

DRAFT

EMPTY HOMES STRATEGY - GUIDE TO COMPULSORY PURCHASE ORDERS

READING BROUGH COUNCIL

16th JANUARY 2014

DRAFT

CONTENTS

The CPO Framework. <i>Legislation. Government guidance. Council policy and practice.</i>	3
Selecting Properties. <i>Identification. Gathering evidence. Preparatory work. Documentation. Correspondence with owner.</i>	4
The Order. <i>Internal reporting. Referencing. The Order Map. The Statement of Reasons. Making, serving, and advertising the CPO. Submitting CPOs to government.</i>	6
Public Local Inquiry. <i>Objections from owners. Statement of case and supporting documents. Proof of Evidence. The Inquiry procedure.</i>	8
Secretary of State's decision. <i>Notice of confirmation. The appeal period.</i>	10
Implementing a confirmed CPO. <i>Considering the options. Notice to treat/ notice of entry. General vesting declarations. Taking possession/ ownership.</i>	10
Disposal of property following CPO <i>Settlement of CPO compensation. Significance of vesting/possession date. Conduct of negotiations.</i>	12
Key stages and Indicative Timescales	13
Glossary and References.	14

COMPULSORY PURCHASE ORDERS IN TWENTY WORDS

Evidence gathering. Formulation. RBC Resolution. Referencing. Making the Order. Notification. (Objections. Negotiation. Public Inquiry). Secretary of State Confirmation. (Appeal). Possession. Disposal. Compensation.

1. THE CPO FRAMEWORK- LEGISLATION, GOVERNMENT GUIDANCE AND COUNCIL POLICY & PRACTICE

Section 17 of the Housing Act 1985 gives Local Authorities the power to compulsorily acquire buildings and land to provide housing accommodation. The power can be used to bring empty private homes back into use when all other means have failed and where owners cannot be found. The power should not be confused with CPOs for planning or development purposes.

The transformation of derelict property into usable homes has a marked impact on:-

- Meeting local need and demand for homes
- The local environment
- The quality of life for residents
- The perception of the Council's commitment to improve substandard properties
- Council tax revenue

The threat or use of CPO is an effective deterrent to owners who refuse to fulfil their responsibilities as property owners. The Council recognises the advantages in maintaining an effective and successful last resort programme of compulsory purchase.

The use of Housing Act 1985 CPO powers to help meet housing need was endorsed in 1992 when the Council launched its first ever Empty Homes Strategy¹ and has remained a key approach to problematic empty homes in subsequent Empty Homes Strategies.

The Council's key considerations for CPOs are

- Empty Home CPO powers will be used only as a last resort where all other action, including the offer of direct purchase, has failed to achieve the desired result.
- Empty Home CPOs will be sought only for empty residential properties where there is demonstrable housing need for that property.
- Empty Home CPOs will not be implemented, even in the later stages of the process, if the owners give binding and time-limited undertakings to carry out works and return properties to beneficial use.

The decision to make a CPO has budgetary implications and must be made by Policy Committee, with reference to Housing, Neighbourhoods and Leisure Committee² and before the CPO can be implemented, it must be confirmed by the Secretary of State via the National Planning Casework Unit (NPCU).³

¹ Housing Services Committee. 2/12/1992

² Matters pertaining to the Empty Homes Strategy are delegated by Full Council to Committees as per Article 4.1.1 (iv) of the Council's Constitution

³ Councils must submit applications to confirm CPOs via the National Planning Casework Unit (NPCU), part of DCLG, to the Secretary of State. Owners should be kept informed at each significant stage of the CPO process.

Guidance on the general procedure for CPOs is contained in Circular 06/04 “Compulsory Purchase and the Cichel Down Rules” and other guidance notes⁴ listed in the appendix.

The Department for Communities and Local Government (DCLG) generally expect that Councils will not keep CPO properties as part of their permanent housing stock. Any case for CPO must include proposals for the property in the event that a CPO is confirmed. The Council may elect to sell the property on the open market or dispose of it to a Registered Social Landlord for social housing purposes.

2. SELECTING PROPERTIES FOR COMPULSORY PURCHASE

The sole purpose of a section 17 CPO is to return an empty home to use in order to meet identified housing need. While they can be taken into consideration, environmental nuisance factors alone are not the main reason for using CPO.

