

## Agenda – Pwyllgor yr Economi, Seilwaith a Sgiliau

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Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Ystafell Bwyllgora 1 – Y Senedd Gareth Price  
Dyddiad: Dydd Iau, 11 Hydref 2018 Clerc y Pwyllgor  
Amser: 09.30 0300 200 6565  
[SeneddESS@cynulliad.cymru](mailto:SeneddESS@cynulliad.cymru)

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### Rhag-gyfarfod preifat (09:30–09:45)

#### 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

#### 2 Sesiwn dystiolaeth Prynu Gorfodol

(09:45–10:45)

(Tudalennau 1 – 56)

Philip Meade, Davis Meade Property Consultants

Paul Wheeldon, County Surveyors Society

Roisin Willmott, Royal Town Planning Institute

#### Dogfennau atodol:

EIS(5)–22–18–(P1) Royal Town Planning Institute (Saesneg yn unig)

EIS(5)–22–18–(P2) Royal Institution of Chartered Surveyors (Saesneg yn unig)

EIS(5)–22–18–(P3) Geldards (Saesneg yn unig)

EIS(5)–22–18–(P4) County Surveyors Society Wales (e+w)

EIS(5)–22–18–(P5) Stan Edwards (Saesneg yn unig)

EIS(5)–22–18–(P6) Sustrans (Saesneg yn unig)

EIS(5)–22–18–(P7) Phillip Meade (Saesneg yn unig)

EIS(5)–22–18–(P8) Papur briffio'r Gwasanaeth Ymchwil – Ymchwiliad Prynu  
Gorfodol



**Egwyl (10:45–11:00)**

**3 Y Seilwaith Digidol – Y Wybodaeth Ddiweddaraf am y Cynllun  
Gweithredu ar Ffonau Symudol**

(11.00–12.00)

(Tudalennau 57 – 85)

Gareth Elliott, Mobile UK

Paul James, Telefonica O2 UK

Tom Corcoran, Three

Kamala MacKinnon, Vodafone

Richard Wainer, BT Group Corporate Affairs

**Dogfennau atodol:**

EIS(5)–22–18–(P9) Mobile UK (Saesneg yn unig)

EIS(5)–22–18–(P10) Mobile UK 2 (Saesneg yn unig)

EIS(5)–22–18–(P11) BT Group (Saesneg yn unig)

EIS(5)–22–18–(P12) Papur briffio'r Gwasanaeth Ymchwil – y wybodaeth  
ddiweddaraf am y cynllun gweithredu i wella cysylltedd ffonau symudol

**4 Papurau i'w nodi**

(12.00–12.05)

(Tudalennau 86 – 91)

**Dogfennau atodol:**

EIS(5)–22–18–(P13) Gohebiaeth oddi wrth Ysgrifennydd y Cabinet dros yr  
Economi a Thrafnidiaeth – gwybodaeth ychwanegol mewn ymateb i'r sesiwn  
ar 19/09/2018

**Ôl-drafodaeth breifat (12.05–12.15)**



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12 September 2018

e-mail response sent to: [SeneddEIS@assembly.wales](mailto:SeneddEIS@assembly.wales)

Dear Sir/Madam,

**Response to: Compulsory Purchase**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 25,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

Thank you for the opportunity to contribute our views to the above consultation.

The request for evidence is particularly broad and it is unclear if the Inquiry is looking at process or principles. We have therefore set out below a number of general planning comments in relation to Compulsory Purchase.

The Independent Advisory Group looked at Compulsory Purchase in their report to Welsh Government, [‘Towards a Welsh Planning Act: Ensuring the Planning System Delivers’](#) (June 2012). They recommended (see recommendation 97) a number of legislative changes to the Compulsory Purchase Order (CPO) provisions.

We understand that CPOs are not widely used to secure routes for active travel, primarily due to many not being of a scale to justify the costs and risks of the process to Local Authorities. Generally, the preferred option to secure active travel routes at a smaller scale would be to seek to secure land required by way of negotiation. However, if an active travel route were part of a larger scheme, which required a CPO to build, then this may be an appropriate route for land assembly.

Equally in relation to major infrastructure projects, the objective would be to acquire land rights by agreement in the first instance (demonstrating steps taken to acquire land rights by agreement is an integral part of applying for a CPO), with CPO itself being a last resort.

In terms of town centre regeneration, it can also be beneficial as a final course of action, after all other means have not secured a result – should an individual decide not to sell.


The Compulsory Purchase process requires significant legal/surveying input and can therefore be expensive, time-consuming, and resource-intensive. The cost and timescale for going through the CPO process, usually resulting in an Inquiry, can in itself be off putting to Local Authorities. However we also recognise that this forms the necessary steps to ensure the process is open, transparent, and not open to challenge. A formal system is necessary to ensure fair inputs etc, however we note, as with many formal procedures and processes, it is useful for the likely outcomes and nature of the process to be more clearly set out and understood by objectors at the outset.

We also question whether there is a lack of public sector experience in using the process, requiring further training, sharing of information and skills or another learning process.

In considering CPOs it is important to cross reference and coordinate with all relevant Committees /Ministers and the Programme for Wales Agenda to ensure a holistic review.

If you require further assistance, please contact RTPI Cymru on 029 2047 3923 or e-mail Roisin Willmott at [walespolicy@rtpi.org.uk](mailto:walespolicy@rtpi.org.uk)

Yours sincerely,



Dr Roisin Willmott OBE FRTPi

**Director**  
**RTPI Cymru**

# Submission



Economy, Infrastructure and Skills Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

10<sup>th</sup> September 2018

Dear Sir/Madam

## **Re: Committee Inquiry into Compulsory Purchase powers**

The Royal Institution of Chartered Surveyors promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals worldwide and represent 4,000 professionals locally. Any individual or firm registered with RICS is subject to our quality assurance. As part of its Royal Charter, RICS has a commitment to provide impartial advice to the Government of the day and has an obligation to bear in mind the public interest as well as the interests of its professionals. RICS is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to key sectors.

RICS welcomes the opportunity to respond to the Committee Inquiry into the use of compulsory purchase powers in Wales. Compulsory purchase orders (CPOs) enable bodies in the UK and Ireland to legally secure rights over land or property, or obtain land or property outright, without the consent of the owner. The use of the powers for the acquisition of land in the UK dates back over 170 years. As such, the legislative framework for compulsory purchase is complex and can be intimidating for both Acquiring Authorities (AAs) and property owners.

RICS provides mandatory high-level guidance for professionals involved in advice relating to the use of compulsory purchase or other statutory powers compelling land acquisition. The [Professional Statement for surveyors advising in respect of compulsory purchase and statutory compensation](#) sets out the standards of behavior and competence expected when acting in relation to the compulsory purchase code.

Acknowledging that compulsory purchase can become an adversarial process, RICS is currently engaged in a consultation with professionals in the specialist compulsory purchase field to explore alternative methods for dispute resolution (ADR) in cases of CP disputes. The RICS Dispute Resolution Service has completed a draft ADR option in consultation with experienced CP practitioners and legal professionals. Further information about this process is available below.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Pwyllgor yr Economi, Seilwaith a Sgiliau/ Economy, Infrastructure and Skills Committee  
Prynu Gorfodol / Compulsory Purchase  
Ymateb gan RICS / Evidence from RICS

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Our response to the initial committee inquiry is as follows:

**Are there any barriers to the use of compulsory purchase powers? If so, how can they be overcome?**

Experience

The economic, social and environmental benefits of using compulsory purchase powers to unlock development, particularly in the residential and infrastructure sectors, is well understood. The legislative framework surrounding the exercise of CP powers, however, is complex and for those without extensive experience of the process, can prove intimidating.

Feedback from acquiring authorities across the UK suggests that one of the most significant barriers to regular use of these powers is a lack of knowledge, confidence and recent experience of the process. Experience suggests that the use of CP powers varies considerably by local authority with small numbers utilising the acquisition pathway regularly.

Further support is needed for those authorities that could benefit from active use of CP powers. A central support unit and guide for CP applicants should be considered to build a bank of information and experience across acquiring authorities.

Following a comprehensive review carried out by the Scottish Law Commission, the Scottish Government has recently published a suite of guidance papers for those involved in the CP process, aimed at reducing the knowledge and experience deficit in this specialised field. In advance of legislative reform, the Scottish Government has also committed to providing a technical check service to those authorities that have resolved to adopt a compulsory purchase approach to individual developments. These checks are designed to address any errors or omissions that could lead to delay or rejection at decision stage, providing additional certainty to the acquiring authority.

Time/Costs

In the context of reduced central government allocations, acquiring authorities continue to express concerns about resourcing CP developments, particularly in complex cases likely to be subject to objection or appeal.

Funding remains a relevant material consideration for all forms of compulsory acquisition to the extent that Ministers must be satisfied that a scheme is likely to proceed within a reasonable period.

Acquiring authorities should be encouraged to explore alternative resourcing arrangements for regeneration and other public interest objectives. Several enabling acts allow cooperation with third party organisations. Disposing of land post-acquisition to a third party (another public body, agency or a private institution) can give AAs the flexibility to achieve their public policy objective while an external organisation commits to delivering the development and indemnifying the authority's costs.

The perception that the process is cumbersome and drawn out should be addressed in enhanced guidance notes which set out average timescales from initial application to final decision, including periods of inquiry or mediation.

### Perception/Reputational risk

Acquiring authorities often view compulsory purchase as a method of last resort. The nature of the process and the potential to become adversarial – risking reputational damage to the authority if not well-managed – can act as a significant disincentive.

Early engagement with affected landowners and their representatives is critical to minimising risk and maximizing the opportunity of any particular scheme. Many property owners (who are involuntary participants in the CP process) argue that they do not receive adequate compensation, and that compensation is not paid out early enough, if at all. Understanding those concerns, working with affected parties at an early stage and sustaining engagement throughout the application process, including through mediation and appeal, will deliver better results for all involved.

### Appeal

RICS professionals working in the specialist field of compulsory purchase have raised significant concerns about the effect of the current system of appeal on property owners. At present the only form of recourse available to owners who feel that settlement offers do not represent fair compensation is to refer the case to the Upper Tribunal of the Lands Chamber. The formal, complex and expensive nature of the process acts as a deterrent, particularly where the claims involved are less substantial.

The effect of a rigid, inaccessible appeals process is that many property owners feel forced to accept a substandard outcome. That is not an equitable.

The RICS Dispute Resolution Service has been consulting on an Alternative Dispute Resolution pathway for CPO processes. Further information on the consultation can be found below.

### **Are there any specific barriers to the use of compulsory purchase to regenerate town centres; and/or develop opportunities for active travel?**

The general barriers to the use of compulsory purchase powers outlined above apply to both regeneration projects and active travel development.

In both situations, a compelling public interest case for development that promotes economic, environmental and social wellbeing must be demonstrated prior to approval.

In instances of regeneration projects, a comprehensive impact assessment should be undertaken early in the process, alongside engagement with affected property owners and the wider local community. Any challenges identified early in the process may be fixed by expanding the scope of the purchase, for example in the Land Authority for Wales' Gwent Levels Wetland Reserve acquisition. Compensatory or supplementary acquisition should be explored to mitigate potential environmental or public service losses.

Active travel development is often a slow process. The length of time needed to negotiate routes with individual property owners, explore the impact on traditional public and private transport modes and undertake wider community engagement can be a significant challenge.



Most active travel proposals will carry a strong public interest case for environmental and social wellbeing development. The proposals are also usually the result of a prior public consultation process, demonstrating demand and support for development.

A significant barrier to the use of compulsory purchase for active travel development, however, is the availability of alternative routes. The nature of active travel is such that any given walking path or cycle route will have a viable alternative that can circumvent the need to acquire individual properties. Unfortunately, the alternative proposals may be much longer, encounter more severe gradients or simply take a less desirable route. Any of these issues will result in lower levels of usage and diminish the public policy goal of the acquisition.

### **Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?**

As above, the use of compulsory purchase powers is inconsistent across local authorities. Knowledge, confidence and recent experience of the powers available are the primary barriers to more regular CP use.

An assessment of current knowledge and skills in compulsory purchase should be carried out across local authorities. This should be supplemented with updated guidance on the powers available to acquiring authorities to acquire land for development.

Further consideration should be given to offering a technical check service on CP applications before the final submission stage to reduce rejections based on technical error.

### **Resolving CPO disputes**

RICS surveyors and other professionals, who work in CPO, have been increasingly concerned that the cost of the current tribunal system often acts as a deterrent to its use. We have explored possible ADR options for resolving CP disputes, particularly in relation to compensation matters. The objective is to offer Acquiring Authorities and affected property owners a viable and better alternative to resolving disputes prior to considering a reference to the Lands Chamber.

The ADR option we have prepared is summarised in a consultation document [www.rics.org/cpo-consultation](http://www.rics.org/cpo-consultation).

It is aimed at helping to streamline the CPO process by resolving CP disputes at an earlier stage than is usually the case at present. We feel it would be particularly well suited to lower value and less complicated cases. It is quick and cost-effective. It also gives all parties confidence that the management and resolution of their dispute will be facilitated by someone who is impartial and has immense subject matter expertise.

After the consultation is completed (closing date 21 September) a published list of activities and timetable to finalise the details of the scheme will be released. A panel of experts/adjudicators will be set up and a soft launch will be developed by end of 2018.

RICS would be happy to offer further assistance or clarification on any of the points raised in this submission. If you have any queries, please do not hesitate to contact me directly.

