Your say on reforms to CPO compensation

June 2022

Hot on the heels of the procedural compulsory purchase order reforms in the Levelling-up and Regeneration Bill (LURB), on 6 June the Department for Levelling Up, Housing and Communities published a consultation paper proposing fundamental changes to how CPO compensation is assessed. If introduced following a six-week consultation exercise, these reforms, which are the most important set of CPO proposals since the 1970s, will have very significant implications for stakeholders.

Broadly, the proposals are in two parts. Part one concerns reforms to the Certificate of Appropriate Alternative Development (CAAD) system. Part two concerns the introduction of a measure enabling acquiring authorities, on a scheme specific basis, to request a direction from the secretary of state capping the CPO compensation payable at or close to existing use value.

CAAD proposals

A CAAD is a mechanism for determining what land could have been used for in the absence of the CPO scheme. Its purpose is to identify development(s) for which planning permission could reasonably have been expected to be granted if the land had not been compulsorily acquired. The grant of a CAAD establishes that the development is "appropriate alternative development". AAD status is significant as, when compensation is assessed, it must then be assumed that planning permission for the development(s) specified in the CAAD is in force. In addition, following reforms in 2011, where there is a reasonable expectation of a particular planning permission being granted in a CAAD it is assumed that the planning permission is in force which converts this reasonable expectation into a certainty. Any advantage accruing to claimants is arguably fair in circumstances when the land is likely to have been blighted and/or safeguarded preventing applications for planning permission being made and recognising that landowners are being forced to sell at a date not of their choosing.

Aside from announcing its intention to amend sections 14 and 17 of the Land Compensation Act 1961, the details of the proposed changes are sparse and limited to five high level bullet points. Bullet point 1 states that the amended CAAD system will reflect "normal market conditions". What specifically is proposed by this is unclear. If it is intended that CAADs should specify the prospects of securing planning permission as a percentage, this is problematic. For a start, this does not reflect how the planning system works when a proposal either is or is not acceptable in planning terms.

Bullet point 2 proposes moving forwards a single route for determining hope value of land. Again, the precise details as to what is proposed here is missing. If it means that you can get only get AAD if you make a CAAD application this is arguably not unreasonable. However, if it is proposing that hope value can only be claimed if a CAAD application is made that would, to my mind, be unfair and undermine the tribunal's fundamental role in ascertaining the market value of land. The other bullet points propose other arguably less contentious reforms to the CAAD process, including a proposal to remove the acquiring authority's obligation to pay the claimant's CAAD costs and to limit the scope of the CAAD certificate to the development(s) applied for.

Land value capture proposals

With the objective of improving scheme viability and delivering more public benefits, part two of the consultation proposes capping CPO compensation at or close to EUV through directions made by the secretary of state on a scheme specific basis on request from public sector acquiring authorities. If made, such directions would set out the level of compensation payable for the scheme providing certainty on this element of land assembly costs.

Although the procedure for such directions is not specified, it is likely that evidence would be required as to how the land value captured would be applied for the public benefit. Contrary to what the consultation states, it is hard to see how landowners caught by such a direction could possibly remain entitled to a “fair price for their land” in circumstances when the compensation received would be less than market value.

Aside from the inherent unfairness of these proposals and unresolved questions as to whether such measures are compatible with the European Convention on Human Rights, in practice, they are likely to be little used by acquiring authorities. First, to obtain a direction, disclosure of commercially sensitive financial information such as viability calculations and property cost estimates is likely to be required, which no acquiring authority in its right mind would agree to doing.

Second, if disclosed, they would be opening themselves up to viability based objections at inquiry, risking the consenting stage.

Third, the proposals risk creating a damaging and unfair two-tier land market. Land facing the prospect of CPO and such directions would see values depressed in the knowledge that land may be acquired at or close to EUV, whereas land capable of development where there was no risk, or only a very limited risk, of CPO would continue to trade at full development values.

Fourth, the consequences of directions are such that any requests for a direction are likely to be mired by objections and legal challenges significantly increasing the costs and delay in promoting CPOs.

Make your voices heard

Given the very significant implications of these proposals and the apparent intention to introduce these measures as late-stage amendments to the LURB, thereby reducing the opportunity for parliamentary scrutiny, all stakeholders of whatever persuasion are encouraged to actively engage and respond to the consultation before it closes on 19 July. Go to:
https://www.gov.uk/government/ consultations/compulsory-purchase-compensation-reforms-consultation/compulsory-purchase-compensation-reforms-consultation

Paul Arnett
Senior Associate
Town Legal LLP

paul.arnett@townlegal.com
07778487683