

A British Property Federation response to:

Technical consultation on improvements to compulsory purchase processes



Introduction

1. The British Property Federation (BPF) is the voice of property in the UK, representing companies owning, managing and investing in property. This includes a broad range of businesses – commercial property owners, the financial institutions and pension funds, corporate landlords, local private landlords – as well as all those professions that support the industry.

General comments and key issues

2. We welcome the opportunity to respond to this technical consultation on improvements to the compulsory purchase process. This response has been prepared in consultation with the British Council for Shopping Centres (BCSC) and following discussions with the Compulsory Purchase Association (CPA). Whilst many of the proposals are welcome, and will greatly assist in streamlining and speeding this often slow and complex process, care must be taken to ensure the protection of the rights of landowners and to ensure that acquiring authorities can progress their schemes where required.
3. We have long suggested that the compulsory purchase order (CPO) process is over complicated and in need of reform, and were very supportive of the Law Commission report published some years ago. Whilst this consultation is a good start, and makes progress on the reforms needed, this should not be the end of the process. CPO is a powerful tool to support regeneration and a more comprehensive reform would enable it to be used more effectively.
4. There are still further changes that could be made, in particular those that were set out in the Portas Review:
 - Constituted super-BIDs which should have the same rights as local authorities to use Compulsory Purchase Orders and enter and upgrade strategic properties, bringing empty property back into use.
 - Local authorities to be more proactive with the use of Compulsory Purchase Order powers to encourage the redevelopment of key high street retail space and reduce the issues around fragmented ownership.
 - Empowering local authorities to step in when landlords are negligent with new “Empty Shop Management Orders” – using a similar style power which applies to empty homes.
 - Business (and ordinary) Neighbourhood Plans (NPs) should be encouraged to focus on regenerating town centres. The real benefit of NPs is they mobilise local business as well as community interests and result in a mandate for change (through a Referendum) in a way that no other planning framework can.

- In the CPO reform process itself due consideration could be given to identify how the TCIM model of regeneration could benefit from the use of s.237 – overriding restrictive covenants.
5. In addition, we propose that some consideration is given to blight notices, and whether changes could be made to allow such to be served at any time. Based on the experiences of HS2, TfL and others, there is a significant level of understanding of the need for a review of blight provisions, so as to remove a degree of fear and uncertainty of, and opposition to schemes. We suggest that consideration of a more market-based approach to provide for a revised process for dealing with generalised blight would be welcome, and that the current annual value limits for blight are in need of review as they set an unnecessarily restrictive bar on claims.
 6. The following changes should be effected to Blight Notices.:
 - i. The rules should be simplified so that most properties that qualify should allow a Blight Notice to be served as soon as the scheme has been publically announced.
 - ii. The current low Rateable Value limit for commercial property qualifying to serve a Notice (£34,800) should be substantially raised. Virtually all commercial properties in London are excluded by this measure.
 - iii. The requirement to prove that the property has been marketed for a minimum period (3 months) should be waived.
 - iv. Once a Blight Notice has been accepted by the acquiring authority, the claimant should be entitled to serve a “Reverse Notice to Treat” fixing the date of valuation.

Consultation questions

Q1a: Should public sector bodies be given more flexibility in their compensation offers at an earlier stage in the process?

7. Whilst we welcome the principle that public sector bodies should be given more flexibility in their compensation offers at an early stage, we are concerned that this introduces a serious point of exposure for a statutory acquiring authority and is potentially very difficult in practice. There is a risk that landowners will hold out for higher compensation knowing that an offer above market value could be received if they do so. The proposed guidance must therefore be very clear that what is proposed is not converted into a mechanism by which landowners refuse to treat because they know the acquiring authority will go above market value.

b. Does the draft wording provide helpful guidance the Accounting Officers that oversee public schemes and should it be included in guidance publications such as Managing Public Money, the Green Book guidance, Department for Communities and Local Government’s Best Value Guidance for Local Authorities and/or the new compulsory purchase guidance?

8. Yes. However, it is critical that the wording is fully tested to ensure that acquiring authorities have confidence in using it. We question whether the suggested wording in the consultation document in the consultation document has been tested fully, and recommend that the Compulsory Purchase Association (amongst others) is further consulted.

Q2: Do you agree that all acquiring authorities should have the same powers of entry for survey purposes prior to a compulsory purchase order being made?

