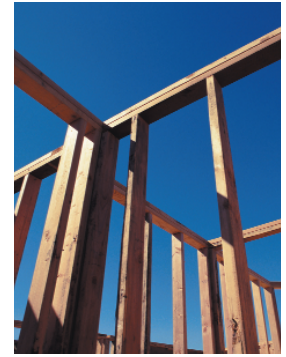


Making plans (2)



The new Planning Act amends the compulsory purchase and compensation code. Michael Humphries reports on the changes (second in a series of articles)

Of the 125 sections of the Planning and Compulsory Purchase Act 2004, only 11 are devoted to compulsory purchase and compensation. Some may see this as a missed opportunity in the light of the detailed review of this area of the law recently undertaken by the Law Commission. That body produced two consultative reports in 2002, dealing with compensation (CP 165) and procedure (CP 169). A final report on compensation (Law Com 286) was published in December 2003, with the final report on procedure expected shortly. It has to be recognised, therefore, that while the changes introduced to the compulsory purchase and compensation code by Part 8 of the 2004 Act may be important, they are, nevertheless, narrow in scope and not the wholesale reform that many had hoped for.

The changes that have been introduced fall under the following six headings:

- Acquisition of land for development;
- Authorisation of compulsory purchase;
- Valuation date;
- Advance payments;
- Information; and
- Loss payments.

Part 8 came into force on 31 October 2004 and has now been accompanied by regulations relating to prescribed forms (SI 2004/2595) and the new written representations procedure (SI 2004/2594), together with a new ODPM Circular (Circular 06/04), to replace Circular 02/03.

Acquisition of land for development

Section 226 of the Town and Country Planning Act 1990 grants local authorities the power to compulsorily acquire land for 'planning purposes' as defined

by s 246(1). This power is amended by s 99 of the 2004 Act, with the intention that it provides a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their community strategies and local development documents.

The principal changes to the section are as follows:

- The original wording of s 226(1)(a), which gave power to acquire compulsorily any land that "is suitable and required in order to secure the carrying out of development, redevelopment or improvement", is swept away and replaced by a power to compulsorily acquire land "if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land".
- The original s 226(2), which provided that local authorities were to take into account the provisions of the development plan, any planning permissions in force and any other material planning considerations, is deleted and a new s 226(1A) is introduced. This provides that local authorities must not exercise the power under the new s 226(1)(a) unless they "think" that the development, redevelopment or improvement is likely to contribute to the "promotion or improvement" of the economic, social or environmental "well-being" of their area.

Thus it can be seen immediately that the effect of the changes is to widen the power. It is no longer necessary that land be "suitable" and "required" in order to "secure" the development etc of the land; it is now only necessary that the authority "think" that the acquisition will "facilitate the carrying out" of the development etc of the

land. The use of the power is, however, now made subject to the overall "well-being" test, which ties in with the duties imposed on some authorities under s 2 of the Local Government Act 2000 to promote the economic, social and environmental well-being of their areas. The new Circular 06/04 comments:

"These powers are expressed in wide terms and can therefore be used by authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate."

Authorisation of compulsory purchase

The 2004 Act amends ss 6, 7, 11 and 12 of, and introduces a new s 13 to, the Acquisition of Land Act 1981, in order to make changes to the procedure for making and confirming non-ministerial compulsory purchase orders. The effects are, broadly, to:

- extend the categories of persons entitled to be served with notice of the making of the order and who have a right to be heard at a public local inquiry;
- require the fixing of notices of the making of the order on or near the land;
- provide for objection to an order to be considered by means of written representations, where all those with outstanding objections consent;
- allow for the confirmation of orders in stages; and
- require notice of the confirmation of an order to be fixed on or near the land.

Similar amendments are made to the procedures for the making and confirmation of ministerial orders under Sched 1 to the 1981 Act.



Michael Humphries QC is a barrister practising from 2 Harcourt Buildings

SOLICITORS JOURNAL

A new s 14A is also inserted into the 1981 Act, which allows the confirming authority for a compulsory purchase order to transfer the decision whether or not to confirm to the acquiring authority. This power may only be exercised where there are no outstanding objections to the order and is intended to speed up the procedure in relation to unopposed orders, including orders where the land is in unknown ownership.

Valuation date

A new s 5A inserted into the Land Compensation Act 1961 introduces a statutory valuation date for the assessment of compensation under rule (2) of s 5 (ie, the open market valuation rule). Where the compulsory acquisition is proceeding by way of notice to treat, the valuation date is the earlier of:

- (a) the date the acquiring authority entered on and took possession of the land; and
- (b) the date when the assessment is made.

