CONSULTATION ON REFORMING THE COMPULSORY PURCHASE PROCESS AND COMPENSATION RULES

RESPONSE ON BEHALF OF THE COMPULSORY PURCHASE ASSOCIATION

(FEBRUARY 2025)

The Compulsory Purchase Association ("**CPA**") is a not-for-profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers. The CPA has circa 800 members and spans a range of professional disciplines involved in the compulsory purchase process, including chartered surveyors, solicitors, barristers, forensic accountants, planners and land referencers. It is a non-partisan organisation that neither supports nor opposes specific public works schemes. Importantly, the CPA's members represent both acquiring authorities (who the Government's proposal is intended to benefit), as well as landowners and occupiers affected by compulsory acquisition.

The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. It seeks to promote the highest professional standards amongst practitioners at all levels, and to ensure that the legal framework for compulsory purchase and compensation is clear, fair and effective.

The CPA is regularly asked by government departments to comment on proposed changes to the compulsory purchase and compensation system and welcomes the opportunity to respond to the current consultation on reforming the compulsory purchase process and compensation rules (the "**Consultation**").

The statements made in this paper reflect the consensus views of the CPA's national committee but may not represent the views of all of its members.

Question 1: Do you agree that directions to remove compensation payable for prospective planning permissions ("hope value") should be allowed to be included in CPOs made on behalf of parish/town or community councils by local authorities under section 125 of the Local Government Act 1972 where the schemes underlying the orders are providing affordable or social housing?

In principle we have no objection to this proposal as it would align it with other CPOs.

In the CPA's experience, however, few parish / town / community councils have the financial resources or expertise to seek a CPO. We do not believe that removal of hope value will significantly change this. We would also be concerned about whether a parish / town / community council would have the necessary resources to comply with its statement of commitments and / or pay any additional compensation at some future date.

Question 2: Do you agree that a decision on the confirmation of a CPO which includes a direction to remove value attributed to the prospects of planning permission (i.e. "hope value") from the assessment of compensation for land taken should be eligible, where the relevant criteria in guidance are met, to be undertaken by:

- **Inspectors where there are objections to the order; and**
- **Acquiring authorities providing there are no objections to the order?**

Whilst the CPA supports any steps which speed up CPO decision-making, we do not support this proposal.

In respect of the first proposal that an inspector may confirm a CPO which includes a direction to remove hope value where there are objections to the CPO, the CPA considers that it would not be appropriate for an inspector, who is unlikely to have any expertise in compensation matters, to make a decision with such significant impacts on the human rights of landowners deprived of hope value. We consider that only the Secretary of State should be able to determine that the public interest outweighs the private interest on such matters.

In respect of the second proposal that an acquiring authority may confirm a CPO which includes a direction to remove hope value where there are no objections, the CPA considers that this would not be appropriate. An acquiring authority seeking a section 14A direction should be subject to independent scrutiny, including of its statement of commitments to ensure that the commitments given are appropriate.

Question 3: Do you agree that the decision-making function of the confirming authority relating to the making of a direction for additional compensation under Schedule 2 of the Land Compensation Act 1961 should be eligible to be undertaken by an inspector?

As this relates to the payment of additional compensation to a landowner and not a decision to reduce a compensation payment to a landowner, the CPA feels that this decision could be delegated to an inspector. However, the delegation of this decision should still be in accordance with the criteria set out in paragraph 28 of the Guidance on Compulsory Purchase Process.

Question 4: Do you agree that section 14A of the Land Compensation Act 1961 should be amended to make it clear that directions to remove hope value should apply to other heads of claim where open market value is a relevant factor in the assessment of compensation?

The Consultation specifically refers to claims for home loss (and related) payments. The CPA agrees that home loss payments should reflect the agreed compensation for the value of the land including where a section 14A direction applies. If that was not the case, then two valuations would need to be agreed to assess both the loss payment and the existing use value.

More generally, where a section 14A direction applies, we consider that other heads of claim should also be assessed on the basis that existing use value will be paid. For example, disturbance compensation which may be different depending on whether hope or development value applies.

