



Research Paper 8

**Compulsory Purchase Orders:
A Review of Usage and Best Practice**

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Summary

- CPOs are a vital tool that enable acquiring authorities to compulsorily acquire land/interests to ensure that a regeneration initiative that is in the public interest can go ahead.
- However, the number of CPOs in 2009 was at its lowest for several years and there is a risk that CPOs may drop off the agenda as a tool for delivering regeneration.
- In the light of the current challenging economic climate, this paper aims to take a timely and necessary review of the level of usage and success rates of CPOs nationally and by region, and the reasons why Orders can fail, and to investigate practitioners' perceptions of the benefits and some of the difficulties often associated with CPOs.
- The statutory and policy tests firmly place the onus upon an acquiring authority to demonstrate that there is a compelling case in the public interest justifying confirmation of a CPO.
- The statistical review undertaken suggests that success rates for both Planning and Housing CPOs are generally high.
- The review of non-confirmed orders highlights the reasons why the Secretary of State may decide not to confirm Planning or Housing CPOs.
- A Practitioners' review reveals that although CPOs are broadly considered to be effective in achieving site assembly they are not always timely in the context of public sector funding and private sector expectations of scheme delivery.

Introduction

Compulsory purchase is undoubtedly an important and flexible tool available to the public sector by which it can facilitate site assembly and promote physical redevelopment and regeneration.

This paper focuses primarily upon the use of planning and housing compulsory purchase powers.

Compulsory acquisition often receives a mixed press and is sometimes perceived as confrontational, complex, slow, uncertain and expensive. This paper seeks to test some of those perceptions and consider the effectiveness of compulsory purchase, in the sense of whether Compulsory Purchase Orders (CPOs) are successful on their own terms; that is whether or not they are confirmed. It is acknowledged that the success of an Order is only part of the picture and should not necessarily be equated with the success or otherwise of the underlying scheme. Nonetheless it remains a valid enquiry as to whether powers of compulsory acquisition are being used and, where they are used, whether they are being used effectively to acquire land in the public interest.

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This paper:

- Reviews the success rates of Planning and Housing CPOs made 2003-2009;
- Analyses the reasons where CPOs were not confirmed;
- Looks at legal challenges to confirmed Orders;
- Includes the results of interviews with a panel of practitioners; and
- Draws conclusions from the above.

As a caveat, it must be emphasised that the bare number of CPOs made does not in itself of course equate to the scale or extent of regeneration or redevelopment. An individual CPO may vary from one interest in a sole plot to several hundred plots and interests and cover considerably different areas of land and achieve very different purposes. That said, the number of Orders made can be indicative of the existence of problems facing authorities which can often only be resolved by the preparedness of authorities to use compulsory purchase powers.

The report focuses on the main compulsory purchase powers used by local authorities, namely those found in the Town and Country Planning Act 1990 and the Housing Act 1985. We are obliged to the National Land Acquisition Unit, Government Offices, and local authorities for data used in this report. However, there are certain limitations in the way that data has been captured; Housing Act CPOs are therefore grouped together and no distinction is made in the statistical section of this report between those orders made, for example, under Section 17 (Provision of Accommodation), Part VII (Renewal Areas) or Part IX (Clearance Areas). Furthermore it would appear that a handful of Orders made, for example, under Local Government Act 1972 have been included in the figures as 'planning' CPOs. Given the overlapping purposes we consider it is appropriate to retain those figures in the planning category.

Review of Planning and Housing Compulsory Purchase Orders 2003 – 2009

Figure 1 below shows the numbers of Planning CPOs made under Section 226 (1) (a) Town and Country and all Housing Act CPOs submitted by local authorities between 2003 and 2009 (to date). Figure 2 shows the numbers determined.

Figure 1

Planning and Housing CPOs submitted 01/01/03 - 04/11/09
(including those not yet determined)

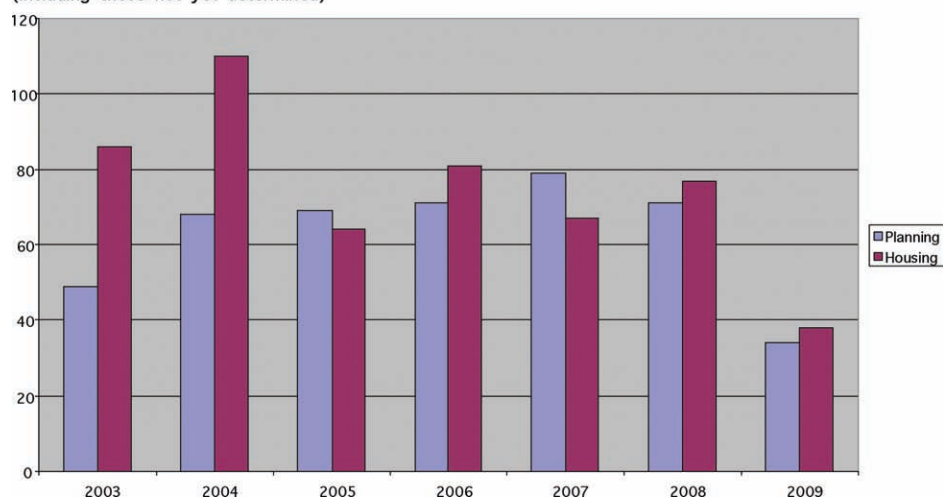


Figure 2

Planning and Housing CPOs determined 01/01/03 - 30/09/09

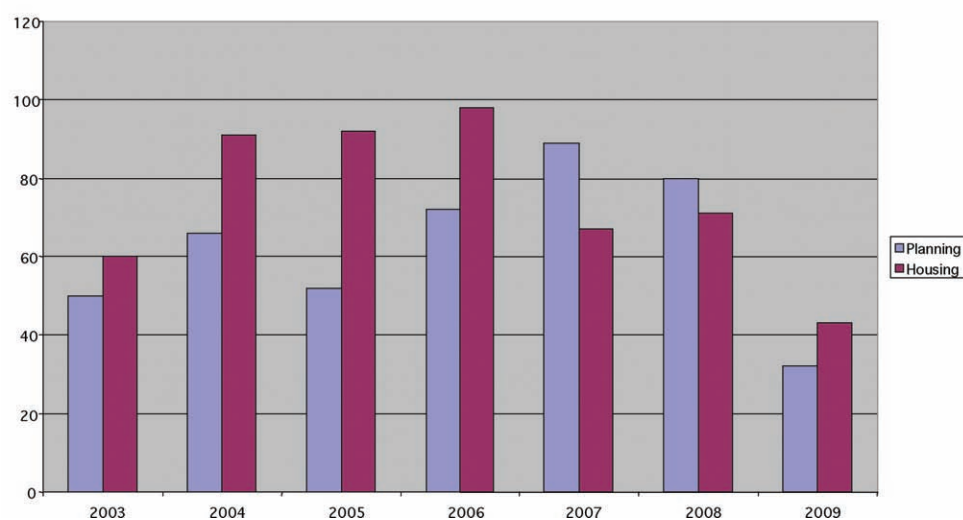


Figure 1 shows that there has been an increase in the use of Planning and Housing compulsory purchase powers after 2003.

Figure 1 indicates that the number of Housing CPOs submitted annually between 2004 and 2008, with one exception, falls between 65 and 85 each year. The exception to this pattern is 2004 in which 110 were submitted. That annual figure was significantly inflated by one Midlands authority making 30 orders each of which appears to have been in respect of a sole property. We would therefore suggest that there has been broadly consistent use of Housing CPOs during this period. Many of these orders reflect the use of Housing Compulsory Purchase powers by authorities in the first and second tranche of Pathfinder initiatives.

