

OPEN CONSULTATION ON PROPOSED REFORMS TO THE NATIONAL PLANNING POLICY FRAMEWORK AND OTHER CHANGES TO THE PLANNING SYSTEM

RESPONSE ON BEHALF OF THE COMPULSORY PURCHASE ASSOCIATION

The Compulsory Purchase Association (“**CPA**”) is a not for profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers.

Its objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. It seeks to promote the highest professional standards amongst practitioners at all levels, and to ensure that the legal framework for compulsory purchase and compensation is clear, fair and effective. Its members represent both acquiring authorities and claimants affected by compulsory acquisition, including in the electricity and wider utilities sectors.

The CPA welcomes the opportunity to respond to the current consultation on proposed reforms to the National Planning Policy Framework and other changes to the planning system (the “**Consultation**”).

The CPA’s response to the Consultation is limited to addressing those proposals that directly relate to the use of compulsory purchase powers, principally in response to question 45 and paragraphs 31 and 32 of the Consultation as set out below:

***“31. The Government considers that limited Green Belt release, prioritising grey belt, will provide an excellent opportunity for landowners to sell their land at a fair price, while supporting the development of affordable housing, infrastructure and access to nature. Where such land is not brought forward for development on a voluntary basis, the Government is considering how bodies such as local planning authorities, combined authorities, and Homes England could take a proactive role in the assembly of the land to help bring forward policy compliant schemes, supported where necessary by compulsory purchase powers, with compensation being assessed under the statutory no-scheme principle rules set out in Part 2 of the Land Compensation Act 1961.*”**

32. In such cases, these rules would operate to exclude any increases or decreases in value of land caused by the compulsory purchase scheme, or by the prospect of it, and valuation of the prospect of planning permission (‘hope value’) for alternative development would reflect the golden rules outlined in the NPPF. Use of compulsory purchase powers may also include use of directions to secure ‘no hope value’ compensation where appropriate and

justified in the public interest. A comprehensive justification for a no hope value direction (e.g., which includes a high proportion of vital affordable housing being delivered) will strengthen the argument that a direction is in the public interest. This would align with the Government's aspiration for high levels of affordable housing to be delivered on these sites."

Response to Question 45: Do you have any comments on the proposed approach set out in paragraphs 31 and 32?

1. The CPA recognises the need to deliver substantial increase in housing, in particular supporting the development of affordable housing.
2. We consider that effective use of compulsory purchase powers can play a vital role in the delivery of land for affordable housing, facilitating the acquisition of land in a controllable, coordinated and timely fashion. The CPA therefore broadly welcomes the proposals summarised in paragraphs 31 and 32 of the Consultation for the increased use of compulsory purchase in the future delivery of land for housing development.
3. It is however important that the rules and processes governing compulsory purchase are proportionate and achieve equal balance between the interests of acquiring authorities and those affected by compulsory acquisition, including in respect of compensation.
4. Under the Levelling Up and Regeneration Act 2023 ("**LURA**"), section 190 has been enacted and introduces provisions for 'no hope value' compensation. Those provisions have been brought into force on 30 April 2024. In summary, the provisions¹ enable the relevant acquiring authority promoting certain types of scheme², including affordable housing schemes, to include in a compulsory purchase order a direction that compensation payable for the permanent compulsory acquisition of land for the purposes of the relevant scheme will disregard any increase in value attributable to the potential for planning permission for development to be granted in the future, including the disregard of both Alternative Appropriate Development (essentially an assumed planning permission) and the future prospect of planning permission being granted (i.e. 'hope value'). The confirming authority in every case is required to apply a legal test to determine whether the proposed

¹ Introducing new Section 14A and 2A into the Land Compensation Act 1961 and new section 15A and Schedule 2A in to the Acquisition of Land Act 1981.

² Affordable housing, a hospital/health facility or education provision.

direction is justified in the public interest. In practical terms more use of compulsory purchase powers to enable land assembly may well do more to reduce the over cost without the need to interfere with market value as the basis of compensation.