Empty Home referrals come from a variety of sources:-

- complaints from local residents
- councillors or MPs
- Council and other agency officers

Properties may be targeted for CPO if they have these characteristics

- empty for more than 2 years
- causing a detrimental environmental effect
- subject to Council enforcement action
- affecting the stability of adjoining properties
- there must also be a demonstrable housing need for the CPO property.

3. PREPARATORY WORK BY THE EMPTY HOMES OFFICER

All reasonable steps must be taken to identify all parties with an interest in the property. In addition to publically available ownership information, staff will use Council Tax data in accordance with section 85 of the Local Government Act 2003, as amended, and section 237 of the Housing Act 2004. “Requisition for Information Notices”⁵ are served on interested parties to ascertain ownership details as best as possible.

In each empty homes case, the Empty Homes Officer writes to the owner enquiring about their proposals for the property. Practical and financial help is offered and owners are given the chance to act themselves to bring the home back into use.

⁴ Though Circulars 05/93, 14/94 and 02/03 were cancelled by Circular 06/04, they contain a wealth of relevant guidance.

⁵ Section 16, Local Government (Miscellaneous Provisions) Act 1976. Section 235, Housing Act 2004

Owners that respond positively are assumed to be willing and able to act. A hard core minority of owners make false promises of action and fail to provide a firm commitment to act. The Council advises them that they have every chance to act themselves in order to avoid CPO and other action. It is best to discuss the consequences of non-cooperation and non-compliance with owners face to face.

All contact with the owner is recorded on the case file. Full notes, taken at the time, are admissible as evidence and should be confirmed in writing to avoid any doubt about what has been said.

Attention to detail is crucial so as to ensure the trail of non-cooperation/non-compliance can be evidenced. The Empty Homes Officer will have been collating the following information in the case file:

- general description of property condition (inc. photographs);
- a copy of the property title registered at the Land Registry to confirm ownership;
- the approximate time for which the property has been empty
- any history of Council enforcement action
- description of the property, with a schedule of defects evident
- ownership (including other interested parties) and occupation details
- chronology of informal approaches made and statutory notices served, indicating the owner's level of cooperation and their compliance or non-compliance with Notices.
- details of any works carried out by the Council and the costs incurred.

Process notes and standard letters are available for each step from initial contact, reminders, offers of assistance to warnings of consequences of inaction.

If it becomes clear that an owner needs the spur of a threatened or served CPO, the following steps are arranged by the Empty Homes Officer

- RBC Surveyors visit the property and produce a fully costed schedule of works.
- RBC Valuations provide estimates of sale and rental value in unimproved and improved states. The formal valuation for CPO purposes does not occur until possession is taken.

If access is not granted, authorised officers use powers of entry relevant to the Statute under which the inspection is required. If an owner still refuses access, a warrant to execute power of entry should be sought.

The listed building, conservation area and consecrated ground status and planning history should be researched. Acquisition history should also be sought.

The following steps are followed when seeking Policy Committee approval to make a CPO

- Empty Homes Officer presents case to Empty Homes Working Group⁶
- If the Empty Homes Working Group agrees that CPO is appropriate, the Empty Homes Officer prepares a CPO Report in consultation with relevant teams and Heads of Services. Both funding of acquisition costs and robust proposals for the future use of the home must be well on the way to being established.
- The draft Empty Homes CPO Report is submitted to the Lead Councillor for Housing by the Head of Housing, Neighbourhood and Community Services. If the Lead Councillor deems CPO appropriate, the draft Report is worked up fully for consideration by Policy Communities and other related decision making groups.
- Before seeking Policy Committee approval to make the Order, it is good practice to notify DCLG/NCPU that an application to make a CPO is envisaged.

4 THE ORDER

The Empty Homes Officer coordinates the case through to completion, while drawing on other services within the Council.

The Policy Committee Report is drafted in accordance with the Council's standard guidelines. The Report should contain the following:

- Ownership details.
- Description of the property and its condition
- Details of attempts made to encourage voluntary improvement
- The Council's proposals for the property if a CPO is confirmed
- The financial implications
- A recommendation from the Director of Environment and Neighbourhood Services that a CPO should be made and that officers are instructed to take all necessary action to implement the resolution.
- Details of the CPO that will be implemented including details of disposal options.

