

Appendix 7 – Case studies

Government departments

Case Study 1 - wartime requisition for airfield

Background

The case relates to agricultural land formerly in several different ownerships, requisitioned during the war for operational use by the USAF as an airfield and handed back to the RAF in 1944. It was subsequently acquired by conveyance in the 1950s with the usual compulsory purchase compensation apparently having been paid to the former owners. The property had ceased to be required for operational use by the late 1950s, at which time a company which had operated from the airfield on licence since about 1947 offered to carry out essential works of maintenance and repair, involving substantial expenditure, on the basis that the freehold interest would be sold to the company.

Although the occupying company was a commercial operator it undertook aircraft- related research, development and testing for the government department - work which was considered to be in the national interest and “vital to military flying in this country and valuable in the most important field of export” (according to the Under-Secretary for Air in 1960).

In 1960, terms were agreed for the sale of the freehold interest to the company without an option to repurchase being given to the former owners, despite the two principal former owners having indicated in writing that they wished to repurchase. The company gave an undertaking to offer the property back to the former owners if its own need for the property ceased; the government considered that the position of the former owners had, accordingly, been safeguarded.

The apparent rationale for the proposed sale to the company was the perceived importance of its work to the Air Ministry (and also to the export market), and the need for a major financial investment for repairs to enable continued use of the property which would, presumably, not have been secured by any other means. The company had, however, indicated that it required the use of the property for only five further years.

Following a concerted campaign by parish councillors and former owners in the local and even national press and in meetings with ministers - culminating in the direct involvement of the Prime Minister - the proposed sale of the freehold interest was aborted, in 1964. The Prime Minister agreed, however, that the company should instead be granted a 99 year lease. This was granted in 1964 at a rent of £1 per annum with the company paying a premium representing the freehold value of the property at that time.

Procedures

In the early 1990s, the leaseholders renewed their efforts to persuade the government department (by then the Ministry of Defence) to sell the freehold interests. The company assert that they wish to purchase the freehold for no other reason than that the property is an essential asset for the company's activities and they contend that ownership of the freehold will give them greater security and flexibility.

There was apparently some difficulty in identifying a departmental budget holder willing to accept ownership and responsibility for the property and consequently a difficulty in obtaining a declaration that the property was surplus.

Negotiations have continued for the last 8-9 years but with apparently no solution or conclusion in terms of the department being in a position to declare the property surplus or a clear and authoritative decision as to whether or not, if the freehold were to be sold to the company which already owns and occupies on a 99 year lease, the Rules would apply. This difficulty in attributing

internal responsibility within the department has been resolved by the transfer of the site from the operational branch of the department to the estates section.

The present circumstances, so far as they are relevant to this issue, are in summary as follows:

- (i) Since the land was originally requisitioned it has been altered by:
 - enclosure with a security fence, closure of a public highway which crossed the land and construction of a new road along one side of the property just inside the original boundary
 - construction of 3 concrete runways together with perimeter roads and hardstanding
 - construction of various buildings, but occupying a relatively small part of the site, including a storage, design and testing building of some 35,000 square feet
- (ii) The remainder of the site, outside and between the runways, is still in agricultural use and is let on licence for grass drying and arable farming.
- (iii) The company's use of the property remains similar to its original use but has been extended to include manufacture and packing as well as research, development and testing.
- (iv) The company still supplies 100% of the department's requirements for the particular aircraft component which it manufactures. It is also a major exporter and supplies 75% of the component used throughout the "free world". The supply to the MOD is understood to be by means of a fairly standard defence contract, but the company enjoys something of a monopoly position by virtue of its domination of this particular market.
- (v) The combined effect of the terms of the lease is such that the value of the freehold interest to one or more third party purchasers is likely to be nil or nominal, and possibly even negative. The occupying/lessee company might however be prepared or induced to pay more to reflect the benefit of owning the freehold - although no clear view has been expressed on this point.

Specific Issues arising

1. Was the granting of the original 99 year lease a disposal for Crichel Down purposes? "Disposal" is not defined; the rules state only that they apply to all freehold disposals; is it, or should it be, intended (and therefore stated) that they also apply to some other disposals - e.g. by way of a lease: if so, of what length?
2. Was the work carried out to the land over a period of some years sufficient for the land to have been "materially changed in character" since the acquisition? "Material change" was envisaged in the Commons debate on the Crichel Down case in 1954 as relating to agricultural land, and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. No such illustration or example appears, however, in the Rules.
3. What should the date of acquisition be - the original wartime requisition or the subsequent conveyance - where there is a long period between the two?
4. Should the issue of material change of character have regard to the overall use of the property? In this case the physical changes were limited to runways etc and some buildings, but the overall use is as an airfield and control over the agricultural areas is essential from an operational and security point of view. In this case, the whole property was considered to comprise a single operational and planning unit. In other cases, a different view has been taken.
5. Is the contractual relationship between the company and the department, bearing in mind the department's apparent dependence upon the contract, of relevance in terms of whether the Rules apply to a disposal to the company - particularly with regard to the exemption in 14(6) of the Rules?

6. Where the owning department is dependent, as in this case, on the property being available for use by a third party upon whom it is dependent under a contractual arrangement, can the property be said to be surplus to the department's requirement?
7. The concept of a property being "surplus" is not explained or defined in the Rules. Is it intended that it should extend beyond a wish to dispose of the property.?
8. What is "market value" in this case - the price (almost certainly nil or nominal) which the former owners or a third party might be expected to pay, or the potentially higher offer from the company as special purchasers?

