Fair Play:

CLA VISION FOR REFORM OF THE COMPULSORY PURCHASE SYSTEM

Country Land &
Business Association

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CLA Country Land & Business Association

FOREWORD

In this report the Country Land and Business Association (CLA) puts forward proposals for reforming the compulsory purchase system, by making fairness its cornerstone.

We do this after having consulted with our members and professionals with extensive experience at the sharp end of the compulsory purchase system.

Compulsory purchase goes to the heart of the relationship between private property owners with very limited resources and the might of statutory authorities or those private companies contracted to deliver infrastructure on the State's behalf.

Many of the CLA's 34,000 members, who own and manage around half the rural land in England and Wales, are regularly involved in this process. They are affected by acquisitions for new or widened roads, rail, airports and utilities as well as land for schools, hospitals and even, in some cases, private development.

Our concern is that the current system, which has arisen piecemeal over more than a century, fails to balance the perceived requirements for infrastructure and the rights of the private landowner.

The inherent unfairness and imbalance of the current system inevitably lead to conflict and delays increasing the costs for acquirers as well as those affected as they navigate the bureaucratic nightmare of the compulsory purchase system.

Our reform proposals set out an approach which will deliver a better balance between the interests of the parties, reduce conflict and lead to better projects that take into account the impacts on those affected, and mitigate them better.

The impact of compulsory purchase begins many years before acquisition in the form of generalised loss of property value – known as blight. Conflict heightens during the planning and acquisition stages which often pan out over many painful years before the construction of the project.

CLA members and others who own rural property generally face the worst of both worlds: not only is their land and property being acquired compulsorily but they are usually forced to tough it out in the same location, remaining in their homes and adapting their businesses to fit in with the project. Farmers often have their holdings split, causing irreparable damage to their businesses. They are financially and logistically hit. This is invariably not fully recognised in the current system.

Compulsory purchase has a significant impact on people, their lives and their aspirations, which adds a moral urgency on top of the business case for reform.

All those who regard property rights as important and care for rural communities under threat should join us in this call for reform. The proposals for the second high-speed rail line – HS2 London to Birmingham and the North – make this particularly urgent.

The time is right for reform of the compulsory purchase system.

Harry Cotterell
President, CLA

ACKNOWLEDGEMENTS

The CLA thanks the many organisations, professionals and claimants whose experiences have informed this report. Prior to this report being written, the NFU and the Central Association of Agricultural Valuers (CAAV) were consulted. We have also welcomed submissions and evidence from those who have contributed their experiences and advice.

LIST OF ABBREVIATIONS

CPO	Compulsory Purchase Order
CPPRAG	Compulsory Purchase Policy Review Advisory Group
IDWGB	Interdepartmental Working Group on Blight

Fair Play:

CLA vision for reform of the compulsory purchase system

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EXECUTIVE SUMMARY

The compulsory purchase system as it stands is inefficient and unfair to those whose land is taken from them. In this report the CLA sets out its vision for changing the system for the better.

We have long argued compulsory purchase should be used only as a last resort. Acquirers should have to show they have fully negotiated with, and sought remedies for, affected landowners.

The present system fails to address the legitimate losses of those whose property is taken. We believe our reforms would improve the system at no additional cost.

The CLA says that a reformed compulsory purchase system must, therefore, include the following key provisions:

- a duty of care with an enforceable code of practice;
- fairer compensation provisions with mitigation;
- a property purchase guarantee scheme to deal effectively with blight; and
- the duty to take only the minimum amount of land permanently required and return any land that becomes surplus at any time.

Fairness and a Duty of Care

Fairness is currently not the cornerstone of the compulsory purchase system. We must change this through a new duty of care that acquirers will have to claimants.

Code of Practice and an Independent Person

The CLA proposes that the Land Compensation Act 1961 should be amended to make sure acquirers adopt an approved Code of Practice of which an essential part would be the appointment of an Independent Person to supervise the implementation and enforce the Code. This statutory Code and the Independent Person are essential to regulate the conduct of both acquisition procedures and construction works.

Valuation

The present valuation rules favour the might of the acquirer. This needs to be rebalanced to ensure that the property owner does not lose out. There needs to be a genuine recognition of open market value, replacement costs and other costs.

Loss Payments

The CLA believes that loss payments should be increased to 30 percent of the value of the claim to reflect that the sale is forced to take place not at a time of the claimant's choosing and to cover numerous other incalculable losses suffered during the entire process.