5. As the LURA provisions are not yet effective there is no evidence yet available to judge their impact on the delivery of land nor how the public interest test will be applied in practice.
6. However, it is anticipated that the central justification on which promoting authorities will rely is that the direction sought is needed to ensure (or improve) the financial viability of a proposed development site, by effectively reducing the cost of acquisition of the site by restricting the amount of compensation payable to the relevant landowner(s).
7. The key question is whether seeking to limit compensation in this way will help materially in the delivery of land for affordable housing development. Would the limiting of compensation to landowners reduce the cost of acquiring land and improve the viability of potential development sites to support them being brought forward for delivery (e.g. by attracting funding etc.)?
8. In 2022, the CPA submitted a response to the government consultation on land value capture, which informed the promotion and ultimate enactment of section 190 of LURA³.
9. In its response the CPA highlighted that the direction provisions may fetter the rights of affected parties to received fair compensation in certain cases. The principle of equivalence is a golden thread running through CPO compensation law, embodying the principle that an affected party is entitled to be compensated for no more but no less than the losses it suffers as a result of the acquisition of their interest/rights in land. The statutory provisions governing the assessment of compensation for land acquired, reflect that an affected party is entitled to receive market value for its land permanently acquired, disregarding the impact of the CPO scheme on the value of land. The concept of 'market value' (or development value) includes the existing use

³ CPA Response to the Department for Levelling Up, Housing and Communities Consultation on amending the compensation provisions for assessing prospective planning permission where land is compulsorily acquired, June 2022 - [Compulsory purchase - compensation reforms: consultation \(compulsorypurchaseassociation.org\)](https://www.compulsorypurchaseassociation.org)

value of land together with any increase in value arising from (i) any existing planning permissions; (ii) Alternative Appropriate Development (effectively an assumption that planning permission is in force at the date compensation is to be assessed) or (iii) the prospect of planning permission being granted in the future (i.e. 'hope value').

10. These provisions broadly reflect how the market for land operates in the real world, that a buyer in the market will ordinarily pay (or make other provision e.g. by way of overage provisions) above existing value for land, where such land benefits from planning permission for development or has some prospect of doing so in the future.
11. The CPA recognises that in certain circumstances the cost of acquisition of land can impact the financial viability of a proposed development. For example, where a greenfield site is allocated for development in a local plan for development the price payable for the land may include a significant uplift above existing use value reflecting the planning allocation. However, the viability of a potential development is dependent on a range of factors, including the cost to build, infrastructure costs, planning contributions (including affordable housing) and prevailing market conditions.
12. Typically, the financial viability of a proposed development site will not be dictated, or materially affected, by the price payable for the land. This is because the payment of development value for the future prospect of planning permission being granted (i.e. hope value) is generally not a factor that dictates viability, as the price payable to a landowner will only include development value if the development is viable. If development is not viable, then the price payable to acquire the land will not include an uplift from existing use value. Therefore, due to the limited contribution land costs make to the overall cost of most developments, removing or capping development value will not make an otherwise unviable scheme viable.
13. Therefore, the financial viability justification supporting an application for a 'no hope value' direction is potentially only likely to be justified in a narrow range of cases. In those circumstances, the CPA recognises that the direction provisions may assist in delivering land for affordable housing where otherwise it would not where it can be shown to be in the public interest.
14. On a wider note, the prospect that such provisions may have a wider impact on the market for land is doubtful, given the still limited role that the use of CPO powers is

likely to play in the delivery of affordable housing schemes. However, there is risk that in relation to specific schemes a two tier market is created, the open market in which market forces dictate how much private/public sector developers pay for land, reflecting the existing and future potential value of that land, as opposed to the use of compulsory acquisition powers to acquire land that permit acquisition based on existing use value only, disregarding future potential for development value.

15. Having regard to paragraphs 31 and 32 of the Consultation, it is not clear whether the government is proposing to extend the scope of the 'no hope value' compensation provisions under section 190 of LURA, for example to extend the provisions beyond the prospect of planning permission being disregarded (i.e. hope value) or to include other types of development scheme in respect of which a direction may be sought by a promoting authority. To the extent that this may be being considered as part of the current Consultation, the CPA would advocate a cautious approach and that any extension of the existing direction powers should only be contemplated after the current provisions have been used and it is possible to judge the impact and effectiveness of the provisions in practice.