

COMPULSORY PURCHASE

MODEL ANSWER

QUESTION

Assuming the solar company decided that the size and scale of the proposed development warrants pursuing a development consent order, and that it has powers (or the relevant acquiring authority) to compulsorily acquire the land falling within the development, consider the likely heads of claim the Estate and its tenants may have in respect of compensation.

Nb. For the purposes of this question, by the time this session is considered you should assume that the Estate cannot reach agreement with the developer as to how the solar development will be structured. In the absence of agreement, we need to consider how the solar company can proceed with the development and if they are able to use compulsory purchase powers as part of the DCO to acquire the land.

ANSWER

This question focuses on the compensation payable to (a) the Estate and (b) tenants of the Estate

Whilst the question does not ask the candidate to consider the legislation giving rise to the acquisition powers granted to the solar company, candidates may wish to touch on S122 of the Planning Act 2008.

Heads of Loss - Estate

The Estate will be entitled to be compensated for the loss of its interest and otherwise, the heads of loss being:

(a) The value of the interest in the land taken

A solar company will likely only be acquiring a leasehold interest in the land, and the Estate will need to consider the value of the interest being taken from them.

- The Estate will need to consider whether the land being taken has any value beyond bare land. On the face of it, the land does not, so there is no route to an increased claim there.
- The value of the Estate's interest claimed will need to consider any actual planning permission, or the prospect of any planning permission. Given the prospects of the Estate obtaining planning permission for residential development, they may want to

consider claiming the interest on that basis. If they were to do so, the valuation would need to apply the scheme cancellation assumptions under s14(5) LCA, namely that (a) the solar development scheme has been cancelled; (b) no action has been taken by the solar developer for the purposes of the scheme; and (c) there is no prospect of the same or any similar scheme being carried out.

(b) Severance and Injurious Affection

The Estate will need to consider the impact of the acquisition of the solar company on value of the land on the rest of the Holding, and claim for the loss of value in their interest of the retained land.

The Estate will need to consider whether the existing farming operation will suffer significant material detriment, possibly to the extent that it can no longer reasonably be farmed. If the Estate is of the view that the remaining land cannot be reasonably farmed, it may also seek to require the developer to acquire the retained land, though that is unlikely to be the case, given the size of the Estate.

It is unlikely that betterment will apply to restrict the severance claim, as the land retained by the Estate will be unlikely to increase in value as a result of being adjacent to the solar farm.

(c) Disturbance

The Estate may also be able to claim for all of the other losses suffered which are not too remote. This will obviously depend on the area taken by the solar company but could include:

- Costs suffered by the Estate having to reduce its farming operation, and the consequential loss of production;
- Loss of the Estate's silage crops due to dust from development;
- Any damage which the developer caused to access land, which may result in damage to vehicles belonging to the Estate.
- Time spent by the Estate dealing with its agent, valuer, and solicitor;

The Estate will need to ensure that any compensation claimed under the Disturbance head of claim is both consistent with the value of the land taken, and that the Estate is also not seeking to double-recover any of their losses which are recovered otherwise under a separate head of claim. For example, if the Estate wants to use the residential development value as it may greatly exceed the bare land value, then disturbance will not be payable.

(d) Occupier's Loss

The estate will be able to make a claim for standard occupier's loss payment for the greater of 2.5% of the Estate's interest, the "Land Amount" or the "Building Amount"

Regarding the "Land Amount," if the developer compulsorily acquires less than 100 ha, the Estate would be able to claim occupier's loss at rate of £100 per hectare. If the acquisition will exceed 100 ha, it will be £100 per hectare for the first 100 ha and £50 per hectare from thereon. Whilst the land acquired is likely to be agricultural, if the developer acquires any 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.

Regarding the "Buildings Amount," the compensation is the greater of £2,500 or £2.50 per square metre in respect of the gross floor space of any buildings. It is unlikely that will exceed either the 2.5% interest or the Land Amount.

Therefore, the amount which can be claimed by the Estate will depend on whether the value of the Estate's interest exceeds the sum which would be payable by reference to the Land Amount, whichever is greater.

(e) Fees

The Estate would also be able to claim for its professional fees incurred, including both legal fees and agent fees.

Rules of Compensation

The usual six rules of compensation under the Land Compensation Act 1961, section 5, then come into play for the various heads of claim, and those rules are repeated below:

The Rules:

- (1) No allowance shall be made on account of the acquisition being compulsory.

- (2) 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.
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers.
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.
- (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land

Applying the rules to the compulsory acquisition of the Estate's land for solar development:

- (1) The Estate will not be able to increase their claim simply because the acquisition is against their will
- (2) The value of the Estate's interest in both the acquired land and retained land must be calculated on the basis of being sold by the Estate as a willing seller on the open market.
- (3) The land owned by the Estate does not appear to have any special suitability or adaptability, and so Rule 3 does not need to be taken into account.
- (4) There does not appear to be any use of land contrary to law, and so Rule 4 does not need to be taken into account.
- (5) Rule 5 does not need to be taken into account, given that both the present use of the land and potential residential development have a market.

Heads of Loss - Tenant

The tenants which may be impacted by the acquisition would be those of bare or agricultural land, for example Argyle Farm, Hillside or any of the other let farms. The Heads of Loss for any tenant impacted by the acquisition will be:

(a) The value of the interest in the land taken

Any tenant losing a leasehold interest to the solar company will need to calculate its value.

Each tenant would need to consider the effect of the terms of their particular tenancy on value, such as:

- 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.

For example, Argyle Farm is held under what appears to be a first succession AHA tenancy by Hans, who is 66. A second succession is possible in Hans' son Theo, which will add value. Comparatively, Hillside is let on a periodic tenancy, so may have limited value.

The tenants will also need to consider the value of the tenant's improvements, and whether they justify increasing the marriage value split. We do not know of any improvements made to Hillside and it is unlikely there are any given that it was let on Lady Day 2024. It is possible that over the significant number of years the Gruber family have farmed Argyle Farm, there may be some improvements to consider.

Depending on the terms of the tenancy and which method would generate the greatest value, each tenant could potentially consider any of the following valuation methods for their interest:

- 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

It is likely that each of the tenants would need to test each of the valuation methods before settling on which method to base their claim upon.

(b) Disturbance

Both Hillside and Argyle are likely to be able to claim similar to that of the Estate under disturbance, though it must be consistent with the value of the land taken.

In particular, Argyle are likely to be able to claim for losses suffered by the dairy farming operation provided that they are not too remote, such as losses caused by a reduction in retained livestock due to the removal of land.

(c) Occupiers Loss

Again, both Hillside and Argyle may be able to claim occupiers loss on the same basis as set out above.

Given the various buildings on both farms, Argyle and Hillside may have a stronger claim on the "Building Amount," but they would need to consider that against the value of their interest and the "Land Amount" in order to assess the greater amount which they could respectively claim.

(d) Fees

Both Hillside and Argyle may also claim their professional fees in relation to the compulsory acquisition.