

Land Compensation Act 1973, Part 1

Part 1 of the Land Compensation Act 1973 (the Act) provides a right to certain homeowners to claim compensation where they suffer as a result of the use of works undertaken for the benefit of the community. This note contains a summary of the law. It is not intended to be a full and complete statement of it.

What are public works?

Public works comprise any highway. Part 1 of the Act is mainly concerned with new works coming into use for the first time. The compensation provisions do apply, however, where existing public works are altered.

The carriageway of a highway is altered where:

the location, level (otherwise than by re-surfacing) or width of an existing carriageway is altered

or

an additional carriageway is provided for a highway beside, above or below an existing carriageway.

What is the compensation for?

Compensation is payable for depreciation in property value by the use of public works.

For claims to be valid, claimants have to be able to demonstrate that the value of their property has been depreciated by more than £50 by one or more physical factors caused by use of the altered highway.

The physical factors that can affect property value under the Act are. noise; vibration; smell; fumes; smoke; artificial lighting; and discharge of solid or liquid substance onto the land. These are the only factors to be taken into account.

The physical factors giving rise to the reduction in property value i.e. noise, fumes etc, must be caused by the use of the altered carriageway and the source of those factors must be situated on the altered length of the carriageway. Thus, the noise, fumes etc must have their source in the vehicles situated on that length of the altered carriageway.

It follows that depreciation caused by increase in traffic flows which is due indirectly to the works, e.g. on side roads not the subject of the works, will not give rise to any claim for compensation.

Compensation is not payable in respect of increased traffic alone.

When can a claim be made?

The first day on which compensation can be claimed is the day one year after the altered highway was first open to public traffic after completion of the alteration. This date is known as the “first claim day”.

In accordance with the Limitation Act 1980, a claim notice may be served at any time within the 6 year period following the first claim day.

However a claim may be made during the one year period between the opening of the altered highway and the first claim day when the claimant contracts to sell their interest in the property and the claim is made before the interest is disposed of.

Who can claim?

The claimant must be a homeowner on or before the date the alterations are completed and must own and occupy the property when the claim is submitted.

Non-resident landlords of tenanted properties can also claim provided a tenant occupies the property at the time the claim is submitted.

Long leaseholders may also claim.

How much compensation?

Part 1 is concerned with depreciation in market value and it is therefore a matter of valuation evidence.

Compensation is assessed by reference to property prices that are current on the first claim day. Account will be taken of the use of the altered highway, as it exists on the first claim day. Account will also be taken of any intensification that may then reasonably be expected of the use of the altered highway in the state it is on the first claim day.

Compensation does not rest on a ‘before’ and ‘after’ approach. The stay period of one year is to allow the works to become assimilated as far as possible into the environment and thus to allow their permanent effect to be fairly judged. The valuer considers the attitude of potential buyers coming fresh on the scene a year after the public works have been in use. The buyer judges the situation as it is and has regard to any intensification of the use of the works as may then be reasonably expected. The potential buyer is genuinely wishing to purchase the property but is under no pressing or special need to do so. The vendor is a willing seller but is likewise under no compulsion.

The measure in depreciation in value is the difference between:

- (i) the price a purchaser would pay for the property with the public works in use but with the physical factors no worse than they were before the scheme, and

- (ii) the price a purchaser would pay with the public works in use with the present or anticipated effect of the physical factors.

As it is necessary to assess the effect of the physical factors on the market value of the property, compensation is only payable if it can be proved that there is a connection between eg noise or air quality and depreciation in market value.

The onus is on the claimant to prove their claim.

Interest will be payable on compensation from the date of service of the claim until the compensation is paid.

Where compensation is payable under Part 1 of the Act, reasonable valuation or legal expenses incurred by the claimant in preparing and prosecuting the claim are also payable.

What happens to unsettled claims?

The Act provides that disputes concerning compensation shall be referred to and determined by the Lands Tribunal.

Conclusion

Reductions in property value due to rat-running and deteriorating traffic conditions on roads adjoining the altered highway are not a factor entitling a claimant to compensation, because the additional traffic has not arisen on the altered public works.