



# Alert

July 2008

## Built Environment Group (Property)



### Opportunity knocks for compulsory purchase orders

The Government's drive to secure the regeneration of our towns and cities in recent years has led to greater use of compulsory purchase powers in assembling sites for development. At the same time, utility companies have found that they need to use their compulsory purchase powers more frequently as landowners are more reluctant to grant rights over their land.

Where an order for compulsory purchase has been made, very often the main bone of contention is the level of compensation payable and increasing numbers of cases are going to the Lands Tribunal, a body which determines the amount of compensation if parties cannot agree.

Hammonds LLP is one of the leading firms in the country dealing with compulsory purchase and compensation matters. Our dedicated team of lawyers:

- offers a comprehensive service for acquiring authorities wanting to promote compulsory purchase orders and assists local authorities and other public bodies, including Regional Development Agencies and English Partnerships, in this area.
- has particular expertise in acting for utility companies and in dealing with complicated compensation claims relating to overhead lines and underground cables.
- represents landowners who require advice when their land becomes subject to a compulsory purchase order.
- deals with compensation claims and references to the Lands Tribunal. We advise acquiring authorities or claimants on all aspects of compensation claims, in particular in relation to complex cases involving loss of profits. An important part of our work is ensuring that our clients maximise their claims and do not miss out on payments to which they are entitled. When advising acquiring authorities, we ensure that claims which cannot be substantiated are rejected.

We also regularly advise developers on schemes where land assembly is proving problematic. In some cases, we are appointed by a local authority to promote a compulsory purchase order financed by the developer. The compulsory purchase regime and the powers given to local authorities to acquire or appropriate land can be particularly useful to developers and those responsible for putting sites together because, in certain circumstances, they permit third party rights to be overridden.

The following are examples of two areas where developers can use this to their advantage and on which we frequently provide advice.

#### Road closures

A developer assembling a site will usually try to acquire the land and all rights affecting it by agreement with the owners. Where this proves difficult, it may persuade the local authority to exercise its powers of compulsory purchase. A major development will also often involve road closures, which can give rise to problems in terms of identifying who owns the site of former highways and ensuring that all rights over former highways have been extinguished. The making of a compulsory purchase order can assist in "curing" some of these problems.

Generally, where the public highway is permanently closed or "stopped up", the interest of the highway authority is extinguished and public rights over the highway cease. At this point, there is a legal presumption that the land which formed part of the road reverts to the frontagers that adjoin it. However, this presumption can be rebutted, for example, where a third party can show that it owns the land. Sometimes, there may be an obvious risk of the presumption being rebutted by a third party but it may not be possible to discover who that is.

Issues also arise with road closures because there may be private rights of way in existence which will not be extinguished by using the stopping up procedure. Easements of necessity can arise on closure to enable adjoining landowners to access their properties and vehicular rights of access may exist over stopped up public footpaths.

One of the advantages of using a compulsory purchase order is that, not only will the site of the former highway be acquired when the order is made, but also any remaining rights which exist over it will be extinguished under section 236 of the Town and Country Planning Act 1990. This provides that upon the completion of a compulsory acquisition of land, all private rights of way shall be extinguished.

If compulsory purchase powers are not used, arrangements will need to be made in relation to any land comprising the former highway which may not revert to the frontagers. Any rights which survive a stopping up must be acquired/ varied by agreement with those enjoying the benefit. If these matters are only discussed once the road has been stopped up, a ransom situation could arise.

The Hammonds LLP team plays a key role in assisting developers by ascertaining, at an early stage, interests in any roads which are to be closed and by helping them to decide how best these can be acquired/brought to an end.

### **The Planning Bill 2007 – increased opportunity for “washing of title”**

Section 237 of the Town and Country Planning Act 1990 can be used to cleanse a title of adverse rights which affect it. The section provides that easements and other rights may be overridden to enable the “erection, construction or carrying out or maintenance of any building or work on land where this has been acquired or appropriated by a local authority for planning purposes”. The work may be undertaken by a local authority or a person deriving title under it, provided that it is undertaken in accordance with planning permission.

The Court of Appeal in *Ford-Camber v Deanminster and Grove Properties (Cardiff) Ltd* [2007] EWCA Civ 458 held that a public body can override third party property rights, pursuant to section 237, even though it has not been registered as the owner of the land. The court said that the public body requires only the “right” to be registered as owner and does not actually need to be registered in order to “acquire” the land. The court also confirmed that a purchase and sale back of land for the express purpose of overriding third party rights is lawful.

Section 237 therefore offers great opportunities for developers. A transfer between a developer and a local

authority can allow development to proceed unhindered by expressly authorising the infringement of easements and restrictive covenants, subject only to the payment of adequate compensation.

However, third party rights can only be overridden in respect of breaches arising from the erection of buildings and not the use of land. In *Thames Water Utilities v Oxford City Council* [1999] 1 EGLR 167 the High Court held that the express wording in section 237, relating to the carrying out of building works, does not also impliedly override easements or restrictive covenants relating to the use of the land. A developer who acquires land from a local authority therefore runs the risk that easements and covenants as to user will remain which could be enforced by injunction against it, if infringed.

Happily, help may be at hand in the form of the Planning Bill 2007 which contains a proposal to amend section 237 to extend the power to override third party rights and allow the subsequent use of the land in breach of an easement or restrictive covenant. Compensation will still be payable, but the threat of injunction will be removed.

Both the *Ford-Camber* decision and the proposed increased scope of section 237 provide a valuable tool for developers to bypass easements and restrictive covenants to enable the construction and use of a developed site, in situations where previously insurance may not have been appropriate and the development could have faltered.

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## **More about the Hammonds LLP Compulsory Purchase and Compensation team**

Our specialist team consists of 27 lawyers, all experienced and trained in various aspects of this diverse subject and located in each of our UK offices.

The team is led by our Director of Compulsory Purchase, Philip Maude. Philip is a highly experienced lawyer who deals with all aspects of compulsory acquisition and compensation and can, if required, appear as advocate at public inquiries or in the Lands Tribunal. He is on the editorial board of the Government's Compulsory

Purchase Manual and he is a regional co-ordinator for the Compulsory Purchase Association for Yorkshire and Humberside. He has also written a number of articles on compulsory purchase for the RICS.

If you need first class, quick and practical advice on compulsory purchase or compensation issues, we are ready to assist you and ensure that your interests are protected. To find out how we can help you, please contact:

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