



Homes
England

CPO Tips and Tricks



Department for Levelling Up,
Housing & Communities

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Our mission

We drive regeneration and housing delivery to create high-quality homes and thriving places. This will support greater social justice, the levelling up of communities across England and the creation of places people are proud to call home.

Our strategic objectives

5 interconnected strategic objectives

3 focused on our overlapping categories of work: places, homes, the sector

2 objectives setting out our aspirations for the homes and places we will work with partners to create



The Fundamental Issue

The “Compelling Case in The Public Interest” Test

- Paragraph 12 of the CPO Guidance: *“A compulsory purchase order should only be made where there is a compelling case in the public interest.”*
- **Essential question** – will the public benefits associated with the proposals outweigh the interference with private rights?
- NB, for a section 226(1)(a) TCPA 1990 regeneration CPO:
 - A local authority must not exercise the power unless they think that the development, re-development or improvement of the land is likely to contribute to the achievement of the promotion or improvement of the **economic, social and/or environmental well-being** of their area (section 226(1A))
- What are the public benefits arising from the proposals?
- Start by listing them! Are they compelling and deliverable?
- List the factors which may weigh against them. Take a cautious approach

What is the Scheme?

- Compulsory purchase is about scheme delivery – not an end in itself
- Identify the scheme, not the CPO, at the outset
- Must be able to justify the inclusion of all of the land/rights in the CPO and why they are required for the scheme
- Paragraph 13 of the CPO Guidance- an acquiring authority should have a: *“clear idea of how it intends to use the land which it is proposing to acquire”*
- Section 226(1)(a) TCPA 1990: will the acquisition of the land: *“facilitate the carrying out of development, redevelopment or improvement on or in relation to the land”*?
- Must be able to articulate what the implications for the scheme and the public benefits would be if any of the land was excluded

What is the Scheme (continued)? - Alternatives

- What alternatives have been/will be considered that may achieve the scheme objectives eg refurbishment versus demolition?
- How was the site/route selected or how will it be? Are there other suitable alternative locations?
- What consultation has been/will be carried out?
- How have/will requests for design and route changes be assessed and reported?
- Need a robust and objective engagement and assessment process, not a fait accompli
- Have alternative proposals been put forward by other parties?
- Paragraph 106 of the CPO Guidance: *“Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse.”*

What are the appropriate CPO powers?

- Housing, Planning, Highways, other public body's powers?
- Flows from the identification of the scheme and its purposes
- Paragraph 11 of the CPO Guidance:
 - *“Acquiring authorities should look to use the **most specific power available** for the purpose in mind, and only use a general power when a specific power is not available”*
- Informed by the type of land interests that are proposed to be acquired
 - Creation of new rights – section 13 of the Local Government (Misc. Provisions) Act 1976
 - Temporary possession powers – Not yet in force for CPOs. Consider drafting of ‘temporary’ new rights
 - Easements, restrictive covenants, rights to light etc – cannot be compulsorily acquired. See the powers in Section 203 of the Housing and Planning Act 2016

What is the Planning Position?

Does the Scheme have planning policy support?

- Essential for a section 226 TCPA CPO
- Paragraph 104 of the CPO Guidance: *“Any programme of land assembly needs to be set within a **clear strategic framework**, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been **subjected to consultation processes**, including those whose property is directly affected.”*
- The planning framework should be as detailed as possible
- Do not promote a CPO prematurely without a robust existing and/or emerging planning framework
- Supports the scheme which the authority are promoting
- Can be essential to resist non-compliant schemes
- Important when it comes to the prospect of compensation for development value or hope value

What is the Planning Position? (continued)

Does the Scheme have planning permission?

- Highly desirable for a section 226 TCPA CPO
- Paragraph 15 of the CPO Guidance: need to be able to show that the scheme is unlikely to be blocked by the need for planning permission or other consent or licence.
- If not yet granted, must be able to demonstrate there are no obvious reasons why it might be withheld
- The strategy and programme for obtaining planning permission should inform the CPO strategy and programme
- Planning permission boundary will inform the CPO boundary and the justification for the land-take
- Assists in resisting competing schemes

The Public Sector Equality Duty

- Section 149 of the Equality Act 2010
- Have due regard in the exercise of functions to the objectives of the equality duty to:
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- **9 protected characteristics:** age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- Also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status.
- A continuing duty that applies throughout the scheme lifecycle, including scheme evolution, planning and implementation
- Recommended to undertake an Equalities Impact Assessment at an early stage and keep it updated.
- Becoming a fertile ground of challenge

Deliverability, Impediments and Funding

- How will the scheme be delivered?
- Is it necessary to procure a development partner?
- If so, has that process started and what is the programme for entering into a development or other partnership agreement?
- Highly desirable for the developer to have been selected before a CPO is made to inform the nature of the scheme and scope of the land requirements
- Highly desirable for a development or other agreement to be concluded before any CPO inquiry to give evidence to support the justification for the CPO and scheme delivery
- Are there conditions precedent to scheme delivery which make it uncertain?

