michelmores

CAAV National Tutorial 2024

Development Consent Orders and Compensation

Detailed Notes

Michelmores LLP
10 Victoria Street
Bristol
BS1 6BN

michelmores

These notes are provided by Michelmores LLP in order to assist CAAV Probationer candidates in their preparation for the CAAV Fellowship Exams. They are intended to provide candidates with sufficient knowledge of the topic to meet the requirements of the relevant area of the syllabus, and as such they are not intended to be a comprehensive guide to this area of law, or a substitute for legal advice. They do not set out the opinion of Michelmores LLP or its employees on any particular matter, and are not to be used for any purpose other than preparing for the CAAV Fellowship Exams.

Introduction

Compulsory purchase claims are, at one level, relatively straightforward. However, as with most things the devil is in the detail. No doubt you'll have a copy of R G Williams' Agricultural Valuations: A Practical Guide (Routledge; 4 ed, 4 Aug. 2008) and no doubt you have all read it and will continue to revise from it in preparation of your exams. It contains a useful summary of compulsory purchase claims and gives a couple of good examples. However, there is far more to compulsory purchase than that set out in his book or this talk and it is important to read around this subject to obtain a better understanding of how it works.

The valuer's job is to value, and the valuer needs to know what he is to value, the valuation date, and the basis of the valuation.

Your examination will ask you to display a knowledge of Compulsory Purchase and Compensation that shows that you know what a valuer's job is.

The Principal Acts

Land Compensation Act 1961 – the valuation rules

Compulsory Purchase Act 1965

Land Compensation Act 1973

Agriculture (Miscellaneous Provisions) Act 1968

Acquisition of Land Act 1981

Town and Country Planning Act 1990

Planning and Compulsory Purchase Act 2004

Planning Act 2008

Plus, more than 100 other Acts!

The most important one as far as candidates are concerned is the Land Compensation Act 1961 which sets out the six rules of valuation but before we turn to that you need to diarise the limitation date.

Limitation

In many cases it will be the agent rather than the lawyer who is contacted first by the client about a compulsory purchase claim. I would suggest that the first thing you do is to consider and note the limitation date that applies.

Calculation of the limitation date is not that straightforward. There is more than one limitation period, and the start of the period will vary depending on the particular circumstances.

In most case the latest date on which a reference to the Tribunal can be made is not more than six years after the course of action arises. In the case of the compulsory purchase of land the course of action arises for the purposes of the Limitation Act when the compulsory purchase is implemented by the acquiring authority entering onto the land following notice to treat and notice of entry.

Where the general vesting declaration procedure is used to implement a compulsory purchase the six-year period applies from the time of the vesting order under section 10 (1) or from when the person claiming compensation first knew or could reasonably be expected to have known about the vesting of the interest in the land. There are other limitation periods. The statutory wording needs to be considered very carefully.

In respect of claims made for disturbance only caused where no land is taken e.g. a bypass, no claim can be made before the expiration of 12 months from the relevant date; the relevant date being the day the road is opened to the public and the following day became the first claim day and the six-year limitation period runs from that date. Where a notice to treat is served but no further action is taken the limitation period is three years. The same limitation period applied where the road is not adopted but following the decision in *Thomas -v- Bridgend CBC* in the Court of Appeal on 26 July 2011, the limitation period can be disapplied where it breaches human rights legislation. In other words, the limitation dates vary depending on the precise circumstances of the claim and you need to look at the statute carefully and consider the human rights regime.

Although you can enter into an agreement to extend the limitation period, this must not be left to the last minute. Acquiring authorities will often negotiate claims on the basis that they are liable for what is statutorily due to the claimant. This means that if no reference is made to the Lands Tribunal there is nothing lawfully due from the acquiring authority to the claimant and the acquiring authority will not have to pay anything. However, your firm's insurers will have to do so. Before the expiry of the limitation date either a binding agreement on the level of compensation must be reached or a reference made to the Lands Tribunal. References take time to prepare, so do not leave it to the last minute.

Compulsory Purchase and Development Consent Orders (DCOs)

Where a DCO is made, section 122 of the Planning Act 2008, provides that the DCO may include provisions authorising the compulsory acquisition of land by the relevant authority. However, before these powers are granted, the Secretary of State when granting the DCO must be satisfied that the land in question is:

a) required for the development
b) required to facilitate or is incidental to the development; or
c) replacement land which is to be given in exchange for the order land under sections 131 or 132 of the Planning Act (e.g. commons, open space or fuel/field garden allotment).