Blight

The impact on the value and marketability of property near to an infrastructure project is the scourge of landowners. It paralyses businesses, destroys property values and damages the security of lending for homeowners and private enterprise, sometimes with terrible effects on its victims. A property bond scheme would underpin both property values and the market throughtout the period of the scheme but would still allow property owners to force acquirers to purchase blighted property.

Crichel Down and the Return of Surplus Land

The CLA believes there is no justification for the acquirer to retain land purchased by compulsion, or threat of compulsion, when the use for which it was bought has either ceased or been abandoned. The current non-statutory Crichel Down rules are inadequate.

A requirement to offer it back to the original owner must be enshrined in law and there should be no time limit on this obligation.

Cost of our Proposals

The present system fails to address the legitimate loss of those whose property is taken. We believe the overall cost of our proposals will be neutral. Our proposals will benefit acquirers through savings in cost and time and claimants through the knowledge that the acquirer is duty bound to treat them fairly, reducing the need for challenge and establishing a trust between the parties.

This report expands on these themes.

1. THE CLA AND COMPULSORY PURCHASE

The CLA represents 34,000 members who collectively own or manage approximately half the rural land in England and Wales and more than 250 different types of businesses.

The members are individuals, businesses, charities, farmers and estate managers. They generate jobs, provide land and buildings for investment, and housing for local people as well as producing food, fibre and a wide range of land-based environmental services. They also manage a significant proportion of the heritage properties in England and Wales.

Compulsory purchase is a fundamental challenge to property ownership. We recognise compulsory purchase may be a necessary tool to deliver large-scale infrastructure projects for the public good. However, it does not follow that the public interest is served by the State or other bodies using their dominant position and often confrontational approach to acquire land on any lesser terms than if it were sold voluntarily on the open market.

The dominance of the State and other acquirers is often demonstrated by the situation when a landowner challenges, at inquiry or tribunal, the compulsory purchase process. Success or partial success does not automatically entitle the landowner to recover his costs in making that challenge.

Moreover, the imposition of large-scale infrastructure projects and the acquisition of people's homes and businesses inevitably cause stress to those affected. Indeed, it can produce great trauma to those involved in significant drawn-out cases.

CLA members face threats of compulsory purchase of land and rights over land arising from more than 40 different Acts of Parliament. This statute and case law dates from the time of the British Empire and has been amended piece by piece. The ability of privatised and other profit-seeking businesses to use compulsory purchase powers is also a major concern. Such powers have real commercial benefit and give unwarranted strength to such businesses.

The confrontational nature of the compulsory purchase process makes most rural landowners naturally want to fight any proposal likely to lead to compulsory acquisition of their land. Owners should not feel they have to adopt an adversarial approach to protect their interests. This is the unfortunate position at present and costs both the landowner and the acquirer dearly.

The CLA has long argued that compulsory purchase should only be used as a last resort. Acquirers should be compelled to show that they have fully negotiated and sought remedies for the dispossessed landowner.

No acquirer should have recourse to compulsory purchase powers without having tried to reach an agreement with the owner. Faced with a difficult negotiation, it is far too easy at present for an acquirer to serve notice and take possession and leave the claimant to argue his case for compensation after losing his land. This report seeks to show much can be gained by both acquirers and claimants through our proposals.

It is more difficult for those living and working in rural communities, including many CLA members, to sell up and move to another location than for those living in urban locations. A CLA member who loses an entire farm, for example, is very unlikely to be able to find a similar property on the open market without, perhaps, waiting many years or moving to an entirely different part of the country. Family and geographical ties for rural landowners are strong and therefore many do not move. Thus, the accommodation and mitigation works provided as part of any scheme are central to our members' interests.

Blight is the scourge of landowners, paralysing businesses, destroying property values, causing property markets to seize up and damaging the security of lending for homeowners and private enterprise, sometimes with desperate effects on those who lose out.

In the countryside, those who have land taken often remain as neighbours to the large construction projects and resultant developments that have an enduring effect on their homes, businesses and lives.

The impacts of the high-speed rail Channel Tunnel Link (HS1) project on a swathe of rural Kent caused enough concern in Parliament in the 1990s for the

Government to commission the Interdepartmental Working Group on Blight (IDWGB)[1] and the Compulsory Purchase Policy Review Advisory Group (CPPRAG)[2], and this was followed by a Law Commission study[3].

The CLA finds it shocking that almost none of the recommendations made in these important reports have been implemented. After nearly a decade since the Law Commission's report, we believe the time is right to highlight the issue and bring some fresh ideas to the debate. This would help claimants without needing to have a new consolidating Act, although we would welcome this outcome.

