Landmark Chambers

The purpose of compensation, and fair value principles

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Topics to be covered

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- Introduction to valuation and compensation – the principles
- Practical considerations – hints and tips
- Accommodation works, disturbance and s. 7 claims
- S. 10 claims and tenant compensation
- Part 1 claims
- Q&A

Preface: the nature of valuation

- Valuation involves elements of law, science/arithmetic, and a healthy dose of professional judgment – as much an art as a science!

- The role of law:
  - Sets the <u>framework</u> within which the valuation exercise is undertaken
  - Critical first step in any valuation is to identify the features and parameters of this framework
  - Cross-fertilisation from multiple areas of law: rating, rent review etc

- Once framework is established, the role of the law is largely over:

“Ascertainment of the rent at which premises might reasonably be expected to let on the statutory assumptions is a question of fact, not one of law. The selection of the most appropriate technique to be employed in answering that question is a matter of valuation judgment rather than legal precedent.”

Hughes (VO) v York Museums and Gallery Trust [2017] RA 302, para 112 (rating case)

Introduction to valuation for CPO compensation

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- Governing framework: Land Compensation Act 1961, s. 5

- Seven rules:
  - No allowance for compulsory nature of acquisition
  - Open market value realised by willing seller
  - No-scheme world
  - No special suitability value for statutory power
  - No value from illegal/unlawful/detrimental uses
  - Reinstatement value
  - No impact on disturbance compensation

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Valuation date

- Critical to any valuation – sets the circumstances of the hypothetical negotiations and transaction
- Factors arising after valuation date usually disregarded – unless they were reasonably foreseeable on the valuation date
- LCA 1961 s. 5A – specifies the valuation dates for various circumstances of acquisition

Principle of equivalence

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- Overarching principle governing all CPO compensation

“The purpose of these provisions … is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail.”

Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 1 AC 111 per Lord Nicholls

The open market and the hypothetical sale

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- Open market value achieved by positing a hypothetical transaction between hypothetical parties

- Note – statute refers only to willing seller. Willing buyer, however, is necessarily implicit: risk of under-compensation otherwise
  - See e.g. *Dennis & Robinson Ltd v Kiossos Establishment* (1987) 54 P&CR 282 (rent review case)

- The “higgling of the market”
  - *Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1937] KB 445

Value to the owner principle

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- It's the value of the property to its owner that is sought to be identified, not the value of the property to the acquiring authority

- Underlies the "no scheme world" approach (aka the *Pointe Gourde* principle)
  - Implications for development value aspects of the compensation

- Also justification for disturbance payments

The principle of reality

- Aka valuation *rebus sic stantibus* ("as it stands")
- Save where the statute requires otherwise, value by reference to the real world
- Physical condition of the land, patterns of ownership, use and occupation in the locality, state of the property market and wider economy etc are all as they were on the valuation date

How to value land for CPO compensation purposes

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- A matter for valuers!

- Four main methods:
  - Comparables valuation
  - Residual valuation
  - Receipts and expenditure (“R&E”) valuation (aka the profits method)
  - Depreciated replacement cost valuation

Thank you for listening

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