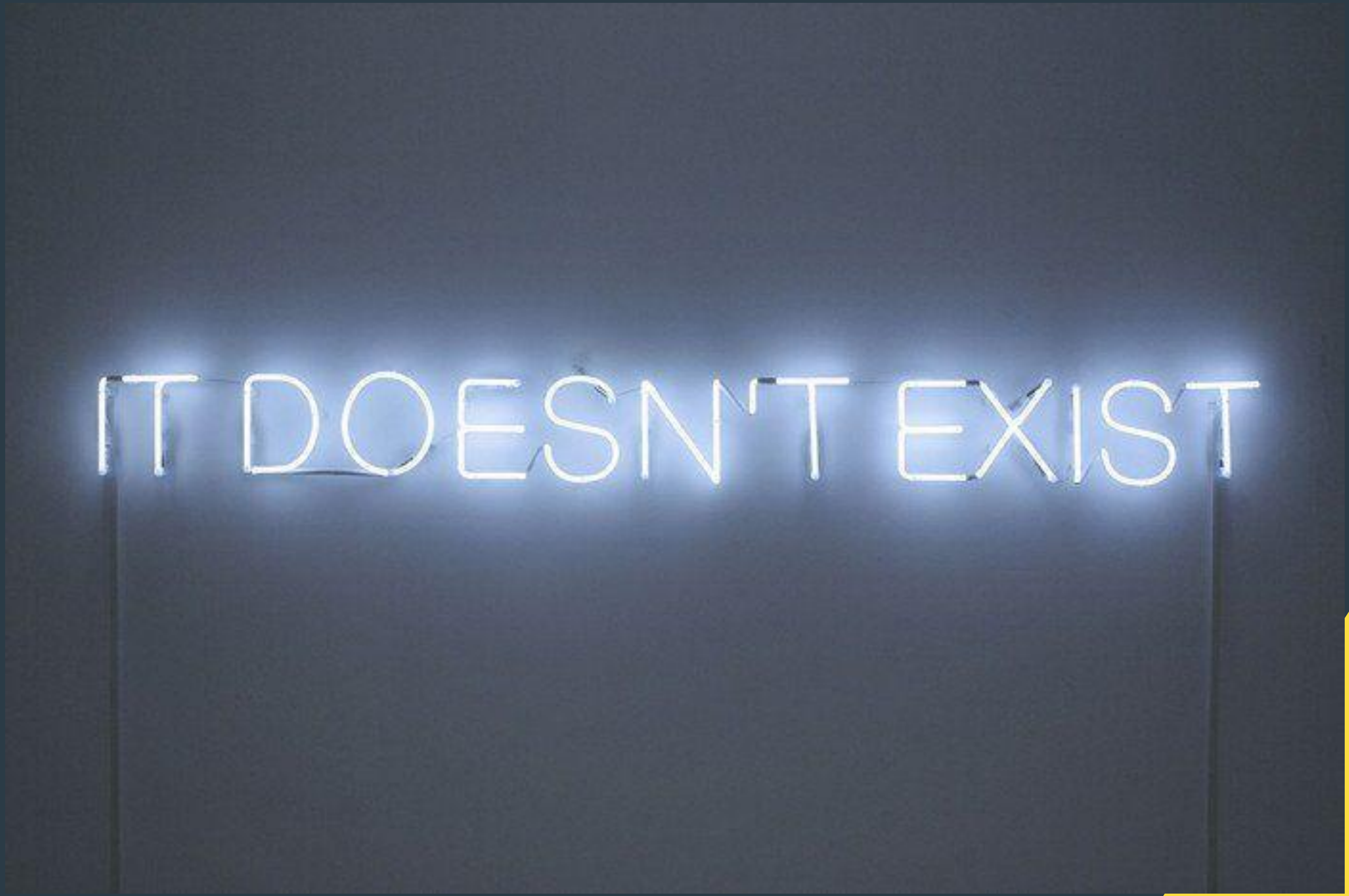
Forward thinking.
Straight talking.

An introduction to compensation

November 2019

Gateley HAMER

The Compensation Code, you say?



Key legislation

- Land Compensation Act 1961 – Section 5, Rules 1-6
- Compensation where no land is taken (s.10 1965 Act and Part 1 1973 Act)
- Compensation for injurious affection and severance (s.7 1965 Act)
- Material detriment (s.8 1965 Act)
- Business extinguishment (s.46 LCA 1973)
- Equivalent reinstatement (r.5, s.6 1961 Act)
- Loss payments (s.29 & s.33A-33K 1973 Act)
- Blight (TCPA 1990)

Key principles of compensation

- Financial equivalence
- Reasonable businessman
- Duty to mitigate
- Disturbance: Reasonableness, remoteness and causation

When is compensation payable?

