

Introduction

The Upper Tribunal (Lands Chamber) has decided a number of preliminary issues regarding a claim for compensation brought by the owner of the Haven holiday village lying adjacent to Hopton Beach under section 10 of the Compulsory Purchase Act 1965 (the “**1965 Act**”) in *Bourne Leisure (Hopton) Limited v Great Yarmouth Port Authority* [2016] UKUT 044 (LC).

Brief Facts

The claim arose following the construction of an outer harbour by the Great Yarmouth Port Authority which the Claimant argues caused erosion leading to the partial collapse of sea defences along Hopton Beach and subsequent damage to the Claimant’s land. The compensation claim sought to recover the costs of carrying out consequent works to make good damage and repair the sea defences, losses associated with the works and diminution in value of the land as a result of the loss of the beach.

The Claimant then proceeded to carry out the works to make good the damage and repair and improve the sea defences for long term protection.

The outer harbour was built under the Great Yarmouth Order Harbour Act 1986 (as amended) (the “**1986 Act**”). Importantly, the compulsory purchase powers under the Act had expired a decade before the outer harbour was built and was subsequently amended by a 2005 Revision Order (the “**Order**”).

The Preliminary Issue

The Tribunal was asked to address several areas of preliminary issue between the parties as follows:

- Was the Claimant entitled to bring a claim for compensation under section 10 of the 1965 Act where no compulsory purchase powers were used?
- Whether the alleged facts gave rise to a cause of action in nuisance but for the statutory authority conferred by the 1986 Act.
- Whether the losses claimed under section 10 of the 1965 Act were limited to the diminution in value of the land.
- When the cause of action arose for limitation purposes.

Decision

Entitlement to Claim under Section 10 of the 1965 Act

As we know it, the ordinary application of section 10 of the 1965 Act relates to land, or an interest in land, which has been taken for or injuriously affected by the execution of the works carried out pursuant to compulsory purchase powers.

The Tribunal held that the use of the wording “as if this Act were a compulsory purchase order” within the 1986 Act, along with the interpretation that section 10 of the 1965 Act did not depend on the exercise of compulsory purchase powers being exercised, had the cumulative effect of applying the 1965 Act to the works carried out by the Authority.

The Judge was mindful of the fact that any other interpretation would have allowed the Authority to entirely avoid an obligation to pay compensation, subsequently preventing other affected landowners from obtaining any compensation. Further, it was held that the expiration of the powers did not destroy the link between them and the power to construct the works; there was no logical reason why a claimant should only be entitled to compensation if the outer harbour works were constructed in the five year period in which the compulsory purchase powers applied, particularly as the power to construct the outer harbour remained extant.

Additionally, the Order envisaged that the works would cause erosion and damage to coastal protection structures; therefore, damage to private land adjoining the coast was also conceivable yet the statutory authorities made no provision for this, thereby providing an incomplete remedy.

Moreover, despite arguments that the Order changed the effect of the 1986 Act, it was held to be sufficient that the compulsory purchase power was included in the same enactment as the power to construct the outer harbour i.e. the two statutory provisions were treated together as the special act.

Cause of Action in Nuisance?

There was no reason, in principle, why the physical damage to the Claimant’s land would not be an actionable nuisance but for the authority granted in the 1986 Act.

Limitation of Losses to Diminution in Value

In terms of damages, the Tribunal found no difficulty in including the cost of remedial work within the losses which may be recoverable. Despite the fact there was no authority, it was held to be down to the fact that "it was so evidently correct... (they) never dispute it."

However, this is subject to the requirement of fair and reasonableness and the Claimant was under an obligation to mitigate any loss. Moreover, generally the cost of remedial works should not exceed the diminution in land value; although it was acknowledged that other factors may affect this, such as a building's heritage value.

When Did the Cause of Action Arise?

The Tribunal reiterated that a claim for compensation did not arise until there was an actionable nuisance, i.e. when the works actually had an effect on the claimant's land such as physical damage or interference with enjoyment. As a result, the claim was within the correct time limits.

Comment

This case is obviously of benefit to claimants relying on statutory instruments as bases for compulsory purchase compensation, especially where there is no threat of compulsory purchase when the land acquisition and subsequent works occur, and provides a wider scope for the availability of compensation.

Nevertheless, it is also important for authorities who should be mindful when revising or amending statutory provisions which provide for compulsory purchase powers that any amendments should remove any such powers when they become redundant and before the actual acquisition and/or injurious affection of land take place.

We wait to see how the case progresses.

If you would like to discuss any matter relating to compulsory purchase and/or land compensation, please contact any of the team below.

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