



# **A RESPONSE FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS**

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**DISCUSSION PAPER ON COMPULSORY PURCHASE – NO 159**

**SCOTTISH LAW COMMISSION – ISSUED DECEMBER 2014**

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**19<sup>th</sup> June 2015**

# 1 Introduction

## 1.1 Interest of Scottish registered social landlords in use of CPO's in Scotland

1.1.1 There are around 170 Registered Social Landlords (RSL's) in Scotland, managing 270,000 homes for social rent to people in housing need.

The Scottish Federation of Housing Associations represents 120 RSL's operating from the Borders to the Shetland Isles and varying in size from 200 properties in management to 44,000 homes owned by the Wheatley Group in Glasgow.

1.1.2 RSL housing stock has either been constructed by each individual organisation over a 40 period from the passing of the Housing (Scotland) Act 1974 or acquired through stock transfer from public bodies such as Scottish Homes and local authorities.

1.1.3 Construction of stock is a long process which involves land acquisition, planning, construction and community consultation, supported by public subsidy and public aspiration to meet housing need, which currently far outstrips availability of homes.

1.1.4 Our interest in commenting on the discussion paper on compulsory purchase is land acquisition issues which often impede the building of new homes through unreasonable seller expectations, lack of contact or general intransigence to the principle of providing new social homes. SFHA is however acutely conscious of the necessity for CPO powers to be exercised fairly, appropriately and in accordance with the democratic process and in a way consistent with legitimate rights of owners. On the 800<sup>th</sup> Anniversary of the sealing of the Magna Carta, which amongst other things progressed the right to hold land and enshrined the right not to have it taken away, it is incumbent upon Legislators to have the highest regard of the legitimate interests of owners balanced by the justifiable demands of communities and their representatives.

## 1.2 The Development Process and Access to Land

1.2.1 RSL's work with local authorities to identify potential housing sites for development, to meet needs identified in specific geographical locations or to address specialist needs. By this collaboration, Scottish Government subsidy is allocated to support land acquisition by housing associations for the development of affordable housing, mainly social rent.

1.2.2 Many sites are in towns and cities and are also combined with a regeneration agenda, where new housing can revitalise a run down and depressed community while improving health and well being.

1.2.3 Access to land acquisition opportunities can prove very difficult in identified areas. While local authorities and other public bodies can provide access to land banks, this is sometimes at a cost which makes development difficult, or is only useful where a consequential private sector acquisition proceeds as well. In addition, there is often particularly in rural areas, a need to target particular sites for development such as key sites to provide suitable accommodation for older people or people with disabilities. These keys sites, whilst they may be appropriately zoned as exception sites for affordable housing use only may not be deliverable for that purpose without the appropriate use of CPO powers which, in the experience of the writer has often been resisted in the past.

1.2.4 Other opportunities for site acquisitions lie with negotiations with the private sector – either companies or individuals. Developers are required in some cases to supply 25% of any

development as social housing, although this is resisted in many instances. Sometimes sites are advertised or come up at auction, although this is the exception rather than the rule.

- 1.2.5 The time taken to secure acquisition opportunities can also cause problems as negotiations with a number of landowners can be extremely difficult, particularly where it is perceived that there is public money to support acquisition with each landowner anxious to secure the best price for themselves.

## **2 CPO Consultation**

### **2.1 Housing Associations and CPO's**

2.1.1 When confronted with a difficult land acquisition case, housing associations may consider asking the Local Authority which has prioritised the development in its strategic housing plans, to acquire the site using CPO powers in the public interest.

2.1.2 In practice, this is not considered an option however, because of the general perception that CPO's are difficult to achieve, time consuming and not guaranteed to succeed, depending on the political enthusiasm of members and experience of local authority property and development staff.

2.1.3 There is also a perception that any value attributed to a site through the CPO process may not reflect the true social housing development value, which in many cases is below private sector open market value in the event that a private developer acquired and developed the site for housing for sale. A higher valuation would result in the project being unworkable under the subsidy rules.

2.1.4 Housing associations accept that as third sector voluntary bodies, CPO powers given directly to them would conflict with the premise that deprivation of property rights through compulsory acquisition needs to be exercised by a democratically elected public body – local authorities or Scottish Government. The points raised in the Discussion Paper about challenges under human rights legislation are well made. In particular, the political decision to compulsorily purchase land in the public interest is a judgement which housing associations cannot make, unless there was some strong delegation of authority by a local authority, which seems unlikely and unworkable.

2.1.5 What Housing Associations need is clarity, speed and commitment to use existing CPO powers ( and any subsequent administrative improvements or classification ) to acquire land for affordable housing, through a valuation method which takes account of the reduced value generated by this use.

2.1.6 Having read through the Discussion Paper, the likelihood is that the processes used presently could probably be revised to meet these objectives, but a clear steer needs to come from the Scottish Government on the political support for using CPO powers where the acquisition of land compulsorily will enable an affordable housing project to proceed and provide much needed homes in communities around Scotland and in particular where it can be fairly demonstrated that intransigence of individual owners is holding up or permanently ruling out the development of key, strategic sites identified in the Local Development Plan as contributing to the social and economic progress of a community. The SFHA would be happy to work with its members to provide the Scottish Law Commission with examples of the type of land assembly problems which could be progressed by a fair and appropriate use of CPO powers.

### **3.1 Conclusion**

3.1.1 CPO's are currently seem as powers which exist, but which are rarely advanced as an option by local authorities to address land assembly and site acquisition problems.

3.1.2 The SFHA would endorse any improvements to the current CPO system, which brings certainty into the process, produces fair timescales and cost and results in an appropriate value for a site reflecting its use for affordable housing,

3.1.3 Undoubtedly some public interest power to compulsorily acquire land must be available in Scotland and CPO's have existed for a long time. The origins and evolution through adding to statutes throughout the last centuries clearly demands a modernisation in terms of statute and it is hoped that the opportunity will be taken to define an improved process and categorise clear circumstances where CPO's are appropriate, with the provision of affordable housing being a public interest activity.

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