

# Compulsory purchase and regeneration

One of Mary Portas' 28 recommendations was that 'local authorities should make more proactive use of Compulsory Purchase Order powers to encourage the redevelopment of key high street retail space'. In the light of what we know of CPOs can they be used effectively in dealing with these problems?

*Mary, Mary au contraire-e  
How do the high streets grow?  
From empty shelves,  
In empty shells  
Through CPOs all in a row?  
Stan Edwards*

## Introduction

Mary Portas was asked by the Prime Minister to conduct an independent review into the state of our high streets and town centres. Her statement in terms of using CPO powers to encourage the redevelopment of key high street retail space is accurate, but probably not in the way that she meant. Her other recommendations basically suggest marshalling the resources relative to the 'high street' to create a managed, deregulated shopping centre. Such would require, *inter alia*, additional legislation and adjustment to national policy by making an explicit presumption in favour of town centre development. **The cost and validity of such proposals are challengeable** (and have to be) in terms of the operation of the retail industry, sustainable development and public interest otherwise the inadequacy of assessment will lead to unintended and unanticipated consequences<sup>2</sup>. CPOs have to be judged on their individual merits.

## Definitions

It is important to state key definitions from the outset:

- In Wales the definition of 'sustainable development' relates to the enhancement of the economic, social and environmental (ESE) well being<sup>3</sup>. The new English NPPF<sup>4</sup> quotes the UN<sup>5</sup> defining it as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs'. The English presumption is in favour of sustainable development focusing on growth. 'Well-being' has been removed and replaced by mutually dependant ESE 'roles'
- Sustainable development aligns with the 'public interest', which has been defined by the English government as 'the considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens ... common to all members of the community (or a substantial segment of them), and for their benefit'<sup>6</sup>
- The generic 'high street' may be defined as the prime shopping street/s of a town/settlement, market place, comprising shops and commercial interests characterised by the traditional retail and other outlets expected to be found there.



Retail led CPOs for High Street regeneration – any Portas in a storm, questions **Stan Edwards?**

## A situational analysis

A clear alignment of sustainable development and public interest means that the drivers and influencers of a situational analysis<sup>7</sup> are important for providing a context, even if constraints prevent a full analysis now. **The largest part of the analysis by far is going to be the economic one, which is considered first.**

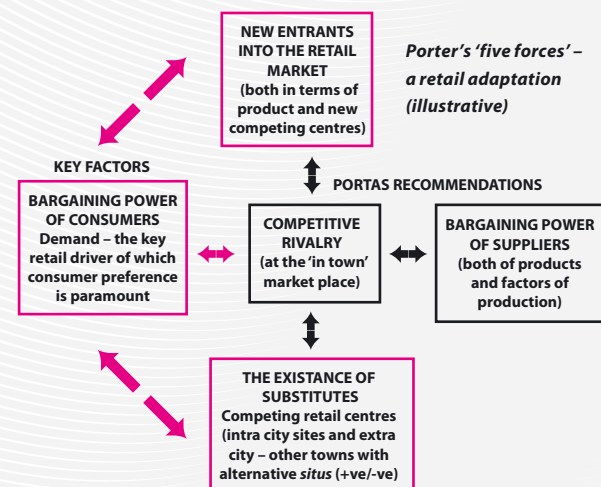
## ECONOMIC WELL-BEING/ROLE

### The context of the economics of the retail industry

The success of any retail centre is geared to prime characteristics of retail demand identified by spending power (income and population), the existence of substitutes, and consumer preference, so that people actually choose where they spend their income. Macro economic effects are excluded from this exercise.

### Portas in Porter

The retail industry in a given geographical area can be described by adapting Porter's 'Five Forces Analysis'<sup>8</sup> as an illustration of the active components. The Five Forces is a framework for industry analysis and business strategy development utilising five forces that determine the competitive intensity and therefore attractiveness of a market – in our case, urban retail.



