

Land and Property

Guide to Compulsory Acquisition and Compensation

Introduction

To build and operate the railway, we will need to acquire land and property, including land required permanently, land required temporarily (for construction), and land where permanent rights only will be required, for example, for accesses or re-routed utilities. Where possible we will use existing railway land, however we would also need to acquire other land which includes homes, businesses and agricultural land.

As our proposals develop, we will continue to seek to reduce the impact of our proposals on homes, land and property, where possible. We will seek to enter into voluntary negotiated agreements to acquire the land and property we need for our proposals and to agree measures to reduce the impacts of our proposals. However, so that we have the certainty that we can acquire this land to build and operate our proposals, we will still need to seek the appropriate powers for compulsory acquisition in our Development Consent Order (DCO) application.

This guide will provide you with information about the process we would follow and compensation which may be available, should we acquire your land using powers of compulsory acquisition under the DCO.

This guide is part of a suite of documents to provide information to landowners that may potentially be affected by our proposals. This includes where owner occupiers have difficulty selling their property due to our proposals (Guide to the Need to Sell (NTS) Property Scheme and Guide to Statutory Blight Notices) or where land is impacted by the operation of our proposals (Guide to Part 1 Claims).

Helping you through the process

As part of our non-statutory consultation, we are presenting our updated proposals including the project boundary (the draft Order Limits) that includes land that would need to be permanently acquired, and land that would be used temporarily for construction as well as land where we may need to acquire permanent rights, for example for accesses or diverted utilities.

It is important that you have the opportunity to tell us what you think about the proposals for East West Rail, responding to the non-statutory consultation is a way for you to provide feedback on,

and influence, the design of our proposals. We will also engage and consult with other statutory consultees (such as the local authorities and the Environment Agency) and the local community.

More information is available on our website: www.eastwestrail.co.uk

We understand that the possibility that we may need to purchase your land and/or property may be concerning. We will follow these five principles to try to reduce the impact on you if your land and property would be potentially affected by our proposals.

- **Keep you updated:** we will keep you updated and informed throughout as our proposals develop.
- **Act with respect:** we will treat you, your land, property and personal data, and third parties acting for you with respect. We will work collaboratively with you and any third parties acting for you.
- **Reduce land loss:** we will discuss our proposals with you, so we understand and manage the potential impacts to you. We aim to reduce the impact our proposals may have on your land and property and mitigate any impacts we cannot avoid where possible.
- **Agree fair compensation:** we will seek agreements with you to acquire your land and property needed for our proposals. Where we'd need to acquire your land we would compensate you fairly to the compensation code.
- **Provide dedicated case managers:** our specialist Land and Property team will be in touch so you have consistent and well-briefed contacts on our proposals.

You should consider taking independent professional advice if your land and property is potentially affected by our proposals. We would recommend you seek advice from a RICS qualified Chartered Surveyor with experience of compulsory purchase.

For further advice and assistance, RICS has a helpline scheme which enables landowners to contact a regulated member firm (listed on their website) for an initial 30 minute free consultation: www.ricsfirms.com/helplines/compulsory-purchase/

Please contact the Land and Property team if you have any questions on how you can get independent professional advice and what costs we can reimburse.



Lake in Campbell park on overcast day in summer, Milton Keynes

What is East West Rail?

East West Rail is a once-in-a-generation opportunity to connect people and businesses in the communities between Oxford, Milton Keynes, Bedford and Cambridge, making it easier, faster and more affordable to get around the region. It would also effectively bring the rest of the UK closer by intersecting with the East Coast Main Line, Midland Main Line and West Coast Main Line. The railway would open up new journeys, cut travel times, ease congestion on local roads and bring more jobs within reach of people living locally.

Throughout the development of East West Rail we have been talking to local communities, representatives and other stakeholders and will continue to do so.

East West Rail is a project of national significance which means that instead of applying for planning permission from a local authority, permission will be sought at a national level from the Secretary of State for Transport, via a DCO pursuant to the Planning Act 2008.

The DCO would authorise the construction and operation of a new railway between Bedford and Cambridge and associated works including works to the existing railway between Oxford and Bedford (the project).

We will seek to enter into voluntary negotiated agreements to acquire the land and property we need for our proposals and to agree measures to reduce the impacts of our proposals. However, so that we have the certainty that we can acquire this land to build and operate our proposals, we will still need to seek the appropriate powers for compulsory acquisition in our DCO application.

Further information about EWR can be found on our website: www.eastwestrail.co.uk

Compulsory Acquisition

If granted, the DCO would provide consent to build and operate the railway including the ability to compulsorily acquire and temporarily use land needed for the railway. The Secretary of State for Transport will make the final decision on whether the DCO should be granted.

