



# CROSSRAIL INFORMATION PAPER

## C10 - LAND DISPOSAL POLICY

This paper sets out the Crossrail land disposal policy as published in November 2005.

It will be of particular relevance to owners of land subject to compulsory acquisition under the Bill.

This is not intended to replace or alter the text of the paper itself or any commitments contained in it, and it is important that you read the paper in order to have a full understanding of the subject. If you have any queries about this paper or about how the policy might apply to you, please contact either your regular Petition Negotiator at CLRL or the Crossrail helpdesk, who will be able to direct your query to the relevant person at CLRL. The helpdesk can be reached at:

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This Information Paper reproduces the text of the policy on land disposal as published in November 2005 and now includes a guidance note on implementation at Appendix 2.

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## **1. Land Disposal Policy**

- 1.1 This Policy sets out the basis upon which, subject to key guiding principles to protect the public interest and qualifying conditions, landowners will be offered the opportunity to reacquire a beneficial interest in land that has been compulsorily acquired from them to carry out the works required by the Crossrail scheme where that land is not required for the operation of Crossrail.
- 1.2 Nothing in this Policy is intended to affect the rights to compensation of owners of an interest in land that is compulsorily acquired for the Crossrail scheme.

## **2. General Approach**

- 2.1 Where any land which has been acquired and used for the construction of Crossrail is;
- i) no longer required for the satisfactory completion of the Crossrail works;
  - ii) not required in connection with the operation of Crossrail;
- it will be sold subject firstly to the Crichel Down Rules 2004 and to the extent that this does not apply, then in accordance with this policy.<sup>1</sup>
- 2.2 The Crichel Down Rules 2004 provide for the circumstances in which land acquired under threat of compulsion, but no longer required for public purposes, will be offered back to the former owner. It should be noted that the requirement under the Rules to offer land back is not unqualified but is subject to limitations and exceptions set out in the Crichel Down Rules 2004 themselves. In particular, by virtue of rule 10 of the Crichel Down Rules 2004, there will be no obligation to offer the land back to the former owner where the Crossrail works have materially changed its character.
- 2.3 At station and working sites, there will be works involving the demolition of existing buildings and the construction of the railway works at ground level or below. Following completion of the railway works these sites will become available for redevelopment above and around the Crossrail Works (Over Site Development – “OSD”). In such circumstances, it is unlikely that the Crichel Down Rules would require an offer back, as there will have been a material change in character of the land.

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<sup>1</sup> Crichel Down Rules 2004 (set out in Part 2 of the Memorandum to Office of the Deputy Prime Minister Circular 06/2004)

### **3. The land to which this policy applies**

- 3.1 This Policy applies to any sites where the original land interests will have been acquired compulsorily or under the threat of the exercise of compulsory powers currently contained in the Crossrail Bill and which subsequently become available for disposal after construction of the Crossrail works.
- 3.2 The site boundaries of such land for disposal will be determined by the Secretary of State having regard to the former property boundaries, the works which have been carried out and the Guiding Principles referred to below.
- 3.3 Where larger sites have been assembled from a number of individually owned land parcels, it is expected that these sites will be disposed of as a whole, rather than in a fragmented manner, in order to meet the Guiding Principles referred to below.
- 3.4 The policy as set out in this document will be followed in all cases where land is available to be disposed of (except for those referred to in section 8 below).
- 3.5 This Policy does not apply where the Secretary of State disposes of any interest in land to a nominated undertaker for the purposes of the construction, operation or maintenance of Crossrail.
- 3.6 Where the Secretary of State uses his powers under the Crossrail Bill as enacted to appoint a “nominated undertaker” or devolve the project to another public body, he will require the nominated undertaker and/or public body to adhere to this Policy. Accordingly, references in this document (including the Appendix) to the Secretary of State should be taken to refer to any such nominated undertaker or public body except where the context otherwise requires.
- 3.7 This Policy will not apply to land which becomes surplus, and available for disposal, more than 25 years after the date of acquisition. The date of acquisition is the date of the conveyance, transfer, or vesting.

