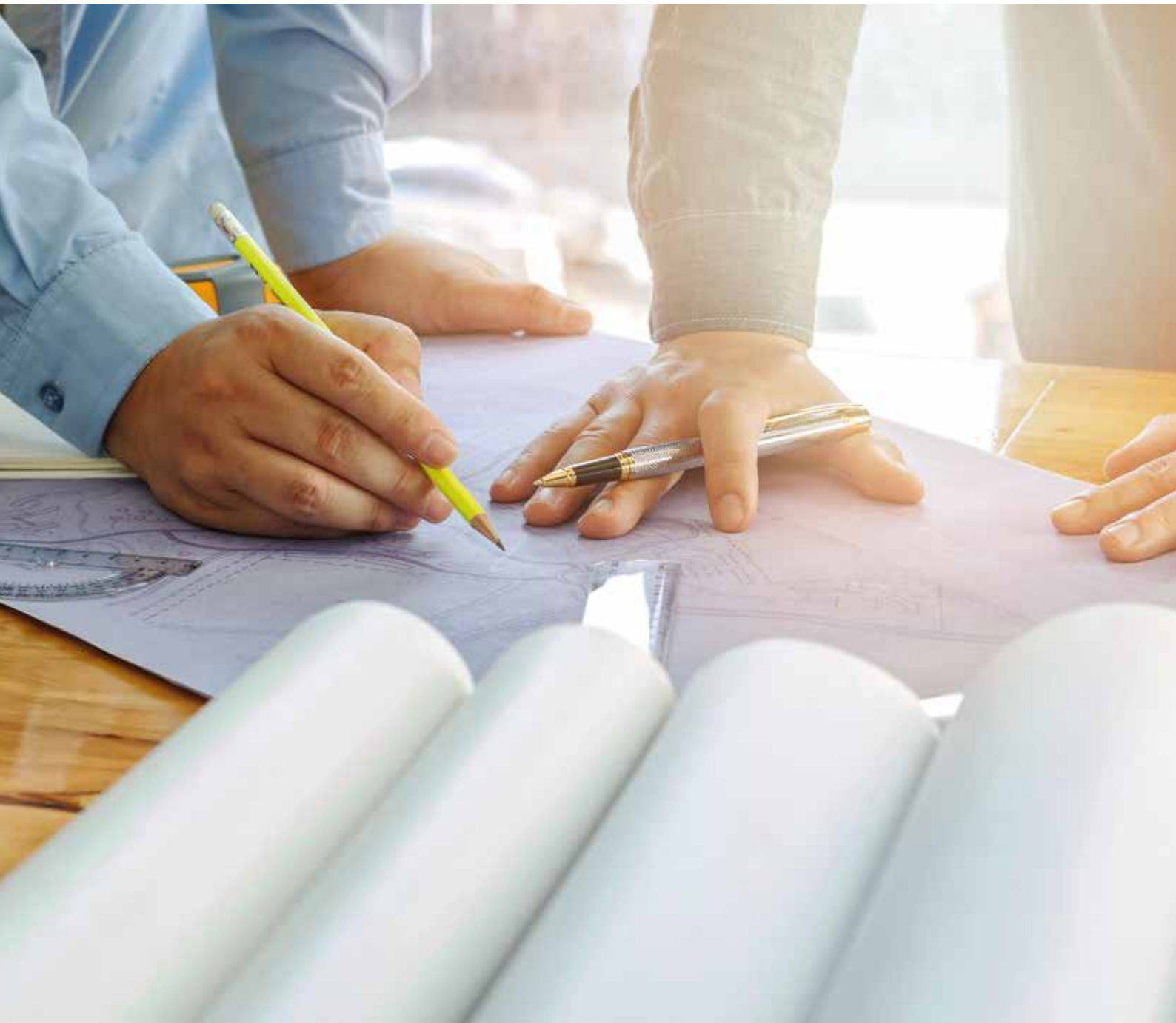


Compulsory purchase orders: 2017 update

November 2017



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Foreword

Compulsory purchase can be incredibly helpful to investment and community building, when used appropriately by local authorities, helping them bring forward much-needed housing and package parcels of land in ways that support regeneration. Despite its benefits, this report confirms that CPO remains an under-used process – particularly when compared to the frequency of applications during the pre-recession period.

With the country facing a housing crisis, proposals for Garden Towns/Villages and more development on complex urban sites will likely gather pace and local authorities therefore need to be supported in the understanding of the tools at their disposal. Increased use of CPOs will not act as a silver bullet to addressing these challenges, and there are other means of supporting the development of new housing and regeneration – better resourcing of planning departments; improved and more transparent engagement between the public and private sector; and innovative thinking around infrastructure funding, for example. However, even if we are to accept these relatively low levels of use as the “new normal”, it is clear that increasing its use could still go a long way to unlocking more sites and more housing.

This report finds that CPO remains a complicated and expensive process. Reforms proposed in the previous Parliament would help simplify this process, but are yet to come into force, and we would urge Government to bring these forward and consider how to go further in their reform. Empowering and encouraging local authorities to be more proactive with the use of CPOs will likely go a long way.

Legislative change will no doubt prove difficult within the current parliamentary constraints, and Government will look to the industry to come forward with ideas, and evidence, to help support its agenda. The BPF therefore welcomes the findings and recommendations of this excellent report as it adds to a helpful body of evidence, and looks forward to working with Womble Bond Dickinson, Government and all our members to bring forward much-needed reform and regeneration.

**Melanie Leech,
Chief Executive,
British Property Federation**



Introduction

This is the fourth in our series of reports looking at the usage and success rates of compulsory purchase orders (CPOs), principally those made under the Town and Country Planning Act 1990 s226 (1)(a) (ie **Planning CPOs**) and those made under the Housing Act 1985 s17 (ie **Housing CPOs**).

In our previous reports we have assessed Housing and Planning CPOs both quantitatively and qualitatively.

Our first report in 2010 contained a statistical analysis of the outcomes of CPOs, analysing how many were confirmed (with or without modifications), how many were not confirmed and how many were treated as withdrawn. The report also reviewed Secretary of State decisions and case law.

Our second report in 2012 contained a purely statistical update of the figures through to the end of 2011.

Our third report in 2015 was a more extensive review containing both a statistical update and a detailed review of Secretary of State decisions through to the end of 2014. The report also included details of levels of implementation of confirmed orders based on information collated from Acquiring Authorities.

This fourth report in our series continues the statistical assessment through to the end of 2016 and looks at Secretary of State “not confirmed” decisions in 2015-2016; ie it seeks to identify why some CPOs were not confirmed.

In large part, this report echoes many of the key messages of previous reports:

- CPOs are a vital tool for regeneration
- Success rates for both Planning and Housing CPOs remain high
- There are a range of reasons, from technical to evidential, why some CPOs were not confirmed
- A significant number of local authorities make use of compulsory purchase powers but generally do so sparingly.

However, this report additionally makes the following findings.

As regards the statistical assessment:

- In 2015, 57 Planning CPOs and 54 Housing CPOs were submitted respectively. In 2016, 40 Planning CPOs and 39 Housing CPOs were submitted. These figures are toward the lower end of the range of CPOs submitted annually in the years 2003-16 covered by our previous research. Moreover, the range of 40-60 CPOs per year for both Planning and Housing CPOs reflects the “new normal”.
- Both Planning CPOs and Housing CPOs continue to demonstrate high levels of success.
- The figures indicate that:
 - for Planning CPOs at least 87% in 2015 and 82% in 2016 succeeded. This may be even higher when considering withdrawn CPOs due to acquisition by agreement
 - for Housing CPOs the equivalent figures are at least 79% in 2015 and 88% in 2016.
- This level of success is consistent with previous years and demonstrates an established, long-term trend.
- In terms of the time taken to determine CPOs, there is continuity for unopposed orders. For example, unopposed Housing CPOs were determined on average in 70 days as compared with an average 63 days in 2013, the last year for which comparative figures are available. Similarly the figures for unopposed Planning CPOs would suggest (subject to the adjustments noted

below) that the average is 98 days, identical to the 2013 figure.

- In short, it takes on average two months for an unopposed Housing CPO to be determined once it is submitted to the Secretary of State for confirmation and three months for an unopposed Planning CPO.
- For both opposed Housing and Planning CPOs it appears to be taking longer to determine these. Most significantly, opposed Housing CPOs would appear to be taking three times as long to determine as they did in 2013, notwithstanding that it may be assumed that most were determined by way of written representations.
- We have collated all Planning and Housing CPOs submitted between 2003 – 2016 by region. As previously reported, the North West of England and London regions predominate in terms of totals of CPOs submitted.
- Within the regional figures, however, there is a wide range of usage. The data supports our previous conclusions that:
 - Many authorities have used their compulsory purchase powers but do so sparingly
 - A relatively small number of authorities account for a significant proportion of CPOs made.

We have reviewed the reasons why the Secretary of State has not confirmed Housing and Planning CPOs in 2015-2016.

- The reasons for non-confirmation of Housing CPOs include:
 - Whether the property is vacant or in limited use – assessment of extent of actual use of the property
 - Individual circumstances of the owner
 - Degree of harm caused by the CPO and insufficient to warrant confirmation
 - Engagement of PSED¹ and ECHR² – including a failure to accommodate disabilities
 - Failure to show CPO was being used as a “last resort”,

1. Public Sector Equality Duty

2. European Court of Human Rights

- Compliance with an undertaking whilst not fulfilled by the owner but sufficient work had been undertaken
- The reasons for non-confirmation of Planning CPOs include:
 - Conflict with Ministerial Statement
 - Failure to assess alternative schemes
 - No longer any need for confirmed order
 - Late attempt to change purpose of order
 - owner's recent limited improvements being sufficient
 - Lack of detail in the Council's case as to compliance with Guidance (including failure to assess alternatives)
 - Planning permission not being conclusive of need
 - Where the case is finely balanced
 - 'benefit of doubt' to the objector.

There is evidence of an increasingly detailed assessment being required of the individual circumstances of landowners and occupiers when weighing the proportionality of interference with their rights, including the application of the PSED. Significantly this approach is not limited to the Aylesbury Estate Planning CPO decision (a large phased regeneration scheme which attracted the media headlines) but has also been applied to much smaller, single property Housing CPOs in which the individual circumstances of the respective owners have been considered in detail.

The application of PSED and human rights considerations, on a fine-grained basis, represents a greater focus in approach and requires consideration by an acquiring authority of PSED and human rights both at an early stage of the process of intended acquisition and on an on-going basis; as well as a greater understanding of affected parties' needs and therefore a greater level of engagement. Omissions cannot readily be rectified at inquiry or written representations stage. Moreover, acquiring authorities are well advised to

remember that not only must negotiations be undertaken proactively; they must also be seen to have been undertaken. In opposed cases, the Secretary of State will expect "chapter and verse" of efforts to acquire and negotiate. In finely balanced cases "the benefit of the doubt" may well be given to an owner. This is, perhaps, a lesson which has been taken from the examination of Nationally Significant Infrastructure Projects and the approach being taken to the examination of those applications.

It is difficult to be certain how many CPOs are dealt with by way of written representations as against by way of public inquiry since the National Planning Casework Unit (NPCU) does not keep its records on that basis. However, given the content of Guidance and from experience as practitioners, it may reasonably be assumed that it is the more complex CPOs that are dealt with by way of public inquiry. Those of course tend to be Planning CPOs rather than Housing CPOs. It is notable that five of the eight CPOs not confirmed by the Secretary of State in 2015-2016 were determined by way of written representations, including all of the Housing CPOs that were not confirmed. Moreover, each of those Housing CPOs took over a year to determine.

Our impression is that more CPOs are being determined by written representations rather than by way of public inquiry. Given that wider use of written representations was intended to produce time-savings it is striking that the opposite, in fact, appears to have happened albeit the sample is relatively small.

The written representations process is front-loaded in that it imposes relatively short deadlines on the acquiring authority to make additional representations and thereafter for additional submissions by both the objector and acquiring authority. Thereafter however, there is no fixed timetable or deadline within which the Secretary of State must make this decision. Anecdotally, it appears that written representation decisions simply

join the same queue awaiting an Inspector. We would recommend that this aspect of the system be reviewed to check whether our observations are well-founded and, if so, how time-savings can be achieved. At the time of this report's publication, the provisions of the Housing and Planning Act 2016 to introduce timetables for the determination of CPOs, as well as the ability for inspectors to confirm CPOs, have not been brought into force. Those changes could have the effect of speeding up the process and also provide greater certainty for all involved.

Lastly, where a CPO is limited to a single property (most likely a Housing CPO) but nonetheless the detailed circumstances of individuals are crucial (and possibly determinative) to assessing the proportionality of State interference with rights, then it may be more appropriate in some cases for some form of hearing or inquiry to take place rather than reliance on the basis of written representations.

Statistics



Planning and Housing CPO Statistics 2015 – 2016

Figure 1 below indicates that:

In 2015:

- Local Authorities submitted 57 Planning CPOs. This is almost identical to the 58 Planning CPOs submitted in the previous year, 2014.
- 54 Housing CPOs were submitted, representing a 19% decrease from the 66 submitted in 2014.

In 2016:

- 40 Planning CPOs were submitted. This is the joint second lowest annual total in all the years covered by our research since 2003. In 2009, 40 Planning CPOs were submitted. In 2013, 36, the lowest annual total were submitted.
- 39 Housing CPOs were submitted. This represents a low annual total. Indeed in the years covered by our research only 2012 (with 37 CPOs) saw a lower total of Housing CPOs submitted.

As we have previously reported, in terms of the longer term trend set out in figures 2 and 3, the number of Planning CPOs submitted continue to be within a range significantly lower than pre-recession figures.

To the extent that the use of Planning CPOs can be considered to be a proxy for economic and redevelopment activity, and in particular as a barometer of economic confidence, the longer term annual figures of Planning CPOs in the broad range of 40 – 60 represents the “new normal” at a much lower level.

We have previously caveated our reports to suggest that decreased usage of Planning CPOs continued to reflect subdued economic confidence in previous years because of the long lead-in times to prepare some CPOs. However, that position appears increasingly difficult to sustain. There does not presently appear to be any indication of a revival of Planning CPO usage to pre-recession levels of 70 – 80 per annum.

Levels of Housing CPO usage have tended more to reflect access to public sector funding by local authorities, as opposed to general economic activity. Previous increases in annual figures reflected the undertaking by a small number of Councils of targeted programmes of improvement. The spike in usage in 2013, for example, represented two or three Councils being particularly active in that regard. The submission of 54 Housing CPOs in 2015 and 39 in 2016 respectively fall broadly

within the range of 40 – 60 also displayed in years 2009 – 2012 inclusive. The figures for 2013 therefore increasingly appear to be an outlier as against the broad range of 40 – 60 Housing CPOs submitted per annum.