### The bargaining power of consumers and 'the cake'

Consumer preference and ability to choose is vital in retail demand. If consumers choose to ignore a town's brand new retail icon at the centre and leap-frog out of the catchment area, then that is their choice in a capitalist (mixed) free economy. **The amount of spendable income in the economy, or catchment area at any given time is finite**, and any retail development means an attempt to capture this revenue from somewhere/someone else. There is only so much cake.

Specific capture of spendable income cannot be guaranteed, and it always means winners and losers and resists policy. A shift in population to another area of a town may mean the creation of another centre to provide convenient access to retail, even shifting from an existing out-of-town (OOT) centre to a new one.



### Competitive rivalry and bargaining power of suppliers

The 28 recommendations of the Portas Report being significantly 'supply' orientated seem not to be cognisant of the consumer demand. **It is tantamount to saying that the solution is to create protected shopping centres.**

There are a number of problems with this:

- most high streets are not in single ownership
- urban dynamics and growth over time are ignored. It would mean reversing negative accessibility and convenience to and at the centre
- provision of free parking is at a sacrificial cost
- deliberately encourages congestion
- *ceteris paribus*. Portas appears to apply in practice the theoretic principle whereby all other things (in the retail hierarchy and distribution) can be held constant. This may be fine for the firm in describing micro economic theory, but all other forms of retail cannot be held constant whilst the centre receives a, perhaps, undeserved and questionable, priority
- part of the argument for the traditional high street is that shopping patterns within it should be retained and conflict will ensue with the Portas orientated regenerators. Local independent traders in centres put profit directly back into the local economy, whereas larger national multiples do not. The deregulation of on-street market trader operations suggested by Portas is in direct conflict with shop keepers who have overheads
- a managed shopping centre/high street focused on retail delivery increasingly demonstrates the Schumpeter<sup>9</sup> effect of creative destruction characterised by the destruction of smaller units to create others
- the CPO aspect is considered later.

### The existence of substitutes

There will always be substitutes of varying shapes and sizes, including off-centre and OOT shopping, and competition from other towns with their satellites also competing. **Realistically the complete package of retail is no longer mono centric**, no matter how much politicians and environmental planners would wish it to be. In fact towns should now be considered by the purchasing public as composite, polycentric networks of retail offers.

### New entrants into the retail market

These investors will have done their research and targeted the consumer. They realise, what policy planners fail to accept, that they must bring the market to consumers. Regeneration planning, in promoting unassessed replacement retail in town centres, attempts bringing more consumers to the market. Internet shopping is the classic example of targeting convenience.

## ENVIRONMENTAL WELL-BEING/ROLE

### Urban retail location or situs

It is said that 'there are three things that matter in property – location, location, location.'<sup>10</sup> The urban economist would disagree in that location is just a position on the globe and say that 'situs' is the key. Situs represents those features within a location that provide its critical success or failure factors. Just because a town or city remains in an apparently good, proximate geographical location does not assist in assessing how that town performs in retail terms.

### Urban growth and urban change management

People readily accept corporate change, but are unable to apply

those features to urban change because they impinge directly on our lives and the time span is of generational proportions. The traditionalist would love to pickle and preserve our old high streets safe in our memories. The younger generation are unable to relate to this – the world has moved on.

### The high street's inability to cope

Urban growth happens organically, and the town centres just could not have coped with the size of population, changing modes of transport and shopping patterns – diminishing returns had set in. **Some bombed cities like Bristol and Coventry were able to cope for a while**, taking the opportunity to reinvent their centres. However, a characteristic of urban growth is the creation of sub-centres (towns become polycentric) servicing the indigenous residential neighbourhoods in close proximity.

### Out of town (OOT)

Given the constraints which characterise the centres of towns, OOT and out-of-centre (OOC) became an essential part of the lives of millions of people all over the world. The negative situs features of constraints and congestion of centres have been exchanged for the positive situs features of accessibility and convenience found in retail parks and OOT shopping centres. Here, spending on high and low volume/bulk convenience and comparison goods is channelled through them being easily and conveniently accessed. In fact the trade-off is between cost and convenience.