If we secure the powers to acquire land compulsorily in the DCO, we would discuss our plans with you and give you as much notice as possible of when we require your land and property. If we need to use compulsory purchase powers, then prior to taking possession and ownership of the land we would send notices to all those who have an interest in the land. These notices would confirm the plot(s) of land that would be acquired; would advise that we are exercising our powers under the DCO to enter onto and take possession (and in certain circumstances,

ownership) of the land; and would invite you to make a claim for compensation. There are various processes we would be able to use when taking possession and ownership of the land:

1. **A General Vesting Declaration (“GVD”)** would transfer ownership of the land to us. We would serve notice that we have made a General Vesting Declaration on all affected landowners. This would allow us to take possession and ownership of the land after the time period stated in the notice (which must not be less three months) on what is known as the “Vesting Date”.

We would pay compensation once we have agreed the amount and the receipt accepting the payment in full and final settlement of all claims is signed.

2. **A notice to treat and notice of entry** would not transfer ownership of the land to us; you would be required to transfer the land to us after compensation had been finalised. When using this method, we would serve a notice to treat confirming that we would compulsorily acquire the land. This would be accompanied or followed by a notice of entry which would specify the date when we would intend to take possession of the land.

You can sell land that we would be intending to purchase, or acquire rights over, until the date the ownership would transfer to us. However, the amount someone is willing to pay for the land could be reduced by the threat of compulsory acquisition and the compensation you may be eligible to receive from us may be affected. We recommend seeking professional advice before selling land that we would be intending to acquire or acquire rights over.

Compensation for Freeholders, leaseholders and tenants (known as compensatable interests)

Freeholders, leaseholders and tenants may be eligible to claim a number of types of compensation when their property is being compulsorily acquired. The types of compensation which may be available would depend on your rights or interest in the affected property and could include:

- The market value of the land. This is the value of the land ignoring the effect of our proposals.
- Disturbance compensation would be paid for the costs incurred by having to leave the property e.g. professional fees and removal costs.
- If you had other retained land after the compulsory acquisition, you may claim compensation if the value of that other land is reduced by its separation from the land acquired, or its division into separate parts.

- Injurious affection compensation would be paid where the construction or use of the improved/new railway had reduced the value of your remaining land.
- A home loss payment or an occupier's loss payment could be paid if you have occupied the land as a freeholder or leaseholder for at least one year on the date we would enter onto and take possession of your land.
- You may also be entitled to a basic loss payment. The government sets the minimum and maximum amount of these payments.
- There would be compensation available if the compulsory acquisition affected your benefit from a restrictive covenant or right of way and, as a result, the value of your land had been reduced.
- If access to your property would be closed as a result of our proposals, we would provide an alternative means of access for you. You would be responsible, or jointly responsible if the access is shared with your neighbours for maintaining the alternative route. If the maintenance costs of the new access would exceed the costs of maintaining the old one, then you may be able to claim the difference.
- We would also reimburse the reasonable fees for your chartered surveyor, or other valuer to prepare and negotiate your compensation claim. If your accountant assists you with your claim we would consider reimbursing these fees. We would reimburse reasonable fees for your solicitor to provide proof of ownership of your rights or interest in the land and if required, to transfer this to us. However, we would not reimburse your solicitors' hourly rate if they negotiate your compensation claim.
- We would pay the fees directly to you so that you can arrange for your agent to be paid.

We would not pay:

- Any charges your agent may seek from you that are additional to the reasonable fees agreed for the preparation and negotiation of your claim.
- The fees of more than one agent.
- Solicitors' costs that have been unnecessarily incurred for proving your ownership of the property.
- Solicitors' costs to negotiate compensation claims.

- Any charges made by your mortgage lender relating to our legal obligation to offer the compensation to the lender before you.

A model claim form with guidance notes can be obtained on the government website here: www.gov.uk/government/publications/compulsory-purchase-process-guidance

Disturbance Payments for persons without compensatable interests

If you do not hold an interest which would qualify you for compensation, you may be entitled to a disturbance payment if you incur expenses, or suffer a loss due to your business being disturbed, as a consequence of having to leave the property.

Important: the legislation and case law for compulsory acquisition and compensation is complex. We recommend that you seek independent professional advice if your property is potentially affected by our proposals.

How we would process your compensation claim

When we receive your claim we would ask our independent valuer to begin compensation negotiations with your appointed agent. We may also instruct our solicitors to check that you own the land; they would normally contact your solicitor to ask for proof of ownership.

If your land is subject to a GVD then, once you have agreed compensation with our valuer, we would prepare a receipt for you to sign to accept the compensation and release any mortgage that you may have had against the land. We would pay the compensation after you have signed the receipt to accept the amount in full and final settlement of all claims.

If we had served a notice to treat, our solicitors would draw up the legal document needed to either transfer the land to us or grant us rights over the land. We would pay compensation after we had agreed the amount with you and the transfer of ownership/grant of rights had been completed.

If you are a tenant, or if we would only require a temporary licence over your land, we would ask you for proof of your lease or tenancy ownership of the land. Once you have agreed compensation with our valuer we would prepare an agreement for you to sign to accept the amount in full and final settlement for all claims.

You may be eligible to apply for payments of advance compensation.

Applying for Advance Payments

Once we had made a GVD or served a notice to treat and a notice of entry, freeholders, leaseholders and tenants could apply to us for an advance payment before their compensation has been finalised.

