

Compulsory Purchase Association **South West Regional Meeting**

12 November 2009

To be held at Bond Pearce LLP, 3 Temple Quay, Bristol BS1 6DZ

AGENDA

- 5.30 Registration and arrival

- 5.45 Chairman's introduction –

Paul Astbury National Chairman CPA

- 6.00 The IPC: Open for Business –

Jonathan Bore, Director of Case Management IPC

- 6.20 Legal Update –

Jonathan Bower, Partner Bond Pearce LLP

- 6.40 Questions and Chairman's closing remarks

- 6.50 Drinks and networking

The IPC : Open for Business

12 November 2009



Jonathan Bore

**Director of Case Management,
IPC**



The case for radical change

Terminal 5



Thameslink



Belvedere energy from waste



Southampton Docks



The Act provides for

1. **A single integrated consent regime**
2. **National Policy Statements**
3. **A new duty on applicants**
4. **IPC**



12 National Policy Statements



- Overall energy policy
- Renewables
- Fossil
- Electricity networks
- Oil and gas
- Nuclear



- Ports
- Transport networks
- Airports



- Water supply
- Waste water
- Hazardous waste

NPS's: Separating policy from decision making

Secretary of State

- National policy and need
- Direction and priorities
- IPC.... 'must do's' and matters for consideration

IPC

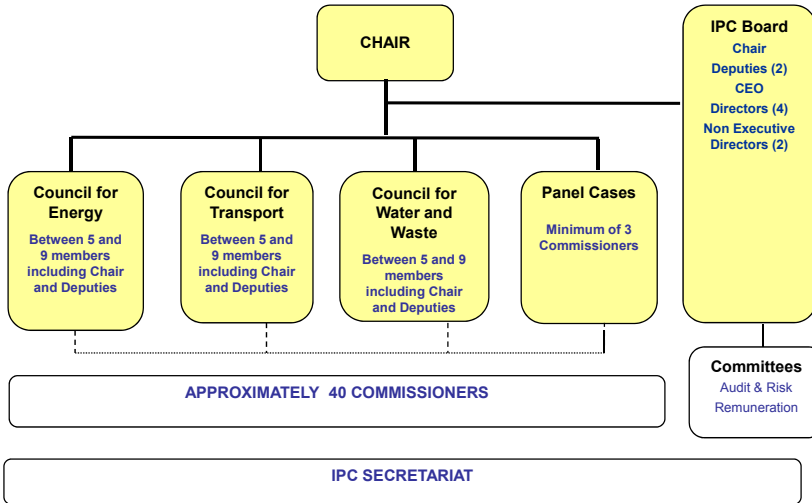
- Suitability of individual site?
- Conformity with NPS?
- Technical issues and evaluating evidence, for and against

Commissioners: Evaluating the Technical Evidence

- Habitats regulations
- Feasibility of carbon capture
- Pollution control
- Noise and vibration
- Hazardous substances
- Bird strike
- Flood risk
- Electro-magnetic fields
- Emissions and eutrication



