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Compulsory Purchase and Compensation: an overview of the system in England and Wales.

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***Abstract:** This paper provides an overview of the legal principles which govern the process of gaining compulsory acquisition powers in England and Wales and, in more detail, the circumstances under which compensation may be claimed. An indication is given as to the process of assessing compensation, although detailed valuations and procedures to be adopted in order to claim compensation are not provided. The paper concludes with a discussion regarding the equity of the current provisions, with illustrative examples, and the potential for reform, as well as a brief introduction to the proposed UK betterment tax - Planning-Gain Supplement*

***Keywords:** Compulsory Purchase; Compensation; England; United Kingdom*

1 Compulsory purchase

The taking of anything from anyone without their permission is theft and is punishable within the courts. Thus there is no compulsory purchase at common law¹. However, Parliament authorises the taking of land, but only for the “public good”, and such “public good” needs to be demonstrated. In order for an authority to get compulsory purchase powers, it is necessary for Parliament to authorise all of the following:

the taking of land;
the use of compulsion;
the process of acquisition;
the purpose for which the land is to be used; and
the specific parcel of land to be taken.

Many bodies/authorities which exercise compulsory purchase powers (called acquiring authorities or AAs) are local authorities (municipalities) or providers of utility services (formerly statutory undertakers), which are expected to fulfill the needs of society by undertaking or securing developmentⁱⁱ.

In order to speed up the process, certain authorising legislation (public general Acts of Parliament e.g. Housing Act 1988 (which authorise the taking of land, the use of compulsion and a range of purposes to which land can be put) and the Compulsory Purchase Act 1965 (which provides the procedural authorisation) is always in force. Parliament has also delegated some of its powers to ministers of state so that, generally, the necessary Parliamentary authorizations are achieved thus:

the taking of land – public general act of Parliament;
the use of compulsion – public general act of Parliament;
the process of acquisition – Compulsory Purchase Act 1965 (CPA 1965);
the purpose for which the land is to be used – public general Act of Parliament together with a Compulsory Purchase Order (CPO); and
the specific parcel of land to be taken - CPO.

Briefly, an acquiring authority prepares and submits to the relevant minister of state, a CPO made under a relevant public general act of Parliament and seeking authorization to acquire specific land for one of a range of purposes contained in the public general act of Parliament. Having following the appropriate procedure, and being satisfied of the “public good” to be achieved by the acquisition and subsequent development, the relevant minister uses powers delegated from Parliament to grant to the acquiring authority powers of compulsory acquisition for the stated land and purpose. Thus, the powers of compulsory acquisition are contained in the three pieces of legislation: the relevant public general act of Parliament, the Compulsory Purchase Act 1965 and the relevant CPO, which together may be called the Special Act, the Authorizing Act or the Enabling Act.

Parliament achieves the “compulsory” acquisition of land by, effectively, preventing the land owner from withdrawing from the transaction with the acquiring authority. However, the acquiring authorities can choose not to exercise its powers (allow them to lapse) or, during the process of exercising their powers, an AA can change its mind, for example, once the level of compensation payable is apparent. Where the power to acquire land compulsorily exists within a public general act of Parliament, an AA can choose to purchase land by agreement, and, for certain purposes, statute only allows an AA to purchase by agreement. However, when purchasing by agreement, an authority is expected to follow the normal rules for assessing compensation in fixing a purchase price (refer Sections 3 – 6 below).

Further details of the process of gaining compulsory purchase powers and how they are exercised (how the land is actually taken from the owner) are not covered here (refer Davies, 1984 and Denyer-Green, 2003 for

further details). However, the following points are important for the remainder of the paper:

The awarding of compulsory purchase powers does not alter the legal ownership of land, until those powers are exercised by the AA;

The right to object to the compulsory purchase of land only exist during the process of approval of the CPO and not during its subsequent implementation;

Powers of compulsory purchase must be exercised within three years or they will lapse. Powers of compulsory purchase are exercised by the serving of a Notice to Treat which effectively commits both the acquiring authority and the land owner to the sale of the land. The date on which Notice to Treat is served fixes both the physical and the legal property which the AA will acquire, but it is not the date of valuation (see below);

The valuation date is the date on which the AA takes possession of the land or the date on which compensation is agreed or determined;

Where an AA seeks to take part only of an owner's land, there is legislation (s. 8 CPA 1965) requiring the AA to take all of the land or none of it, but conditions are applied to the use of this "all or nothing" provision;

Disputes regarding levels of compensation are made to the Lands Tribunal, although appeal on a point of law is available to the Court of Appeal and thence to the House of Lords, with all matters of valuation being referred back to the Lands Tribunal;

A claim for compensation is a "once and for all" claim i.e. it must include all items of loss, even those which have not yet been suffered. It is not possible to make a claim for compensation, say for land taken, and then go back to the AA later and claim for further losses.