In addition, the Secretary of State must be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition. Provided that the Secretary of State is satisfied of the above, and makes the DCO granting compulsory purchase powers,

the compensation which is subsequently applied on compulsory acquisition is calculated on the same basis as any other compulsory acquisition.

Rules of Compensation

Section 5 of the LCA 1961 lays down the six rules for assessing compensation and they are as follows:

1. No allowance is to be made because the acquisition is compulsory.
2. The value is to be the open market value assuming a willing seller. You will note that it is not a Red Book valuation but prescribed by statute.
    a. The value of the land will be assessed in light of the no-scheme principle set out in section 6A. Any increase or decrease in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded (this is the *Point Gourde* principle codified).
3. Special suitability for a statutory purpose or where there is no market apart from the special needs of a particular purchaser is to be disregarded.
4. Any increase in value due to use contrary to the law is to be disregarded.
5. Special and rare cases only can be dealt with on a cost of reinstatement basis.
6. Rule two above does not affect assessment of compensation for disturbance on other matters not based on the value of the land.

Rules 1, 2 and 6 are the most important and we will look at Rule 2 in more detail in a moment. We will look briefly at the other rules shortly.

Valuation Date

Note changes since 13 July 2016 – section 5A of the LCA 1961 states:

5A Relevant valuation date

(1) If the value of land is to be assessed in accordance with rule (2) in section 5, the valuation must be made as at the relevant valuation date.

(2) No adjustment is to be made to the valuation in respect of anything which happens after the relevant valuation date.

(3) If the land is the subject of a notice to treat, the relevant valuation date is the earlier of–

(a) the date when the acquiring authority enters on and takes possession of the land, and

(b) the date when the assessment is made.

(4) If the land is the subject of a general vesting declaration, the relevant valuation date is the earlier of–

(a) the vesting date, and

(b) the date when the assessment is made,

and "general vesting declaration" and "vesting date" have the meanings given in section 2 of the Compulsory Purchase (Vesting Declarations) Act 1981.

(4A) If an interest in land vests in accordance with an agreement under section 8A *of that Act (postponement of vesting), the relevant valuation date in respect of that interest is the earlier of—*

(a) the date on which it vests, and

(b) the date when the assessment is made.

(5) If the acquiring authority enters on and takes possession of part of the land–

(a) specified in a notice of entry, or

(b) in respect of which a payment into court has been made,

the authority is deemed, for the purposes of subsection (3)(a), to have entered on and taken possession of the whole of that land on that date.

(unless there is another express provision to the contrary).

And as of 03 February 2017:

Section 5A(5A)

If—

(a) the acquiring authority enters on and takes possession of land in pursuance of a notice of entry given as mentioned in paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 ("the original land"),

(b) the acquiring authority are subsequently required by a determination under paragraph 27 of Schedule 2A to the Compulsory Purchase Act 1965 to take additional land, and

(c) the acquiring authority enters on and takes possession of that additional land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on and taken possession of the additional land when it entered on and took possession of the original land.

S5A(5B)

If—

(a) the land is the subject of a general vesting declaration, and

(b) the vesting date is different for different parts of the land,

the first of the vesting dates is deemed for the purposes of subsection (4)(a) to be the vesting date for the whole of the land.

No adjustment may be made to the valuation in respect of anything which the parties do not know about which happens after the valuation date. Where the acquiring authority takes

possession of part of the land specified in a notice of entry or in respect of which a payment into court has been made, it is deemed to have entered on the whole.

There is no statutory requirement that a notice of claim be served in any particular form or within any particular time. When a notice to treat is served, it normally invites the recipient to respond by providing a notice of claim; often a form is provided, and responses are requested within 21 days. While the right to compensation is not lost if no notice to claim is provided to the acquiring authority, a failure to deliver a notice of claim can have two main consequences:

a) The claimant may have to bear, not only his own costs of any proceedings in the Land Tribunal, but also those of the acquiring authority, and

b) the acquiring authority may, at any time up to 6 weeks after the decision of the Land Tribunal, withdraw the notice to treat and pay compensation for losses, unless it has entered into possession.

If compensation is not agreed or determined or a reference made to the Lands Tribunal before the expiry of the limitation date enforcement of the claim will become statute barred.

Basis of Valuation

It is not a Red Book Valuation, see: *Yorkshire Traction Co Ltd v South Yorkshire Transport Executive* [2003] RVR 67.

