

**Insights**

## **SIGNIFICANT CHANGES TO CPO REGIME UNDER CONSIDERATION**

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### **SUMMARY**

Two significant consultations opened at the end of last year, the first by the [Government](#) and the second by the [Law Commission](#), seeking views on proposed changes to CPO law and process. In the first of this two part series, we consider the Government consultation and what the changes it proposes may mean for acquiring authorities and those whose land or interests may subject to a CPO.

The Government consultation that opened on 19 December (which closes on 13 February) was prompted by the need to increase the efficiency of the CPO process and reduce costs, primarily to support the government's housing delivery objectives. Key changes to proposed to the CPO regime includes:

### **AN EXPANSION OF THE USE OF DIRECTIONS TO REMOVE "HOPE VALUE" IN CPOS**

The Levelling Up and Regeneration Act 2023 (LURA) introduced a new power that allows directions to be included in certain CPOs (for example schemes that include provision of affordable/social housing, acquisitions by the NHS or for education purposes) to remove "hope value" (which is compensation payable to CPO claimants for prospective planning permission) from compensation assessments.

Such directions can only be included in a CPO in limited cases and must be justified in the public interest on a case-by-case basis. Authorities must evidence the public benefits expected to be delivered as a result of the non-payment of hope value (which wouldn't be viable without the direction), setting out the public needs they will meet, the impact on affected landowners, and how a fair balance between public and private interests will be reached. However, inclusion of such directions would reduce the compensation payable – increasing scheme viability and the

deliverability of public benefits, but lowering the compensation received by claimants for existing use values.

The changes under consultation would increase the availability of these directions and provide greater certainty as to when acquiring authorities can seek their inclusion in CPOs, by allowing:

- CPOs made on behalf of parish/town or community councils by local authorities under section 125 of the Local Government Act 1972 to include them where they provide affordable or social housing, to enable smaller schemes to benefit;
- the delegation of decisions to include such a direction to acquiring authorities where there is no objection, leaving only decisions where their inclusion is contested to Inspectors;
- value attributed to hope value to be removed from all heads of claims for compensation where an assessment of market value is carried out (for example this would include home loss payments as well as compensation for land taken);
- the Secretary of State or Welsh Ministers to issue a general direction to remove hope value from the assessment of compensation for a specific category of sites where justified in the public interest, for example for affordable housing on brownfield sites or sites allocated for housing which have not come forward, to benefit from the inclusion of such directions. This change would provide greater certainty for acquiring authorities as to when they can be included in a CPO and would be the most significant expansion of this power.

## **TECHNICAL PROCESS CHANGES**

Technical changes proposed to improve the general CPO process would allow authorities (rather than the Secretary of State) to approve certain modifications following confirmation of a CPO (such as to rectify drafting errors or remove plots of land).

Additionally it is finally proposed to move forwards with the proposal to allow authorities temporary powers of entry and use (currently unimplemented powers sit in the Neighbourhood Planning Act 2017) with clarification such powers would not apply if temporary possession is available under other statutory powers (for example the Transport and Works Act 1992 or the Planning Act 2008). This change addresses concerns as to the operation of these powers in practice alongside each other.

Other changes would introduce a new expedited notice process for GVDs in certain circumstances relating to the physical state of the property or its legal use to avoid damage and nuisance from anti-social behaviour, or otherwise on agreement. The process would allow properties to vest within 6 weeks as opposed to 3 months and deliver benefits in the public interest.

Further proposed statutory amendments would allow the electronic service of notices and documents served under all CPO legislation (currently this is only allowed for notices served under the Compulsory Purchase (Vesting Declarations) Act) 1981) and potentially simpler information requirements for newspaper notices.

## **CHANGES TO COMPENSATION ASSESSMENTS**

Proposed changes to the calculation of loss payments would reverse the share for landlords and occupiers, as occupying businesses or agricultural tenants incur the greater cost and relocation burden compared to landlords, and simplify the basis for such calculations. This change would mean claimant occupiers receiving more compensation, but claimant landowners receiving less.

Finally, some exclusions to home loss payments (designed to compensate for the distress and inconvenience of people's homes being compulsorily purchased) are proposed, predominantly to remove the payment entitlement where a property owner of a neglected property has failed to comply with enforcement/statutory notices, in order to mitigate costs of the Local Authority. This change would lower the compensation costs for local authorities, and may incentivise compliance with statutory enforcement notices/orders.

## **OUR THOUGHTS**

The consultation contains some welcome practical suggestions, particularly the technical process changes which, whilst they require thought in terms of implementation, are likely to streamline the system. The long awaited introduction of temporary possession powers for CPOs have been unnecessarily delayed for too long, so it's good to see this moving again. Equally, the changes to the compensation provisions generally make sense and don't initially appear too controversial.

Perhaps the most controversial change is the proposal to bring in general categories of directions to remove hope value. The introduction of the statutory power allowing these directions has already potentially created a two tier compensation system for land owners, where hope value may be removed dependant on whether or not your land is affected by a DCO or CPO (and within the CPO regime whether a direction is sought).

Extending this further may increase the numbers of affected landowners whose compensation is limited to existing use values, rather than market value. The suggestion of a general direction seems to bring with it difficulties in considering the human rights of the affected parties in the balance, because at the time of making any direction the confirming authority cannot possibly be aware of all of the affected parties and the impact on their human rights.

Additionally, the situations suggested for blanket directions, namely (i) brownfield sites without planning permission and (ii) allocated land which has not come forwards, seem to suggest a penalty element of reduced compensation for landowners not moving forwards with delivery

promptly. This raises challenging questions, for instance how long a delay in delivery of allocated sites would bring this direction into play, and how do you deal with situations where there is no extant planning permission because applications for complex brownfield sites are stuck with the LPA? Depending on if and how these changes land, more claimants could be faced with receiving much less compensation than under the existing rules.

In the next blog in this series we will be covering the Law Commission's current consultation, which is a more detailed and comprehensive review of CPO law and considers ways in which it could be simplified, consolidated and modernised.

## **RELATED PRACTICE AREAS**

- Planning & Zoning

## MEET THE TEAM



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