

# Neighbourhood Planning Bill

Public Bill Committee – 18 October 2016

## Representations of the Compulsory Purchase Association - Executive Summary

### Sections 9 to 20 Temporary Possession

- The CPA supports the principle of codifying powers of temporary possession and making them more widely available. However, we do not believe the Bill as currently drafted meets the needs of those who will use and be affected by those powers.
- There should be limitations on the power to acquire short leasehold or other subordinate interests where the leaseholder remains responsible to his landlord under the terms of the lease during the period of temporary possession. Subordinate interests should be acquired permanently unless a voluntary agreement can be reached.
- Consideration should also be given to liabilities to mortgagees.
- Clarification of an acquiring authority's obligations to reinstate is necessary.
- There should be a prohibition against seeking temporary and permanent freehold powers over the same part of a freehold interest.
- Temporary occupation and permanent acquisition of new rights over the same land should be possible.
- The Bill's provisions should be capable of being augmented by Regulations, to provide opportunity for a code of temporary possession to be prepared.
- Transitional provisions are needed for Transport and Works Acts Orders and Development Consent Orders if their provisions on temporary possession are to be excluded.
- The time period limitation for temporary possession upon service of a counter notice should be 3 years rather than 6.
- Compensation should be paid for any loss or damage where reasonably incurred and subject to the principles of causation, remoteness and mitigation that generally apply to claims for compensation.
- Clarification is required in relation to the Limitation Act. The Bill's current wording could be interpreted as preventing a claim being made until the end of occupation. It should be possible to a claim at any time from the date possession is first taken until the date that is 6 years after the date on which the acquiring authority gives up possession.
- Interest should run from the first day of possession, not the last.
- There is no obvious need to duplicate the advance payment provisions or late payment of interest provisions contained within the Land Compensation Act 1973 (as amended).

### Section 22 No Scheme Principle

- The CPA is supportive of the proposal to clarify the principle of the 'No Scheme World'; however we believe substantial change is required to the current draft.
- Any increase in value should be disregarded both as a result of the scheme and the prospect of the scheme.
- The Bill as currently drafted suggests that rules other than the five rules at 6A might also be considered. This should be clarified.
- Rule 4 is unnecessary and could lead to confusion.
- 6D (2 – 4) is unnecessary and carries the potential to give unfair results.
- 6C should be deleted as a consequence of deleting 6D(3).

### Section 25 Compensation for Disturbance

- The provisions of this section should apply to compensation paid to all tenants.

# Neighbourhood Planning Bill

## Response of the Compulsory Purchase Association

*October 2016*

### **Bill s.9-20 Temporary Possession**

**Introduction:** CPA is supportive of the principle of temporary possession powers being available more widely than is currently the situation. We also believe codification of the current variety of use of temporary possession powers is overdue.

We do not however believe the current drafting is fit for purpose. In particular it is, we believe, unfair in relation to the impacts on leasehold owners and tenants.

**Issues:** We are concerned about the practicality and scope of the provisions as drafted. We support the introduction of measures to bring forward uniformity of use and availability of temporary possession powers. Clarity in terms of transitional provisions is needed – a number of DCOs proceeding through the Planning act 2008 process will have worked up provisions on this topic and it is essential to clarify when the uniform approach will apply to projects authorised or to be authorised by statutory instrument.

We are concerned that there should be limitations on the power to acquire short leasehold or other subordinate interests because the Bill does not deal with the situation where a leaseholder remains responsible to the landlord for the use, repair and payment of rent under the lease but is not in control of the property whilst it is under temporary use. The area is complex and clarity of the relative parties' obligations to each other must be clarified in a leasehold situation where temporary possession powers are exercised. Similarly consideration should be given to the liability on mortgagors to the mortgagee where they may not be in a position to service a mortgage due to possession being taken.

Re-instatement obligations placed on an acquiring authority upon handback should also be clarified.

Subordinate interests should be acquired permanently where called for by the holder of that interest. However, acquiring authorities should be able to enter into voluntary agreements with subordinate and superior interest holders regarding the temporary use of premises without the acquisition of the subordinate interest (see cl 9(4) for this power).

The majority of those on our sub-committee believe there should be a prohibition against seeking temporary and permanent freehold powers over the same part of a freehold interest. It is felt by many that where these processes are used consecutively it can lead to significant uncertainty where the land owner may not know how much of their land will be returned, or which parts, or when.

We would however propose the Bill is clarified to allow both temporary occupation and permanent acquisition of new rights over land.

Overall we would suggest the Bill's provisions should be augmented by Regulations to provide further opportunity for a Code for Temporary Possession to be prepared.

## **Amendments:**

### **Clause 9**

A power to make Regulations should be provided in this Chapter.

9(2) clarification is needed on whether there is a limitation to temporary possession of freehold interests. Should it instead be power of temporary possession is not available if an interest would terminate within 1 year of the date on which the authority intends to hand back possession to the occupier?

9(3)/ 9(6) transitional provisions are needed for Transport and works Act Orders and Development Consents Orders if their provisions on temporary possession are to be excluded. The prohibition, if it is needed, should apply only to Orders applied for after the Bill's provisions come in to force.

### **Clause 10**

10(1) "same type of instrument" is not clear. Would it not be more appropriate to allow applications for temporary possession only where the principle has been established by the confirmation/making of the authorising instrument? Or where express provision for temporary powers are sought when the CPO is made? It would appear this is what the Bill is aiming at but the wording is not clear.