9. Yes. We agree that this would be a helpful change to the regime.

Q3: Do you agree that there should be a warrant provision associated with the proposed standard power of entry for survey purposes prior to a compulsory purchase order being made?

10. Yes.

Q4: Do you agree that the notice period for the single power of entry for survey purposes, prior to a compulsory purchase order, should be a minimum of 14 days? If you disagree, please specify what minimum time period of notice should be adopted?

11. We believe the notice period should be 28 days.

Q5a: Do you agree, in principle, that we should introduce statutory targets and timescales for the confirmation stage of the compulsory purchase order process:

- i. For cases decided by the Secretary of State?**
- ii. If introduced, for delegated legislation?**

12. Yes. There should generally be a greater degree of consistency between the CPO regime and other parts of the planning process. The Development Consent Order (DCO) process includes statutory targets and timescales and works well. Lessons could be learnt from the DCO process and applied here. Consideration must be given to any remedies that could be awarded should the proposed timescales not be adhered to, in situations where the time limit is exceeded; the Secretary of State could be advised to write to all parties with an estimated date of completion.

b: for cases decided by the Secretary of State do you agree with the following timescales and targets for cases dealt with by written representations:

- i. a new statutory requirement for a site visit to be conducted within 15 weeks of the starting date letter. If you disagree, please specify any alternative timescale**
- ii. a new target for 80% of decisions on written representation cases to be issued within eight weeks of the site visit with the remaining 20% of cases dealt with within 12 weeks of the site visit. If you disagree, please specify any alternative timescales or percentages.**

13. Yes, we agree with the proposed timescales.

c: For cases decided by the Secretary of State do you agree with the following timescales and targets for cases that are the subject of a public inquiry:

- i. a new statutory requirement for the Inspector who conducted the inquiry to inform the acquiring authority, within 10 days of the end of the inquiry, the timescale for a decision. If you disagree, please specify any alternative timescales.**
- ii. a new back-stop target that 80% of cases are dealt with within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. If you disagree, please specify any alternative timescales or percentages.**

14. Yes, we agree with the proposed timescales.

Q6: Do you agree that we should introduce a new statutory requirement for each Secretary of State with confirmation powers to report annually to Parliament on his/her performance in meeting the defined timescales and targets for confirmation of orders, where the number of cases decided in the year exceeded five?

15. Yes.

Question 7a: Do you agree that each Secretary of State should be able to delegate to an Inspector a decision on whether to confirm or refuse to confirm a compulsory purchase order?

16. Yes. We support the proposed delegation of decisions to Inspectors. This should both speed up the process, and reduce the political element of the decision making. There should perhaps be a timescale introduced within which this should take place to avoid undue delay. At present, it can take up to nine months just to get an Inquiry date which is putting planned investment in jeopardy.

b: Do you agree it would only be appropriate to delegate decisions that do not raise issues of more than local importance? If not, why not, and what other types of cases would be suitable for a delegated decision?

c: Do you agree that the Secretary of State should also be able to recover for their own decision any delegated case, at any point, before a final decision is made?

d: What sort of cases would be suitable for a delegated decision? Would it only be appropriate to delegate decisions that do not raise issues of more than local importance?

(Answer to b, c, and d)

17. We are concerned by the use of 'local importance' as a distinguishing factor. It is a subjective definition and is therefore likely to tempt potential challenge. Decisions made in the planning system should be made on the merits of a scheme, however, the CPO regime is concerned with the acquisition of rights, and therefore there should be a clear delineation, rather than the potential for wilful decision making.

18. We suggest that as an alternative, there could be a presumption introduced that an Inspector will take the decision unless the case is called in by the Secretary of State.

Q8: Do you agree that the communication of decision letters and Inspector's reports on compulsory purchase orders can be undertaken electronically, subject to ensuring that parties who did not have electronic access, or who requested a hard copy, continued to receive the relevant information by post?

19. Yes

Q9: Do you agree that the remedies available to the Courts should be widened to allow them to quash the decision to confirm an order as an alternative to quashing the order?

20. Yes. We agree that the remedies available to Courts should be widened. This will assist in speeding up the CPO regime, and ensuring that the acquiring authority does not lose out should the Court make a flawed decision.

