

Accommodation works, disturbance costs and s.7 claims



Jacqueline Lean (Chair)

Colin Smith FRICS

Topics to be covered

- S.7 claims – severance and injurious affection
- Accommodation works – how do they factor into the claim?
- Disturbance costs

S.7 CPA 1965

“In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land to be purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

Severance and injurious affection under s.7

- Can only be claimed by a person from whom an interest in land has been compulsorily acquired (cf s.10)
- Also applies where an acquiring authority is authorised to acquire rights over land (see, eg, ss13 & 14 Local Government (Miscellaneous Provisions) Act 1976)
- Applies where there has been depreciation in value of retained land – (note, if an increase in value – ‘betterment’ – this may need to be deducted from compensation for land acquired)

Severance and injurious affection under s.7

- A claim under s.7 does not arise in respect of all or any retained land – it must be “other land” “held therewith” the acquired land.
 - Common ownership not sufficient in and of itself
 - Neither necessary nor sufficient for land to be held under same title
 - *“The basis of the claim to compensation for lands injuriously affected by severance must be that the lands taken are so connected with or related to the lands left that the owner of the latter is prejudiced in his ability to use or dispose of them to advantage by reason of the severance”*

Holditch v Canadian Northern Ontario Rly [1916] 1 AC 536 per Lord Sumner

Severance and injurious affection under s.7

- “**Severance**” – can apply to horizontal strata as well as parcels of land (eg subsoil only acquired for a railway: City & South London Rly Co v United Parishes of St Mary, Woolnoth & St Mary, Woolchurch [1905] AC 1, HL)
- “**Injurious affection**” – depreciation in value of retained land as a result of works (etc) carried out under the order (or other enactment) which authorised compulsory acquisition of the land.
 - Does not require C to demonstrate that loss actionable at common law absent the statutory authority (cf s.10)
 - Is not limited to works (etc) carried out on the land actually acquired from C (s.44 LCA 1973).

Severance: S.8(2) CPA 1965

“(2) If any land which is not situated in a town or built upon is cut through and divided by the works so as to leave, either on both sides of the works, or on one side, a quantity of land which is less than half an acre, the owner of the land may require the acquiring authority to purchase the land along with the land subject to compulsory purchase:

Provided that this subsection shall not apply if the owner has other land adjoining the land so left into which it can be thrown so as to be conveniently occupied with it, and in that case the acquiring authority shall, if so required by the owner, at their own expense throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof, and by soiling it in a satisfactory and workmanlike manner.”

S.7 – assessing the claim

- Amount by which the retained land is depreciated in value
 - (Value before vs value after)
- Statutory rules in s.5 LCA 1961 do not apply
- Can have regard to anticipated future use of the land acquired (eg in respect of exercise of rights in future by the acquiring authority) but must be considered by reference to “reality” and not just what is “theoretically” possible (*Elitestone Ltd v National Grid Gas plc* [2015] UKUT 452 (LC))
- Can include depreciation in / deferment of development value
- Is not to be assessed by reference to costs which C incurs to mitigate or deal with the effect of compulsory acquisition of part of its land (*Cooke v Secretary of State for the Environment* (1973) 27 P & CR 234).

Accommodation works



© Highways England
Green bridge over the A556

9 Accommodation works

- 9.1.1 Where land is to be acquired or temporarily occupied for the purposes of Phase One, it is likely that some form of accommodation works will be provided to allow the continuation of the activities adjacent to the railway. This may include the provision of new or altered accesses to or around the farm, fencing, the re-provision of built facilities, and the provision of services. Appropriate accommodation works will be discussed with farmers on a case-by-case basis and in a timely manner.
- 9.1.2 The provision of accommodation works will depend on the individual circumstances of the holding and will usually be developed as the detailed design of the Proposed Scheme is undertaken. Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned.
- 9.1.3 The structures of accommodation bridges, underpasses, culverts or sleeves over or under HS2 will be maintained by HS2 Ltd. The maintenance of access way surfaces or services within will need to be determined on a case-by-case basis. The farmer will normally be responsible for any surface over which he will have exclusive use.
- 9.1.4 The Nominated Undertaker will discuss with each landowner the provision and timing of accommodation works as part of the compensation package.

Accommodation works

- In broad terms, these are works which the acquiring authority may carry out in order to reduce the effect of severance and/or injurious affection on land (and, consequently, the compensation that would otherwise be payable)
- Landowner cannot be compelled to accept accommodation works on retained land– but is required to act reasonably in mitigating his loss

Note - s.8(3) CPA 1965

(3) If the owner of any land cut through and divided by the works requires the acquiring authority under the provisions of the special Act to make any bridge, culvert or other communication between the land so divided, and—

(a) the land is so cut through and divided as to leave, either on both sides or on one side, a quantity of land which is less than half an acre, or which is of less value than the expense of making the communication between the divided land, and

(b) the owner has no other land adjoining that piece of land,

the acquiring authority may require the owner to sell them the piece of land. Any dispute as to the value of the piece of land, or as to the expense of making a communication between the divided land shall be determined by the Upper Tribunal, and either party to proceedings for determining the compensation to be paid for the land acquired may require the Upper Tribunal to make its determination under this subsection in those proceedings.

Disturbance costs

- Costs or losses arising from compulsory acquisition and dispossession not directly based on the value of land (Rule 6, s.5 LCA 1961)
- C can claim for direct and reasonable consequence arising from compulsory acquisition
- Loss must not be too remote
- C must act in a reasonable manner and mitigate losses
- Can, in principle, include pre-acquisition losses – Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111 - subject to meeting 3 criteria above.

Disturbance costs

- In order to claim compensation for disturbance, C:
 - Must be the occupier of the land
 - Must have an estate or interest that has been compulsorily acquired
 - Caution! There can be difficulties where ownership of legal interest differs from 'person' in occupation.
 - Must have lost possession as a result of the compulsory acquisition of the land

- + claim must not be inconsistent with basis on which land acquired was valued –no double recovery!

Potential heads of claim

- Temporary and permanent loss of profits
- Loss of crops on agricultural land
- Cost of seeking suitable alternative premises
- Costs of fitting out alternative premises
- Stamp Duty on new premises
- Close down of business if relocation not possible
- (Reasonable) legal and surveying fees

- Does not include cost of alternative premises – it is assumed C has received value for money for the land acquired

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
📌 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers/)