

Your property
and discretionary
purchase

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National Highways

At National Highways, we maintain, operate and improve England's motorways and major A-roads, the roads we all use between major cities and which are vital to our economy.

The government has tasked us with delivering their road investment strategy. This is a programme of investment which aims to improve journeys, tackle congestion, support the economy and maintain safety.

Introduction

This guide will provide you with information about the circumstances in which we may offer to purchase property either in advance of requirements for a new or improved road scheme or where the construction works or the road in use will seriously affect your enjoyment of the property.

We realise that some of the terms we use in this booklet may not be familiar to you, so we have included a glossary in Annex 1 at the end.

More information about the process we follow to deliver our larger road schemes and other types of compensation that may be available can be found in the following publications:

Your property and our road proposals

Your property and land surveys

Your property and blight

Your property and compulsory purchase

Your property and compensation or mitigation for the effects of our road proposals

Your property and Part I compensation

These booklets are updated from time to time to ensure they are correct. The latest versions are always published on our website. Please check the website to ensure you are reading the latest version.

For more information

@ info@nationalhighways.co.uk

☎ 0300 123 5000

www www.nationalhighways.co.uk

Discretionary purchase

There may be situations where owners have a pressing need to sell their property and are unable to do so except at a significantly reduced price as a result of our proposed road scheme. While we are under no obligation to purchase those properties, Parliament has given us the ability to purchase properties using discretionary powers in the following sections of the Highways Act 1980:

- Section 248 applications can be made for properties on the line of one of our published public consultation route options or on the preferred route once announced ('on-line property'). There may also be situations where the planning inspector recommends we investigate an alternative route suggested by a third party. Property owners on that alternative route can also apply under this section.
- Section 246 applications can normally be made once the notification of development is issued to the local planning authority, giving notice of the preferred route, for properties not on its line ('off-line property') but the enjoyment of which is seriously affected as follows:

- Section 246(2A) serious effect from the construction works or from the road in use. Applications can normally be made after a notification of development has been issued to the local planning authority.
- Section 246(2)(a) serious effect from the construction works. Applications can be made during the construction period.
- Section 246(2)(b) serious effect from the road in use. Applications can be made during the first year after it has opened to traffic.

This booklet explains the way in which we will consider applications. However, please note that we only exercise our discretion in exceptional circumstances.

Requesting and submitting an application for discretionary purchase

Please let us know the section of the Highways Act 1980 under which you are applying for discretionary purchase so that we can send you the correct form. If you are unsure we can advise you.

