



## Roads: compensation for homeowners

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This note explains the right of homeowners to compensation where they are affected by road works of one type or another.

**Compensation is a complicated subject and any individual who is affected is strongly recommended to consult a legal professional to advise on their rights and who could also act on their behalf in negotiations. This is a general briefing and will not apply comprehensively to individual cases.**

Under the rules of compulsory purchase, compensation is paid at the open market value of the property, as if there were a willing seller, where a property is needed for a development. Compensation is also available for those who suffer as a result of development but whose property is not needed. Once the development is in use you may be entitled to compensation for 'injurious affection' from physical factors, such as noise and vibration, caused by the use of new or altered public works including roads and railways. It must be realised, however, that there is no statutory requirement for compensation to be paid to those who live next to public works, such as roads and railways, purely because traffic has increased.

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# 1 Compulsory purchase

For more information on compulsory purchase and compensation in general see HC Library standard note [SN/SC/1149](#).

Compensation is paid at open market value of the property, as if there were a willing seller. Anyone dissatisfied with the amount of compensation offered can appeal to the Lands Tribunal. In addition, there may be extra compensation when a home is compulsorily purchased.

Compulsory purchase procedure in the UK is covered by the [Acquisition of Land Act 1981](#), as amended, although the compulsory purchase powers come in many different Acts. That Act refers back to the [Land Compensation Act 1961](#) for assessment of compensation. Section 5 of the 1961 Act gives five rules for assessing compensation:

## 5 Rules for assessing compensation

Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

- (1) No allowance shall be made on account of the acquisition being compulsory:
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise:
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers:
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account:
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:
- (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land:

and the following of this part of this Act shall have effect with respect to the assessment.

In practice, of course, there are immense complications. In cases where the owner is not offered what he considers adequate compensation, there is a right of appeal to the Lands Tribunal. The [Lands Tribunal](#) was established by the [Lands Tribunal Act 1949](#) to determine questions of disputed compensation arising out of the compulsory acquisition of land; to decide rating appeals; to exercise jurisdiction under section 84 of the [Law of Property Act 1925](#) (discharge and modification of restrictive covenants); and to act as arbitrator under references by consent. The Tribunal's jurisdiction is exercised in England and Wales. The

Tribunal consists of a President who must have been a judge or a barrister and other Members who must be either lawyers or persons experienced in the valuation of land.

The jurisdiction of the Lands Tribunal was transferred into the Lands Chamber of the Upper Tribunal from 1 June 2009, in line with an overall review of the tribunal system. The Lands Tribunal name has been retained for the time being.<sup>1</sup>

## 2 Blight

The term “blight” has a technical meaning in law relating to compulsory purchase. When a property is acquired compulsorily, compensation is payable at the market value. When agreement has been reached for the development to go ahead, some properties may be bought before others. Later properties might have a lower market value as a result of the development. Therefore they would be liable to receive lower compensation. In certain circumstances, property owners can issue a blight notice, requiring the compulsory purchase to go ahead so that they receive compensation at the full rate. A textbook on compulsory purchase summarises:

The circumstances are when the owner can show that, as a result of proposals by the authority which would involve their purchase of the land in the future, he cannot currently sell his interest except at a substantially depreciated price. The provisions are based on the principle that the public proposal must have a fair degree of certainty...<sup>2</sup>

The definition of blighted land comes in Schedule 13 of the *Town and Country Planning Act 1990*, as amended. It includes land identified in a development plan for relevant public functions, even if the development plan has been submitted to the Secretary of State for independent examination, but not yet finally approved. One of the categories included in Schedule 13 of the 1990 Act is land identified in a development plan for highways. Even if a landowner issues a blight notice, the public authority can issue a counter notice. One ground for a counter notice is that they do not intend to acquire that land compulsorily.

In addition, in the early stages of a road proposal, before a preferred route is announced, there also exists a discretionary power to buy where there is a genuine possibility that the property will be required. This power is intended to alleviate cases of serious hardship. This provision for purchasing properties potentially blighted by road proposals is contained in section 248 of the *Highways Act 1980*, as amended:

### 248 Acquisition in advance of requirements

(1) Any power of the Minister under any of the foregoing provisions of this Part of this Act, other than sections 240 and 246 to acquire by agreement land required for a purpose mentioned in the provision in question is exercisable in respect of any land which, in the opinion of the Minister, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

(2) Subject to the following provisions of this section, where under any provision of this Act specified in column 1 of Schedule 17 to this Act a highway authority have power to acquire, or have acquired, land (“the initial stage area”) for a purpose specified in column 2 of that Schedule, then any power of the authority under this Act to acquire land compulsorily for a purpose specified in column 3 is, in the case of other land adjacent to the initial stage area (“the subsequent stage area”), exercisable by them

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<sup>1</sup> DL Committee Deb 28 April 2009, cc3-8

<sup>2</sup> Sweet & Maxwell, *Boynton's Guide to Compulsory Purchase and Compensation* (7<sup>th</sup> ed.), 1994, p126

notwithstanding that the other land is not immediately required for the purpose specified in column 3.

