

Compulsory Purchase Orders

Negotiate or Arbitrate

Now that the CPO's seem to be a reoccurring issue for many farmers, they are often left wondering about the next step in the procedures following service of the required notices. In this specially commissioned article, Ennis based Chartered Surveyor Brian T. Doyle explains the options.

A claim for compensation is the next step in response to the Notice to Treat. The Notice specifies that the landowner must submit his claim in detail. Essentially the claim should follow the rules as set out in the legislation and any Chartered Surveyor will be familiar with this issue. How it should be set out also requires careful consideration. I would suggest that the claim should be brief. Remember, the claim will be used later if the matter is not resolved by negotiation. It is therefore not always wise to disclose your hand at the opening stages. The local authority of course will need some detail. This can be conveyed on a without prejudice basis after the claim is lodged. If handled this way, the detail cannot be later used against the claimant. It makes the negotiation stage a lot fairer and will require the Local Authority to disclose their offer and how they arrive at their figure.

Negotiations on a CPO claim are often unusual. Delay is sometimes used by the Local Authority for their own financial reasons. They have nothing to gain by moving along at an acceptable pace. They can use the land provided they have served a notice of entry. They do not have any time limit as to when compensation should be paid. Indeed, the disadvantage of delay to the owner can be significant. The property will be valued at the date of the Notice to Treat. In a rising property market and where the landowner has let the matter drift, the money received may be less than sufficient to replace the property. This is where the claimant's advisors must drive the procedure.

If a realistic offer is not issued within a few weeks of submitting the claim the claimant should request the appointment of one of the Property Arbitrators to decide on the matter. Arbitration is very efficient. The Property Arbitrator is appointed by the Chief Justice. The Arbitrator will decide on a date and place to hold an oral hearing. The hearing will be under oath and the Arbitrator will examine the case for compensation made on behalf of the claimant in light of the legislation. He will also examine the evidence put forward by the Local Authority. The Arbitrators decision will be made within a short period of time. It is binding on both parties.

The procedure is not expensive. The appointment costs approximately €33 and each day of the hearing costs approximately €1,000 per day for the costs of the Property Arbitrator. Hearings seldom last for more than a couple of days. Their cost is not, as some commentators think, a percentage of the award. This cost is paid for by the Local Authority through a stamp duty. A significant advantage of Arbitration is that it makes the Local Authority deal with the matter quickly. With an oral hearing on the horizon they are forced to address the issue. They are forced to disclose their evidence and often this is the first time that meaningful negotiations commence. In many cases an acceptable offer emerges. If it does not, the hearing continues and an award will be made. The award is enforceable and the landowner will be paid.

else. They are qualified Chartered Surveyors (currently two) with a lot of experience of the property market and more importantly the application of the rules of property compensation. Legal fees and the costs of expert witnesses are awarded at the discretion of the Arbitrator. Generally the Local Authority is required to pay the costs. The claimant can only be burdened with some of the costs if an unconditional offer is refused. Faced with the expense of Arbitration the Local Authority would be foolish not to address a negotiated solution seriously. The Arbitrator can deal with other issues including the often thorny matter of accommodation works. This is the cost of walls and fences, drains and access points etc. While the Arbitrator cannot compel the Local Authority to build any of these items it can award the cost of carrying out the work and leave it to the owner as to how and when he wishes to spend the money.

Does Arbitration result in more money to the claimant or is negotiation better? There is no evidence to suggest either way. My own experience is that in all the cases that I have been involved with, the

Arbitrator awarded more than the local authority was prepared to offer, and just as important, a result was reached in cases where a solution was taking an unacceptable length of time.

In summary therefore take care as to how the claim is drafted, make sure it is in accordance with the rules, submit without delay and seek Arbitration if there is no adequate response from the other side.

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