

‘Technical consultation on improvements to compulsory purchase processes’: LGA Response

June 2015



The Local Government Association (LGA) welcomes the opportunity to respond to the ‘Technical consultation on improvements to compulsory purchase processes’.

The LGA is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services. www.local.gov.uk

This response has been agreed by the LGA’s Environment, Economy, Housing and Transport Programme Board. The Environment, Economy, Housing and Transport Board has responsibility for LGA activity in relation to the economy and environment, including: transport, employment and skills, economic development and business support, housing, planning, waste and climate change.

Summary

Councils play a central role in driving regeneration, revitalising communities and creating the right mix of homes and jobs to enable them to thrive. As the consultation rightly points out, compulsory purchase powers are an important tool available to councils for assembling the land needed to help deliver regeneration that helps local areas to prosper and grow.

We therefore broadly welcome the ambition to make the process for compulsory purchase clearer, faster and fairer with an overall aim of bringing more land forward for development. Whilst the consultation proposes a number of helpful reforms, we would like to see further reform including:

- A default position that all decisions on confirmation of a compulsory purchase order are delegated to the acquiring authority, with the Secretary of State retaining the ability to use his/her recovery powers in exceptional circumstances
- A more fundamental consolidation and streamlining of the legislative provisions for compulsory purchase
- Stronger compulsory purchase powers where planning permissions have expired and development has not commenced
- Ability to acquire land for Garden Cities and large scale land assembly at closer to existing use value to capture more uplift in land value for infrastructure and community benefits.
- Stronger compulsory purchase powers to tackle empty homes
- Powers for councils to direct the use of publicly owned land

Submission

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Comments on proposals included in the consultation

Reforming compensation

Councils agree that pursuing a compulsory purchase order to acquire land should be used a last resort, where it has not been possible to achieve acquisition through negotiation with the relevant landowners. Therefore, we welcome the proposal to give public sector bodies flexibility to offer more reasonable initial offers for land, by providing clarification that they are entitled to do this.

If the rules on compensation and entitlement are really clear, this should result in fewer compulsory purchase orders because there is little incentive to progress to that stage, and a big incentive to resolve matters beforehand. However, if the rules are vague there is a possible unintended consequence of lengthy negotiations with landowners holding out for the best possible offer on the land. Whilst savings might still be achieved by not having to undertake compulsory purchase proceedings, there is also a possibility that considerable cost could be incurred by the time taken for long drawn-out negotiations that could outweigh the cost of pursuing compulsory purchase instead. This would defeat the purpose of the provision of additional flexibility.

Government should consider how the guidance should be best worded to minimise the likelihood of this scenario occurring.

We would like the government to be more ambitious and introduce further reforms including:

- **Stronger compulsory purchase powers where permissions have expired and development has not commenced.** This would be used as a measure of last resort and with appropriate safeguards to allow councils to tackle sites which have had planning permission for a long time but which have not been built out. This should include the ability for the acquiring authority to purchase the site at existing use value, disregarding the value generated by the planning permission. The authorities would need to demonstrate plans for the development of the site within a reasonable period of time.
- **Compensation at closer to existing use value to support land assembly for Garden Cities and large scale development.** Large scale developments like Garden Cities and urban extensions require significant land take, often on agricultural land. The value of this land increases significantly when it has planning permission. Currently acquiring authorities must take future planning permission into account in valuation of this land which delivers a very significant return to the landowner but means that there is insufficient funding for the infrastructure and community facilities required to make the development successful.¹ Revised CPO legislation should clarify that for large scale land assembly purposes local authorities should be enabled to compulsorily purchase land at its existing use value. This proposal has parallels with the use of

¹ The Land Compensation Act 1961 required that the increase in value attributable to the prospect of development as a New Town or an Urban Development Area should be disregarded, allowing for the land to be acquired at close to current use value. However the outcome of subsequent legal cases (Myers vs Milton Keynes) found that planning permission had to be taken into account in the valuation

compulsory purchase powers in Europe.² Authorities would be able to use flexibility to offer an uplift on this valuation to encourage landowners to negotiate early sale of their land.

- **Stronger compulsory purchase powers to tackle empty homes.** To support council endeavours to bring empty homes back into use, they should be able to acquire time-limited leaseholds, enabling them to undertake refurbishment work to properties and bring them back into habitable states. Local authorities could then recoup their investment through rental income over the set time period, and even acquire nomination rights, returning the properties back to their owners at the end of the lease. There should also be a removal of the requirement for councils to pay compensation on long-term empty properties – currently 7.5 per cent of the property value, up to £75,000 and enable them to formally share costs and liabilities with a third party.
- **Powers for councils to direct the use of publicly owned land.** There is a need to speed up the process of assembly of surplus land owned by different public landowners in an area. Changes to compulsory purchase legislation provide an opportunity to implement the recommendation in the Elphicke-House report to give councils a power of direction on publicly owned land. This will enable councils to fast track acquisition of un-used public land in their area to support redevelopment or regeneration opportunities.