The Commissioners



Commissioners



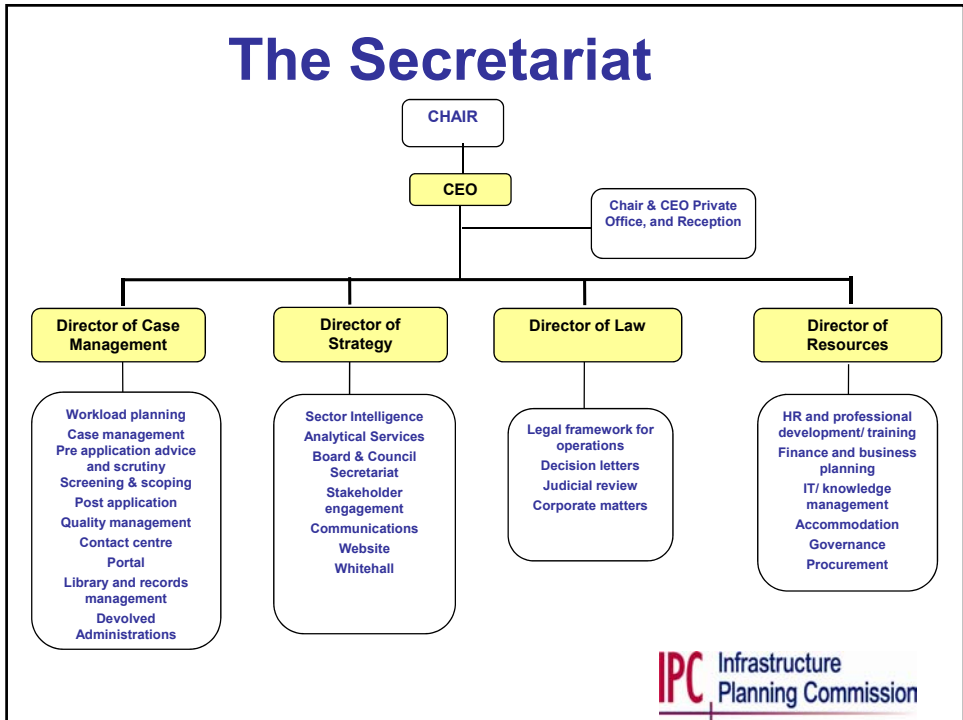
Separating decision making from policy

Independent Commissioners are accountable to the courts

Expert Commissioners are selected for their professional knowledge and judgement

Ethical Commissioners will operate to a strict code and have no conflicts of interest.

The Secretariat



The IPC's purpose is to improve decision making by...

- **Simplifying** the process.
- Ensuring a **fairer approach**, with better opportunities for all to take part.
- Insisting on the **highest standard of applications** from promoters.
- Applying **independent** professional and technical judgement.
- Reducing the **time** taken for deciding major applications to less than a year.
- Cutting the **cost** of delivering national infrastructure by £300m annually.

IPC values

We will be: **Independent, impartial and inclusive.**

In conducting its business, the IPC will observe **the seven Nolan principles of public life:** selflessness; integrity; objectivity, accountability, openness, honesty and leadership.



IPC Infrastructure
Planning Commission

Five Commitments

1. Engagement
2. Openness
3. Sustainability
4. Consensus
5. Independent Decisions



IPC Infrastructure
Planning Commission

Potential projects



"1,000 turbines needed every year until 2020"



guardian.co.uk

"Heat capture technology could save UK 10m tonnes of carbon a year"

TIMESONLINE

"Tunnel that may save the Thames"



IPC Infrastructure Planning Commission

Probable applications in first year

- 8 power stations
- 8 windfarms
- 15 upgrades to National Grid and 132 kv network
- Rail freight depot
- 13 motorway / trunk road improvements.



IPC Infrastructure Planning Commission

Confirmed Projects

Nuclear Power

- Hinkley Point C, Somerset EdF
- Sizewell C, Suffolk EdF

Windfarms

- Brechfa, Wales RWE Innogy
- Llanllwni, Wales RES UK & Ireland Ltd
- Nant-y-Moch, Wales Airtricity
- Dyfnant Forest, Wales Scottish Power Renewables
- Triton Knoll, North Sea (off-shore) RWE Innogy

Confirmed Projects

Biomass Power

- Blyth, Northumberland, RES New Ventures

Road

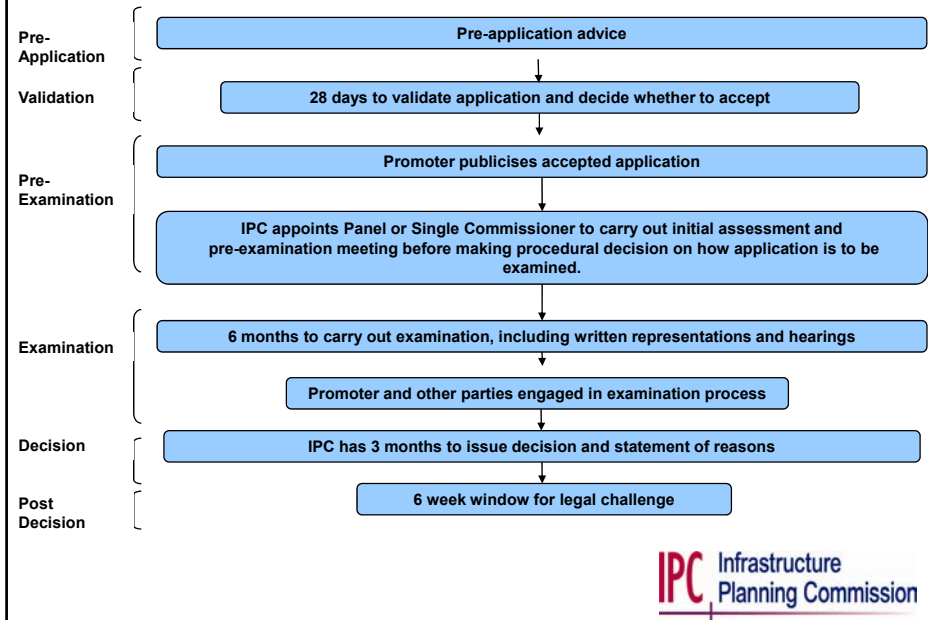
- A2070 Orbital Park, Kent, Highways Agency

