

TRANSPORT FOR LONDON

FINANCE AND POLICY COMMITTEE

**SUBJECT: CROSSRAIL COMPENSATION ARRANGEMENTS FOR
COMPULSORY PURCHASE**

DATE: 21 JANUARY 2010

1 PURPOSE AND DECISION REQUIRED

- 1.1 This paper is intended to give a high level overview of the legal position with regard to compensation for compulsory purchase of property for the Crossrail Project, and explains the approach which Crossrail Limited (CRL) is taking in relation to this matter.
- 1.2 The Finance and Policy Committee is asked to note the contents of this paper.

2 BACKGROUND

- 2.1 A campaign has recently been launched by owners of businesses in the Dean Street area whose premises are being compulsorily acquired for the Crossrail Project to draw attention to what they regard as unsatisfactory compensation and to seek to increase this. This has attracted radio, press and TV coverage. The businesses have also formed a lobbying group and have written to Ministers, the Mayor, the Commissioner and other officials.
- 2.2 In line with the practice adopted by all major public infrastructure schemes, compensation for compulsory purchase in connection with the Crossrail Project is governed by the so-called 'National Compensation Code for Compulsory Purchase' ('The Compensation Code'). This code consists of a combination of statute laws (principally the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and the Land Compensation Act 1973) and their interpretation in a very large body of case law. The interests which are being acquired include both freehold and long leasehold (which for the purposes of calculating compensation are broadly similar), and shorter leaseholds (typically business leases). It is some of the smaller leaseholders in this last category who have been most actively involved in expressing their dissatisfaction with the compulsory purchase process, although there are many owners and occupiers who are not happy with the compensation position. CRL is also taking possession of some properties occupied on a very informal or indeed illegal basis, and in these cases generally no compensation is payable.
- 2.3 The Compulsory Purchase Act 1965 requires only two weeks notice of entry for property that has been compulsorily acquired, but the Crossrail Act increases this minimum notice period to three months. In practice, although the statutory notices are issued only three months before possession, much longer advance warning is given to allow people adequate time to make the necessary arrangements. A typical letter giving notice to the occupiers of properties in Dean Street is attached as Appendix 1.

- 2.4 Compensation is not payable until the date on which vacant possession is taken or, if the General Vesting Declaration procedure is used instead of the Notice to Treat option, the property vests in the acquiring authority. In cases of demonstrable and exceptional hardship, the possibility of making payments in advance of possession will be considered.

3 ACQUIRING FREEHOLD OF COMMERCIAL PROPERTY

- 3.1 For investment properties, the valuation process is well understood in the property industry and is based on the market rent and yield established from comparable properties. In addition, the owner is entitled to recover the incidental costs of re-investing the proceeds of sale such as legal fees, stamp duty, etc. Although property market investors generally understand the process, there are often disagreements about market rent, yields, etc. The process is made more difficult in current market conditions, as in some cases the compulsory purchase is crystallising a loss for the owner. Owners and owner-occupiers who satisfy prescribed qualifying criteria have a statutory entitlement to claim basic and, where appropriate, occupiers' loss payments.
- 3.2 In some markets, a site may be more valuable as a development site than as an investment. In this case, what is known as the residual value basis of valuation is used. Put simply, this involves reaching a valuation by assessing the value of a finished new building and subtracting the cost of developing the building from it. Because the value of the building and the cost of development are generally much greater than the value of the land, small percentage changes in these numbers result in large changes in land value. This can lead to a disagreement about the compensation payable. The claimant determines whether compensation is assessed on the basis of existing use value or development value but, whichever is adopted, other claim settlements associated with the property must be viewed consistently.
- 3.3 In the current market, almost all sites are worth more as investment property than as development sites, so this has not so far been a significant issue. This may, however, have an impact on claims where the anticipated compulsory purchase of land for Crossrail purposes has prevented a viable development proceeding in the previous few years.

4 ACQUIRING FREEHOLD OF RESIDENTIAL PROPERTY

- 4.1 Owner-occupied residential property is valued in the conventional way by comparison with similar nearby properties which have recently been sold. In these cases, in addition to the purchase price of the property, the owner is entitled to a home loss payment based on the value of the property, removal expenses, and other reasonable expenses involved in acquiring a new property as a consequence of having been dispossessed.
- 4.2 Tenanted residential investment property is valued in the same way as commercial property based on rental levels, etc. In addition, depending on the nature of the tenancy, the occupiers are entitled to a fixed home loss payment. For Crossrail, we have taken the view that irrespective of the terms of the tenancy, a full home loss payment will be made. So far only a few residential properties have been acquired.

