

Compulsory purchase in the age of Covid

Exploring how compulsory purchase powers can help Local Authorities achieve development objectives in the post-Covid era



Jonathan Stott, on behalf of the Compulsory Purchase Association
November 2020

Compulsory Purchase Association



- Who are we?
- What do we do?



Richard Guyatt @RGuyatt · 15 Oct 2018
The @IRWA_Network gavel is already in the hands of chair elect @MisterCPO at the @CPA_org AGM this evening.

Compulsory purchase

A vital tool for land assembly



- Required to ensure that development which is in the public interest is not frustrated by private landowners
- Delivers certainty of timeframe for obtaining possession and relative cost certainty

Compulsory purchase Increased use in the post Covid era?



- Impacts on retail and hospitality sectors have resulted in changes to the use and make-up of high streets
- Move to working from home may have a permanent impact on the use of / need for offices, and the economy and purpose of town centres
- Potential for increased homelessness = greater focus on bringing empty homes brought back in to use
- Public sector likely required to increase contribution to new homes targets

Compulsory purchase

The process



1. Identify requirement for CP powers to be used (often following approach from developer)
2. Identify most appropriate enabling Act (i.e. TCPA, Housing Act etc)
3. Seek Cabinet resolution to apply for CP powers
4. Develop case for requiring CP powers and prepare application documents including Statement of Reasons, Map and Schedule
5. 'Make' the CPO (i.e. submit application to SoS)

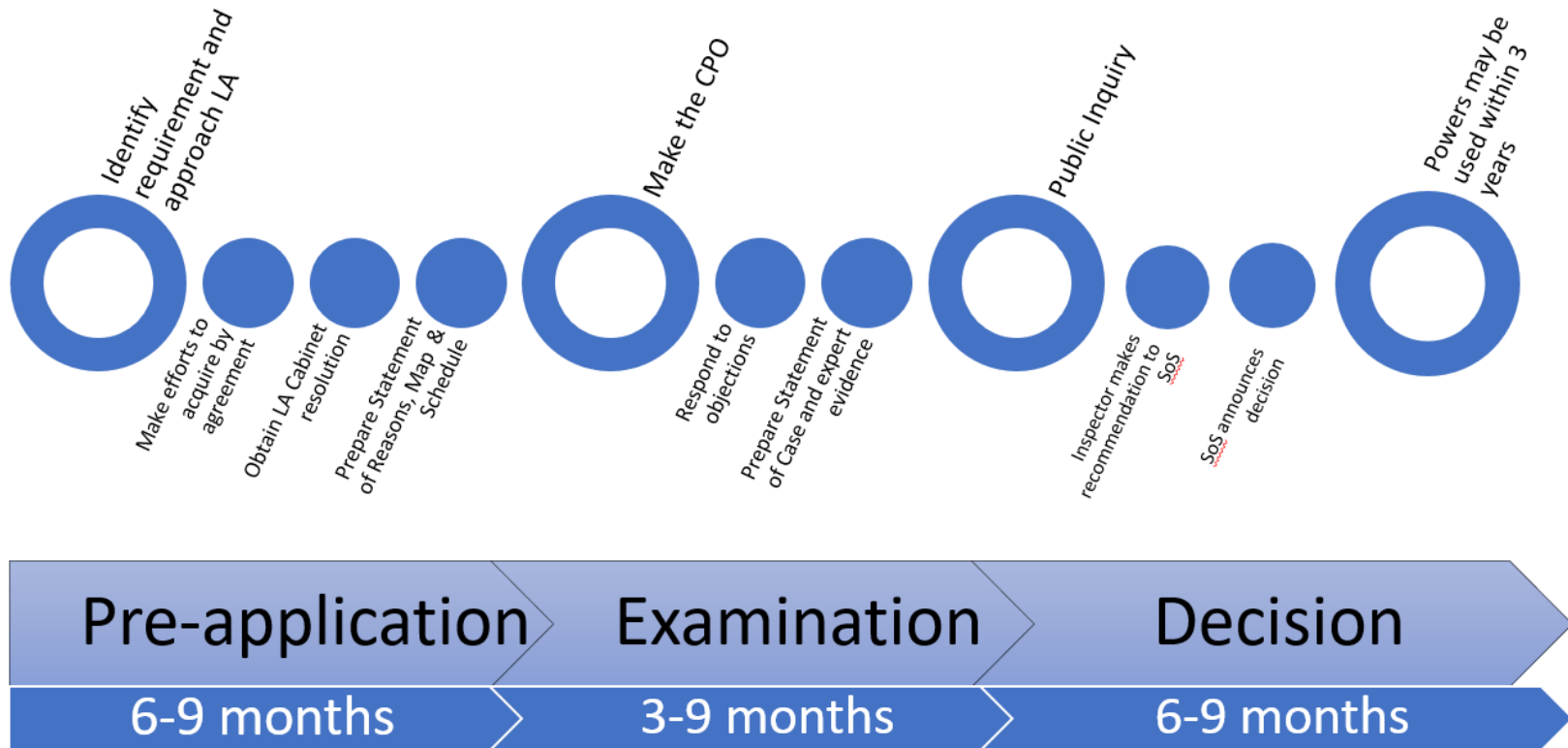
Compulsory purchase

The process



6. Objection period of 4 weeks; often triggers a public inquiry
7. Prepare Statement of Case and expert evidence (from Surveyors, Planners etc)
8. Public inquiry
9. Inspector writes report and makes recommendation to SoS
10. SoS announces decision. If positive notices are served on all interested parties and CP powers may be implemented within three years.