The aim of our proposals is to reduce the likelihood of the claimant and the acquirer ending up in conflict. The key is for the acquirer to recognise and acknowledge its powerful position legally and financially over the landowner and not to abuse this relationship.

The CLA wants to see a new approach to compulsory purchase – one that makes fairness the cornerstone of a project. This happens in Australia[4], where greater attention is given to the need for fairness, especially for those who must give up their land for the public interest. The approach also makes sure that if that land is no longer needed for the original purpose, the former owner has the right to its return.

We are lobbying for a compulsory purchase system with a compensation mechanism that works. Currently, the system fails to protect the interests of those who will be required to sacrifice their property.

CPO tragedy

A Welsh sheep farmer, who had a substantial proportion of his holding acquired, had to rent additional land on which to graze his stock.

His agent submitted and agreed the farmer's claim with the district valuer and vigorously chased the acquirer for payment. Four years of non-payment followed with spurious excuses such as "the girl who writes the cheques is on holiday".

The acquirer also claimed to have lost the paperwork submitted by the claimant.

The saga ended tragically when the bank foreclosed on him and he took his own life.

1. Interdepartmental Working Group on Blight Final Report and Draft Property Purchase Guarantee and Compensation Scheme, DETR, 1997
2. Fundamental review of the laws and procedures relating to compulsory purchase and compensation (the Final Report of the Compulsory Purchase Policy Review Advisory Group), DETR, 2000
3. *Towards a Compulsory Purchase Code* (1) Compensation (Law Com No 286), 2003, and (2) Procedure (Law Com No 291), 2004
4. See www.alrc.gov.au/report-14 – now enacted in the State of Victoria with a "duty to be fair"

2. FAIRNESS AND A DUTY OF CARE

Current compensation is bound by rules that play to the relative strength of the acquirer who will always have more resources than the claimant. The acquirer also benefits from the requirement to pay compensation of no more than the claimant's loss. There is virtually no incentive or requirement for acquirers to act promptly, resulting in compensation often being paid many years after compulsory acquisition takes place.

Valuers are governed by the six rules of compensation in Part II of the Land Compensation Act 1961 which are summarised below.

1. No allowances shall be made on account of the acquisition being compulsory.
2. The value of land shall be the amount that it would realise if sold in the open market by a willing seller.
3. The special suitability of the land for any purpose shall not be taken into account if it could be applied by a body with powers of compulsory purchase.
4. Where illegal activity has increased the value of land, this increase will not be taken into account.
5. Where land has no market value, it will be assessed on the basis of the reasonable cost of equivalent reinstatement.
6. The value of the land in Rule Two shall not affect the assessment of compensation for disturbance or any other matter not directly based on land value.

The upshot of these six rules is that claimants are generally paid less than their loss, especially as some losses are not accurately quantifiable.

Valuation Issues

Property valuation is an art rather than a science. The acquirer's valuer is limited to offering a sum that is no more than his assessment of the loss, which is purely an opinion. Unfortunately, this is often at the low end of the range of values that might be achieved in practice on the open market.

Two valuers could be as far apart as 20 percent in their valuations of the same property and, yet, both may be considered correct. Valuers acting for acquiring authorities naturally seek to do the best deal for their client during negotiations and often only offer the bare minimum. These valuers frequently justify their position on the basis that the acquirer is required to pay no more than the loss.

The CLA believes the problem is not the six rules of compensation but what might be described as their over-zealous application to the acquirer's advantage. This is not helped by the costly and adversarial nature of any appeal.

The CLA is not alone in reaching this conclusion. Indeed, in 2000 the then Government's own review of compulsory purchase (CPPRAG) said: "We have therefore come to the conclusion that open market value seems to present the fairest basis for assessing the compensation payable for the land taken. However, as previously mentioned, valuation cannot be an exact science and the application of the principles used to define open market value will always produce a range of figures. We would therefore wish to encourage acquiring authorities to consider whether there would be advantage in **adopting a more flexible approach to negotiations on the open market value** of any particular site within the limits set by such principles."

Following this, the Law Commission in its report *Towards a Compulsory Purchase Code* stated that the "overriding objective was fair compensation".

Because of the abject failure to carry out these much-needed reforms, the CLA now proposes in this report the introduction of a new duty of care between the acquirer and landowner which would govern their conduct. If enshrined in law, such a duty of care would allow both a flexible approach, as recognised by CPPRAG, and fair compensation, as recognised by the Law Commission, which would go some way to correcting the imbalance in the compulsory purchase system that exists today.