Request an application form

@ info@nationalhighways.co.uk

☎ 0300 123 5000

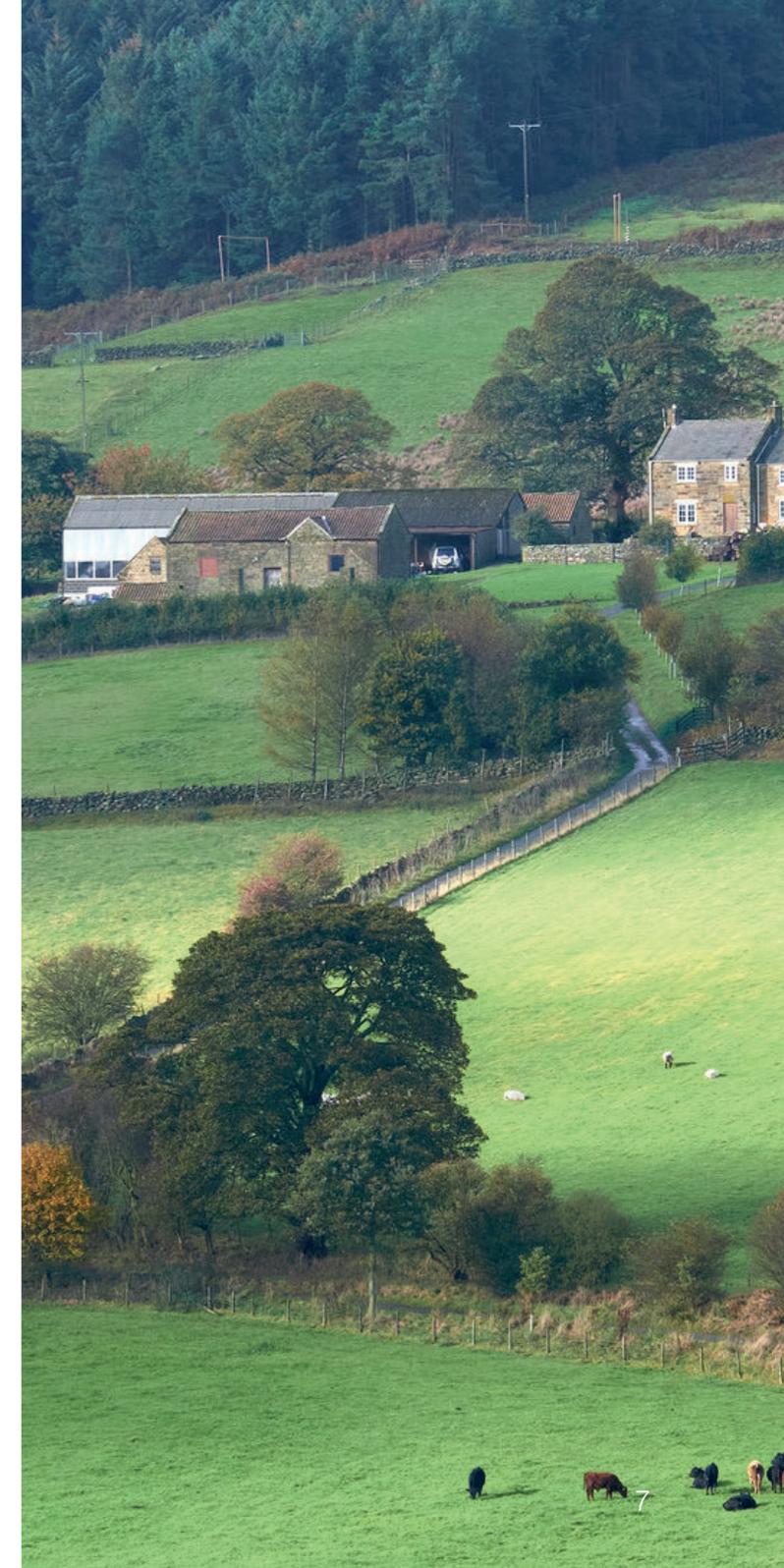
Your completed application and supporting information should be submitted to the National Highways office dealing with the specific scheme.

You can find contact details for our schemes on our website:

www www.nationalhighways.co.uk/our-work

We will confirm receipt of your discretionary purchase application.

We aim to decide applications within three months of receipt, providing they are fully completed. However, some applications may take longer; we will let you know if this is the case.



How we assess your application

Applications under section 246 (off-line property), are assessed in three stages.

Stage 1 – the pre-conditions

We will consider whether you have met the pre-conditions for submitting an application. We will:

- check that you have a qualifying interest in the property (including whether you meet the occupancy requirements and whether your application relates to the whole of your interest in a single hereditament)
- ask our valuer to confirm whether you have made reasonable endeavours to sell your property at a realistic price and have been unable to do so.

Stage 2 - the assessment of serious effect

We will assess the effects of the road scheme on your enjoyment of your property to determine whether it is (or is predicted to be) seriously affected from:

- Diminution in value
- Visual impact
- Noise
- The severe aggravation of a pre-existing medical condition
- Any other factor stated in your application

Stage 3 – your case for discretionary purchase

We will consider whether your case for discretionary purchase justifies National Highways exercising its limited discretion to offer to purchase your property. We will consider whether you:

- have a pressing need to sell (ie a need to sell now or in the immediate future) and will suffer severe hardship as a result of being unable to sell, except at a significantly reduced price
- purchased your property with foreknowledge of the road scheme.

Further information about each of the factors in these stages can be found in the following pages of this booklet. Please note that we can only consider stages 2 and 3 if your application has met the criteria in the earlier stage(s).

