



## CROSSRAIL INFORMATION PAPER

### C8 – PURCHASE OF PROPERTY IN CASES OF HARDSHIP

This paper sets out the Crossrail policy on the purchase of property in cases of hardship, first published in November 2005.

It will be of particular relevance to owners of property affected by the construction or prospect of construction of Crossrail but whose property is not subject to compulsory purchase under the Bill.

This is not intended to replace or alter the text of the paper itself or any commitments contained in it, and it is important that you read the paper in order to have a full understanding of the subject. If you have any queries about this paper or about how the hardship policy might apply to you, please contact either your regular Petition Negotiator at CLRL or the Crossrail helpdesk, who will be able to direct your query to the relevant person at CLRL. The helpdesk can be reached at:

Crossrail  
FREEPOST  
NAT6945  
London  
SW1H 0BR

Email: [helpdesk@crossrail.co.uk](mailto:helpdesk@crossrail.co.uk)  
Telephone: 0845 602 3813

**APPROVED**

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### **1. Introduction**

1.1 The Crossrail Bill will seek powers for the compulsory acquisition of land within the limits shown on the deposited plans. This land, together with a further extension from Abbey Wood to Ebbsfleet, is protected from development under safeguarding directions issued by the Department for Transport. Such land is “blighted land” for the purposes of the Town and Country Planning Act, 1990 (the “1990 Act”). Qualifying interests in blighted land may be entitled to require Crossrail to purchase their property under statutory blight provisions. For further information, see the Office of the Deputy Prime Minister (ODPM) booklet ‘Compulsory Purchase and Compensation Compulsory Purchase Procedure’ published in October 2004<sup>1</sup>.

1.2 It is recognised that there are those whose properties are not required for the Crossrail proposals or are subject to subsoil acquisition only, but who may consider that their properties will be seriously affected by the construction of Crossrail. In recognition of the hardship that some people with a “qualifying interest”<sup>2</sup> may consider that they will suffer, it is proposed to introduce a hardship policy with immediate effect.

### **2. Hardship Policy**

2.1 The hardship policy will apply to persons having a “qualifying interest” in land which is not proposed to be acquired for the purposes of Crossrail, whether whole or in part (subject to the exception at 3.3.3 for subsoil acquisition only), but which is seriously affected by the construction, or the prospect of construction, of Crossrail. This policy will run until one year after the coming into operation of the railway, when the provisions of Part 1 of the Land Compensation Act 1973 apply. Part 1 of the 1973 Act entitles a landowner from whom no land is acquired to claim compensation for the diminution in the value of their property arising from physical factors caused by the use of public works.

### **3. Qualifying Conditions**

3.1 If all of the following conditions are satisfied the Secretary of State will normally accept that there is a case of hardship and the property interest concerned will be acquired on the basis and terms described below.

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<sup>1</sup> ODPM became Communities and Local Government on 5 May 2006 – all references in the text to ODPM should now refer to Communities and Local Government. Copies of the booklets can be found at [www.communities.gov.uk](http://www.communities.gov.uk)

<sup>2</sup> see paragraph 3.2 below

- a) Qualifying interest: the applicant must have a qualifying interest in a property for the purposes of the 1990 Act.
- b) Property not required for the Crossrail Scheme: The property must not be required for acquisition, whether in whole or in part, for the Crossrail Scheme (subject to the exception at 3.3.3 for subsoil acquisition only).
- c) Enjoyment seriously affected by Crossrail: enjoyment of the property must be seriously affected by the construction, or prospect of construction, of Crossrail.
- d) A compelling reason to sell: there must be a compelling reason for the applicant to sell his/her property interest.
- e) Reasonable endeavours to sell: the applicant must have made reasonable endeavours to sell his/her interest but have been unable to do so except at a price at least 15% lower than that for which it might reasonably have been expected to sell in the absence of the Crossrail scheme.
- f) Foreknowledge: The applicant did not purchase his/her property interest at a time when he/she knew, or should have known, of the Crossrail scheme.

These conditions are explained in greater detail below.

