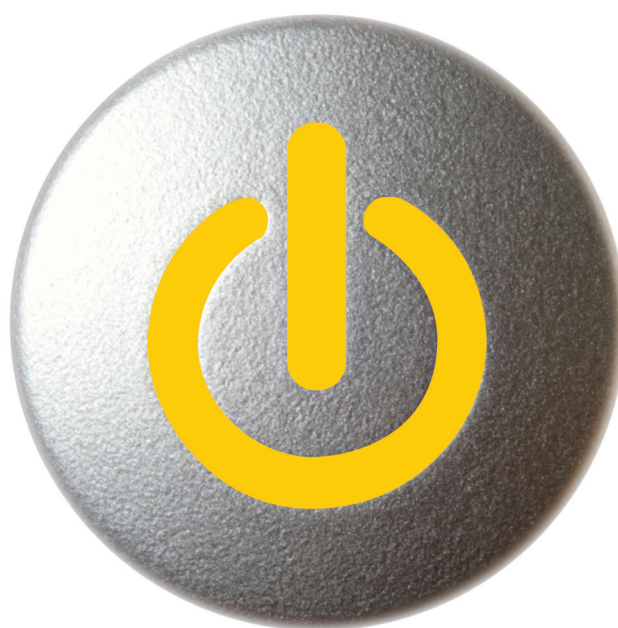




DICKINSON DEES

2012 REPORT ON PLANNING AND HOUSING COMPULSORY PURCHASE ORDERS



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SUMMARY

This report is an addendum to the research paper published by Dickinson Dees in January 2010 and entitled *Compulsory Purchase Orders: A Review of Usage and Best Practice*.

The initial report published in January 2010 looked at the usage of both Planning and Housing Compulsory Purchase Orders ("CPOs") by Local Authorities in the period 2003 to 2009. This addendum reviews the usage of Planning and Housing CPOs in 2010 and 2011.

The initial report found that there was a significant decrease in the number of CPOs made in 2009 when compared with the preceding years 2004-2008. The report concluded this reflected the prevailing economic uncertainty.

The update undertaken for 2010-11 reveals:

- The numbers of Planning and Housing CPOs submitted in years 2010-11 reflect a bottoming out of the decrease in usage evident in the 2009 figures.
- However, in broad terms, the level of usage 2009-2011 remains down from previous levels - at around three quarters of levels of usage experienced between 2004-08.
- In respect of Planning CPOs 2009 represents a low point of usage in the past nine years; 2010 figures showed a marked recovery but was followed by a falling back in 2011 indicative of continuing economic uncertainty.
- The number of Housing CPOs submitted appears to have bottomed out and figures have remained remarkably constant over the past three years; we would tentatively suggest this may represent a baseline below which further substantial falls in usage are unlikely.

Generally compulsory purchase powers continue to be used relatively selectively by local authorities with the majority of those authorities using those powers making one or two orders a year.

An assessment has been carried out by former Government Office region. This reveals that the frontrunners in CPO usage remain the North West, London and the South East. The latter in particular is an indication of continuing active regeneration and development projects. Elsewhere usage is fluctuating. In areas such as the North East it has fallen back. In the South West by comparison 2011 saw seven planning CPOs made compared with none the previous year.

The 2011 figures also indicate a continued concentration in CPO usage by Local Authority. That is, a relatively select number of authorities being responsible for Orders made. This reflects the continuing selective use of compulsory acquisition by authorities and suggests, as one would expect, that it remains those authorities who are familiar with the use of CPO that continue to make Orders.

Of particular note and concern is that the 2011 Planning CPO figures contain a significant increase in the number of Orders not confirmed. This is up to 18% of such Orders made. This reflects an increase in the number of Orders not confirmed for technical reasons which serves as a reminder that Orders must comply with the statutory requirements as to form and process. When these figures are added to those Orders recorded as invalid this amounts to 1 in 5 Planning CPOs being not confirmed.