10(4) Should "acquires" be "takes possession of " the relevant land. Does this mean temporary powers can only be used on land that will also be permanently acquired? The Bill needs to clarify this and also whether permanent new rights can be secured in conjunction with temporary possession powers.

10(7) How can a temporary possession commence at the same time or after the authority has acquired the land (presumably permanently)? Or is this an implied reference to permanent new rights being secured over land? We have already noted that a majority of our sub-committee are of the view that consecutive temporary and permanent acquisition should not be permitted in respect of the same part of a freehold interest. Permanent new rights before during or after temporary possession should be permissible, as exclusive possession will sometimes be required to carry out works that thereafter will not interfere with the owner's rights of possession to an extent that the freehold should be taken.

11 Amendments will be required if it is decided to limit the power to freehold interests. Subordinate interests could be dealt with under existing acquisition and entry notices in respect of each interest.

### **12 Counter Notice**

Amendments may be required generally to limit to freeholds, or clarification on the length of a term of a lease than can be subject to notices.

(2)(b) It is felt that a limit of 3 years should be provided for rather than 6.

### **14 Compensation for temporary use**

(2) The wording "as a result" is incomplete and should read "as a result of the exercise of the power in s.9(2)" or wording to that effect.

(5) the phrase "any loss or damage" is often used rather than "any loss". It may also be helpful to ensure it is clear that losses (and damage) were reasonably incurred and subject to principles of

causation remoteness and mitigation, by making it clear here or in 12(10) that these Compensation Code principles apply.

(7) We agree with the effect of this clause for the Limitation Act. Is there an unintended consequence that it prevents a claim being made until the end of the occupation? If so this should be addressed as it would be a heavy burden on the freeholder, particularly where the freeholder was paying a mortgage but could claim no compensation for lost income until after the occupation ended. "Accrues on the last day of the period" could be clarified – We suggest " may be made by the claimant at any time from the first date possession is taken until the date that is 6 years after the day on which the acquiring authority give up possession."

(8) Interest should run from the first day of the possession, not the last.

### **15 Advance Payments**

Generally, we do not feel that duplicating Advance Payment provisions is helpful and this clause should be deleted except for a provision similar to 15(2) which clarifies the application of s.52 etc of the Land Compensation Act 1973 (as amended by the Housing and Planning Act 2016 and others) applies to temporary possession.

### **16 Interest on Advance Payments paid late**

As for 15, this should refer to the provisions in the 1973 Act as inserted by the 2016 Act.

### **19 Supplementary Provisions**

Given the complexity of temporary use and the circumstances in which it may occur we believe it is prudent to allow the making of Regulations as set out in this clause.

### **22 No-Scheme principle**

**Introduction:** CPA is supportive of the principle of the Scheme provisions in the Compensation Code being provided for in statute. We do not however believe this has been drafted in an appropriate way and substantial changes are required.

**Issues:** We welcome the statutory embodiment of the no scheme principle as this should improve clarity on a central tenet of compensation assessment. However, we have significant concerns over some of the provisions as drafted, as discussed below.

6A(2)(a) Should also include the prospect of the scheme.

6A(3) the words "in particular" imply that something other than the 5 new rules should be considered, but there is no indication as to what. The current position is that only the statutory disregards can be taken into account in disregarding the scheme and this provides clarity over the valuation exercise to be undertaken. "in particular" should be removed.

6A(7) Rule 4. The purpose of the scheme cancellation being on the valuation date is to avoid the need to speculate on what may have happened between the cancellation and the valuation date. Rule 4 is therefore unnecessary and is likely to create confusion as it is not clear what its purpose is.

### **6D Meaning of scheme**

Issue – the wording of 6D(1) is consistent with existing case law and is therefore in our view the correct definition. 6D(5) clarifies that the scheme should be assumed to be the current CPO (or whichever instrument is being used) unless it can be shown otherwise, and in the case of a dispute the Upper Tribunal has the power to determine the matter. This allows the public purse to be properly protected in cases where the scheme is wider than the current CPO.

However, the additional definitions of the extent of the scheme in 6D(2-4) are both unnecessary and carry the potential to give unfair results. In many of the circumstances set out in 6D(2-4) it will be proper to envisage a wider scheme, but this cannot be guaranteed in all instances. As 6D(5) already allows for a wider scheme to be promulgated, with proper scrutiny, there is no need to legislate circumstances where the scheme should be widened without scrutiny of whether it is appropriate in respect of a particular scheme.

*On a wider policy note, we support the proper identification of the scheme to protect against genuine cases of the public purse being penalised for earlier parts of the scheme increasing land values and believe that 6D(5) provides for this.*

*However, recouping the returns of public investment generally is a different matter and should not be confused with the assessment of fair compensation. Where recouping public investment through capturing land value is adopted as a matter of policy, it should seek to capture all the attributable land value increases, and not discriminate between those who have had land acquired (who would potentially pay disproportionately if the scheme is not correctly identified through a properly scrutinised case) and those who have not had land acquired who would pay nothing. It also ignores the substantial impacts of blight (in its wider, non-statutory sense) created by the announcement of schemes, and the substantial disruptions caused whilst works are carried out, many of which are not often adequately compensated for. Denying owners the benefit of a scheme following years of uncertainty and disruption as a scheme proceeds through permission and construction will lead to substantial feelings of unfairness for owners, particularly when they are penalised because their land is in a scheme but neighbours who have not lost land are able to benefit from the market uplift following schemes being built out.*

#### **Amendments**

6D(2) to 6D(4) should be deleted.

6E should be deleted as a consequence of deleting 6D(3).