In previous years we have emphasised the more volatile pattern of Housing CPO submission. That remains the case to this extent. The four highest annual figures during the years covered by this report are all for submission of Housing CPOs (2003, 2004, 2006 and 2013 respectively). From 2009 – 2016, however, in six of these years, the number of Housing CPOs fell within the range of 40 – 60 i.e. very similar to Planning CPOs. 2013 is the outlier in which 92 Housing orders were submitted followed by 66 in 2014.

We would suggest that such a level now reflects the default level of absent targeted programmes with high levels of usage. The levels experienced in 2015 and 2016 would suggest that the 2013 figure very much represents the exception to the present trend.

Figure 1
Planning and Housing CPOs submitted 2015 – 2016 totals

	2015	2016
Planning CPOs submitted (including those not determined)	57 (23 opposed)	40 (23 opposed)
Housing CPOs submitted (including those not determined)	54 (13 opposed)	39 (4 opposed)

Planning and Housing CPOs submitted 2003 - 2016

The change in the numbers of Planning and Housing CPOs submitted each year for the period 2003 – 2016 is illustrated in Figure 2. The figures for 2015 and 2016, as noted above, are consistent with the figures for 2009 – 2012 inclusive. 2013 is an exceptional outlier for reasons previously analysed. The overall pattern from 2009 onwards suggests that 40 – 60 is the range of Planning CPOs that can reasonably be expected to be submitted each year.

Similarly the level of usage of Housing CPOs, after a spike in 2013 and an above average figure in 2014, has returned to a level of usage very similar to that of Planning CPOs, in the range of 40 – 60 per annum.

Planning and Housing CPOs determined 2003 - 2016

Figure 3 shows the figures for Planning and Housing CPOs determined in any given year broadly track the level and pattern of submissions.

Planning CPOs

Figures 4 and 5 show how Planning and Housing CPOs respectively were determined in 2015 and 2016.

There are relatively few surprises in those results when compared against previous years. The pattern of determination of CPOs remains reasonably consistent.

As indicated in Figure 4, Planning CPOs continue to demonstrate high rates of success:

- The percentage of CPOs confirmed without modification (including those referred back to acquiring authorities for determination) remains high at 58% and 52%, albeit slightly down in 2012 – 14 with figures of 66%, 64% and 67% respectively.

- That decrease is however offset by an increase in Planning CPOs confirmed with modification: 29% in 2015 and 30% in 2016. That contrasts with 9%, 26% and 18% in the prior three years.
- When confirmations, both with and without modifications, are considered the totals for 2012 to 2016 are: 75%, 90%, 85%, 87% and 82% respectively.
- Moreover, orders categorised as “withdrawn” have invariably been withdrawn because acquisition by agreement has been achieved against the background of a CPO such that it is no longer necessary to pursue the CPO. If the figures for “withdrawn” CPOs are added to the confirmations, then in 2015 94% of CPOs may be considered to have succeeded and 91% in 2016.

Housing CPOs

Figure 5 indicates how Housing CPOs were determined in 2015 and 2016. The results for 2015 and 2016 continue the trend set in 2014.

Key points to note include:

- Success rates for Housing CPOs remain high.
- Total confirmations (i.e. confirmations both with and without modification) were 79% (2015) and 88% (2016) respectively.
- Figures for confirmations without modification (70% in 2015, 72% in 2016) are similar to the 2014 figure (69%) but lower than the figures of 76% in 2010 and 80% in 2013. However all these more recent figures are higher than the averages for previous years for which data is available: 62% (2003 – 2009), 61% (2010) and 68% (2011).
- The figures for confirmations with modifications (9% in 2015, 16% in 2016) are broadly consistent with the range of recent years (14%, 9% and 11% in 2012, 2013 and 2014 respectively).

- The annual percentages for CPOs not confirmed are 2% in 2015 and 6% in 2016. Again these fall within the broad range of recent years: 3% (2012), 6.5% (2013) and 7% (2014).
- As previously, there has been a degree of inconsistency as to how “not confirmed” decisions are recorded by NPCU³ as against “withdrawn”. However, after checking with NPCU the data has been corrected in order that “not confirmed” reflect only those CPOs actively not confirmed by the Secretary of State as against orders withdrawn by acquiring authorities when acquisition by agreement has been achieved.
- In 2015 14% of CPOs were withdrawn. In 2016 that figure was 6%.
- Possibly the most meaningful assessment of successful use of compulsory purchase is to combine confirmed, confirmed with modifications and withdrawn figures. That produces the following figures: 93% in 2015, 94% in 2016. These figures are consistent with previous years. Success rates may therefore safely be considered to fall within the 90-95% range.

3. National Planning Casework Unit

Figure 2
Planning and Housing CPOs submitted 2003-2016

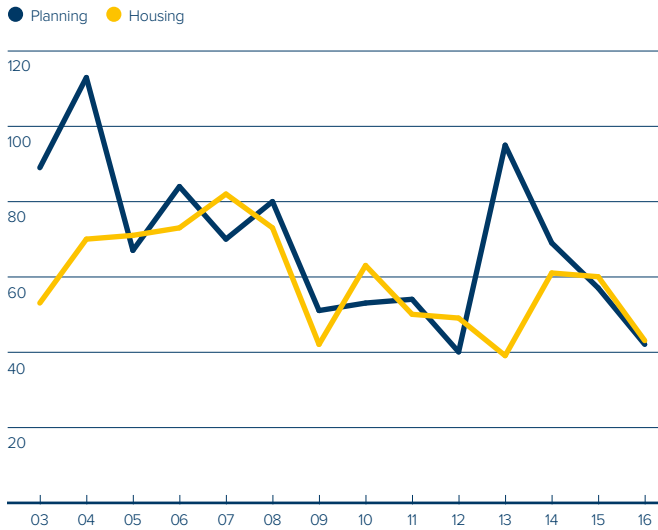


Figure 3
Planning and Housing CPOs determined 2003-2016

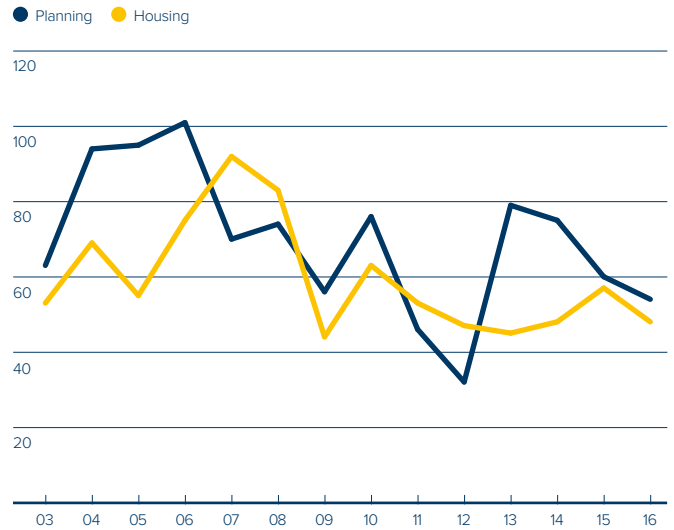
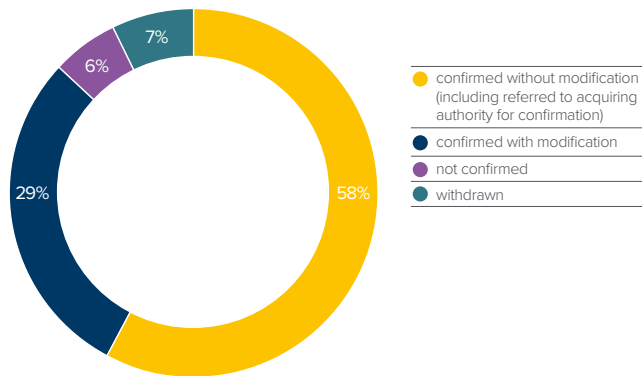


Figure 4
How Planning CPOs were determined 2015



How Planning CPOs were determined 2016

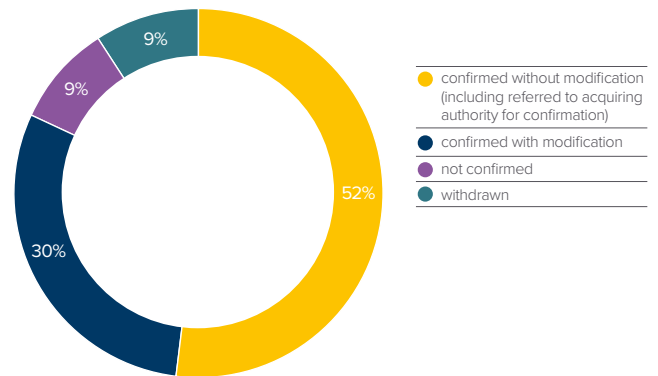
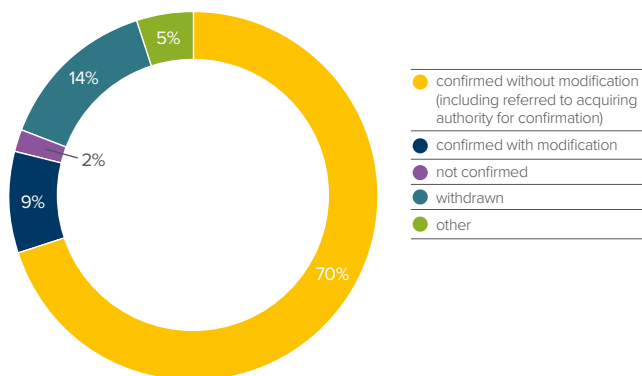
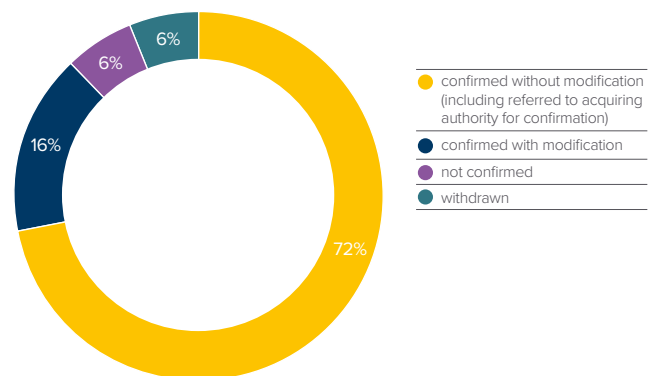


Figure 5
How Housing CPOs were determined 2015



How Housing CPOs were determined 2016



Timescales to determination

Figures 6 to 8 below provide a breakdown of the time taken by the Secretary of State to determine CPOs. These figures represent the time (in days) between first receipt of a CPO by the Secretary of State and the CPO being determined (ie confirmed, not confirmed, remitted to the acquiring authority for decision or treated as withdrawn by letter).

Figure 6
Planning and Housing CPOs determined in 2016

	Opposed (days)	Unopposed (days)
Planning	383	168 (98 excluding 2 outlier decisions)
Housing	420	70

Figure 6 sets out the time taken in 2016 to decide both Planning and Housing CPOs differentiated between those CPOs that were opposed and those unopposed.

The following key points are worthy of note:

- The 2016 Planning CPO figures for opposed orders (383 days) compare with 323 (2012) and 281 (2013) in the last years for which the figures are available.
- The 2016 figure for unopposed Planning CPOs is 168. However, this figure comes with a health warning because it includes two “outlier”

figures of 686 and 906 days respectively for determination of CPOs. These are 2 – 3 times higher than any other unopposed order and may reflect a mis-posting of data. If those figures are excluded, an average of 98 days results. This is in fact, more or less identical to the 2013 Planning unopposed CPOs figure.

- For Housing CPOs, the figure of 70 days for unopposed orders is in line with the last available figure of 63 days for 2013.
- The average time taken to determine opposed Housing orders has, however, increased significantly. It was 420 days in 2016, as compared with 296 in 2012 and 119 in 2013, the last years for which figures are available, and so a significant increase in the determination period.
- Looking at the time taken to determine the “not confirmed” Housing CPOs, suggests that these decisions were taking at least a year to determine, even though they all followed the written representations process.
- Indeed what may warrant further investigation is the extent to which the written representations procedure results in time savings. The process is front-loaded in that it imposes relatively short deadlines of the acquiring authority to make additional representations and thereafter for additional submissions by both the objector and acquiring authority. Thereafter, however, there is no fixed timetable or deadline within which the Secretary of State must make this decision. Anecdotally it sometimes

seems that written representation decisions join the queue awaiting an Inspector. Moreover, we understand from NPCU that its database does not include a filter to establish whether a case went to Public Inquiry or was dealt with by way of written representations, so it has not been possible to take that point further at this time.

- It would appear from the data in Figure 6 that there is considerable consistency in the time taken to determine unopposed CPOs. In broad terms this amounts to around 3 months for unopposed Planning CPOs and around 2 months for unopposed Housing CPOs (subject to the caveat above).
- However, opposed Planning and Housing CPOs, appear to be taking longer to determine. The most significant increase is in the time taken to determine Housing CPOs – a threefold increase in the time taken since the latest available figures in 2013.

Figures 7 and 8 further differentiate the time taken by the Secretary of State to determine CPOs.

Those CPOs referred back to the acquiring authority to be able to confirm are of course unopposed orders. These figures are, therefore, broadly consistent with the time taken to determine unopposed orders in Figure 6 above (which includes all unopposed orders).

Figure 7
Planning CPOs determined in days 2015 – 2016

	Confirmed (by Secretary of State) without modifications	Confirmed (by Secretary of State) with modifications	Referred to Acquiring Authority for confirmation	Withdrawn	Not Confirmed	Overall Average
2015	325	265	49	179	397	189
2016	322	329	235	133	477	304

Planning and Housing CPOs submitted 2003 – 2016 by region

Figures 9 and 10 provide an overview of Planning and Housing CPOs submitted 2003 – 2016 by region.

As indicated in our previous reports the greatest use of planning compulsory purchase powers has been in the North West and London followed by the West Midlands.

Housing CPO usage follows a similar pattern, with the North West and London regions again leading the way. The West Midlands as well as the Yorkshire and Humberside regions have also made significant numbers of Housing CPOs.

However, within the regional totals there are very significant variations between local authorities. A full list of all of those local authorities that have submitted Planning and Housing CPOs is included at Appendix J. From that data the following key points can be discerned:

- Many authorities have used their compulsory purchase powers but do so sparingly.
- A relatively small number of authorities account for a significant proportion of CPOs. This is particularly the case with Housing CPOs, with the distribution of Planning CPOs being somewhat more even.
- The total of CPOs submitted by Great Yarmouth is a little misleading since the Council's legal department promoted orders on behalf of other authorities, but NPCU's records, particular in earlier years, lists CPOs under Great Yarmouth's name.
- CPO totals in the London region reflect a wider and more regular use of powers. Even against that background of broader usage the programme of Housing CPOs made by Newham stands out.
- In the North West, as previously reported, the extensive use of housing compulsory purchase powers by Burnley and Wigan Councils, and of planning compulsory purchase powers by Liverpool and Manchester City Councils respectively, contribute significantly to the results.
- In the West Midlands, Birmingham and Wolverhampton Councils have made substantial numbers of Housing CPOs, with the former also making 19 Planning CPOs.

