

Heathrow Expansion

Draft Land Acquisition and Compensation Policies

Commercial Property

1 Introduction

- 1.1 This document sets out the draft policy of Heathrow in relation to the acquisition of commercial properties required in connection with the development of a new north-west runway and associated infrastructure to expand Heathrow Airport currently being prepared for an application for a Development Consent Order under the Planning Act 2008 (the "Project").
- 1.2 We have prepared this draft policy to help potentially affected owners and occupiers of commercial properties understand our approach to land acquisition. It explains our general approach to acquisition of commercial properties and the compensation offer we propose to make.
- 1.3 This draft policy is one of the discretionary draft policies that we are putting in place for those whose properties are within the area most affected by the Project or, with an interest in land required for the Project. This discretionary policy includes an enhanced compensation offer on eligible properties. In making an application in relation to these discretionary policies, the property owner must identify whether the property in question is residential, commercial or agricultural in nature, and thus which one of the discretionary policies is applicable (only one such policy may apply).
- 1.4 Our discretionary policies are intended to supplement and operate in parallel with, the existing statutory regime governing compensation for the compulsory acquisition of land. The draft policy set out in this document has therefore been developed to enhance the compensation that would otherwise be available to certain affected property owners and does not remove or limit rights that already exist in law.
- 1.5 In developing this draft policy, we have had regard to guidance published by the Department of Communities and Local Government on the compulsory acquisition procedures that apply to nationally significant infrastructure projects promoted under the Planning Act 2008.¹

2 Properties covered by this draft policy

- 2.1 In order to construct, operate and maintain the Project we will need to acquire a large area of land. The detailed design of the Project has not yet been established. That design will inform the extent of land that will ultimately be required.

¹ *Planning Act 2008 Guidance related to the procedures for the compulsory acquisition of land* dated September 2013. See also *Guidance on Compulsory purchase process and the Cribel Down Rules for the disposal of surplus land by, or under threat of, compulsory* dated October 2015, also published by DCLG.

2.2 As currently understood, the likely area includes residential, commercial and agricultural properties. This area of land is referred to as the Compulsory Purchase Zone (“the CPZ”). The area currently anticipated to be needed (based on the scheme recommended to Government by the Airports Commission in their final report) is shown edged red on the map attached to this draft policy. A copy of the plan can be found at the attached link, allowing for some zooming in to read it in more detail: <https://www.heathrowexpansion.com/local-community/compensation-schemes/>. We estimate that approximately 300 commercial properties are within the CPZ and will therefore need to be acquired. These properties are generally located along the A4, in Poyle and in Colnbrook but also in Stanwell.

2.3 As part of the consultations in relation to our proposals, we will consult on a variety of options which may impact on the boundaries of the CPZ based on the scheme recommended to Government by the Airports Commission in their final report. This consultation exercise may change the extent of the CPZ; possible options include commercial properties located in Poyle, Harmondsworth and Stanwell Moor.

3 General approach

3.1 We will seek to acquire properties by agreement wherever practicable. We do not expect to purchase any commercial properties within the CPZ unless and until after development consent for the Project has been granted and we have decided to proceed with its construction. If consent is granted, we anticipate that this would occur in early 2021. Until that time it is our intention that businesses should be able to continue to operate, and our draft policy reflects this underlying general principle.

3.2 Given the large number of properties that need to be acquired for the Project however, we need to plan for the possibility that we will not be able to acquire everything by negotiated agreement. We therefore intend to apply for powers to compulsorily acquire the land within the CPZ as part of our application for development consent for the Project. We would only exercise those powers where our attempts to reach agreement fail or as a backstop to obtaining possession.

3.3 Our general approach will be to seek to agree to acquire commercial properties within the CPZ conditional upon the grant of development consent for the Project and Heathrow deciding to proceed with its construction. However, we expect there to be a number of large businesses for which relocation would potentially take longer than would be available between the grant of development consent and vacant possession of the land being required to start construction of the Project. This may be due to the nature of the business and the complexity involved in any relocation or re-provision of it. Engagement with these and any other businesses similarly identified will continue in parallel with the statutory process.

