

# Guidance for S17 applications and S18 appeals

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## CERTIFICATES OF APPROPRIATE ALTERNATIVE DEVELOPMENT UNDER PART III OF LAND COMPENSATION ACT 1961

### GUIDANCE ON CONSIDERATIONS RELEVANT TO APPLICATIONS UNDER SECTION 17 AND APPEALS UNDER SECTION 18

#### Definition

1. In this leaflet, we have used the term "the decision maker". We mean by this the local planning authority (LPA) faced with an application for a certificate of appropriate alternative development under section 17 of the 1961 Act or, where there is an appeal under section 18, the First Secretary of State.

#### Purpose of the certificate procedure and special features

2. The certificate procedure in Part III of the 1961 Act has only one purpose-to provide valuers and (ultimately) the Lands Tribunal with guidance on the development value, if any, of land that is being acquired by an authority with compulsory purchase powers. For this reason, the considerations for the decision maker differ in a number of ways from those relevant to ordinary planning applications and planning appeals. The main points are-
  - Applications and appeals must be decided against the background of a hypothetical "no scheme world". This means that the decision maker may not be able to rely on the development plan and other planning policies to settle the matter. He may have to disregard some policies.
  - The decision maker must not appraise applications or appeals against the planning considerations that are relevant at the date of his decision. Instead he must consider the situation as it stood at the date when the acquisition process began.

## Disregarding the acquisition and the underlying scheme (the "no scheme world")

3. Section 17(4) of the 1961 Act requires the decision maker to certify the alternative development (if any) for which planning permission would have been granted "in respect of the land in question, if it were not proposed to be acquired by an authority possessing compulsory purchase powers". For this reason, the purpose for which land is being acquired must always be disregarded, as must any other purpose involving public acquisition. It is not sufficient to ignore the fact of acquisition-the underlying public purpose of the scheme must also be disregarded. This principle was settled by the House of Lords in *Grampian Regional Council and others -v- Secretary of State for Scotland and others* [1983] 1 WLR 1340.
4. Section 17(7) of the 1961 Act provides that a certificate may not be refused for a particular class of development solely on the grounds that it would be contrary to the relevant development plan. The purpose of this provision is to avoid the whole purpose of the certificate system being defeated, where land is allocated in the development plan for the use for which it is being acquired. It follows that the decision maker must ignore development plan policies with no function beyond the acquisition scheme-for example, policies that earmark land for a road or school. But he may take account of broader policies-for example, Green Belts and countryside protection policies-if the classes of alternative development suggested by the applicant or appellant would have been objectionable in the "no scheme world".

## Relevant date for appraisal of applications and appeals

5. There are three main issues in reaching a decision on any application or appeal-
  - the physical considerations-that is, the state of the appeal land and the area in which it is situated;

- the current and reasonably foreseeable planning policies; and
- identifying and disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.

Following the judgement of the House of Lords in *Fletcher Estates (Harlescott) Ltd -v- the Secretary of State for the Environment and the Secretary of State for Transport and The Executors of J V Longmore -v- the Secretary of State for the Environment and the Secretary of State for Transport* [Times Law Report, 23 February 2000], the first Secretary of State takes the view that all these issues must be considered at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers. That event is specified in section 22(2) of the 1961 Act, so the relevant date will always be one of the following-

- a. acquisition by private or hybrid Parliamentary Bill-the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament; or
- b. acquisition by compulsory purchase order-the date of notice of making of the order (or date of publication of the draft compulsory purchase order, if the acquiring authority is a Government Department); or
- c. acquisition by blight notice or a purchase notice-the date on which "notice to treat" is deemed to have been served; or
- d. acquisition by agreement- the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

For the third issue the consequences of the scheme underlying the acquisition should be discounted as they stood at the section 22(2) date, as if the scheme had been cancelled at that date. And if the method of acquisition changes during the life of the scheme, the relevant date is that of the earliest section 22(2)(a) event.