Figure 2 sets out Housing CPOs determined in the same period and follows broadly the same pattern: between 60 and 100 annually.

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What is most striking about both submitted and determined figures is the fall in 2009 to date as economic circumstances changed. The figures for determination, of course, reflect orders made in the previous year. It is therefore anticipated that the figures for determined orders will in due course show a decrease in 2010.

The number of Planning CPOs made 2004-2008 shows a marked consistency, with the annual totals falling within the range 64–79. The figures for 2003 were slightly lower at 50. Without further historical analysis it is not clear whether this reflected a generally lower level of usage against which the mid-noughties usage comprises an increase. Anecdotally there is some evidence in recent years reflecting a limited revival in the use of compulsory purchase powers. More speculatively, it may appear somewhat exaggerated if judged against a hiatus in 2003 in use of Planning CPOs in advance of the changes to S226(1)(a) TCPA 1990 (and which eventually came into force in October 2004). Those changes perceptibly broadened the ambit of the planning power from the clearly objective test of necessity to the more suggestive, subjective test of whether an acquiring authority ‘thinks’ acquisition will ‘facilitate’ development, redevelopment or improvement. The change in emphasis in Circular guidance 06/04 also sought to encourage the proactive use of Planning compulsory acquisition powers and included the express acknowledgement by the Secretary of State that the use of such powers was acceptable to facilitate housing market renewal. Indeed a number of the Planning CPOs made between 2004 and 2008 were pursuing Housing Market Renewal objectives. Of course, the relevant Secretary of State’s basis for confirmation has remained the same, namely whether there is “*a compelling case in the public interest*” and whether he is satisfied that there are reasonable prospects that the scheme will go ahead if the Order is confirmed.

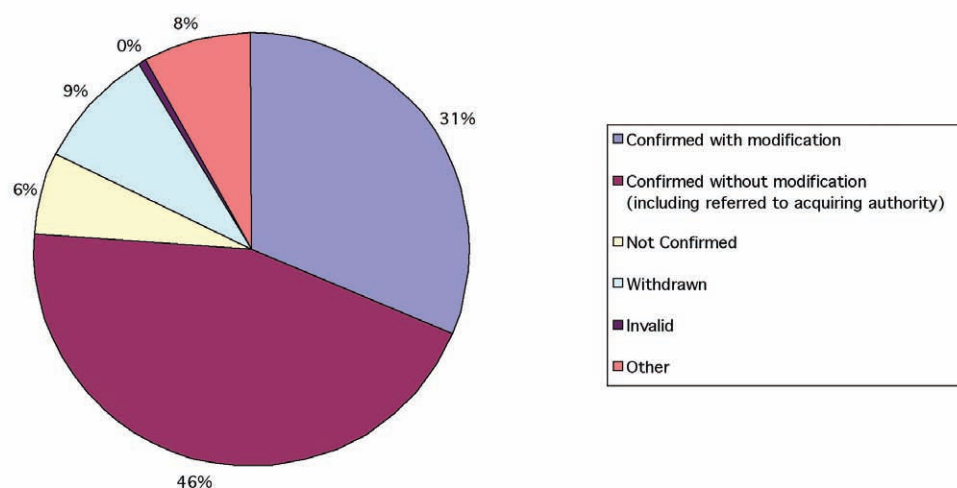
What is most striking about the planning figures, however, is the generally consistent levels of compulsory purchase activity between 2004 and 2008 and the subsequent steep decline in the numbers of Orders made in 2009. Notwithstanding that the figures only represent the position to 4 November 2009, nonetheless it is a stark reflection of the recent decline in economic activity.

Furthermore it would be interesting to investigate the extent to which the recession has discouraged authorities from implementing confirmed orders. Anecdotally it would appear that there are a number of schemes which have benefited from a confirmed order, but authorities have been reluctant to implement the order because the underlying scheme may no longer be considered viable.

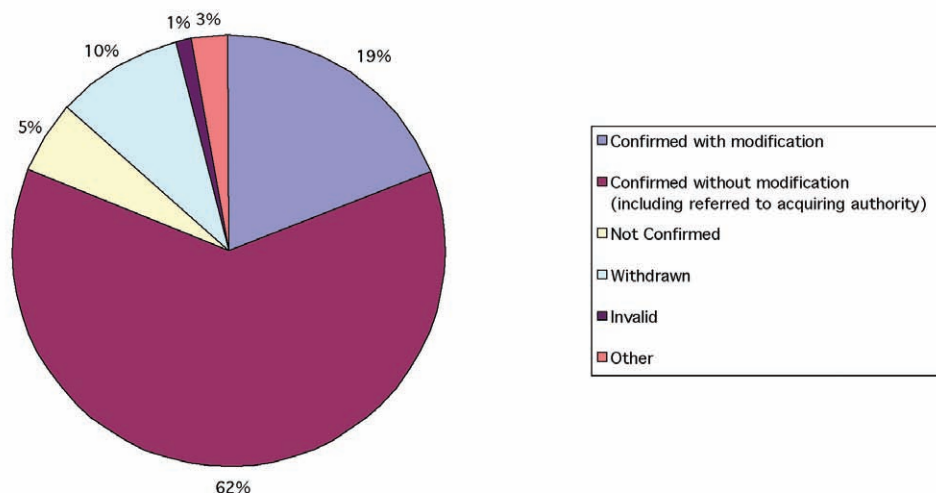
Figure 3 contains a breakdown of the results of planning and housing CPOs submitted between 1 January 2003 and 30 September 2009.

Figure 3: Planning and Housing CPOs determined 01.01.03 – 30.09.09

Planning CPOs



Housing CPOs



More Housing CPOs were made compared with Planning CPOs. This reflects a larger number of smaller CPOs: i.e. Housing CPOs made in respect of sole or small numbers of properties. Planning CPOs as a generality tend to cover wider areas. 62% of Housing CPOs and around 46% of Planning CPOs are confirmed without modification (this includes those referred back to the acquiring authority for confirmation, there having been no objections received). Orders confirmed without modification are in effect confirmed in the form in which they were originally made without alteration. 19% of Housing CPOs and 31% of Planning CPOs were confirmed with modifications. This report does not consider in detail the extent and nature of the modifications. From a practitioner's viewpoint it is suggested that the majority of these modifications are largely either technical in nature or reflect an agreed position at Inquiry. It is possible, however, that there are a number of CPOs for which the modifications will have substantially affected the delivery of the scheme.

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Roughly around 10% of both Planning and Housing CPOs are withdrawn. This should not necessarily be taken as an indication of the CPO having failed, but rather that changed circumstances meant that it was no longer necessary to proceed with the Order; acquisition by agreement having been agreed against the backdrop of a CPO. To that extent we would suggest that many withdrawn CPOs can in fact be considered to have succeeded.

If withdrawn CPOs are considered as part of the confirmed percentages, then it is likely that up to 85% of Planning and 90% of Housing CPOs were successful.

A very small number of Orders submitted were considered invalid.

There is also a small percentage under the category of '*others*' which includes those for which details of the determination or otherwise of the Order are missing. Without further detailed work no conclusions can be drawn from those figures.

Of the Planning and Housing CPOs submitted some 5% of Housing and 6% of Planning Orders are actively '*not confirmed*' by the Secretary of State. That is the Secretary of State actively considered the Order and refused to confirm it for specified reasons. Of these '*not confirmed*' Orders all but eight were opposed Orders which went to Public Inquiry or where written representations were made and thereafter an Inspector's report was considered by the relevant Secretary of State. A small number of these would appear to be not confirmed with the consent of the acquiring authority in particular circumstances. In only two cases did the Secretary of State disagree with an Inspector's recommendation to confirm, and instead not confirm an Order.