Figure 8
Housing CPOs determined in days 2015 – 2016

	Confirmed (by Secretary of State) without modifications	Confirmed (by Secretary of State) with modifications	Referred to Acquiring Authority for confirmation	Withdrawn	Not Confirmed	Overall Average
2015	347	66	65	367	400	170
2016	286	181	79	169	359	156

Figure 9
Planning CPOs submitted 2003 – 2016 by region

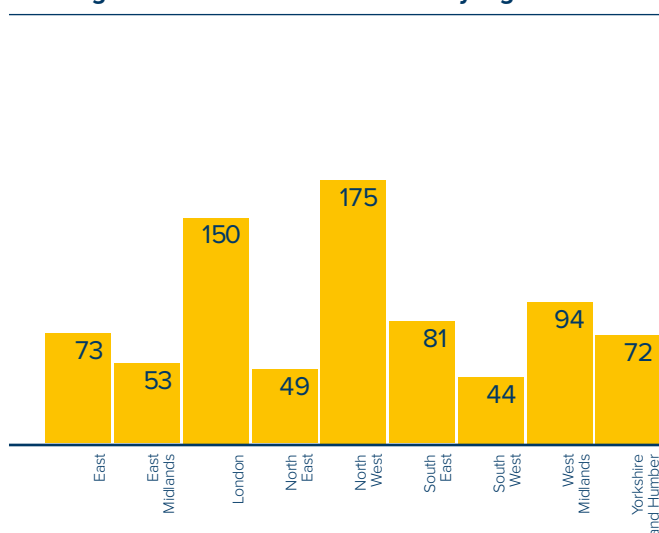
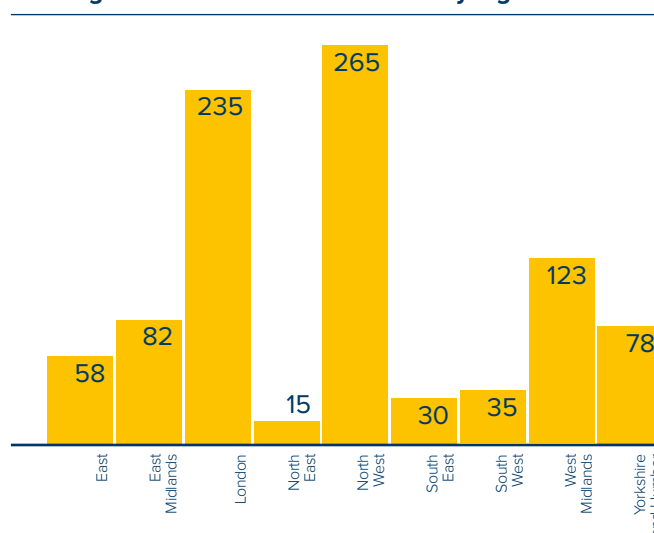


Figure 10
Housing CPOs submitted 2003 – 2016 by region



Housing CPOs 2015-2016



Housing CPOs not confirmed 2015 and 2016

Five housing CPOs were not confirmed by the Secretary of State. Each was determined pursuant to the written representations process.

The key reasons why the CPOs were not confirmed include:

- Nature of vacancy within the property as against extent of actual use of the property.
- Individual circumstances of the owner.
- Degree of harm caused by order lands insufficient to warrant confirmation.
- Engagement of PSED and ECHR – failure to accommodate disabilities.
- Failure to show that the use of CPO was a “last resort”.
- Undertaking not fulfilled by the owner but sufficient work undertaken.

Summary of why some CPOs fail

This report also contains analysis of failed CPOs. Reasons include:

- a CPO confirmed but subsequently quashed on PSED grounds.
- CPOs not confirmed where the acquiring authority had not discharged its PSED duty.
- Inappropriate use of CPO powers.
- Compliance with an undertaking: whilst not fulfilled by the owner sufficient works had been completed to warrant the CPO not to be confirmed.
- CPO not confirmed on heritage grounds and that the intended purpose could be achieved by alternative means.
- CPO not confirmed as an order was no longer required.
- CPO not confirmed where the owner had made improvements to the order land.
- CPO not confirmed – the benefit of the doubt given to the objector where the case was “finely balanced”.
- The Aylesbury Estate CPO case.

The Planning CPO decisions not to confirm appear to be on a trajectory where the reasons not to confirm impinge on the previously separate but parallel issue of compensation. The Housing CPO decisions not to confirm, are fact specific and therefore it is difficult to see or predict the direction of travel regarding reasons not to confirm other than the usual suspects, lack of evidence, no compelling case made, PSED not properly considered.

As regards CPO process, the evidence suggests that proceeding by written representations is no guarantee to a speedy decision nor does it appear to be faster than proceeding by way of public inquiry.

The East Riding of Yorkshire (8 Cave Road, Brough) CPO 2014

CPOs, being site specific, are by definition also fact specific. **The East Riding of Yorkshire (8 Cave Road, Brough) Compulsory Purchase Order 2014** (DCLG decision letter 13 March 2015) was a **Housing CPO** that was determined by consideration of written representations.

Background

The order land comprised a vacant semi-detached house in a “pleasant village location” that had been empty for 20 years and required “full renovation” to bring it back into use. Neighbours had made complaints about its poor condition; including a flooded kitchen, rotten floor and doors, and generally poor condition throughout. The Council had been in contact with the owner but efforts to acquire by agreement had proved unsuccessful.

Council case

The Council wished to see the property brought back into beneficial use as a dwelling in accordance with its Housing Strategy. The Strategy recognised the disproportionately negative impact that high profile empty properties could have on a locality.

If the CPO was confirmed it was proposed that the Council proposed to market the property with requirements for the buyer to carry out all necessary improvements within 6 to 12 months.

Objection

The owner objected principally on the ground that the CPO, if confirmed and implemented, would make him homeless. He stated he had been caring for a friend and had been away “for a considerable period”. He also worked full time and was often not at home. Since October 2013, however, his case was that he had been giving the property more attention. He also disputed the Council’s evidence as to the condition of the property. It had a new central heating boiler and windows installed among other improvements. He argued that the property was safe and habitable.

He further disputed the Council’s case in respect of complaints having been made: this was hearsay. Complaints had not been made to him. Additionally he criticised the Council’s behaviour alleging that unacceptable trespass and surveillance had been carried out.

Inspector’s conclusion

The Inspector’s conclusion was that the objective of re-use of the house was in accordance with local and national policy. However, he considered that the key issue was whether the existing house was being used or was empty together with its condition. The Inspector considered that it was partially furnished and contained necessary facilities for day-to-day living including a kitchen and appliances and a bathroom. However, he acknowledged that there was a long list of problems with the condition of the property. On the other hand, there were many elements of the house’s condition that were not of concern.

The house did not appear to be lived in; there were indeed no furnishings. But the Inspector did not consider that to be definitive evidence that the house was not used from time to time. There were no beds but it was “possible to sleep in a house without a bed”.

This is another case in which the particular facts in respect of the condition and use of the order land were critical. On the question of emptiness as against use, the Inspector's judgement ultimately differed from that of the acquiring authority – he concluded that on that spectrum, there was evidence of use. However, given “the absence of sleeping facilities in the form of beds” this may well be thought not to reflect habitation in the usual sense of that term.

In addition, one must look carefully at the particular circumstances of the individual owner. The Inspector concluded that he was “aware that the current proprietor indicates he would be homeless if the CPO were to be confirmed. His continued visits to the property, brief and intermittent though they are, and limited improvements carried out so far, seem to me to show a longer term commitment to the house”.

However, the onus is squarely on an acquiring authority to demonstrate a compelling need in the public interest for intervention by means of compulsory purchase. Despite not knowing about the Objector's detailed plans for the house and the uncertainty as to the improvements to be carried out, the Inspector was ultimately not persuaded that it was a case where “the defects of the property are so serious that it adversely affects other housing accommodation to any material degree”.

Reasons for refusal:

Extent of actual use of house, individual circumstances of owner and degree of harm caused by order lands

The East Riding of Yorkshire Council (341 Boothferry Road, Hessle) CPO 2015

Orders to which objections are received are handled differently by NPCU from those that do not receive objections. In the case of **The East Riding of Yorkshire Council (341 Boothferry Road, Hessle) Compulsory Purchase Order 2015** (which was a Housing CPO decided by DCLG letter of 17 February 2016) the owner had not technically submitted an objection. The order was therefore registered as “unopposed” because no written objection had been submitted, albeit it was noted that the owner was understood to object. Moreover, the decision was made directly by the Secretary of State on the basis of the written representations received and without an Inspector's report.

Council case

The acquiring authority's case was that the property was in poor condition, had been empty for about 15 years and suffered from neglect, poor management, and overgrown gardens. Complaints had been received from neighbours.

The acquiring authority had contact with the owner who was an elderly lady and made offers to acquire. Indeed the owner had agreed to sell. Contracts had been drawn up but not exchanged because the owner had not made the necessary arrangements to remove personal effects.

The acquiring authority had contact with the owner's social worker and had taken steps such as instructing auctioneers to check the condition of the contents as the owner was unable to travel.

Owner

The owner was an elderly lady in very considerable ill health, which was itemised in the report. She lived in a care home some distance from the order land. The state of her health was considered to amount to her being disabled within the terms of the Equality Act 2010.

Third party representations

Representations were made on behalf of third parties including via the local Member of Parliament. Neighbours were concerned that their security had been compromised as: a dividing wall was near to collapse; the front wall was leaning onto the pavement; the garden was considered to be a gathering point for antisocial behaviour; fences were falling onto neighbours land; and drains were blocked. In short, they argued that the property was derelict.

Secretary of State decision

The Secretary of State however concluded that the CPO should not be confirmed.

There was no evidence that methods of Alternative Dispute Resolution (ADR) had been pursued. There was a deficiency of evidence regarding detailed steps to encourage the owner to bring the property back into use.

No notices under s215 of the Town and Country Planning Act 1990 had been served. It was unclear why this was not considered as an option for securing improvements to the property. This is a process which requires an owner to clean up a property when its condition adversely affects the amenity of the area. In addition the required information (comprising quantitative analysis of housing supply and demand, number of dwellings in the district, total number of substandard dwellings etc) that should accompany a Housing CPO was not included.

By reason of the owner's physical and mental condition the PSED, as set out in s149 of the Equality Act 2010, was engaged. That created a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation.
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Secretary of State noted the disabled status of the owner and concluded *"it appears that the primary reason the owner of the property finds herself in the position of Compulsory Purchase Powers being sought – rather than a voluntary restoration/sale of the property being possible – relates to her physical, and possibly mental disability."*

It was concluded therefore that insufficient attempts had been made to consider alternative options. It was evident from the chronology in this case that the owner had previously consented to the voluntary sale of the property. *"Given the owner's disability one would expect a heightened scrutiny of the effect that the CPO would have in relation to interference with her human rights"*.

Given the owner's state of health, greater efforts should have been made by the Council to accommodate her disabilities in seeking a mutually acceptable solution regarding disposal of the property, whether by facilitating

a voluntary sale, serving a notice under s215 of The Town and Country Planning Act 1990, or otherwise. The Secretary of State therefore considered that the Council had failed to justify compulsory purchase as a "last resort".

This case is especially unusual in that, despite there being no formal objection, the CPO was not confirmed. The absence of a formal objection was perhaps seen as reflecting the owner's individual circumstances that were such as to engage the PSED.

The decision letter sets out the acquiring authority's case including considerable efforts to engage with the owner, her representatives and social worker. The owner's case forming part of the decision letter thereafter simply iterates the owner's ill health and circumstances living in a care home. The decision letter states that *"the owner's ill health appears to render her disabled within the meaning of the Equality Act... as her physical/mental impairments have a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities, hence her inability to live independently"*.

Thereafter, the Secretary of State assesses the acquiring authority's case against the requirements of guidance and in particular efforts to negotiate and provide quantitative housing evidence. It considers in detail the PSED and the ECHR.

The Secretary of State's conclusion that he was unconvinced by the evidence that every attempt had been made to achieve a voluntary sale or to accommodate the owner's disabilities in accordance with the PSED, sets a very high bar for an acquiring authority when dealing with a disabled person. Indeed there would appear to be a very real practical difficulty in demonstrating full and proper efforts to negotiate in circumstances in which an owner's disability makes reciprocal engagement difficult, if not impossible.

Reasons for refusal:

Engagement of PSED and ECHR – failure to accommodate disabilities, failure to show CPO was "last resort"

The Cheshire West and Chester Borough Council (450 Sutton Way, Great Sutton, Ellesmere Port, Cheshire, CH66 4RL) CPO 2015

The Cheshire West and Chester Borough Council (450 Sutton Way, Great Sutton, Ellesmere Port, Cheshire, CH66 4RL) Compulsory Purchase Order 2015, was a Housing CPO, determined by way of written representations (DCLG letter 26 April 2016) where human factor, in the form of a family dispute, was the central issue.

Background

The order property was a single dwelling house on Sutton Way, a main thoroughfare in a primarily residential area of Ellesmere Port. It comprised a two storey, mid-terrace house with lockable enclosed service passage to the rear garden that it shared with its neighbour property. The property had been unoccupied for over four years since the death of the objector's mother.

Council case

The acquiring authority's case was the need to secure the re-habitation and use of the property so as to assist the further potential of any visual and physical decline of the locality. The on-going vacancy of the property meant it was at risk of deterioration. Complaints had been received from concerned close neighbours.

The death of the elderly lady owner of the property had resulted in a family dispute. The property had passed to her two sons, one of whom was the executor. The on-going dispute in turn had prevented positive steps being taken to bring the property back into use.

The brothers seemed unable to agree on what to do with it in terms of sale to a third party or one buying out the other's share. Offers by the Council to facilitate private sector leasing by a housing association had been rejected. The Council's Council Tax department was also having difficulties recovering outstanding debts.

There was no apparent prospect of the brothers reaching accommodation. The most appropriate solution was therefore an order to *"clean the title and allow the property to be brought back into use as much needed housing stock"*.

It was argued that the Council's Empty Homes Strategy aimed to unlock the potential of homes that are empty on a long-term basis and compulsory purchase was identified as a last resort.

Co-owner support for order

Support for the order came from one brother who considered that his brother had not been negotiating properly. Compulsory acquisition would end the difficulties, which he alleged were caused by his brother not discharging duties as administrator of their mother's estate.

