



CPOs – A Trigger’s Broom approach for Rodders ... or how a sensitive socially and environmentally challenged mixed-use regeneration CPO was delivered with no objections, no Inquiry and no challenge. However, organisational changes at the delivery stage could have derailed what started out as a possibly exemplary CPO. **Stan Edwards** reports.

# A Trigger’s Broom approach for Rodders ...

**‘Chance favours the prepared mind’ – Louis Pasteur**

## Introduction

Effective delivery of CPOs is not a matter of chance – preparation is essential. There is much to be learned from previous articles on court cases where the system failed in some way, yet the golden grail of acquiring authorities is not what does not work, but an approach that delivers sites with minimal conflict and cost.

## The mid-noughties

The mid-noughties was the time when local authorities were experimenting with the amendments to the Town & Country Planning Act 1990, provided by the Planning and Compulsory Purchase Act 2004, and were grappling with replacing ‘suitable’ and ‘required’ with ‘think will facilitate’, and providing a qualification of ‘contribute to economic, social, environmental wellbeing’. The government had promised a more flexible exercise of power, but the system seemed to misunderstand that this was the requirement for the exercise of a power, and focused on just that forgetting that the exercise of power has responsibilities and guidance to follow, hence the challenges. However, at this time a highly complex regeneration CPO was promoted by the Welsh Development Agency (WDA) which required precise attention to detail.

## Rodney Parade

Rodney Parade was a street in Newport which gave its name to a regeneration CPO approaching an exemplar in CPO in process, notwithstanding the complexity

of its components and stakeholder problems in the final delivery of the project.

Located on the east bank of the River Usk opposite the city centre, the site (3.04 hectares) included mostly degenerated commercial properties in multiple ownerships that had been identified by Newport City Council as a significant residential/mixed use redevelopment scheme in the Gwent Structure Plan/Usk Riverfront Local Plan. **Any scheme would be fettered by high abnormal costs**, including a river walk and flood prevention measures, together with massive and varied environmental requirements and impediments.

## Late 1990s original scheme

In the late 1990s, Newport City Council (NCC) regeneration team, with a succession of developers, approached the WDA to use its extensive land assembly skills and CPO powers to promote a focused linear riverbank regeneration project, resulting in a partnership scheme with a developer and NCC. But, even though NCC offered a subsidy to the scheme, **it failed in 2000 due to a massive financial shortfall** – plus the fact that the JVs were unable to be signed because of Newport’s compliance issues in respect of selecting its developer.

The developer then attempted unilateral acquisitions in line with agreed CPO valuation parameters but without much success, and NCC continued with input into the scheme by undertaking a community exercise identifying concerns

with the critical Colne Street area, particularly regarding future parking and traffic circulation. **The promotion of a CPO would have ended there** but, before describing how the delivery of the scheme was accomplished, it is necessary to know something of the commercial nature and CPO powers of the WDA.

## The Acquiring Authority and its powers

The WDA was established under the Welsh Development Agency Act 1975 (as amended by the Government of Wales Act 1998) and charged with the function of furthering economic and social development, promoting business efficiency and the international competitiveness of Wales, providing, maintaining and safeguarding employment and improving the environment in Wales. **Since 1998 it had become merged with two other quangos** – the LAW<sup>1</sup> and the DBRW<sup>2</sup>. It was from LAW that the WDA inherited its land assembly and augmented CPO powers and expertise. LAW operated commercially on a trading basis as a property company in the public sector, and was a useful residual element of the Community Land Act 1975 (in Wales). In 2002, then as the WDA Land Division & Legal Services (WDA LD), its turnover was £24m with £9m profit. Its core land management (lead), planning, legal and engineering CPO teams were in-house, but as with most large projects it was necessary to augment the Rodney Parade team with external consultants, plus representatives from NCC Regeneration

Colne Street

Rodney Parade



and Planning team and Newport Unlimited (URC).

The WDA powers were under section 21A and Schedule 4 of the 1975 Act, and very wide to acquire land compulsorily to facilitate its development in accordance with its functions<sup>3</sup>. It was similar but wider than the RDA's.

In April 2006 the WDA merged with the Welsh Assembly Government and transferred its powers.

