

The power of compulsory purchase

Trevor Ivory explains the need to demonstrate a compelling case in the public interest to justify the interference with private property rights that compulsory purchase entails

Compulsory purchase powers ("CPO powers") have existed for centuries in one form or another. The legislation we have today originated in the railway building boom of the 19th century. The private companies that built the UK's railway network were able to do so because they were empowered by private acts of parliament to acquire the land compulsorily.

Since then, the prominence of CPOs in London has waxed and waned in response to political and economic changes.

The Millennial Regeneration Boom

The last peak in the use of CPO powers was probably in the decade before the economic collapse of 2008/9. The election of a new government in 1997 pushed urban regeneration higher up the agenda and almost all of the UK's major towns and cities, including London, saw regeneration schemes of one form or another at some time in the following ten years. Town centre regeneration schemes were perhaps the classic example of this trend, with tired and dated town centres redeveloped into new shopping malls alongside multiplex cinemas, bowling alleys and restaurants, all intended to attract customers who had drifted away to out-of-town retail and leisure parks during the 1980s and 1990s.

Such schemes invariably required the use of CPO powers to assemble the land needed because of fragmented ownership patterns and competing interests. One man's regeneration opportunity is, after all, another man's valuable investment property.

The London Boroughs and the London Development Agency ("LDA") were all using their CPO powers to deliver the regeneration agenda. While many projects were relatively small scale, others are part of the political history of the time; from the redevelopment of the Greenwich Peninsula to build the Millennium Dome to the legacy-inspired development of the 2012 Olympic Park in Stratford; all required CPO powers.

The economic crisis ended the party. The collapse of the banks and the public sector's focus on austerity resulted in these ambitious (and expensive) projects no longer being fundable. Councils had to focus on dealing with funding cuts and the government abolished the LDA; more immediate priorities pushed out regeneration.

Rediscovering Infrastructure

While regeneration fell out of fashion, central government was increasingly seeing infrastructure investment as a means of keeping UK plc afloat. Improvements to the motorway network, HS2, a new generation of nuclear power plants and a new runway in the South East are just some of the more headline-grabbing projects that have moved forward after years (and sometimes decades) of procrastination. This support for infrastructure spending, including plans for Crossrail

2, shows no signs of abating and is beginning to deliver a new boom in the use of CPO powers.

Many of these projects are land hungry and require the use of CPO powers to be realised. Such projects, especially those that are linear in nature (roads, rail, power lines, and so on) have an impact on a larger number of landowners across a wider area than more traditional regeneration schemes. It may be this greater impact that has pushed reform of the legislative framework back onto the agenda.

Legislation Reform

The legislation governing the use of the CPO powers has developed piecemeal over time and it is common (especially in relation to railways) for acquiring authorities to derive their CPO powers from 19th century legislation. While Parliament has had several attempts at codifying the law since the 1960s, the Law Commission has been recommending wholesale reform for almost two decades. Perhaps because there are not many votes in reforming such an esoteric area of the law, successive governments have failed to allocate parliamentary time to the subject and instead we continue to see piecemeal reform.

Even before the ink was dry on the Housing and Planning Act 2016 ("the 2016 Act") and the changes it made to compulsory purchase law, the government published the Neighbourhood Planning Bill, which looks set to become law in 2017. The Bill includes a number of amendments to CPO legislation; including clarifying the statutory framework for compensation, introducing a general power to obtain temporary possession of land and imposing a set period for implementing CPO powers. Some of the changes amend the changes introduced in the 2016 Act and so the Law Commissioners are entitled to smugly point to their recommendation of the need for wholesale codification as they watch the government asking Parliament to amend their own amendments to the law enacted just months previously.

A New Dawn for Regeneration?

Alongside a continuing appetite for infrastructure projects, regeneration schemes are also coming back into fashion, with Councils looking to use regeneration and development more generally as a catalyst for economic growth. The use of CPO powers therefore looks set to increase - although this will happen within the existing complicated legislative framework, adding to the uncertainty for both those exercising CPO powers and those affected by them.

London case study

CPO powers are draconian; they are a means by which the state can seize the land of private citizens, albeit in return for compensation. In a democracy that considers private proper- >>>



Trevor Ivory is a partner in DLA PIPER and UK head of development and infrastructure planning

>>> ty rights to be fundamental, this has never been a power to use lightly. Now that the Human Rights Act 1998 enshrines our rights to the peaceful enjoyment of our property and to a private life in law, those seeking to use CPO powers must make sure that their justification is watertight.

The London Borough of Southwark recently learned this lesson the hard way, when it sought to use CPO powers to obtain possession of part of the Aylesbury Estate in South London.