At this point, the Council must have in place robust plans for financing the CPO and for the future use/disposal of the property once it is acquired.

The owner of any property to be acquired will also be notified that the matter is to be taken to Policy Committee.

While the Policy Committee Report is being drafted, further work is required on documents that are required as part of the submission to the Secretary of State:

- A schedule identifying and describing all the interests in the buildings and/or land
- A map showing the subject property (known as the Order Map) and

⁶ Staff from Legal Services, Valuation, Environmental Health, Planning, Building Control and Council Tax.

- The Statement of Reasons for making the CPO. This will set out the reasons why the Council wants to make the CPO, and also set out details of its proposals for the property if the CPO is confirmed

The process of identifying and describing the interests in the Order property is called **referencing**. Official Copy of Register of Title will show the names and addresses of the freeholder, lessees and any mortgagees. Land Registry is checked to identify all registerable interests which are then drafted as a Schedule of Interests.

All parties are sent a letter by First Class Post and recorded delivery asking them to declare their interests on a standard form. If no reply is received, another letter, enclosing a copy of the first, is sent, again by recorded delivery, requesting a response within 21 days. These persons must be served with documents relating to the CPO at designated stages of the procedure. A CPO can fail if a person with a legal interest in the property is not served on.

An **Order Map** will show the property to be acquired. The Order Map must be 100% accurate. If a discrepancy is found with the Ordnance Survey map or the map attached to the Official Copy of Register of Title, the procedure for obtaining access for the purpose of an internal survey will be followed. Legal Services should be instructed to obtain a court order if access is refused.

A **Statement of Reasons** will be prepared to support the CPO. This statement will detail the reasons why the Council is to make a CPO.

When the Schedule of Interests, Order maps and Statement of Reasons have been finalised, the legal formalities outlined in the next paragraph will be followed.

These documents are appended to the Policy Committee Report. Approval is then sought from Policy Committee to make the Order. Once Policy Committee approves the recommendation to make the Order, Legal Services will prepare and serve the Order.

The next stage will involve the making, serving and advertising of the CPO and submission to the Secretary of State.

The Statement of Reasons and four engrossments each of the Order and Order Map are prepared. Further paper copies of the Order and map will also be prepared. The Order will be sealed and dated. Notice of the making of the Order⁷ together with the Statement of Reasons will be served correctly on everyone who has an interest in the property, giving not less than 21 days for objections to be made. A copy of the Order and Map is placed on deposit for public viewing at the Civic Offices and Central Library. A Notice of the making of the Order must be publicised in the local press for two consecutive weeks.

⁷ Certain prescribed forms are to be found in the Compulsory Purchase of Land Regulations 1994.

Following the second advertisement of the Notice in the local press and service of the Notice on those with an interest in the property, the Order will be submitted to the National Planning Casework Unit (NPCU) for confirmation. The following will be sent:

- One sealed and four unsealed copies of the Order plus two sealed and four unsealed copies of the Map;
- certificate supporting the Order stating that the Notice has been published and served;
- A certified copy of the Policy Committee's Resolution to make the Order
- A Report on the property by the Council's Valuations Team.

5. PUBLIC LOCAL INQUIRY

If a CPO is unopposed, the Secretary of State normally issues a decision within two months of receiving the Council's application for confirmation. However, objections to CPOs are the norm. If an objection is made, a Public Local Inquiry into the matter must be held. This section assumes that a Public Local Inquiry is to take place. All action taken under this section is overseen by Legal Services.

Any person with an interest in the property may object to a CPO. The objection must be submitted in writing to DCLG. The most common objections are to dispute the Council's case and because the owner wants more time to put their own proposals into action.

The Council may seek an undertaking with the owner rather than enforcing powers conferred by the Order. The Council may agree not to implement a confirmed CPO on condition that the owner agrees to withdraw their objection and to bring the improved property back into use in a given timescale. The Council would still have the CPO confirmed in case the owner then failed to fulfil their part of the undertaking. DCLG has no jurisdiction over undertakings made between the owner and the Council.

At the end of the objection period, DCLG sends copies of objections to the Council and gives around 10 to 12 weeks notice that it will hold a Public Local Inquiry⁸. The Council is responsible for paying the administrative costs of DCLG and the expenses for the Inquiry.

