Compulsory Reading

The CPO newsletter

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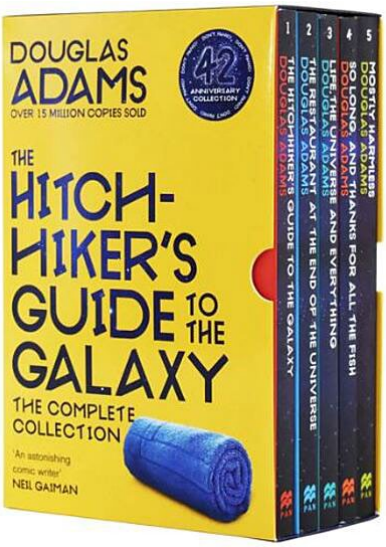
Welcome to the first in a regular series of articles by myself and Town colleagues on all things CPO and compensation related. There are excellent blogs on planning law such as **Simonicity** by our very own Simon Ricketts and Zack Simons' always entertaining **Planoraks**. Infrastructure enthusiasts are well-served by Angus Walker's regular **analysis** of DCO decision, challenges and statistics. But there's a gap in the market when it comes to CPO and compensation law which we hope to fill.

Future entries will cover a wide range of subjects including hope value, case management in the Tribunal, appropriation, tips for objecting to a CPO, and a deep dive into the latest HS2 Bill amongst others. Inevitably, however, this first post will consider the CPO reforms in the **Levelling-up and Regeneration Bill** published on 11 May, accompanied by a **policy paper** (of which more later).

There's a whole part of the Bill (Part 7) devoted to compulsory purchase. Part 7 is bookended by a new section 226(1B) which amends section 226 of the TCPA 1990 to make it explicit that the scope of the commonly used CPO power to acquire land for "planning purposes" includes regeneration purposes and by some minor technical amendments to the no-scheme principle (as set out in sections 6D and 6E of the Land Compensation Act 1961). Those measures aside, the focus in Part 7 is very much on CPO procedure and implementation.

Digitalisation:

Baby steps



Source: books2door.com

The first time I ever encountered compulsory purchase was in the wonderful Hitch-hiker's Guide to the Galaxy by Douglas Adams. In the opening sequence to the book, Arthur Dent discovers his home is to be demolished for a bypass. Arthur complains that while the plans were indeed available at the local planning office, they were in a locked filing cabinet in a disused lavatory with a sign on the door warning readers to "Beware of the Leopard".

Source: redbubble.com

Arthur would have approved of clause 141 of the Bill which attempts to bring the antiquated CPO process kicking and screaming into the 1990s by promoting online publicity. As well as publishing notices of the making of a CPO (and the right to object to it) in successive editions of a weekly local newspaper, acquiring authorities must also now publish these notices on an "appropriate website" i.e. one that a member of the pubic could find on searching the internet.

Clause 141 also changes the minimum 21 day objection period to accommodate the online publicity measures. The objection period must now be at least 21 days after the latest day on which the acquiring authority has issued the notices (a) in a local newspaper, (b) on the web, (c) fixed to a conspicuous object on or near the affected land, and (d) to qualifying persons (i.e. broadly those with an interest in the land affected by the CPO). In practice, I expect that Acquiring Authorities moving forwards will give themselves plenty of leeway and set a longer objection period of at least 28 days or more after the notice is published to avoid procedural points being taken. It's not as if late objections are ignored by confirming authorities in any event.

At the other end of the CPO process, notice of confirmation of the CPO must also now be published on an appropriate website for at least six weeks.

While any measures to raise awareness and improve the accessibility of the CPO process are welcome, these are pretty modest when a wholesale reform of the process is really needed. There is still no obligation on acquiring authorities to host a website with relevant CPO documentation on it (e.g. the Council's resolution, the statement of reasons, the timetable etc). At the very least, this could be stated in the updated CPO guidance to be best practice. There's also no database of inspectors' reports into CPOs, so practioners are not informed of best practice (this tool was previously proposed by MHCLG (as it was called then) but has yet to be implemented). None of this is rocket science – a system has been in place for more than a decade to allow access to documentation and decision making for DCOs. There seems no good reason why CPOs continue to be shrouded in mystery. A CPA committee led by Richard Asher has produced an excellent **paper** on digitalisation. Let's hope the Government takes notice of it and considers amendments along these lines during the Bill's passage through Parliament.

