



# Localism Act 2011

## 2011 CHAPTER 20

### PART 9

#### COMPENSATION FOR COMPULSORY ACQUISITION

#### **232 Taking account of planning permission when assessing compensation**

- (1) The Land Compensation Act 1961 is amended as follows.
- (2) For sections 14 to 16 (assumptions as to planning permission) substitute—

#### **“14 Taking account of actual or prospective planning permission**

- (1) This section is about assessing the value of land in accordance with rule (2) in section 5 for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land.
- (2) In consequence of that rule, account may be taken—
  - (a) of planning permission, whether for development on the relevant land or other land, if it is in force at the relevant valuation date, and
  - (b) of the prospect, on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, of planning permission being granted on or after that date for development, on the relevant land or other land, other than—
    - (i) development for which planning permission is in force at the relevant valuation date, and
    - (ii) appropriate alternative development.
- (3) In addition, it may be assumed—
  - (a) that planning permission is in force at the relevant valuation date for any development that is appropriate alternative development to which subsection (4)(b)(i) applies, and
  - (b) that, in the case of any development that is appropriate alternative development to which subsection (4)(b)(ii) applies and subsection (4)

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- (b)(i) does not apply, it is certain at the relevant valuation date that planning permission for that development will be granted at the later time at which at that date it could reasonably have been expected to be granted.
- (4) For the purposes of this section, development is “appropriate alternative development” if—
- (a) it is development, on the relevant land alone or on the relevant land together with other land, other than development for which planning permission is in force at the relevant valuation date, and
  - (b) on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, planning permission for the development could at that date reasonably have been expected to be granted on an application decided—
    - (i) on that date, or
    - (ii) at a time after that date.
- (5) The assumptions referred to in subsections (2)(b) and (4)(b) are—
- (a) that the scheme of development underlying the acquisition had been cancelled on the launch date,
  - (b) that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,
  - (c) that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and
  - (d) if the scheme was for use of the relevant land for or in connection with the construction of a highway (“the scheme highway”), that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.
- (6) In subsection (5)(a) “the launch date” means whichever of the following dates applies—
- (a) if the acquisition is authorised by a compulsory purchase order, the date of first publication of the notice required under section 11 of the Acquisition of Land Act 1981 or (as the case may be) paragraph 2 of Schedule 1 to that Act,
  - (b) if the acquisition is authorised by any other order—
    - (i) the date of first publication, or
    - (ii) the date of service,
 of the first notice that, in connection with the acquisition, is published or served in accordance with any provision of or made under any Act, or
  - (c) if the acquisition is authorised by a special enactment other than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills;
- and in paragraph (a) “compulsory purchase order” has the same meaning as in the Acquisition of Land Act 1981.

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- (7) In subsection (5)(d) references to the construction of a highway include its alteration or improvement.
- (8) If there is a dispute as to what is to be taken to be the scheme mentioned in subsection (5) (“the underlying scheme”) then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal as a question of fact, subject as follows—
- (a) the underlying scheme is to be taken to be the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and
  - (b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme only if that larger scheme is one identified in the following read together—
    - (i) the instrument which authorises the compulsory acquisition, and
    - (ii) any documents published with it.
- (9) For the purposes of the references to planning permission in subsections (2)(a) and (b)(i) and (4)(a) and section 15(1)(b), it is immaterial whether any planning permission was granted—
- (a) unconditionally or subject to conditions, or
  - (b) on an ordinary application, on an outline application or by virtue of a development order,
- or is planning permission that, in accordance with any direction or provision given or made by or under any enactment, is deemed to have been granted.

### **15 Planning permission to be assumed for acquiring authority's proposals**

- (1) In a case where—
- (a) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part of it, and
  - (b) planning permission for that development is not in force at the relevant valuation date,
- it is to be assumed for the purposes of section 14(2)(a) and (b)(i) and (4)(a) that planning permission is in force at the relevant valuation date for the development of the relevant land or that part of it, as the case may be, in accordance with the proposals of the acquiring authority.
- (2) For the purposes of subsection (1)(b), no account is to be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested in the land.”
- (3) For sections 17 and 18 (certification of appropriate alternative development and appeals against certificates) substitute—

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### **“17 Certificates of appropriate alternative development**

- (1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may (subject to subsection (2)) apply to the local planning authority for a certificate containing whichever of the following statements is the applicable statement—
  - (a) that in the local planning authority's opinion there is development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition;
  - (b) that in the local planning authority's opinion there is no development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition.
  
- (2) If—
  - (a) the acquiring authority have served a notice to treat in respect of the interest or an agreement has been made for the sale of the interest to that authority, and
  - (b) a reference has been made to the Upper Tribunal to determine the amount of the compensation payable in respect of the interest,
 no application for a certificate under this section may be made after the making of that reference by either of the parties directly concerned except with the consent in writing of the other party directly concerned or the permission of the Upper Tribunal.
  
- (3) An application for a certificate under this section—
  - (a) must contain whichever of the following statements is the applicable statement—
    - (i) that in the applicant's opinion there is development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition concerned;
    - (ii) that in the applicant's opinion there is no development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition concerned;
  - (b) must, if it contains a statement under paragraph (a)(i), specify—
    - (i) each description of development that in the applicant's opinion is, for the purposes of section 14, appropriate alternative development in relation to the acquisition, and
    - (ii) the applicant's reasons for holding that opinion; and
  - (c) must be accompanied by a statement specifying the date on which a copy of the application has been or will be served on the other party directly concerned.
  
