

Submission



Economy, Infrastructure and Skills Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

10th September 2018

Dear Sir/Madam

Re: Committee Inquiry into Compulsory Purchase powers

The Royal Institution of Chartered Surveyors promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals worldwide and represent 4,000 professionals locally. Any individual or firm registered with RICS is subject to our quality assurance. As part of its Royal Charter, RICS has a commitment to provide impartial advice to the Government of the day and has an obligation to bear in mind the public interest as well as the interests of its professionals. RICS is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to key sectors.

RICS welcomes the opportunity to respond to the Committee Inquiry into the use of compulsory purchase powers in Wales. Compulsory purchase orders (CPOs) enable bodies in the UK and Ireland to legally secure rights over land or property, or obtain land or property outright, without the consent of the owner. The use of the powers for the acquisition of land in the UK dates back over 170 years. As such, the legislative framework for compulsory purchase is complex and can be intimidating for both Acquiring Authorities (AAs) and property owners.

RICS provides mandatory high-level guidance for professionals involved in advice relating to the use of compulsory purchase or other statutory powers compelling land acquisition. The [Professional Statement for surveyors advising in respect of compulsory purchase and statutory compensation](#) sets out the standards of behavior and competence expected when acting in relation to the compulsory purchase code.

Acknowledging that compulsory purchase can become an adversarial process, RICS is currently engaged in a consultation with professionals in the specialist compulsory purchase field to explore alternative methods for dispute resolution (ADR) in cases of CP disputes. The RICS Dispute Resolution Service has completed a draft ADR option in consultation with experienced CP practitioners and legal professionals. Further information about this process is available below.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Pwyllgor yr Economi, Seilwaith a Sgiliau/ Economy, Infrastructure and Skills Committee
Prynu Gorfodol / Compulsory Purchase
Ymateb gan RICS / Evidence from RICS

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Our response to the initial committee inquiry is as follows:

Are there any barriers to the use of compulsory purchase powers? If so, how can they be overcome?

Experience

The economic, social and environmental benefits of using compulsory purchase powers to unlock development, particularly in the residential and infrastructure sectors, is well understood. The legislative framework surrounding the exercise of CP powers, however, is complex and for those without extensive experience of the process, can prove intimidating.

Feedback from acquiring authorities across the UK suggests that one of the most significant barriers to regular use of these powers is a lack of knowledge, confidence and recent experience of the process. Experience suggests that the use of CP powers varies considerably by local authority with small numbers utilising the acquisition pathway regularly.

Further support is needed for those authorities that could benefit from active use of CP powers. A central support unit and guide for CP applicants should be considered to build a bank of information and experience across acquiring authorities.

Following a comprehensive review carried out by the Scottish Law Commission, the Scottish Government has recently published a suite of guidance papers for those involved in the CP process, aimed at reducing the knowledge and experience deficit in this specialised field. In advance of legislative reform, the Scottish Government has also committed to providing a technical check service to those authorities that have resolved to adopt a compulsory purchase approach to individual developments. These checks are designed to address any errors or omissions that could lead to delay or rejection at decision stage, providing additional certainty to the acquiring authority.

Time/Costs

In the context of reduced central government allocations, acquiring authorities continue to express concerns about resourcing CP developments, particularly in complex cases likely to be subject to objection or appeal.

Funding remains a relevant material consideration for all forms of compulsory acquisition to the extent that Ministers must be satisfied that a scheme is likely to proceed within a reasonable period.

Acquiring authorities should be encouraged to explore alternative resourcing arrangements for regeneration and other public interest objectives. Several enabling acts allow cooperation with third party organisations. Disposing of land post-acquisition to a third party (another public body, agency or a private institution) can give AAs the flexibility to achieve their public policy objective while an external organisation commits to delivering the development and indemnifying the authority's costs.

The perception that the process is cumbersome and drawn out should be addressed in enhanced guidance notes which set out average timescales from initial application to final decision, including periods of inquiry or mediation.

Perception/Reputational risk

Acquiring authorities often view compulsory purchase as a method of last resort. The nature of the process and the potential to become adversarial – risking reputational damage to the authority if not well-managed – can act as a significant disincentive.