### 3.2 *Qualifying interest*

#### *Residential owner-occupier*

3.2.1 A residential owner-occupier in relation to a property means:

- a) an individual who occupies the whole or a substantial part of the property as a private dwelling in right of an owner's interest in it, and has so occupied the property or, as the case may be, that part during the whole of the period of six months ending with the date of service of an application under the Crossrail hardship policy; or
- b) if the whole or a substantial part of the property was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the property or, as the case may be, that part during the whole of a period of 6 months ending immediately before the period when it was not occupied.

3.2.2 An owner's interest means a freehold or a tenancy granted for a term of years certain not less than three years of which remain unexpired on the date of service of an application under the Crossrail hardship policy.

#### *Business owner-occupier*

3.2.3 The definition of a business owner-occupier is the same as that of a residential owner occupier except that it relates to a property the annual rateable value of which does not exceed £29,200<sup>3</sup>.

#### *Leasehold interests*

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<sup>3</sup> Crossrail will automatically apply any future increases in the ratable value limits.

3.2.4 In the case of leasehold interests the applicant must also be able to assign or sublet the whole of his or her interest to the Secretary of State and any necessary consent from the landlord must be obtained first. An application under the hardship policy will not be accepted where it would not be possible for an acquirer to comply with the terms of a lease, e.g. a covenant to continue trading.

### 3.3 *Property not required for the Crossrail Scheme*

3.3.1 The property must not be required for acquisition, whether in whole or in part, for the Crossrail Scheme (subject to the exception at 3.3.3 for subsoil acquisition only).

3.3.2 Persons holding a qualifying interest and from whom land is to be compulsorily acquired at the surface will have the statutory right to serve a blight notice upon the appropriate authority requiring that authority to acquire the whole of the interest in the affected property. Under these circumstances the use of the hardship policy would be unnecessary.

3.3.3 Where a property is subject to subsoil acquisition only (e.g. for the construction of the running tunnels or for a utility diversion), such properties will be exempted from the requirement at 3.3.1 and may be eligible for purchase under this policy.

### 3.4 *Enjoyment seriously affected by Crossrail*

3.4.1 Enjoyment of the property must be seriously affected by the construction, or prospect of construction, of Crossrail. Whilst each case will be considered on its merits it is most likely that any serious effect upon the enjoyment of the property will be caused by one or more of the following: noise, vibration, dust, artificial lighting and obstruction to a right of way or access. The applicant will be required to specify the cause of the serious effect and provide such information about the serious effect which may reasonably be required by the acquirer.

3.4.2 For an effect on the enjoyment of a property to be considered serious it must be sustained over a period of time of not less than 3 months and not be transitory or trivial in character.

3.4.3 In considering an application under the hardship policy, regard shall be had to any works of attenuation or mitigation that have been, or are proposed to be, undertaken as part of the Crossrail scheme.

3.4.4 In considering an application under the hardship policy regard shall be had as to whether a claim for compensation under section 10 of the Compulsory Purchase Act 1965 would provide adequate redress for the hardship claimed. The hardship policy will not apply if such compensation has already been assessed and paid; nor will the hardship policy apply in cases where it is considered that the payment of compensation under section 10 of the 1965 Act will provide adequate redress for the claimed hardship.

### 3.5 *A compelling reason to sell*

3.5.1 The applicant must demonstrate that there is a compelling reason to sell and that save for circumstances falling under paragraph 3.5.2 d) hardship will occur if a sale is not possible.

3.5.2 The following are the grounds that constitute compelling reasons for the purposes of this hardship policy.

- a) A need to move to larger or different premises, e.g. the need to accommodate a larger household or to move home for employment or business purposes.
- b) Financial pressures that require the sale of the property e.g. the need to realise assets as part of a divorce settlement or in connection with a business or due to a threat of repossession.
- c) The applicant, or a dependant living with the applicant, has developed a medical condition which necessitates selling and which is not related to the proposed scheme, e.g. a disability which prevents a person from negotiating stairs.
- d) Where the serious effect is itself a compelling reason to move:
  - i) the applicant, or a dependant living with the applicant, has a medical condition which is likely to be severely aggravated by physical factors caused by the construction works, e.g. noise or dust, or
  - ii) if the carrying out of construction works does or is predicted by the Promoter to affect the enjoyment of the property for a continuous period of not less than three months to such an extent that continued occupation of that property is not reasonably practicable.