- (4) Where an application is made to the local planning authority for a certificate under this section in respect of an interest in land, the local planning authority must not, without the agreement of the other party directly concerned, issue a certificate to the applicant before the end of 22 days beginning with the date specified in the statement under subsection (3)(c).
  
- (5) If a certificate under this section contains a statement under subsection (1)(a) it must also—

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- (a) identify every description of development (whether specified in the application or not) that in the local planning authority's opinion is, for the purposes of section 14, appropriate alternative development in relation to the acquisition concerned, and
  - (b) give a general indication—
    - (i) of any conditions to which planning permission for the development could reasonably have been expected to be subject,
    - (ii) of when the permission could reasonably have been expected to be granted if it is one that could reasonably have been expected to be granted only at a time after the relevant valuation date, and
    - (iii) of any pre-condition for granting the permission (for example, entry into an obligation) that could reasonably have been expected to have to be met.
- (6) If a certificate under this section contains a statement under subsection (1)(a) —
- (a) then, for the purposes of section 14, development is appropriate alternative development in relation to the acquisition concerned if, and only if, it is of a description identified in accordance with subsection (5)(a) in the certificate, and
  - (b) the matters indicated in accordance with subsection (5)(b) in the certificate are to be taken to apply in relation to the planning permission that under section 14(3) may be assumed to be in force for that development.
- (7) If a certificate under this section contains a statement under subsection (1)(b) then, for the purposes of section 14, there is no development that is appropriate alternative development in relation to the acquisition concerned.
- (8) References in subsections (5) to (7) to a certificate under this section include references to the certificate as varied and to any certificate issued in place of the certificate.
- (9) On issuing to one of the parties directly concerned a certificate under this section in respect of an interest in land, the local planning authority must serve a copy of the certificate on the other of those parties.
- (10) In assessing any compensation payable to any person in respect of any compulsory acquisition, there must be taken into account any expenses reasonably incurred by the person in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 18 where any of the issues are determined in the person's favour).
- (11) For the purposes of this section and sections 18 to 20, the Broads Authority is the sole district planning authority for the Broads; and here “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.

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### **18 Appeal to Upper Tribunal against certificate under section 17**

- (1) Where the local planning authority have issued a certificate under section 17 in respect of an interest in land—
  - (a) the person for the time being entitled to that interest, or
  - (b) any authority possessing compulsory purchase powers by whom that interest is proposed to be, or is, acquired,
 may appeal to the Upper Tribunal against that certificate.
- (2) On any appeal under this section against a certificate, the Upper Tribunal—
  - (a) must consider the matters to which the certificate relates as if the application for a certificate under section 17 had been made to the Upper Tribunal in the first place, and
  - (b) must—
    - (i) confirm the certificate, or
    - (ii) vary it, or
    - (iii) cancel it and issue a different certificate in its place,
 as the Upper Tribunal may consider appropriate.
- (3) Where an application is made for a certificate under section 17, and at the expiry of the time prescribed by a development order for the issue of the certificate (or, if an extended period is at any time agreed upon in writing by the parties and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in accordance with that section, the preceding provisions of this section apply as if the local planning authority has issued such a certificate containing a statement under section 17(1)(b).”
- (4) In section 20 (power to prescribe matters relevant to Part 3) omit—
  - (a) in the opening words—
    - (i) the words “and appeals under section eighteen of this Act”, and
    - (ii) the word “respectively”,
  - (b) paragraph (b) (manner of and time for giving notice of appeal), and
  - (c) paragraph (d) (which refers to provisions of section 17 not re-enacted in the section 17 substituted by this Act).
- (5) Omit section 21 (proceedings for challenging validity of decision on appeal under section 18).
- (6) In section 22 (interpretation of Part 3)—
  - (a) in subsection (1) (meaning of “the parties directly concerned”) for “authority by whom it is proposed to be acquired” substitute “acquiring authority”, and
  - (b) in subsection (2) (interpretation of sections 17 and 18) for “and eighteen” substitute “to nineteen”.
- (7) In each of paragraph 11 of Schedule 27 to the Local Government, Planning and Land Act 1980 and paragraph 8 of Schedule 9 to the Housing Act 1988 (modifications of section 17(2) of the 1961 Act)—
  - (a) for “authority proposing to acquire it” substitute “acquiring authority”,
  - (b) for “in respect thereof,” substitute “in respect of the interest”, and

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- (c) for “sale thereof” substitute “ sale of the interest ”.
- (8) The amendments made in the Land Compensation Act 1961 by this section apply to the Crown to the extent set out in section 33 of that Act (Act applies in relation to acquisition by government department, including any Minister of the Crown, that is an authority possessing compulsory purchase powers as it applies to other authorities possessing those powers).

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**Commencement Information**

- II** [S. 232](#) in force at 6.4.2012 by [S.I. 2012/628](#), [art. 8\(d\)](#) (with [arts. 9, 12, 13, 16](#), [arts. 18-20](#)) (as amended (3.8.2012) by [S.I. 2012/2029](#), [arts. 2, 4](#))

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