Fees owed

A CLA member in Herefordshire said: "With nearly 30 years' experience in this, I have to admit to being appalled at the Government's disrespect for the law it puts into place.

"I have more than £40,000 of fees outstanding relating to compensation claims which date back as far as 1994."

2.1 Duty of Care

The CLA's approach to the widely recognised inadequacies of the current system does not call for wholesale legislative change. While we believe, in common with the Law Commission, that consolidation of statute and case law is needed and long overdue, our proposal seeks changes to the existing law that would bring about a fundamental change in the working practice of those bodies with compulsory

purchase powers. This change is one of fairness through a duty of care, which we believe an acquirer owes to a claimant from the moment a project is conceived to the completion of works.

The Duty of Care should include:

- acting fairly;
- consulting claimants and their immediate neighbours before and during acquisition;
- minimising the impact on claimants and immediate neighbours;
- recognising the special position of, and consulting with, the land managers remaining at or beside the project's site after the scheme's completion;
- acting transparently in negotiations over accommodation works including fences, bridges, underpasses, gates and other mitigation measures provided by an acquirer;
- maintaining and providing up-to-date contact details for ongoing management issues involving the scheme and providing other relevant "aftercare";
- ensuring effective dispute resolution;
- indemnifing claimants against losses caused by acquirers, their agents, staff, contractors and sub-contractors; and
- paying compensation promptly.

To achieve fairness we propose the rules of compensation in The Land Compensation Act 1961 should be bolstered by a new provision that those acting on a Compulsory Purchase Order (CPO) or backed by the shadow of compulsion (where an acquirer purchases a property by agreement that would otherwise be subject to a CPO) should have an overriding duty of care to claimants.

Broken promise

The Highways Agency took around 24 acres of land to use for storage of soil removed during by-pass construction at Haydon Bridge in North Yorkshire with a promise to return the land in good condition after work was complete.

Two years later, the land has been left in an appalling condition and the Agency refuses even to respond to correspondence.

The land agent said: "We have been contacting the Agency almost incessantly for months and it has deferred numerous meetings."

The CLA recommends that an additional rule of compensation should be added to the six rules set out above. Rule Seven would say:

"In assessing compensation an acquirer should at all times exercise a duty of care to the claimant and act fairly and reasonably within a code of practice. Failure to adhere to this Duty of Care would lead to financial penalties being imposed by either the Independent Person[5] or the courts."

The ways in which the Duty of Care would be discharged should be set out in a code of practice with enabling powers created by the Government through secondary legislation.

Such codes of practice, while sharing a common theme, would be specific to either a particular industry or scheme. In the case of a specific scheme, the Code of Practice would be agreed and in place before the planning phase of the scheme started.

5. See 2.2 for a description of the Independent Person

2.2 The Independent Person

It is the responsibility of the Independent Person, highlighted in the new Rule Seven, to ensure the acquiring authority fulfils its duty of care and its obligations under the Code of Practice.

Every acquirer must appoint such an Independent Person to act as ombudsman to ensure fair play and compliance with the Code of Practice.

'Mean' valuers

A professional member of the CLA in the Midlands said: "There are certain valuers working on behalf of acquiring authorities who are known to be 'mean' with their figures and refuse any form of negotiation – the idea of an independent person would effectively deal with this situation."

The Independent Person should be an expert who can exercise professional judgment to enforce the Duty of Care and Code of Practice and act as a mediator between claimants and acquirers. Where a problem is identified by a claimant, the Independent Person would have a duty to report, with recommendations, on the actions required to put matters right, seeking specialist advice if necessary. The Independent Person would also have the power to impose penalties for breaches of the Duty of Care and the Code of Practice.

Having an Independent Person would achieve two main goals:

1. the acquirer is likely to act fairly and reasonably from the start; and
2. any disputes that arise would be dealt with swiftly and cost effectively.

Time and cost savings would be considerable and would, the CLA believes, benefit the acquirer, and the overall benefit would be a fairer system with reduced conflict.

The existence of an Independent Person would not preclude the claimant taking the matter to the specialist Upper Tribunal (Land Chamber) – the former Lands Tribunal – for formal resolution at any point. This would be with or without previous reference to the Independent Person.

2.3 Code of Practice

A statutory code of practice, backed by low-cost and user-friendly enforcement procedures through the Independent Person, is required to regulate the conduct of acquisition and construction works. All major infrastructure projects should be required to adopt such a code agreed with representative organisations which will become a basic requirement for managing projects involving Compulsory Purchase Orders.