- Valuation date is usually date of possession or vesting date
- Compensation is usually paid after possession is taken
- Advance payments may be payable on date of possession
- But – AA’s should make efforts to acquire by agreement (CPO should
  be a last resort)

AAs should make efforts to acquire by agreement

Government guidance states:

When offering financial compensation for land in advance of a CPO, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

AAs can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

Forward thinking.
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Value of the land taken

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Value of the land taken

s.5(2) LCA 1961
(‘Rule 2’ of the six rules):

“*The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.*”

Disregarding the scheme:
The *'hereinafter provided'*

- 'Rule 3' of the "six rules"
- S.32 of Neighbourhood Planning Act 2017 (new rule 2A)
- Ss. 14-16 Land Compensation Act 1961 (the 'planning assumptions')
- S.17 LCA 1961 (Certificate of Appropriate Alternative Development)

Disregarding the scheme: s.5 r.3 LCA 1961

‘Rule 3’:

Disregard special suitability of the land for any purpose which could be applied only in pursuance of statutory powers or for which there is no market except for a body with compulsory purchase powers

See *Port of London Authority v Transport for London (2007)*

Disregarding the scheme: s.32 NPA 2017

Section 32

Inserts a new rule 2A after ‘Rule 2’

“*(2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A.*”

Replaces the whole of ss 6 to 9 and Schedule 1 of LCA 1961 and the ‘Pointe Gourde principle’ with new provisions in a new section 6

Disregarding the scheme:
s.32 NPA 2017

New s.6A LCA 1961:

- Disregard any increase or decrease in the value of the land due to the scheme or the prospect of the scheme.
- Also sets out 5 “no-scheme rules” including an assumption that the scheme was cancelled on the relevant valuation date

Disregarding the scheme: Planning assumptions

The need for planning assumptions:

Compensation is based on market value

Legislation is aimed at ensuring payment of ‘fair’ market value by disregarding the existence or prospect of a CPO

The CPO, and the acquiring authority’s need for the land, often means that:

- land is acquired before the owner has had the opportunity to maximise its value
- planning permission will not be granted for development

Disregarding the scheme: Planning assumptions

ss.14-16 Land Compensation Act 1961

- Take account of any planning permissions actually in place.
- Assume benefit of planning permission for any development for which permission could reasonably have been expected to be granted:
  - on the valuation date, or;
  - at a later time if it is certain that it would have been granted at that time
  - assuming the scheme underlying the acquisition was cancelled on the date of first notice of the making of the CPO

Disregarding the scheme: Planning assumptions

Hope Value

- Land is valued based on the circumstances as they exist at the valuation date
- Any ‘hope value’ that would have attached to the land absent the scheme/CPO is therefore reflected in the valuation
- The statutory ‘planning assumptions’ may in some circumstances convert hope value into an assumption of planning permission

Disregarding the scheme: Planning assumptions

Certificates of Appropriate Alternative Development

Application to LPA for certification of permission it would have granted if the land were not proposed to be compulsorily acquired.

Certificate must state either:

- the LPA believes there is development that is AAD for purpose of s14; or
- The LPA believes that there is no development which is AAD

If there is, the LPA must:

- “identify every description of development” that is AAD
- “give a general indication” of conditions & pre-conditions reasonably expected to be attached

Summary of Rule 2

- The amount which the land if sold in the open market by a willing seller might be expected to realise…….
- Disregarding the special suitability of the land for the underlying scheme,
- Disregarding any increase or decrease in the value of the land due to the scheme or the prospect of the scheme,
- Assuming that the underlying scheme had been cancelled on the valuation date,
- But taking account of any planning consent that exists or which would have been granted or might have been expected to have been granted (i.e. hope value) in the future in the no scheme world (i.e. assuming the scheme underlying the acquisition was cancelled on the date of the first notice of the making of the CPO).

A few thoughts on Rule 2

- In the majority of cases market value is based on existing use value.
- Development value or hope value should be taken account of it alternative uses could have been consented and delivered in the no scheme world.
- Special purchasers may be taken in to account.
- Marriage or ransom value may be taken in to account if it existed in the no scheme world.

Severance & injurious affection

Severance

- Severance occurs when part of the claimant’s land is taken.

- Damage due to severance arises when the land acquired contributes to the value of the retained land and the loss of the land acquired reduces the value of the land retained (but it is not necessary that the claimant’s retained land be divided).

- The measure of compensation is the depreciation in the value of the claimant’s retained interest arising from the severing of the land acquired from the original whole.

Injurious affection

- Injurious affection to retained land may arise as a result of the execution and use of the works (i.e. noise, vibration, impact on a view etc)

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Non land value compensation

Presented by:

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5 November 2019

Introduction

- What is it?
- Relocation v Extinguishment
- Reinvestment
- Accommodation Works
- Basic and Occupiers Loss
- Professional Fees

What is it?

- Principle of Equivalence
- Other costs and losses due to being compulsorily acquired
- ‘Disturbed’
- In the shadow of a CPO

What is it - Residential?

- Finding and securing new home including stamp duty
- Packing and removal costs
- Adaptation of fixtures and fittings
- Special adaptations
- Services/utilities/post redirection etc

What is it - Business?

- Finding and securing new premises including stamp duty
- Double Overheads
- Loss of Profits
- Packing and removal costs
- Adaptation of fixtures and fittings
- Services/utilities/post redirection etc
- Notification of customers
- Additional staff time

Business Relocation v Extinguishment

Relocation v Extinguishment

- Duty to be reasonable and mitigate
- What would a ‘reasonable businessman’ do?
- Retirement exception
- Business charter and assistance?

Investors?

- Not ‘disturbed’
- Principle of equivalence
- Costs of reinvestment
- Potentially some relocation costs?
- Capital Gains tax rollover relief

Accommodation Works

- Works to mitigate impact
- Fencing / new access ways etc
- Noise proofing / air quality
- Cost / benefit analysis
- Plan ahead

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Statutory Loss Payments and Fees

- Basic Loss payment
  - Entitlement?
  - Calculation

- Occupiers Loss Payment
  - Entitlement
  - Calculation

- Professional Fees
  - Reasonable
  - Necessary
  - Early discussion

Thank you

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