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Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Pwyllgor yr Economi, Seilwaith a Sgiliau/ Economy, Infrastructure and Skills  
Committee  
Prynu Gorfodol / Compulsory Purchase  
Ymateb gan Huw Williams / Evidence from Huw Williams

**NATIONAL ASSEMBLY FOR WALES**

**ECONOMY, INFRASTRUCTURE AND SKILLS COMMITTEE**

## **Submission to Inquiry on Compulsory Purchase**

September 2018

**Huw Williams**  
**Lead Partner – Public Law**  
**Geldards LLP**



**Geldards**  
law firm

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## 1. Introduction

1.1 I am a solicitor and the Lead Partner – Public Law at Geldards LLP. I have been practicing the law relating to compulsory purchase and land compensation since the early 1980's when I was involved in promoting CPO's for highway schemes for the Mid Glamorgan County Council. After joining Geldards in 1987 I advised the Cardiff Bay Development Corporation on several compulsory purchase orders such as those for Penarth Haven and the Ferry Road area and on the CPO provisions of the Cardiff Bay Barrage Act. I have also advised local authorities in both Wales and England on regeneration and highway schemes, for example the Wrexham Industrial Estate Access Roads, Friars' Walk, Newport and Markham Vale (a coalfield regeneration scheme adjoining the M1) in Derbyshire. I am currently actively involved in the CPO's for two highway schemes in NW England and in relation to the CPO elements of the M4 Corridor around Newport scheme. I have also advised on compensation claims in the Upper Tribunal (Lands Chamber), notably the claims relating to the acquisition of multi storey car parks in central Cardiff required to make way for the St Davids' 2 Shopping Centre scheme where I acted for the Welsh Ministers.<sup>1</sup> I was a member of the Planning and Environment Committee of the Law Society from 2003 – 2016 and continue to contribute to that Committee's Welsh work as a member of the Law Society's Wales Committee. I am a member of the Compulsory Purchase Association.

1.2 I am pleased that the Committee has decided to conduct this inquiry. The law relating to compulsory purchase and compensation lies at the heart of the ability of public bodies and other undertakings granted special powers by legislation ("statutory undertakers") to deliver infrastructure and other schemes considered to be in the public interest. Virtually the whole of our transport network, utilities and much of the public realm has been developed over almost 200 years with the benefit either of explicitly exercised CPO powers or with recourse to powers available "in the background". The system we have today is still essentially that devised to facilitate the construction of railways and canals in the 19<sup>th</sup> century and adapted to creating a national road network and for post war reconstruction and urban regeneration in the 20<sup>th</sup>. The use of CPO powers is therefore a creative instrument which should be viewed in a positive light as the means to realise in a timely fashion development that is determined through democratically accountable and evidence-based decision-making to be in the wider public interest. The courts have recognised this, for example:

*"... compulsory purchase of property is an essential tool in a modern democratic society. It facilitates planned and orderly development. Hand in hand with the power to acquire land without the owner's consent is an obligation to pay full and fair compensation."*<sup>2</sup>

1.3 Nevertheless, the Courts have also always been vigilant in keeping the use of CPO powers within strict limits, recognising the infringement of individual rights of occupation and ownership that is inherent in compulsory purchase and which is only acceptable because a compelling case in the public interest has been demonstrated and because fair compensation is payable with recourse to independent adjudication of disputed claims. This well-established approach is now further reinforced by the

<sup>1</sup> Reported as *Bishopsgate Parking (No2) Ltd v Welsh Ministers* [2012] UKUT 22 (LC)

<sup>2</sup> Lord Nicholls in *Waters v. Welsh Development Agency* [2004] 1 WLR 1304

right to respect for family life and of property established in UK law by the Human Rights Act 1998.<sup>3</sup> There are many judicial pronouncements to this effect, both pre and post the Human Rights Act, for example:

*“In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority and if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused.”<sup>4</sup>*

- 1.4 The current case of the statute book relating to CPO and land compensation is unsatisfactory and scattered across numerous statutes from the Lands Clauses Consolidation Act 1845 to the Neighbourhood Planning Act 2017. A major Law Commission project<sup>5</sup> to reform, restate and consolidate the law relating to compulsory purchase carried out under Carnwath J<sup>6</sup>, a notable authority on this area of law, was not implemented. The most significant recommendations for reform have, however, been implemented more recently. Although this is to be welcomed, the piecemeal nature of the reforms has been to further complicate the statute book. There four main CPO statutes, namely the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and the Acquisition of land Act 1981 and have all been amended significantly over the years.
- 1.5 The powers to acquire land compulsorily are generally to be found in statutes relating to specific areas of public service. Thus, for example, the Highways Act, the Education Acts and the NHS (Wales) Acts all contain CPO powers. In addition, general powers to acquire land for development can be found in the Town and Country Planning Act 1990 Part XI and the in the Welsh Development Agency Act 1975.
- 1.6 The position in Wales is further complicated by the reservation of powers in this subject area under the Wales Act 2017. The power to create statutory powers to CPO land for devolved purposes and CPO procedure are devolved to the National Assembly. Land compensation, presumably because it is seen as being closely related to land law which is another reserved topic, remains reserved.<sup>7</sup>

## **2. Barriers to the use of CPO powers**

- 2.1 While the legislation relating to the use of CPO powers is in an unsatisfactory form, the fundamental features of the system are sound, especially since the Planning and Housing Act 2016 and the Neighbourhood Planning Act 2017 have implemented key reforms recommended by the Law Commission.
- 2.2 The main barriers are ones of confidence, training and resources.
- 2.3 The use of CPO, while it is rightly seen as the last step in a process that should always encourage voluntary agreement, should always be part of the planning for any public project that involves land acquisition. However, many public bodies see CPO as a last

<sup>3</sup> Incorporating Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights

<sup>4</sup> Watkins LJ (Sir Tasker Watkins VC) in *Prest v. Secretary of State for Wales* [1982]

<sup>5</sup> <https://www.lawcom.gov.uk/project/towards-a-compulsory-purchase-code/>

<sup>6</sup> Now Lord Carnwath of Notting Hill JSC

<sup>7</sup> See Government of Wales Act 2006 (as amended) Schedule 7B, section M3, para 185.

resort and do not factor into their project planning the possible use of CPO powers from inception. Having to initiate a CPO “from scratch” when a project is otherwise well advanced is a source of delay and also loses the acquiring authority the initiative in negotiations with recalcitrant landowners.

- 2.4 In general, the one area where it is accepted that CPO action is integral to the project is in relation to highway schemes. The nature of linear projects where hundreds of owners and occupiers may be affected is such that there is never any hope of securing agreement from all landowners and the use of CPO is therefore seen as inevitable and is planned for accordingly from the outset.
- 2.5 On the other hand, the position with regeneration schemes is sometimes less clear cut, especially if a relatively small number of interests are involved, where there may be a natural inclination to try and negotiate a deal. Difficulties can also arise with sites in single ownership where the owner/developer’s aspirations and those of the public sector differ. There may also be cases, such as the type of schemes highlighted by Sustrans, where CPO powers are considered too resource intensive and disproportionate to justify their use.
- 2.6 The reluctance to integrate the possible use of CPO into project planning is the result of a lack of experience and familiarity within the public sector in how to build the case for a CPO and to administer the process. While the legislation and the associated rules and guidance are complex, the confidence of acquiring authorities and officers will grow with familiarity. In Wales, the relatively small size of Welsh local authorities is undoubtedly a factor as is the loss of the centres of expertise that were to be found in bodies such as the Land Authority for Wales, CBDC and the WDA. To provide some context: when I headed the team responsible for the legal work on highway CPO’s at the Mid Glamorgan County Council in the early to mid 1980’s, the capital programme was geared to starting a major road scheme every other year, as well as smaller schemes, so there was a continuous stream of CPO and compensation work generated. Even today, a major local authority such as Birmingham City Council with a large capital and regeneration programme can sustain a very experienced in-house cross disciplinary scheme capable of running several orders simultaneously.
- 2.7 A Welsh local authority seeking to embark on a CPO will currently receive little support from Welsh Government. There are three matters I would mention:
  - (a) Guidance on project managing the CPO process was identified as a weakness some years ago as in a report by the Compulsory Purchase Policy Review Advisory Group in 1999.<sup>8</sup> A very useful “CPO Manual” was subsequently issued by the DCLG in 2006. Written by a team of leading CPO and compensation surveyors and lawyers,<sup>9</sup> it contained an “end to end” description of best practice. Unfortunately, DCLG has failed to fund the updating of the manual, which was in loose leaf format, since 2009 and it is now out of date.
  - (b) An important element in the CPO process is the central government guidance on CPO powers. England now benefits from comprehensive Guidance

<sup>8</sup> Compulsory Purchase Policy Review Advisory Group (CPPRAG); Interim Report, DETR, Jan 1999

<sup>9</sup> *Compulsory Purchase Procedure Manual* (2 vols) DCLG,  
<https://www.tsoshop.co.uk/parliament/bookstore.asp?Action=Book&ProductId=7003095>

updated as recently as February 2018.<sup>10</sup> This replaced guidance issued by DCLG in 2004. The relevant guidance in Wales, however, dates from 2004.<sup>11</sup> An update was subject to consultation but never issued. I understand that work to produce a new Welsh circular may be in hand.

(c) Until stopped as an economy measure in the 1980's central government departments were prepared to conduct a technical review of CPO's in draft before they were made and submitted formally for confirmation by Ministers. The Welsh Government continued to do this on an informal basis until more recently if requested but it is believed that the official who had the experience to undertake this has now moved on. This was a useful service which gave confidence to acquiring authorities that orders would not be rejected for technical defects (as opposed to the merits of the proposals). Significantly the current DCLG Circular has reinstated this service in cases of difficulty.<sup>12</sup>

2.8 In summary, an up to date Welsh Circular, supplemented by a technical manual and the reinstatement of pre-submission technical checking, would undoubtedly give local authorities and public bodies the resources to consider the use of CPO with greater confidence.

2.9 I recognise that there are also arguments for re-establishing centres of excellence in land assembly and the use of CPO powers to achieve this. This could be in the form a shared service for local authorities and, perhaps, other public authorities. Such an approach could also justify investment in the specialised mapping and word-processing systems that are now essential for the making of a CPO of any scale nowadays. This existed, to an extent, in the former Land Authority for Wales in relation to the assembly and acquisition of development sites. However, the Authority's remit to be self-financing, meant that the legal, surveying and administrative skills that it developed were not made available to the wider public sector. However, I recognise that this is a proposal that would need to be considered in the context of the forthcoming local government reform and public land asset management agenda.<sup>13</sup>

2.10 The efficient use of CPO powers requires affected persons to have access to experienced professional advice in connection with their rights to object and to claim their due entitlement to compensation. The Compulsory Purchase Association<sup>14</sup> established some fifteen years ago is a not for profit body that promotes best and most effective practice in compulsory purchase and draws its membership from surveyors, lawyers and planners. This has been a welcome development and the CPA now runs an effective training programme to develop relevant professional skills. However, one of the problems with CPO skills is that the flow of work has been erratic

<sup>10</sup> Guidance on Compulsory purchase process and The Crichel Down Rules, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684529/Compulsory\\_purchase\\_process\\_and\\_the\\_Crichel\\_Down\\_Rules\\_-\\_guidance\\_updated\\_180228.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684529/Compulsory_purchase_process_and_the_Crichel_Down_Rules_-_guidance_updated_180228.pdf)

<sup>11</sup> The National Assembly for Wales *Revised Circular on Compulsory Purchase Orders* NAFWC 14/2004 [https://gov.wales/about/open-government/publications-catalogue/circular/circulars04/NAFWC14\(1\)2004?lang=en](https://gov.wales/about/open-government/publications-catalogue/circular/circulars04/NAFWC14(1)2004?lang=en) and [https://gov.wales/about/open-government/publications-catalogue/circular/circulars04/NAFWC14\(1\)2004?lang=en](https://gov.wales/about/open-government/publications-catalogue/circular/circulars04/NAFWC14(1)2004?lang=en)

<sup>12</sup> See para 24

<sup>13</sup> In this regard I have commented elsewhere on the desirability of a public sector wide approach to land asset management. See Geldards response dated 10<sup>th</sup> April 2017 to Q9 of the Government's Reforming Local Government; Resilient and Renewed consultation.

<sup>14</sup> <http://www.compulsorypurchaseassociation.org/>



over the past twenty years. Overall, the 2008 crash and resulted in a slow down in development activity with a consequent loss of CPO skills. In Wales this compounded be abolition of the WDA and the shift in economic development strategy away from land development. The situation now is that the demands of scheme such as HS2 and the accelerated local authority and trunk roads programme in England is leading to a shortage of experienced CPO practitioners, but is also providing opportunities for young practitioners to move into the field.

- 2.11 Another constraint is the availability within the Planning Inspectorate of sufficient Inspectors trained in CPO work. There is currently s shortage, with the time from the making of a CPO to public inquiry currently around 12 months.

