

**ENSURING THE VALIDITY OF CPOs
AND CHALLENGES TO THEIR VALIDITY**

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Introduction

1. Both for those promoting CPOs and for those objecting to them, it is a matter of the greatest importance that the order in question will withstand challenge on legal grounds. For the promoter, a legal challenge to a confirmed CPO in the courts can delay a project for many months if not years and may even prevent it going ahead at all. For the objector, the making of a legal challenge may present the opportunity to strengthen their hand in negotiations over compensation or other matters such as a relocation package or even result in preventing the acquisition of their interest altogether.
2. This paper looks at some of the formalities and other legal rules governing the validity of CPOs. It is necessarily something of a personal overview, but it is hoped that it will alert those on either side of the CPO process to certain of the pitfalls which can arise in the course of the promotion of a CPO.

Legal formalities

3. The text books set out the legal formalities for making a valid CPO, see eg Tottel's Compulsory Purchase and Compensation Service para. A155 and following, drawing on the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595). Even though it may not be absolutely obvious from the title, these regulations apply to compulsory purchase both by ministerial and by non-ministerial acquiring authorities.
4. Essentially, the order must be in the prescribed form and describe by reference to a map the land to which it applies, see section 10(2) of the Acquisition of Land Act 1981 and reg. 3 of the 2004 Regulations. The most common form of order is Form 1 in the Schedule to the Regulations (or Form 4 for clearance orders) and other forms are prescribed to deal with situations such as providing for the vesting of exchange land where a common, open space etc is to be acquired or for discharging the land purchased from rights, trusts and incidents, see Forms 2 and 3 (and 5 and 6 for clearance orders) respectively.
5. The model form of order provides a template for setting out the matters which must be included within it, such as the Schedule describing the land (and perhaps new rights – see below) authorised to be acquired under the order and describing the nature of the interests of all “qualifying persons” under section 12(2)(a) and 12(2A)(a) and (b) of the 1981 Act (ie respectively any “owner, lessee, tenant (whatever the tenancy period) and occupier of the land” and “(a) [any] person to whom the acquiring authority would... be required to give notice to treat or (b) a person the acquiring authority thinks is likely to be entitled to make a relevant claim [for compensation for injurious affection under section 10 of the 1965 Act]... so far as he is known to the acquiring authority after making diligent enquiry”).

6. Any “special category” land to be acquired under the order, ie statutory undertakers’, National Trust or common, open space etc land, must also be identified in the Schedule, see eg Form 1 footnotes (n) and (o).
7. There is are certain additional paragraphs to be added to orders made under section 47 of the Listed Buildings Act 1990 (compulsory acquisition of listed buildings in need of repair), see reg. 4 of the 2004 Regulations (and Forms 1 and 8)
8. The order must be accompanied by a map delineating the land to be acquired, “prepared in duplicate, sealed with the common seal of the acquiring authority and marked ‘Map referred to in [full title of order]’”, see eg para. 2 of Form 1.
9. The order itself must be sealed, signed and dated, see eg Form 1 footnote (p). This should all be done on the same day and it may be necessary for acquiring authorities to amend standing order so schemes of delegation to ensure that this can be achieved (see below).
10. Notices in prescribed form (Form 7) of the making of the CPO, the procedure for making objections etc must be published in newspapers (and a site notice must be posted) and be given (in Form 8 or 9 as appropriate) to all qualifying persons, see sections 11 and 12 of the 1981 Act. Notice must also be served on the Church Commissioners where the land to be acquired includes ecclesiastical property, see section 12(3).
11. Detailed guidance on the above is to be found in Part 1 of the Memorandum to Circular 06/2004: Compulsory Purchase and the Critchel Down Rules. The thrust of the advice is to try to keep things simple and therefore comprehensible but at the same time to try to make sure you get them right, see eg paras. 30 and 31 of the Memorandum to the Circular (and note that if an interest has been omitted from the order, this can only be rectified by modification if all persons interested give their consent, see section 14 of the 1981 Act).
12. Acquiring authorities can seek informal advice from the confirming authority about technical details of a proposed order, ie “confined to... a technical examination to check that [the draft order] conforms with the requirements on form and content in the statutes and the regulations”, and expressly without prejudice to the process of considering the merits of confirmation of the order once submitted for confirmation, see paras. 32 and 33 of the Memorandum to the Circular.
13. Specific advice on preparing and serving the order and its associated notices and the order map is given in Appendix U and V to the Memorandum to the Circular respectively. This advice should of course be followed closely.
14. When the order reaches the stage of readiness for submission to the confirming authority, there is a checklist of documents, certificates, statements and notices to be submitted with the order in Appendix Q to the Memorandum to the Circular. NB also the requirement for an additional certificate where listed buildings, conservation areas etc are included within an order, see Appendix S.

