

Consultation response

Improvements to compulsory purchase processes

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Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Introduction

Shelter welcomes the opportunity to respond to the Department of Communities and Local Government (DCLG) and HM Treasury (HMT) consultation on 'improvements to compulsory purchase processes'.

At Shelter we are in contact with millions of people every year through our front-line advice services, help-line and website who need our specialist housing advice and support. We are hearing more and more from people who are struggling with the cost and availability of homes in their local area. That's why we are campaigning for the new government to commit to building the homes we need in order to address our massive housing shortage, which has built up under successive governments. We need to be building at least 250,000 new homes per year in England: a step-change from current levels.

We welcome the proposals in the consultation to make compulsory purchase order (CPO) processes clearer, fairer and faster. The government is absolutely right to modernise CPO, a process which we know can often be frustrating and unsatisfactory for all parties involved. We want to see reform go even further, so that CPO can incentivise better development, with more homes being built in the right places.

We argue that there are a range of options for further reform to give greater power to local leaders to get development going in the right places, without major top-down reform of the planning system. This could involve devolving stronger CPO powers to England's growing cities to enable efficient land assembly, which could then enable the delivery of high quality new communities at pace and scale.

1. Answers to selected consultation questions

Question 1(a): Should public sector bodies be given more flexibility in their compensation offers at an earlier stage in the process.

Yes. As with private sector bodies it makes sense for public bodies to appraise the total potential costs of a CPO process, including the additional costs of not settling early, when considering their first offer to a property owner. By reducing the number of disputes, CPO processes could become less costly and quicker for the public sector.

Question 5(a), (b) and (c): Do you agree, in principle, that we should introduce statutory targets and timescales for the confirmation stage of the compulsory purchase process: (i) for cases decided by the Secretary of State; (ii) If introduced, for delegated decisions?

Yes, providing an incentive for quick decisions by public authorities would be a simple way to improve the speed of compulsory purchase and reduce uncertainty or risk-aversion from public bodies considering undertaking a CPO.

We would argue though that the best way to ensure quick CPO decisions would be to have a simple, clear method for evaluating the value of property or land, the compensation for having it compulsorily purchased and the grounds under which a CPO can be rejected.

For example in the Netherlands property can be compulsorily purchased for implementing a local 'Land-Use Plan'. These plans specify in detail the legally allowed changes to land use, for example the form and tenure and housing. This creates a clear land value from which to start.¹

Compensation is then calculated as follows:

"First, the average value for the whole plan area (complexwaarde) is paid, not the value which the plot being expropriated would have after development. The owner of the plot which would become a park

¹ Land value is calculated on the basis of the residual land value methodology. This takes the total rental value of the site given its planning status and subtracts any costs associated with delivering the change in use, such as labour, materials and tax.

*receives as much as the owner of a plot which would become an office building: and vice versa. Second, in determining the average value, account is also taken of the costs of the necessary servicing and infrastructure works: taking account of these diminishes the value of the unserviced land being expropriated. Third, account is taken of how soon development would take place. If that is a long way away...less will be paid than if it is imminent."*²

There is therefore a clear methodology for determining site value and compensation which can provide a solid basis for determining fair payments to property owners.

Aside from compensation, CPO can also be opposed on the grounds that it is not being conducted lawfully: for example that it is not in the public interest. Again in the Netherlands the solution is simple. If a Land-Use Plan has been legally adopted by the planning authority and a landowner refuses to allow the change of use, then this is sufficient proof of public interest for any CPO dispute.

*"Compulsory purchase is used when the existing owner does not want to develop in accordance with the plan, and refuses to sell to the municipality in order to do that. If the owner refuses to sell because she does not agree with the plan...she has little chance of winning an appeal against a compulsory purchase notice".*³

Questions 17, 18, 19: Payment of compensation

Reforms are needed to make the CPO process less financially uncertain for all concerned.

Implementing a CPO requires the acquiring local authority to demonstrate that adequate funding is available to enable the site to be purchased within the possible CPO timeline.⁴ Often this is achieved by local authorities setting aside a budget for site purchase. Given the high cost of land and the fact that the current CPO process can often take a decade or more, this is a large financial commitment for a local authority.

As a result local authorities usually partner with a developer in order to ensure the proposed CPO is financially viable and also to give further justification to the purpose and likely success of the proposed CPO.

This element of financial risk, and the ability to attract a development partner, is made worse by the uncertainty created around values by the current CPO process.

Certainty around the value of the site is not finally achieved until either the landowner accepts a proposed price or, if contested, has a final Land Tribunal valuation. This latter process can take many years, during which period market conditions and values can alter significantly, whilst the range of values settled on by the Land Tribunal can also vary significantly.

The process of valuation within a CPO should be made much quicker:

- If value is contested, the land valuation by a Land Tribunal should happen up front, making it easier to find a development partner and reducing the uncertainty associated within the current CPO system.

In situations where sites are not being brought forward for development, offering market prices for existing use value should not be controversial. A shorter process that provided firmer guidance on use value would help do this and would rebalance the law in favour of development-minded local authorities.

