

# LONDON CITY AIRPORT

2015 SECTION 106 ANNUAL PERFORMANCE REPORT

## APPENDIX 18 VALUE COMPENSATION SCHEME

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# LONDON CITY AIRPORT - VALUE COMPENSATION SCHEME

Provision for a voluntary compensation scheme to compensate for loss of value of undeveloped sites which may be affected by the possible expansion of Public Safety Zones at London City Airport

## Introduction

We are required to put into place a scheme to compensate for the loss of value that may be caused to undeveloped sites affected by any expansion of the Public Safety Zones ("PSZs") (from the "base case" PSZs which existed on 9 July 2009) due to the increase in annual aircraft movements at the Airport to 120,000, which was granted planning permission by London Borough of Newham on 9 July 2009. This compensation scheme is known as the Value Compensation Scheme ("VCS").

## Background

Planning permission ("the Planning Permission") was granted on 9 July 2009 (reference 07/01510/VAR) by the London Borough of Newham for variation of conditions attached to previous planning permissions for the Airport to allow up to 120,000 total aircraft movements per year (with related modifications to other limits on aircraft movements).

The Planning Permission was subject to an agreement under Section 106 Town and Country Planning Act 1990 dated 9 July 2009 ("Section 106 Agreement"). Under the Section 106 Agreement the Airport is required to prepare and consult on a Value Compensation Scheme to compensate for value that may be lost at sites that are yet to be developed in the vicinity of the Airport and which could be affected by any expansion of the PSZs of the Airport, as a result of the Planning Permission.

In the normal course of events, PSZs around airports are reviewed periodically and also following a material change in circumstances such as (in this case) a permitted increase in aircraft movements.

The body responsible for implementing Department for Transport (DfT) policy on PSZs is the Civil Aviation Authority (CAA). Air travel is a low risk means of transport but as a precaution the CAA delineates PSZs at each end of a runway in order to control the number of people on the ground, in the vicinity of airports, who could be at risk of death or injury in the event of an aircraft accident on take-off or landing. The way this is achieved is to restrict new development within PSZs. The basic policy objective of the DfT (set out in DfT Circular 01/2010) is that there should be no increase in the number of people living working or congregating in PSZs and that, over time, the number should be reduced as circumstances allow. However, unimplemented planning permissions in PSZs do not need to be revoked or modified: paragraph 15, DfT Circular 01/2010.

PSZs are based on an objective assessment of the risk to an individual on the ground in the vicinity of an airport from an aircraft accident over the course of a year. They comprise an outer

boundary which is the 1 in 100,000 risk contour and an inner zone, based on the 1 in 10,000 risk contour. Most existing developments within PSZs can remain there, but some types of new development are not permitted. To place the level of risk in context, the risk of fatality from all types of road accidents is about 1 in 16,800 each year<sup>1</sup> and the risk of being killed accidentally in the home from all causes is about 1 in 13,000 per year<sup>2</sup>.

Further information on PSZs and the DfT's policy is can be found in DfT Circular 01/2010, available on the DfT's website.

The Airport understands that the CAA has started to undertake a comprehensive review of PSZs at London City Airport and is expected to reach a conclusion by the end of 2010. However, work undertaken during the course of the planning application indicated that there existed a possibility that the PSZs could extend further than they exist today and if that were to happen, the potential value of undeveloped sites in the vicinity of the Airport could be adversely affected. The purpose of the VCS is to compensate for any adverse effect of this nature arising from the publication of the first revision of the PSZs which takes into account the planning permission granted on 9 July 2009.

To understand the VCS it is important to appreciate the full extent of the PSZs which were current at the Airport at the time of the planning permission being granted (9 July 2009). Those PSZs are shown on the attached plans. The VCS is intended only to compensate eligible sites outside the existing PSZs if they are affected by any revision of the PSZs by DfT.

## The Value Compensation Scheme

### 1 Eligible Sites

The only sites which are eligible for the VCS are those sites which were undeveloped as at 9 July 2009 and over which any increased PSZ extends for the first time as a result of the Planning Permission. The physical extent of each site will be the land within the extension of the PSZ and any other adjoining land in which the same interest is held by the same owner at the time of the planning permission. This means that assembly of land after 9 July 2009 will be disregarded for the purposes of identifying the Eligible Site. (The potential of that site to form part of a larger, assembled development site may however be relevant to the valuation process as described below.)