DCLG may consider objections through the Written Representations procedure⁹ if both objector and the Council agree.

When the date of the Public Local Inquiry is fixed it will only be changed in exceptional circumstances. The Statement of Case and copies of all Council documents must be

⁸ The procedure for Public Inquiries is set out in the Compulsory Purchase (Inquiries Procedures) Rules 2007.

⁹ See the Compulsory Purchase of Land (Written Presentations Procedure) (Ministers) Regulations 2004

submitted to the Secretary of State and objectors either six weeks from the date of the DCLG's letter informing the Council of the need for a Public Local Inquiry or 28 days before the Inquiry, whichever is the earlier.

The Statement of Case is an extended and more detailed version of the Statement of Reasons prepared earlier in the procedure. It is a factual statement of the Council's reasons and case for compulsory purchase.

Copies of documents that the Council intends to refer to or put in evidence at the Inquiry, vary depending on the case. Only written correspondence and statutory notices are acceptable as evidence.

The Statement of Case and all other documents to be referred to the Inquiry should be prepared at least two weeks before the deadline for the service of documents.

Once the Statement of Case and documents to be referred to at the Inquiry are prepared, drafting the Proof of Evidence for the Council's main witness will begin forthwith.

The Proof of Evidence can vary according to the evidence compiled in each case, but should include:

- The Council's CPO policy in the context of wider Housing Strategy;
- The attempts made to encourage voluntary improvement or sale of the property;
- The Council's proposals for the property if the CPO is confirmed, and the ability to meet the costs involved;
- The details of the scheme that will be implemented by any RSL if the property is to be transferred on by the Council.

Both the Council and owner are entitled to engage legal representation to act on their behalf at the Inquiry, but this is not compulsory. The Council may engage Counsel to act as its advocate. Choice of Counsel should be made at an early stage, so that they can be involved in all the various steps prior to the inquiry hearing.

Proof of Evidence should be finalised and submitted to DCLG at least three weeks before the Inquiry. This will give Counsel sufficient time to consider the draft, for a conference to take place before the Inquiry and for amendments to be made in the light of Counsel's advice. Copies must also be served on all other parties involved in the Public Inquiry.

Discussions on presentation of the Council's case and tactics to be adopted should be finalised with Counsel.

The Inspector appointed by the Secretary of State opens the Inquiry, explains the procedure to be adopted and circulates an attendance list. Counsel, on behalf of the Local Authority, will set out the case for the CPO to be confirmed. The owner or their

representative may cross-examine at the end of the presentation. The owner then presents their case and will be cross-examined by Counsel and questioned by the Inspectorate. Finally, Counsel has the right to present a summary of the Council's case.

The Inspector may wish to inspect the property before formally closing the Inquiry. Both the owner and the Council's witness may join the Inspector at the site visit but cannot present any further evidence. The inquiry process is likely to last one or two days.

6. SECRETARY OF STATE'S DECISION

The Secretary of State's decision is normally notified to the Council two or three months after the Public Local Inquiry.

If the CPO is not confirmed by the Secretary of State the Council can apply to the High Court for judicial review of the decision on legal grounds.

If the Secretary of State confirms the CPO, Legal Services will prepare a **Notice of Confirmation** for service on all parties and for press publication. This Notice contains provision for any person to appeal to the High Court against the Secretary of State's decision to confirm the CPO. The appeal must be lodged within six weeks and can only be made on a point of law.

At the end of the six week period if a High Court appeal has been made Legal Services will seek instructions.

7. IMPLEMENTING A CONFIRMED CPO

Even after a CPO has been confirmed, the Council will continue to try to acquire the property by agreement. If an undertaking was made, it will be necessary to monitor any refurbishment works being carried out throughout the period. If works are under way, the Council may withhold service of the CPO. If refurbishment works are satisfactorily completed the CPO can be rescinded altogether.

The procedure for implementing the CPO and taking possession of the property can begin if no undertaking was given, or if the terms of the undertaking have not been met. CPOs must be implemented within three years of the Notice of Confirmation being served. The Council may gain possession of the property using either the **Notice to Treat/Notice of Entry procedure** or the **General Vesting Declaration procedure**.

