

# Compulsory purchase

**Regeneration CPOs – the importance of crib lists to provide a simple aide memoire is explained by Stan Edwards, as he concludes his latest series of articles, tackling the CPO delivery process ■**

## Part 2 – Conclusion

CPOs are of necessity a catalogue of issues in the public interest and a collection of required actions to deliver solutions through the mechanisms provided by statute and guidance. It is important that random facets of the process are collected, to in some way provide working lists/schedules of a range of requirements and activities.

***“You have to learn the rules of the game. And then you have to play better than anyone else.”*** Albert Einstein

### Avoiding a trip to Mystique

This article is an attempt to provide, to a wider audience, the content of some of the slides provided in a seminar to the Department for Communities and Local Government (DCLG) and other government departments on the practical aspects of promoting a CPO – the same was later rolled out by DCLG to local authorities. I will receive the accusation that what I provide is too simplistic! However, I take that risk to achieve a simple package for the CPOs for development redevelopment and improvement, providing a basic knowledge to be built upon.

The size of this article means that it is covered in two issues; this is Part 2. In the previous issue, in the June 2015 edition of Valuer, Part 1 dealt with:



- strategic concept
- early considerations
- purpose and power
- documents to hand
- core regeneration CPO powers
- funding and finance
- partnerships
- planning
- a compelling case in the public interest
- consultation.

This article includes notes on:

- Circular 06/04
- guidance for inspectors – highway inquiries
- Approval in Principle – AIP
- statement of reasons
- check lists:
  - project – the case
  - acquiring authority approvals
  - considerations and assessments
  - project management
  - detail.

Reinforcing what was said in Part 1, it is essential to completely follow the Circular 06/04 guidelines. One solicitor once sneered that they were not statutory. My response is that promoters ignore them at their peril. Below is a quick index with key words. This is only a signpost to the contents.

## Aide memoire – quick index of 06/04:

### INTRODUCTION

1. CPOs – an important tool 2. Providing guidance 3. Main topics covered 4. Appendices A to W 5. No statutory status – guidance only 6. Departments 7. Confirming Minister/Department 8. Terms 9. Transition 10. & 11. Circulars

### POWERS

13. Use of the 1981 Act 14. Purpose determines power 15. Most specific power

### JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER

16. Acquiring authority decides – **justify a particular power** 17. A **compelling case** in the **public interest** 18. Confirming Minister to take **balanced view** 19. Clear idea of intentions, resources, reasonable timescales 20. **Resource** implications 21. Timing/availability of **funding** 22. **Impediments** to implementation – a reasonable prospect 23. **Planning** required

### PREPARING AN ORDER

24. **Seek** to acquire by **negotiation** 25. Negotiations in **parallel** 26. **ADR** 27. **Involving those affected** – rights and duties – indicative timetable – accessible format. Appointing a case manager. 28. Keeping uncertainty, anxiety **and delay to a minimum** 29. Enter into **agreements** 30. Minister satisfied; **order is made correctly. Advice from the confirming Department** 31. **Errors or omissions** and power of **modification** 32. AA to seek own **advice** 33. **Technical examination** by confirming Department (Wales PINS) 34. App.Q **document checklist**

### THE CONFIRMATION PROCESS

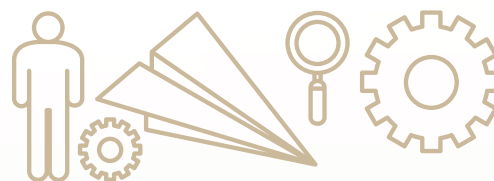
35. **Statement of reasons** 36. **SoR type of case** (help PINS) 37. **Objection grounds** 38. **Clarification points** 39. Consideration of **objections** 40. **Written representations** 41. **Programme officer** 42. **Timing of inquiry** 43. **Date of the inquiry fixed** 44. Scope for **joint or concurrent inquiries** 45. **Inquiries – Procedure Rules** 46. **Inquiry and WR Costs** 47. **Acquiring authorities meet costs** 48. **Award of costs** 49. **WRs** 50. **Legal difficulties. Validity** 51. & 52. **Modification of orders** 53. & 54. **In stages** 55. **Unopposed order** 56. **Confirming authority will exercise discretion under Sec. 14A** 57. **Notification of date of confirmation / section 19 certification**

### IMPLEMENTATION

58. **Confirmed order operative date** on which notice of confirmation 59. **Notice to treat period** 60. **Notice of Entry** 61. **General vesting declaration** 62. **General vesting declaration GVD and NTT** 63. **Commencement** of exercise of CPO

### COMPENSATION

64. **Assessment** of compensation 65. **Compensation basis** 66. **Date of assessment** 67. **Interest payable** 68. **Advance payments** 69. **Earlier payments and reinstatement** 70. See also paragraphs 33-34 of the Annex – mortgagees 71. **Professional fees** 72. **Fees on a case-by-case basis**