Applications under section 248 (on-line property) follow a similar process, but if your property is on the line of the proposed road scheme (or on one of the public consultation options) we will accept that it is seriously affected in stage 2, without the need for further assessment. Where your property is partly on-line and partly off-line, we will consider whether the on-line part can be acquired without making the off-line part less useful or less valuable in some significant degree. If it cannot, we may offer to purchase your whole property. If we only offer to purchase part of your property, you may wish to consider making an application for the remaining (ie off-line) part under section 246.

We may also waive some of the factors in stages 1 and 2 in limited circumstances. Details of these circumstances are explained in the following pages of this booklet.





Stage 1 - the pre-conditions

Qualifying interest

Discretionary purchase applications under sections 246(2)(a), 246(2)(b), 246(2A) (off-line property) and section 248 (on-line property: on one of our published public consultation route options, or on the line of an alternative route suggested by a third party which the planning inspector recommends we investigate) can be made by freeholders and leaseholders provided the lease has at least three years remaining. To be eligible you must have a qualifying interest in the property as one of the following:

- A residential owner-occupier of a private dwelling
- An owner-occupier of business premises with a net annual value not currently exceeding £36,000 per year
- An owner-occupier of an agricultural unit or part of an agricultural unit
- A personal representative of a deceased person who, at the date of his or her death, would have been able to apply
- A mortgage lender who has the right to sell the property and who can give immediate possession

Applications can be made by owner-occupiers of homes, business premises or agricultural units provided you have occupied the property for at least six months. If you move out of a property without applying for discretionary purchase, you can still apply within twelve months as long as you had lived there for at least six months and the property has been unoccupied since you moved. Personal representatives or mortgage lenders do not have to satisfy the occupancy requirements

Your application also needs to relate to a single hereditament (see Annex 1 for further details) and be for the whole of your interest in it.

Important: If you have let your property, or if you are a tenant, then you would not have a qualifying interest and you would not normally be able to make an application for discretionary purchase.

However, for discretionary purchase applications under section 248 within the boundary of our notification of development, applicants do not need to have a qualifying interest.

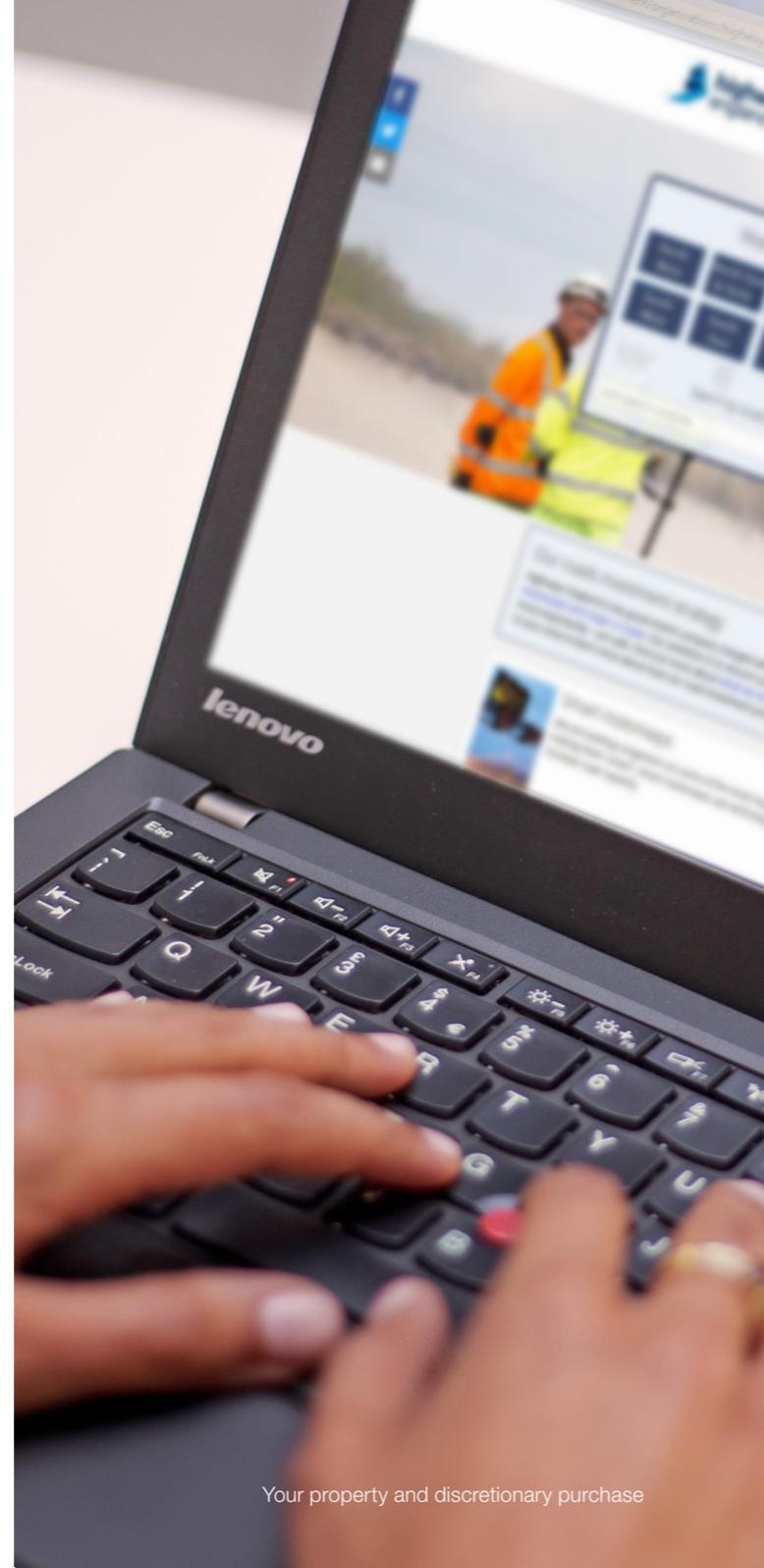
Reasonable endeavours to sell the property