Sites which were undeveloped will be deemed to include:

- Undeveloped sites without planning permission;
- Undeveloped sites with the benefit of planning permission that remained unimplemented (as at 9 July 2009);

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<sup>1</sup> Reducing risks, protecting people, HSE's decision-making process, HSE, 2001

<sup>2</sup> Working for a Safer World: 23rd Annual Report of the Home and Leisure Accident Surveillance System – 1999 data

- Sites with derelict or cleared buildings and structures (ie previously developed or “brownfield” land) without any lawful planning use;
- Sites with only temporary use or temporary buildings which are required as a matter of law to cease or to be removed at the end of a temporary period.

## 2 Eligible Interests

Any estate, right, or interest in an Eligible Site (as well as any charge over an Eligible Site), if in each case it existed on 9 July 2009, will be eligible for compensation under the VCS including:

- a freehold interest; and
- a leasehold interest.

## 3 Eligible Claimants

A claimant will only be considered for compensation under the VCS if:

- (a) on the date of publication of the revised PSZ he/she/it was the owner of an Eligible Interest in an Eligible Site and has either retained the Eligible Interest or in the event of the claimant having transferred that Eligible Interest, retained all rights to claim compensation under the VCS; or
- (b) he/she/it is a person to whom an Eligible Interest in an Eligible Site has been transferred and to whom the entitlement to claim (under the preceding paragraph (a)) has been assigned.

A claimant must be able to demonstrate eligibility in accordance with these criteria at the date of claim under the VCS and the date of payment of any compensation by the Airport. In both cases, however, a claim will not be accepted if a claim has already been made either by the same claimant or by any other claimant in respect of the same Eligible Interest and (a) the previous claim is still under consideration by the Airport or (b) compensation in relation to such claim has been accepted or paid or is the subject of an offer open to acceptance or (c) if such a claim was made under the VCS at any point in the preceding two years and compensation was offered by the Airport but not accepted by the claimant. The overriding principle is that the Airport will only pay compensation once in relation to each Eligible Interest.

## 4 Scheme Start and Close

Claims under the VCS cannot be made until the VCS is operational. The expectation is that this will be the later of 8 July 2010 and the date on which the first revision of the PSZs for the Airport is published taking into account the effects of the increased aircraft movements. However, this is subject to the time taken to secure approval of the VCS by Newham.

The VCS will close on 8 July 2019. This is the deadline for receipt of any claims. If a claim is received by the Airport after this date, then neither the Airport nor its related companies will be

obliged to consider the claim or to accept liability to pay compensation under the VCS.

## 5 Publicity

The existence of the VCS (once adopted) and its closing date will be publicised by its inclusion in the annual performance report which the Airport is obliged to publish every year under the Section 106 Agreement and (within three months of the start of the VCS) through written notification of the owners of Eligible Interests in Eligible Sites, insofar as the Airport is able to identify them through Land Registry searches.

## 6 Procedure

The claim will be made under the VCS by the delivery to the Legal Affairs Manager of London City Airport Limited at City Aviation House, Royal Docks, London E16 9PX of a written request for compensation which includes the following minimum information requirements:

- Name of claimant;
- Nature of interest held;
- When the interest was acquired;
- If the interest was acquired after publication of the revised PSZs, evidence of assignment of the entitlement to claim under the VCS in accordance with the above requirements
- Address of the site in which the interest is held; Plan showing the extent of the interest in the relevant site;
- Details of the estimated loss of value of the claimant's interest as a result of the expansion of the PSZs at the Airport due to the planning permission granted on 9 July 2009.

From receipt of the claim the Airport will use reasonable endeavours to adhere to the following procedures and timescales:

- within three months of receipt of the claim the Airport will notify the claimant whether or not the Airport considers the claimant, its interest and the site to be eligible for the VCS;
- if there is a dispute regarding eligibility, this will be resolved in accordance with the dispute resolution process indicated below and the determination of eligibility through that dispute resolution process will prevail;
- if the claimant, its interest and the relevant site are eligible under the VCS, the Airport will procure that a valuation of the relevant interest is undertaken within three months of notifying the claimant of his/her/its eligibility or eligibility being determined through the dispute resolution process. This valuation will be undertaken by an RICS (Royal Institution of Chartered Surveyors) qualified valuer, who will at the Airport's cost visit the site to undertake the valuation described below. If the valuer requires a survey to be undertaken before

arriving at a valuation, then the Airport will pay the costs of that survey as well;