### **3. The use of CPO for urban regeneration**

- 3.1 It is testimony to the robustness of the foundations of the CPO system laid down in the 19<sup>th</sup> century that is has evolved and adapted from the needs of the canal and railway pioneers to facilitating sophisticated urban regeneration schemes and the advent of the modern planning system and its more recent adjunct, environmental assessment.
- 3.2 It is essential that the purposes for which a CPO is made are clear and this is normally to be done through the prior grant of planning permission. The decision-maker will also expect evidence that the scheme has been funded or that there are reasonable grounds to assume that it will be funded if the CPO is approved. Evidence should also be available that there are no other impediments to development.
- 3.3 That said, the is no statutory requirement for planning permission to be in place and it is, as a matter of law, possible for a CPO to be confirmed if the evidence presented amounts to a “compelling case” that land should be developed and that acceptable proposals within the purposes for which the CPO is sought will come forward if the CPO is approved.<sup>15</sup>
- 3.4 The latest DCLG Circular emphasises the need for the planning framework justifying the CPO to be set out in some detail as well as the needs for evidence that there are no physical or legal impediments and no obvious reasons why planning permission should not be upheld. However, the circular also recognises that it may not always be sensible or feasible for full details to have been worked up, especially where a proposed acquisition is part of a longer-term strategy and that it is up to an acquiring authority to present a compelling case for acquisition in advance of resolving all the uncertainties.<sup>16</sup>
- 3.5 This position echoes, but not quite to the same broad extent, advice contained in a now cancelled circular relating to use of the CPO powers of urban development corporations which recognised the role of site assembly in giving the market

<sup>15</sup> For an account of the current law relating to the use of CPO powers for regeneration see the paper by David Elvin QC of landmark Chambers, presented to the 2017 Conference of the UK Environmental Law Association <http://www.landmarkchambers.co.uk/userfiles/documents/resources/CPO%20Paper%20DEQC%20UKELA%202017%20FINAL.pdf>

<sup>16</sup> See paragraphs 15, 74 and 75

confidence to bring forward development proposals in areas where land was derelict, contaminated or under used creating “market failure”.<sup>17</sup>

3.6 The CPO process, in the hands of an experienced and skilled multi-disciplinary team is well understood in terms of the planning and interaction with the development industry and can achieve impressive and positive change through large scale comprehensive schemes.<sup>18</sup> However, the challenge now facing local authorities is at different scale and relates to the adaptation of the urban fabric to take account of the changing nature of retailing and leisure activities, the need to move to sustainable modes of transport and getting around and the reintroduction of residential uses within town centres.

3.7 These pressures will change to nature of land assembly to a need to stimulate the redevelopment and re-use of sites scattered through an urban area or along a street to remove pockets of “market failure” and therefore stimulate the regeneration and improvement of the well-being of the area. There is no reason why the existing powers to develop land for “planning purposes”<sup>19</sup> should not be used for such a purpose. A strategy based on:

- (a) The survey of under used or derelict properties,
- (b) a “master planning approach” to design, the identification of development constraints and well-being benefits for a wider area of a co-ordinated programme of acquisitions, accompanied by public and stakeholder engagement and consultation and
- (c) a structured approach to negotiations with landowners to identify those willing to sell and those unwilling to do so or with unrealistic expectations as to value of future acceptable uses, and it being known that a CPO was in preparation in the background

should a establish a case for acquisition which tilts the balance in favour of the public interest in regeneration when weighed against the constitutional right to individual property, thereby amounting to a compelling case for CPO action.

3.8 New, up to date, Guidance taking account of case law and legislative changes over the last fourteen years, would be a good start in reviving the skills and confidence of public bodies to use CPO and, most importantly, to factor the possibility of its use into their project planning and to prepare accordingly. The up to date DCLG Guidance, at

<sup>17</sup> UDC's have broad CPO powers under s.142 of the Local Government Planning and Land Act 1980. The commentary on this provision in the Encyclopaedia of Planning Law notes at section 2-1609.1: “This section confers a broad land acquisition power on urban development corporations. Guidance as to the use of these powers was contained in DOE Circular 23/88 which emphasised (para. 5) that the powers are expressed in wide and general terms, reflecting both the national importance of the task of urban regeneration and the practical problems of returning wide areas of severe urban dereliction to beneficial use. In the special circumstances in which UDCs operate it would not always be possible or desirable for them to have specific proposals for the land concerned beyond their general framework for the regeneration of the area. And where there was a defined end use, such as strategic infrastructure, it would not be essential for the proposals to have full planning permission, nor for all other statutory procedures to have been completed at the time of submission of the compulsory purchase order, or even at the time of the Secretary of State's decision on it.”

<sup>18</sup> See the evidence submitted by to the inquiry by Mr Stan Edwards

<sup>19</sup> Town and Country Planning Act 1990 s.226

paragraph 2 recognises the balance to be struck between negotiation and the need for certainty and progress:

*Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures*

*This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.*

3.9 In addition, it needs to be recognised that a Welsh Government procedural Circular whose requirements are accorded significant weight by the Courts in CPO cases, notwithstanding its non-statutory status<sup>20</sup> must necessarily be circumspect to a degree due to the decision-making role of Ministers in confirming CPO's. I think that there is strong argument, therefore, for the Welsh Ministers to consider issuing alongside a new Circular, a "CPO Manual" highlighting good practice and addressing specific situations calling for CPO action, such as the urban regeneration scenario described above and the requirements of active travel schemes. The Local Development Plans<sup>21</sup> and Development Management<sup>22</sup> Manuals issued by the Government to supplement Planning Policy Wales, provide an example of this approach in a related field.

3.10 However, any new Welsh Circular this needs to be accompanied by further training and support for acquiring authorities along the lines already discussed. While I recognise that this will have financial and resource implications, I think that overall there would be valuable time and resource savings overall, not to mention, well-being benefits through the CPO system being used more effectively and skilfully to bring about development and change in a timely manner.

#### **4. Active Travel**

4.1 Active travel schemes, although generally on a smaller scale to schemes for motorised traffic, give rise in legal terms to the same potential issues. In any linear infrastructure project, a single landowner who is unwilling to sell or has unrealistic expectations as to price can frustrate progress of the scheme in the absence of CPO action. In preparing my evidence, I have had the benefit of reading the evidence put in by Sustarans and I recognise the issues.

4.2 Notwithstanding the differences in scale it is relevant to note that some active travel schemes such as cycleways will have land takes that are not very different to that

<sup>20</sup> See, for example *The Queen on the Application of Baker v. Secretary of State* [2018] EWHC 2099 para. 24

<sup>21</sup> <https://gov.wales/topics/planning/policy/policy-and-guidance-on-development-plans/ldpmanual/?lang=en>

<sup>22</sup> <https://gov.wales/topics/planning/policy/development-management-manual/?lang=en>

required for long stretches of a single track light rail or tramway scheme, where the use of CPO powers will usually form part of the planning and design programme.

- 4.3 In my view, for general reasons already discussed, the difficulties raised by Sustrans are not problems with the CPO system itself but rather arise from not taking account of the requirements of the CPO process in project planning from the outset. As the DCLG Guidance makes clear seeking to negotiate acquisition is not incompatible with making preparations for the timely deployment of CPO action. The willingness to do so comes down, as I have said, to confidence, training and resources.
- 4.4 In terms of the specific problems Sustrans identify:
- (a) In terms of the CPO system, the purpose of identifying owners and occupiers is to ensure that they receive notice of the making a CPO and have an opportunity to exercise their rights to object and, prior to that, to enable the acquiring authority to open voluntary negotiations. Absence of ownership information following “diligent enquiries” should prevent or delay CPO action.<sup>23</sup>
  - (b) An acquiring authority should always have carried out an assessment of alternatives as part of their planning process and, if an alternative is proposed in the context of an objection to a CPO, the decision-maker must consider the alternative put forward. However, a decision-maker is not bound to favour an alternative on the basis that it is less intrusive than the scheme proposed.<sup>24</sup> An alternative proposal is not a basis for defeating a CPO, it is uncertain in its delivery of the public interest objectives of the CPO (e.g. encouraging active travel), will delay implementation or will not deliver the public interest benefits as well or as effectively.<sup>25</sup>
  - (c) In terms of funding the generally recognised position is that the decision-maker in deciding to confirm a CPO should be satisfied of the likelihood of funding to enable a scheme to proceed in a reasonable time. The current DCLG Circular deals with this point. New Welsh guidance should consider being more explicit on the type of statements of funding that the Ministers, as decision-makers on a CPO, would expect to see from other department of the Government or its agencies to enable the Ministers to have sufficient assurance on funding, if the CPO is made, to enable a decision to approve the CPO.

## 5. Legislative Codification

- 5.1 Finally, I would draw the Committee’s attention to the Welsh Government’s legislative codification proposals, currently being legislated for in Part 1 of the Legislation (Wales) Bill and the Law Commission’s forthcoming report on its project on Welsh Planning Law which has been identified as the subject of the first Welsh Law Code.<sup>26</sup>
- 5.2 Codification will ultimately require consideration of how to re-enact the main planning and regeneration CPO and related powers in Part XI of the Town and Country

<sup>23</sup> See the current DCLG Guidance at paragraphs 208 and 209 which sets out the position.

<sup>24</sup> See *R. (Clays Lane Housing Co-operative Ltd) v. Housing Corp* [2005] 1 WLR 2229 at para. 25


<sup>25</sup> See the discussion in Elvin *op. cit.* at paras. 34 – 40.

<sup>26</sup> <https://www.lawcom.gov.uk/project/planning-law-in-wales/>

Planning Act 1990. This will provide an opportunity to consider whether there should be a single Welsh Land Acquisition and Development Act which would bring together into a single Code all the purposes for which CPO powers were available in support of devolved functions along with the procedural provisions related to CPO. Recommendations along these lines were put forward by the Independent Advisory Group on Planning in 2012. <sup>27</sup>

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22<sup>nd</sup> September 2018

<sup>27</sup> Towards a Welsh Planning Act: Ensuring the Planning System Delivers Report to the Welsh Government by the Independent Advisory Group June 2012 p.113 *et seq.*

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Ein Cyf/Our Ref:	Eich Cyf/Your Ref:	Dyddiad/Date: 11 Medi 2018

Annwyl Robert,

Dear Robert,

Cyfeiriaf at eich e-bost sy'n gwahodd ymatebion mewn perthynas ag ymgynghoriad gan Bwyllgor Economi, Seilwaith a Sgiliau Llywodraeth Cymru ar brynu gorfodol sy'n gysylltiedig ag adfywio canol trefi a datblygu cyfleoedd teithio llesol. Ystyriwyd y mater gan ein Fforwm Rheoli Datblygu a hoffwn gynnig y sylwadau canlynol:

I refer to your e-mail inviting responses in respect of consultation by Welsh Government's Economy, Infrastructure and Skills Committee into compulsory purchase associated with town centre regeneration and developing active travel opportunities. The matter has been considered by our Development Control Forum and I would offer the following comments:

Cyllid gwarantedig ar gyfer yr amser y mae'n ei gymryd i ymdrin â'r Gorchymyn Pwrcasu Gorfodol yw'r prif rwystr. Mae'r cyfnod sy'n ofynnol er mwyn ymgymryd â Gorchymyn Pwrcasu Gorfodol o'i gymharu â ffrydiau cyllido a'u gofynion yn broblem. Mae hyn yr un mor berthnasol i gynlluniau adfywio canol trefi a theithio llesol a phrosiectau eraill megis Llwybrau Diogel mewn Cymunedau.

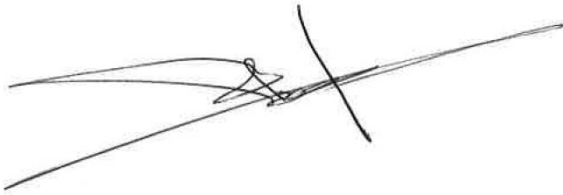
Guaranteed funding for the time it takes to deal with a Compulsory Purchase Order is the main barrier. The length of time it takes to undertake a CPO compared to funding streams and their requirements is a problem. This applies equally to town centre regeneration and active travel schemes along with other projects such as Safe Routes In Communities.

Mae ymdrin yn briodol â Gorchymyn Pwrcasu Gorfodol yn gofyn am faint sylweddol o amser ar ran swyddogion ac mae'n cynnwys is-adrannau amrywiol mewn awdurdod lleol. Mae gan awdurdodau lleol y sgiliau cywir ar gyfer y dasg ac arweinir y broses fel arfer gan gyfreithwyr ac arbenigwyr mewn timau eiddo (priso), cynllunio a phriffyrdd. Fodd bynnag, mae arbenigedd yn yr is-adrannau hyn wedi lleihau dros y blynyddoedd ac mae'r staff sy'n weddill dan fwyfwy o bwysau i ganolbwyntio ar weithrediadau statudol beunyddiol. Ar ben

To properly deal with a CPO takes a significant amount of officer time and involves various sections within an Authority. Local Authorities have the right skills for the task and the process is normally led by solicitors and experts within property (valuation), planning and highway teams. However expertise within these sections has diminished over the years and remaining staff are under more and more pressure to focus on day to day statutory functions. Furthermore, whilst CPO processes could potentially be carried out by an external consultancy this would not help in that costs would be significant and

hynny, er ei bod hi'n bosib i ymgynghoriaeth allanol gynnal prosesau Gorchymyn Pwrcasu Gorfodol, ni fyddai hyn yn helpu oherwydd byddai'r costau'n sylweddol a byddai'n rhaid hefyd neilltuo adnoddau'r awdurdod lleol o hyd i reoli a chefnogi'r ymgynghorydd. Hefyd, mae'n rhaid i gyllid ar gyfer adfywio a chynlluniau teithio llesol bara am nifer o flynyddoedd ac ystyried unrhyw broses Gorchymyn Pwrcasu Gorfodol yn briodol. Ar ben hynny, byddai sicrhau cyllid digonol yn gyffredinol ar gyfer Llywodraeth Leol i ymgorffori cadernid a chynllunio dilynol hefyd yn helpu i sicrhau argaeledd a pharhad arbenigedd.

