
Communities and Local Government Circular 04/2010
Department for Communities and Local Government
Eland House, Bressenden Place, London SW1E 5DU

31 March 2010

COMPULSORY PURCHASE and THE CRICHEL DOWN RULES

INTRODUCTION

1. The Memorandum to this Circular provides updated and revised guidance to the Homes and Communities Agency on the use of their compulsory purchase powers.
2. The content of this Circular and the Memorandum has no statutory status, and is guidance only.

CANCELLATIONS

3. Appendix C to Part 1 of the Memorandum to ODPM Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* is cancelled except to the extent that it is applicable to earlier compulsory purchase orders made by English Partnerships (as the Urban Regeneration Agency) prior to 1 December 2008.

STAFFING AND FINANCIAL IMPLICATIONS

4. Action in accordance with the Circular and Memorandum will have no significant effect on central or local government staffing levels or expenditure.

TOM WALKER
 Deputy Director
 Homes and Communities Agency Sponsorship and Commissioning Team

The Chief Executive
 Regional Development Agencies

The Chief Executive
 Homes and Communities Agency

The Chief Executive
 Urban Development Corporations

The Chief Executive
 County Councils in England

District Councils
 London Borough Councils
 Metropolitan Borough Councils
 Council of the Isles of Scilly

The Town Clerk, City of London

The Chief Executive,
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 British Property Federation
 Campaign to Protect Rural England
 Chartered Institute of Housing
 Commission for Architecture and the Built Environment
 Compulsory Purchase Association
 Country Land and Business Association
 Defra
 Department for Business Innovation and Skills
 Government Office for London
 Home Builders Federation
 House Builders Association (National Federation of Builders)
 Housing Market Renewal Pathfinders
 Local Government Association
 London Councils (formerly Association of London Government)
 National Housing Federation
 Planning and Environment Bar Association
 Planning Inspectorate
 Planning Officers Society
 Public Interest Lawyers
 Regional Housing Boards
 Royal Institution of Chartered Surveyors
 Royal Town and Planning Institute
 Shelter
 Tees Valley Living
 The Law Society
 Town and Country Planning Association
 West Lakes Renaissance
 West Yorkshire Housing Partnership

Appendix C

ORDERS MADE BY THE HOMES AND COMMUNITIES AGENCY UNDER SECTION 9 OF THE HOUSING AND REGENERATION ACT 2008

1. The Homes and Communities Agency (“the HCA”) was established under the Housing and Regeneration Act 2008 (“the 2008 Act”). The HCA’s statutory powers bring together those of the Urban Regeneration Agency, the Commission for the New Towns, the investment functions of the Housing Corporation, the Academy for Sustainable Communities and certain delivery functions of the Department for Communities and Local Government. The HCA has statutory powers to compulsorily acquire land and new rights over land, subject to authorisation by the Secretary of State, under subsections (2) and (3) of section 9 of the 2008 Act. The confirming authority for a compulsory acquisition by the HCA is the Secretary of State of the sponsoring department.
2. The objects of the HCA (and therefore the purposes for which the HCA may exercise its compulsory purchase powers) are set out in section 2 of the 2008 Act and are:
 - to improve the supply and quality of housing in England;
 - to secure the regeneration or development of land or infrastructure in England;
 - to support in other ways the creation, regeneration or development of communities in England or their continued well-being; and
 - to contribute to the achievement of sustainable development and good design in England,

with a view to meeting the needs of people living in England.

3. In a Written Ministerial Statement to Parliament of 17 January 2007¹, the Secretary of State outlined the new role that the HCA (then referred to as Communities England) would play in helping to deliver housing and regeneration in England. The Secretary of State said, “I propose to establish a new agency, Communities England, to support local authorities in their drive to create and shape prosperous and cohesive communities. This new expert partner will pioneer innovative new ways of working with key partners in the public, private and voluntary sector to ensure we get even better outcomes from our investment in places throughout England.” To fulfil this ambition and to deliver its objects as set out in paragraph 2 above the HCA will, from time to time, need to use its compulsory purchase powers.

¹ <http://www.publications.parliament.uk/pa/cm/cmtoday/cmwms/archive/070117.htm>

4. In preparing and submitting compulsory purchase orders the HCA needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. The HCA should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part. The HCA should submit orders for confirmation via the Government Office for London.

EXERCISING COMPULSORY PURCHASE POWERS

5. It is for the HCA to decide how best to use its land acquisition powers to fulfil its objects and in accordance with any guidance which may be issued from time to time by the Secretary of State. The fact that the powers have been expressed in wide and general terms, together with the Government's statement mentioned above, reflects the national importance of the tasks facing the HCA. While the HCA should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to use compulsory purchase powers to make an order at the same time as attempting to purchase the land by agreement.
6. The HCA is charged with assisting both private and public sector bodies to deliver housing and regeneration priorities throughout England by providing, where appropriate, land, funding and expertise. This will facilitate a coherent and comprehensive approach to housing and regeneration. The fact that the HCA takes steps to acquire land in an area can stimulate confidence that housing delivery and regeneration development will take place, which in itself can help to secure investment. Thus, the power available to the HCA to acquire and merge plots of land in different ownerships provides a vital instrument for implementing housing and regeneration projects for the public benefit and at a realistic cost.
7. The HCA must justify the use of its compulsory purchase powers by showing that such action is being done for the purposes of the HCA's objects, although there may be other additional valid reasons for the proposed acquisition. Whatever the justification, it should have been included in the HCA's Statement of Reasons for the CPO, preferably backed up by a more detailed development framework. The justification will need to be consistent with the policies in the development plan and, in the case of major proposals, form part of the implementation proposals of a Regional Spatial Strategy and/or Regional Economic Strategy².
8. The extent of the HCA's planning powers, if it is designated as a local planning authority under sections 13 and 14 of the 2008 Act, are restricted to those set out in Part 1 of the Town and Country Planning Act 1990. When the designation order relates to permitted purposes, the HCA are restricted as defined in Part 2 of the Planning and Compulsory Purchase Act 2004³. For the purposes of the HCA's work in Milton Keynes