Given the way the data has been captured it is not possible to deduce the percentage of opposed Orders which are eventually not confirmed. However, from the figures available and a qualitative analysis of decisions, it is clear and unsurprising that there is a significantly higher risk of non-confirmation where an Order is actively opposed and cases are considered in detail at Public Inquiry.

Both quantitatively and from an assessment of the Secretary of State's decisions, it is evident that an authority's case for compulsory purchase will be rigorously tested and the onus is firmly on the acquiring authority to demonstrate that there is a compelling case in the public interest justifying confirmation of the Order. The finding of this review is that testing of evidence at Inquiry is substantive and real and that acquiring authorities must accordingly prepare their cases thoroughly.

Planning CPOs are more likely to receive objections than Housing CPOs. Objections were submitted to 59% of Planning CPOs, compared with 37% to Housing CPOs. The region with the lowest rate of objections to Planning CPOs is Yorkshire and Humberside at 48%. The highest is the South East at 71%. For Housing CPOs the lowest rate of objections is the North West at 24%; the highest the South East at 67% (although derived from a low base figure).

There are regional variations in the use of CPOs. Figure 4 below shows a breakdown by Government Office Region of Planning CPOs submitted and determined between 2003 and 2009. Figure 5 shows the equivalent information for Housing CPOs.

Figure 4

Planning CPOs by Region 2003-2009									
Region	No. of CPOs submitted between 01/01/03 and 04/11/09	No. of CPOs determined between 01/01/03 and 30/09/09	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Total number of CPOs opposed of those submitted	% of CPOs opposed of those submitted	% confirmed of those CPOs determined	% not confirmed of those CPOs determined
GO-East	44	38	6	21	2	27	61	71	5
GO-EM	27	26	16	3	0	19	70	73	0
GO-L	60	55	15	15	4	32	53	55	7
GO-NE	29	28	11	14	1	20	69	89	4
GO-NW	101	104	30	64	0	67	66	90	0
GO-SE	38	40	6	18	5	27	71	60	13
GO-SW	22	22	5	12	5	11	50	77	23
GO-WM	68	80	37	34	4	33	49	89	5
GO-YH	44	46	13	18	6	21	48	67	13

Figure 5

Housing CPOs By Region 2003-2009									
Region	No. of CPOs submitted between 01/01/03 and 04/11/09	No. of CPOs determined between 01/01/03 and 30/09/09	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Total number of CPOs opposed of those submitted	% of CPOs opposed of those submitted	% confirmed of those CPOs determined	% not confirmed of those CPOs determined
GO-East	16	10	0	7	1	9	56	70	10
GO-EM	50	51	21	11	11	30	60	63	22
GO-L	141	140	19	98	2	46	33	84	1
GO-NE	12	12	6	6	0	4	33	100	0
GO-NW	175	181	18	142	3	42	24	88	2
GO-SE	9	9	0	4	2	6	67	44	22
GO-SW	15	15	3	12	0	6	40	100	0
GO-WM	72	71	31	22	5	34	47	75	7
GO-YH	30	28	1	18	4	15	50	68	14

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The extent of CPO usage varies considerably by region. Over 25% of the combined total of Planning and Housing CPOs are made in the North West region. Other regions with relatively high levels of compulsory purchase usage (in absolute terms) are London and the West Midlands.

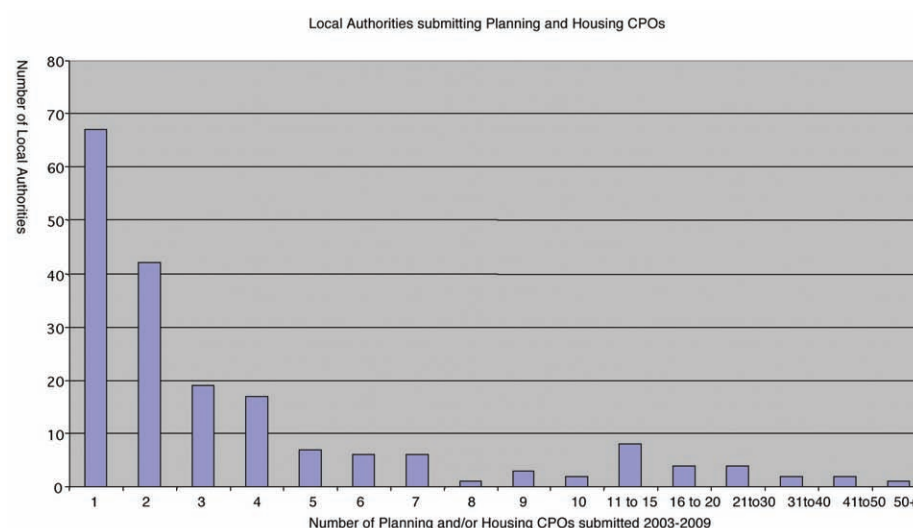
In terms of Housing CPOs, most were made in the North West (175) and London (141) regions. Indeed the usage of Housing CPOs is concentrated very heavily in those regions together with the larger urban areas of the East and West Midlands. Relatively low numbers of Housing CPOs were made in the South East (9), North East (12), South West (15) and East (16). Geographically, therefore, the use of Housing CPOs clearly reflects the need in those regions to address issues associated with poor housing stock and low demand housing.

The figures for Planning CPOs submitted by region fall within a narrower range; from North West (101) to South West (22). This reflects the breadth of the Planning power and its more extensive use by a greater range of authorities across a broader geographical area.

Given the relatively low numbers of CPOs not confirmed, comparative percentage figures for non-confirmed CPOs by region can readily be misleading. Eleven Housing CPOs in the East Midlands were not confirmed. Between four and six Planning CPOs were not confirmed in each of the following regions: West Midlands, London, South West, South East and Yorkshire/Humber. These non-confirmation decisions are considered further below.

Within the headline figures of overall usage it is apparent that the majority of those local authorities that do utilise compulsory purchase powers do so somewhat rarely.

Figure 6



How extensive is CPO usage amongst local authorities? Figure 6 shows that of the 192 local authorities that used Planning or Housing powers the majority of authorities made only one or two Orders and only 10 authorities made 20 or more Orders.

45% of all local authorities in England made at least one Planning CPO between 2003 and 2009. 26% made at least one Housing CPO. 52% made either at least one Planning CPO or one Housing CPO.

Within certain regions usage of CPOs tends to be concentrated within a handful of authorities. For example, within the West Midlands region the local authorities of Birmingham, Sandwell,



Stoke on Trent and Wolverhampton in effect account for the vast majority of Orders made. In London the Housing statistics are significantly affected by 70 CPOs made by one authority, Newham. In others the picture is more diverse. For example, in the North West significant numbers of Orders are made by Blackburn with Darwen, Burnley, Manchester, Salford, Tameside and Wigan, but in addition many other authorities have also made Orders. The distribution is more even in other areas.

Looking at the overall numbers of CPOs made, it may be considered that notwithstanding the increase in the use of planning and housing compulsory acquisition powers in the mid-noughties, that such powers are still not especially widely used when judged against the total numbers of authorities with compulsory purchase powers. This may be for a number of reasons. Firstly, authorities are increasingly successful in systematic and structured acquisition strategies whereby advance acquisition by agreement obviates the need for the use of compulsion. Secondly, the enhancement of compensation arising from statutory loss payments may have encouraged a greater readiness for third parties to agree the sale of interests by agreement. Thirdly, a number of local authorities have no need to use compulsory purchase powers or be politically wary of doing so perceiving it as a draconian step. Fourthly, given that the CPO process is typically led by the acquiring authority, it is often dependent upon both the existence of a culture of use of CPOs and experience. The resource and skills base necessary to promote CPOs are more generally found in Metropolitan and County Councils.