If a request for additional compensation were made at a later point, then a new assessment of compensation would need to be undertaken which assumes the payment of hope or development value and which would then take into account the consequential impact on other heads of claim that would have been paid on the basis of the existing use value.

Question 5: Another approach to removing hope value from the assessment of compensation could be to allow the Secretary of State in England or the Welsh Ministers in Wales to issue general directions for sites which meet certain defined criteria. We would welcome examples of brownfield sites suitable for housing in your areas (e.g. through an allocation) where a planning permission has not been sought along with the reasons why. In particular, examples of sites where either:

- **it is claimed the delivery of the scheme with minimum affordable housing provision and other obligations such as provision of public infrastructure is not viable; or**

- **the costs associated with the value associated with the prospect of planning permission ("hope value") has made the scheme unviable.**

The CPA put out a call to its members for any examples of specific schemes where this would apply but has received no response. We are therefore unable to provide any examples at this time.

The CPA has concerns regarding the making of general directions and considers that directions to remove hope value should be made case by case having regard to the circumstances which apply to the land in question and that each site should be subject to its own viability appraisal.

The CPA further notes that, whilst a general direction might provide a framework for testing viability and contributions to assist developers and local authorities in assessing schemes and whether they can only be delivered with or without the use of CPO powers, it also has the potential to drive away private investment from the sectors covered, making the public sector the only driver of development, which is unaffordable and unsustainable.

Question 6: We would welcome views on why you think, in the circumstances of the example(s) given in question 5, the removal of the value associated with the prospect of planning permission ("hope value") where CPO powers are used could help deliver a housing scheme which meets the policy requirements of the local authority and how it would help address the problem outlined in the example.

Whilst removal of hope value could improve the viability of a scheme meaning that it could deliver more housing to meet policy requirements or could unlock a scheme which is unviable, we remain concerned about the potential implications of general directions including that it might be open to manipulation.

In addition, we are concerned that it could discourage owners and promotors of land to bring forward sites for allocation in the development plan and / or investment in regeneration sites where there is no hope value and no certainty that promotion costs will be recoverable (such costs normally being covered by the increase in value over existing use, either as hope value or when crystalised with a planning consent). It may be possible to mitigate this through extending compensation to cover such costs where they have been genuinely incurred.

Question 7: We would also welcome your views on whether, in the circumstances of the example(s) given in question 5, there would be any consequences of removing the value associated with the prospect of planning permission ("hope value") from the assessment of compensation as a result of the use of CPO powers and the delivery of land for housing development.

See response to question 6 above.

Question 8: We would welcome views on whether there are any other categories of sites, other than those listed in question 5, which would be suitable for the proposal. If so, please give reasons why you think the removal of the value associated with the prospect of planning permission ("hope value") where CPO powers are used in those circumstances could help deliver a housing scheme which meets the policy requirements of the local authority and how it would help address the problem outlined.

The CPA is unable to provide examples of any other categories of site where this would be suitable.

Question 9: Do you agree that notices and documents required to be served under the Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973 and the

Acquisition of Land Act 1981 should be capable of being served electronically if parties agree in writing to receive service in that manner or where the recipient is a public authority?

We agree with this proposal, it would align the CPO process with other similar statutory processes, for example Transport and Works Act Orders.

It is not entirely clear what is intended in relation to serving of notices on a public authority. If the proposal is a general requirement that any public authority can be served notices electronically, even where no written consent has been given, then this raises concerns. There is a risk that such a provision will mean notices go unchecked/noticed/sent to the relevant department in a public authority within sufficient time.

If, however, the intention is in relation to an order, promoted by a public authority, a general e-mail address for the service of notices has been provided solely in relation to that order, then electronic service would be acceptable.

Question 10: Do you agree that the information relating to the description of land published in newspaper notices of the making and confirmation of CPOs should be simplified?

