

# Practical Tips on Compulsory Purchase or Acquisition and Compensation

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# COMPULSORY PURCHASE PROCESS: PRACTICAL TIPS

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# CPO- GETTING IT WRONG:



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# REFUSED CPO

- Challenge by way of Judicial Review CPR Part 54
- Time period is 3 months from decision not 6 weeks
- Powers of Court is to quash decision – Court may remit for inquiry/reconsideration e.g. LB Southwark case 2016/17

# CONFIRMED CPO

- s 23 and 24 of the Acquisition of Land Act 1981
- “any person aggrieved by” CPO “desires to question the validity” or “any provision” ss(1)
- NB 6 weeks from “date on which notice of the confirmation or making of the order is first published” no discretion

# Grounds & Powers s23 & 24

- S23(1) and s24(2)(a) “not empowered to be granted” or
- S24 (2) “court is satisfied that...(b) the interests of the applicant have been substantially prejudiced by any relevant requirement (as defined in section 23(3) above) not having been complied with”
- S24 (2) Quash CPO or “any provision contained therein” and ss(3) option to quash decision
- “any procedural or legal error” see Sullivan J in Powell ;
- inadequate reasons Gibbs ; Horada (Shepherds Bush TA) ;
- procedural unfairness Hibernian ; Grafton Group (UK);
- material considerations- including alternative sites Brown;  
Rhodes; costs justification (repair v rebuild) Eckersley

# CPO - GETTING IT RIGHT



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# THIS IS THE WAY...



# INTRODUCTION:

- Authorisation procedure enacted in the Acquisition of Land Act 1981 applies to most compulsory purchases
- Where ALA does not apply process and justification are similar.

- CA under Planning Act 2008 part of ‘one stop shop’ of Development Consent Order application process
- Where power to acquire specific land is conferred by a Private or Local Act, the legislative process (Standing Orders of the Houses of Parliament) will have required the authority promoting the Bill in Parliament.

# GOVERNMENT GUIDANCE:

- Detailed information and guidance  
"Guidance on compulsory purchase process and the Crichton Down Rules"  
(updated 2019)
- "Compulsory purchase system guidance"  
[updated Dec 21]
- Guide 1 = Procedure;
- Guides 2 – 4 = compensation (business; agric and residential owners/occupiers)

# GOVERNMENT GUIDANCE

- TWA schemes - see “Transport and Works Act orders: a brief guide and Transport and Works Act orders: good practice tips for applicants” (2013)
- DCOs Planning Act 2008: “Guidance related to procedures for the compulsory acquisition of land”

# ENABLING ACT/UNDERLYING SCHEME

## LAs

- LOCAL GOVT ACT 1972 (S121 ++ OR S125) [principal councils]
- TOWN AND COUNTRY PLANNING ACT 1990 (s226) [LPAs]
- HOUSING ACT 1985 and HOUSING ASSOCIATIONS ACT 1985
- LOCAL GOVT & HOUSING ACT 1989

- EDUCATION ACT 1996
- HIGHWAYS ACT 1980
- LISTED BUILDING ACT 1990
- Homes England – HOUSING & REGENERATION ACT 2008

# s226 1990 Act

- CPO Guidance [95-106] *“a positive tool to help [LPAs] to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist”*
- Described as a *“general power”* not to be used *“in place of other more appropriate enabling powers”*.
- S226 (1)(a) relates to facilitating *“the carrying out of development/re-development or improvement on or in relation to the land”* but requires s226(1A) one or more of 3 *“well being”* objectives be met

# s226 1990 Act

- s226 (1)(b) land "*required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated*" – one or other (a) or (b) - CPO Guidance [97] suggests "*potential scope... is broad. It is intended to be used primarily to acquire land which is **not** required for development, redevelopment or improvement, or as part of such a scheme*". As noted in PE [P226.08] alters meaning of words...
- S226 (3) land adjoining CPO required for the executing works for facilitating its development or use (



# S254 1990 Act

- S247 – SofS or HA stopping up or diversion order to enable development to be carried out [NB separate jurisdiction to planning application]
- S254 of 1990 Act – power to acquire related to a highway order (under 1990 Act)