Deliverability, Impediments and Funding (continued)

- Paragraph 15 of the CPO Guidance: *“The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:*
 - *the programming of any infrastructure accommodation works or remedial work which may be required; and*
 - *any need for planning permission or other consent or licence”*
- What other consents are needed to deliver the scheme? Eg Highways orders? Environmental Permits? The strategy and programme for obtaining them must inform the CPO strategy and programme
- Are any significant works required before the scheme can be implemented? Have these been consented? Is there uncertainty over their delivery? How will their timing and delivery be controlled and co-ordinated with the scheme?
- Any special category land for which additional authorisation is needed- eg open space, commons, allotments, burial grounds, statutory undertakers' land, National Trust, Crown land?

Deliverability, Impediments and Funding (continued)

- A CPO should not be made prematurely
- Paragraph 13 of the CPO Guidance: if the acquiring authority cannot show that all the necessary resources are likely to be available in a reasonable timescale it will be difficult to justify the CPO in the public interest at the time of its making
- Provide **substantive information** as to the sources of funding for acquiring the land and implementing the scheme. How will the scheme be funded, who by, and how and when will that funding be secured?
- Are there funding gaps? How will they be met, what evidence is there that they are capable of being met?
- Funding should generally be available now or early in the process. Only in “**exceptional circumstances**” will acquisition be justified if there is little prospect of implementing the scheme for a number of years (Paragraph 14(b) of the CPO Guidance)
- Show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

Meaningful engagement and negotiations

- Important to show made meaningful attempts to acquire by agreement- requires sufficient information to have been provided to assess what is being offered
- Can pursue negotiations in parallel with CPO process
- Detailed Recommendations in [paragraph 19 of the CPO Guidance](#) which Inspectors are likely to use as a checklist
- Consistency with deals – one point of contact
- Identify priority targets early and build into the negotiations strategy
- Be innovative in deals – eg consider sale and leaseback, and relocation packages
- Consider ADR
- Keep clear records of negotiations – they may need to be produced in proceedings!

Relocation and mitigation strategies

- What is the strategy for mitigating the impacts of the scheme upon private rights?
- **Residential occupiers**
 - A relocation strategy essential – inspectors will consider individual re-housing issues at inquiry. How is the authority bound to comply with it?
 - Relocation assistance whether back into the scheme or the local area
 - “Equity gap” funding strategies
 - Discretionary purchase and hardship schemes
 - The acquiring authority is also often the local housing authority with additional duties
- **Commercial occupiers**
 - Increasingly important to have a relocation and assistance strategy
 - Gain an early understanding of business’ requirements and timescales for moving
 - Provide certainty over timescales, enable proprietor to plan
 - Can continuity of business/trading be guaranteed?
 - Assistance with finding relocation opportunities
 - Advance release of compensation to fund relocation?

Relocation and mitigation strategies (continued)

- Surrounding Owners and occupiers
 - No land take or minimal land take
 - May require rights from surrounding owners
 - Can be most complex part of an urban scheme – how can you retain what you have whilst making improvements
 - Walk slowly around all four sides of your scheme and the access routes / servicing at different times of the day
 - What third party rights required to construct?
 - How will you operate? Access / noise / lights / vibration?
 - Can you mitigate these?
 - Undertakings? Accommodation works?
 - Construction plan and operational guidelines

- If you do the work on this early, the whole project will be easier and less controversial



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Nicholsons Shopping Centre CPO: Adequacy of Engagement, Human Rights



- **The Royal Borough of Windsor & Maidenhead (Nicholsons Shopping Centre and Surrounding Area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2022**
- Made February 2022 to facilitate the demolition of the existing dated shopping centre and its redevelopment for comprehensive mixed use scheme known as the ‘Nicholson Quarter’
- **Refused** by an Inspector in January 2023.
- Satisfied that the scheme:
 - Complied with the policy framework
 - Would bring significant benefits for the social, economic and environmental well-being of the town
 - Is financially viable, and free from impediments, and that the necessary resources are available