² Needham, B; Dutch Land-Use Planning, Ashgate 2014

³ Needham, B; Ibid

⁴ CPO Circular, 2004 p.7

2. Options for further reform

The proposals for CPO reform in the consultation are sensible, but could go further. Organisations such as Shelter, IPPR and KPMG want to see stronger powers for local leaders to deliver the new homes and infrastructure that they need (such as for new city Mayors as proposed under the draft Cities and Local Government Devolution Bill). Reforming CPO could play a role in delivering this change.

The essence of further reform should be to strengthen the ability of local leaders to release land for homes in the right places and at prices which allow for high quality, affordable homes, better infrastructure and services. By devolving these powers to local leaders, they will be able to champion not just more development, but better development.

There is now a growing body of evidence showing that local opposition to new development is increased by fears that new house building will put additional pressure on local infrastructure and services, will not be affordable for local people, and will be ugly or of low quality.⁵ Increasing the quality and affordability of new development will reduce local opposition to it and make it easier for local leaders to champion new house building.

In the current land market and planning system it is very difficult to achieve high quality, affordable developments.⁶ This is largely because high land prices squeeze out investment in affordable housing, infrastructure or build quality. If we instead followed the Dutch approach of 'active planning', where land is brought into development at lower costs to enable high quality, ambitious local development, we could enable the market to deliver much better homes, more affordable housing and to contribute to better local infrastructure.

Option 1: Modernising land compensation and local government capacity

The most critical CPO reform to allow a step-change in the quantity and quality of development in England would be to modernise land compensation so that high land costs didn't choke off good development.

The current market value guidance creates drawn-out legal contests around the (highly unclear) definition and assessment of 'hope value' for landowners (how much they think the land would be worth with planning permission based on future residential prices), amplifying uncertainty for investors and local government and vastly increasing the opportunities for legal dispute throughout the process.

A definitive process of valuation and compensation would speed up the process and give confidence to landowners, developers and planning authorities about the use of CPO. There are two potential modernisations to CPO law (in particular the Land Compensation Act 1961, Section 5 (2)) that would ensure compensation is based on a clear formula. The first proposal would apply to specific planned developments, such as urban extensions or garden cities. The second would be a broader change to allow CPO to bring land into development projects at a lower cost, such as on stalled brownfield sites or other smaller schemes:

- Modernise CPO compensation specifically so that compensation for land within a legally adopted, large scale planned development such as an urban extension or garden city is based upon the average market value of land within the planned development area minus the costs of servicing, affordable housing and infrastructure that would be required to deliver the planned development.
- Modernise CPO compensation generally so that it is based upon a formula of existing use value + a percentage uplift as compensation for the loss of the asset.

⁵ Meeting Place Communications & Shelter, Engaging the Silent Majority, 2015; DCLG, Public Attitudes to House Building, 2015; PRP Architects and Shelter, Wolfson Economics Prize 2014

⁶ KPMG and Shelter, Building the Homes We Need, 2014

- The current market value guidance means drawn out legal contests around highly unclear 'hope value' for landowners (how much they think the land would be worth with planning permission based on future residential prices), amplifying uncertainty for investors and local government and vastly increasing the opportunities for legal dispute throughout the process.

Current guidance allows land owners to benefit from development undertaken in the public interest, as planning assumptions for land compensation include 'the development which the acquiring authority proposes for the land'⁷. This means that land owners benefit from the government acquisition through higher compensation, even if the land would not have been developed absent of government intervention.

If compensation excluded the uplift in value from government development, this would allow for increased value capture through the CPO process, making it easier to finance development. In some cases, a portion of land acquired as part of the development could be provided as sufficient compensation to land owners, as the increase in value of that land as a result of the development would meet the required compensation, removing the need for cash payments of compensation to be made.

This would be a similar approach to CPO as in Australia⁸, where compensation reflects the current market value of the land prior to any government development, and the uplift in value of surrounding land is considered when determining compensation.

As well as modernising the basis for assessing compensation claims, it is also vital to consider how to improve the capacity of bodies with CPO powers to undertake the process. Two reforms in particular would help improve capacity:

- Introducing stronger and more streamlined CPO powers as part of a devolution package to growing English cities which would also include control over resources from the Homes and Communities Agency (HCA) and the pooling of resources across local authority boundaries within a city region.
- Setting up a national team to aid authorities in undertaking larger CPO, modelled on the HCA's ATLAS team's support for local authorities dealing with major planning applications. This should draw on the experience of those authorities such as Birmingham City Council who already have strong CPO experience.

Option 2: Dutch-style zoning powers for cities

The simplest approach - and one that is successful in other comparable countries - would be to use a form of proactive planning, or 'zoning', to set land values via the local plan, with the credible threat of compulsory purchase for landowners who refused to develop according to the zoning plan or sell to a developer who will.

As described above, this sort of approach has been widely practiced in the Netherlands where local planning authorities select areas for future growth as part of a statutory planning process and provide a detailed Land-Use Plan describing the changes which can be made to land. Where a landowner refuses to develop according to this plan or sell to a developer who will, the municipality can buy the land at the price that would make development of the land according to the plan economically viable.