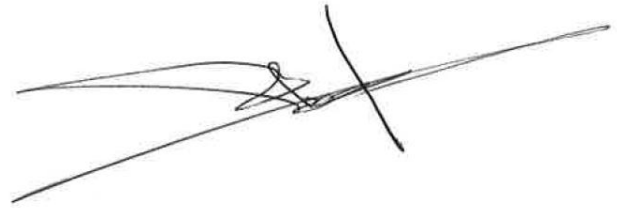
Byddem yn croesawu symleiddio'r broses Gorchymynion Pwrcasu Gorfodol.



Diolch,  
Mike Roberts

also local authority resources would still have to be made available to manage and support the consultant. Again, funding for regeneration and active travel schemes must span a number of years and properly take account of any CPO process. Furthermore, ensuring sufficient funding generally for Local Government to build in resilience and succession planning would also help ensure availability and continuity of expertise.

We would welcome streamlining of the CPO process.



Thanks,  
Mike Roberts

**A Stakeholder Inquiry by The Economy, Infrastructure and Skills Committee of the National Assembly into compulsory purchase.**

Submission by Stan Edwards MBA, FRICS, Honorary Member of the Compulsory Purchase Association, Director of Evocati Limited, a Welsh consultancy dealing with the promotion and challenge of Compulsory Purchase Orders. **12<sup>th</sup> September 2018**

**Focus of Brief**

To focus on the use of compulsory purchase powers in two specific areas of a. Regenerating town centres; and b. Opportunities for active travel.

To assist the Committee views have been provided on : **Q1** Are there any barriers to the use of compulsory purchase powers? How can they be overcome? **Q2** Are there any specific barriers to the use of compulsory purchase to regenerate town centres; and/or develop opportunities for active travel? **Q3** Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?

**Relevance of Stan Edwards MBA, FRICS, Hon CPA. to compulsory purchase.**

1. Holds an MBA, Cardiff Business School and Fellow of the Royal Institution of Chartered Surveyors. An Honorary Member of the Compulsory Purchase Association (CPA).
2. Involved in the delivery of compulsory purchase orders including town centres and regeneration /employment projects for 40 years in Cwmbran DC, LAW and the WDA.
3. Since 2006 has been involved with the challenge as well as promotion of compulsory purchase orders. A writer on CPO. This year provided CPO advice to the Coastal Housing Group, Swansea, relating to the CPO delivery of a second phase of Swansea High Street.
4. 2003 to 2017 Lectured on the MSc Spatial Planning and Real Estate degree, Cardiff University focusing on town centre retail development and its urban economic rationale.
5. **QUESTION 1** Are there any barriers to the use of compulsory purchase powers? If so, how can they be overcome?
6. **General Application** The taking of a person's rights is not to be done lightly. Statute has provided the mechanisms for CPOs to operate and rules to be followed are well documented. These are perceived as a barrier those who would simplify the ways in which people's property is compulsorily acquired. The Court of Appeal stated, "The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, which sways his mind into confirmation of the order sought."
7. A barrier is that there must be a compelling case in the public interest. Lord Denning stated, "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands"
8. **THE PROJECT – the Purpose Is it in the public interest?** CPO powers available for varying purposes and the most appropriate should be chosen. Lord Nicholls in the



Supreme Court stated “normally the scope of the intended works and their purpose will appear from the formal resolutions or documents of the acquiring authority”.

9. The delivery of any project by a public authority is an intervention in the market in the ‘public interest’. Where that intervention means acquiring the private rights and interests compulsorily such actions have to be justified by demonstrating a ‘compelling case in the public interest’. There are no general barriers to CPO if the rules are followed.
10. **Well Being of Future Generations (Wales) Act 2015 and Sustainable Development**  
The consequence of the WBFGW Act places global environmental and other fetters on economic development in Wales and is a barrier due to an in-built bias towards the climate and social justice. The originating Sustainable Development (SD) White Paper / Bill should have enabled a balanced view to be taken in respect of Economic, Social and Environmental factors. However the SD White Paper / Bill was designed to impact on bodies including Local Authorities and Welsh Government itself by directives to promote pro environmental behaviour. The legislation was exposed to selective consultation and its name changed to the present Act. The operating department changed from Planning. In a way this Act defines the **public interest for Wales**. The Appeal against the decision of the WBFG Commissioner is to Welsh Ministers.
11. **Well being and CPOs** Since 2004 all English and Welsh projects for mixed and non specific use requiring compulsory purchase, including retail and mixed use town centre schemes under the Town and Country Planning Act 1990 (as amended) powers, already have to consider social, economic and environmental (ESE) well being as well as demonstrating a compelling case in the public interest. The Government of Wales Act also includes an ESE CPO requirement. CPOs have generally to be confirmed (‘made’ in respect of ministerial CPOs) by Welsh Ministers . The barrier created by the WBFGW is one of sluggish delay caused by compliance. Also any objections under the Act could mean CPOs being engulfed in a policy mire in Wales causing a barrier not in place in England where opportunities to streamline the confirmation of CPOs are enjoyed.
12. Policy overload. Every new relevant policy adds an administrative / cost barrier .
13. Objections to the CPO project create a barrier and opportunities to challenge a CPO are found at a number of stages in the process. The greater the transparency and community engagement up-stream the more the likelihood of a justifiable CPO has of succeeding.
14. Are there objections to the project itself that would create an impediment or barrier to promoting a CPO? These may be planning or otherwise objections before a CPO is even mentioned notwithstanding that the objector/ advisors are aware of acquiring authority CPO powers. It is nowadays considered essential to remove potential barriers by assessing potential objections up-front building the arguments into the CPO case.
15. **Cost, Funding and Partnerships** Acquiring authorities have to demonstrate that there is a real prospect the scheme will proceed. The costs related to a CPO include not only compensation for acquisition, but administration costs, consultants and Inquiry /Tribunal costs and considered a barrier. Originally CPOs were funded by the state but where state funding dried-up partnership schemes became the norm where a developer / other organisation provided the funds and the acquiring authority used its CPO powers.
16. The barrier occurs where the developer is unable to demonstrate that the scheme is in the public interest rather the interests of the developer’s shareholders.

## **POWERS**

17. Public bodies are conferred with ‘enabling powers’ to acquire land compulsorily and the basic powers of which is to make CPOs is the Acquisition of Land Act 1981.
18. **Empowering Legislation** An Appeal Court Judge stated “where if compulsory power is authorised for a particular statutory purpose, it cannot be exercised for a different or collateral purpose”. It may be considered a barrier that if, say, a highway scheme was being promoted then strictly Highways Act powers have to be used unless there is a significant other use in conjunction such as housing development. In Welsh Government the Transportation Department delivers highway schemes whereas for economic development schemes can include highway development as part of a mixed use scheme under the extensive powers of the Government of Wales Act – not by the Transport Department. Local authorities also have to select the appropriate power, for example Housing Act for housing schemes, and Highways Act for highway. For retail and mixed use schemes in town centres Sec 226 of the Town and Country Planning Act 1990 (as amended) power is applied..
19. With careful thought the selection of the powers is not a barrier to promoting a CPO. Compulsory purchase powers are an important tool to use as a means of assembling the land required to help deliver social, environmental and economic change. Compulsory purchase of land in Wales requires the confirming approval of Welsh Ministers.
20. The greatest barrier of all is making sure that all the requirements are in place. This can be greatly minimised if approached systematically by following available guidance (see Para 24). This also relates to Skills and Expertise (see Q3 post)
21. Silo mentality within WG Departments is a barrier to a comprehensive CPO approach.
22. **PROCEDURES & CODES** There is a standard procedure where The Acquisition of Land Act 1981 lays down the procedure for acquiring powers of compulsory acquisition (compulsory purchase order (CPO) with The Compulsory Purchase Act 1965 providing procedure for taking the land. These in themselves are not considered a barrier. Standard Codes provide the basis on which compensation is paid. This is not a barrier in itself but application but inconsistency by valuers assessing and negotiation compensation may be considered a barrier. The CPA has put to its members a CPO protocol for consideration.

## **23. CPO GUIDANCE**

A **significant barrier** in Wales is the lack of formal guidance available for those promoting CPOs. The last Guidance for Wales was produced in 2004 (NAFWC Circular 14/04) and even then it was out of date when published. A draft Guidance for Wales was then commenced but not finalised. Wales had to use the English Circular 06/04 but this had Welsh elements missing. This year (2018) England published new guidance which Wales will have to use in the interim until a dedicated Welsh version is produced. Urgent!

24. **QUESTION 2 Are there any specific barriers to the use of compulsory purchase to regenerate town centres?** The general barriers outlined in Q1 and the resource issues in Q3 apply here as well.
25. The specific barriers in respect of regenerating town centres stem from attempts to justify the project which in turn impacts on justifying the use of CPO powers. These barriers derive from ignorance, error and ‘imperious immediacy of interest’ all three of which

- combine to deliver unintended consequences. Reviewing historic schemes gives present professionals the evidence to create barriers to schemes that may not be considered in the public interest.
26. Retail led CPOs have the potential for severe negative collateral socio /economic impact. Schemes set out in many ways to remove the competitive advantage of indigenous retail interests and replace them with others all in the name of the ‘public interest.’ A barrier (impediment) blocking schemes is an inadequate understanding of market forces and lack of market evidence coupled with a history of unhelpful, failed, misdirected attempts at retail led regeneration of obvious politically originated vanity schemes.
  27. The barrier of the results of negative appraisal. If a retail scheme has to receive public funding to make it happen then there must be no surprise that the finished project fails in market terms. Such schemes emanate from political aspirations, kudos-seeking regeneration urbanists feeding profit seeking developers.
  28. **Evaporated Demand** Many noughties schemes emanated from an irrational desire of politicians to fill voids or ‘fix’ failing town centres by replacing old with new or even displacing centres. The concept that a centre fails through lack of demand was /is not fully understood and that the ‘evaporated’ demand taken up elsewhere, in satellite retail parks or other town /city centres and their satellites is not easily, if ever, retrievable.
  29. **Perceptual and behavioural biases** Creating a new town centre retail destination, even with free parking, means that to make it a success the spendable income has to come from somewhere. Councils suffer from ‘optimism bias (aka ‘developer’s syndrome’ –believing it will all work out and then acts accordingly. Coupled with an “attention bias” a local authority will not investigate far beyond their (with the developer) argument to push the scheme. This approach takes no account of the collateral impact on other businesses, the intense competition in the centre in order to capture limited consumer spending.
  30. **The Barrier of erroneous Planning Policy** CPOs for retail led developments have been poorly assessed encouraged by planning policy that can only be effective in negative terms; never positively being able to promote retail town centre regeneration success.
  31. Predominately planning policy (particularly PPW) revolves around the sequential test, needs test (both quantitative and qualitative) and provisions for non-car shopping – pedestrians cycling, public transport. For a retail scheme to have a modicum of success the development requires car convenience shopping.
  32. The **Sequential test** forces competition closer to existing town centres where retail firms are failing and also creates congestion constraints. **Needs test (quantitative and qualitative)** is a fallacy based upon the premise that there are gaps to be filled in the in the retail profile (caused by leakage of spendable income). Need is not the test; demand is–evidenced with market trend analysis of changes in demand spending power. Retail is demand orientated with a determinant being is consumer preference and no one knows for certain the nature of leakage in consumer spending and how it would be re/captured.
  33. Consumer spending at any given time is finite and any new scheme will attempt to take spendable income from various sources that presently may be stable but no one can say

- the amount of collateral damage to other centres. Is the spendable income captured locally or some other innocent external centre - there is only so much cake.
34. There is a barrier of ignorance of urban dynamics as to what is being attempted in terms of regeneration. Is it Reinforcement, Replacement, Displacement or even Assisted Contraction of the city core? What are the alternatives? Is the retail project a substitute or complement? Has housing need /demand been assessed as part of a substitutionary or complementary scheme?
  35. The concepts of town structure have to be realistically reviewed as does succession (how the town changes -growth, maturity, decline), accounting for activities (uses) associations (activities linking uses together), accessibility (how goods, services and people move). How much is the core shrinking? What happens in a widening unstable transition zone considering Economic Social (Community) Environmental – sustainability drivers, plus Political Technological Legal – sustainability influencers. Any assessment has to consider population / distance gravitational critical mass effects of large cities in proximity.
  36. **Mode of transport (note Q1 b. Opportunities for active travel).** People travelling by foot, cycle or public transport have a marginal impact on the success of a retail in town centres. Depending upon the facilities provided it would require a dense, close, indigenous population to make an impact. The success of retail centres is geared to: catchment size (spendable income), footfall, convenience, unrestricted accessibility, few competing alternatives, new market entrants and internet impacts. Restricted car access is a barrier.
  37. Multiple CPO schemes The cross-impacts of numerous towns promoting retail led property regeneration causing more competition between towns is an irresolvable barrier.
  38. Other barriers include: cost /value mismatch, vanishing core business of, or associated with, the town, long linear high streets lacking parking and focus, immoveable physical constraints and Traditional v Redevelopment conflict.
  39. **QUESTION 3 Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?**
  40. **Operational Skills and Resources Public Sector (internal resource)** This applies to all acquiring authorities. Unused skills become lost. The reluctance to use CPO powers has meant skill reallocation to productive employment elsewhere. In past years larger local authorities undertook numerous CPOs maintaining standing CPO team/s.
  41. The Land Authority / WDA success in CPO was due to the internal land management teams each of which could project manage a CPO as well as other asset related projects. The core team included a Land Manager (project manager a Chartered Surveyor) who also assessed compensation. Other members included a Planner, Lawyer and an Engineer.
  42. **Private Sector (external resource)** Small private sector firms also cannot be expected to carry non productive CPO specialists if there are no projects forth coming. Previously the internal public sector teams were augmented by external specialists where required. External resources are now more the norm but knowledge and experience is an expensive scarce resource. Private firms are the main source of CPO training – in-house.
  43. **Valuers, Lawyers and Referencers and Planners.** Many authorities now completely outsource these resources. Also needed is specialist Leading Counsel to comment, prior to

making the CPO and at an Inquiry. Counsel **must** be specialist. Referencing was previously in-house but now mostly outsourced to specialist firms.