### The Welsh Development Agency (Rodney Parade, Newport) Compulsory Purchase Order 2005<sup>4</sup> (aka 'Rodders')

In 2004 the market conditions improved and the WDA LD had cash receipts to recycle, so it commenced effecting acquisitions on an appraisal basis so that the scheme may just break even. This was a difficult challenge because of pressures outlined later. Early in 2005 the decision was made by the WDA to promote the CPO and started to acquire all interests, including those of the originally proposed developer partner, and to pursue a joint venture with the council. In April 2005 the CPO was approved in principle, followed in June by WDA Main Board approval. In August was a public exhibition, followed by the CPO (made and sealed in October) so that by December 2005 there was:

- no objection to the CPO and therefore no public inquiry
- a planning application submitted for flood defence scheme and walkway
- marketing underway

- much interest from developers
- decision machinery put in place for approvals before WDA demise in April 2006
- programme in place to deliver scheme with (hopefully) no challenge.

In August 2006 the CPO was confirmed (see footnote 4) and the £48m George Wimpey scheme implemented so that by 2007 the priority works commenced on flood defences, which were completed in 2008. The first phase of the construction of the residential development then just started as the recession began to set in.

### Things are not as they seem ...

That brief chronology of events seriously understates the preparation that was required to attempt an exemplar approach to a highly complex CPO.

The project was not without its problems which involved interlinked issues:

#### Financial (economic/technical)

There had to be a reasonable prospect that the scheme would proceed, and without public sector subsidy or developer funding the acquiring authority had to balance the estimated return from the mixed use scheme against a raft of abnormal costs. Apart from high holding costs were:

- CPO acquisition and administrative costs
- flood prevention scheme and river walk way costs
- environmental protection

- highway cost intra and extra based on a TIA
- parking policy constraints
- pressures for a 'quality' scheme which meant subjective cost implications on the development
- returns for the appraisal required high residential capacity
- structure of the imposed mixed use with disproportionate retail use diluting the return.

#### Community

The community concerns revolved around increased parking pressures on existing residents, particularly in respect of the impact of the rugby club on match days, and maintaining access generally and to the school. This would be aggravated during construction. Of particular concern was 'massing' – the building of multi-storey apartment blocks obscuring views of the river to existing residents (notwithstanding it was blocked by original warehousing before the scheme).

#### Environment

The greatest environmental concerns were in respect of the status of the River Usk, and its bank ecology – SSSI and SAC with concerns about otters. Also the running of the Shad had a programming impact on development – no construction would be allowed between April and August. Additionally, TAN 15 (PPS 25) indicated the need for a contribution from the site to a larger flood defence scheme involving other riparian owners. And to seal the

flood defences would mean a loss of rear access to terraced houses on Colne Street. Traffic (parking) was an environmental concern, as was Newport Unlimited's (NU) pressure for 'quality'.

### Political/legal

NU promoted a project for a pedestrian bridge to link the city centre with the east bank (Rodney Parade). This was originally requested to be part of the Rodney Parade CPO, but as NU had pressures to spend, they agreed with the council to advance a Highways Act CPO in isolation. Their CPO would have the effect of creating interlocking CPOs under different powers.

**Their Statement of Reasons made no mention of the Rodney Parade CPO** that was being promoted. This was only resolved by technical assistance from PINS Wales.

Additionally, the finer points of funding requirements to demonstrate a reasonable prospect of the scheme to proceed appeared to be lost in attempts to diminish the development footprint of the scheme to produce more open space in front of the Art College, a grade II Listed Building.

With this in mind it was acknowledged within the WDA LD that developers would only be encouraged to bid if the terms contained an element of flexibility.

### Technological

The technical requirements were immense. Not only were there the usual ones of highway capacity, estate design and services, but also the question of parking capacity impacting upon residential volume, as well as flooding issues requiring under-croft parking. In addition, the flood defence/walkway design had to cater for carrying a fire engine and sealing the rear access of the Colne Street terraced properties to make them flood proof.

### Wellbeing

The wellbeing terms for promotion of a mixed-use regeneration scheme were in conflict and had tremendous cross-impacted hurdles to overcome. **Perhaps the greatest was that the riverbank and its immediate environs were SSSI and the river with SAC status.** It would be very difficult to promote a scheme with so many and extensive problems – it needed some creative thinking to even commence the CPO process.