As was noted in the original report the fact that an Order was not confirmed does not of itself mean that it did not succeed – it may well have been not confirmed after successful acquisition by agreement. However, the technical failings that are in part responsible for the 2011 figures do give cause for concern. Expert advice should be sought when preparing CPOs. In addition NLAU also offers a pre-submission technical check which should be used if in any doubt about the form or content of an Order.

Data capture and the recording of CPO statistics has improved for which NLAU deserves credit.

This paper reviews the usage of Planning and Housing CPOs by Local Authorities in the years 2010 and 2011.

REVIEW OF COMPULSORY PURCHASE ORDERS (CPOs) 2010-2011

Figure 1 shows that in 2010 60 Planning CPOs were submitted by Local Authorities. This represents a 50% increase from the 40 Planning CPOs which were submitted in 2009.

In 2010 50 Housing CPOs were submitted representing a very slight decrease, of 6%, from the 53 submitted in 2009.

In 2011 47 Planning CPOs and 51 Housing CPOs were submitted by Local Authorities. Whilst the number of Housing CPOs submitted was strikingly consistent with the previous two years, there was greater fluctuation in the use of Planning CPOs, with a falling back of 13 from 2010 representing a reduction of 18%.

Moreover, significantly in terms of the longer term trend, the number of Planning and Housing CPOs submitted post Credit Crunch and economic downturn are of a different order to the levels of usage witnessed 2004-08. The change in the numbers of Planning and Housing CPOs submitted each year for the period 2003-2011 is illustrated in Figure 2. In broad terms the level of usage 2009-2011 remains down from previous levels – at around three quarters of 2004-8 levels.

The level of usage of Housing CPOs has been more or less constant over the past three years. We would tentatively suggest that this represents a baseline level of usage below which Housing CPO usage is unlikely to fall much further.

In comparison, there has been greater fluctuation in the levels of Planning CPOs. 2009 represents a low point of usage in the past nine years; 2010 showed a marked recovery in use but was followed by a falling back in 2011 indicative of continuing economic uncertainty.

Figure 1

	01/01/10 – 31/12/10	01/01/11 – 31/12/11
Planning CPOs submitted (including those not determined)	60	47
Housing CPOs submitted (including those not determined)	50	51

Figure 2

Planning and Housing CPOs submitted 01/01/03 – 31/12/11 (including those not determined)

