

Compulsory Purchase Order (CPO) Law and Practice: A View from the Front Line

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Introduction

1. If the law and practice of compulsory purchase and compensation is complex and inaccessible,¹ it is also capable of delivering transformative regeneration and essential infrastructure. In this paper we will shine a light on some of the key principles of CPO work in order to de-mystify this fascinating practice area.

2. To keep the material manageable we leave Development Consent Orders (which incorporate CPO) and the detailed provisions governing compensation to another day; and we focus on the use of s.226 of the Town and Country Planning Act 1990 ("planning powers") which confers CPO powers on local planning authorities ("acquiring authorities"), subject to confirmation by the Secretary of State.

3. We start with a review of recent planning CPO decisions of the Secretary of State as confirming authority, to illustrate the range of decisions taken in the last year or so and the positive role it can play. Success often depends on attention to detail and the coherence of the underlying vision, as the examples we give demonstrate. It is a practice area that suits those who want to reach across the aisle and work with local government (advising the developer with whom the authority has entered into a development agreement); as well as those who advise landowners and others on their rights to object, and to compensation.

4. Second, we outline the key steps in the process with a focus on good practice and the role of the private sector planner and planning lawyer.

5. Third and finally, we address the reform agenda: the most significant changes to CPO practice set out in the Levelling Up and Regeneration Act 2023 ("LURA 2023") and such indications as there are about the new Government's intentions.

Recent CPO decisions

6. Of the 37 CPO decisions of the confirming authority taken so far in 2024, 19 have been authorised under the planning powers² and all but one of these (which was withdrawn³) were confirmed with or without modifications. The following table presents some comparative data for the last three years (bear in mind, however, we don't have a complete year for 2024):

YEAR	2024	2023	2022
Confirmed	3	9	2
Confirmed with modifications	8	1	4
Referred back to Acquiring Authority	7	4	8
Not confirmed (or withdrawn)	1	1	1
Total decisions (planning CPOs)	19	15	15
<u>Confirming authority contested decisions⁴</u>	9 ⁵	10 ⁶	7
Inquiry / written representations	9 / 0	8 / 2	6 / 1
SoS / delegated to Inspector	0 / 9	0 / 10	0 / 7

7. We have chosen four decisions from 2024 in order to illustrate the way objections are generally addressed within the confirmation process. These are as follows:

- (1) The Doncaster (City Gateway – Railway Square and Phase 1) CPO 2023;
- (2) The Metropolitan Borough of Dudley (Castle Hill, Dudley) CPO 2023;
- (3) The London Borough of Haringey (High Road West Phase A) CPO 2023;
- (4) London Borough of Merton (High Path No 1) CPO 2022.

1. Described as "an unwieldy, lumbering creature" by the Compulsory Purchase Policy Review Advisory Group established by the then Government in 2000. The subsequent Law Commission Final report (2004) described it as "Difficult to locate, complicated to decipher and elusive to apply". It still is.

2. The other 18 were taken under section 17 of the Housing Act 1985. These two powers are the most frequently used. In 2022 the power under section 9(2) of the Housing and Regeneration Act 2008 was successfully used to justify the acquisition of land for the provision of new railway stations in the West Midlands; and the power under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is also used for the acquisition of new rights (particularly important where the principal CPO power does not itself confer this right).

3. The London Borough of Southwark (Elephant and Castle Town Centre) CPO 2023.

4. Total decisions less (a) the number referred back to the acquiring authority, and (b) the number confirmed without any remaining objections.

5. In addition, two were confirmed by SoS without any objections.

6. In addition, one was confirmed by the SoS without any objections.

(1) The Doncaster (City Gateway – Railway Square and Phase 1) CPO 2023

8. The stated purpose of this CPO was the economic regeneration of the city centre through the provision of “green urban space”, new cycle and walking paths, and the construction of a “Gateway Office Development” in mixed use. It was made for two key projects in Doncaster for which the Council had received funding from central government of £24.8 million.

9. After an inquiry lasting one day the Inspector confirmed the order with minor modifications. Key points to note:

(1) The need for regeneration in Doncaster was clearly set out in the Local Plan. In particular, the Doncaster Urban Centre Masterplan included a regeneration project for the railway station, which was intended to provide a new “arrival statement”. In addition the Inspector considered the development would accord with the NPPF policies on regeneration.

