

COMPULSORY PURCHASE

COMPENSATION

A GLIMPSE OF EMINENT DOMAIN IN THE UNITED KINGDOM



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As in other democratic countries, property rights in the United Kingdom are protected. However, since expropriation, or “compulsory purchase” as it is called in the UK, is considered an attack on these rights, it must be justified to be in the public interest, have a proper process/clear regulations and a compensation code that is regarded as fair and just.

“An Englishman’s home is his castle” conveys something of the people’s attitude toward the state in such matters.

THE UK SYSTEM AND EUROPE

The European Convention of Human Rights provides protection against dispossession without

due process (and in the public interest), right to fair trial and right of respect to home. Various codes of compensation developed by different countries have regard to this. In Germany’s Constitution (Basic Law), Article 14 (3) states that “an expropriation is only allowed for the public good,” and just compensation must be made. It also includes for the right to have the amount of the compensation checked by a court.

In the UK, a Compulsory Purchase Order (CPO) needs to be obtained by the state or local authority to acquire land or property for a scheme without the consent of the owner. The acquiring authority must make a compelling case in the public interest in order to take the property, and any objections

will be heard by an independent inspector. CPOs may be used for motorways, regeneration, housing schemes, and other infrastructure under different statutory powers, and this process is intended to balance the public needs and private rights.

COMPENSATION IN THE UK

The UK may be said to have a mature system of compulsory purchase. Compensation assessment was developed substantially in the 19th century with the private construction of the railways, and was based on the concept of “value to owner.” With later statutes and much case law, it has developed into what has become known as the “statutory code of compensation,” centered around the Land Compensation Act 1961 codification, but with various key precedent compensation court case decisions that have made the code complex and often uncertain in effect.

In a Hong Kong Ironworks relocation appeal case, *Director of Buildings and Lands v. Shun Fung Ironworks 1995*, key principles established by statute and case law prevailed. This appeal case confirmed the principles of equivalence – that a claimant is entitled to be compensated fairly and fully for his loss, but conversely, not to a greater amount.

Key principles established by statute and case law include:

- Market Value - ignoring the CPO Scheme and the prospect of compulsory purchase (Rule 2 of the 1961 Act);
- Fixed Valuation Assessment Date - when ownership/possession is taken by the acquiring authority;
- Early Advance Payments - paid to the claimant if the compensation has yet to be settled (based on 90% of the acquiring authority’s estimate of compensation at that stage);
- Compensation for Losses - if shown to be caused by the CPO, not too remote, and following claimant’s mitigation of loss (sometimes referred to as “value to owner”);
- Surveyors Fees (and legal costs) - incurred by the claimant, reimbursed by the acquiring authority;
- Loss Payments - compensation for non-tangible losses (allowance for the upset, discomfort and inconvenience in being dispossessed by compulsory purchased), typically 10% of market value for owner occupants, or an amount based on the area of the land or buildings.

COMPENSATION CLAIMS

The determination of the proper compensation basically operates as an adversarial system where the claimant is encouraged to employ an experienced surveyor to advise them and act on their behalf in securing compensation with reasonable surveyors fees being reimbursed. The surveyor will assess the market value and his losses according to the Compensation Code, and then submit the claim to the acquiring authority, whose own surveyor will check entitlement and negotiate the compensation.

The claimant’s surveyor first investigates the claimant’s property interest and the circumstances of the dispossession, and prepares Heads of Claim. He is likely to apply for an advance payment to help finance relocation and the purchase of another property, and will advise the claimant as to relocation and “mitigation of loss” - an established principle of Disturbance Compensation.

A typical claim for a compulsory purchase of an owner occupied home or business may include:

- 1) **Market Value** - at the valuation date of property interest acquired - freehold, leasehold or tenancy
- 2) **Disturbance Claim**
 - a) Removal costs
 - b) Costs of acquiring and adapting relocation premises
 - c) Arrangement fee for mortgage transfer
 - d) For a business - temporary and permanent loss of profits (accountant’s advice may be called in to assess the losses of profit)
- 3) **Loss Payment** - potentially 10% of compensation for intangible losses
- 4) **Statutory Interest** on compensation from entry date
- 5) **Surveyors Fees and Legal Costs** – full reimbursement

When the claimant is a tenant, the market value of the lease may be nominal but the claimant is usually still entitled to disturbance compensation based on relocation costs, loss of profits and other factors. Investment owners may be able to claim loss of rent, and the costs of purchasing another property of similar value as reinvestment.

Part of an owner’s land may be compulsorily purchased for road widening or tunnelling, so the value of the



Following a 1947 case involving land acquisition for a U.S. Naval Base in Trinidad, new principles for assessing market value compensation were established in the UK.

land taken is assessed, along with the value effect on the retained land, known as Severance and Injurious Affection and Set Off. In essence, the total effect of the CPO on the value of the owner's interest is assessed for compensation.

PRINCIPLES OF COMPENSATIONS

A landmark UK compensation case concerned the 1941 acquisition of a quarry in Trinidad for the U.S. Chaguaramas Naval Base. This case, *Pointe Gourde Quarrying and Transport Company Ltd v. Sub-Intendent of Crown Lands 1947*, established the principle of ignoring the scheme of the acquiring authority when assessing the market value for compensation. In this case, the enhanced value of the quarry to a new naval base (the scheme) should be excluded in determination of market value compensation.

The application of this principle to planning assumptions for compensation has led to further case law and caused much litigation on the Olympics CPO.

Another case on planning assumptions led to a South London Borough having to pay £1.6 million compensation for open land incapable of redevelopment. These and other compensation issues of the Compensation Code need significant and urgent reform, which is being pursued with the government by the Compulsory Purchase Association.

If settlement cannot be reached by negotiation, one can appeal to the independent appeal body of the Lands

Tribunal for a reasoned decision and determination, although because of the high costs and risk of such a legal appeal, mediation or arbitration may be considered first. Reference to the Court of Appeal may be made on legal points only, and then the case can move on to the Supreme Court.

OLYMPICS 2012 – LONDON

When the International Olympic Committee announced in July 2005 that the XXX Summer Olympics 2012 would be held in London UK, the London Development Agency faced two major challenges. Within just two years, they would need to obtain compulsory purchase powers and then take possession and ownership of over 500 acres of East London industrial property and hundreds of businesses. This was to allow for the land then to be remediated and the stadia and infrastructure built in time for the 2012 Games. They soon realized that it would be one of the biggest Regeneration CPOs in Europe with many major business relocations.



2010 Olympic Site Planning Timetable:

• Bid Planning/CPO Blight	2003 - 2004
• London Selected 2012	July 2005
• CPO	November 2005
• Public Enquiry	Summer 2006
• Confirmation of CPO	December 2006
• Acquisition	July 2007
• Remediation	2007 - 2009
• Construction	2008 - 2011
• Olympics Games 2012	July 2012
• Legacy Development	2013 and beyond



The Olympic zone (looking east) in Spring 2010 shows the main stadium and Aquatics stadium (Wave Roof) on the right, and Media Centre and Velodrome on the left.

The ambitious timetable has progressed well. In fact, the main stadia and park should be complete by July 2011 – a full year ahead of the Games.

However, there have been substantial funding problems. The planned private financing of the Olympic Village and the Media Centre fell away with the economic crisis, and there has been much litigation and negotiations concerning compensation claims on various issues including planning assumptions and relocation costs.



The acquisition of over 500 acres of industrial property was needed before the infrastructure construction could begin in 2009.

The Compulsory Purchase Association continues to press the UK Government for urgent reform of the UK Compensation Code where identified problems and uncertainty exist.

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