

Guide to Part 1 Claims

How you would claim for the effects of a new or altered railway on your property

Introduction

As our proposals develop, we will continue to seek to reduce the impact of our proposals on homes, land and property, where possible.

This guide explains how compensation, often called ‘Part I Compensation’, could be claimed for the effects on residential, agricultural and other property from the use of new railways or alterations to existing railways.

It is not a complete guide to Part I compensation. Please get in touch with us, using the details at the end of this guide, if you have questions about your particular circumstances.

This guide is part of a suite of documents intended to provide information to landowners that may potentially be affected by our proposals. This includes where land would be directly required to build or operate the railway (Guide to Compulsory Purchase and Compensation), or 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)

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



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 Government (relevant Secretary of State), via a Development Consent Order (DCO). 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). Further information about East West Rail can be found on our website: www.eastwestrail.co.uk

What is Part I Compensation?

Under Part I of the Land Compensation Act 1973 (“the Act”) compensation can be claimed by people who own and also occupy property which has been reduced in value by more than £50 by physical factors caused by the use of a new or altered railway.

The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the property of any solid or liquid substance.

The cause of the physical factors must be the new or altered use of the railway. For example, if a railway is altered, the noise and other adverse effects must arise from the traffic using the altered stretch of rail.

Part I Compensation cannot be claimed for the effects of rail traffic further down the railway line where no alteration has taken place.

Part I compensation is also not payable where part of the affected property has been taken for the construction of the new or altered railway. This is because the effect of the use of the railway on the value of the rest of the property must be taken into account in calculating the compensation for the part of the property taken. If your land and property is potentially needed to build or operate our proposals please see our Guide to Compulsory Acquisition and Compensation.

Loss of view or privacy, personal inconvenience and physical factors arising during the construction of the railway are also not included under Part I Compensation.

Could you make a Claim?

Residential property

To claim, you would have to be the owner of the property before the date the railway first came into public use (known as the ‘relevant date’). You would also need to still be the owner on the date you make a claim.

For the purposes of making a claim under the Act, you are the owner of the property if you hold either the freehold or a lease that has at least three years left to run at the date you make a claim.

In addition to being the owner, you would also need to occupy the property as your home at the date you make a claim. The exceptions to this are where you have let the property to someone else or there is another legal reason preventing you from occupying, for example, there is a court order in place which removes your right to occupy the property.

Agricultural unit

You would need to be the owner and the occupier both before the new or altered railway first came into public use and at the date you make a claim. You would need to occupy the whole of the unit and own the freehold or a lease with at least three years left to run in the whole or any part of the unit at the date of claiming.

Other non-residential property

Owners of other non-residential property, such as small business premises, would be able to make a claim provided that the property does not have an annual rateable value above a set amount. At the time of publication, that amount is: £36,000, but it may change from time to time. The rating office at your local council would be able to tell you the annual rateable value of your property.

You would need to be the owner and the occupier both before the new or altered railway first came into public use and at the date you claim. You would need to occupy the whole or substantial part of the property and own the freehold or a tenancy with at least three years left to run at the date of claiming.

Could you claim if only part of your property is residential?

Where a property has more than one use, for example, a shop with living accommodation above, then you could claim for the living accommodation.

You may also be able to claim for the business part of the property provided that business part has an annual value of not more than £36,000, but please note it is varied from time to time.

Could you claim if you transfer ownership of your property to another family member and continued to occupy it?

Although your occupation of the property has continued, you would still need to satisfy the ownership requirements described earlier in this section. So, if you

transferred the property to a family member before you claimed, you would not be eligible for Part I compensation. The family member to whom the property was transferred may be able to claim, providing the transfer took place before the date the railway first came into public use. They would also need to occupy the property unless they do not have a legal right to do so, as described earlier in this section.

Whether a legal right exists would depend on the terms under which the previous owner continues to occupy the property. An informal arrangement where there is no tenancy agreement in place would mean a claim would be unlikely to succeed.

Could you claim if you inherited your property after the railway first came into public use?

Yes, provided the person from whom you inherited the property was the owner before the date the railway first came into public use. Also, at the date you make the claim, you must also be the owner of the inherited property. Ownership does not pass by inheritance immediately on the death of the previous owner. Further, being named as a beneficiary in a will does not mean that ownership has transferred. You are the owner only when the legal title of the property has passed to you. You must also occupy the inherited property at the date you make a claim if you have a right to do so, even if you still have another property to live in.

Could the personal representatives (executors/administrators) of a deceased person make a claim?

No. They obtain legal title by operation of the law and not by inheritance. As they have not inherited the property, they cannot take the benefit of those provisions described above.

When could you claim?

The first day for claiming compensation would be a year and a day after the new or altered railway first came into public use (known as the 'first claim day').

We would not be able to accept claims made before the first claim day, except when you were selling your property or granting a lease. It would be important that you claim as early as possible after the first claim day. Your right to compensation may be lost if your claim was not made and settled within the six years following the first claim day. Claims made after those six years would not be accepted as provided by the Limitation Act 1980.

Selling your property before the first claim day

Normally, claims cannot be made during the 12 months between the new or altered railway first coming into use and the first claim day. However, if you were selling your property or granting a lease during that period, you could lodge a claim with us but you would need to do so after exchanging contracts to sell and before completing the sale or granting the lease. We would not negotiate your claim or pay any compensation before the first claim day.

Your claim may not be accepted if, while waiting for your property to be sold, you move into another before the date of your claim. This would be because you may no longer be able to meet the occupancy requirement.

How would you make a claim?

You would be able to make a claim yourself or ask someone to do this for you. Anyone could act for you but most people prefer to use a professional property valuer or an agent that specialises in Part I claims to prepare and negotiate the claim on their behalf.

The legislation and case law for compensation is complex. We recommend that you should seek independent professional advice before making a claim.

Making a claim yourself

Forms for making a claim would be available from us, should our proposals go ahead. In the meantime there is a model form on the Government website here:

www.gov.uk/government/publications/part-i-claims-claim-for-compensation-form

We would recommend that you keep a copy of your completed claim form and keep proof of postage. This is important in case your claim did not reach us and we would need to be sure that a claim was, in fact, made.