3.4 We recognise the uncertainty and impact that our proposals may have on local communities, including on those whose businesses are potentially affected. We are committed to engaging with business owners and occupiers throughout the process. It is our intention to protect the most vulnerable and we have introduced an interim Property Hardship Scheme (“the PHS”) to enable those with a compelling need to move to apply to Heathrow to purchase their property early. The PHS is explained in detail in separate draft policy documents.

3.5 We will engage with potentially affected business owners and occupiers as part of the pre-application consultation in relation to our proposals. Our stage one consultation is expected to take place in the early part of 2018 when we will consult on (among other matters) the compensation offer for commercial properties as set out in this draft policy.

4 **Larger commercial properties**

- 4.1 This section of the draft policy applies to large commercial properties within the CPZ. For the purposes of this draft policy, a 'large commercial property' is one which contains business premises with an annual rateable value exceeding the level set by Government for the service of a blight notice (which is currently £44,200 within the Greater London Area). The relevant rateable value in this regard, is that applicable at the date on which the application for this compensation offer is accepted by Heathrow.
- 4.2 Affected owners and occupiers of large commercial properties will be compensated in accordance with the Statutory Compensation Code. Heathrow will work with owners and occupiers to agree terms of acquisition before the start of the Examination into the Development Consent Order application.
- 4.3 It is anticipated that compensation payments under the Statutory Compensation Code will fund the relocation of operations. On acquisition owners and occupiers can request payment of the agreed compensation figure or, if the figure has not been agreed, 90% of Heathrow's provisional estimate of compensation (in accordance with the principles of the statutory regime).
- 4.4 As a discretionary measure, Heathrow may offer financial support in advance of Heathrow acquiring the property in order to assist with relocation of a business. This could comprise early reimbursement of reasonable and properly incurred expenditure which is deemed by Heathrow to be essential for relocation at the time, for example payment of reasonable and properly incurred interim professional fees, to support cash flow. The availability of such financial support will be dependent on, among other things, Heathrow obtaining all necessary budgetary and other approvals (for example from our regulator the Civil Aviation Authority), obtaining Development Consent, the circumstances of each individual case and subject to the negotiation of suitable terms.
- 4.5 It is important that affected businesses are able to plan their relocations with sufficient notice to enable the smooth transition of operations from one location to another. Heathrow will aim to give occupiers of large commercial properties as long a period of notice as is reasonably practicable commensurate with the coordinated progress of the construction of the Project. This will be at least three months' notice prior to entering and taking possession of a property where compulsory purchase powers are implemented.
- 4.6 Heathrow is considering establishing an agency service to assist those businesses that will have land and property acquired. The service could help businesses ascertain their property requirements and provide information on appropriate alternatives to meet their reasonable accommodation needs. It could also work with property agents, landowners, and developers as well as Local Enterprise Partnerships, local authorities and other relevant organisations identified to ensure reliable and effective information is provided. The agency would not act as adviser or negotiator to affected businesses in formulating their claims for compensation.
- 4.7 Claimants may be able to recover reasonable professional costs of appointing their own agents for such purposes (see further our separate draft policy on Professional Fees).

5 **Small commercial properties**

- 5.1 This section of the draft policy applies to small commercial properties within the CPZ. Small commercial properties are business premises with an annual rateable value not exceeding the amount prescribed by the Government for the service of a blight notice which is currently £44,200 for the Greater London Area (please refer to the local authority's business rate banding for further details of rateable values). For the purposes of this draft policy, the relevant rateable value in this regard, is that applicable at the date on which the application for this compensation offer is accepted by Heathrow.
- 5.2 Those having an interest in small commercial properties may, as an alternative to seeking compensation under the Statutory Compensation Code, be entitled to recover enhanced compensation as set out in Section 6 below. It is anticipated this applies to a small number of the properties in the CPZ.
- 5.3 It is anticipated that compensation payments will fund the relocation of operations. Property owners can request payment of the agreed compensation figure pursuant to this draft policy, on acquisition of their property.
- 5.4 As a discretionary measure, Heathrow may offer financial support in advance of Heathrow acquiring the property in order to assist with relocation of a business. This could comprise early reimbursement of reasonable and properly incurred expenditure which is deemed by Heathrow to be essential for relocation at the time, for example payment of reasonable and properly incurred interim professional fees, to support cash flow. The availability of such financial support will be dependent on, among other things, Heathrow obtaining all necessary budgetary and other approvals (for example from our regulator the Civil Aviation Authority), obtaining Development Consent, the circumstances of each individual case and subject to the negotiation of suitable terms.
- 5.5 It is important that affected businesses are able to plan their relocations with sufficient notice to enable the smooth transition of operations from one location to another. Heathrow is considering establishing an agency service to assist those businesses that will have land and property acquired.