Hearing aids

Clause 142 brings about a significant change to the CPO confirmation process. With a few limited exceptions, there will no longer be an automatic right for objectors to require a public local inquiry into the confirmation of the CPO. Instead, (similar to the process for planning appeals) the confirming authority (DLUHC for planning CPOs) can decide, having regard to the scale and complexity of the CPO, whether there will be an inquiry or the "representations procedure" should be followed instead. We will have to wait for full details of the "representations procedure" on secondary legislation, but it appears it will allow for written representations or a hearing. Where there are written representations, it also appears from the framework legislative provisions that the confirming authority considers those directly rather than following a report by an inspector. It is likely hearings will be less formal than inquiries – for example with no cross-examination allowed.

There's a lot of sense in all of this. It's a real disincentive for acquiring authorities

considering using CPO powers (not to mention developers) if they know that they will have to incur all the costs and delay associated with a full public inquiry (including proofs of evidence, instructing Counsel etc) even if there are just one or two objectors who may not even turn up at the inquiry. That said, a lot will depend in practice on how the discretion is exercised by confirming authorities. They will of course need to carefully consider whether the procedure adopted complies with the fundamental right to a fair hearing under the Human Rights Act 1998 given that a CPO obviously amounts to a significant interference with the right to hold property free of state interference. Almost certainly, an early decision on this will be tested in the courts on these grounds.

A halfway house

Source:reddit.com/r/CasualU/

Another interesting and slightly left field reform is the provision of a power (clause 143) to allow confirming authorities to confirm a CPO subject to conditions. The effect of this “conditional confirmation” is that the CPO cannot be implemented until the conditions have been discharged by the confirming authority. To prevent acquiring authorities from extending the life of the CPO by holding off from making an application, the CPO will expire if the confirming authority has not received an application by a certain time or having received an application, decides that the conditions have not been met. Both conditions and time limits are to be specified by the confirming authority when it confirms the order.

The process and procedure for the discharge of conditions is to be set out in

secondary legislation but must include provision for an affected objector to be given notice of an application and have the opportunity to make written representations (will this create a burdensome satellite process post confirmation?).

Once an application has been approved and the conditions discharged, the acquiring authority must serve and publish a copy of both the order and a "fulfilment notice" within 6 weeks (unless a longer period is agreed).

In my view, this reform is to be tentatively welcomed. Tentatively because we don't yet know what kind of conditions the Government has in mind. They could, for example, require that the Acquiring Authority demonstrate that they have funding for the scheme or that they have reached a satisfactory agreement with an objector for its relocation. On the other hand, considerable care will be needed to ensure the new "conditional confirmation" tool does not facilitate under prepared and insufficiently justified orders being promoted by acquiring authorities which inappropriately defers issues to conditions and dilutes the obligation for an acquiring authority to robustly demonstrate that CPO powers are necessary and that there is a compelling case for them in the public interest. Presumably, in addition to the promised secondary legislation, there will be detailed guidance provided on the parameters of this new consenting route when DLUHC issues the latest version of its '*guidance on Compulsory Purchase and the Crichel Down Rules*' which is promised in the Levelling Up policy paper accompanying the Bill.

Time limits

Clause 146 adds a new section 13C into the Acquisition of Land Act 1981 giving the confirming authority flexibility to grant a longer than the current 3 year period for implementing the CPO where appropriate. It appears that the acquiring authority can't include this longer implementation period in the order submitted for confirmation, but I assume that they will have to request it so that landowners will know how long it is anticipated the powers will last for.

Finally (on the Bill), there is provision to allow the acquiring authority to agree with the owner of any interest in land a later vesting date to that specified in notices send to the owner following the execution of a general vesting date.

And there's more...

Source: chorleywoodmagazine.co.uk

Overall, these reforms are significant but unlikely to be revolutionary. However, the policy paper makes it clear that there is more to come in the compensation sphere, including what appears to be proposed wholesale reform of the system for securing certificates of appropriate alternative development (CAADs). It states:

"*We also intend to introduce a measure that reforms land compensation by ensuring that fair compensation is paid for the value attributable to prospective planning permission ('hope value'). The relevant planning assumptions in the Land Compensation Act 1961 will be made more realistic, and improvements made to the process of obtaining a Certificate of Appropriate Alternative Development. These changes will make the valuation of land in this context more akin to a normal market transaction.*"

Presumably DLUHC couldn't get all its (ahem) ducks in a row in time for the introduction of these CPO compensation measures in the Bill to the Commons and I anticipate (following a short technical consultation) that these provisions will creep into the Bill in the Lords. In the meantime, this **paper** by the CPA's CAAD working group (which I now chair) is worth a read.

Intriguingly, there's also a passing reference in the policy paper to a new review by the Law Commission. Let's hope that if there is a review, the Government carries through the reforms this time. The law would be in a much better place if a **Compulsory Purchase Code** had been legislated for as recommended by Lord Carnwath and his distinguished colleagues in 2003.

A special thank you to Paul Arnett for his invaluable insights from his time at MHCLG when the last set of reforms were put before Parliament.

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