



# EXCEPTIONAL HARDSHIP PROCEDURE

Original document App213.01

June 2017

Handling instructions for the protective marking shown are provided in the Protective Markings Standard (Document reference: 2362-TDWAY-TTTUN-990-ZM-PS-100000).

# TIDEWAY

## Exceptional Hardship Procedure

### List of contents

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
<b>2</b>	<b>Purpose of document</b> .....	<b>1</b>
<b>3</b>	<b>Exceptional Hardship Procedure</b> .....	<b>1</b>
<b>4</b>	<b>Independent advice and support</b> .....	<b>2</b>
4.1	Introduction.....	2
4.2	Independent Advisory Service (IAS) .....	2
4.3	Independent Compensation Panel.....	3
4.4	Independent Complaints Commissioner (ICC).....	4
<b>5</b>	<b>EHP Criteria</b> .....	<b>4</b>
5.1	Introduction to the five criteria.....	4
5.2	Property Interest.....	5
5.3	Location of property.....	6
5.4	Effort to sell .....	6
5.5	No prior knowledge.....	7
5.6	Exceptional Hardship.....	7
<b>6</b>	<b>Procedure</b> .....	<b>8</b>
6.1	Stage one - submitting the application and supporting evidence.....	8
6.2	Stage two – receipt of application .....	8
6.3	Stage three – determination of the application by the ICP .....	9

## 1 Introduction

- 1.1 The Exceptional Hardship Procedure (EHP) provides information for property owners whose property may be affected by the construction of the Thames Tideway Tunnel and who have a pressing need to sell.
- 1.2 The EHP may also provide support for leasehold occupiers of business premises identified for temporary use.
- 1.3 The original document is known as App213.01, a revised update was issued in autumn 2015. All revisions to App213.01 are reviewed by the relevant boroughs in line with the App 209.03 Legal Agreement for Securing of Off-site Mitigation Policies and Resources for Local Planning Authorities.

## 2 Purpose of document

- 2.1 This document sets out:
- how the EHP will be managed
  - how EHP applications can be made
  - the criteria on which they will be assessed
  - the procedure for completing purchases.
- 2.2 This document, and the associated EHP Help Guide and Application Form, will be reviewed regularly by both the Independent Compensation Panel (ICP), Tideway and Thames Water. Any amendments required will be approved by the ICP in consultation with the London Boroughs.
- 2.3 Reviews will be conducted on an annual basis, irrespective of any continual improvements, to ensure accuracy.

## 3 Exceptional Hardship Procedure

- 3.1 Tideway and Thames Water both recognise that there will be uncertainty as to which properties may be substantially and adversely affected by construction or operation of the project.
- The EHP is provided in recognition of the importance of providing assistance for those property owners who are most severely affected by the project.
- 3.2 This means that, in some cases, there may be a significant effect on properties in the immediate vicinity of the construction sites in the period until the project has been completed.
- 3.3 The EHP is available to eligible property owners who can demonstrate that they have a pressing need to sell but have been unable to do so, other than at a substantially reduced price, as a direct result of the project.
- 3.4 Those property owners who apply to the EHP and meet the eligibility criteria can then have their property purchased by Thames Water, at its unaffected fair market value (that is, what the value of the property would have been without any adverse effect arising from the project proposals).

- 3.5 The EHP is also available to eligible occupiers of premises to be used temporarily as part of a construction worksite.
- 3.6 Those occupiers of premises to be used as a construction site who apply to the EHP and meet the eligibility criteria can have their leasehold interest purchased by Thames Water at its unaffected fair market value and will also be entitled to claim compensation for disturbance in accordance with the Statutory Code<sup>1</sup>.
- 3.7 The EHP is a non-statutory procedure, and supplements the statutory rights of owners.
- 3.8 Every application under the provisions of this procedure will be subject to assessment by the Independent Compensation Panel (ICP). Further advice and clarification on this procedure can be obtained by contacting the Independent Advisory Service (IAS).
- 3.9 The EHP Help Guide and Application Form can be found on the Tideway website, [www.tideway.london](http://www.tideway.london).