OOT started on a large scale post WWII in that the main planning solutions in the UK were expanded towns and new towns. The beauty of new towns, such as Cwmbran, was that they were built with creating sub-regional shopping centres in mind. They provided accessibility with ample free parking/convenience on a plate. **It is no wonder that Cwmbran's vacancy rate is currently at 5-6%** as opposed to the current 11% national average, and that it impacts heavily on the desperate plight of surrounding towns and cities.

## SOCIAL/COMMUNITY WELL-BEING/ROLE

### Now 'market to the people' not 'people to the market'

Surely the overall public interest concern in society is not the priority to protect the high street, but to make sure that the population is fed, clothed and housed lining up with Maslow's pyramid of needs<sup>11</sup>. Whereas traditionally it was a case of 'people to the market' it is now 'market to the people' – convenience in whatever form that takes, including the internet. This does not sit well with those policies created to recreate town centres with a defunct utility.

### Socio/economic heritage

The problem of trade diversion 'in' city centres associated with regeneration is a deliberately unacknowledged problem. After the Iceland Case<sup>12</sup>, Newport City Council<sup>13</sup> commissioned a retail study and capacity assessment. Their summary of the report, regarding job creation benefits of further retail development described, on a specific point, the circumstances relating to additional retail development where trade diversion from existing retailers and job transfer could occur. This potentially impacted negatively on existing centres, with no new significant retail employment generated, but rather a redistribution of existing jobs around the city.

### Community

It is significant that with extensive growth (including residential) the desire for convenient retail and local social interaction drives



## Compulsory purchase and regeneration

the creation of new centres. The town centre itself retains a varied function, including community, recognising also that due to the Localism Act 2011 it will be subject to the 'duty to cooperate'. The immediate indigenous residential community at town centres actually seek, as a minimum, levels of convenience shopping found in neighbourhoods. **They are the ones who have seen the irreversible changes**, and eventually have to be satisfied with what can trade at a lower level of activity.

### Empirical evidence of decline in South Wales' traditional shopping centres

The UK government is prepared to provide £100,000 to each of 12 'Town Pilots' suggested by Portas, as a way of experimenting with her recommendations. Too little money and too little time has been allocated for a realistic assessment to be made. The approach in terms of sustainability is to be questioned.

Throughout Wales are many examples of town centres in crisis. It would take a lengthy report to catalogue these, but realistically Newport, Pontypridd, Barry, Ebbw Vale, Bridgend and Llanelli provide examples of critical negative factors from which to 'pick and mix':

- departure of original core business of or associated with the town
- long linear high streets lacking parking and focus
- in-town growth constrained requiring more convenient and accessible sub-centres in the form of superstores and retail parks
- competition from larger and more successful centres and their satellites
- immovable physical constraints
- traditional v development conflict
- a history of unhelpful, failed, misdirected attempts at retail led regeneration.

Newport CC have even attempted to revive its core by creating a new centre, Friars's Walk, adjacent to Commercial Street, in the face of all the foregoing accessibility and convenience aspects described earlier. The council with its developer was reported as agreeing to extract major stores from Commercial Street (the main 'high street') to locate in Friar's Walk. **The explanation as to how this complements Commercial Street is still awaited.**

### Planning policy, urban growth and in-town retail

If, as empirical evidence seems to bear out urban economic theory, extensive growth and the creation of sub-centres is a natural characteristic of that growth, then endeavouring to create regeneration in towns with the same uses that have left (retail) are doomed to fail. Existing planning policies are based on a poor explanation of the facts. Actually the in-town/OOT argument is more to do with control of extensive urban growth (negatively described as sprawl) just as much as with the losses of retail at the centre.

Blame is attributed to the OOC or OOT for their impact on the centre, but the centre is the very thing that sowed the seeds of its own demise. The Post Fordist economy and growth meant that the very things that made a town successful – agglomeration (clustering) and associated economies – would be countered by diseconomies of agglomeration. This is identified by the convenience striving shoppers in terms of diseconomies of scale (congestion and constraints to growth). The new situs features of convenient access to retail (economies of scale) soon drew shoppers to locations in convenient proximity. The policy makers preoccupied with the high street still believe that they can influence shoppers' choice and seem surprised when their attempts fail.