Case study 2 - wartime requisition of operational land and buildings - military storage and maintenance depot

Background

This case relates to the acquisition and subsequent disposal of land used for a military storage and maintenance depot. In 1940 the former owner bought a farm, including land on which the subsequent depot was developed. Just before the purchase, the government department requisitioned and compulsorily purchased the eastern part of the current site from the former owners of the farm. In 1942 the Ministry requisitioned from the (new) former owner the western half of the current site and further land to the west of this. Further land to the south was requisitioned during the war, although it was not until 1948 that both pieces of land taken were formally acquired. Temporary (Nissen hut) and more permanent (brick) buildings were built on the northern half of the land whilst the southern part remained open.

Procedures

In 1969 the open land to the south and part of the land to the north east was offered back to the former owner and he purchased this at agricultural value. Although there is no information on file about this, it appears that the land was offered back, under the Rules, because most of it was agricultural in character and the cost of reinstating the land with buildings on it was minimal. The former owner persuaded the government department to stop demolition of one of the two Nissen huts on this land subject to him gaining planning permission for industrial use for this part of the site. This he did in 1977 and developed it as a small industrial estate.

Hearing rumours that the depot was going to be declared surplus, the former owner wrote to the government department in 1994, asking to be informed if, and when, the depot became surplus. The government department confirmed that closure of the depot had been mentioned in a government report, but that it had not yet been declared surplus. They also mentioned the general rule that land would be offered back to former owners, provided that its character had not materially changed. Very soon after this the depot was declared surplus to their requirements. The government department followed the clear procedures laid down in their estates guide and first offered the site to other military services who might wish to reuse the site. The depot was officially declared surplus in April 1996.

In December 1995 the former owner heard that the depot site was to be sold. After checking with the district council to see if planning permission had been granted for the site, he wrote to the department stating his surprise that the land was to be sold. In that letter he claimed that the property should be offered back to him as it had not materially changed in character (and did not have any likelihood of planning consent for development). Furthermore, the former land boundaries were clearly discernible and the land was linked to his adjoining land which had been offered back in 1969 and which was of the same character.

In response the department stated that the former owner had been 'misled' by the local planning authority on the planning situation, as they had been in protracted negotiation with them. They also pointed out that there had been buildings on the land since it had been originally purchased, and that the buildings had stood for 50 years and were therefore of some 'permanence'. It was considered by them that the character of the site had 'materially changed' and the obligation to offer back did not apply. The former owner was informed that he could bid for the site through the tender process, either alone or as part of a consortium.

During 1996 both parties took legal advice and correspondence was exchanged which elaborated their arguments. These revolved around:

- whether the land had materially changed in character since its original requisition;
- the permanence of the 'temporary' buildings built on the land;
- the costs of restoring the land to agricultural use; and
- whether the 'date of acquisition' should be interpreted as the date of original requisition or date of actual purchase, and therefore whether a material change in character had, in fact, taken place.

The solicitors for the former owner were able to delay the tendering process by about a year, whilst the obligations under the Crichel Down Rules were resolved.

In claiming that the exception under rule 14(7) applied, the department initially emphasised the material change of character of the site from agriculture to storage and industrial use. However after taking Counsel's advice, the emphasis switched to the fact that there had been no material change of character since the date of purchase in 1948 (when it was already developed as a depot).

'Out of fairness', the department also considered the application of the Rules, taking the date of requisition as the date of acquisition, but maintained their view that the current B8 (storage) use was not temporary (taking into account the cost of restoring the land to its former condition). Finally, they considered whether, notwithstanding the Rules, there were reasonable grounds for offering back the land to the former owner as a private treaty sale. It was felt that this would be against Treasury Guidelines and undermine their policy on disposals. However, they agreed to sell the site as one site or as two lots, which would give the former owner the opportunity to repurchase almost exactly the area of land he once owned without going against the principles of the Rules or their interpretation of the Treasury Guidelines.

The former owner considered applying for judicial review but was not prepared to risk the legal costs of taking the case further. In particular he was not confident that his solicitors were knowledgeable enough of the Rules to develop a winning case. With the benefit of hindsight, the former owner believes that if he had sought out more informed advice, such as from a surveying firm with some experience of the Rules, he would have stood a better chance of successfully challenging the government department's interpretations.

Specific Issues Arising

1. In this case departmental guidance on land disposal was followed but there was still some uncertainty over the interpretation of the Rules. This was clarified by reference to Counsel's advice.
2. The first involves differing interpretations of '*a material change in character*', particularly the '*permanence*' of buildings which have been constructed as temporary structures but which can be in use for decades. The interpretation in this case seems to have changed over time; land which was offered back in 1969 similar to an adjoining plot which was not offered back in 1995. However, there are no details of the rationale for the earlier decision to offer back.
3. The second uncertainty concerned the 'date of acquisition' under Rule 13. The government department concerned have used both the date land has been requisitioned and, as in this case, the 'official' view that it applies to the date of transfer or sale. The difficulties arise when the land has been materially changed in character in the intervening period so that it is no longer agricultural land at the time of purchase. In this case, initial judgements were based on the assumption that the *requisition date* was the appropriate '**date of acquisition**' but this was changed to the *date of sale* later on, on the advice of Counsel. However, 'out of fairness' to the former owners, both definitions were applied and tested before the land was eventually disposed of through competitive tender.

Case study 3 - operational land and buildings - military airfield

Background

This case relates to the purchase and eventual disposal of 40 acres of agricultural land in connection with the extension of the main runway of an airfield used by the USAF. The original base had been requisitioned in 1942 and eventually purchased from a number of former owners during the 1950s and 1960s. The land was acquired under threat of compulsory purchase in 1960 and laid-out as an extension to the original runway. It also consisted of aircraft taxi and turning (apron) facilities.

