

High Speed Rail (HS2)

Exceptional Hardship Scheme (EHS) Consultation & Proposed Alternative Compensation Solution

Briefing prepared by HS2 Action Alliance
'Working for fair and just compensation'

April 2010

Commended by:

The Amersham Society
Amersham Town Council
Aylesbury Vale District Council
Buckinghamshire County Council
Chiltern Conservation Board
Chiltern Countryside Group
Chiltern District Council
The Chiltern Society
Local Community Action Groups along the 'preferred route option'
Old Amersham Business Association

Foreword

Fair and just compensation

Major infrastructure projects are sometimes essential for the benefit of society generally. However, they typically have an adverse effect on the locality in which they are situated and the people living and working there.

Projects such as HS2 involve noise, vibration, disruption and loss of amenity both during construction and when they are complete. The results are permanent changes to the character of the area and reductions in property values.

The current statutory compensation arrangements mean that many property owners in the vicinity of HS2 will suffer reductions in their property values for which they have no entitlement to compensation. The prospect of this depresses property prices well in advance of any work beginning – and even before the route is settled – as it already has on the ‘preferred route option’. It may affect properties on several alternative routes, as it did with the Channel Tunnel Rail Link. Blight has long been recognised by Government as a serious effect of such projects.

To address the blighting of residential property values in the vicinity of the preferred route option, the Government has proposed an Exceptional Hardship Scheme (EHS). This non statutory scheme is intended solely to compensate owner-occupying residents who have pressing reasons to sell but can only do so (if at all) by taking a substantial drop in price because of HS2. It has been presented as the model that would be adopted for subsequent extensions of HS2. It is clearly intended to have very limited application, acting as a stop-gap before statutory blight arrangements apply.

Unfortunately the proposed scheme is neither fair nor equitable. It will do virtually nothing to address blight in the vicinity of the preferred route option, and nothing at all for the other routes identified.

HS2 Action Alliance has produced this briefing to assist consultees on EHS to prepare their responses. We believe that irrespective of your views on the desirability of particular routes or HS2 in general, you will share an interest in ensuring that there is fair and just compensation for those whose property values are damaged by HS2.

We hope you will find the material useful, and that you will give your support to the alternative approach that we have proposed, which is based on private sector best practice. Our proposals have already attracted support from several organisations, as indicated on the front cover. As you will be aware, the deadline for responses on EHS is 20 May 2010.

Copies are available for you to download at www.hs2actionalliance.org. If you have any queries then please contact us via e-mail at info@hs2actionalliance.org. Copies are also available at www.chiltern.gov.uk/highspeedtwo.



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For more details on HS2 Action Alliance please visit www.hs2actionalliance.org. HS2 Action Alliance has made best endeavours to ensure the accuracy and completeness of this briefing, but it should not be relied upon legally.

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Consultation response deadline: 20 May 2010

Consultation replies to: High Speed Two Ltd – Exceptional Hardship Scheme Consultation, 55 Victoria Street, London SW1H 0EU or email ehsconsultation@hs2.gsi.gov.uk

Summary A5 Leaflet

High Speed Rail (HS2) EHS & Proposed Alternative Compensation Solution

Consultation on Government proposed scheme:

What is the Exceptional Hardship Scheme (EHS)?

The Government are consulting on a proposed EHS. It is intended to compensate some homeowners who have difficulty selling their home because of the HS2 route announcement. The scheme's aim is to:

- Protect homeowners whose property value may be seriously affected by the 'preferred route option', and who urgently need to sell.

When does the Scheme apply?

- Start: in 2010 – sometime after 20 May closing date on EHS consultations
- End: when the route is chosen (possibly mid 2011)

Who is eligible?

Homeowners can apply to the Secretary of State to buy their home at its full market value (assuming no HS2), if all the criteria are met. These are:

- Only residential owner-occupiers
- Only those with a 'pressing need to sell'. Five 'hardship' reasons only are cited: change in employment location; extreme financial pressure; accommodate enlarged family; move into sheltered accommodation etc; or medical condition of a family member
- Only those 'on or in close vicinity' of the 'preferred route' (mainly those who later on will be covered by 'statutory blight' provisions)
- Only if they have tried to sell – been on the market for at least 3 months with no offers within 15% of full market value (as if no HS2)
- Only those who can demonstrate the inability to sell is due to HS2
- No prior knowledge of HS2 before acquiring the property.

How will it operate?

- The scheme is discretionary (i.e. non statutory)
- A 'panel of experts' decide on individual applications

The problem:

1. Property blight will spread to other routes

Property blight will occur wherever it is suggested HS2 is routed. Unless measures are taken to reassure people that property values will be protected, it will be HS1 in Kent all over again – a universally recognised disaster (that Government agree must be avoided).

2. Compensation for ‘national interest’ projects is unjust

Current compensation arrangements require most property owners to carry the losses in value created by major infrastructure projects.

Owners of nearby properties suffer blight immediately. Their only recourse to compensation is one year after project completion (at least 17 years away for HS2) which in any event does not recompense the full loss in value but simply for ‘physical effects’. For HS2 it is effectively a selective tax, singling out property owners around the route to pay part of the project costs from their personal assets.

This injustice fuels local hostility to selecting any route, especially for projects with long time horizons, and where those most affected do not benefit – as with the HS2 route.

3. Few qualify under the arbitrary rules of the discretionary EHS

The Government’s proposed EHS rules are restrictive and unjust:

Only certain ‘hardship’ reasons for moving qualify; geographic restrictions mean it is mainly for compulsory purchase type cases and so excludes many properties that have already lost value; restrictions to owner-occupiers exclude farmers and businesses; the 15% loss threshold further restricts full compensation, with none for losses of 0 -15%. Properties over tunnelled sections are specifically excluded.