Case Study – Hartlepool

Dynamic, co-ordinated team working is essential to promote major Orders. Hartlepool Borough Council (HBC) made three Planning CPOs in November 2005 in pursuance of HBC's Housing Market Renewal objectives and sought to assemble sites for redevelopment in West Central and North Central Hartlepool. The Orders proceeded to Public Inquiry during the summer of 2006. The Orders were confirmed and were implemented. By March 2007 over 620 properties were vested in the Council. Redevelopment of all three sites is underway providing high quality modern homes.

The key characteristics of the Hartlepool scheme were:

- A strong project team with thorough knowledge of the area
- Consultation with the local community, especially via New Deal for Communities
- Detailed evidence base of housing market failure
- Up to date local planning policy
- CPO, appointment of developer and preparation of planning application taken forward in tandem
- Ongoing negotiation and extensive acquisition by agreement
- Shortened Public Inquiries with relatively few objectors
- Three major housing sites developed or under construction
- Developer view that schemes have not only made significant difference to the area in their own right, but have also had a beneficial ripple effect

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Regeneration, Highways and Education CPOs

We sought also to review the use of Regeneration (i.e. Orders under the Leasehold Reform, Housing and Urban Development Act 1993 and Regional Development Agencies Act 1998), Highways and Education CPOs.

It has not proved possible to access the relevant data to facilitate a detailed review of Regeneration CPOs. Anecdotally, the use of Regeneration powers by both English Partnerships and Regional Development Agencies has tended to be very selective. English Partnerships in particular typically preferred to pursue acquisition by agreement rather than use powers of compulsion. Furthermore, the strategic and directive funding role of RDAs has meant that the project delivery role of achieving site assembly has often devolved to partner local authorities.

As regards Highways CPOs between January 2007 and September 2009, 190 Orders were submitted. Of these 147 were opposed; 43 were unopposed. 146 Orders were confirmed (including 89 confirmed with modifications) and four were not confirmed. Twenty-four Orders were withdrawn (including four which were deemed invalid). Sixteen remain undetermined as at 30 September. At first glance it appears that the non-confirmation rate is much lower than for Planning and Housing. However, it also appears that a higher percentage of Highways CPOs are withdrawn. Further analysis is needed to ascertain whether this is because acquisition by agreement has succeeded against the background of a CPO, or whether they were withdrawn either in the light of technical defects or otherwise anticipated non-confirmation.

Between 2003 and 2009, 28 Education CPOs were submitted. Of these 18 were confirmed, eight were withdrawn and two were still live as at 30 September 2009.

Planning and Housing CPOs not confirmed

A review has been carried out of the Secretary of State's decisions not to confirm Planning and Housing CPOs. The following reasons for non-confirmation can be identified.

Renovation or improvement

Of those Orders made under S17 Housing Act 1985 (for the purposes of securing the improvement or repair, proper and effective management and reuse of land) many turn upon a detailed appraisal of the likelihood of the owners to carry out renovation or improvement such that the acquiring authority's objectives will be achieved without the need for compulsory acquisition. Even in circumstances in which the Secretary of State considered that there was demonstrable housing need and that the Order property was defective, nonetheless, where an objector, even very late in the day and only in response to the CPO, had undertaken works or arranged for works to be carried out then such commitment to renovation often leads the Secretary of State not to confirm the Order. It is interesting to note that in a small number of cases the Secretary of State disagreed with the Inspector's recommendation that an Order be confirmed and decided not to confirm on the grounds that sufficient commitment to renovation had been demonstrated.^{[1] [2]}

[1] Leicester City Council (31 Bridge Road) CPO 2004

[2] Leicester City Council (11 Hardy's Avenue) CPO 2005

In addition, the Secretary of State can be expected to have express regard to Annex E of Circular 06/04 which indicates that he would not expect an owner-occupied house to be included in a CPO unless defects in the property adversely affected other housing. Thus in Church Road, Birmingham,^[3] notwithstanding that the acquiring authority considered there was a risk of differential settlement affecting neighbouring property, this was unsupported by detailed technical evidence. Consequently the Secretary of State considered that the factors in favour of confirmation, namely that there was housing need and the property itself was defective, did not outweigh the failure to demonstrate that the defects adversely affected other housing accommodation.

It is evident from a review of the cases resulting in non-confirmation that the Secretary of State, through his Inspectors, has taken into account all the circumstances of each case including the personal circumstances of the owners and occupiers and has demonstrably carried out a balancing exercise assessing whether a compelling need in the public interest existed as against the human rights of the expropriatee. Where family and financial commitments meant that renovation works had been delayed but there was evidence recent refurbishment work had been carried out, then the Secretary of State has been reluctant to confirm an Order, eg. in Derbyshire,^[4] Leicester,^[5] Nottingham^[6] and Wolverhampton.^[7]

In some of these cases there had been lengthy histories of neglect and disuse of property, together with previous attempts by the Local Authority to intervene. To that extent there was no criticism made by the Secretary of State of an acquiring authority's use of compulsory purchase powers. Indeed it would seem that in several instances it was only the actual use of the powers that brought matters to a head such that the owner took steps to remedy the problem.

A number of cases have faltered where the acquiring authority failed to demonstrate that the preferred scheme underpinning the use of CPO was the only feasible or practical solution.

Alternative approach not properly considered

In Great Yarmouth^[8] an Order was made to purchase compulsorily drainage rights for the purpose of an adjoining house. It was accepted by the Secretary of State that the improvement of the adjoining property by implementing a disabled facilities grant to improve bathroom and WC facilities constituted a qualitative housing gain under Part II of the 1985 Act. However, the Secretary of State was not satisfied that alternative solutions not requiring interference with property rights had been properly considered including the absence of any *"detailed, comparative breakdown of the preferred scheme against any of the possible alternatives"*.

Too much land

It is often said that an acquiring authority needs to justify the need for every last inch of land included in a CPO. Two cases of non-confirmation illustrate this. In Birmingham^[9] the acquiring authority sought to acquire a terraced dwelling with shop front on the ground floor. In addition it sought to acquire an additional strip of land, in separate ownership.

- [3] Birmingham (64 Church Road, Northfield) CPO 2005
- [4] Derbyshire Dales District Council (Ackwood Cottage, Elton) CPO 2005
- [5] Leicester City Council (25 Glenborne Road) CPO 2004
- [6] Nottingham City Council (154 Charlton Road, Nottingham) CPO 2003
- [7] Wolverhampton City Council (79 Oxbarn Avenue) CPO 2006
- [8] Great Yarmouth (Drainage Rights at 17 Middlegate) CPO 2008
- [9] The Birmingham (2 Hamstead Road, Handsworth) CPO 2006

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The reason for acquisition of the access strip was to enable the garden of the dwelling/shop to be increased in size such that it would be suitable for family accommodation. It was not disputed that the acquisition of the strip would benefit the scheme. However, it provided access for deliveries to the rear of the adjoining landowner's shop. The Secretary of State concluded that it was unreasonable to confirm that part of the Order relating to the strip in the absence of greater certainty that an alternative means of rear access would be provided.

In a case in Ellesmere ^[10] the Council made a CPO under S125 Local Government Act 1972 (but which shared much in common with Planning CPOs) to extend a cemetery. It was accepted that additional land for the cemetery was required. The key issue, however, was precisely how much.

The Secretary of State was critical of the manner in which capacity and need had been calculated, reflecting not an extension based on historical or current levels of usage but on a proposed different future cemetery regime, intended to offer a greater choice and enhance income generation. The Secretary of State therefore considered that it was not inappropriate to consider a new site a little further away and that an extension to the existing cemetery was not the only means of achieving the Council's objective.