The Basis of Valuation has been subject to judicial consideration on more than one occasion.

- "Willing Seller and the Open Market"
- "Might be expected"
- "*Rebus sic stantibus*" (actual condition with all its possibilities)
- "Disregarding the scheme"
- "Evidence" – an analytical approach is preferred to a "40 years man and boy" approach, but not always. The Tribunal likes real evidence!

<u>"Willing seller on the open marker"</u>

One of the classic descriptions, the concept of the **willing seller on the open market**, is to be found in the judgement of an unpronounceable Privy Council decision of an Indian case (*Gajapatiraju v Vizagapatam* [1939] AC 302) which was decided on principles of English law, and is therefore relevant:

> *"The compensation must be determined, therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendors to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may*

always be taken into consideration for what it is worth. It may also be observed in passing that it is often said that it is the value of the land to a vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its market value. But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as willing to sell at market price.

It is perhaps desirable in this connection to say something about this expression market price. There is not in general any market for land in a sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the market value. But sometimes it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land and that particular position in today's particular potentialities."

An "open market" does not mean a hypothetical market but the market in which, at the relevant date, the seller could legitimately have sold his property and the buyer could have bought it.

"Might be expected"

As to what **might be expected** in *IRC v Clay* [1914] 3 KB 466 Swiften Eady LJ said:

"Expected refers to the expectations of properly qualified persons who have taken pains to inform themselves of all the particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers. The price actually realised by a sale is not necessarily the price which it might have been expected to realise, but if the valuer be competent, and has taken proper pains in the matter, there ought to be little difference between the two figures.

However, it must be recognised that valuation is a matter of judgement and that there is a range of price, in some circumstances wide, which competent valuers would recognise as the price which property would fetch in the open market."

"Rebus sic stantibus"

The land must be valued **"rebus sic stantibus".** To quote Lord Buckmaster in *Fraser -v- City of Fraserville* [1917] AC 187 @ 194:

"In other words the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities."

<u>"Disregarding the scheme"</u>

You have to value what is there and **disregard the effect of the scheme**. *Point Gourde Quarrying and Transport Co Ltd v Superintendent of Crown Lands* [1947] AC 565 PC is the authority on this point. In this case the claimant claimed a substantial increase in the value of the land. It was a quarry with limited potential until the port was developed. It was held that the development of the port and the compulsory acquisition of the quarry were part of the same scheme and therefore the resultant increase in the value of the quarry bought about by the development of the port must be disregarded.

This case must be considered in the light of *Waters v Welsh Development Agency* [2004] 1 WLR 1304 which concerned the Cardiff Bay barrage and the requirement to purchase a Nature Reserve. There, the landowner tried to argue ransom value because his land was needed for the wetland reserve which was an integral part of the scheme. The House of Lords ruled it was an integral part of the project and the developer's need for the nature reserve had to be disregarded.

It is also important to consider the changes to the LCA 1961 made by the Neighbourhood Planning Act 2017, inserting section 6A which further modifies the application of the so-called *Pointe Gourde* principle, it lists the five rules to be followed when applying the 'no-scheme principle'.

1. It is to be assumed that the scheme was cancelled on the relevant valuation date.

2. It is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.

3. It is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.

4. It is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the *relevant valuation date*.[1]

5. If there was a reduction in the value of land as a result of—

   (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or

   (b) the fact that the land was blighted land as a result of the scheme,

   that reduction is to be disregarded.

See also section 14 for assumptions to be made in respect of planning permission, considered below.

[1] "relevant valuation date" has the meaning given by section 5A.

Evidence

Without evidence your claim will face great difficulties and, as of this moment, you cannot claim to have 40 years' experience.

You have to be aware of Rules 3 and 5. The land may have "**special suitability**" but you only ignore such suitability if that suitability arises because of the scheme. The rule is narrowly construed.

"Contrary to law" under Section 5 of the LCA means what is says. The value has to be based on the price a purchaser would be willing to pay for a lawful use.

As to planning assumptions to be made under Section 14 LCA broadly speaking you can value on the basis of any existing permissions on the property, any permitted development rights which have not been implemented or any permitted development or any development that would be in accordance with any allocation within the development plan. If there is disagreement with the district valuer, you may be able to apply for a certificate of appropriate alternative development.