Some EHS rules are open to restrictive interpretation e.g. the 3 month rule; what ‘offers’ count; ‘in close vicinity’; when EHS ends; demonstrate HS2 is the problem.

4. Private sector (BAA and Central Railway) have better schemes than public sector

Property Protection Schemes have long been recognised by Government departments as superior ways to address property blight, but have not yet been adopted in the public sector. This is despite Government endorsement of Central Railway and BAA schemes.

The solution:

1. New policy approach for Government

Major infrastructure developments undertaken for the national benefit should not impose losses on individuals through reducing the value of their property. The blighting of property values in the locality of HS2 is a consequence of HS2 and should be a cost to HS2, not to the people who happen to be in that locality.

2. New objectives

- To modernise compensation for blight, basing it on fairness and equity not arbitrary precedents
- To prevent blight spreading to other routes as they attract consideration
- To allow owners of homes, farms and businesses in the vicinity of possible HS2 routes to be able to continue their lives as unaffected by HS2 as possible
- To effectively address the blight created by the Government's announcement on 11 March 2010 of the 'preferred route option' for HS2
- To allow the property market to function as it would in the absence of HS2, by giving potential purchasers the confidence that property values are protected.

3. An *Undertaking* to guarantee property values

The Government should now give an '*Undertaking*' that it will guarantee blight-free market values for all properties affected by whichever route is chosen. This would be achieved through a new property blight protection scheme that would start from when the route is selected – costing nothing until the route is chosen.

4. A Property Blight Protection Scheme (PBPS)

PBPS would guarantee the blight-free market value of all property that loses value as a result of HS2, without qualifying reasons for sale or arbitrary restrictions on proximity, noise or any other factor besides an impact on market value.

HS2 Ltd to purchase blighted properties at the blight-free values.

5. Address the blight already created on the 'preferred route option'

Apply the PBPS on an 'interim basis' to address the property blight already created by 11 March 2010 announcement on the 'preferred route option'.

Detail on the alternative proposal:

Purpose of Government '*Undertaking*'?

- To provide reassurance to property owners on all potential routes
- To maintain confidence in the market now, so it can function normally

Purpose of PBPS?

- To protect property owners against a 'loss in property value' due to HS2

When would this alternative start?

- The *Undertaking* is given now, with PBPS starting when the route is chosen – hence supporting the market at no cost until then
- The 'preferred route option' suffers 'extra' blight – requiring the PBPS now

Who is eligible under PBPS?

- Any property owner who suffers a 'loss in property value' due to HS2 can apply to HS2 Ltd to purchase the property at its blight-free market value

How will PBPS operate?

- To inhibit groundless applications some 'general conditions' must be met:
 - Been on the market for a reasonable period (set by price bands)
 - No serious offers at blight-free value (with evidence to justify the value)
 - Reasonable (evidenced) belief that its reduced value is due to HS2
- The 'loss in property value' is decided by the market (i.e. how much people will offer for a property that is blighted by HS2)
- The blight-free value would be professionally estimated (using similar methods to existing schemes, supported by an appeals process)

Safeguards

- By requiring HS2 Ltd to purchase blighted properties it is in their best interest to provide good information e.g. on effects of noise, vibration, etc. This limits speculation, as uncertainty depresses prices
- Having PBPS on the 'preferred route option' at this stage does not encourage unnecessary sales, as PBPS still applies if the route is chosen
- To maintain confidence in the property market on all potential routes, HS2 Ltd must be seen to be fair in its operation of PBPS on the preferred route.

Key points for Exceptional Hardship Scheme (EHS) consultation response

The points below summarise the key responses to the DfT consultation questions that have been developed by HS2 Action Alliance, consulting with local community action groups and members of the public.

A summary of our alternative compensation solution is available on page 12.

A Research Paper (at Appendix 1) provides a more detailed review of the EHS (see Annex B); a summary of other relevant compensation schemes (see Annex A); and develops a proposed alternative new solution.

We hope that you find these documents useful in developing your own response.

DfT Question 1 - Proposed Introduction of an Exceptional Hardship Scheme

The Department for Transport would welcome views as to whether it should introduce an Exceptional Hardship Scheme ahead of decisions on whether, and if so how, to proceed with a high speed route?

- Yes. We need a scheme now. Some property values have already been severely damaged by 11 March HS2 announcement. Action is needed now to remedy this
- A broader scheme is required. A comprehensive Property Blight Protection Scheme is needed to maintain market confidence and compensate property owners for the blight already created
- We need to prevent property values suffering on all the routes considered. The EHS will not do this, but the proposed alternative would
- It is wrong that EHS is only an 'interim scheme' ending when the route is chosen. Protection is needed up until HS2 is built and operating – at least 17 years away
- The comprehensive scheme (page 12) should remain in force throughout construction to continue to protect property values.

DfT Question 2 - Exceptional Hardship Scheme Principles and Criteria

Do you agree with the proposed principles underpinning the proposed Exceptional Hardship Scheme? If not, what alternative principles would you propose, including specific criteria for determining qualification for the scheme?

Principles

- The proposed principles are too restrictive. They do not compensate the great majority of individuals suffering loss in property value as a direct result of HS2
- The rules on eligibility are unreasonable (on property type, hardship, proximity, HS2 evidence, threshold loss, no prior HS2 knowledge). See criteria points (overleaf).

Proposed alternative principle that Government should adopt:

- Major infrastructure developments undertaken for the national benefit should not impose losses on individuals through reducing the value of their property. The blighting of property values in the locality of HS2 is a consequence of HS2 and should be a cost to HS2, not to the people who happen to be in that locality.

Individual property owners should not be forced to pay from their own personal assets the costs of something done for the benefit of society. HS2 should be required to fully compensate property owners for their loss.

