

APPENDIX 5

COMPULSORY PURCHASE PROCEDURE

1. Consultation

- a. Extensive consultation is to take place involving all parties that have an interest in the area through meetings and one to one discussions (a minimum of two general meetings is required).
- b. Appropriate negotiation is undertaken to reach agreement with landowners and occupiers (proof - letters and meetings showing what has been offered with evidence that the landowner or occupier is being unrealistic or uncooperative)
- c. Research undertaken into appropriate relocation for occupiers and provision of appropriate alternatives or temporary relocation if being relocated in the new development (cost and management of their move is expected).
- d. Dialogue is required to take place throughout the process set out below, as the Council prefers resolution through negotiation.

2. First resolution – the ‘in principle’ resolution.

The acquiring authority passes a resolution that they will, in principle, use their compulsory purchase powers and promote an Order for the scheme, as identified on a plan, the area to be subject to the CPO being ‘redlined’ (denoted by a red line around the perimeter).

3. Requisition

The acquiring authority, following the ‘in principle’ resolution, serves a requisition on all those interests identified within the red line boundary outlining the site a notice requiring them to inform the promoting (acquiring) authority of the extent of their interests in land within the red line. Completion of the requisition within 21 days is a legal requirement.

4. Drafting the Order and statement of reasons

The promoting authority drafts the Order and prepares a statement of reasons in support of the Order.

5. Second resolution (6 months)

The acquiring authority resolves to 'make' the Order i.e. publish the Draft Order. The acquiring authority may choose to deal with issues arising in the second resolution at the first resolution doing away with the need for this stage, however most acquiring authorities prefer the accountability of a 2 stage resolution process.

6. Making the Order

The acquiring authority makes the Order and serves a copy of the Draft Order on all those who have an interest in land together with those who have a right in land that may be affected by the proposal. Those affected have the right to submit an Objection to the Order. Those with an interest in land that is directly affected are statutory objectors and have a right to be heard at a Public Inquiry. All others who object are objectors who may be heard at the Public Inquiry. The Order is generally made concurrent to, or shortly after, the second resolution.

7. Objection Period

Objectors have an objection period (usually minimum 21days), within which to submit an objection to the scheme. Objections can only be considered valid if they relate to the scheme and not on matters where the Lands Tribunal has jurisdiction i.e. compensation.

8. Negotiations

The promoting authority will enter a period when they seek to negotiate with Objectors with a view to reaching an agreement that leads to the withdrawal of the Objection.

9. Public Inquiry (12-15 months after first requisition)

Assuming that there are outstanding Objections to the Order then an Inspector will be appointed to hold a Public Inquiry at which the promoters will outline their case justifying their requirement for confirmation of the Order. Objectors can either make representation at the Inquiry or by a written statement. Both cases for the promoter and the Objector can be the subject of cross-examination.

Following the Planning and Compulsory Purchase Act 2004 in the event that there are no objections outstanding the acquiring authority may be able to confirm its own Order.

10. Confirmation of the Order (15-18 months after first requisition)

Having heard the case the Inspector will consider the case for confirming the Order and report to the Secretary of State recommending that:

- The Order is confirmed as drafted

- The Order is confirmed as amended
- The Order is not confirmed.

The Inspector's report will be published together with the Secretary of State's decision. If confirmed the promoting authority is required to inform all affected parties of the decision.

11. Challenge Period

Assuming that the Order is confirmed it may be subject to Judicial Review on matters of law only for a period of 6 weeks commencing with confirmation of the Order.

12. Vesting (a minimum of 4 months after confirmation of the Order)

Assuming that title is to be secured by way of Vesting (instead of the Notice to Treat and of Entry procedure) the promoting authority will be required to advise affected parties of their intention to use a General Vesting Declaration and, subsequently, advise as to the date of Vesting. On this date the interest in land will be vested in the acquiring authority.

Compensation

(a) Following vesting a claimant is entitled to compensation assessed in accordance with the compensation 'code', being the relevant Acts of Parliament, Statutory Instruments and decided case law. In simple terms the heads of claim will be:

- The interest in land – the open market value of the interest in land in the 'no scheme' world.
- Disturbance – the costs and losses arising from the dispossession in the interest in land.

Freehold or long leasehold owners will be entitled to costs of reinvestment, subject to criteria.

- Occupiers may be entitled to recover the costs of finding, securing and adapting alternative premises (where such adaptations do not create value) together with the costs of relocating and business disturbance. In all cases the claimants will be entitled to their reasonable professional fees, reasonably incurred.

- Loss Payment – calculated in accordance with Planning and Compensation Act 2004

(b) Lands Tribunal

In the event that the parties are unable to agree compensation either party may make reference to the Lands Tribunal for an assessment of compensation. The successful party may be awarded their costs.

(c) An acquiring authority may be served with a Blight Notice at a time following the making of the Order (1(v) above) subject to the affected party being an owner occupier and have a rateable value under the prescribed limit (currently £34,800 – see the Town and Country Planning (Blight Provisions) Order 2010). The effect of accepting the blight notice is to require the acquiring authority to acquire the affected property as if it had been compulsorily acquired. In reality few, if any, of the affected party will meet the criteria.

(d) Government guidance contained within Para 25 of Circular 06/04 encourages promoting authorities to enter into negotiations with affected parties ahead of an Inquiry. It is usual for affected parties to require an undertaking in respect of their fees. In order to demonstrate commitment to the Order it would be prudent to provide such an undertaking although subject to a cap, in the first instance.

(e) The acquiring authority's exposure to costs arises:

- If a CPO Inquiry takes place and either the CPO is 'lost' or an individual objector succeeds in having their property excluded or modified.
- When (if) a valid blight notice is served.
- Following entry if notice to treat used (even this is subject to exclusions) or Vesting