### APPENDICES

#### CPO Powers

**A** Section 226 of the T&CPA 1990 as amended **BRDAs** **C** English Partnerships **D** UDCs **E** Housing powers **F** LGA 1972 **G** National Parks/Access to Countryside **H** Educational purposes and for public libraries and museums **J** Airport public safety zones **K** Under section 47 of the Listed Buildings Act **KA** Request of the community

#### Procedural issues

**L** Special kinds of land **M** New rights and other interests **N** Crown land **P** Certificates of appropriate alternative development

#### Documents and submission

**Q** Check list of documents **R** Preparing the statement of reasons **S** Protected assets certificate **T** General certificate in support of order submission **U** Preparing and serving the order and its associated notices **V** The order map **W** Addresses to which orders, objections and applications for certificates should be sent

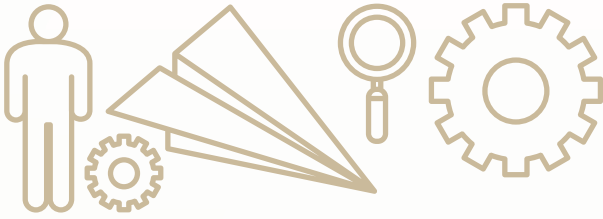
**ANNEX** – Part 8 of the Planning and Compulsory Purchase Act 2004.

### HIGHWAY SCHEME GUIDANCE

Although it is in respect of highway schemes, Section 2.4 of the Planning Inspectorate's "Notes for the Guidance of Inspectors Holding Inquiries" into orders and Special Road Schemes, is a useful general CPO consideration. It states:

**"2.4 Although inquiries are convened because of unresolved objections, the scope of the inquiry can be wider. For example, in the case of inquiries into CPOs (see ODPM Circular 06/2004 for further details) an Inspector is required not only to deal with the objections to the order, but he or she must also satisfy himself or herself that:**

- **there is a compelling case for acquisition in the public interest**
- **this justifies interfering with the human rights of those with an interest in the land affected**
- **the acquiring authority has a clear idea of how it is intending to use the land it seeks to acquire**
- **the acquiring authority can show that all necessary resources to carry out its plans are likely to be available within a reasonable timescale**
- **the scheme is unlikely to be blocked by any impediment to implementation**
- **Section 248 of the Highways Act refers to the limited circumstances in which land may be acquired where the land is not immediately required. When considering the amount of land incorporated in the order, the Inspector should give due regard not only to the area of land, but also to the estate or interest proposed to be taken in it. For example, it may well be argued that an order providing for the acquisition of title to the land is excessive because all that is required is for a right to be created under Section 250 of the Highways Act and for that right to be acquired under the CPO."**



## The Approval in Principle

The **AIP** is a fulcrum, in that it draws together the concept (e.g. “think will facilitate” – T&CPA 1990) into a report which sets conditions precedent for making and sealing a CPO (to be rehearsed in the Statement of Reasons):

### AIP – SUBJECT TO CONDITIONS

- sustainability/wellbeing factors
- community engagement
- planning
- technical
- legal
- confirmation of compelling case in the public interest and justification
- completion of any agreements with stakeholders
- confirmation of additional rights including those of the Crown
- preparation of the Order - Statement of Reasons, CPO Plan and Schedule of Interests
- technical approval of the Draft CPO by DCLG (Wales PINS)
- confirmation that funding is forthcoming conditional upon confirmation of the Order
- there is a reasonable prospect that the scheme will proceed in that funding, resources and organisational facilities will be available. The council’s position is protected through indemnity
- authority being satisfied that the project is sustainable and planning approval for the scheme should not be blocked by planning problems. Report to the acquiring authority for approval to make and seal a CPO, on being satisfied that the conditions precedent have been fulfilled.

Following this, ongoing work takes place to prepare the SoR:

Input from:

- negotiations
- community
- planning and policy
- technical
- legal
- sustainability and wellbeing:
  - economic – demand studies, impact
  - social
  - environmental
  - authorisation conditions.

The SoR is amplified and reinforced with relevant detail:

### STATEMENT OF REASONS (06/04 Appendix R)

06/04 35 – As comprehensive as possible – basis of Statement of Case. Flows from the AIP:

- a brief description of the Order land and its location. Use the numbering from the Order plan and Interest schedule
- a justification of the use of the enabling power
- an outline of the authority’s purpose in seeking to acquire the land. Again group numbered parcels to describe
- a statement of the authority’s case for compulsory purchase – a compelling case
- a description of the proposals for the use or development of the land
- a statement about the planning position of the Order site
- information required in the light of government policy statements where orders are made in certain circumstances (e.g. Housing Acts)
- any special considerations, e.g. ancient monument, listed building, conservation area special category land, consecrated land, renewal area, etc
- details of how the acquiring authority seeks to overcome any obstacle [or impediment] – prior consent before the order scheme can be implemented
- details of any views expressed by a government department
- related applications, appeals, orders, etc
- documents, maps or plans for the public inquiry
- statement of community engagement
- statement of sustainability and diversity
- special considerations, such as open space
- actions already undertaken under Statutory Powers
- details of contact with the claimants
- assessments related to sustainability, wellbeing factors – economic social environmental.