44. **Specialist Advisers** Depending upon the nature size of the scheme – to include Architecture & Design, Highway Planning, Structural / other Engineers, Funding Surveyor / urban economist/ retail development analyst, Housing advisor, Community Engagement, Environmentalists. All may provide evidence at a Public Inquiry. Not having a competent CPO project manager is a barrier. Skills come at a very high cost.
45. **Developers and Partnerships (see paras. 15&16)**
46. **Education** A number of Universities provide compulsory purchase compensation modules as part of a surveying /real estate course but I am unaware of any that teaches on CPO process / project management. Compulsory Purchase is not part of LLB law courses.
47. **Overcoming the skills and resource barrier** **Short Term** - Pooling of shared service CPO teams is an obvious answer for groups of local authorities in Wales regions with, where necessary, even cross regional sharing plus perhaps with the Welsh Government officers. Mentor services could be brought in where needed. **Long Term** Dedicated courses at various educational establishments and institutions
48. **Highway Department.** The Assembly Highway Department has a dedicated CPO team but have problems in transferring skills to wider CPO use.
49. **Resource threat.** Public authority internal CPO staff are targeted by the private sector once they have gained CPO knowledge and experience. A resource to be protected.
50. **Q4** What are your views on the [Welsh Government's](#) proposals for streamlining the Compulsory Purchase Order process, as set out in its consultation on infrastructure consenting? I have not commented on this item but many core CPO issues above apply.

## Compulsory Purchase

Sustrans is the charity making it easier for people to walk and cycle. We connect people and places, create liveable neighbourhoods, transform the school run and deliver a happier, healthier commute.

**Are there any barriers to the use of compulsory purchase powers? If so, how can they be overcome?**

- 1. Current legal processes do not favour use of Compulsory Purchase Order (CPO) powers for Active Travel Routes, as they are predisposed to apply to larger schemes such as highways.**
  - 1.1. Currently to obtain a Compulsory Purchase Order for an active travel route you must make the case that there are no viable alternative routes available to that requiring Compulsory Purchase Order.
  - 1.2. However, when it comes to active travel routes in most cases of traffic-free route provision, there is usually a road alternative. Often these roads are classed as viable routes even though when it comes to walking and cycling they are not realistically a viable option due to traffic speed and volume. Evidence from Sustrans' Bike Life programme (2017) shows that the overwhelming barrier preventing more people from cycling is safety. The National Assembly's Economy, Infrastructure & Skills Committee post legislative inquiry into the implementation of the Active Travel (Wales) Act supported this position.
  - 1.3. Local authorities are often reluctant to invoke Compulsory Purchase Order powers for cycle or walking routes due to the assumption that any inspector will find that alternative options are available.
  - 1.4. The process can also be very lengthy, taking upwards of two years and leading to unnecessary delays. For example, in Caerphilly the local authority has faced difficulties in invoking a Compulsory Purchase Order which has led to significant delays to the development of the Northern Sirhowy Route.
  - 1.5. This barrier could be overcome by ensuring alternative route considerations take into account Active Travel Act and National Cycle Network guidance when considering what viable alternative routes are for pedestrians and cyclists.

## 2. Funding

- 2.1. Currently there is a requirement to have funding in place to build a scheme before a Compulsory Purchase Order can be obtained.
- 2.2. This can restrict active travel routes and planning as most grant funding streams are available on an annual basis.
- 2.3. Changes to current practice should be made to make it possible for a local authority to undertake Compulsory Purchase Order in one year without having to prove funding will be subsequently available for delivery, subject to a suitable delivery period being agreed, we recommend 5 years, which would be in line with Planning Applications.
- 2.4. Funding is also an issue as the relative cost of applying Compulsory Purchase powers for lower cost active travel schemes is disproportionate relative to the overall scheme cost.
- 2.5. Consideration should be given to simplifying the process in terms of time and cost so that it is a more viable option for local authorities.
- 2.6. Sustrans Cymru thinks that unless these changes are made to accommodate active travel design and planning, Wales will not see the step change to get more people walking and cycling.

### **Are there any specific barriers to the use of compulsory purchase to:**

- **regenerate town centres; and/or**
- **develop opportunities for active travel?**

## 3. As above.

## 4. Multiple Landowners

- 4.1. Active Travel routes often involve multiple landowners, which can make it difficult as you have to identify all landowners and ensure a comprehensive Compulsory Purchase Order is prepared, this is especially difficult for rural routes.
- 4.2. To make this possible there should be a clear link between Compulsory Purchase Orders and Land Registry records.

- 4.3. There should be the ability to apply Compulsory Purchase Orders if a local authority can show it has made best efforts to trace a landowner and suitable notices have been issued, both publicly and on site.

### **Do local authorities have enough resources and the right skills in place to use their compulsory purchase powers effectively?**

#### **5. Resources and Training**

- 5.1. Given active travel schemes are often deemed as small the existing revenue pressures facing local authorities, we suspect that they are under-resourced and therefore not likely to enter into complex and protracted Compulsory Purchase Order processes. This is especially true if the project or scheme does not have extensive additional funding for this purpose.
- 5.2. Most local authorities lack sufficient specific knowledge of applying Compulsory Purchase powers in relation to the Active Travel (Wales) Act..
- 5.3. Previous examples are very limited, particularly in Wales, and there is a sense that authorities have to undertake bespoke approaches to the process each time, given the variable nature of active travel routes.
- 5.4. As previously stated in our evidence to the post legislative scrutiny inquiry the capacity of local authorities to deliver active travel act compliant infrastructure remains a concern. Therefore, planning and legal officers working on an active travel compulsory purchase order may not receive appropriate support.
- 5.5. Training for legal, planning and transport officers should be made available, so that local authorities can be clear on the potential use of Compulsory Purchase powers to obtain access for Active Travel infrastructure and be prepared to use this effectively as part of the planning process. This would ideally be incentivised through a suitable qualification.

### **What are your views on the Welsh Government's proposals for streamlining the Compulsory Purchase Order process, as set out in its consultation on infrastructure consenting?**



## 6. Views on streamlining.

- 6.1. The consultation document suggests that the streamlining is very focussed on large scale infrastructure projects, and many active travel schemes will fall outside of the thresholds for this level of intervention.
  - 6.2. Sustrans Cymru thinks that any streamlining of the Compulsory Purchase Order process should be linked directly to delivery processes identified in the Active Travel Act (Wales) 2013 and its design guidance, as well as the wider planning process and any revision to Planning Policy Wales.
  - 6.3. Sustrans Cymru welcome the consideration of delegating Compulsory Purchase Order decisions to submitting authorities instead of automatic referral to Welsh Government, as this could provide more flexibility for Local Authorities when dealing with Active Travel related Compulsory Purchase Orders.
  - 6.4. Thresholds for this process should be set to allow the majority of strategic Active Travel schemes to be eligible, subject to other appropriate factors consistent with the wider process.
  - 6.5. Training should be provided for independent inspectors, the training should cover specific matters relating to Active Travel infrastructure development as well as current policy context. This would breach the gap between policy and delivery and ensure that Active Travel infrastructure is meeting the correct standards. Specifically alternative routes and appropriate funding frameworks for delivery.
7. Although Welsh Government continue to commit investment in the National Cycle Network and active travel route interfaces with the trunk road network, Welsh Government has specifically moved away from acquiring land to deal with difficult stretches of new National Cycle Network routes, particularly in rural areas like Powys and Ceredigion. For example the route between Aberystwyth and Machynlleth has to have land acquisition to fit into the highway corridor but, despite numerous feasibility studies, these powers are not being exercised.
8. As part of the committee recommendations, Sustrans Cymru would like to see Welsh Government trunk roads taking a pro-active view on land acquisition for new strategic Active Travel routes and using Compulsory Purchase powers to achieve this. This position should be asserted in the forthcoming Welsh Government Welsh Transport Strategy.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales

Pwyllgor yr Economi, Seilwaith a Sgiliau/ Economy, Infrastructure and Skills Committee

Prynu Gorfodol / Compulsory Purchase

Ymateb gan Philip Meade / Evidence from Philip Meade

Evidence for Energy, Infrastructure and Skills committee 11<sup>th</sup> October 2018

Philip Meade FRICS ACIarb

Davis Meade, Oswestry

### **Issues with compulsory purchase.**

It is important for me to say from the outset that whilst I do not intend to be intentionally partisan, it is fair to say that I only really have experience from the claimants' side of the fence.

I have acted for claimants affected by compulsory purchase for over twenty years. Claims have usually been for farming clients, with some residential and commercial properties involved as well.

I dealt with the majority of agricultural claims on the A55 when it was built from Llanfair PG to Holyhead and as a firm we are currently heavily involved in acting for clients affected by the Newtown bypass.

I have also acted for numerous clients on bypass schemes including the Heads of the Valleys road, gas and water pipelines, minor and major electricity schemes and other infrastructure schemes such as the extension to the West Wales airport.

All in all, I have probably acted for in excess of 1000 claimants over a twenty five year career as well as acting as expert witness and appearing in front of the Upper Tribunal on compulsory purchase matters for utility companies including Dwr Cymru and South West Water.

This evidence is not meant as a criticism of any individuals or companies involved in any of the schemes I have been involved in.

I say this because I appreciate that working on the contractors'/acquiring authorities' side of the fence no doubt has its own challenges, many of which I would have little or no experience of.

In order to break the evidence down a bit, I intend to separate it into two categories, namely conflict avoidance and dispute resolution.

Conflict avoidance is something which I believe we as a profession are perhaps almost uniquely placed to do something about.

Dispute resolution is of course a huge subject and in a strict sense can include everything from negotiation and mediation to High Court and Tribunal.

In many ways, focusing on conflict avoidance is more important than dispute resolution, because if steps can be taken to avoid a dispute, money, time and stress can be avoided for all concerned.

I will try to cover both equally.

### Conflict avoidance

From my experience, one of the key things that appear to be forgotten (from the claimants' point of view) is that it is the contractors and subcontractors who build the infrastructure (roads, pipelines, cables etc.) that are the public facing people in any scheme.

Whilst they are of course ultimately employed by the acquiring authority and thus only really answerable to them, their actions and behaviour (good or bad) have a direct impact on those affected by the scheme and they are nearly always the first point of contact.

It is fair to say that almost without exception, in every case both parties (contractors and claimants) start out with good intentions.

It is very rare for a claimant to set out with the intention of being disruptive from the outset (although this does happen occasionally) and it is fair to say that I have never come across a contractor who intentionally sets out to be uncompromising.

The problem is that as a scheme progresses, different pressures come to bear (time constraints, costs, errors and mistakes) and very often the relationship can come under pressure.

Of these, time constraints and budget seem to usually be the root cause of any conflict.

As a scheme progresses and unforeseen events (bad weather etc.) cause problems, the need to get on and complete the scheme by a certain time takes over and goodwill starts to evaporate as corners are cut to save money and time.

This in turn leads to friction and misunderstandings and the parties tend to become less amenable, thus causing more problems and probably more delays and further expense. It becomes something of a vicious circle.

Whilst I appreciate the need for budget constraints, I have never really understood why contractors are put under so much pressure to complete a build by a certain date. It may be that the need to complete by a deadline is somewhat self-imposed (because they have other projects to move onto etc.) or it may be that the acquiring authority have to get it built for their own macro-economic reasons, grants, political reasons etc.

I am not in a position to be able to know what the reasons for these deadlines are, and it may be that they are a necessary evil, but if they can be addressed and the time limits relaxed, I suspect that would make a significant difference.

### Public Inquiry

Another source of friction is the Public Inquiry and more importantly, the outcome of the Inquiry.

One of the most common complaints I hear and have to deal with is when promises and undertakings have been made at the Public Inquiry and then broken.

This usually involves matters such as promises only to work on certain days and within certain working hours, or undertakings not to close roads.

It is accepted that large contracts such as building a road are far from predictable and any number of unseen events can occur.

There should, however, be some element of accountability and ideally more of an incentive for these promises and undertakings to be kept.

Whilst the contractors and the acquiring authority should have the flexibility to be able to adapt a build program to unforeseen events, it would help if there was an underlying accountability such that they should have to prove that breaking such promises is due to *force majeure* and not just due to less excusable factors such as not carrying out proper due diligence when bidding for the contract or not properly monitoring or managing their employees or subcontractors.

### **Possible solutions**

It would be far too presumptuous of me to suggest that I have a perfect solution to the above issues, but simply making the contractors more accountable for their actions and less inclined to just seek the quickest, cheapest and easiest solution would help.

One way to achieve this would be to have an independent ombudsman who could deal with complaints and suggest possible remedies and if necessary (in extreme cases) issue sanctions against the contractor and possibly the acquiring authority. I appreciate that this sounds somewhat draconian (especially in terms of sanctioning the acquiring authority), but I would suggest that the threat of sanctions would be a significant deterrent and in reality the more extreme sanctions may hardly ever have to be used.

The sanction that would be most effective against a contractor would be removal from the list of contractors used by the acquiring authority either permanently or for a period of time. The criteria for when such a sanction would be used is not for me to propose, but I would suggest that simply knowing that repeated transgressions (that are proven) could lead to suspension from the list will I would suggest have a significant effect.

Sanctions against the acquiring authority could go as far as limiting or removing their compulsory powers to the extent that future applications have to be authorised in some way by a higher authority for a period of say 12 months.