This paper outlines rights to compensation and how that compensation is assessed. This paper does not include detailed valuations nor are the procedures to be adopted for claiming compensation discussed. Readers are warned that many other details are omitted from this text, and reference to more comprehensive information should be sought in all cases (refer Davies, 1984 and Denyer-Green, 2003 for further details).

2 Compensation – background

As stated above, compulsory acquisition is a creation of statute – it does not exist at common law. Thus, rights to compensation do not exist at common law. Only if statute specifically allows for compensation to be claimed does a land owner have a right to compensation – rights to compensation cannot be assumed to exist, regardless of the loss suffered. If statute does not specifically allow for compensation to be paid, an owner has no right to claim, regardless of the level of loss.

Because of the way that the legislation has developed historically, the rights to compensation are treated separately here, as follows:

Section 3: compensation for land taken;

Section 4: compensation for the depreciation in value of land which is retained by the owner (land “held with” land taken);
Section 5: compensation where no land is taken; and
Section 6: compensation for other losses.

3 Compensation for land taken

1.1 The Six Rules

The right to compensation for land taken is clearly set out in legislation (s. 7 CPA, 1965), and the provisions for assessing compensation for land taken are contained in s. 5 of the Land Compensation Act 1961 (LCA 1961) and are generally known as the six rules. They have been further explained by judicial (court) decisions, but briefly are, as follows:

1. no additional compensation is payable because the acquisition is compulsory;
2. compensation is based on the open market value of the land, assuming a willing seller (refer 3.4 below);
3. ignore any increase in the value of land which relates to a use which would only be of value to a statutory purchaser (the aim of this rule is to prevent statutory bodies being forced to pay more compensation because they are the only potential purchaser);
4. ignore any increase in value due to an illegal use;
5. in cases where there is no demand or market for the purpose for which the land is used, compensation may be based on the equivalent reinstatement of that use i.e. a cost-based valuation (refer 3.5 below);
6. the requirement for compensation to be based on open market value (rule ii) does not prevent the owner from claiming compensation for other losses (refer Section 6 for further details).

Thus, basically, legislation requires the valuer to fix compensation based on the open market value of the land, assuming a willing seller (rule ii value).

1.2 The Additional Rules

Further guidance is provided to the valuer, thus:

1. ignore the increase or decrease in the value of land which is created by the scheme of the acquiring authority, whether such increase or decrease has already been achieved or whether it can be anticipated. Thus an AA does not have to pay for any value which it has created nor is it to benefit from any loss which it has created (s. 6 LCA, 1961, and *Pointe Gourde* principle) (refer 3.4 below);
2. ignore the decrease in value of land due to the threat of acquisition (s. 9 LCA, 1961);
3. where an owner who is claiming compensation also has land which is increased in value as a result of the acquisition and development

proposed by the acquiring authority, then the amount of compensation payable is set off against the increase in the value of land. Thus, if an owner is entitled to £100,000 in compensation, but has land which is increasing in value by £60,000 as a result of the AA's development, then the amount of the increase is set off against the amount of compensation and the owner will receive (£100,000 - £60,000) only £40,000 (s. 7 LCA, 1961). This issue is discussed further later (refer 7.1.4 below).

1.3 Planning Assumptions

When undertaking a valuation of land in accordance with the above, legislation (ss. 14 – 16 LCA 1961) allow a valuer to assume the following planning consents which reflect the land use by the local planning authority, as shown within the approved development planⁱⁱⁱ:

1. value the land for its existing use;
2. value the land for any planning consents which have been granted and for which the land is not yet being used;
3. value the land for the purpose for which the acquiring authority will use the land;
4. value the land for any uses for which the land is allocated within the development plan.

The valuer is able to take the highest of these uses as the basis on which a claim can be made for compensation.

Where the above provide no “valuable” uses on which to base compensation and there is no indication of any “valuable” use of land shown on the development plan, a valuer can ask the local planning authority what land use would have been permitted if there had been no compulsory acquisition (s. 17 LCA, 1961). The local planning authority is required to respond either with a “valuable” use (positive certificate) or to state that no “valuable” use (negative certificate) would have been permitted. If a positive certificate is issued, then the valuer can base compensation on such a use and thereby increase the level of compensation claimable by the owner.

Thus, the compensation for land taken is based on the valuer's opinion of the open market value of the land, assuming a willing seller, given all of the conditions mentioned above and in the light of the evidence of actual sales of similar properties occurring at or near the valuation date. Where such market transactional evidence is lacking, it is not unusual for compensation to be based on the level of previously agreed compensation settlements, but this is not something which is preferred by the courts.

1.4 Open Market Value assuming a Willing Seller in a “no scheme world”

It may be useful to provide a fuller explanation of what the (rule ii) concept of an open market value assuming a willing seller means. This has been extensively considered by the courts.

Market value can generally be understood to mean the price at which a property changes hands between a willing seller and a willing purchaser, assuming normal market conditions, appropriate marketing of the property (such that all potential purchasers have a chance to make an offer for it).