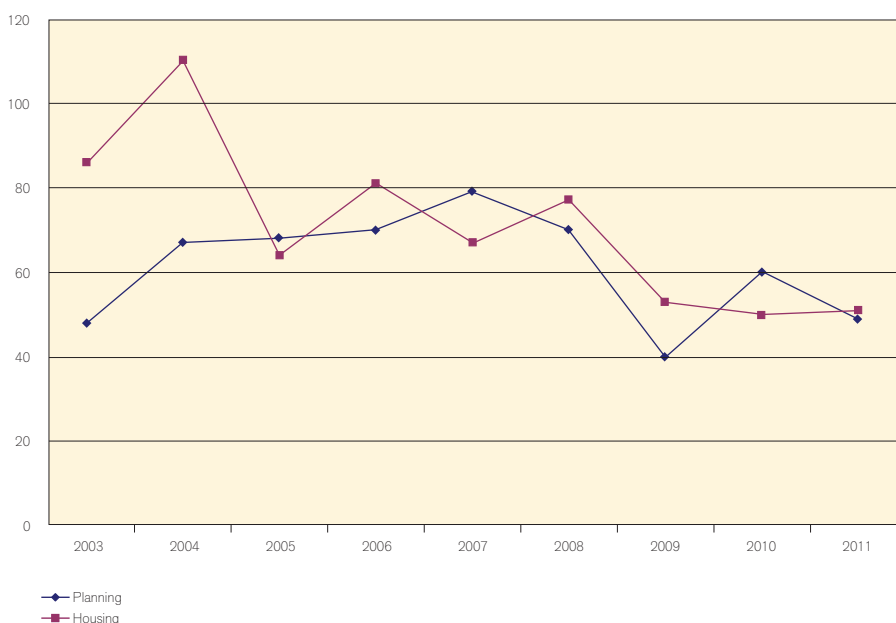
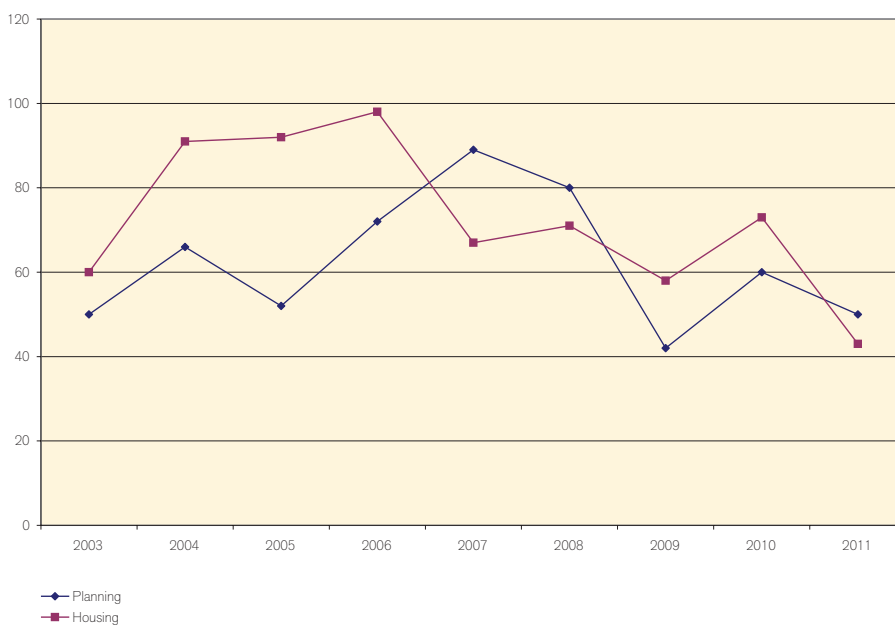


Figure 3

Planning and Housing CPOs determined 01/01/03 - 31/12/11



For sake of completeness, Figure 3 shows that there were 60 Planning CPOs determined in 2010 against 73 Housing CPOs. There is of course a time lag between submission and determination of CPOs and whereas the pattern of determination does not track submissions exactly there is a broad correlation between the patterns.

CPO SUCCESS RATES

Figures 4 and 5 in Appendix 1 show how the Planning and Housing CPOs were determined in 2010 and 2011. These broadly followed the profile of outcomes identified in our earlier report. However, the reason for an increase in 2011 of Orders not confirmed requires further investigation.

Housing CPOs followed very much the same pattern of determination as previous years with between 76-80 % of orders being confirmed either with or without modification. However there was a slight increase in Orders being withdrawn from the average of 10% in 2003-9 to 18% and 16% in 2010 and 2011 respectively.

The pattern of determination of Planning CPOs also broadly followed the previous pattern but with the following qualifications.

The percentage of Orders confirmed with modification fell from the average of 31% in preceding years to 23% and 12% in 2010 and 2011 respectively.

In 2011 the percentage of Orders not confirmed increased to 18% which represents a highpoint for any year surveyed. In comparison the average figure for Orders not confirmed in 2003-09 was 6% and in 2010 was 8%. Most particularly this includes an increase in the number of Orders not confirmed for technical reasons which serves as a reminder that it is necessary to comply with the statutory requirements as to form, content and process. In addition it should be noted that an Order was also recorded as invalid. Taken together those figures amount to 1 in 5 Planning CPOs in 2011 being refused.

Expert advice should be sought in order to avoid technical errors resulting in refusal or invalidity. In addition NLAU also offers a pre-submission technical check which should be used if in any doubt about the form or content of an Order.