For us to consider an application for discretionary purchase you must have made reasonable endeavours to sell your property at a realistic price and been unable to do so.

The property should have been marketed with an estate agent or placed in the local or national press at least twice. The property must be marketed for a minimum of 13 weeks. You must show that you have not received any offers within 15 per cent of the unaffected market value or, if you have received an offer, that it has been withdrawn due to our road scheme.

Exceptionally if you are suffering from unusually severe hardship (please see the definition in Annex 1), we may accept a shorter period of marketing if the hardship would occur (eg if your property would be repossessed) before you could complete 13 weeks marketing.

Important: You will need to submit evidence of your endeavours to sell, and any offers received, with your application for discretionary purchase.



Stage 2 – the assessment of serious effect

For applications under section 248 (on-line property):

- If your property is likely to be required for the road scheme, we will accept that it is seriously affected.
- If part of your property is likely to be required for the road scheme, we will assess whether that part can be acquired without making the remainder less useful or less valuable in some significant degree. Where the part can be acquired without making the remainder significantly less useful or valuable, we may offer to exercise our discretion only over that part. However, where it cannot, we will offer to purchase the whole of your property.
- If we cannot say with any certainty how much of your property would be required for the road scheme, we will normally offer to acquire the whole of it.

If we offer to purchase only part of your property, you may be able to make an application under section 246 (off-line property) for the remainder.

For applications under section 246 (off-line property), we will assess whether there is serious effect on your enjoyment of the property from the following factors:

- Diminution in value: this is the amount by which the value of your property has been reduced by the road scheme. We will ask our independent contracted valuer to assess whether your property has reduced in value. However, you can also submit any valuation advice you have received. Our policy is that we would not normally consider diminution in value of less than 15 per cent to have seriously affected a person's enjoyment of a property.
- Noise from the construction works or the road in use: our policy is that we will normally consider that the enjoyment of a property will be seriously affected by noise if, taking account of any proposed mitigation measures such as noise fencing (but not noise insulation installed at the property), the predicted noise levels:
 - of the construction works (applications under sections 246(2A) or 246(2)(a)) is well in excess of 70 dBA (12 hour Leq) for a substantial period of the day, over a period of at least three months, or if the property is eligible for noise insulation.

