CPO Consultation Team

DCLG

Planning Directorate

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**Technical consultation on improvements to compulsory purchase processes**

Dear Sir,

**Introduction**

Accessible Retail (AR), the trade body which represents the property interests of the retail warehouse and retail park sector of the retail industry. We have over 1000 members comprising retailers, developers, owners/investors and advisers, including most of the major companies active in the sector

Our sector plays a significant role in the economy and in the retail industry. It accounts for a third of total retail spend and comprises the largest part of investment grade retail commercial property with a value in 2013 of some £49.7 billion.

We welcome the opportunity to respond to this consultation on improvements to the compulsory purchase process.

**Main Considerations**

Overall, the Government's intention to improve the working of the CPO process is welcomed. The ability to acquire land is an essential tool in bringing forward the development and regeneration of key sites and areas. Until recently, though, it has been relatively underutilised, in no small part due to over complicated procedures and an inadequate approach to compensation. What is required is a balance which will enable acquiring authorities to progress their schemes speedily whilst protecting the rights of landowners. Many of the proposals will help achieve this balance.

In addition, some consideration should be given to blight notices. In particular that (a) for qualifying properties, the rules should allow a Notice to be served as soon as the scheme has been formally publically announced; (b) the Rateable Value limit for commercial property should be raised substantially above £34,800; and (c) once the Notice has been accepted, the claimant should be able to serve a 'Reverse Notice to Treat'.

**Consultation questions**

**Q1a: Should public sector bodies be given more flexibility in their compensation offers at an earlier stage in the process?**

Yes. We welcome the principle that public sector bodies should be given more flexibility in their compensation offers at an early stage. In our view, this is the core element by which improving the utility gained from the use of CPOs will be achieved. This should include the ability to offer greater than market value and enhanced compensation where this is judged to be likely to lead to better overall value for money. We acknowledge there is a risk that some landowners may hold out for higher compensation knowing that an offer above market value could be received, nevertheless in the majority of cases the overall costs of securing development sometimes years earlier are likely to fall (principally lower construction and legal and other professional advice costs). Further, earlier delivery of schemes will result in earlier enjoyment of the benefits they create for the public good.

**Q1b: Does the draft wording provide helpful guidance the Accounting Officers that oversee public schemes and should it be included in guidance publications such as Managing Public Money, the Green Book guidance, Department for Communities and Local Government's Best Value Guidance for Local Authorities and/or the new compulsory purchase guidance?**

Yes, but only so far. It does not state explicitly that an offer above market value can be made where it is believed acceptance at that value would result in greater overall public value for money being achieved. Only with it made explicit will accounting officers have confidence in using it.

**Q2: Do you agree that all acquiring authorities should have the same powers of entry for survey purposes prior to a compulsory purchase order being made?**

Yes.

**Q3: Do you agree that there should be a warrant provision associated with the proposed standard power of entry for survey purposed prior to a compulsory purchase order being made?**

Yes.

**Q4: Do you agree that the notice period for the single power of entry for survey purposes, prior to a compulsory purchase order, should be a minimum of 14 days? If you disagree, please specify what minimum time period of notice should be adopted?**

In our view, the notice period should be 28 days.

**Q5a: Do you agree, in principle, that we should introduce statutory targets and timescales for the confirmation stage of the compulsory purchase order process:**

i. **For cases decided by the Secretary of State?**
ii. **If introduced, for delegated legislation?**

Yes. It is right that the CPO regime be subject to performance requirements as is the rest of the planning system. Remedies should be available should the proposed

timescales not be adhered and where the time limit is exceeded; the Secretary of State should write to all parties with an estimated date of completion.

**Q5b: for cases decided by the Secretary of State do you agree with the following timescales and targets for cases dealt with by written representations:**

i. **a new statutory requirement for a site visit to be conducted within 15 weeks of the starting date letter. If you disagree, please specify any alternative timescale**
ii. **a new target for 80% of decisions on written representation cases to be issued within eight weeks of the site visit with the remaining 20% of cases dealt with within 12 weeks of the site visit. If you disagree, please specify any alternative timescales or percentages .**

Yes.

**Q5c: For cases decided by the Secretary of State do you agree with the following timescales and targets for cases that are the subject of a public inquiry:**

i. **a new statutory requirement for the Inspector who conducted the inquiry to inform the acquiring authority, within 10 days of the end of the inquiry, the timescale for a decision. If you disagree, please specify any alternative timescales.**
ii. **a new back-stop target that 80% of cases are dealt with within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. If you disagree, please specify any alternative timescales or percentages.**

Yes.