Criteria (and proposed alternatives)

- The only fair approach to deciding loss in property value should be that determined by the market (i.e. how much people will offer to pay for a property blighted by HS2) – not by a set of arbitrary rules (on proximity, expected or actual noise level, vibration, automatically excluding those above tunnels etc).
- The market reflects the anxieties and uncertainties HS2 creates, and decides which properties are affected (so rules on proximity to HS2 etc are not needed).
- The freedom to move without a price penalty because of HS2 should be everyone's right – it is natural justice. It should not depend on exceptional cases or being 'on or in close vicinity of' the route.
- *Property type*: unreasonable to exclude all but residential owner-occupiers (e.g. not include farmers and businesses). The market will determine which properties have lost value. Even comparable hardship schemes (e.g. Crossrail) cover small businesses.
- *Hardship rules*: the only equitable approach is to include everyone needing or wanting to move – not just those who can prove they are moving for one of the five EHS specified reasons (i.e. the 'exceptional hardship' cases).
- *Proximity*: properties above tunnels should not be excluded if they suffer loss in value because of HS2.
- *Threshold loss*: there should be no 'threshold loss' before full compensation is given. It is wrong to require people to suffer up to 15% loss in value, and only compensating those with greater losses. (Further, the process of basing it on 'offers' is unfair and open to manipulation – not all offers are serious). All property owners should be eligible for the full 100% blight-free market value. Other public sector schemes may use the same 85% threshold e.g. Crossrail (and CTRL before), but private sector best practice (BAA and Central Railway) uses 100% i.e. with no threshold.
- *Proof it is due to HS2*: What evidence is needed to prove the inability to sell is due to HS2? A simple time limit (adjusted for different property price bands like BAA use) can be adopted, basing it on estate agents' data for the general area. This would also replace the need for the 3 month rule (which is currently unclear – does the property have to already be on the market at EHS inception, or can it subsequently qualify?).

The more comprehensive scheme (on page 12) details fairer alternative arrangements.

The alternative scheme is based on similar schemes used in the private sector and designed to meet the Government's own advice to BAA and Central Railway on addressing property blight and getting confidence back into property markets. Their property protection schemes had neither hardship rules nor a threshold loss (but compensated at the full 100% blight-free value).

DfT Question 3 - Operation of the Exceptional Hardship Scheme

Do you agree with the proposed system for operating the proposed Exceptional Hardship Scheme? If not, what alternative arrangements would you suggest?

- No. The EHS proposed system of operation is unfair
- Under the alternative scheme we propose, HS2 Ltd would agree to purchase any property put on the market if it has lost value because of HS2. It is practical to do this. If the Government is right and the effects on properties are limited, then there will actually be few properties to purchase.
- Using a 'panel of experts' to operate the scheme is unreasonable and introduces subjective interpretation. The public are often sceptical of such panels and question the selection of members and their accountability.

-
- The scheme needs to include more than one independent valuation of the property and the property owner must have the option of having their own valuation done.
 - Any decisions on eligibility and property valuations should be subject to independent appeal. Otherwise the scheme is unjust and subject to abuse. It is wrong for the Secretary of State to have absolute discretion on whether to purchase or not.

Summary and Conclusion

There needs to be a new approach for how individuals affected by major infrastructure projects are compensated. The recommended alternative solution has four elements:

1. A new policy for Government

Major infrastructure developments undertaken for the national benefit should not impose losses on individuals through reducing the value of their property. The blighting of property values in the locality of HS2 is a consequence of HS2 and should be a cost to HS2, not to the people who happen to be in that locality

2. A Government *Undertaking* to guarantee property values

To reassure property owners on all potential routes and maintain confidence in the property market

3. A new compensation scheme (instead of the EHS)

To protect property owners against a loss in property value (and compensate at full blight-free market value) for properties affected by HS2

4. Applying new scheme to 'preferred route option'

The immediate interim application of the new compensation scheme to the 'preferred route option' to address the blight created by 11 March 2010 announcement.

Other points

Consultation period for EHS:

- It does not comply with Governments own code of practice
- Its timing and restricted period are inappropriate (10 weeks instead of 12)
- Because the consultation period overlaps with the run up to the general election, there is period of *purdah* which deprives individuals of their rights of proper liaison with their MP and with councils (on the political front). The deadline needs extending

Human rights issues:

- Articles 1 and 8 of European Convention on Human Rights (given effect in UK law by the Human Rights Act 1998) give individuals certain rights of enjoyment of their possessions, that can only be infringed by the state if its in the public interest
- A 2003 High Court judgment concluded 'common fairness demands that where the interests of the minority, let alone an individual, are seriously interfered with because of an overriding public interest the minority should be compensated'.

In formulating your response to the Government consultation, please feel free to attach the Alternative Compensation Solution (overleaf), if you conclude it is a suitable approach to the property blight. The research paper provides further detail on EHS, other schemes and the alternative proposal.

Alternative Compensation Solution

A new approach is needed for how individuals affected by major infrastructure projects are compensated. A summary of the recommended alternative solution has four elements:

1. A new policy for Government

Major infrastructure developments undertaken for the national benefit should not impose losses on individuals through reducing the value of their property. The blighting of property values in the locality of HS2 is a consequence of HS2 and should be a cost to HS2, not to the people who happen to be in that locality.

2. A Government *Undertaking* to guarantee property values

The Government should now give an '*Undertaking*' that it will guarantee blight-free market values for all properties affected by whichever route is chosen. This would be achieved through a new property blight protection scheme that would start from when the route is selected. The *Undertaking*, given now, would cost nothing until the route is chosen.

Its aim is to reassure property owners on all potential routes and maintain market confidence.

3. A new compensation scheme (instead of the EHS)

The new Property Blight Protection Scheme (PBPS) would guarantee the blight-free market values to property owners who in selling their property would suffer a loss in value due to HS2. PBPS would not replace statutory rights but provide new rights to those affected by HS2.