Thus, an open market sale involves conditions under which everyone who might wish to purchase can make an offer; thus assuming full publicity; it is the actual property which is being sold, with no additions or improvements; a “willing seller” has been defined as “a free agent” who will not sell at just any price; nor is a willing seller an anxious seller; a willing seller has been defined as “a hypothetical character” with no special characteristics, but is assumed to be willing to sell at the best price which he can reasonably get for it.

However, the fact that compensation is being fixed under conditions of a compulsory purchase demonstrates that a true open market value cannot be achieved – there is no willing seller. What is therefore anticipated is that compensation will be based on the opinion of an experienced valuer, who will use comparable transactional evidence in order to arrive at a reasonable market value under conditions which ignore the effects of both the acquisition and the subsequent development of the land on its value (refer below). Such hypothetical circumstances are assumed when valuing for other purposes, where it is necessary to fix an open market value but where a free market transaction will not take place or does not take place under the assumed conditions.

What makes the situation so potentially difficult for the owner is that the acquiring authority does not have to pay for value which it creates. The case of *Myers v Milton Keynes Development Corporation* (1974) illustrates one aspect of this point. The claimant’s land which was to be acquired was located outside a village and within a designated “new town” (Milton Keynes) which was being developed. At the time, the land was used for agricultural purposes but was to be used by the acquiring authority for residential purposes. Thus, the valuer was able to base a claim for compensation assuming residential use (refer 3.3 above). However, the requirement under s. 10 (LCA 1961 refer 3.2 above) to ignore the scheme meant that demand for that residential use would only exist once the original village expanded naturally to include the claimants land – this, the court decided, would not happen for ten years, and so fixed the compensation at the current residential value of the land, deferred for ten years.

In another example, an AA decided to acquire a large area of land, which was being both acquired and developed in stages, using a number of compulsory purchase orders. The first two stages of acquisition and development were completed and the prices of those properties surrounding the development (which were not being compulsory acquired) increased. This additional value was created by the AA as a result of the scheme. When the AA came to acquire the land and buildings within the third stage of the acquisition, and the valuer looked around for comparable sales

evidence on which to base a compensation claim, those transactions of properties which surrounded the entire area of the development were no longer suitable for comparison purposes because their prices, had been increased by the value of the AA's development. The valuer had to look in more remote locations for similar properties to those being acquired but which were entirely unaffected by the AA's development.

Thus, the valuer has to imagine a "no scheme" world in which the acquisition and the development – the "scheme" - does not exist and does not therefore affect demand for and prices of property, and to fix the open market value of the property based on this artificial scenario. This is particularly difficult for the owner who may wish to remain within that locality but who finds that the compensation paid to him by the acquiring authority is not enough for him to purchase a similar property nearby.

1.5 Equivalent Reinstatement

Under s. 5, rule v, where property is of a kind for which there is no general demand or market for its use, then a claimant can have compensation fixed on the cost of reinstating that use, instead of market value (rule ii). The following conditions (determined in *Sparks v. Leeds City Corporation* 1977) must apply:

1. the purpose to which the land is put must be one for which there is no general demand or market (e.g. a church or a club);
2. there must be evidence that the use of the premises would continue if it were not for the acquisition;
3. there must be a genuine intention to reinstate the use; and
4. (should the case get to court) the Lands Tribunal's discretion should normally be exercised in the claimant's favour (but in the case of a railway used for tourists, the Lands Tribunal found that costs of reinstatement were so disproportionate to its value, that it did not exercise its discretion in favour of the claimant).

Rule v equivalent reinstatement can also be used in the case of dwellings adapted for a disabled occupier. Note that it is the purpose (not the building itself) for which there should be no general demand or market. The application of rule v allows a claimant to claim compensation based on a cost based (contractors test) valuation, although, strictly speaking, a valuer should carry out both a rule ii (open market value) and a rule v (equivalent reinstatement) valuation and claim the higher on behalf of the claimant.

4 Compensation for the depreciation (reduction) in the value of land which is retained by the owner (land "held with" land taken)

The right to compensation for an owner from whom some land is taken and who also retains some land which is depreciated (reduced) in value is clearly laid down in statute (s. 7 CPA 1965). The right to compensation for land taken is fixed as outlined in Section 3 above, but the reduction in value

to the land retained is assessed in a different way. However, both losses are part of the “once and for all” claim made against the acquiring authority.

Land which is retained by an owner can be depreciated in two ways:

1. severance i.e. the land is depreciated in value because it is now smaller in area than it was before; and
2. injurious affection i.e. the land is depreciated in value because of the nuisance which is caused by the acquiring authority and/or by the development on the land taken.

4.1 Land “held with” land taken

The right to compensation under s. 7 (CPA, 1965) exists only for depreciation to land which is “held with” land taken. This expression has been interpreted by the courts as referring to land which is owned by the same person from who land is taken and which is also reduced in value as a result of the acquisition of the land taken.