*“However, I have found that the compulsory acquisition of the lease for Smokeys Nightclub would be likely to result in the club’s closure, contrary to the wishes of its owners, Lee and Dean Page. The nightclub has no apparent prospect of finding satisfactory alternative premises within a reasonable timescale, and there is a **consequent likelihood that the business would be forced to cease trading**. The impact on the Page brothers would be particularly severe, because of the club’s historic central role in their family life, and also because of their own personal commitment to it. Moreover, the closure of Smokeys would also mean the loss of a valued facility for the town.”*

- Did not find fault with the AA's negotiations with other parties but placed great weight on the potential extinguishment of the nightclub
- The Inspector concluded that Smokeys has an importance to the town and that if it were lost it would have a significant adverse impact extending beyond the owners, staff, performers and customers
- The Inspector also took into account the likely severe mental and emotional impact that acquisition

would have on the owners: *“This reinforces my conclusion that the loss of Smokeys Nightclub is an outcome to be avoided if other options are available.”*

- The owners alleged that no suitable relocation premises were offered
- 7 pages of the Inspector's report running through the negotiation history both before and after the CPO was made



- **Relocation premises were offered:**- The owners insisted on a smoking area which could not be accommodated. The Inspector found that the AA took too long to respond to this request and wasted time that the owners could have spent on searching for opportunities
- **Financial terms could not be agreed:**- A significantly increased offer of circa 4 times the first offer was made shortly before the inquiry. The Inspector considered that the earlier offer could not have been realistic and the 2 year gap reinforced the impression of a genuine or constructive lack of engagement
- *“The failure of the Authority and their partners, over a period of more than three years, to provide the Pages with any **viable relocation options** to keep their business alive, demonstrated a **lack of genuinely constructive engagement.**”*
- *“The point of the exercise was to relocate the existing business, not simply to make generic provision for any nightclub. In their existing premises, Smokeys has the benefit of an external terrace, which is evidently well-used. It was not unreasonable for the owners to want to achieve a **like-for-like replacement** for that facility.”*
- The benefits of the scheme did not therefore outweigh the impact on the owners of the club.
- CPO refusal has been challenged by the Council



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The Vicarage Field CPO

Viability and Adequacy of Engagement



- The Inspector accepted that the scheme would create a comprehensive transformative change to the town centre
- Significant public benefits and improvements to the economic, social and environmental well-being of the area
- *“Given the obvious need to redevelop the site and regenerate the town centre, and the substantial benefits in the public interest, there is an extremely compelling case for the acquisition of the Order Lands”*
- *“Current and emerging planning policy points towards the delivery of comprehensive redevelopment on this site. The whole Order Lands are required to deliver this scale of change necessary in Barking to realise the regeneration effects and reduce the levels of deprivation, and there are no alternatives proposals that would achieve the same purposes for which the AA is proposing to acquire the land.”*



BUT:

- No budget built in for business extinguishment costs despite high occupancy levels, a need to relocate businesses and a risk of extinguishment
- Inspector not satisfied that the scheme was viable – market evidence was presented but not an updated viability appraisal due to commercial sensitivity
- The only available appraisal was submitted with the outline planning application 5 years previously which found the scheme to be ‘substantially unviable’
- No concrete evidence presented in relation to future commercial occupation
- *“Consequently I cannot be certain that the necessary resources are likely to be available within a reasonable time-scale and I am unable to conclude that there is a reasonable prospect that the scheme will proceed and would be delivered”*

- Inspector not persuaded that the AA has genuinely attempted to negotiate with the affected parties in line with the CPO Guidance in relation to:
 - providing full information at the outset,
 - appointing a specified case manager,
 - keeping any delay to a minimum,
 - offering advice and assistance to affected occupiers about relocations, and
 - providing a 'not before' date confirming that acquisition would not take place before a certain time
- The scheme had been beset with delays with engagement starting in 2015, and multiple changes of advisors. That increased uncertainty and anxiety for affected parties
- A 3 year period from the Cabinet resolution to make the CPO to it actually being made
- Unclear if CPO would have been refused for these reasons alone



Project Management and Communications

- CPOs involve a number of disciplines and partners, private and public
- Assemble core team early on
- Resource issues
- Frameworks – Homes England panel
- Not all consultants have the right types of experience
- Need to have:
 - Clear roles and responsibilities
 - Leadership
 - Appropriate decision-making arrangements
 - Core team and others to call on
 - Clear project plan
 - Use of extranet sites, etc.

