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CPOS: COMPULSORY FOR TOWN CENTRE REGENERATION?



Introduction

Town centres are, and always have been, at the heart of our communities and local economies but they have been in decline for some time. The way we shop, and the way communities use their town centres, have changed. This has led to huge pressures on, and challenges to, their role in being economic catalysts for the communities they serve.

The Levelling Up agenda, which has culminated in the recent White Paper with its 12 national missions, has brought town centre regeneration into major focus. It is shining a spotlight on those places that have suffered from declining investment and identifying those that should be 'levelled up' by once again creating a sense of place and pride in town centres across the UK.

However, in practice, it can be particularly tricky to deliver town centre regeneration successfully. The process can be complicated by a variety of challenges such as sites under multiple ownerships, alignment with human rights legislation, local opposition groups, access to funding and competing needs and objectives.

A crucial tool in facilitating "regeneration" is the use of compulsory purchase powers – an opinion supported by the new Levelling Up and Regeneration Bill which inserts the word (for clarity) into the key objective test for Compulsory Purchase Orders (CPOs) in reference to England. This briefing note provides an overview on the role that CPO can play in levelling up our town centres.

When should the public sector step in to facilitate town centre regeneration?

Town centre regeneration usually requires the public sector to step in when the private sector either is not bringing forward redevelopment or cannot deliver the comprehensive redevelopment necessary due to a fragmented land ownership.

Local authorities should back the use of compulsory purchase powers at an early stage if the proposals broadly accord with planning policy. This, in turn, will provide the confidence needed for a developer to take the scheme through the planning stage and to commence discussions with landowners and occupiers on advance agreements to acquire the interests.

To date, there has been a limited use of CPOs by other parties to deliver impactful regeneration. The Mayor of London (the Greater London Authority) has not been prolific in this respect. The key intervention so far has been in the development of the former Southall Gas Works which spanned the administrative boundaries of Ealing and Hillingdon.

Transport for London (TfL) and Homes England have the ability to deliver regeneration through use of compulsory purchase powers but there has been limited appetite so far. Therefore, delivery of 'in our back yard' regeneration often falls to the local authority, but the burden can and should be shared by others in certain situations.

What should the public sector's approach be?

The public sector should stand 'shoulder to shoulder' with the private sector. For example, local authorities can use their powers if a scheme contributes to the promotion and improvement of the "economic... social... or environmental well-being" of an area.

A crucial step in the process will be a cabinet resolution to make a CPO once the development proposals are well advanced. Prior to this, the private sector can indemnify the acquiring authority for its costs in undertaking the process and for acquiring any interests that it has not directly secured. In turn, the public sector can enable early discussions to take place against a backdrop of the 'Compensation Code' – the body of statute and case law that informs the compensation entitlement of a landowner.

A primary aim must be to ensure that an advance agreement is reached which enables a timely relocation for residents, businesses, and other occupiers. This is what success looks like. Conversely, a party who becomes a 'claimant' could be considered to be a failure of the system unless the acquiring authority and private sector have taken all reasonable steps to enable a relocation to take place.

Enabling powers are contained within Acts of Parliament – the most common being s226 Town and Country Planning Act for "development and other planning purposes. Other primary legislation supports the functions of bodies including Homes England, the Mayoral bodies (e.g. Greater London Authority, West Midlands Combined Authority, Greater Manchester Combined Authority) and TfL.

The powers should be used to unlock development but acquiring authorities should not overreach in terms of the interests they seek to acquire. Section 203 of the Housing and Planning Act 2017 is a useful tool in this regard: reducing the financial burden of the project by overriding rights of land and

compensating for the 'damage' in value rather than acquiring outright from a third party.

How can the public and private sector work together to deliver on this?

The public and private sector should collaborate at an early stage if their shared aim is to bring forward comprehensive and transformational regeneration. The benefits are clear: compulsory purchase powers (and potentially public sector land interests) combined with the private sector's resources, market focus and technical expertise can result in significant placemaking achievements and make a valuable contribution to Levelling Up by providing skilled employment opportunities.

Compulsory purchase provides the structure by which compensation is assessed and agreements reached to put those affected back into the same position 'as far as money can.' Although the cost and time required in making a CPO are significant, this investment does enable realistic conversations to happen which hopefully lead to agreements, removing the need for the process to continue.

The resolution to make a CPO is a crucial step – as is planning permission for the scheme – but these are typically 'down the line' steps. Therefore, early and open support for the project is vital to show that the scheme is deliverable and to facilitate engagement.

In conclusion, the use of compulsory purchase powers will be vital when delivering the Levelling Up agenda and will provide the confidence needed by the developer and any affected parties to negotiate meaningfully at an early stage.

There are a number of compulsory purchase proposals for England and Wales in the new Bill which are designed to improve the 'toolkit' to some degree. In reality, it is a lack of specialist resource in some cases and the perceived risk of the process which are deterring bodies possessing compulsory purchase powers from using them.

We expect Homes England will start to use its compulsory purchase powers to re-purpose 'unfit' town centres as a means of boosting housing (and employment) numbers. Similarly, the mayors of Birmingham and Manchester may decide to use their CPO powers to deliver regeneration schemes alongside their commitments to improving region wide transport connections.

The public and private sector should support each other at an early stage if they are to ensure delivery of the transformational regeneration of which many of the UK's town centres are in desperate need.

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