3.5.3 An application for hardship based upon ground (c) or (d)(i) above must be supported by satisfactory written medical evidence.

3.5.4 Ground (d) is directly related to the construction works. In the case of ground (d)(i) or (ii), an offer will not be made to buy earlier than nine months in advance of the start of the construction works in the vicinity. If an application under this ground is made early in the life of the scheme the applicant may be asked to reapply later.

3.5.5 Ground (d)(ii) applies where there has been or is predicted by the Promoter to be hardship for a continuous period of at least three months. The Crossrail Noise and Vibration Mitigation Scheme (see Information Paper D9, Noise and Vibration Mitigation Scheme, available from <http://billdocuments.crossrail.co.uk>) provides for noise insulation or temporary re-housing where there may be a serious noise effect on the occupation of a dwelling for a shorter period. That scheme normally applies only to residential property and excludes the requirement for the enjoyment of a dwelling to be affected for a three month period.

### 3.6 *Reasonable endeavours to sell (save for circumstances falling under paragraph 3.5.2d))*

3.6.1 The property must have been exposed to the market in the most appropriate manner to effect its disposal at the best price reasonably obtainable. The length of exposure time may vary with market conditions, but must be sufficient to allow the property to be brought to the attention of an adequate number of potential purchasers. The property should not be marketed at a price which would have been unreasonably high in the absence of Crossrail.

3.6.2 The applicant must provide evidence of marketing and of the inability to sell unless at a discount of at least 15% to the market value (not the asking price) of the property in the absence of Crossrail. To establish this it will normally be necessary for the applicant to instruct an agent.

### 3.7 *Foreknowledge*

3.7.1 The applicant must not have purchased his/her property interest at a time when he/she knew, or should have known, of the Crossrail scheme.

3.7.2 The hardship policy will not normally apply if the applicant bought the property after it had been included within the 1990 safeguarding directions or, in relation to property unaffected by that safeguarding, after 28 October 2004, which is when the Crossrail information centre publicised the scheme. After this date the extent of information in the public domain was such that a reasonable person could have foreseen the effect the scheme might have upon the enjoyment of that property.

3.7.3 Where changes to the scheme have been made since 28 October, 2004 an applicant will be deemed to have been aware of such changes from the date that Crossrail publicised them.

## **4. How to make an application under the Hardship Policy**

4.1 Applications should be made on the form attached as Appendix A to this policy. The completed form should be sent to: The Secretary, Cross London Rail Links Ltd. ("CLRL"), Portland House, Bressenden Place, London, SW1E 5BH.

## **5. Processing applications for hardship**

5.1 For the period prior to enactment of the Crossrail Bill, CLRL will appoint a panel (the "Panel") to consider whether each hardship application satisfies all the qualifying conditions contained in paragraph 3 of this policy.

5.2 The Secretary of State will appoint an independent lay member to sit within the Panel.

5.3 The Panel may arrange for the instruction of two firms of independent professionally qualified valuers<sup>4</sup>, both of which will separately determine the

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<sup>4</sup> This is the term used in the Crichel Down Rules.

market value of the qualifying interest in the property as at the date the application is received by the Secretary of State:

- (i). assuming the absence of the Crossrail scheme; and
- (ii). taking account of the effect of the Crossrail scheme.