Procedures

In August 1992 the Secretary of State for Defence declared that the base and a neighbouring base were surplus to requirements and would be closed following vacation by the USAF. The bases were eventually closed on 30th September 1993.

The MOD applied the procedures outlined in their manual on disposals (superseded by an estate guide produced in 1993) under which former owners are approached only after the planning situation of the land has been resolved.

On hearing the decision that the airfield was to close, the former owner (along with a number of other former owners) sought advice from a local estate agent who advised them that the Rules would apply and the land would need to be offered back to them. The MOD replied to subsequent enquiries on this issue that the interest of the former owners had been registered but that they were in the process of sorting out the planning situation and could not settle any obligations under the Rules until that was resolved.

The MOD sought internal policy advice at the end of 1993 about whether it was appropriate to offer back the less built-up part of the site (i.e. the land on which the runway extension had been constructed) to the former owner, whilst not offering back the more developed areas to the other former owners. Although the response was rather elliptical (mentioning the 'political' difficulties of offering back to some former owners and not others), the decision was taken that this land might be needed to contribute to a possible civil aviation reuse of the airfield and therefore should not be offered back as it contributed to the development potential of the overall site. This advice, and general consideration of the Rules, were built into the normal timetable for the disposal process. They did not, in this case, cause additional delay or cost.

Throughout 1993 and 1994, the planning policies for the reuse of the base were negotiated and eventually agreed. An important issue arising from this process was the local planning authorities' view that the redundant site should be treated as one single entity and not (re)developed in an incremental and fragmentary way. Although there is no 'planning' exception in the Rules, this planning requirement helped provide further support to the decision not to offer land back to former owners.

Once it was clear that the planning authorities were not opposed to the reuse and redevelopment of the base for various uses, the MOD wrote to the former owners and their estate agent indicating that they intended to sell the former air base as a whole. The former owners were informed that, as a consequence of this, the requirement to offer back did not apply. They offered the former owners the opportunity to bid in the tender process and included tender packs for their information.

The disposal process involved a long and contorted series of negotiations which took place between mid-1994 and early 1997. During this time three potential purchasers had bids accepted and the first two were within days of signing contracts before their deals fell through. The land was eventually sold to a third bidder in February 1997.

During this period of market uncertainty and prevarication, the former owner maintained pressure to try and get back his former land. In March 1995 his solicitors wrote to the MOD to contest the interpretation of the Rules in his particular case.

They raised a number of points of varying relevance to the application of the Rules, including their view that the land had not materially changed in character and that his former land did not contribute

anything to the value of the overall site (being in an AONB with no development potential). The MOD replied repeating their view that the site needed to be sold as a whole. Similar correspondence took place in early 1996 when the former owner also asked his local MP to intervene. The response from the Under-Secretary of State repeated the department's position that the obligation to offer back under the Rules did not apply because the site needed to be sold as a single entity to realise its best price. The former owner's last letter on file (February 1996) is a reluctant acceptance of defeat and a parting criticism of the 'unacceptable' nature of the Rules. He ends his letter by questioning the morality of the department in taking land from former landowners during times of national emergency and then refusing to return it after they have finished with it.

A final irony of this case is that the former owner is currently negotiating with the current owners to purchase his former land (and some adjoining land) but cannot agree on an acceptable price. Other parts of the former air base are also being sold off in lots; albeit in reference to the framework set by a planning brief.

Specific Issues Arising

1. This case illustrates the use of a well-developed procedure for delaying the disposing of surplus property, but also the uncertainties (for former owners) of delay in consideration of the Rules until the planning situation has been resolved, in this case over a period of two years.
2. The case also indicates the conflicting interpretations of what constitutes the 'site as a whole' in relationship to surplus land which has planning permission for development or redevelopment. In this case the decision was taken that all the land occupied by the former airfield could contribute to the overall market value of the site and that a fragmented sale would prejudice this.
3. It is interesting that there is no 'planning' reason for not offering back land to former owners, despite the rise in importance of 'plan-led' development in recent years. In this case the local planning authorities' support for a 'co-ordinated' approach to the redevelopment and reuse of the site provided further arguments against a fragmented sale, but ones which could not be used in relation to the Rules.
4. The final issue concerns the extent to which former agricultural land has 'materially changed in character', in this case into a runway and ancillary hard-standings. The government department did not base their decision on this issue alone as they were aware of court cases in which such works were not considered to be a material change in character.

Case study 4 - operational land and buildings- agricultural storage

Background

This case relates to land and buildings acquired in 1955 for use as storage of governmental food stocks. The records were not clear on whether compulsory acquisition powers (CPO) were used. It is likely that the purchase would have been authorised (or under the threat of CPO) by the Requisition of Land and War Works Act 1945. The site is in a rural setting, consisting of 2 separate self-contained warehouse units of 5,177 sq. m (55,733 sq. feet). The total site area was 1.94 Ha (4.8 acres). The warehouses are single storey 1940s constructions, with an ancillary single storey office.

Procedures

The land was declared surplus in 1994 at which time the relevant government committee recommended: *“write to former owner explaining that site is now surplus; that, although requirement of offer back is not yet clearly established, government department is willing to consider offering back to former owner”*. At that juncture, a member of the government department concerned put forward recommendations relating to all lands declared surplus and whether they came within the provisions of the Rules. Where land was “exempt” (see issues arising below) then the land would not be “offered back” to the original owners

Surveyors were appointed to *“investigate and confirm the planning status of the depot”*. They advised that the planners would consider change of use for small business purposes. In September 1994, the operational use of depot ceased.

