



Compulsory Purchase Orders: A Fresh Perspective

Webinar 7th June 2021

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Today's webinar: outline



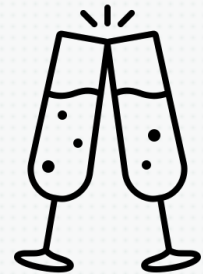
- Introduction: Harriet Townsend
- Procedure
 - Making a CPO: Emmaline Lambert
 - Confirming a CPO: Harriet Townsend
- Get your power right: Dr Christina Lienen
- The importance of 'the scheme' & concluding remarks: Paul Shadarevian QC
- Questions

Procedure



- CPOs remove property rights from individuals by force. Therefore ...
 - the law requires that they should only be made where there is **“a compelling case in the public interest”**. This is so important a requirement, it summarises Government policy on confirmation of CPOs; and
 - Acquiring Authorities should adhere closely to procedural requirements.

If the AA achieves both it should succeed



Sources



- The main source is the Acquisition of Land Act 1981.
- Regs - England
 - CP of Land (Prescribed Forms) (Ministers) Regulations 2004/2595
 - CP (Inquiries Procedure) Rules 2007/3617
 - CP (Written Representations Procedure) (Ministers) Regulations 2004/2596
- Regs - Wales
 - CP of Land (prescribed Forms) (National Assembly of Wales) Regulations 2004/2732
 - CP (Inquiries Procedure) Wales Regulations 2010/3015
 - CP (Written Representations Procedure) (National Assembly for Wales) Regulations 2004/2730
- Guidance England - MHCLG Guidance for England (with 2019 update),
- Guidance Wales - CP in Wales and the Crichel Down Rules (Wales Version 2020).



Making the Order: Emmaline Lambert

Context – a few facts

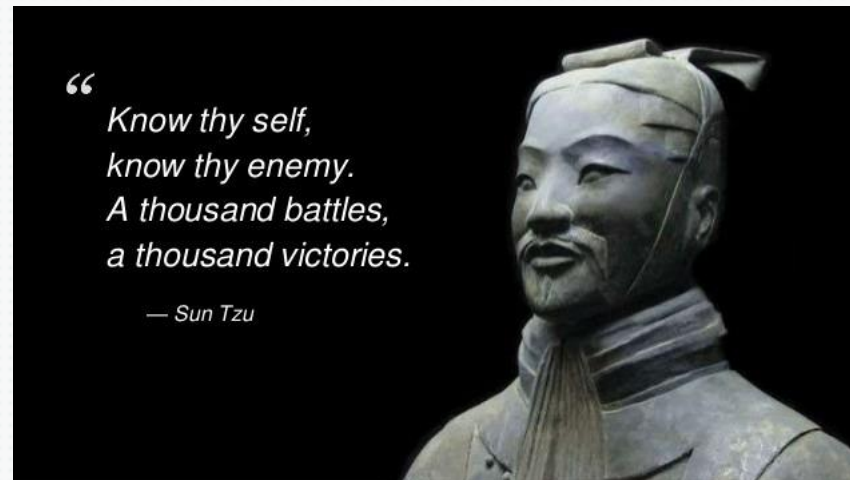


- Most CPOs, even those resisted at inquiry, are confirmed.
- Unfortunately, there is no central database of decisions.
- Thanks to Womble Bond Dickenson (2017 report) we know that in 2015 & 2016:
 - Planning CPOs confirmed or withdrawn: 94% , 81%
 - Housing CPOs confirmed or withdrawn: 93% , 94%
 - Time submission to decision mostly < 1 year
 - Reasons for failure most frequently arising:-
 - Circumstances/human rights of the objector
 - Proposed alternative scheme by the objector
 - Quality of consideration by the authority eg. PSED

General point



- “Time spent in reconnaissance is seldom wasted” Sun Tzu



Reconnaissance



- Preparation....
- AA should identify all **qualifying interests** – if necessary use statutory powers to obtain the necessary information.
- AA should ensure authorisation for the CPO is lawful and up to date.
- AA should know what land and/or rights are needed to deliver the benefits of the scheme.
- The CPO must be in the correct form (closely prescribed by Regulations). MHCLG will assist with this if requested.
- The CPO Plan must be at the correct scale and identify each plot clearly.
- The CPO must be made under seal, authenticated, and dated (ideally on the same day).
- A **Statement of Reasons** must set out the essential case for acquisition and is served with the CPO. If this is going to be at all controversial – review by external counsel is recommended.