National Grid projects

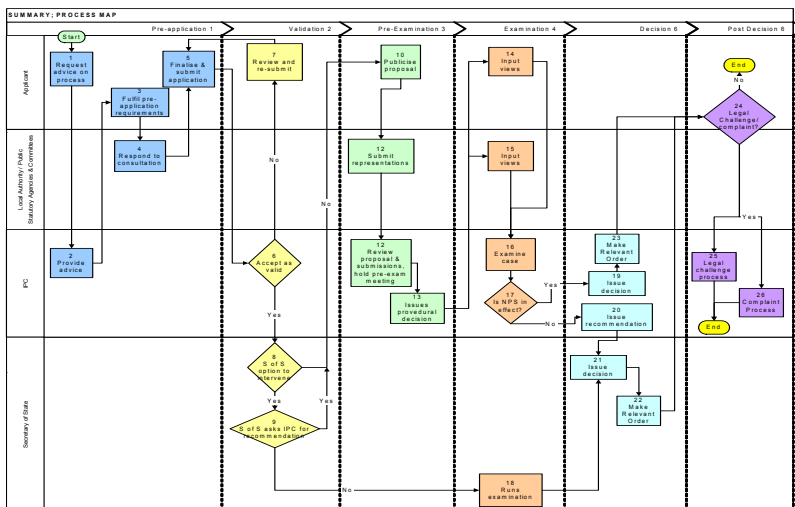
- Sizewell C, Suffolk
- Hinkley C, Somerset