- 5.4 The instruction will be made in the joint names of the Secretary of State and the applicant and the valuation will be at the cost of CLRL.
- 5.5 If the difference between the two independent valuations made under 5.3(i) is equal to or greater than 10% of the amount of the higher of the two valuations, the relevant valuation will be referred to an independent expert to be appointed by the President of the Royal Institution of Chartered Surveyors, whose assessment of value shall be final.
- 5.6 If the difference between the two independent valuations made under 5.3(ii) is equal to or greater than 10% of the amount of the higher of the two valuations, the relevant valuation will be referred to such an independent expert, if this is necessary for the Panel to determine whether the applicant has made reasonable endeavours to sell his or her interest. In such cases, the independent expert's assessment of value shall be final.
- 5.7 The Panel will submit a report to the Secretary of State advising acceptance, rejection or further consideration of each hardship application. The lay member shall, in cases where rejection is recommended by the panel, submit a separate report to the Secretary of State either agreeing or disagreeing with the panel's advice and giving the reasons for any disagreement.
- 5.8 If the Panel advise the Secretary of State that an application for hardship should be rejected it will give written reasons why it does not consider that this hardship policy applies.
- 5.9 The Secretary of State will determine each application in accordance with this hardship policy having regard to the circumstances of the individual application.
- 5.10 The Secretary of State will, when determining an application for hardship, have regard to the advice and written submissions of the Panel and the lay member appointed by him and shall give written notification of his decision to the applicant including the reasons for refusing an application.
- 5.11 The Panel will send their written report and advice to the Secretary of State within one month from the date of receipt of all necessary information in connection with an application.
- 5.12 Rejection of an application will not prevent an applicant submitting a further application under the hardship policy although in such cases the Secretary of State will normally expect the applicant to show that there has been a material change in circumstances since the earlier application was rejected.

## **6. Procedure upon acceptance of an application for hardship**

6.1 If the Secretary of State accepts an application to purchase under this hardship policy, CLRL will proceed as follows:

- (i). An offer to purchase the applicant's property interest will be made at a price which represents the average of the two independent valuations made under 5(ii) above, or, if applicable, at the valuation made by the independent expert to be appointed by the President of the Royal Institution of Chartered Surveyors under 5.5;
- (ii). Any offer shall be subject to proof of the applicant's qualifying interest;
- (iii). The offer shall be open for acceptance by the applicant for one month and shall be subject to exchange of contracts within six months;
- (iv). If the compelling reason for the applicant to sell falls within paragraph 3.5.2(d) above then (in addition to the market value of the applicant's qualifying interest) disturbance compensation, a home loss or basic loss payment and an occupier's loss payment (if applicable<sup>5</sup>) and reasonable surveyors' and legal fees will be payable. In all other cases of hardship payment will only be made for the market value of the applicant's qualifying interest; and
- (v). The applicant may appeal against the assessment of disturbance or other compensation not based upon the market valuation of property within one month of that assessment. In the event of such an appeal, the assessment of compensation will be referred to an independent expert in compulsory purchase compensation appointed by the President of the Royal Institution of Chartered Surveyors. The independent expert shall give written reasons for his determination, which shall be final.

## **7. Exceptional Circumstances**

7.1 Additionally, the Secretary of State will exceptionally consider providing assistance for hardship cases falling outside this policy on a case by case basis having regard to the specific circumstances of the case and the reasons why the case does not fall within this policy.

## **8. Ongoing Arrangements**

8.1 At an appropriate time, management of this Hardship policy may be transferred from CLRL to the nominated undertaker appointed for the implementation of the Crossrail works, with similar safeguards to prospective applicants.

## **9. Implementation**

9.1 This policy will take effect immediately.

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<sup>5</sup> See Part 3 of the Land Compensation Act 1973 (as amended) for the rules governing a claimant's entitlement to home loss, basic loss and occupier's loss payments.

**CROSSRAIL**

**Application for the Purchase of Property in the Case of Hardship**

**Application form**

Request for discretionary purchase under the Crossrail hardship policy

This form may be completed by the applicant or by an agent on the applicant's behalf

Reference (for insertion by Crossrail) .....

1. Name(s) of applicant(s) .....

Address:

Postcode:

Telephone No:

e-mail address:

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Request for purchase of property at:

(If different from above address)

Address of  
Property:

Postcode:

2(i) For residential or business owner-occupiers to complete

I/We acquired a qualifying interest<sup>6</sup> in this property on the following date:

..... (date)

I/We own the freehold/leasehold.