Eligibility: any property owner who suffers a 'loss in property value' due to HS2 could apply to HS2 Ltd to purchase the property at its blight-free market value. There would be no qualifying reason for sale, restrictions on proximity, noise etc, or threshold loss, besides there being some impact on market value.

Operation: to inhibit groundless applications some 'general conditions' must be met

- Been on the market for a reasonable period (determined by property price bands)
- No 'serious offers' at blight-free value (with evidence to justify this value)
- Reasonable (evidenced) belief that its reduced value is due to HS2

The 'loss in property value' is decided by the market (i.e. how much people will offer for a property that is blighted by HS2). The blight-free value would be professionally estimated (using similar methods to existing schemes e.g. RICS 'red book' valuations, supported by an appeals process). If the blight-free value is not more than the best serious offer received, the owner would be required to pay HS2 Ltd the evaluation costs.

4. Applying new scheme to 'preferred route option'

To address the blight created by 11 March 2010 announcement, the new PBPS would apply on an interim basis to the 'preferred route option' with immediate effect.

These alternative arrangements contain certain regulating safeguards:

- By requiring HS2 Ltd to purchase blighted properties it is in their best interest to provide good information e.g. on effects of noise, vibration, etc. This limits speculation, as uncertainty depresses prices
- Having PBPS on the 'preferred route option' at this stage does not encourage unnecessary (i.e. extra) sales, because PBPS still applies if this route is chosen
- To maintain confidence in the property market on all potential routes, HS2 Ltd must be seen to be fair in its operation of the PBPS on the 'preferred route option'.

Appendix 1 – Research Paper: EHS and Addressing Property Blight from HS2

This Research Paper examines issues of property blight raised by the HS2 announcement on 11 March 2010. It reviews the proposed Exceptional Hardship Scheme (EHS) that is out for consultation (at Annex B), and other relevant compensation schemes (at Annex A). It concludes that a new approach is needed to achieve fair and just compensation, and an alternative compensation solution is developed.

Executive Summary

The current strategy for addressing property blight from HS2 is ineffective. HS2 has already blighted property values in the locality of its preferred route option. The proposed Exceptional Hardship Scheme (EHS) neither remedies this, nor will it prevent blight spreading to alternative routes, as consideration is focused on them.

It is universally recognised that property blight affects not only properties that will be compulsorily purchased, but also those at some distance from the new line. For HS2 it is a particularly serious and enduring problem, with statutory compensation for most affected properties available almost two decades after the blight arises. Blight leads to significant losses for property owners and is a serious injustice. It greatly intensifies the hostility in local communities to selecting any route.

HS2 Ltd needs to take action to prevent property blight on all potential routes, as BAA has done for potential airport expansions and Central Railway did in the 1990s when a new railway was proposed. In 2003 the Government required BAA to address blight through non-statutory arrangements, but still applies inadequate non-statutory arrangements for its own major infrastructure projects (see Annex A).

The approach must be more effective than the proposed EHS, which has very restrictive rules borrowed from previous public sector hardship schemes (see Annex B). The EHS:

- Applies 'hardship rules' i.e. only applies to very limited reasons for moving
- Is confined to residential property 'on or in the close vicinity of ... preferred route option' (which if it follows similar schemes would only apply to a narrow band e.g. 120 metres wide, adjacent to the track)
- Excludes all properties above tunnels
- Gives full compensation only if the loss in value exceeds 15%
- Applies only until the route is selected.

Governments have explored alternative arrangements. An Interdepartmental Working Group on Blight produced a Draft Property Purchase Guarantee and Compensation Scheme in 1997. However, this Draft Scheme would not have been effective in addressing the losses in value of properties not directly required by the project for purchase.

Theresa Villiers has already said Conservatives want to help those affected by blight.

Proposed new approach

The proposed new approach has four elements:

1. A new policy statement and objectives for Government
2. An *Undertaking* to introduce a PBPS that guarantees blight-free property values for whatever route is actually selected (post autumn 2010 consultations)
3. A PBPS that involves the purchase of properties by HS2 Ltd that are blighted, when owners wish to sell
4. Immediate introduction of the PBPS on an interim basis to the 'preferred route option' only (where blight is greatest) until the final route is actually selected.

1. Proposed new policy for Government:

Major infrastructure projects undertaken for the national benefit should not impose losses on individuals through reducing the value of their property. The blighting of property values in the locality of HS2 is a consequence of HS2 and should be a cost to HS2, not to the people who happen to be in that locality.

This policy parallels the principle that ‘the polluter pays’.

Proposed new objectives for Government:

- To modernise compensation for blight, basing it on fairness and equity not arbitrary precedents
- To prevent blight spreading to other routes as they attract consideration
- To allow owners of homes, farms and businesses in the locality of possible HS2 routes to be able to continue their lives as unaffected by HS2 as possible
- To effectively address the blight created by the Government’s announcement on 11 March 2010 of the preferred route option for HS2
- To allow the property market to function as it would in the absence of HS2, by giving potential purchasers the confidence that property values are protected.

2. The Undertaking:

Secretary of State should immediately announce a binding *Undertaking* to guarantee blight-free values for all properties that are blighted by whatever route is chosen. The guarantee will take effect from when the route is selected, i.e. from the decision on which route is actually selected following the autumn public consultations. From that point HS2 Ltd should be required to purchase blighted properties at blight-free value.

The Undertaking gives rise to no costs until the route is settled, but gives assurance to property purchasers for all the routes under consideration that the value of their property would be protected. Its aim is to restore confidence to the property market.

3. The new PBPS scheme:

Property owners who try to sell their property in the normal manner, but are unable to sell at the blight-free price, will be able to require HS2 Ltd to acquire their property at the blight-free value. To qualify property owners will need to demonstrate that:

- They have made reasonable efforts to sell their property
- They have been unable to sell except at below the blight-free value
- That the difficulty with sale is related to HS2

The scheme is market based, with the market determining which properties have lost value – not some Procrustean and independently specified test.