Streamlining CPO legislation and processes

There should be a **more fundamental consolidation and streamlining of the legislative provisions for compulsory purchase.** A number of different Acts and statutory instruments introduced over more than 150 years pertaining to compulsory purchase have resulted in antiquated legal terminology, inconsistencies and uncertainties, all of which add to the costs of the CPO process and the scope for dispute. There should be a fundamental review of all legislation pertaining to compulsory purchase with a view to bringing it all together in a single Act for a modern day CPO system. This would build on the work undertaken by the Law Commission in 2001³, the recommendations of which were not implemented at that time.

The consultation proposes enabling powers to allow the Secretary of State to delegate decisions for confirmation to an Inspector in certain instances. Whilst, this is a step in the right direction and should speed up decision-making to a degree, we think government should be more ambitious. There should instead be a **removal of the requirement for permission from the Secretary of State to proceed with a compulsory purchase order.** The default position should be that acquiring authorities can confirm their own compulsory purchase orders. As a backstop, the Secretary of State could retain the ability to use his/her recovery powers in certain circumstances. The consultation itself cites that 30 per cent of orders submitted to the Secretary of State for Communities and Local Government are remitted back to the acquiring authority for confirmation. Our proposal is a natural extension of this existing common practice.

² For example the Netherlands – local authorities have traditionally purchased land at existing use value, provided infrastructure and services, and sold it to developers at a price that at least recovered costs

³ <http://lawcommission.justice.gov.uk/areas/towards-a-compulsory-purchase-code-1-compensation-a%20consultative-report.htm>

The consultation proposes introducing statutory targets and timescales for confirming a compulsory purchase order once it has been submitted to the authorising authority e.g. relevant Secretary of State. Whilst indicative timescales for decision-making would provide a degree of certainty to all parties involved in the process, government should consider carefully the introduction of narrow measures which focus on arbitrary process targets rather than good quality service provision. Timeliness in decision taking is of course important, however a careful balance needs to be struck to ensure that full consideration is given to the application to ensure that the right decision is made. In addition, adequate resources will need to be put into place to ensure any statutory targets and timescales can be fulfilled.

Land valuation should be considered by the tribunal up front, in cases where a compulsory purchase order is contest, not at the end of the process, creating greater certainty for both the local authority and the landowner and making it easier for it to find a development partner. Currently this happens at the end of the process – often several years after the compulsory purchase order starts – and creates unnecessary uncertainty and risk for local authorities and their development partners. This uncertainty may also reduce incentives for some parties to reach agreement outside the compulsory purchase order process.

We welcome the proposal to update the guidance on compulsory purchase and provide it as web-based resource in similar way to the national planning practice guidance.

Reforming High Court challenges

We support the proposal to widen the remedies available to the Courts as part of a challenge to a compulsory order to allow them to quash the decision to confirm an order as an alternative to quashing the compulsory purchase order as a whole. This will ensure that in situations where a confirmation decision is successfully challenged, but the order itself is sound, the acquiring authority will not have to remake the order which can be time consuming and add unnecessary delays to the system.

Entry to take possession of acquired land

In principle we support proposals to provide consistency and certainty in relation to notice periods to occupiers when an acquiring authority begins the process of taking possession of the land. This builds on one of our key messages that the legislative provisions for compulsory purchase need more fundamental consolidation and streamlining.

We agree in principle that there should be a mechanism to enable a claimant to require the acquiring authority to take possession after the specified date of entry if it has not done so, although our view is that in practice this mechanism will rarely be needed.

We support proposals to introduce additional protection for acquiring authorities when new interests in land are discovered after notice of entry has been given, but before entry is taken. This will avoid the need for acquiring authorities to re-serve a notice of entry, avoiding unnecessary delays in the compulsory purchase process.

Advance payments of compensation

We agree that it would be helpful for claimants to have access to a standard form of claim before requesting an advance payment of compensation, as this might help with the quality of applications received, however this should be for guidance and not prescribed.

Councils agree that compulsory purchase should be used as last resort to acquire land and wish to ensure minimal disruption to those landowners whose land they acquire. Therefore in principle we support the proposal to enable acquiring authorities to make advance payments prior to the date of entry - this should support claimants with moving house if their house is acquired, or to move to other business premises, in order to avoid closure of their business, without having to finance from their own resources or use bridging loans. However, this should be dependent on the claimant supplying sufficient information to the acquiring authority to enable this claim to be made and should be an enabling power not an obligation.

We are unclear on the reasoning behind a proposed arbitrary 21 day time limit for acquiring authorities to request further information from a claimant after the receipt of a claim. However, if such a timescale is introduced guidance should make clear that advance payment will only be considered for the areas on which the acquiring authority has received information.