6 **Terms applicable to the offer for small commercial properties**

6.1 **What is the enhanced compensation offer?**

Subject to satisfying the criteria (see below), qualifying owners of eligible small commercial properties within the CPZ will be offered:

- the unaffected open market value (excluding development value) of their property; plus
 - a loss payment calculated at 25% of the unaffected market value (excluding development value); plus
 - Stamp Duty costs relating to the purchase of replacement property of an equivalent value; plus
 - reimbursement of reasonable legal fees and relocation or other disturbance costs incurred.
- 6.1.1

The 'unaffected open market value' means the property's market value as a lawful commercial unit, ignoring any impacts from the Project. Any development value will not be taken into account.

Reimbursement of fees and relocation costs will be assessed in accordance with the Statutory Compensation Code.

If any party wishes to take advantage of this enhanced compensation offer, they must enter into a legal agreement with Heathrow before the start of the Examination into the Development Consent Order application. This agreement will set out the terms upon which Heathrow agrees to purchase the property.

6.1.3 In particular, owners will not be eligible for this enhanced compensation offer if they object to the compulsory acquisition of their property as part of our application for a Development Consent Order for the Project. Owners will need to agree before the beginning of the Examination into our Development Consent Order application, not to make an objection to the compulsory acquisition of the property in question and to withdraw any such objection that they may have previously made.

6.1.4 Parties may trigger the agreement offer after development consent has been granted for the Project and we have decided to proceed with its construction. If the party has chosen not to trigger the agreement by the time we need the property, then we would instead have to use our compulsory acquisition powers in respect of that property, and would therefore acquire it and pay compensation under the Statutory Compensation Code instead of this enhanced compensation offer.

6.2 Eligibility criteria for small commercial properties

6.1.6 The enhanced compensation offer is proposed to be open to qualifying owners of eligible small commercial properties. Such owners will be able to take advantage of the offer after development consent has been granted for the Project and we have decided to proceed with its construction.

This offer applies to small commercial properties which are inside the CPZ. There is a Wider Property Offer Zone (“WPOZ”) which only applies to residential properties.

Owner-Occupier

6.2.1 To be eligible for this compensation offer as an owner-occupier of a small commercial property you would need to:

6.2.2 (a) have an “owner’s interest” in the property, being a freehold interest or a leasehold interest granted or extended for a fixed term of years, not less than 3 years of which remain unexpired at the date of any claim; and

6.2.3 (b) have either (i) occupied the property for at least the six months before 17 December 2013 or (ii) if the property was unoccupied, occupied it for at least six consecutive months before it became unoccupied within 12 months of 17 December 2013.

You would need to show that the property is eligible for acquisition by Heathrow under this compensation offer (i.e. that it is an “eligible property”). A small commercial property will be eligible if it was in occupation as commercial property on 17 December 2013 (as defined in paragraph 6.2.3).

The date of 17 December 2013 was when the Airports Commission short-listed our north-west runway scheme. From this date, prospective purchasers could reasonably be expected to have been aware of the proposals for the Project and that a new north-west runway at Heathrow was a realistic prospect.

