

Response to consultation paper on Reform of Compulsory Purchase Orders from the Highbury group on Housing Delivery

As the consultation notes, the “use of compulsory purchase powers is an optional mechanism which acquiring authorities can choose to use where negotiations to acquire land have failed to support the delivery of a range of development, regeneration and infrastructure projects in the public interest providing there is a compelling case.”

It is important to note that a CPO is a last resort and should not be used widely, particularly given the associated legal costs, the level of expertise it requires, and the time it takes. In addition, the guidance to public authorities on undertaking CPOs highlights a number of important factors that must be taken into account including:

- Ensuring that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.
- Demonstrating that there is a compelling case in the public interest for exercising compulsory acquisition powers and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe
- Providing evidence why it has not been possible, or would not be practicable, to secure the commitments of the landowner for the regeneration of the relevant land in accordance with the objectives and timescales without the making of a compulsory purchase order or otherwise securing the acquisition of the land by voluntary agreement.

In essence CPO rules cannot be used to merely acquire land as a way of competing with developers by buying land more cheaply. It must be demonstrated that the current landowners have no intention of building out a similar scheme and have refused to sell their land commercially for development purposes to the public authority. If the developer or landowner is willing to build out the scheme then it will much harder to demonstrate there is any real public interest test, unless a new, much larger scheme in the public interest can be demonstrated.

Furthermore, a public authority, should as far as is practicable, attempt to agree a reasonable commercial transaction with the landowner - using the compensation framework as a threat given the legal costs, the time and the risk of going down this path. Hence, public authorities should offer landowners a premium above the existing market value excluding hope value in those instances where a direction is likely to be awarded. The new towns offered just over twice [agricultural values](#) to landowners to ensure swift acquisition of the necessary land. If a landowner refuses the offer thereby forcing a compulsory purchase order, they would receive less than the initial commercial offer in compensation following a direction by the SoS to ignore the prospect of planning permission. Thus the fact that a direction to disregard hope value could be made in the event of a CPO helps ensure that a commercially agreed figure is at a level that preserves scheme viability.

Comments on substantive points in the consultation

In general, it is harder to substantiate a public interest test for small sites where the private sector could build out the site. Hence it is unclear what the actual use case would be enabling local authorities to acquire land on behalf of town and community councils where the schemes underlying the orders are providing affordable or social housing. (referencing point 1 above)

It is unclear why there needs to be a CPO if there are no objections enabling the public authority to undertake a direction itself. If there is an agreement on the sale of the land then it would be far more effective to have agreed to a commercial transaction. (referencing point 2 above)

The government's desire to introduce a general power to remove hope value from the assessment of compensation for brownfield land in built-up areas, suitable for housing delivery, but with no extant planning permission for residential development, and land allocated for residential development in an adopted plan but which has not come forward for development is likely to prove controversial. (referencing point 3 above)

As noted above, a public authority if it wishes to proceed with a CPO it must demonstrate why it has not been possible to secure the commitments of the landowner for the regeneration of the relevant land in accordance with the objectives and timescales. There may be many valid commercial reasons why a private developer has decided not to bring forward a development at a certain time. Hence, it is likely - quite apart from the question whether compensation should exclude hope value - that these categories would be challenged by legal representatives of landowners and create all sorts of difficulties for public authorities, driving up costs and increasing uncertainty.

However, categories of sites that by definition would not compete with private developers can avoid this issue, particularly where development is undertaken at scale, and transport is integrated with housing. This can be defined as a large-scale urban extension or new town development encompassing a significant number of net new residential private and social housing - integrated with additional public transport alongside the necessary supporting health and educational infrastructure, as well as utilities. In this instance therefore, planning permission for residential housing would **only** be granted in the event that a large scale integrated housing and transport scheme were proposed.

Hence where the acquiring authority is looking to acquire land in connection with the development of an area in conjunction with a relevant transport project under:

- (a) an urban development area by an order under section 134 of the Local Government, Planning and Land Act 1980,
- (b) a new town by an order under section 1 of the New Towns Act 1981, or
- (c) a Mayoral development area by a designation under section 197 of the Localism Act 2011,

The direction to remove hope value should be part of a general power and automatically applied to all of the land encompassing the development. This addition to the legislative framework would make it clear to landowners that they would be better off doing a deal with the public authority and avoiding a legal battle.

It would be expedient, therefore, if the government provides a general power to remove hope value only for sites where a CPO is likely to be uncontested. Attempting to push public authorities to acquire land more cheaply in cases where they face and lose a legal challenge is poor public policy and only likely to discourage the public authority from promoting development.

The remaining proposals are more procedural or propose making small changes, however, the proposals to reduce compensation payments to leaseholders at the expense of freeholders is likely to prove controversial. (referencing point 7 above)

Concluding comments

While the change to the land compensation laws can indeed transform the way we fund and finance our built environment resulting in the reemergence of a plan-led model to complement the existing speculative housebuilding model, this will require a public authority to plan and deliver at scale. The new CPO rules that enable hope value to be discarded can be used to raise the rate of housebuilding, but only if more infrastructure is put in first unlocking new land for housing

However, this would require strategic planning to be undertaken at the functional economic geography level where the public authority has a deep pool of human resources to tap into, and the ability to access the capital markets to raise the necessary financing. This means that local authorities are clearly not the appropriate public authorities to be embarking on these kinds of projects even though they remain the public authority responsible for housing. The government has recognised this issue in its devolution bill recommending that Mayors of Combined Authorities should be given strong new powers over housing, planning and transport.