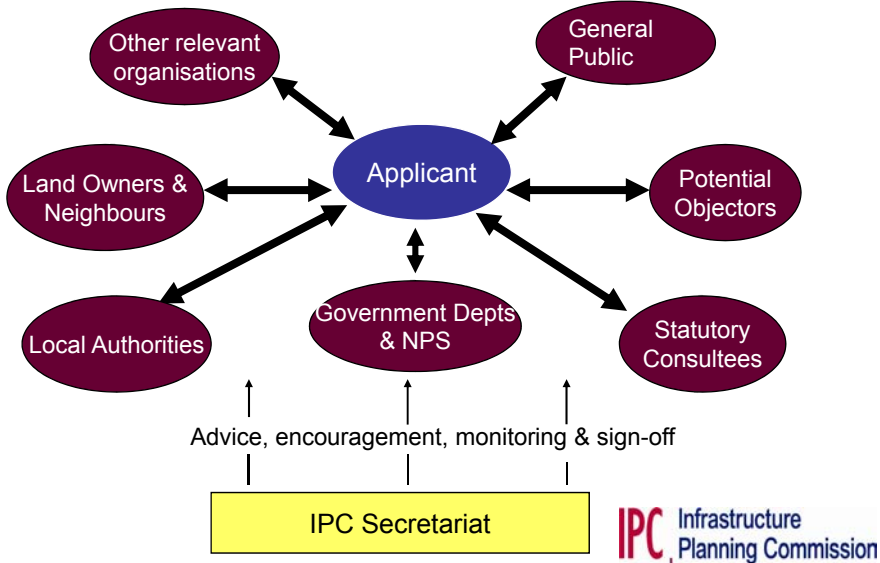
Active Engagement



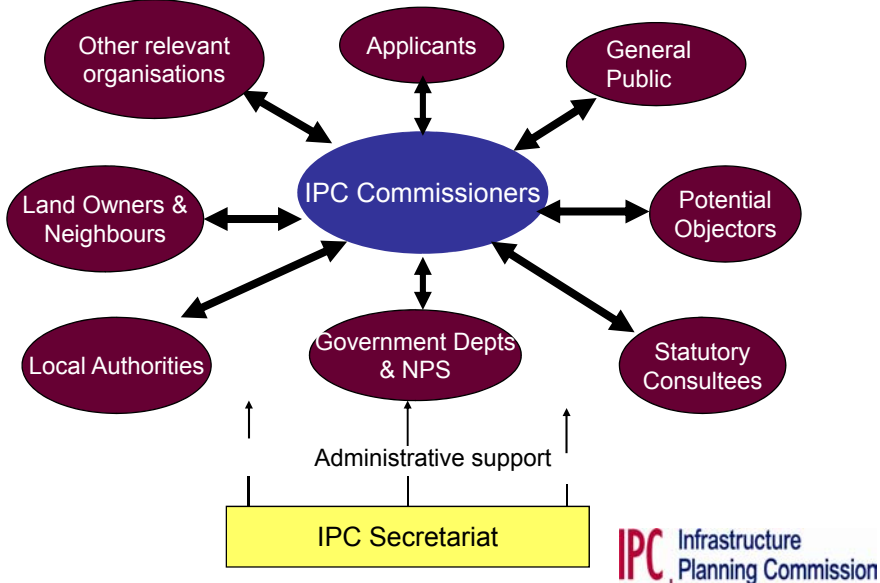
IPC process map



Pre-Application: Effective Community and Organisational Engagement



Post-Application: Effective Gathering of Evidence and Decision Making



Decision Making

- Commissioners must **determine in accordance with NPS**, unless:
 - Disbenefits outweigh benefits
 - Unlawful or breach of obligations
- Commissioners can **approve, refuse or impose conditions**
- Commissioners must work to **statutory time limits**



Progress

- IPC open for business
- Chair, Deputy Chairs and 8 Core Commissioners
- 40 staff
- Stakeholder engagement
- Draft NPSs published
- Applications from 1 March 2010



Contact us

Infrastructure Planning Commission (IPC)
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Helpline: 0303 444 5000

Email: IPCenquiries@infrastructure.gsi.gov.uk

Website: www.independent.gov.uk/infrastructure





Compulsory Purchase Association - South West Regional Meeting

Legal Update

Clarity, Confusion and Calls for Reform

1 Introduction

- 1.1 The last 12 months or so of life in the world of CPO has been one which has been repeated each year over many years. When one looks at the cases I have referred to and the other developments, some are easily understood and others just add to the confusion. That being so it is this uncertainty which keeps those of us here this evening in business!
- 1.2 What this paper does is take you through the life cycle of a CPO by reference to various stages reporting on some developments and cases that have appeared in the journals in the last year.

2 OGC Guidance on Procurement

- 2.1 For those involved in the “front end” of developments will be aware of the ECJ’s decision in ***Jean Auroux and Others v Commune de Roanne*¹ (Roanne)**. In short, Roanne entered into a Development Agreement (**DA**) with SEDL for the development of a leisure centre. SEDL, another public authority, was to construct works to be retained by Roanne and commercial works to be transferred to the private sector. Roanne paid SEDL for the car park, contributed to the financing of the development and SEDL received income from selling parts of the works to third parties.
- 2.2 The ECJ held that the works prescribed in the DA corresponded to the requirements specified by Roanne, and the main purpose of the DA was the performance of works. These works taken as a whole were works caught under the public procurement rules. The ECJ concluded that an agreement where one Contracting Authority (**CA**) entrusted another CA with the execution of work it was a public works contract, regardless of whether the first CA would own all or part of the work.
- 2.3 The result of this decision left a number of regeneration schemes in limbo even where authorities had undertaken a quasi procurement process without complying

¹ [C-220/05]

with the procurement rules in The Public Contracts Regulations 2006 (**PCR**), which implement EU Directive 2004/18/EC.

- 2.4 For some time the development industry supported by the BPF called on the government to issue guidance on its interpretation of the procurement rules and this was going to be released "imminently" by OGC in June – it came out on 16 October 2009.².
- 2.5 The guidance discusses the applicability of the public procurement rules to DAs, setting out some factors which may affect the likelihood that DAs will be subject to these rules. (The OGC says it intends to publish a separate paper relating to planning agreements under section 106 of the Town and Country Planning Act 1990 and agreements in connection with the exercise of compulsory purchase powers.)
- 2.6 It says a DA, on its widest interpretation, could mean any agreement between a CA and a third party about the use or development of land or property. In its summary it suggests that DAs between CAs and developers may be less likely to be public works or works concession contracts if some of these characteristics are met:
- 2.6.1 all or a substantial part of the development is undertaken at the developer's initiative and autonomous intention (especially if it already owns or controls the land being developed);
 - 2.6.2 the DA is ancillary or incidental to a transfer or lease of land or property from the CA to the developer, with the intention of protecting the CA's interests where it is the lessor or otherwise retains an interest in the land or property;
 - 2.6.3 the DA is based on the developer's proposals rather than on the CA's specified requirements (even where these proposals are sought and the successful bidder chosen by the CA);
 - 2.6.4 there is no pecuniary interest passing from the CA to the developer for undertaking the development directly (through payment) or indirectly (eg through project finance or guarantees);
 - 2.6.5 the DA does not include specific contractually enforceable obligations on the developer to realise the works (even if the DA recognises that is the parties' general intent).
- 2.7 However, the OGC warns that the details of each development and exact relationship between the parties should be considered in each case, and that the ECJ can be

² Procurement Policy Note – preliminary guidance on the application of the public procurement rules to development agreements
http://www.ogc.gov.uk/documents/PPN_11_09_Development_Agreements.pdf

expected to look at the overall nature of the DA to decide whether the public procurement rules apply.