**Q6: Do you agree that we should introduce a new statutory requirement for each Secretary of State with confirmation powers to report annually to Parliament on his/her performance in meeting the defined timescales and targets for confirmation of orders, where the number of cases decided in the year exceeded five?**

Yes.

**Question 7a: Do you agree that each Secretary of State should be able to delegate to an Inspector a decision on whether to confirm or refuse to confirm a compulsory purchase order?**

Yes.

**Q7b: Do you agree it would only be appropriate to delegate decisions that do not raise issues of more than local importance? If not, why not, and what other types of cases would be suitable for a delegated decision?**

Yes, but clear guidelines should be set defining what constitutes more than local importance to limit potential challenge such as by judicial review..

**Q7c: Do you agree that the Secretary of State should also be able to recover for their own decision any delegated case, at any point, before a final decision is made?**

Yes.

**Q7d: What sort of cases would be suitable for a delegated decision? Would it only be appropriate to delegate decisions that do not raise issues of more than local importance?**

No comment.

**Q8: Do you agree that the communication of decision letters and Inspector's reports on compulsory purchase orders can be undertaken electronically, subject to ensuring that parties who did not have electronic access, or who requested a hard copy, continued to receive the relevant information by post?**

Yes

**Q9: Do you agree that the remedies available to the Courts should be widened to allow them to quash the decision to confirm an order as an alternative to quashing the order?**

Yes. This will ensure that an acquiring authority does not have to go back to the beginning should the decision to confirm (rather than the substantive arguments of fact of the acquisition) be flawed.

**Q10: Do you think there is a need to change the method of challenging a decision not to confirm a compulsory purchase order from judicial review to statutory High Court challenge?**

Yes. This will ensure that both the acquiring authority and the landowner can undertake a similar process.

**Q11a: Do you think that there is a need to extend the time allowed to implement a compulsory purchase order in the event of an unsuccessful legal challenge?**

Yes.

**Q11b: If the time to implement should be extended, would your preference be for:**

- **i. a flexible period of extension reflecting the time taken to achieve final determination of the challenge; or**
- **ii. a set period only in all cases? Please specify what set period of extension should be granted.**

A fixed period equivalent to the time lost due to the pursuit of the challenge from inception to decision.

**Q12: Do you agree that the notice period before entry to land authorised to be acquired by compulsory purchase should be three months? If not, specify what alternative period would be appropriate.**

Yes, However, there should be the ability to vary this where seasonal constraints such as habitat reasons or planned openings for commercial operations could be significantly detrimentally affected by this period..

**Q13a: Do you agree in principle that there should be a mechanism to enable a claimant to require the acquiring authority to take possession after the specified date of entry?**

Yes.

**Q13b: If a mechanism were introduced - do you prefer Option 1 - to allow the claimant to serve a "reverse notice of entry" or Option 2 that the acquiring authority should be deemed to have entered and taken possession on the "on" date, whether or not they had actually done so?**

Option 1.

**Q13c: If option 1 were to be taken forward, do you agree the defined period, where a reverse notice of entry can be served, should be 28 days after the earliest date for entry?**

Yes.

**Q14: Do you agree that there should be provision for a new notice to treat / General Vesting Declaration in the circumstances outlined in this consultation paper in Paragraph 75.**

Yes. .

**Q15: Do you agree that when obtaining entry by means of a General Vesting Declaration, the General Vesting Declaration must be executed within three years of the date of operation of the compulsory purchase order, in order to exercise the powers of compulsory purchase?**

Yes.

**Q16: Do you agree that the alternative method of obtaining entry in section 11(2) of and Schedule 3 to the Compulsory Purchase Act 1965 should be repealed?**

Yes as it is rarely used. .

**Q17: Do you agree that claimants should be required to submit a prescribed form of claim before requesting an advance payment of compensation?**

Yes, provided the prescribed information sought in the claim form gives the claimant the opportunity to present a full and relevant case for advanced payment.

**Q18a: Do you agree that a claim for an advance payment should be allowed to be made at any time from the date of confirmation of the compulsory purchase order?**

Yes. The intention is to give assistance to claimant when proper to do so; when the claim is made should not be a consideration provided the test is met.

**Q18b: Do you agree that the earliest date on which an advance payment can be made should be brought forward to two months after a claim or the date of the Notice to Treat or execution of the General Vesting Declaration, whichever is later?**

Both should be permitted so that, on a case by case basis, the most appropriate option can be used.

