

HUMAN RIGHTS

Consideration of Human Rights Issues for Cabinet Reports

Section 6 Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the Convention of Human Rights.

The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order (CPO) are Article 8 - the right to respect for private and family life and his/her home and Article 1 of the First Protocol - the protection of property.

The approach to be taken to give effect to rights under the Convention is also reflected in paragraph 12 of the Guidance on Compulsory purchase process and The Crichton Down Rules:-

"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. proportionate. In pursuing a CPO, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest having regard also the availability of compensation for compulsory purchase.

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 Article 8 in the context of a CPO it is necessary to consider the following questions:

1. Does a right protected by this article apply?
2. Has an interference with that right taken place or will take place as a result of the CPO being made?

The Council has considered the effect of the above articles of the Human Rights and decided that on balance it is in the interest of 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 for the reasons set out in this Report. The Council in making this order also had particular regard to the rights of the individuals to compensation.