- Within 30 days of receiving the final valuation report, the Airport will send a copy to the claimant together with its offer of compensation; any offer of compensation made by the Airport will be subject to the following terms and conditions: (a) the offer will be open for acceptance until the earlier of the following dates - the expiry of three months from the date of receipt of the offer by the claimant or the date on which the Airport makes a further offer of compensation following agreement between the parties on the amount of compensation as described below or the date on which a dispute concerning the amount of compensation is referred to an expert in accordance with the dispute resolution process referred to below; (b) the claimant agrees that the offer is in full and final settlement of any claim that the claimant may have (against the Airport or LBN or any other body) in respect of the diminution in value of an Eligible Interest which results from the extension of the PSZs due to the 2009 planning permission; (c) the claimant undertakes that (notwithstanding its acceptance of the offer in full and final settlement) in the event of receiving compensation under any other entitlement for the same loss of value (due to the extension of the PSZs), within 30 days of receiving such compensation to pay this compensation to the Airport, up to the value of any payment received from the Airport with interest calculated at the Bank of England base rate from the date of payment.
- The compensation payable and to be offered by the Airport under the VCS will be the difference between the value of the Eligible Interest assessed with and without the extended Public Safety Zones (in accordance with the valuation principles indicated below). If there is a dispute regarding the amount of compensation following the receipt of the Airport's offer, the claimant and the Airport will meet to discuss compensation and failing agreement between the parties, the dispute may be referred by either party in accordance with the dispute resolution process indicated below. The amount of compensation which is arrived at following that dispute resolution will prevail and within 30 days of the Airport receiving written notice of the compensation determined by the expert the Airport will make an offer to the claimant to pay that compensation on the terms and conditions referred to above (except that there will be no further provision for disputes regarding the amount of compensation).
- If an offer of compensation including its terms and conditions is accepted in writing by the claimant, payment will be made within three months of the date of receipt by the Airport of that written acceptance.

## 7 Valuation Principles

Valuations under the VCS will be conducted in accordance with the RICS' Valuation Standards (Red Book) but subject also to the following principles:

- Actions taken in order to enhance compensation potentially payable under the VCS (such as the creation of additional interests in land) will be disregarded.
- The VCS will be based on the difference in value of the eligible interest in the eligible site shown in two valuations. Both valuations will assess the market value of the interest as at the date of claim (unless an Eligible Claimant has transferred its Eligible Interest without assigning the entitlement to claim - see below) but the first valuation will assume that the Planning Permission had not been granted and that therefore the PSZ was not extended beyond its extent prior to the grant of the Planning Permission - all other valuation assumptions shall be the same and in addition, in the first valuation the valuer shall be entitled to assume that if the PSZ had not been extended other adjacent and nearby sites to the valuation site may have been developed at the time of valuation to the extent that this may affect the valuation of the site being valued.
- If an Eligible Claimant has transferred its Eligible Interest without assigning the entitlement to claim the date for the two valuations will be the date of transfer, not the claim; the second valuation (which takes into account the revised PSZ) will be the higher of the purchase price paid at the time of transfer and the valuation conducted under the VCS.
- In undertaking the VCS valuations, regard shall be had to the effect of the PSZ extension on the eligible site as a whole. In other words, any loss of potential development floor space caused by the PSZ extension across part of the site could have beneficial or adverse knock on effects within the remainder of the site and these should be taken into account in the valuations.
- The market value shall take account of all factors that may impact on a willing seller and a willing buyer in the open market at the date of claim. This includes the future development potential of the site and the desirability in valuation terms of implementing planning permissions extant on 9 July 2009.

## 8 Aggregate Claim made before 8 July 2011

An aggregate claim is one which is made by the owners of all Eligible Interests in one Eligible Site. Until 8 July 2011, the Airport will consider an aggregate claim in respect of any Eligible Site from all Eligible Claimants in respect of all Eligible Interests provided that those claimants jointly agree and request a capital sum from the Airport which will represent the sum of the

payments which would otherwise be due under the VCS in respect of all such interests. Whether or not the Airport pays compensation pursuant to an aggregate claim of this nature will be in its absolute discretion and the amount of compensation will be subject to the prior approval of Newham. If an aggregate claim is not accepted or withdrawn (by one or more claimants) before payment is made, then the relevant Eligible Claimants will be entitled to claim individually.

