



CPO COMPENSATION **CONSULTATION RESPONSE**

PREPARED AND SUBMITTED BY
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RESPONDENT DETAILS

Question 1: Respondent details:

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Please state whether you are responding as an individual or the organisation stated above: Responding as an organisation.

Question 2: Please indicate whether you are applying to this consultation as a (select one option only):

- Professional Association / Industry representative body

GENERAL COMMENTS:

The consultation paper advocates a profound change from that anticipated in the current legislation and compensation code.

Bearing in mind that when a public body resorts to the use of a CPO it does so because the other party is an unwilling seller, such a profound reduction in the claimants' financial compensation should be approached with great caution and only contemplated in very limited circumstances where the public benefit secured is overwhelming and of national or regional significance.

An example where such a high threshold was met was the 1946 New Towns Act which enabled the New Towns Commission to acquire agricultural land at existing use value to deliver the post-war new towns programme. However, it is not without relevance to the current consultation to note that this approach to reduced compensation was secured through separate legislation passed for a specific and limited purpose. It was not undertaken through general CPO powers and clearly therefore, was not intended to be the approach to be taken in the determination of compensation where public bodies sought to promote other forms of development.

There are further reasons for urging caution in implementing the proposals. First, a significant share of development value is already secured for public benefit consequent upon planning permission being granted (i.e. the realisation of hope value) through the imposition of levies or benefits in kind including the deployment of planning conditions requiring owners to finance and provide benefits to the public, the levying of CIL and the provision of affordable housing. It should not pass unnoticed that in an increasing number of appeals, these appropriations of value are reduced by inspectors or the Secretary of State because unless this is done, they render development plan compliant schemes unviable. Taking away hope value will exacerbate this problem as most large and complex redevelopment or regeneration schemes are commercial ventures undertaken by the private sector.

The proposals in this consultation paper represent the most significant reforms to the assessment of CPO compensation in half-a-century. Given they are so fundamental to individual's rights we would have liked to have seen a more detailed set of proposals, and a consultation period lasting longer than six weeks.

On a similar theme, the measures will come forward as amendments to the Levelling Up and Regeneration Bill. Given their controversial nature, they should get the full scrutiny of the legislative process. However, they will already have missed Second Reading in the House of Commons and will possibly miss Committee Stage and even further stages of the Bill beyond that.

The main proposal being consulted on (to give directions on hope value) is lacking in specifics and that makes it difficult to assess, let alone support. For example:

In what circumstances will local planning authorities be able to apply to the Secretary of State for a direction? The consultation paper cites a public benefit test, but without some strictures the 456 planning authorities in England may interpret that in very different ways.

1. In what circumstances will the power that sits with the Secretary of State be exercised?
2. What factors will the Secretary of State take account of in determining whether somebody should be deprived of their entitlement to hope value? At present, the consultation paper is again framed around a public benefit test.
3. In the absence of such detail, the impression given in the consultation paper is that these powers could be used in any circumstance.

Our understanding is that is not the intention, and that these powers would be used sparingly and for example, to deliver urban extensions, or new towns, where the public benefit would be significant. As we explained, there is precedent in as much as under the New Towns Act (1946) agricultural land was bought at existing use value and passed into the ownership of New Town Development Corporations to deliver the post-war new towns programme.

There will always be arguments for exceptions for the public benefit. However, private property rights are better protected than they were in the immediate post-war period via human rights law, and that reflects the importance that society places on those rights.

Significant value is also created in the aftermath of development. Income streams and value that was not there before, and a share of which could be used to incentivise landowners to invest their land, rather than to confiscate it from them at an undervalue.

Therefore, fundamentally, we do not believe that it is fair to deprive a landowner of the benefits that would accrue with their land if they were to sell it at a time of their choosing and extinguish those benefits when they are forced to sell their land through a CPO.

We also worry that the scheme as proposed could harm more than support regeneration efforts. The power of CPOs is often not in their use, but as a last resort and the threat to use them. If claimants feel they are being unfairly treated, however, they are more likely to dispute the terms of a CPO, adding what can be years to regeneration project.

