

A Stakeholder Inquiry by The Economy, Infrastructure and Skills Committee of the National Assembly into compulsory purchase.

Submission by Stan Edwards MBA, FRICS, Honorary Member of the Compulsory Purchase Association, Director of Evocati Limited, a Welsh consultancy dealing with the promotion and challenge of Compulsory Purchase Orders. **12th September 2018**

Focus of Brief

To focus on the use of compulsory purchase powers in two specific areas of a. Regenerating town centres; and b. Opportunities for active travel.

To assist the Committee views have been provided on : **Q1** Are there any barriers to the use of compulsory purchase powers? How can they be overcome? **Q2** Are there any specific barriers to the use of compulsory purchase to regenerate town centres; and/or develop opportunities for active travel? **Q3** Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?

Relevance of Stan Edwards MBA, FRICS, Hon CPA. to compulsory purchase.

1. Holds an MBA, Cardiff Business School and Fellow of the Royal Institution of Chartered Surveyors. An Honorary Member of the Compulsory Purchase Association (CPA).
2. Involved in the delivery of compulsory purchase orders including town centres and regeneration /employment projects for 40 years in Cwmbran DC, LAW and the WDA.
3. Since 2006 has been involved with the challenge as well as promotion of compulsory purchase orders. A writer on CPO. This year provided CPO advice to the Coastal Housing Group, Swansea, relating to the CPO delivery of a second phase of Swansea High Street.
4. 2003 to 2017 Lectured on the MSc Spatial Planning and Real Estate degree, Cardiff University focusing on town centre retail development and its urban economic rationale.
5. **QUESTION 1** Are there any barriers to the use of compulsory purchase powers? If so, how can they be overcome?
6. **General Application** The taking of a person's rights is not to be done lightly. Statute has provided the mechanisms for CPOs to operate and rules to be followed are well documented. These are perceived as a barrier those who would simplify the ways in which people's property is compulsorily acquired. The Court of Appeal stated, "The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, which sways his mind into confirmation of the order sought."
7. A barrier is that there must be a compelling case in the public interest. Lord Denning stated, "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands"
8. **THE PROJECT – the Purpose Is it in the public interest?** CPO powers available for varying purposes and the most appropriate should be chosen. Lord Nicholls in the

Supreme Court stated “normally the scope of the intended works and their purpose will appear from the formal resolutions or documents of the acquiring authority”.

9. The delivery of any project by a public authority is an intervention in the market in the ‘public interest’. Where that intervention means acquiring the private rights and interests compulsorily such actions have to be justified by demonstrating a ‘compelling case in the public interest’. There are no general barriers to CPO if the rules are followed.
10. **Well Being of Future Generations (Wales) Act 2015 and Sustainable Development**
 The consequence of the WBFGW Act places global environmental and other fetters on economic development in Wales and is a barrier due to an in-built bias towards the climate and social justice. The originating Sustainable Development (SD) White Paper / Bill should have enabled a balanced view to be taken in respect of Economic, Social and Environmental factors. However the SD White Paper / Bill was designed to impact on bodies including Local Authorities and Welsh Government itself by directives to promote pro environmental behaviour. The legislation was exposed to selective consultation and its name changed to the present Act. The operating department changed from Planning. In a way this Act defines the **public interest for Wales**. The Appeal against the decision of the WBFG Commissioner is to Welsh Ministers.
11. **Well being and CPOs** Since 2004 all English and Welsh projects for mixed and non specific use requiring compulsory purchase, including retail and mixed use town centre schemes under the Town and Country Planning Act 1990 (as amended) powers, already have to consider social, economic and environmental (ESE) well being as well as demonstrating a compelling case in the public interest. The Government of Wales Act also includes an ESE CPO requirement. CPOs have generally to be confirmed (‘made’ in respect of ministerial CPOs) by Welsh Ministers . The barrier created by the WBFGW is one of sluggish delay caused by compliance. Also any objections under the Act could mean CPOs being engulfed in a policy mire in Wales causing a barrier not in place in England where opportunities to streamline the confirmation of CPOs are enjoyed.
12. Policy overload. Every new relevant policy adds an administrative / cost barrier .
13. Objections to the CPO project create a barrier and opportunities to challenge a CPO are found at a number of stages in the process. The greater the transparency and community engagement up-stream the more the likelihood of a justifiable CPO has of succeeding.
14. Are there objections to the project itself that would create an impediment or barrier to promoting a CPO? These may be planning or otherwise objections before a CPO is even mentioned notwithstanding that the objector/ advisors are aware of acquiring authority CPO powers. It is nowadays considered essential to remove potential barriers by assessing potential objections up-front building the arguments into the CPO case.
15. **Cost, Funding and Partnerships** Acquiring authorities have to demonstrate that there is a real prospect the scheme will proceed. The costs related to a CPO include not only compensation for acquisition, but administration costs, consultants and Inquiry /Tribunal costs and considered a barrier. Originally CPOs were funded by the state but where state funding dried-up partnership schemes became the norm where a developer / other organisation provided the funds and the acquiring authority used its CPO powers.
16. The barrier occurs where the developer is unable to demonstrate that the scheme is in the public interest rather the interests of the developer’s shareholders.