The Qualifying Person



- Identify in the CPO and notify all **“Qualifying Persons”**
- Who are qualifying persons?



The Qualifying Person



- All the following are qualifying persons (defined s.12 AoL Act 1981)
 - An owner;
 - An occupier;
 - A tenant;
 - A person to whom the AA would be required to give notice to treat if proceeding under s5(1) of the CPA 1965 – (inc mortgagees);
 - A person the AA thinks is likely to be entitled to make a claim for compensation under s10 of the CPA 1965 (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority **after making diligent inquiry**; this relates mainly, but not exclusively, to easements and restrictive covenants.
- AA has information gathering powers eg s.297 Highways Act 1980; and s.5A AoL Act 1981.



Confirmation: Harriet Townsend

Confirmation 1



- Submit the necessary documents to the confirming authority [see MHCLG Guidance Tier 1 para 25 list] together with a certificate of compliance with the necessary procedural steps as to notice:
 - In newspapers; and
 - To qualifying persons (note the requirements of s6 of the AoL 1981)
- Those notice requirements are absolutely essential and must be met to the letter. Proof of compliance should be obtained.
- The notice will spell out the period and form in which objections can be made.

Confirmation 2



- Objection – the initial objection should be drafted with care and with the benefit of specialist advice.
- The approach to take naturally depends on the objector's reason for objecting. Common motives are
 - An owner seeking to ensure compensation is acceptable;
 - An occupier seeking to delay or prevent acquisition;
 - An option holder wishing to develop the land for an alternative scheme
 - A conservation group opposing the scheme.
- An objection can be disregarded if it relates solely to compensation.

Confirmation 3



- All objectors are not equal.
- The objection made by a qualifying person is a “**relevant objection**” and these objectors have a right to be heard. Unless they agree to the written representations procedure, the CPO will be considered at inquiry.
- And unless that relevant objection is withdrawn or disregarded (for relating solely to compensation), it will become what’s known as a “**remaining objection**”.



- Even if all remaining objections are withdrawn, while objections remain, the AA will need to convince the confirming authority of the compelling case for the CPO.

Confirmation 4



- The procedure chosen varies considerably. 5 options
 - Delegated to an Inspector for decision by them, and considered on written representations or at inquiry;
 - Decided by the Minister after an Inquiry held by an Inspector and in the light of their report;
 - Decided by the Minister following an exchange of written representations.
 - In limited circumstances by the AA – s14A of the AoL Act 1981 [Guidance para 47-49]
- Special Parliamentary Procedure is required if the Order includes certain “special kinds of land” (including land forming part of a common, open space or allotment).

Meanwhile



- Negotiation should step up – the AA has a strong interest in securing agreement of all remaining objectors, (or as many as proves possible) ahead of the inquiry (quite often at the inquiry).
- Each side prepares case and evidence – and should ensure evidence remains up to date (eg to reflect changes in planning policy; funding information).

A Compelling Case in the Public Interest



- What is this? The policy/guidance is an essential companion and should be followed carefully.
- The land/rights are acquired for a purpose within the scope of the relevant power (obviously!)
- The land/rights are needed in order that the purpose is achieved.
- The scheme for which the land/rights are acquired is likely to be delivered
 - Necessary statutory consents (eg. planning permission) are in place or likely to be within a reasonable period.
 - Finance is in place (if the scheme isn't viable in its own terms, where is the funding coming from?)
- The **harm** associated with the proposed interference with the rights of those who currently own the land/rights and others affected by the CPO is **outweighed by the public benefits of the scheme.**

Inquiry procedure



- The onus is on the AA to address every issue of concern.
- Ensure notice requirements have been met.
- Counsel for AA generally delivers a detailed opening of a planning inquiry. It should set out the AA's stall, and address powers, objections, the scheme, the compelling case.
- AA evidence first, then for objectors in turn.
- Closing submissions.
- Report by Inspector – either as decision maker or to the Secretary of State.

Confirmation



- Timing: The Housing and Planning Act 2016 introduced a requirement (in England) and a power (in Wales) for the confirming authority to publish timetables for confirmation of CPOs. The English Guidance sets these out at 50-53.
- Confirmation is by letter, similar to a planning appeal.
- The confirming authority's power to **modify** the Order is used sparingly and cannot be used to add land (unless consent is given) or to alter the statutory power for which the CPO was made [S14 of the AoL Act 1981].
- **Costs** are generally awarded to a successful objector – see paras 41-42 of the English Guidance.