Objection

The executor brother however objected on the ground that he was anxious to retain the family home and was in negotiations with his brother, the co-owner of the property.

Site visit

The Inspector undertook a site visit in January 2016. The Council representative attended but the objector did not attend. A phone call to the objector's solicitor elicited the response that the letter arranging the site visit had not been received.

However, Regulation 8(3) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 provides that an Inspector is not bound to defer an arranged accompanied inspection. In this instance the next-door neighbour was able to permit access through the shared enclosed service passage. The Inspector was therefore able to inspect

the exterior of the property front and rear on an "access required" basis, leaving the Council representative to observe.

Parties were subsequently given the opportunity to make further representations on the basis of the inspection.

Conditional withdrawal of objection

The objector's solicitor then wrote to NPCU stating that "the Objector was willing to accept the CPO on the basis that [a] fresh valuation of the property's market value is obtained". Since this did not constitute a clear and unconditional withdrawal of the objection it was not accepted and the order considered therefore on the basis of an outstanding objection.

Inspector's decision

The Inspector made express reference to the requirements set out in paragraphs 110 and 111 of the CPO Guidance concerning orders made under housing powers.

The nub of the problem was that the brothers were unable to agree on a practical way forward. One brother wished to dispose of the property and share the proceeds, whereas the other, who had administrative responsibility, wished to retain the family home for his own use in one way or another and therefore proposed to "buy out" his brother's share.

The Inspector described this situation of estranged brothers as "not at all uncommon".

"The fairness, or otherwise, of the offers made by one brother to the other is not a matter for me. The diligence, or otherwise, of the former in administering his mother's affairs, of itself, is similarly of no direct concern and the effect on their personal lives and wellbeing is likewise immaterial. Moreover, it seems to me that compulsory purchase to, in effect, resolve what is essentially a private dispute, would represent a serious intervention."

The only circumstance in which the Inspector considered that compulsory purchase would be justified would be if

the public interest was so harmed by the consequences of that dispute – i.e. the on-going vacancy – that the case for compulsory acquisition in the public interest was to be a compelling one. That itself is a high bar.

The Inspector was not persuaded in this instance for the following reasons:

- The principle of utilising compulsory purchase powers to acquire vacant housing is well established but this case was simply two brothers failing to agree a sensible accommodation of their differences.
- He noted that Council officers had acted diligently and patiently in the middle of "an increasingly bitter dispute" and that the Council's frustration was well understood.
- Family disputes are identified in the Empty Homes Strategy as one of a number of reasons for vacancy.
- The current condition of the property is "average" or "below average".
- Externally, the property was sound and was reasonably maintained on the whole. The report contained a detailed description and assessment of the property.
- Complaints from neighbours were noted, as was the fact that the Council had considered the possibility of serving a s215 Notice.
- No interior inspection had been undertaken, but there was no reason to doubt that the property remained functional, if dated. It was "perfectly marketable".
- It was in below average condition, especially in relation to the external appearance, but not so as to constitute a serious blight on the neighbourhood.
- Further deterioration was likely to be a relatively gradual process.

Notwithstanding that the Council stated it had no confidence in the owners bringing the property back into use, the Inspector considered that there was no hard evidence to support that proposition. In addition there was no particular shortage of housing in this area.

Above all the use of compulsory acquisition to resolve a family dispute was inappropriate. *“Confirmation of the CPO would no doubt guarantee a fair and equitable division of the value in the house, but that is not material”.*

The Inspector concluded that the balance of considerations was insufficiently clear to conclude that there was a compelling case in the public interest at the present time to compulsorily acquire the house subject to the order.

The key elements in this case were the fact that the on-going vacancy and condition of the property was not such not such as to cause the requisite unacceptable harm as to justify compulsory purchase. In contrast with other decision letters or Inspectors’ reports, no mention is made of either PSED or ECHR. Indeed an interesting point arises where the co-owners of a property subject to a CPO find themselves on opposite sides of the case. It is perhaps a notable omission in this instance as to how their respective human rights stood to be considered.

Written representations

In addition, the application of The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 should also be noted. The Guidance on Compulsory Purchase process sets out the Secretary of State’s approach to the application of such regulations. The policy is “to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate”.

The Regulations prescribe a procedure by which objections to a CPO can be considered in writing if all the remaining objectors agree and the confirming minister deems it appropriate, as an alternative to holding an inquiry. In practice, this can mean that even if an acquiring authority may prefer for a public inquiry to be held, the Secretary of State may direct that the written representations procedure be followed.

One immediate effect of such direction is that an acquiring authority has only fifteen working days in which to make additional representations in support of the case it has already made in its statement of reasons. Thereafter, the objectors also have fifteen days to make additional representations followed by an acquiring authority having the opportunity to make final comments.

If an acquiring authority considers it likely that the written representations procedure may be followed it is prudent to ensure that as full a case as possible is advanced at the outset. Assuming that there will be a further six weeks from the relevant date to submit a fuller Statement of case and, thereafter, evidence for inquiry can leave one under pressure to prepare evidence if the shortened written timescale is imposed.

It is notable that all of the Housing CPOs not confirmed were determined by way of written representations. Where the individual circumstances of the landowner are very significant and possibly determinative of the outcome of a proposed CPO, an interesting question is what level of detailed evidence or information is in practice before the Secretary of State. There is no opportunity for the evidence to be tested forensically by way of cross-examination, although each party does, of course, have the opportunity to comment on the other’s case.

Reasons for refusal:

Limited adverse impact of property, inappropriate to use CPO to resolve private dispute

The London Borough of Haringey (39 Broad Lane N15 4DJ) CPO 2015

The London Borough of Haringey (39 Broad Lane N15 4DJ) Compulsory Purchase Order 2015 was a Housing CPO determined by the Secretary of State (letter dated 5 May 2016) following an Inspector’s report on the basis of written representations.

Background

39 Broad Lane was a Late Victorian end of terrace 3 storey building with single storey front projection and 2 storey rear addition. The area was a mix of residential and commercial uses. Of the sixteen properties in the terrace, nine appeared vacant or disused. Most had shutters similar to the order land.

Council case

The Council’s case was that the property had been vacant for about six years. Windows to the ground floor shop and upper floor flat were boarded up. Floorboards had been pulled up. There was no kitchen or bathroom. The roof had partly fallen in. Debris and rotting wood made it additionally dangerous to visit.

A s215 Notice issued in 2009 had not been complied with. Further visits to the property in 2010 and 2012 indicated further deterioration. The objectors had installed a pull down shutter/grill.

The Council argued that there was significant pressure on Housing in Haringey. Its Empty Property Strategies of 2005-2008 and 2009-2019 respectively provided policy support to reduce the number of empty homes. The Council intended to contract with a registered provider to purchase the property to provide permanent social housing. In addition the objector had provided no schedule of work.

Objector’s case

The Objector’s case was that he had commissioned complete repair of the building. Renovation was expected to last 3-6 months. He also considered that the Council’s case was unsustainable because it was not viable.

Site Visit

When the Inspector carried out his site visit the objector and 2 or 3 colleagues were busy carrying out repairs. All windows had been replaced with new UPVC windows. There were new doors. Roof repairs and extensive internal repairs had been carried out.

Inspector's conclusions

In his conclusions the Inspector referred to paragraph 111 of Guidance as it related to acquisition of substandard properties which may be justified as a last resort in cases where:

- A clear housing gain will be obtained
- The owner of the property has failed to maintain it or bring it to an acceptable standard
- Other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation.

In this instance all three of the above points had been met. However, despite not fulfilling an undertaking he had given, the owner had carried out a substantial amount of work such as: external works to roof, windows and doors; and internal works comprising new floors and ceilings, new staircases, internal partitions, plastering, ceilings, and improved wiring.

The Inspector and Secretary of State therefore concluded that sufficient progress had been made such that the CPO was no longer necessary to ensure that renovation took place.

This was a case in which the owner had given an undertaking to the Council that had not been fulfilled. Nonetheless circumstances had subsequently changed considerably such that the Inspector concluded that so substantial was the amount of work carried out that "it seems inconceivable ...that the owner will not now continue with the renovation and finish the work in order to recoup some of the costs through renting out the flat and the commercial unit."

Reasons for refusal:

Whilst meeting guidance tests for acquisition the owner had carried out substantial work even if in breach of undertaking

The Stevenage Borough Council (53 Archer Road) CPO 2014

The **Stevenage Borough Council (53 Archer Road) Compulsory Purchase Order 2014** was a **Housing CPO** that was confirmed by the Secretary of State but subsequently successfully challenged pursuant to s23 Acquisition of Land Act 1981 on human rights and PSED grounds.

Background

53 Archer Road was a terraced two-storey house with a rear and front garden, which presented a familiar picture of neglect. Its porch and extensions suffered from rotten timber. The gardens were overgrown. Fencing was broken and rubbish had accumulated. It had been vandalised. The interior of the property was in need of repair and extensive refurbishment. The water supply and gas supply had been cut-off and capped-off.

Neighbours had made complaints and in response the Council had served s215 Notices. In response the gardens had been tidied. Further complaints led to further s215 Notices that were not complied with so the Council itself had cleared away materials.

Council case

The Council's case was that it had advised the owner over many years about its Empty Homes Strategy and the potential for intervention. There had been repeated discussions and offers of a Home Improvement Loan. The need for social rented housing in Stevenage is high. There was support for the Council's case from local councillors and neighbours. Although the owner had indicated he would renovate the property, he had not taken steps to do so.

Objection

The owner's objection, comprised in the evidence of Mr W Dennehy, sole director of the company owning the order property, was that it was always his intention to renovate the property and to live there but incidences of crime and anti-social behaviour made it difficult to make good the damage caused. The disrepair of a neighbouring property; for example continued water damage and damp which had caused some of the defects in the property. The requirements of the Council set out during mediation were unrealistic.

Mr Dennehy also made reference to illness that had prevented him taking steps he had wanted to. In addition, criminal activity had caused him to move out in 2009. He had returned in 2012 but had to move out again because of "the actions of others".

He contended that if funds were available to the Council to pursue refurbishment then why couldn't such funds be available to him?

Inspector's conclusions

The Inspector noted that the house was in a state of neglect that had a seriously detrimental effect on the character and appearance of the area. There was no evidence that works to neighbouring property had had any adverse effect on the order property. It was the neglected state of the order property that attracted problems such as deposit of waste and litter. It was a "magnet" for such activity.

The continued neglected state, far from being functionally habitable, combined with considerable efforts undertaken by Council to encourage the objector to renovate the property, indicated that there was little likelihood of the property being restored as a home if the CPO were not confirmed.

There was a need for homes within its area. The Council had necessary resources to purchase the property and to undertake renovation works.

The Council had considered that compulsory acquisition was the most appropriate power. Other powers would not satisfactorily address the unacceptable effects that the property had on neighbours. s215 Notices had previously been used and not complied with. The Council had tried to encourage the owner to contemplate other solutions but the owner had not seen fit to pursue these.

The Inspector's conclusion was that there was a clear need for acquisition of the property because of the harm that it was causing to neighbours in the area and the local need for housing. If confirmed, there was a reasonable prospect that financial resources required to acquire the property and bring forward renovation were available. The benefits of improvement to the area outweigh the private loss. The use of CPO was accordingly proportionate.

On the basis of the Inspector's report the Secretary of State confirmed the order.

However that decision was challenged pursuant to s23 Acquisition of Land Act 1981.

Subsequently a consent order was agreed by the Secretary of State acknowledging that the decision be quashed because the Inspector erred in law in his report. He did not have the necessary regard to "the implications of the claimant's diagnosis of suffering from severe depression for (i) his ability to maintain the property; (ii) his ability to conduct effective negotiations ... in relation to the property; and (iii) his ability to represent himself effectively at the inquiry in relation to his objection."

It was further agreed that "this error amounted to a breach of the PSED... and also affected the human rights balance struck by the Inspector and the Secretary of State under Article 8, and Article 1 of the First Protocol to the ECHR".

In both this case and the Aylesbury Estate case (see below), the Secretary of State has been prepared to submit to consent orders quashing decisions, albeit from different perspectives. In the Stevenage case the order was confirmed but it was latterly accepted that the objector's physical and mental condition and importantly its effect upon his ability to conduct negotiations had not been properly taken into account. That was the case even though the inquiry process was followed rather than that of written representations, presumably affording a greater opportunity for those matters to be explored and tested. This should be contrasted with the East Riding case at Hessle above in which the owner's physical and mental condition was taken into account and given substantial weight so as to warrant non-confirmation of the CPO.

It remains to be seen what will happen in the event that the Stevenage CPO process is recommenced, but it appears that the Secretary of State is setting a high bar when it comes to circumstances in which there are physical and/or mental impediments to an owner fully participating in negotiation with a view to acquisition by agreement.

Reasons for refusal:

Undertaking not fulfilled but sufficient work undertaken

Planning CPOs 2015-2016



Planning CPOs not confirmed 2015 and 2016

Five planning CPOs were not confirmed by the Secretary of State. Three were determined following public inquiries and the other was determined pursuant to the written representations process.

The key reasons why the CPOs were not confirmed and issues involved include:

- Conflict with Ministerial Statement.
- Failure to assess alternative schemes.
- No longer any need for confirmed order.
- Late attempt to change purpose of order.
- Owner's recent limited improvements.
- Lack of detail in Council case as to compliance with Guidance (including failure to assess alternatives).
- Planning permission not conclusive of need.
- Where case finely balanced - "benefit of doubt" to objector.

Liverpool City Council (Welsh Streets Phases 1 and 2) CPO 2013

The **Liverpool City Council (Welsh Streets Phases 1 and 2) Compulsory Purchase Order 2013** was a **Planning CPO** determined by the Secretary of State (letter dated 15 January 2015) following a public inquiry conjoined with an inquiry into the called-in planning application for redevelopment of the order lands. The Secretary of State's decision not to confirm the CPO was made against the recommendations of the Inspector. This was a particularly high profile scheme and CPO that engendered a good deal of publicity at the time, not least because of "the Beatles' factor".

Background

The CPO contained land at High Park Street, Kelvin Grove, South Street and Madryn Street – part of an area known as the Welsh Streets – in Toxteth, Liverpool.

Council's case

The order land comprised ten specific properties within a larger site where planning permission was sought for redevelopment. The order land plots comprised predominately two or three storey terraced dwellings plus a mixture of commercial and retail units.

The Council's case was that the proposed development would deliver a mixed tenure scheme with a balance of household sizes, types and tenures distributed throughout the site.