(2) By the time the inquiry opened, there was only one extant objection from a corporate freehold owner of an area of the site. The Inspector noted that the Council had made every effort to assist the objector in finding alternative premises, and that premises had been found (subject to planning permission).

10. This case demonstrates the value and significance of the planning policy context for a planning CPO. Here, the Local Plan made clear provision for this development, having been itself subject to democratic scrutiny and a finding of soundness. This laid the groundwork for a relatively straightforward CPO confirmation process.

11. The importance of this process is reflected in paragraph 107.1 of the Guidance on the Compulsory Purchase Process (“the Compulsory Purchase Guidance”), updated in October 2024, which states:

“Any programme of land assembly needs to be set within a clear strategic framework and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base and to have been subjected to consultation processes, including those whose property is directly affected.”

(2) The Metropolitan Borough of Dudley (Castle Hill, Dudley) CPO 2023

12. The stated purpose of this CPO was the provision of a four-storey higher education facility. There were numerous objections. These related to the buildings to be demolished, demand, the validity of the Order, and whether the Scheme was in the public interest. However, by the time of the Inspector’s decision, the

Council had successfully acquired all interests in the Order land.

13. Many of the objections received related to the demolition of the Hippodrome Theatre. However, that had already been demolished by the time the inquiry opened, in line with a previous planning permission.

14. The Order had to be amended to reflect easements owned by South Staffordshire Water and Cadent Gas. SSW had failed to respond to a statutory request for information, and, thus, the easement was not discovered until shortly before the inquiry. Further, the scheme itself had to be reduced in size due to funding shortfalls.

15. This case demonstrates how a local authority can use a CPO to respond to a specific pressing need in their areas by assembling the land necessary to deliver a specific development. There was a clear, evidenced issue in Dudley: a relative lack of educational achievement combined with difficult economic circumstances. The Scheme – enabled by the CPO – aimed to respond directly to those difficulties.

16. The fact the Council had acquired all the freehold property ahead of the inquiry also illustrates the way the CPO process complements acquisition by agreement. Indeed, negotiated acquisition is an important part of the acquiring authority’s task when pursuing compulsory purchase as is reflected at paragraph 17.1 of the Compulsory Purchase Guidance:

“Undertaking negotiations and engagement prior to, and in parallel with, preparing and making a compulsory purchase order can help build good working relationships with those whose interests are affected.”

(3) The London Borough of Haringey (High Road West Phase A) CPO 2023

17. The stated purpose of this CPO was the creation of a comprehensive mixed-use development (including housing), a new public square, and other works. The main objector was Tottenham Hotspur Football Club (THFC), whose new stadium is very close to the proposed development, and there were also several local resident objectors. Their principal argument was the absence of a compelling case in the public interest. The inquiry sat for 10 days in November 2023.

18. The majority of the Order lands comprised a housing estate (Love Lane Estate), which had been the preferred option for redevelopment in the 2012 consultation document “A Plan for Tottenham”.

19. The relevant area lies within an opportunity area within the London Plan, and a growth area as provided by Haringey’s Local

Plan. In considering various specific policies in detail, the Inspector was satisfied that the land assembly programme was “set within a clear strategic framework” as required by the Compulsory Purchase Guidance.

20. The Inspector noted the high levels of deprivation in North Tottenham which performed less well than Haringey as a whole or London on a range of indicators. While the “Phase A” plan was a residential-led scheme, the Inspector also noted the predicted creation of 89 full-time permanent jobs, and the generation – in the period of demolition and construction work only – of £49,800,000 indirect gross value add to the local economy.

21. THFC expressed concern about the access arrangements to its stadium from White Hart Lane railway station. It argued that its need to negotiate this access from what it considered to be a poor negotiating position would reduce its ability to contribute to the local economy. The Inspector found, however, that pre-commencement conditions in the planning permission overcame these concerns.

22. On social wellbeing, the Inspector noted that the Scheme would result in a substantial increases in the availability of housing, and, in particular, social housing. He noted the number of families on the housing register – over 13,000 as of September 2023. While disruption would be inevitable due to demolition and reconstruction, the majority of residents (55.7%) in the Love Lane Estate who responded to a survey supported the redevelopment. The Council overall put forward an “extensive package of measures” to assist existing residents in moving to new accommodation following the redevelopment.