And then...?

High Court Challenge



- **Statutory review** under s23 of the AoL Act 1981 within 6 weeks of the date specified in s23(4) of the Act. Note that
 - the CPO remains valid unless quashed (or unless an application is made and granted for interim relief suspending its operation).
 - The period for implementing the CPO is extended by up to a year from the date the application to challenge is made.
- The Court's powers to quash are discretionary. It may quash the Order itself (sending the AA back to square one) or a provision within it.
- Alternatively, the court may quash the decision to confirm the order either generally or in so far as it affects any property of the applicant (s24(3) – introduced by the Housing and Planning Act 2016).

Implementation



Things to bear in mind throughout ...

- The CPO must be implemented within 3 years of the date it becomes **operative** (extended in the event of High Court challenge by s4A of the CPA 1965 and 5A of the GVD Act 1981).
- The CPO becomes operative on the date notice of its confirmation is first published in accordance with s15 of the AoL Act 1981 (which must be done within 6 weeks of the date of the order being confirmed unless a longer period is agreed).

Implementation



Things to bear in mind if attempting to acquire by agreement

- If negotiations fails, the valuation date (the date at which the market value of the interest in land acquired will be assessed) is fixed by statute.
 - If by Notice to treat under the CPA 1965, the valuation date is the earlier of the date of entry or the date on which the valuation is assessed [s.5A(3) LCA 1961].
 - If by General Vesting Declaration under the GVD Act 1981, the valuation date will be the earlier of the vesting date or the date when compensation is assessed [s5A(4) LCA 1961].



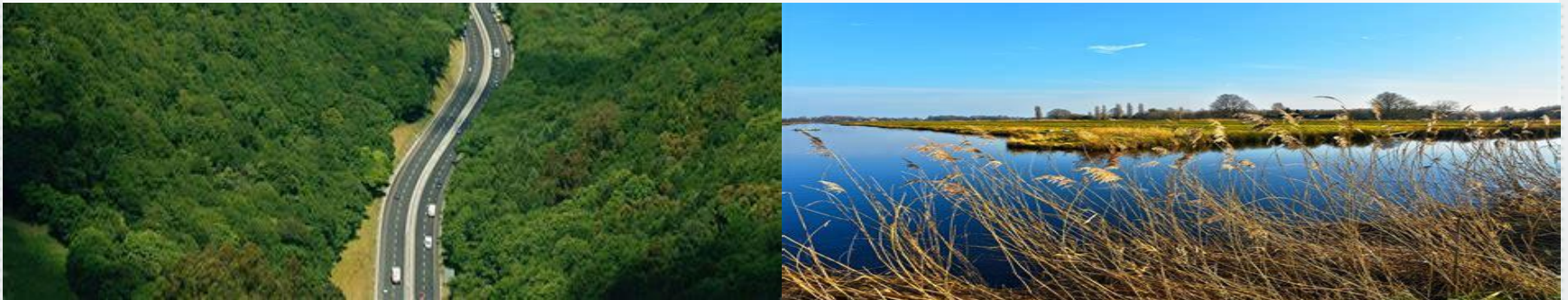
Getting your power right:

Dr Christina Lienen

The starting point



Most compulsory acquisitions are authorised by **an enabling Act of Parliament**, which will authorise the use of compulsory purchase power for a specific purpose and specify the bodies that are acquiring authorities for the purposes of the power.



The 3 enabling powers we will consider today



The Town and
Country Planning
Act 1990

The Highways Act
1980

The Housing Act
1985

Town and Country Planning Act 1990



- Section 226 authorises local authorities to compulsorily purchase land if the acquisition will facilitate **the development, redevelopment or improvement of land, or acquisition is required to achieve the proper planning of an area.**
- LA must be able to show one of the following objects (not restricted to the area subject to the CPO):
 - promoting or improving the economic well-being of their area
 - promoting or improving the social well-being of their area, or
 - promoting or improving the environmental well-being of their area.
- One of the most commonly-used enabling powers.
- Example: regeneration eg Aylesbury Estate (2018).

