



A Guide to Compulsory Purchase Powers

Executive summary

- 1 Compulsory Purchase Powers are a recognised tool to help acquiring authorities achieve social, environmental and economic change to improve the quality of life of communities.
- 2 The Council is an 'authorised body' granted powers to acquire land compulsorily to carry out a function which is in the public interest.
- 3 The law and procedures relating to compulsory purchase are complex and the use of such powers interfering with the rights of landowners / occupiers must be managed carefully. As a result local authorities are often reluctant to use compulsory powers.
- 4 However, used correctly compulsory purchase powers can be used for a wide range of purposes offering wide ranging opportunities to deliver improvements.
- 5 By understanding the complexities of compulsory purchase and the correct procedures, the Council will be able to more strategically consider if the use of these powers could help facilitate or act as a catalyst for the delivery of specific projects such as through regeneration, revitalisation of communities, the promotion of business and protection of historic assets.
- 6 Preparing and submitting a compulsory purchase order for approval is very process driven, and the statutory requirements and prescribed procedures must be adhered to and met. It is not a process that the Council will routinely undertake for all problem buildings and they can take time to complete.

Background

7 A constant element of the Council's work in recent years has been in supporting the improvement and regeneration of the county's towns and villages and addressing issues of local concern. The initial Town and Villages strategy, approved by Cabinet in December 2018, set out a series of guiding principles for town and village regeneration. Of particular relevance to the potential to use compulsory purchase powers are:

- *Targeted work to address empty and/or poor quality and wrongly configured property through support, conversion, acquisition and assembly. This may lead to demolition of problem local buildings.*

8 Many of the challenges identified in the Town and Villages strategy relate to retail and the high street, a challenge that will now be even greater going forward as a result of the impact of COVID 19 pandemic. The 2018 report identified various ways in which the Council can achieve greater impact in addressing these and other more diverse issues, including specific reference to using compulsory purchase powers:

- *Utilising the capital programme, disposals and CPO powers where appropriate to bring forward new development proposals or to address local regeneration opportunities*
- *Targeting empty properties, particularly residential properties to seek to bring such properties back into productive use*

9 Within the five key themes of the Towns and Villages Strategy, specific references are made to supporting the accelerated delivery of the County Durham Housing Strategy. The Housing Strategy contains a series of 'key messages' including working with communities most affected by long term empty properties and working with property owners and landlords with the aim of bringing empty properties back into use wherever possible. The key themes of the Towns and Villages Strategy also promote finding innovative solutions to underused / derelict land and buildings to drive and support regeneration activities within towns and villages.

10 Some local authorities routinely implement compulsory purchase procedures to encourage active engagement with property owners of empty or derelict land and buildings to enable them to achieve successful outcomes. Whilst initially this may necessitate resource to develop skills and processes, it can be used as another tool to deliver strategic objectives in respect of individual buildings as well as larger scale projects.

- 11 Delivering against various strategic programmes and priorities requires a long term commitment in terms of land acquisition, partnership working, capital investment. Land and property negotiations by agreement are notoriously protracted and time consuming, particularly if the landowners are reluctant to engage. This can stall or completely stifle schemes or regeneration opportunities if terms cannot be agreed within a reasonable timescale.
- 12 Whilst the use of compulsory purchase powers is not always appropriate and is the route of last resort, it can be expedient and prudent to plan a compulsory purchase timetable and initiate formal procedures whilst negotiations are still ongoing rather than waiting for them to break down completely.
- 13 This twin tracking approach provides a clear signal to landowners and those affected that the Council is serious and committed to a scheme, which may encourage more meaningful negotiations. It also helps provide a focus to limit 'open ended' negotiations which can often be protracted over many years without a positive result.
- 14 Many authorities take this approach and the purpose of this report is to ensure that appropriate consideration is given to the potential to utilise compulsory purchase powers as part of the planning and development of strategic schemes to help bring improvement projects to fruition.

What are compulsory purchase powers?

- 15 Simplistically, compulsory purchase powers are a legal function allowing public bodies on which they are conferred to acquire an interest in land if the landowner is not willing to sell. As a local authority, the Council has compulsory purchase powers.
- 16 A compulsory purchase order (CPO) will be granted if all legal and procedural requirements are fully met. Each CPO must be for a specific purpose which presents as a compelling case in the public interest and each purpose must be granted by the power of what is referred to as an enabling Act of Parliament with the approval of the specified government minister.

When can the Council use compulsory purchase powers?