15. The order as served and as submitted for confirmation should be accompanied by the acquiring authority's statement of reasons for making the order, see para. 35 of the Memorandum to the Circular. Oddly, this is not actually a statutory requirement. The advice in the Circular is that the statement of case should be "as comprehensive as possible" so that the acquiring authority can use it "as the basis for [their] statement of case" under rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules (now 2007), see again para. 35 of the Memorandum to the Circular. The statement also helps to give an early indication of the nature of the case to the Planning Inspectorate so they can consider what special skills the Inspector to be appointed on an inquiry may need, see para. 36.
16. Detailed guidance on the content of the statement is contained in Appendix R to the Memorandum to the Circular. Appendix R advises that "the statement of reasons... should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):
- (i) a brief description of the order land and its location, topographical features and present use;
 - (ii) an explanation of the use of the particular enabling power (see paragraphs 13-15 of this Part of the Memorandum);
 - (iii) an outline of the authority's purpose in seeking to acquire the land;
 - (iv) a statement of the authority's justification for compulsory purchase, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human rights, and Article 8 if appropriate (see paragraphs 16-18 of this Part);
 - (v) a description of the proposals for the use or development of the land (see paragraph 19 of this Part);
 - (vi) a statement about the planning position of the order site (see paragraphs 22-23 of this Part and, for planning orders, Appendix A);
 - (vii) information required in the light of Government policy statements where orders are made in certain circumstances, eg. as stated in Annex E where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part IX of the Housing Act 1985 [see footnotes to Appendix E concerning Housing Bill proposals to replace housing fitness test with Housing Health and Safety Rating System assessments.]); or such information as may be required by any of the other documents mentioned in paragraph 11 of this Part;
 - (viii) any special considerations affecting the order site, eg. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc;
 - (ix) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented, eg. need for a waste management licence;

(x) details of any views which may have been expressed by a Government department about the proposed development of the order site;

(xi) any other information which would be of interest to persons affected by the order, eg. proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained;

(xii) details of any related order, application or appeal which may require a coordinated decision by the confirming Minister, eg. an order made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application; and

(xiii) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place”.

17. Tottel points out that considerable case should be taken over the drafting of the statement of reasons (and the subsequent statement of case) both from the point of view of strengthening the authority’s case and from the point of view of subsequent debates about compensation, see para. C173 (and compare Batchelor v Kent County Council (1990) 59 P & CR 357 where the purpose of the acquisition was the construction of a new roundabout junction to afford access to a substantial development, thus facilitating a substantial ransom claim).

18. A failure to observe any of the above legal and other procedural requirements may result in a legal challenge to the CPO in question. However, because section 25 of the 1981 Act precludes a challenge until after the CPO has been confirmed (see further below) there may be the opportunity to remedy any failing in the procedural steps or legal formalities relating to the order in the course of any inquiry into objections to the order so that the order is not ultimately quashed. Having said that, though, proper observance of the technical requirements is not a matter to be complacent about and great care must be taken to seek to ensure that one gets matters right first time.

The acquiring authority’s decision to make a CPO

19. Another area of risk (or opportunity) from the point of view of potential for challenge is the acquiring authority’s initial decision to make a CPO. Any likely problems here will be the most acute for authorities whose decisions and proceedings to reach decisions are open to public scrutiny. If there is an apparent error of law or failure of consideration on the part of the acquiring authority which emerges from the published committee report on which their decision to invoke compulsory purchase powers was based, then this too could give rise to legal a challenge. An example might be omitting to mention the human rights of those whose interests are to be acquired or interfered with and the need to balance that against the objectives to be secured through the compulsory purchase.

