

Regeneration funding: Securing Compulsory Purchase Orders in the face of escalating building costs

The focus on the Levelling Up agenda and the availability of grant funding, means there are numerous important regeneration schemes actively being pursued across the country. With ever-escalating project and building costs, in many cases, applications that were made for grant funding were based on costs contingencies that have already been exceeded.

26 August 2022

The focus on the Levelling Up agenda and the availability of grant funding, through the Towns and Future High Street Funds, means there are numerous important regeneration schemes actively being pursued across the country.

Inevitably, challenges in the land assembly process mean that many of these schemes will require local authorities to utilise their statutory powers to compulsorily acquire land.

With ever escalating project and building costs, one issue that we are increasingly facing when supporting local authorities through the Compulsory Purchase Orders (CPO) process, is how to demonstrate sufficient funding when seeking to secure an CPO.

In many cases, applications that were made for grant funding were based on costs contingencies that have already been exceeded.

What's the issue if a local authority is still committed to a scheme?

As set out in the Department for Levelling Up, Housing and Communities [guidance on 'Compulsory Purchase and the Crichton Down Rules'](#), a CPO should only be made where there is a compelling case in the public interest.

When considering the justification for a CPO, the Inspector at any inquiry (and ultimately the confirming Minister) will assess whether sufficiently compelling reasons have been made for the land to be acquired at that point in time.

A lack (or potential lack) of funding is a clear risk to a scheme being delivered – this risk then must be weighed up as part of the justification for the CPO, and against the forcible acquisition of private property interests.

Where costs are likely to, or have already, outstripped contingencies, there is a real risk of CPO's not being granted on the basis that schemes may not be delivered.

What practical steps can a local authority take to address this?

There are several practical steps that authorities may wish to consider taking to support its case in the Statement of Reasons:

- **New schemes:** For any new schemes, authorities at least have the advantage of being aware of the issue of spiralling costs. It will be imperative for the funded costings to include realistic, future proofed contingencies.
- **Cabinet resolution:** For many schemes, they are so vital to the regeneration of an area that an authority will be prepared to cover any shortfall (either from the grant funding or previous funding commitments). However, a general political will to support a scheme will have limited weight as evidence in the public interest test. Instead, authorities should look to secure a Cabinet Resolution – either against an updated costing of the scheme, or, a specific commitment to plug any funding shortfall.
- **Lesser scheme:** One option is for authorities to identify in the Statement of Reasons what changes could be made to the scheme, as a fall back, if there were to be a funding shortfall. This might be for example by delivering a smaller building or providing less public

realm. The authority would then need to show that the lesser scheme still delivered sufficient public benefit to justify the CPO and consider any impediments to a revised scheme, for example whether it would need, and be able, to secure a revised planning permission.

- **Alternative funding:** If none of the above apply, authorities may be forced to demonstrate that they could secure alternative funding if required. This might be through incorporation of (additional) commercial elements into a scheme, or by incorporating elements that would attract funding from other public bodies. Again, still demonstrating sufficient public benefit and the ability to secure any necessary planning consents will be key. The weight that will be applied to the potential for alternative funding will depend on the evidence the authority can show on the likelihood of it being secured.

Practically, it is also worth noting the importance of any timing restrictions on grant funding. Securing a CPO is a lengthy process, and so authorities need to be clear on delivery timescales to ensure the land can be secured and practical delivery achieved prior to any funding deadlines.

The future

The Levelling Up and Regeneration Bill sets out a series of changes to the CPO process, with the aim of making it faster and more efficient to secure an CPO.

One of the proposed changes is the ability to secure a conditional confirmation of a CPO. This would potentially allow a local authority to secure the principle, without having full funding or planning in place - providing certainty on land assembly at a much earlier stage of the project timetable.

Whilst we will need to see more detail on this as it emerges through the consultation responses and secondary legislation, moving into the future, this may be an attractive proposition for local authorities on projects which have funding uncertainties.

But for now, authorities must continue to ensure that they have robust funding evidence, to ensure the risk of spiralling costs does not prevent CPOs being secured.

Contact

Mark Hickson
Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

Related expertise

Local government real estate

Planning

Public contracts, projects and funding

Public private partnerships (PPP) and PFI

Real estate

Regeneration