The government department uses a checklist procedure for disposals. The first item to be considered from this list is “offer back” under the Rules. Thus, as soon as the property had been declared surplus, the department instigated a rigorous procedure to trace the original vendors. A letter was sent to one (of three) of the original owners (his address having been traced via “Who’s Who”) asking him to “sound out his fellow vendors” (or successors) before replying. It was noted that if the department were unsuccessful in tracing the owners by letter then they would have to advertise in accordance with the revised Rules.

The letter stated: *“We are not entirely clear about the circumstances of the sale in 1955 but from the evidence we have there is nothing to suggest that compulsory powers were exercised. (You may of course be able to confirm whether or not such powers were used). Nevertheless, it is the Government’s practice, to offer former owners or their successors the opportunity to buy back the property. We are required to sell at the current open market value as determined by the District Valuer.”*

The actual circumstances of this case were quite complicated. The original three vendors were all trustees and, hence, were not beneficial owners. The recipient of the letter had not had contact with either of the other two trustees for a long time, but was able to provide the last known address of the original owner’s family. The department thus wrote a similar letter (to that above) to the original owner’s (supposed) successor. This eventually proved successful and the current successor was traced. After a period of correspondence to determine the details of the proposed sale-back, the solicitors acting for the successor in title wrote and confirmed that their client did *not* wish to pursue the re-purchase of the site.

Surveyors were then appointed by the department to proceed with disposal on the open market. The land was subsequently sold to a third party in October 1995 at a price considered to be Market Value.

Specific Issues Arising

1. This was a “textbook” example on how the Rules should be applied. The internal procedures efficiently examined the need to offer back under the rules and having determined that the Rules might apply (there was no confirmation that the original purchase was under, or under the threat of, compulsory powers), the department did everything they could to trace the original owner.

Case study 5 - operational land and buildings- military hangar

Background

This case concerned an area of land on a military airfield that was purchased in two lots in 1946 and 1947. It is not known whether compulsory purchase powers were actually used in either case, but, this is irrelevant. At the point of disposal, the land and buildings comprised 3 hangars (on a site with other sheds), each with an enclosed security chain link fence. The land in question housed only 3 of a total of 50 buildings on the airfield.

Procedures

The airfield was closed in 1994 and, as a result, the area of land in question was declared surplus. The assumption was made that the land was agricultural at the time of acquisition and had now become part of the airfield and is surrounded by a number of other units in agricultural/industrial use. Therefore the Ministry of Defence considered it was reasonable to claim that there had been a material change in character and, as such, there was no requirement to offer back the land back to the original owner. At that time, the decision-making committee of the MOD did question whether the hangars could be removed, thus reversing the “material change” and in turn bring the land within the Rules. However, given that the land housed 3 of some 50 buildings on site, it was felt that their removal would not alter nature of the site as a whole and thus the decision that there had been a “**material change**” exception to the Rules was warranted. The site was subsequently placed on the open market for sale at market value.

Specific Issues Arising

1. Once again, well determined systems ensured that the Rules were considered fully at the time of declaring the land surplus. The decision to offer this site on the open market was only taken after a full and detailed consideration of the particular circumstances pertaining to this case.
2. The issues surrounding material change of character were considered carefully here. However, in other, similar, cases semi-permanent structures (sheds, hangars) have been considered insufficient to warrant exclusion from the Rules. The lack of a clear definition or set of criteria may contribute to inequity between former owners.

Case study 6 - operational land and buildings- storage depot

Background

This case centres upon a storage depot that is now situated in an urban and developed area. The land was acquired under threat of compulsory purchase in 1946 by the government. The land has been used for storage sheds.

In 1974, the government leased back to the original owner a small parcel of land on the north east corner of the site. This portion of land was subsequently sold back to the original owner in 1985.

Procedures

The site was declared surplus in early 1994 and was due for closure in the autumn of that year. As noted above, the government department in question uses a checklist for its disposal procedure. The first consideration is whether the land should be "offered back" to the previous owner under the Rules.

The internal advice within the department at that time was that the Rules did not apply. The reasons for this were that as the land was an urban site when acquired and more than 25 years had elapsed since acquisition, it was exempt from consideration under the elapsed time rule. However, the department accepted that although, strictly speaking, offer-back did not apply, there was a precedent for selling back to the original owner, due to the previous sub-sale in 1985. It was agreed that the original owner would be offered back the property on the basis that: *"..although the position is not entirely clear the government department is, nonetheless, prepared to offer back the site"*.

Prior to the decision to declare the land surplus, there had been a number of inquiries in the previous year, resulting in a request for the District Valuer (DV) to value the site. The (early) 1993 value was £425,000 – in the (current) department's view, this was an open market valuation. Later in that year a "major landowner" in the area contacted the department in question, indicating their interest in purchasing the site for a small food store at a figure "substantially more" than the DV's value. Although not documented, it appears that the party in question had also entered into an agreement with the original owner.

At the same time as the land was being declared surplus, the solicitors acting for the original owner contacted the department stressing that the Rules refers to "material change" of character and this was not relevant in this case. They argued that, if the land were not offered back to their client, they would pursue the matter through the courts by way of Judicial Review. This resulted in the Government Property Lawyers writing to the solicitors in question, stating that *"the erection of a 20,000 square foot building is material and has materially changed the land"*. Interestingly, no mention was made of the exclusion of the Rules as more than 25 years had elapsed.

This stance resulted in a climb-down by the former owners solicitors and an agreement for them to enter into private treaty negotiations. However, following the internal advice noted above, it was agreed that the original owner could be considered as a "special purchaser" due to the previous sub-sale in 1985. Negotiation then proceeded to agree the price. The original owner's first offer of £475,000 was rejected, as the government department was looking for offer in excess of £500,000 due to general inflation since the DV valuation. The sale was to be conditional on planning permission being granted for retail use: a claw-back clause was not to be included.