20. It is to be borne in mind that challenges to resolutions to make CPOs are not precluded by the terms of section 25 of the 1981 Act and so a judicial review claim can be mounted when a resolution has been made but not the CPO itself, see eg R v Camden LBC ex parte Comyn Ching and Co Ltd (1983) 47 P & CR 417. Again, such a challenge can result in delays to the process of making the order in question.
21. Generally speaking, it is a good idea to use the sub-paragraphs in Appendix R (above) as a checklist for the material background matters and other considerations which should go into any report recommending the use of compulsory purchase powers, supplemented as appropriate by reference to any other guidance in an Appendix to the Circular or from some other relevant source.
22. According to the DCLG publication Compulsory Purchase and Compensation: Compulsory Purchase Procedure (October 2004), the specific resolution to make a CPO “will define the land to be acquired (usually by reference to a plan) and state the purpose for which the land is required”, see para. 3.13.
23. It may or may not be so in every case that an acquiring authority’s resolution will be in this form. As above, it will be the substance of the authority’s action on all of the material contained in the relevant committee report which will be significant and not the question of whether the advice (which has no legal force) has been followed to the letter.
24. But an example of a situation in which the guidance was relied on as indicating a strict requirement is Collis v Secretary of State and Tower Hamlets BC [2007] EWHC 2625 (Admin). Not surprisingly, that contention was ultimately rejected, see at para. 7 per Underhill J.
25. The case was unusual in that the grounds of challenge had nothing to do with the merits of the order. They were essentially concerned with the formal authority under which it was made. The acquiring authority’s resolution was as follows:

“that the Council initiates and appropriately manages back-up compulsory purchase order processes to assist the necessary re-purchase of leaseholds in Mallard Point, Priestman Point, Hackworth Point and Holyhead Close [ie blocks of flats on a housing estate in need of regeneration]”.
26. The resolution did not specifically identify the individual properties to be acquired (by reference to a plan or otherwise). Neither the resolution nor the report mentioned the statutory power (section 17 of the Housing Act 1985) under which it was proposed that the order should be made. There was a subsequent reference in the report on the basis of which the resolution was made which was relied on by the Claimant as suggesting that the matter might come back before the Council before the order itself was made.
27. The body of the report stated:

“The CPO process usually requires a further report to be made to Cabinet setting out the properties to be acquired before the formal statutory process can begin. The resolution in this report if adopted will enable the process to proceed to that stage” (emphasis supplied).

But the report was subsequently amended so that the individual properties to be acquired were listed within it (and plans were appended to it) and the word “usually” was added into the first sentence quoted above, to reflect the fact that the matter would otherwise have gone back before Cabinet (although the second sentence was left unamended).

28. The terms of the resolution, viewed on their own, were nevertheless held by the court to be sufficient to authorise the invoking of compulsory purchase powers, see paras. 13 and 14. It followed that the court did not therefore have to go on to consider whether the order should not be upheld in any event, ie exercising the court’s discretion not to quash, because of the contention that the absence of any challenge to the merits of the order meant that any revisiting of the question of making the order was bound to result in its being remade.
29. The challenge was dismissed and the Claimants were required to pay both the Secretary of State’s and a proportion of the Council’s costs.
30. There is another point to be made about the Collis case which is that the Secretary of State’s decision that the order should be confirmed was made in November 2006 and the challenge to it was finally disposed of on 20 September 2007, even after expedition of the case was granted. It therefore stands as another example of the serious delays that legal challenges can cause to CPO projects.

