

Loss Payments

s. 33A-F Land Compensation Act 1973

Basic and Occupiers Loss payments were inserted into s.33A – F of the Land Compensation Act 1973 (the 1973 Act) by the Planning and Compulsory Purchase Act 2004. They introduced payments in addition to the loss incurred as a result of the acquisition of an interest in land used for purposes other than as a main residence or an agricultural holding. Loss payments were already available for main residence and agricultural holdings.

The concept behind loss payments is to provide an acknowledgement of the fact that a party is displaced from property against their will. This is not otherwise permitted because of s. 5(1) of the Land Compensation Act 1961 (the 1961 Act).

There are currently three issues with the provisions in s.33A-F of the 1973 Act.

- the method of calculation of the payments is ambiguous and open to argument,
- the “building amount “ is based on Gross External Area which is difficult to measure in practice and is also inconsistent with market practice for the measurement of most buildings,
- the level of payments is not fairly distributed between occupiers and investors.

Ambiguity

The wording of the provisions is ambiguous in that it relates the payment to a percentage of the “value of [the claimant’s] interest in land”. This leads to some ambiguity over whether this means the market value of the interest under s.5(2) LCA 1961 or whether it also includes disturbance compensation and injurious affection as these items together with the amount under s.5(2) comprise the value of the interest to the owner which is the compensable amount.

In the case of occupiers, particularly leasehold occupiers, this can make a significant difference to the Loss Payments received as the s.5(2) value of the lease is commonly very low but the disturbance compensation can be considerable.

The CPA have been advised by the Department for Communities and Local Government (CLG) that the intention of the wording was that the payment should be a percentage of the market value only, as assessed under s.5(2) of the 1961 Act. This interpretation curtails the usefulness of the Basic Loss payment in particular to those hardest hit by compulsory purchase, that is businesses occupying leasehold premises.

PROPOSAL: The CPA propose that the alternative interpretation be adopted and confirmed, that is that the Basic Loss payment (and occupiers Loss Payment where applicable) be calculated as a percentage of the entire compensation payable, including disturbance. The maximum values already imposed on the Basic and Occupiers Loss payments are £75,000 and £25,0000 respectively and

would limit the additional expense of such a measure. If the proposal to reverse the current percentage rates for Basic and Occupiers Loss payments outlined below is also adopted, the additional expense would be further reduced or removed altogether.

Building Amount

The Occupiers Loss payment has alternative methods of calculation. The first is a percentage of the “market value” of the interest. However, where the interest has little or no market value the claimant can elect to calculate the amount by reference to the area of the buildings he occupies (the “Building Amount” or the area of land occupied (the “Land Amount”).

The building amount is based upon the Gross External Area (GEA) of the buildings occupied by the claimant. The GEA is the area within the footprint of each floor of the building. It is the most generous calculation of the area of a building as it takes into account walls, stairwells, bathrooms and other features that are not normally valued.

The problem with GEA is that it is physically difficult to establish and must usually be measured specifically for the compensation claim.

If the standard market practice for measurement were to be adopted, not only would the area be easier to ascertain, it may also have been recorded previously for letting or rent review purposes.

PROPOSAL: The “buildings amount” should be measured in line with the Royal Institution of Chartered Surveyors standards of measuring practice.

Amount to be paid

The Basic Loss payment is available to both occupiers and owners of a building and is based on 7.5% of the “market value” of the interest held, subject to a maximum payment of £75,000.

The Occupiers Loss payment is only available to those in occupation of all or part of a building. There are three methods which can be used to calculate it. The claimant is able to choose by which method the loss payment should be calculated. The choices are;

- 2.5% of the value of his interest
- The land amount (£2.50 per square metre of the land occupied)
- The building amount (£25 per square metre of the GEA)

For a leaseholder on a normal occupational lease or tenancy, the value of the interest is likely to be minimal. This means that they will receive no Basic Loss payment, and the Occupiers Loss payment is likely to be the building amount.

The maximum amount payable for an Occupier Loss payment is £25,000 and the minimum is £2,500.

Disparity between parties

In the most common situation for commercial premises is to have an investor landlord with a valuable freehold or long leasehold land interest and an occupying business tenant holding a lease from the landlord at a market rent.

Because the lease has little or no market value, the Basic Loss the tenant receives will be at or near nil. The landlord will receive 7.5% of the market value of his interest, capped at £75,000. The landlord will not receive any Occupiers Loss payment, but this will be a maximum of £25,000. In most cases the landlord investor receives up to three times more Loss payment than his tenant, and yet it is the tenant, in having to close down or relocate his business, which has suffered the more disruption.

PROPOSAL: The CPA propose that the percentage rates be reversed so that the Basic Loss payment becomes 2.5% of the value of the interest subject to a cap of £25,000. The Occupiers Loss payment should become 7.5% of the value of the interest (or the land or building amount), subject to a cap of £75,000.

Route to reform

Under s.33K of the 1973 Act, the Secretary of State

“may by regulations substitute for any amount or percentage figure specified in these sections such other amount or percentage figure (as the case may be) as he thinks fit”

If the change is not due to a change in the value of money or land, a draft of the regulation must be laid before and approved by resolution of each House of Parliament.

Summary

The current Basic and Occupiers Loss payments are designed to reflect some of the inconvenience and upheaval that is caused by compulsory purchase but is not reflected in the disturbance compensation payable by virtue of s.5(1) of the 1961 Act.

The CPA are concerned that the payments are poorly targeted and should be adjusted to provide more compensation to occupiers, and less to investors. This would reflect the relative level of disruption and inconvenience caused to each group.

By calculating the Loss payments with regard to the total compensation and reversing the current percentages, we believe that the necessary adjustment can be made without undue additional expense to the acquiring authority.

Two examples of common circumstances are shown in Appendix 1. Loss payments are calculated for each under the existing system, and under two potential alternatives. Our preferred proposal, A, gives an end result very close to the existing system. Proposal B takes only the change of percentages and retains the existing use of the s.5(2) value. This results in a significant under compensation.

Member(s) Responsible

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