

THRIVING IN THE SHADOWS

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The decision of the Lands Chamber of the Upper Tribunal last July in *Pattle v Secretary of State for Transport* [2009] UKUT 141 (LC) is likely to have far-reaching consequences for those landowners whose development plans have been thwarted by the prospective compulsory purchase of their land.

Compulsory purchase

Since Magna Carta English law has protected the ownership of land and expropriation has been possible only when legally authorised and in the public interest. The compulsory acquisition of land has for more than two hundred years been essential for economic and social development. Infrastructure projects such as railways, roads, harbours, hospitals and schools were only possible as a result of compulsory purchase. Local authorities have more recently used their compulsory powers to allow shopping centres and housing developments to be constructed by companies without such powers.

Compensation

The landowner is compensated for the loss of his land on the basis of a fiction that the sale is between a willing seller and a willing buyer, the so-called ‘no-scheme world’. The underlying principle was expressed in *Horn v Sunderland Corporation* [1941] 2 KB 26 at 42:

‘[Compensation] is the right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains a money payment of not less than the loss imposed on him in the public interest, but, on the other hand, no greater.’

The compensation to be paid as a single sum to the landowner will generally comprise the following:

- the market value of the land taken;
- any loss caused by reason of losing possession of the land (called ‘disturbance’); and
- loss of the value of the land held by the claimant caused by its being severed from the land taken or otherwise detrimentally affected (called ‘severance’ and ‘injurious affection’).

The facts in *Pattle*

The two claimants were the owners of an industrial estate in Kent. A small part of the estate (“the Reference Land”) was included in a compulsory purchase order made under the Channel Tunnel Rail Link Act 1996. The acquiring authority served a notice to treat in 2001 and took possession of the Reference Land in 2002. The claimants had obtained outline planning permission several years earlier for the development of the industrial estate by demolishing the existing buildings and constructing 20 new industrial units. They intended to let the completed units to tenants. The planning permission was subject to a condition that no permanent buildings or structures were to be erected within the area safeguarded for the proposed Channel Tunnel Rail Link (“the CTRL”) until after construction of the link. The effect of the compulsory purchase of the Reference Land was that two out of the 20 units in the proposed estate would be lost.

The claimants claimed compensation for the value of the Reference Land and for severance and injurious affection.

They also claimed compensation under rule 5 of section 5 of the Land Compensation Act 1961:

“...for disturbance or any other matter not directly based on the value of the land”

on the ground that in a no-scheme world they could and would have completed the redevelopment of their estate by 1996, and would then have started to receive rents, but that the redevelopment was deferred because of the continuing uncertainty about the precise route of the CTRL and the consequent depressed state of the letting market between 1996 and the valuation date in 2002.

The issue

The Lands Chamber considered as a preliminary issue whether the claimants could claim compensation for the alleged loss of rent between 1996 and the valuation date where:

- the claimants might be able to show that the deferment of the redevelopment was reasonably attributable to the acquisition of part of the estate;
- the allegedly lost rents being claimed were not merely from land actually acquired or prospectively acquired but from the entire estate; and
- the lost rents were not rents which were lost on an existing industrial estate, but rents that could have been obtained from an estate which had not yet been redeveloped, though it could and would have been redeveloped had it not been for the acquisition of part of it.

The decision

The Lands Chamber decided the preliminary issue as follows:

- A landowner who conducts a business on land which is subject to compulsory purchase and which is ultimately *all* taken by the acquiring authority is entitled to recover those business losses sustained by him in the shadow period (when the prospective compulsory purchase is known about but possession has not yet been taken): *Director of Building and Lands v Shun Fung Ironworks Ltd* [1995] AC 111 (PC);
- The landowner is in principle able to recover compensation if his business conducted on the land was letting, so that the landowner is in effect an investor deriving profits from rental income;
- If only *part* of the land upon which the letting business was conducted was compulsorily acquired, the landowner may in principle be able to claim (a) rents lost to the letting business from the land taken, and (b) rents lost to the letting business from land which was never at risk of being compulsorily purchased; and
- Even if there were never any actual lettings beforehand, the landowner may still in principle be able to claim (a) rents lost to the letting business from the land taken on the ground that that land could and would have been developed but for the prospect that it would be compulsorily purchased and (b) rents lost to the letting business from the land which was never at risk of being compulsorily purchased.

Landowners who have suffered business losses from the shadow cast by the prospect of compulsory purchase associated with large and slow-developing infrastructure projects ought to be encouraged by the decision to claim such losses and not merely to accept the losses as being part of irrecoverable general blight caused by those projects.

Gerard has a broadly-based chancery practice, with particular emphasis on property litigation including compulsory purchase, landlord and tenant (business and residential premises) and leasehold enfranchisement. He acted for the claimants in *Pattle*.

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