Again the criteria (and indeed legality) of such a sanction are not for me to comment on, but the threat of such a sanction could in my view prove very effective.

### **Dispute Resolution**

The other side to when CPO goes wrong is when it comes to sorting out the compensation due to a claimant.

Claimants come in many shapes and sizes from the individual property owner whose house is affected by the road but loses no land to a large business or farm that is completely decimated.

Whilst there are many issues that arise under the compensation heading, the over riding problem (for both parties) is that there is no simple, cost effective way of resolving a dispute.

The only statutory remedy is essentially a reference to the Upper Tribunal.

One leading QC who is the author of a leading text on the subject has suggested that unless the difference between the parties is £250,000 or more, the Upper Tribunal is probably not a suitable forum.

The vast majority of claims I have dealt with will be under £100,000 in total, the difference between the parties is rarely (if ever) £250,000 on rural properties.

There is also simply no forum at all for some disputes, such as a disagreement over the advance payment claimed for.

In short, a statutory claimant can ask for an advance payment as soon as the Notice to Treat and Notice of Entry are served. The advance payment is then calculated by the agent acting for the acquiring authority and a payment of 90% of that figure is then paid.

Crucially, there is no forum for challenging this.

The claimant, disaffected by an offer that he feels is below what it should be simply has to wait until the scheme is finished (sometimes years later) before he can submit his final claim. If the final claim cannot be agreed, then the matter can be referred to the Upper Tribunal.

If the advance payment falls short of the final claim (which is always the case in my experience), then the claimant is naturally entitled to the difference, but the only recompense for having to wait for the extra money is to receive interest on the difference. The statutory interest rate is currently so low that it makes such interest payments virtually non-existent and provides no incentive to the acquiring authority to try and get the advance payment right.

### **Possible solutions**

I have been heavily involved with the RICS in working with the Water Industry and more latterly HS2 to provide a simplified dispute resolution mechanism using various forms of Alternative Dispute Resolution (ADR) to resolve lower value disputes.

These range from Early Neutral Evaluation (ENE) where an independent surveyor assesses the likely compensation under given circumstances and provides a report that can be binding or non-binding (but used as evidence in any subsequent tribunal hearing) to Independent Expert Determination which is similar to ENE, but usually is binding.

A simplified arbitration scheme is also being considered where the third party would act as arbitrator, a role which is more judicial in nature and based on evidence put before him/her as opposed to using their own evidence and expertise.

A lot of work on these options has been done already and it would be fairly easy to set up meetings between the appropriate Assembly staff and the various RICS working parties to see if the ADR proposals are of interest to the Assembly.

The issue with advance payments could be resolved by introducing a fairer level of interest and/or having the right to refer the disagreement to a third party such as discussed above.

### **Summary**

In my view, the introduction of some sort of ombudsman type role to oversee the behaviour of a schemes contractors in particular would be a significant step in the right direction. Such an ombudsman would need to have “teeth” to be an effective deterrent against unreasonable behaviour, but also to be able to filter complaints that have no grounds.

The same ombudsman could refer appropriate compensation disputes to a third party (or at least recommend that as a course of action if the parties have not already agreed to do so).

A proper analysis of why time limits are set for some schemes would also assist and in appropriate circumstances, such time limits could be discouraged (or not actively encouraged).

The introduction of a simplified compensation dispute resolution procedure would also be immensely helpful as well as a fairer level of interest for under paid claims.

Mae cyfyngiadau ar y ddogfen hon





**of Wales Consultation on the Consolidation of the Town and Country Planning (Use Classes) Order 1987 and Town and Country Planning (General Permitted Development) Order 1995**

**Response from Mobile UK**

**About Mobile UK**

Mobile UK is the trade association for the UK's mobile network operators - EE, Telefonica UK (O<sup>2</sup>), Three and Vodafone. Our goal is to realise the power of mobile to improve the lives of our customers and the prosperity of the UK.

As mobile increasingly becomes the device of choice for running daily life both at home and at work, customers have come to expect more extensive coverage, more capacity and greater capabilities. Our role is to identify the barriers to progress, and work with all relevant parties to bring about change, be they Government, regulators, industry, consumers or citizens more generally.

# Government of Wales Consultation on the Consolidation of the Town and Country Planning (Use Classes) Order 1987 and Town and Country Planning (General Permitted Development) Order 1995

## Response from Mobile UK

### Introduction

#### Mobile Communication – relevance to the Welsh economy

1. This consultation on new permitted development rights present Wales with a very timely opportunity to redress an in-built disadvantage that exists in Wales arising both from geography and more restrictive planning legislation than in other parts of the United Kingdom.
2. Over the next few years, the industry will be rolling out the next generation of technology (5G), in addition to continued expansion of 4G. Getting to scale quickly will be crucial to the success of 5G, and Wales does not want to find itself again at a disadvantage from a legislative point of view.
3. With the timing and cycle of planning reform, Wales is well placed to leapfrog, as it were, other jurisdictions and to design a regime of PD that not only reflects the very challenging topography of Wales but also recognises the benefit of rapid 5G deployment, where it is required.
4. In the last 10 years or so mobile communication has joined other services such as power and water to become part the UK's essential infrastructure. 95% of adults own a mobile device. As a key indicator of the mobile's evolving place in our lives, advertising spend on mobile has risen from near zero in 10 years to £5.7 bn<sup>1</sup>, more than the total annual spend on TV advertising, and about 50% of all digital advertising.
5. Even though the market reached maturity in terms of subscriber numbers some time ago, the introduction of smartphones in 2007 and the deployment of 4G from [2013] has led to a very rapid rise in total network traffic – a rise that is set to continue for the foreseeable future.
6. With respect to the **Welsh society and economy**, mobile connectivity makes a number of very important contributions, for example:

#### Social inclusion

- 95% of people own a mobile device. Entry cost is very low (£15 for a basic phone) and only 0.2% of households are now in a mobile 'not spot'

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<sup>1</sup> <https://www.statista.com/statistics/281750/mobile-advertising-spending-in-the-united-kingdom-uk/>

- Those looking for houses and jobs can be alerted by text message of new opportunities. Research shows that good mobile connectivity increases participation in the labour market.
- Mobile connectivity supports flexible/home working, particularly in rural areas. 22% of people in rural areas are home workers v [% in the urban areas]

### **Safety**

- From April 2018, all new cars sold in the UK are fitted with E-Call (whereby an automatic call is made to 999, with location, in the event that an airbag is triggered)
- Tourists and visitors can use navigational tools and call for assistance, if required (on any network)
- Lone workers in remote places can be better safeguarded

### **Economic activity**

- Applications enable greater efficiencies in both the manufacturing and services sector (for example connectivity and trackability in supply chains is becoming increasingly important)
- Providing access to services such as banking and retailing, where the physical footprint of such facilities is reducing
- Supporting other large parts of the Welsh economy, such as healthcare and other public services
- Providing mobile connectivity to the UK's 39 million incoming tourists (many of whom go to rural areas) and the 70 million visitors to National Parks (almost all of which are in rural areas)

### **Mobile Communication – coverage in Wales**

7. In response to this rapid rise in the importance of mobile connectivity, mobile operators have played a central role in driving this progress by continually investing in their networks, value-added services, and subscriber acquisition. In the current cycle, mobile operators are investing around £2 billion per annum in new coverage, capacity and capability. In turn, business and consumer customers have shown extraordinary ingenuity in harnessing the power of mobile, to be more creative and productive, to offer new services, and to improve lives.
8. As a consequence, the measurements Ofcom publishes every six months or so have improved markedly.
9. 99.3% of premises in the UK have indoor data coverage (i.e. 3G or 4G) from at least two operators (and for 4G, the figure is 96%). Only 0.23% of premises have coverage from no operators. Perhaps unsurprisingly, 95% of those who have no indoor coverage live in the least densely populated areas (i.e. those with fewer than 2 residents per hectare)
10. That said, while there have been huge improvements from around £10 billion of investment in new coverage, capacity and capability, of the remaining parts of the UK still without a signal, the great majority lies within the hardest to reach places such as remote regions of Wales (and Scotland), including the road network.
11. Moreover, mobile operators are starting to declare their intent to deploy the next generation of mobile technology (5G) in the coming years. Initially, this is likely to entail

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at least an overlay of the 4G network, where some sites may need to be renewed, enlarged and strengthened to accommodate new antenna and radio equipment. Looking to the future, where capacity and connectivity needs demand, small cells will be deployed to deliver the very high bandwidth and low latency of which 5G is capable.

12. With 4G, planning reforms in England, for example, came too late to be of any material assistance in rapid deployment. This was one of the reasons that the UK fell behind other countries.
13. With 5G, there is now an opportunity to implement reforms in advance of deployment. This is particularly so in Wales, where the legislative cycle is the most closely aligned with 5G rollout.
14. If all 5G deployment, other than in the most sensitive places, can be regarded as *de minimis* (small cells) or executed under permitted development (macro cells), the opportunity to get to scale quickly will be very much enhanced. Getting to scale, and realising the accompanying economies, will be key to ensuring that the UK establishes the world leadership to which the Government aspires.
15. Thus, the cost saving of PD v full planning is very much a secondary issue when compared to the strategic importance of moving quickly and with the added certainty that development under PD or *de minimis* confers.
16. The mobile operators will continue to invest in new coverage, capacity and capability; the respective governments' contributions, at all levels, is to allow that investment resource to go further and faster by, among other things, removing unnecessary regulatory barriers.

### **Mobile Communication – evolution over 30 years**

17. Mobile operators will also continue to employ a combination of past technologies and different frequency bands. Modern mobile broadband networks are now comprised from a synthesis of succeeding generations. Of the technologies deployed, only analogue has been completely retired and withdrawn.
18. The first [analogue] mobile networks were launched in the UK in 1985 (first generation). 2G (the first digital) in 1992, 3G in 2003 and 4G in 2012. Along the way, many new blocks of spectrum between 800MHz and 2.4GHz have been licensed to and deployed by mobile operators. In the future, further blocks will be auctioned and deployed (700MHz, 3.4GHz, millimetre wave blocks [ $>30$ GHz]).
19. Faced with a rapid rise in total network traffic (7 times in the last 5 years) and consumer expectations of good broadband speeds, mobile operators are having to employ all the resources at their disposal (spectrum & technologies) and also use innovative techniques such as carrier aggregation to continue to deliver a high quality service. This is a highly complex radio engineering challenge. Consequently, operators need as much flexibility within the planning regime to accommodate the equipment (antennas and ancillary apparatus) needed to meet customer expectations.

**Responses to questions (relevant to the deployment of mobile equipment) in the consultation document**

***Q20 Do you agree that developers and LPAs should be able to agree longer determination periods for the consideration whether prior approval is required?***

Yes – this ability to extend provides flexibility to both LPAs and MNOs to find solutions when the necessity/request for extension is reasonable.

***Q25 Do you agree with the introduction of permitted development rights for the installation of smart meter antenna?***

Yes – there should be PD rights for smart meter antennas on dwellings etc but mobile operators should also be afforded at least the same rights to add 5G antennas to identical dwellings/buildings, even in protected areas, for the same reasons.

***Q34 Do you agree with the proposed increases in height for the installation, alteration or replacement of a mast on protected and unprotected land?***

Paragraph 3.87 is very concerning. In England, Scotland and NI (and NI's draft legislation adds to this) there are parameters for replacement/upgrade height increases without prior approval in both Article 1(5) locations and outside. Wales must follow suit.

Mobile UK does not agree that the suggested height parameters go far enough – Wales has among the most difficult topography and scattered population in the UK and so more height is needed for backhaul line of sight and to maximise coverage to make sites in these areas both technically viable and commercially feasible. Lack of backhaul line of sight due to lack of height could mean additional rural sites continue to be not viable.

In the attached Confidential Annex Mobile UK is providing an example (take from Argyll in Scotland, as it happens), where a higher mast was able to achieve line of site (LOS) with neighbouring sites and thus. Confidential Annex 1 shows the coverage where site 385 is under 30m. Confidential Annex 2 shows the coverage achieved where site 385 is at 30 metres and it is able to link in 2 satellite sites to deliver coverage in local pockets. This is the type of scenario that is very likely to be helpful in the remaining harder to reach places of Wales. Without sufficient height to achieve LOS in difficult topography then there will be many cases where it is impossible to make remote sites live at all – resulting in it being impossible to service some rural communities. While the example provided shows lost coverage across the villages and a ferry route, this principle is entirely transferable to a

valley floor where, commonly across rural Wales, communities, housing and transport infrastructure is located.

30m masts will also provide extra geographic footprint in some situations, where increased height is needed to overcome topography and maximise coverage (something that can be assessed in propagation tools using OS and topography data), it is also needed to clear 'clutter' in the form of trees and buildings (something the propagation tools can't 'see' as the data cannot be built into the tools. Taking account of the specific challenges in rural parts of Wales, as against other regions of the UK, a more progressive PD regime for mast heights would be beneficial.

***Q35 Do you agree with the change to mast width described in relation to the alteration or replacement of a mast?***

The proposed addition of 1m or 1/3, whichever is the greater is potentially welcome but there is a strong argument for relaxing this parameter even further. As mentioned above, some existing sites will have to be reinforced to accommodate more antennas and equipment. Moreover, it is anticipated that 5G antenna will have a design that integrates more of the radio apparatus than up to now (to achieve some of the advanced radio techniques being deployed), resulting in the antennas being heavier. Consequently, masts will have to cope with increased wind loading and thus be more robust (particularly in some of the exposed locations where coverage is required in Wales). It would therefore be very helpful to specify that the 1/3 or 1m (whatever is the greater) parameter applies to the mast (being replaced) at its widest point (and remove 'at any given height' and that this dimension can be used for the upgraded mast. In other words a tapered structure can be converted into a structure with vertical sides, rather than mirror the shape of the existing structure.