### Solutions

#### *Trigger's Broom*<sup>5</sup> – thinking differently

What was needed was an approach that effectively focused on delivery. As a

straightforward mixed-use regeneration CPO (no matter how 'iconic') it was a non-starter, because the environmental factors were so extensive and restrictive that it would impact not only on the costs, but on the returns for the site – **it just did not stack-up.**

Those who watched 'Only Fools and Horses' will recall Trigger's broom! Trigger had received a medal for his services as a road sweeper, and when asked why, he replied that it was because he had the same broom for 20 years, notwithstanding it had 17 new heads and 14 new handles. What was required for 'Rodders' was the 'Trigger's Broom' approach – view things in a different way!

### *The compelling case in the public interest*

Notwithstanding the financial difficulties, the one thing that would overcome a seemingly insurmountable environmental opposition would be something of greater benefit – a trump card. Using Trigger's Broom thinking, the 'compelling case in the public interest' went from 'a 480-apartment mixed-use regeneration project with a flood prevention requirement' to 'a flood defence scheme with walkway funded by and in association with a mixed use residential development'. **It was demonstrating that the scheme would prevent a New Orleans type flooding situation,** by protecting 4000 homes and 20000 people. The environmental solution that protected human life superseded the local ecological argument. Every effort was then applied to limit each impediment to optimise the return.

### Cross-impacts

#### *Flood defence scheme – economic/ environmental/technical/social*

The first to be tackled on this basis was the Environment Agency (EA). The EA's preference for the river edge was a large grassy land form which substantially reduced the developable area. The WDA's preference was a hard-edge to the river bank which would have the opposite effect. The compromise was a soft edge with concrete top-of-bank flood prevention, with column piles supporting the walkway. Once this had been agreed there was no plan B. The compromise grassy bank fulfilled the ecological requirements – particularly the routes for otters.

The Colne Street residents saw that although they were losing their rear access they were gaining flood protection, plus compensation ... and hopefully

a reduction in their home insurance premiums.



Colne Street: before



Colne Street: after

### *Planning and a quality scheme – economic/ environmental/political*

Newport CC were preparing an SPG for the area, and there were subjective concerns from Newport Unlimited that the residential development would be a 'quality development'. The WDA rejected such an open-ended requirement because of the fine balance of the appraisal. To overcome this, it was decided to define 'quality' as 'conforming to a standard', and then set an even playing-field by creating a comprehensive and realistic master brief, incorporating the main principles into the SPG. The marketing strategy was a two phased bid:

1. compliance with the brief;
2. strictly financial assessment.

The problem of the amount of retail in the mixed use was eliminated by requiring the future developer to carry out an assessment of retail sustainability.

### *Highways – technical/economic/ environmental*

In highway terms, carrying out a TIA defined on- and off-site requirements. The scheme comprised a long cul-de-sac which meant capacity issues, but capacities were 'pushed' in the light of a real possibility of an additional access to the site in the future. Most of the locals' concerns were not the scheme's on-street parking, but the continued impact on the rugby supporters on match days.

### *CPO process community engagement – social/environmental/political*

It was essential for the scheme to progress that there was buy-in from the local community – in fact it was preferable that the public demand that the scheme proceed. A well advertised exhibition was

held over two days in a school adjoining the site. Over 200 visitors attended the exhibition, with 90 comments, providing an 84% favourable response. The respondents identified concerns mentioned above, but not one person in the local community objected to the CPO.

## Objections

The only objection to the subsequent CPO was the WDA's partner, Newport City Council, who withdrew once they understood that **they would be responsible for unnecessarily triggering an inquiry**. There was no inquiry!

## Organisational and strategic factors

Three things spring to mind when considering this project:

1. contingencies for an exit strategy should underlying macro economic changes occur;
2. how to replicate and standardise for future projects the assessment of a compelling case in the public interest;
3. what lessons are learned from organisational changes during final delivery of the project.