### **4. The interest to be offered back**

- 4.1 Where the Secretary of State intends to dispose of an interest in a site to which this policy applies, holders of Qualifying Interests will, subject to the provisions of this Policy, be given first opportunity to acquire that interest at the market value before it is offered to the general market.
- 4.2 The Secretary of State will determine the nature of the interest to be offered and the terms of any transfer. In doing so, he will have regard to the following guiding principles. (“the Guiding Principles”)
- 4.2.1 the proper completion and operation in the public interest of the Crossrail works as authorised by the Bill as enacted;
- 4.2.2 the paramount requirement to protect the future safe and efficient operation of the railway;

- 4.2.3 the need to fulfil any undertaking given by the Secretary of State in respect of the Bill or comply with any legal obligations to which he is subject;
- 4.2.4 the need to secure in the public interest the carrying out of development or redevelopment associated with the Crossrail Works to meet the planning, environmental and heritage considerations applicable to the sites affected; and
- 4.2.5 the need for the land disposal to achieve the best value reasonably obtainable in so far as this is consistent with the principles outlined above.
- 4.3 Where it is considered necessary, the terms of the disposal may include provisions for forfeiture, step-in rights, clawback and other mechanisms to ensure that the Secretary of State can meet his obligations.
- 4.4 Where considered necessary, the Secretary of State may require holders of Qualifying Interests to demonstrate that they either have or can secure the necessary financial and development expertise to fulfil the terms of the transfer and to meet the Guiding Principles.

## **5. Interests qualifying for offer back**

- 5.1 The holders of the following interests (“Qualifying Interests”) may qualify for the offer back of an interest under the terms of this Policy:
- i) former freehold owners of the whole or part of a site; or
  - ii) those who, but for the acquisition for the Crossrail scheme, would have an unexpired lease of the whole site or part of the site with an unexpired term of more than 21 years at the time the property is being disposed of; or
  - iii) the successors of anyone who would have fallen into category (a) or (b) where, had the property not been acquired, the land interest would clearly have devolved upon those successors under a former owner’s will or intestacy; or
  - iv) where there was fragmented ownership of the site at the date the property was acquired or occupied for railway works under the provisions of the Crossrail Bill as enacted, a consortium of former owners who have indicated a wish to purchase the land collectively.
- 5.2 Where only one expression of interest from a former owner or long leaseholder with a Qualifying Interest is made to acquire a site, that person will be given the opportunity to acquire the site at market value within the timescales set.
- 5.3 If there are competing bids for a site from former owners, it will be disposed of on the open market.

## **6. Timescale and procedure for offer back**

- 6.1 Before offering any interest for sale under this Policy, the Secretary of State will wish to be satisfied that he can secure compliance with the Guiding Principles.

- 6.2 The general approach, therefore, will be for the site to be offered for disposal only when planning consents for development have been obtained, in accordance with the undertaking that the Secretary of State has given on oversite developments, and when the Crossrail works are sufficiently advanced to permit development.
- 6.3 The procedures for offer-back and the timescales are set out in Appendix 1 to this Policy. Holders of Qualifying Interests will be notified of the intention of the Secretary of State or nominated undertaker to dispose of an interest in the relevant site and will be provided with details. Failure to comply with the relevant timescales may result in the Secretary of State or nominated undertaker withdrawing the offer-back.
- 6.4 The price paid by the holder of a Qualifying Interest will be the market value of the interest being transferred at the date of the transfer. Where it would not be practicable or appropriate to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Government's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

## **7. Prior Agreement**

- 7.1 The Secretary of State may in his discretion enter into prior agreements with existing holders of Qualifying Interests that will provide for the earlier transfer of an appropriate interest in the OSD subject to conditions that enable the Secretary of State to implement the Crossrail scheme and meet the Guiding Principles.
- 7.2 This discretion will be exercised by the Secretary of State where both the Secretary of State and a single owner of a site (or a consortium of owners of a site) wish to progress development plans to achieve the Guiding Principles outlined in paragraph 4.2.

## **8. Exceptions**

- 8.1 In the following circumstances the Secretary of State or nominated undertaker may decide that the provisions of this Policy shall not apply:
- i) where it is decided by the Secretary of State that all or part of the surplus land forming a site is needed for railway purposes by either a Railway Authority, Infrastructure Company, Operator or otherwise;
  - ii) to sites that, in the opinion of the Secretary of State, are of such a nature or so small that their sale would not be commercially worthwhile;
  - iii) where the Secretary of State or nominated undertaker concludes that it is advantageous to include land in adjoining ownerships in a joint disposal to achieve the Guiding Principles;
  - iv) where planning consent has not been obtained by the Secretary of State at the date of disposal and the value of the surplus land is so uncertain that

clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the Secretary of State;

- v) where former owners are not prepared to commit to provisions that protect the future safety and operation of Crossrail or any railway (including the London Underground) with which Crossrail interconnects both during construction and thereafter;
- vi) where holders of Qualifying Interests are not prepared to comply with the details of any undertakings given by the Secretary of State or nominated undertaker to planning authorities; and
- vii) where former owners are not prepared to pay the market value of the site or are not prepared to offer terms that the Secretary of State or nominated undertaker considers to represent best value having regard to all the circumstances.