This is simply a statutory recognition of the existing case-made rule in *Birmingham Corporation v West Midland Baptist (Trust) Assn* [1970] AC 874. For an acquisition by general vesting declaration the valuation date is the earlier of:

- (a) the vesting date; and
- (b) the date on which the assessment is made.

The section makes it clear that the date of assessment is to be the last hearing date before the Lands Tribunal makes its determination, or the last date for written representations (whichever is applicable).

Of particular interest is the new s 5A(2) which provides that "no adjust-

ment is to be made to the valuation in respect of anything which happens after the relevant valuation date" (emphasis added). This provision would appear to put a stop to the practice of looking at post-valuation date events to confirm the soundness of valuation judgements arrived at on the valuation date itself: see, for example, the Court of Appeal in *City and County of Swansea v Griffiths and Jones* [2004] EWCA Civ 398.

The new s 5A also gives statutory recognition to the existing case-made rule in *Chilton v Telford Development Corporation* (1985) 47 P&CR 674 that entry on part of the land specified in a notice of entry is entry on the whole.

Advance payments

Three new sections (ss 52ZA, 52ZB and 52ZC) are added to the Land Compensation Act 1973, making it possible for advanced payments on the compensation due to a claimant following compulsory purchase to be paid directly to a mortgagee, where appropriate.

Information

Where an authority has power to acquire land compulsorily, a new s 5A inserted into the Acquisition of Land Act 1981 gives the power to require it to be provided with the names and addresses of those who own, occupy or are believed to have an interest in land. The power may only be exercised, however, for the purpose of enabling the authority to acquire the land. While powers to require information already exist for most acquiring authorities, this is not universally the case, with a notable omission being the Regional Development Agencies.

It is clearly intended that such information will facilitate early negotiations with those who own, occupy or have an interest in the land and allow for the service of notices on the appropriate persons. A new s 5B in the 1981 Act makes the failure to provide such information, or knowingly providing false information, an offence.

Loss payments

Sections 106-109 of the 2004 Act introduce a new 'loss payments' scheme into the Land Compensation Act 1973, which will operate in addition to

the existing 'home loss' payment scheme. The new scheme will, however, replace the existing 'farm loss' payments scheme. These loss payments are paid in addition to the value of the land acquired and there is, therefore, no doubt that the purpose of the new scheme is to ease the burden on owners and occupiers of land who have their interests compulsorily acquired in the public interest. Whether this will make such owners or occupiers more amenable to the advances of an acquiring authority remains to be seen, but that presumably is the intention.

The new s 33A to the 1973 Act provides that a person who is an owner or tenant of property that is compulsorily acquired, and who has held that interest for no less than a year, is entitled to a 'basic loss payment'. That payment will be assessed at the rate of 7.5 per cent of the value of the person's interest in the land, up to a maximum of £75,000. If the person is entitled to a 'home loss' payment in respect of the land, however, the value of the interest in the dwelling part of the property will be deducted from the value of the interest in the whole in arriving at the basic loss payment. Thus the 'basic loss payment' scheme extends the loss payment concept to non-agricultural business properties for the first time.

In addition to the basic loss payment there is also a new 'occupier's loss payment' scheme introduced. Occupier's loss payments are available both to agricultural and non-agricultural occupiers who satisfy the conditions of the basic loss payment and have been in occupation of the land for a period of no less than a year. The amount of this payment is assessed at a rate of 2.5 per cent of the value of the interest, or on the basis of a formula using land area or building floor space, whichever is the greater, up to a maximum of £25,000. Again, if a person could claim a home loss payment, then the value of the interest in the dwelling is deducted from the value of the whole in making the assessment.

Various exclusions are made from the new loss payment scheme to prevent those whose neglect of a property has prompted the compulsory acquisition from benefiting from that neglect.

Conclusion

The reforms to the compulsory purchase and compensation code introduced by the 2004 Act can be seen to fit into a wider government agenda. The changes to s 226 are intended to make it easier for local authorities to use their compulsory purchase powers to bring about urban regeneration and to facilitate redevelopment. The procedural changes introduced seek, by and large, to streamline the system to allow orders to be confirmed more quickly and efficiently. New loss payments are intended to remove, or at least reduce, the perception of unfairness felt by many owners and occupiers of land and, thereby, promote negotiated settlement. Of course, whether these changes will lead to a "better, simpler, faster, more accessible system", to borrow a phrase, only time will tell!