The main advantage of the Notice to Treat and Notice of Entry procedure is that it is quick. The Council is able to take possession of the property within 14 days of the Notice

to Treat and Notice of Entry being served. However, it does not give the Council ownership and compensation claims can take up to two years.

The Council will generally use the **General Vesting Declaration (GVD)** procedure because it gives the Council possession and ownership in three to four months. The GVD procedure is particularly helpful when dealing with property that has unclear Title and when owners cannot be traced. Unless the special circumstances arising from the paragraph above apply this is the preferred route for implementing CPOs.

Legal Services complete the GVD process involves the following steps and prescribed forms¹⁰

- Serving a Statement concerning GVD on those with an interest in the property – the `First Notice`;
- Publication of a Statement concerning GVD in the local press; and
- Following a two month period as required by the Act the GVD is made. Notice of making the GVD is then served and published in the local press- the `Second Notice`

Serving and publishing the Notice of the GVD- the Second Notice- has the effect of a compulsory exchange of contracts. On the 29th day after serving the notice, the property vests in the Council entitling the Council to possession. The GVD will give good title to the property even though compensation has not been settled and may still have to be determined by the Lands Tribunal.

Arrangements to take possession of a property in furtherance of a GVD should be made immediately after the Second Notice has been served. The arrangements must include the following elements, which should all be confirmed in writing.

- A Council representative must attend the property at the time and date possession is being taken. Arrangements should also be made for a locksmith to attend in case a forced entry is necessary and to secure the property afterwards.
- A valuer shall be engaged to attend the property at the appointed time and date to prepare a schedule of condition recording the state of repair.
- The owner should be told that officers authorised by the Council will be taking possession at the appointed time and date. The owner should be invited to attend to hand over keys and agree a schedule of condition with the Council's valuer.

If the owner or any other person prevents access officers of the Council shall abandon the exercise. Legal Services must be informed immediately and instructed to prepare a warrant for possession.

¹⁰ Prescribed forms at the Compulsory Purchase of Land Regulations 1994

8. DISPOSAL OF PROPERTY FOLLOWING COMPULSORY PURCHASE

The Council must obtain fair market value on disposal of the Order property either on the open market or to Registered Social Landlords (RSLs) for refurbishment, securing nomination rights for Council nominees where possible. To maintain and enhance the integrity of the Council's CPO policy it is important that properties are sold or transferred, then refurbished and returned to residential use as quickly as possible.

Under current financial rules, if a property acquired under CPO is resold within three years, 100% of the sale proceeds can be returned to the Council's capital programme.

9. SETTLEMENT OF CPO COMPENSATION

An owner of a property that is acquired via CPO is entitled to compensation¹¹ of the market value of the property plus Basic Loss Payment at 7.5% of the market value, to a ceiling of £75,000. No Basic Loss Payment is paid to a person on whom certain statutory notices or orders have been served and not complied with in respect of the property¹².

The date that ownership of a property is vested in the Council or the date of possession in the case of the Notice to Treat and Entry is significant for the settlement of CPO compensation. The date of vesting or possession is the valuation date for assessing value of the property. Interest on compensation agreed or assessed runs from the date of vesting or possession. Immediately after the date of vesting or possession the dispossessed owner can make a claim on the Council for an advance compensation payment of up to 90% of the Council's Valuation Section. Any claim does not signify acceptance of the Council's valuation.

The Council must be ready for the compensation claim, and finances must have been allocated and approved at the time the CPO report was submitted to Cabinet. The costs of acquisitions may have been approved and be met from within Council budgets. Alternatively, costs may be temporarily funded by another party, a Housing Association or a Government funding scheme, until a capital receipt is received from the sale of the property.

The Valuation Section is responsible for the negotiations for settlement of compensation. They must ensure that every effort is made over a reasonable period to settle compensation by agreement. If no agreement is reached, either party can refer the matter to the Lands Tribunal for determination at a hearing. The waiting time for a hearing is up to six months. At the hearing each side gives evidence about the level of

¹¹Full details of compensations can be found in The Land Compensation Manual at www.voa.gov.uk

¹² Notices and Orders that preclude Basic Loss Payments are section 215 Town and Country Planning Act 1990; sections 11, 12, 20, 21 or 432 Housing Act 2004; section 265 Housing Act 1985; and S48 Planning (Listed Buildings and Conservation Areas) Act 1990.

compensation that could be assessed. The Tribunal’s decision can take two to three months after the hearing and is final.