4.2 Assessment of Compensation

Where an owner has some land compulsorily acquired and retains some land, compensation is assessed on a “before and after” basis. Thus, for example:

Value of the owner’s interest in the land prior to acquisition	£1,000,000	
Value of the owner’s interest in the land after acquisition and assuming the development completed	£750,000	
Owner’s loss, which includes both the value of land taken and the depreciation to the land retained		£250,000

So, the owner is entitled to compensation of £250,000, but this amount must be split between the value of the land taken (assessed in accordance with the provisions outlined above in Section 3) and the depreciation to the land retained. The valuer calculates the “before and after” valuations (as above) and arrives at the loss of £250,000; the value of the land taken is then assessed in accordance with the rules outlined above (Section 3) at, say, £200,000 and the depreciation to the land retained calculated (£250,000 - £200,000) at £50,000, but the claim made would be presented, as follows:

Value of land taken (assessed in accordance with 6 rules etc)	£200,000	
Depreciation to land retained	£50,000	
Compensation Claimed		£250,000

5 Compensation where no land is taken

In the original (1845) legislation which laid down rights to compensation, no specific provision was made for the payment of compensation where no land was taken. Also, at the time, there was no legislation to say how the level of compensation should be fixed, and the assessment of compensation was left entirely to the discretion of the courts. Cases of depreciation to the value of land caused by injurious affection (i.e. the land is depreciated in value because of the nuisance which is caused by the acquiring authority and/or by the development on the land taken) were brought to court, and in the absence of any specific statutory rights to compensation, the courts chose to misinterpret a section of the legislation in order to give at least some compensation to those from whom no land was taken but whose land was clearly reduced in value.

5.1 Section 10 CPA 1965 – McCarthy Rules

The section in the 1845 Lands Clauses Consolidation Act which the courts used to give some rights to compensation was designed to force an acquiring authority to actually hand over the compensation where it had already taken possession of the land. Thus, the current legislation (s. 10 CPA 1965, which re-enacts the original 1845 provisions) provides that compensation is payable for land which has been “injuriously affected by the execution of the works”. The courts (specifically in *Metropolitan Board of Works v McCarthy*, 1874) have interpreted this provision to mean that compensation can only be paid under s. 10 if the following rules apply:

1. the action which depreciates the value of the owner’s land must be authorised by Parliament (which effectively prevents an owner from using the courts either to stop the action or to get any other kind of compensation);
2. if Parliament had not authorised the action, the owner would have had the right to an action at law (effectively stopping the damage to the value of the interest in land);
3. the depreciation must reduce the value of the land (and not be a personal loss); and
4. the loss must be caused by the execution (carrying out) of the works.

Thus, the rights to compensation where no land is taken and which are covered by s. 10 are limited to what the law recognizes as a tort (e.g. trespass or nuisance), but where there is no opportunity for the injured party to take any other action because Parliament, in authorizing the acquisition of the land for the purpose, has, effectively authorized any and all resulting nuisance. The loss must reduce the value of land and, the final and most limiting of the rules, the loss must be caused by the execution of the works and not their subsequent use.

By way of illustration of how s. 10 applies, the *McCarthy* case involved the construction of the Victoria embankment in London, as a result of which, access to the claimant's land was blocked, and his land reduced in value because he was forced to find an alternative and a less convenient means of access. Once a s.10 claim has been established, compensation is assessed using the "before and after" method of valuation (refer 4.2 above).

5.2 Part 1 Land Compensation Act 1973

The limited rights allowed by s. 10 CPA 1965 outlined above in s. 5.1 were clearly unsatisfactory because they did not allow compensation for losses caused by the use of the development for which the land was acquired. In the 1960s, the UK began a major programme of motorway construction which demonstrated clearly the loss to neighbouring properties caused specifically by the use of such development. As a result, government introduced new legislation to allow compensation where no land is taken and where land is depreciated by the use of "public works". However this right is limited.

Part 1 of the Land Compensation Act 1973 (LCA 1973) allows compensation for depreciation due to "specified physical factors", which are: noise, smell, fumes, smoke, vibration, artificial light and the discharge on to the land of any solid or liquid substances. Thus, there is no compensation for the actual existence or proximity of the public works or for a loss of light or view.

Similarly, the right to claim compensation under Part 1 is limited to someone holding an "owner's interest"^{iv}. Thus, the legislation denies compensation to any claimant who is not an owner-occupier of residential or agricultural property (e.g. an investor), or who holds an "owner's interest" in other property, the (taxable) value of which exceeds a relatively modest amount (e.g. the majority of commercial organizations).

There are additional provisions which seek to limit the circumstances which allow for the payment of compensation. Thus, compensation can only be claimed if the specified physical factors come directly from the new public works. So, if a new motorway (public works) increases traffic on an existing main road and the neighbouring houses suffer from depreciation caused by the specified physical factors as a result of the increased volume of traffic on their unaltered highway, their owners will have no right to

claim compensation because the specified physical factors will come from an existing road not from the new public works.

The only exemption from this relates to aerodromes (airports), where the depreciation in value caused by noise etc. from incoming and outgoing aircraft qualifies as a compensable loss.

