

## **Compulsory purchase of land: How far can NAMA go?**

**Niall Coleman, The Sunday Business Post, 20<sup>th</sup> December 2009**

One of the National Asset Management Agency's (NAMA's) functions is to “*take all steps necessary or expedient to protect, enhance or realise the value of acquired bank assets ...*”. In achieving this aim, not only can NAMA acquire land and buildings charged to the participating banks but it can also consider acquiring land which is not charged to participating banks. Chapter 5 of Part 9 of the National Asset Management Agency Act 2009 gives very wide compulsory acquisition powers to NAMA. Effectively, NAMA can compulsorily acquire lands if NAMA is of the opinion that it is necessary to do so for the following reasons:

- (a) To enable NAMA to deal expeditiously with the assets acquired by it and to protect or otherwise enhance the value of those assets, in the interests of the State.
- (b) To enable buildings on charged land to be used or enjoyed for the purposes for which they were developed. The meaning here is very unclear. Could adjoining land be acquired for use as a surface car park for a constructed building with insufficient car parking for example?
- (c) To enable NAMA to grant a prudent and experienced purchaser good and marketable title to charged land but only if the land to be compulsorily acquired is only of material benefit to the owner in so far as it affects the use or development of charged lands. This appears to be a sweeper clause, in an effort to give NAMA as wide a power as possible.

In addition to the above powers NAMA may also compulsorily acquire land where:

- (i) That land is owned by a person who is a debtor, associated debtor, guarantor or surety in relation to an acquired bank asset and that person is in material default of his obligations to NAMA or a NAMA group entity and that default has caused or is likely to cause NAMA or the NAMA group entity substantial loss.
- (ii) Land or buildings should have formed part of the security but due to an error or omission was left out.
- (iii) A debtor, associated debtor, guarantor or surety in relation to an acquired bank asset is using or intends to use his ownership of land to materially impede the sale of that land at a fair and reasonable price by NAMA. This most likely refers to ransom strips (usually a strip of land retained by a person to control the development of adjoining lands).

NAMA can only compulsorily acquire land if it has made a reasonable attempt to acquire the land by agreement. Unfortunately the Act does not define what reasonable attempt is.

NAMA might consider a price reasonable whereas the owner of the land might not be of the same view.

If NAMA wants to compulsorily acquire land it has to apply to the High Court for an order, publish and serve a notice of its application for a court order on every person who appears to NAMA to have an estate or interest in the land concerned, so far as it is reasonably practical to ascertain these people. A person claiming an estate or interest of land in relation to which a notice has been published (interested persons) can object to the order. There are strict timescales for interested persons to lodge objections with the High Court to the making of acquisition orders in relation to such land. The rules governing how compensation is arrived at are found in the Acquisition of Land (Assessment of Compensation) Act 1919. This Act coupled with the Land Clauses Consolidation Act 1845 determines how the compensation is to be arrived at if land is compulsorily acquired.

Only time will tell as to whether the drafting of the compulsory acquisition rights in favour of NAMA as widely as they have been drafted will cause more problems than it solves. In the light of the property rights enshrined in the Constitution it will be interesting to see how the courts will look at NAMA compulsorily acquiring land from somebody who has no involvement with the NAMA process but, for example, owns land necessary to enable NAMA deal expeditiously with assets acquired by it and to protect or enhance the value of those assets, in the interests of the State.

In the 1994 case *Heaney v. Ireland*, Mr. Justice Costello was of the view that where a constitutionally protected right is being overridden it must be reasonably connected to the objective and not be arbitrary, unfair or based on irrational considerations. It must impair the right as little as possible and be proportionate to the objective.

On the other hand, *In the matter of Article 26 of the Constitution and in the matter of the Health (Amendment) (No. 2) Bill 2004* the Supreme Court in 2005 appears to have been of the view that constitutional rights may be looked at differently in the case of “extreme financial crisis”.