- 17 The use of compulsory purchase powers is not always appropriate, and a CPO will not be approved by the confirming government minister if he/she is not satisfied that all statutory procedures have been followed correctly or that the project is in the public interest. The Council needs

to consider the appropriateness of using compulsory purchase powers for each individual project.

- 18 A CPO should only be made where there is a compelling case in the public interest. The use of compulsory purchase powers is a sensitive and emotive issue and may well be challenged and objected to. The Council must be sure that the purposes for which it is making the CPO can justify interfering with the rights of people with an interest in the land affected.
- 19 The Council may be required to defend the proposal so will need to prepare a thorough and robust justification. As part of the justification, the Council will have to show that it has a clear plan for the use of the land (supported by any planning policies), and that it has appropriate resources in place to undertake the project. This includes identifying sources and timing of funding. There is a lot of preliminary work involved in preparing for a CPO, so it should only be considered as a tool to help deliver projects that the Council is committed to in all respects.
- 20 Compulsory purchase powers should be used where it is expedient to do so. However, they should only be used as a last resort and the Council will be required to comprehensively demonstrate that it has taken all reasonable steps to acquire the interests in the land by agreement first. This is an important principle, not only in terms of land negotiations but also in terms of ensuring that appropriate and prescribed procedures have been followed to try and get empty homes, derelict or at-risk properties back into use (see 30).
- 21 However, negotiations can become (sometimes deliberately) very protracted and projects often stall completely. It is well recognised that valuable time can be lost if the compulsory purchase procedure is not started until negotiations formally break down. As such, it is accepted practice for acquiring authorities to take a twin track approach as a contingency measure and initiate compulsory purchase procedures during the course of negotiations.
- 22 The Council should consider when land is required for each project and if there is a real likelihood that the land or interests will not be acquired by agreement to the detriment of the scheme, it should plan the compulsory purchase timetable as part of the project development and initiate formal procedures accordingly.
- 23 Whilst acquisitions by agreement are to be preferred, the ability and willingness of the Council to use compulsory purchase powers makes clear the Council's intent and commitment to a scheme which may be

sufficient to encourage reluctant landowners to enter meaningful negotiations.

What can the Council use compulsory purchase powers for?

- 24 The Council can use compulsory purchase powers for a wide range of purposes using a large number of acts of Parliament referred to as 'enabling powers'. The purpose for which the Council wants to acquire the land will determine the enabling power which it must use to seek the CPO.
- 25 It is essential to use the most specific enabling power for the purpose proposed as use of the wrong power could result in a delay in the process or at worst the CPO application being rejected. There are some general enabling powers, but these should only be used where a specific power is not available. Specialist advice should be sought to identify which enabling power should be used and to ensure all specific legislative and procedural requirements are met.
- 26 The following paragraphs outline some of the more common purposes for which the Council is likely to want to use compulsory purchase powers and for which there are enabling powers. It is not intended to be comprehensive and cover every situation. Specialist advice should be sought to determine if compulsory purchase powers can be used in other specific situations.

Wider planning objectives

- 27 The Council may need to use compulsory purchase powers to help assemble land where this is necessary to implement proposals in the County Durham Plan. This is most likely to involve assembling land for regeneration through the provision of new retail, employment, leisure and housing for larger scale schemes. It could also however acquire individual properties which are detrimentally impacting on an area which could be regenerated to provide affordable housing, improve the appearance of the surrounding area or reduce anti-social behaviour.
- 28 If the Council proposes to use compulsory powers for these purposes, it is essential that any programme of land assembly is set within a clear strategic framework and that the development, re-development or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area.

Housing

- 29 The Council may need to use compulsory purchase powers to help assemble land for the provision or improvement of housing and ancillary development (whether by itself or someone else).
- 30 It may also want to use compulsory purchase powers to help bring empty properties into housing use and improve substandard or defective properties. In these cases, as the use of compulsory purchase powers is a route of last resort, the Council must have tried all other avenues before making a CPO.
- 31 In respect of empty or underused properties, the use of compulsory purchase powers will only be appropriate where there appears to be no other prospect of a property being brought back into residential use or full occupation, or where the owner cannot be traced.
- 32 In respect of properties where the owner has failed to maintain or bring it to an acceptable standard, the use of compulsory purchase powers will only be appropriate where other statutory measures (eg the service of statutory notices) have not achieved the provision of acceptable housing accommodation. There are limitations in respect of owner occupied housing but compulsory purchase powers could be used where the defects in the property adversely affect other housing accommodation.
- 33 In all cases, the Council will have to demonstrate what steps it has taken to encourage the owner to bring it into acceptable use and the outcome, and what works have been carried out by the owner towards its reuse for housing purposes. However, making it clear that as well as taking formal enforcement action the Council is prepared to use compulsory purchase powers as part of its standard process to bring properties back in to use may help bring about the desired outcomes.