## **9 Claimant's Costs**

In the event that a claim is made under the VCS which results in compensation being paid in respect of that claim which is at least 50% of the amount claimed, the Airport will cover all of the claimant's reasonable and proper legal and valuation costs incurred in making the claim and in entering into any agreement to record the compensation payable.

## **10 Interest**

Interest will be payable on compensation calculated at the Bank of England base rate from time to time from the date of claim until date of payment.

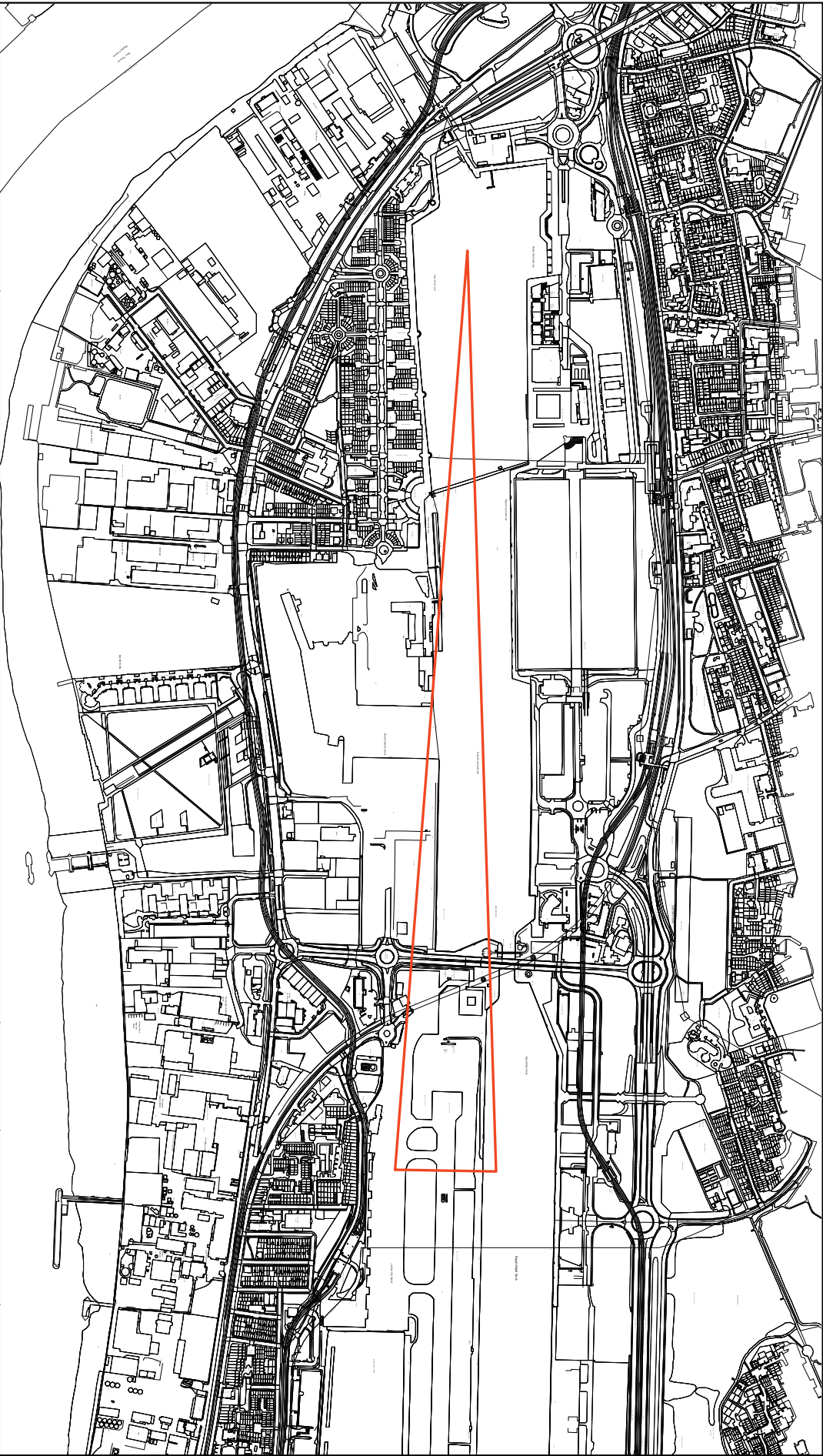
## **11 Dispute Resolution**

In the event of a dispute under the VCS the matter in dispute will on the application of either the Airport or the claimant be referred to a person acting as expert (the "Expert") being a person with not less than 10 years' recent and relevant experience of the matter in dispute whose identity will be agreed between the Airport and the claimant or in the absence of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party.

