

LONDON BOROUGH OF HARINGEY
THE LONDON BOROUGH OF HARINGEY (HIGH ROAD WEST PHASE A)
COMPULSORY PURCHASE ORDER 2023

NOTE ON EXERCISE OF ACQUISITION POWERS FOLLOWING
CONFIRMATION OF COMPULSORY PURCHASE ORDER

Introduction

1. Flat 85, Whitehall Street is located in the block of flats which is identified as Plot 35 in Table 1 of the Schedule to the CPO (CD1.1) and on the sealed Order Map (CD1.3). See pages 32 and 35 of CD1.1 for the entries in respect of Flat 85, Whitehall Street.
2. Table 1 of the Schedule to the Compulsory Purchase Order [**CPO**] shows Erdal Pinar and Guiseren Pinar as lessees/reputed lessees and occupiers of Flat 85, Whitehall Street. The interest of Mr Adrian Sherbanov as tenant and occupier of Flat 85, Whitehall Street is not entered in Table 1 of the Schedule to the CPO. In his objection to the CPO (CD 6.Obj-09), Mr Sherbanov states that he has held and occupied Flat 85, Whitehall Street under an assured shorthold tenancy [**AST**] since April 2018.
3. A compulsory purchase order is required to be made in the prescribed form: section 10(2) of the Acquisition of Land Act 1981 [**ALA**]. In this case, the applicable prescribed form of order is Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004/2595). See regulation 3(a)(i) of the 2004 Regulations. Form 1 requires the inclusion in Table 1 of the Schedule to the CPO of the names of “qualifying persons” under section 12(2)(a) of the ALA. Under that definition, a person is a qualifying person if, in relation to land comprised in a compulsory purchase order, they are an “owner, lessee, tenant (whatever the tenancy period) or occupier of the land”.
4. When the CPO was made, Mr Sherbanov was a “qualifying person” in relation to Flat 85, Whitehall Street by virtue of holding an AST and being in occupation of that flat with his family. His name does not appear in Table 1 of the Schedule to the CPO.

The question

5. The purpose of this Note is to address the question whether the omission of Mr Sherbanov from the Table 1 of the Schedule to the CPO affects the Acquiring Authority's [AA] ability to exercise the powers of compulsory acquisition conferred by the CPO for the purpose of acquiring title to and obtaining vacant possession of Flat 85, Whitehall Street. In order to address that question, we shall assume that the CPO has been confirmed without the modification sought by Mr Sherbanov in his objection; and that Flat 85, Whitehall Street continues to be shown in Table 1 of the Schedule to the CPO which has come into effect. We shall also assume that Mr Sherbanov and his family remain in possession and occupation of Flat 85, Whitehall Street under the AST.

6. In short, the question is whether the defect in Table 1 of the Schedule to the CPO by the omission of Mr Sherbanov as a qualifying person in respect of Flat 85, Whitehall Street has the result of disempowering the AA from exercising the powers of compulsory acquisition conferred by the confirmed CPO in relation to that flat.

7. There are two alternative statutory procedures under which the AA is empowered to exercise the powers of compulsory acquisition conferred by the CPO following its confirmation and coming into effect –
 - (1) Under Part 1 of the Compulsory Purchase Act 1965 [**the 1965 Act**]

 - (2) Under the Compulsory Purchase (Vesting Declarations) Act 1981 [**the 1981 Act**].

Part 1 of the Compulsory Purchase Act 1965

8. Part 1 of the 1965 Act applies in relation to any compulsory purchase to which Part 2 of the ALA applies: section 1(1) of the 1965 Act. Part 2 of the ALA applies to the CPO in the present case. The AA initiates the process of compulsory acquisition by service of notice to treat [NTT] in accordance with section 5 of the 1965 Act. Subsections 5(1) and 5(2) state –

(1) When the acquiring authority require to purchase any of the land subject to compulsory purchase, they shall give notice (hereafter in this Act referred to as a “notice to treat”) to all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.

(2) Every notice to treat-

(a) shall give particulars of the land to which the notice relates,

(b) shall demand particulars of the recipient’s estate and interest in the land, and of the claim made by him in respect of the land, and

(c) shall state that the acquiring authority are willing to treat for the purchase of the land, and as to the compensation to be made for the damage which may be sustained by reason of the execution of the works.

9. It is necessary to understand what, in this statutory context, is meant by the phrase “land subject to compulsory purchase” and how “land” is itself defined for the purposes of the 1965 Act.

10. Subsection 1(3) of the 1965 Act gives the applicable definitions –

(3) In this Part of this Act, unless the context otherwise requires –

...

“land” includes anything falling within any definition of that expression in the enactment under which the purchase is authorised;

...

“subject to compulsory purchase” in relation to land, means land the compulsory purchase of which is authorised by the compulsory purchase order.

11. In the present case, the purchase of the Order Lands is authorised by section 226(1)(a) of the Town and Country Planning Act 1990. Section 336(1) of that Act defines “land” as follows –

“land” means any corporeal hereditament, including a building, and, in relation to the acquisition of land under Part IX, includes any interest in or right over land.

12. A “corporeal hereditament” is a unit of real property in its physical sense.

13. Applying these statutory provisions of the 1965 Act to Flat 85, Whitehall Street, leads to the following conclusions –

(1) The flat at 85, Whitehall Street is a corporeal hereditament.