However, in conjunction with this increase of orders not confirmed 2011 witnessed a decrease in the number of Orders registered as being withdrawn. Taken together the combined average percentage figures totals of not confirmed / withdrawn orders in the period 2003-09 was 15%. In 2010 that figure was 18%; in 2011 22%.

However, data capture has improved markedly and whereas the 2003-09 data contained an 8% "other" figure reflecting uncertainty as to outcome this has been largely eradicated in recent years. In 2010 "other" was 0%, in 2011 4%.

With the benefit of hindsight we would suggest that the percentage previously attributed to "other" may have effectively represented an under-recording of withdrawn / not confirmed orders.

There may also be a difference in practice when determining whether an order is recorded as withdrawn or not confirmed as between Planning and Housing CPOs. Housing CPOs are more likely to be treated as withdrawn than not confirmed, or at least recorded as such.

We also note the point raised at the CPA conference in 2010 and by fellow practitioners in subsequent correspondence that there is no formal provision for the withdrawal of a CPO and that the correct course of action should be for those orders which an acquiring authority wishes to be considered withdrawn should in fact be "not confirmed", albeit by consent.

In any event as was identified in the initial Report, the fact that a CPO was withdrawn (or indeed not confirmed, especially by consent) should not be interpreted as meaning that it did not succeed. In many instances it reflects the fact that against the background of compulsory purchase it had proved possible to negotiate acquisition by agreement.

LOCAL AUTHORITY USAGE

Generally compulsory purchase powers continue to be used relatively selectively by local authorities with the majority of those authorities using those powers making one or two orders a year.

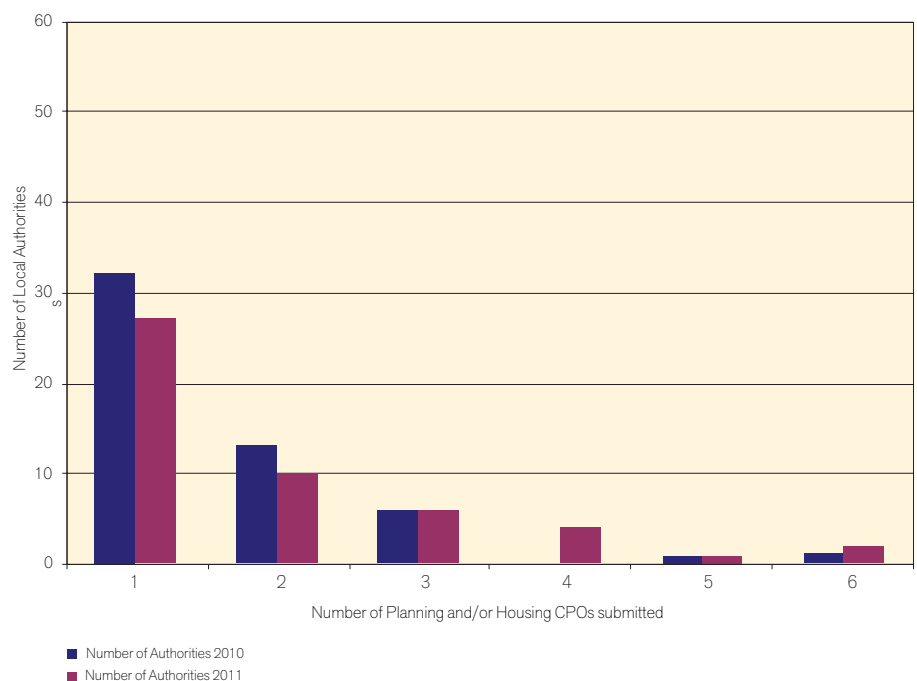
In 2010 53 different Local Authorities submitted planning or housing CPOs. Of these, 31 submitted 1 CPO each, 14 submitted 2 each, 6 submitted 3 each, 1 submitted 5 and 1 submitted 6. No Local Authority submitted more than 6.