23. The Inspector also considered an alternative scheme put forward by the objector, THFC. This included a significant difference in the leisure component of the scheme, and offered 76 fewer homes than would have been delivered even on a low estimate for the original Scheme. The Inspector rejected that alternative scheme, finding that it neither offered greater benefits nor was more closely aligned with the planning framework for the local area.

24. On viability, the Inspector rejected THFC’s criticism that the viability of the CPO scheme was fragile.

25. The Inspector considered numerous other objections, including from the Tryfonos family, which owned several affected properties. The family objected to relinquishing ownership of these properties and the consequent need to relocate. However, the Inspector found that to remove the affected properties from the CPO would significantly weaken the effectiveness of the redevelopment scheme in landscape terms.

26. This CPO is another example of how statutory powers can be used to address deprivation. Regeneration is obviously important for deprived areas throughout the country, and a CPO (if trialed correctly and with proper consultation) is a valuable tool for local authorities to address deep-rooted issues.

27. Second, again, this CPO, and the work of the Council, underscores the importance of proper consultation. This was particularly evident from surveys of residents of the Love Lane Estate. The positive outcome of that survey was helpful in pushing the CPO toward confirmation.

28. Third, while the objector’s alternative scheme was relevant, the Inspector attached significant weight to the fact that THFC had not engaged with the Council as LPA on it. Further, it would require planning permission and this would delay the redevelopment of the area. THFC may have been in a better position had it sought the view of the Council as LPA to its alternative scheme, and made its prompt realisation more credible.

(4) London Borough of Merton (High Path No 1) CPO 2022

29. This is one of three CPOs made by Merton in 2022: High Path No.1; Eastfields No.1; and Ravensbury No.1. By the time of the inquiry, there were no remaining objections in respect of Ravensbury and Merton, and eight in respect of High Path.

30. Eastfields, High Path, and Ravensbury were all housing estates, built between the 1940s and 1980s. The Council transferred these to Clarion Housing Group in 2010 as part of a Stock Transfer Agreement. Clarion accepted an obligation to improve all homes to a decent home standard. Following the STA, and further consideration of the condition of the estates, it was decided to demolish and redevelop them. Outline planning permission had been granted for redevelopment of each estate prior to the inquiry.

31. Each of the estates was in poor condition, with heat loss, water ingress, mould, and life expired features just some of the problems. The objections to this scheme were not well founded or well evidenced, and the Inspector dealt with them quickly.

32. The Inspector found that there was a clear drive in the development plan for more housing, and this was echoed in national policy. There were specific policies relating to each housing estate and the scheme complied with the development plan.

33. On economic impact, the Inspector noted the substantial cost estimates for refurbishing the existing housing stock if complete redevelopment were not pursued. While he agreed that the cost of redevelopment would be substantial, he noted that there were

economic benefits that could only be achieved through those means. This included increased housing numbers, and associated increases in spending in the surrounding areas. There would also be higher energy efficiency in each home, leading to less money spent on heating.

34. In terms of social and environmental benefits, the Inspector highlighted the increase in housing availability. There were significant levels of overcrowding on the estates, which the redevelopment would help address. It would also reduce carbon emissions by providing more efficient homes. The Inspector found there to be no evidence suggesting that the very substantial benefits associated with the Scheme could be achieved in a different way.

35. On viability, the Inspector gave the test set out in the Compulsory Purchase Guidance: the potential viability of a scheme should be considered in the context of an assessment as to whether there is a reasonable prospect that the scheme will proceed and that a general indication of funding intentions and of any commitments from third parties will usually suffice. The necessary resources should be “likely” to be available.

36. Clarion Housing intended to deliver the schemes for each estate on behalf of the Council over a development programme extending until the mid-2030s. By the end of November 2023, Clarion had spent £204 million on the scheme primarily relating to the acquisition of new homes in advance of confirmation of the CPOs.

37. While viability was by no means certain, the Inspector noted that Clarion was the UK’s largest affordable housing provider with a turnover of around £1 billion, with considerable experience of delivering estate regeneration programmes. The Council had contracted financial analysts to scrutinise Clarion’s financial strategy, which, the Inspector said, “assuage[d]” his concerns on this point. He found the Scheme to be viable.

38. In many CPO-enabled schemes, there is secure source of funding, such as central government. While the Inspector clearly had concerns about viability, no party to the Inquiry sought to press this point and the reputability of Clarion, and presence of financial analysts able to assess viability won the day.

