

**Legal Challenges to Implementing CPOs and
Decisions under the Crichel Down Rules**

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Implementing a CPO – time limits

- Compulsory Purchase Act 1965 s. 4
The powers of the acquiring authority for the compulsory purchase of the land shall not be exercised after the expiration of three years from the date on which the compulsory purchase order becomes operative
- Powers of the AA for compulsory purchase of the land are those stated in the confirmed (or made) CPO
- CPO becomes operative on the day on which notice of confirmation or making of the CPO is first published in accordance with the ALA (s.26 Acquisition of Land Act 1981)

Compulsory Purchase Under An Enactment



- Statutory Order made under Transport and Works Act 1992/Planning Act 2008 (NSIPs)
- Crossrail Act 2008
- High Speed Rail (London – West Midlands) Bill
- The powers of the acquiring authority for the compulsory purchase of land are conferred by the Act or Order
- The Act or Order prescribes a period within which those powers must be exercised (sometimes subject to a power to extend)
- Crossrail Act 2008 section 6
- Network Rail (Thameslink 2000) Order 2006 article 33

Exercising compulsory purchase powers

- **Compulsory Purchase Act 1965 s.5 – notice to treat**
- Service by acquiring authority of notice to treat is sufficient exercise of powers of compulsory purchase for purpose of s.4 – Grice v Dudley Corporation [1958] 1 Ch 329
- **Compulsory Purchase (Vesting Declarations) Act 1981 s.4 – general vesting declaration**
- Acquiring authority should execute GVD (and not merely give preliminary notices under s.3) in order to ensure sufficient exercise of powers of compulsory purchase within 3 year time limit – CIS Ltd v Hastings BC (1993) 91 LGR 608

Loss of right to enforce NTT through lapse of time $\frac{L}{C}$

- Prior to Planning and Compensation Act 1991, no statutory control over completion of compulsory purchase following effective service of NTT/execution of GVD
- Grice v Dudley Corporation [1958] 1 Ch 329 – acquiring authority should proceed to complete compulsory purchase within reasonable period
- Now covered by Compulsory Purchase Act 1965 s.5(2A)-(2E) inserted by Planning and Compensation Act 1991 s.67

S.5(2A) Compulsory Purchase Act 1965



A notice to treat shall cease to have effect at the end of the period of three years beginning with the date on which it is served unless –

- (a) the compensation has been agreed or awarded or has been paid or paid into court,*
- (b) a general vesting declaration has been executed under section 4 of the [1981 Act],*
- (c) the acquiring authority have entered on and taken possession of the land specified in the notice, or*
- (d) the question of compensation has been referred to the Upper Tribunal.*

Challenges to Exercise of CPO



- Whether the acquiring authority has complied with the statutory requirements outlined above is likely in most cases to be a question of fact.
- If the acquiring authority has failed to comply with those statutory requirements, it is no longer able to rely upon the CPO.
- See Oakglade Investments Ltd v Greater Manchester Passenger Transport Executive [2009] RVR 39 (Lands Tribunal)
- Is implementation of CPO amenable to judicial review when acquiring authority has complied with those statutory requirements?

Different purpose challenges



- An acquiring authority is amenable to judicial review on the ground that it has exercised (or is proposing to exercise) its powers for the compulsory purchase of the land for a purpose that is not within the authority of the CPO
- Simpsons Motor Sales (London) Ltd v Hendon Corporation [1964] AC 1088, 1118 –

Where a body such as the corporation obtains a power of compulsory acquisition which is expressed or limited by reference to a particular purpose, then it is not legitimate for the body concerned to seek to use such power for some different orcollateral purpose.

The limit of judicial inquiry



- A CPO is a public legal instrument which falls to be understood in accordance with its stated terms in the context of the empowering statute (e.g. S. 226(1) of the Town and Country Planning Act 1990)
- R (Argos Limited) v Birmingham City Council [2011] EWHC 2639 (Admin), [172]
- Challenge to GVD on grounds that acquiring authority's purpose no longer within the scope of the CPO
- Ouseley J rejected the argument that the court should have regard to non-statutory materials (the Statement of Reasons, Statement of Case, etc) in determining the scope of the CPO

The stated purpose of the CPO



- Meravale Builders Ltd v Secretary of State for Environment (1978) 36 P&CR 87, Mann LJ at 326 –
...the purpose for which the order was made was the regeneration of part of the Urban Development Area, that is to say of East Quayside. That was the expressed purpose of the maker....I attach decisive importance to the order. That is the natural focus of attention for both layman and lawyer. That purpose must of course be identical to or one selected from within the purpose for which the making of an order is empowered.
- R(Iceland Foods Ltd) v Newport City Council [2010] EWHC 2502 (Admin) should be understood on this basis

The correct approach in practice



- What is the stated purpose of the CPO?
- Usually expressed by reference to an enabling statute or statutes: does the acquiring authority's current scheme remain within the ambit of the stated enabling power(s)?
- Usually expressed by reference to a factual objective (e.g. the redevelopment oflands forpurposes): does the acquiring authority's current scheme remain within the ambit of those stated purposes?
- If the answer to those questions is 'yes', it is immaterial that the acquiring authority's current scheme is factually different from that which formed the factual basis for making the CPO.

