

Land and Property

Guide to Compulsory Acquisition and Compensation

Introduction

This guide will provide you with information about the process we would follow, should the project go ahead, to purchase land and property needed for East West Rail, using powers of compulsory acquisition. It also describes the compensation which may be available to people with an interest in that property.

This guide is part of a suite to provide information to landowners that may potentially be affected by the East West Rail project. This includes where land would be directly required by the project (compulsory acquisition and compensation), or where owner occupiers have difficulty selling their property due to our proposals (our proposed Need to Sell Scheme and Statutory Blight Notices) or impact on land in the event the project is constructed and comes into operation (Part 1 Claims).

Key information

As part of our planning process we would seek the appropriate power for compulsory acquisition of land and property needed for East West Rail. However, before we would compulsory acquire any land for the railway the project would need to move through a number of development stages and approvals, including two more periods of public consultation. These are summarised in our Route to Construction, available on our website www.eastwestrail.co.uk

We know the possibility that we may need to ultimately purchase your land and property may concern you, and we will follow these five principles to seek to minimise the impact on you if you are potentially affected by the project.

- **Keep you updated:** We will keep you updated throughout the project and keep you informed 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.
- **No unnecessary land:** We will discuss our proposals with you, so we understand and manage the potential impacts to you. We aim to minimise the impact our proposals may have on your land and property and mitigate any impacts we cannot avoid.

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- **Fair compensation:** Where we would need to acquire your land for the project, we would compensate you fairly in accordance with the statutory compensation code and we would seek agreements with you.
- **Dedicated contacts:** our dedicated, specialist land team is in place to ensure you have consistent and well-briefed contacts with the project.

You should consider taking independent professional advice if your land or property is potentially affected by the East West Rail project.



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

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What is East West Rail?

East West Rail is a proposed new rail link, which would connect communities between Oxford, Milton Keynes, Bedford and Cambridge. By making it cheaper and quicker to get around, by making it easier to develop more homes for people and by boosting local economies, the new railway line aims to create a range of opportunities for people right across the area and to help spread prosperity across the UK, by supporting opportunities for economic growth in towns and cities outside London.

The East West Railway Company (EWR Co) is responsible for developing the East West Rail Project and was created to plan a railway with customers and communities at its core. The project is being delivered in stages. Trains are already running between Oxford and Bicester, and we aim to have trains running the full length of the line between Oxford and Cambridge by the end of the decade. Further information about East West Rail can be found on our website: www.eastwestrail.co.uk

Compulsory Acquisition

The East West Rail Project is a Nationally Significant Infrastructure Project (NSIP). This means that instead of applying for planning permission from a local authority, permission would be sought at a national level by Government, via a Development Consent Order (“DCO”). If granted, the DCO would provide planning consent for the development and the ability to compulsorily acquire property needed for the project. The Secretary of State for Transport would make the final decision on whether the DCO should be authorised.

If the DCO is granted we would send notices to all those who have an interest in property that we would acquire through compulsory acquisition. This would confirm the plot(s) of land that would be acquired; would enable us 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:

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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 you had signed a receipt accepting the payment in full and final settlement of all claims.

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.

Generally, we would use the GVD process so that we would take possession and ownership of the land at the same time. However, in some circumstances, we would serve a notice to treat and notice of entry. We would discuss our plans with you and give you as much notice as possible.

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 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:

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- The market value of the land. This is the value of the land ignoring the effect of the project.
- 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 project, 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 repay 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 repaying these fees. We would repay 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 repay your solicitors' hourly rate if they negotiate your compensation claim.
- We would ask you to say whether you would like us to pay the fees directly to the agent or to you so that you can arrange for your agent to be paid.

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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.
- 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-and-the-crichel-down-rules-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 the project.

How we would process your compensation claim

When we received 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 had 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.

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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 ownership in the land. Once you had agreed compensation with our valuer we would prepare an agreement for you to sign to accept the amount in full and final settlement of 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.

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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.

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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.

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

The specialist Land team at EWR Co 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 team at any point during the project and you can contact us on the detail below and one of our landowner engagement team will respond:



- Email us at: land@eastwestrail.co.uk
- Call us on: **0330 838 7583**
- Send us a message online at www.eastwestrail.co.uk/get-in-touch

If you have issues, concerns or wish to make a complaint please don't hesitate to get in touch so we can work with you to investigate and quickly find a good resolution. You can contact us via the above details.

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 or property would be potentially affected by our project. These can be found on the land and property page of our website:

<https://eastwestrail.co.uk/the-project/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
- Our proposed Need to Sell Scheme

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

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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