5 COMMERCIAL TENANTS

- 5.1 The compensation regime for commercial tenants is quite complex and heavily influenced by legal precedent. Unsurprisingly, this is the area which has so far been the subject of the most publicity. In general, a tenant is compensated for the proper and reasonable costs incurred in relocating to, and adapting, new premises together with other costs not directly related to the value of the land acquired but incurred consequent to its acquisition. These other costs may include temporary or permanent loss of profits. In addition, compensation is paid for the value of the leasehold interest in the vacated property. Assessment of these amounts is influenced by a number of factors. For example, if a lease only has a relatively short period to run and is not protected (i.e. the tenant has given up the right to an automatic extension of the lease), then the tenant would only be entitled to the additional costs incurred as a result of bringing forward the date of removal, together with a sum to compensate for the loss of benefit of fit out of the property being vacated during the unexpired portion of the lease period.
- 5.2 Another area causing controversy is that of betterment and value for money. The objective of the Compensation Code is to put the claimant in substantially the same financial position as he would have been if no compulsory purchase order had been made. Consequently, deductions from the compensation payable are made where the tenant substitutes new plant or equipment for old. For example, a new office may be equipped with new fittings, such as computers, rather than relocating those from the premises being vacated. In this case the tenant would not normally be entitled to recover the cost of the improvement to his facilities.
- 5.3 In some cases, it is simply not possible for the tenant to find alternative premises which are equivalent to those being vacated, and he may choose to extinguish his business. In these situations, the compensation payable is calculated on a different basis. Compensation is payable for the value of the business to the owner, together with items such as redundancy payments, loss on forced sale of stock, etc. Extinguishment may also apply if the business owner is aged over 60; owners of land interests who are aged over 60 with a rateable value under a prescribed level have a statutory right to decide to extinguish their business.
- 5.4 The calculation of compensation, particularly for businesses, is complex and requires professional advice. Moreover, claims cannot be processed until they are received. For this reason, CRL urges claimants to engage advisers experienced in these matters (for which CRL will pay), so that they can submit full claims early and allow compensation to be paid promptly.

6 TIMING OF COMPENSATION PAYMENTS

- 6.1 The law requires that an advance payment of 90 per cent of the compensation payable (or, if the final figure has not been agreed, 90 per cent of the acquiring authority's estimate of the compensation that will be payable) is paid within three months of the date on which a claimant requests such a payment. If the three months expires before possession is taken, the advance payment is not payable until the date possession is taken. Generally, when a valid and properly evidenced claim has been received, CRL aims to make advance payments on possession notwithstanding that the request for such a payment may have been

made less than three months previously. If this aim cannot be met, payments are made as soon as reasonably practicable after taking possession of a property. CRL then seeks to agree the purchase price to allow payment of the balance as quickly as possible thereafter. If appropriate, further interim payments can and will be made as and when elements of the compensation payable are agreed. Statutory interest (SI) is added to the outstanding balance of compensation and paid when final agreement as to the total compensation payable is reached. However, SI is set at 0.5 per cent below bank base rate, and so is currently zero per cent.

- 6.2 In the case of commercial occupiers, payment on possession can leave a business with cash-flow difficulties if, for example, it needs to pay a deposit on a new property, or pay for redecoration of new premises before possession of the existing premises is taken. In these cases earlier payments can be made, providing that a claim is made in sufficient time to allow verification of the facts, and that the claim (at least for the level of payment requested) is valid. Such payments have been made in several cases already, but each case is considered on its merits rather than being decided on the basis of strict precedent. If a request for an early payment is declined, a claimant can seek to recover costs associated with arranging and servicing bridging finance as part of a wider disturbance claim. CRL is also willing to offer alternative forms of assistance, such as providing confirmation that tenants are entitled to compensation for the loss of their existing premises in order to assist them in taking out a new tenancy.
- 6.3 It must be emphasised that CRL can not provide advance payments or payments of compensation unless proper, verifiable, information is received from tenants.