Highways

- 34 The Council may need to use compulsory purchase powers to help acquire land compulsorily to construct or improve highways. This is most likely to involve the construction of new lengths of highway, improvement of an existing highway, construction of new ancillary roads to connect the new road with the existing highway system, the provision of car parking and means of entry/exit and new rights over land for various purposes such as drainage.
- 35 The use of compulsory purchase powers for highway projects is probably the most common application.

Listed buildings

- 36 The Council may need to use compulsory purchase powers to acquire a listed building in need of repair and long-term preservation. However, a CPO will only receive ministerial approval in exceptional circumstances, and the Council would have to be confident that the building would be better off in its or in the ownership of somebody else than the Council intends to hand it to.
- 37 As in other situations, the use of compulsory purchase powers are a route of last resort and the Council would first have to go through all possible actions and serve statutory notices for repair and urgent works as appropriate.

Schools

- 38 The Council may need to use compulsory purchase powers to help acquire land which is required for the purposes of its educational functions. This is most likely to involve needing land for a new school or to enable proposals to accommodate changes in school provision including alterations to an existing maintained school.

Countryside Improvement

- 39 In certain circumstances, there may be the potential for the Council to use compulsory purchase powers to acquire land to improve its appearance or condition. This is most likely to involve the planting of trees to preserve or enhance the natural beauty of the land or to carry out works to reclaim, improve or bring back into use land in the area that the Council believes to be derelict, neglected or unsightly. This is not a commonly used power and there is an element of subjectivity in interpreting the enabling power, but the powers cannot be used solely because the Council believes it can provide a better use than the present one.

Other Acquisitions

- 40 The compulsory purchase process requires the use of specific enabling powers to reflect the specific purpose for which the Council wants to acquire the property. However, there may be occasions when the Council can use general enabling powers. This is usually when the Council has specific statutory powers to acquire land for a statutory purpose by agreement (such as for public conveniences, cemeteries and refuse disposal sites), but that specific power doesn't include the power of using compulsory purchase powers. In such situations, the Council can use general powers to enable them to acquire the land compulsorily for defined statutory purposes.

Can anyone else initiate a compulsory purchase procedure that will affect the Council?

- 41 There may be occasions when the Council receives requests from third parties to use their compulsory purchase powers on their behalf. This could include voluntary and community organisations or local bodies such as lower tier councils or commercial groupings like Business Improvement District bodies.
- 42 The Council should consider all requests from third parties who put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response. Consideration should include consideration of the benefits of the scheme to ensure it is in the public interest. It should also consider how the costs of the scheme including the compensation and the compulsory purchase order process are to be covered, either with by those making the request or by the Council. If the Council decides to use compulsory purchase powers on behalf of a third party, it will have to produce a robust justification in the same way it would as if it had initiated the process itself, as set out earlier in this report.
- 43 Cabinet has recently approved the Council making a Compulsory Purchase Order in respect of the land at Witton Gilbert allotments on behalf of Witton Gilbert Parish Council (14 October 2020). This includes the Council taking all ancillary steps necessary in order to secure the confirmation of the CPO and purchase of the land. The Council is making the CPO on the basis that the land is to be transferred to the parish council in the event the order is confirmed and the parish council must meet all of the expenses incurred by the county council in making the order.

Costs and timescales

- 44 The costs and timescale to successfully seek and implement a CPO will vary with each project and be subject to numerous variables, not least whether or not there are any objections to the proposal which result in a lengthy and complex inquiry or court case.
- 45 Preparing and submitting a CPO for approval is very process driven, and the statutory requirements and prescribed procedures must be adhered to and met. It is not a process that the Council will routinely undertake, and experience and knowledge within the Council may be limited. As such, the idea of using compulsory purchase powers can be daunting and is often discounted as being too complex and costly. However, much of the detail required to produce the initial justification for a CPO will need to be produced as part of the Council's own business plan development and consideration.

46 Any decision by the Council to acquire land and buildings for a strategic objective will be subject to robust internal challenge and require strategic and financial justification, irrespective of the route of acquisition. There will be however be additional resource required to comply with the specific requirements of the compulsory purchase legislation, prescribed procedures and the format for presentation.