Whether to acquire land or rights¹

31. A further potential legal pitfall to which CPOs may be vulnerable is when they provide for the acquisition of new rights, as distinct from simply acquiring an interest in land. The most famous example of this phenomenon is Sovmots Investments Ltd v Secretary of State and Camden LBC [1979] AC 144 which involved the compulsory acquisition by Camden London Borough Council of flats in the east wing of the Centre Point Tower at Tottenham Court Road in London (see below – and discussed generally in Tottel at para. B406 and following).
32. Where a statute gives a power to acquire compulsorily “land” with no reference to new rights and the definition of “land” in that statute does not include new rights, then the acquiring authority can only acquire the whole of the land (ie from the centre of the earth to the top of the heavens). Land includes any existing interest in land, but would not enable the creation of a lease, easement or other new interest. It cannot acquire rights which would not pass under ordinary conveyancing rules as appurtenant to the land acquired. Accordingly, in Sovmots the CPO to acquire the flats could not also acquire ancillary rights over an emergency staircase and a goods lift serving the flats, a right of support, a right of free passage of water and other services through pipes and cables serving the flats, a right of access from the outside of the building for window cleaning maintenance and repair.
33. In order to meet the problem revealed by Sovmots, Parliament enacted section 13 of the Local Government (Miscellaneous Provisions) Act 1976, which gave local authorities the power to create and acquire new rights, but this was not extended to other bodies having compulsory purchase powers.

¹ With many thanks to Guy Roots QC for his substantial input into this section of the paper

34. Most new legislation post-Sovmots which gives powers of compulsory purchase has included the power to acquire new rights, eg the legislation applicable to English Partnerships (now part of the Homes and Communities Agency) and the Regional Development Agencies and the provisions of the Electricity Act, Water Acts, Gas Act etc.
35. Where a body has power to acquire land, it can choose not to acquire some (existing) interest if the scheme can be implemented with out it. For example, it could acquire the freehold subject to a lease and wait for the lease to expire. But this does not extend to the creation of an interest (ie which does not already exist).
36. For those bodies which do have the power to acquire new rights, the question then is: what is the scope of that power? For example, does it enable an acquiring authority to acquire: a stratum of land only; to place permanent structures on the land; to use land temporarily for, eg, a construction site?
37. There does not appear to be any advice from Government as to the circumstances in which it would be willing to confirm a CPO for the acquisition of rights as distinct from land. Certainly, there is nothing in Circular 06/04 and its predecessor 14/94. Under the Highways Act 1980, section 250, highway authorities were given the power to acquire rights and some limited advice was given in DETR Circular 1/81. This Circular has now been cancelled but the essence of the advice was that the power to acquire rights should not be used where the effect would be to deprive the landowner of his land for a significant period of time.
38. The question may turn to some extent on the meaning of the term “rights”. Thus an issue might arise in a situation where it was proposed to acquire “rights” in order to construct a concrete tunnel under land with nothing on the surface. The essence of a right is that the exercise of the right does not deprive the landowner entirely of the use of his land. Constructing a large tunnel would do so, compare Metropolitan Railway Company v Fowler [1893] AC 417 (even though in practice the landowner may not have intended to use that part of their land). Further, once constructed, the tunnel would merge with the land and belong to the landowner and not the person who constructed it. There would be problems about repairs. Rights would also have to be obtained to use the space inside the tunnels once constructed, whether for cables, water etc.
39. In Sovmots, the rights in question were required to enable the upper floors of a building which were the subject of the CPO to be used separately from the rest of the building, so the rights were in the nature of easements required to enable the land acquired to be used. It seems very clear that rights of that nature would be covered by provisions enabling the acquisition of new rights.
40. As for the acquisition of strata, where projects involve underground construction, it appears to be usual to grant a specific power to acquire a stratum. Thus legislation concerning London Underground lines and the Channel Tunnel Rail Link included such express powers. In the absence of such a power, it is unlikely that a generally expressed power to acquire land and new rights over land would authorise the acquisition of a stratum. For this reason, when the LDA needed to acquire the

land/rights to construct two underground tunnels to contain high voltage electricity lines across the Olympic site, the CPO sought to acquire the whole of the land including the surface, but an accompanying letter made clear that the surface was not required and that if the landowner agreed, the conveyance would take the required stratum only. In the event, all landowners signed up by agreement and so the issue was never tested legally.