We agree with this proposal although question the extent to which there is a significant difference in simplifying the level of description of land, based on the example set out in the consultation paper, will make any material difference where there are a number of interests affected by a CPO, thereby still requiring a summary of all affected land to be given, even in simplified form.

Overall, we question the extent to which newspaper notices continue to serve a useful purpose. Many newspapers now only do on-line editions and serve more than one "local" area. The cost of placing notices can also be significant. It may be that a newspaper notice is only more appropriate where the interests in land are unknown but suggest even then the newspaper notice is only required to describe the unknown parcel of land rather than list all parcel of land. This would also align with the planning application notification process for unknown land affected by an application.

Question 11: Do you agree that where a CPO requires modification to rectify an error such as a drafting mistake or to remove a plot of land from the schedule and/or map, the acquiring authority should be able to confirm the CPO itself by making the required modification(s) providing: (a) all other conditions under section 14A of the Acquisition of Land Act 1981 have been met, and (b) the proposed modifications are non-controversial in the manner set out in the consultation?

In principle we agree with the proposal. The examples given at paragraph 43 of the consultation are appropriate examples of errors capable of being rectified as non-controversial amendments. It would be helpful for a similar "list" of non-controversial amendments be set out in any amended legislation rather than this being left to the discretion of the acquiring authority prior to confirmation as this requires subjective judgement and would potentially create a new route of challenge for an aggrieved party.

If the proposal is adopted, then consideration should be given to how it would apply where a section 14A direction has been included, noting the responses to the questions above.

Question 12: Are there any modifications which you think should or should not be capable of being made by the acquiring authority (in addition to the inclusion of additional land in a CPO without the consent of the owner) when confirming its own CPO?

We believe the ability of an acquiring authority to modify its own orders should be strictly controlled and not extended beyond the examples given at paragraph 43 of the consultation document. There is a risk that a wider power could be deployed to rectify more serious errors or omissions that may be viewed as modifications by an acquiring authority. It is more appropriate that the Secretary of State is the scrutinising body, particularly given the additional costs that would accrue should a party be forced to launch a statutory challenge to a decision by an acquiring authority to use the modification powers in a circumstance that amounts to a procedural impropriety or error of law.

It is difficult to provide a full list of what should or should not be capable of being subject to a modification, but the CPA's position is that the extension of this power to acquiring authorities, if it occurs at all, should be very strictly limited.

The CPA notes there is a potential tie between this question and the Law Commission's consultation question 6 about the terminology for the CPO authorisation process. The CPA supports the Law Commission's proposal to adopt language that better reflects the status of a CPO and will be more easily understood. Our preferred terminology is "applied for" and "confirmed". If the approach is adopted that CPOs are applied for rather than made, then consideration will need to be given to the extent to which an applied for order that has been published can be modified before it is confirmed by the acquiring authority.

Question 13: Do you agree that the Secretary of State should be able to appoint an inspector to undertake a decision on whether to confirm or refuse a CPO made under the New Towns Act 1981?

Yes, potentially but, given the large scale and inherently political nature of the decision whether to confirm most New Towns Act Orders, we consider that the decision should remain with the Secretary of State rather than an inspector in most cases.

We do not believe that CPOs made under the New Towns Act 1981 would ordinarily fall to be determined by an inspector. Where the powers are sought for a CPO for a relatively small amount of land, rather than launching a major development, the power may be appropriate. It might be appropriate for an inspector to undertake a decision on whether to confirm or refuse an order made under the New Towns Act 1981, but this would be only in limited and specific circumstances, most likely where there is either (or both) limited opposition and/or only a small area of order land.

If the proposal was introduced, then we believe the criteria in paragraph 28 of the Guidance on Compulsory Purchase Process should be strictly applied by the Secretary of State when deciding whether to appoint an inspector to make the decision (noting that, in recent times, the criteria in paragraph 28 does not appear to be applied, with most / all decisions being delegated). We believe that, if the criteria were properly applied then, in the case of most New Town Act Orders, it is likely to mean that most decisions are not delegated.