# Highways Act 1980 Pt XII

- S 239 HA powers to acquire land for construction of roads; improvement of highways; or improvement or development of frontages to a highway or of adjacent land.
- S240 – land in connection with construction, improvement etc. of highway i.e. required for construction purposes
- S245 – land required for provision of any buildings or facilities needed for HA's purposes
- S246 - land for the purpose of mitigating any adverse effect which the existence or use of a highway has or will have on the surroundings of the highway and 'blighted' land by agreement only

# KEEP IN MIND FROM START:

## JUSTIFICATION

- Compelling Case in Public Interest
- Human Rights interference
- Last Resort
- Statutory Procedures correctly followed correctly - [whether opposed or not].
- Equality Act 2010 PSED [CPO Guidance[6]]
- Land is required/necessary - Sharkey

# PROCESS – PRE MAKING

- Identify land and rights required – powers under s172 HAPA 2016 to enter and value land
- Referencing – qualifying persons
- Ensure funding and resources for CPO process; compensation; blight and underlying scheme
- Negotiation – [17] CPO Guidance AAs “*expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.*”

# PROCESS – PRE MAKING

- Public Consultation – (Walker poor consultation not fatal to s226 CPO)
- Planning Permission/Policy Basis -
- Resolutions and Forms: Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004/2595)
- Notice Requirements – publication and service - NB s12ALA 1981 – objections within 21 days

# GENERAL FORM of THE CPO

[see 2004 regulation]

- Powers -
- Schedule - Land and Rights  
'Book of Reference'
- Plans – each plot
- Statement of Reasons – [non  
stat]comprehensive as possible  
– SoC

# OBJECTIONS

- ‘Relevant objection’ – s 13(6) ALA 1981 i.e. owner, lessee, tenant or occupier of the land or a person to whom AA would be required to give a NTT
- Objections by others - CA may disregard any objections by persons other than relevant objector but if a public local inquiry is held other objectors have the right to be heard: Middlesex CC (reversed [1953] 1 Q.B. 12 CA).
- ‘Remaining Objector’ – s13A ALA 1981 i.e. not withdrawn
- Objections must be in writing.

# PROCESS for CONFIRMATION

- CA usually relevant SofS –
- s13 ALA 1981- if no relevant objections/all withdrawn/disregarded;
- S13A ALA 1981 - by written reps if remaining objectors and AA agree (ss (2) or by public local inquiry/hearing (ss3) – Inspector who reports ;
- S14A ALA 1981 – CA/SofS may notify AA it has powers to confirm if no objections/withdraw; compliance and no mods
- s14D ALA 9181 – CA may appoint Inspector to confirm where remaining objectors and may hold inquiry under Compulsory Purchase (Inquiries Procedure) Rules 2007



# Thank you for listening!

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# PROMOTING ORDERS (A FEW LESSONS LEARNED)



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# Infrastructure projects

- Often 'land hungry', e.g. road network, HS2, new generation of nuclear power plants and new runways
- Many require the use of CPO powers in order to be realised, i.e. to acquire land and rights for the purposes of construction, operation and maintenance
- Linear projects (roads, rail, power lines, etc) often have a greater impact on a larger number of landowners across a wider area than more traditional regeneration scheme

# A range of consenting regimes

- ALA 1981 and Highways Act 1980
- NSIPs under Planning Act 2008, e.g. power stations, electricity grid connections, railways, pipelines and airports authorised under DCO
- Transport & Work Act Orders under T&W Act 1992 for railway and tramway schemes that fall outside the Planning Act 2008 regime, e.g. guided busway
- Electricity Act 1989 – brought forward by electricity statutory undertakers
- Hybrid Bills, e.g. HS2

# But many common themes

- Justification
- Preparation
- Engagement
- Negotiation
- Presentation

# Justification

*“It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts”*

# Justification

- Will need to demonstrate:
  - a clear idea of how the land to be acquired is to be used;
  - that all necessary resources are likely to be available within a reasonable time-scale (to cover CPO process, acquiring the land and implementing the scheme);
  - that the scheme is unlikely to be blocked by any physical or legal impediments e.g. the programming of infrastructure works or the need for planning permission/other consents;
  - whilst planning permission is not essential, the acquiring authority will need to show that there are no obvious reasons why it may be withheld.