41. In our “crowded island”, tunnels are used increasingly. For example, many of the utility companies have for some time had tunnels for electricity cables and continue to construct them.
42. Where temporary possession of land for construction purposes is concerned, the power to acquire rights is often used to acquire rights limited in time, in order to avoid the need to acquire the land outright when it is only required for a short time or a few years. Whether the acquisition of a right for such purposes is authorised must depend upon the circumstances. If the landowner is not entirely deprived of the use of his land, it may be that the acquisition of a right is appropriate. If, on the other hand, a large area of land is taken, a security fence erected and the landowner deprived of his land for a long period, it must be doubtful whether a mere right is sufficient. It would be much better if the legislation gave power to use land temporarily with an associated (and appropriately drafted) right to compensation for loss caused, but that is unlikely to happen in the short term.
43. In the light of the above, it may well be that the power to acquire new rights is often misused and, even if a CPO is confirmed, it may not give the acquiring authority what it think it is getting. It is surprising therefore that there seem to have been no challenges to the exercise of compulsory purchase powers on this ground yet.

Challenges to CPOs

44. Challenges to confirmed CPOs must be made under section 23 of the Acquisition of Land Act 1981. The grounds for challenging a CPO in section 23 are that (1) the authorisation of a compulsory purchase granted by the order in question is not within the powers of the Act (or other empowering enactment) or that (2) any relevant (procedural) requirement has not been complied with (and the applicant has been substantially prejudiced by that non-compliance, see section 24(2)(b)).
45. As noted above, section 25 prevents challenge to a CPO by any other means (although the resolution to make a CPO may be challenged before the order itself is made, see reference to Comyn Ching above, and note similarly that a challenge to the failure to confirm a CPO is also not proscribed by the section).
46. The procedure for a section 23 application is by way of Part 8 Claim under the Civil Procedure Rules (see generally the review of The New Procedures for Part 8 and similar claims at [2008] JPL 1720).
47. The time limit for making a challenge under section 23 is six weeks from the date on which notice of the confirmation or making of the order is first published in accordance with the Act (unless the Statutory Orders (Special Procedure) Act 1945 applies (and is not excluded by section 27 of the Act) in which case the challenge must be made within six weeks from the date on which the order becomes operative under

that Act), see section 23(4). Note also that that it was held in Enterprise Inns plc v Secretary of State [2000] JPL 1256 that the court had no jurisdiction to entertain a challenge brought before publication of the notice of confirmation.

48. The very similar formula to that contained in section 23 for challenges under the Planning Acts (sometimes also called the Ashbridge grounds of challenge) has been defined so as to allow the court to intervene where the decision maker acts perversely, or takes into account an immaterial consideration, or fails to take into account a consideration which is material or otherwise fails to comply with procedural requirements (including the duty to give adequate reasons for the decision – see below), Seddon Properties Ltd v. Secretary of State (1981) 42 P & CR 26 at 26-27 per Forbes J.
49. Where the duty to have regard to material considerations is concerned, the decision maker must take such a matter into account where there is a “real possibility that they would have reached a different conclusion if they did take that consideration into account”, Bolton MBC v. Secretary of State (1991) 61 P & CR 343, CA, at 352 per Glidewell LJ.
50. Compare R (Kides) v. South Cambridgeshire District Council [2003] JPL 431 at para. 121 per Jonathan Parker LJ:

“In my judgment a consideration is “material”, in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker’s scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative”.
51. The decision maker’s reasons will be inadequate if, for instance, they give rise to a substantial doubt whether the decision was within the powers of the Act, compare South Buckinghamshire DC v. Porter (No. 2) [2004] 1 WLR 1953, HL, at para. 36 per Lord Brown of Eaton under Heywood:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can

satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision”.