The CPO process

39. There are three core principles which run through the process of compulsory acquisition of land and rights:

(1) First, the acquiring authority should only make a CPO if there is “a compelling case in the public interest” for the use of statutory powers to force the sale of a person’s property. The quote is taken from the Government’s CPO Guidance and is the consistently

applied overarching test for confirmation of the Order.

(2) Second, alongside any CPO power is a power to acquire by agreement (see s.227 of the TCPA 1990). Compulsory purchase is a last resort, and should be pursued in tandem with efforts to acquire by agreement.

(3) Third, any compensation agreed in the shadow of (or as a result of) the exercise of a CPO power should reflect the compensation code, and include the reasonable legal and professional fees incurred by the displaced owner. It will make a significant difference to the outcome for the displaced owner if they have access to specialist advice on their entitlement.

40. There are essentially four stages to the CPO process:

- (1) Authorisation;
- (2) Objection;
- (3) Confirmation (and potential challenge);
- (4) Implementation.

(1) Authorisation

41. The Order should set out all (and only) the land and rights it is necessary to acquire in order to deliver the scheme, and it must do so by reference to a plan.

42. In a planning CPO this will often be the site of the planning permission. The Housing and Planning Act 2016, ss.172-179, provides specific powers to survey the land before making the Order and ss.5A and 5B of the Acquisition of Land Act 1981 contain information gathering powers. The acquiring authority needs to know the implications for those deprived of their property in order properly to justify the CPO. It should also keep this under review so as to ensure that the public interest balance in favour of the scheme remains positive.

43. Before making the Order, the acquiring authority will probably prepare a non-statutory Statement of Reasons (“SoR”) and must obtain authorisation for the Order (usually from the Cabinet) in accordance with the authority’s own constitution. Usually a draft SoR is appended to the report recommending that the Order is made and subsequently published alongside the Order.

44. The acquiring authority should be able to demonstrate and set out within the SoR:

- (1) That it has identified the most appropriate statutory power (or powers) and met any statutory requirements;
- (2) Consideration of statutory duties such as the public sector equality duty [s.149 of the Equality Act 2010] and whether any interference with human rights is justified in the circumstances (in particular Article 8 and Article 1 of Protocol 1 to the European Convention on Human Rights) [Human Rights Act 1998]; and
- (3) The compelling case in the public interest underpinning the use of the power of compulsory acquisition.

45. As s.226 of the 1990 Act provides:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area -

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or

(b) which is 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.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

(1B) In the application of subsections (1) and (1A) in England, "improvement" includes regeneration.⁷

46. The authority should state which of (1)a) or b) the Order is made under and address the contribution it is said the Order will make to the three well-being objects explicitly within the SoR and authorisation process.

47. Often there are opposing voices; often there is a Local Plan context and/or a local survey to establish options and develop a robust vision for the underlying project; often the prospect of CPO has been mooted several times before the final authorisation. Both the SoR and the report/minutes authorising the CPO should be checked by those opposing the Order for legal adequacy and the elements said to comprise the compelling case in the public interest.

48. The acquiring authority ought to give appropriate consideration to its duties under the Environmental Information Regulations 2004⁸ (posting relevant information to a project webpage may assist with this), and those advising affected landowners and others should consider making early use of their clients' rights under the same so as to ensure that advice is given on as fully informed a basis as possible.

49. The Order must follow the correct form,⁹ and refer to all qualifying persons. These include owners, lessees, tenants and occupiers (s.12(2)(a) of the 1981 Act); and those falling within s.12(2A) of the 1981 Act, which includes all those the acquiring

authority thinks are likely to be entitled to make a claim for compensation.¹⁰

50. From the acquiring authority's point of view, the making of the Order and its submission to the Secretary of State ("the confirming authority") fires the starting gun on a process which will require careful attention to:

(1) Ongoing negotiation to acquire interests and/or settle claims for compensation by agreement;

(2) Progress with the relevant planning context and ensuring all consents are in place; and that the project aligns with relevant policy statements, both national and local. While it is not legally necessary to have planning permission in place before the Order is made, the planning justification for the Order is key;¹¹

(3) How the project which forms the rationale for the CPO is to be funded and delivered: the business case for it and the terms of any grant funding; the development agreement (if relevant) and its terms (ensuring compliance with procurement rules, as well as data protection and confidentiality constraints on publication);

(4) The interests of those directly affected by the project, for example secure tenants who need rehousing in order to ensure an orderly implementation of the project.