# Justification

- Statement of Reasons - sets out advance case for making CPO and explains why compulsory powers are sought, together with describing the land over which these powers are to be granted
- Approach should be strongly evidence-based in order to demonstrate compelling case in the public interest



# Preparation

- Key documents, e.g. Order and Order Schedule, detailing the powers requested, and the interests in the land over which powers are to be acquired
- Ensure effective governance, e.g. hierarchy of approvals
- Put in place an experienced professional team
- Be clear as to who is responsible for what
- Look at / review other projects to understand what has gone well and key challenges, e.g. <https://learninglegacy.crossrail.co.uk>

# Preparation

- Understand, manage and mitigate risks, e.g. designing out problems, extending notice periods etc
- Record keeping and paper trail – always related directly to:
  - A well-articulated public need
  - A project designed to meet that public need and supportive planning policy
- Test the extent of the proposed acquisition against the public need at each design stage,
- Assess the land requirements for different design options on a consistent basis over time
- Identify politically charged acquisitions as well as acquisitions which could affect the programme (e.g. sensitive buildings)

# Engagement

*“Stakeholder engagement should not be seen as a separate activity from ‘real’ project management, and in most cases, it should not be outsourced or, worse still, regarded as an activity only for public relations or communications departments. It is vital for project teams, especially the senior members, to continuously develop their understanding of their stakeholders’ evolving objectives, interests, constraints and expectations, whether these are reasonable or not”*

2014 RICS guidance on stakeholder engagement

# Engagement

- **Explain**, e.g. the impact of the project
- **Understand**, e.g. the financial consequences
- **Work together**, e.g. with stakeholders to mitigate the impact
- **Invest**, e.g. build good relationships.

# Negotiation

- Timing and content
- Record keeping
- Reasonable steps to acquire land by agreement
- Avoid exposure to risk, e.g. don't a handful of interests to be acquired after years of negotiation
- Identify the land essential to meeting the public need and if land assembly is unlikely by consent then undertake negotiations in parallel with preparing and making Order

# Presentation

- Demonstrate a willingness to listen
  - Be flexible and open to alternatives
  - Establish firm foundations for constructive relationships
- 
- Successful delivery generally comes down to proactive risk, opportunity and stakeholder management

# Simplifying the Approach to Compensation\*

[\*Insofar as possible (and  
leaving aside Planning  
Assumptions)]

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# From the Outset (1)

- Focus: Aim to refine live compensation issues (of both Law and Valuation judgment)
- Document: ensuring the audit, from the earliest stage (chronology, etc.)
- Clarity: SoC should set plain parameters for the basis for claim and quantum (e.g. a shorthand for explaining and reasoning the appropriate valuation methodology)
- Flexibility: Anticipate that the Model Claim Form particulars will require (considerable?) adaptation/extending (Schedules?)
- Efficiency: Efficient disposal should be viewed as a shared ambition of Claimant & AA



## From the Outset (2)

- Review: Compliance with CMC directions and Rules of Evidence
- Sense Checking:
  - - Ensure complexities are reduced
  - - Ensure impartiality of expert and witness evidence
  - - Ensure any secondary case has evidenced basis
- Update: Keep it iterative; account for evolving circumstances
- The Dividend! (Only) reasonable Claimant costs are recoverable - beware the costs sanction for a poorly detailed claim

# Early Consideration of Factuals / Counterfactuals:

- Presentation: Chronology & Statement of Facts (SoC)
- Explaining all choice-making: e.g. objective basis for search/selection criteria
- Full exploration of all Losses (and their subsets): e.g. Business losses (including Relocation Costs; Management Time: who / what / why, displacement, etc.?)
- Mitigation(s): exemplifying the duty to mitigate: explaining the essential approach

# Early Scoping of Issues & Expertise:

- Identify the framework for exercising all relevant valuation principles
- Identify (any) live legal questions
- Justify the appropriate valuation methodology:
  - - Comparables (+ Adjustments)
  - - Residual land valuation (GDV – Total Project Cost)
  - - Business property valuation: ‘Receipts and Expenditure’

# Preparing any ‘Secondary Position’:

- Comprehensive approach
- Not a weakness!
- Firm up evidential basis and valuation methodology, etc. underpinning a secondary position (in case of Tribunal’s departure from the first!)