The resolution of the dispute will be on the following terms:

- (a) the determination will be final and binding on the parties except where the Expert has made a manifest error;
- (b) the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert directs; and
- (c) the Expert's costs will be borne in such proportions as he or she may direct failing which each party will bear its own costs of the reference and determination and one half each of the Expert's costs.





— Base Case PSZs (current at the time planning permission was granted on 9 July 2009)



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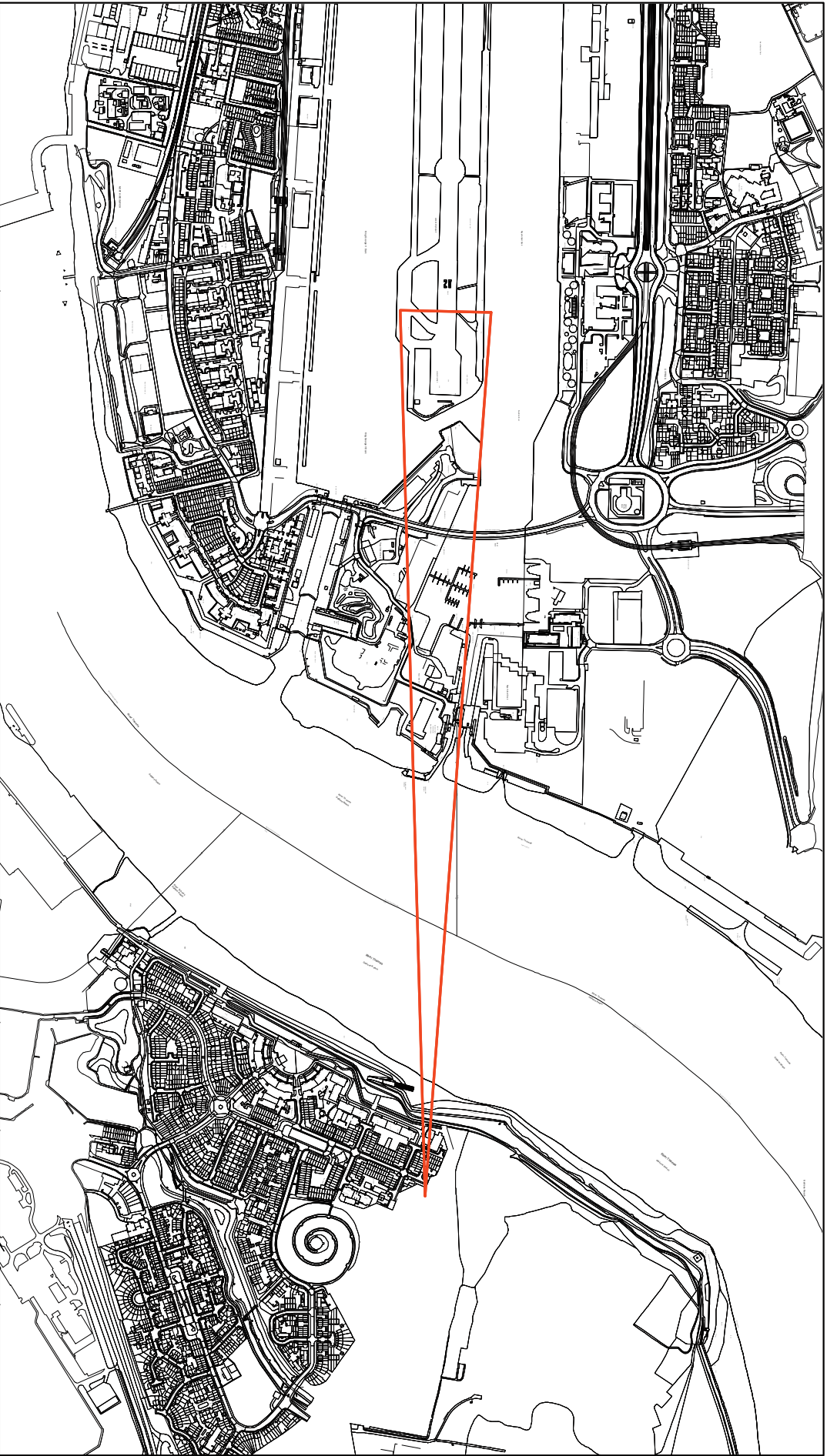
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London City Airport - Value Compensation Scheme


