

JANUARY 2018

LTN 82 | COMPULSORY PURCHASE ORDERS

INTRODUCTION

1. The purpose of this Legal Topic Note is to explain the circumstances in which a parish council or, in Wales, a community council (local council) may compulsorily purchase land and the procedure for doing so.

THE STATUTORY BASIS

2. Compulsory purchase is regulated by the Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981.
3. The Land Compensation Act 1961 lays down rules for compensating persons who have had legal interests in land compulsorily purchased.

COMPULSORY PURCHASE AS A LAST RESORT

4. The legislation makes it clear that the use of compulsory purchase should be seen as a last resort and a local council should always try to acquire land by agreement under s.124 of the Local Government Act 1972 ('the 1972 Act'). A Compulsory Purchase Order ("CPO") will not usually be granted unless it is clear that all other options have been exhausted.

POWER TO COMPULSORILY PURCHASE

5. The Compulsory Purchase Act 1965 ('the 1965 Act') and the Acquisition of Land Act 1981 ('the 1981 Act') do not permit a local council to compulsorily purchase land. However, under section 125 of the 1972 Act it may request the relevant principal authority to compulsorily purchase land on its behalf if it is unable to acquire it by agreement and on reasonable terms. A local council will need to specify the power which allows it to seek a compulsory purchase of the land (such as being an allotment authority under section 25 of the Small Holdings and Allotments Act 1908). If the principal authority refuses to make a CPO or does not make one within 8 weeks of the local council's request, then the local council may petition the Secretary of State, who may then make the order.

COMPULSORY PURCHASE PROCEDURE

6. The Department for Communities and Local Government has produced a booklet about a CPO procedure which can be downloaded using the following link:
<http://www.communities.gov.uk/publications/planningandbuilding/compulsorypurchase>
7. The basic steps in the procedure are:
 - a) Request received by principal authority to make a CPO.
 - b) Principal authority obtains information regarding legal interests in the land including serving requisitions for information, title checks and notification to affected persons that their interests in the land can be sold to the authority or a CPO will be served in due course.
 - c) Draft report regarding compulsory purchase including draft statement of reasons for making, and the draft CPO itself prepared by principal authority staff and presented to principal authority Council.
 - d) Principal authority Council approves the CPO.
 - e) The CPO is formally made, it should specify the basis for the power to compulsorily purchase such as:
'..... the acquiring authority is under section 125 of the Local Government Act 1972 hereby authorised to purchase compulsorily on behalf of the parish council of the land described in paragraph 2 for the purpose of providing land for use as a burial ground .
 - f) Advertisements are placed in the press, formal notices including a copy of the CPO and the statutory forms served upon all persons with legal interests in the land or any land likely to be adversely affected by the CPO.
8. There is a 28 day objection period. If objections are received the Secretary of State will direct a CPO public inquiry to be held. The timescale is set by the Secretary of State and will normally involve a pre-inquiry meeting and a formal open public inquiry into whether the CPO should be confirmed or not. Once the Inquiry has been completed, the Inspector will put a report before the Secretary of State who will decide whether to confirm the CPO as drafted, modify it, or reject the CPO.
9. If there are no objections the Secretary of State will confirm the CPO.
10. Once a CPO has been confirmed the principal authority will serve a General Vesting Declaration (GVD) (or a Notice to Treat / Entry) which will transfer

the legal interest from the then owner to the principal authority which will then transfer it to the local council.

11. A principal authority which makes a CPO on behalf of a local council can recover from the latter the expenses that it has incurred. This includes the administrative expense; the cost of any inquiry; the legal costs awarded to successful statutory objectors (should the order not be confirmed, or confirmed in part only); statutory compensation (including, where appropriate, any additional disturbance or other loss payments) to which the dispossessed owners is entitled; and any compensation payable to adjoining owners who may be adversely affected and entitled to claim.

COMPENSATION

12. The Land Compensation Act 1961 ('the 1961 Act') requires the principal authority to compensate a person who has had legal interests compulsory purchased, or adversely affected. This is based upon putting that individual into a similar position to that before they lost their land. The DCLG produces a series of three booklets explaining the compensation provisions for different types of premises (business, agriculture and residential). These can be accessed via the following link:
<https://www.gov.uk/government/collections/compulsory-purchase-system-guidance>
13. There are four categories of compensation:
 - Value of the Land Taken;
 - Severance & Injurious Affection;
 - Disturbance; and
 - Fees.
14. In assessing the value of the land the CPO itself should be ignored. In other words the land is valued on the basis of the open market value assuming that no CPO exists. The value of the land is set by the principal authority in discussion with the land owner and their professional advisors. If agreement cannot be reached the landowner may challenge the principal authority's value of the land in the Upper Tribunal (Lands Chamber).
15. Severance and injurious affection is compensation for the effect of the CPO on retained land where only part of a land holding is compulsorily purchased.
16. Disturbance compensation is payable to the occupier of the premises subject to the CPO to reflect the cost and inconvenience of having to move out of

the premises. For a dwelling the payment is 10% of the market value of the property to a maximum of £47,000. For business premises the calculations vary dependent on the nature of the effect on the business and can include things such as removal expenses or loss of goodwill.