(2) Objection

51. Before submitting the Order for confirmation, the acquiring authority must comply with the notice requirements set out in sections 11 and 12 of the Acquisition of Land Act 1981. These notice requirements must be met to the letter;¹² the form of the notice must be as prescribed and served on every qualifying person at the appropriate address (see section 6). This provides for a period of objection which must be at least 21 days.¹³ Objections from all qualifying persons are "relevant objections" although they may be disregarded if they relate exclusively to matters which can be dealt with by the Upper Tribunal (essentially compensation).

52. The acquiring authority should take reasonable steps to achieve the withdrawal of relevant objections with a view to minimising the risk associated with the confirmation process.

(3) Confirmation

53. It is relatively rare for the Secretary of State to refuse to confirm a well justified CPO. The most effective grounds of objection tend to be: 'my piece of the jigsaw is not needed'; or 'I should be allowed to pursue my own development proposals' and are best framed under the headline of 'there is not a compelling case in the public interest'.

54. If there are "remaining objections" (qualifying objections which have not been withdrawn or disregarded) the Order will be considered by an Inspector either following exchange of written

representations or an inquiry. The confirming authority will frequently delegate the decision on confirmation to the Inspector under s.14D of the 1981 Act;¹⁴ and an inquiry will be held unless all those who have made a remaining objection consent to the written representations procedure “in the prescribed manner” (s.13A(2) of the 1981 Act).

55. The process is managed in part by the Planning Casework Unit within the Department of Housing Communities and Local Government, and in part by PINS (liaison between the two can lead to some interruptions to the process).

56. The acquiring authority will strive to secure the withdrawal of objections during the pre-confirmation phase, not least because that reduces risk and delay. It can happen that objections are settled at the door of the inquiry leading to a curtailed hearing and a prompt decision. Equally, there are occasions where a single and determined individual holds up an entire regeneration scheme with objection and legal challenge.

57. However many – or few – objections there are, acquiring authorities need to remember that their role at confirmation stage is to present persuasive evidence on all matters, including financial viability.

58. The “Barking and Dagenham (Vicarage Field and surrounding land) CPO 2021” is something of a cautionary tale in that regard. Although issues of viability were not raised by objectors until the inquiry, they proved decisive in the Inspector’s decision not to confirm the Order. The evidence supplied by the Council was prepared five years before the CPO was made and showed the scheme to be “substantially unviable”. The Inspector was critical of the failure to provide an updated appraisal, and refused to confirm the order despite recognising that the developer had given evidence of its confidence the scheme was viable. The following paragraphs of her decision letter drive the point home:

144. The reason for not providing an updated viability appraisal is said to be linked to commercial confidentiality. To share the information at this stage could, I am advised, hamper the deliverability of the scheme by releasing sensitive information to the open market. Whilst I understand the sensitivities to sharing this type of information, I am left in a position whereby the only independent evidence of viability presented concludes the CPO scheme to be substantially unviable 6 years ago.

145. An updated appraisal could have been redacted, or even, as suggested by Mr Elvin KC (representing the 24-34 Station Parade), subjected to a ‘data room’ exercise, carried out by an independent expert under a non-disclosure agreement. This would have reviewed the appraisal and provided an independent peer review that the scheme was viable.

146. The AA claim that this would have taken me nowhere, as this evidence could not have been tested. I disagree. It would have provided an independent and clear indication that the scheme was viable when assessed by an expert in the field. At the very least, it would have provided some comfort as to the likelihood of the potential financial viability, given the gravity of the conclusions in the viability appraisal that I do have.”

59. If there are no remaining objections the confirming authority may confirm the Order with or without modifications (s.13 of the 1981 Act). The Act prohibits modification to include additional land or rights unless all concerned consent (s.14 of the 1981 Act).

60. Alternatively, provided no modification to the Order is required, it may return the Order to the acquiring authority for confirmation (s.14A of the 1981 Act), as has occurred in over 50% of Orders in each of the last 3 years.