Plan 1

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— Base Case PSZs (current at the time planning permission was granted on 9 July 2009)



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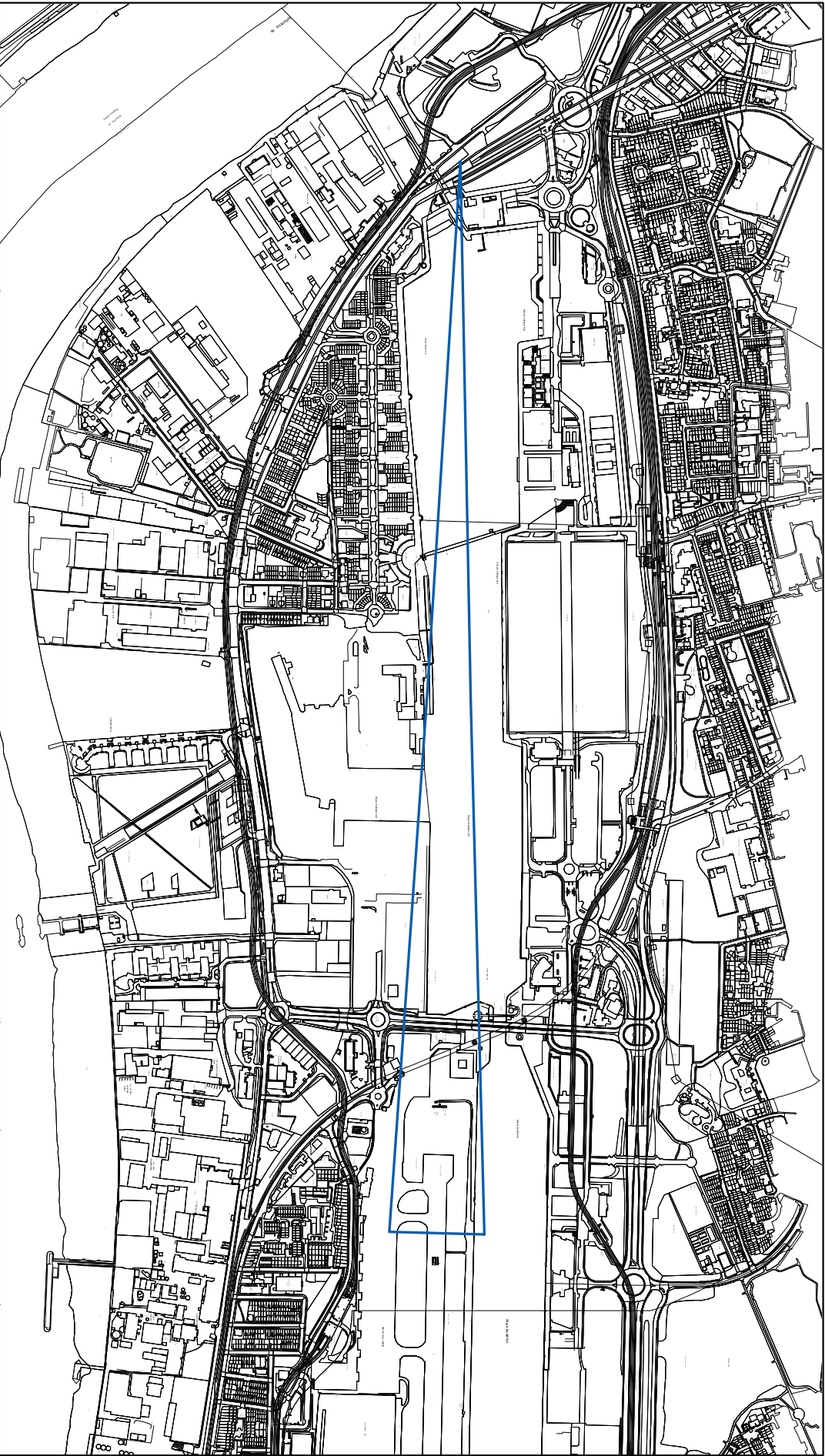