If the owner is untraceable or if he refuses to accept compensation determined by the Lands Tribunal or if there is a dispute about who is entitled to compensation then the Council can pay the money into Court.

10. KEY STAGES AND INDICATIVE TIMESCALES

The summary and timescales shown on the next pages are based on the following assumptions: -

- That there is an objection to the CPO necessitating a Public Local Inquiry. If there is no objection and no Inquiry the overall timescale will be reduced by six months.
- That no appeal is made in the High Court against the Secretary of State’s decision to confirm a CPO. A valid appeal will add at least six months to the overall timetable.
- That the CPO is implemented by way of the General Vesting Declaration procedure.

STAGE	TYPICAL TIMETABLE
Selecting the property, gathering information and establishing ownership	Depends on responses from owners.
Empty Homes Officer action to encourage voluntary improvement and threat of CPO	Allow 6 months of owner inaction to show CPO is the last resort action.
Report to Policy Committee recommending CPO Referencing, The Order Map The Statement of Reasons Making, serving notice, advertising and submitting CPO to DCLG	Start By month 2 By month 3 By month 5
Notice of Intention to hold Public Local Inquiry Statement of Case and supporting Documentation The Proof of Evidence, conference with Counsel and Public Local Inquiry	By month 7 By month 9 By month 10
The Secretary of State’s Decision The Notice of Confirmation Period of Appeal to High Court	By month 13 By month 14 By month 16
Consideration of procedure options for implementation of confirmed CPO	By month 16

General Vesting Declaration Taking possession/ownership of Property	By month 19 By month 20
Onward disposal of property	
Settlement of CPO compensation	Depends on individual circumstances

GLOSSARY OF TERMS

Empty Homes Strategy- A range of policies adopted by the Council designed to encourage owners of empty properties to return them to residential use.

Compulsory Purchase Order- A forced sale of a property to the Council authorised by the Secretary of State.

Private Sector Renewal Policy- A range of policies adopted by the Council to achieve improvements in the condition of the private sector housing in Reading.

Section 17, Housing Act 1985- The main statutory provision by which CPOs for housing purposes are made and authorised.

Circulars 5/93, 14/94, 02/03 and 06/04 (Crichel Downs Rules)- CPO policy and procedure advice issued by the Government.

Confirmed CPO- A CPO authorised by the Secretary of State

Official copy of register of title- A document available from the Land Registry which sets out ownership details of a property

Order Map- A map based on the ordnance survey that shows the precise extent of property and buildings subject to CPO.

Statement of Reasons- A factual statement stating the Council's reasons for making a CPO.

Public Local Inquiry- A set of rules which govern the procedure, conduct and timescales relating to Public Local Inquiries.

Statement of Case- An extended version of the Statement of Reasons.

Proof of Evidence- A detailed presentation of the Council's case for CPO supplied to the Public Local Inquiry by expert witnesses.

Notice to Treat/ Notice of Entry- A method by which a confirmed CPO is implemented. This method gives the Council possession and ownership of the property.

CPO compensation- The purchase price paid by the Council together with Home Loss and Disturbance payments (if applicable) and surveyors and legal costs.

Lands Tribunal- Determines CPO compensation to be paid where agreement cannot be reached between the Council and the dispossessed owner.

REFERENCE DOCUMENTS

- Reading Borough Council Empty Homes Strategy 2014-2019
- “Compulsory Purchase Orders – Procedure for Staff” Reading Borough Council 1996
- Housing Act 1985. Sections 17 to 19.
- Compulsory Purchase (Vesting Declarations) Act 1981
- Compulsory Purchase of Land Regulations 1994
- Circular 06/2004. “Compulsory Purchase and the Crichton Down Rules”. Office of the Deputy Prime Minister. 2004
- “Compulsory Purchase and Compensation – Compulsory Purchase Procedure”. DCLG 2004
- “Compulsory Purchase and Compensation – Compensation to Residential Owners and Occupiers”. DCLG 2010
- Practice Guide 54 “Acquisition of land by general vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981”. Land Registry 2013