**SITES MATERIALLY CHANGED IN CHARACTER BY CROSSRAIL****Where the former owner's address is known**

1. Where the address of a former owner of a Qualifying Interest in the whole or part of a site is known, a recorded delivery letter will be sent by or on behalf of the Secretary of State, inviting the former owner to purchase an interest in the whole site at the valuation made by the Secretary of State's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property or there are competing bids from former owners, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken.
2. If the former owner wishes to purchase the site and there are no competing bids there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

**Where address is unknown**

3. Where the former owner is not readily traceable the Secretary of State will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 1 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 4 below, informing the solicitor or agent that this has been done.
4. Advertisements inviting the former owner to contact the Secretary of State will be placed as follows:
  - 1) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the Secretary of State's web site;
  - 2) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

**Responses to invitation to purchase where address is unknown**

5. Where no intention to purchase is indicated by or on behalf of former owners within two months of the date of the latest advertisement which is published as described in paragraph 4 above, the site will be disposed of on the open market.
6. Where an intention to purchase is expressed by or on behalf of a former owner of all or part of the site within two months of the date of the latest advertisement without competing bids from other interested former owners of part of the site, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 2 above. If there is no agreement, the property will be disposed of on the open market.

## **GUIDANCE NOTE ON IMPLEMENTATION**

### **1 Introduction and Purpose**

1.1 This paper provides guidance on the application of the Land Disposal Policy and the discharge of the Undertakings to be given by the Secretary of State in respect of applications for planning consent in respect of non-operational development. This guidance should be read in conjunction with the Land Disposal Policy.

1.2 The Guiding Principles for application of the Land Disposal Policy are set out in paragraph 4.2 of that document. This guidance will form the basis upon which the Secretary of State will interpret and apply the Policy on advice from the nominated undertaker. This guidance may be added to and amended from time to time by the Secretary of State to reflect changes in circumstances and evolving practice.

1.3 Guidance is set out by reference to individual paragraphs of the Land Disposal Policy. Specific guidance is given only in respect of those sections/paragraphs where the nominated undertaker may exercise discretion and where further guidance is considered necessary. Nothing in this guidance should be construed as changing the Land Disposal Policy.

### **2 Section 2**

#### Paragraph 2.1

2.1 The Crichel Down Rules apply to all land if it was acquired by or under the threat of compulsion. Hence all land required for Crossrail is covered by the Crichel Down Rules and their provisions.

#### Paragraph 2.2

2.2 The main purpose of the Crossrail Land Disposal Policy is to capture the situations at stations and other sites where land is materially changed in character and the requirement to offer back an interest in land to the former owners would be excluded. The Crossrail Land Disposal Policy is supplementary to, and not in replacement of the Crichel Down Rules. The exceptions from the obligation to offer back sites to former owners (apart from the specific aspect of land materially changed in character) contained in the Crichel Down Rules apply to all Crossrail land acquired under compulsion and subsequently released for disposal.

### **3 Section 3**

#### 3.1 Paragraph 3.1

3.1.1 The extent of surplus land that becomes available for disposal and the nature and extent of any rights to be reserved to any party will be determined by the Secretary of State on advice from the nominated undertaker having regard to the site specific requirements of the engineer. In particular the nominated undertaker will make proper provision for access to inspect, repair and renew the railway infrastructure to protect the future safe, efficient and economic operation of the railway.

### 3.2 Paragraph 3.2 and 3.3

3.2.1 The Secretary of State will determine the boundaries of disposal sites by reference to the former (physical) property boundaries, the nature and extent of development undertaken or permitted (including the scheduled works and any over site development), planning policies, value for money and other relevant considerations - irrespective of the original ownership boundaries. Where appropriate in order to meet the Guiding Principles and the Secretary of State's undertaking he may:

- a) combine previous ownerships to create a single discrete site;
- b) configure disposal site boundaries to create two or more development lots at a single location;
- c) package the disposal of sites at different locations to one purchaser;
- d) enter into agreements with other parties from the public or private sectors to include land which is outside the ownership or control of the nominated undertaker, but where the inclusion of such land means that the nominated undertaker is better able to meet its obligations.

