

Appendix 9

The Human Rights Act 1998 and the European Convention of Human Rights in relation to Compulsory Purchase

1. Relevant Articles

- 1.1 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.") There are 2 main articles of The Convention which are applicable to the recommendations in this report. These are:

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.

- 1.2 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.

2. Guidance

- 2.1 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.
- 2.2 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.
- 2.3 The approach to be taken to give effect to rights under The Convention is also reflected in paragraph 12 of the Department for Levelling Up, Housing & Communities' "Guidance on the Compulsory Purchase Process and the Crichel Down Rules" (2019) as follows:

"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”.

2.4 The European Court of Human Rights has recognised that:

- Any interference with Article 8 rights must be “necessary in a democratic society”, i.e. the proposed interference must be necessary.
- In the context of Article 1 of the First Protocol “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, and both public and private interests are to be taken into account in the exercise of the Council’s powers.

2.5 In pursuing a CPO, therefore, 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.

3. Consideration of Human Rights Issues

3.1 Article 8(1) provides that everyone has the right to respect for their 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.

3.2 In considering Articles 8(1) and 8(2) 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?

3.3 These questions are addressed in the following sections.

4. Does a Right Protected by these Articles Apply?

- 4.1 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.
- 4.2 Clearly the dispossession of an owner of their property through CPO and enforced rehousing will impinge on the right under Article 1 of the First Protocol, which entitles every natural or legal person to the peaceful enjoyment of his possessions. Also, as a tenancy is a possession under this provision, the rights of tenants must be taken into consideration.
- 4.3 Clearly rights protected by both relevant articles do apply and therefore it is necessary for the Council to consider the possible justifications for the interference (as allowed by Article 8(2)). This is detailed in the response to questions (b), (c) and (d) as set out below.

5. Is the interference in accordance with law?

- 5.1 There is a clear legal basis for making the CPO under section 226(1)(a) of the Town and Country Planning Act 1990.

6. Does the interference pursue a legitimate aim?

- 6.1 The Compulsory Purchase Order is necessary to implement a redevelopment scheme and following the grant of planning permission and the acquisition of the site there will be no impediments to implementation.

7. Is the interference necessary in a democratic society?

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

8. Conclusion

- 8.1 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.
- 8.2 The Council has had regard to meeting the alternative housing needs of affected households, and the rights of individuals to compensation in accordance with the Land Compensation Act 1973, the Land Compensation Act 1961 and the Compulsory Purchase Act 1965. The Council considers that it is both necessary and proportionate in this case and that the land to be acquired is the minimum to achieve this Scheme's objectives.

- 8.3 It is recognised that this will need to be monitored throughout the process and that specific approaches to working with affected parties may need to be implemented to ensure that the rights of individuals are not unduly compromised.