Compulsory purchase Timeframe



Compulsory purchase

Key tests

Set out in Government guidance – ‘Guidance on Compulsory Purchase process and The Crichton Down Rules’ (published October 2018)

1. Is there a compelling case in the public interest? (Para 2)
2. Has the acquiring authority taken reasonable steps to attempt to acquire all of the land and rights included in the Order by agreement? (Para 2)
3. Does the acquiring authority have a clear idea of how it intends to use the land and can it demonstrate that all necessary resources are likely to be available to achieve that end within a reasonable timeframe? (Para 13)
4. Are there any planning impediments to implementation? (Para 15)

Compulsory purchase

Passing the tests

1. Is there a compelling case in the public interest?

- Is the proposed scheme likely to deliver social, economic or environmental benefits for the wider public?
- Very often the provision of housing in an area where there is an under-supply will go a long way to ticking this box
- It may also be necessary to demonstrate that the provision of schools or commercial (i.e. job-creating) elements of the scheme will deliver social benefits, and/or improved green spaces will deliver environmental benefits.
- Human Rights implications need to be considered, but on the basis that dispossessed landowners will be entitled to fair compensation, that should not ordinarily cause an issue

Compulsory purchase

Passing the tests



2. Have reasonable efforts been made to acquire by agreement?

- Compulsory purchase should generally be a last resort, but that doesn't mean attempts need to be made to acquire third party interests at any cost.
- Rather, the requirement is to demonstrate reasonable efforts have been made and reasonable offers have been put to third party landowners.
- Reasonable offers should reflect the level of compensation that the landowner is likely to be entitled to if compulsory purchase powers were exercised.
- In most cases that will be little more than existing use value, and in almost all cases it will be far less than what might be paid if the site was being assembled through agreement.
- The key question is what, in the no-scheme-world, would the land be worth?

Compulsory purchase

Passing the tests

3. Is there a clear proposal for the land and are all necessary resources available to deliver the proposal within a reasonable timeframe?

- This is essentially asking:
 - a) are the financial resources in place to deliver the scheme, and
 - b) does the developer have a track record.
- In most cases that should be easy to demonstrate.
- To meet this test it isn't necessary to demonstrate the financial viability of the scheme – the key is a clear commitment to deliver and certainty that financial resources are available (i.e. development agreement)

Compulsory purchase

Passing the tests

4. Are there any planning impediments to implementation?

- Ideally full planning consent will be in place prior to the CPO being made, or prior to a public inquiry.
- That is not always necessary and an outline consent will generally suffice.
- In some cases CPOs can be confirmed without any consent being in place; the key requirement is to demonstrate that the proposed scheme is not in conflict with existing planning policy.

Compulsory purchase: Relative cost certainty

- Over-riding principle of financial equivalence
- Claims are most commonly assessed based on market value of interest plus disturbance costs
- Market value may take account of development or hope value
 - But the claimant must be able to demonstrate that development is deliverable
 - Just because consent might be granted now or in the future doesn't necessarily mean it can be implemented by the landowner.
- Market value may also take account of special purchasers and ransom / marriage value, but these are rarely relevant factors where multiple interests need to be assembled.
- Vacant possession and clean title is generally obtained prior to compensation being settled
- If compensation cannot be agreed between the parties the case can be referred to the Upper Tribunal (Lands Chamber) or other form of ADR

Compulsory purchase Issues arising due to C19

Practical issues

- Consultation and negotiation
- Land referencing
- Holding public inquiries
- Carrying out inspections and taking possession
- Relocation of businesses and residents

Compensation issues

- The importance of updating PCEs
- Tribunal hearings
- Negative equity
- Advance payment regimes
- Alternative uses and planning assumptions
- Attribution of losses – caused by CPO or Coronavirus?

Compulsory purchase and C19: Consultation and negotiation

“The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement”

and

“Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire”

Stay at home

- Only go outside for food, health reasons or work (but only if you cannot work from home)
- If you go out, stay 2 metres (6ft) away from other people at all times
- Wash your hands as soon as you get home

Do not meet others, even friends or family.

You can spread the virus even if you don't have symptoms.

