

Appendix [6]

The Ministry of Housing, Communities and Local Government Guidance on Compulsory Purchase Process October 2015 (updated in February 2018) provides advice to acquiring authorities in the preparation and submission of compulsory purchase orders and the matters that the Secretary of State can be expected to take into consideration when reaching a decision on whether to confirm an order.

A CPO should only be made:

1. where there is a compelling case in the public interest. The PDD for Dudley sets out the benefits to be delivered by the scheme and can be seen in Appendix [1].]
2. the Council should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected. The Secretary of State confirming the order will take a balanced view between the intentions of the acquiring authority, the concerns of those with an interest in the land affected and the wider public interest. The Council considers that after considering and balancing these various interests, the use of compulsory purchase powers in this case is justified.
3. the Council should have a clear idea of how it intends to use the land which it is proposing to acquire. The final scheme has been developed and the design has been fixed.
4. resources are likely to be available within a reasonable time-scale to deliver the proposals, the scheme is to be funded from DfT grant, Prudential Borrowing and Integrated Transport Block
5. the Council should show that the scheme is unlikely to be blocked by any impediments to implementation. A Side Roads Order will be made at the same time as the CPO to make alterations to roads and private means of access. Planning consent is deemed granted under the provisions of Schedule 2 Part 9 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

In addition authorities must also have regard to the Public Sector Equalities Duty in determining whether to use CPO powers, and in particular the differential impacts on groups with protected characteristics – See Appendix [5]

Detailed technical advice on the preparation of the CPO [and SRO] in Department of Transport circular 2/97 will be followed in drafting these orders

COMPULSORY PURCHASE - THE HUMAN RIGHTS ACTS 1998 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 6 Human Rights 1998 Act prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights (“The Convention.”) There are 2 main articles of The Convention, which are applicable to the recommendations in this report.

ARTICLE 8

1. “Everyone has the right to respect for private and family life, his home and his correspondence.”
2. “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 1 of the FIRST PROTOCOL

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. “

Guidance

Article 8 applies where a local authority is considering disturbing residents’ private and family lives and removing them from their homes. It may also be relevant where residents who, although not directly affected by removal or dispossession, suffer significant disruption to their lives as a consequence of the authority’s actions.

Article 1 of the First Protocol applies where a local authority is considering the use of CPO powers to acquire private interests, and where it is proposing to dispossess residents of their homes.

The approach to be taken to give effect to rights under The Convention is also reflected in paragraph 12 of the MHCLG Guidance: “A Compulsory Purchase Order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which the Compulsory Purchase Order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention”.

The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”, i.e. compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council’s powers. Similarly, any interference with Article 8 rights must be “necessary in a democratic society” i.e. the proposed interference must be necessary. In pursuing a CPO, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest having regarded also the availability of compensation for compulsory purchase.

Consideration of Human Rights Issues

Article 8(1) provides that everyone has the right to respect for his/her property but Article 8(2) allows the State to restrict the rights to respect for the property to the extent necessary in a democratic society and for certain listed public interest purposes e.g. public safety, economic well-being, protection of health and protection of the rights of others.

In considering Articles 8 and Article 1 of the First Protocol of the Convention in the context of dispossession and compulsory purchase, it is necessary to answer the following:

- a. Does a right protected by these Articles apply?
- b. Is the interference in accordance with law?
- c. Does the interference pursue a legitimate aim?
- d. Is the interference necessary in a democratic society?

A. Does a right protected by these Articles apply?

ARTICLE 1 of the FIRST PROTOCOL

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions...”

Clearly the dispossession of an owner of their property through CPO (and if relevant enforced rehousing) will impinge on this right. Also, as a tenancy is a possession under this provision, the rights of tenants must be taken into consideration. The Council must therefore consider all the possible justifications for this interference as detailed in considerations B, C and D set out below.

ARTICLE 8

Article 8.1 provides that everyone has the right to respect for his/her private and family life, home and correspondence. Article 8.2 allows the State to restrict these rights to respect to the extent necessary in a democratic society and for certain listed public interest purposes.

The essence of this right lies in the concept of respect for the home as a right to privacy, in the same context as private and family life and correspondence. Article 8.1 does not concern itself with the person’s right to the peaceful enjoyment of their home as a possession; this is dealt with under Article 1 of the First Protocol.

Where Article 8 applies it is necessary for the Council to consider the possible justifications for the interference (Article 8(2)) as follows:

B. Is the interference in accordance with law?

There is a clear legal basis for making the CPO under sections 239,240 (and if relevant) 250 of the Highways Act 1980

C. Does the interference pursue a legitimate aim?

The CPO is necessary to implement a junction improvement scheme to which there is no impediment to implementation (subject to the confirmation of the CPO and SRO)

D. Is the interference necessary in a democratic society?

This requires a balanced judgement to be made between the public interest and the rights of individuals, and the rights and freedoms of others.

Conclusion

The Council has considered the effect of the above articles of The Convention and decided that, on balance, it is in the general public interest and of benefit to the community to make the CPO over and above the interest of the individuals affected.

Interference with Convention rights is considered by the Council to be justified. The Council in making this Order has had particular regard to meeting the alternative housing needs of the affected households, and the rights of individuals to compensation in accordance with the Land Compensation Act 1973 (as amended.) and the Land Compensation Act 1961 and Compulsory Purchase act 1965 is considered to be both necessary and proportionate in that the land to be acquired is the minimum to achieve this Scheme's objectives