

# The CPA's Law Reform Lecture 2019

*Is There a Need to Reform the Law of Blights?*

*Thursday 30<sup>th</sup> April 2019*

*Bryan Cave Leighton Paisner LLP*

**Welcome & Introduction by the  
Conference Chairman**

**Rebecca Clutten**

*CPA Vice Chair*

*Barrister, Francis Taylor Building*

## Lead Paper

**Mary Cook**

*Partner, Town Legal*

# **The Compulsory Purchase Annual Law Reform Lecture Discretionary Blight Schemes**

30 April 2019

Mary Cook – Partner

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## Structure of talk

- (A) Introduction
- (B) Statutory Blight
- (C) Generalised Blight
- (D) Discretionary Schemes
- (E) Talking points

## Introduction (1)

- Purpose of compensation  
*“Hand in hand with the power to acquire land without the owner’s consent **is an obligation to pay full and fair compensation**”*  
(Lord Nicholls in *Waters v Welsh Development Agency [2004] 1 WLR 1304 AT [1]*)
- CPO Compensation Code- Underpinned by equivalence principle

### Statutory Blight (1)

- What is it?
- Statutory Framework- Section 150 and Schedule 13 of the Town & Country Planning Act 1990 ('TCPA 1990')
- Procedure- Notices, counter notices, Upper Tribunal references. Very technical and uncertain process
- Common theme to classes of blighted land

### Statutory Blight (2)

Key Ingredients:

- **Qualifying interest:** an owner occupier of a residential hereditament/agricultural unit or non-domestic property below defined annual values. Large swathes of investors/owners excluded.
- **Reasonable endeavours to sell:** who? Claimant or agent? How long should property be marketed? To whom? How? At what price? Who determines this? Assets of a business?

### Statutory Blight (3)

- Claimant must demonstrate that they have been:
- *“unable to sell except at a price substantially lower than that which might reasonably be expected”*  
(section 150(1)(c) TCPA 1990)
- Some thoughts/questions on this requirement?
  - Who establishes unblighted market value absent scheme? Agent selling? Valuers?
  - What if dispute between owner and appropriate authority?
  - Is, for example, 10% lower than unblighted market value absent the scheme *“substantially lower”* for these purposes or is 15%?
  - Evidential difficulties for claimants

### Statutory Blight (4)

- Practical Issue- What if owner occupier forced to sell for good family reasons during blight process?
- Case law treats a sale in these circumstances as a deemed withdrawal of the Blight Notice.
- Discretionary hardship schemes for major infrastructure projects may cover this scenario but many smaller schemes would not.

## Statutory Blight (5)

- ‘Qualifying interest’ defined in section 149(2), (3) TCPA 1990
- Annual value of hereditament for rating purposes must not exceed prescribed amount (As of Apr 2017- £36,00 in England except Greater London where it is £44,200)
- Intention of measure- restrict entitlement to small businesses
- Logic/ rationale for this? Rough justice?

## Generalised Blight (1)

CBRE Study

Figure 1. Changes in values following the announcement of the proposed route

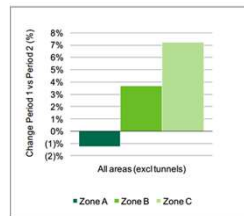
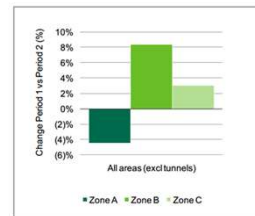


Figure 2. Changes in sales volumes following the announcement of the proposed route



## Generalised Blight (2)

### Interdepartmental Working Group on Blight-1990s

- Terms of Reference
- Definition of generalised blight
- IWGB Recommendations

## Central Railway Scheme

- A twenty-one-year option agreement;
- The price was based on “fair open market value” ignoring any possible effect of Central Railway’s proposals;
- Index linked;
- Option agreement automatically transferable with the property;
- Other statutory rights can be exercised but if they do, rights under the property protection scheme forfeited;
- Allowance for moving costs and stamp duty costs on the alternative property purchased.

## Discretionary Schemes (1)

### Crossrail

- Hardship policy
- Qualifying conditions



## Discretionary Scheme (2)

### **Crossrail:** Key ingredient: hardship policy

- Qualifying interest as per TCPA 1990
- Property not required & enjoyment seriously affected by construction or prospect of it
- Compelling reason to sell within defined parameters (can be scheme impact)
- Reasonable endeavours to sell
- Unable to do so except at a price 15% lower than expected absent Crossrail
- No Foreknowledge