52. An example of a pure error of law on the Secretary of State’s part as revealed in a section 23 challenge is Pascoe v First Secretary of State [2007] JPL 607 in which an English Partnerships “Pathfinder” CPO was quashed because the land subject to the order was found to be “predominantly under-used or ineffectively used” when section 159 of the Leasehold Reform Housing and Urban Development Act 1993 authorises compulsory purchase of land which is “under-used or ineffectively used”. Part of the argument was that the claimant’s own Victorian terraced house was not “under-used or ineffectively used” and it was not therefore good enough that the area surrounding it “predominantly” was. The court held that the Secretary of State’s approach involved the application of a “watered down” or less stringent test than that imposed by the statute, see per Forbes J at paras. 39-44.
53. An example of a human rights challenge to a CPO is Lisa Smith v. Secretary of State [2007] EWHC 1013 (Admin)². The three claimants were gypsies living lawfully on land at the two travellers’ sites to be acquired under the Olympic and Legacy CPO. (The sites were “crucial areas” under the CPO as being the proposed locations for the Olympic Village). The CPO was confirmed by the Secretary of State in the absence of any available relocation sites (ie contrary to the Inspector’s recommendation that the CPO should not be confirmed until planning permission was in place). The claimants argued that confirmation in such circumstances was disproportionate and a less intrusive means to achieve the regeneration sought by the order would have been to confirm the CPO only when a relocation site was available. Agreeing with Pascoe (above) the judge rejected the contention that proportionality required the least intrusive means to be adopted in the context of the case before him (although he noted that the contrary was plainly arguable). He therefore proceeded to examine whether less intrusive means to the compulsory acquisition of the claimant’s plot could in fact achieve the regeneration sought by the CPO. Given the overwhelming benefits of the CPO that were identified, the urgent need to acquire the sites in order to meet the timetable for the provision of the 2012 Games and the Secretary of State’s finding that the land was essential for that purpose, he found on the facts that no lesser means existed to achieve the regeneration in question. The challenge was therefore dismissed.
54. Another human rights case, also a challenge to the Olympic and Legacy CPO is Sole v. Secretary of State [2007] EWHC 1527 (Admin). The claimant was a residential occupier on the Clays Lane housing estate. The claim was based on the alleged failure of the LDA to implement an effective relocation strategy and alleged disproportionality under Article 8. He wished to have the CPO quashed so that the Secretary of State could invoke the power under section 13C to defer consideration of confirmation of the CPO until appropriate relocation proposals were in place. The challenge was dismissed. The relocation strategy (which included the offer to residents on the estate of at least two alternative properties) was less constrained in terms of options than the relocation proposals for travellers. There was nothing disproportionate in the context of the interference with Article 8 rights. Unlike in R (Neptune Wharf Ltd) v. London Development Agency [2007] EWHC 1036 Admin,

² With due acknowledgements to James Pereira for this synopsis

where confirmation was to await the outcome of the planning process, the Clays Lane estate was within the development area for the Olympics (like the travellers' sites, it was to be redeveloped as the Olympic Village) and so confirmation could not in any event appropriately be deferred pending the final outcome of the procedures for relocation. As with the travellers' challenges, the public benefits of the proposals and the need for certainty in relation to their timely implementation decisively outweighed the interference with the claimant's human rights.

55. Other fertile areas of debate in CPO challenges are the extent to which the existence of alternatives to the CPO scheme have been taken into account, see eg De Rothschild v Secretary of State [1989] 1 EGLR 19, CA, and arguments over whether the order scheme will be viable, see eg Chesterfield Properties v Secretary of State (1997) 76 P & CR 117. There is also an argument, which has never been conclusively tested, that a CPO should not have been confirmed so as to authorise the acquisition of a party's freehold interest when they were prepared to offer, say, a lease of their land to the acquiring authority instead.
56. Two final matters to be borne in mind in section 23 challenges are that, first of all, substantial prejudice must be demonstrated where procedural issues are raised in the challenge, see section 24(2)(b) referred to above. Second and in any event, and as noted in Collis above, the court retains a discretion not to quash even where a ground of substantive invalidity has been made out.

Conclusion

57. It will appear from the above that there are many aspects of the making and promotion of CPOs which can give rise to legal challenge. The watchword for those preparing CPO proposal must be caution to ensure that opportunities are not given to those interested in upsetting the process to raise an argument on the validity of a CPO which may substantially delay its implementation or even result in defeating the CPO proposal altogether. For objectors, their watchword must be vigilance to look for aspects of the process which may yield arguments to found a legal challenge which, even if it does not result in defeating the CPO process, may nevertheless strengthen their hand in negotiations over the consequences of its implementation.

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