- from the road in use (applications under sections 246(2A) or 246(2)(b)) rises by at least 1 dBA to a level of 68 dBA (18 hour L10) during the first year after opening. Please see Annex 2 for further information on noise measurement.
- Visual impact from the construction works or from the road in use: our policy is that we assess this factor in accordance with our published document LA 107 - Landscape and visual effects, which explains the requirements for assessing and reporting the landscape and visual effects of highway projects. It considers the significance of visual effect by using a matrix that measures visual sensitivity and the magnitude of effect. The significance of visual effect ranges from 'neutral' to 'very large'. For us to accept that your property is seriously affected by visual impact, the significance of visual effect must be (or be predicted to be) 'very large' during the construction period (applications under sections 246(2A) or 246(2)(a)) or the first year of the road opening to traffic (applications under sections 246(2A) or 246(2)(b)).
- Severe aggravation of a medical condition caused by physical effects: if you, or a dependant living with you, have a pre-existing, serious recognised mental or physical medical condition, which is likely to be severely

aggravated by the physical effects from either the construction of the road or its use, we will consider the effects of the road scheme on that condition. However, general stress and anxiety (eg about our road proposals) are not normally considered. Physical effects may include noise, dust and poor air quality (this is not an exhaustive list). The medical conditions that may be relevant may include respiratory conditions and tinnitus. Applications made on the basis of the severe aggravation of a pre-existing medical condition should include a statement from your GP or specialist.

- Other factors (for example air quality, loss of privacy, or vibration) may also cause serious effect. If you consider that your enjoyment of your property is seriously affected by other factors, please provide details in your application.

Unless we consider that the effects of the road scheme will severely aggravate a pre-existing medical condition or you are suffering from unusually severe hardship (please see definition in Annex 1), we will not normally consider your enjoyment of your property will be seriously affected unless two of these factors are assessed as having been met, or are predicted to be met.



Stage 3 – your case for discretionary purchase

If we have assessed that your property is seriously affected, we will then decide whether to exercise our discretion to offer to purchase. In reaching this decision we will consider the following factors.

Foreknowledge

We will not normally agree to purchase a property affected by our road scheme if we issued the notification of development before you acquired the property (or, for s248 applications on the line of one of our published consultation route options, if we published the consultation before you acquired the property). In this situation we believe that you could have expected that the road scheme would affect your enjoyment of the property. However, foreknowledge may be waived where:

- The design of the road scheme has significantly changed in substance or location, such that the physical effects being, or predicted to be, experienced by you could not have been reasonably foreseen at the time you acquired the property.

- For applications under section 248 (on-line property within the boundary of the notification of development), compulsory acquisition powers have come into force in relation to the property, for example where the development consent order has been granted or the compulsory purchase order has been confirmed (these orders are explained in Annex 1).
- For applications under section 246 (off-line property), the physical factors would severely aggravate a medical condition that you (or a dependant living with you) were not suffering from at the time you acquired the property.

An application from a mortgage lender is not accepted if the lender entered into a mortgage at a time when it should have known (ie had foreknowledge of) the effects of the road scheme.

Pressing need to sell and hardship

We must be satisfied that you have pressing reasons for selling (ie a need to sell now or in the immediate future) and that severe hardship would result if you were unable to do so at a reasonable price. Your case must be convincing and in most cases the reasons for selling must be unrelated to the road scheme. As a guide, the following situations would be regarded as a pressing need to sell (please note that this is not an exhaustive list):

- Domestic – there is a need to move to a larger or different house to accommodate a growing family
- Employment – a need to relocate to take a new job outside a reasonable commuting distance
- Financial – there are external financial pressures, such as dividing assets following a divorce, releasing capital for a business, or to avoid threatened repossession
- Medical condition unrelated to the road scheme – where you, or a dependant living with you, has developed a medical condition making the property unsuitable. Examples would include a severe loss of mobility making it difficult to maintain your home and garden or a requirement to go into sheltered accommodation or a long-term

- nursing home due to infirmity or ill health
- Winding up the estate of a deceased person
- A disposal by a mortgage lender in possession

However, this factor may be waived in applications under:

- section 246 (off-line property), where the construction works or the road in use will severely aggravate an existing medical condition.
- section 248 (on-line property within the boundary of the notification of development), where the development consent order has been granted or the compulsory purchase order has been confirmed.

