

## **Housing White Paper – fixing the broken housing market**

### **Compulsory Purchase Association's response to Compulsory Purchase Reforms**

#### **1. Introduction to CPA**

- 1.1 This document is submitted on behalf of the Compulsory Purchase Association (**CPA**).
- 1.2 CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation.
- 1.3 CPA has over 700 members practising in this field, including surveyors, lawyers, accountants, planners and officers of public authorities.
- 1.4 This consultation response has been formulated following discussions within the National Committee of CPA.
- 1.5 CPA remains committed to a fundamental reform and codification of the law on Compulsory Purchase, as proposed by the Law Commission in 2003/4.

#### **2. at Introduction to our views on the Housing White Paper**

- 2.1 We comment only on the Compulsory Purchase (CPO) aspects of the White Paper. We do not comment on the underlying policy nor on the wider proposals contained in the White Paper. We answer three of the specific questions asked, at the end of this paper.
- 2.2 The call for consultation on further reform of CPO and compensation law in the White Paper (Para 2.46) is welcome. CPA would welcome the opportunity to continue its dialogue with DCLG and HM Treasury on proposals to improve the compulsory purchase and compensation processes and law.
- 2.3 Land assembly, including CPO and title cleansing powers are key levers for giving force to the process of housing delivery. There is a long, and somewhat overlooked track record of CPO supporting significant housing growth through the public sector, from the post-war years until the 1970s.
- 2.4 Where is it not well understood, CPO is seen as a slow, cumbersome, last resort. We are keen to work with Government to make sure the tool kit is better understood.

#### **3. Infrastructure and Housing (Para 2.20 etc)**

- 3.1 It is widely accepted that the link between infrastructure and housing must be cemented if the repairs to the housing market heralded by the White Paper are to succeed. Appropriate and sustainable housing development is best achieved by better integrating planning processes with an improved land assembly process that speeds the timetable for delivery of new infrastructure. Co-ordination of housing and infrastructure planning must be re-discovered after many years of being fragmented – and the policy given time to be properly implemented.
- 3.2 The White Paper suggests this can in part be achieved by the Government calling for local planning authorities (LPAs) to identify development opportunities arising from strategic infrastructure when the funding for those schemes is committed, and to maximise the potential unlocked. LPAs might find it hard to achieve in practice. Much will depend on the co-ordination and flow of information (where relevant) the funding Departments, infrastructure providers and local transport authorities. The role of LEPs could be integral in this co-ordination.

#### **4. Local Authority Powers (Para 2.39 etc)**

- 4.1 The White Paper's call for LPAs to consider the economic and social benefits of estate regeneration is welcome. The Government must now take action to support and encourage essential estate renewal by the issue of clear Guidance on what is expected of LPAs in terms of proper compensation and consideration of their Equalities Act duties. That guidance will need to ensure that an appropriate balance is struck between fair compensation to those displaced, and the need to ensure that schemes can viably be brought forward.
- 4.2 Consultation is proposed on removing the bar on LPAs disposing of land held for planning purposes for less than best consideration without the Secretary of State's consent. Whether this is significant is open to question. The change could just lead to LPAs being pressured to accept sub-optimum consideration for their land. If an undervalue is genuinely needed the Secretary of State's consent is usually forthcoming, so this relaxation may actually just take away one of the LPA's stronger bargaining chips when negotiating development agreements.
- 4.3 Consultation is also proposed on additional powers for "all authorities" to dispose of land with the benefit of additional powers to prevent "'ransom strips' delaying or preventing development". This follows the widening of the availability of powers to "cleanse" public sector-held land of historic interests on title such as restrictive covenants, an area which has been legislated on several times in recent years. If the intention is to allow authorities to remove inherent ransom strips, this will be a radical and controversial step forward, significantly impacting on the basic market value principles of compulsory purchase compensation law. See our response to Q6 below.