As mentioned in the previous article, the macro economic contingencies form part of a well structured agreement. However, the other two factors should be considered further:

## Assessments

Adapting tools from business management is extremely useful in generating issues both in identifying problems areas and deriving solutions. A structured approach in attempting this is an adaptation of a PEST and SWOT<sup>6</sup> situational analysis as a useful starting point. **The analysis is widened to PESTEL** (incl. environment and legal) so that the greatest use is derived by grouping the wellbeing/sustainability drivers (ESE) and the (PTL) influencers.

Currently these tools are not used to optimum use. Usually people just list the benefits or disbenefits for each PESTEL category, and then with a finger in the air attempt to conjure up the SWOT, with people inventing their own ideas of strengths, weaknesses, opportunities and threats. It is in the area of cross-impacting these factors that the juice of the strategy and justification for a project can soon be derived. Each issue is classified in terms of:

1. +ve/-ve;
2. internal/external;
3. present/future;
4. public/private;
5. risk – frequency/impact.

In this way the situational analysis

practically writes itself, not only identifying and resolving CPO wellbeing/sustainability issues, but also delivering a strategy for project delivery – plus producing details for a required risk analysis.

## Organisational factors

The project management of the promotion of a CPO of this nature proved highly successful, but its ultimate success was nearly compromised. The number of detailed cross-impacted components in the scheme were time sensitive, to retain the cohesion of purpose. The longer the period from seeking confirmation (no inquiry) to the confirmation itself, the more the likelihood of fragmentation. In corporate change related to M&As, mergers are likely to fail through lack of planning, human/stakeholder actions, strategic alignment and implementation.

**The 'Rodders' project was well assessed**, but the main impediments to the project came from within the public sector – those with a different agenda and ignorance of the requirements for CPO delivery. However, no matter how much the WDA planned the delivery of the project, when organisational parameters changed midstream, delays were caused by:

1. the change of culture from a risk-taker WDA/LAW culture to a risk averse WAG on a learning curve;
2. with the onset of the recession, the chosen developer went through a merger process where due diligence, in itself, provided a weakened negotiating position in terms of project delivery;
3. without the scheme's original WDA CPO parents, the planning authority that once attempted amendments through objections now saw the opportunity to apply those elements to the residential planning application. They were:
  - greater area of open space in front of the Art College
  - the first phase on land retained by Newport City Council that was previously planned as second phase
  - the original first phase in proximity to the Art College at the 'front door' of the town. This phase contained the greatest degree of residential 'massing' and the bulk of the value of the site. The WDA had been conscious of the developer's needs in terms of cash-flow, because of the overriding condition that the flood defence/walkway had to be put in first.

The developer, at risk, and in good faith,

had progressed with the flood defence works and expected some flexibility in the other terms. The argument for decreasing the 'massing' when the flood defences had been completed arose because connectivity was diminishing. **As the recession bit it was the developer that had taken possession of the site** and was encumbered with the financial risks of delivery.

## Conclusion

As it is, **the CPO was confirmed**, the compelling case in the public interest was delivered for the flood defences constructed, but to those who promoted the original scheme there was a disappointment that not all the components of the scheme (especially the original regeneration requirements) had been delivered in the spirit that had been understood by the original stakeholders, including the developer – a win/win all round.

The lesson to be learned from Rodders is that complex CPOs are achievable by creative thinking in justifying their use, but unless time sensitivity and organisational factors are appreciated and in place to ensure continuity and cohesion of implementation and delivery, the critical success factors are greatly challenged. ■

## Footnotes:

1. Land Authority for Wales.
2. Development Board for Rural Wales.
3. NOTE Under the Government of Wales Act 2006 the Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the promotion or improvement of the economic/ social/ environmental wellbeing of Wales.
4. By virtue of the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 the compulsory purchase order known as The Welsh Development Agency (Rodney Parade, Newport) Compulsory Purchase Order 2005 was deemed to be a compulsory purchase order made in draft. The draft has subsequently been made and is now known as The Welsh Ministers (Rodney Parade, Newport) Compulsory Purchase Order 2007. The CPO had changed from a Non-Ministerial CPO to Ministerial one.
5. "Heroes and Villains", an episode of the BBC sit-com 'Only Fools and Horses', first screened on 25 December, 1996 – also from the classical Theseus Paradox.
6. Political, Economic, Social, Technology, and Strengths, Weaknesses, Opportunities, Threats.

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