This Code should provide undertakings by the acquirer on consultation, communication, notice of entry, construction practices and protection of adjacent land and services, together with provisions to cover dispute resolution and ancillary issues. It should be enforced by the Independent Person and provide real protection for those who are affected by a project.

The CLA believes that a well-drafted code of practice could effectively deal with the pressing issues faced by claimants, in particular farmers and rural landowners, where the current system either fails completely or is inadequate in other ways.

2.3.1 Loss Payments

The CLA believes loss payments[6] are vital to achieve fairness. We have identified where the system is unfair to the claimant, particularly those with rural businesses. However, the current loss payment system is still inadequate in terms of its percentage and the capping measures in place.

We propose these loss payments should be increased to 30 percent of the value of the claim. Such a percentage would reflect that the sale is forced at a time not of the claimant's choosing as well as hard-to-quantify impacts of the compulsory purchase. This would be an appropriate payment over and above the value of the property taken, as uncompensated losses always arise. This could go some way to reduce the adversarial nature of the process and should not represent a windfall gain.

The CLA believes the cost of this approach would be offset by savings in time and expense for acquirers in defending the scheme through complex inquiries and legal challenges, which are often driven by the real concerns that claimants have about the existing compensation system.

2.3.2 Replacement Buildings

Farms and other rural businesses often find that compensation in cash terms fails to meet their needs, particularly where farm buildings and houses may be taken by the project, or physically cut off from the farm so they are no longer viable or significantly less valuable. The market value of farm buildings may be low but these buildings will often be essential to the running of the business. Reform should recognise that provision should be made for the replacement cost where essential buildings have been taken.

6. Land Compensation Act 1973 as amended by the Planning and Compulsory Purchase Act 2004

A further issue arises in relation to farm and other buildings located in the greenbelt and other protected areas: planning policy may stop the replacement of farm or other rural buildings and, in particular, replacement dwellings in the countryside. The CLA argues that landowners should be able to include replacement assets on their remaining land – including "planning consent" for replacement buildings and dwellings – as part of the project's accommodation mitigation works.

The CLA recommends that the current Rule Five should be amended to provide equivalent reinstatement for essential housing and buildings taken by a scheme, which may have a market value but cannot be replaced. It should state that a claimant should have the ability to seek that the acquirer should provide both the planning consent and the cost of replacing such assets rather than their market value. This is appropriate when it is clear that equivalent reinstatement cannot be achieved on a holding without the intervention of the acquirer.

2.3.3 Advanced Payments

An acquirer is required to make an advance payment of compensation of 90 percent of the acquirer's estimate of compensation. The claimant is required to request such a payment in writing. At the present time, claimants, even after a written request, are unable to compel the acquirer to make advance payments – a fact recognised by the Law Commission in its report *Towards a Compulsory Purchase Code*.

The proposed Code of Practice should make it an obligation for acquiring authorities to assess accurately compensation, on which to base the 90 percent, and then make advance payments on the day it takes possession of the property.

The Law Commission recommended enforcement through the county court, a process which is slow and costly. The CLA proposes that scrutiny of the accuracy of the acquirer's assessment and enforcement be undertaken by the Independent Person.

The CLA recommends that a schedule of advance payments is submitted to the Independent Person for his agreement prior to entry to ensure a fair advance payment is made. Claimants would be able to make representations to the Independent Person as to their assessment.

To guarantee a reasonable assessment is submitted by the acquirer, the Independent Person would have the ability to impose a punitive rate of interest between the advance payment and the eventual settled figure.

2.3.4 Accommodation Works

The Code needs to compel the acquiring authority to design and to be bound to deliver a full scheme of accommodation works agreed with the claimant. The CLA often finds that promises are broken by acquirers when it comes to accommodation works. The Code of Practice will oblige the acquirer to enter legally binding agreements specifying the scope and extent of accommodation works.

2.3.5 Timing of Notices

At present an acquiring authority has a significant amount of time in which to exercise a purchase. Once a CPO has been confirmed, an acquirier has three years to serve a Notice to Treat[7]. After that, the Notice to Treat remains valid for a further three years. Potentially a claimant can have up to six years of limbo. The CPPRAG advised the shortening of this period to three years with the ability of a claimant to serve a reverse Notice to Treat. The CLA believes this is the correct recommendation to reduce the time in which acquirers have to bring forward a scheme.

2.3.6 Amount of Land Acquired

Frequently, acquirers seek to compulsorily purchase more land than is needed for the operation of the finished scheme. This additional land is usually to make construction easier. The CLA believes that such additional land should be only taken under temporary licence for the time period of the works and under commercial terms and not retained.