Planning permission for retail use was granted in 1995, subject to a Section 106 agreement. The land was sold back to the original owner by private treaty in 1996 for £500,000. Immediately after that sale, the original owner sold the property on to the "major landowner", who had previously expressed an interest, for £510,000.

Specific Issues Arising

1. Interestingly, this case highlights the rigour with which this government department considers the Rules. In this instance, it was agreed, and indeed argued to the original owner, that the Rules did not apply, and yet for the sake of probity, they chose to deal with the original owner under a “special purchaser” decision. The prior sale back created a precedent overriding any requirement to place the land on the open market.
2. A number of technical issues arose in the sale. Firstly the decision not to use a clawback agreement, even though the department were aware of the interest of a third party. And, secondly, that even though they were aware that a “back to back” sale might occur, they made no attempt to alter the sale price. As it was, the original owner probably made £10,000 (2%) from selling the property on immediately.
3. Once again, well determined systems ensured that the Rules were considered fully. Had the Rules been followed strictly, the land need not have been offered back.

General issues arising in case studies 4- 6

Cases 4-6 relate to disposals by one government department. To avoid duplication, general issues relating to these cases are raised below:

1. The department concerned had a very clear and well-established procedure relating to the Rules.
2. Land acquired by compulsory purchase was predominantly agricultural land required for the improvement of farms, or for the establishment or expansion of experimental farms. The majority of such purchases took place between the end of the Second World War and the mid 1950s.
3. Guidance on land disposals relies on Annex 32.1 to Chapter 32 of Government Accounting and the Crichel Down Rules. As soon as a sale is contemplated research is carried out into the circumstances of acquisition and a case submitted to the Head of the Division recommending whether or not offer-back should apply.
4. In all the case studies the properties in question were offered back to the former owner, where appropriate, as soon as the land was declared surplus to the purposes for which it was acquired.
5. The case files were well maintained and, even where the original purchase was 40 years previous, it was possible to trace the original owners and determine the background of the case. Occasionally it was impossible to determine whether the original purchase was by compulsory acquisition (or under threat of CPO). In such cases, the assumption was made that it was compulsory acquired unless the original owner (or successor), once traced, indicated otherwise.
6. The process to trace the former owners or their successors appeared to be very thorough and diligent.
7. The department has formal written guidance on the procedure to follow for disposals of surplus land. The system is overseen by a member of staff with an in-depth knowledge of the Rules. Other staff members are furnished with the "aide memoire".
8. When the property is offered back to a former owner or successor, normally no restrictive covenants, clawback or other onerous conditions are applied, although internal regulations do not preclude their use in theory.
9. The Rules are deemed not to apply where land is needed by another department; where there is a government decision to dispose of to local authority or other body with compulsory purchase powers; small areas of agricultural land with no satisfactory agricultural use and sites which consist partly of where there has been a material change in the use of the character of the land from that which it was acquired.

Government agencies and non departmental public bodies (NDPBs)

Case study 7 - land for road extension – residential property

Background

The property comprises of a three bedroom, semi-detached dwelling house and garden. It was acquired by the Highways Agency in February 1995 as part of the scheme for the then proposed relief road. The property was purchased under blight notice procedures under the Town and Country Planning Act 1990, in advance of a Compulsory Purchase Order.

Procedures

The government announced the abandonment of the relief road in November 1995, only 8 months after the original purchase. The Highways Agency had previously used a checklist for disposal procedure that included “offer back”. However, the staff involved in the property management section were all well experienced in the necessary procedure and the system was followed automatically through experience and custom.

The original owner was contacted via the original solicitor (who had acted for a number of the property owners at the time). The price for the proposed offer back was determined by the District Valuer (DV) at £50,000. In mid 1996 the DV contacted the government agency to confirm the position regarding the offer back of the property to the previous owner. The former owner declined to buy back the property. It was later sold to a local Housing Association.

Specific Issues Arising

1. This was a fairly standard case.
2. The agency staff involved (all of whom are administrative) have a very well established procedure for such cases. The team is only five strong and thus the need for a formal system has been superseded by custom and practice. The team were well aware of their requirements under the Rules.
3. Internal procedures ensured that all property was offered back to the former owners via the DV, who acts as authorised agent for the Highways Agency. The DV was responsible for all contact with the former owner, including agreeing price where appropriate.
4. This case confirms evidence from the quantitative analysis of the survey results, that single residential disposals are generally simpler and, hence, more likely to be offered back to former owners. As with this case, few such owners repurchase their former home.

Case study 8 - disposal of a disused pumping station and cottages

Background

This case relates to the disposal of a former pumping station and two workers cottages by the former National Rivers Authority. The properties were built in 1844 and modernised in the 1940s by a private estate trust to regulate the water table within the estate and on adjoining land. The properties are surrounded by the estate and were managed by the trust between 1840 and 1974, when they were acquired by a River Board from a successor trust, who at that time were holding the estate. The River Board acquired the properties in 1974 by agreement, backed by statutory compulsory purchase powers; ownership passed to the National Rivers Authority when they took over responsibility for land drainage in the area.

In the 1974 conveyance, a limited right of way was given over estate land to the authority, with a covenant providing access rights restricted to use until "such time as the authority shall cease to have a requirement for the property". The conveyance also allowed for the construction of new pumping works as required. We are advised by the Lands Agent for the Estate that the acquisition of the land was part of a larger land deal, involving the acquisition of land for major water course improvements, which had advantages to the estate. The estate were also relieved of the responsibility for water table management

The responsibility for and ownership of the pumping station and houses passed firstly to the River Board in 1974, the NRA (an NDPB) in 1990 and, subsequently, to the Environment Agency (another NDPB) in 1996.

