

COMPULSORY PURCHASE

MODEL ANSWER

QUESTION

Suffolk Water have telephoned to say that they will be taking access to a couple of fields on the Brookfield Estate next week in order to install a water main and pumping station (Assume that compulsory powers are required for a small compound for a pumping station). You have noticed from the plans that the water company has sent through suggest that the water main crosses into land that is subject to Brian's tenancy.

They have said that they have the statutory powers to enter and undertake the work, and they sort out the compensation later.

In advance of meeting with the clients, prepare a note of the key points you will want to cover, to include:

- a) The statutory provisions covering the utility's powers to enter, occupy and take land, and their application.
- b) How a claim for compensation might be made, and what heads of loss would be included.
- c) The position of Brian in respect of the water main and how you might advise the Estate to approach him.

ANSWER

This question is a hybrid of works powers and compulsory purchase powers.

It is intended to draw out candidate's knowledge of water undertakers' powers to enter onto land to carry out works under the Water Industry Act 1991 ("**WIA**"), as well as their powers to acquire rights by compulsory powers if necessary, and the compensation available to both landlord and tenant when they do so.

a) Statutory Provisions

Here, it is important to identify exactly why the water undertaker would be seeking to enter on to the property. We are told it is because they want to install a new water main and a pumping station.

Power to enter & carry out works:

The power to lay new pipes in land is granted by s159 WIA, and accordingly, the power to enter on to land to lay pipes is granted by s168. Reasonable notice must be provided to both

the owner and occupier; in the case of new pipes to be laid, as is the case here, this must be at least 3 months. For alteration of existing pipes, the minimum notice period is 42 days.

Suffolk Water would therefore need to provide a notice under s159 3 months before entering onto the land to lay the new pipe.

If the notice is disputed, then Suffolk Water may then make an application to the SoS to compulsorily purchase an easement over the land, or purchase the land itself if required.

As to the pumping station, we are assuming for the purposes of this question that the works powers do not give Suffolk Water the ability to enter onto the land, and they will need to compulsorily acquire the land itself, or relevant rights, to enable them to build the pumping station.

Power to Occupy and/or Take:

If a water undertaker needs to occupy or take land, they have a wide discretion to do so. S155 WIA allows a water undertaker to make an application to the SoS to purchase compulsorily any land or rights required by the undertaker for the purposes of, or in connection with, the carrying out of their functions. They may take the land using either the Notice to Treat or General Vesting Declaration procedure.

b) How a claim can be made, and heads of loss

Works

For the compensation for works carried out under s159, able to make a claim by contacting Suffolk Water directly and instigating a business loss claim.

Losses will be:

- Depreciation value of the interest in the affected land
- Disturbance (loss or damage which does not consist of depreciation, but would otherwise be payable if the land had been compulsorily purchased)
- Damage and/or injurious affection caused to non-relevant land (i.e. land where the works was not carried out)

This compensation will be payable after the works are completed, and are not payable in advance unless an order is made by the Secretary of State.

Compulsory Purchase

For the compulsory purchase, the method of claiming compensation will be the same whether the acquiring authority uses the notice to treat / notice of entry procedure, or the general vesting declaration procedure.

The acquiring authority will issue the claimant with a claim form, which it must then complete and return to the acquiring authority.

The Estate will be entitled to be compensated for the loss of its interest and otherwise, the heads of loss are:

- (a) the value of the interest in the land taken
- (b) severance and injurious affection
- (c) basic loss

The usual six rules of compensation under the Land Compensation Act 1961, section 5, then come into play, these are repeated below:

The Rules:

- (1) No allowance shall be made on account of the acquisition being compulsory.
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers.
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.
- (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land

If using the compulsory purchase process, Suffolk water's assertion that it "sorts the compensation after" is incorrect. Advance payment is payable under section 52 of the Land Compensation Act 1973, of either (a) 90% of the agreed sum for the compensation; or (b) 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed.

c) Brian's position in respect of water main & how Estate should approach him

Note that only the water main crosses Brian's tenanted land, so this land will not be subject to any compulsory purchase.

Under s159 WIA notice must of entry for works must be given to both the occupier and the landowner in respect of any relevant land (land which is being entered onto). Therefore, the Estate would expect Suffolk Water to approach Brian directly.