Compulsory Purchase Association

Section 10A repeal or amendment?

Section 10 A Land Compensation Act 1961

1. The need for change

Section 10A in its current form does not meet the needs of claimants or the principle of financial equivalence, which underpins the Compensation Code in the Land Compensation Act 1961. In the CPA's view the provision is not fit for purpose and creates a number of complications. Therefore, the CPA should consider whether they should lobby government for the repeal or amendment of the provision.

The current provision is as follows:

> *10A Expenses of owners not in occupation.*
>
> *Where, in consequence of any compulsory acquisition of land—*
>
> *(a) the acquiring authority acquire an interest of a person who is not then in occupation of the land; and*
>
> *(b) that person incurs incidental charges or expenses in acquiring, within the period of one year beginning with the date of entry, an interest in other land in the United Kingdom,*
>
> *the charges or expenses shall be taken into account in assessing his compensation as they would be taken into account if he were in occupation of the land.*

2. The issues

Section 10A is primarily aimed at claimants, who are landlords. The present wording creates issues for such claimants, among others, for a number of reasons:

a) The reinvestment must be within 12 months of the date of entry.
b) Where an advance payment is late or the final settlement is delayed, many claimants will not have access to the funds available to reinvest within the 12 -month period.
c) This places larger regular investors at an advantage to smaller, one-off investors, such as individuals or small family pension funds, as they often do not have the funds available to reinvest out of existing funds, whereas large pension funds have the funds available to re-invest in property before full compensation is received. Frequently, the final payment of compensation is not received until well after a year from the possession date.
d) It is believed that Rule 6 of s.5 of the Land Compensation Act 1965 does allow for the recovery of disturbance where the claimant is not in occupation. Therefore, it is well arguable that s10A is now redundant.
e) Most investors, who will have lost a source of income when their investment is acquired, will be anxious to re-invest (to reinstate that income) as soon as possible after the acquisition. Their main constraint is likely to be availability of funds to secure such a replacement investment.
f) The one-year time limit is at variance with the 3-year rollover relief period for capital gains tax purposes, which applies on a compulsory purchase.
g) There appears to be some uncertainty as to whether s10A applies when a qualifying interest is acquired and the compensation payable under Rule 2 is based on development value. This uncertainty is created because of the decision in Horn –v- Sunderland Corporation [1941] (All ER

480) and whether or not s10A should be applied in these circumstances. The CPA considers this issue should be clarified.

3. The options

A. s10A should be retained but amended to extend the period for re-investment either to:
   a. six years from the date possession of the land is taken
      or
   b. three years from the final settlement of Rule 2 compensation.

   OR

B. s10A should be repealed as being unnecessary and all claims in respect of investment costs should be made under Rule 6. It is because of the existence of s.10A that the Upper Tribunal (Lands Chamber) is unlikely to allow any claim for incidental costs in relation to the acquisition of a replacement property that falls outside the limitations of that provision.

C. Any amendment to the legislation should specifically clarify the position as to confirm that the provisions formerly contained in S10A should apply in the circumstances where compensation under rule (2) is based on development value.

4. Discussion

I six years from possession date (as proposed in 1.a above) would be consistent with the limitation period for bringing a reference to the Upper tribunal (Lands Chamber) and should provide ample time in almost all circumstances where an investor does not have the funds with which to reinvest until all the compensation has been paid.

II. Three years would seem to be a reasonable period to allow time for reinvestment after the claimant has received all of the compensation, and it is consistent with other time limits in compulsory purchase, albeit these relate mainly to notice periods, and to CGT rollover relief time limits, although the latter period runs from the acquisition of the land

III. The difficulty with three years from the date all the compensation is paid (option 1.b above) is that this may result in the six year time limit to make a reference having been exceeded, but this could be easily addressed by the amended s.10A expressly stating that the limitation period for such a claim shall commence on the date of the final payment of compensation.

IV. If the compensation has not been settled and a reference is made to the Upper Tribunal (Lands Chamber) the three years would presumably extend for that period beyond the Tribunal decision.

V. The repeal would be tidy, but parties would then be relying on the general provisions of Rule 6 and the case law to date, which whilst helpful is based on specific circumstances. But, as s10A does not require proof that incurring the relevant expenses was caused by the compulsory acquisition, any repeal would have to expressly provide that incurring costs on a replacement property can be taken into account in accordance with rule (6). Under the existing case-law, relating to the recovery of losses and expenditure, claimants disturbed from occupation of any land are entitled to claim the incidental costs and expenditure incurred in acquiring replacement land. For example, these include stamp duty land tax, bank charges, legal and other professional fees. The normal principles of financial

equivalence, reasonableness and causation must be satisfied. As it is no longer the case that a claimant must be disturbed from actual physical possession to claim compensation under rule (6), there is no reason why compensation should not be claimed by a claimant owner, not disturbed from actual physical possession, for any incidental costs and expenditure on a replacement property, subject also to the principles of financial equivalence, reasonableness and causation. Thus, it would not be reasonable to claim all the incidental costs of acquiring a replacement property where that property is bought for a much higher price than the value of the property which has been acquired. The claimant would have to prove that the incidental costs were caused by a compulsory acquisition.

VI. There is no obvious reason why s10A should not apply to development land. If a developer has been deprived on a site for development, he will presumably need to seek an alternative site to develop in order to derive the profits he would have achieved if the site had not been the subject of compulsory purchase. Therefore the costs of acquiring the replacement site should be reimbursed in the same way as those for an investor who is holding the reinvestment for income only. Subject also to the principles of financial equivalence, reasonableness and causation.

5. Recommendation

The CPA believes that s.10A should be repealed. Claimants should be entitled to claim any incidental costs and expenditure on the acquisition of alternative premises in accordance with the settled principles and decisions under rule (6) of s.5 of the 1961 Act.
S.10A should be repealed and replaced with wording to the effect that the Upper Tribunal (Lands Chamber) is entitled to have regard to the charges or expenses incurred by a claimant for compensation on the acquisition of any replacement property in accordance with the principles that apply to any claim under rule (6).

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