Procedures

In 1991, a new electrical pumping station was built and the former pumping station and houses were surplus to requirements. The elderly widow of a former employee of the River Board was in occupation of one of the houses, but the other was empty. The NRA examined the possibility of obtaining planning permission for a change of use and conversion of the building to three dwellings to maximise the value before sale on the open market. It became apparent early in the discussions and consideration of the title deeds that the site could not be offered on the open market without the removal of the access restriction on the site. At the same time, the tenant was rehoused by the local authority in sheltered accommodation.

The former NRA and, now, the Environment Agency do not appear to have formal procedures for declaring land surplus, although there is clear guidance in the Treasury Rules that the disposal of surplus properties must be at best price. The NRA held discussions with the second trust, who had bought the estate in 1976, about the possibility of the removal of the restriction and had agreed a price with them. The trust subsequently changed its mind and progressed negotiations to buy back the properties.

Independent valuations were obtained by both parties for the open market value of the properties, subject to the access restrictions. There was a substantial difference in valuation between the two parties. The NRA's valuation report was prepared by the District Valuer (DV) in October 1993 and was to be used in negotiations with the trust and for the purposes of preparing the formal internal disposal report. This indicated a value range of between £110,000 and £130,000 after making an estimated allowance for the cost of acquiring "unrestricted " and assignable access track rights. The estates manager from the NRA, who now works for the Environment Agency, felt that the valuation prepared by the DV was too high, given the lack of access rights. He also did not feel that the restriction would be removed by the Lands Tribunal, given that the estate owned large tracts of surrounding land, and that the open market value would be set by what the only realistic purchaser, the trust, would be willing to pay. As the property was surrounded by estate land, which forms one of the most valuable coursing estates in the country, they would be willing to pay a sum to maintain the estate's integrity. The trust obtained an independent open market valuation of £60,000 for the properties and offered £70,000 to repurchase the land.

The DV advised the NRA that the offer by the trust was neither realistic nor equated to a reasonable open market value, despite the special purchaser situation. He felt that the purchasers did actually wish to acquire the properties, and could only do so at a price which was acceptable to the

association/agency. The NRA obtained an independent valuation, negotiations proceeded and the site was acquired back by the trust in 1994 for £70,000. Delay in disposal was caused by the problems of demonstrating that best price had been obtained for the purposes of Treasury Rules.

The NRA were alerted to the need to offer back which was implied by the access restriction, and the operation of the Rules themselves was not considered to be of paramount importance, given the restriction.

Specific Issues Arising

1. The reorganisations in the River Board, the NRA and the Environment Agency and the resultant changes in responsibility for the properties did not result in the loss of files and vital papers in this case. This was probably assisted by the continuing responsibility of staff transferred to the new NDPBs.
2. None of the parties had considered that this may have been a Rules case, until quite late in the negotiations.
3. The DV considers that there should be provision in the Rules for the valuations to be independently determined by a third party, which could include the DV.
4. The key to the strength of the negotiating position of the trust was the access restriction in the original conveyance. Without this, the disposal would have been subject to normal Rules procedures, with limited negotiations with former owners. The properties would have been offered on the open market to determine their value and demonstrate that best price had been achieved.
5. The tenant was probably a "sitting tenant" under the Rules, and the property could have been offered to her under normal Rules procedures, although she indicated she did not want to purchase. She was re-housed by the Local Authority at the request of the NRA, thereby giving vacant possession.
6. The DV thinks the NRA could have tried to negotiate the release from the restriction covenant or possibly referred the matter to the Lands Tribunal. This may have allowed them to sell the property on the open market rather than to the former owner. The Environment Agency does not believe this was a feasible or realistic option.
7. Market value was particularly difficult to estimate in this property and all parties referred to the problem of a lack of arbitration and third party referral on the issues of offer back and valuation.

Local Authorities

Case study 9 - local authority - operational land and buildings - playing field

Background

The property comprises part of a former playing field adjoining a primary school on the urban/rural fringe of a small town. The area of approximately 1Ha is no longer used by the school, but leased to the local Council and sub-let to a local football club. The land is level and surrounded on three sides by open space and on the fourth by the school.

The site was acquired by the local authority in a conveyance dated 1975. It was not clear from the records whether compulsory acquisition powers (CPO) were used. It is likely that the purchase would have been authorised (or under the threat of CPO) by the Education Acts.

Procedures

In April 1981, it was decided that school numbers no longer supported the then required playing field allocation. An area of approximately 1Ha was declared surplus. An internal report stated that under Section 123 of the Local Government Act *"the disposal of the land should be for a consideration not less than the best that can reasonably be obtained"* (sic). However, at that time, it was decided to let the land to the local borough council for recreational (playing field) use.

In 1994, the local authority was contacted by the original owner indicating that it was "his right" to be offered back the land under the Rules. The local authority considered his request and, as the planners would not consider a change of use from "playing fields" to residential at this juncture, it was decided to offer the land back for "playing field use", subject to a clawback agreement in the sale, should residential value be obtained at a later date.

In early 1995, a letter was sent to the former owner indicating that the local authority were willing to offer the land back in accordance with the Rules. A later letter, sent by recorded delivery, included time limits for the deal to be agreed and completed. The offer letter indicated an asking price of £20,000 for playing field use, but with a clawback agreement at 60% of net development value (as defined), if residential value was achieved with a 5-year period from sale. This clawback was to be reduced by 5% for every subsequent 5-year period thereafter.

