



Briefing Note on Compensation

Transport Initiatives Edinburgh Ltd (“tie”) Edinburgh Airport Rail Link (“EARL”)

1. Introduction

The purpose of this Briefing Note is to provide information on the opportunities for those affected by EARL to claim compensation as a result of the scheme. The law and procedure relating to the eligibility for and assessment of compensation are complex. Of necessity, the information provided here is a simplification and cannot cover every circumstance.

The Bill will apply what is commonly known as the “Compensation Code”. tie cannot provide individual advice to landowners and other interested parties who will have to seek advice from their own independent advisors (e.g. a solicitor or surveyor).

2 What is compulsory acquisition?

Compulsory acquisition, as the name implies, involves the taking of property by one party (in the public interest by statutory process) without the consent of the other. Provision is, of course, made for the payment of compensation.

3 Who will exercise the powers of compulsory acquisition?

The powers of compulsory acquisition will be exercised by what is termed the “authorised undertaker”. The authorised undertaker will also be the party responsible for paying compensation. These provisions only apply if the Bill receives Royal Assent.

4 What property will be compulsorily acquired?

The Bill will authorise the compulsory acquisition of land for the construction of EARL and associated infra-structure and to acquire rights in land e.g. for the purpose of re-routing statutory undertakers’ apparatus. The land to be acquired compulsorily will be shown on the parliamentary plans which accompany the Bill.

Where land is only required for a temporary period the Bill will also authorise this temporary use.

5 **Why is compulsory acquisition necessary?**

The Bill must contain everything necessary to enable the railway to be built. The land required is, obviously, essential. Whilst some landowners may well be in favour of the Bill others may of course not. Due to the different ownerships of land and rights in land it is accordingly expedient for the promoter to seek compulsory acquisition powers in the Bill.

6 **What is the Compensation Code?**

The Compensation Code is the collective term commonly used to describe the body of law (including various existing Acts of Parliament and case law) governing the procedures for entitlement to compensation following compulsory acquisition. The Bill will simply apply that existing law.

7 **Who is entitled to compensation?**

Compensation will be payable to those whose property is acquired (this includes the acquisition of rights over property) or used. Those entitled include owners, certain tenants under leases, heritable creditors and those holding servitude rights. See also paragraph 13 below.

8 **How is compensation measured?**

The rules are extremely complex and the underlying principle is to put the landowner, in financial terms, in the same position as if his property had not been taken. Accordingly, the amount of compensation will therefore depend on the facts of each case. In general terms, the amount of compensation is the open market value of the property taken at the date it is taken together with the depreciation in value of any remaining land caused by severance and other injurious affection. For the purposes of valuation the scheme (in this case EARL) is to be disregarded in the valuation exercise. The calculation will also not take account of any buildings or other developments if it is considered that those buildings or developments are in place for the sole reason of increasing compensation.

9 **When will compensation be paid?**

Under the Compensation Code compensation is not payable until after the property is acquired. The procedure for compulsory acquisition is commenced by the authorised undertaker serving notice on the proprietor. The promoter will strive to reach early agreement on the level of compensation. However, in the event of a failure to agree the matter will be settled by the Lands Tribunal for Scotland.

10 **Will tie pay for landowners' professional fees?**

tie is not obliged by law to make advance payments for professional fees however, the issue of professional fees may well form a legitimate head of claim of compensation included in any claim following compulsory acquisition.

11 **What is severance and injurious affection?**

Compensation for severance is a claim for the adverse physical effects which result from the compulsory acquisition of **part only** of a parcel of land. The taking, for example, of part of a farm for the construction of EARL may necessitate the provision of new fencing, drainage, replacement buildings etc. Injurious affection is concerned with compensation for the adverse effects caused to remaining land. In certain circumstances, where the effects of severance are particularly serious a

proprietor may prefer instead of claiming compensation to serve a notice requiring the promoter to take all of the land.

12 **What is a claim for disturbance?**

A proprietor who is displaced from land as a result of compulsory acquisition may be faced with losses in addition to the value of the land itself. For example there may be professional fees and removal costs. These items are generally referred to under the heading of "disturbance" and are a legitimate head of claim.

13 **Can compensation be claimed by those who are affected by EARL but whose land is not compulsory acquired?**

Any person with a qualifying interest whose land or buildings are depreciated in value by prescribed physical factors arising from the use of EARL may claim compensation. The prescribed physical factors include noise and vibration. Those who will qualify for compensation include owners of a dwelling, a farm and small businesses. Claims can usually only be made twelve months after EARL comes into use.

14 **What is a Blight Notice?**

Where a dwellinghouse or small business or farm is to be compulsorily acquired the owner may be entitled to serve a Blight Notice. If a Blight Notice is accepted or confirmed the property will have to be acquired ahead of the authorised undertakers requirements. The person affected must show that because of Blight he cannot sell his land except at a price substantially below what would normally be expected. The Blight Notice requires the authorised undertaker to acquire the land at the open market value as if it were unaffected by Blight. Any dispute as to whether the Blight Notice is to take effect is decided by the Lands Tribunal for Scotland.

15 **What happens if the promoter and the claimant are unable to reach agreement on the level of compensation?**

Whilst the promoter will strive to reach early agreement with a claimant on the level of compensation, in the event of a dispute, the claimant must refer their claim to the Lands Tribunal for Scotland which is the Scottish Court having jurisdiction over compensation matters.

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