You should always bear in mind that in a limited number of circumstances there is the opportunity to make a claim for additional compensation after the land has been acquired. Where planning permission is granted for additional development on the land with a period of 10 years from the valuation date you can claim the difference between the amount received and the amount you would have received if permission had been in force when the notice to treat was served, in the case of compulsory acquisition, or on the date of the contract, where the sale is by way of agreement albeit under threat of compulsory purchase.

Reinstatement claims are very rare indeed. In agricultural terms, virtually non-existent. However, they do arise, and an example is *Harrison & Hetherington –v- Cumbria* CC [1985] P&CR 396 HL where it was held that 18 transactions for livestock markets between 1957 and 1985 did not constitute a market and a claim for equivalent reinstatement was permitted by the House of Lords.

Heads of Claim

There are several Heads of Claim which can apply when claiming compensation for compulsory purchase.

Remember: "LIDOF and LLAPI"

- Land and Betterment
- Injurious Affection and Severance
- Disturbance
- Others
    - Basic Loss and occupiers' loss payments
    - Home Loss payments
    - Accommodation Works
    - Advance Payments
    - Interest
- Fees

L – Value of Land taken

Do not assume that it is agricultural value. Consider:

- What was its planning potential?
- Refer to planning assumptions
- Consider the effect on any disturbance claim if you are seeking increased value as a result of development potential.

First let us look at the land taken. The valuation of this is relatively simple but you need to consider whether any factors might make the land value greater than that of plain agricultural land. If you think so, you should bear in mind the consequential effect on the injurious affection claim. You must also consider whether the land has special agricultural value, for instance, it may be particularly well suited to the growing of root crops because of the water table.

If you want to read an interesting Lands Tribunal decision on land values and the water table, we refer you to *Messrs Saxton and the Ministry of Transport* LCA/11/2007. In this case the water table was reduced from 1 metre below the surface to 4 metres, as a result of which both the yields reduced and the cost of production increased significantly. The land had a much higher value than normal agricultural land and, as a result, compensation was increased accordingly.

Betterment

You should also bear in mind **Betterment**, which has the opposite effect of injurious affection. If the value of the retained land has increased as a result of the compulsory acquisition, then no compensation is payable. There may well be instances where the scheme of the acquiring authority increases the value of land, such that any increase in land value must be set off against the claim made against the acquiring authority. This may mean that one receives no compensation, where the value of the retained land increases by sum greater than the value of the land taken. In no cases however will you be required to pay the acquiring authority any money.

It is important to realise that the compensation that is payable is a single sum even though it is made up of various heads of claim. Betterment is set off against the whole claim not just one of the heads of claim.

The recently added section 6B(2) of the LCA 1961 provides that "The amount of compensation to which the person is entitled in respect of the compulsory acquisition of the original land is to be reduced by the amount of the increase in the value of the person's interest in the other land as at the relevant valuation date"

Planning Permission

The valuation exercise may take account of certain planning permissions as well as the prospect of planning permission being obtained:

(a) actual planning permission (which includes permitted development rights) relating to development of the property or other land, if it is in force on the valuation date;

(b) the prospect of the grant of planning permission, on or after the valuation date, subject to the scheme cancellation assumptions (effectively hope value); and

(c) for appropriate alternative development.

The scheme cancellation assumptions mentioned at (b) above are contained in s. 14(5) LCA 1961. In short, they assume:

(a) the scheme of development underlying the acquisition of land has been cancelled on the date of first publication of the making of the CPO;

(b) that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme;

(c) that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers; and

(d) if the scheme was for use of the relevant land for or in connection with the construction of a highway (including its alteration or improvement) (the scheme highway) that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.

Appropriate alternative development is covered by s. 17 LCA 1961. Where an interest in land is proposed to be compulsorily acquired by an authority possessing compulsory purchase powers, either the owner of the interest to be acquired or the acquiring authority may apply to the LPA for a certificate, stating that, in the LPA's opinion, there is or is not appropriate alternative development in relation to the acquisition.

Section 17 certificates might be helpful where:

- there is no adopted development plan covering the land to be acquired
- the adopted development plan indicates a 'green belt' or leaves the site without specific allocation
- the site is allocated in the adopted development plan specifically for some public purpose, e.g. a new school or open space
- the amount of development which would be allowed is uncertain, or
- the extent and nature of planning obligations and conditions is uncertain.

I – Injurious affection and severance

The next head of claim is injurious affection and severance.

Claims for severance and injurious affection arises under section 7 of the Compulsory Purchase Act 1965 which reads:

> *In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of powers conferred by this or the special Act.*

Severance claims arise when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. In the case of by-pass, access to fields can be rendered virtually useless or severely curtailed.