To conclude, our members report that their perceptions of CPO claimants are not of people seeking to profiteer, or play the system, but of people who own their homes, run farms, or businesses, and are fighting for their existence, exhausted by a process that is long, complex, and stressful.

CAAD PROPOSALS

The consultation paper sets out an intention to amend sections 14 and 17 of the Land Compensation Act 1961. The proposals are explained in five bullet points, to:

- reflect normal market conditions in compensation payments by only allowing the equivalent of planning certainty for appropriate alternative development if a CAAD is obtained in relation to that AAD
- establish a single route for determining hope value based on the likelihood of AAD, taking into account the assumptions in section 14(5) LCA 1961
- remove the requirement that acquiring authorities pay the costs of landowners in seeking a CAAD – if a landowner chooses to seek a CAAD then they can do so at their own cost and weigh the risks in doing so against the benefits to value that may materialise
- further streamline the process for obtaining a CAAD so that the ask on local planning authorities is simpler and clearer – local authorities will be asked to only issue a CAAD in relation to the type(s) of AAD applied for
- address the issue raised in *Lockwood v Highways England Company Limited* around the date of determination of a CAAD where the relevant valuation date has not yet occurred

Bullet points 4 and 5 are uncontroversial. However, we would wish to comment on bullet points 1, 2, and 3.

The proposal to suppress hope value by only allowing the equivalent of planning certainty does not really explain what is being proposed. The planning system works on the basis that you get permission, or you do not. There are no half-measures, or percentage calculations. We worry equivalence is being undermined.

So far as the single route is concerned, it is proposed that AAD can only be established if a certificate is obtained from the Local Planning Authority (LPA). However, as these applications are complex and LPAs are already under-resourced, it is worth acknowledging the immense pressure that these changes would inflict on an already overstretched planning system. Many Local Authorities are weeks, if not months, behind on 'normal' planning determinations. How will they cope with the additional burden of a possible influx of CAADs under this new regime? In turn, this could inadvertently lead to more appeals being lodged at the Tribunal, either against poor quality decision-making or non-determination by LPAs. So why not continue to allow landowners to apply to the Tribunal in the first instance? Further, these applications can only be submitted before a reference is made to the Tribunal, unless the acquiring authority's or the Tribunal's approval is obtained. This in theory leaves the door ajar for an authority to make a reference to prevent, or at least make it harder, for a landowner to seek a certificate.

Removing the requirement that acquiring authorities pay the costs of landowners in seeking a CAAD seems terribly unfair if it is the only way to establish hope value for a CPO process. It could prevent some claimants' access to the system. Fundamentally, landowners would not incur these costs if there was no CPO, so why should they have to bear these costs to demonstrate what fair compensation is?

QUESTIONS ON FURTHER REFORM

Question 3: Do you agree that there are schemes where capping or removing the payment of hope value will increase the viability of certain schemes and/or increase the public benefits delivered through the schemes? Please provide details and where possible examples of schemes.

Clearly if claimants are being deprived of compensation for their land it is bound to increase the funds flowing to the promoter of the CPO.

Contrary to what the consultation states, however, 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, including hope value.

There are also likely to be consequences for CPO promoters. The acquiring authority would be opening themselves up to viability-based objections at inquiry, risking the consenting stage.

As we have also already highlighted, the consequences of directions will make the CPO process more contentious, become mired by objections and legal challenges, and therefore significantly increase the costs and delay of CPOs.

Question 4: Please provide any comments you may have as to the proportionality of capping or removing the payment of hope value balanced against the delivery of public benefits. Please provide any examples you have where you believe the public benefits would be such that it would be proportionate to impose such a cap or removal of hope value to a scheme.

Most regeneration schemes whilst they may be facilitated by public organisations, such as local authorities and Homes England, will have a private sector developer behind them. It certainly feels uncomfortable to be taking compensation from a landowner for what is a profit-seeking venture.

The proposals will also create a two-tier land market, which will create significant unfairness, between those landowners who are the subject of a CPO with a direction, and those that sell their land into the market, or are subject to a CPO where hope value remains.

Question 5: Do you have evidence of the extent to which hope value is currently claimed/paid generally in compulsory purchase situations? Please provide details and where possible any evidence that you have as to whether hope value is more likely to be paid on particular types of schemes, for example from urban regeneration schemes to greenfield schemes or from housing schemes to transport schemes.

