

Compulsory Purchase Association

Response to Consultation on New Policy and Guidance on Compulsory Purchase – WG37651

To: Compulsory Purchase Consultation
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1 Introduction

- 1.1 This document is submitted on behalf of the Compulsory Purchase Association (CPA).
- 1.2 The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation.
- 1.3 CPA has some 850 members practising in this field, including surveyors, lawyers, accountants, planners and officers of public authorities.
- 1.4 This consultation response has been formulated following discussions within the National Board of the CPA.

Q1	Do you agree the guidance on the different stages of the compulsory purchase process in Part 1 of the Circular is clear? If not, why not?	Yes	Yes (subject to comment)	No
			✓	

Comments

We welcome the positive approach taken to CPO and that it is recognised as an important tool and should be considered proactively by acquiring authorities. We consider that the guidance is clear subject to the matters listed below.

We note the guidance in respect of the Well-being and Future Generations (Wales) Act 2015 contained in paragraphs 15 to 18. WE are pleased to see this duty in the draft Circular. We note and support the approach by Welsh Ministers to private as well as public sector acquiring authorities, although we think it is unclear what is meant by “expect reference to be made to the principals” of the Act. Does this mean that it will be expected that an identical approach to the public sector needs to be undertaken by a private sector acquiring authority or is it enough just to acknowledge the Act and say that regard has been had to the principals? We consider that it should be the former.

Paragraph 28 advises acquiring authorities to look to the most specific power for the purpose which encapsulates the whole project. A general power should only be used when a specific power is not available or the content of the project goes beyond a specific power. The words ‘encapsulates the whole project’ does not appear in the English version. We consider that this is useful as there is often a debate as to whether, for example, a road as part of a regeneration scheme should be promoted under the planning legislation or the highway legislation. This would support the use of a TCPA power and we therefore believe this gives more flexibility to the acquiring authority.

Paragraph 36 contains a useful checklist of questions an acquiring authority should ask itself before promoting a CPO. We consider the following should be added – (1) Do any impediments exist which would prevent our proposed project proceeding if we acquired the land? (2) Is planning permission needed and, if so, has it been secured? If not, why not?

The National Development Framework is listed as material consideration but this is to form part of Development Plan rather than material consideration. This should be made clear.

Paragraph 41 states that certain CPO powers, e.g. s226(4) TCPA allow back to back disposals. Local authorities are advised to check whether this is permitted under the relevant enabling power they have chosen to use. Does this mean that if the enabling Act does not permit this, i.e. it is silent, the acquiring authority cannot enter into such an arrangement? This should be made clear. Perhaps reference should be made to the wider local authority powers which permit them to enter into all sorts of agreements, such the Local Government Acts and the Wellbeing Act.

A lot of detail is provided in relation to ADR, similar to English guidance, and the Welsh Guidance does list a number of ADR techniques (para 63). It might be worth a more of an explanation being added to these so it is clearer for those considering the guidance what each technique means and what is involved.

Q2	In Part 1 of the Circular we have included examples of best practice relating to the erection and maintenance of site notices. We would welcome your examples of other best practices in the compulsory purchase order making process. Please use the space below.
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Comments

The guidance in relation to the erection and maintenance of site notices is welcomed and useful. This is an area where, in practice, the approach outlined is often taken but to have clear and express guidance on the erection and maintenance of site notices is useful.

One additional area of best practice which we consider could be included in the Circular relates to the decision making process. There is a lot of advice in the Circular about what needs to be taken

into account, but very little on how to evidence this. In terms of CPOs being promoted by local authorities, the normal way this is done is through a Committee report which outlines the powers, and walks through each of the considerations in order to ensure the decision making is robust and ends with a recommendation and a resolution. We would recommend that is done whoever is promoting a CPO – even a private company – as it helps ensure the decision making is correct and can be evidenced. This is an example of best practice which could be set out in the Circular with specific guidance on approach and content.

Q3	Do you agree the template model claim form set out in Part 1 of the Circular captures the relevant information required for: (a) a claim for compensation for the compulsory acquisition of land and / or taking of temporary possession; or (b) an application for an advance payment of compensation?	Yes	Yes (subject to comment)	No
		✓		

Comments

This adopts the English approach and we consider this is useful in terms of best practice and consistency of approach.

Q4	Do you agree the guidance on the compulsory purchase enabling powers in Part 2 of the Circular is clear? If not, why not?	Yes	Yes (subject to comment)	No
			✓	

Comments

Guidance is contained in respect of powers in a number of Acts. This largely adopts the wording and approach to the English version. Probably the biggest difference between the English and the Welsh Circular Guidance is that the Welsh Guidance contains detailed advice about using the powers in the Highways Act 1980 to deliver new or improved roads. The new wording is welcomed. The Circular draws the distinction between works for improvement of an existing highway and works for the construction of new highway and recognises that CPO should make it clear which is being undertaken. In many cases it is both and there is opportunity for the Circular to make that clearer. The Circular also seeks to align improvement/construction with the permitted development conditions in every case which we consider is too simplistic an approach (it should say in most cases). The Guidance, correctly, recognises that currently there are no powers to create rights for a limited period. We support the guidance in relation to the use of CPO in respect of the Active Travel (Wales) Act 2013 which requires local authorities to, effectively, designate active travel routes and seeks to strengthen and encourage the use of compulsory purchase in such cases..