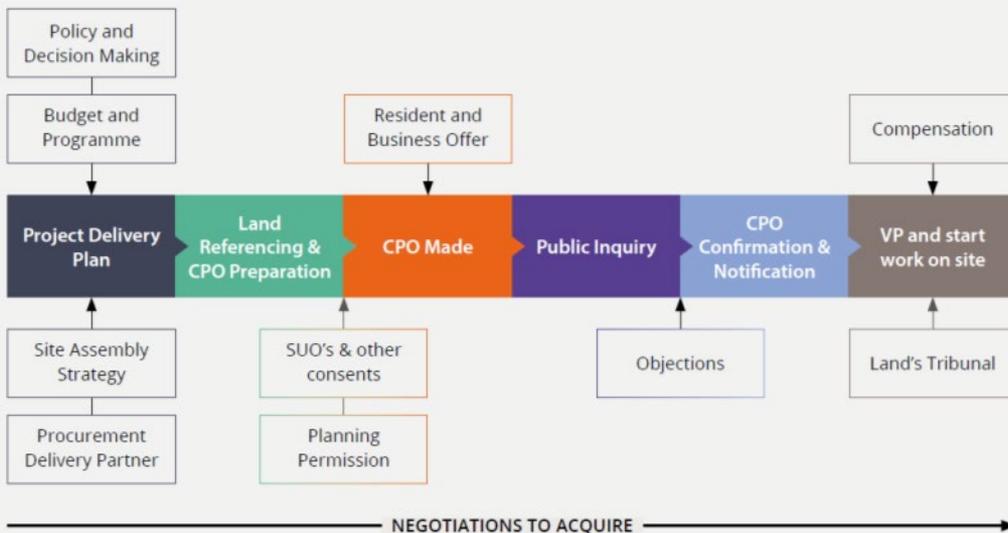


Project Management and Communications (continued)

- Good communication important – internal and external
- Communication strategy
 - Consistent messages, from the scheme evolution stage
 - Avoid making statements that give the impression that CPO is a first rather than last resort
 - Be careful about making commitments that cannot be adhered to. Keep a clear commitments register
 - “Points to note” papers on key issues
 - Nominate individual officers to deal with queries/contact for consistency
 - Involve other stakeholders
 - Keep all records!
- Establish a protocol for dealing with FOI, Environmental Information Regulations and GDPR requests which are increasingly used as tools of challenge by objectors

Timescales

- CPOs take time and internal approval processes must also be taken into account



Costs

- Cost comparison – CPO vs by agreement

Acquired by agreement	Acquired by compulsion
Market Value of land	Market Value of the land
Legal fees including conveyancing	Legal fees to transfer ownership
Resource costs to undertake the negotiation	Costs to negotiate land values/compensation
Due diligence costs (to differing levels)	Due diligence costs to assist in valuations
Post-acquisition holding costs	Post-acquisition holding costs
	PLUS
	Land referencing costs (priced by number of interests but a significant cost on large schemes)
	Compensation and disturbance costs
	Potential costs of accommodation works
	Costs at inquiry and potential tribunals
	Legal fees to make the order
	Legal fees to take possession
	Surveyors' fees for early land cost estimates
	Fees for infrastructure costings to assist with land value negotiations

Costs

- Indicative process costs
- Overall public purse considerations

TYPE OF ORDER	PROCESS COSTS (£)	COMMENTS
Single property Housing Order	20,000-50,000	Assuming no objections or public inquiry
Small highways or non-controversial development/ regeneration scheme	50,000-100,000	Assuming few or no objections, with objections withdrawn prior to public inquiry.
Medium sized town centre development	150,000-500,000	Assuming objections and short public inquiry (1-3 days)
Estate regeneration project or large controversial scheme	500,000-1,000,000 +	Assuming numerous objections, public inquiry in excess of 5 days, wide variety of technical witnesses required and senior counsel.

Costs

- **Often overlooked costs:**
 - the time lag between taking the first and last properties under a CPO may allow land values to increase and accordingly require greater levels of compensation
 - difficulties in setting compensation by agreement can result in increased costs of statutory interest and lands tribunals cases
 - no assessment of buildings prior to acquisition can be undertaken as the acquiring authority does not yet own them and usually cannot gain access. This can result in unforeseen H&S works having to be undertaken
 - once land has been acquired this brings with it a building stock which requires estate management
 - VAT requirements and tax implications not being factored into the project at the outset
 - workable and clear exit strategies should be factored in at the outset to negate prolonged holding costs
 - consultant's fees can escalate when charged on a time basis
 - claims for disturbance for the execution of the works can arise as well as the more commonly considered compensation claims

Q&A

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