**Q19a: Do you agree that there should be time limits on requests for additional information from acquiring authorities when processing claims for advanced payments?**

Yes. Whilst it is important that Acquiring Authorities have the opportunity to return to the claimants and ask for clarity in their claims, claimants make their claims because of need and should know when they will get an answer and can plan effectively.

**Q19b: If so what time limits should be imposed?**

Yes. The time limit should be 28 days.

**Q19c: Do you support the introduction of fast-track decision process to deal with disputes over claims for advance payments?**

Yes.

**Q19d: If so, how might this be achieved?**

Mediation in the lower tier of the Lands Chamber would be both expert, quidk and cost effective for both parties.

**Q19e: Who might provide such a service?**

See above.

**Q19f: How might a service be funded?**

A fee to be paid by both parties with the possibility of requiring the loser to pay both fees where their application is considered to be vexatious.

**Q19g: Do you have any proposals for a sanction against acquiring authorities who do not make payments on time?**

A penal rate of interest payable from when the payment could reasonably have been made.

**Q20a: Do you agree that the rate of interest should be pegged to the Bank of England base rate?**

Yes.

**Q20b: Do you agree that the prescribed rate should be set at 1% above the Bank rate?**

Yes.

**Q21: Do you agree that legislation should be introduced to require compound interest to apply?**

No, this is does not apply usually in court proceedings..

**Q22: Do you agree that setting a 1% interest rate floor is fair on all parties concerned?**

Yes.

**Q23a: Do you agree that encouraging the transfer of mortgages to avoid negative equity is a worthwhile and fair proposal to pursue with industry?**

Yes.

**Q23b: If government is unable to secure agreement with industry do you agree that such protections should be implemented through legislation?**

Yes.

**Q24a: Do you agree that existing powers to override covenants and easements should be extended to other acquiring authorities, acting in their capacity as statutory undertakers or in the exercise of their public functions?**

Yes.

**Q24b: Do you have any comments on the proposal that where overriding by those authorities is to facilitate commercial development on land acquired for public works, the basis of compensation should be open market value, rather than diminution to the value of the claimants land (as is currently the case for local authorities)?**

Open market value should be adopted. Giving other acquiring bodies powers to override covenants and easements at diminished value should be limited to the pursuit of their primary purposes. Where they are seeking to act in competition with the market, they should be given no special advantages.

**Q25a: Would you prefer harmonisation which:**

i. **allows entry to land and vesting of title before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures; or:**
ii. **involves a procedure similar to requiring acquisition of the whole under the current general vesting declaration procedure that would apply also to the notice to treat procedure, which prevents entry on to the land and vesting of title before the dispute has been determined. Please explain why.**

Option 1. .

**Q25b: Do you agree to allow the material detriment provisions to be disapplied in compulsory purchase orders for the acquisition of rights through subsoil?**

Only where, after full assessment, it would amount to a fair balance between public interest and private loss..

**Q25c: Are there any other options to achieve harmonisation of the treatment of material detriment?**

No comment.

**Q26a: Do you agree that the measures listed in paragraphs 124, 125 and 126 will provide modest net benefits for business interests, or have a negligible impact? If you disagree, please specify which measures may not provide modest net benefits or have negligible impact?**

Yes.

**Q26b: Do you agree that cost savings to all claimants as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to all acquiring authorities? Please explain the basis of your response?**

This is not an appropriate consideration. Where advance payment are justified, implementing the proposals would fulfil the consultation paper's stated aim of making the CPO system fairer to those having their property compulsorily acquired.

**Q26c: Do you agree that cost savings to business as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to acquiring authorities that involve business interests? Please explain the basis of your response.**

See above.

**Q26d: Do you agree with our assumption that the average amount claimed by a business is typically larger in monetary terms than the average amount claimed by an individual homeowner? Please explain your response.**

No comment.

**Q26e: Do you agree with the assumption, set out in the consultation stage impact assessment, that there is an average of 15 household claimants per compulsory purchase order? Please explain your response.**

No comment.

**Q26f: Do you have any further comments on the likely impact of these proposals on business interests, including the assumptions we have adopted for proportions of compulsory purchase orders with business interests, both in respect to the acquiring authority or the claimants?**

No.

**Q27: Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.**

No.

AR would be very pleased to discuss our comments with you further.

Yours Faithfully

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