STAY AT HOME 

PROTECT THE NHS 

 **save lives**

Compulsory purchase and C19: Land referencing

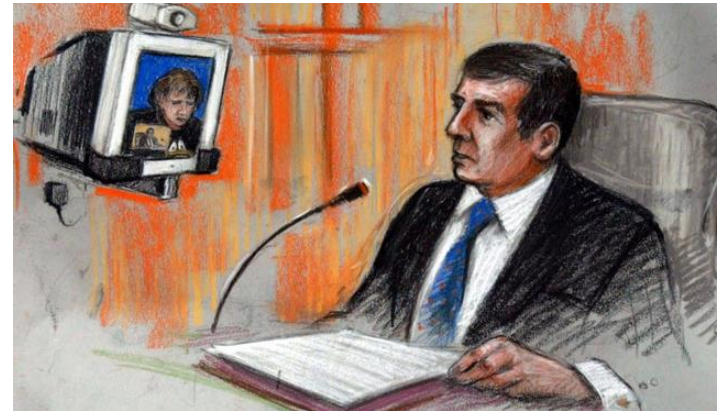
Diligent enquiries need to be undertaken, usually involving HMLR searches, service of Requisition notices, and site visits / door to door enquiries etc.

How can diligent enquiries be fulfilled in the current environment?

Calling cards
On-line RFIs
QR codes



Compulsory purchase and C19: Holding public inquiries



Compulsory purchase and C19: Relocation of businesses / residents

Government guidance:

“Where the property being moved into is vacant, then you can continue with this transaction although you should follow the guidance on home removals.

Where the property is currently occupied, we encourage all parties to do all they can to amicably agree alternative dates to move, for a time when it is likely that stay-at-home measures against coronavirus (COVID-19) will no longer be in place.”



Compensation and C19: Advance payments

Issue

- More need than ever for businesses to maintain cash flow
- AAs need to balance protecting the public purse with the obligation to assist businesses ('whatever it takes')
- Additional uncertainty of CPO costs

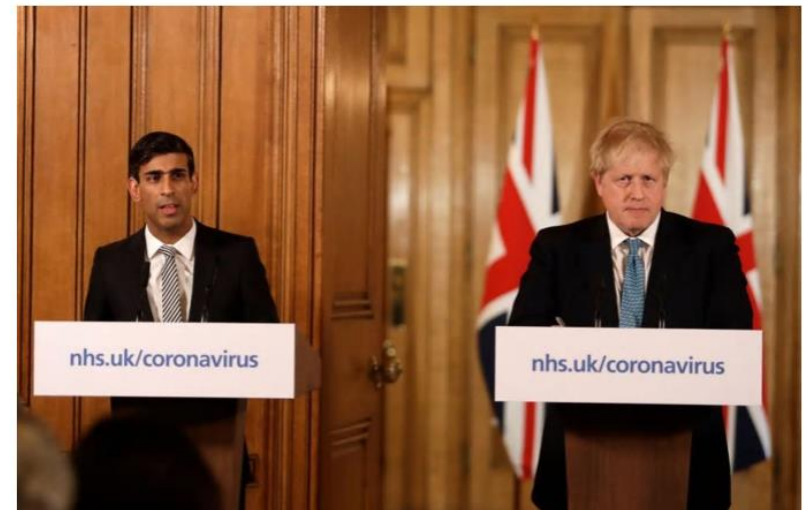
Possible Solutions

- Critical role for acquiring authorities to play
 - Quicker advance payments
 - Fuller advance payments (possibly at 100%)
- Should this not be happening in any event?

Tuesday 17 March 2020 5:25 pm

Coronavirus: Government pledges 'whatever it takes' to help British businesses

Catherine Neilan



Compensation and C19: Paying agent's fees

In the current climate it's reasonable to assume some agents may not be inclined to take new instructions from certain business types (i.e. cafes / restaurants etc), because of concerns as to whether they will be paid.

Even if they can find advisors, many such businesses will struggle to pay fees on an ongoing basis, due to cash-flow difficulties.

In response to the question 'What other steps should be considered to help those affected by a compulsory purchase order?', Government guidance suggests:

'where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition'

Chiquito the first restaurant casualty of shutdown as administrators set to be appointed

By News · 28 March 2020 · Business Matters



UK restaurant chains face 'drastic Darwinian environment'

Carluccio's was first main casualty of lockdown but others are on shaky ground



Business

Carluccio's falls into administration, putting 71 UK restaurants and 2,000 employees at risk

Read our live updates on coronavirus [HERE](#)

- Compulsory purchase is an effective tool to facilitate regeneration
- Central government expects local authorities to use 'all tools available' to rejuvenate high streets and town centres
- The pandemic has heightened the need for public sector intervention: obtaining ownership of assets ensures a more cohesive strategy can be implemented to deliver positive change
- When using powers, do so responsibly.
 - Make genuine efforts to acquire interests by agreement,
 - Be pragmatic (you can pay over MV if there is a sound case for doing so),
 - Understand how businesses operate and their relocation requirements (where do their employees live, who / where are their clients?)
 - Communicate regularly, clearly and consistently. Lack of contact = affected parties become anxious, less trusting, more likely to object.
 - Identify case managers to act as SoP throughout the process

Questions?



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