KPMG and Shelter have made a similar proposal for the English context: **New Home Zones**. Under our proposal, local planning authorities or city-regions would be able to designate a zone in a strategic location (such as along a transport corridor) and invite competitive tenders for a masterplan of the site, with maximum input from the public and local business.

By legally adopting the winning masterplan in their Local Plan as the only permitted land use change allowed, the planning authority would in effect be setting the land price for the site. If the landowner refuses to sell to a developer willing to develop the Zone then the local planning authority would CPO

⁷ [Compulsory Purchase and Compensation](#), 2004

⁸ [The Commonwealth and You: Compulsory Acquisition of Land](#), 2011

the site on behalf of the developer at a price reflected by the modernised compensation laws discussed above.

This would require changing CPO land compensation law to allow purchases at the price required to fulfil the masterplan of a specific planned developed (such as a New Homes Zone) that had been adopted into a Local Plan. The government already has a Housing Zone programme in place, with the ambition for delivering 95,000 new homes over the current Parliament. It should be considered whether a stronger CPO power could be used to incentivise higher levels of affordable housing on these sites.

Option 3: Compensation with land, rather than cash

An alternative approach to achieve land at lower costs is suggested by Ghatak et al, following a study of CPO in rural India. They found that farmers would hold out for higher prices for their land from public bodies for fear of being ripped off compared to their neighbours: this led to a greater use of CPO and more disputes over price.

To avoid this, Ghatak suggests that authorities should offer to buy land in the wider vicinity than just the plots that they wished to develop.⁹ By acquiring nearby land of equal agricultural worth, which farmers would willingly sell for a small uplift in its market value, authorities could offer farmers who do have land in the area designated for development a new plot of land as compensation, rather than cash.

Such an approach may be attractive in the English context as it allows a pro-development authority to offer unwilling landowners a replacement site as an alternative to cash. This could help improve the legitimacy of CPO in the eyes of the public, by distinguishing between a landowner's right to proper compensation for the lost agricultural land (which is seen as morally essential) and their ability to make huge windfall gains from land value uplift that results from a change of land use from agricultural to residential (which is less widely accepted). This approach might therefore increase public bodies' ability and willingness to acquire land in the places that they wish to see developed, at prices which would allow high quality development with a high proportion of affordable housing.

Option 4: Pre-emption rights

Another approach taken from the Netherlands would be to give certain public bodies a pre-emption right for buying land designated for major new developments. In the Netherlands this works as follows:

"A municipality...is empowered to designate land within its boundaries where it intends to exercise a pre-emption right. That means that if the owner of the land within the area wants to sell it, he has to first offer it to the planning agency. Only if that body does not want to buy it may the owner sell the land to others."

The pre-emption right remains in place for ten years, to provide an incentive for the landowner to sell. The price that the landowner can sell to the authority is that which would be paid if the seller and the public body cannot agree on a sale i.e. the compulsory purchase price. As described above, this is worked out according to the average market value in the plan area minus the necessary infrastructure costs.

In England, a pre-emption right could be combined with the zoning approach outlined above. If a New Home Zone were created, then there could be a pre-emption right for any land sale within the zone for the developer or development corporation. This would increase the incentives for willing landowners to negotiate a sale at a lower price without recourse to CPO. However it may need to be backed up by the ultimate threat of CPO at a lower price than the Hope Value.

⁹ Ghatak et al, [Land Acquisition and Compensation](#), 2013

Option 5: Stronger CPO power for existing public bodies

One of England's most frequent users of compulsory purchase powers is Transport for London (TfL). Under current legislation, TfL may only CPO to discharge its statutory transport functions, whereas the Greater London Authority may use CPO for housing and regeneration purposes. However TfL has recently announced plans to become one of London's biggest housing developers - using its strategic investment in transport and thousands of acres of land.¹⁰

Shelter agrees that with TfL that strategic transport bodies should be able to part fund their infrastructure investments through property development. CBRE have estimated that Crossrail has already raised property values around stations by 20%¹¹, however these increased land values from public investment are not being directly used to part-fund the infrastructure. A more sensible approach would be to allow TfL to buy land in advance of major transport upgrades and develop property that benefits from uplifted land values and can part fund the investment.

However, such additional powers should come with a *quid pro quo* for public bodies such as TfL. The Mayor of London is not only responsible for TfL but also for London's strategic planning and housing policy. Shelter would therefore argue that any additional CPO powers for TfL should come with a clear mandate for the Mayor to set ambitious affordable housing targets for TfL led development. While this would cut the amount of revenue generated for transport investment, it would be a long-term investment in London's affordable housing capacity.

- Strategic transport bodies, such as TfL, should be able to use CPO for housing development purposes as part of infrastructure upgrades. As we have already argued, such CPO powers should be possible with compensation at a fairer value than is presently the case.
- However with these extra powers should come additional responsibilities to deliver higher quality and more affordable homes that meet long term needs.

Further Information:

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¹⁰ Transport for London, Property Partnership Opportunities, 2015

¹¹ CBRE, [Crossrail: The Impact on London's Property Market](#), Winter 2013/14