Q5	Do you agree the procedural issues relating to compulsory purchase orders are clearly set out in Part 3 of the Circular? If not, why not?	Yes	Yes (subject to comment)	No
			✓	

Comments

We agree that largely the procedural issues, which cover special kinds of land (including statutory undertakers, local authorities and open space) is clearly set out. Certificates of Appropriate Alternative Development was the subject of details representations by the CPA to the English Guidance which were largely adopted and we consider this results in very clear and practical advice. It also deals with material detriment, overriding easements and other rights (under the new Housing and Planning Act 2016 powers). Having the benefit of giving advice on the Housing and Planning Act powers of appropriation, we consider that the Circular could be more detailed in relation to these powers and acquiring authorities would benefit from more guidance on the

approach which they should take to such powers.

Q6	Do you agree the overview of the compulsory purchase process for non-ministerial compulsory purchase orders in Part 4 of the Circular is clear for both acquiring authorities and remaining objectors? If not, why not?	Yes	Yes (subject to comment)	No
			✓	

Comments

This comprises three pages of diagrams. The first shows the process of submission of the CPO and consideration of objections, which we consider is clear and straightforward. The second provides an overview of the Public Inquiry stage, which again is clear. The third shows the decision and the vesting/possession stage. The only issue we would raise in relation to the third diagram is that it refers to 'the scheme being blocked by planning issues' but it isn't clear what that means and how that fits in as a stage in the process.

Q7	Do you agree the rules and procedures for the disposal of surplus government land set out in Part 5 of the Circular ('The Crichef Down Rules' (Wales version 2019)) are clear to former landowners/ their successors, local authorities and statutory bodies. If not, why not?	Yes	Yes (subject to comment)	No
		✓		

Comments

This mirrors the English guidance and we have no comment.

National planning policy

Q8	Do you agree with the proposal to revise paragraph 3.53 of Planning Policy Wales (Edition 10) set out in paragraph 25 of the 'Consultation Executive Summary' document?	Yes	Yes (subject to comment)	No
			✓	

Comments

We welcome the proposal to revise paragraph 3.53 of PPW.

Currently the approach is: "Authorities are encouraged to take a de-risking approach to unlocking the development potential of sites. In some instances the authority may need to purchase land in order to facilitate redevelopment. Wherever possible this should be with the agreement of the landowner however, in exceptional circumstances planning authorities may use compulsory purchase powers."

We consider that this very much focuses on CPO as a power of last resort and does not balance with the positive tool which the draft Circular is promoting. The new proposed wording does strengthen use of CPO in a planning policy context and we are pleased to see that "local planning authorities should consider using the full range of powers available to them. This should include, where necessary, use of compulsory purchase powers where it is in the public interest to bring land and/or buildings forward for meeting development needs in their area and/or to secure better development outcomes".

The revised wording removes reference to 'exceptional circumstances' being the test for CPO, which we would entirely support. However, there is, in our view, scope to strengthen this further.

For instance the revised paragraph could refer to CPO being a positive tool to facilitate development. For example, the wording could be amended to read "This should include, where necessary, use of compulsory purchase powers which should be regarded by authorities as an important tool in securing development and which should be used proactively where it is in the public interest to bring land and/or buildings forward for meeting development needs in their area and/or to secure better development outcomes".

Q9	Do you agree with the proposal that LPAs should adopt general policies detailing the criteria they will apply when considering whether or not to exercise their compulsory purchase powers?	Yes	Yes (subject to comment)	No

Comments

We question whether it is appropriate for general policies to be adopted detailing the criteria which will apply to any decision whether to exercise CPO. On the face of it this would appear to be unnecessary and has the potential to conflict with the detailed national policy and legislative criteria already in place. In most cases development proposals, such as regeneration or road schemes, are contained within and supported by local planning policy. In some cases that policy will also state that the acquiring authority will consider using CPO powers to assist with delivery if necessary. Indeed, this is becoming the case more and more. This, coupled with the specific scope of the enabling statutory power which contains the relevant test for CPO and the CPO guidance which contains detailed policy in relation to what should or should not be taken into account, is considered sufficient. It is difficult to see what a general CPO policy would add which isn't already contained in these documents. Indeed, any such policy may result in being inconsistent with the statute or Circular or may even introduce tests which are very localised and not appropriate. With revisions to paragraph 3.53 of PPW it would appear that there is even less need for local policy to be drawn up.

Q10	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.
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Comments

None.