

Introduction and overview

In the UK, most local authorities, other similar public bodies and statutory undertakers (providing utilities services) may acquire land and interests in property by negotiated agreement when such land is required by them to enable them to carry out their statutory functions. Acquisition by agreement is always favoured, but when this is not practicable or possible (for a variety of reasons, such as, for instance, refusal to sell; unknown ownership of land; or impossibility of agreement as to price) then powers of compulsory purchase will often be available.

Government ministers consider compulsory purchase powers to be an important tool for assembling the land needed to help deliver social and economic change, contributing towards urban and rural regeneration, revitalising communities, promoting businesses and, ultimately, improving quality of life. However, because the acquisition of private land for public purposes raises many sensitive issues and requires careful consideration and justification, there are strict statutory procedures governing the exercise of powers of compulsory purchase.

Bodies having powers of compulsory purchase may make a compulsory purchase order ("CPO"), but the powers may not be exercised until that order has been confirmed by a government minister, who must be satisfied that the powers are to be used for their proper purpose and that there is a compelling case in the public interest justifying their exercise. The procedure also involves public consultation,

which may include a public inquiry. The nature of compulsory purchase procedure is such that, for projects involving compulsory purchase, there is often a considerable time between their inception and their implementation.

The following sections of this note set out the sequential stages of compulsory purchase procedure. They are intended to provide an overview and a brief guide only. Should you have any queries regarding the content of this note, or require more detailed information regarding any stage of the procedure, please do contact us. Our details are provided at the end of this note.

Formulation

The acquisition of land – by agreement or by compulsory purchase – is likely to arise in the context of a project for which the promoter of the project ("the acquiring authority") either has direct responsibility (or is empowered to enable others to carry out) and for which it has been given the statutory power to purchase land compulsorily, if that proves necessary.

The exact extent of the land which is to be acquired will therefore be identified with reference to the demands of the project. Once the required land has been identified, the acquiring authority should investigate the ownership and occupation of that land, and endeavour to begin informal negotiations with as many as possible of the persons having ownership of, or an interest in, or rights over, that land. At the same time, the acquiring authority may begin preparations for a CPO, as

a contingency measure, should negotiation by agreement fail. Preparing a CPO in parallel with carrying out negotiations to acquire land by agreement is considered by the government to be a valid strategic tool, giving momentum and focus to the process of land acquisition and ensuring the viability of the project.

Resolution

Having established the boundary of the land required for the proposed CPO and provisionally determined the land ownership and interests within it, the acquiring authority will be in a position to commence the formal CPO procedure. In order to do so, it is necessary for the acquiring authority to make a formal decision to exercise its powers of compulsory purchase and make a CPO. For a public authority, this is normally a decision or "resolution" of the full Council, or, if the Council has delegated decisions of this kind, it will be a resolution of either a committee, the executive, cabinet or mayor, as the case may be. For a company, it will normally be a decision of the board of directors. The resolution or decision is the root of the exercise of the powers; it authorises the acquiring authority to proceed with the making of a CPO.

The resolution must define the land to be acquired by reference to a plan, state the purpose for which the land is required, and identify the statutory provisions under which the CPO is to be made. It is also helpful if the resolution includes a request for the delegated powers for committees or individuals to take all necessary steps to progress and implement the CPO.

The decision making body should be provided with a report setting out supplementary information covering, for example, the justification for the exercise of the powers of compulsory acquisition, the financial implications of proceeding with a CPO, the sources of any funding for the project, the planning position, the need for any associated consents and a summary of any consultations conducted or representations received.

Referencing

In order to make the CPO, the acquiring authority needs not only to have identified the land required, but also to have obtained as much information as possible about the property interests which will be affected by the CPO. "Referencing" is the name given to the collection and recording of detailed information on land ownership and occupation necessary for the making of the CPO. This exercise is normally carried out after the resolution and builds on the preliminary information gathered previously for the commencement of informal negotiations for the purchase of the land.