# Observing the Principle of Equivalence (Shun Fung Ironworks):

- Compensation payable for interest in land: owner should be paid no less or more than their loss
- Reflects ‘value to owner’ principle (not to AA) and ‘No Scheme world’

# Starting Point: s.5 Land Compensation Act 1961 & Principal Rules:

- Compulsory character of acquisition discounted
- The key hypothetical: Open market valuation, by the willing seller
- No Scheme World disregard (valuation increases/decreases owing to scheme)
- Any arguable ransom value owing to suitability to AA, to be discounted
- Unlawful or unauthorised uses discounted
- Reinstatement value

# Valuation date

- 'Relevant valuation date'
- Open market value at relevant valuation date (+ physical condition of land & buildings; local market & economy conditions, etc.)
- - [Date of entry and taking possession (on/of *any* part of land) (if AA served a notice to treat and notice of entry);  
OR
- - Vesting date (if AA executes a general vesting declaration); OR
- - Date of determination of compensation by Upper Tribunal, if earlier]

# Common Elements of Compensation (1):

- Open market value of interest
- 'No Scheme' disregard (and integral No Scheme Rules)
- [*Certificates of Appropriate Alternative Development*: hypothetical planning permissions indicating land development value]
- Disturbance for loss caused by dispossession and losses not direct based on land value (LCA s.5; R.6)
- Distress and inconvenience of relocation
- Severance (loss of (contribution) value to retained land): reduced access



# Common Elements of Compensation (2):

- Injurious Affection (depreciation in value of retained land in consequence of development of acquired land)
- Does review/sense checking/updating necessitate Elements to be reconsidered?
- Other:
  - - Ransom value
  - - [Public/Private] Rights of Way (Documentary basis for? Landowner/Highway Authority agreement? Requirement for future extinguishment or diversion?)
  - - Special Purchasers (Business valuation & Adjoining Landowner interests, etc.)

# No Scheme Principle+; S.6A-6E LCA 1961 (NPA 2017 amended) (1):

- S.6A: change in value caused by (prospect of) scheme to be disregarded
- S.6B: Betterment deduction: Increase in value of contiguous/adjacent land to be deducted
- S.6C: Injurious Affection: Where compensation is received for injurious affection for other land, upon land being acquired, and subsequently the other land is acquired for the purposes of the scheme, compensation is reduced to extent of injurious affection compensation

# No Scheme Principle+; S.6A-6E LCA 1961 (NPA 2017 amended) (2):

- S.6D: defines ‘scheme’ for no-scheme world purposes:
- Default (ss.1): the ‘scheme’ for disregarding is the scheme of development underlying the CA.
- Special provision (ss.(2)): acquisition for new towns, urban development corporations and mayoral development corporations. Here, the ‘scheme’ is the development of any land for the purposes for which the area has been designated
- Special provision (ss.(3) and (4)): acquisition for regeneration or redevelopment facilitated or made possible by a ‘relevant transport project’
- Any dispute over ‘scheme’ definition: ss.(5)

# No Scheme Principle+; S.6A-6E LCA 1961 (NPA 2017 amended) (3):

- S.6E(2): General Qualifications and safeguards ('scheme' will not be treated as if it included the relevant transport project, when assessing compensation for CA; any increase/decrease not required to be disregarded):
- Redevelopment part of published justification for relevant transport project
- CP enabling instrument (as made/drafted) postdates 22.09.17
- Redevelopment is in vicinity of land comprised in relevant transport project
- Works comprised in relevant transport project are not in use before 22.09.22

# No Scheme Principle+; S.6A-6E LCA 1961 (NPA 2017 amended) (4):

- CP authorised within 5 years of works comprised in relevant transport project first opening for use
- If the owner acquired the land after announcement (e.g. DCO or TWAO application; DPD approval) of plans for relevant transport project but before 08.09.16

# Spotlight on Disturbance

- Loss caused by disturbance to possession and other losses caused
- Examples: costs and expenses of vacating & moving to new property (e.g. legal costs, professional fees, conveyancing costs)
- Other land interest-specifics:
  - - E.g. Land is subject of business tenancy (equivalence for minor and unprotected tenancies; protected tenancies (Landlord and Tenant Act 1954, Part II) and licensees, with consideration of (conditional) tenancy renewal; likely duration/term; and/or right to apply for new tenancy

# **Simplifying the Approach to Compensation\***

Thank you for listening.

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