7 DISPUTES

- 7.1 Matters which cannot be settled by negotiation can be referred to the Lands Tribunal and from there to the Court of Appeal if the dispute relates to a matter of law. Alternative cheaper and quicker procedures, including arbitration or mediation, can also be used. Where disputes arise in relation to minor or more straightforward valuation matters, we have indicated that Crossrail would be prepared to use these alternative forms of dispute resolution.

8 RECOMMENDATION

- 8.1 The TfL Finance and Policy Committee is asked to NOTE the information in this paper.

9 CONTACT

- 9.1 Contact: Rob Holden, Chief Executive, Crossrail
Number: 020 3229 9484
Email: RobHolden@Crossrail.co.uk

020 79184202
020 70278284
steven.wilkinson@gpf.org.uk

16 April 2009

Dear Sir/Madam,

**Crossrail Act 2008 – Tottenham Court Road; Dean Street South Box-
Impacts on your Property:**

As you will know, Crossrail Ltd (CRL), acting on behalf of the Secretary of State for Transport, intends to undertake the construction of the Crossrail Station. TfL Group Property are assisting CRL in acquiring the land and property interests for the scheme using the powers contained within the Crossrail Act.

Based on the present programme it is intended to take possession of the land and property required for these works on 1st December 2009 and according to our information your property interest in is one of those required for the scheme.

Before the property can be acquired, the Secretary of State is required by law to give notice of intention to all persons having an interest in that property. Enquiries about these are being made on behalf of the Secretary of State by Supporta Terraquest and we understand they have been in contact with you regarding confirmation of your interest.

The acquisition powers under the Crossrail Act require the Secretary of State to give a minimum of 3 months advance notice prior to possession being taken. Based upon our current programme, this will commence with the service of legal notices not later than the beginning of September 2009, although earlier notice will be provided if achievable.

If you still have an interest in the property when possession is taken you will be entitled to seek compensation for your loss, in accordance with the relevant legislation. The enclosed Information Papers will give you more detail on the national compensation code which will apply to the acquisition of property for the Crossrail scheme.

If you have not already done so, you may wish to engage a professional advisor, such as a chartered surveyor, to advise you and negotiate any claim for compensation you may be entitled to. You will be reimbursed for the reasonable fees and costs incurred although you are advised to ensure that the basis of their instructions incurring those fees and costs (including the fee level and basis of costs themselves) is set out in writing and agreed by me in advance.

You will receive information about how to make a claim for compensation when the legal notices are issued. Settlement of the claim will be negotiated on behalf of the Secretary of State by TfL Group Property and I will be your contact for this purpose in the first instance. I would like to meet you to explain the property and compensation process in more detail and understand your requirements and concerns. You may contact me using the contact details above to arrange a meeting or if you have any questions about the contents of this letter.

If you are in occupation of the premises in which you have an interest, due to the relatively short time period between now and the expected date for taking possession on 1st December 2009, you may consider it appropriate to commence planning to relocate. I can confirm on behalf of CRL that the proper and reasonable costs you incur in searching for suitable alternative premises will be reimbursed whether or not the scheme proceeds to be implemented. I will require proper evidence of the reasoning and amounts of any costs incurred.

To avoid any subsequent difficulties in agreeing costs I would stress that no commitments should be entered into for alternative premises without further discussion through myself and colleagues.

Our agency service can liaise with you to help ascertain your property requirements and advise on suitable property we have been able to identify that might be available to meet your reasonable accommodation needs, along with offering an opportunity to identify any potential concerns that may prevent achieving relocation within the allocated time frames; at the earliest stage possible. For this purpose, Alan Uzomah, our Business Relocation Manager, will be available to discuss any issues you may have. Alan can be contacted on: 020 7027 8282 or email alan.uzomah@gpf.org.uk. It must be stressed that the onus on preparation and sourcing alternative premises for relocation is primarily with you as the claimant.

Finally, we will wish to inspect your premises in the near future. Accordingly I would ask that you accept this letter as providing the required seven days notice in accordance with Schedule 2 para 9(1) of the Crossrail Act for this purpose. We will of course contact you in advance and ask for your cooperation in this regard.

I hope this above information is of assistance and invite you to contact me should you wish to discuss matters further at this time.

Yours sincerely

Steven Wilkinson
Senior Surveyor
for Head of Operational Property

Enc: Information Papers C01, C02 & C06