

Appendix F

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 Pershore Road Priory Road sets out the benefits to be delivered by the scheme and can be seen in Appendix [A].]
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, 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 [E]

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

1. 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”).

Relevant Articles

2. Article 8 and Article 1 of the First Protocol of the Convention are of importance in making a CPO:
 - *Article 8(1)*
Everyone has the right to respect for private and family life, his home and his correspondence
 - *Article 8(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.
3. 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

4. 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.
5. 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.
6. The approach to be taken to give effect to rights under The Convention is also reflected in paragraph 12 of the DCLG's Guidance on the Compulsory Purchase Process:

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 Minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest.

7. 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.

Considerations

8. In considering rights under The Convention in the context of the CPO it is necessary to consider the following questions:
 - (a) Does a right protected by this Article apply?
 - (b) Has an interference with that right taken place or will take place as a result of the CPO being made?
9. Clearly Article 8 does apply and therefore it is necessary for the Council to consider the possible justifications for the interference (Article 8(2)) as follows:
 - (a) Is the interference in accordance with law? There is a clear legal basis for making the CPO under section sections 239, 240 and 250 of the Highways Act 1980.
 - (b) Does the interference pursue a legitimate aim? The CPO is necessary to development of the Order Land in accordance with planning policy.
 - (c) Is the interference necessary in a democratic society, i.e. is it proportionate? This requires a balanced judgement to be made between the public interest and the rights of individuals. The CPO is considered to be both necessary and proportionate in that the land to be acquired is the minimum to achieve the objectives of redevelopment of the Order Land, as set out in the AAP.
10. Any decision to deprive a person of possessions (which includes land) must strike a fair balance between the public interest and the private rights which are being taken.
11. In the case of both of these Articles (and indeed other provisions in the Convention) the Council has been conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit that would arise from the implementation of the proposed redevelopment the

Council has concluded that it would be appropriate to make the CPO. It does not regard that the Order as constituting an unlawful interference with individual property rights.

12. Article 6 of The Convention also requires that those whose civil rights may be affected by a decision are given a fair hearing by an independent and impartial tribunal. This is secured by means of the CPO process, including the holding of an inquiry into any objections which may be made, and the ability to challenge any CPO confirmation decision in the High Court.
13. The opportunity has been given to landowners to make representations regarding the Council planning policies that underpin the proposed CPO. Objections may be made to the making of the CPO. Further representations can be made in the event of any Public Local Inquiry that the Secretary of State may decide to hold in connection with the CPO. Those directly affected by the CPO will be entitled to compensation under the compensation legislation, equivalent to the loss that they incur as a result of the acquisition.

Equalities

14. Paragraph 6 of the CPO Guidance provides that

“All public sector...acquiring authorities are bound by the Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions acquiring authorities must have due regard to meet these 3 aims of the Equality Act 2010.”

15. An Equalities Assessment (EA) was carried out as part of the Options Appraisal Project Definition Document formulation as well as part of the CPO authority granted by the Council's Cabinet. A copy of the Executive Summary is at Appendix E of the reports. The EA concluded that the proposed improvements to the Pershore Road / Priory Road junction, will be provided as a public good and will be available in an inclusive way for members of the community and visitors alike to use.