#### **5 Use it or Lose it (Para 2.44)**

- 5.1 We welcome the opportunity to consult with Government on this concept, including consideration of the acquired site being subject to an auction process to establish the market value to the dispossessed owner.
- 5.2 A site, having passed through the statutory authority's ownership, will benefit from a statutory process of "cleansing" title issues. This is likely to give a site a higher value than when it was taken, so this approach would seem to cost more than just adopting a policy to simply pass the site through the local planning authority before handing it back to the previous owner, with the previous rights capable of being breached - and compensated for on a Code basis.
- 5.3 We have a number of questions and concerns with the approach. If a landowner is unwilling to develop for other reasons, it seems odd that it could in effect benefit from its recalcitrance through an auction process, when the value at the time of auction is compared to the compensation position that would currently apply at the point of compulsory acquisition. Would the auction required the scheme to then be built out using an existing permission (which could well be close to lapsing) or can a new owner re-apply? If so should overage apply for a more valuable permission?
- 5.4 Compensation would also be due to the beneficiaries of the extinguished rights, which could well fall to be paid by the LPA by way of a statutory indemnity if not deducted from the sale proceeds. The value of the cleansed rights might not be known until long after the auction process. For instance a right of way could be either built over and lost forever - or left in situ and re-granted by the new scheme. Each would give rise to very different compensation values. The risk of such compensation payments needs to be allocated and covered in full in any legislation on this proposed process.
- 5.5 Improved guidance for LPAs to use their existing powers on dormant sites may be an alternative. For instance a wider regeneration power not requiring a LPA to demonstrate a fully worked up scheme for a long-vacant "eyesore" site would better achieve land recycling. The current

system, used well by a determined LPA should, following due process, give such an owner little benefit at all for dragging their feet.

## **6 Homes and Communities Agency (Para 2.45 etc)**

6.1 The White Paper proposes that the Homes and Communities Agency (HCA) should look to use its powers to support development and regeneration, including supporting LPAs.

6.2 The Government indicates its own willingness to intervene in the market, promising to

*"look seriously at any request from local authorities for Government powers to be used to support delivery in their local area, and will be prepared to consider all the levers at our disposal to do so"*

6.3 These levers include consideration of infrastructure delivery at a spatial level, encouraging joint planning and statutory plans, and through the HCA supporting the process - including using its own wide CPO powers.

6.4 An emboldened HCA can make a real difference to providing suitably title-cleansed sites, without facing some of the hurdles faced by LPAs in justifying expropriation.

## **7. New Towns (Para 1.36 etc)**

7.1 The White Paper suggest new "locally accountable" New Town Development Corporations will be provided for in legislation. This is subject to the local areas deciding themselves that one is needed – the historic tension between development corporations and the local authorities having corporations imposed on their area being recognised.

7.2 Reference to communities being able to "benefit from land value capture" suggests the new development corporations could have a powerful tool kit, including CPO powers.

7.3 We would be happy to support CLG in considering any proposed legislative change – we assume this will be by amendment to the New Towns Act 1981.

## **8. Conclusions**

8.1 The Housing White Paper rightly looks to cement CPO more firmly in housing delivery. We support the principles underlying its aims in relation to compulsory purchase. We believe use of CPO power can be part of the answer to fix the housing market.

8.2 The call for representations for further reform of the CPO process are certainly welcome as much more could be achieved.

8.3 We would be very willing to meet with CLG to discuss our own thoughts on further reforms (which have recently been subject to consultation with selected industry stakeholders, and the responses to which are under review by the CPA Committee).

## **Responses to Specific Questions**

### **Question 6**

*How could land pooling make a more effective contribution to assembling land, and what additional powers or capacity would allow local authorities to play a more active role in land assembly (such as where 'ransom strips' delay or prevent development)?*

The White Paper suggests the proposal is to investigate "land pooling" powers, by reference to German examples. The text suggests limited understanding by the White Paper's authors of how the Compensation Code works. The no scheme world principles enshrined in the Code mean that a "last man standing" is not treated as having a true ransom value - at least not beyond the practical consideration of paying someone over market value to speed up the process, thereby removing risk and saving the cost of a CPO inquiry. Land pooling is already possible by way of agreement and there is no reason why a local authority could not support a planning permission using its CPO powers to assemble land for a scheme where not all landowners fall in to line. The Government's intention would be better achieved by stronger Guidance and a speeded up CPO process.

### **Question 7**

*Do you agree that national policy should be amended to encourage local planning authorities to consider the social and economic benefits of estate regeneration when preparing their plans and in decisions on applications, and use their planning powers to help deliver estate regeneration to a high standard?*

Yes.

### **Question 30**

*What support would be most helpful to local planning authorities in increasing housing delivery in their areas?*

Limited knowledge of how CPO compensation law is applied is one that possibly already exists. A wider understanding of what CPOs can already do, and how compensation is assessed, would remove many of the uncertainties and fear of using CPO powers.

## **Compulsory Purchase Association**

**1 May 2017**