The guarantee is not conditional on having special reasons for moving, or restricted to meeting arbitrary criteria of proximity or degree of being physically affected.

PBPS would not replace the statutory rights of those facing compulsory purchase, but provide additional rights to those affected by HS2.

4. Application of PBPS to preferred route option:

Had the Government not announced the preferred route option, the *Undertaking* should have been sufficient to address blight on all routes. However, there is a greater problem for the preferred route to which the Undertaking is not a sufficient remedy. This problem persists until the route is chosen, which may take years.

So the scheme needs implementing immediately for this route. If another route is selected, the blight will lift and the scheme on the preferred route option can end.

New approach to addressing property blight

1. Addressing blight

Blight of property values has already occurred and anticipates the physical occurrence of HS2. Statutory compensation for properties not needed to build the railway follows the railway's full operation. There are at least 17 years and probably more between loss of market value and any compensation (which even then is limited to the physical effects).

Existing owners of properties blighted by HS2 will inevitably suffer reduced sales prices if they live normal lives (moving to suit the different stages and events of their lives) unless more effective measures are introduced.

The Government's approach to addressing property value blight is ineffective:

- The compensation arrangements in the Exceptional Hardship Scheme (EHS) proposals fail to address the problems of the great majority of those suffering loss in property values on the preferred route, (and nothing for other routes)
- The announcement of the preferred route option, while initially focusing attention and creating property value blight on this route, will not prevent blight spreading to other route options when they come to be seriously considered. Buckinghamshire County Council is likely to recommend the adoption of the West Coast Main Line route passing through and stopping at Milton Keynes. Re-routing to better serve Heathrow would also extend the affected area.
- Property Protection Schemes, while recognised as superior by Government departments, are not being adopted for the public sector (see Annex A)

There is a need to address the blight already created and prevent its spread, if the widespread and serious blight arising from Channel Tunnel Rail Link (CTRL) is not to be repeated.

Solutions need to put confidence back into the local property markets enabling them to function normally. They must address both the rational and irrational reactions of people to such proposals. Key factors will be:

- Ensuring property owners do not suffer a loss in the value of their property
- Detailed information on the actual physical effects of the HS2 scheme (to help limit speculation and quell concerns).

1.1 Statutory and Discretionary schemes

Annex A summarises the statutory position, public and private sector discretionary schemes, and a 1997 draft scheme by DETR. Annex B reviews EHS proposals.

The statutory arrangements and the non-statutory hardship schemes deployed for similar (road and rail) projects do not address blight as it affects the majority of property owners, i.e. those with properties that are not required for the project but have their market value depressed.

Unaddressed blight is an unjustifiable imposition on the affected individuals and intensifies hostility to selecting any route. It guarantees bitter and dogged resistance to planning the route at all stages.

2. Blight on all potential routes

2.1 Blight will spread:

There is a real risk that property blight arises on every route that has the prospect of being chosen. This applies to the three Chilterns routes (A413 corridor, Hughenden Valley, and

WCML), potentially the M1 routes, and any other route that emerges prior to or during consultation.

The experience of CTRL is recorded in numerous Select Committee reports. Widespread blight on several alternative routes grievously affected the lives of many living on each of these routes – including those not eventually selected.

2.2 An Undertaking to stop blight spreading

An Undertaking to guarantee property prices on whichever route is actually selected addresses this blight.

The prospect of full compensation will give buyers confidence, so that they will purchase at prices that do not include allowance for the risk that HS2 may reduce the property's value. Where the risk of proximity is modest, the likely timing of the commencement of works distant, and the risk of financial loss underwritten, HS2 should have at most a modest influence on purchasing behaviour.

The purpose of the Undertaking is identical to that of Central Railway and more recently BAA's undertaking (for their property protection guarantee) in the context of airport expansions:

‘protecting the market value of affected properties, so that people can buy in the area, safe in the knowledge that when it is time to sell, the property value should not be affected by blight’ (BAA Heathrow, July 2005)

BAA's consultation on their proposals achieved 65% support from the public.

An Undertaking has the benefit of supporting property markets without actually involving any expenditure prior to the route being settled.

2.3 Promised scheme must be fair and just

To be effective, property owners (homeowners, farmers, and small businesses) must be confident that their property values will really be guaranteed, and that the scheme will not prove to be so qualified that in practice they would still suffer losses. This requires that the guarantee must apply to:

- All owners – not just those who have purchased before some announcement or publication, and
- All properties that lose market value due to HS2 – not just those meeting some arbitrary test of proximity, noise level or other non-market based test.

Imposing restrictions would mean the scheme would fail as it would drive potential purchasers to still demand a discount for blight. The exception would be owners who purchase properties from HS2 Ltd – resold at prices reflecting blight.

Evidence from Central Railways (at Annex A) shows that such a scheme does work and that the property market can continue to function normally.

3. Blight on the ‘preferred route option’

Properties in the locality of the preferred route option have already been blighted, with reports of buyers withdrawing from the purchase of nearby properties, reducing offers, and owners being professionally advised their properties are unmarketable.

3.1 The Undertaking is not enough

An *Undertaking* to give a guarantee triggered by route selection will be insufficient to remedy this blight. The clear identification of an exact route and with it properties that will be severely affected, makes such properties unattractive to potential purchasers.

Although the *Undertaking* may guarantee the value, few purchasers would want to move to somewhere from which they will want to, or have to, move in the near future. They would expose themselves to the costs of moving and adapting the property to their requirements, and disruption to their own and their children's lives. They might expect a discount to undertake this, which a vendor would have to provide through a reduction from the blight-free price.

This is true to a lesser extent for every potential route. But for other routes the chance of selection is much less – with no clear identified line of route or of adjacent properties. The Undertaking may mitigate a 'slight' risk, but not a 'probable' risk.