***Q36 Do you agree with the definition of 'small antenna' and 'small cell system'?***

Mobile UK believes there is considerable scope for **simplification** in this whole section. Reference to different types of pico, femto, small cell is not helpful to local planning authorities. Nor does it make sense to distinguish what can be done with the antenna of a small cell and what can be done with the ancillary equipment, some of which might be externally visible and some of which may not be, depending on the design of that particular installation. Looking to the future, we could see equipment that is more integrated in design.

Mobile UK thinks that the best approach would be to focus on simply 'small cell systems' (including the antenna) and on the allowable dimensions.

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The design of small cell systems for range of frequencies that will be used for 4G and for 5G, including 'millimetre wave' bands above 30GHz is under continuous development from multiple manufacturers. Wherever possible, as has been shown with networks rollout up to now, mobile operators will look to deploy within what is allowed under permitted development; the time and resource involved in going to full planning demands it.

As such, the more flexibility the Welsh Government can provide in this respect, the more likely that it will be straightforward to rollout small cells in due course. Increasing the cubic capacity to 60,000 cubic centimetres and simplifying the measure will be helpful:

*'Small systems' means an antenna, and any apparatus ancillary to that antenna which: (i) operates on a point to multi point or area basis in connection with an electronic communications service (as defined in section 32 of the Communications Act 2003); (ii) does not, in any two dimensional measurement, have a surface area exceeding 5000 square centimetres; and (iii) does not have a volume exceeding 60,000 cubic centimetres; And any calculation for the purposes of paragraph (ii) or (iii) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other supply structure.*

**Q37 Do you agree with the proposed changes to small antennas and small cell systems allowed on buildings and structures (other than dwellinghouses and within their curtilages) in unprotected areas, and protected areas?**

Mobile UK welcomes these are positive steps but PD rights for small cells in protected areas should also come without the necessity for prior approval – they should be straight PD. There must be the ability to utilise PD regs **without** prior approval, even in Article 1(5) locations.

**Q38 Do you agree with the changes to permitted development rights for small antenna and small cell systems on dwelling houses and within their curtilages in unprotected areas; and dwelling houses in protected areas and conservation areas?**

Mobile UK welcomes these positive moves but, again, there is scope to go further. The existing restrictions on buildings within 20m and facing a highway **must** be removed. It is both unnecessary and counter-productive. If the logic for retaining this restriction is for visual amenity grounds then it is counter-productive – rooftop antennas on the top, flat, section of a rooftop (where there is no such restriction) are more prominent with greater visual impact protruding above the building outline and in the skyline silhouette than facemounted antennas that are attached against the backdrop of the building with no protrusion above and coloured to match the building it is attached to. So the facemounted

within 20m of a highway is counterproductive where 5G may require many small cells in urban areas.

***Q39 Do you agree these changes are sufficient to accommodate the likely needs of future network requirements?***

No. For reasons alluded to in answering other questions (limitations meaning cells in protected areas may need prior approval) mean that progress will be significantly hampered and slowed unnecessarily. If Local Planning Authorities are overwhelmed with unnecessary applications for prior approval that will slow down progress and stretch LPA resources. The same applies to the 'face or slope facing a highway' restriction – in practice this will create the need for numerous unnecessary applications that will slow progress and roll-out of 5G technology.

Furthermore, it would be appropriate that mobile operators benefit from the same rights as set out by fixed operators, that being; allowing telegraph poles to be PD for the use of small cell antennas and equipment cabinets adjacent. It seems logical that if a fixed operator can install a telegraph pole under a notification then the installation of the same structure but with an antenna (camouflaged if necessary) would also seem appropriate. This would allow a far greater number of installations in designated areas and rural communities where the availability of tall buildings and structures is sparse.

***Q40 Do you agree with the changes to other antenna system and to the increase in numbers of electronic Communications code operators present on a building?*** This is a positive step but a **major** issue that needs rectified if these changes are to accommodate the needs of mobile operators to rollout 5G technology across Wales. Furthermore, there are the implications of the 'Forsythia House' judgement<sup>2</sup>. The interpretation arrived at in this case will create uncertainty and the need for numerous prior approval applications. The legislation around rooftop antennas must be written and worded appropriately to avoid the Forsythia interpretation so that it is clear that rooftop antennas and their supports/fixings are Permitted Development without prior approval and they are **not** 'masts' interpreted akin to a ground based mast.

***Q41 Do you agree to an increase in the time from 6 months to 18 months, where land may be used in an emergency to station and operate moveable electronic communications apparatus required to replace unserviceable equipment?***

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<sup>2</sup> <http://www.landmarkchambers.co.uk/cases.aspx?id=5471>



Yes, this is positive but it is important that 'emergency' and 'moveable' are clearly defined within the Part 24...

*““emergency works”, in relation to the operator or a relevant undertaker for the purposes of paragraph XX, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause –*

*(a) Danger to persons or property;*

*(b) The interruption of any service provided by the operators network, or as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment;*

*or,*

*(c) Substantial loss to the operator or, as the case may be, the undertaker, and such works as in all circumstances it is reasonable to execute with those works”*

'Moveable' should make clear that the proposal does not need to be on wheels to be considered moveable; Mobile UK has always argued that 'moveable' simply means non-invasive, non-permanent, that could be relocated at some stage – this could include sitting on wheels, sitting upon gravity based concrete plinths etc etc and the legislation should be written to reflect this.

## The National Assembly for Wales' Economy, Infrastructure and Skills Committee (EISC) inquiry into Digital Infrastructure in Wales

### Memorandum for EISC hearing on 11th October 2018

October 2018

1. Mobile UK welcomes the opportunity to submit comments in advance of the oral hearing on 11<sup>th</sup> October.
2. When your inquiry was launched in 2017, Mobile UK was encouraging the Welsh Government to publish a Mobile Action Plan, along the lines that had been deployed in Scotland in 2016.
3. We were pleased that this idea was taken up and welcomed the publication of the Mobile Action Plan in October 2017, both for its scope and its ambition.
4. While there is no doubt that the Welsh Government has been progressing some of the items identified, the pace of change needs to be quicker, with some of the Action items yet to be started. At the end of this document, we have provided comments on our perspective of the progress that has been made against each Action item.
5. In the meantime, mobile operators have continued to enhance and expand their networks, and, across the UK, they are investing around £2bn per annum (c.15% of revenues). In December 2017, Ofcom published coverage data based on June 2017 and in the Spring a further update based on data up to December 2017.<sup>1</sup>
6. In that six months, there was a 96k hectare reduction in not-spots in Wales (3G/4G), about 5% of the country. 91% of the geographic territory of Wales has 3G/4G mobile coverage from at least two operators (of which 76% is 4G).
7. In the same period, an additional 147k people in Wales gained 4G coverage. 52% of the population now has coverage from all four operators, 91% from at least two operators and 2.8% have no 4G coverage yet. Less than 1% of the population of Wales lives in premises without mobile coverage.
8. This progress has been achieved independently of the Mobile Action Plan. However, mobile operators are now reaching the hardest to reach places and putting together plans to deploy 5G.
9. On the policy front, Mobile UK has been seeking to engage Local Authorities (LAs) with a view to making it much easier for operators to deploy on land and buildings in the public domain. The Welsh Government organised a successful roundtable with LAs in Llandidnod, where the ideas presented by Mobile UK were well received.
10. We have recently published a report '*Councils and Connectivity*' in which we emphasise the importance of political leadership at LA level, the need for LAs to make their assets easily available for mobile use and the benefits of having a digital champion at a senior level to ensure that LAs are aligned to the economic and social benefits accruing from good mobile

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<sup>1</sup> Ofcom, Connected Nations Report Spring Update 2018.

connectivity.<sup>2</sup>

11. The LAs present suggested they would welcome a clear steer from the Welsh Government that connectivity is part of deriving the best value from local assets in line with the new Electronic Communications Code. Mobile UK also presented at a seminar at the Royal Welsh Agricultural Show, organised by Ofcom Wales. It is apparent that much more needs to be done at a grass-roots level to encourage a more collaborative approach to mobile deployment. Mobile operators cannot overcome these significant challenges alone.
12. **If Wales is not to fall behind again regarding mobile deployment and coverage, mobile operators need the actions identified in the Action Plan to be put in train with much more urgency.**

Welsh Mobile Action Plan – Progress Report		
Welsh Government Action	Progress	RAG
<b>Planning Reform</b>		
<p>Commission research to inform changes to permitted development rights for telecommunications equipment to improve mobile connectivity.</p> <p>Deadline: Autumn 2017</p>	<ul style="list-style-type: none"> <li>• <i>Arcadis Report published December 2017. Recommended PD reform, mostly to catch up with England</i></li> <li>• <i>The Welsh Government is currently consulting on reform to Permitted Development Rights (along the lines of ‘catch up with England’). Mobile UK response submitted 26th September 2018</i></li> </ul>	
<p>Refresh Planning Policy Wales (PPW) to ensure that it highlights the positive relationship between telecommunications and the economy.</p> <p>Deadline: Revised PPW will be published for consultation by Spring 2018.</p>	<ul style="list-style-type: none"> <li>• <i>Consultation conducted April-July 2018.</i></li> <li>• <i>Engagement to be undertaken Oct 2018 – June 2019.</i></li> </ul> <p>Draft: “NDF Policies will provide a framework for the delivery of modern digital infrastructure across the whole of Wales and will require the technological capacity to be built into the design of new development, infrastructure (including transport infrastructure) and areas of 20 growth and regeneration.”</p>	
<p>Mobile network operators will work with the Welsh Government to revise and, if appropriate, consolidate the code of best practice and Technical Advice Note (TAN19) on mobile network infrastructure development.</p>	<ul style="list-style-type: none"> <li>• <i>Awaiting feedback from the Welsh Government.</i></li> </ul>	

<sup>2</sup> <http://www.buildingmobilebritain.org.uk/wp-content/uploads/2018/09/68548-Mobile-UK-%E2%80%93-Councils-and-Connectivity-AW-%E2%80%93-web-ready.pdf>

<b>Public Assets</b>		
Facilitate relationships between mobile network operators and mobile network infrastructure providers, and estates managers and other interested parties in Welsh public sector bodies.	<ul style="list-style-type: none"> <li>No deliverables yet although a consultative roundtable held at Llandidnod Wells with LAs.</li> </ul>	
Undertake an audit of the existing asset registers, including the proposed publicly available national public asset register, and assess their suitability for use by mobile infrastructure providers.	<ul style="list-style-type: none"> <li><i>Mobile UK understands that there has been some assessment of what might be possible within the Welsh Government but not much visible progress yet.</i></li> </ul>	
<b>Business Rates</b>		
Assess the impact of a reduction in non-domestic rates for new mobile infrastructure (masts, small cells etc.) on investment decisions by the mobile operators.	<ul style="list-style-type: none"> <li><i>Mobile UK has responded to a Welsh Government consultation on business rates in April 2018.</i></li> </ul>	
Where evidence suggests that a reduction in non-domestic rates would encourage investment the Welsh Government will consider providing non-domestic rates relief on appropriate mobile mast sites.	<ul style="list-style-type: none"> <li>Under consideration by the Welsh Government</li> </ul>	
<b>Regulation</b>		
Research to understand the opportunities and challenges of geographically differentiated regulation, engaging with Ofcom as appropriate.	<ul style="list-style-type: none"> <li>Welsh Government has been lobbying Ofcom on the terms of the 700 MHz auction</li> </ul>	
<b>Emerging technologies</b>		
Support emerging technology initiatives throughout the country including solutions to support rural businesses.	<ul style="list-style-type: none"> <li><i>Isolated examples (e.g. O2's Staylittle in Wales)</i></li> </ul>	
Identify opportunities to develop and test innovative technologies in Wales.	<ul style="list-style-type: none"> <li><i>Operators are constantly testing new technologies and initiatives where relevant and will share findings where appropriate.</i></li> </ul>	
<b>Infill</b>		
Scope the extent of any public intervention and mobile operators, through Ofcom, will share appropriate network information to inform its development.	<ul style="list-style-type: none"> <li><i>No comment</i></li> </ul>	
<b>Transport</b>		
Explore opportunities for improving connectivity on transport networks.	<ul style="list-style-type: none"> <li><i>No comment</i></li> </ul>	

**PROGRESS OF THE WELSH GOVERNMENT'S MOBILE ACTION PLAN**

BT Group, of which EE is a part, welcomes the opportunity to provide written comments to the Committee on progress made to date on delivery against the Welsh Government's Mobile Action Plan.

This note sets out that:

- EE 4G coverage now extends to over 90% of the geography of Wales.
- The Mobile Action Plan set out a welcome framework for reform – but there have been no concrete deliverables to date.
- The imperative for a more supportive mobile deployment environment will only increase as 4G coverage reaches the edges of commercial viability and as 5G roll-out begins.

**1. EE 4G coverage now extends to over 90% of the geography of Wales**

1.1 Since providing oral evidence to the Committee in January 2017, EE has continued to invest significantly in its network in Wales. We have now upgraded the vast majority of all our Welsh sites to 4G services and we are progressing towards the completion of our new site build programme, delivering over forty new masts principally across Gwynedd, Powys, Ceredigion, Conwy, Carmarthenshire and Pembrokeshire. We have made available our new sites to the other mobile network operators should they want to share the infrastructure.

