Compulsory Purchase Reform – is a Change on the Cards to Promote Regeneration?

The systems of and surrounding compulsory purchase in the UK are faced with a number of barriers that have prevented, or at the least reduced its effective use in the regeneration of land in local communities, most notably for brownfield sites.

This means that despite its potential to facilitate development in communities across England and Wales, developers have not been able to benefit from this system as widely as hoped. Consequently, we are left with fewer houses, both open market and affordable.

Whilst the need for increased utilisation of these powers has been a point raised by parliament on a number of occasions, there has not been a holistic review of the law and process since 1981... until now.

So what are compulsory purchase powers?

Compulsory purchase is a legal mechanism by which acquiring authorities (usually public bodies such as local planning authorities and Ministers of State) can acquire land without consent from the landowner. In such cases related instruments, known collectively as the Land Compensation Code, allow those who suffer as a result of these acquisitions (i.e., owners and occupiers) to seek compensation once the compulsory purchase order comes into effect.

It is important to note that the use of these powers extends beyond your local planning authority. Statutory utilities and other infrastructure providers such as electricity networks, railway companies, water and highway authorities, are also eligible to employ these powers, thus they have great scope for use in practice.

These powers are intended to be exercised by such authorities to drive urban regeneration and housing revitalisation in their communities in active response to social, environmental and economic change – an ever-present concern in recent years.

How does it work in practice?

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Whilst mutterings of national projects such as the HS2 come to mind when mentioning compulsory purchase, these powers are too often under-used on a more local scale – a result of an inefficient and complicated system spread across multiple sources of the legislature and case law, some of which is still based in the 19th century.

Despite this array of statutes, there is no overriding principle that can be applied by claimants and authorities when faced with differences in interpretation regarding compensation beyond the dictum in *Horn v Sunderland Corporation* [1945] that, in so far as the finances allow, claimants should be placed in the same position they would have been in had their land not been taken. Whilst there are opportunities to obtain the correct compensation, without specialist knowledge of the applicability of these laws, many are lost in the muddied waters of negotiation.

This failure and its subsequent practical impact have been noted by the Law Commission in their most recent planning newsletter from 4 November 2022, calling for a review of compulsory purchase law to modernise drafting, repeal out-of-date provisions and rectify technical inconsistencies.

However, this is not the first time a recommendation of this type has been made. Two Law Commission reports published in 2004 branded compulsory purchase and land compensation "a patchwork of diverse rules [...] which are neither accessible to those affected, nor readily capable of interpretation save by specialists" and made recommendations to set out clearly defined legislation in the area. However, these were never implemented.

What makes this time different?

With the emergence of the 2022 Levelling-up and Regeneration Bill, currently under parliamentary consideration, the Department for Levelling Up, Housing and Communities has requested the Law Commission undertake a review of the compulsory purchase procedure with a view to amending the system – making the legislation easier both to access and understand for all parties involved, landowners to lawyers.

With a push from both this review and the proposed implementation of the bill, we can hope to see a more committed response from parliament to take firm action on the recommendations made and encouragement given to local authorities to develop.

The hope?

That local authorities begin to make proper use of this power to encourage the build of stalled development sites, improve dilapidated housing estates and bring forward commercial development, boosting high streets and the housing sector as a whole.

There is also hope that this review and potential reform will allow an opportunity for the legislation to become more accessible for landowners and acquiring authorities themselves allowing greater transparency in situations

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often interwoven with emotion.

The Law Commission is currently advertising for applicants to lead this review, which is expected to take 3 years to complete. Whilst this review will understandably not be a 'fix all' solution to the issues affecting the sector as a whole, there is hope that response from practitioners in light of this review will be a positive first step in rectifying a faulted system and will encourage necessary development in communities across the UK.

Need advice?

Lester Aldridge's Real Estate Development team advises national and regional developers on all legal aspects of development. Contact the team at online.enquires@LA-law.com.

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