- 2.8 It is also very clear throughout, that the note is for guidance only, is not intended to be definitive or comprehensive, and is subject to future feedback from the European Commission.
- 2.9 Notwithstanding these caveats, it now is clear from the note (and case law) that some DAs will be treated as works contracts and therefore not enjoy the benefit of land exemptions. The answer in each case will be found in the detail of the transaction.
- 2.10 If CAs breach the public procurement rules in awarding DAs, remedies may be available against them. Under the current remedies directives (92/13/EEC and 89/665/EEC), these include interim measures, setting aside unlawful decisions, or compensation – although it is generally accepted that once contracts are entered into the only remedy is damages.
- 2.11 However, under the new remedies directive (2007/66/EC) (to be implemented by 20 December 2009) wider remedies are available, including financial penalties (payable by the penalised CA to the Treasury) and a new remedy of contractual ineffectiveness (where contracts can be declared ineffective even if entered into). These remedies are in addition to the ability of the court to award damages to an aggrieved party. One ground for declaring a contract ineffective is that a CA has failed to publish a contract notice advertising the contract – but the directive also says that if a CA believes it has a right to proceed without publishing a contract notice, and it publishes a voluntary transparency notice and allows a standstill period, it can avoid a challenge of ineffectiveness if it later transpires that the CA should have published a contract notice. This could be a dilemma for CAs if they conclude that they do not need to advertise a DA but want to avoid the risk of the DA later being declared ineffective.

3 Scope of s.226(1)(a) – the “Battle of Wolverhampton”

- 3.1 In *Sainsbury’s Supermarkets Ltd v Wolverhampton City Council*³ Sainsbury’s had sought leave to bring judicial review proceedings against the Council challenging its decision to give approval in principle to the making of a compulsory purchase order under section 226 (1) (a) of the Town and Country Planning Act 1990 which included land owned by Sainsbury’s but the purpose of the CPO was to provide a new Tesco store.
- 3.2 By way of reminder:-

³ [2009] EWCA Civ 835

"226(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area –

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land...

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one of more of the following objects –

a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area."

3.3 Originally the Council intended to permit the redevelopment of the Sainsbury's land by them but subsequently the transaction did not proceed and Sainsbury's were in discussions to dispose of their interest to Tesco and as such no CPO would have been required. Sainsbury's then changed its mind, both competitors submitted outline planning applications and there were resolutions to grant permission for both schemes. The court highlighted the litigation as a case in point that no agreement could be reached between the two supermarkets hence the need for the promotion of CPO powers.

3.4 The Cabinet report which considered the case for CPO looked at both schemes and the only criticism by Sainsbury's of the Council's detailed consideration of the enabling legislation in section 226 as well as the provisions of ODPM Circular 06/2004 was the consideration of the "well being" test which indicated that the Tesco scheme would benefit an off-site hospital site which would only be developed by virtue of a cross subsidy of the original site.

3.5 A useful summary of the obligations on an acquiring authority when deciding whether to promote a CPO is set out in paragraph 25 of Sullivan LJ's speech

"Subsection 226(1)(a) focuses the local authority's attention on what is proposed to take place on the CPO site itself. While the local authority must be satisfied that the CPO will facilitate the redevelopment of the CPO site, subsection 226(1A) requires it to look beyond the benefits that will accrue on the CPO site itself, and to consider whether, and if so to what extent, its redevelopment is likely to bring economic/social/environmental

"well-being" benefits to a wider area. Although it is in form a limitation, in practice the purpose of sub-section 226(1A) is to broaden the issues that must be taken into account by a local authority when deciding whether to make a CPO under s.226(1)(a). This understanding of the practical effect of the subsection is entirely consistent with the policy advice in Circular 06/04"

- 3.6 Sainsbury's appeal was dismissed because what the Council had done was to consider the matter in accordance with its obligations.