(3) A highway authority shall not acquire land compulsorily by virtue of subsection (2) above unless one or more of the following conditions are satisfied, namely—

(a) the authority intend, when they have acquired the subsequent stage area, forthwith to incorporate it within the boundaries of the highway or proposed highway or, as the case may be, of the service area, maintenance compound, trunk road picnic area or lorry area, for the purposes of which the initial stage area is to be, or has been, acquired;

(b) the authority's proposed use of the initial stage area involves the carrying out of works wholly or partly on, or under or over, the subsequent stage area;

(c) plans for the use of the subsequent stage area (for the purpose for which the authority have power by virtue of this section to acquire it) have been made or approved by the Minister.

(4) A highway authority shall not by virtue of subsection (2) above acquire land compulsorily for any purpose where, apart from this section, they would not have power to acquire it compulsorily if it were required immediately for that purpose.

Section 248 in effect gives the Department for Transport (and other highway authorities) discretionary powers to alleviate hardship caused by road proposals. These are the powers under which the Department may agree to purchase some blight properties before the proposals reach the statutory stages. Because the powers are discretionary, as a matter of policy the Department insists on strict criteria when they are exercised. There is an information sheet on the application of section 248 on the Highways Agency website.<sup>3</sup>

### **3 Disturbance due to construction**

One may claim compensation for temporary disturbance caused by construction work. The responsible public authority may be willing to make some payment towards reasonable expenses incurred moving to suitable temporary accommodation elsewhere. If the noise from the construction is very high, homeowners may be able to get some insulation. There is also a discretionary power to buy property severely affected by construction works.<sup>4</sup>

### **4 Reduction in value because of use**

Where a property is not needed for a development, Part I of the [Land Compensation Act 1973](#), as amended, provides for compensation to be payable where the value of a property is adversely affected by physical factors, such as noise and vibration, caused by the use of new or altered public works, including roads and railways. The reply to a PQ in March 2006 summed up the position:

**Yvette Cooper:** Under Part 1 of the Land Compensation Act 1973, compensation may be payable for a reduction in value of land caused by the use of certain public works. This compensation is based upon the depreciation caused by physical factors: noise,

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<sup>3</sup> HA, [Blight and Discretionary Purchase](#), December 2007

<sup>4</sup> DCLG, [Compulsory purchase and Compensation booklet 4: Compensation to residential owners and occupiers](#), October 2004

vibration, smell, fumes, smoke, artificial light and the discharge onto land of any solid or liquid substance. Compensation is not available for a loss of view.<sup>5</sup>

'Injurious affection' is the phrase used to describe depreciation in the value of property caused by the use of new or altered public works including roads and railways. The 1973 Act does not specify precisely what is meant by altered works: it refers to them being "reconstructed, extended or otherwise altered". Section 9(5) of the 1973 Act states:

For the purposes of this section the carriageway of a highway is altered if, and only if—

(a) the location, width or level of the carriageway is altered (otherwise than by re-surfacing); or

(b) an additional carriageway is provided for the highway beside, above or below an existing one;

and the reference in subsection (2) above to depreciation that would not have been caused but for alterations to the carriageway of a highway is a reference to such depreciation by physical factors which are caused by the use of, and the source of which is situated on, the length of carriageway which has been altered as mentioned in paragraph (a) above or, as the case may be, the additional carriageway and the corresponding length of the existing one mentioned in paragraph (b) above.

Section 1 of the 1973 Act allows a householder to claim compensation for depreciation in the value of their property even if none of the property is taken to build the road. The basis for compensation is the difference in value resulting from any new 'physical factors' arising as a result of the development. The physical factors specified are: noise; vibration; smell; fumes; smoke; artificial lighting; and discharge onto the land of any solid or liquid substance.

The procedure for making claims is set out in detail in sections 3 and 9 of the 1973 Act. In general terms, claims can be made 12 months after the new or altered work first comes into use. The legislation limits the period of the claims to seven years.