The legislation also allows for compensation where existing public works are altered. Again the rights to compensation are limited to the following alterations:

1. the alteration of a highway (by a change in the location, width or level (other than by resurfacing) and by the addition of a new carriageway;
2. the alteration of an aerodrome (airport) by a new runway or apron (area for planes to taxi and/or park); and
3. the change of use of any other public works.

There is, for example, no right to compensation for the installation of traffic lights, parking restrictions on a highway, nor for the use of more powerful (and by implication noisier) aircraft at an airport, unless this is accompanied by runway or apron alterations. There is no right to compensation for the intensification of use of any public works and any claim for compensation under Part 1 should reflect any reasonably foreseeable intensification of use.

In assessing the level of compensation, the valuer is required to undertake a “before and after” valuation (refer 4.2 above), but to reflect only the loss caused by the specified physical factors listed in the legislation. This can mean that a somewhat arbitrary percentage of the actual loss may be recognised as being compensable under the legislation – certainly it is not likely that an owner will get all of the loss suffered under this legislation.

6 Compensation for other losses (disturbance)

Before 1919, rights to compensation were based on the provisions of each individual Special Acts, but the assessment of compensation was not covered by any legislation. Instead, it was based on the judicial (court) interpretation of the loss suffered by the owner, and not on market value. Thus, for example, compensation was increased to reflect the compulsory nature of the acquisition – this is now prevented by rule in (refer Section 3 above). However, when an owner is forced to sell land, particularly when an owner is forced to leave (vacate) land, there are other losses which are suffered. Compensation for these other losses is referred to as “disturbance”, to reflect the fact that owners and occupiers are disturbed in their occupation of land and the right to such disturbance compensation is based on these early judicial decisions, not on any statutory provisions.

6.1 Disturbance Compensation (judicial)

Section 5 of the Land Compensation Act 1961, which sets out the six rules (refer Section 3 above) specifies (as rule vi) that the requirement for compensation to be based on open market value (rule ii) does not prevent the owner from claiming compensation for other losses. This means that an owner remains entitled to claim for any additional losses which would have been payable prior to the introduction of open market value (rule ii) and is interpreted to mean that an owner can claim for any additional losses which are suffered as a result of having to sell and vacate the land, in accordance with the pre-1919 court decisions. However, such losses are claimed only as part of the “once and for all” claim for land taken and it follows that the right to such compensation does not exist where no land is taken (although an owner from whom no land is taken is entitled to increase compensation claimed to cover the professional fees involved in dealing with the claim).

Such disturbance compensation is based on the overriding principle (from the court case of *Horn v Sunderland Corporation* 1941) that “*the owner shall be paid neither less nor more than his loss*” – this is the only situation where a claimant can make such a demand. However, other principles have been established by judicial decisions, thus:

- disturbance compensation can only be claimed for losses which occur after the date on which the acquiring authority exercises its compulsory purchase powers (i.e. the date of notice to treat – refer Section 1) because before that date, there is no certainty that the land will be taken;
- a claim for disturbance compensation only occurs when an owner has been forced to vacate land;
- the loss must not be too remote;
- the loss must be capable of assessment (calculation);
- the loss must be the natural and reasonable consequence of the owner’s dispossession;
- in cases where an owner and an occupier of the same land are closely connected e.g. where the parent company is the owner and a subsidiary company is the occupier, it is possible to look beyond the legal ownership and treat the owner and occupier as one;
- the basis of the claims for land taken and disturbance must be compatible i.e. if the compensation for land taken is based on the development value of the land, the compensation claim cannot be based on the assumption that the existing use will continue;
- an owner has a duty to minimise (mitigate) the loss.

It is generally accepted that if an owner can demonstrate any loss as the result of being forced to vacate land, that loss will be compensated by the acquiring authority. This means that there can be no definitive list of losses covered by disturbance compensation, but the following are usual for either or both residential or commercial claims:

removal expenses		traveling costs	redundancy payments	new carpets etc.
adaptation of premises	of	loss of profits	damage to or loss on forced sale of stock	new stationery
damage to or adaptation of fixtures and fittings	or of and	double overheads (e.g. rent on two premises during the move)	loss of goodwill (i.e. loss of repeat business)	surveyors and legal fees

There is no right to compensation where, in effect, additional money is paid for a better property. Thus, where an owner buys or rents new premises at a higher price than the one acquired, that owner is assumed to be getting a better asset as a result ("value for money"), and should not also receive compensation to cover this extra expenditure. Compensation is, however, payable where an owner buys or rents premises which have to be adapted for their new use e.g. by strengthening the floor to take heavy machinery or adapting a dwelling for a disabled occupier, on the basis that such expenditure will not increase the rental or capital value of the property.

6.2 Disturbance Payments (statutory)

The rights to claim disturbance compensation are limited only to owners from whom land is taken and compensation for land taken is increased to include such disturbance losses. Where no land is taken from an owner (freeholder or leaseholder), or it is a tenant (with no compensatable interest in land) who has suffered the loss, there is no right to claim disturbance compensation.

