



Paradise, Birmingham

Purchasing power

How CPOs are being used to ensure much-needed regeneration

It could be any 1970s eyesore in any city centre, which everyone would like to see gone. But plans to replace Axis Square, just off Birmingham city centre, with a £150m office-led scheme, faced being scuppered because a handful of private owners refused to sell, determined to hold on for a better price.

It is a typical scenario in towns and cities, holding back much-needed economic growth. But local authorities had the ultimate weapon to deploy – the compulsory purchase order (CPO).

Axis Square, off Holliday Street, is a key regeneration area and Birmingham City Council issued a CPO to ensure the opportunity was unlocked for developer London and Continental Railway (LCR). It is the latest example of the council forcing landowners to go ahead with a sale. The £700m Paradise mixed-use scheme, the £335m Grand Central shopping centre, the Midland Metro, the £275m New Monaco urban village and Poolway Shopping Centre, on the Medway; none would have happened without CPOs.

“Birmingham has a long track record of using CPO powers to allow development and regeneration to go ahead,” says Richard Thomas, planning and development officer at the council. “In the case of the Axis site, we felt if the site was not acquired, the opportunity to expand the city core and the associated public benefits would be lost.”

Although not foolproof, CPOs give local authorities a strong hand when it comes to getting a development out of the ground. But your case must be watertight.

“The success rate of CPOs is upwards of 80 per cent, but that’s no reason to be complacent,” says Vicky Fowler, chair of the Compulsory Purchase Association (CPA) and a planning and regeneration partner at Gowling WLG.

Councils need to demonstrate they can fund the acquisition and the scheme underlying it, which can be tricky in austere times for local authorities. Costs start at £60,000, but can quickly spiral into the tens of millions when they add in compensation and business relocation costs.

“The compensation bill can be large if you displace businesses,” Fowler says.

“This can be difficult to fund if you haven’t got a private sector partner. Planning reference fees can be around £60,000. But if you have lots of objections the process can last three months and become costly.”

This is why CPOs are seen as a last resort, and often just the threat of one can lead to a settlement. Once an authority has secured the land it can override planning restrictions on the site. This can result in mutually beneficial deals between landowners and councils.

CPOs are decided by the housing, local government and communities secretary or the planning inspectorate. Nationally, 40 to 60 CPOs are granted each year, but a sudden explosion in numbers is unlikely, says Fowler, despite the government pushing for local authorities to do more.

“It’s a time-consuming process that you need to drive forward at every stage,” she adds.

“Birmingham City Council has experienced staff who are confident in what they do.

The essential tool for development



Compulsory purchase is an essential tool for unlocking and enabling ambitious large-scale development projects and particularly for facilitating compre-

hensive schemes seeking the regeneration of Britain's town centres. Compulsory purchase can also be a critical tool for local authorities in assembling land for much-needed housing development and delivering highway schemes, and the use of these powers is being encouraged by government. The detailed steps prior to making of an Order are set out within government guidance and legislation. An overriding principle of a successful Order is that it must demonstrate 'a compelling case in the public interest'. If it cannot be proven that the use of compulsory purchase powers is in the public interest, then the Order may be rejected by the Secretary of State.

In practice, the process of making, confirming and implementing an order requires co-ordinated cross-discipline work and joined up thinking, often across the public and private sectors. Early and concerted legal input is an essential ingredient of the process, in order to ensure that the Order is properly drafted and robustly justified. Adopting a collaborative, proactive and transparent approach including engaging with affected landowners and other stakeholders at an early stage is a prerequisite to obtaining a successful Order and reducing the risk of challenge.

Compulsory purchase can be a useful tool to consider not only in achieving land assembly, but also as a method of dealing with sites affected by awkward rights e.g. rights to light and restrictive covenants. Land that is acquired for planning purposes may benefit from Section 203 Housing and Planning Act 2016 which allows rights and covenants to be overridden, subject to payment of compensation, where a development is carried out pursuant to planning permission and satisfies certain criteria. Many local authorities are now relying on these powers in delivering regeneration projects.

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Compulsory purchase orders

PROPERTY

But not all councils do, which is why borough and district councils are looking to set up a CPO centre of excellence to share knowledge and skills."

Legislation for the current process of securing a CPO is from the Acquisition of Land Act 1981, but the origins of the powers go back to the 1960s. However, like a lot of legislation, there is room for improvement.

"The common criticism is the time it takes to be awarded compensation when served with a CPO," says Clive Read, commercial property partner at law firm Veale Wasbrough Vizards.

"The compensation arrangements also don't take into account the full cost to clients of relocating premises."

Calculating compensation for the loss of a business premises can be very complicated and take years to sort out.

If the business has to relocate, it is compensated for the 'costs of disturbance'. But some businesses are bought out because relocation is not an option. A value is calculated based on a profit multiplier or a discounted cashflow, taking account of the goodwill value, future profits and assets.

But even then, those on the receiving end of a CPO have six years from the date their premises are taken over by the acquiring authority to dispute the amount of money they received.

"In lots of cases, businesses don't get adequate advice or know what they're entitled to," says Hannah Griffin, a CPO surveyor with EY, who represents both those issuing CPOs and those on the receiving end.

"A forensic accountant will advise what the business is worth. The council will offer to pay 90 per cent of that as an advanced payment. But there can be a

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Richard Thomas

big difference between what the business thinks it's worth and what the acquiring authority thinks.

"Some businesses have been at a certain location for generations – it can be difficult to get past the emotional side."

The Axis Square CPO had not yet technically been completed as *Insider* went to press. But the economic benefits of going ahead speak for themselves, says Nick Clough, LCR development manager.

The scheme will create a commercial office development of up to 1 million sq ft, with retail uses and a public square.

"Axis Square will cater to the region's employment needs, both for government and the private sector, with office space for 10,000 people, and contribute £300m to the local economy," says Clough.

But it is not just commercial premises where compulsory purchase powers are being used. CPOs are also helping to drive up the number of much-needed homes.

"We are getting some of the thousands of empty homes in the city back onto the market," says Thomas. "We try to identify owners to bring them back to use. If that fails we use CPOs as a last resort."

Forcibly purchased homes are then auctioned off, usually bought by buy-to-let investors or occupiers. Either way, the new owner will help to regenerate that part of the city by bringing a redundant building back to life, and so justifying the public sector intervention. ■



Axis Square