61. The CPO will become “operative”, however, only once notice of the confirmation has been published in accordance with the 1981 Act (s.26) and the six week statutory period for a legal challenge runs from that date (s.23 of the 1981 Act). This is a statutory judicial review akin to the procedure under s.288 of the 1990 Act. It has the effect of extending the three year period within which the CPO may be implemented by up to one year.¹⁵

(4) Implementation

62. The acquiring authority does not become the owner of the land until the CPO is implemented. There are two ways of achieving this: either the authority serves a notice to treat on individual owners and takes possession following agreement over compensation; or the authority executes a “general vesting declaration” in a statutory process¹⁶ whereby at the appointed time all interests in the land vest in the authority, leaving compensation to be settled thereafter.

63. The general vesting declaration is the most usual route to implementation, particularly for regeneration CPOs, as it is relatively simple to operate and vests all the land and interests acquired under the Order in the acquiring authority on the same date. That date is the valuation date for compensation.

64. If you are acting for the developer partner, now’s the time the development agreement (if it exists already) crystallises and you deliver the project. You may need to obtain planning consent or to vary the consent which is in place. You will need to consider the timing of this and whether before or after implementation by the acquiring authority.

65. If you are acting for a landowner or other qualifying objector, you may consider challenging the GVD (for which there are precise statutory steps which must be complied with) by way of judicial

14. All the contested planning CPOs in the last three years were delegated decisions.

15. General Vesting Declarations Act 1981 sections 5A and 5B; and Compulsory Purchase Act 1965 sections 4 and 4A (both as amended by the Housing and Planning Act 2016).

16. Governed by the General Vesting Declarations Act 1981 as amended.

review. Once dispossessed the valuation date crystallises and your client's former interest transforms into a statutory right to compensation.

Reform

66. The case for reform (and consolidation) of the cumbersome scattering of statutory provisions and related regulations is in our view a strong one, but also a daunting task and unlikely to occur in the foreseeable future.

67. The Levelling Up and Regeneration Act 2023 has followed recent attempts to reform by making several small adjustments to the existing statutory landscape. The most important of these are as follows:

- (1) The power to dispense with the influence of "hope value" on compensation;
- (2) The power to extend the date for implementation of the CPO;
- (3) The power to make a conditional CPO; and, for the political message it reflects;
- (4) The confirmation within s.226 that "improvement" includes "regeneration" for the purposes of s.226(1)(a), the power which is (already) the one most usually relied upon in regeneration CPOs.

The power to dispense with the influence of "hope value" on compensation

68. Section 190 of LURA 2023 is currently in force in England. In Wales, it is in force only insofar as it confers a power to make regulations. It introduces a detailed and technical scheme, summarised in the Explanatory Notes as follows:

"The changes implemented by this section allow, on a scheme-by-scheme basis and for certain types of CPOs only, certain public sector authorities to include in their CPOs a direction that certain aspects of section 14 of the 1961 Act, i.e. the prospects of planning permission (including appropriate alternative development), are to be ignored when the value of the land is assessed for compulsory purchase compensation purposes."

69. This is a change from the general rule that, in calculating the compensation due to a landowner, the value of the land may be influenced by the prospect of securing planning permission for an alternative project ("hope value"). This general rule gives rise to the complex set of provisions governing the grant of "certificates of appropriate alternative development" which can result in cost and delay. Their existence also introduces some uncertainty for acquiring authorities as to their exposure to a large claim for compensation.

70. Nevertheless, the amendment is controversial and – depending on how extensively these powers are used – potentially

significant.

71. It applies to housing development and regeneration schemes where they include public-sector led affordable or social housing, health or education uses, and are justified in the public interest. While only certain bodies exercising certain powers may apply for a direction to ignore hope value, this includes local authorities exercising power under s.226 of the TCPA 1990. This power therefore has the potential to apply to a large number of CPO schemes.

72. Procedure: Acquiring authorities seeking a direction to remove hope value must include a direction to that effect in the CPO submitted for confirmation. They must demonstrate that there are compelling reasons why the inclusion of the direction is justified in the public interest.¹⁷

73. The effect of a direction to ignore hope value is that section 14 of the Land Compensation Act 1961 does not apply.¹⁸ This provides that, in assessing compensation due

"...account may be taken... of the prospect, on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, of planning permission being granted on or after that date for development..."