(2) Flat 85, Whitehall Street is shown in Plot 35 in Table 1 of the Schedule to the CPO and on the Order Map. Following confirmation of the CPO without modification and its coming into effect, the CPO will authorise the AA compulsorily to purchase Flat 85 as part of the acquisition of Plot 35 (which comprises the building within which Flat 85 is located).

(3) The AA's power to give NTT for the purchase of Flat 85, Whitehall Street under subsection 5(1) of the 1965 Act is unaffected by the omission of Mr Sherbanov's interest and occupation of that flat under his AST from the CPO Schedule. It is the inclusion of Flat 85, Whitehall Street in the Schedule to the CPO which will confer power on the AA to give NTT requiring the purchase of that land, in accordance with section 5 of the 1965 Act.

14. It is relevant to note also that the AA is not required to give NTT under section 5(1) of the 1965 Act to persons who hold no greater interest in the land than a tenancy for a year or from year to year. Such persons are provided for under section 20 of the 1965 Act. Ordinarily, tenants in occupation of land under an AST will hold no greater interest than as tenant for a year or from year to year. In any event, should the AA consider that Mr Sherbanov holds an interest which entitles him to service of a NTT under subsection 5(1) of the 1965 Act, the AA will be in a position to give him NTT notwithstanding that his AST is not shown in the Schedule to the CPO.

15. Following the service of NTT in relation to land that is subject to compulsory purchase, the AA is authorised under section 11(1) of the 1965 Act to serve notice of entry [NOE] on "the owner, lessee and occupier of that land" and, following the expiry of the period specified in the NOE (which must be no less than 3 months), to enter on and take possession of that land. If, therefore, Mr Sherbanov remains in possession and occupation of Flat 85, Whitehall Street at the date on which NTT is given by the AA, the AA will be obliged to serve NOE upon him giving at least 3 months' notice before

taking possession of the flat under section 11(1) of the 1965 Act. Mr Sherbanov's right to compensation under section 20 of the 1965 Act will arise in the event that he is required to give up possession of Flat 85, Whitehall Street following service upon him of NOE under section 11 of the 1965 Act.

Compulsory Purchase (Vesting Declarations) Act 1981

16. The 1981 Act has effect for the purpose of enabling any public authority to vest in themselves by a declaration land which they are authorised to acquire by a compulsory purchase order: see section 1 of the 1981 Act. Such a declaration is known as a general vesting declaration [GVD].

17. Subsection 4(1) of the 1981 Act states –

(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).

18. The land specified in the GVD vests in the AA on the “vesting date”, which is ordinarily the first day after the expiry of the period specified in accordance with subsection 4(1) of the 1981 Act. On the same date, the AA obtains the right to enter upon and take possession of that land: subsection 8(1) of the 1981 Act.

19. By virtue of section 9 of the 1981 Act, where land specified in a GVD is land in which there subsists a “minor tenancy”, subsections 9(2) and (3) apply –

(2) The right of entry conferred by section 8(1) above shall not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the acquiring authority have served on every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of such period as is specified in the notice (not being less than 3 months) from the date on which the notice is served, they intend to enter upon and take possession of such land as is specified in the notice, and that period has expired.

(3) The vesting of the land in the acquiring authority shall be subject to the tenancy until the period specified in a notice under subsection (2) above expires, or the tenancy comes to an end, whichever first occurs.

20. Section 2(1) of the 1981 Act gives the relevant definitions –

(1) In this Act -

...

“land”, in relation to compulsory acquisition by an acquiring authority, has the same meaning as in the relevant enactments,

...

“minor tenancy” means a tenancy for a year or from year to year, or any lesser interest,

...

“relevant enactments”, in relation to an acquiring authority, means the enactments under which that authority may acquire or be authorised to acquire land compulsorily and which prescribe a procedure for effecting the compulsory acquisition by them by means of a compulsory purchase order.

21. As with the procedure under Part 1 of the 1965 Act, the omission from the Schedule to the CPO of Mr Sherbanov’s interest in and occupation of Flat 85, Whitehall Street under an AST will not affect the AA’s ability to operate the GVD procedure in accordance with the provisions of the 1981 Act. The effect of the applicable definitions in section 2 of the 1981 Act is that the AA is empowered to make a GVD in relation to Flat 85, Whitehall Street by virtue of that land, in its physical sense, having been shown within Plot 35 in Table 1 of the Schedule to the CPO and on the Order Plan. In the event that Mr Sherbanov remains in possession and occupation of Flat 85, Whitehall Street under the AST at the vesting date, that land will vest in the AA subject to Mr Sherbanov’s subsisting tenancy. The AA must then either determine that tenancy in accordance with its terms or in accordance with subsections 9(2) and (3) of the 1981 Act (paragraph 19 above).

Conclusion

22. The analysis set out in this note shows that the omission from the CPO Schedule (CD1.1) of Mr Sherbanov’s interest in and occupation with his family of Flat 85, Whitehall Street under an AST will not affect the AA’s ability to exercise the powers of compulsory acquisition conferred by the CPO under either the 1965 Act or the 1981

Act for the purpose of acquiring Flat 85, Whitehall Street (assuming that the CPO is confirmed and comes into effect without modification).

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