² References to the Regional Spatial Strategy and the Regional Economic Strategy in this document should be taken to refer to the Regional Strategy, including the related plan for implementing the strategy, once the Local Democracy, Economic Development and Construction Bill is enacted and brought into force. The latest version of the Bill can be found at <http://services.parliament.uk/bills/>

³ In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

the HCA is restricted to those powers that were conferred upon the Urban Regeneration Agency for that area by means of the Milton Keynes (Urban Area and Planning Functions) Order 2004⁴. The HCA will need to work in partnership with the relevant local planning authorities.

9. It will be for the HCA, in conjunction with the relevant local planning authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which the HCA takes responsibility for land assembly are likely to be those of significant regional, sub-regional or inter-regional importance. Indeed, Government has recognised that for the HCA to effectively deliver its objects it should have the ability to acquire sites to ensure large-scale development and regeneration takes place in the right places at the right time. Sites are likely to cover wider areas, with significant commitment of financial and other resources. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that housing and regeneration initiatives on a local scale cannot be regarded as part of the HCA's objects.
10. Where the land is required for a defined end use, or for the provision of essential infrastructure such as roads and sewers to facilitate regeneration or economic development, the HCA will normally be expected to have reasonably firm proposals, or a longer term strategic need for the land, in place before making a compulsory purchase order. It would also be expected that, as far as is practicable, the HCA would have resolved any major planning difficulties before submitting an order for confirmation. However, it is recognised that it may not always be feasible or sensible (for example, when rapid action may be essential), particularly for schemes of strategic or national importance, to wait for planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before making a compulsory purchase order. In such circumstances, the onus will rest with the HCA to demonstrate that there are no planning or other impediments to the scheme.
11. Furthermore, it may sometimes be appropriate, in furtherance of the HCA's objects, for it to assemble land which is in need of development or regeneration even though there are no specific detailed development proposals in place. It would be unusual for the HCA to undertake extensive building development itself, and it is more likely that it would seek to fulfil its objects by stimulating as much private sector investment as possible. It could, therefore, be counter-productive for the HCA to seek to pre-determine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds. Nevertheless, in exercising its compulsory purchase powers the HCA will need to show that they have reasonably firm proposals or a longer term strategic need for the land in place and that it is in furtherance of a clearly defined and deliverable objective and that the compulsory acquisition is in the public interest.

⁴ http://www.uk-legislation.hmso.gov.uk/si/si2004/ukxi_20040932_en.pdf

12. When assembling land for redevelopment, the HCA may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the HCA. In such cases, the receipts generated can make an important contribution to the HCA's future housing and regeneration activities.

CONFIRMATION

13. In reaching a decision about whether to confirm an order made under section 9 of the 2008 Act, the Secretary of State will have in mind the statutory purposes of the HCA and will, amongst other things (including those identified in Part 1 of the Memorandum, in particular paragraphs 16-23), consider:
 - i) whether the purchase of the land in question supports the activities as described in the HCA Statement of Reasons and other guidance referred to in paragraph 5 above;
 - ii) whether the purchase of the land in question supports the achievement of any Improvement Targets as set out in any applicable Local or Multi Area Agreements;
 - iii) whether, where appropriate, the HCA has demonstrated that the land is in need of housing development and/or regeneration;
 - iv) any guidance and directions which may be given under section 46 and or 47 of the 2008 Act;
 - v) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and or determined; and the extent to which the proposals advocated by the other parties may conflict with the HCA's proposals as regards the timing and nature of any housing development and/or regeneration of the wider area concerned;
 - vi) whether the proposed development or regeneration is, on balance, more likely to be achieved if the land is acquired by the HCA, including the effect on the surrounding area that the purchase of the land by the HCA will have in terms of stimulating and/or maintaining the regeneration of the area;
 - vii) whether, if the HCA intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development or investment, and that the objects of the HCA cannot be achieved by any other means; and
 - viii) the quality of, and proposed timetable for completing, the proposals for which the HCA is proposing to acquire the land under their compulsory purchase powers and any alternative proposals.

14. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for the HCA to have specific proposals for the land concerned beyond any broad indications in its Corporate Plan, or any justification given in the HCA Statement of Reasons. This would be more likely with projects of strategic or national importance where extremely rapid action may be essential. However, although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and the HCA will need to be able to show that the proposed exercise of its compulsory purchase powers is clearly in the public interest.

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