Application for Development Consent

Application Reference Number: WWO10001

Exceptional Hardship Procedure

Doc Ref: APP134
Exceptional hardship procedure
# Exceptional hardship procedure

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List of abbreviations

AQL         acceptable quality level
mm          millimetre
EHP         Exceptional hardship procedure
RICS        Royal Institute of Chartered Surveyors
TTT         Thames Tideway Tunnel
ICP         Independent Compensation Panel
IAS         Independent Advisory Service
ICC         Independent Complaints Commissioner
LLAU        limits of land to be acquired or used
1 Introduction

1.1.1 This guidance and application form provides information on the establishment of an exceptional hardship procedure (EHP) for property owners whose property may be affected by the Thames Tideway Tunnel project proposals, and who have an urgent need to sell and are able to evidentially demonstrate this requirement.

1.1.2 This procedure was introduced as an interim scheme in August 2011 and has subsequently been amended to provide the same support for property owners throughout the lifetime of the project.

1.1.3 The procedure has also been amended to provide support for leasehold occupiers of premises identified for temporary use as a construction work site in the Development Consent Order. In certain circumstances, applicants may request their lease be purchased outright, thereby removing the question of being required to return after the construction phase.
2 Purpose of document

2.1.1 This document is designed to outline the EHP. It explains:
   a. how the EHP will be managed
   b. how applications can be made
   c. the criteria on which they will be assessed
   d. the procedure for completing purchases.

2.1.2 This document, and the associated application form and guidance, will be subject to review and amendment, through continual improvement, as required.

2.1.3 Reviews will be conducted on an annual basis, irrespective of any continual improvements, to ensure accuracy.
## Thames Tideway Tunnel project planning and construction timeline

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<table>
<thead>
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<tr>
<td>a.</td>
<td>September 2010</td>
</tr>
<tr>
<td>b.</td>
<td>November 2011</td>
</tr>
<tr>
<td>c.</td>
<td>July 2012</td>
</tr>
<tr>
<td>d.</td>
<td>February 2013</td>
</tr>
<tr>
<td>e.</td>
<td>2015-16</td>
</tr>
<tr>
<td>f.</td>
<td>2023</td>
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</table>
4 Exceptional hardship procedure

4.1 Introduction

4.1.1 Thames Water recognises that, from the announcement of the project until it is completed, there will be uncertainty as to which properties may be substantially and adversely affected by construction or operation of the Thames Tideway Tunnel project.

4.1.2 This means that, in some cases, there may be a significant effect on properties in the immediate vicinity of the Thames Tideway Tunnel project construction sites in the period until the project has been completed.

4.1.3 Given this, Thames Water has decided to introduce the EHP.

4.1.4 For the purposes of this document, the Undertaker means Thames Water Utilities Ltd and any successors and statutory assignees.

4.1.5 The EHP is available to eligible property owners who can demonstrate that they have an urgent need to sell but have been unable to do so, other than at a substantially reduced price as a direct result of the Thames Tideway Tunnel project.

4.1.6 The EHP is also available to eligible occupiers of premises to be used temporarily as part of a construction worksite.

4.1.7 Those property owners who apply to the EHP and meet the eligibility criteria can then have their property purchased by the Undertaker at its unaffected fair market value (that is, what the value of the property would have been without any adverse effect arising from the Thames Tideway Tunnel project proposals).

4.1.8 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 the Undertaker at its unaffected fair market value and will also be entitled to claim compensation for disturbance in accordance with the Statutory Code.

4.1.9 The EHP is a discretionary policy and procedure, and supplements the statutory rights of owners.

4.1.10 It recognises the importance of providing assistance for those property owners who are most severely affected by the Thames Tideway Tunnel project.

4.1.11 Every application under the provisions of this policy and 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). These two services are discussed in more detail in Section 5.

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4 Exceptional hardship procedure

4.1.12 The workflow/steps to be undertaken by this procedure are provided in Appendix A.

4.1.13 The ID numbers next to the steps in the tables in Section 7 cross-refer to the procedural steps and paragraphs which follow it.
5 Independent advice and support

5.1.1 The Undertaker recognises that, in order to give confidence that the process is impartial and transparent in every respect regarding compensation, potential claimants will require independent advice and decision making regarding claims.

5.1.2 In order to assist individuals and ensure independent review of mitigation and compensation policies and processes, the Undertaker shall establish the following bodies:
   a. Independent Advisory Service (IAS)
   b. Independent Compensation Panel (ICP)
   c. Independent Complaints Commissioner (ICC).