74. The changes, however, do not prevent account being taken of planning permission that has already been granted.¹⁹ It should also be noted that additional compensation may be due where the acquiring authority (among other conditions) does not build out its scheme in accordance with its stated intentions within 10 years (or, alternatively, where there is no longer any realistic prospect of the acquiring authority's stated intentions being fulfilled within that period).²⁰

75. There are, nevertheless, serious and legitimate concerns inherent in the idea that the state will force landowners to sell at a price which does not reflect the true fair market value of a property. Reflecting that tension, LURA 2023 imposes significant additional hurdles for acquiring authorities seeking to use these powers. These hurdles could increase the cost and complexity of what is already a daunting procedural and financial process for acquiring authorities. For these reasons, the significance of these changes in practice remains to be seen. It is also likely that the new Government will revisit these powers in the Planning and Infrastructure Bill.²¹

The power to extend the date for implementation of the CPO

76. The purpose of this provision (which is in force) is to give acquiring authorities more time to implement CPO schemes following confirmation. Prior to this section coming into force,

17. Acquisition of Land Act 1981 s.15A.

18. Land Compensation Act 1961 s.14A(2) as amended by LURA 2023.

19. Land Compensation Act 1961 s.14A(4) as amended by LURA 2023.

20. Land Compensation Act 1961 Schedule 2A para 3 as amended by LURA 2023.

21. Source: the background briefing notes to the King's Speech.

that time limit was, effectively, 3 years from the date the CPO becomes operative.²²

77. Section 185 of LURA 2023 inserts a new section 13D into the Acquisition of Land Act 1981 (and makes necessary consequential amendments). The key provision is as follows:

- (1) *The confirming authority may, when it confirms a compulsory purchase order, include provision in the order specifying a period longer than three years for the purposes of section 4 of the Compulsory Purchase Act 1965 (time limit for notice to treat) and section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 (time limit for general vesting declaration).*
- (2) *No such provision is to be included by the acquiring authority in the order submitted for confirmation.*

78. In our view, this discretionary power is welcome. It is only good sense to enable the confirming authority to give the acquiring authority longer to implement the CPO in appropriate cases. The explanatory notes to this section make clear that the Government envisages that this would be helpful for “more complex schemes, for example, regeneration schemes, which in some cases may need longer than three years to implement.” It is unlikely, therefore, that extensions of time will be granted as a matter of course.

The power to make a conditional CPO

79. Section 183 of LURA 2023 inserts section 13BA into the Acquisition of Land Act 1981, and confers a power on the confirming authority to confirm a CPO conditionally.

80. The effect of this is that the CPO does not become operative until the confirming authority has decided, on an application by the acquiring authority, that the conditions have been met by a certain time. Both the time and conditions are to be specified in the conditional confirmation. At the time of writing, this provision is in force only insofar as it confers regulation making powers.²³ Much of the procedure to be followed is to be set out in regulations.²⁴

81. The aim of the provision is again clear from the explanatory notes – speed. The Government wished to shorten the delivery of schemes by encouraging acquiring authorities to make a CPO earlier in the delivery process alongside other consenting and funding processes. According to the explanatory notes, it was felt that acquiring authorities often make their CPOs only after other

impediments to the delivery of a project have been overcome, delaying the overall delivery of a scheme. This new power – once in force – should do much to remedy that state of affairs.

Confirmation with s.226 that “improvement” includes “regeneration”

82. Section 180 of LURA 2023 made a simple amendment to s.226 of the TCPA 1990:

In section 226 of TCPA 1990 (power of local authority to acquire land compulsorily for development and other planning purposes), after subsection (1A) insert – “(1B) In the application of subsections (1) and (1A) in England, “improvement” includes regeneration.”

83. Since section 226 has justified many a regeneration scheme in its pre-LURA form, this amendment is clearly not strictly necessary. The Explanatory Notes confirm the legislative intent:

“The aim of the measure is to give local authorities greater confidence that they have the power to acquire land by compulsion to support regeneration schemes.”

84. Thus, it is implicitly recognised that the existing planning power may be used to achieve regeneration, and the s.180 amendment is designed to encourage local planning authorities to use it.

Law correct at time of writing 30 October 2024. This paper is for educational purposes only and does not constitute legal advice. For legal advice please contact the authors.

22. This is by virtue of section 5A of the Compulsory Purchase (Vesting Declaration) Act 1981 and section 4 of the Compulsory Purchase Act 1965, which, respectively, govern the time limits for executing a general vesting declaration and serving a notice to treat.

23. Levelling-up and Regeneration Act 2023 (Commencement No. 3 and Transitional and Savings Provision) Regulations 2024/389 Regulation 2(j).

24. Acquisition of Land Act 1981 s.13BA(4).



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