## 4 Independent advice and support

### 4.1 Introduction

- 4.1.1 To give assurance that the process is impartial and transparent in every respect, potential claimants will require independent advice and decision making regarding claims.
- 4.1.2 In order to assist individuals and ensure independent review of mitigation and compensation policies and processes, the following bodies have been established:
- Independent Advisory Service (IAS)
  - Independent Compensation Panel (ICP)
  - Independent Complaints Commissioner (ICC)

### 4.2 Independent Advisory Service (IAS)

- 4.2.1 The IAS will provide advice in respect of the EHP. It will advise individuals and other affected parties how to apply and whether they might qualify for the EHP and explain the role of the ICP.
- 4.2.2 The IAS shall be independent from Tideway. They will not be responsible for any advice given by the service. The full cost of setting up and operating the IAS will be met by Tideway.
- 4.2.3 The IAS has been in place from February 2014 and run for the duration of construction. Tideway will publish details of the IAS and periodically advise local residents and small business owners about its availability through a newsletter. The IAS will be operated through a freephone helpline and email service.

---

<sup>1</sup> The Statutory Code refers to one or more of the following acts: Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973, Acquisition of Land Act 1981, Planning Compensation Act 1991.

## 4.3 Independent Compensation Panel

- 4.3.1 The ICP will be comprised of a Chairperson plus two additional members.
- 4.3.2 The Chairperson shall not have less than 20 years' experience in the field of compensation and valuation or environmental health and suitable experience in the management of major infrastructure projects of compatible scale and complexity to the Development,
- 4.3.3 The other two additional independent members will have expertise in the field of the claim and be chosen from the expert advisory panel detailed below on the basis of their field of specialty.
- 4.3.4 The ICP shall receive advice from the expert advisory panel in relation to the following areas or professions:
- a. noise and vibration
  - b. transport
  - c. building surveying
  - d. quantity surveying
  - e. chartered engineering with experience of tunnelling projects in highly developed and complex urban environments
  - f. chartered surveying
  - g. medical advice from an appropriate qualified medical professional on the potential effects of exposure to noise and vibration on the health of individuals or groups of individuals
  - h. legal advice
  - i. exceptional hardship specialists.
- 4.3.5 In addition, the ICP may call on such other specialists as the chairperson may deem necessary from time to time to perform the role and functions of the ICP, which include:
- a. supervising the implementation of this procedure, the Settlement Information Paper and the Non-statutory off-site mitigation and compensation policy
  - b. ensuring that the mitigation avoids significant observed adverse effects and, where provided for that purpose, then minimises adverse effects on the same receptor as far as is reasonably practicable
  - c. ensuring that the mitigation provided is of good design quality
  - d. ensuring that all policies are effective and accessible, and recommending any necessary changes to improve the efficiency and effectiveness of the processes and procedures that they contain
  - e. determining any claims or disputes arising out of all policies
  - f. taking decisions with reference to the relevant policy and relevant guidance in codes of practice, British Standard BS 5228 and precedent from other equivalent projects.

## Header

- 4.3.6 The ICP shall be independent from Tideway and Thames Water and will run until construction of the project is completed. The ICP is solely responsibility for the decisions made by the Panel. The full cost of setting up and operating the ICP will be met by Tideway.
- 4.3.7 Tideway shall publish details of the ICP and periodically advise local residents and small business owners about its availability through updates.
- 4.3.8 If an affected party has a dispute they wish to be resolved they must first inform Tideway to allow for a resolution to be reached. If the parties cannot agree on a satisfactory resolution then the dispute can be referred to the ICP, this can be done by either the affected party or Tideway or Thames Water..
- 4.3.9 Any dispute or request for a decision can be made by either Tideway, Thames Water or the affected party and must be made in writing to the ICP, including full details. Subject to Panel member's availability the ICP will seek to consider such requests within ten working days of receipt and write to both parties setting out the timetable for resolution. It may also request a site visit or further information.
- 4.3.10 EHP applications for consideration by the ICP must be submitted using the template application form available from the IAS, or Tideway's website, [www.tideway.london](http://www.tideway.london).