The purpose of the referencing exercise is to produce a schedule of ownerships and a CPO map that will form part of the statutory documentation comprising the CPO. Acquiring authorities have a statutory power to "requisition", or require disclosure of, information on the ownership and occupation of the land and the name and address of any person known to hold an interest in the land. Failure to provide information, or making false or reckless statements in response to the acquiring authority's requisition for information, is a criminal offence.

Order (CPO)

The order itself is a two-part document, the form of which is prescribed by statute. The first part sets out the statutory source(s) of the power of compulsory purchase and the purpose(s) for which the power is to be exercised. The second part of the order takes the form of a schedule which includes details of all the persons with an interest in land which is affected by the CPO. These details will have been revealed by the referencing research and requisitions for information. The land to be acquired is described in the CPO by reference to the schedule and also to the CPO map.

In addition to the acquisition of land under a CPO, an acquiring authority may also acquire "new rights". These are rights over land which did not exist prior to the making of the CPO, and they may be either permanent

or temporary in nature. Examples of such new rights might be a crane oversailing right, necessary for the construction of the project, or the right to enter onto land and carry out accommodation or mitigation works associated with the project. The CPO map shows, on a plot by plot basis, the extent of land and new rights included in the CPO. The CPO is "made" when the finalised documentation (order, schedule and map) is sealed, signed and dated. Once the CPO has been made, it must be published. This involves serving notice of the making of the CPO (in a form prescribed by statute) on all persons named in the schedule to the order; posting notices on the land affected by the CPO; and publishing a notice in one or more local newspapers on two successive weeks. Once the CPO has been published, it should be submitted to the Secretary of State for confirmation. The order, schedule and map must be accompanied by a number of supporting documents, the most important of which is a "statement of reasons" setting out the acquiring authority's justification for making the CPO.

Objections

The publication of the CPO is followed by a period (being a minimum of 21 days) during which objections to the CPO proposals may be submitted to the Secretary of State in writing.

If no objections are received, and the Secretary of State is satisfied that the CPO should be confirmed, (s)he will either confirm the CPO, or return it to the acquiring authority accompanied by a notice allowing the acquiring authority to confirm the unopposed CPO itself.

If objections are received and not withdrawn, and relate either to the way in which the CPO has been promoted, or to the reasons for its justification (as opposed to objections limited to land compensation values) they will normally trigger a public local inquiry, which is likely to be held some time within the six months following publication of the CPO. It is also possible for the objections to be dealt with by way of written representations or an informal hearing, but in practice, these methods are rarely used.

Although all objectors have the right to be heard at inquiry, acquiring authorities should continue to negotiate with them following the making of the CPO, with a view to securing the withdrawal of objections and the acquisition of the land by agreement.

Some land, such as that owned by statutory undertakers or the Crown, is known as "special category land" and enjoys a degree of protection from compulsory purchase. If such land is included in a CPO, it may be necessary for the acquiring authority to offer to provide alternative land ("exchange land") in substitution for the land included in the CPO. Acquiring authorities should endeavour to begin negotiations with owners of special category land at the earliest possible opportunity, to secure agreement to the inclusion of their land in the CPO, if at all possible. The owners of special category land may make a representation to the Secretary of State objecting to the CPO. Such objections may prevent confirmation of the CPO unless the Secretary of State issues a certificate allowing the CPO to proceed. If this is not forthcoming, the CPO will be subject to "special parliamentary procedure", which involves consideration in both the House of Commons and the House of Lords.

Inquiry

A public local inquiry may last a few days or go on for several months, depending on the nature of the objections and the complexity of the scheme to which the CPO relates. The Inspector will hear evidence from the acquiring authority and the objectors and may also carry out a site visit. Once the inquiry has concluded, the Inspector submits a report to the Secretary of State, recommending either that the CPO be rejected; or confirmed; or confirmed with modifications. There may be an interval of weeks or even months between the conclusion of the inquiry and the issuing of the Inspector's report.

Decision

Following receipt of the Inspector's report, the Secretary of State will make a decision as to whether the CPO should be rejected, or confirmed (with or without modifications). The Secretary of State's decision often follows the Inspector's recommendation, but does not always do so.

