



**RTPI**

mediation of space · making of place

The Royal Town Planning Institute in Scotland  
57 Melville Street  
Edinburgh  
EH3 7HL

Tel: 0131 226 1959

Fax: 0131 226 1909

[www.scotland.rtpi.org.uk](http://www.scotland.rtpi.org.uk)

Registered Charity No: 262865

Scottish Charity Registration Number SC 037841

Ms Alison Wilson  
Assistant Clerk to the Petitions Committee  
TG.01  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Email: [Alison.wilson2@scottish.parliament.uk](mailto:Alison.wilson2@scottish.parliament.uk)

14<sup>th</sup> July 2010

Dear Alison

**Petition PE1326**

**Petition by Moira Beattie calling on the Scottish Parliament to urge the Scottish Government to investigate and review the compulsory purchase powers of local authorities to deal with derelict properties / land.**

Thank you for inviting the Royal Town Planning Institute in Scotland to respond to your Inquiry regarding the compulsory purchase powers of local authorities to deal with derelict properties. The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and politically-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2100 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and education.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

The Institute's responses to the questions raised are set out below.

**What is your response to the points raised in the petition?**

The RTPI in Scotland supports the proposal for a general review of compulsory purchase powers. In July 2009 the Institute wrote together with the Royal Incorporation of Chartered

Surveyors (RICS) to the Scottish Law Commission (SLC) in support of the SLC's proposal to include a review of Law on Compulsory Purchase and Compensation in their eighth programme of law reform.

We note that Mr Swinney, Cabinet Secretary for Finance and Sustainable Growth, has recently approved a programme of work, involving all relevant interests across Scottish Government and the wider public sector, to promote good practice in the use of CPOs. Mr Stephen Jones, Compulsory Purchase Orders Policy Manager, Directorate for the Built Environment, is leading this work which will revise Circular 42/1976 and provide up-to-date and focused CPO guidance; facilitate training events and other opportunities for sharing good practice; issue Plain English guidance to owners whose land may be purchased; and improve the Scottish Government's efficiency in confirming CPOs.

The Institute considers that in addressing issues of derelict land and buildings it might be more appropriate to utilise powers under s179 of the Town and Country Planning (Scotland) Act 1997. S179 notices (Amenity Notices) are used by planning authorities in respect of derelict land ('Land' as defined in the Planning Acts includes buildings), which has an adverse effect on public amenity. Some authorities may be reluctant to use such powers, or indeed Listed Building Repair or Purchase Notices, or CPOs because of the resource implications. The prospect of any planning authority using CPO or Listed Building Repair Notices is diminished at present given the current budgetary situation. S179 notices may well be the most cost effective option for addressing dereliction. However, there are associated difficulties and these are discussed below.

**Is it your understanding that councils already have the power to compulsory purchase these types of property? Are there barriers to using them?**

The SPICE report by Alan Rehfisch provides a very clear explanation of the legislation which grants compulsory purchase powers including the powers available under the Town and Country Planning (Scotland) Act 1997. The chief barriers to the use of CPOs are the length of time taken, the legal costs associated with any inquiries and legal challenges; the compensation system which is perceived as unfair; and the present-day lack of experience in handling CPOs.

As noted above, in considering derelict land (and buildings), reference should also be made to s179 of the Town and Country Planning (Scotland) Act 1997. This empowers local authorities to serve a Notice requiring specific steps to be taken to abate adverse affects on an area's amenity within a specified time. The steps required under a s179 notice must be those "reasonably required" to abate the adverse affect on the amenity.

Clearly, there are potential financial implications for a Council in taking action under s179, both in terms of commitment of staff time and resources; and, more significantly, in bearing the cost of the necessary works in the short term, when there is no budget to finance direct action. In addition, failure on the part of the owner or occupier to comply with the requirements of an Amenity Notice which has taken effect may result in the Council having to take necessary steps through the courts to recover their expenses. The risk of possible non-recovery of any debt must be balanced against the benefit to be gained by taking action. Given these financial and resource implications, established practice is always to seek a remedy by agreement and only to recommend formal action under s179 in extreme cases.

A person on whom a Notice under section 179 is served, or any other person having an interest in the land to which the Notice relates, may, at any time before the date specified in the Notice (as the date on which it is to take effect) appeal to Scottish Ministers against the Notice, on any of the following grounds:

- (a) that neither the amenity of any part of the planning authority's district nor that of any adjoining district has been adversely affected;

- (b) that the steps required by the Notice to be taken exceed what is necessary to remedy any such adverse effect;
- (c) that the specified period for compliance with the Notice falls short of what should reasonably be allowed;
- (d) that the condition of the land is attributable to, and such as results in the ordinary course of events from, a continuing lawful use of the land or from continuing lawful operations carried out thereon; or
- (e) that the Notice was served other than in accordance with s179.

There are a number of questions which any improvement in associated legislation would need to address: how to ensure that the definition of 'reasonable repair' encourages sustainable property maintenance; how to reduce the time taken in cases of non-compliance; how to deal with situations when the ownership of land or property is obscure; and how to ensure that risk to the Local Authority is reduced and costs cover officer time as well as any repair costs. Additional problems may be encountered when the cost of repair exceeds the value of the site / building / structure as in the case where a cleared development site may be worth more than a repaired building.

Where a property is listed, consideration may be given as to whether action could be taken to improve this property under Listed Building legislation. Sections 43 and 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 refer in this regard in terms of Repairs Notices and urgent works to preserve unoccupied listed buildings respectively. The main difficulties in taking such action are firstly that these sections refer more to urgent repair of the fabric of the buildings and, secondly, that the planning authority must effectively be committed to compulsory acquisition of the property failing satisfactory action by the owner. In a Listed Building Purchase Notice it is possible to seek minimum compensation where there has been deliberate neglect.

### Compulsory Purchase

The current CPO legislation is complex and in need of reform. It was designed for public acquisition for public development whereas now it is often used for public acquisition for private developments which ultimately produce public benefit. Research published by the then Scottish Executive's Central Research Unit in 2001 concluded that compulsory purchase had been little used in Scotland. The report suggested that this was partly due to a lack of public funds and partly as a result of a perception that the Scottish Ministers were reluctant to confirm compulsory purchase orders. The report made a number of recommendations pertaining to procedures; the revision of Circular 46/76; the need for additional guidance; and the matters to be covered by the acquiring authority in their Statement of Reasons for making an order. These matters are being taken up by the Scottish Government's Advisory Group, mentioned above.

Views on the basic concept of compulsory purchase vary. Compulsory purchase may be seen by some as an unreasonable interference with the individual citizen's rights. However, there is general acceptance that it is reasonable for the State and other appropriate bodies to have the power to acquire property by compulsion, where it can be clearly demonstrated that it is in the public interest. The issue of 'public benefit' is of critical and paramount importance. The European Court of Human Rights has taken the view that the compulsory purchase of property by public authorities does not breach human rights, at least where the use of such powers are proportionate and in the public interest. However, it is important that there is a clear and substantial public benefit expressed through an approved Development Plan, and that the law under which the powers are exercised provides both an opportunity for the affected persons to have their objections heard and for sufficient compensation in the event of compulsory purchase.