Housing clearance evidential requirements

Those instances in which clearance CPOs under S290 Housing Act have not been confirmed demonstrate the need for acquiring authorities to ensure that any housing survey and economic assessment are robust. These decisions also serve as a reminder that in making a CPO the onus is firmly upon the acquiring authority to provide sufficient relevant and robust evidence to justify its case. Both in the case of Darwen ^[11] and Burnley Wood ^[12] the economic assessment of the CPO Schemes requiring clearance as against repair and for refurbishment was not found to have been carried out in a systematic or sustainable fashion. For example, comparisons were not made on a like for like basis: costs of clearance as against group repair were not justifiable because the repair costs included costs for structural repair, which formed no part of the Council's case. It was concluded this amounted to a critical flaw in the Neighbourhood Renewal Assessment process in the Darwen case. In Burnley Wood there was a discrepancy in the renovation costs used in the assessment. In any event there was very little to choose between renovation and demolition costs and therefore the Secretary of State was convinced there were good reasons for clearance. In both cases a detailed evaluation was made of the extent to which the acquiring authority had carried out economic appraisals in accordance with Circular guidance and approved methodology.

With Housing Market Renewal CPOs it is essential to provide up to date evidence of local housing market conditions. Detailed assessment of the particular conditions of the local market including evidence of voids, vacancy rates and the respective functions of discrete parts of the market are necessary. Failure to properly assess current market conditions can invariably lead to difficulties with the acquiring authority's prognosis of likely future market conditions, including predicted decline. In Pendle, ^[13] for example, the Secretary of State did not find convincing the acquiring authority's description of the local housing market as being in collapse; rather he was unpersuaded in the absence of detailed and up to date evidence of vacancy rates, long terms voids or abandonment. There was also no clear evidence of downward trends in house prices, nor any high turnover of property.

[10] The North Shropshire (Land adjacent to Ellesmere Cemetery, Swan Hill, Ellesmere) CPO 2005

[11] Borough of Blackburn with Darwen Franklin St No.2/Hannah Street/Star Street/Sunnybank Street/Redearth Street (Darwen) CPO 2005

[12] Burnley (Hampden Street, Burnley Nos. 1 – 5 Clearance Areas) CPO 2004

[13] Borough of Pendle No.101 (Nelson (West) No.1) CPO 2001

The need to adduce contemporaneous market evidence is perhaps more important than ever given the current economic climate and uncertainty about values.

In addition, in Pendle the Secretary of State was unconvinced by the comparative analysis of the economic benefits of the Council's preferred option of redevelopment compared with the benefits likely to accrue from group repair. He considered that group repair was likely to give some uplift in value and would result in a low likelihood of a permanent void rate. In comparison there had not been adequate sensitivity analysis of the redevelopment option; it had simply been assumed – rather than demonstrated – that there would be demand for the new housing stock.

Not enough land

Just as care should be taken to ensure that no more land than is strictly justified should be included in a CPO, it is also essential to ensure that enough land is included and that the land is accurately identified. In Taunton ^[14] an Order contained inadequacies in the descriptions of the area of land required and in fact the extent of the Order Land fell short of that required to achieve the purpose of connecting with the local footpath network. The Secretary of State considered that the steps required to remedy the shortfall fell outside his powers of modification and therefore the Order was not confirmed.

Technical flaws

The Secretary of State will also refuse to confirm an Order which is demonstrably technically flawed and contrary to policy guidance in Appendix V to Part 1 of the Memorandum to Circular 06/04. A Greenwich LBC ^[15] CPO was not confirmed on technical grounds including discrepancies between the descriptions in the Order and the Map to identify the Order Land; Order Map not being at a large enough scale to enable ready identification of addresses; and Table 2 entries not indicating the location of land neighbouring or adjacent to be Order Land which may give rise to an injurious affection claim.

Multiple orders

Also, the Secretary of State is generally unwilling to consider multiple Orders for the same Order Lands made under different CPO powers. When Reading Borough Council submitted three Orders ^[16] under S226(1)(a), S226(1)(b), and S226(1)(a) and (b) of the 1990 Act in respect of the proposed relocation of a policy compound, GOSE was minded to refuse to confirm all three. As a result the Council only pursued the S226(1)(a) Order, the other two being not confirmed.

Planning impediments

Perhaps the most significant Planning CPOs not to be confirmed are those major mixed use, retail or office schemes which encounter opposition from parties with an interest in the Order Land and/or developers with compelling schemes. In such cases there are key issues which can prove determinative: planning obstacles to the scheme, viability issues, and the existence of alternative proposals. In addition, where the planning application for the scheme underlying the CPO was considered by the Secretary of State at the same Inquiry, having been called in, it may well be that the planning position and any possible impediments are considered in greater detail than may otherwise be the case. It also follows that where planning permission is refused on call-in that the CPO will in all likelihood also fail.

Examples of jointly heard Planning and CPO Inquiries are Croydon ^[17] and Dartford.^[18]

[14] Taunton Deane Borough Council (Craig Lea)

[15] London Borough of Greenwich (Kidbrooke Development Area) CPO 2007

[16] Reading Borough Council (land at Whitley Wood Depot, Whitley Wood Road, Reading) CPO 2004 Nos.1-3

[17] The London Borough of Croydon (Land West of East Croydon Station, the Gateway Site) CPO 2007

[18] The Dartford Borough Council (Lowfield Street) CPO 2004

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Croydon

The Croydon scheme was high profile and widely reported comprising an arena-led, mixed use development promoted by the Council in conjunction with its preferred developer in the face of objection from the freehold owner of the majority of the land which already benefited from planning permission for an office-led development.

It is important to note that, quite properly, the Council's preferred scheme for which the Order Land was sought to be acquired compulsorily (although the Council emphasised its overall purpose rather than the scheme per se) was subject to detailed viability testing at Inquiry in a way which the landowner's developer's scheme had not been. The Secretary of State's decision to refuse planning permission and not confirm the CPO rested in large part upon doubts about the financial soundness of the arena element of the scheme (*'the reasonable prospects'* test). Without that element the Secretary of State was not convinced that the scheme would achieve the regenerative and transforming purpose sought. The arena element was dependent upon cross-funding from other revenue-generating elements. It therefore required a robust development appraisal taking into account all development costs (including land acquisition and developer's profit) and of revenue-generating assumptions. Although certain parts of the business plan were found to be reasonable and realistic, the Secretary of State was concerned that uncertainties about funding and land values and other compensation payable, together with revenue achievable, meant that he could not reasonably conclude that the development could achieve the level of returns necessary.

In such circumstances the onus is firmly on an acquiring authority to demonstrate to the Secretary of State's satisfaction that a scheme has reasonable prospects of delivery. In the absence of a favourable conclusion on economic soundness, it is incumbent upon an acquiring authority to produce evidence of the compelling nature of other grounds. In Croydon, however, there were additional substantive planning obstacles, including transportation and design issues, that weighed against the scheme.

Dartford

In Dartford, a called-in planning application for a town centre mixed use scheme and a compulsory purchase inquiry were jointly heard. The Inquiry undertook a detailed assessment of the regeneration and housing benefits sought as against planning policy and environmental and amenity impacts. The Secretary of State's decision turned primarily upon the conflict of the proposed scheme with the development plan including its impact upon Dartford Town Centre Conservation Area. Notwithstanding the acknowledgement that there is no absolute requirement for a planning permission to exist in support of a CPO, the Secretary of State concluded that the refusal of planning permission meant there was not a compelling need in the public interest for compulsory purchase; and the lack of planning permission represented a serious impediment to the implementation of the proposed development.



