

## **Covid-19: taking possession under compulsory purchase powers: is there a stay on executing a possession warrant?**

Where an acquiring authority makes a general vesting declaration, and the legal title vests with the authority, or it has served a notice to treat and a notice of entry, it is entitled to take possession of the subject land. If the owner refuses consent to enter, the authority may take possession without the use of force (if the land is unoccupied or the occupier offers no resistance): *Loosemore v Tiverton & N Devon Rly Co* [1884]. Otherwise the authority may issue a warrant to the sheriff or the enforcement officer appointed under para 3A of schedule 7 to the Courts Act 2003, who is then authorised to take possession of the land using sufficient force to enable this to be achieved: section 13 of the Compulsory Purchase Act 1965.

By Practice Direction 51Z, made under rule 51.2 of the Civil Procedure Rules with Covid-19 in mind, all proceedings seeking to enforce, inter alia, an order for possession by a warrant are stayed for a period of 90 days from 2 April 2020. Enforcing a warrant to take possession issued by an acquiring authority is not the same as enforcing an order for possession by a warrant. The latter comes about where a court order for possession is not complied with, and a warrant is then issued following an application to the court on form N325. It follows that acquiring authorities under compulsory purchase and development consent orders are not inhibited from enforcing their statutory right to take possession of land. However, the Ministry of Housing, Communities & Local Government's *Covid-19 Compulsory Purchase Guidance* does advise that acquiring authorities should act responsibly in relation to both business and residential claimants, particularly in terms of the timing of vesting orders and compensation. Residents should not be unduly evicted during this period in line with the Government's wider guidance on evictions.

One important aspect of taking possession of land, the subject of compulsory acquisition, is that the date of possession is, in most cases, the valuation date for the purpose of assessing compensation. It seems likely that a consequence of the Covid-19 pandemic is an economic recession and a possible fall in property values in the short to medium term. Acquiring authorities should therefore take careful advice from their valuers as to whether there is any advantage in waiting to take steps to trigger possession dates, and therefore valuation dates, if such will minimise the compensation bill. Whilst claimants might think they will lose out by such tactics, if property values do fall, then they will presumably be buying any replacement properties at comparably lower prices. Claimants should not be worse off. Much more serious to affected property owners, if there is a fall in property values, is the possible abandonment of a compulsory purchase or development consent order because the underlying scheme has become uneconomic. Careful management of the expectations of such owners is required to safeguard their interests in such circumstances.

**Barry Denyer-Green**

