

Practical issues & Temporary possession



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Practical issues (1/10)

- The importance (to both parties) of:
 - Claims that are both documented & explained from the outset
 - Understanding (if not acceptance) of the value for money principle
 - A clear strategy towards offers of settlement

Claims: documented & explained (2/10)

- Starting points:
 - MHCLG Guidance (2019) model claim
 - LC Practice Direction (2010)
- Claimant's interest:
 - A full Advance Payment
 - Costs of claim almost invariably recoverable
- AA's interest:
 - Efficient disposal of claims
 - Informed offers inc. sealed offers

Claims: documented & explained (3/10)

- Examples:
 - Relocation: Who undertook premises search & why, search parameters, factors informing premises selection
 - Management time: Personnel engaged, amount of time consumed, loss resulting from staff deployment
 - Mitigation: Explanation of key choices made

Value for money (4/10)

- Rebuttable presumption that expenditure on relocation premises secures value for money no always understood or accepted
 - » *Service Welding* (1979) 38 P&CR 352
 - » *Mohammed* [2016] UKUT 415
- Issues arise most typically in respect of new/replacement fittings & equipment
- But may also arise in respect of (part) rental (not a hard & fast distinction)

Value for money (5/10)

- Examples:
 - The builders' merchants
 - The dairy
 - Office or warehouse relocation

Temporary possession (6/10)

- Context
 - Previously permanent acquisition only subject to exceptions
 - Neighbourhood Planning Act 2017 (Part 2 Chapter 2)
 - S.18:
 - » All with power to CPO land empowered also to take temporary possession of it by agreement or compulsorily
 - » Only power to take temporary possession of land compulsorily (subject to express provision), therefore also applies to TWAOs and DCOs
 - A new frontier for objectors – not my plot, not permanently

Temporary possession (7/10)

- Procedure
 - s.19: May be authorised by CPO
CPO may authorise acquisitions that are perm & temp, temp only, or both perm & temp in respect of the same land acq
 - s.20: Within 3 years of CPO (5 in other cases)
>3 months notice of intended entry
 - S.21: Counter-notice (28 days): 12 (dwellings) or 6 months?
AA (28 Days) to accept, withdraw or CPO
Material detriment provisions apply

Temporary possession (8/10)

- Compensation (s.23)
 - ‘Claimant’ with an interest/right to occupy entitled to compensation for ‘*any loss or injury the claimant sustains*’ where an AA takes temporary possession
 - ‘Beneficial claimant’ (BC) is entitled to compensation ‘*any loss or injury*’ sustained by interference with a right or interest annexed to land belonging to BC, or breaching a restriction as to the user of land arising by contract to which BC is a party or the restriction benefits land belonging to BC

Temporary possession (9/10)

- Very broad scope:
 - No spatial limitation
 - No physical limitation
- Requirements to demonstrate:
 - Causation
 - Reasonableness/mitigation
- The role of the Scheme

Temporary possession (10/10)

- Business/trade disturbance
 - Compensation to include that for any loss sustained by reason of disturbance consequent upon having to quit the land for the period of the temporary possession.
 - Regard to be had, in estimating loss, to:
 - period for & terms on which the land may reasonably have been expected to be available for the purposes of the claimant's trade or business;
 - availability of other land suitable for those purposes during the period of temporary possession.

Thank you for listening

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