Legislation (Land Compensation Act 1973 as amended by the Planning and Compensation Act 2004) has therefore given such claimants certain rights to compensation when they are disturbed in their occupation of land. These rights are, basically, as follows:

6.2.1 Home Loss Payment (s. 29-32 LCA 1973)

Anyone who is forced to leave their home as a result of compulsory acquisition (and other forms of public action) can claim a Home Loss Payment. There is an occupation condition (one year) and a requirement that the occupation results from a legal right (either the ownership of a freehold

or leasehold interest, or a statutory tenancy). A claimant with an “owner’s interest” (freehold or leasehold with three years unexpired), is entitled to a Home Loss payment of 10% of the (rule ii) open market value of the property, subject to a minimum of £3,800 and a maximum of £38,000 (as at 2005). Other claimants are awarded a lower amount.

6.2.2 Basic Loss Payment (s. 33A LCA 1973)

A claimant with a qualifying interest, but who is not entitled to a Home Loss payment (refer 6.2.1 above) is entitled to a Basic Loss payment of the lower of 7.5% of the open market value of his interest in land or £75,000. For this purpose, a qualifying interest is a freehold or a leasehold interest of at least one year, which is (effectively) ended by the compulsory purchase process.

6.2.3 Occupiers Loss Payment (s. 33B & 33C LCA 1973)

This payment is made to an occupier of agricultural land^v who has a qualifying interest (refer 6.2.2 above). The amount of the payment, which is made in addition to the compensation for land taken, is the greatest of the following:

2.5% of the value of the (rule ii) interest in land;
the land amount (being the greater of £300 and a rate of £100 per hectare for the first 100 hectares and a rate of £50 for the next 300 hectares); or
the building amount (being £25 per m² of the gross floor area of any buildings);

subject to a maximum payment of £25,000.

6.2.4 Disturbance Payments (ss. 37-38 LCA 1973)

Occupiers who have no legal interest in the land and therefore no right to disturbance compensation can be paid a disturbance payment provided they are in lawful occupation of a building which is being compulsorily purchased. Disturbance payments equal the reasonable cost of removal from the premises and, for commercial occupiers, the loss in trade which results from being forced to move.

6.2.5 Discretionary Payments (s. 37(5) LCA 1973)

The disturbance payments outlined above do not cover all of the circumstances in which an individual can be displaced from property which is being compulsorily acquired and thus the acquiring authority has the discretion to make payments to people who have no right to any other form of compensation (e.g. lodgers or those displaced in advance of compulsory acquisition).

6.2.6 Other Matters

The acquiring authority has a duty to reduce the effects of public works by taking such measures as the installation of double glazing, tree planting, and

construction of sound barriers. In fixing compensation, the mitigation effect of such measures must be taken into account.

Section 41 LCA 1973 imposes a duty on the acquiring authority to make a loan for the purpose of buying or constructing another dwelling to anyone displaced from a dwelling and who is also entitled to a Home Loss Payment.

Under s. 39 LCA 1973, the local housing authority (which may not also be the acquiring authority) has a duty to rehouse anyone displaced from a dwelling as a result of compulsory acquisition and who cannot find suitable alternative accommodation.

In certain cases, an acquiring authority can agree to provide additional works, such as bridges, underpasses, walls, hedges, as part of their proposed development and which effectively reduces the loss or depreciation in value to an owner. Where such “accommodation works” are undertaken, the compensation assessed reflects the value of such accommodation works.

7 Discussion

Compulsory acquisition is undertaken in England and Wales for the “public good”. The property rights of individuals (so carefully protected in UK law) take second place to the public benefit which is expected to result from the development for which the land is required. While it may be accepted that, in such circumstances, individuals should be forced to give up individual property rights, it must also be recognized that such individuals should also be compensated fairly and adequately and also that everyone should be treated equally. This does not happen.

It should be clear from the above that the rules for assessing compensation differ depending on whether land is taken or is not taken, and this affects the extent to which compensation covers actual loss. While it is well recognised that compensation is paid out of taxpayers’ money, it cannot be right that some individuals are worse off as a result of the activities of public bodies, where others are fully compensated.

7.1 Rule ii Open Market Value

The use of open market value (under rule ii), assuming a willing seller (clearly not the situation in any case of compulsory acquisition), ignoring the increase in value created by the development (“no scheme world”) and denying the owner any additional compensation to reflect the compulsory nature of the acquisition, has been criticized, but repeated official inquiries have reaffirmed it. The use of such a basis of compensation results in a number of problems for claimants. Thus, effectively, an owner can be awarded compensation which does not allow him to buy a neighbouring property, because the value of neighbouring properties increase as a result

of the development, whereas his compensation does not this increase in value. This causes hardship to an owner.

