

Insights

SIGNIFICANT CHANGES TO CPO COMPENSATION ON THE HORIZON

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SUMMARY

A recently published [government consultation](#) (which closes on 19 July 2022) proposes fundamental changes in how CPO compensation is assessed and will have significant implications for landowners, acquiring authorities and scheme promoters. In this Insight we explain the implications and significance of these important proposed changes.

Reforming compulsory purchase powers so that land assembly for regeneration projects is made easier, is a critical part of the Government's levelling up agenda.

The recently published Levelling Up and Regeneration Bill contained some procedural amendments to the compulsory purchase regime and proposes changes in how alternative development should be considered in compensation assessments and the process for securing Certificates of Appropriate Alternative Development.

By themselves, these changes do not amount to a significant rewrite of the CPO regime. However, a separate [government consultation](#) (which closes on 19 July 2022) proposes further changes in how CPO compensation is assessed. These changes are more significant and will have fundamental implications for landowners, acquiring authorities and scheme promoters.

In this Insight we explain why the proposed changes are so significant and their practical implications.

THE CPO COMPENSATION CODE

The overriding principle of compulsory purchase compensation is 'equivalence'. This means that people whose land is acquired compulsorily should be left neither better nor worse off financially as a result of their land being acquired – being entitled to compensation which is neither more nor less than the value of their loss.

Compensation payments are governed by various legislative rules and case law known as the 'compensation code'^[1]. One of the principal elements of compensation assessments is that they are based on the open market value of the interest acquired^[2] in light of the 'no-scheme principle'^[3] with the prospect that planning permission may be granted on that land or other land in the future, included in this valuation. The value attached to prospective planning permissions is often referred to as 'hope value' and for a long time has been contentious, seen by some as a barrier to land assembly for inflating compensation costs and affecting viability. The argument for reform is that compensation costs are difficult to predict and if land is acquired at closer to existing use value, rather than the anticipated value from possible future development, more of the uplift in land value can be captured for public benefit.

PROPOSED CHANGES

The Government proposes to reform the 'hope value' element of CPO compensation to improve viability and deliver more public benefit. Its preferred approach is to cap payments for 'hope value' at existing use value or at a percentage above this in certain circumstances and following a request by a public sector acquiring authority for a direction from the Secretary of State. If made, the direction would set out the levels of 'hope value' payable for a relevant scheme thus providing certainty on this element of land assembly cost. Directions would be likely to require evidence as to how the land value captured would be applied for the public benefit.

An alternative approach is proposed that goes further, to automatically limit the payment of 'hope value' either more generally or for specific types of schemes.

In both cases the consultation seeks views on whether these proposals are in the public interest, and, in relation to the first proposal, whether certain, deliverable public benefits could be identified in applications for directions and how those public benefits could be linked to value captured. This justification is critical to enable the Government to lawfully introduce these reforms.

The consultation doesn't indicate what percentage cap is contemplated or give much information about the types of CPO schemes the cap could apply to, other than to say that schemes where 'hope value' is not a material consideration would not be affected.

IMPLICATIONS

At first glance the proposals clearly favour acquiring authorities and scheme promoters who indemnify and then cover the CPO costs. 'Hope value' calculations are not straightforward and are determined on what can be justified on a case-by-case basis based on evidence and are often drawn out and disputed. As such, estimates of compensation and economic modelling for development schemes is difficult and uncertain from a promoter's perspective. These changes would enable a more accurate assessment of costs and a scheme's viability at the outset. With more clarity (and less scope for dispute) landowners could be incentivised to release land for

development in advance of any application of the compulsory purchase. Reduced compensation could also improve the viability of schemes that may otherwise not come forward and, in turn, deliver more public benefits, for example affordable housing or enhanced infrastructure improvements. That's the theory.

However, whether the proposals are workable in practice is a different question. Firstly, in order to secure a direction, disclosure of commercially sensitive information around land values will be required, and possibly made public, which will not find favour with the development community. Secondly, regardless of the outcome of a direction application, such disclosure will make the proposed CPO vulnerable to objection on viability grounds and potential challenge if made.

For landowners, particularly those with large or strategic land holdings, a reduction in the value of their land if acquired by compulsion (potentially below what they paid for it) will clearly be a significant concern.

The proposals could potentially create a two-tier system for land valuations, leading to inequity and unfairness and consequentially to legal challenges to any directions made on a case by case basis. It is doubtful whether these reforms would, in practice, speed up and clarify the land acquisition process and deliver the desired objective. Furthermore, whether compensating owners at less than open market value (and undermining the long established principle of equivalence) is equitable, compatible with human rights and justifiable, raises hugely important questions that must be fully examined. Given the significance of these proposals, it is hoped that the Government receive a good amount of feedback from affected stakeholders. Please let us know if you would like any further information about this consultation.

[1] This includes the Land Compensation Act 1961 and the Land Compensation Act 1973

[2] Rule 2 of section 5 of the Land Compensation Act 1961 (LCA 1961) defines this as the amount which the land if sold on the open market by a willing seller might be expected realise, subject to the other provisions of that Act.

[3] This is so that any increases or decreases in the value of the land attributable to the underlying 'scheme' e.g. regeneration project, new settlement, trunk road etc. or the prospect of that scheme, are disregarded.

RELATED PRACTICE AREAS

- Planning & Zoning

MEET THE TEAM



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