Injurious affection is the depreciation in the value of retained land as a result of the proposed development on the land acquired by the acquiring authority. The impact of the whole of the proposed scheme is to be considered not just the effect on the area acquired. Compensation is claimable both on the construction works and their subsequent use.

If you think that there is a risk that only part of the land is being acquired, and that there would be a serious effect on the rest of the holding, you have two months following receipt of the notice to treat to serve a counter notice claiming that all the other land is *not reasonably capable of being farmed*, and so require the authority to purchase that other land. Where any severed areas are less than .2 ha there is an automatic right to require the acquiring authority to purchase it. For larger areas, you have to show that there is a *significant material detriment*.

The presence of a road bisecting land invariably results in increased costs of working the holding due to the greater travelling time and often more irregular shaped and smaller fields.

A severance claim however requires the consideration of the diminution in land values; it is not sufficient to claim on the basis of the increased cost of working. Essentially what is required, is a before–and–after valuation of the retained land, although it is recognised that this may well give rise to a lower value and not fully reflect the full cost of the severance to the claimant.

A shortfall may well substantiate a claim for disturbance (as per *Cooke v Secretary of State for the Environment* (1973) [1973] 12 WLUK 87).

D – Disturbance

The overriding principle of this head of claim is that anything which is not too remote and is a natural and reasonable consequence of the acquisition is to be compensated.

To be entitled to make a claim for disturbance, one must:

- Be an Occupier
- Have an Estate in land (freehold or leasehold interest)
- Have lost possession as a result of the compulsory acquisition

And, of course, the claim must be consistent with the basis of value of the land taken (there can be no double-recovery) (*Horn v Sunderland Corporation* [1941] 2 KB 26).

In short, you must be an occupier with an interest in the land, and the claim must not be inconsistent with the basis of value of the land taken. For instance, there is no disturbance payment where the land value claim reflects the development value as disturbance compensation is only payable where the value is based on existing use.

Payments for disturbance are to compensate for any loss that is *not too remote* and which is a *natural and reasonable consequence* of the dispossession; and the claimant must behave reasonably to eliminate or reduce his loss.

This element of the claim is submitted when the works have been completed. To ensure that the claim is as full as it should be, it is imperative that your client is advised to keep a detailed diary recording any event which is caused by the acquisition of the land.

The possible heads of claim are too numerous to list but the following are examples :

- Damage to utilities servicing the farm: consequential loss of milk production.
- Cleaning costs due to dust and mud: carpets curtains outside of the house driveway redecorating.
- Damage to vehicles caused by damage to the access.
- Loss of silage crop due to contamination by dust, and loss of malting barley premia caused by contamination.
- Cost of clearing ditches. Total loss of crop caused by flooding over part of a field, rounding up stock.

- Farmers time dealing with attending meetings with his solicitor’s valuer engineers district valuer.

Disturbance compensation is also payable where no land is taken, however the rules are different. The rules applicable where no land is taken are known as the “**McCarthy Rules**” (from *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243).

The McCarthy Rules are as follows:

1. The loss must result from an act made lawful by statute.
2. The loss must be such that in the absence of statutory powers it would have given rise to a cause of action.

   (For example, a claim for noise and dust will not succeed following *Andreae v Selfridge & Co Ltd* [1938] Ch. 1 CA, as there is no actionable nuisance. However, a claim for physical damage will succeed.)
3. The loss must arise from physical interference with the land, or with a right enjoyed with it, and must result in deprecation of the value of the claimant’s land.

   (Such rights include easements, profits a prendre and restrictive covenants.)
4. The loss must arise from the execution of the authorised works and not from their use.

O – Other claims – Supplementary Payments

A statutory loss payment is payable in addition to any other compensation due. This additional amount recognises the inconvenience and disruption caused by the acquisition, and is split into two payments related to the value of the interest of land and the occupier’s disturbance. The value and the disturbance interrelate and the full amount under every heading is not necessarily the amount payable.

<u>L – Basic **L**oss Payment</u>

To be eligible for a basic loss payment:

1. The claimant must have a qualifying interest in land; and
2. That interest must have been acquired compulsorily.

However, where the claimant is entitled to a <u>home loss payment</u>, the entitlement to a basic loss payment is limited to the extent to which the basic loss payment exceeds the home loss payment.

The amount of any basic loss payment is modest; currently 7.5% of the value of the property acquired, capped to a maximum of £75,000.