Circular 06/04 does not, of course, state that the absence of planning permission per se will lead to non-confirmation. Rather Appendix A in respect of Planning CPOs requires that there should be “no planning or other impediments to the implementation of the scheme” ^[19] and that “it is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the Order”. ^[20] It is thus possible to persuade the Secretary of State to confirm a Planning CPO in the absence of planning permission for the scheme. However, it remains necessary to establish a convincing, prospective case that permission will in all likelihood be forthcoming. That position is distinct from a scenario in which the planning impediment has demonstrably crystallised in the form of a refusal of planning permission for the scheme underpinning a CPO.

Calderdale

Even where outline planning permission has been granted it does not necessarily follow that all planning impediments have been overcome as the example of Calderdale illustrates. ^[21] Although the Calderdale scheme turned principally upon issues of viability, the capacity to secure approval of reserved matters was also relevant. The Council’s preferred scheme comprised A1 and A3 retail, car parking, pedestrian footbridge, road bridge and public swimming pool. As with the Croydon scheme, the Calderdale scheme was actively opposed by a developer with its own preferred scheme. Upon a full assessment of the likely costs and value of the Council’s proposed development scheme the Secretary of State concluded that there was insufficient certainty as to viability to enable the necessary resources to be available to allow implementation of the scheme. It was considered particularly important because this was not a case in which the development scheme was not intended to be financially viable, and there was no prospect of public finance being available to underwrite losses.

The Secretary of State was also concerned that confirmation of the CPO would not necessarily permit acquisition of all the land needed for the development. This turned on the exclusion of statutory undertaker’s land from the CPO but which would have been needed to allow complete accordance with details of access within the terms of the outline permission. Objectors contended that a reserved matters application showing the access in an identical position to that approved at outline stage was invalid. This matter was of sufficient concern to the Secretary of State that he concluded that areas which were omitted from the Order, but which would be required to allow implementation, could significantly delay the scheme or even preclude it from taking place.

[19] Paragraph 13 Appendix A Circular 06/04

[20] Paragraph 15 Appendix A Circular 06/04

[21] The Borough Council of Calderdale (Mill Royd Street, Briggate, Bridge Road, Brighouse) CPO 2005

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Hull

In Hull ^[22] the Council sought confirmation of a CPO to provide land for a retail scheme with ancillary facilities, including a health centre, as part of the St Andrew's Retail Park. Not only had planning permission previously been granted for the scheme, but the planning application had been referred to the Secretary of State as a departure at which time he took the view that it did not raise issues of more than local importance and did not justify his intervention. However, in the instance of considering whether a CPO should be confirmed and whether there was a compelling case in the public interest, the Secretary of State undertook a much more detailed and critical assessment of the scheme. He concluded that there was neither quantitative nor qualitative need for the retail element. In particular, the quantitative case was overly reliant upon forecasts derived from an earlier scheme which even on the Council's evidence would not support the extent of additional floor space proposed. The Secretary of State also expressed concerns about the impact upon the Conservation Area. The inclusion of the healthcare element sat unhappily with the requirement for compulsory purpose. The Secretary of State took the view that it was "*predetermined*" by the proposal to include a healthcare facility within the retail scheme and that alternative locations had not been adequately explored.

Legal challenges to confirmed Orders

Once a CPO passes the confirmation stage, there remains, nonetheless, a further hurdle at which it may fail: that of judicial challenge.

Grounds for challenge

A person aggrieved by a Compulsory Purchase Order may challenge a CPO on two grounds:

- The CPO was ultra vires (ie not within the statutory powers).
- Failure to comply with a "*relevant requirement*" of the legislation which "*substantially prejudiced*" the interests of the applicant.

Case law review

Of all the recent reported cases, in only one – Pascoe ^[23] – have the Courts overturned the decision of the Secretary of State to confirm a CPO. At public inquiry the Inspector found that the land which was the subject of the CPO was "*predominantly under-used or ineffectively used*" and that it therefore fulfilled the statutory requirements of section 159(2)(b) of the 1993 Act. The Secretary of State agreed and, in confirming the CPO, adopted the same wording. The Administrative Court considered the test set out in the 1993 Act and concluded that it was necessary for the land, considered as a whole, to be under-used or ineffectively used. The Court therefore accepted the claimant's contention that the finding by the Inspector and the Secretary of State that the land was "*predominantly under-used or ineffectively used*" plainly involved the application of a less stringent test. The Court held that the Inspector had therefore fallen into error by engaging an impermissible dilution of the statutory requirement.

[22] The Kingston upon Hull (Hessle Road and Flinton Street) CPO 2001

[23] *Elizabeth Susan Pascoe v. First Secretary of State & (1) Urban Regeneration Agency (English Partnerships) and (2) Liverpool City Council* [2006] EWHC 2356

The failed case of Collis^[24] concerned a legal challenge on the basis that the Council's resolution was inadequate to authorise the making of an Order. Although the Court did not accept the claimant's argument, it went on to stress that the Secretary of State cannot confirm an invalid Order.

In Bennett,^[25] property, which adjoined a designated clearance area and the acquisition of which was considered by the local authority to be needed to be acquired for the satisfactory development or use of the area, it was argued that the acquiring authority had failed to produce sufficient particulars of the unfitness of particular properties and therefore failed to give residents adequate opportunity to remedy the alleged defects. The Court held that although this may have been best practice, there was no statutory duty to provide such details, and the authority had fully complied with its statutory duties by notifying affected owners and occupiers and reciting general grounds of unfitness.

In Baker^[26] there was no dispute that the premises were "*unfit for human habitation*" under section 604 of the Housing Act 1985, but the claimant contended that there were practical alternatives to the compulsory purchase route which could have been used to return the property to a state of fitness for human habitation, and that a CPO should only have been used in the last resort. The Court concluded that the correct test set out in guidance was not the "*last resort*" test but the "*most satisfactory course of action test*", and that this test had been correctly applied by the Secretary of State.

A further housing case was that of Rowe,^[27] which was a challenge of the Secretary of State's decision to exclude houses from a CPO, and shows the unwillingness of the Courts to interfere with the Secretary of State's exercise of discretion where challenges are made by the acquiring authority. Before the Public Inquiry the acquiring authority had demolished a number of houses contained in a Clearance Order on the basis that they were in a dangerous state. However, the Secretary of State concluded that there was no longer a need to acquire the demolished buildings to deal with their unfitness. The Court held this approach not to be irrational.

A number of human rights based challenges have been brought. In Smith^[28] the claimants sought to challenge a CPO, relating to the 2012 Olympic and Paralympic Games, which affected two traveller caravan sites. The Inspector considered that, to prevent a breach of the claimants' human rights, the Order should not be confirmed until it was demonstrated that alternative traveller caravan sites were available. The Secretary of State, however, considered that the clear and overwhelming importance and urgency of the Order made it appropriate to confirm the Order before alternative accommodation was secured. The Court agreed this was justified given the exceptional nature of the 2012 Games, with convincing and significant benefits for the whole of the UK, and meant that the interference with the claimants' rights under the European Convention on Human Rights 1950 (ECHR), Article 8, was proportionate.

[24] *R (on the Application of Collis) v. (1) Secretary of State for Communities and Local Government and (2) London Borough of Tower Hamlets* [2007] EWHC 2625 (Admin)

[25] *Valerie Bennett v. (1) Secretary of State for Communities and Local Government and (2) Metropolitan Council of Bury* [2007] EWHC 737 (Admin)

[26] *R (on the Application of Edith Baker) v. First Secretary of State* [2003] EWHC 2511 (Admin)

[27] *R (on the Application of (1) Burnley Borough Council (2) Peter John Rowe) v. First Secretary of State and Others* [2006] EWHC 798 (Admin)

[28] *(1) Lisa Smith (2) Mary Ellen Reilly (3) Julia Reilly (Claimants) v. Secretary of State for Trade and Industry (Defendant) and London Development Agency (Interested Party)* [2007] EWHC 1013 (Admin)

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A similar approach was taken by *Sole*,^[29] another Olympics case. The claimant argued that the decision to approve the Order was a disproportionate interference with his rights under ECHR Article 8.