## 4.4 Independent Complaints Commissioner (ICC)

- 4.4.1 An Independent Complaints Commissioner, will be appointed whose role will be to ensure that the correct process has been followed where a claimant is not satisfied with the response of the ICP. In such circumstances, a claimant can raise the matter formally with the commissioner, who will then evaluate the ICP's decision-making process in that case.
- 4.4.2 Should either party consider that the ICP has not followed the appropriate decision-making process, they may refer the decision-making process for review by the ICC. The remit of the ICC in such cases is not to revisit the decision itself but to consider the decision-making process of the ICP. In most cases, the ICC will respond within 28 days from the date on which the ICC has all relevant information but may advise that further time is required when considering complex or long running cases. Should the ICC find that due process has not been followed, then the claim will be returned for a re-evaluation by the ICP, having regard to the guidance of the ICC. Ultimately a determination by the ICP will be final and binding on all parties.

## 5 EHP Criteria

### 5.1 Introduction to the five criteria

- 5.1.1 To qualify to have a property purchased under the EHP, the affected party must meet the five criteria outlined below.
- 5.1.2 Details of the supporting documentation and information that should be included with an application can be found in the EHP Help Guide and Application Form

which can be obtained on the Tideway website at [www.tideway.london](http://www.tideway.london) or from the IAS. The 24hour Tideway Helpdesk 08000 30 80 80 can also help direct applicants to the right information.

## 5.2 Property Interest

### 1) Do you have a qualifying interest in the property which you wish Thames Water to buy?

The definition of a qualifying interest covers:

- a. owner-occupiers (to include freeholders and long leaseholders) of private residential properties,
- b. owner-occupiers of business premises with an annual rateable value not exceeding £34,800,
- c. occupiers of premises which are identified for temporary use as a construction worksite,
- d. mortgagees (i.e. banks and building societies) with a right to sell a property and who can give immediate vacant possession,
- e. personal representatives of a deceased person who had a qualifying interest at the time of death.

#### Residential owner-occupiers

5.2.1 You must either be living in the property at the date on which the application is received and must have owned it and lived in it as your main residence for at least six months before that date, OR

If the property is empty, you must have lived there for at least six months prior to it being empty, so long as it has not been empty for more than 12 months,

5.2.2 If you are a long leaseholder, the tenancy must be granted for a certain term of years, not less than three years of which remain unexpired on the date of an application under the EHP.

#### Owner-occupiers of business premises

5.2.3 You must hold a freehold or long leasehold interest in the premises at the date on which the application is received and must have owned it for at least six months before that date, and have operated a business of which you are the sole proprietor or principal shareholder from there throughout this time. Or, if the property is empty, you must have operated a business, of which you are the sole proprietor or principal shareholder, from there for at least six months prior to it being empty, so long as it has not been empty for more than 12 months.

#### Occupiers of premises identified for temporary use

5.2.4 You must hold a leasehold interest in the premises which has at least three years to run at the date on which the application is received.

5.2.5 You must be in occupation of the premises or, if it is empty, be able to show that you have occupied it for at least six months prior to it being empty, so long as it has not been empty for more than 12 months.

#### Reluctant landlords

- 5.2.6 Reluctant landlords are defined as owners who have had to rent out their property to facilitate an essential relocation (e.g. due to their employment circumstances) or because they would have suffered financial hardship if they were to have remained in the property.
- 5.2.7 To be eligible under the reluctant landlord criteria you must own only one property which you have been forced to rent and you must not become owner-occupier of a separate property following the letting of the application property.
- 5.2.8 You must have lived in the application property for at least six months prior to it being let, so long as it has not been let for more than 12 months. Owners of property that has been let out for longer than 12 months would not be eligible.