## **4 Section 4**

### Paragraph 4.1

4.1 The guidance in this section applies to holders of Qualifying Interests who are given the opportunity to acquire any site (either by way of a Prior Agreement under section 7 or otherwise). However the nominated undertaker will apply the principles equally to any potential purchasers who are seeking to acquire the site in the market.

### 4.2 Paragraph 4.2

4.2.1 In assessing the nature of the interest to be offered on disposal, the Secretary of State will have regard to the Guiding Principles and in particular:

- a) the sites will be released for development once they are no longer required for construction of the Crossrail works
- b) where appropriate arrangements may be made for development works to commence alongside Crossrail works where this is necessary to ensure effective management of the interfaces between the over-site development and the Crossrail works.
- c) the disposal terms will:
  - protect the safe operation of the railway during construction of the development through a works agreement; and
  - protect the continuing safe and efficient operation of the railway with future arrangements to inspect, repair and renew the railway infrastructure.

4.2.2 The nature of the interest to be offered for disposal will be determined by the nominated undertaker in light of site specific constraints, market requirements and engineering requirements in each individual case. Generally, the intention is to offer either freehold or the longest possible leasehold interest, commensurate with achieving Value for Money and the need to protect the continuing safe and efficient operation of the railway with future arrangements to inspect, repair and renew the railway infrastructure. Four broad categories of disposal have been identified as a guide to the likely land interest offered on disposal in different circumstances but subject to the site specific operational constraints or requirements in each case:

Category A: If no operational structures have been constructed beneath the site, for example where Crossrail merely uses land as a working site with no ongoing constraints or requirements required for the authorised works, then the land will usually be offered for disposal on a freehold basis.

Category B: If authorised works, including operational structures have been constructed on or beneath the site, but occupy only part only of the site so that commercial development can be supported on structures independent from the authorised works then a long leasehold interest of 150 years will usually be offered, The range of alternatives under this category can vary considerable and a freehold disposal or longer leases may be offered depending upon the individual circumstances.

Category C: If the commercial development proposals are to be physically supported by the authorised works and/or integrated with them and responsibility for repair and renewal of the supporting structures is with the nominated undertaker, but the developer contributes towards the cost of repair of the structural elements and takes responsibility for repair and renewal of the transfer slab supporting the development, then the interest offered for disposal will usually be a long leasehold for a period of up to 150 years.

Category D: If the commercial development proposals are to be physically supported by the authorised works and/or integrated with them, and responsibility for repair and renewal of both the supporting structures and the transfer slab is with the nominated undertaker then the interest offered for disposal will be a long leasehold for a period equal to the design life of the Crossrail structures, normally 125 years.

4.2.3 In each of these categories A-D the nominated undertaker will structure the interests to ensure that any necessary rights are reserved to the sites and/or adjoining land for access to inspect, maintain and renew infrastructure and to ensure that development is carried out in accordance with the Guiding Principles. The disposal terms in paragraph 4.2.2 above relating to categories B, C and D will be subject to an overriding safety clause requiring the developer to maintain and keep the structures and development in good condition. In default, the engineer to the nominated undertaker will be able to enter into the commercial property development above the Crossrail works and undertake works for the safety and protection of the railway and the travelling public.

4.2.4 These broad guidelines will be subject to the site specific requirements of the engineer to the nominated undertaker on all development proposals which may vary the general arrangements and timescales outlined above. It should also be noted that the engineer to the nominated undertaker will have responsibilities to ensure the continued safe and efficient operation of the railway. The discharge of these responsibilities cannot

be delegated or made subject to legal interpretation or challenge on matters of safety in any legal agreements for disposal and development.

4.2.5 The nominated undertaker will normally enter into a direct disposal by way of a development agreement and lease with the company or consortium undertaking the development and will normally make provisions to control the onward sale or transfer of the site until such time as any undertakings given by the Secretary of State have been properly fulfilled, and the development completed.

4.2.6 The disposal terms will require payment of the market value of the site at the date of disposal. Market value of the interest disposed of will be determined in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (The Red Book) 5th Edition or the relevant valuation standards at the time of assessment and will reflect terms of the agreement for disposal and the benefit of any planning consents granted.