If the Secretary of State decides to confirm the CPO, the acquiring authority must publish notice of its confirmation in the same way as it published notice of the making of the CPO (explained above). The date on which notice of the confirmation of the CPO is first published is the date on which the CPO becomes "live". For a period of six weeks following this date, the validity of the CPO may be challenged in the High Court. If no successful challenge is received, the CPO will remain valid and the powers of compulsory purchase may be exercised (i.e.

land acquisition may take place) at any time within a period of three years from the date on which notice of confirmation was first published.

Possession

If it has still not been possible to acquire the required land by negotiated agreement, then the CPO may be implemented and the power of compulsory purchase exercised. This is most commonly done in one or other of two ways: either by the execution by the acquiring authority of a general vesting declaration; or by the service of a notice to treat, followed by a notice of entry

A general vesting declaration (“GVD”) is a legal procedure used for acquiring land in connection with compulsory purchase. It enables the acquiring authority to make a declaration vesting ownership of the required land in itself. In effect, it gives the acquiring authority ownership of the land and the right to enter and take possession of the land. When the land vests in the acquiring authority, the previous owners’ interests in the land are converted into rights of compensation. Accordingly, from the vesting date, the acquiring authority will be liable to pay compensation and interest thereon. The GVD procedure does not require the co-operation or acquiescence of the landowner in transferring title.

Where a GVD is not used to acquire land pursuant to a CPO, or where a CPO includes interests which may not be acquired by GVD (such as some particular types of tenancy) the alternative acquisition procedure is by way of service of ‘notice to treat’, followed by service of ‘notice of entry’. A notice to treat is a written notice given by an acquiring authority to landowners affected by the CPO, to let them know that the acquiring authority intends to acquire the land and is willing to negotiate for possession of the land. Once a notice to treat has been served, the acquiring authority may also serve a notice of entry, which gives it the right to enter and take possession of the land not less than 14 days later.

The notice to treat and notice of entry procedure is useful where early possession of land is required and it is not immediately necessary to secure title, as this is dealt with at a later stage, by way of standard conveyancing procedure. In comparison with the GVD procedure (which needs to be set in motion no later than two months before the end of the validity period) the notice to treat and notice of entry procedure may be commenced later within the validity period

of the CPO, even within the final month of validity. A notice to treat is valid for three years after it is served (although there are exceptions to this rule).

Compensation

Any person who is dispossessed as a consequence of the exercise of compulsory purchase powers has a right to claim compensation of an interest in land. Compensation is assessed by reference to a valuation date, which is taken to be the earlier of either the date on which compensation is agreed; or the date on which possession is taken; or the last day of any Lands Tribunal hearing.

When assessing compensation, any increases or decreases in value, which can be said to be a direct consequence of the project underlying the CPO, must be disregarded. Compensation is usually assessed under four heads of claim: land taken; severance and injurious affection (where only part of a parcel of land is acquired); disturbance or any other matter not directly based on the value of the land; and a statutory loss payment (subject to qualification).. The dispossessed land owner may also claim repayment of professional fees incurred in connection with the disposal of land.

The assessment of compensation is undertaken in accordance with what is generally known as the “Compensation Code”, which is a collection of statutes and case law. There are also six statutory rules of valuation, five of which address the valuation of land, whilst the sixth relates to disturbance and other matters.

Disputes relating to the amount of compensation payable on the compulsory acquisition of land are determined by the Lands Tribunal. This is an expert tribunal both in relation to the valuation of land and in relation to matters of law.

CPO and Regeneration

When used with due care and consideration, powers of compulsory purchase may be an extremely powerful and effective tool, and may be vital to the delivery of many large scale regeneration projects. Our team has experience and expertise in this complex area of the law and relishes being involved in projects delivering social, economic and environmental regeneration.

Shoosmiths’ Planning and CPO Law Group advises both public and private sector clients on all aspects of compulsory purchase law. If you require further information in relation to any aspects of this briefing note, please do not hesitate to contact a member of our team.



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