Similarly, it has been argued that the levels of compensation paid tend to lead to lengthy negotiations between purchasing authority and owner, which delay both the acquisition and development, which in turn increase costs to the acquiring authority. The argument has been put forward that if compensation could be increased to an amount in excess of open market value, then financial savings would be made in both time and efficiency in the acquisition and development processes. This is unlikely to happen.

7.2 Depreciation to the Land Taken (*Abbey Homestead case*)

There is legislation to cover the circumstances where land retained is reduced in value as a result of the compulsory purchase and subsequent development (refer Section 4 above). However, there is no compensation where the land taken is depreciated in value as a result of the same process. Such a case occurred in *Abbey Homesteads Group Ltd v Secretary of State for Transport* (1982), which can be illustrated as follows.

The construction of a road involved the acquisition of a narrow strip of land from the edge of a plot which had development potential. The entire plot was suitable for the development of 20 industrial units, each worth (at the time) £15,000 but, as a result of the acquisition, it would be possible to construct only 19 units, resulting in a loss to the owner of £15,000. However, the long, narrow strip of land to be acquired, considered in isolation, had little value, except as “garden land” and, under (rule ii) open market value attracted only nominal compensation, fixed at £500.

So, on a “before and after” valuation, the loss to the claimant was (£15,000 - £500) £14,500. But the loss of £14,500 did not relate to a reduction in value to the land retained – each of the plots retained its original £15,000 value, so the £14,500 could not be claimed as depreciation to the value of the land retained. As the value of the land taken (given its shape) was £500, that is the amount of money which was awarded to the owner. The loss of £14,500 reflected the depreciation to the land taken, which resulted from its shape and which made it unsuitable for development. There is no right to compensation for depreciation to the land taken, and therefore, the claimant received only £500.

7.3 Limited rights to compensation where no land is taken

The contrast between the assessment of compensation under s. 10 (where land is depreciated by the execution of the works) and under Part 1 of the Land Compensation Act 1973 (where land is depreciated by specified physical factors resulting from the use of public works) clearly demonstrates different approaches to compensation for what are, effectively, similar losses. Basically, the specifying of physical factors for which compensation can be awarded and ignoring other depreciating factors (e.g. loss of light, loss of privacy, existence of the works) which may be reflected in market value, creates an inequitable situation.

Similarly, once a right to claim under s. 10 has been established, there is no further limitations imposed by the nature of the claimant's interest in the land. However, for non-domestic and non-agricultural properties, under Part 1 LCA 1973, it is necessary for the claimant to have an owner's interest in the property and for that property also to have a taxable value, not exceeding £24,600 (net annual value). However, such properties as places of public religious worship would not have a taxable value, nor would derelict buildings. Indeed, even where commercial premises are taxed, the limit of £24,600 is relatively modest and would be unlikely to include, for example, a large supermarket or office property. However, there are no moves to change the legislation.

7.4 Effect of the Set off Provisions (s. 7 LCA 1961)

Another example of inequity occurs as a result of the set off provisions (s. 7 LCA 1961) (refer 3.2 above). Figure 1 below shows three plots of land each with a different owner. The parallel lines indicate the proposed highway, which will require a compulsory purchase order. The owner of plot A will have all of his land acquired and will be entitled to the open market value of the land, based on its existing use – assume that is agricultural. This is no more and no less than its value in the absence of the acquisition and development.

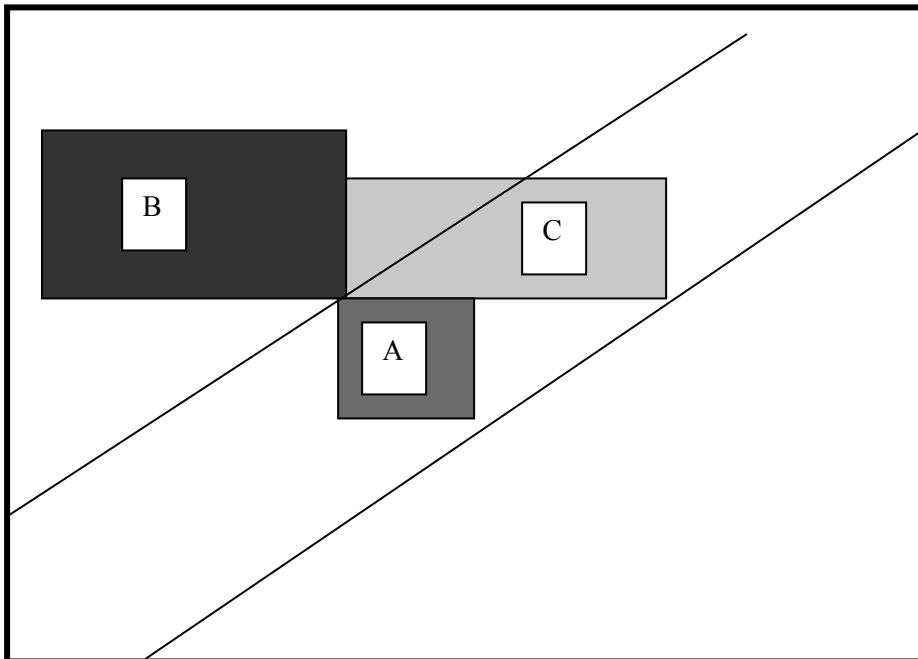


Figure 1. *Effect of section 7 set-off provisions*

However, once the road is constructed, it is anticipated that it will open up the surrounding land for industrial development. Owner of plot B will have no land taken and will therefore benefit from the increase in value caused by the opening up of the land which results from the construction of the road. When Owner B chooses to sell the land, he will be liable to Capital Gains Tax (at 40%) on any increase in value.