Question 14: Do you agree the temporary possession powers available under the Neighbourhood Planning Act 2017 do not need to apply to the taking of temporary possession of land under the Transport and Works Act 1992 and Planning Act 2008 as there are sufficient provisions under those consenting regimes which provide for the temporary possession of land?

The CPA welcomes the introduction of the temporary possession powers under the Neighbourhood Planning Act 2017. Whilst it is not ideal that two different regimes for temporary use of land will exist, we do not believe that the powers in the 2017 Act need to align with the well-established principles and precedents now found within orders made under the Transport and Works Act 1992 or Planning Act

2008. There are already slightly differing practices in relation to the 1992 Act and the 2008 Act powers, as well as between orders, but this does not cause any particular difficulties for acquiring authorities or owners of order land. The provisions in orders made under the 1992 Act and 2008 Act are well precedented and well understood by practitioners and are like provisions often contained in hybrid Acts. The CPA does not therefore consider it necessary for the powers to be aligned.

Question 15: Do you agree there should be an expedited notice process for the vesting of interests in land and properties under the general vesting declaration procedure in the circumstances outlined in the consultation?

We support the proposal, as set out in paragraph 68 of the consultation document, for an expedited notice process where there is agreement in writing between the acquiring authority and the owners (or person legally entitled to make decisions on behalf of the owners) regardless of the physical state and/or legal use of the land / property subject to the CPO. In such circumstances, it would seem sensible to provide for a minimum period for vesting of 6 weeks for the reasons stated in the consultation document.

As regards paragraph 67 of the consultation document, we presume that the intention is for (a) and (b) to apply separately as standalone scenarios which could enable an expedited vesting process. We have concerns regarding both.

Scenario (a) appears to rely on a subjective test as to whether land or property is legally occupiable due to its physical condition. There may be limited circumstances where the criteria are clearly met (for instance, a demolition order has been made by the local authority under the Housing Act 1985) but, in most cases, it is likely to be less clear cut, requiring the acquiring authority to exercise its discretion and decide whether the criteria is met, a decision which itself could be challenged by the owner of the land or property.

We do not believe that a shortened vesting should be permitted in scenario (b) i.e. when there are no responses to notices of objections made to the CPO. There are many reasons why an owner or occupier of the land or property might not respond, or object and the CPA considers it unfair on an owner or occupier to be penalised for this. Providing for a shortened vesting period might further have the unintended consequence of forcing an owner or occupier to respond or object.

Finally, given that the timing savings for acquiring authority will only be 6 weeks and the potentially subjective determination to be made by the acquiring authority as to whether the criteria in (a) or (b) is met, we believe that the proposed change will, if introduced, be of limited benefit to acquiring authorities and consequently will be seldom used.

Question 16: If you answered positively to question 15, we would welcome views on whether there are any other circumstances where the expedited notice process for the vesting of interests in land in an acquiring authority should apply?

The CPA considers that the only other circumstances in which shortening the vesting period could be justified is where land or property is (1) in unknown ownership and (2) is unoccupied and (3) where there has been no response to statutory notices or objections to the CPO. The CPA considers that instances where all three criteria might appeal will be limited.

Question 17: **If you answered positively to question 15, do you agree those with an interest in land included a CPO should be able to enter into an agreement with the acquiring authority for their interest to vest in the authority earlier than the existing minimum 3-months' notice period?**

Yes. If introduced, however, it should be clear what is required by way of agreement (noting that the question references entering into an agreement suggesting a formal agreement). It should also be clear that it only relates to the interest of the person giving their agreement or consent, and not to other interests in the same land. It may be preferable for the provisions to mirror section 8A of the Compulsory Purchase Vesting Declarations Act 1981 (i.e. "may agree in writing with the owner of any interest").

Question 18: **Do you agree that the current loss payments should be adjusted as set out in the consultation?**

The CPA has previously made representations on this matter, proposing that the percentage rates be reversed so that the Basic Loss payment becomes 2.5% of the value of the interest, subject to a cap of £25,000, and the Occupier's Loss payment becomes 7.5% of the value of the interest (or the land amount), subject to a cap of £75,000. The proposals set out in the Consultation therefore align with the CPA's previously stated views on this and are supported.