### NPPF and retail

Planning policy will find itself challenged when retail policy is geared to ensure the vitality of the town centre. NPPF (part 2) focuses on town centres as the heart of the community, and to pursue policies to support their viability and vitality. Sequential tests encouraging development towards the centre accompanies guidance which encourages competition within the centre. The preoccupation with 'need' to deal with over-trading by means of competition sits uneasily when under-trading causes empty shops. Promotion of competition becomes a problem when new trades challenge, also promoted, individuality in the form of traditional independent traders who desire to be protected. The policy to retain, enhance, reintroduce and create new town centre markets ignores consumer demand. Also, promotion of edge of centre with town centre connectivity again ignores consumer accessibility and convenience. **The NPPF answer for centres in decline is 'plan positively for their future to encourage economic activity'!** *'Striving to better, oft we mar what's well' – King Lear.*

### Technology

Technological solutions to high streets involve unacceptably high costs, whether it be rationalising the size, accommodation and use of buildings to create a managed Portasian 'shopping centre' or transport and parking. Add to this removing the obstructions to access by preventing parking along the arterial shopping roads which would be socio/political suicide.

### Political

An issue that lingers high on the agenda of many politicians is a preoccupation with legacy. There is a saying, 'every Pharaoh has to have his pyramid'. I would add, 'the rest are in de Nile!'

**A lot depends upon the integrity of the individual authority.**

Some authorities are prepared to sacrifice the high street by plundering them of national retailers to occupy a new 'regeneration' project alongside. Other times, it is obvious that some authorities have difficulty in following their own commissioned retail studies. One such study for a city caused the media to proclaim 'enough convenience stores for the next ten years'. Shortly afterwards a new convenience store was announced contrary to officers' recommendations. The provision of affordable housing or funding a pet environmental scheme is recognised as an inducement to provide retail 'trojan horses'. Politicians' eagerness to expediently fill voids oozes the likelihood of unintended consequences, and demonstrates an inability to acknowledge the generational dimension of urban transition and change.

### Public interest and sustainable development

We therefore have to consider the improvement of high streets in terms of the wider well being of the population, and where town centres sit in a whole host of priorities of challenging importance. Environmental planners describe the utilities of growth negatively as urban sprawl – such thinking is a legacy from the court of King Canute.

What is the 'smart'<sup>14</sup> approach to the disappearance of retail from the traditional high street?

### SPECIFIC

Type of scheme:

- **Status quo**  
No CPO required, but not really acceptable in socio /political terms although gradual change is the way that town centres have traditionally evolved
- **Extended reproduction**  
Using CPO, if necessary, to accelerate the natural process by



marginal changes. Infill schemes

- **Evolutionary transition**  
LPAs plan for changes over time, using CPOs to rearrange uses through decanting and consolidating
- **Radical transformation**  
Complete redevelopment of core retail to create a shopping centre. You have to be pretty sure of consumer preference and loyalty to attempt this.

## MEASURABLE

There should be robust assessments of sustainable development/public interest to deliver change.

## ACHIEVABLE

A retail led regeneration scheme cannot be guaranteed. Marginal changes are achievable such as High Street Swansea (on the periphery of the city centre) to deliver an affordable housing led mixed-use scheme facilitated by a CPO through a WDA originated partnership.

## REALISTIC

Knowing what we do of consumer behaviour and convenience/accessibility, it is realistic that few will want to return to the town centres no matter how much they have changed.

## TIME

The lead-in time can be years, and at the end of this period the original parameters may have changed. CPOs in the high street can be made quickly but unless they have a credible basis and foundation they will be fraught with challenge and an ultimate waste of resources.

## Legal – CPO ... and the high street empowerment

Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended)<sup>15</sup> has made it easier to promote CPOs for a wide range of mixed use, retail and employment schemes. **It could also be used to acquire empty shops** if the council thinks that the acquisition will facilitate the development or improvement on or in relation to the land. To qualify for this empowerment, they would only need to think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the promotion or improvement of the economic/social/environmental (ESE) well-being of their area.