17. Fees are disbursements incurred by the person whose land is to be purchased such as professional survey/ mortgage fee and solicitors fees for the purchase of a replacement property; disconnection/ connection of utilities; adaptations to new property or to fixtures and fittings.

CHANGES TO THE PROPOSED SCHEME AFTER THE CPO IS CONFIRMED.

18. Once the CPO has been confirmed the overall proposed scheme can still be amended so long as it remains basically for the same end. Any General Vesting Declaration made following the confirmation of the CPO will be valid.
19. Thus in the case of *R (on the application of Argos) v Birmingham City Council* (2011) the Administrative Court considered the issue of the effect of changes in the proposed scheme for which a CPO was being used. In that case the council and Railtrack had a plan to regenerate a station and attached shopping area. Argos was situated in the shopping area and was due to be able to continue to trade through the redevelopment and afterwards. The CPO was confirmed. The council then made some changes to the redevelopment plan and issued a General Vesting Declaration in respect of Argos's property. The property was now to be included in a large department store and no longer available to Argos. They took Judicial Review proceedings against the council as the CPO was for a different plan than that originally set out and confirmed. The Administrative Court held that the plan was still substantially the same and did not have to be identical to the proposal originally put forward for the CPO. The longer-term purpose of the scheme has to fall within the CPO and in this case it did so.
20. In summary obtaining a CPO can, in any but the simplest case, be a long and expensive process. Indications of likely time scales and costs are given in the Appendix to this LTN.

APPENDIX

STAGES IN OBTAINING A COMPULSORY PURCHASE ORDER (CPO)

PRELIMINARY (estimated time 12-18 months)

- Initial discussions on the scheme
- Identification of the area to be purchased
- Discussion with affected statutory bodies and undertakers
- Preliminary public consultation
- Preliminary Identification of third party interests
- Approval for principal authority involvement
- Identification of appropriate CPO powers
- Outline confirmation of scheme funding and viability

PREPARATION (estimated time 9-18 months)

- Procurement of lawyers, valuers and other experts
- Full financial viability
- Planning and other consents
- Further identification of any affected third parties
- Preparation of any necessary relocation strategy

DECISION (estimated time 3 months)

- Full report considered by principal authority
- Liability to payment of compensation determined

PROPOSAL DEVELOPMENT (estimated time 6-9 months)

- Intensive discussions and negotiations with third parties
- Scheme viability validation
- Final Identification of all known affected third parties
- Drafting Statement of Reasons
- Consultation on any draft necessary Highway Orders

MAKING THE CPO (estimated time 6 months)

- CPO resolution by principal authority
- Making, and serving the CPO
- Making and serving any Highway Orders
- Receiving objections
- Negotiating with any objectors

PREPARATION FOR PUBLIC ENQUIRY (estimated time 6 months)

- Full instructions to selected advocate
- Finalisation of evidence
- Inquiry arrangements with Planning Inspectorate

PUBLIC INQUIRY (estimated time 1 month)

PUBLIC INQUIRY DECISION (estimated time 6-12 months plus additional time if his decision is challenged by judicial review)

- Decision issued by Secretary of State

GENERAL VESTING DECLARATION (estimated time 3 months)

COMPENSATION (estimated time up to 5 years)

- Agreement of compensation or contested compensation claims

There will be fees and expenses payable for lawyers, professional surveyor / valuer, various expert consultants and the public inquiry (including the inspector) which will vary from case to case but will be in the order of £100,000 to £500,000 depending upon whether there are objections and the number and nature of objectors. Further fees may be payable if there is a Judicial Review of the CPO. Compensation is payable in addition.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
45	Disposal and appropriation of land by local councils	Explains the statutory duties which councils are subject to when dealing with land.
72	Highways	Sets out the powers of local councils in respect of highways.
75	Lease Negotiations	In respect of a disposal of land by grant of lease (or assignment), explains the process

		of negotiating them. Also defines and gives guidance on important lease terms.
77	Public Rights of Way	Sets out the various methods of creating a Footpath, Bridleway, Byway Open to All Traffic (BOAT), or Restricted Byway.