## Discretionary Schemes (3)

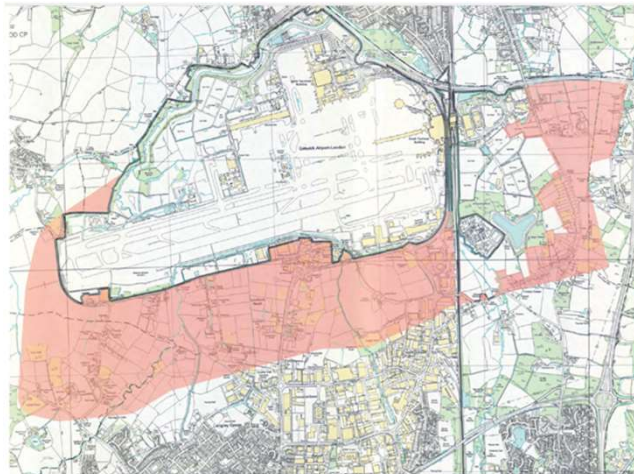


## Discretionary Schemes (4)

- Gatwick
- Two voluntary schemes:
  - (i) Property market support bond **but only** within extended aircraft boundary
  - (ii) Homeowner support scheme



**MC1**  
Property Market Support Bond  
Existing and extended airport boundary



**Slide 20**

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**MC1**

Mary Cook, 18/04/2019

### Discretionary Schemes (7)

#### Property Market Support Bond

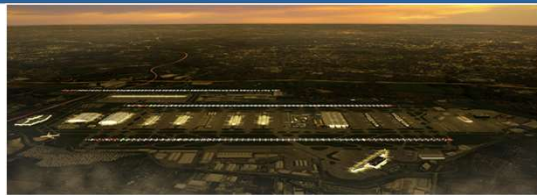
- Joint instruction of two valuers, if difference equal or greater than 10%, independent expert appointed by RICS President, assessment final
- If less than 10% difference average of two taken
- Offer open for one month
- If compelling reason to sell is scheme itself, home loss /basic loss payment, surveyors and legal fees paid.

#### Eligibility Criteria:

- owner/occupier or owner of only that property and renting house out
- occupation or rental for at least six months prior to publication of scheme 3/10/2005
- Property Market Support Bond transferrable on sale subject to new owner meeting eligibility criteria, includes valuation, index linked value.

## Home Relocation Assistance Scheme

- Initially available for five years
- Eligibility criteria: owner/occupier for at least six months before scheme launch
- Must be moving from within to outside the 69decibal Leq contour ie to a quieter area
- 1.5% of sale price plus lump sum of £5000, up to a maximum of £12,500



# Heathrow

Did you know? Heathrow Expansion will provide ...

**10,000**

quality apprenticeships by 2030 to build a stronger home base of skills

→ [Employment Impacts](#)

**New Routes**

An expanded Heathrow will create new domestic routes.

→ [Expansion to create new routes](#)

**180,000**

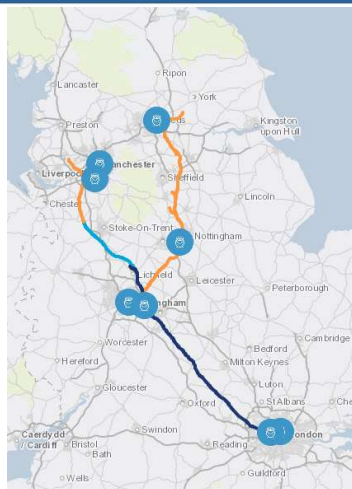
**Jobs**

Up to 180,000 new jobs created across the UK.

## Discretionary Schemes (9)

### Heathrow

- Interim property hardship scheme (Compulsory Purchase Zone and Wider Property Zone)
- Enhanced compensation package
- 5 Qualifying criteria (qualifying interest, no prior knowledge, proximity to runway, efforts to sell, and hardship)



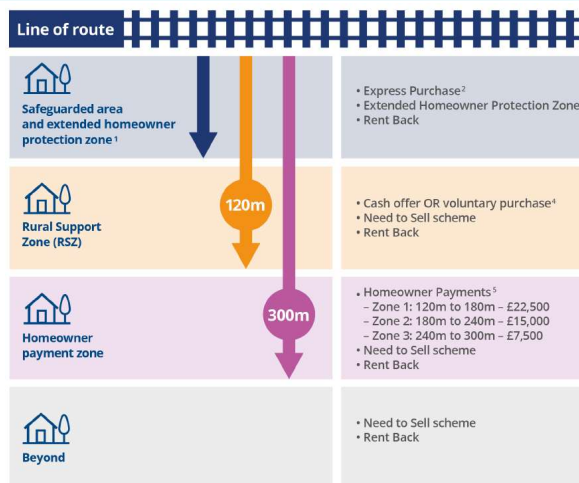
## HS2

“The new HS2 high speed line will provide fast, frequent and reliable connections between 8 out of Britain's 10 largest cities and their regions: Birmingham, London, Leeds, Manchester, Liverpool, Sheffield, Edinburgh and Glasgow.”