7. A notice served by an acquiring authority seeking to "treat" (negotiate) with the claimant over the amount of compensation payable

2.3.7 Payment of Compensation

Claimants often find it almost impossible to enforce prompt payment of compensation including advance payments and fees. Most businesses require settlement of accounts within 30 days and apply penalties after that. A similar provision should be made for agreed compulsory purchase compensation.

2.3.8 Interest

The current statutory rate of interest is half a percent below the Bank of England base rate. At present, with a Bank of England base rate of 0.5 percent, this means that no interest whatsoever is payable by the acquirer. Clearly, this is unacceptable and does not reflect the cost to rural business of borrowing money. It means there is no incentive for any acquiring authority to agree and pay promptly. The CLA calls for commercial rates of interest to be paid on a compound basis. The Independent Person and the Upper Tribunal (Land Chamber) should also have the power to award punitive rates of interest (and wider compensation) when justified by the conduct of the acquirer.

2.3.9 Betterment

Betterment is the increase in value of a claimant's land, or part of it, by virtue of the scheme. At present, betterment is deducted from all heads of claim. The CLA believes, as recommended by the Law Commission, that betterment should only be deducted from the severance and injurious affection heads of claims and not from the value of the land taken.

2.3.10 Costs

The acquirer should be responsible for all the reasonable costs incurred by the claimant. Often schemes fail to go ahead due to changing political and financial priorities. Where landowners and businesses have incurred costs due to an abortive scheme, they should be compensated for those costs.

Derailed

A CLA member in Wales was the owner of a colliery served by a private rail siding. He had his railway dismantled when the Highway Authority built a new road bridge over the line which was too low to allow trains to pass underneath. His call for a different design was turned down.

This prevented the re-opening of the colliery and future income and employment opportunities were lost forever.

Subsequently, the Highway Authority has changed twice. This has resulted in new people dealing with the case and the claim remains unsettled.

The new Authority has no incentive to deal with what it sees as someone else's scheme. The statutory interest rate, currently zero percent, is unlikely to encourage any progress by the acquiring Authority.

The member says: "Twenty-two years later, you lose the will to live."

2.3.11 Water Industry

The power of water companies to serve notice to enter land to lay new pipes and drains is used often without any prior negotiation with the landowner or regard to the consequences to the management of that land. This contrasts starkly with the behaviour of companies in the gas industry where the CLA and NFU have in the past facilitated a national agreement which includes provision for owner's and occupier's payment together with agreed legal documentation. This has reduced the need for the gas industry to seek formal compulsory purchase orders to lay pipes.

All acquirers should be bound to consult and consider all land management issues arising from their proposals and be bound by the Code of Practice

2.3.12 Heritage Property

Often heritage property is owned under complex structures which can give rise to an artificially lower level of compensation than the real loss incurred. This imbalance needs to be redressed.

Too risky

A heritage property, held in trust precluding an open-market sale, lost five acres of land from the estate to a railway scheme. As a result of its status, the Trust was unable to make a successful claim against the acquirer for injurious affection.

A CLA Kent member said: "The Trust employed a valuation expert, noise consultant, landscape consultant, its own team of solicitors and a QC. Despite all of this, we were faced with the option of a Lands Tribunal hearing with no certainty of the outcome.

"If the Trust had lost, there was the prospect of paying not only our own but also the other side's costs which could have amounted to several hundred thousand pounds. The trustees agreed that it would not be prudent to take the risk with charitable funds."

2.3.13 Contractors' Indemnity

The Code should require that acquirers have fully indemnified liability for all losses incurred by claimants because of the actions of contractors and sub-contractors.

2.3.14 Future Value

The Code of Practice needs to make sure that where land is taken for a specific public purpose and is subsequently developed for a commercial use after the original purpose has ceased, any uplift in value arising from the subsequent development is shared with the former owner.

The Planning and Compensation Act imposes a limit of 10 years from the completion of the compulsory purchase transfer. The CLA believes that this time limit should be extended significantly to protect owners and their successors, particularly when that owner or successor remains in possession of adjoining land.

Development uplift clauses will be familiar to many landowners and professionals selling land on the open market. Such development uplifts (or clawbacks) are commonly terms of 20 years to 50 years. We believe that a landowner should be given the opportunity to negotiate a time limit to such an uplift, as would be the case with an open-market sale.