After protracted negotiations (many by telephone and not fully recorded on the file), it was eventually agreed that the cash consideration should be £15,000. However, in 1996, the former owner broke off all contact with the local authority. It was assumed that he no longer wished to purchase the site, as he was then outside the time limits noted in heads of terms.

Specific Issues Arising

1. This was an odd case. The land was first declared surplus in 1981 and yet no attempt was made then to offer the land back to the former owner. The original owner only contacted the local authority some 13 years later to invoke his perceived right to purchase under the Rules. At that point, the internal procedures did consider the validity of his claim, but there appeared to be few internal procedures to examine the need to offer back under the Rules prior to this contact.
2. From that point onwards, the local authority appears to have acted prudently and knowledgeably in its negotiations. The decision to offer the site on the open market was based on a clawback clause, in case a more favourable planning permission was forthcoming after the sale (although it could be argued that the playing field valuation already includes some hope value). Although the sale to the former owner did not progress, he appeared to be happy with such a clause and although the negotiations were protracted, he did not argue against any of the principal heads of terms.
3. The local authority have no checklist or written procedures for disposal of land. The requirements of the Rules are understood, but not rigidly applied.

Case study 10 - local authority highways scheme - single dwelling house

Background

This case relates to the acquisition and subsequent disposal of a single house and large garden in connection with a local authority road scheme. The property was acquired under the Highways Acts from the former owners, by a former metropolitan county council. The site was acquired in 1979 in anticipation of it being needed for the construction of a new roundabout for town centre link road proposals and was held by the highways department.

Early in 1980, the road scheme was redesigned, the land was no longer required for the highways scheme and was "surplus". At this stage there was no formal decision that the property was surplus and, as a result, it was not offered back to the former owners. It continued to be held by the highways committee and was used to house council tenants from the waiting list. There is no information on any file as to why the property was not offered back to the former owners at this stage. The case officer dealing with the subsequent disposal of the property cannot ascertain why the land was not offered back when the scheme was redesigned in early 1980.

Following local government reorganisation in 1984, the property ownership and the relevant files were transferred from the highways department of the metropolitan county council to the highways department of its successor authority, a metropolitan borough council. Whilst in their ownership, the property to an extent "slipped through the net", as it continued to be used for housing tenants from the council's waiting list and was held by the highways and not the housing department. There was no contact with the former owners during the 18 years that the property was in public ownership.

Procedures

In 1996 the then council tenant vacated the property and a report was prepared by the council's estates department, assessing the cost of outstanding repairs and refurbishment required to update, modernise and relet the property. Only when that report indicated that the cost of the repairs made the letting of the property uneconomic was the decision made under the Local Government Act 1972 to declare the land surplus. The decision was made in July 1997 that the property was no longer required and it was formally declared surplus in September, following a report to committee.

During July to September, sales particulars were prepared for the property for an open market sale and the site was offered in two lots to maximise value. At this stage, a neighbouring property contacted a local councillor and questions were raised as to whether the land should be offered back to the former owners. The councillor interest, instigated by a member of the public, prompted the borough council to consider the Crichel Down Rules.

Prior to this case, the council's estates department had no knowledge of and had not considered the Rules. They did not have written guidance on disposals or considering the Rules and there were no copies of the Rules held by the estates department. This case prompted them to contact their in-house legal team to obtain guidance on the following matters:

- what the Rules were;
- whether they applied to this particular case;
- application and interpretation of the Rules;
- the procedures which needed to be followed;
- the relevant timescales.

The legal advice they received indicated that the property should be offered back to the former owner and this was done by making contact with the solicitor whose name appeared on the acquisition file as having acted for the former owners on the original compulsory purchase. In view of the 20 years which had elapsed between the acquisition and the disposal and a number of corporate changes in the legal firm, the council had difficulty tracing the solicitor who had originally been instructed. The council did not try to make direct contact with any of the former owners or ascertain any successors under their will. The tracing of the former owners and their successors was left in the hands of the solicitor who had acted for the former owner.

The former owner died in March 1993 and her husband died in 1994. There are two clear successors under the will, namely nieces of the deceased. The council wrote to the solicitors in November 1997, offering the property to the executors at open market value (£52,500) and asking for an indication whether they wished to purchase by 5 January. The solicitor responded asking for the deadline to be extended to 5 February, as he was having difficulty tracing the former owners. From the correspondence between the council and the solicitor, it is impossible to ascertain whether the solicitor actually made contact with the former owners or their successors. When no further correspondence was received from the solicitor (no further chasing letters were sent), the property was offered on the open market in May 1998. After one possible sale fell through, the property was finally sold by private treaty in October 1999 at open market value.

Specific Issues Arising

1. The property was not offered back to the former owner when it was originally surplus to the purposes for which it was acquired. It seems likely that at this point, the Rules would have applied, albeit in discretionary fashion.
2. Although local government reorganisation meant that the acquiring authority no longer existed, well maintained files which were transferred in their entirety to the correct authority enabled the former owners' advisors to be easily traced and the background of the case clearly understood.
3. The local authority did not take it upon themselves to trace the former owners or their successors, but passed this responsibility to the former owner's solicitors. As the former owners were dead, there was no obligation on the solicitors or incentive for them to spend time and effort identifying or contacting the beneficiaries under the former owner's will. Clearer guidance should be issued with the Rules on what are considered "reasonable" steps to trace the former owner or successors under a will. Is the transfer of responsibility to the former owners solicitors an acceptable practice?
4. As a result of this case, the council have revised their disposals procedures in relation to the disposal of residential properties (but not development sites or other properties). All residential properties offered for sale are now offered back to the former owners. When any house is declared surplus, the estate records are checked to discover when and why the property was purchased. If the Rules apply, contact is made with the legal advisors to the former owners and the property is offered back to the former owners through them before the site is placed on the open market. The offer price is the **Open Market Value**. At the same time, the site is prepared for sale on the open market and property particulars are drawn up with an asking price equal to the offer price.
5. The council officers and members consider that it would be both inequitable and outside the spirit of the Rules to apply restrictive covenants, clawback or other onerous conditions when the property is offered back to a former owner or successor.
6. Although it was possible that the sale of the site as two lots could achieve more than sale as a whole, again it was decided to offer the site back to the former owners, for the reasons set out above.
7. The Rules are not applied to development sites and areas affected by redevelopment schemes because the council consider that these are types of properties where there has been a material change in the character of the land from when it was acquired. They are also not applied to sale of small parcels of land where a request to purchase is made by adjoining owners. The council have no formal or written guidance on these adopted disposal procedures.
8. The system works because the three people in the estates department who deal with disposals now have a working knowledge of the Rules.