The role of the confirming authority



- Argos Land Ltd at [155] –
...if it is desired to define the scope of the CPO more precisely, mechanisms exist but were not used. This is not a case where any documents are incorporated by reference into the CPO as they could be, nor where any modification was made to reflect the outline planning permission as at the time of the inquiry, as could have been done, or to tie the CPO to a scheme any more precisely defined than is done by the terms of the CPO itself.
- As part of his objection, a landowner may propose modifications to reduce the scope of the CPO as narrowly as possible, in the event of confirmation

Different purpose challenges - summary



- A challenge to implementation of a CPO based on alleged departure from the acquiring authority's case as stated in the Statement of Reasons or Statement of Case is unlikely to succeed
- A challenge based upon clear evidence that the acquiring authority intends to acquire for a purpose that is different from that authorised on the face of the CPO is more likely to succeed.
- Landowners should seek to narrow the scope of the express purpose of the CPO at the confirmation stage

The Crichton Down Rules



- Non statutory arrangements for the disposal of surplus land held by Government departments
- Current rules are set out as Part 2 of the Memorandum to Circular 06/2004, with accompanying guidance notes
- Government departments are expected to abide by the Rules.
- Local authorities and other public authorities are also “recommended” to abide by the Rules
- The Rules are “commended” to private sector bodies to which public land holdings have been transferred, such as on privatisation

The basic policy of the Rules



- Surplus government land that was acquired by or under threat of compulsion should be offered back to the former landowners or their successors, provided that the character of the land has not “materially changed” since acquisition
- Former owners will, as a general rule, be given first opportunity to repurchase at full market value as at the date of repurchase
- Rules 7 and 10
- Exceptions from the Obligation to Offer Back – Rule 15
- Terms of Resale – Rules 26 and 27

A juridical explanation for the Rules



- R v New Towns Commission ex parte Tomkins (1989) 87 LGR 209, 218 (Bingham LJ) –

The public interest underlying this policy is obvious also. When land is compulsorily purchased the coercive power of the state is used to deprive a citizen of his property against his will. He is obliged to take its assessed value whether he wants to or not. This exercise is justified by the public intention to develop the land in the wider interests of the community of which the citizen is part. If, however, that intention is not fulfilled, and the land becomes available for disposal, common fairness demands that the former owner should have a preferential claim to buy back the land which he has been compelled to sell...[at] full market price at the time of repurchase....

The Rules may be modified

- As the Rules are non-statutory, they may lawfully be modified in their application to specific public works and projects
- Crossrail Land Disposal Policy – applied the Rules subject to stated modifications
- HS2 Land Disposal Policy – specific modifications to take in wider regeneration proposals

Materially changed



- Rule 10

The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested' or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

Room for judicial review?



- The basic scheme of the Rules (is the land surplus or within one of the exceptions, has the character of the land materially changed, determining price based on open market value) does not lend itself to the intervention of the court on judicial review principles.
- These are fact sensitive and judgmental questions.
- There is no underlying statutory scheme against which to test the lawfulness of decisions.
- Challenges will tend to be confined to disputes over the interpretation of the Rules: cf. Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 (interpretation of planning policy)

Interpretation Challenges



- R v Secretary of State for the Environment ex parte Wheeler (2001)82 P&CR 1 – the court interpreted the predecessor to rule 15(2), which allowed as an exception to Offer Back a case in which it was decided on ministerial authority that for strong and urgent reasons of public interest the land should be disposed of as soon as practicable to a local authority.
- R v Secretary of State for Defence ex parte Wilkins [2000] 3 EGLR 11 – the court interpreted the general rule in a case where multiple parcels of land had originally be taken for the creation of the military airfield.

Summary



- Court is likely to defer to the decision maker on the application of the Rules save in a case in which there is evidence of a clear and unexplained departure from the stated provisions
- Court is more likely to intervene in a case in which a dispute as to the interpretation of the Rules has given rise to a dispute or a difficulty in their application to the circumstances of the case.