Highways Act 1980



- Sections 238, 239, 249, 256 and Schedule 18 authorise local highway authorities to compulsorily purchase land **to construct or improve highways**.
- Example of a typical use: to improve a major road in poor condition with a high accident rate: eg *Stanton v Secretary of State for the Environment, Transport and the Regions* (2000) CO/353/00.
- Example of a novel but appropriate use: Acquiring an arable field next to the M11 to facilitate the provision of a service station and other buildings and facilities to be used in connection with the use of the M11: eg *Streeter's Executors v Secretary of State for Transport* [2011] RVR 167, UT.

Housing Act 1985



- Section 17 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation.
- This is the principal power to **purchase land and housing in order to provide housing by erection, or conversion** (under s.9), **or in order to sell the land to someone else to provide housing on it** (see also s. 9(3)), **or to provide facilities in connection with housing** (ss. 11 and 12), eg, shops or recreation grounds, **or in order to carry out works of alteration, enlargement, repair or improvement to adjoining property in or to be in their ownership.**
- Common example: unoccupied property/poor condition: eg *Parmar v Barnet LBC* [2015] UKUT 510 (LC), [2016] RVR 9.
- What about the overlap between the Housing Act 1985 and the TCPA 1990?
 - *R (Mufasa Ltd) v Secretary of State for Communities and Local Government* [2014] EWHC 1337 (Admin).

Other sources of CPO powers



- s. 530 of the Education Act 1996;
- s. 10 and Schedule 3 to the Electricity Act 1989;
- s. 47(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- s. 13(1) of the Local Government (Miscellaneous Provisions) Act 1976.

→ for some specific large-scale projects, the power to purchase land compulsorily has been granted in designated legislation: eg HS2 - High Speed Rail (London - West Midlands) Act 2017



The importance of 'the scheme':

Paul Shadarevian QC

What is “the Scheme”



- The scheme is the scheme of development that justifies the making of the CPO. This may turn on the statutory power that is utilised by the acquiring authority, but is to be determined as a matter of fact.
- This is often a difficult question to determine. The importance of understanding the issue is that scheme or the prospect of the scheme will be disregarded in assessing compensation (hence a landowner will not receive an uplift in OMV which is attributable to the scheme, neither will a landowner be penalised for any diminution in value caused by the scheme): the “no scheme” principle.

Importance of LCA 1961 as amended



- Sections 6A to 6E of the Land Compensation Act 1961 make provision for the assessment of value applying the 'no scheme principle'.
- Section 6A: lists five 'no scheme rules' that must be followed when applying the 'no-scheme principle':

“No Scheme Rules”



- Rule 1: it is to be assumed that the scheme was cancelled on the relevant valuation date;
- Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme;
- Rule 3: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers;



- Rule 4: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date;
- Rule 5: if there was a reduction in the value of land as a result of—(a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or (b) the fact that the land was blighted land as a result of the scheme, that reduction is to be disregarded.
- Importantly, section 6B provides that any increases in the value of the claimant's other land, which is contiguous or adjacent to the land taken, is deducted from the compensation payable.

Section 6D defines “the scheme”



(1) For the purposes of sections 6A, 6B and 6C, the “scheme” in relation to a compulsory acquisition means the scheme of development underlying the acquisition (subject to subsections (2) to (5)).

(2) Where the acquiring authority is authorised to acquire land in connection with the development of an area designated as—

(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 scheme is the development of any land for the purposes for which the area is or was designated.



(3) Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project (subject to section 6E).

(4).....

(5) If there is a dispute as to what is to be taken to be the scheme (the “underlying scheme”) then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal as a question of fact, subject as follows—

(a) the underlying scheme is to be taken to be the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and



(b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme only if that larger scheme is one identified in the following read together—

- the instrument which authorises the compulsory acquisition, and
- any documents made available with it.

(6) In the application of no-scheme rule 3 in relation to the acquisition of land for or in connection with the construction of a highway (the “scheme highway”) the reference in that rule to “any other project” includes a reference to any other highway that would meet the same or substantially the same need as the scheme highway would have been constructed to meet.



It is important, therefore, that the scheme is accurately described in the CPO documentation and should be drawn as widely as reasonably possible having regard to the extent of the development that is to take place or which is being enabled by the acquisition and its purpose.

To sum up ...



- The early work counts: do the groundwork and ensure the implications for those whose property is taken away are considered throughout.
- During confirmation process, keep negotiating.
- Choose the power that most precisely fits your purpose, and your evidence.
- Describe the scheme accurately and by reference to the relevant development plan policies.





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