2.3.15 Mitigation

The impact of any scheme not only affects those who are having land compulsorily acquired but also those in the vicinity. This impact can start from the time the proposal becomes public, through the planning and construction phase to completion. At all stages, there are matters that the acquirer can deal with that can reduce that impact.

The Code of Practice needs to make sure that the acquirer shows it has considered all appropriate mitigation measures throughout the scheme's life to lessen the impact on affected property owners.

Claimant 'cheated'

A claimant in Yorkshire found that the final design of a project provided just half the width of access originally promised and was therefore wholly inadequate for his purposes. His agent said: "Overall I believe my client has been cheated on this."

The failure of acquirers to agree works to mitigate the ill effects on the claimant as part of the design often leads to unfairness and problems for claimants.

In most cases, acquirers will prepare "illustrative" drawings of what is proposed for use at public inquiry subject to final design.

Commonly, these change before the project is built. So, what is promised by way of mitigation to secure authority for the CPO is not delivered.

Claimants are invariably told that all drawings and designs are for illustrative purposes only. This is unjust and misleading.

2.3.16 Negotiation before Service of Notice

It is important that all acquirers use compulsory purchase only as a last resort and, therefore, it is necessary for them to show they have taken a proactive and flexible approach to negotiating for voluntary purchase before resorting to compulsory purchase.

3. BLIGHT

Blight is a major problem associated with infrastructure projects. In common parlance, blight has a variety of meanings. First, blight has a statutory meaning (statutory blight). Second, there is generalised blight which is the effect on the value and marketability of property in close proximity of an infrastructure project.

Timescales are a major problem. Most transport projects take a considerable time from conception to completion. This is usually decades during which time the scheme is often either changed or abandoned. Long periods of blight can have a paralysing effect on individuals and businesses.

In 1997 the Government established the Interdepartmental Working Group on Blight (IDWGB) in the wake of the significant issues arising from the Channel Tunnel Rail Link (HS1) through Kent. The CLA was a leading member of the Stakeholder Group that worked with the IDWGB and made representations at that time. The Working Group produced a report which looked at statutory blight and generalised blight. The report proposed a draft Property Purchase Guarantee and Compensation Scheme, a type of bond scheme.

Subsequent governments have failed to take account of its recommendations. The HS2 proposal brings into focus the issue of property market confidence over a wide area caused by such proposals. The CLA believes that the conclusions of the IDWGB were broadly correct and the draft Property Purchase Guarantee and Compensation Scheme should be mandatory for all large-scale infrastructure projects.

3.1 Statutory Blight

Statutory blight is only available once a scheme has been confirmed and is "safeguarded" in the planning system. In some cases this can be years from the project conception. Only after this stage can an owner serve a blight notice for the acquirer to purchase the blighted property before the potential compulsory purchase.

However, insufficient enforcement provisions in the blight notice procedure mean acquirers can sidestep the responsibility to purchase a property.

CLA members have found themselves under threat of compulsory purchase for many years. Even where a blight notice has been served, the claimant has no means of requiring the early conclusion of the matter.

Landowners with business premises whose rateable value exceeds £34,800 are prevented under the Rateable Value Limits from serving a blight notice. The CLA calls for the limit to be abolished.

Reform of statutory blight is long overdue. Existing statutory blight provisions need to have an enforcement mechanism through which a claimant can compel an acquirer to undertake their blight notice obligations. The CLA proposes that this enforcement mechanism be dealt with by the Independent Person proposed in 2.2.

A blight mess

A CLA member in Devon owns a house where a small part of her garden is to be taken to improve a road. The proposal has been in existence for several years and planning consent has been granted. As yet no CPO has been made.

The owner is keen to move from the property but the acquirer has been stalling on the pretext of waiting to learn the outcome of its own spending review.

A blight notice was served and no counter-notice was made, so the acquirer is obliged to purchase the property but so far has refused to proceed. There is no mechanism to help the blighted owner to achieve a satisfactory and speedy completion.

Worse still, if the owner moves out early she will no longer qualify for the Home Loss Payment, even though the acquirer's scheme would have caused her to move.

3.2 Generalised Blight

Generalised blight affects all properties close to a scheme as soon as it becomes public knowledge. For linear infrastructure projects, in particular, scheme promoters are bound to publish several option routes. Even if the promoter has a preferred route, it needs to consult and show why the alternatives are not suitable. The problem it creates is significant uncertainty in the property market in the vicinity of the lines on the map. The impact of generalised blight is at its highest at the beginning of a scheme.