## 5.3 Location of property

### **2) Is your property directly affected by the project proposals, or in such close proximity to the project that it would likely be substantially adversely affected by the construction or operation of the new infrastructure?**

- 5.3.1 Any property must be situated within 100 metres of the limits of land to be acquired or used (LLAU) in order to satisfy this criterion within the scope of this document.
- 5.3.2 However, in considering the question above, the particular characteristics of the property, including its position and its surroundings (for example, whether there is other built development between the property and the project infrastructure), will be considered when forming a view as to the degree to which it would be affected by the project.
- 5.3.3 Occupiers of premises identified for temporary use must show that all or a significant proportion of the premises are identified within the LLAU and are not identified for permanent acquisition in the Development Consent Order.

## 5.4 Effort to sell

### **3) Have you made all reasonable efforts to sell your property and still not received an offer within 15 per cent of its unaffected open market property value (that is the price it would most likely have achieved other than for the project proposals, assuming a normal or unpressured sale period)?**

- 5.4.1 The purpose of this criterion is to identify whether or not and, if so, the extent to which, the reason a property has not sold is because of the effect of the proposed project on its sale prospects rather than any other factor.
- 5.4.2 The requirement that all reasonable efforts should have been made to sell a property and that, despite those efforts, no offers have been received within 15 per cent of its unaffected open market value helps to demonstrate any such effect.
- 5.4.3 This is because if a property is appropriately priced and marketed, it should ordinarily (ie, without the effect of a proposed project) receive an offer and that offer should be within 15 per cent of its open market value. Coupled with this, there is an expectation that applicants should accept an offer within 15 per cent

of their property's unaffected open market value because it is not uncommon for there to be a difference between the open market value of a property and prices offered for it, and because the applicant has an urgent need to sell.

- 5.4.4 In considering this criterion in relation to applications under the EHP, the panel will take into account the performance of the current housing market and the efforts that sellers would ordinarily have to make in such circumstances, particularly if they needed to sell their property urgently.
- 5.4.5 With this context in mind, 'all reasonable efforts to sell' is defined as including:
- a. having made reasonable attempts to obtain the current unaffected open market value for the property (that is the price it would most likely have achieved other than for publication of the project proposals) and ensuring the asking price reflects professional advice (three property valuations will be required) as to that value and is competitive for the market it is in,
  - b. the property having been actively marketed, preferably with at least one Royal Institute of Chartered Surveyors qualified estate agent, for a minimum of three months,
  - c. being able to demonstrate, through positive actions, a willingness to review and, where appropriate, revise the asking price and marketing strategy for the property, particularly in the light of advice from the estate agent and/or feedback from potential buyers.
- 5.4.6 Occupiers of premises identified for temporary use will not be required to go through or meet the Effort to Sell criteria.

## 5.5 No prior knowledge

### **4) Did you buy your property before you could be reasonably expected to have been aware of the project proposals?**

- 5.5.1 Provided the property was acquired prior to 27 March 2013 (the date the application for development consent was accepted), you will meet this criterion.
- 5.5.2 You may also qualify if you can demonstrate that you purchased your property before it could have been reasonably possible for you to have known about the project proposals which would have the effect on your ability to sell the property.

## 5.6 Exceptional Hardship

### **5) Do you have a pressing need to sell your property and would you suffer exceptional hardship if you are unable to sell your property?**

- 5.6.1 There is no definitive list of circumstances which might potentially give rise to such a need, but examples include as follows:
- a. Domestic – there is an urgent need to move to a larger or different house due to changed family circumstances such as divorce and court orders to sell the property,
  - b. Employment – there is a need to relocate to take up a new or different job, outside reasonable commuting distance,

- c. Financial – there is a significant external financial pressure that necessitates a sale, for example, the need to realise assets due to divorce, dissolution of a civil partnership or other individual personal circumstances, to release capital in connection with a business, or to avoid threatened repossession,
  - d. Medical condition – where the applicant, or a dependant living in the affected property, has developed a medical condition which necessitates selling. Examples would include a severe disability causing inability to negotiate stairs, loss of mobility, or a requirement to go into sheltered accommodation, to co-locate with family members, or to move to a long-term nursing home due to infirmity or ill health,
  - e. Winding up of an Estate - you are the personal representative of a deceased person who had a qualifying interest in the property at the time of death.
- 5.6.2 For occupiers of premises identified for temporary use, the hardship criteria will be met in the event that the planned temporary occupation of the premises by Tideway and/or Thames Water extends beyond a period of 24 months.
- 5.6.3 Any application from an occupier of premises identified for temporary use for a period shorter than 24 months will be considered on its merits and determined at the absolute discretion of the ICP.

