

Development Consent Orders: Compulsory Acquisition

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- The statutory powers
- Policy context
- Relevance of alternatives
- Practical application
- The future

Statutory framework (1)

DCO may provide for (amongst other things):

- the compulsory acquisition of land;
- the creation, suspension or extinguishment of, or interference with, interests in or rights over land;
- the abrogation or modification of agreements relating to land;
- the protection of the property of any person

s 120 Planning Act 2008/Part 1 of Sch 5

Statutory framework (2)



S/S must be satisfied that:

– The land

- is required for the development to which the development consent relates;
- is required to facilitate or is incidental to that development; or
- is “replacement land”

AND

– There is a compelling case in the public interest for the land to be acquired compulsorily

s 122 Planning Act 2008

Statutory framework (3)



- The land must be included in the application for the DCO;
or
- all persons with an interest in the land must consent to the inclusion of the provision for acquisition of that land; or
- the prescribed procedure in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010/104 is complied with.

s 123 Planning Act 2008

Statutory framework (4)

- Procedure after making the DCO is governed by the Compulsory Purchase Act 1965 (subject to amendments) – s 125
- Limited scope to modify compensation arrangements – s 126
- Restrictions on acquisition of land of statutory undertakers – s 127
- Note removal of special Parliamentary procedure requirements in 2013, save for National Trust land where NT objects, or commons/open space without replacement- s 130-132

Policy



- Since repeal of s 124 Planning Act 2008 there is no statutory guidance
- DCLG procedural guidance – 2013
- Recent guidance following 2013 changes – changes need for special parliamentary procedure

Compelling case in the public interest?



- Relevance of NPS
- Relevance of alternatives
- Negotiation

Practical application

- Consultation – s 44
 - Category 1 – owner/lessee/tenant
 - Category 2 – interest in land
 - Category 3 – entitled to make a claim (e.g. under Part 1 LCA 1973)
- Book of Reference
- CA hearings
- Notice requirements – s 134

Compulsory acquisition hearings

- s 92 Planning Act 2008
 - Right to be heard
 - Infrastructure Planning (Examination Procedure) Rules 2010/103
 - No special procedure for CA hearing

Rookery South

- *R (FCC Environment) v SSECC* [2015] Env LR 22
- Acquisition of local authority land led to SPP process (and very substantial delay)
- FCC had land acquired (and rival operator)
- One ground of challenge related to reasons given for allowing the acquisition of land

Court of Appeal judgment

- Rejected Mitting J's finding that it would be difficult to conceive of circumstances in which DCO made but could nonetheless find that the CA test was not met
- Considered various circumstances in which CA may be refused despite application otherwise succeeding
 - Excessive land take
 - Acquisition of right would be sufficient
 - Agreement to sell
 - Existence of alternative (despite alternatives not falling to be considered under the decision on the merits of the DCO)
- Reasons challenge to Panel report fails

The future

- Expanding scope of DCO regime – expanding scope of CA?
- Ex gratia compensation schemes
- Small claims schemes
- Voluntary purchase schemes for major infrastructure projects



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