Early engagement with affected landowners and their representatives is critical to minimising risk and maximizing the opportunity of any particular scheme. Many property owners (who are involuntary participants in the CP process) argue that they do not receive adequate compensation, and that compensation is not paid out early enough, if at all. Understanding those concerns, working with affected parties at an early stage and sustaining engagement throughout the application process, including through mediation and appeal, will deliver better results for all involved.

Appeal

RICS professionals working in the specialist field of compulsory purchase have raised significant concerns about the effect of the current system of appeal on property owners. At present the only form of recourse available to owners who feel that settlement offers do not represent fair compensation is to refer the case to the Upper Tribunal of the Lands Chamber. The formal, complex and expensive nature of the process acts as a deterrent, particularly where the claims involved are less substantial.

The effect of a rigid, inaccessible appeals process is that many property owners feel forced to accept a substandard outcome. That is not an equitable.

The RICS Dispute Resolution Service has been consulting on an Alternative Dispute Resolution pathway for CPO processes. Further information on the consultation can be found below.

Are there any specific barriers to the use of compulsory purchase to regenerate town centres; and/or develop opportunities for active travel?

The general barriers to the use of compulsory purchase powers outlined above apply to both regeneration projects and active travel development.

In both situations, a compelling public interest case for development that promotes economic, environmental and social wellbeing must be demonstrated prior to approval.

In instances of regeneration projects, a comprehensive impact assessment should be undertaken early in the process, alongside engagement with affected property owners and the wider local community. Any challenges identified early in the process may be fixed by expanding the scope of the purchase, for example in the Land Authority for Wales' Gwent Levels Wetland Reserve acquisition. Compensatory or supplementary acquisition should be explored to mitigate potential environmental or public service losses.

Active travel development is often a slow process. The length of time needed to negotiate routes with individual property owners, explore the impact on traditional public and private transport modes and undertake wider community engagement can be a significant challenge.

Most active travel proposals will carry a strong public interest case for environmental and social wellbeing development. The proposals are also usually the result of a prior public consultation process, demonstrating demand and support for development.

A significant barrier to the use of compulsory purchase for active travel development, however, is the availability of alternative routes. The nature of active travel is such that any given walking path or cycle route will have a viable alternative that can circumvent the need to acquire individual properties. Unfortunately, the alternative proposals may be much longer, encounter more severe gradients or simply take a less desirable route. Any of these issues will result in lower levels of usage and diminish the public policy goal of the acquisition.

Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?

As above, the use of compulsory purchase powers is inconsistent across local authorities. Knowledge, confidence and recent experience of the powers available are the primary barriers to more regular CP use.

An assessment of current knowledge and skills in compulsory purchase should be carried out across local authorities. This should be supplemented with updated guidance on the powers available to acquiring authorities to acquire land for development.

Further consideration should be given to offering a technical check service on CP applications before the final submission stage to reduce rejections based on technical error.

Resolving CPO disputes

RICS surveyors and other professionals, who work in CPO, have been increasingly concerned that the cost of the current tribunal system often acts as a deterrent to its use. We have explored possible ADR options for resolving CP disputes, particularly in relation to compensation matters. The objective is to offer Acquiring Authorities and affected property owners a viable and better alternative to resolving disputes prior to considering a reference to the Lands Chamber.

The ADR option we have prepared is summarised in a consultation document www.rics.org/cpo-consultation.

It is aimed at helping to streamline the CPO process by resolving CP disputes at an earlier stage than is usually the case at present. We feel it would be particularly well suited to lower value and less complicated cases. It is quick and cost-effective. It also gives all parties confidence that the management and resolution of their dispute will be facilitated by someone who is impartial and has immense subject matter expertise.

After the consultation is completed (closing date 21 September) a published list of activities and timetable to finalise the details of the scheme will be released. A panel of experts/adjudicators will be set up and a soft launch will be developed by end of 2018.

RICS would be happy to offer further assistance or clarification on any of the points raised in this submission. If you have any queries, please do not hesitate to contact me directly.

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