However, whereas the Housing Act specifically operates to acquire empty houses the T&CPA would require wider justification to acquire empty shops.

Guidance – non statutory: whereas the guidance in Circular 06/04 is not statutory. It is there for the use of acquiring authorities in promoting CPOs, those who would object and the Inspectors' guidance.

### 1. A compelling case in the public interest

Sustainable development (SD) and public interest (PI) issues are a start, but the guidance for CPO schemes provides the requirement of a 'compelling case in the public interest'. It is not sufficient that they are just in the acquiring authority's corporate interest, even though it can be demonstrated ultimately for some public good.

**The socio/economic issues are of high relevance in respect of sustainable development.** A full SD/PI assessment has to be made.

### 2. Justify the use of CPO powers

The CPO has to be promoted in such a way as to satisfy human rights criteria. But the exercise of powers of compulsory acquisition, especially in a "private to private" acquisition, amounts to a serious invasion of the current owner's proprietary rights.<sup>16</sup> It is the overriding concern of the courts to protect the rights and

interests of the individual. Of all the types and uses of CPOs, those that are retail led have the most potential for severe collateral socio/economic impact. They set out to remove the competitive advantage of numerous retail interests and replace them with others 'in the public interest.'

### 3. There must be no impediments to the implementation of the CPO

The blocking impediment may be the lack of planning/market evidence. Does acquiring an empty shop(s) mean that a new replacement(s) will do better? Does interfering with the rights of current occupiers assist in resurrecting a dead or dying centre akin to putting a new patch on an old garment?

### 4. There must be a reasonable prospect the scheme will proceed

### The challenge ...

The challenge is for a rational strategic approach to consolidate and reinforce stability in centres, rather than trying to second-guess the market. **Chasing growth in an artificial environment does not provide for sustainable town centres.** If such promoters can reverse the characteristics of growth, redevelop traditional centres out of all recognition, and then convince the public that it is what they want, then high streets stand a chance. ■

### Footnotes:

1. The Portas Review – an independent review into the future of our High Streets – Mary Portas, December 2011. <http://www.maryportas.com/news/2011/12/12/the-portas-review/>.
2. Merton, Robert K. Sociological Ambivalence and Other Essays. New York: Free Press, 1976. Article 1936 "The Unanticipated Consequences of Purposive Social Action,".
3. One Wales: One Planet Consultation on a new Sustainable Development Scheme for Wales November 2008.
4. NPPF National Planning Policy Framework Department for Communities and Local Government March 2012.
5. Resolution 42/187 of the United Nations General Assembly.
6. Office of the Information Commissioner (QLD) Information Sheet – Public Interest Balancing Tests in the Freedom of Information Act Issue Date: 5 February 2003.
7. Political, economic, social, technology, environmental, legal, community. Rearranged for sustainable development as economic social/community, environmental drivers and political, technical legal influencers.
8. Michael E. Porter. "The Five Competitive Forces that Shape Strategy", 1979 Harvard Business Review.
9. Schumpeter, Joseph A. [1942] Capitalism, Socialism and Democracy, London: Routledge.
10. Lord Samuel or real estate classified ad in the Chicago Tribune: 'Attention salesmen, sales managers: location, location, location, close to Rogers Park. 1926.
11. Abraham H Maslow. A Theory of Human Motivation (1943).
12. R (on the application of ) Iceland Foods Ltd Claimant v Newport City Council. Defendant Neutral Citation Number: [2010] EWHC 2502 (Admin) Case No: CO/2654/2010 in the High Court of Justice Queens' Bench Division Administrative Court in Cardiff.
13. Retail Study and Capacity Assessment carried out for the City Council and urban regeneration company Newport Unlimited by Colliers International (formerly Colliers CRE) 2010.
14. Specific, Measurable, Achievable, Realistic, Timebound.
15. Town and Country Planning Act 1990 by Section 99 of the planning and Compulsory purchase Act 2004.
16. Lord Walker – R (on the application of Sainsbury's Supermarkets Ltd) (Appellant) v Wolverhampton City Council and another (Respondents) [2010] UKSC 20 – Para 84.

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