In *Hall*^[30] and *Powell*^[31] the Courts upheld circular guidance establishing the “*compelling case in the public interest*” test. In *Powell* it was argued that the correct test to be applied, for an order to be a proportionate interference to human rights, is that it should be the “*least intrusive*” means of achieving its objectives. The Court rejected this approach and held instead that the policy requirement that a CPO will not be confirmed unless there is a compelling case in the public interest fairly reflects the necessary balance required under the Human Rights Act 1998.

Attempts have also been made to challenge CPOs on the basis of the relationship between CPOs and planning or regeneration proposals. In *Alliance Spring*^[32] (which concerned the development of the new Emirates Stadium for Arsenal Football Club) the Secretary of State confirmed the Order, with amendments, on the basis that there was a compelling need for the scheme in the public interest. The claimant challenged the scheme on the basis that its purpose was to give the football club a new stadium and it could not be properly regarded as a scheme to achieve the comprehensive regeneration of the relevant area for which there would be a compelling case in the public interest. The Court held that the purpose of the scheme (regeneration) and not its effect (the new stadium) were all important, and that the local authority was entitled to make use of the football club’s desire for a new stadium to produce and promote a scheme which it regarded as a comprehensive redevelopment of the area in the public interest.

In the Scottish case of *Standard Commercial*^[33] the claimant sought to challenge a so-called ‘*back-to-back*’ agreement, which underpinned a CPO, by which the Council would compulsorily acquire a site which was in multiple occupation and make over the site to a developer in return for the reimbursement of its costs in assembling the site and making it available. The Court decided that the Council had not acted unreasonably in entering into these terms since ‘best terms’ did not necessarily mean ‘best price’ and it was entitled to consider planning benefits and gains of value to the authority.

CPO experience

We carried out a series of interviews with a panel of 10 practitioners with involvement in the CPO process, including private sector developers, funders, local government officers, public sector agencies and valuers. Many of the individuals interviewed had appeared as witnesses at Public Inquiries and had worked as part of a CPO Project Team. Their views were sought, based on their experience of compulsory purchase: on the time taken by CPOs; their effectiveness; whether objectors had a fair opportunity to be heard; and the benefits/disbenefits of the process.

[29] *John Sole v. (1) Secretary of State for Trade and Industry (2) London Development Agency* [2007] EWHC 1527 (Admin)

[30] *Hall & Another v. (1) First Secretary of State (2) Hillingdon London Borough Council* [2007] EWCA Civ 612

[31] *(1) Belfields Ltd (2) Nextdom (Bootle) Ltd (3) David Powell v. (1) Secretary of State for Communities and Local Government (2) Sefton Metropolitan Borough Council* [2007] EWHC 3040 (Admin)

[32] *Alliance Spring Co Ltd & Others v. First Secretary of State* [2005] EWHC 18 (Admin)

[33] *Standard Commercial Property Securities Ltd and Others v. Glasgow City Council and Others* [2006] UKHL 50



Practitioners' experience of compulsory purchase was broadly positive. In the case of Housing Market Renewal it was seen as essential to achieve site assembly and get schemes off the ground. From a valuation perspective it was considered to be a positive tool which demonstrated the commitment of the public sector to a scheme and encouraged third parties to take realistic negotiating positions. However, there were also negative experiences, most particularly in respect of the resource implications and time taken.

The bare, statutory CPO process was itself considered by some consultees to be relatively straightforward albeit one where *"you must pay attention to detail for 100% of the time"*. However, the preparatory process was considered to be *"too long"* and the *"evidence gathering often overly elaborate"*.

In particular, the amount of time taken when working up major regeneration projects from procurement to developer appointment and securing funding arrangements often led to decisions on compulsory acquisition being delayed or postponed.

The reasons for delay in schemes involving CPO were considered by interviewees to be as much a reflection of uncertainty about the scheme being promoted, as of the CPO process. The decision whether or not to utilise CPO powers was described as the *"acid test"* of the worth and suitability of a scheme. Only if it was the right scheme and one which could be fully justified did those practitioners with funding and scheme delivery experience feel comfortable in making a CPO. It was considered more straightforward to use CPO powers for clearly defined schemes with detailed policy provenance. Highway CPOs, for example, were generally perceived as being less complex than regeneration or town centre redevelopment Orders.

There was acknowledgement that Government initiatives had succeeded in bringing forward Public Inquiries within a reasonable timeframe and almost invariably within the target five-month period.

However, there was also much frustration with the time taken by the CPO and compensation processes. One private sector view of a CPO-led scheme was that it was *"contorted and Byzantine"* and moved at *"glacial speed"*.

There was dissatisfaction both from public and private sectors with the time taken to resolve issues of compensation and that referrals to the Lands Tribunal continued many years after the CPO and scheme were complete. The *'hangover'* issues of compensation and some title issues could continue for many years on some schemes and occupy a lot of resources.

In terms of success rates and effectiveness, the experience of the Panel was that given the right preparation and a robust scheme the prospects of success were good. However, successful land assembly per se was perceived as only one element of the effective use of CPOs and it was considered crucial that CPOs worked in a timely fashion.

Some commentators were critical of the reluctance of acquiring authorities and of funding bodies to make and fund CPOs in advance of complete certainty as to, for example, planning permission and private sector involvement especially in terms of CPO indemnity and commitment to meet land acquisition costs. Surveyors tended to emphasise the need for early site acquisition and assembly whereas those with a funding perspective emphasised the need to obtain all necessary funding approvals and commitments before a CPO could proceed.

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There was acknowledgement that the traditional iterative and sequential approach to schemes could give rise to delays which in themselves could be fatal to timely delivery of the scheme. Mechanisms needed to be developed to enable key elements of schemes to be taken forward in parallel. In an era of constrained public funding it was felt that public funds could best be utilised to achieve physical regeneration by means of earlier intervention to site assembly and de-risk sites to encourage greater private sector interest.

Perception of risk and how it should be shared between public and private sectors underlies many of the apparent delays in schemes reliant upon CPO for site assembly. Developers, funders and investors perceived regeneration as a risky undertaking and the use of CPOs as time consuming and creating uncertainty. Interviewees also considered that often acquiring authorities were too risk averse rather than risk aware. There was a call for a more candid dialogue between public and private sector partners as to the risks associated with earlier use of CPO for site assembly.

Public sector practitioners believed that CPOs had an important role in demonstrating the commitment of the public sector towards regeneration and in enhancing public sector performance and confidence but also considered that there was scope for improved education and communication about the benefits and opportunities that could arise from the effective use of CPOs. It was generally considered that the public sector had a good track record in effective delivery of sites by means of CPO and that this needed to continue if regeneration momentum was to be maintained.

Specific reasons for delays which caused frustration included the absence of clear legal mechanisms to overcome hurdles such as obtaining planning permission in advance of CPO where a S106 Agreement was a prerequisite of permission being granted. Notwithstanding that terms could be included in development agreements, for example, there was broad support for the use of Arsenal style conditions, i.e. the use of a planning condition which in turn required a S106 agreement to be completed once site assembly was also complete.

There was a broad consensus that early and clear communication with persons affected by an Order represented best practice and was beneficial to the process. As well as respecting individual rights it also provided an opportunity to avoid misunderstanding and, where practicable, promote acquisition by agreement.

The CPO process was considered to provide a fair opportunity to objectors, although there was acknowledgement that it could be intimidating to some third parties or 'lay objectors'.