## 6 Procedure

This section outlines the procedure for the submission and determination of EHP applications. For detailed guidance on the type and quality of supporting evidence and documentation that should be provided applicants should refer to the EHP Help Guide and Application Form.

### 6.1 Stage one - submitting the application and supporting evidence

- 6.1.1 Applicants submit a completed EHP application form together with supporting evidence to the address provided.
- 6.1.2 Applicants should submit as much evidence as they can to support the application (e.g. copies of correspondence with estate agents, employers or medical staff). Further details of and examples of evidence and documents that should be provided can be found in the EHP Help Guide and Application Form.

### 6.2 Stage two – receipt of application

- 6.2.1 Within three working days of receipt of an application the Compensation Coordinator will acknowledge receipt of the application and review it to ensure that it contains appropriate information.
- 6.2.2 If the Compensation Coordinator believes the application contains insufficient information or that evidence is missing, the applicant will be contacted and asked to provide it. However, it is the responsibility of the applicant to supply all the relevant documentation to support an application.

- 6.2.3 It is likely that the applicant's estate agents will be contacted to discuss the property. Other information submitted as part of an application may be independently verified.

## **6.3 Stage three – determination of the application by the ICP**

- 6.3.1 Once the Compensation Coordinator has confirmed receipt of a completed application the ICP will meet, subject to availability, within 10 working days to decide on the outcome of the application.
- 6.3.2 A recommendation to either accept or refuse the application will be made by the ICP and the applicant informed within 7 working days. A determination by the ICP will be final and binding.
- 6.3.3 Applicants will be notified by the Compensation Coordinator if they are successful or unsuccessful, detailing the reasons why (in the case of an unsuccessful application).
- 6.3.4 In addition, at their discretion, the ICP may request to see further evidence to enable a decision to be made. This would be referred to as a qualified rejection, enabling the application to provide additional evidence to support the application, within the three month period.
- 6.3.5 Unsuccessful applicants may ask the ICC to review the ICP's decision-making process. If the process has not been followed correctly the application will be referred back to the ICP. The ICC does not review the application itself, only the process that has been followed.
- 6.3.6 If an unsuccessful applicant's circumstances have materially changed in relation to the five criteria a new application may be submitted after three months.

### **Approved applications – acquisition of property**

- 6.3.7 Once an application has been approved by the ICP, two independent RICS valuations of the property will be arranged and the average used to determine the offer price. If the two valuations are more than 10% apart, a third valuation will be sought and the outlier discarded to establish the offer price.
- 6.3.8 The Compensation Coordinator will write to inform successful applicants of the offer price and formally offer to purchase the property. This should be within 15 working days of the ICP's decision, subject to valuers' availability. This period is likely to extend if a third valuation is required.
- 6.3.9 The offer Thames Water makes to purchase a property will be open for acceptance for six months after which Thames Water reserves the right to carry out a re-valuation or withdraw the offer.
- 6.3.10 The purchase process will be handled in the same way as a normal property purchase and for domestic properties it may take up to 12 weeks from the date that solicitors are appointed. The process may be quicker than this depending on the circumstances. Following acceptance of the offer legal formalities will commence and surveyors will be appointed to undertake structural and condition surveys.

Header

---

- 6.3.11 In a straightforward purchase it is expected that contracts would be exchanged within eight weeks with completion two to four weeks later.
- 6.3.12 Please note that if Thames Water become aware of any information, or a material change in circumstances, that would affect the decision already made by the ICP to approve an application and prior to exchange of contracts Thames Water reserve the right to review the decision. This could result in the retraction of the acceptance/offer.
- 6.3.13 If this is the case, applicants are entitled to submit a new EHP application three months after the date of the initial ICP determination to reflect their change in circumstances or additional information.
- 6.3.14 On the completion of the purchase, Thames Water will take ownership and management of the property.