

The Localism Act which passed into law on 15<sup>th</sup> November 2011 contains a range of widely publicised changes to the town planning system, but it also makes a long awaited change to the assessment of compensation for the acquisition of land under a Compulsory Purchase Order (CPO) or other compulsory purchase powers.

### **What change has the Localism Act brought to CPO compensation?**

The Localism Act changes the rules concerning how compensation is assessed for acquiring land that may have had development value were it not for the CPO proposals.

s. 232 of the Localism Act amends ss. 14 – 22 of the Land Compensation Act 1961 which set out the assumptions to be made as to planning permission when valuing land affected by compulsory purchase, including Certificates of Appropriate Alternative Development ( “s.17 certificates”).

### **What was wrong with the previous provisions?**

The previous provisions had been heavily criticised by the Courts for being out of date and inconsistent. The main concerns were;

- s.17 certificates determined the planning permissions likely at the date the CPO was made and not at the date the land had to be valued (which is usually the date the land was acquired). There can often be several years between these dates and planning prospects can be materially different.
- The wording of the provisions in relation to the “development plan” was not consistent with the current planning system.
- Permitted development which is no longer available in the “real world” could still be claimed and used to calculate compulsory purchase compensation.
- It was not clear that the “scheme” to be disregarded for planning purposes was the entire scheme or just the intention to acquire the subject land.

### **What has changed?**

The main changes that the Localism Act will bring in for planning assumptions are;

- s.17 certificates are issued by the Local Planning Authority as before, but appeals will go to the Lands Chamber of the Upper Tribunal.
- s.17 certificates now assess planning prospects as at the date the compensation has to be assessed.
- But, the scheme that the CPO is designed to deliver is assumed to have been cancelled on the day the CPO was made.
- Any dispute over the extent of the “scheme” (for planning purposes) is to be settled by the Tribunal and will be taken to be the extent of the CPO. A wider scheme can only be argued in special circumstances or with the agreement of the Tribunal, and then only if the CPO or documents published with it identify a wider scheme.
- s.17 certificates will now identify “development” rather than just “use” of the land
- The previous provisions under s.16 for planning consent in line with a development plan have been removed. Available planning assumptions are now;
  - Any consent in force at the valuation date
  - Consent to develop the land in accordance with the CPO scheme, if not already in place
  - Appropriate alternative development assumed to be consented on the valuation date
  - Appropriate alternative development assumed (with certainty) to be consented at a future time
  - The prospect of consent in the absence of the scheme at the valuation date or at a later time which is not appropriate alternative development (therefore not assumed to be in force at the valuation date or expected with certainty at a future time).

- The definition of alternative appropriate development is development for which, had the scheme been cancelled when the CPO was made, consent could “reasonably have been expected to be granted” if considered at the valuation date or at a later time.
- The assumptions regarding cancellation of the scheme are set out explicitly and are the same for assessing appropriate alternative development and for the prospect of other consents which are not appropriate alternative development. The cancellation assumptions set out in the Act are the only assumptions that can be used to disregard the scheme for planning purposes. They are;
  - (a) the scheme was cancelled at the time the CPO was first published
  - (b) that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,
  - (c) that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and
  - (d) if the scheme was for the construction of a highway, that no highway will be constructed to meet the same or substantially the same need.
- The provision within s.15(3) of the Land Compensation Act 1961 which allows account to be taken of permitted development rights under Schedule 3 of the 1990 Act has been removed. Those permitted development rights were withdrawn in 1991 and their continuance in the 1961 Act is an anachronism.

### **What does this mean in practice?**

Appropriate alternative development is now assessed at the valuation date and will as a result be of more use to valuers assessing value as at that date. The complex and inconsistent assumptions in relation to consent in line with development plans have been removed, and effectively replaced with appropriate alternative development, so that there will be a more consistent approach across all the relevant assumptions .

The assumptions regarding the cancellation of the scheme underlying the CPO are explicit and broadly in line with the approach taken in respect of disregarding the scheme for valuation purposes in *Waters v Welsh Development Agency*. However, with the exception of the explicitly listed cancellation assumptions, the planning situation must otherwise be assessed based on the knowledge in the market at the valuation date. Again this should help valuers in dealing with what is often a complex situation by bringing more consistency and certainty to the rules to be applied.

Where an authority is promoting a CPO in pursuance of a scheme which is wider than the CPO boundary, it is now essential that this is made clear in the CPO and associated documents published with it. It will be for the Tribunal to determine the extent of the underlying scheme, and only in special circumstances can this be argued to be wider than the immediate CPO. Identification of the wider scheme in the CPO supporting documents will not be conclusive, but failure to identify a wider scheme at that time will preclude the authority from making the argument, at least in relation to planning assumptions.

### **When will the new rules come into force?**

The revised provisions will not come into force until the Government issues a commencement order. This is expected to happen in April 2012 for s.232 of the Act. The commencement order will also set out the transitional provisions which will dictate whether CPOs made or confirmed before April 2012 will be caught by the new rules.