So, taking into account all of that featured above, compile your own check list. Here is mine for starters – but it continually grows:

### PROJECT – THE CASE

Re-read Circular 06/04 – assume nothing, reference throughout:

- why are you undertaking this scheme?
- what is the policy background for the scheme?
- what is the minimum land take required for the scheme?
- what is the maximum land take required – no surplus?
- what is the acquisition status? How will this be audited? Have negotiations commenced? Unknown ownership?
- what steps have been undertaken to identify the owners? Have notices been put up? Who is documenting this?
- what referencing was done for planning purposes?
- is access required for survey purposes?
- what is the planning/local policy/national planning policy status?
- how is sustainable development demonstrated?
- is any CPO likely to be blocked by planning? Remedies?
- are there any other impediments to be overcome?
- what is required under the acquiring authority’s standing orders?
- obtain copies of source documents.

**ACQUIRING AUTHORITY APPROVAL CONSIDERATIONS**

- how is the authority to be sought from the council/cabinet?
- what is the mechanism to communicate between the affected parties/community and the council and the means of updating and engaging all?
- what is the mechanism for translating the authorisations into the statement of reasons?
- how does the proposal line up with Circular 06/04, including the Appendices?
- is a joint venture partner involved and if so was the appointment compliant and on what terms? Do EU procurement rules apply? Roanne?
- is a joint venture agreement signed?
- what indemnity is provided for the acquiring authority?
- what are the terms if the JV partner fails to deliver?
- What are the terms in the event of failure of the CPO?
- is a risk assessment being prepared and who will prepare it?

**CONSIDERATIONS AND ASSESSMENTS – 1**

- special considerations, e.g. listed buildings or open space?
- if open space, how is it dealt with? Sec 19 1981 Act
- what is your justification for using CPO powers?
- how does the public benefit outweigh private interest?
- what is your compelling case in the public interest?
- why is it compelling?
- why is it in the public interest?
- compelling case in the public interest in well being terms
- sustainability/wellbeing/diversity factors?
- social wellbeing?
- economic wellbeing?
- environmental wellbeing? EIA?
- how are these to be assessed?
- how do they cross impact? Compelling case
- documentation of assessment?
- crown/local authority interest. Include as plots but include all interests other than ... dialogue with Crown estate
- retail assessment? Full collateral impact and situs analysis?
- housing.

**CONSIDERATIONS AND ASSESSMENTS – 2**

The factors affecting the mix of residential, commercial and retail premises found in town centres.

**Overlooked:** Assessment as to **what is being attempted** by regeneration of a town centre. The features of retail demand that are **avoided** yet are absolutely essential are:

- **the impact of alternatives**
- a true assessment whether retail projects are **substitutes or complements**.

Nearly every regeneration planning scheme will stress that the new development is complementary or at worst neutral. Many stores in a new scheme will compete with the traditional high street, and so the question has to be asked as to whether they are:

- **complements**
- **substitutes**
- **neutral**.

This then begs the question as to what is being attempted. Is it:

- **reinforcement**
- **replacement**
- **displacement**
- **assisted contraction ... of the city core?**

**PROJECT MANAGEMENT**

- source prepare working interest plan schedule
- has a draft reference plan/schedule been prepared
- has a draft appraisal been carried out? By whom?
- Section 106 /CIL ?
- do you have the necessary resources and if not - cost?
- can a review of sequencing of developer involvement regarding project delivery enhance a demonstration of a reasonable prospect the scheme will proceed? 06/04 20-22
- what is the timetable for the process?
- who is responsible for the delivery of the scheme and ... auditing the process? SRO?
- who are the core CPO team members?  
– surveyor, planner, lawyer, engineer
- which consultants are required and why?
- is specialist CPO advice required and why?
- who does the referencing?
- who is placing notices on the land to identify rights?
- who will be the programme manager for an inquiry?
- who is your contact for technical advice? Gov.Dept./PINS
- what are the milestones?
- target for Approval in Principle
- target for AtM & SCPO
- target for possession?

**DETAIL**

- which government department deals with this and where is the Order to be submitted?
- what powers are appropriate to deliver this and why?
- if the CPO is under the Town and Country Planning Act 1990 (as amended), which wellbeing factors are contributing to the achievement of the scheme?
- if other power, say Housing Act, quantitative and qualitative assessment
- how is the project to be communicated to the community (engagement)?
- when and what level is community involvement?
- how are these to be catalogued for future use?
- has an appraisal been carried out? By whom?
- how is this project to be funded?
- is it likely that the project will proceed?

I hope that these lists and schedules are of help to the reader. I can imagine the Captain of the Titanic requesting a schedule of pressing issues and required actions ... and was given the LIST he was not expecting! Where there is no vision, the people perish<sup>1</sup>. It would seem that people perish through lack of knowledge and vision. In CPO, accumulated knowledge has to be applied to any vision derived from a compelling case in the public interest to achieve an achievable level of success.

**Footnote:**

<sup>1</sup> Proverbs 29:18 King James Version (KJV).

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