Q10: Do you think there is a need to change the method of challenging a decision not to confirm a compulsory purchase order from judicial review to statutory High Court challenge?

21. Yes. We are of the view that this is a logical change to be made to ensure that both the acquiring authority and the landowner can undertake a similar process, particularly for larger schemes.

Q11a: Do you think that there is a need to extend the time allowed to implement a compulsory purchase order in the event of an unsuccessful legal challenge?

22. Yes.

b: If the time to implement should be extended, would your preference be for:

- i. a flexible period of extension reflecting the time taken to achieve final determination of the challenge; or**
- ii. a set period only in all cases? Please specify what set period of extension should be granted.**

23. It is difficult to see how a set period would work, unless it was related to the actual period for which the challenge was being considered by the court, and this may not be known until judgement is given. Therefore a flexible basis needs to be adopted. However, to avoid uncertainty, some estimates must be provided when the challenge is issued.

24. We suggest that some consideration should be given to a long stop date for the extension of time so as to achieve a fair balance for landowners who have not challenged the Order – whilst an acquiring authority should be allowed a reasonable time to implement powers, it should not be extended without a reasonable limit given the continuing uncertainty which arises during the period until a challenge is finally determined.

Q12: Do you agree that the notice period before entry to land authorised to be acquired by compulsory purchase should be three months? If not, specify what alternative period would be appropriate.

25. Yes, we agree with the proposal. However, there may be seasonal constraints either for habitat reasons or even to meet target openings for commercial operations which could be significantly affected by this period, so some flexibility may be required.

26. We suggest that at the very least a 14 day period could be retained for acquisition of rights. The 3 month period would enable occupiers a longer period to relocate. There is a balance between businesses who will be displaced and, for example, the acquisition of a strip of land for a road scheme where 14 days' notice will not necessarily impact on the owner.

Q13a: Do you 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?

27. Yes.

b: If a mechanism were introduced - do you prefer Option 1 - to allow the claimant to serve a "reverse notice of entry" or Option 2 that the acquiring authority should be deemed to have entered and taken possession on the "on" date, whether or not they had actually done so?

28. Option 1. Option 2 is overly complex, and allows claimants the potential to stay in the system for an overly long time.

c: If option 1 were to be taken forward, do you agree the defined period, where a reverse notice of entry can be served, should be 28 days after the earliest date for entry?

29. Yes.

Q14: Do you agree that there should be provision for a new notice to treat / General Vesting Declaration in the circumstances outlined in this consultation paper in Paragraph 75.

30. Yes, in circumstances where the Acquiring Authority who has complied with all necessary requirements including making diligent inquiry as is acting upon them with good faith, they should be able to move forwards.

Q15: Do you agree that when obtaining entry by means of a General Vesting Declaration, the General Vesting Declaration must be executed within three years of the date of operation of the compulsory purchase order, in order to exercise the powers of compulsory purchase?

31. Yes.

Q16: Do you agree that the alternative method of obtaining entry in section 11(2) of and Schedule 3 to the Compulsory Purchase Act 1965 should be repealed?

32. Yes, although this is a rarely used method in practice.

Q17: Do you agree that claimants should be required to submit a prescribed form of claim before requesting an advance payment of compensation?

33. Yes, however, in practice, this has the potential to be very difficult to agree. It is crucial that the right questions are asked by the Acquiring Authority. This would be particularly helpful for residential issues, although perhaps more challenging for the commercial elements.

Q18a: Do you agree that a claim for an advance payment should be allowed to be made at any time from the date of confirmation of the compulsory purchase order?

34. Yes, although balance is required. It should be remembered that the intention must be to assist Acquiring Authorities to assist the claimants, and we suggested that a right to help the claimant, rather than an obligation to do should be introduced.

b: Do you agree that the earliest date on which an advance payment can be made should be brought forward to two months after a claim or the date of the Notice to Treat or execution of the General Vesting Declaration, whichever is later?

35. Both proposals are welcome, and may well have the effect of assisting the funding of some relocations. We would like to see both permitted so that on a case by case basis, the most appropriate option can be used.

Q19a: Do you agree that there should be time limits on requests for additional information from acquiring authorities when processing claims for advanced payments?

36. No. It is important that Acquiring Authorities have the opportunity to return to the claimants and ask for clarity in their claims.

b: If so what time limits should be imposed?