If a market-based bond property purchase guarantee scheme was in place when a new project is proposed, the CLA believes opposition to such projects would be significantly reduced, particularly from residential owner-occupiers. Property owners would feel assured the future value of their property would be underpinned by the promoter, thus retaining market stability. It is worth bearing in mind that the vast majority of people whose property values would be protected by the bond scheme would not be actively trying to sell their property.

The CLA believes that a properly constructed scheme akin to the Central Railway Property Protection Scheme or the BAA Scheme should be mandatory when a project is first announced. The IDWGB fell short of recommending that the Property Purchase Guarantee Scheme should include those properties with no land taken but they too are often affected by blight. Including properties which would eventually be eligible for a claim under Part 1 of the Land Compensation Act 1973[8] is essential to prevent blight spreading.

A robust bond-type scheme would help promoters with their projects. We do not believe such a scheme would inevitably lead to the acquirer owning and having to manage vast numbers of properties. A secure index-linked bond is more likely to persuade undecided property owners to stay if they have no pressing need to move. Moreover, those marketing and selling properties during the blighted period before a scheme will be able to sell their property subject to a transferable bond. Purchasers of these properties will have the reassurance of either a bond that can be realised in the future; alternatively they would benefit from either full or part purchase through a CPO or receive compensation under Part 1 of the Land Compensation Act 1973.

The use of discretionary hardship purchase schemes has been favoured in recent times. Mechanisms such as the HS2 Exceptional Hardship Scheme do not solve the problem for those with properties they cannot sell. The arbitrary nature of the hardship assessment does nothing to deal with the root of the problem: market confidence.

Retirement blow

A CLA member in the Midlands was planning to sell a substantial rural property to fund a smaller house and his imminent retirement.

Because of the HS2 project, he has suffered blight on the property he wants to sell. He applied to the Exception Hardship Scheme for HS2 Ltd to buy the property. However, because of his other assets, HS2 Ltd decided he was not suffering hardship.

The member feels that the blight is preventing him from fulfilling his retirement plans, and that even though he has other assets, it is unfair that the damage done to his lifestyle and hopes for the future is not deemed worthy of compensation.

With a bond scheme, it would have been far easier for him to sell his property. Moreover, if this had not proved possible, it would have been purchased by the promoter regardless of his other assets.

The option of a bond-based property purchase scheme was favoured by 98 percent of those who commented on the three options set out in the HS2 Consultation in 2011, including the CLA, the Council of Mortgage Lenders and the British Bankers Association[9].

3.3 Market-based Bond Property Purchase Guarantee Scheme

The concept of a bond-based purchase scheme is that property owners can apply to the acquirer for an undertaking to purchase the property at a future date.

This bond underpins the value of the property thus giving confidence to lenders and future purchasers that there will be a buyer for the property should they wish to sell in the future.

This secures lending which is crucial to many small businesses. A bond scheme has been operated successfully by both BAA and Central Railway. A description of the Central Railway scheme is in Annex D of the IDWGB report.

In conclusion, the CLA believes that a properly managed bond scheme is vital as an antidote to both statutory and generalised blight. Reform of statutory blight provisions is essential to ensure affected property owners are treated fairly.

8. A claim for compensation for depreciation in value due to the physical factors of the scheme ie noise, vibration, smell, lighting etc. A claim can only be submitted 12 months after the scheme has come into operation
9. DfT Review of Property Issues January 2012 paragraph 26

4. LAND NO LONGER REQUIRED (CRICHEL DOWN RULES)

There is no justification for the State to retain land that was purchased by compulsion, or threat of compulsion, when the use for which it was bought has ceased or been abandoned. A statutory requirement to offer it back to the original owner needs to be put in place. The current non-statutory Crichel Down rules are inadequate and uncertain.

In 2003, the Government proposed reform, in particular the intention to put the rules on a statutory footing. As with other compulsory purchase reforms this was stymied by a lack of legislative time. In view of the significant threats to the position of landowners under compulsory purchase, the CLA argues there should be action to protect their position.

This would enable the Government to introduce regulations that would ensure the rules are applied equally to all acquirers, rather than relying on exhortation and recommendations as at present, which have been shown by the Government's own research paper, *The Operation of the Crichel Down Rules* (2000), to be largely ineffective.

There should be no time limit on the obligation to offer compulsorily acquired property back to the original owner. Because of the historical valuation context of the compulsory purchase system, land was bought for the public good at less than its true open market value. It is fair and proper that once the purpose for which it was acquired has ceased or been abandoned, then the original buyer should have the option to buy it back on the same basis as it was sold, with no additional clawback provisions for the vendor.

CONTACTS

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