

Biodiversity Gain and Compulsory Purchase Powers

1. The Environment Act 2021 contains powers for the inclusion of conditions in the grant of planning permission for biodiversity gain (BDG): eg see section 90A and schedule 14, para 13 of the Town and Country Planning Act 1990. The exceptions include planning permission granted by a development order, and exceptions provided for by regulations: see schedule 7A, para 17.
2. There is concern among acquiring authorities as to whether existing powers of compulsory acquisition are wide enough to authorise the acquisition of land required for biodiversity gain, whether required by a condition in a planning permission or otherwise.
3. This short paper addresses one area of compulsory purchase powers: the acquisition of land for or in connection with highways.
4. Section 239 of the Highways Act 1980 contains powers to acquire land for highway purposes.
5. Subsection (1) provides that certain authorities: *“may acquire land required for the construction of a trunk road, and any highway authority may acquire land required for the construction of a highway”*.
6. Subsection (2) provides that certain authorities *“may acquire land ... required for:*
 - (a) the carrying out of any works authorised by an order relating to a trunk road under section 14 above, or*
 - (b) for the provision of buildings or facilities to be used in connection with the construction or maintenance of a trunk road other than a special road.*
7. Subsection (3) provides that: *“a highway authority may acquire land required for the improvement of a highway, being an improvement which they are authorised by this Act to carry out in relation to the highway”*.
8. In broad terms the construction or improvement of a highway within the boundaries of an existing highway would be permitted development under the GPDO, and would not trigger a biodiversity gain planning condition. But the construction (and some improvement) of a highway outside the boundaries of an existing highway would require a planning permission that would trigger a BDG condition.
9. Unlike the compulsory purchase powers in the Planning Act 2008, which includes the word ‘facilitate’, the above provisions do not. They are very tightly drawn.

10. Section 240 of the HA 1980 does contain the following power: *a highway authority may acquire land which is required for use by them in connection with the construction or improvement of a highway, or with the carrying out of works authorised by an order relating to a trunk road under section 14 above or an order under section 18 or section 108(1) above*". It would be rather stretching the words "*them in connection with*" to say that this provision is wider enough to acquire land for BDG.
11. Indeed the rest of section 240, and the succeeding sections 241 246, contains some very specific powers of acquisition which rather points to a narrow interpretation to powers in sections 239 and 240.
12. It is suggested that the CPA should consider with the two relevant government departments whether there is any need for legislation authorises the acquisition of land where a highway authority is required to provide BDG.
13. This paper has not examined any legislative shortcomings in relation to the acquisition of land for housing purposes.
14. Powers of acquisition conferred on local authorities under the Town and Country Planning Act 1990 are widely drawn. They include the word "facilitate" and, as one of the objects, "the promotion or improvement of the environmental well-being of the area.

BDG