5.2 Independent Advisory Service (IAS)

5.2.1 The IAS shall provide advice in respect of this procedure, the Settlement Information Paper and the Non-statutory off-site mitigation and compensation policy. It will advise individuals and other affected parties how to qualify for these policies and explain the role of the ICP. Staff at the IAS will be familiar with the Book of Reference and the application documents, including later submissions. Advice will be available to individuals and other affected parties, such as schools and communities generally, who either are entitled or believe they may be entitled to mitigation or compensation under any of the relevant policies.

5.2.2 The IAS shall be independent from the Undertaker. The Undertaker 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 the Undertaker.

5.2.3 The IAS shall be effective from February 2014 and run for the duration of construction. The Undertaker 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.

5.3 Independent Compensation Panel (ICP)

5.3.1 The ICP shall be established by the Undertaker and consist of an independent chairperson with experience in the field of compensation and valuation and two additional members. These 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 specialty field.

5.3.2 The ICP shall receive advice from the expert advisory panel in relation to the following areas or professions:
   a. Noise and vibration
   b. Transport
5 Independent advice and support

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.

5.3.3 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 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; the decision of the ICP will be final and binding on the Undertaker
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.

5.3.4 The ICP shall be independent from the Undertaker and will run throughout construction. The Undertaker will not be responsible for any advice given or decisions made by the ICP. The full cost of setting up and operating the ICP will be met by the Undertaker.

5.3.5 The Undertaker shall publish details of the ICP and periodically advise local residents and small business owners about its availability through a newsletter.

5.3.6 Any dispute or request for a decision must be made in writing to the ICP, including full details, by either the Undertaker or the affected party. The panel will consider such requests within five 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.

5.4 Independent Complaints Commissioner (ICC)

5.4.1 The Undertaker shall appoint an Independent Complaints Commissioner, 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. Should the commissioner find that due process has not been followed, then the claim will be resubmitted to the ICP.
6 EHP criteria

6.1 Introduction

6.1.1 To qualify to have your property purchased under the EHP, you should be able to answer yes to all of the following five questions.

6.2 Property interest

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

6.2.1 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 (ie, 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

6.2.2 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

6.2.3 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.

6.2.4 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

6.2.5 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

6.2.6 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**

6.2.7 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.

6.2.8 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.

**6.3 Location of property**

Q. 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?

6.3.1 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.

6.3.2 However, in considering (ii) 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 Thames Tideway Tunnel project infrastructure), will be considered when forming a view as to the degree to which it would be affected by the Thames Tideway Tunnel project.

6.3.3 An overview and detailed maps of the Thames Tideway Tunnel project, with which you can gauge the proximity of your property to the project, can be found at the following web address: [http://www.thamestunnelconsultation.co.uk](http://www.thamestunnelconsultation.co.uk)

6.3.4 Occupiers of premises identified for temporary use must show that all or a significant proportion of the premises are identified with the LLAU and are not identified for permanent acquisition in the Development Consent Order.

**6.4 Effort to sell**

Q. 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)?

6.4.1 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 Thames Tideway Tunnel project on its sale prospects rather than any other factor.

6.4.2 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.
6.4.3 This is because if a property is appropriately priced and marketed, it should ordinarily (ie, without the effect of a proposed Thames Tideway Tunnel 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.

6.4.4 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.

6.4.5 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 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 RICS 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.

6.4.6 Occupiers of premises identified for temporary use will not be required to go through or meet the Efforts to Sell criteria.

6.5 No prior knowledge

Q. 4) Did you buy your property before you could be reasonably expected to have been aware of the Thames Tideway Tunnel project proposals?

6.5.1 Provided the property was acquired prior to 13 Sept 2010 (the start date of phase one consultation), you will meet this criterion.

6.5.2 Because, during the project development phase, proposals have changed, 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.
6.6 Exceptional hardship

Q. 5) Do you have a pressing need to sell your property and would you suffer exceptional hardship if you had to wait until the project has been completed (expected to be in 2023)?

6.6.1 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

b. Employment – 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 in conjunction with a 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.

6.6.2 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 the Undertaker extends beyond a period of 24 months.