Public sector consultees felt that there was a particular need for better communication and that tensions would be defused by the involvement of a neutral third party, independent of an acquiring authority, which could provide information relating to the CPO process. CLG booklets advising third parties were considered good but should be expanded to give clear and bold explanation of complex process.

There was a mixed response as to whether those practitioners who had been involved in the CPO process were more or less likely to consider using them in future. Some were more inclined because of the positive results (e.g. overriding covenants) especially when judged against problems with similar projects taken forward purely on a negotiated basis. Others considered the process to be discouraging especially in terms of the timescales taken by large, mixed use schemes.

Conclusions

Notwithstanding that the scope of this paper has been national, the conclusions are especially relevant to all those regions promoting physical regeneration by means of CPO or considering doing so.

The research undertaken has revealed that in the period 2003-2009 some 52% of local authorities made Planning and/or Housing CPOs. Of those authorities that used such powers most used them on only one or two occasions. In contrast, a small number of authorities have used their Planning and Housing compulsory purchase powers extensively.

It is acknowledged that the bare number of Orders made does not necessarily equate to the scale of intervention since the scope of Orders can vary from a sole plot to several hundred interests. Nonetheless, it is submitted that broad conclusions can be drawn from the levels of usage. Higher numbers of Housing CPOs, as may be expected, are to be found to have been made by authorities in those areas closely associated with Housing Market Renewal initiatives such as Pathfinder, for example, in the North West region. Planning Orders tend to be more evenly spread geographically and to be more widely used.

Where CPOs are used they are generally successful. Only 5% of Housing and 6% of Planning CPOs are not confirmed. The assessment of the actively not-confirmed decisions suggests that the testing by the Secretary of State of cases for compulsory purchase is real and substantive and that it is necessary for an acquiring authority to present a robust body of evidence in order to demonstrate that there is a compelling case in the public interest justifying compulsory purchase.

The analysis of the decisions not to confirm indicate that the following reasons are generally applicable to all Orders:

- Technical drafting errors
- Use of wrong powers
- Failure to include enough land
- Including more land than was justified

Housing CPOs in addition failed because:

- Owner demonstrated commitment to works or renovation
- Failure properly to undertake Neighbourhood Renewal Assessment in accordance with approved methodology
- Failure to carry out proper comparative economic assessment of CPO-intervention scheme with renovation option

Planning CPOs failed because:

- Unable to demonstrate viability of CPO-led scheme
- Failure to demonstrate retail need for scheme
- Existence of planning impediments

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Planning CPOs were most clearly at risk where there was a combination of questionable viability of the CPO-led scheme, planning impediments (most obviously refusal of planning permission or inability to discharge reserved matters) and the existence of an alternative scheme (usually promoted by objectors to the CPO).

Once a CPO has been approved, however, the review of recent case law suggests that the Courts are reluctant to second-guess the Secretary of State's discretion, most particularly in planning matters. However, it is essential for acquiring authorities to comply with procedural and statutory requirements (especially in the light of the Courts holding that the confirming authority cannot validate an inherently invalid Order) and to have due regard to human rights in balancing the public interest against private interests affected both in terms of proportionality of ends and means.

Practitioners' experience of compulsory purchase was broadly positive but with notable reservations. The use of CPOs was seen as an effective public sector tool for the promotion and delivery of regeneration. The benefits moreover were not restricted to the Order Land but could effect a step-change in the perception of place.

However, there was disquiet about perceived reluctance to use or delay in using compulsory purchase powers and the time taken to resolve outstanding compensation issues post-confirmation of an Order.

CPOs remain a vital public sector tool in maintaining regeneration momentum. Used properly they have good prospects of success in achieving site assembly. However, greater regard must be had to the timing of CPO usage.

Acquiring authorities must be aware of the pitfalls of CPO use and the reasons why Orders have not been confirmed. Careful technical drafting and ensuring that the Order matches the scheme in terms of powers used and land taken are essential. Detailed regard must be had to the Secretary of State's tests in Circular 06/04 and evidence in support of a CPO case must be regularly updated.

It was generally considered that the range of powers available to acquiring authorities was appropriate but that greater clarity and flexibility in Circular 06/04 could assist. There was concern that notwithstanding that the statutory basis for a Planning CPO was amended by the Planning and Compulsory Purchase Act 2004 to one of facilitation (in the context of 'well-being') rather than requirement and that the statutory reference to regard to the development plan had been removed, nonetheless the policy test remained onerous and in effect had its roots in the previous rather than updated legislation. That said it was acknowledged that in order to have regard to Human Rights legislation it was essential to undertake a transparent and substantive balancing exercise between the public and private interests.

In the context of large regeneration schemes it was suggested that the Secretary of State take a more proactive role to increase effectiveness at Public Inquiry, and that Inspectors could issue a statement of matters about which the Secretary of State particularly wishes to be informed to CPO Inquiries, as in the practice with call-in Inquiries.

It is also suggested that the Secretary of State expressly approves the use of Arsenal style conditions (subject to detailed provisos requiring fully detailed S106 obligations to be drafted) to enable planning permission to be issued in advance of site assembly.

Further dialogue is required between the public and private sectors to promote the timely use of CPOs. It is, of course, a subjective judgement on a scheme-by-scheme basis as to



what constitutes timely intervention. However, if regeneration momentum is to be maintained then regard must be had to the opportunity through the use of compulsory acquisition to de-risk investment.

In an era of constrained public finance, the earlier use of public sector powers of compulsory purchase to achieve site assembly and facilitate private sector investment requires a change in culture from risk aversion to risk awareness.

ANNEX A

How we undertook this work.

This work was undertaken by a group of lawyers who specialise in planning and compulsory purchase from Dickinson Dees LLP Planning Team.

The group was led by Frank Orr with assistance from Andrew Batterton, Stephen Dagg, Sarah McCann and Antonia Murillo.

In undertaking this review of CPO usage we sought to obtain comprehensive statistics relating to the use of the following CPO powers 2003-2009 nationwide: Planning, Housing, Education, Regeneration (i.e. Leasehold Reform, Housing and Urban Development Act 1993 and Regional Development Act 1998) and Highways.

We made requests for information from the following bodies and obtained such data as was available from them:

- Government Offices for the Regions
- National Land Acquisition Unit (NLAU)
- Department for Transport, Local Authority Orders Section
- Partnerships for Schools
- Selected local authorities and RDAs
- Office for National Statistics
- Department for Business, Innovation and Skills

We are particularly grateful to John Pierce of NLAU for his assistance.

In addition, we obtained copies of Inspectors' reports and Secretary of State's decision letters in respect of those CPOs that were not confirmed.

We thereafter undertook a detailed quantitative analysis of the statistical data relating to Planning and Housing CPOs and a qualitative analysis of the reasons for non-confirmation of CPOs as evidenced in the Secretary of State's decision.

We also carried out interviews with a number of practitioners involved in regeneration and the use of CPOs and discussed with them their experiences and perceptions relating to the use of CPOs. Practitioners interviewed included: developers, funders, local authority officers, surveyors and CPO Project Team members.

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About Regeneration Momentum

In August 2009 The Northern Way launched Regeneration Momentum, a programme of research and activities to rebuild momentum in the regeneration of our regions, cities and towns, in the recovery phase and beyond.

Regeneration Momentum is supported by the three northern Regional Development Agencies (One North East, Yorkshire Forward and the North West Development Agency), All Party Urban Development Group, British Property Federation, Homes and Communities Agency, Centre for Cities, NLGN, IPPR North, Core Cities, CLES, TCPA and BURA. This research paper is one of a portfolio of research reports commissioned as part of the Regeneration Momentum research programme. The views expressed in this paper are those of the authors and not those of the aforementioned partner organisations. For further information about the wider research programme, please go to www.thenorthernway.co.uk.