4 The status of an objector

- 4.1 Whether or not an objector is to be classified as a statutory objector arose in a recent compulsory purchase order promoted by West Berkshire District Council.
- 4.2 In this matter an objection was received from someone whose land was outside of the boundary of the compulsory purchase order. His property did however share a boundary. Section 12(2) of the Acquisition of Land Act 1981 defines a "qualifying person" (being someone who is a statutory objector):

"a person is a qualified person, in relation to land comprised in an order, if_

- a) he is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land, or
- b) he falls within sub section (2A)".

A person can only fall within Section 12 (2A) if he is

- a) a person to whom the acquiring authority would, if proceeding under Section 5 (1) of the Compulsory Purchase Act 1965, be required to give a Notice to Treat; or
- b) a person the acquiring authority thinks is likely to be entitled to make a relevant claim if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent enquiry.

In this case the objector did not qualify to receive a Notice to Treat nor would he have been entitled to make "relevant claim"; a relevant claim is one that could be made under Section 10 of the Compulsory Act 1965 – i.e. compensation for injurious affection.

The objector argued that they would be faced with a depreciation in value of their property and that the lost right was the right to sell his property even though he did not fall within the statutory tests and as a result the Secretary of State did classify this objector as a statutory objector. That being so the matter was not progressed

further but it did highlight a potential anomaly in the guidance issued by CLG on compulsory purchase procedure. It does not go into the required degree of detail to identify what constitutes the qualifying criteria for a Section 10 claim and provides objectors with a false hope that they are statutory objectors.

5 The pitfalls of Notice to Treat

- 5.1 In the recent Lands Tribunal multi matter decision of ***Aytan v Secretary of State for Transport***⁴, the Lands Tribunal had to consider 81 references arising from the acquisition of sub soil following the implementation of the Channel Tunnel Rail Link. Possession was taken of the respective interests at various times from 1 September 2001 and the Acquiring Authority had used the Notice to Treat and Notice of Entry procedure. The CTRL Act applied the provisions of the Compulsory Purchase Act 1965 so as to enable the procedure set out in the 1965 Act to be followed for gaining possession. Whilst the time limit in the Compulsory Purchase Act 1965 for serving a Notice to Treat of three years did not apply, the procedure was still the same but with a five year time limit.
- 5.2 The references were either to seek determination of the amount of compensation payable or further directions where compensation was being contested. The reason for bringing these multi matter references which were all heard together and were initiated by the Acquiring Authority was because the Secretary of State wished to grant a lease of the railway and their tunnels to the nominated operator in December 2009. Without having secured title the Secretary of State was not in a position to do so.
- 5.3 In making a determination the Lands Tribunal confirmed the compensation payable of £50 in respect of the open market value of the sub soil taken per interest with no compensation payable in respect of injurious affection or severance subject to three of the references where the costs of repairing cracks will be reimbursed. Those works were described as “*superficial and within the ability of a DIY competent person to repair*” and that ground borne noise and vibrations was not a factor in any claim as Colin Smith said “that the passage of the high speed train took about three seconds and that any noise was like a loud tummy rumble”.
- 5.4 For the cases where determinations have been made the acquiring authority is now at liberty to utilise the deed poll procedure and secure title to the interests that way. For the others where there was no determination but directions were issued the timetable in respect of some these directions will post date December 2009 such that the Secretary of State will not necessarily be in a position to complete the grant of a lease of the whole of the CTRL’s estate.

⁴ [2009] UK UT 194(LC)

6 Investment owner – pre acquisition losses

6.1 Following the acquisition of part of the Northfleet Industrial Estate a preliminary issue decision from the Lands Tribunal in ***Pattle & Pattle –v- Secretary of State for Transport***⁵ has given guidance on both the entitlement to recover losses in advance of acquisition and also the ability of an investment owner to make a claim under Rule 6 – “any other matter not directly based on the value of land”.

6.2 The property was within the limits of deviation for works for the construction of CTRL and CTRL took possession of the land in January 2002. Previously to this, outline planning permission had been granted for the development of the property by way of demolition of the existing buildings and constructing 20 new units for B1 and B2 uses. It contained a condition which provided that:

“no permanent buildings or structures shall be erected or means of access laid out within this area safeguarded for the Channel Tunnel Rail Link by the directions of the Secretary of State for Transport of 24 February 1994 until after the completion of construction of the link”.

On the plan of the reference land Unit 5 and a substantial proportion of Unit 4 and some other land fell within the triangle of land such that both units would have had to have been relocated or lost if the reference land was taken. The Claimants sought compensation for losses incurred on the basis that in the no scheme world they could and would have completed a redevelopment of the property as an industrial estate by 1996 but the redevelopment was deferred because of CTRL. Their claim was based upon the difference between what they could have achieved and what they actually achieved during this period. Whilst matters of causation, remoteness and reasonableness were not matters for the preliminary issue the Lands Tribunal have confirmed that a claim can arise in the circumstances provided that the deferment of their redevelopment proposals were reasonably attributable to the prospective taking of a part of the property.