The order land was referred to as Phases 1 and 2 which together formed Phase A of the conjoined called-in planning application. Within that phase, the application was for the demolition of 279 units and the construction of 154 new dwelling houses together with the refurbishment of existing housing stock. Within Phase A it was proposed that around 116 units would be affordable new build units and 37 would be affordable refurbished units allocated for a mix of rent and affordable ownership and outright sale. 38 of the houses would be for outright open market sale.

The Council contended that the scheme would deliver an attractive, vibrant and sustainable new neighbourhood and that a better choice of homes would, in turn, attract economically active residents to move to the area.

Funding and delivery would be in place via the Council's Capital Programme with Heads of Terms with Plus Dane Group in place and a developer partner to be appointed.

Objection

The principal, indeed one outstanding, objection was advanced by Save Britain's Heritage (SAVE) namely that there were better alternatives. The public benefit would not outweigh the harm and the scheme would not comply with local and national planning policy.

Inspector's report and Secretary of State decision

The Inspector recommended that the order be confirmed with modifications. However, the Secretary of State disagreed and concluded that it should not be confirmed.

Local and National Planning framework

In terms of the planning framework, the Secretary of State disagreed with the acquiring authority and Inspector and concluded that the order scheme would conflict with UDP policies relating to the historic environment and he gave due weight to these policies in the adopted plan. In contrast he attached very little weight to the emerging local plan.

He also considered that the scheme would conflict with local policy in so far as it was concerned to protect local character and also with Paragraph 58 of the National Planning Policy Framework (NPPF).

Notwithstanding that the Secretary of State accepted that the scheme did not conflict with the Council's Housing Strategy, and therefore neither with Paragraph 51 of the NPPF, he considered that the scheme did conflict with the Government position as set out in the Written Ministerial Statement of 10 May 2013. That Statement accepted the recommendations in George Clark's Empty Homes Review requiring refurbishment and upgrading of existing homes to be the first and preferred option and demolition of existing homes to be the last option after all forms of market testing and options for refurbishment were exhausted.

The Secretary of State agreed with the Inspector that the physical condition of properties in Welsh streets was not the result of deliberate neglect or damage and consequently took into account such condition when assessing the heritage value of the streets as a whole.

Heritage and Culture

In terms of heritage and culture the Secretary of State agreed with SAVE's assessment of heritage matters and concluded the Welsh streets were "of considerable significance as non-designated assets of historic, architectural, cultural and social interest."

No 9 Madryn Street was the birthplace of Richard Starkey, better known as Ringo Starr, and had previously been saved in the interests of its cultural significance, along with a further part of Madryn Street. SAVE argued that the demolition of much of Madryn Street would significantly harm the ability to understand and appreciate this part of Liverpool's Beatles heritage. Even though one could no doubt visit similar streets, the Secretary of State placed importance on the actual street where one of the Beatles was born. The regeneration proposal advanced by the Council was therefore considered to be short-sighted and damaging to the future tourism potential of Madryn Street and the Secretary of State concluded that "the surviving built and cultural heritage in the Welsh Streets is of considerable significance".

The Welsh Streets have proximity to Princes Park (Grade II* registered park and garden), the Princes Park and Princes Avenue Conservation Areas, and a group of Grade II listed buildings. Notwithstanding that the order lands were outside the Conservation Area and that there was little inter-visibility, the Secretary of State agreed with SAVE's analysis that a functional relationship between them constituted an important part of the setting. He concluded that the proposed scale of demolition would have a detrimental impact on the setting, character and appearance of the Conservation Area causing some harm to which considerable weight and importance are attached.

The Welsh Streets were also close to Grade II listed villas, terraces and stable blocks dating from 1850-60. These formed part of an area of large houses facing towards Princes Park and comprised significant architectural value both individually and as a group. The Inspector had acknowledged that the

setting of the listed buildings would not be preserved. However, the Secretary of State disagreed with her assessment that the harm to the setting of the listed buildings was small, instead attaching very considerable importance and weight to it.

Density and local character

Local policy required development to be of a density that related well to its locality. Whereas the Secretary of State noted the efforts to achieve a degree of conformity with the existing pattern of heritage and townscape but disagreed that the design would fit in well with the character of the area. Instead he agreed with SAVE that the design of the proposal failed to respond to local character, history and distinctiveness. Notwithstanding the retention of some street names and orientation of streets, the existing character would be lost, existing density would be halved by a "suburban" approach and a broken street pattern created, with an excess of parking spaces. Provision of open space was also considered to be excessive given the amount in the area.

Alternatives/reduced intervention

In terms of social well-being the Secretary of State was unconvinced that the appraisal exercise of renewal/refurbishment alternatives was wide enough in scope and analysis.

In light of the Written Ministerial Statement he considered that some demolition might be justified but not the scale of demolition proposed. He was unconvinced that sufficient forms of market testing and options involving refurbishment had been exhausted. Therefore, although the proposal did not conflict with paragraph 51 of the NPPF or with the Council's own Local Plan policies, it did conflict with the Ministerial Statement and that was accorded considerable weight.

As regarding the order scheme within the context of housing supply the Council could demonstrate a five year housing land supply plus a 12% buffer. The net loss of 210 units would, therefore, have no adverse effect on the adequacy of housing land supply.

However, an alternative scheme, if viable, would involve substantially less demolition and correspondingly more refurbishment. In that way the Secretary of State considered that the upgrading of "intrinsically characterful" Victorian homes to modern standards could deliver "a broadly comparable package of social, economic and environmental benefits to the area".

The Secretary of State accepted the Inspector's conclusion that the proposals would meet the aim of paragraph 50 of the NPPF to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. However, in his view "so too would a future for the Welsh Streets involving less demolition and more refurbishment that would retain more of its heritage value."

Economic benefits

The Secretary of State also agreed with the Inspector's assessment of the economic benefits of the scheme but agreed with SAVE that the scheme was short sighted in terms of the heritage benefits and future tourism benefits.

Viability

The scheme was viable and capable of being delivered. In contrast, no specific alternative scheme had yet to be demonstrated to be viable. However, crucially the Secretary of State considered that not all alternatives or options had been assessed, including an intermediate scheme involving more selective demolition. Although some demolition may be justified, the Secretary of State was not persuaded that the proposed scale of demolition was justified.

Accordingly his conclusion was that the purpose for which the land was proposed to be acquired did not accord with adopted planning framework and would not fully achieve the social, or environmental well-being objectives sought. Crucially and although the potential viability of the scheme had been demonstrated, the Secretary of State was not satisfied that the intended purpose could not be achieved by alternative means.

This is a case that has echoes of the Croydon (The London Borough of Croydon (Land West of East Croydon Station, the Gateway Site) CPO 2007 and Dartford (the Dartford Borough Council (Lowfield Street) CPO 2004) schemes considered in our first report. In each of those cases, conjoined inquiries were held both into the planning application for the scheme and the associated CPO. In each case planning permission was refused and the order not confirmed.

Where the planning application for the scheme underlying the CPO is considered by the Secretary of State at the same inquiry, having been called-in, it may well be that the planning position and any possible impediments are considered in greater detail than may otherwise be the case. The strict legal position is that planning permission is not a pre-condition for confirmation of a Planning CPO, and the policy requirement in Guidance gives leeway for an acquiring authority to establish that the CPO should be confirmed in the absence of a planning permission by demonstrating a convincing, prospective case showing that planning permission will, in all likelihood, be forthcoming.

However, that situation is materially distinct from one in which the Secretary of State has refused planning permission and therefore the planning impediment has demonstrably crystallised. What is unusual about the Welsh Streets case (and distinct from the Croydon and Dartford examples), is that the Secretary of State differed from the Inspector's recommendations to such an extent.

Reasons for refusal:

Conflict with Ministerial Statement and failure to assess alternative schemes

Stroud District Council (Stroud Water Navigation and Thames and Severn Council) (No 12) (Lodgemore Bridge) CPO 2015

Some orders can from a distance appear more than a little confusing. The **Stroud District Council (Stroud Water Navigation and Thames and Severn Council) (No 12) (Lodgemore Bridge) Compulsory Purchase Order 2015** is one such case. It was a **Planning CPO** determined pursuant to written representations (by DCLG letter 29 April 2016).

Background

Indeed it is not readily apparent why the acquiring authority continued with the promotion of the CPO, which sought to acquire 0.0055ha of land straddling the Stroudwater Navigation canal for the purpose of facilitating the replacement of the existing rigid canal bridge at Lodgemore Lane, Stroud by the construction of a new lifting bridge.

Council's case

The Council's case was that restoration of the canal from Ocean, Stonehouse to Bowbridge, a distance of some 6.7km, had tourism and housing benefits. The bridge at Lodgemore Lane acted as a barrier to the passage of boats and prevented the wider benefits of Phase 1a of the wider project being delivered. Accordingly, in November 2014 the Council resolved to make a CPO for either a swing bridge or a lifting bridge. Planning consent for a new swing bridge had been granted in 2011. Planning permission for a lifting bridge was granted in February 2015.

The principal purpose of the CPO was stated to be the enabling of the existing bridge over the canal to be removed and replaced with a new lifting bridge. The new bridge at 30 tons, would be significantly greater than the 8 ton weight of the old one and would significantly improve access for vehicles, plant and machinery to premises to the south of the canal such as WSP Textiles Ltd who supported the CPO.

It was proposed that the replacement bridge would be transferred to the ownership of the Company of Proprietors of Stroud Water Navigation (CoPSN) and leased on to the Stroud Valleys Canal Company.

The order listed the order lands as being in unknown ownership.

Objection

One objection was submitted by Hartley Property Trust Ltd, pointing out discrepancies between the order land and planning permission site and contending that that part of the land within the order land was in fact within the objector's ownership rather than unknown ownership.

It also contended that the project was not viable and did not accord with the canal restoration project and would prejudice the objector's ability to develop his own land for residential development. In conjunction with the CPO process, a title dispute was lodged with the Land Registry.

As a result of incorrectly identifying the owner of the order lands the acquiring authority had not properly sought to acquire by agreement and there had been an absence of communication with objectors.

In addition to the land ownership and registration issues it was contended that there was a discrepancy between the order map and planning permission plan. The land required was in excess of that in the order map and impinges on the objector's land.

The viability of the project was also disputed. The benefits said to accrue from facilitating vessels of all sizes and types to negotiate the canal at that location were challenged. It was also argued that construction of a lifting bridge was inconsistent with the character and heritage of the canal and would prejudice the objector's ability to develop its own land.

Inspector's decision

It transpired that the Inspector did not have to consider, in detail, many of the points raised in the objection. There was, in fact one key point that was in itself fatal to the order.

By the time matters came to be determined by the Inspector circumstances were, as he noted, "much changed". The acquiring authority's Statement of Reasons dated June 2014 referred to land being required for the demolition of an existing bridge and the construction of a new bridge. However, when the Inspector's site visit was undertaken in March 2016 he discovered that the "existing bridge" no longer existed and had been replaced by a new bridge. The Council subsequently confirmed that the new bridge was substantially complete and had in fact been carrying road and pedestrian traffic since January 2016. Except for some minor works relating to its lifting capacity the new lift bridge was fully functioning.

The Inspector concluded therefore that as the new lifting bridge has been constructed, the CPO cannot reasonably be said to be required for that purpose.

In addition he concluded that the CPO cannot be considered or confirmed for a different purpose from that for which it was made. The acquiring authority had sought to claim that the order land was required for both construction of the bridge and "its on-going management and maintenance". However the Inspector noted that such second limb of the reasoning only appeared in one email from its Solicitor. That amounted to a different purpose from that for which it was made. In addition, the Inspector noted that it was also unclear how the on-going management and maintenance would comply with the statutory requirement that the acquisition would facilitate the carrying out of development, redevelopment or improvement.

The Inspector concluded that given that the bridge had been replaced, the acquiring authority had the option to withdraw the order or ask for the matter

to be held in abeyance pending the resolution of the land dispute. But since it had chosen to pursue the order it was not confirmed since it was demonstrably not required for the purposes of a lifting bridge that was now built.

This is a most curious case. One could speculate at length as to how the various issues would have been considered if the order had not fallen at the first hurdle.

An acquiring authority must provide a compelling justification that the order Land is needed. This fundamental requirement derives both from statute and policy guidance and satisfaction of this test must underpin an acquiring authority's approach to any CPO. It has been expressed in terms of showing that one needs "every last square inch" of the order land. Or, in the metric terms of this case, "every last 0.0055ha".

If it can be shown that the proposed scheme, or an acceptable alternative scheme, can be delivered without the need for compulsory acquisition of land, then that may constitute grounds for non-confirmation (or confirmation with modification) of an order. What is indisputable, however, is that where the scheme has already been carried out in advance of the confirmation (or indeed the implementation) of a CPO then both as a matter of fact and law it cannot be said to be needed in order to deliver the scheme.

Moreover, an acquiring authority must be consistent in its purpose or rationale for compulsory acquisition. The late attempt to re-frame the case for acquisition in terms of maintenance rather than construction found little favour with the Inspector. The late adoption by an acquiring authority of a purpose that did not either appear in its Statement of Reasons or Case, will leave it on decidedly thin ice.

This situation is distinguishable from cases such as the Newport redevelopment scheme (*R (Iceland Foods Ltd) v Newport City Council 2010*) in which the implementation of a CPO was challenged on the grounds that the

scheme had materially changed. In that instance it was held that, notwithstanding alterations to the scheme to be delivered, the purpose of the order (i.e. town centre regeneration) remained consistent. In the Lodgemore Bridge case the purpose itself had fundamentally changed because the original purpose could demonstrably no longer be achieved.

Reasons for refusal:

No longer any need for confirmed order, late attempt to change purpose of order

The Hastings Borough Council (55 Victoria Avenue) – CPO 2014

The Hastings Borough Council (55 Victoria Avenue) – Compulsory Purchase Order 2014 was a **Planning CPO** decided by way of written representations (DCLG decision letter dated 25 May 2016).

Background

55 Victoria Avenue was an end of terrace 2 storey house. Damp was penetrating the outside flank wall abutting No 53. The Council considered that some limited repairs had been undertaken but no effective progress in making the house habitable had been made. There was a demonstrable demand for affordable housing in the area. If the order were confirmed the acquiring authority stated that it would approach registered providers to agree a back to back purchase deal or put it on the open market.

There had been regular communications with the owner, since October 2009. The acquiring authority had offered a number of potential arrangements to him, including repair and lease arrangements with the YMCA.

Objection

The owner objected to the order on the ground that the house was required by him in order to let it to a tenant to provide future income. He accepted that it was not in a habitable condition but it

had not proved possible to agree arrangements with adjoining owners to allow necessary access to carry out external repairs. In addition, poor weather and non-performance from building contractors had frustrated improvements being carried out. He fully intended to refurbish and make the house ready for occupation.

Inspector's decision

The Inspector noted that the property had been in a poor and uninhabitable condition for an extended period. Limited weight was to be given to the objector's reasons for not carrying out refurbishment to date. However, a chartered architect who was advising on improvements now represented him.