Applications would need to be submitted in writing and provide all the required information. To help with this we would send you the following forms when we served notice:

- Claim form for compensation for the acquisition or the occupation of land
- Solicitor's report on title
- Bank Details Form

You should keep a copy of your completed claim form. Using a type of postal delivery that would provide you with proof of posting is advisable in case your claim did not reach us and we would need to be sure that a claim was, in fact, made. Advance payments would normally be made within two months of us receiving the fully completed application. If an application was received before the GVD is made or notice of entry served, the two months processing time would commence from that date.

Advance Payment calculation

Up to 90% of the compensation which we had agreed with you, or if this were not agreed, 90% of our compensation estimate, may be paid in advance.

If the land is mortgaged, your advance payment would be reduced by the amount required by your mortgage lender to release the mortgage. If you and your mortgage lender agree, we could pay some or all of the advance payment directly to your mortgage lender either to reduce or pay off your mortgage.

Where only part of your land would be compulsorily acquired, your mortgage lender may decide that they require part of the mortgage to be repaid before releasing that land from your mortgage. Alternatively, they may decide that you would retain sufficient land to cover the outstanding mortgage and release the land from your mortgage without payment. This would be your mortgage lender's decision.

The advance payment may also include:

- Up to 90% of any surveyor's fees (this can be an estimated amount).
- 90% of any basic loss payment or occupier's loss payment.
- 100% of any home loss payment.

- Your solicitor's reasonable fees for work in connection with your advance payment.
- VAT where you are unable to recover this from HM Revenue & Customs
- Interest on the agreed or estimated compensation and surveyor's fees. The interest is calculated from the GVD date or the date of entry, depending on the type of notice which we had sent to you. We would not pay interest on VAT or the home loss payment. The rate of interest is set at 0.5% below the Bank of England Base Rate.

In situations where we were unable to agree the amount of compensation with you, we would ask our independent valuer to provide us with an estimate. If land is mortgaged, we would contact your lender to calculate the amount which could be advanced to you and your lender.

Accepting an advance payment would not affect your negotiations or the final payment. In situations where the final amount of compensation agreed is higher than the estimate paid, we would pay you the difference. However, if the amount paid in advance is higher than the final settlement then you would have to pay back the difference.

Referring Disputes to the Upper Tribunal

We would work with you and your professional advisors to agree the amount of compensation payable. However, there may be cases where we could not agree. In this situation you could refer your claim to the Upper Tribunal (Lands Chamber). This is the court of law appointed to deal with these types of disputes.

Claims would need to be referred to the Upper Tribunal within six years of the vesting date, (where we had used a GVD) or the date of entry (where we had served a notice of entry).

To refer your claim to the Upper Tribunal you would need to submit an application in writing to:

Upper Tribunal (Lands Chamber), 5th Floor, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL

When the Upper Tribunal receives an application, all parties would be encouraged to attend mediation meetings before the tribunal hearing. A neutral third party would oversee the meeting and would encourage all involved to reach an agreement on the disputed points. It may not be possible to reach agreement on all the issues but settling some points could save time and reduce the costs of the hearing. The Upper Tribunal would make the final decision on your claim.

Important: The Upper Tribunal could award costs to either party so it is important that you should seek professional advice before referring your claim.

The Limitation Act 1980

In the context of a compulsory acquisition claim the period of limitation is six years from the date of the cause of claim, i.e. the Vesting Date or date of the Notice to Treat, arose. But please also see section above on referrals to the Upper Tribunal (Lands Chamber) on matters of compensation.

After that six-year 'limitation period', we could no longer be ordered to pay compensation.

Who can you speak to if you have questions or any complaints?

Our specialist Land and Property team are available if you wish to talk about our proposals, tell us your views and also to answer your questions.

You will be able to contact our Land and Property team at any point during the development of our proposals:



- Email us at: **land@eastwestrail.co.uk**
- Call us on: **0330 838 7583**
- Write to us at: **Freepost EAST WEST RAIL LAND**
- Send us a message online at **www.eastwestrail.co.uk/get-in-touch**

Where can you find further information?

Visit our website: **www.eastwestrail.co.uk**

We have created a number of resources to provide further information for people whose land and property is potentially affected by our proposals. These can be found on the land and property page of our website: eastwestrail.co.uk/planning/land-and-property

These include guides on:

- Part 1 Claims: How to claim for the effects on your property for a new or altered railway
- Statutory Blight Notices
- The Need to Sell (NTS) Property Scheme

In addition, the Ministry of Housing, Communities and Local Government (MHCLG) publishes the following series of technical booklets which you may find useful:

Booklet 1: Compulsory purchase procedure
 Booklet 2: Compensation to business owners and occupiers
 Booklet 3: Compensation to agricultural owners and occupiers
 Booklet 4: Compensation to residential owners and occupiers;
 and Booklet 5: Mitigation works

The booklets are available on the MHCLG website:
www.gov.uk/government/collections/compulsory-purchase-system-guidance



A farmer feeding his flock of sheep