Health Sector

Case study 11 - operational land and buildings - community hospital scheme

Background

This case relates to the acquisition and subsequent disposal of land in connection with a proposed community hospital scheme. In 1986, the department approached the former owners (the local authority and a house-builder) to purchase land (2.65 and 5.6 acres respectively) from them. The house-builder, who was interested in developing this and adjacent land for housing, took advice from his solicitors at the time about the proposed purchase and it was suggested that he should sell to the government department as they could compulsorily acquire his land if he refused.

Procedures

During 1988, as part of the roll-forward of the department's Five Year Development Programme for the area, the proposed community hospital was dropped due to financial cutbacks in their capital programme. By November 1990, the department had officially declared the site surplus and had instructed local estate agents and solicitors to dispose of the site for residential development. The department did not consider that the obligation under the Rules applied because they had not purchased the land by compulsory purchase or, they thought, under the threat of compulsion.

Between 1991 and 1995 a relatively complex web of negotiations took place between the department, the house-builder, solicitors representing the two parties, and the estate agents marketing the site. During this period, the house-builder sought clarification from the department about his rights under the Rules. At different times he was informed that the Rules did not apply either:

- i) because the land had been purchased from two separate owners and there was a risk of a fragmented sale (in January 1991); or
- ii) that the land was not purchased under the threat or in pursuance of a CPO (in August 1994).

In response to the first argument, the house-builder secured the agreement of the local authority to form a consortium of former owners, although it appears that this information was not passed on to the department by their estate agents. The view of the house-builder on the second point was that the acquisition of the land in 1986 had been under the very clear threat of a CPO.

Irrespective of these disagreements, negotiations on an appropriate price continued between the agents and the builders. However, in late November 1994, another bidder entered the scene. From this time onwards the department and their agents conducted a competitive bidding process with the two potential purchasers. The offers for the site rose from £1.082m in November 1994 to £1.35m a year later.

It was during this period that the obligations under the Rules received serious attention from all concerned. The two reasons given earlier for not offering the land back were stated or elaborated and, when the government department were made aware of the consortium of former owners, they questioned the evidence of this until a minute of the Council's Policy and Resources was produced. The department sought the advice of Counsel and were informed that, "*the ... Rules do not apply although special consideration¹ should be given to the house-builder's bid*" and that neither of the two bidders would be able to commence and pursue judicial review proceedings (which both had threatened). The department then followed this advice and, having given '*special consideration*' to an offer of £1.25m from the former owners, decided to sell the site by competitive tender.

The former owners then initiated judicial review proceedings which took place in November 1995. In his determination, the Judge was clearly not impressed with the arguments put by the department's Counsel (who had provided the advice on which the final decision was made) or the actions of the department and their estate agents. The department reluctantly gave up their argument that the land had originally been purchased without the threat of compulsory purchase and, therefore, the

¹ Although the general approach to the expression 'special consideration' was developed by Counsel, no specific meaning of what this meant in practice was given.

case rested on the interpretation of Rule 14(7) and the '*special consideration*' which a consortium of former owners should receive.

The judge, overviewed the evidence presented and gave his interpretation of the Rules by saying:

“As it seems to me, there is an exception within the exception in favour of a consortium of former owners and the special consideration which they are to be awarded. If a balance is to be struck between the interests of the disposing department on the one hand, and those former owners on the other, they, having formed a consortium, become in the position of a single former owner, and that is the special consideration to which they are entitled.”

Given that consideration, the former owners should be offered their land back under the procedure laid down in Rule 18, rather than through a process of competitive tendering.

Specific Issues Arising

1. This case provides an interesting example of a less than perfect interpretation and application of the Rules by a department who received inadequate legal advice from Counsel. This was compounded in the early stages by poor communication between the department and their legal and property advisers. Once the assumption was made that the Rules did not apply, the department was then on the defensive, seeking to formally explain the reasons why that assumption was correct. The judicial review came firmly down against that reasoning and the legal advice given to the department.
2. The key issue on which the case rested was the meaning of the '*special consideration*' to be given to a consortium of former owners under Rule 14(7). This was settled by the judicial review where it was stated that it means that a consortium should be treated as if they are one single owner.
3. Another confusion apparent in this case is over the defining features of '*the threat of compulsion*'. In the case of this department, which has purchased much of its land without resort to their (Secretary of State's) powers of compulsory purchase, this appears to be potentially a widespread problem. Our surveys of organisations indicate that many believe that the Rules apply *only* where land has been compulsorily purchased.
4. Some of the evident confusion may be due to the lack of any clear guidance in the department's estate code about the procedures and significance of the Rules. Although they are mentioned in a number of contexts, the consistent advice is to take legal advice on them. Given the experience of the department in this case, this is not a very reassuring line of action!