37. As above.

c: Do you support the introduction of fast-track decision process to deal with disputes over claims for advance payments?

38. Yes, in theory, however, we are concerned that this may slow down the final claim process. It is crucial that the detail is worked out with the assistance of the various interested bodies.

d: If so, how might this be achieved?

e: Who might provide such a service?

f: How might a service be funded

g: Do you have any proposals for a sanction against acquiring authorities who do not make payments on time?

Q20a: Do you agree that the rate of interest should be pegged to the Bank of England base rate?

39. Yes, we agree with this proposal. It seems unlikely to encourage either party to misbehave or to 'game' the system.

b: Do you agree that the prescribed rate should be set at 1% above the Bank rate?

40. Yes.

Q21: Do you agree that legislation should be introduced to require compound interest to apply?

41. No, this does not apply in usual court proceedings, so we are at a loss as to why it might be considered here.

Q22: Do you agree that setting a 1% interest rate floor is fair on all parties concerned?

42. Yes.

Q23a: Do you agree that encouraging the transfer of mortgages to avoid negative equity is a worthwhile and fair proposal to pursue with industry?

43. Yes. In practice this seems sensible but the devil is always in the detail and small print of the mortgage terms and conditions which determine if this is possible.

b: If government is unable to secure agreement with industry do you agree that such protections should be implemented through legislation?

44. Yes.

Q24a: Do you agree that existing powers to override covenants and easements should be extended to other acquiring authorities, acting in their capacity as statutory undertakers or in the exercise of their public functions?

45. Yes. Generally, the powers to override third party rights exist where there is planning permission in place – not all regeneration (for land acquired or appropriated under s.226 of the 1990 Act may necessitate planning permission (if improvements are proposed) and so question whether planning permission should be a pre-requisite as opposed to it being a scheme which complies with the purposes permitted by the statute.

b: Do you have any comments on the proposal that where overriding by those authorities is to facilitate commercial development on land acquired for public works, the basis of compensation should be open market value, rather than diminution to the value of the claimants land (as is currently the case for local authorities)?

46. The definition of "open market value" will need to be very clearly explained. The use of pure open market value could lead to a situation where ransom payments are sought and secured because that reflects the open market value of the interest being bought off. Whilst in pure landownership terms this may be an appropriate level of compensation it will not assist the Government in its ambitions in releasing more land for development.

47. Traditionally the diminution in value measure has led to far more affordable development of land encumbered by interests and there could be a considerable increased expense to developers and the taxpayer if an open market value approach is adopted.

Q25a: Would you prefer harmonisation which:

- i. allows entry to land and vesting of title before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures; or:**
- ii. involves a procedure similar to requiring acquisition of the whole under the current general vesting declaration procedure that would apply also to the notice to treat procedure, which prevents entry on to the land and vesting of title before the dispute has been determined. Please explain why.**

48. We prefer option 1. However, in addition, we recommend that the procedural elements of the process should be speeded up, perhaps through the delegation of such matters to the First Tier of the Tribunal Service.

b: Do you agree to allow the material detriment provisions to be disapplied in compulsory purchase orders for the acquisition of rights through subsoil?

49. In some cases, this should be disapplied, but a balance between public interest and private loss must be assessed.

c: Are there any other options to achieve harmonisation of the treatment of material detriment?

50. N/A

Q26a: Do you agree that the measures listed in paragraphs 124, 125 and 126 will provide modest net benefits for business interests, or have a negligible impact? If you disagree, please specify which measures may not provide modest net benefits or have negligible impact?

51. Yes.

b: Do you agree that cost savings to all claimants as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to all acquiring authorities? Please explain the basis of your response?

52. Yes

c: Do you agree that cost savings to business as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to acquiring authorities that involve business interests? Please explain the basis of your response.

53. Yes.

d: Do you agree with our assumption that the average amount claimed by a business is typically larger in monetary terms than the average amount claimed by an individual homeowner? Please explain your response.

54. N/A

e: Do you agree with the assumption, set out in the consultation stage impact assessment, that there is an average of 15 household claimants per compulsory purchase order? Please explain your response.

55. N/A

f: Do you have any further comments on the likely impact of these proposals on business interests, including the assumptions we have adopted for proportions of compulsory purchase orders with business interests, both in respect to the acquiring authority or the claimants?

56. N/A

Q27: Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.

57. N/A

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