1.2 This investment has taken our 4G geographic coverage of Wales from c.77% in January 2017 to over 90% today.

1.3 We recognise that there is still further to go, but to do so requires investment in increasingly rural and remote locations. To extend rural networks to wherever people live, work and travel will require deployment economics to change markedly. Not only do remote cells serve very few customers, the costs of deployment to hard-to-reach locations are often significantly greater than average, mainly due to the challenges of providing power and backhaul.

1.4 Succeeding here requires a more effective approach to partnership working across all stakeholders involved in delivering mobile coverage – principally, mobile operators, land owners, local and national governments.

**2. The Mobile Action Plan sets out a welcome framework for reform – but there have been no concrete deliverables to date**

2.1 The Welsh Government has, through its Mobile Action Plan, recognised the need to create better conditions for investment in and deployment of mobile infrastructure, using the policy levers available to it. We believe that the nine areas it covers<sup>1</sup> are appropriate issues on which to focus and we have continued to engage constructively.

2.2 Since the Action Plan's publication, some positive steps have been taken. For example:

- A consultation has just closed on reform to Permitted Development Rights which, if taken forward, would broadly bring Wales into line with England. However, via Mobile UK, we have raised concerns regarding the level of ambition set out in the consultation, particularly given the specific topographical challenges faced in Wales.

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<sup>1</sup> Planning reform, access to public sector assets, non-domestic rates relief, regulation, innovative solutions, infill programmes, coverage on transport routes, the role of ESMCP, and addressing major events and special projects.

- A consultation on business rates was conducted in April 2018 exploring the potential impact of a reducing non-domestic rates on mobile infrastructure investment. We have not yet seen the Welsh Government's conclusions.
- Initial discussions took place in June 2018 regarding more effective access to public sector assets.

2.3 Overall, there have yet to be any concrete reforms that we are able to utilise and we are concerned by the current speed of delivery. When Wales is compared to other parts of the UK<sup>2</sup>, then in many areas it is playing catch-up.

### **3. The imperative for a more supportive mobile deployment environment will only increase as 4G coverage reaches the edges of commercial viability and as 5G roll-out begins**

3.1 The progress we have made to date in extending coverage has therefore very largely been made without additional support from the Welsh Government. Going significantly further will require this support, including the consideration of direct publicly-funded interventions to deliver coverage to enduring not spots.

3.2 Looking further ahead, we plan to begin the roll-out of 5G in 2019. The extent and speed of this deployment will crucially depend on the ease of access to public assets, how well the planning regime facilitates the upgrading of existing macro sites (and, in future, the deployment of small cells) and operators' relationships with local government.

3.3 We believe that greater urgency and prioritisation is needed from the Welsh Government if the shared ambitions of the Mobile Action Plan are to be realised.

**28 September 2018**

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<sup>2</sup> Both England and Scotland have, for example, already enacted reforms to their planning regulations to ease mobile infrastructure deployment. The Scottish Government is also progressing a 4G infill programme.

Mae cyfyngiadau ar y ddogfen hon



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Llywodraeth Cymru  
Welsh Government

Russell George AM  
Chair  
Economy Infrastructure and Skills Committee

4 October 2018

Dear Russell

At the scrutiny session of the Economy, Infrastructure and Skills Committee on 19th September, I said I would write to you with additional information in response to the following issues raised by the Committee, which I will respond to point by point:

- ***Economic Contracts: The Cab Sec agreed to facilitate seeing anonymised examples of Economic Contracts.***

As I indicated at Committee, we plan to engage the social partners in reviewing an anonymised sample of signed Economic Contracts. I expect this to happen soon and I am very happy to share that information with Committee. I have asked my officials to liaise with your clerk to facilitate this.

- ***Details of the size of the businesses that have signed up to the Economic Contract***

72 businesses have currently signed up to the Economic Contract. Of those:

- 8 are micro businesses;
- 22 are small businesses;
- 22 are medium sized enterprises;
- 20 are non-SMEs.

- ***To provide further details on the 29 businesses that have been awarded just over £6.2 million from the Economic Futures Fund since it was launched in May.***

34 businesses have now been awarded just over £7.7 million from the Economy Futures Fund (EFF). Further detail on these awards is included at Annex A.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



- ***To write to the committee providing a detailed breakdown of total £5billion investment in the franchise and Metro under the new contract, including the funding source, what will be funded and expected spending per year for each item?***

The investment of nearly £5 billion is over the next 15 years of this contract. The breakdown is follows (including inflation and VAT where appropriate):

<b>Investment area</b>	<b>Value</b>	<b>Source</b>
Rail services revenue expenditure	£3 billion*	Welsh Government
South Wales Metro infrastructure operation, maintenance and renewal, and Valley Lines asset transfer expenditure	c.£900 million*	Funding transferred from UK Government as part of the asset transfer on basis of fiscal neutrality
South Wales Metro capital investment (including an additional £55m for the Taff's Well depot)	£793 million	Welsh Government - £515 million European Regional Development Funding (ERDF) - £140 million Department for Transport - £125 million (2014 prices)
<b>Total</b>	<b>c£4.7 billion*</b>	<b>*this will be subject to inflation over the next 15 years.</b>

The current South Wales Metro forecast spend profile is based on the concept design provided as part of the procurement, against the expenditure envelope of £738 million. In light of the fact that this profile is subject to the detailed design and discovery work currently underway, I commit to write to the Committee to set out the expenditure profile in more detail, including the anticipated draw down of UK Government and ERDF contributions, when this detail is confirmed.

- ***An update on the steps the Welsh Government is taking to assess and prepare for the impact of Brexit on business support funding, transport infrastructure and services and to ensure adequate preparations are made. (Particularly with regard to Cardiff airport, Welsh ports, road freight services and the highway network)***

We have been working and will continue to work in a joined up way with the UK Government and key stakeholders on operational preparedness for EU exit, including planning for the potential effects on the transport network resulting from new and or additional customs checks at our sea ports and airport. Stakeholders include Wales' major ports, Cardiff International Airport, the WLGA, key local authorities, the Freight Transport and Road Haulage Associations. Much of the detail of this work remains confidential at this stage, reflecting its sensitive, commercial nature.

However clarity is needed urgently on decisions before government and business can be expected to start investing in significant mitigation measures. Otherwise there is the significant risk of investing both public and private resource in solutions which are not needed. The Technical Notices published by the UK Government to date do not help in mitigating that risk.

If significant change is required, I have made it clear that the UK Government must take responsibility for the pressures being put on Welsh businesses and the infrastructure which supports them, and make funding available to assist in the transition to a post-EU Exit environment.

To support business through the complexities of Brexit, we have recently launched our new Brexit Portal, which is part of the Business Wales website. The portal provides up-to-date information and advice on a range of relevant business topics including trading internationally and workforce planning as we enter the six month period leading up to the UK's departure from the EU. It houses an interactive diagnostic tool which will further enhance our existing support to businesses, raising awareness of appropriate preparedness actions and additional sources of support. It does, in effect, provide a health check for those already prepared or identifying key actions for those needing more support. We will continue to refine and develop content on the portal as the precise nature of Brexit becomes clearer and I hope to be able to make further announcements for business support over the autumn.

We are also providing direct financial support to sectors across Wales to prepare for Brexit. This includes the £50 million EU Transition Fund (announced in January 2018). The fund will help business, public services and other partner organisations in Wales plan for and prepare for the impacts of Brexit. The Cabinet Sub Committee for EU Transition has committed over half of the £50 million EU Transition fund to help Welsh businesses and public services plan and prepare for Brexit. The fund is part of our Brexit plans to directly help businesses and public services for the significant changes ahead and will help future proof our economy.

We recently announced £6m in funding for Airbus, Toyota and Ford to help them prepare for Brexit. Airbus and Ford are part of global groups and our support will help significantly improve the chances of developing the Welsh-based sites as the preferred locations for any future and post-Brexit European investment projects. Our support will also in turn help secure business for the aerospace and automotive supply chains in Wales. Any opportunity to up-skill a workforce with transferable skills is imperative in order to continue showcasing Wales on the global stage as a desirable place for business, especially in a post-Brexit world.

September has seen the publication of a second batch of Technical Notices by the UK Government. My view is that, overall, the language is as opaque as ever, but the theme emerging is again one of uncertainty. The September batch of Technical Notices indicate new and complex burdens for businesses, with little detail on the practical steps they as organisations can or should take to prepare. This is why we are being pragmatic in our approach as a Welsh Government and will continue to support business to prepare for all eventualities. We will continue to listen to employers, tailoring our approach and supporting businesses accordingly.

Many existing Welsh Government services remain highly relevant in the context of Brexit. Welsh Government led Export Support services are an example where

demand is now growing as more businesses consider the implications of leaving the European Union.

The Welsh Government's offer on export support is designed to help new and existing exporters to overcome the barriers that are preventing them from growing their business through exports. Support is designed to:

- Inspire companies to see exporting as a vehicle for growth;
- Transfer the knowledge and skills to help companies increase their capability to export;
- Help companies to connect with potential customers overseas;
- Support visits to overseas markets.

Support is available to companies of all sizes in Wales that either have a product or service that originates from Wales, or that are adding significant value to a product or service of non-Welsh origin. Details of the range of relevant services are all accessible via the Brexit Portal and Business Wales websites.

The Development Bank of Wales (DBW) also has the objective of providing greater levels of funding to SMEs and improving the integration of the provision of advice and support to businesses, by working more closely with Business Wales. Over 5 years, from 2018 – 2023, the DBW aims to invest £1bn into the Welsh economy; support 1,400 businesses; and create or safeguard 20,000 jobs. DBW now manages in excess of £1 billion of WG funds including around half a billion pounds across all business funds and the £454 million Help to Buy – Wales.

Immediately following the decision for the UK to leave the EU, the Development Bank created and launched the Wales Flexible Investment Fund in 2017. The purpose of this £130million fund is to provide flexible and patient capital to meet the varying business needs in the Welsh market following the UK decision to leave the EU. Its key objectives are to provide a highly flexible funding vehicle that can react to evolving market needs particularly during negotiations for exiting Europe, provide economic stability and liquidity in the market, and encourage businesses to continue with investment plans.

We continue to keep our offer to business under review and will be making further announcements on support for businesses later in the autumn.

- ***Question from Adam Price regarding the feasibility study for the Swansea Bay & Western Valleys directed to Simon Jones who will provide further details.***

Welsh Government officials will be meeting Swansea Council officers on the 4<sup>th</sup> October to agree how the Metro work in the area is to be taken forward. This discussion will focus on how the various ongoing developments come together to inform the type of interventions required to deliver an integrated transport system.

These developments include:

- The M4 Study between Junction 35 and 49;
- The findings from the Swansea Bay & Western Valleys feasibility study. Swansea Council will continue the development of the concept in 2018/19, where works will be undertaken to apply a more thorough assessment and testing of the concept through a strategic outline business case;

- The Strategic Business Case for investing in the rail network in the south Wales mainline and the Swansea Bay Metro area;
  - The use of the £700k Local Transport Fund allocated to Swansea City Council to include the development of a transport model for the area to ensure that the current and future travel are well understood before any proposals are made with respect to how Metro principals might be applied.
- ***Dean Medcraft stated in the meeting that, with regard to the £6.2 million allocated from the EFF, “the profile of that is about £1 million, and it’s spread over four years”. Please could you clarify how much of the £6.2 million is profiled to be spent in each of the 4 years?***

Currently the indicative profile for the approved projects is summarised in the table below:

<b>CAPITAL</b>	<b>2018/19 £m</b>	<b>2019/20 £m</b>	<b>2020/21 £m</b>	<b>2021/22 £m</b>	<b>Total £m</b>
Economy Futures Fund	0.8	2.1	1.2	2.1	6.2

- ***Please could you also clarify whether businesses applying for financial support from funding streams within your department, which are outside the EFF, have to sign up to the Economic Contract? Likewise, does the Calls to Action approach apply to all businesses applying for financial support from your department, or does the Calls to Action approach only apply to those businesses applying for support from the EFF?***

As I explained to Committee, we have not sought to consolidate all direct funding into the Economy Futures Fund from day one. This is because we want to safeguard business continuity and ensure we drive change as part of a managed transition.

I expect to consolidate more funds into the Economy Futures Fund in due course and wherever possible, we are also proactively taking every opportunity to apply the new operating model of the Economic Contract and Calls to Action to funds that currently sit outside of the Economy Futures Fund. For example, this includes the Property Development Grant and Overseas Business Development Visits Fund.



**Ken Skates AC/AM**

Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith  
Cabinet Secretary for Economy and Infrastructure

## Annex A

a. EFF projects by Unitary Authority:

<b>Unitary Authority</b>	<b>Number</b>
Blaenau Gwent	1
Bridgend	3
Caerphilly	2
Cardiff	2
Carmarthenshire	3
Conwy	1
Denbighshire	2
Gwynedd	3
Monmouthshire	3
Neath Port Talbot	2
Newport	3
Rhondda Cynon Taf	3
Swansea	2
Torfaen	1
Wrexham	3
<b>TOTAL</b>	<b>34</b>

b. EFF projects by Call to Action:

<b>Call to Action</b>	<b>Number</b>
Exports and Trade	2
High Quality Employment, Skills Development and Fair Work	9
Innovation, entrepreneurship and headquarters	1
R&D and Automation	22
Decarbonisation	0
<b>TOTAL</b>	<b>34</b>

c. EFF projects by company size:

<b>Company size</b>	<b>Number</b>
Micro	7
Small	13
Medium	8
Non-SME	6
<b>TOTAL</b>	<b>34</b>