## Discretionary Schemes (11)

Various non-statutory schemes. Main schemes:

- Express Purchase scheme
- Voluntary Purchase/ Cash offer scheme (within Rural Support Zone)
- Homeowner Payment scheme
- Need to sell scheme



## Discretionary Schemes (12)

### Express Purchase Scheme

- Aim speed up blight notice process and provide greater certainty;
- Unblighted OMV + moving costs + 10% OMV HLP
- Differences to statutory blight: (i) no requirement for owner to attempt to sell property; (ii) blight notice accepted on whole of property if more than 25% of land in safeguarded zone; (iii) Extended homeowner protection zone for properties formerly in the safeguarding zone
- As of 30 September 2018, 173 properties had been acquired at a total cost of £261.90m.

## Discretionary Schemes (13)

### Voluntary Purchase (in RSZ)

- 100% of unblighted OMV but no disturbance or HLP payable as acquisition not compulsory

### Cash Offer (in RSZ)

- Lump sum of 10% of OMV (min 30k- max 100k)
- Eligibility criteria for both schemes
- Valuation approach- 2 independent valuations paid for by HS2 Ltd
- Take Up- As of 30 September 2018, 62 properties acquired under voluntary purchase option at total cost of £28.32m and 179 offers had been made under cash offer option at total cost of £6.72m



## Discretionary Schemes (14)

### Homeowner Payment Scheme

- Aim- allow home owners in rural areas early share of scheme benefits
- Eligible owners can claim a lump sum of £7,500, £15,000 or £22,500 depending on which band their property falls into;
- As of 30 September 2018, 689 payments had been applied for at cost of £8.84m

## Discretionary Schemes (15)

### Need to sell scheme

- Available in both urban and rural areas
- 5 criteria: (i) eligible owner; (ii) location of property; (iii) reasonable efforts to sell; (iv) no prior knowledge of HS2; and (v) Compelling reason to sell;
- Assessed by panel with recommendation to Secretary of State;
- Controversially, no independent appeals mechanism;
- As of 30 September 2018, 173 properties had been acquired under NTS scheme at total cost of £151.01m.

## Discretionary Schemes (16)

### Property Bond/ Property Price Support Scheme

- Characteristics
- Types
- History of HS2 property bond consultations
- Current position



### Talking Points(1)

- (A) Statutory Blight
- Arguably, ripe for reform
- Claimant perspective- e.g. revise/remove rateable threshold?; relax/remove 12 month occupation requirement?;
- Appropriate authority perspective- remove the ability of Claimant to 'change his mind' and withdraw blight notice after compensation determined?
- Primary legislation- unlikely in current climate?

### Talking Points (2)

- Alternatively, issue national policy and guidance on statutory blight?
- National policy could address:
  - (i) How statutory blight works making it more accessible and intelligible to claimants; and
  - (ii) HMG guidance on complex qualifying conditions (e.g. what reasonable endeavours to sell means and what evidence base is required to satisfy this)

### Talking Points (3)

#### Generalised Blight

- Claimant 'post code' lottery?
- Expectations of such schemes now being included
- Effect on Compensation Code?
- Query whether opposition to development can and should be "bought off"?
- Reducing resistance to new development securing public benefits of schemes earlier?

### Talking Points (4)

- Effectiveness of discretionary schemes currently unproven
- Case for expert independent review of generalised blight to inform next steps?
- Scope/ terms of reference of such a review
- Best practice protocols? e.g. valuation process; requiring an independent appeals process (e.g. Thames Tideway Tunnel scheme)

### Talking Points (5)

- Scope of such an independent review could also perhaps include other recurring issues with infrastructure development. For example:
- (A) Should safeguarding of land be time limited?
- (B) Should scheme promoters be required to produce:  
(i) a full property budget and (ii) impact study to identify likely scheme impacts and mitigation measures (e.g. relocation strategies for individuals and businesses) to address these scheme impacts, before gaining the necessary consents/powers to deliver schemes?

### Talking Points (6)

- Argument for statutory footing/  
harmonisation of discretionary schemes?
- Proposal- HMG policy/ guidance on statutory blight and generalised blight to encourage and promote best practice for non-statutory schemes and to establish a 'baseline' but to retain scheme specific flexibility



## Question & Answer Panel Session

*Rebecca Clutten, CPA Vice Chair; Barrister, Francis Taylor Building*

*Mary Cook, Partner, Town Legal LLP*

*Hilary Wharf, Director, HS2AA (HS2 Action Alliance); Partner, Wharf Weston*

*Simon Mole, Partner, Carter Jonas*

*Keith Murray, Principal, Keith Murray Consultants*

*Charles Clarke, Principal Lawyer - Property & Planning, Transport for London*

**Thank you for attending the CPA  
Annual Law Reform.**

**Please enjoy the Drinks Reception.**

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