The CPA’s Law Reform Lecture 2019

Is There a Need to Reform the Law of Blights?
Thursday 30th April 2019
Bryan Cave Leighton Paisner LLP

Welcome & Introduction by the Conference Chairman

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Lead Paper

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The Compulsory Purchase
Annual Law Reform Lecture
Discretionary Blight Schemes

30 April 2019
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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.
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
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
Property Market Support Bond
Existing and extended airport boundary
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 69 decibal Leq contour i.e. 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

New Routes

An expanded Heathrow will create new domestic routes.

180,000

Jobs

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

Employment Impact

Expansion to create new routes

Source: Heathrow

69 decibal Leq contour
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)

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