47 Whilst the Council may not have routine experience of what is involved, the recent work undertaken to prepare and submit the CPO for the Witton Gilbert allotments will have provided an opportunity for officers and members to become more familiar and confident with the technicalities of the compulsory purchase procedure.

48 **Costs**

49 Costs can be split between process costs and the costs of the acquisition itself. There will be a cost to the County Council in making a CPO, over and above the costs of the acquisition of the land or building. The process costs will depend to some extent on the type of scheme and will need to be assessed a part of the business case development.

50 However, there may be cases where the Council can be reimbursed all costs incurred or enter an indemnity agreement with a third party to cover associated costs and transfer this risk. Any such agreement will need to be secured through appropriate legal documentation before any CPO is made.

51 This type of reimbursement and indemnity arrangement forms part of the current agreement with Witton Gilbert Parish Council where the Council is making the CPO on their behalf for the acquisition of an allotment site (see para 54). In that case, as well as reimbursing all costs and expenses incurred in making the order, the Parish Council will indemnify the Council against any costs incurred in the eventuality that a CPO is progressed but is not successful.

52 Indemnity agreements with developer partners will tend to form part of larger more complex land assembly projects where the Council can work with developers to use its compulsory purchase powers to enable complex regeneration projects to come to fruition. CPO indemnity agreements can be very complicated and need to reflect the different stages of the process, the resources required for each and how these will be borne. Again, any such agreement will need to be secured through appropriate legal documentation before any CPO is made to ensure the Council's interests are appropriately protected.

53 **Timescale**

- 54 In terms of timescales, there have been changes in legislation in recent years with a view to simplifying and speeding up the compulsory purchase process. This was particularly aimed at strategic neighbourhood planning but also helps schemes where there are no objections when acquiring authorities may now be able to confirm their own orders if they are unopposed and certain other criteria are fulfilled.
- 55 Even if objections are received, there is the potential to follow the more straightforward written representations procedure as a quicker alternative to holding a public inquiry, and inspectors are also now able to use delegated confirmation to confirm CPOs instead of the Secretary of State. All these procedural options give potential to speed up the CPO process and enable development to be brought forward more quickly.
- 56 However, the compulsory purchase procedures are quite prescriptive and even if the project is straightforward and uncontentious it must still follow a strict programme of activities and stages.
- 57 Whilst some stages in a compulsory purchase procedure have defined timescales (such as the time required to allow responses to public notices, periods of notice to prepare for public inquiry etc), the time taken to work through many of the stages will be dependent on numerous factors. These include the complexity and contentiousness of the project, the number of landholdings involved, the availability of required information and the skills and resources available. As such, it is not possible to provide a guide timetable as there is no typical CPO.
- 58 Simplistically, the process will go through the following process stages, all requiring time and resource input. Some of these stages will be undertaken sequentially, but some can be undertaken concurrently (particularly negotiations and acquisitions):
- Preparing for and making the CPO – the process whereby the Council would consider its support for the CPO and thereafter prepare, publish and make the CPO. This is a very resource hungry part of the process.
 - Confirmation of the CPO – this may involve the Council but will culminate in the CPO being either confirmed, modified or rejected.
 - Implementing the CPO - assuming the CPO is confirmed, the Council will acquire the land.
 - Compensating – the Council will negotiate and pay compensation to interested parties. It should be noted that negotiations and acquisitions should be progressing throughout

the whole process. The ideal situation is to acquire by agreement rather than use a CPO.

- Miscellaneous matters that may form part of the process, depending on the individual CPO. This would include public inquiries and Tribunals and responding to issues such as a blight.

Use of compulsory purchase powers as part of the strategic process

- 59 Whilst the use of compulsory purchase powers is not something the Council should enter into lightly and they will certainly not be appropriate in many cases, there may be situations where their use could provide an expedient, or the only solution to help meet the Council's strategic objectives.
- 60 This guide provides a brief summary of the context in which this might be the case, but the appropriateness of the use of compulsory purchase powers should be considered for each scheme individually.
- 61 It is proposed that there should be more formal recognition of the potential to use compulsory purchase powers as a tool to deliver strategic objectives on smaller as well as larger scale projects, and that the Council should routinely consider the potential to use compulsory purchase powers in the development of wider corporate initiatives.

Contact: Susan Robinson

Tel: 03000 267332
