

Compulsory
Purchase
Orders
Explained

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

COMPULSORY PURCHASE ORDERS EXPLAINED

Introduction

This update highlights changes in the procedure for the compulsory acquisition of land as enacted by the Planning and Development Act 2000 (the “Act”). Essentially, the Act transfers the functions of the Minister for the Environment and Local Government (the “Minister”) to *An Bord Pleanála*, the Irish planning board (the “Board”). The procedure by way of public enquiry has been replaced by oral hearing by an inspector appointed by the Board. The transfer of the Minister’s functions to the Board involves all necessary powers previously within the Minister’s remit, including those concerning rights of access to land, the modification or revocation of planning permissions, and all other powers generally necessary to ensure that the Board can carry out its functions efficiently and effectively.

Acquisition of Development Land

Section 212(1) of the Act details the circumstances in which a local authority may acquire development land. Among other things, it entitles local authorities to acquire land:

-  in order to secure, facilitate, control or improve the frontage of any public road by widening, opening or enlarging it;
-  in order to provide areas with roads and other infrastructure facilitating public transport; and
-  for such services and works as may be needed for development.

Section 213 (2) (A) states that a local authority may, for the purposes of performing any of its functions, acquire land either permanently or temporarily, by agreement or compulsorily. However, a local authority may not acquire lands compulsorily when it has not determined the particular purpose for which the land is required.

Notice of Intention to Compulsorily Acquire Land

The local authority is obliged to publish a notice of its intention to compulsorily acquire land in one or more newspapers circulating in its area. This notice must expressly specify where

the order and relevant maps may be inspected. It must also be forwarded to each owner, occupier and lessee of lands to which the order relates.

Objections to the Notice of Intention to Compulsorily Acquire Land

Oral hearings must be held where a valid objection is made by an individual who will be affected by the order. Compensation issues are never dealt with at oral hearings. A property arbitrator will be appointed to reach a satisfactory settlement with the affected parties.

The procedure to be followed at public inquiries is relatively informal. Initially, the local authority will present the formal proof of the making of the compulsory acquisition order, the publication of advertisements and the services of notices. The evidence relating to the reasons and purposes for acquiring the land will then be heard. The witnesses for the local authority may be cross-examined on a wide range of issues relating to the acquisition, such as:

- ▣ noise and vibrations;
- ▣ agricultural properties;
- ▣ air quality;
- ▣ aquatic environment;
- ▣ archaeology;
- ▣ landscape; and
- ▣ visual aspects.

Any witnesses for the objectors may then be cross-examined. The inspector is obliged to hear evidence on the effects any proposed development will have on the environment. Section 175 of the Act obliges the local authority to complete an environmental impact statement on all the issues listed above.

When the oral hearing has concluded, the inspector is obliged to complete a report for consideration by the Board. All documentation relevant to the report must then be made

available for inspection by the public. Section 143(2) of the Act stipulates that the Board is obliged to have regard to the policies and objectives of:

- ▣ the government;
- ▣ any relevant state authority;
- ▣ the minister for the environment and local government;
- ▣ planning authorities; and
- ▣ any other body which is classified as a public authority and whose functions have or may have a bearing on the planning and development of all areas throughout Ireland, whether rural or urban.

The Board also has the power to direct the local authority to pay the costs incurred in conducting the hearing and/or a contribution of the costs of any person appearing at the hearing.

Confirmation Orders

Section 78(1) of the Housing Act 1966 states that notice of the confirmation order must be published in two national newspapers. A decision of the Board on the compulsory acquisition becomes operative three weeks after the date on each notice of the decision is first published. An application for leave to apply for judicial review must be made within eight weeks of the date on which the notice of the decision is first published. Leave will only be granted where the High Court is satisfied that there are substantial grounds for disputing the decision and that there are valid reasons as to why the decision should be quashed. An application for leave to apply for judicial review must be made by motion on notice to the Board and the planning or local authority concerned, and to any other person specified for that purpose by order of the High Court.

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