In 2011 50 different Local Authorities submitted Planning or Housing CPOs. Of these, 27 submitted 1 CPO each, 10 submitted 2 each, 6 submitted 3 each, 4 submitted 4 each, 1 submitted 5 and 2 submitted 6 each.

The 2010-11 figures indicate a continuing concentration in the use of Orders by a relatively small number of local authorities.

Figure 6

Local Authorities submitting Planning and Housing CPOs 2010 and 2011



As Figure 6 illustrates, CPO activity is spread broadly but thinly. Many Local Authorities utilise CPO powers and there is clearly a broad awareness of the potential for their use.

This spread of CPO activity across England is further demonstrated by a statistical analysis of Planning and Housing CPOs submitted and determined per Government Office Region (as they were prior to their abolition in March 2011) – Figures 7, 8, 9 and 10 in Appendix 2.

Figure 7 reveals that the former Government Office regions of London, North West and South East submitted the most Planning CPOs in 2010. London and North West also submitted the most Housing CPOs in 2010 (Figure 8).

It is evident from a review of Figures 9 and 10 that the highest activity in 2011 was in Government Office London, where 12 Planning CPOs and 16 Housing CPOs were submitted. Other activity in 2011 was concentrated in Government Office North West, East, South East and West Midlands.

CONCLUSIONS

The update undertaken for 2010-11 reveals :

- The numbers of Planning and Housing CPOs submitted in years 2010-11 reflect a bottoming out of the decrease in usage evident in the 2009 figures.
- However, in broad terms, the level of usage 2009-2011 remains down from previous levels - at around three quarters of levels of usage experienced between 2004-08.
- For Planning CPOs 2009 represents a low point of usage in the past nine years; 2010 figures showed a marked recovery but was followed by a falling back in 2011 indicative of continuing economic uncertainty.
- The number of Housing CPOs submitted appears to have bottomed out and figures have remained remarkably constant over the past three years; we would tentatively suggest this may represent a baseline below which further substantial falls in usage are unlikely.

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Data capture and the recording of CPO statistics has improved for which NLAU deserves credit.

HOW WE UNDERTOOK THIS WORK

**This work was undertaken by
Frank Orr with assistance from
Sarah McCann and Victoria Smith.**

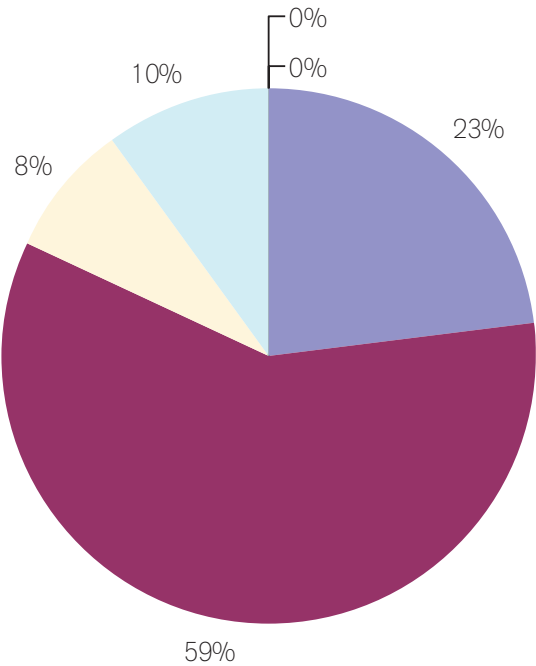
We obtained updated CPO statistics 2010-2011 from NLAU and thereafter undertook a detailed quantitative analysis of the statistical data relating to Planning and Housing CPOs. In addition, we obtained copies of Inspectors' reports and Secretary of State's decision letters in respect of those CPOs that were not confirmed.