6.6.3 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.
### 7 Procedure

#### Table 7.1 Overall procedure

<table>
<thead>
<tr>
<th>ID</th>
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<th>Responsible person</th>
<th>AQL</th>
<th>Methods of review</th>
<th>Reviewing person</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Exceptional hardship property purchase procedure</td>
<td>Property Manager</td>
<td>100% of the time</td>
<td>Annual inspection</td>
<td>Operations Manager</td>
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#### Table 7.2 Procedural steps

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<th>AQL</th>
<th>Methods of review</th>
<th>Reviewing person</th>
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<tr>
<td>6.2.1</td>
<td>Submit application</td>
<td>Applicant</td>
<td>100% for each application</td>
<td>Ongoing</td>
<td>Compensation Coordinator</td>
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<td>6.2.2</td>
<td>Application form and evidence</td>
<td>Applicant</td>
<td>100% for each application</td>
<td>Ongoing</td>
<td>Compensation Coordinator</td>
</tr>
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<td>6.3</td>
<td>Review application</td>
<td>Compensation Coordinator</td>
<td>100% of the time, within 3 days of receipt of application</td>
<td>Ongoing</td>
<td>ICP</td>
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<td>6.4.1</td>
<td>Consider application</td>
<td>ICP</td>
<td>100% of the time, within 5 days of the receipt of a checked application</td>
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<td>6.4.3</td>
<td>Notification to TTT project</td>
<td>ICP</td>
<td>100% of the time, within 5 days of a recommendation from the ICP</td>
<td>Ongoing</td>
<td>Property Manager</td>
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<tr>
<td>6.5.1</td>
<td>Notify applicant</td>
<td>Compensation Coordinator</td>
<td>100% of the time, within 3 days of the TTT project review notification</td>
<td>Ongoing</td>
<td>Property Manager</td>
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### Procedure

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<th>Methods of review</th>
<th>Reviewing person</th>
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<tr>
<td>6.53</td>
<td>Obtain valuations</td>
<td>Independent valuers</td>
<td>100% of the time, providing values within 10 days of tasking from Compensation Coordinator</td>
<td>Ongoing</td>
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<td>6.54</td>
<td>Make and agree offer</td>
<td>EHP Applicant</td>
<td>90% of the time, reaching legal instructions within 21 days of valuations being offered</td>
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<tr>
<td>6.6</td>
<td>Take ownership and manage site</td>
<td>Facilities Manager</td>
<td>95% of time, taking ownership within 8 weeks from legal instructions being reached</td>
<td>Ongoing</td>
<td>Property Manager</td>
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1 day = 1 working day

#### 7.1 Stage one

7.1.1 Complete the application form and submit it together with supporting evidence, using the Exceptional Hardship form.

7.1.2 Applicants are asked please to submit as much evidence as they can to support the application (eg, copies of correspondence with estate agents, employers or medical staff) as this will enable your application to be processed more quickly.

#### 7.2 Stage two

7.2.1 The Thames Tideway Tunnel project appointed Compensation Coordinator will acknowledge your application and review it to ensure that it is complete and contains the required information.

7.2.2 If information or evidence is missing, you will be contacted and asked to provide it.

7.2.3 In addition, it is very likely that your estate agents will be contacted while other information regarding your application may be independently verified.

#### 7.3 Stage three

7.3.1 Completed applications will be submitted to the ICP for its consideration.
7.3.2 The majority of members of each panel will be independent of Thames Water.

7.3.3 A recommendation to either accept or refuse the application will be made by the panel. Ultimately, a determination by the ICC will be final and binding.

7.4 **Stage four**

7.4.1 If the ICP recommends that Thames Water should offer to buy your property, you will be notified.

7.4.2 You will be notified by the Compensation Coordinator if you are successful or unsuccessful, detailing the reasons why (in the case of an unsuccessful application).

7.4.3 If you are successful, independent valuations of your property will be arranged to establish an offer. If you are an occupier of premises identified for temporary use as a construction worksite, you will be invited to submit a detailed claim for compensation in accordance with the Statutory Code.

7.4.4 The Compensation Coordinator will then write to you with a formal offer to buy your property.

7.5 **Stage five**

7.5.1 For occupiers of premises identified for temporary use as a construction site, there will then ensue a period of negotiation of the compensation claim with the Undertaker’s representative, under the guidance of the ICP. If negotiations are not concluded to the satisfaction of the applicant, a complaint may be made to the ICC.

7.5.2 On the completion of the purchase, Thames Water will take ownership and management of the property.
8 Timeframes

8.1.1 Timeframes provided in this document are targets.
Appendix A: Exceptional hardship application process

Figure A.1 Exceptional hardship application process

[To be updated in line with the new procedure]
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