At the time of the site visit the scaffolding surrounded the order land. The interior of the building had been fully refurbished, including structural alterations to incorporate a new bathroom, redecoration and replacement of finishes; and new central heating system. There was no longer any evidence of damp. The refurbishment had been professionally carried out and was substantially complete. However, repairs to the roof and flank wall were unfinished.

The Inspector expressed scepticism whether work could be said to have been carried out in a timely fashion. But there had been considerable investment in refurbishing the interior of the property and this demonstrated commitment on the objector's part to make the house habitable.

The Inspector was critical of the shortage of information about the status of the Council's housing policies noting that paragraph 76 of the Guidance made it clear that the Secretary of State can be expected to consider "whether the purpose for which the land is being acquired fits in with the adopted local plan for the area or, where no such up to date local plan exists, with the draft local plan and the NPPF". The acquiring authority's submission fell short of the necessary level of reasoned justification to show that there is a compelling case for compulsory acquisition in the context of planning policy.

Irrespective of what view may be taken about the likelihood of the owner completing works there was no detail forthcoming from the Council as to how its present appearance was harmful. In that context Paragraph 76 of the Guidance required the acquiring authority to consider the alternative means of achieving its objectives by other means. There was a lack of detail of the extent to which the Council had investigated use of alternative powers.

Overall therefore, the objector's recent actions meant that there was a realistic prospect that the Council's objectives would be achieved without compulsory acquisition. In any event the Council's case was insufficiently strong to show that compulsory purchase was essential to achieve economic, social and environmental well-being which is a pre-requisite for the powers (it being a Planning CPO).

This case well represents the factors that often come into play when determining compulsory acquisition of a single property in poor condition with one owner. On one side of the equation sit a number of factors including:

- the current state of the property
- the owner's previous actions
- evidence as to the owner's current intentions
- personal circumstances.

In turn, it is incumbent upon an acquiring authority to demonstrate:

- the harm that will arise or persist if the order is not confirmed
- what alternative steps it has considered or taken to achieve its desired objective (and hence show that only compulsory acquisition will do so)
- how it has negotiated with the owner to acquire by agreement
- that it has complied with all other requirements of Guidance.

If the effect of instigating the compulsory purchase process is to encourage the owner of the property to begin to take steps of renovation or improvement and

thereby ameliorate existing harm, then to that extent the order can be said to have had beneficial effect notwithstanding it was not confirmed.

However, where such orders are not confirmed and the owner thereafter resiles from promises made at the inquiry or in written representations, then the process has achieved relatively little – delay and cost being the most significant outcomes. The present process does include a mechanism whereby the Secretary of State may make determination of an order conditional upon an owner undertaking to carry out works within a fixed timescale. There is some limited scope for an order to be placed into abeyance pending the outcome of undertakings previously given by an owner to an acquiring authority but there are often practical difficulties negotiating the terms of such undertakings.

Reasons for refusal:

Owner's recent limited improvements, lack of detail in Council case as to compliance with Guidance including failure to assess alternatives

The Council of the Borough of Hartlepool (Longscar Building, The Front, Seaton Carew) CPO 2015

Another case in which family relations were at the fore was **The Council of the Borough of Hartlepool (Longscar Building, The Front, Seaton Carew) Compulsory Purchase Order 2015** - a Planning CPO determined by DCLG letter of October 2016 following a public inquiry.

Background

The Longscar Building is on the seafront at Seaton Carew. It is of 1960s heritage and was owned by owners. In 2015, Longsco Limited was granted an unregistered tenancy of the building for a period of 25 years. The directors of Longsco were the owners' sons and it was Longsco Limited that objected to the order.

Council case

The Council's case was that the Longscar Building was in a poor visual and physical state and had been substantially vacant for over ten years. It had a strong negative impact upon the amenity of the seafront at Seaton Carew, exacerbated by the building's condition. In any event its design, mass, footprint, scale, materials and location all contributed to an adverse impact upon the visual and other amenity of the sea front and of the adjacent Seaton Carew Conservation Area. The Conservation Area was identified as being "at risk" and Historic England supported the Council's proposed acquisition of the Longscar Building.

Regeneration programme

The Council proposed a scheme of improvements to the sea front area of which the Longscar Building was a part. Those improvements were, in turn, part of a programme of the regeneration of Seaton Carew designed to improve the tourist offer and the attraction of the settlement. The Longscar Building would be demolished and replaced with an open, landscaped area that would be used for open-air markets and as an events space. When not in use for those purposes, it would be an enhanced public realm. A second phase of new play facilities would follow.

The delivery of the demolition and redevelopment of the Longscar Building was critical to the regeneration of the seafront and the proposed removal of the building enjoyed public support, given longstanding public concern about its continued presence.

The scheme accorded with the development plan when taken as a whole. It also accorded with the Seaton Carew Masterplan that has been consulted upon and adopted as a supplementary planning document. The Masterplan was amended after consultation but before its adoption in order to strengthen the references to the need to remove the Longscar Building. The SPD was part of an overarching regeneration strategy for Seaton Carew to develop a clean, family friendly environment; enhance public

amenities, space and facilities for residents and visitors; and support the economic vibrancy of the area.

Planning Permission

Planning permission for the Council's scheme had been granted in November 2015 for development that Historic England described as creating "huge public benefits". In addition, there were funding mechanisms in place to deliver the removal of the Longscar Building.

Efforts to acquire

The Council had made extensive attempts to acquire the Longscar Building by consent. It had not proved easy to engage with the owners. They had been reluctant to give addresses for communication and correspondence. It had not always been clear who had been speaking on whose behalf and the Council had on occasion been asked to contact agents only to find that they possessed no instructions. That said, negotiations had taken place and continued. The Council had made formal offers to acquire the land since 2011. The Council remained willing to negotiate, but the parties were poles apart on valuation. That was the principal reason why voluntary acquisition had not been achieved.

Objector's proposals

The objector's contention was that the building could be refurbished and re-opened for leisure uses. However the Council considered that the objector's most recent potential proposals were but the latest of various and inconsistent schemes, none of which had come to anything beyond an initial 'pitch' to the Council or initial drawings as a "fishing expedition". There was no robust evidence to show that the objector had any settled intention or ability to secure the refurbishment of the building nor was there reason to conclude that the past impediments to bringing the building back into use had been overcome.

The objector's proposals were not costed or demonstrably viable and would require planning permission, for which no application had been made and permission might not be forthcoming. Furthermore, the funding

claimed was unreliable. The proposals would also be in breach of a restrictive covenant that restricted the use of the building to, in short, leisure uses.

Harm to Conservation Area

Furthermore the objector's position was that the building either does not harm its surroundings, including the Conservation Area, or actually does or could enhance the area. The Council considered that even if the building were to be brought back into use, its use would still cause sufficient harm to the need to redevelop and regenerate Seaton Carew that the CPO would be justified.

Objector's case

The objector's case was that it, Longscar Limited, was now in a position to refurbish and bring the Longscar Building back into active use. The family dispute that had resulted in the building being inactive had been overcome. Evidence had been given at the inquiry that in the event of the order not being confirmed the objector "will pursue a planning application which will be implemented within a proposed timescale of less than 16 months".

Masterplan - SPD

The content of the SPD was criticised. Guidance emphasised the importance of conformity with the local plan. For a document to be a properly constituted SPD required it to be supplemental to and not in contradiction with adopted development plan policy. The SPD in so far as it supported the removal of the Longscar Building went beyond what was permitted in the local plan. Sections of the Masterplan created new policy unsupported by the local plan. Furthermore, the local plan supported the refurbishment proposals and not the Council's proposed acquisition and demolition.

Character of existing building

A building of the mass and scale of the Longscar Building had existed since the 1960s. Works to the building had been considered acceptable in the context of the adjoining Conservation Area. The building was not in the Conservation Area but was within its setting. It was not a modern building but was of its time and is part of the character and context of the area.

Openness

Creating openness where it does not exist was not itself an appropriate design objective. In any event the surrounding area was already open. The effect of increased openness would merely serve to expose the backs of a neighbouring terrace of properties that it was generally acknowledged had an adverse impact.

There was no evidence advanced of equivalent schemes or examples in which the mass and scale of an existing building outside a Conservation Area had been such as to justify its removal and clearance in order to generate Conservation Area benefits.

Alternative

The demolition of the Longscar building was not the only means of achieving tourism benefits contrary to the Council's proposals. The Longscar Building was not "redundant resort infrastructure" as claimed. The evidence of economic, social and environmental benefits was not compelling and was not specific to the Council's scheme.

The claimed public support for the Council's proposals resulted from a conflation of concerns about its condition and disuse and the requirement that it be removed. One could address its poor condition without resorting to demolition.

Viability

Even on the Council's evidence the objector's scheme was viable, albeit marginally so.

Inspector's conclusions

The Inspector's conclusion focused on three strands of the Council's case:

- Concern about longstanding dereliction and disuse of the building.
- Effect on society, economic, environmental quality of area.
- A more fundamental point that the building was inappropriate for its location, because it is an impediment to proper redevelopment of the seafront as set out in Masterplan and its effect on the Conservation Area.

Impact on heritage

In terms of impact upon heritage the Inspector concluded that the Longscar Building is "of an entirely different design, size and materials which does not complement the surrounding architecture; and which divides part of the old town from the Seafront". However, discordant buildings affected many heritage items and it would be unusual to seek their removal and replacement with open space in any but the most compelling circumstances. Such circumstances did not exist in this case. Other buildings in the Conservation Area had horizontal emphasis and there was merit in the objector's case that removal of the Longscar Building would expose the relatively poor aspect of the car park and rear of shops. The evidence falls short of providing that any harm caused by the building is so great as to justify its removal, as opposed to renovation.

Failure to investigate alternatives

As regarded the Council's Masterplan proposals there was no indication of the investigation of alternative schemes that would not require acquisition of order land. It may well be that the location of order land would be best positioned for the market and events space, but no evidence that an alternative location would be so inferior as to prevent the Council's objectives being realised.

The Masterplan and attendant planning permission are not of themselves conclusive evidence of the need to acquire the land. The Council's redevelopment proposals did not provide adequate support for the case.

There was reason to consider that compulsory purchase was needed to resolve the harmful effect of the poor condition of the property. It was a large site in a prominent location and "public responses to the Masterplan reinforces the view that it has had a seriously depressive effect on the town". Indeed "the combination of disuse and partial dereliction would have undermined any attempt to improve the local environment and promote the town as an attractive tourist venue". The Inspector acknowledged that

there was little justification for leaving the building substantially vacant and neglected for a decade. He noted that "having regard to the sensitivity of this location, and evidence of the fragile state of the seaside economy, there is a case for public intervention to solve the problem".

Objector's proposals

The question therefore to be addressed was whether the objector's current proposals to refurbish and re-use the property were realistic. The Inspector noted that "there is scope for some scepticism about the capacity of Longsco Limited to undertake the work. The company has no track record, and any indications of financial support appear to rely on cooperation within the family, which, as demonstrated, has been subject to internal disputes. There are also doubts about whether the proffered expressions of interest in the refurbished premises would be likely to result in firm tenancies."

Moreover, "the Council point out that no planning applications have been made for the renovated building, and there are concerns about whether any residential accommodation proposed would be capable of providing satisfactory amenity, or would overcome restrictive covenants on the title. Above all, there is no clear reason why, if there were a realistic means of resolving the problems posed by the building, effective action has not been taken at an earlier date".

Nonetheless the Inspector gave credit to the directors of Longsco who "have experience of building projects and running leisure businesses, and ... the recent repair of the roof and removal of unsightly outbuildings is an indication of some financial commitment".

Viability evidence

The Council had provided evidence of the marginal financial viability of the objector's scheme but the Inspector concluded that limited weight could be given to the Council's cost estimates in the absence of a detailed survey and design. He concluded that the Council did not prove that a positive financial return would be so unlikely as to prevent the project from proceeding. The Inspector also commented that it was credible that the Council have been committed to the Masterplan project and have been reluctant to enter positive discussions as to deliver a refurbished building.

Benefit of doubt

The matter was "finely balanced", but the Inspector concluded that the "benefit of doubt" should be with the objector.

The Longscar case emphasises both that the Secretary of State's policy is to assess an order against the planning framework and the preparedness to give owners the opportunity to deliver a scheme. Even though planning permission was in place and deliverability of the Council's scheme had been demonstrated the Secretary of State was not satisfied that this itself demonstrated need for the scheme, per se. Indeed the Inspector clearly did not share the view of the Council, Historic England and a substantial body of local opinion of the adverse effect that the building had on the locale.

Particularly where matters are "finely balanced" the Secretary of State will look closely at an owner's intention and capacity to deliver an alternative scheme. In this instance the owners were accordingly given "the benefit of the doubt" to deliver their proposals. As at the time of finalising this report, however, it is understood that a planning application has yet to be submitted by the owners.

Reasons for refusal:

Matter was finely balanced but benefit of the doubt was given to the objector

The London Borough of Southwark (Aylesbury Estate Site 1B-1C) CPO 2014

is probably the single most high profile order in recent years. The Secretary of State by decision letter dated 16 September 2016 agreed with the Inspector's recommendation and decided not to confirm this **Planning CPO**. Subsequently that decision was subject to a judicial review brought by Southwark LBC. As at the date of this report, that decision had been quashed by consent and a new public inquiry is due to take place in early 2018.

Background

The Aylesbury Estate in Southwark was constructed between the mid-Sixties and mid-Seventies and was originally home to some 7,500 residents. It was widely acknowledged as suffering from high levels of social and economic deprivation and from 2001 onwards regeneration proposals, including demolition, had been advanced.

Council's case

The 2010 Aylesbury Area Action Plan envisaged phased regeneration, comprising an overall proposal of some 4,000 new homes over 20 years, and by 2013 two CPOs for land in Phase 1 had already been confirmed and the first new homes were ready for occupation.

In June 2014 the London Borough of Southwark made the third of its Phase 1 CPOs comprising two parcels of land, the effect of which, if redeveloped, would be to replace 556 homes with 830 new ones. A public inquiry was held in April and October 2015. In January 2016 the Inspector recommended that the CPO not be confirmed because it would not fully achieve the social, economic and environmental well-being benefits sought. The Secretary of State accepted that view and determined that the order should not be confirmed.

Inspector's report

In her report the Inspector acknowledged that the proposed scheme would deliver a range of substantial benefits. It was in accordance with the local plan; it was viable and deliverable; there were no other means by which the Council's regeneration objectives could readily be achieved; it would deliver significant economic benefits and some social benefits; the scheme contained robust and substantial buildings that would result in a more varied townscape; and a more permeable and user friendly environment.