POWERS

17. Public bodies are conferred with ‘enabling powers’ to acquire land compulsorily and the basic powers of which is to make CPOs is the Acquisition of Land Act 1981.
18. **Empowering Legislation** An Appeal Court Judge stated “where if compulsory power is authorised for a particular statutory purpose, it cannot be exercised for a different or collateral purpose”. It may be considered a barrier that if, say, a highway scheme was being promoted then strictly Highways Act powers have to be used unless there is a significant other use in conjunction such as housing development. In Welsh Government the Transportation Department delivers highway schemes whereas for economic development schemes can include highway development as part of a mixed use scheme under the extensive powers of the Government of Wales Act – not by the Transport Department. Local authorities also have to select the appropriate power, for example Housing Act for housing schemes, and Highways Act for highway. For retail and mixed use schemes in town centres Sec 226 of the Town and Country Planning Act 1990 (as amended) power is applied..
19. With careful thought the selection of the powers is not a barrier to promoting a CPO. Compulsory purchase powers are an important tool to use as a means of assembling the land required to help deliver social, environmental and economic change. Compulsory purchase of land in Wales requires the confirming approval of Welsh Ministers.
20. The greatest barrier of all is making sure that all the requirements are in place. This can be greatly minimised if approached systematically by following available guidance (see Para 24). This also relates to Skills and Expertise (see Q3 post)
21. Silo mentality within WG Departments is a barrier to a comprehensive CPO approach.
22. **PROCEDURES & CODES** There is a standard procedure where The Acquisition of Land Act 1981 lays down the procedure for acquiring powers of compulsory acquisition (compulsory purchase order (CPO) with The Compulsory Purchase Act 1965 providing procedure for taking the land. These in themselves are not considered a barrier. Standard Codes provide the basis on which compensation is paid. This is not a barrier in itself but application but inconsistency by valuers assessing and negotiation compensation may be considered a barrier. The CPA has put to its members a CPO protocol for consideration.
23. **CPO GUIDANCE**
 A **significant barrier** in Wales is the lack of formal guidance available for those promoting CPOs. The last Guidance for Wales was produced in 2004 (NAFWC Circular 14/04) and even then it was out of date when published. A draft Guidance for Wales was then commenced but not finalised. Wales had to use the English Circular 06/04 but this had Welsh elements missing. This year (2018) England published new guidance which Wales will have to use in the interim until a dedicated Welsh version is produced. Urgent!
24. **QUESTION 2 Are there any specific barriers to the use of compulsory purchase to regenerate town centres?** The general barriers outlined in Q1 and the resource issues in Q3 apply here as well.
25. The specific barriers in respect of regenerating town centres stem from attempts to justify the project which in turn impacts on justifying the use of CPO powers. These barriers derive from ignorance, error and ‘imperious immediacy of interest’ all three of which

- combine to deliver unintended consequences. Reviewing historic schemes gives present professionals the evidence to create barriers to schemes that may not be considered in the public interest.
26. Retail led CPOs have the potential for severe negative collateral socio /economic impact. Schemes set out in many ways to remove the competitive advantage of indigenous retail interests and replace them with others all in the name of the ‘public interest.’ A barrier (impediment) blocking schemes is an inadequate understanding of market forces and lack of market evidence coupled with a history of unhelpful, failed, misdirected attempts at retail led regeneration of obvious politically originated vanity schemes.
 27. The barrier of the results of negative appraisal. If a retail scheme has to receive public funding to make it happen then there must be no surprise that the finished project fails in market terms. Such schemes emanate from political aspirations, kudos-seeking regeneration urbanists feeding profit seeking developers.
 28. **Evaporated Demand** Many noughties schemes emanated from an irrational desire of politicians to fill voids or ‘fix’ failing town centres by replacing old with new or even displacing centres. The concept that a centre fails through lack of demand was /is not fully understood and that the ‘evaporated’ demand taken up elsewhere, in satellite retail parks or other town /city centres and their satellites is not easily, if ever, retrievable.
 29. **Perceptual and behavioural biases** Creating a new town centre retail destination, even with free parking, means that to make it a success the spendable income has to come from somewhere. Councils suffer from ‘optimism bias (aka ‘developer’s syndrome’ –believing it will all work out and then acts accordingly. Coupled with an “attention bias” a local authority will not investigate far beyond their (with the developer) argument to push the scheme. This approach takes no account of the collateral impact on other businesses, the intense competition in the centre in order to capture limited consumer spending.
 30. **The Barrier of erroneous Planning Policy** CPOs for retail led developments have been poorly assessed encouraged by planning policy that can only be effective in negative terms; never positively being able to promote retail town centre regeneration success.
 31. Predominately planning policy (particularly PPW) revolves around the sequential test, needs test (both quantitative and qualitative) and provisions for non-car shopping – pedestrians cycling, public transport. For a retail scheme to have a modicum of success the development requires car convenience shopping.
 32. The **Sequential test** forces competition closer to existing town centres where retail firms are failing and also creates congestion constraints. **Needs test (quantitative and qualitative)** is a fallacy based upon the premise that there are gaps to be filled in the in the retail profile (caused by leakage of spendable income). Need is not the test; demand is–evidenced with market trend analysis of changes in demand spending power. Retail is demand orientated with a determinant being is consumer preference and no one knows for certain the nature of leakage in consumer spending and how it would be re/captured.
 33. Consumer spending at any given time is finite and any new scheme will attempt to take spendable income from various sources that presently may be stable but no one can say

