

IT'S THE LAW: Compulsory Purchase Orders

An invitation you couldn't refuse

In the good old days, if the King wanted to get hold of your land he'd just turn up with a few soldiers and invite you to leave. Nowadays, what with democracy and human rights (see 'political correctness gone mad'), things are a bit different.

Having said that, the state (and those authorised by it) can achieve similar results through what are known as Compulsory Purchase Orders. They are often essential tools to unlock land needed to undertake infrastructure projects, town centre developments or estate regeneration schemes. They enable someone else's land and rights to be forcibly acquired.

AA

Not just anyone can apply for a CPO. A CPO will only be granted to certain bodies (known, in this context, as Acquiring Authorities). AAs include Local Authorities, Utility Companies and Development Corporations. CPOs will only be granted in limited situations and only after strict procedures have been followed. Those procedures are designed to ensure that everyone affected has their voice heard and to see to it that those having their land or rights taken away are compensated.

By the power vested in me...

CPO powers come from legislation. Different Acts provide CPO powers for different purposes. By way of example:

- S89(5) National Parks and Access to Countryside Act 1949: acquisition of land for the planting of trees.
- S47 Planning (Listed Building and Conservation Areas) Act 1990: acquisition of listed buildings in need of repair.
- S6(1) Crossrail Act 2008: acquisition of land within designated areas to facilitate the construction of Crossrail.

The Acquiring Authority needs to carefully consider which is the most suitable power to use. At the detailed level they all have their distinct procedures and peculiarities – but most follow a broadly similar structure.

We're all about the housing

The principal CPO powers applicable to the provision of housing are contained in s226 of the Town and Country Planning Act 1990 or s17 of the Housing Act 1985. The former can be used where the acquisition will facilitate the development, redevelopment or improvement of the land and the latter is used exclusively for developments where the focus is on the provision of housing.

In these instances the Acquiring Authority will most often be the Local Authority.

By way of hypothetical example...

So, say the London Borough of Buildmore & Develop (LBBDD) want to deliver an estate regeneration scheme. They already control the bulk of the land they need – but they also need Mr & Mrs Holdout's bungalow so that they can knock it down and build a new 30 story tower block. What hoops must LBBDD, as Acquiring Authority, jump through before they can send the bulldozers in?

Title Investigation: In the first instance, LBBDD should carry out a thorough investigation of the title to the land they want to acquire. They need to make sure that the land they need is only owned by Mr & Mrs Holdout. They need to check, for example, that the Holdouts aren't the tenants of someone else. They need to check that the red line of the land they need doesn't encroach beyond the Holdouts' land into that of their next door neighbour. This is often referred to as the referencing exercise. It's not uncommon for Acquiring Authorities to use specialist consultants to undertake this step.



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Statement of Reasons: The second step is the preparation of a Statement of Reasons explaining why the benefits derived from exercising CPO powers will outweigh the detriment to the Holdouts as landowners. It will also be necessary to demonstrate that the scheme or redevelopment will contribute to the social, economic and environmental well-being of the area.

Notice: Before LBBDD submits the CPO for confirmation by the Secretary of State (SoS), all known persons with an interest in the relevant land must be served a notice and be invited to make objections. A notice must also be published for two successive weeks in one or more local newspapers and must be fixed on or near the land included within the order. Any objection must be made to the relevant SoS within 21 days of the notification being sent.

Public Inquiry: Assuming the Holdouts lodge an objection (and don't withdraw it) a Public Inquiry will be held. LBBDD will have to prepare a Statement of Case, expanding on the justifications set out in their Statement of Reasons. The Holdouts will be given an opportunity to have their say. The SoS will then review the arguments for and against and either reject or confirm the CPO.

Making it happen

Once the SoS confirms the order LBBDD, as the Acquiring Authority, can choose how to enforce it. Whichever route LBBDD decides to take, it must take it within 3 years of the CPO being confirmed (the Operative Date).

- If LBBDD don't necessarily need to acquire title straight away, they'll probably serve a Notice to Treat followed by a Notice of Entry on Mr & Mrs Holdout. A Notice to Treat is intended to inform the Holdouts of LBBDD's intention to take possession, and eventually title. A Notice of Entry then needs to be served before LBBDD can enter onto the CPO land without consent. The title itself will not pass to LBBDD until it has been conveyed, which will occur once compensation has been settled, either by agreement or by the Upper Tribunal (Lands Chamber).
- If LBBDD do need to acquire title to the land immediately (for example to transfer it for development by a third party under a development agreement) then a General Vesting Declaration (GVD) would be the preferred route to take. The GVD replaces the Notice to Treat and conveyance with one procedure that, on a specified date, automatically vests title in the CPO land with the Acquiring Authority.

Ker-ching!

The Acquiring Authority is under an obligation to adequately compensate those with interests in the land being acquired. If the AA and an affected owner can't reach an agreement then the matter will be settled by the Tribunal.

Compensation does not necessarily need to be limited to just the market value of the land. Ultimately, the landowner is not to be left worse off than had their land not been taken. Equally they should

not get any undue advantage. There are generally six principal principles that will be observed by the Tribunal when making an assessment: -

- Rule 1: No allowance is made on account of the acquisition being compulsory.
- Rule 2: The value of the land is taken to be the amount which the land, if sold on the open market by a willing seller, might be expected to realise.
- Rule 3: The effect on the value of the land because it is particularly suitable for a particular use will be ignored if that use can only be carried out under statutory powers.
- Rule 4: If the value of the land is being increased by an unlawful use, then that increase will be ignored.
- Rule 5: Land being used as a church, school or hospital etc. will be assessed on the basis of the reasonable cost of equivalent reinstatement; and finally
- Rule 6: Disturbance costs will be taken into account.

In addition to the six rules above, the Tribunal will apply the Pointe Gourde Rule, which provides that in valuing the land acquired, any value directly attributable to the scheme underlying the acquisition should be disregarded. In other words, the land must be valued in its current form and based on its current use, rather than its prospective value following completion of the scheme.

Why don't we just go to lightspeed?

There is no reliable set timescale for the running of a CPO process. As a rough guide, 12-18 months is not an uncommon period from the Statement of Reasons being prepared to the General Vesting Declaration being made transferring ownership. It can be quicker, it can be much longer.

Simples (not)

The CPO process is by no means simple. Or quick. It's not supposed to be – since it's depriving someone of their personal property. In practice, Acquiring Authorities will often use it as a 'threat'. The mere fact that they *could* opt to follow the CPO route often means that they don't actually have to. Because the landowner cooperates 'willingly', albeit reluctantly.

The tiny print

This is one of a series of leaflets published by Devonshires' Real Estate & Projects Department aimed at our property owning and developing clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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