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

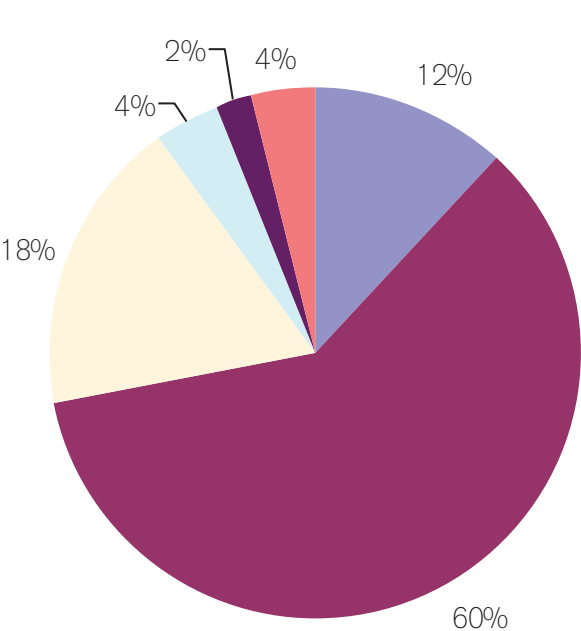
APPENDIX 1

Figure 4

Planning CPOs determined 01.01.10 – 31.12.10



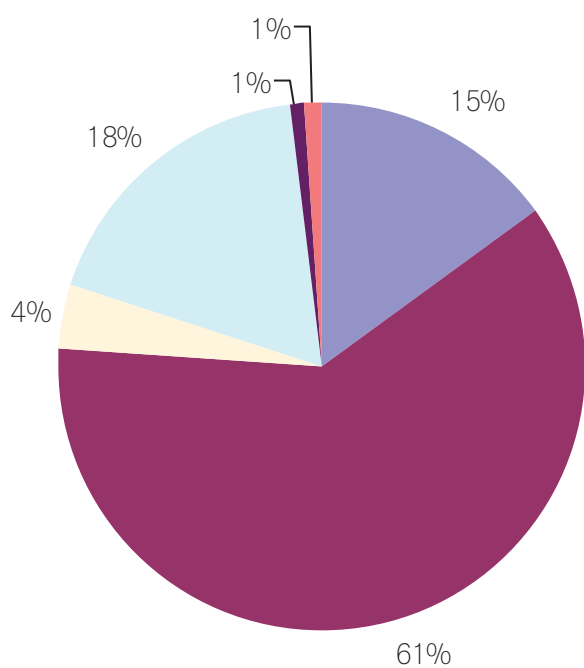
Planning CPOs determined 01.01.11 – 31.12.11



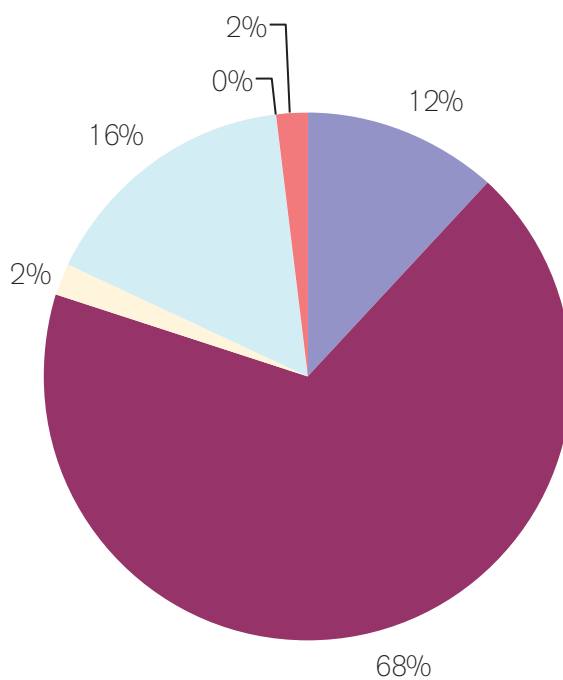
- Confirmed with modification
- Confirmed without modification (including referred to acquiring authority)
- Not confirmed
- Withdrawn
- Invalid
- Other