**London City Airport - Value Compensation Scheme**

**Plan 2**

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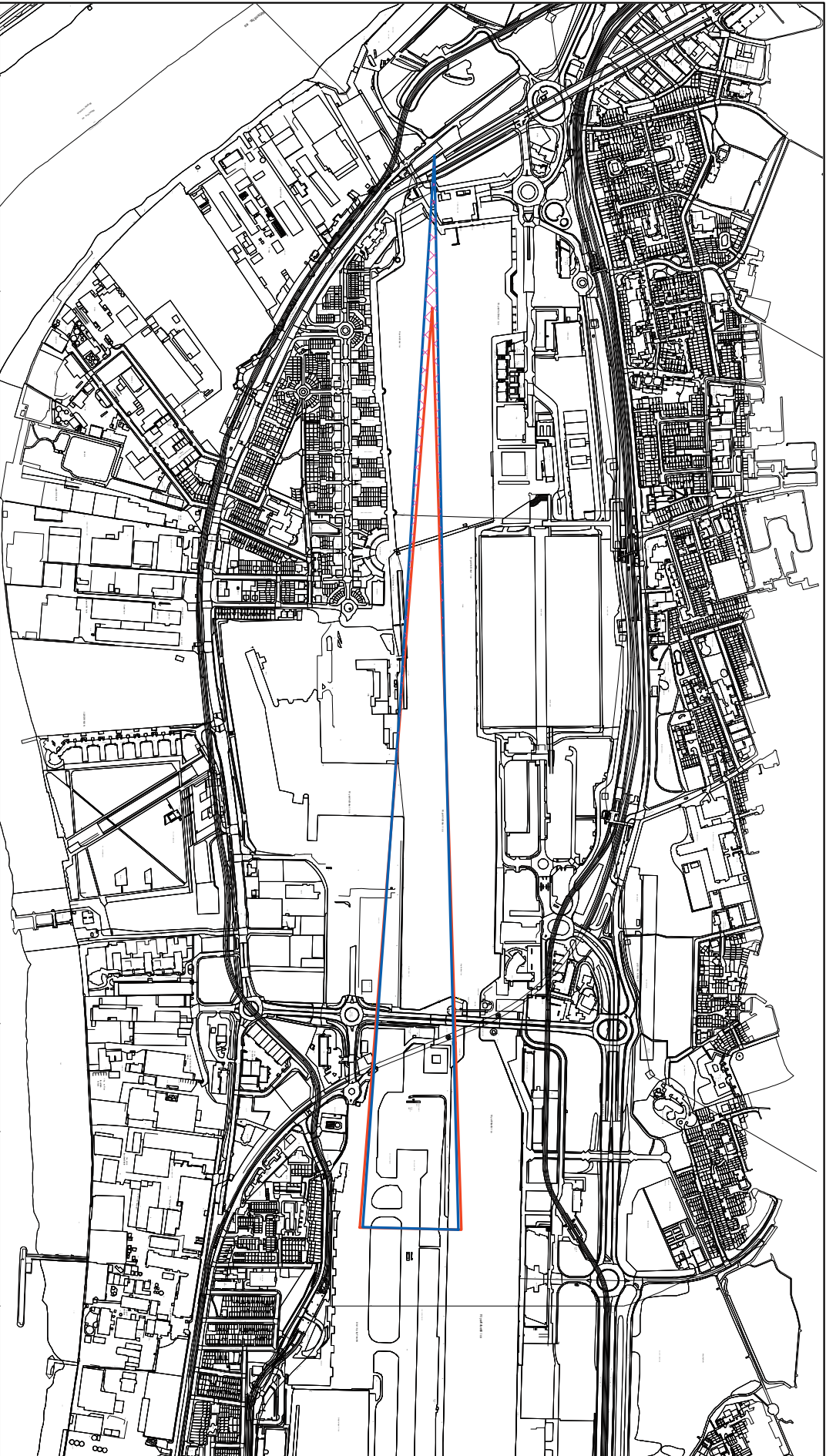
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