We urge recognition that paying at least an element of hope value is a valuable tool in securing acquisition by agreement which promotes early regeneration or redevelopment where land acquisition is necessary. Its importance is demonstrated in the following example. It is not uncommon for local authorities and developer partners to determine who purchases and finances an element of a scheme, especially land acquisition, according to who can achieve the required outcome the most quickly. A local authority may initially agree to acquire residences needed to construct a new road and its developer partner agrees to pay for the road's construction. However, if the acquisition of the houses proves difficult, as is often the case given the tight constraints the current Compensation Code places on the ability of local authorities to meet occupiers' price expectations (which usually includes an expectation of hope value), the two may swap responsibilities i.e. the developer acquires the houses by agreement through being able to pay more of the hope value, and the local authority builds the road with any resultant disparity in cost being accounted for in final profit share.

We would also flag a good summary of CPO case study examples here: <https://www.townlegal.com/wp-content/uploads/Compulsory-Reading-The-Town-CPO-Blog-01.07.22.pdf>

As the authors conclude: *these illustrate from tribunal decisions that there is no real evidence that lengthy disputes are leading to delays or undermining the viability of regeneration schemes.*

The cases also illustrate that hope value doesn't really add all that much to development value, and is certainly not an unfair distribution of the benefits of particular development scheme.

Question 6: Do you think the public benefits of capping or removing hope value is more likely to arise in particular types of scheme? Do you think any solution to this issue should be limited to particular types of scheme or apply across all types of compulsory purchase situations? Please provide details in support of your answers.

As we have explained in our introductory remarks there will always be exceptional cases, where land value capture can help make things happen. For example, the sector supported its contributions to Crossrail via Mayoral CIL, recognising the significant public investment to make it happen.

Our concern is that this is not cast as a policy for exceptions - it has very little strictures on it and therefore makes it difficult to support.

There might be arguments where significant public investment is made that justifies capturing some of a landowners' hope value. For example, with urban extensions or new towns. However, that bar should be extremely high, and as we have articulated in our opening remarks, arguably it should be higher than previous new towns legislation given the greater protection of human rights now.

QUESTIONS ON CONSULTATION PROPOSAL

Question 7: Do you agree with the proposal to address this through the issue of directions for specific schemes as set out in this consultation?

We disagree with the basic premise that landowners should be deprived of their hope value.

Looking at this specific question, however, as is exemplified by questions 3. to 6. it is unclear in what circumstances these directions would be used. It is therefore difficult to judge their appropriateness. We think directions will be highly contentious and just prolong the CPO process, leading to delay and risk for regeneration projects.

If the Government proceeds with these proposals, then there should be far more strictures about when and how directions will be used than there are in the consultation paper.

There are better and less contentious alternatives in any case. Regeneration by its very nature creates long-term value and income streams. Some sharing of that long-term value or income streams might incentivise a landowner to invest their land, rather than having it CPO-d.

Question 8: Do you agree with the proposal that the directions could cap the payment of compensation at existing use value or at a percentage above existing use value (excluding the payment of compensation under other heads of claim)?

We disagree with the basic premise that landowners should be deprived of their hope value.

It is difficult to see what formula the Government might use that would deliver fairness. Any new test will be arbitrary and not deliver the equivalence, which underpins the existing system.

Setting compensation at existing use value, will mean claimants are getting no compensation beyond the consequential costs and losses of moving. It will sometimes cost more, however, to find a suitable home or premises that is equivalent. Casting minds back to the 2012 Olympics, several hundred businesses were moved through CPO. They were entitled to equivalent use plus some hope value, and then the consequential losses of uprooting their businesses. Even with hope value, however, many struggled to find premises of a similar quality and value near the Olympic Park, and without hope value that would have been a significantly greater struggle.

There is a broader point around landowner's land being the subject of a CPO (with a direction) and them having to move to a nearby location (in the area, but perhaps out the red lines). That land has increased in price owing to the public investment around the CPO. In such circumstances how can it be fair for the landowner to get EUV or less than hope value when the land they need to buy now is more expensive directly because of the CPO process?