For applications relating to residential dwellings where the property is your only asset, an inability to sell it other than at a significantly reduced price will be deemed to cause severe hardship.

Hardship can also relate to non-financial matters, such as living conditions that might severely affect your health (and which cannot be mitigated by reasonably adapting your home, such as fitting a stair-lift).

Please let us know if you are suffering from unusually severe hardship (please see Annex 1 for an explanation of this) and we will aim to prioritise your application.

Our decision

We aim to decide applications within three months of receipt, providing they are fully completed. However, some applications may take longer; we will let you know if this is the case.

We will write to you and let you know our decision on your application.

If we offer to purchase your property under section 248 (on-line property) or under section 246 (off-line property) due to serious effect, our offer will be available for you to accept now.

However, if we offer to purchase your property under section 246 (off-line property) due to a pre-existing medical condition that would be severely aggravated by the construction or use of the road, we would normally defer the purchase until nine months before the start of construction or the road opening depending on which event will aggravate that condition. We will contact you at that time to offer to proceed with the purchase.

If we defer our offer to purchase your property until nine months before the start of construction or road opening, you will be required to keep your property for sale on the open market at a realistic price and advise us if you receive an offer within 15 per cent of the asking price.

Important: If we accept your application and offer to buy your property, our offer will only be open for one month. The offer will also be subject to agreement on price and exchange of contracts within six months of the date of the offer. If you do not meet these timescales the offer to purchase may be withdrawn. However, if we defer the purchase, these timescales will not apply before we contact you to offer to proceed with the purchase.

Compensation for successful applications

We will offer to purchase your property at its unaffected market value, not the reduced value as a result of our road scheme. Our independent professional valuer will negotiate and agree the value of the property with you.

When selling to us under discretionary purchase you normally pay your own surveyor's costs, legal fees and moving expenses. However, where your application is accepted under:

- Section 246 (off-line property) on the grounds that you, or a dependant living with you has a pre-existing medical condition that will be severely aggravated by the physical effects of the scheme, or
- Section 248 (on-line property) on the grounds that your property is within the boundary of our notification of development,

we will reimburse your reasonable surveyor's costs, legal fees and a disturbance payment in line with entitlements under the Compensation Code.

Also, for section 248 applications, if your property is within the boundary of our notification of development, you may qualify for a home loss, basic loss or occupier's loss payment. More information about these payments can be found in our guide *Your property and blight*.

In all cases, we will not pay the costs involved in marketing the property beforehand nor will we pay the costs for preparing and submitting unsuccessful applications.

Data protection and you

National Highways will collect and process your data in relation to your discretionary purchase application. National Highways is permitted to do this in order to: carry out our statutory and public functions; enter into a contract with you; and/or meet any statutory requirements relating to the exercise of discretionary purchase powers (where relevant).

We will not use your personal information for any purpose other than to process your application, and if an offer to purchase is made, your claim or to meet our statutory requirements. All information we hold will be maintained accurately and kept as up-to-date as possible. Your data will be processed and retained by National Highways and our appointed contractors until the purpose for which it was collected is complete. In some cases, we may be required to share your information with the Planning Inspectorate. If you appoint an agent to prepare your application and negotiate your claim, we will take that as agreement to share your information, other than your bank or building society details, with them, unless you instruct us not to do so.

Under the General Data Protection Regulation you have the following rights:

- Right of access to the data (Subject Access Request)
- Right for the rectification of errors
- Right to erasure of personal data – this is not an absolute right under the legislation
- Right to restrict processing or to object to processing
- Right to data portability.