Question 19: **Do you agree that the method of calculating the "buildings amount" under sections 33B(10) – 33C(11) of the Land Compensation Act 1973 should be changed to "gross internal floor area"?**

The CPA has previously made representations on this matter, proposing that the 'buildings amount' should be measured in line with the Royal Institution of Chartered Surveyors' Code of Measuring Practise. Measuring the Gross External Area (GEA) can be difficult in practise and is inconsistent with the market practise for measurement of most buildings for valuation purposes. Not all properties are measured for valuation purposes based on their Gross Internal Area (GIA). The recommendation remains that the 'buildings amount' should be measured in line with the Royal Institution of Chartered Surveyors' Code of Measuring Practise. In the absence of this it is however considered that it would be reasonable for the GIA measurement to be taken for the purposes of calculating the payment of an Occupier's Loss payment and the proposal is therefore supported by the CPA.

Question 20: **Do you agree that exclusions to home loss payments should apply where one of the statutory enforcement notices or orders listed under section 33D(4) and (5) of the Land Compensation Act 1973 has been served on a person and they have failed to take the required action on the day the relevant CPO which their property is subject to is confirmed?**

We are concerned that the change proposed might encourage acquiring authorities to serve a statutory enforcement notice or order where they would not previously have done to avoid making home loss payments. If introduced, then steps should be taken to prevent this, for instance by providing that a home loss payment will still be due where an enforcement notice or order has been served after the CPO was made.

Question 21: **Do you have any comments on the likely impact of the proposals outlined in this consultation on business interests both for the acquiring authority and claimants?**

The CPA believes that the removal of hope value could lead to more objections and opposition to CPOs, which might make the compulsory purchase process slower rather than faster, for acquiring authorities. For this reason, acquiring authorities might choose not to seek a section 14A direction. Where a direction is sought or a general direction applies, the compulsory purchase process is likely to be more complex for claimants.

The CPA is further concerned that the removal of hope value, and the further proposal to introduce general directions, which could distort the market and lead to a two-tier market where landowners subject to compulsory acquisition would see development value capped, while landowners not subject to compulsory acquisition would still be able to sell at a price that reflected market value. As indicated above, we believe that general directions could especially discourage landowners and developers from promoting their land for allocation or development

Question 22: **Do you consider there are potential equalities impacts arising from any of the proposals in this consultation? Please provide details including your views on how any impacts might be addressed.**

The CPA considers that the proposals in the Consultation could give rise to a number of equalities impacts, including:

- Proposal to introduce general directions to remove hope value – This could significantly impact on the human rights of owners whose land is subject to a general direction, creating a two-tier market at the expense of some and potentially the benefit of others. A proposal to introduce a general direction should be subject to appropriate evidence / justification, objection and scrutiny to enable owners to put forward their concerns before it is adopted.

- Modification of CPOs by acquiring authorities – Although the scope of this proposal is intended to be narrow, it could be open to abuse by acquiring authorities. To mitigate against this, there should be a clear process and notification process to affected persons to enable them to make representations should they wish to do so.

- Expedited vesting of land – Owners and occupiers could feel that they are being put under undue pressure by the acquiring authority to agree to an earlier vesting date. If introduced, we consider it appropriate for the Guidance on the Compulsory Purchase Process to be updated to set out what factors the acquiring authority should take into account in making a request for earlier vesting, including the nature of the land and what mitigation they might be able to provide to owners and occupiers to facilitate an earlier vesting date.

More generally, whilst the Government's stated aim is to make compulsory purchase faster, simpler and fairer, we do consider that many of the proposals will make the compulsory purchase process more complex for both acquiring authorities and owners / occupiers. The proposal to introduce general directions could in particular create a new forum for opposition and result in expensive satellite litigation, whilst damaging the reputation of the compulsory purchase process as fair and equal.

Submitted on behalf of the
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