Figure 5

Housing CPOs determined 01.01.10 - 31.12.2010



Housing CPOs determined 01.01.11 - 31.12.2011



- Confirmed with modification
- Confirmed without modification (including referred to acquiring authority)
- Not confirmed
- Withdrawn
- Invalid
- Other

APPENDIX 2

Figure 7

Planning CPOs by Region 01.01.10 – 31.12.10

Region	No. of CPOs submitted between 01.01.10 and 31.12.10	No. of CPOs determined between 01.01.10 and 31.12.10	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Withdrawn	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	5	11	1	4	4	2	2	40	45	9
GO-East Midlands	4	2	2	0	0	0	2	50	100	0
GO-London	12	10	1	6	0	3	8	67	70	0
GO-North East	6	6	2	4	0	0	5	83	100	0
GO-North West	11	9	2	6	1	0	7	64	89	11
GO-South East	11	7	2	5	0	0	6	55	100	0
GO-South West	1	3	3	0	0	0	1	100	100	0
GO-West Midlands	6	6	0	5	0	1	1	17	83	0
GO-Yorkshire Humber	4	6	1	5	0	0	3	75	100	0

Figure 8

Housing CPOs by Region 01.01.10 – 31.12.10

Region	No. of CPOs submitted between 01.01.10 and 31.12.10	No. of CPOs determined between 01.01.10 and 31.12.10	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Withdrawn	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	3	7	1	4	0	1	1	33	71	0
GO-East Midlands	5	3	0	2	0	0	3	60	67	0
GO-London	11	19	4	8	1	6	7	64	63	5
GO-North East	1	1	0	0	0	1	1	100	0	0
GO-North West	13	20	1	13	1	5	3	23	45	5
GO-South East	1	4	0	4	0	0	0	0	100	0
GO-South West	1	6	3	3	0	0	1	100	100	0
GO-West Midlands	7	6	2	4	0	0	5	71	100	0
GO-Yorkshire Humber	8	7	0	6	1	0	1	13	86	14

Figure 9

Planning CPOs by Region 01.01.11 – 31.12.11

Region	No. of CPOs submitted between 01.01.11 and 31.12.11	No. of CPOs determined between 01.01.11 and 31.12.11	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Withdrawn	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	7	7	0	5	0	1	1	14	71	0
GO-East Midlands	1	3	0	1	2	0	1	100	33	67
GO-London	12	10	1	6	3	0	5	45	70	30
GO-North East	1	3	1	2	0	0	1	100	100	0
GO-North West	9	9	0	7	1	0	7	78	78	11
GO-South East	7	7	1	5	1	0	4	57	86	14
GO-South West	7	6	1	3	1	1	4	57	67	17
GO-West Midlands	3	2	2	0	0	0	3	75	100	0
GO-Yorkshire Humber	0	2	0	0	0	0	0	0	0	50

Figure 10

Housing CPOs by Region 01.01.11 – 31.12.11

Region	No. of CPOs submitted between 01.01.11 and 31.12.11	No. of CPOs determined between 01.01.11 and 31.12.11	Confirmed with modification	Confirmed without modification (including referred to acquiring authority)	Not confirmed	Withdrawn	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	5	4	0	2	1	1	2	50	50	25
GO-East Midlands	5	4	1	1	0	2	3	60	25	0
GO-London	16	14	1	9	0	2	7	44	71	0
GO-North East	0	0	0	0	0	0	0	0	0	0
GO-North West	5	4	1	2	0	1	2	40	75	0
GO-South East	6	4	0	4	0	0	0	0	100	0
GO-South West	0	1	0	1	0	0	0	0	100	0
GO-West Midlands	7	6	1	5	0	0	3	43	100	0
GO-Yorkshire Humber	6	5	1	4	0	0	1	17	100	0



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