3.2 Why have the interim application before the route is selected?

The published timetable for HS2 makes route selection in under a year unlikely. It is plausible that it will take much longer. If issues arise on the affordability of HS2, it could be several years before a firm decision on route is made. Meanwhile the preferred route will stand, and blight along it will continue.

If there is no interim application of PBPS to the preferred route option, property owners can only move at a loss or wait until some route is finally selected.

3.3 Who would benefit from the interim application of PBPS?

We expect those wanting or needing to move for any reason to benefit from its interim application to the preferred route.

The interim application gives no extra encouragement to move (provoking more sales) prior to the final route being chosen. This is because if the route is confirmed the protections would continue to be available. If another route is selected the blight (and the scheme) would end. The interim application simply allows people to continue their lives as if HS2 had not happened, moving when it suited their life-plans.

3.4 Delivering confidence in the Undertaking

It is crucial to the effectiveness of the Undertaking in preventing the spread of blight, that PBPS is seen to work satisfactorily, for the preferred route option. Purchasers on other routes will only have confidence that the protections promised would be adequate in practice, if this is demonstrated on the preferred route option.

The onus is on HS2 Ltd to both operate PBPS as intended and to publicise information about what they have done in applying the Scheme, in order to demonstrate that they are acting fairly and reasonably.

4. PBPS mechanism

4.1 Eligibility

The proposed scheme works by:

- Having 'general conditions' that must be met to inhibit groundless applications
- Letting the market decide if properties have lost value due to HS2.

4.2 General conditions:

Property owners (homeowners, farmers and small businesses) would be entitled to apply for HS2 Ltd to buy their property if they believed that HS2 had depressed its value. The owner would need to show they had:

- Seriously marketed their property for a reasonable period (or been advised unmarketable). (BAA Early Movers Scheme, see Annex A, has periods depending on property value bands. Estate agents in the area (but not locality) could provide the basis for tailored values)
- Unable to attain a serious offer at what the owner reasonably believes to be the blight-free value. (Some form of valuation would be needed; evidence of similar but HS2 unaffected properties having higher values; evidence that nearby properties have been accepted as blighted)
- A reasonable basis for believing that HS2 accounted for the reduced value (e.g. relevant factors concern its proximity, whether likely to be audible, visible, create vibration, exposed to disturbance from construction, proximity to properties recognised as blighted). *NB The Select Committee on the CTRL Bill recognised that property values considerably declined even when they were not close enough to suffer the physical effects [of its construction]¹.*

The purpose of the conditions is not to present a major hurdle to those with blighted properties, but to inhibit groundless applications. A charge could apply which is returned if the application is successful.

Properties that are over tunnelled sections of the railway should not be excluded. If market forces dictate they are blighted, the owners should not be expected to suffer the loss. If tunnelling and the tunnel in operation will actually have no effect on the property, it is for HS2 Ltd to get this message across. By obliging HS2 Ltd to purchase blighted properties, they are encouraged to ensure that this is done effectively. This applies to blight generally.

Road and rail hardship schemes operate with tight and rigid geographical or physical (e.g. noise) limits. These ignore the way that property market values are actually affected, with, for example, differing importance being attributed to tranquility in rural as opposed to urban settings. 'View' has a value that is ignored.

4.3 Assessing the loss

The objective is to allow the property market to function as normally as possible, providing support to property owners only when HS2 has depressed sale prices. This requires knowing the blight-free value and if the current market value is below this.

- *Current value:* If a property is marketed for a reasonable period, the market gives a direct measure of the value of a property including any blight from HS2. Either 'offers' indicate the value, or their absence shows the value is substantially lower than the advertised price.
- *Blight-free value:* This needs to be estimated. The 'Red Book' process by professionally qualified (RICS) surveyors provides estimates and is often used to underpin loans. So while it is widely accepted, it tends to give conservative results, and will carry a cost to the property owner.

The 'Red Book' process unavoidably involves judgement. There is consequently some uncertainty as to what the blight-free value would be, given there will be variations between different estimates for the same property. The PBPS should allow for two (or more) estimates in order to reduce the subjective component.

HS2 Ltd would commission an independent surveyor to evaluate the blight-free value using the 'Red Book' process. The owner could additionally appoint their own surveyor (or submit

the evidence of their own 'Red Book' survey). The valuation would be supported by an appeals and adjudication process (e.g. if the valuations were within 10% of each other they would be averaged).

HS2 Ltd would, within a fixed timescale, offer to buy the property at the blight-free price. The owner would be open to accept the offer or not. To discourage over use of the arrangements, if the blight-free value is not more than the best serious offer received on the property, the owner would have to pay HS2 Ltd the evaluation costs.

All the current schemes have valuation processes, differing little from that proposed.

4.4 Threshold

The proposed EHS and the Crossrail, CTRL and Highways Agency schemes all employ a threshold, with full compensation to blight-free market values available only if properties suffer a greater loss than 15% of the blight-free value. It is argued that there must be a discernable difference, and this exceeds 10%. However, this means that owners of heavily blighted properties are compensated, while those of moderate and lightly blighted ones (that have lost between 0% and 15% of value) are not.

To require individual owners to suffer up to a 15% loss is inequitable and inconsistent with the policy of obliging HS2 – not individuals – to meet the cost of property value reductions. Such a potential loss would also have the effect of reducing the willingness of lenders to advance funds to potential purchasers, further inhibiting the marketing of affected properties.

BAA and Central Railway property protection schemes do not have thresholds.

4.5 Would PBPS be over used?

Unless the owner believed that the property was only saleable at a discounted value, due to blight, he would prefer to sell on the open market as it would:

- Be quicker
- Avoid inconvenience
- Avoid additional costs
- Be likely to achieve a better price than the typically conservative estimation achieved if the 'Red Book' process is used.

