

Landmark Chambers' webinar – questions and answers

Delivering Major Infrastructure: Part 5 – Land compensation – assessing the claim

Introduction

1. On Monday 3rd August 2020, Landmark Chambers hosted the fifth webinar in a five-part webinar series entitled “Delivering Major Infrastructure: Part 5 – Land compensation – assessing the claim”. Speakers included Jacqueline Lean (Chair), Simon Pickles, Luke Wilcox and guest speaker Colin Smith FRICS.
2. During the webinar, attendees submitted a number of questions, and for those that were not answered at the end of the webinar, we have provided answers here. We have not been able to provide answers to questions involving particular cases or particular sites.

Talk 1: The purpose of compensation, and fair value principles

Talk 2: Injurious affection and tenant compensation

Luke Wilcox

Question: Does Section 5 Rule 2A affect the assessment of Rule 6 matters?

3. Answer: Not particularly, no. Rule 6 is concerned with disturbance payments, and as the rule itself indicates (s. 5(6) of the Land Compensation Act 1961), it is concerned with matters “not directly based on the value of land”. By contrast, the “no scheme world” rules are all directed at “assessing the value of land” (s. 6A(1) LCA 1961). Put another way, the “no scheme world” rule is an aspect of establishing the open market value of the property to the owner; disturbance payments are about compensating the owner for losses arising from the CPO which are not connected to the open market value of the property as such (but which still need to be compensated to give effect to the fullness of the principle of equivalence).

Question: Is there a section 10 claim for the benefit of nearby land if the AA has acquired the land for the scheme by agreement even if under the threat of CPO?

4. Answer: This issue (amongst others) was considered by the Court of Appeal in *Moto Hospitality Ltd v SST* [2008] 1 WLR 2822. Carnwath LJ said that all that was needed for s. 10 to be triggered was that the “package of orders” for the scheme included compulsory acquisition powers for at least some of the scheme’s land. If such powers are present, then s. 10 applies

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
 Landmark Chambers

to the works as a whole, even if the relevant works are conducted on land acquired by agreement (para 53). Presumably, s. 10 will be available even if all of the scheme land is acquired by agreement: what is needed is the existence of compulsory purchase powers, not their exercise.

Question: If the Tenant is holding over on a protected 1958 tenancy (so only the statutory term remains), are they considered to have a 'minor tenancy' - or will they be acquired under the GVD process?

5. Answer: While the position is not entirely clear, it appears that where a tenant is holding over in reliance on the Landlord and Tenant Act 1954, then that tenancy falls within the scope of s. 20 as a 'minor tenancy'. That was held to be the case by the Court of Appeal in *Newham LBC v Benjamin* [1968] 1 WLR 694. At the time of the *Benjamin* decision, the 1954 Act contained (in s. 39(1)) an explicit direction that compensation was to be determined without regard to the right to apply for a new tenancy. S. 39(1) has since been repealed. As the Court of Appeal noted earlier this year in *Anixter Ltd v SST* [2020] 1 WLR 2547, however, s. 39(3) of the 1954 Act also requires the prospect of a new tenancy to be ignored for compensation purposes (see paras 50 and 51 of *Anixter*), and that provision remains in force today. *Barnes on The Law of Compulsory Purchase and Compensation* is of the same opinion.

Accommodation works, disturbance costs and s.7 claims

Jacqueline Lean (Chair) and Colin Smith FRICS

Question: Is the sole tenant of a piece of land taken via CPO entitled to compensation for injurious affection in relation to his freehold interest in an adjoining house, jointly owned with his wife?

6. Answer: The question of whether s.10 compensation is payable where an owner of land acquired compulsorily holds an interest in another parcel of land whose value is affected by the scheme will need to be determined following consideration of all circumstances of the case. The landowner does not need to enjoy the same legal estate or interest in both parcels of land (see, e.g. *Oppenheimer v Minister of Transport* [1941] KB 242) but there is authority to the effect that land held by two individuals jointly cannot be land "held therewith" a parcel of land owned by one of those individuals alone: *Cooper v Northern Ireland Housing Executive* [1981] RVR 131.

Question: Are s10A (re investment costs) claims recoverable where the land has the benefit of planning permission for development?

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
 Landmark Chambers

7. Answer: We are not aware of any authority directly on this point. However, as s.10A was intended to provide for certain expenses to be recoverable by a landowner which he could not claim as compensation for disturbance as he was not in occupation (*Saddiq v Stoke-on-Trent City Council* [2009] RVR 178) it may be that reinvestment costs are not claimable where they relate to land which has the benefit of planning permission where the rule 2 compensation has been assessed on that basis, having regard to *Horn v Sunderland Corp* [1941] 2 KB 26.

Talk 1: Practical issues & Temporary possession

Talk 2: Part 1 claims

Simon Pickles

8. All questions relating to these talks were answered live at the end of the webinar.
9. If there are further queries please do not hesitate to contact marketing@landmarkchambers.co.uk

[JACQUELINE LEAN](#)

[SIMON PICKLES](#)

[LUKE WILCOX](#)

COLIN SMITH FRICS

21 AUGUST 2020

This document is made available for educational purposes only. The views expressed in it are those of the authors. The contents do not constitute legal advice and should not be relied on as such advice. The authors and Landmark Chambers accept no responsibility for the continuing accuracy of the contents.

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
 Landmark Chambers