Hope value is delivering some form of compensation. Existing Use Value is simply buying somebody's home or business premises at what it is worth and forcing them to move.

Question 9: Please provide any comments you may have as to: (1) whether it will be possible to identify certain, deliverable public benefits in applying for directions; (2) how it will be possible to link those public benefits to value captured.

We disagree with the basic premise that landowners should be deprived of their hope value.

We would have thought that identifying public benefits would be a relatively low bar to overcome.

The more challenging aspect may be linking those public benefits to the value captured. Typically, on a major project the property acquisition price may only account for 5-10% of the total project cost. Being able

to evidence that the public benefits of the project were solely a result of the hope value captured via the direction could be challenging.

There is an issue also as to whether the benefits are subsequently realised. If not, would the claimant be able to seek compensation for a direction made on benefits that did not materialise?

Question 10: Do you think that an acquiring authority should have to consult with affected landowners before seeking a direction from the Secretary of State?

We disagree with the basic premise that landowners should be deprived of their hope value.

As we have set out elsewhere, the threat of using a CPO is often sufficient to get a landowner negotiating with a public authority on a negotiated sale, and that generally can cut down on stress and time for both parties.

Whilst we think it would be courteous to consult affected landowners, we do not believe that will bring them to the table. If anything, it will just prolong the process further with the applicant public authority having to battle the landowner on more grounds. First the decision to seek a direction, and then the CPO itself.

Question 11: Do you agree that issuing directions should only be to schemes where the acquiring authority is also a public sector entity?

We disagree with the basic premise that landowners should be deprived of their hope value.

It is not clear how a public authority supporting a private developer would be treated in such circumstances. Most regeneration schemes will rely on some element of public sector support but be led and funded via the private sector.

Local authorities simply do not have the resources or the expertise to deliver regeneration schemes of any significance by themselves. It's hard to see how removing hope value from landowners to establish the viability of a commercial development (requiring a developer's profit of course) will ever be justifiable.

Question 12: It might be possible for landowners to seek a planning permission so that development value applies under section 14(2)(a) LCA 1961 circumventing any cap applied under a direction. Do you think it should be possible for the directions to cap development value for any planning permission which falls under section 14(2)(a) where that planning permission is made after the "launch date" of the scheme or after the date the directions are issued if later? The launch date is defined by section 14(6) LCA 1961.

We would strongly advise against such a change. As things stand, account can be taken of a planning permission that is in force at the VD (i.e. after the launch date and after the directions would be issued), so proposing to be able to put a cap/limit on that potential uplift to any planning permission granted from a time way before the valuation date would seem to unfairly prejudice the landowner and fly in the face of the well-established Rule 5(2) as the value would not then reflect what a willing purchaser would buy and a willing seller sell, and again offend the principle of equivalence.

Question 13: Do you have any further comments as to how the process of seeking and issuing directions might work?

There are ways of making the issuing of directions fairer. The Secretary of State is not an independent party in the issuing of directions. He/she will want to maximise the public benefit and therefore minimise the claimants hope value.

Some detailed rules around the use of directions and how value is determined will be imperative.

Better still, it is acknowledged in the consultation paper that the Secretary of State may have to refer to outside expertise and that could be formalised into some independent body or structure.

QUESTION ON ALTERNATIVE PROPOSAL

Question 14: Do you think the proposals should go further and automatically limit the payment of hope value in compulsory purchase more generally or in relation to specific types of schemes? Please provide details and justification as to why you think it would be in the public interest to go further and what public benefits could be delivered if hope value was limited. Examples of types of schemes, for example regeneration, you think any further general application should apply to would also be helpful.

It would seem odd to be proposing to go further when the consultation paper is littered with caveats about the human rights implications of doing so.

As we have explained elsewhere in this response, we would rather see more collaborative approaches being supported that incentivise landowners to bring land forward by allowing them to share in the long-term uplift in values and income that development creates.

QUESTION ON THE EQUALITY IMPACT ASSESSMENT

Question 15: Do you have any comments on the initial equality analysis? If yes, please provide your views on the equality impacts arising from this proposal and any suggestions for how those impacts could be mitigated (please include any evidence you may have in support your views).

No comment.