It is plausible that fewer properties will ultimately prove to be blighted than is initially the case, and those that are blighted become less so. Apparently this proved to be the case with CTRL.

For the 'preferred route option', information about the environmental impact, and the extent and effectiveness of mitigations is currently absent: fear and speculation grow where there is no information. However, for those wanting to move, the deterioration in the property market is just as real if it is based on fear as if it were founded on full and accurate information. It is not reasonable to expect individuals to defer selling their property until the settled down level of blighting is evident, and even then to still suffer a loss.

It may be sensible for HS2 Ltd to retain some of those properties that it purchases. If the informed judgement is that the fall in market values will reverse, HS2 Ltd may be better renting rather than re-selling until property values reflect the long term impact.

5. Final compensation

The Land Compensation Act 1973, that applies after the railway has been operational for a year restricts the permissible reasons for awarding compensation to 'physical effects', e.g. it specifically therefore excludes the effect on view. In an AONB, tranquility and outlook undoubtedly contribute to residential property values. The basis of compensation under the Act is not to restore the full blight-free market value.

This means that affected properties will not be fully compensated for their loss in value. Typically claimants under the Act 'can usually expect to receive between 2% and 5% of the capital value of the property, with larger amounts being paid in many circumstances'². The real percentage loss is likely to be greater for higher priced properties, where potential purchasers have more options.

This situation should be redressed by obliging HS2 Ltd to compensate the full loss in market value consequent on the existence and operation of the railway, where properties have not been subject to the purchase provisions of the scheme. This was the approach that Central Railway adopted i.e. for those who chose not to move after the railway was operational the company would buy the arrangement back for cash.

The scheme would also benefit owners who do not wish to sell, but wish to use their property as collateral (e.g. to re-mortgage). In these circumstances the availability of the scheme should underwrite the blight free value.

This document is produced by HS2 Action Alliance and should not be relied upon legally

¹ Railways; Channel Tunnel Rail Link Act 1996, Standard Information Note SN/BT/70 for MPs, House of Commons Library, last updated 17 March 2010

² SamuelRose.co.uk website, specialists in compensation under Land Compensation Act 1973 for road and railway schemes

Annex A – Summary of compensation schemes and recent policy developments

1. Purpose

The EHS proposals¹ are out for consultation. The closure date is 20 May 2010. This note together with Annex B reviews the proposals in the context of other schemes.

There is a considerable volume of literature on loss of property value from major infrastructure projects and means that have been adopted to address it. It is clear that it is a well recognised problem but that the current solutions are less than adequate. While we continue to find more material, bearing in mind the short window before consultation closes, we have decided to put out a note based on our current understanding.

2. Overview of relevant compensation schemes

The legal position is that *statutory* protections are available:

- For those whose properties need to be compulsorily purchased; and
- For loss of property value from noise, vibration, etc when the scheme has been operating i.e. at least 17 years hence in the case of HS2, and very probably longer.

The problem is that from the identification of the route the market value of properties falls both immediately and widely, so that the great majority of owners of property in the vicinity of the route suffer loss of value without any right to compensation. On average people move every 5 years (*Source: 'Blight express in Chilterns' article by Duncan Farmer 18 Aug 2009*) consequently homeowners can expect to suffer from needing to sell in a depressed market.

In response to this type of situation, a number of *discretionary* schemes have been developed to give property owners some additional protections e.g. by the Highways Agency for road schemes, by Union Railways for CTRL, and more recently by BAA for airport expansions.

The Government themselves have examined proposals² and encouraged private sector companies responsible for new projects to tackle this problem e.g. the 2003 White Paper on airport expansion required operators to address the issue of property blight. The approaches adopted have developed, and the Conservative Party are committed to reviewing arrangements.

The table summarizes the various statutory and relevant discretionary compensation schemes. Particularly relevant non statutory schemes include Crossrail, which is happening now, and similar to the CTRL scheme; a Central Railway scheme that was put in place in the 1990s for a new freight route that would have affected Beaconsfield and Gerrards X in Chilterns area, and many other areas along its proposed route e.g. in Kent and further north; and BAA have schemes for airports including Stansted, Gatwick and Heathrow third runway.

We should see the proposed EHS scheme in the context of these other arrangements.

Table: Statutory and relevant discretionary compensation schemes

Development phase	Crossrail (similar to CTRL scheme)	HS2 (proposal)	Central Railway (CR)	BAA
A Property and land identified for compulsory purchase				
Pre-route selection		Exceptional Hardship Scheme	none	Home Guarantee Value Scheme (HGVS)
Rail route settled	National Compensation Code*; and Town & Country Planning Act 1990 (statutory blight provisions for specified properties and those within small deviation of the route)			
B Other blighted property and land (not earmarked for compulsory purchase)				
Pre- preferred rail route; pre-seeking airport planning permission		n/a	n/a	Undertaking to introduce The Home Owners Support Scheme (HOSS)
Preferred rail route declared; seeking airport planning permission		Exceptional Hardship Scheme (EHS) <i>if 'on or in close vicinity' and need to sell</i>	Property Protection Scheme (PPS) <i>if 'line side or adjacent' or 'nearby'</i>	Assistance Schemes under HOSS: <i>for those within the designated 'sound contour' (BAA start purchasing)</i>
Rail route selected; airport planning permission granted	Crossrail Hardship Scheme (CHS) <i>if seriously affected by construction, or prospect of it, and need to sell</i>	Nothing	PPS as above	Property Protection Scheme (PPS) under HOSS: <i>for those within the designated 'sound contour'</i>
Construction	CHS as above	Nothing	PPS as above (CR purchase)	PPS under HOSS as above
Operational (+1yr)	Land Compensation Act (LCA) 1973 <i>(for physical factors only: noise, vibration, artificial light, smell, fumes, solid or liquid discharge – it excludes view)</i>			
* This embraces Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973 and their interpretation in a large body of case law				