Date of expiry of lease if leasehold: .....

(ii) For representatives of a deceased person to complete

I am/We are the personal representative(s) of the deceased person (name)

.....

who, to the best of my/our knowledge, acquired a qualifying interest in this property on the following date:

..... (date)

The deceased owned the freehold/leasehold interest.

Date of expiry of lease if leasehold: .....

(iii) For mortgagees to complete

I am/We are entitled as mortgagee(s) by virtue of a power which has become exercisable to sell this interest. To the best of our knowledge, the person(s) entitled (otherwise than as mortgagee) to this qualifying interest, namely ..... acquired it on the following date:

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<sup>6</sup> See paragraph 3.2 of the hardship policy. Proof of title will be required.

..... (date)

3(i) It appears to me/us that enjoyment of this property is/will be seriously affected by the proposed construction works of Crossrail.

(ii) The factors which I/we think will cause serious effect are:

A large, empty rectangular box with a thin black border, intended for the respondent to list factors that may cause serious effect. The box is currently blank.

*Note: See paragraph 3.4 of the hardship policy for some of the factors which may cause serious effect.*

- 4(i) I/We have made reasonable efforts to sell this property at a realistic price, but have been unable to do so except at a substantial discount to market value.

I/We attach copies of the relevant press advertisement(s) and/or agent's hand-outs(s), together with a statement of the prices asked, with relevant dates where these are not given in enclosures.

I/We also indicate below details of any offers received and attach copies of any documents in which these offers were made.

***Details of Marketing***

Dates	How marketed (Estate agent, local paper, etc)	Price asked

**Details of offers received**

Dates	By whom made	Price Offered

*Note: If you have used an estate agent, he/she should be asked to complete this section of the form.*

**OPTIONAL**

- (ii) The value of the property is, or is likely to be, diminished because of the proposals. I have listed below the valuation information attached in support of this request.

Dates	Description	Value

*Note: If you have stated in section 3 that you think that the value of the property is or will be seriously affected by the proposed scheme, you may submit and list here, your own valuation evidence with this application.*

5(i) I/We have set out below the reasons for needing to sell the property together with why, if I/we are unable to sell, this will result in hardship:

*Note: See paragraph 3.5 of the hardship policy for compelling reasons to sell. Normally hardship will be financial and full details should be included, with references to total assets and liabilities.*

- (ii) I/We expect an existing medical condition details of which are given below, to be severely aggravated by the physical effects of the construction work of the railway:

The doctor and/or specialist treating the condition is/are as follows:

Doctor: ..... Specialist: .....

Name: .....

Address:

I consent to my doctor and/or specialist(s) giving further medical information if requested by or on behalf of the Secretary of State

Signed: .....

*Note: See paragraphs 3.5.2(c) and 3.5.2(d)(i) of the hardship policy for scheme-related medical conditions. You should give the basic details of any illness or medical condition, its duration, and the doctor and/or specialist who is treating the condition. You must attach a note from your doctor and/or specialist stating what the medical condition is and the physical factors that are likely to severely aggravate it.*

*Your attention is specifically drawn to the provision in paragraph 3.5.4 relating to deferment until 9 months before the start of the construction of the proposed route.*

- 6 If you have made any other claims under policies operated by Crossrail, or if mitigation works have been, or are due to be, undertaken by Crossrail for the benefit of your property, please provide full details here:

- 7 I/We certify that to the best of my/our knowledge the information given in this Form is correct. I/We therefore ask you to purchase my/our interest in this property.

Signed:.....

Names:.....

.....

(Block Capitals)

On behalf of:

.....

(Where acting as Agent)

Date: .....

Please send this form, with all the information requested, to:

The Secretary  
Cross London Rail Links Limited ("CLRL")  
Portland House  
Bressenden Place  
London  
SW1E 5BH

Please note that in some cases it may be necessary to seek further information from applicants before a decision is made.

If you have any questions about how to complete this form, please contact CLRL on 0845 602 3813.