Compulsory Purchase Association

Rt Hon James Brokenshire MP
Ministry of Housing, Communities & Local Government,
2 Marsham Street,
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Date 11 September 2018

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Dear Rt Hon James Brokenshire MP,

CPA response to the onward letter dated 20 August 2018 - 'Sharing land value with communities'

This letter has been prepared by the Board of the Compulsory Purchase Association (CPA) to respond directly to the open letter titled 'Sharing land value with communities'. The letter was published on the UK Onward website (http://www.ukonward.com/landreform/) on 20 August 2018 and signed by 16 leading campaign organisations.

The CPA is a not for profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers. It has in excess of 800 members spanning a range of professional disciplines involved in the compulsory purchase process, including chartered surveyors, solicitors, barristers, forensic accountants, planners and land referencers. It is a non-partisan organisation and neither supports nor opposes specific public works schemes. The CPA's members represent both acquiring authorities and claimants affected by compulsory acquisition. The CPA is regularly invited by government departments to comment on proposed changes to the compulsory purchase and compensation system.

We have written this letter to respond to the suggestion by Onward that the Land Compensation Act 1961 should be amended to alter the basis on which compensation is assessed when compulsory purchase powers are used.

The CPA regards amendments to the 1961 Act as unnecessary. The existing rules that govern the assessment of compulsory purchase compensation reflect the principle of equivalence, meaning that landowners are compensated only for the value of their land in the market, excluding any increase in value arising from the acquiring authority's scheme. Recent reforms in the Neighbourhood Planning Act 2017 have extended the scope of what can be included within the definition of the acquiring authority's scheme, strengthening the protection against rises in value created by the scheme.

Furthermore, the existing system already provides a framework within which public bodies can secure substantial economic benefits, including the capture of land value, through the delivery of housing, regeneration and infrastructure for the wider public good.

Summary of CPA's position

The CPA does not oppose the principle of Land Value Capture (LVC) and is very much engaged in the debate that is ongoing at present. It recently submitted evidence to the Land Value Capture Inquiry of the Housing, Communities and Local Government Committee. Land value capture was also the theme for the CPA Annual Reform lecture in April 2018, where Richard Harwood OBE QC reviewed the subject in some detail and produced a paper.

The CPA is supportive of development and infrastructure projects that shape and create better places across the UK. This includes the delivery of affordable housing and investment in public services. Compulsory acquisition can undoubtedly provide significant financial benefits for society when it is needed, by facilitating the release of land that would otherwise not come forward for development. However, it is not the underlying purpose of compulsory purchase powers to capture land value. Moreover, compulsory purchase is and should continue to be a mechanism of last resort and is therefore used in only a small proportion of schemes. It is therefore a poor vehicle for land value capture due to its relatively limited application.

It must be remembered that it is an essential pre-condition of the exercise of compulsory powers that those expropriated are fairly compensated. This includes ensuring they are compensated for all the value that their land would enjoy if it were sold in the open market but for the CPO. There must be real doubt as to whether a scheme of compensation that removed or restricted the compensation payable would be compatible with the human rights of those landowners.

Overview of the current system

The Onward letter sets out that Government should '*reform the 1961 Land Compensation Act to clarify that local authorities should be able to compulsorily purchase land at fair market value that does not include prospective planning permission, rather than speculative "hope" value.*' We understand this sentence to mean the repeal of section 14(2)(b) of the Land Compensation Act 1961 and consequential amendments.

It is important to reiterate that the UK's compulsory purchase compensation system is founded on the principle of equivalence. That principle requires a person who has had their land acquired compulsorily to be compensated for his/her loss such that they are placed, as far as is possible in monetary terms, in the same position that they would have been but for the compulsory acquisition.

The corollary of this is that a claimant is only entitled to losses fairly attributable to the taking of his land, but no greater amount. For this reason Rule 2, Section 5 of the 1961 Act provides that the compensation to be paid for land acquired compulsorily "...shall, subject as hereinafter provided, be taken to be an amount which the land if sold on the open market by a willing seller might be expected to realise." In other words, the market value of the land reflecting its condition, potential and all relevant circumstances at the date of acquisition.

A Rule 2 valuation further assumes an unconditional purchase of land disregarding both the benefit and any blighting effects of the acquiring authority's 'scheme' and the use of compulsory purchase powers (the 'no-scheme principle'). A Rule 2 value therefore only permits the value that the owner could have received had he or she sold their land voluntarily on the open market as if the acquiring authority's scheme (including any preparatory works it may have undertaken) and the CPO did not exist. It also precludes any assumption that any neighbouring land is being acquired at the same time to deliver the acquiring authority's scheme, or any other form of larger development. As such, it is simply not the case that a person subject to compulsory acquisition could receive a 'windfall' as a result of the need for their land for any given public scheme. Any value recoverable will be value that pre-existed the public scheme.

Under the 1961 Act, land is only valued with the benefit of planning permission if planning permission has already been granted, or if an express assumption of planning permission can be made pursuant to the statutory rules. In practice, the only circumstances in which a planning permission can be assumed to exist when it does not exist, is if is reasonably expected that planning permission could have been obtained but

for the proposed CPO scheme. The arbiter of this is either the local planning authority or the Upper Tribunal.

Even in circumstances where planning permission has been granted, or can be assumed for individual land holdings, all of the risks and uncertainties that might affect the delivery of development are to be taken into account when assessing compensation under Rule 2.

An example of how the statutory provisions work in practice can be found in the cases following the CPO used to deliver facilities for the 2012 Olympic Games and subsequent legacy regeneration at Stratford. Although the Olympic CPO has been cited by some as an example of where landowners were paid 'windfall' residential development values for industrial land under the statutory compensation rules, this is not correct. Members of the CPA, including the authors of this submission were involved in negotiating and settling Olympic CPO compensation claims and so have first-hand knowledge of the agreements reached.

All of the claimants who sought full development for their land on the main Olympic Park site ultimately settled their claims on the basis of existing use value plus a relatively modest 'hope value' premium. The only location where higher values were paid was an area of land situated to the south of the main Olympic Park site where the land had been capable of immediate development. However, this represented only circa 1% of the total land area encompassed by the Olympic CPO.

Conclusion

It is important to make clear that the current legislative framework within which compensation is assessed does not result in compensation being paid to landowners in excess of what they might reasonably have expected to have received for their land absent the CPO.

The suggested changes to the 1961 Act would undermine a system that has developed over 170 years around the concept of proper compensation for the acquired owner's loss and equally would not provide an effective or comprehensive solution to land value capture. Such changes would potentially disrupt the delivery of land for infrastructure and regeneration by increasing the level of opposition to the use of compulsory purchase powers by any landowner whose land had genuine development value for which they would not be compensated under a revised system.

The CPA considers that the market value approach to the assessment of compensation should be protected and it would be damaging to the provision of land for housing, infrastructure and regeneration to create a system where private individuals can have their property forcibly expropriated by the state without compensation that adequately reflected their loss. Furthermore, any proposal to pay dispossessed landowners less than market value would need to be carefully considered against the body of international and domestic human rights law.

The CPA would be pleased to meet with officers to discuss any of the points raised in this correspondence

Yours sincerely,

Jonathan Stott MRICS
Vice Chairman of the Compulsory Purchase Association

cc: Will Tanner, Director, Onward