There is a further measure in the *Highways Act 1980*. Section 246 of the 1980 Act, as amended, refers to the discretionary powers of the Department for Transport to buy a property where an owner's enjoyment of the property is seriously affected by a road scheme. The discretionary purchase scheme is in addition to that under the 1973 Act. It enables the Department to act as 'buyer of last resort' where the enjoyment of the property is or will be seriously affected by trunk road proposals and where the owner has a pressing need to move that is not connected to the road scheme. The acquisition must be in hand before the road is opened or in advance of the provisions of Section 1 of the 1973 Act coming into play (i.e. 12 months from the date of opening).

Departmental guidelines for the discretionary purchase of property were drawn up in July 1995 following a court case.<sup>6</sup> The Minister at the time, Steve Norris, summarised the process in response to a WPQ:

The new guidelines do not affect owner-occupiers' existing statutory rights under part 1 of the Land Compensation Act 1973 and apply only to those who have a pressing need to sell their property in advance of these provisions coming into play. Owner-occupiers

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<sup>5</sup> [HC Deb 9 March 2006, c1758W](#)

<sup>6</sup> DoT press notice, "Norris announces new guidelines on discretionary purchase..", 19 July 1995 [PN 95/226]; and DoT, *Guidelines for discretionary purchase under s246(2A) of the Highways Act 1980 of land in advance of the start of works*, July 1995 [HC DEP 2052]

who do not qualify under the guidelines may, nevertheless, be eligible for noise insulation. The new guidelines indicate the general manner in which cases will be considered by the Highways Agency acting on the Secretary of State's behalf, but each application for discretionary purchase will be considered on its merits.

I recommend detailed study of the guidelines for a full understanding of the way the new scheme will work. Briefly, the Highways Agency will consider eligible applications in two stages: first to see if, in the agency's opinion, enjoyment of the property will be seriously affected and, if the agency thinks it will be— second to decide whether to offer to buy, taking account of the information in the application.

The agency must be of the opinion that the enjoyment of the property will be seriously affected by either the construction or the use of the road. Serious effect may be caused by a number of factors, including noise and medical conditions which are likely to be severely aggravated by physical effects from either the construction of the road or its use. To these, the new guidelines add diminution in the value of the property as a result of the road proposal. Other factors, or combination of factors, may cause serious effect and the agency will take these into account when considering the application.

The agency's decision on whether or not to offer to buy the property will depend on whether the applicant:

- had foreknowledge of the proposed road scheme;
- has made reasonable efforts to sell the property; and
- has a pressing need to move and therefore to sell the property—which normally must not be connected with the scheme.

I should emphasise that the agency will normally also need to be of the opinion that the enjoyment of the property will be seriously affected by both diminution in value and noise arising during the construction period or during the first year following the opening of the road to traffic.

The Highways Agency will aim to arrive at a decision on a properly completed application within three months of its receipt.<sup>7</sup>

## 5 Intensification of use

*For more information on traffic noise in general see HC Library standard note [SN/BT/347](#).*

The [Land Compensation Act 1973](#), as amended, specifically excludes the claiming of compensation where there has been intensification of use of an existing road. There is no statutory requirement for compensation to be paid to those who live next to public works, such as roads and railways, purely because traffic has increased. The view is taken that those who purchase property near existing roads or railways do so in the knowledge that traffic can change in composition or volume, and that it would not be right to require the relevant authorities to pay compensation solely because traffic patterns have altered in this way.

When a new road is built a calculation is made of future noise levels. The highway authority then offers those eligible help with insulation. It may also install sound barriers to help avoid reaching the projected levels and these may be used in conjunction with earth mounding to

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<sup>7</sup> [HC Deb 19 July 1995, cc1324-25W](#); the Minister gave further information during a debate in February 1996: [HC Deb 14 February 1996, cc982-990](#)

hide traffic as it is recognised that continuous passing traffic can be stressful. The rules state that a dwelling within 300 metres of road works would be eligible for help if it is calculated that within 15 years from the opening of the new or altered road:

- the traffic noise level at one or more facades will increase by at least 1dB(A) and will be not less than the specified level of 68 dB(A) L10 (18 hour);<sup>8</sup> and
- noise caused or expected to be caused by traffic using the new or altered section of road will contribute at least 1dB(A) to the noise level.

The Highways Agency's general view is that if a property was eligible for compensation under the 1973 Act then noise levels would have been taken into account and any further noise mitigation once compensation has been settled would be double counting. For this reason it will not install acoustic fencing on motorways that have already been completed. However, in exceptional circumstances help may be given to those suffering from noise under section 282 of the 1980 Act, usually by the construction of noise barriers on the highway as opposed to insulating an individual's property.

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<sup>8</sup> L10 is the noise level in dB(A) - decibels measured by reference to human hearing - which is exceeded for 10 per cent of a given period of time; in the regulations, L10(18 hour) is the arithmetic average of all hourly L10 values during the period 06.00-24.00 on a normal working day