6.3 The basis of claim on lost rents was allowed to proceed and a claim under Rule 6 can include a claim for losses sustained by someone who is not in occupation of the relevant land but who merely holds the land as an investor – it is not limited to claims for costs or expenses but it extends to any loss attributable to the compulsory acquisition subject only to the ordinary principles of causation and remoteness.

6.4 The Lands Tribunal also confirmed:

6.4.1 where a business is in occupation and all of the land is taken and losses are incurred during the shadow period such losses are recoverable under Rule 6 – “Shun Fung”.

6.4.2 An investor deriving profits from rental income of units on the land taken can claim losses if that is the “business”.

6.4.3 Where only part (as opposed to the whole) of the land upon which a letting business is carried on is subject to compulsory purchase and is ultimately taken a claim is permissible as a matter of legal principle in respect of

(a) rents lost to the letting business from the land prospectively and actually taken;

(b) rents lost to the letting business from the land that was never at risk of acquisition pursuant to the compulsory purchase procedures.

This is of course subject to the rules of causation remoteness and reasonableness.

6.4.4 A claim can be made for losses to the business calculated by reference to the land in its redeveloped state were it not for the prospective acquisition of that part of the land such that a claim could proceed on the basis of lost rents not necessarily attributed to the passing rent at the time but could take into account potential minor refurbishments albeit potential redevelopment could not be.

6.4.5 The final area of dispute between the parties related to the “before and after” valuation method when assessing compensation for the value of the reference land and for severance and injurious affection. The Lands Tribunal endorsed the Law Commission’s conclusions. This method has the advantage that it assesses the true loss of the claimant and satisfies the principle of equivalence whilst being easy to understand and use. It also avoids the problem which can arise if the land taken and the retained land are valued separately and of having to compensate for the loss of marriage value in the two plots of land. This process will always produce a valuation that includes the value of the land taken and any severance/injurious affection even if they are not identified separately in the valuation process.

6.4.6 As ever whilst the claims will proceed it will be a matter of evidence to establish whether or not the quantum claimed is appropriate.

⁵ [2009] UK UT141 (LC)

7 The Spirerose Conundrum

7.1 In what was one of the final decisions to be handed down by the House of Lords, their Lordships allowed the appeal in ***Transport for London –v- Spirerose Limited***⁶. The appeal by Transport for London was against the decision of the Court of Appeal which had applied the Lands Tribunal’s decision to value the Claimant’s interest which was based on a balance of probabilities that planning permission for a mixed-used development would had been granted by the valuation date and as such compensation was assessed at £608,000, as opposed to purely hope value at £400,000. In the speech of Lord Collins he summarised the issue as this:

Where land is compulsorily acquired, and the Lands Tribunal, in assessing compensation, finds on the balance of probability that but for the compulsory acquisition [i.e. the no-scheme world], planning permission would had been granted by the valuation date, should the Tribunal:

- (a) *Treat that hypothetical as a certainty, to be assessed at its full value; or*
- (b) *Award "hope value" that is, a percentage of the full value, discounted for the chance that permission would not had been granted.*

7.2 The difficulty for Spirerose was that it was unable to take advantage of the various provisions relating to planning assumptions set out in the Land Compensation Act 1961. The primary difficulty related to the fact that the relevant date for a section 17 Certificate of appropriate alternative development was in 1993 some time before the valuation date and that the planning position had changed significantly in the intervening period.

7.3 Spirerose had argued that but for the scheme planning permission would had been granted for mixed-use redevelopment of the land and as such the land should be valued on the basis of an assumed permission to this effect.

7.4 Despite the lack of any statutory assumptions applying, section 14 (3) was considered. This has the effect of enabling a Claimant to seek to persuade the Tribunal that the value of this site would had been enhanced by permission, or the prospect of permission, for some valuable development. The reason being that this section prevents an assumption that planning permission would necessarily be refused for any development which is not able to be assumed under the 1961 Act.