Disbenefits for leaseholders

But the Inspector and Secretary of State turned their attention to the "considerable economic and social dis-benefits in terms of consequences for leaseholders remaining on the order land". There were shortfalls in environmental standards in respect of some individual flats and communal areas.

Public Sector Equality Duty

More critically however, it was concluded that Southwark had not taken reasonable steps to negotiate with homeowners and acquire interests by agreement and the PSED had not been complied with – there would be significant impacts on protected groups if the CPO were confirmed. In respect of the PSED it should be noted that the Secretary of State disagreed with the Inspector's findings who had concluded that there was no breach of PSED.

The Secretary of State gave considerable weight to the difficulties for remaining long-term residents who were facing a difficult choice between remaining in the local area by means of accepting the financial package on offer from the Council founded on either shared ownership/shared equity or, alternatively, considering relocation. This was particularly problematical for those residents who were of an age that meant they were unable to obtain a mortgage. Consequently that would necessitate the use of their savings and investments with the concomitant loss

of financial security. If they were to be able to remain in the immediate area then residents were effectively reliant on the options offered by the Council. On the other hand moving away from the area, often where they had spent much if not most of their lives, would invariably have significant adverse consequences in terms of separation from family and friends.

The PSED requires a Council to give due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Secretary of State concluded that: he did not consider that the Council had taken reasonable steps to acquire land interests by agreement. In addition “the proposed purpose of the order will have considerable economic and social dis-benefits in terms of consequences for those leaseholders remaining...”

Additional comments by the Secretary of State

Unusually the decision not to confirm was tempered by the further comments that “the Secretary of State in principle welcomes regeneration and much needed residential development. He also considers that the Council’s desired outcome could, in principle, bring with it considerable benefits. He considers that potentially there is a good opportunity for the Council to work positively with the remaining leaseholders to alleviate the negative aspects he has highlighted above; with a view to resubmitting an order in due course to achieve successfully the objectives set out in the planning framework”.

Southwark’s response

In response to the Secretary of State’s conclusion Southwark raised a number of points.

- The perceived failure to negotiate was challenged. Very substantial progress had been made to acquire all necessary interest by agreement. The particular phase of the Estate originally comprised 566 dwellings and the time of the inquiry 16 units were still occupied, reduced to 8 at the time of the decision. Of those 8, non-resident landlords owned 4.
- The planning permission in place authorised redevelopment of 830 dwellings representing an increase of 264.
- Compensation had been offered in accordance with statute. There was concern that the Secretary of State’s approach amounted to a novel, broader policy test regarding the adequacy of compensation.
- The Secretary of State’s approach to interference with human rights represented a departure from the established approach that awards of compensation ensured that a fair balance was struck between public and private interest.
- The Secretary of State’s approach to well-being appeared to focus on the effect on individuals rather than on the area per se.
- There was a contradiction between the Inspector’s finding that there was no breach of PSED and Secretary of State finding of a significant negative impact on protected groups if the CPO was confirmed.

Southwark LBC therefore sought to judicially review the Secretary of State’s decision. Its application was initially refused permission by Mr J Dove, but was subsequently granted permission by Mr J Collins.

Unsurprisingly this decision has given rise to extensive comment.

The need to have regard to the ECHR and in particular Article 8 (right to private and family life) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions) are well established as part of the matrix of factors to be taken into account in the context of

compulsory purchase. There is balance to be struck between the effect of acquisition on individual rights and the wider public interest in the form of regeneration or redevelopment.

The Aylesbury Estate decision in its combined reading of the PSED and human rights potentially opens the door to a much increased need to give weight to the personal circumstance of individual residents and their current community life. At the same time it appeared to decrease the weight to be given to compensation and other benefits offered as part of the statutory Compensation Code by an acquiring authority.

Indeed compensation was considered to be insufficient and compulsory acquisition unjustified if, notwithstanding compliance with the statutory regime, residents’ financial security was compromised.

The Aylesbury Estate decision did not appear from a blue sky. Similar issues in the sense of a more intensive focus on the impact upon current occupiers of land had been raised in Hammersmith and Fulham’s Shepherd’s Bush market CPO case. In that case the Inspector recommended that the CPO not be confirmed, considering that the scheme may meet well-being tests, but only if essential ingredients and the unique character of the market were preserved. He took the view that “the personal losses and widespread interference with private interests arising from confirmation of the order cannot be justified” and the “number, mix and diversity of traders” was “vital to the distinctiveness of the market and Goldhawk Road shops”.

Reasons for refusal:

Not complying with public sector equality duty, CPO would cause significant impact on protected groups

This report was prepared by Frank Orr with assistance from Jonathan Bower, Antonia Murillo, Kate Ashworth, Rachel Sykes and Aphrodite Christodoulou.

Appendices



Appendix A

Compulsory purchase orders 2015 – 2016

(i) Compulsory purchase orders – not confirmed

S17 Housing Act 1985

The East Riding of Yorkshire (8 Cave Road, Brough) compulsory purchase order 2014 (DCLG decision letter 13 March 2015) (Inspector Philip Major BA (Hons) DipTP MRTPI)

The East Riding of Yorkshire Council (341 Boothferry Road, Hessle) compulsory purchase order 2015 (DCLG decision letter 17 February 2016) (DCLG decision)

The Cheshire West and Chester Borough Council (450 Sutton Way, Great Sutton, Ellesmere Port, Cheshire CH66 4RL0 compulsory purchase order 2015 (DCLG decision letter 25 April 2016) (Inspector Keith Manning BSc (Hons) BTP MRTPI)

The London Borough of Haringey (39 Broad Lane N15 4DJ) compulsory purchase order 2015 (DCLG decision letter 5 May 2016) (Inspector Clive Hughes BA(Hons) MA DMS MRTPI)

S226(1)(a) Town and Country Planning Act 1990

The Liverpool City Council (Welsh Streets Phases 1 and 2) compulsory purchase order 2013 (DCLG decision letter 15 January 2015)

The Stroud District Council (Stroudwater Navigation and Thames and Severn Canal) (no12) (Lodgemore Bridge) compulsory purchase order 2015 (decision letter 29 April 2016) (Inspector GD Jones BSc (Hons) DMS DipTP MRTPI)

The Hastings Borough Council (55 Victoria Avenue) compulsory purchase order 2014 (DCLG decision letter 25 May 2016) (Written representations) (Inspector John Chase MCD DipArch RIBA MRTPI)

The London Borough of Southwark (Aylesbury Estate Site 1B-1C) compulsory purchase order 2014 (DCLG decision letter 16 September 2016) (Inspector Lesley Coffey BA (Hons) BTP MRTPI)

The Council of the Borough of Hartlepool (Longscar Building, the Front, Seaton Carew) compulsory purchase order 2015 (DGLG decision letter 13 October 2016) (Inspector John Chase MCD Dip Arch RIBA MRTPI)

(ii) Compulsory purchase orders – withdrawn

S17 Housing Act 1985

The Borough Council of Wellingborough (6 New Street) compulsory purchase order 2013 (DCLG letter 12 January 2015)

The Leicester City Council (32 Gosport Street) compulsory purchase order 2015 (DCLG letter 22 October 2015)

The Wigan Borough Council (Highfield Avenue, Golbourne) compulsory purchase order 2013 (DCLG letter 25 February 2015)

The Wigan Borough Council (Ellesmere Street, Astley, Tyldesley) compulsory purchase order 2013 (DCLG letter 25 February 2015)

The Wigan Borough Council (10 St Stephens Avenue Wigan) compulsory purchase order 2013 (DCLG letter 15 July 2015)

The Council of the Borough of Hartlepool (19/21 Tankerville Street, Hartlepool) compulsory purchase order 2014 (DCLG letter 29 July 2015)

The Wigan Borough Council (395 Manchester Road, Astley, Wigan) compulsory purchase order 2014 (DCLG letter 28 August 2015)

The London Borough of Barnet (56 Bedford Avenue, Barnet, Hertfordshire, EN5 2ER) compulsory purchase order 2014 (4 December 2015)

The Wigan Borough Council (96 Highfield Grange Avenue, Wigan) compulsory purchase order 2015 (DGLG letter 8 December 2015)

The Derby City Council (3 Crompton Street) compulsory purchase order 2015 (DCLG letter 11 February 2016)

The Swindon Borough Council (1 Exe Close, Swindon) compulsory purchase order 2014 (DCLG letter 17 February 2016)

The Wigan Borough Council (23 Wardley Street, Wigan) compulsory purchase order 2016 (DCLG letter 5 December 2016)

The Bedford Borough Council (23A St Michael's Road) compulsory purchase order 2015 (DCLG letter 24 November 2016)

Planning

The North Kesteven District Council (South East Sleaford Regeneration Route, Sleaford) compulsory purchase order 2014 (DCLG decision 27 March 2015)

The London Borough of Ealing (Havelock Estate Southall UB2) compulsory purchase order 2014 (DCLG letter 14 May 2015)

The Cheshire East Borough Council (Churchill Way, Macclesfield) compulsory purchase order 2014 (DCLG letter 8 July 2015)

The Borough of Rochdale (Site 219-233 Entwisle Road and adjoining land, Rochdale) compulsory purchase order 2014 (DCLG letter 24 July 2015)

The Hastings Borough Council (26 North Street, St Leonards on Sea) compulsory purchase order 2015 (DCLG letter 3 August 2015)

The Great Yarmouth Borough Council (Millora Works, Admiralty Road) compulsory purchase order 2015 (DCLG letter 1 September 2016)

The Devon County Council (Trinity School, Exeter) compulsory purchase order 2016 (DCLG letter 6 December 2016)

Appendix B

Section 226(1)(a) and (1A) Town and Country Planning Act 1990 - compulsory acquisition of land for development and other planning purposes

- (1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area—
 - (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, or
 - (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- (1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—
 - (a) the promotion or improvement of the economic well-being of their area;
 - (b) the promotion or improvement of the social well-being of their area;
 - (c) the promotion or improvement of the environmental well-being of their area.

Appendix C

Section 215 Town and Country Planning Act 1990 - Power to require proper maintenance of land

- (1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.
- (2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.
- (3) Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.
- (4) That period shall not be less than 28 days after the service of the notice.

Appendix D

Section 17 Housing Act 1985 - Acquisition of land for housing purposes

- (1) A local housing authority may for the purposes of this Part—
 - (a) acquire land as a site for the erection of houses
 - (b) acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings
 - (c) acquire land proposed to be used for any purpose authorised by sections 11, 12 and 15(1) (facilities provided in connection with housing accommodation)

(d) acquire land in order to carry out on it works for the purpose of, or connected with, the alteration, enlarging, repair or improvement of an adjoining house.

- (2) The power conferred by subsection (1) includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land or of disposing of the land to a person who intends to provide housing accommodation on it [or facilities which serve a beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided].
- (3) Land may be acquired by a local housing authority for the purposes of this Part by agreement, or they may be authorised by the Secretary of State to acquire it compulsorily.
- (4) A local housing authority may, with the consent of, and subject to any conditions imposed by, the Secretary of State, acquire land for the purposes of this Part notwithstanding that the land is not immediately required for those purposes; but an authority shall not be so authorised to acquire land compulsorily unless it appears to the Secretary of State that the land is likely to be required for those purposes within ten years from the date on which he confirms the compulsory purchase order.

Appendix E

Extracts from Department for Communities and Local Government Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion (October 2015)

76. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- (1) whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework
- (2) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area
- (3) where the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.

110. When is the acquisition of empty properties for housing use justified?

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know:

- (1) how long the property has been vacant
- (2) what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome
- (3) what works have been carried out by the owner towards its reuse for housing purposes.

111. When is the acquisition of substandard properties justified?

Compulsory purchase of substandard properties may be justified as a last resort in cases where:

- (1) a clear housing gain will be obtained
- (2) the owner of the property has failed to maintain it or bring it to an acceptable standard
- (3) other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation.

However, the Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affect other housing accommodation.

In considering whether to confirm such a compulsory purchase order the Secretary of State will wish to know:

- (1) what the alleged defects in the order property are;
- (2) what other steps the authority has taken to remedy matters and the outcome;
- (3) the extent and nature of any works carried out by the owner to secure the improvement and repair of the property;
- (4) the Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property.

Appendix F

Extracts from National Planning Policy Framework

51. Local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. They should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.

58. Local and neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area. Such policies should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics. Planning policies and decisions should aim to ensure that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit
- optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation
- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion
- are visually attractive as a result of good architecture and appropriate landscaping.

Appendix G

Ministerial Statement 10 May 2013

The Minister for Housing (Mr Mark Prisk): The coalition agreement outlined this Government's commitment to introduce a range of measures to get empty homes back into use, reflecting the general election manifesto pledges of both coalition parties. We want to increase housing supply, remove the blight that rundown vacant properties cause and help support local economic growth from refurbishment and improvements. I would like to update the House on the steps we have taken.

As part of this commitment, we have explicitly rejected the last Administration's top-down, large-scale Whitehall targets for demolition and clearance. The obsession with demolition over refurbishment was both economically and environmentally wasteful, as well as involving significant damage of our nation's heritage. By contrast:

The Government have committed £160 million to bring empty homes back into use. Some £100 million of this funding is being paid directly to local authorities, registered housing providers and community groups to bring around 7,600 empty homes back into use as affordable housing. £60 million is being allocated to 20 partnerships which suffer from significant clusters of empty homes which have good market prospects but require an intensive approach to return them to a liveable standard. This will produce a further 3,600 homes, resulting in a combined total of over 11,000 empty homes being brought back into use by March 2015.

In November, we launched a second bidding round to bring up to a further 5,000 empty homes back into use using a further £75 million of funding, with a particular emphasis on refurbishing former commercial and high street properties. Combined with existing empty homes commitments, this funding will take our overall target to over 15,000 empty properties being brought back into use as housing by March 2015.

We are further supporting local authorities to take a lead. Under the new homes bonus, local authorities now earn a financial reward for bringing a long-term empty home back into use. To date this has provided an income to councils of £63 million for 55,000 homes brought back into use.

Our reforms on council tax flexibilities and the new empty homes premium now allow councils to remove the special tax subsidies being given to empty homes and instead use the funding to keep the overall rate of council tax down and support front-line services.

My Department's refurbishment schemes are also assisting the improvement of social housing and getting empty homes back into use. During the current spending review period, the Government have allocated £1.6 billion to the decent homes backlog programme to provide a grant to local authorities to support them in bringing 127,000 poor quality council homes up to the decent homes standard by April 2015.

In addition, following a number of large-scale voluntary transfers, the Government have made gap funding grants to private registered providers to enable stock to be brought up to decent homes standard. The total amount of gap funding will be £500 million during the current spending review. It is currently expected that gap funding outside London will contribute to making 43,500 homes decent between 2011 and 2015 (we do not have comparable figures for London).

