

Compulsory Purchase Orders

Galway Property Owners need professional advice

Brian Doyle on Compulsory Purchase Orders

New road systems in Galway County and City together with the expansion of all sorts of infrastructure mean that more Galway property owners have to come to terms with CPO procedures. The process is based on legislation, much of it going back to the mid 1840's and almost all of it having being taken through the courts on at least one occasion. The legislation is complex and often property owners are confused and intimidated by the process. Experienced professional help is vital if owners are to be properly compensated.

The basis surrounding the assessment of compensation under CPOs is quite simple; a person is left in no better or no worse position after the acquisition is completed, in so far as money can do this. Legal procedures are designed to make sure this happens. Many property owners are unaware that the legal procedures are there to protect them and not to facilitate the National Roads Authority (NRA), County Council, ESB or any other organisation. Indeed, the Courts are very much on the owner's side in these matters and will insist that a body with CPO power exercises it properly and to the letter.

The legislation dates back to over one hundred and fifty years with some

very minor amendments in more recent times. The Courts have added to this through their judgements. The primary legislation is contained in the Acquisition of Land (Assessment of Compensation) Act 1919, the Local Government (Planning & Development) Act 2000 and the Housing Act 1966. Legislation from the 1840's is involved as well. Together, these acts provide the rules that govern the assessment of compensation.

The valuation rules apply to local authorities and most bodies exercising CPO powers (including Bord Gais and the ESB). Even a relatively minor land take, for say a road widening project must be carried out within the law. The law surrounding this area may be obscure to most, however professionally qualified property advisors will understand its significance in relation to the valuation of property and the compensation that arises. Experienced Chartered Surveyors are well equipped to advise given their background in property markets and statutory property valuation techniques.

According to the rules, the landowner is entitled to the market value of his land at the date of the Notice to Treat. That starting point is where the problems begin. Even the date can cause difficulty. There is no benefit to the owner in waiting and

indeed, there could be a penalty. Most owners should submit their claim, allow say a month to conclude negotiations and if there is no adequate response, as is often the case, they should go directly to Arbitration. Seek advice. Do not enter into any discussion without it. The market value can be based either on the existing use value of the land or its development value, whichever is greater. Knowing when to claim development value and just what is necessary to prove it is vital. This is where the judgements in previous cases can assist. A properly qualified advisor should be very familiar with all of this case law.

Where existing use value is being claimed, then landowner may be entitled to compensation for disturbance and severance. It often arises that the completed development has a negative effect on the value of the retained land. If so, then compensation for injurious affection as it is called may also form part of the claim. As can be appreciated, placing figures on these

amounts can be very difficult indeed. Appropriate valuation training, qualification and experience is essential. In some cases, the land value may form only a small part of the total claim.

Where a business premises is taken as part of the acquisition, then it may be required to relocate. In this event, loss of profit, either temporarily or permanently, will arise. This loss can form part of a valid claim. If part of a property is taken with the effect that the remainder is useless, then the acquiring authority can be forced to take the entire, and pay appropriately for it. If a power cable is placed over land making it impossible to develop underneath then compensation arises.

(Next week: Development value, betterment and the issue of "reasonable costs".)

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