Owner C is losing some land to the acquiring authority, for which he will be paid open market value based on its existing use, as for Owner A, but he is also retaining some land which will increase in value, as for Owner B. Assume that the value of the land taken and therefore the compensation payable is £100,000, and that the value of the land retained increases by £80,000. The effect of the set-off provisions means that the compensation payable to Owner B is reduced by the increase in value to the land retained i.e. Owner B will be entitled to $(£100,000 - £80,000)$ £20,000 in compensation. If the figures were different, if the compensation payable was £80,000 and the increase in value to the land retained £100,000, then Owner B would receive no compensation at all from the acquiring authority. This is clearly inequitable when compared to the situations of his neighbours, one of whom receives compensation to reflect his loss (ignoring the increase in value due to the proposed road scheme) and one of whom benefits from the increase in value due to the road scheme.

The UK has proposed a Planning-Gain Supplement (PGS) which would tax the increase in value which results from the granting of planning permission to develop land. The proposal (as at June 2007) is for tax to be fixed at a “modest” level which, in the above example, would recover for the public purse at least some of the increase in value which results from the development for which compulsory acquisition is taking place. However, the basic inequity between the parties would remain. There is no proposal to change this situation.

8 Potential reform

At the root of many of the problems discussed above is the failure of the legislation to deal effectively with the issue of betterment (defined as “any increase in the value of land (including buildings thereon) arising from central or local government action, whether positive . . . or negative . . . “(Davies, 1984: 268 citing the Uthwatt Report). Provided that the UK has a comprehensive tax on betterment, the set-off provisions and the *Pointe Gourde* principle make sense – betterment (in the form of development value) belongs to the state and cannot be reflected within compensation. The UK has had three attempts at taxing betterment at a national level, all of which were subsequently repealed.

Current debate in the UK within the area of compulsory purchase and compensation focuses on the introduction of the Planning-Gain Supplement

(PGS) which was proposed pre-July 2007 as a betterment tax (i.e. a tax on the increase in value following the grant of planning permission). At the date of writing (post-July 2007), the introduction of PGS has been suspended, with the new Brown government looking to devise a new tax to achieve the same aims as PGS i.e. revenue to spend on infrastructure based on value created on the grant of planning permission. It seems possible that this could be an extension of the existing system of planning agreements (s. 106 agreements - each one negotiated individually with the local planning authority and the developer) and a tariff system – but further details are not yet available.

9 Conclusions

This paper has provided an overview of the system of compensation on compulsory acquisition within England and Wales. The details rules are complex and require reference to judicial interpretation. Use of compulsory purchase powers is unpopular, and to some extent, the powers have been neglected in favour of buying by agreement. There is, therefore, something of a skill shortage in the use of this highly technical process in the UK.

With the exception of compensation payable for disturbance, compensation following compulsory purchase is based on specific legislation which has been consolidated and amended over the years. Thus, the original 1845 basis continues to give the basic rights to compensation, with more recent amendments (e.g. the Land Compensation Act 1973) providing a more limited right to compensation for those situations neglected in the original 1845 legislation. This results in inequity between those claimants who qualify for compensation under the original legislation (and who are therefore entitled to all of their financial loss) and those claimants who have, for example, not lost any land to the acquiring authority and who are entitled only to depreciation based on specified physical factors. Similarly, there are limitations on who can claim such rights.

Even for those claimants from whom land is taken, compensation may fail to provide them with sufficient funds to buy a comparable property within the locality, because of the requirement to ignore any increase in value due to the scheme underlying the acquisition. The issue of set-off also treats claimants differently – the failure of the UK government to either tax betterment or to reform compensation so that betterment which is reflected in the market is included in their compensation is the cause of this.

Repeated reviews of the legislation have reinforced the basic rules (outlined here) with only minor amendments proposed and only some of them implemented. It could, for example, speed up the process of acquisition and development if an additional sum was offered to claimants in exchange for a quick settlement of claims. Such agreements would undoubtedly reduce overall costs. However, there is clearly no appetite within government for a major overhaul of the system to ensure financial equivalence is achieved for all claimants. This is probably linked to the cost

of introducing such a system and to the political issues attached to being seen to pay in excess of market value out of taxpayers' money. Dealing with the betterment issue (which is inextricably linked to compensation) would go some way to improving the situation, but this too is not likely to happen – thus the inequity continues.

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