Note that Farm Loss Payments can only be claimed in respect of a compulsory purchase order made before 31 October 2000. After this date, Occupiers Loss Payment is claimed instead.

L – Occupier's **L**oss Payment

There is also a right to an "Occupiers Loss Payment: Agricultural Land", which is in addition to other rights to compensation, and can apply to other land as well as the acquired land.

The amount of such a payment is a modest 2.5% of the value of the property acquired, capped at a maximum of £25,000. There are qualifying conditions similar to the Basic Loss Payment.

The amount of such payment is the greatest of the following amounts:

- 2.5% of the value of the claimant's interest;
- the *land amount*;
- the *building amount*.

The value of an interest for this purpose is its value for the purpose of deciding the amount of compensation payable in respect of the acquisition. However, where the land taken partly comprises a dwelling in respect of which the claimant is entitled to a home loss payment, the value of the dwelling is excluded.

"Land Amount":

For agricultural Land, where the claim does not exceed 100 ha it is at a rate of £100 per hectare or part thereof. For land exceeding 100 ha, it is £100 per hectare for the first 100 ha and £50 per hectare for the next 300 ha or part thereof.

For non-agricultural land, the compensation is the greater of £2,500 or £2.50 per square metre of the area of land acquired. If part of the land is acquired, the payment is limited to £300.

"The Building Amount":

The compensation is the greater of £2,500 or £2.50 per square metre, measured externally.

You should note that there should be no duplication of an Occupier's Loss Payment under section 33B LCA 1973 and a payment due under section 12 (1) of the Agriculture (Miscellaneous Provisions) Act 1968, being the additional payments in consequence of compulsory acquisition of an agricultural holding. The section 12 payment is the payment made under section 60 of the Agricultural Holdings Act 1986.

Payment can only be made in respect of one head of claim, and it is for the claimant to decide under which scheme the payment should be made.

L - Home **L**oss Payment

To qualify for a home loss payment, a claimant must show that he fulfils the following conditions:

1. He has been in occupation of the dwelling, or a substantial part of it, as his only or main residence;
2. His occupation is by virtue of:

- An interest in the dwelling, or
- A right to occupy the dwelling as a statutory tenant,
- A right under a contract,
- A right to occupy under an employment contract, or the right to occupy under a license pursuant to statutory provisions;

3. He has been in such occupation for a year ending with the date of displacement;
4. He is displaced from his dwelling in consequence of the compulsory acquisition of an interest in the dwelling,

Failure to fulfil condition 4 is not necessarily fatal to a claim for a home loss payment. If all the other conditions are satisfied, the claimant may aggregate his period of qualifying occupation with that of a predecessor.

If the claimant fails to satisfy condition 2, there are a number of caveats allowing a claim. For instance, a beneficiary under a trust or a spouse with matrimonial home rights may claim.

Home Loss Payments are calculated on one of two bases: 10% of the market value of his interest, subject to maximum and minimum limits of £5,300 or £53,000; or £5,300. In other words, not less than £5,300. Note that these amounts are updated from time to time.

F – Fees

Importantly, you must put in a claim for your fees. If no claim is made, they will not be included in the schedule.

The Tenant's Claim

- Land – value the tenant's interest – not necessarily just 50% of the marriage value.
- Consider the effect of the terms of the tenancy.
- Does the value of the tenant's improvements justify increasing the marriage value split?
- Tenant right claims
- Section 12 payments?

There are a number of factors which need to be considered.

- the age of the tenant,
- the possibility of a member the tenanted family being able to apply for a tenancy succession,
- the importance of any given area of land to a particular tenant,
- the relative value of any given area of land,
- the availability of a case of the notice to quit to the landlord,
- the rent review the terms,
- profit rent,
- the possibility of assignment.

A number of different valuation methods have been suggested:

- A proportion of the difference between the vacant possession value and the value of the reversion.
- A proportion of the vacant possession value of the area acquired.
- A proportion of the difference between the vacant possession value of the freehold interest and its value subject to be like tenancy. This will have regard to the age of the tenant.
- Capitalising the profit rent for the remainder of the tenant's lifetime.
- Capitalising profits for a reasonable period at a rate which reflects risk-taking

A review of the CAAV discussion paper entitled Valuation of Agricultural Tenancies for Taxation Purposes dated June 1997 refers to many considerations of relevance to this particular valuation issue.

If part of the land is taken remember the rent review provisions under the Agricultural Holdings Act 1986.

michelmores

Michelmores LLP

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