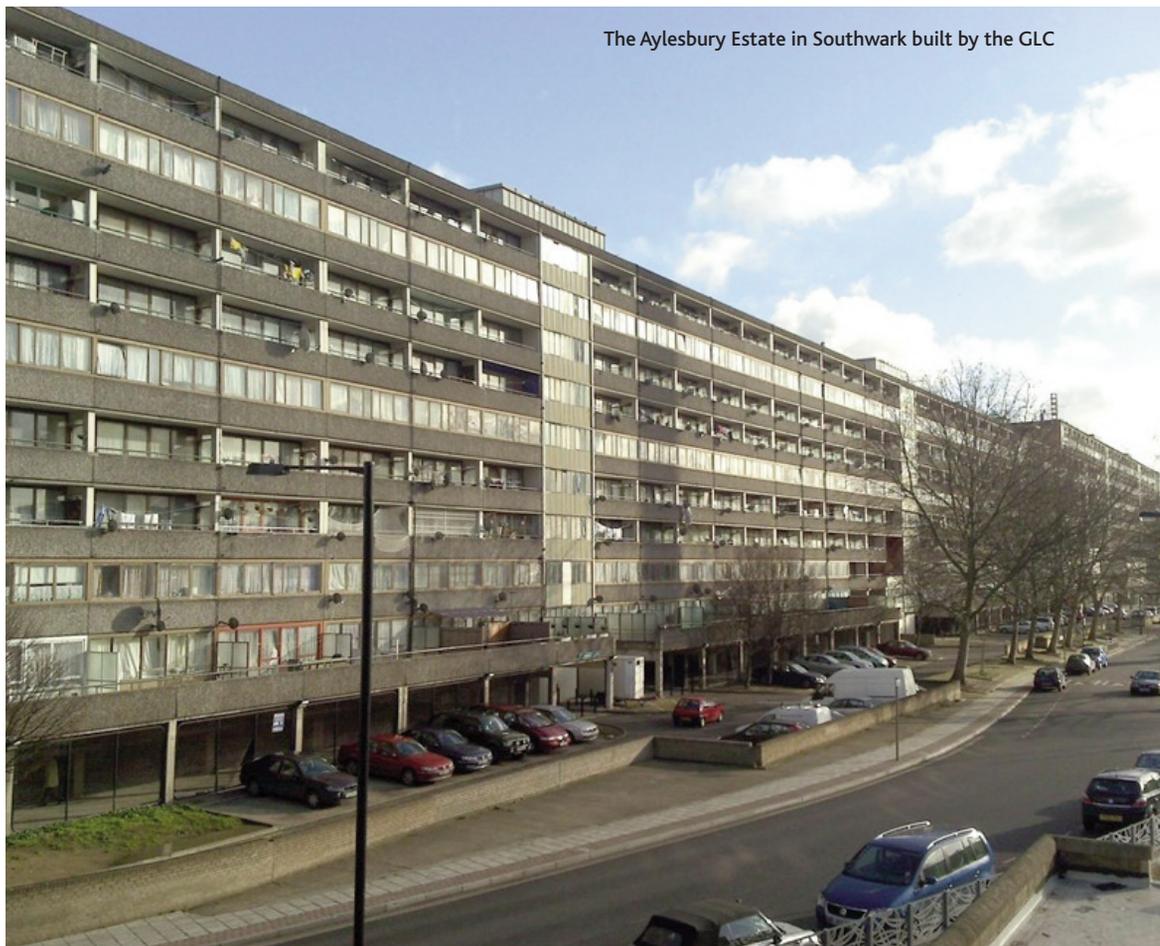
The Secretary of State for Communities and Local Government, Sajid Javid, refused to confirm the Council's CPO powers. He concluded that the Council had not done enough to try to acquire the properties by agreement. Because of their draconian nature, the law has long recognised that CPO powers should be a method of last resort for use only when all other means of acquiring the land are exhausted.

Mr Javid also decided that the compensation and relocation package offered to existing residents did not take account of the lack of comparably priced accommodation in the area. While the Council was offering market value for the properties it wished to acquire, it had failed to take proper account of the

lack of similarly priced properties locally. Residents either would have to be in a position to invest considerable extra resources of their own on top of their compensation to continue living locally or would have to move away to find cheaper accommodation.

Taking all of this into account, Mr Javid decided that the public benefits of the regeneration scheme did not outweigh the interference with residents' human rights. He also found that the use of CPO powers would constitute a breach of the Public Sector Equality Duty under the Equality Act 2010.

This example is a reminder of the need to demonstrate a compelling case in the public interest to justify the interference with private property rights that compulsory purchase entails. While CPO powers are critical to regenerating our towns and cities as well as to delivering the new infrastructure that we need, the scope of the powers is limited and promoting authorities must ensure that the case for using them is robust. With an increasing number of controversial projects on the horizon, promoting authorities should be prepared to face ever-greater scrutiny of their use of CPO powers. ■



The Aylesbury Estate in Southwark built by the GLC