- the amount of collateral damage to other centres. Is the spendable income captured locally or some other innocent external centre - there is only so much cake.
34. There is a barrier of ignorance of urban dynamics as to what is being attempted in terms of regeneration. Is it Reinforcement, Replacement, Displacement or even Assisted Contraction of the city core? What are the alternatives? Is the retail project a substitute or complement? Has housing need /demand been assessed as part of a substitutionary or complementary scheme?
 35. The concepts of town structure have to be realistically reviewed as does succession (how the town changes -growth, maturity, decline), accounting for activities (uses) associations (activities linking uses together), accessibility (how goods, services and people move). How much is the core shrinking? What happens in a widening unstable transition zone considering Economic Social (Community) Environmental – sustainability drivers, plus Political Technological Legal – sustainability influencers. Any assessment has to consider population / distance gravitational critical mass effects of large cities in proximity.
 36. **Mode of transport (note Q1 b. Opportunities for active travel).** People travelling by foot, cycle or public transport have a marginal impact on the success of a retail in town centres. Depending upon the facilities provided it would require a dense, close, indigenous population to make an impact. The success of retail centres is geared to: catchment size (spendable income), footfall, convenience, unrestricted accessibility, few competing alternatives, new market entrants and internet impacts. Restricted car access is a barrier.
 37. Multiple CPO schemes The cross-impacts of numerous towns promoting retail led property regeneration causing more competition between towns is an irresolvable barrier.
 38. Other barriers include: cost /value mismatch, vanishing core business of, or associated with, the town, long linear high streets lacking parking and focus, immovable physical constraints and Traditional v Redevelopment conflict.
 39. **QUESTION 3 Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?**
 40. **Operational Skills and Resources Public Sector (internal resource)** This applies to all acquiring authorities. Unused skills become lost. The reluctance to use CPO powers has meant skill reallocation to productive employment elsewhere. In past years larger local authorities undertook numerous CPOs maintaining standing CPO team/s.
 41. The Land Authority / WDA success in CPO was due to the internal land management teams each of which could project manage a CPO as well as other asset related projects. The core team included a Land Manager (project manager a Chartered Surveyor) who also assessed compensation. Other members included a Planner, Lawyer and an Engineer.
 42. **Private Sector (external resource)** Small private sector firms also cannot be expected to carry non productive CPO specialists if there are no projects forth coming. Previously the internal public sector teams were augmented by external specialists where required. External resources are now more the norm but knowledge and experience is an expensive scarce resource. Private firms are the main source of CPO training – in-house.
 43. **Valuers, Lawyers and Referencers and Planners.** Many authorities now completely outsource these resources. Also needed is specialist Leading Counsel to comment, prior to

making the CPO and at an Inquiry. Counsel **must** be specialist. Referencing was previously in-house but now mostly outsourced to specialist firms.

44. **Specialist Advisers** Depending upon the nature size of the scheme – to include Architecture & Design, Highway Planning, Structural / other Engineers, Funding Surveyor / urban economist/ retail development analyst, Housing advisor, Community Engagement, Environmentalists. All may provide evidence at a Public Inquiry. Not having a competent CPO project manager is a barrier. Skills come at a very high cost.
45. **Developers and Partnerships (see paras. 15&16)**
46. **Education** A number of Universities provide compulsory purchase compensation modules as part of a surveying /real estate course but I am unaware of any that teaches on CPO process / project management. Compulsory Purchase is not part of LLB law courses.
47. **Overcoming the skills and resource barrier** **Short Term** - Pooling of shared service CPO teams is an obvious answer for groups of local authorities in Wales regions with, where necessary, even cross regional sharing plus perhaps with the Welsh Government officers. Mentor services could be brought in where needed. **Long Term** Dedicated courses at various educational establishments and institutions
48. **Highway Department.** The Assembly Highway Department has a dedicated CPO team but have problems in transferring skills to wider CPO use.
49. **Resource threat.** Public authority internal CPO staff are targeted by the private sector once they have gained CPO knowledge and experience. A resource to be protected.
50. **Q4** What are your views on the [Welsh Government's](#) proposals for streamlining the Compulsory Purchase Order process, as set out in its consultation on infrastructure consenting? I have not commented on this item but many core CPO issues above apply.