#### 4.3 Paragraph 4.3

4.3.1 In applying the requirements of paragraph 4.3 CLRL will include within the interest to be transferred such provisions as are necessary to secure that:

- a) In the event of the purchaser failing to carry out any of their obligations in respect of applying for and implementing planning consents, the Secretary of State can regain control of the property and/or step in to fulfil the terms of his undertaking to Parliament;
- b) The nominated undertaker benefits from suitable parent company or other guarantees of the financial, performance and delivery obligations of the development organisation to which the property interest is transferred.
- c) In the event that the transferee subsequently benefits from enhanced planning consents and/or disposes of all or part of the property for a profit within a designated timeframe the Secretary of State can claim a fair share of any increase through clawback or overage.

#### 4.4 Paragraph 4.4

4.4.1 In applying the requirements of paragraph 4.4 the nominated undertaker will take steps to assess the financial capacity and development capability of the transferee of the interest to be disposed of and will not proceed with a disposal under this policy to any party unless it is satisfied that the transferee can fulfil the terms of the transfer and meet the Guiding Principles.

4.4.2 When assessing the financial capacity and development capability of a holder of a Qualifying Interest the nominated undertaker will normally:

Require that any such interested party must either be a property development company

- with experience of undertaking property development
- able to demonstrate a successful record of delivering and undertaking

commercial development schemes of the size and nature envisaged on the site in question. (N.B. Experience in development in an urban area over or in conjunction with railway infrastructure will be assessed).

- able to demonstrate that it will commit the resources, skills and experience in developing over railway infrastructure needed to take the development forward;

or

in the event of the formation of a consortium, be properly constituted as a legal entity and include at least one party which is the lead company that meets the criteria set out above, and require that the transferee (whether it is a consortium or individual company) demonstrates:

- adequate commitment of personnel and related resources to meet their obligations under the Agreement; and
- access to secured and committed funding together with appropriate financial and performance guarantees.

## **5 Section 5**

In assessing applications from landowners with qualifying interests to acquire an appropriate interest in a site when available for development, the nominated undertaker will have regard to the requirements of section 4 of the Land Disposal Policy applied in accordance with this Guidance Note.

## **6 Section 6**

### **6.1 Paragraph 6.1 - 6.2**

6.1.1 The timing of any offer back to holders of Qualifying Interests will be determined by the nominated undertaker so as to fulfil its obligations in completing the authorised works, commissioning the operational railway, discharging the Secretary of State's undertaking, receiving town planning consent for the proposed development and achieving best value in accordance with the Guiding Principles. Whilst the general approach will be to offer sites for disposal after completion of the authorised works, the nominated undertaker will consider entering into Prior Agreements with holders of Qualifying Interests under section 7 of the Policy before or during the construction of the authorised works for the disposal of an interest in the site for development.

### **6.2 Paragraph 6.4**

6.2.1 Where an interest is offered back to the holder of a Qualifying Interest a reasonable notice period will be given to determine whether the former owner is interested in purchasing an interest in the site allowing for the price will be negotiated between the parties. The nominated undertaker, on behalf of the Secretary of State, will rely on the opinions of its professional valuers in determining the Market Value for purposes of the transfer. In the event that the former owner does not accept the market value price determined by the nominated undertaker, the property may be disposed of in the open market and the holder(s) of (a) Qualifying Interest(s) will be free to bid in competition.

6.2.2 Where an interest is offered for disposal on the open market, whether or not it has previously been offered back to the holder of a Qualifying Interest, the nominated undertaker will normally undertake an appropriate form of market competition in fulfilling the obligation to secure the best price under Paragraph 6.4 of the Land Disposal Policy. In evaluating the results of competition the nominated undertaker will apply the principles of best value, taking into account the price and other terms offered and the ability of the prospective purchaser to deliver the required outputs by deploying the necessary resources, track record and expertise to complete the development and the fulfilment of the Secretary of State's undertaking.

## **7 Section 7**

### **7.1 Paragraph 7.1-7.2**

7.1.1 The Secretary of State will consider entering into a Prior Agreement with any Holder of a sole Qualifying Interest in a site who is able to indicate that they are:

- a) willing to commit in advance to purchase the site upon completion of the Crossrail works on a basis that is consistent with the land Disposal Policy and this Guidance Note;
- b) willing to enter into advance obligations, conditional upon the enactment of the Crossrail Bill and commencement of the project, to support delivery of the nominated undertaker's objectives and fulfilment of the Secretary of State's undertaking;
- c) able to satisfy the requirements of paragraph 4.4 of the Policy (to demonstrate financial and development expertise) as further explained in section 4 of this guidance; and
- d) likely to provide best overall value for money by entering into a Prior Agreement.

## **8 Section 8**

No guidance required.