To exercise these rights, please contact our Data Protection Officer using the following contact details:

 DataProtectionAdvice@nationalhighways.co.uk

Data Protection Officer
National Highways, Piccadilly Gate,
Store Street, Manchester, M1 2WD

If, at any point, National Highways plans to process the personal data we hold for a purpose other than that for which it was originally collected, we will provide you with information about what that other purpose is and any relevant further information about the rights referred to above, including the right to object to that further processing.

You have the right to lodge a complaint with the supervisory authority, the Information Commissioner's Office.

Complaints procedure

We aim to provide the best possible service at all times but there may be circumstances in which you wish to make a complaint about our handling of your application. We are keen to improve the service we offer our customers wherever possible and provide redress where appropriate.

More information about the complaints procedure can be found at:

 info@nationalhighways.co.uk

 0300 123 5000

 www.nationalhighways.co.uk

Annex 1 - Glossary

Compulsory purchase order - A statutory order that authorises the compulsory acquisition of land and property. National Highways will make the order in accordance with legislative processes and hold a public inquiry (if necessary) to consider any objections, before the Secretary of State for Transport decides whether to confirm the order and grant us the powers to compulsorily acquire the land and property needed for the road scheme.

Development consent order - This is similar to a compulsory purchase order, in that it authorises the compulsory acquisition of land and property. However, it also includes powers relating to changes to highways, public and private rights of way, and certain other consents and licences. National Highways will make an application for the order (a form of planning permission) to the Planning Inspectorate, who will consider objections and make a recommendation to the Secretary of State for Transport whether to grant the order. The Secretary of State will then decide whether to grant the order and give us the powers to compulsorily acquire the land and property needed for the road scheme.

Hereditament - The definition of hereditament in Highways Act 1980, refers to Section 115(1) General Rate Act 1967, which defines a hereditament as follows:

“hereditament means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list”

Notification of development - This is a written notice and a map or plan identifying the land required for the preferred route. It is served on the local planning authority and is registered as a local land charge.

On-line property - Land is, or is likely to be, required from the property for the proposed road scheme, including any land that would be less useful or less valuable in some significant degree by the acquisition of the required land.

Off-line property - No land is required from the property for the proposed road scheme (or where only part of the property is required, the remaining part).

Planning Inspectorate - The Planning Inspectorate acts on behalf of the Secretary of State to examine the road scheme and recommend whether the order, authorising the compulsory acquisition of land and property, should be confirmed/granted.

Preferred route announcement - This is the public announcement of the route selected by National Highways, from those put to the public during the route option public consultation, as the route that it intends to take forward into detailed design.

Unusually severe hardship - This occurs where the hardship is particularly severe and pressing, for example (this is not an exhaustive list):

- The threat of repossession of your home by a mortgage lender
- The division of assets in a divorce, where the courts have issued a settlement order requiring the property be sold and you are otherwise unable to separate your lives
- The threat of bankruptcy or your business going into liquidation
- A life threatening or shortening effect to your health (or to the health of a dependant living with you) due to:
 - your property not being suitable to meet your needs
 - your property not being capable of reasonable adaptation; and
 - you being otherwise unable to move to more suitable accommodation.

In these cases, we may waive the requirement to market the property if the unusually severe hardship is likely to occur before you could fully meet the marketing requirement.

Annex 2 - Noise measurement

dB(A)

The unit used for the measurement of sound within the frequency range of the human ear. dB is short for decibel.

L10 (18 hour)

This is the average of the hourly L10 noise between 0600 and 2400 hours on a normal working day. L10 is the noise level exceeded for one tenth of one hour (six minutes).

Leq

The sound level, which, if maintained continuously, would give the equivalent amount of noise energy as the varying levels would over the same period.



Typical noise levels

0 dBA	Threshold of hearing
35 dBA	Quiet bedroom
40 dBA	Library
50 dBA	Ordinary conversation
60 dBA	Office environment
62.5 dBA	Communication starts becoming difficult
70 dBA	Passenger car (60 km/h at 7 metres distance)
81 dBA	Modern twin-engine jet
83 dBA	Heavy diesel lorry (40 km/h at 7 metres distance)
90 dBA	Hazard to hearing from continuous exposure
95 dBA	Pneumatic drill (unsilenced) at 7 metres
120 dBA	Threshold of pain

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