⁶ [2009] UKHL44

7.5 Having reviewed the statutory provisions and authority which have developed over more than a century, he concluded that:

7.5.1 The value of the land is the open market value;

7.5.2 Any depression in the price which the land might be expected to fetch which is caused by the scheme is to be disregarded;

7.5.3 The valuation must take into account the potential of the land including its potential for development; and

7.5.4 The development potential must be valued in the normal way, by discounting for future uncertainties.

7.6 The result of this is that the land should be valued on the "hope value" basis.

7.7 One issue which was also considered was the juridical basis of *Pointe Gourde*. It was described by Lord Collins as a principle of statutory interpretation, mainly designed and used to explain and amplify the expression "value". Tfl's fundamental point was accepted that it was not the role of the Court to re-write legislation by adding additional assumptions of planning permission to achieve a fair result. In so doing, Lord Collins stated that:

"there is a difference between legitimate purposive construction and impermissible judicial legislation. By virtue of the provisions of section 14(3) allowing there to be an assumption that where the planning assumptions do not apply it is open to value other potential developments and enables development value to be taken into account albeit based on hope value."

7.8 Whilst the House of Lords judgment has ruled to an extent in favour of compensating authorities, the House of Lords failed to accept that there was any anomaly in the legislation relative to the operation of section 17. It was dismissed as being only an *"anomaly arising on the facts of the case"*. Lord Justice Carnwath had identified in his postscript in the Court of Appeal decision the various issues which had arisen and the work that the Law Commission had undertaken. Calls for reform have gone unheeded and Lord Justice Carnwath had identified this case as well as **Greenweb** as being a demonstration of the human and financial cost of obscurity in the law.

8 A reminder of Heads of Claim for section 10A

8.1 In a written representations decision last year, the President outlined (based upon the Heads of Claim received) the entitlement to compensation under section 10A of the Land Compensation Act. In handing down the decision in **Sadiq and Hashmi v**

Stoke-on-Trent City Council⁷ the following was awarded. Section 10A was of course inserted to provide for certain expenses of the Claimants who, because they were not in occupation could not claim compensation as disturbance. The President confirmed that mortgage arrangement fees, survey fees and legal fees incurred on the purchase of replacement investment property were recoverable under Section 10A.

- 8.2 Mortgage early redemption penalties and loss of value of fixtures and fittings at the acquired property were compensatable as Rule 6 provisions but removal expenses, reconnection of appliances in the replacement property and application for gas and electricity certificates were not recoverable as they were incidental not to the acquisition of the replacement property but to its fitting out.
- 8.3 I find this element somewhat difficult to understand because, but for the CPO position, the Claimant would not have incurred these costs. Whilst the decision is potentially a useful guide it must be said that very little evidence was provided to the Land Tribunal to enable it to reach this decision.

9 And finally...

- 9.1 One cannot conclude the meeting without making reference to the recent decision of the Lands Tribunal in **Ridgeland Properties Limited v Bristol City Council**⁸ which is a case arising from the redevelopment of Cabot Circus. The case related to the acquisition of Tollgate House, the former Planning Inspectorate building. The submitted claim by the time the matter reached the Lands Tribunal was for £36.5m based upon a redevelopment scheme. The Council valued the claim at £1.9m. It was agreed that it was to be assumed that planning permission would have been granted at the valuation date for a predominantly residential scheme of development. The matter in issue was the form of the scheme to be assumed. Without going into the minutiae of the claim or the decision which runs to some 90 pages, there were some interesting statements made by the Tribunal, particularly on the basis that the valuation used the residual valuation methodology. Whilst the Land Tribunal has said on more than one occasion that it does not prefer the use of residual valuations, it was agreed that that method was appropriate in this instance.
- 9.2 The Tribunal made no apology that they did not document every piece of evidence, particularly because there were such small differences between the parties on some of the items. They had to "take a view" on the conflicting evidence as they considered that would be what the developer would do in the real world when faced with such alternative costs bases.

⁷ (LCA/316/2008)

⁸ [2009] UKUT 102(LC)

- 9.3 In concluding the matter and reaching a valuation of £4.5m, the Tribunal emphasised the need for the parties to consider pragmatically and sensibly how much information a developer would expect and their reluctance to use the residual method was not helped by the inability of the parties to agree upon a common approach and equally where there was *"an attritional battle of detail which descended to the farcical level of the Council specifying the cost of, inter alia, shaver sockets on a scheme costing over £40m"*!
- 9.4 As a postscript to this I understand that the Claimants have changed their professional team and sought to reopen the Lands Tribunal hearing. The reason for this was because there has been some additional "evidence" located which was not presented to the Tribunal. The Lands Tribunal issued a decision refusing to reopen the hearing and that decision is now the subject of an application for judicial review.

Jonathan Bower, Partner

Regeneration and Planning

Bond Pearce LLP

Thursday 12 November 2009