6.2.4

6.2.5

Change of ownership

If an owner-occupier's interest (as defined in paragraph 6.2.3) in an eligible property (as defined in paragraph 6.2.4) is sold after 17 December 2013 to someone other than Heathrow, then eligibility to apply for the compensation offer set out in this draft policy would transfer with that transaction. This means that a new owner of that property interest will be entitled to receive the compensation offer, even if they do not occupy the commercial property.

Heathrow has adopted this approach to ensure that the property market continues to function and that owner-occupiers can continue to buy/sell property interests as usual, notwithstanding our proposal to bring forward the new north-west runway.

6.2.6 Ineligible owners and occupiers

Those with an interest in small commercial premises within the CPZ who do not qualify for the enhanced offer will still be entitled to compensation in accordance with the Statutory Compensation Code. Owner-occupiers of commercial premises outside the CPZ but close to the boundary of the expanded airport (for example in the WPOZ) may be entitled to certain compensation under the Statutory Compensation Code.

6.3 **Inherited property**

6.2.8 A person who inherits an owner-occupier's interest (as defined in paragraph 6.2.3) in an eligible property within the CPZ after 17 December 2013, will be entitled to receive the compensation offer if they enter into an agreement to sell the property to Heathrow, and choose to trigger that agreement after Heathrow has been granted Development Consent and decided to proceed with the Project. As in all other cases, the terms of the agreement for the sale of the commercial property to Heathrow would need to be agreed before the start of the Examination of the Development Consent Order application.

6.3.1 A person who inherits an owner-occupier's interest in an eligible property within the CPZ after 17 December 2013 and subsequently sells the property on the open market, will be entitled to sell with the benefit of this compensation offer (which will transfer with the sale).

6.4 **Valuation**

6.3.2 If the property is in the CPZ and is purchased by Heathrow under the terms of this draft policy, the property value will be assessed by two independent qualified members of the RICS (Royal Institution of Chartered Surveyors) who have experience valuing the relevant type of commercial property, one appointed by Heathrow and the other appointed by the business owner. The valuers will be chosen from a panel of independent valuation firms drawn up by Heathrow. The valuations will be paid for by Heathrow. The average of these two valuations would then become the offer price. If these differ by more than 10%, a third valuer would be appointed by Heathrow and the offer price will be the average of the closest two valuations.

6.4.1

As an alternative to using the panel, owners can choose to commission an independent valuation of their own and Heathrow will take this as the owner's valuation. However, if they choose to do so the cost of this valuation must be borne by the owner and Heathrow will not contribute towards those costs. As before, in the event the two valuations differ by more than 10%, the third valuation from the panel will be introduced.

Each property will be valued individually to establish its 'unaffected open market value' as a lawful commercial property. This means the market value ignoring any effect from the Project as defined in the DCO, and also ignoring any development value. The 'property' to be valued is simply the interest in the premises; it does not include plant or other equipment.

6.4.2

The valuations will be undertaken with reference to the value of the commercial property on the date on which the application for this compensation offer is accepted by Heathrow. That date will become the 'Valuation Date'. The valuation generated by the process will then be index linked until the date on which Heathrow take possession of the property. If Heathrow does not purchase the property until more than 5 years after the Valuation Date, Heathrow may require the property to be 're-valued' in accordance with the procedure outlined in paragraph 6.4.1.

6.4.3

7 **Statutory Compensation Code**

7

7.1
6.4.4 The enhanced compensation offer for small commercial properties as set out in this draft policy, is being put in place to enhance the compensation that would otherwise be available to certain affected property owners. It does not remove or limit rights that already exist in law.

7.2 Under the Statutory Compensation Code an owner occupier of a commercial property in the CPZ would receive a 10% loss payment, capped at £100,000 and landlords in the CPZ would be entitled to receive a 7.5% loss payment, capped at £75,000. Qualifying owner-occupiers of an eligible small commercial property under the Heathrow enhanced compensation offer would receive a 25% loss payment.

7.3 Anyone with whom we do not manage to reach agreement in respect of this discretionary policy, will receive compensation in accordance with the Statutory Compensation Code in the event that their property is compulsorily acquired.

Map of areas covered by this draft policy
Area currently understood to be in the CPZ and WPOZ.

