Compulsory Purchase Orders

Professional advice is the key to success

In 1980 Chief Justice O'Higgins described the law surrounding the compulsory purchase of land as involving "an arduous journey into the obscure". In the intervening 20 years despite several recommendations nothing has changed. New roads, gas pipelines and ESB cables planned throughout the country will mean that more and more landowners will have to come to terms with these complex procedures. It is absolutely vital to get professional assistance and to get that assistance as soon as possible.

The basis surrounding the assessment of compensation under CPO is what's called the doctrine of equivalence. This is legal shorthand for placing the affected landowner in no better or no worse position after the acquisition has been completed. The legal procedures are designed to make sure this happens.

The legislation dates back to over one hundred and fifty years with many 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 1963 and The Housing Act 1966. Together these acts provide 16 Rules that govern the assessment of compensation.

It is important to understand that the compensation to be paid is no what the County Manager or any other official decides. It is what the law allows for under these 16 rules, no more and no less.

The Rules apply to local authorities and most bodies exercising CPO powers (including Bord Gais and the ESB). 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.

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 difficulty begins. The market value can be based either on the existing use value of the land or its development value whichever is the greater. Knowing when to claim development value and just what is necessary to prove it is vital.

Where existing use value is being claimed the 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 required. In some cases the land value may form only a small part of the total claim.

Development value can be claimed only where development potential can be proven to exist. Often such claims present enormous difficulties and confusion. The argument frequently used by the local authority is that, "*the land has no development potential, it will be used for a new roadway and planning permission will be refused*". The law comes to the landowner's assistance here. It states that the compensation claim must be assessed in "the no scheme world". In other words, forget that there is a new road to be built. Would the land have development potential irrespective of the new roadway? If so, then development potential can be claimed. Of course this potential must be proven as with all other aspects of the claim. Proof can be straightforward r provided effective demand can be demonstrated.

The landowner must resist the temptation to settle for what may seem like a handsome offer when compared to that offered to his neighbour. Each case will be different, and the compensation paid will not usually be comparable without analysis of all the facts.

Where a land holding is severed by a new road, additional questions to consider will include whether to force the local authority to buy the remaining inefficient portion of land or accept an underpass.

Most farmers initially opt for the underpass. It is not always the best long-term solution. It is a relatively inexpensive option for the local authority but not necessarily a good solution for the farmer. However the choice is his alone. There may be livestock issues to consider and moving machinery through the tunnel could be difficult in the future.
The acquiring authority is obliged to fence and secure any properties affected by their action or pay for the cost of doing so. How and where this is to be done can have considerable long-term consequences. Together with an underpass these accommodation works are often presented to the landowner as some sort of bonus. They are nothing of the sort. The law says that this is a right and it should not be used to reduce the compensation.

In some circumstances the proposed development will actually improve the retained land. Known as Betterment, the Rules do not allow for it to be used as a set off against the compensation. This is a logical follow on of the "no scheme world" rule and it is specifically catered for in the 1963 Act. Surprisingly many local authority officials and their advisors do not seem to appreciate this aspect and frequently refer to betterment in negotiations, *"the value of your land will be higher when the new road is built"*, this is nonsense and must be ignored.

In many cases there is not a lot of time to react. The landowner will at best have a few weeks to respond to the initial opening of formalities, the Notice to Treat. Preparation is essential and a valid claim must be submitted within a very short period. The claim should be supported by evidence and must not be unreasonable. As can be appreciated the better the background work the better the chances of an acceptable claim. There is no bonus in delay. Indeed delay will act against the land owner. As land is valued at the date of the Notice to Treat, a delay in finalising negotiations may mean the replacement of land at a later date when land prices have risen and this often gives rise to difficulties.

All reasonable costs are a valid part of the compensation claim. These costs include Solicitors and Valuers professional services and any others that would be reasonable.

The construction work can start long before the compensation issues are finalised. Good survey notes and records are essential in order to show various items before and after the land has been altered. Agreements to divert drains or to alter access points can be difficult to enforce if records are poor or non-existent. Local authority staff can move and change employment so all agreements, especially for accommodation works must be clear, precise and in writing.

Sometimes agreement on compensation will be impossible to achieve. The 1919 Act provides for such difficulties to be resolved through Statutory Arbitration. Both parties, the landowner and the acquiring authority, are bound by the Arbitrator's decision. Since a Supreme Court decision in 1994 there is effectively no appeal. The Arbitrator must follow the 16 Rules, just like everyone else. The Arbitrator is completely independent of the local authority. He has the same status as a High Court Judge. He will listen to both sides to the dispute and make his award accordingly based on the evidence presented.

In general Arbitration should be used as a last resort. Costs of dealing with the claim up to arbitration are for the local authority to pay. Costs of the arbitration are at the discretion of the arbitrator and may be awarded against either party.

If arbitration is a last resort then the negotiation phase is the most important part of the exercise. Negotiation is not as most unaware commentators suggest a "horse trade". Negotiations are won or lost through preparation and understanding the limitations of each case. Seek good professional advice early so that preparation of the case can begin thus insuring a successful outcome.

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