By the end of April 2015, 18,500 homes will have been renovated through housing private finance initiative schemes.

As outlined in the written ministerial statement of 9 May 2013, Official Report, column 4WS, we have introduced a series of planning reforms to facilitate change of use; this includes making it easier to convert empty offices into homes. Further changes will be implemented to help convert redundant agricultural buildings into new homes.

Our new community right to reclaim land will help communities to improve their local area by making information about land and empty properties owned by public bodies more easily available. It will also help to ensure that underused or unused land and buildings owned by public bodies can be brought back into beneficial use.

The last Administration's programme created large-scale Whitehall targets for demolition and clearance across the midlands and the north of England. The National Audit Office previously estimated that there were plans for a total of 57,100 properties to be demolished under the scheme. This Government have cancelled the pathfinder programme.

Last year, SAVE Britain's Heritage challenged the Government's decision to award transition funding, to help councils exit the pathfinder scheme; in doing so, we needed to balance ending the scheme with not leaving councils in the lurch with unfinished building sites. We have now agreed terms with SAVE to settle that case. Local authorities are now working to align their regeneration priorities more closely to refurbishment. Liverpool remain committed to refurbishing 40 houses on the Welsh Streets, including the former home of Ringo Starr, with strong community involvement and all local authorities that received transitional funding will now undertake the refurbishment of over 2,000 empty houses.

We are reviewing what further steps can be taken to end the bias for demolition in the state sector. This will include revising out-dated Office of the Deputy Prime Minister guidance, stating in housing fund bidding documents that demolitions are not appropriate, and working with our independent adviser George Clarke to take forward his best practice recommendations on empty homes.

The number of long-term empty homes has already fallen by 20,000 between 2011 and 2012 and by over 40,800 since 2010. Ministers will keep the House updated with progress.

Appendix H

Human Rights and Equality

1. Section 149 – The Equality Act 2010 - Public Sector Equality Duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are—
 - (a) age
 - (b) disability
 - (c) gender reassignment
 - (d) pregnancy and maternity
 - (e) race
 - (f) religion or belief
 - (g) sex
 - (h) sexual orientation.

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a) a breach of an equality clause or rule

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.

2. European Convention on Human Rights Article 8 Right to respect for private and family life

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1, First Protocol Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

3. Extracts from Circular 06/2004 Compulsory Purchase and the Crichel Down Rules (now withdrawn)

Paragraph 17 A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

Paragraph 19 If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Human Rights Act reinforces that basic requirement.

Appendix R – Preparing the Statement of Reasons. The statement of reasons should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):

(iv) a statement of the authority's justification for compulsory purchase, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human rights, and Article 8 if appropriate (see paragraphs 16-18 of this Part).....

4. Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion (October 2015)

2. When should compulsory purchase powers be used?

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the order by agreement. Where acquiring authorities decide to/ arrange to acquire land by agreements, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- (1) plan a compulsory purchase timetable as a contingency measure; and
- (2) initiate formal procedures

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website.

12. How does an acquiring authority justify a compulsory purchase order?

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order (see How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?). Acquiring authorities may find it useful to take account of these in preparing their justification.

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

154. What information should be included in the statement of reasons?

The statement of reasons should include the following information:....

- (iv) a statement of the authority's justification for compulsory purchase, with regard to Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate

Appendix I

Regulation 8 Regulation 8 Compulsory Purchase of Land (Written Representations) Regulations 2004

- (1) The inspector may, at any time, make—
 - (a) an unaccompanied inspection without giving prior notice to the acquiring authority or the remaining objectors
 - (b) an inspection in the company of a representative of the acquiring authority and each remaining objector

of land which is the subject of the compulsory purchase order and of the surrounding area.
- (2) In the case of an inspection under paragraph (1)(b), the authorising authority shall send notification of the date and time of the inspection to the acquiring authority if it is not the authorising authority and the remaining objectors not later than five working days before that date.
- (3) The inspector shall not be bound to defer an inspection under paragraph (1)(b) at the time appointed.
- (4) If a request for an inspection under paragraph (1)(b) is made by the acquiring authority or a remaining objector and is received by the authorising authority not later than ten working days after the starting date, the authorising authority must arrange for such an inspection to take place.

Appendix J

Planning CPOs submitted 2015 and 2016 by Acquiring Authority

2015	2016
Barnet (x 2)	Barnet
Birmingham	Barnsley (x 2)
Camden	Bedford
Derby City	Birmingham
Ealing (x 2)	Blaby
Eastbourne	Bradford
Great Yarmouth	Brent
Hartlepool	Broadland
Hastings (x 3)	Cheshire East
Hounslow (x 2)	Ealing
Hyndburn	East Riding of Yorkshire
Manchester	Enfield (x 3)
Rochdale (x 5)	Exeter (x 2)
Ryedale (x 2)	Haringey
Solihull	King's Lynn
Southwark	Kirklees
St Helens	Leicester
Staffordshire Moorlands	Lincoln
Stockport	Manchester
Stroud	Mid Sussex
Wandsworth	Newham
Warrington	Nottingham
Wellingborough	Pendle (x 2)
West Lindsey	Rother
Wokingham	Salford
Worcestershire	South Tyneside
	Southwark
	Stockton on Tees
	Tamworth
	Tandridge
	Three Rivers
	Tower Hamlets (x 2)
	Wigan
	Wirral

Housing CPOs submitted 2015 and 2016 by Acquiring Authority

2015	2016
Barnet	Bedford
Bedford (x 5)	Blaby
Blackburn with Darwen (x 2)	Bradford
Bradford (x 4)	Bristol
Burnley (x 10)	Burnley (x 7)
Bury	Cannock Chase
Cheltenham	Cheshire West
East Riding of Yorkshire	Derby City (x 2)
Fylde	East Hertfordshire
Hartlepool	East Northamptonshire
Kingston upon Hull	East Riding of Yorkshire (x 2)
Lichfield	Ipswich
Plymouth	Liverpool
Redbridge	Manchester
Southwark	North East Lincolnshire (x 2)
Stockport	North Somerset
Swindon	Salford
Tamworth	Stoke on Trent
Weymouth and Portland	Tandridge
Wigan (x 5)	Wigan (x 5)
Wolverhampton (x 2)	

Appendix K

Planning and Housing CPOs submitted 2003-2016 by Local Authorities listed by region

East

Local Authority		Planning CPOs	Housing CPOs
1.	Babergh	1	0
2.	Bedford	3	11
3.	Brentwood	0	1
4.	Broadland	5	9
5.	Cambridge	1	6
6.	Central Bedfordshire	1	0
7.	Chelmsford	1	0
8.	Dacorum	1	0
9.	Dover	0	0
10.	East Hertfordshire	0	1
11.	Epping Forest	0	1
12.	Fenland	1	0
13.	Great Yarmouth*	27	8
14.	Ipswich	0	1
15.	Kings Lynn	4	0
16.	Luton UA	1	4
17.	Norwich	1	0
18.	Rochford	2	0
19.	South Bedfordshire	1	0
20.	South Norfolk	1	0
21.	St Albans	0	1
22.	St. Edmundsbury	1	0
23.	Stevenage	1	1
24.	Suffolk Coast	1	0
25.	Tendring	0	3
26.	Three Rivers	1	0
27.	Thurrock	1	0
28.	Uttlesford	0	1
29.	Watford	4	6
30.	Waveney	2	0
31.	Welwyn Hatfield	1	0

*Great Yarmouth credited by (N)PCU with orders promoted on behalf of other authorities

Appendices continued

East Midlands

Local Authority	Planning CPOs	Housing CPOs
1. Amber Valley	0	1
2. Ashfield	0	3
3. Blaby	1	0
4. Bolsover	2	1
5. Charnwood	2	0
6. Corby	1	0
7. Daventry	2	0
8. Derby City UA	5	12
9. Derbyshire Co Co	2	0
10. Derbyshire Dales	0	1
11. East Lindsey	2	0
12. East Northamptonshire	0	1
13. Leicester City UA	5	36
14. Lincoln	6	0
15. Lincolnshire	1	0
16. Mansfield	5	0
17. Northampton	0	1
18. North East Derbyshire	1	0
19. North Kesteven	1	0
20. Nottingham UA	2	16
21. Peak National Park	1	0
22. South Northamptonshire	4	0
23. Wellingborough	5	6
24. West Lindsey	1	0

London

Local Authority	Planning CPOs	Housing CPOs
1. Barking and Dagenham	8	6
2. Barnet	7	9
3. Basildon	1	0
4. Bexley	1	0
5. Brent	14	13
6. Bromley	1	1
7. Camden	3	1
8. City of Westminster	4	4
9. Croydon	5	1
10. Ealing	18	5
11. Enfield	9	16
12. Greenwich	5	2
13. Hackney	12	4
14. Hammersmith and Fulham	1	4
15. Haringey	2	4
16. Harrow	1	2
17. Havering	0	1
18. Hillingdon	1	0
19. Hounslow	9	3
20. Islington	1	1
21. Lambeth	1	14
22. Lewisham	3	6
23. Merton	0	1
24. Newham	11	79
25. Redbridge	1	1
26. Southwark	9	9
27. Sutton	2	7
28. Tower Hamlets	4	11
29. Waltham Forest	0	3
30. Wandsworth	7	8

Appendices continued

Noth East

Local Authority	Planning CPOs	Housing CPOs
1. Castle Morpeth	1	0
2. Derwentside	1	0
3. Easington	1	3
4. Gateshead UA	3	0
5. Hartlepool UA	6	3
6. Middlesbrough UA	5	1
7. Newcastle upon Tyne UA	12	2
8. North Tyneside UA	2	0
9. Redcar and Cleveland DC UA	1	0
10. Sedgefield	1	2
11. South Tyneside UA	4	0
12. Stockton-on-Tees UA	9	2
13. Sunderland UA	1	2

North West

Local Authority	Planning CPOs	Housing CPOs
1. Allerdale	1	1
2. Barrow-in-Furness	2	2
3. Blackburn with Darwen BC	8	18
4. Bolton UA	0	3
5. Blackpool UA	3	3
6. Burnley	15	93
7. Bury UA	5	4
8. Cheshire East	2	0
9. Cheshire West	1	4
10. Chester	1	0
11. Chorley	0	1
12. Congleton	2	1
13. Fylde	0	1
14. Halton UA	1	0
15. Hyndburn	5	1
16. Lancashire CC	3	0
17. Lancaster	1	0
18. Liverpool	26	2
19. Manchester UA	18	21
20. Oldham UA	3	1
21. Pendle	6	4
22. Ribble Valley	0	2
23. Rochdale UA	12	9
24. Salford UA	13	23
25. Sefton UA	4	0
26. South Ribble	0	1
27. St Helens UA	1	9
28. Stockport UA	5	11
29. Tameside UA	7	16
30. Trafford UA	3	7
31. Warrington UA	2	1
32. Wigan UA	9	29
33. Wirral UA	3	2
34. Wyre	2	0

Appendices continued

South East

Local Authority	Planning CPOs	Housing CPOs
1. Arun	0	3
2. Buckinghamshire	1	0
3. Brighton and Hove UA	0	1
4. Canterbury	1	1
5. Cherwell	0	1
6. Dartford	2	0
7. East Sussex CC	2	0
8. Eastbourne	1	0
9. Guildford	2	0
10. Hastings	19	3
11. Horsham	1	0
12. Kent CC	6	0
13. Maidstone	4	0
14. Mid Sussex	2	0
15. Milton Keynes	0	2
16. Oxford	1	0
17. Portsmouth UA	1	0
18. Reading UA	6	0
19. Reigate and Banstead	2	0
20. Rother	2	1
21. Rotherham UA	1	0
22. Runnymede	0	2
23. Rushmoor	0	2
24. Slough UA	0	2
25. Southampton UA	6	1
26. Tandridge	1	2
27. Test Valley	1	0
28. Thanet	1	0
29. Tunbridge Wells	1	1
30. Waverley	2	0
31. West Berkshire DC UA	3	1
32. Winchester	1	1
33. Windsor and Maidenhead UA	2	0
34. Woking	0	2
35. Wokingham	1	0
36. Wycombe	2	0

South West

Local Authority	Planning CPOs	Housing CPOs
1. Bath and North East Somerset UA	1	1
2. Bristol UA	7	19
3. Carrick	0	1
4. Cheltenham	1	1
5. Cornwall CC	2	0
6. Devon CC	3	0
7. East Devon	1	0
8. Exeter	4	0
9. Gloucester	2	1
10. Herefordshire	0	0
11. Herefordshire UA	1	1
12. Kennet	1	0
13. Mendip	1	0
14. North Somerset	0	1
15. Penwith	1	0
16. Plymouth	0	4
17. Plymouth UA	2	0
18. Restormel	1	0
19. South Hams	1	0
20. Stroud	1	0
21. Swindon BC UA	2	3
22. Taunton Deane	2	0
23. Teignbridge	6	0
24. Weymouth and Portland	0	2

Appendices continued

West Midlands

Local Authority		Planning CPOs	Housing CPOs
1.	Birmingham	19	46
2.	Cannock Chase	1	1
3.	Coventry UA	4	1
4.	Dudley UA	1	0
5.	Herefordshire	1	0
6.	Lichfield	1	1
7.	Newcastle under Lyme	2	1
8.	North Shropshire	1	1
9.	North Warwickshire	1	0
10.	Nuneaton and Bedworth	2	0
11.	Oswestry	1	0
12.	Redditch	0	0
13.	Rugby	3	0
14.	Sandwell UA	9	9
15.	Shrewsbury and Atcham	3	0
16.	Solihull UA	4	0
17.	Stafford	3	0
18.	Stoke-on-Trent UA	7	14
19.	Stratford-on-Avon	2	0
20.	Tamworth	1	1
21.	Telford and the Wrekin DC UA	3	1
22.	Walsall	0	1
23.	Warwick	1	0
24.	Warwickshire CC	2	0
25.	West Midlands Region	1	1
26.	Wolverhampton UA	9	34
27.	Worcester	3	0
28.	Wyehavon	1	0
29.	Wyre Forest	3	1

Yorkshire and Humberside

Local Authority	Planning CPOs	Housing CPOs
1. Barnsley	9	2
2. Calderdale UA	2	0
3. City of Bradford Metropolitan District	8	18
4. Doncaster UA	5	15
5. East Riding of Yorkshire UA	1	9
6. Hambleton	1	0
7. Harrogate DC	1	0
8. Kingston upon Hull UA	4	2
9. Kirklees UA	7	0
10. Leeds UA	7	8
11. North East Lincolnshire UA	1	9
12. North Lincolnshire	1	0
13. North Yorkshire Co Co	1	0
14. Rotherham UA	6	0
15. Ryedale	2	0
16. Sheffield UA	12	5
17. South Holland	2	0
18. Wakefield UA	2	0
19. York	0	0



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