In summary, under the current law and proposed EHS for HS2, unless a property is to be compulsorily purchased:

- There is no compensation for loss in market value if the property is retained i.e. not sold (except compensation for any physical effects such as noise, vibration, a year after the railway is running – at least 17 years from now, which are not designed to restore the open market blight free value)
- No compensation for loss of local amenity to the Area of Outstanding Natural Beauty (AONB) either now, during construction, or when operational
- No compensation for reduction in sale price if the property is actually sold (except for a very few in the vicinity and if they are in exceptional circumstances)
- No compensation for sale price reduction or disruption during construction – no matter how extreme the effect (unlike all other schemes)
- Very restrictive rules are proposed under EHS (to secure full market value compensation by Secretary of State):
 - Excludes any property above tunnels
 - Confined to residential property 'on or in the close vicinity of ... preferred route section' (whatever this may prove to mean)
 - Applies 'hardship rules' i.e. covers extremely limited reasons for moving
 - Applies only if loss in value exceeds a 15% threshold
 - Applies only until the route is selected

If the property is to be compulsorily purchased, EHS would apply until the route is settled, after which full compensation under statutory arrangements applies. Because construction does not begin for many years (and hence the land is not yet actually required), the owner can serve a statutory blight notice on the promoter which obliges them to purchase it in advance of needing it.

Property blight is a huge and contentious issue (for example with CTRL)³. Compensation schemes have improved as a result of a series of actions over that period⁴ (notably a loss in value is now accepted as affecting the 'enjoyment of your property') but broadly only to the level now proposed in the EHS. For HS2 we are being offered the same hardship tests for having to move; the same 15% loss threshold; and the exclusion of properties over tunnels that have similarly applied.

A clear consequence of the current statutory framework is that unless property needs to be acquired (under the compulsory purchase provisions), the brunt of the loss in property value falls on the owner.

The hardship rules proposed are essentially a palliative to prevent public revolt at the injustice of this arrangement from erupting – triggered by cases where the media might highlight exceptionally oppressive consequences, e.g. pensioners unable to afford to go into nursing homes, families forced to live apart. The reality is that this is a failing of current general compensation arrangements, but it is not a reason for not pressing them in the HS2 context, especially as other current major projects have more favourable (albeit voluntary) protection schemes.

HS2 might be expected to have worse impacts than previous high speed railways, with a line speed of 400k/hr – a third faster than CTRL, TGV and other European high speed lines. We need to modernise compensation arrangements, and bring them into the 21st century.

3. How the EHS compares

3.1 Central Railway (CR) Scheme

The CR Property Protection Scheme (PPS) scheme of late 1990s⁵ was introduced (in part) to overcome local fears which had contributed to rejecting a previous rail plan:

- The Central Railway PPS guaranteed prices for properties that were '*line side*' that might be '*adjacent to*' where the new railway was going (if the existing line was only being upgraded); and on the route or '*nearby*' properties where the railway corridor itself was to be widened or established
- It guaranteed to purchase at an indexed market price (ignoring any possible effect of Central Railway), plus stamp duty on purchase of the new property, and an index-linked contribution of £3.5k for moving costs. It also paid a 'premium' that varied according to the particular circumstances (often 10% in Gerrards X area but up to 25% in parts of Kent)
- The guarantee was transferable with the property. Because the scheme began prior to any approval to the freight plan, new people could buy at the market rate with the confidence that, should the railway go ahead, their property value would be protected.
- Purchase by Central Railway would be from when construction actually begun
- If an owner chose to remain rather than sell their property when the railway was finally built, the company would buy the arrangement back for cash.
- The scheme applied to those wishing to join it, irrespective of hardship or indeed any desire to move at that time. There was no downside to joining the scheme that acted in effect as an insurance policy on the property.
- By 2004 about 1,100 homeowners had joined the PPS, (eventually some 1,500) with about 35% having been sold or re-mortgaged with options transferring. The scheme itself is now suspended as the freight proposal did not proceed, although it would have lasted for 21 years.

The scheme has been discussed with the person who originated and operated it. Once it was established and operating, building societies, (notably Halifax), and local estate agents became familiar with its operation. A local law firm drew up the guarantee.

The Government (DETR) commended such PPS's in 1997 in their Interdepartmental Working Group Report on Blight⁶ and stated that Central Railway's 'came closer than any other to addressing blight concerns' (Report obtained from House of Commons Library).

3.2 BAA schemes:

The White Paper on 'Future of air transport'⁷ required operators to 'address the issue of generalised blight associated with the new runways'. The BAA schemes state in their published booklets that 'The Department for Transport has confirmed that this scheme is consistent with Government's policy on voluntary blight schemes as set out in the White Paper'. BAA schemes apply for several airports (Stansted 2004⁸, Heathrow 2005⁹, and Gatwick), and followed after Central Railway's PPS, and the less favourable CTRL Discretionary Purchase Scheme (that was similar to BAA ARS model as originally proposed, see below).

The two relevant elements of the BAA schemes concern:

- The Home Value Guarantee Scheme (HVGS) – for properties that would be required to create the new runway i.e. compulsory purchase situations
- The Home Owners Support Scheme (HOSS) – for properties that are not required, but are expected to be seriously affected by noise.

For properties beyond the designated 'sound contour' (based on 66 decibels) there is also a Special Cases Scheme that operates like EHS for people who have to move (with 'hardship' rules related to severe medical conditions).

Despite objections and evidence of generalised property blight beyond the 'sound contour', especially for more expensive properties¹⁰, no other cases were covered.

HOSS guarantees property prices for residential and small commercial properties within the designated 'sound contour', covering about 550 properties for the Heathrow third runway. There are two parts to the HOSS:

- Assistance Schemes apply from when planning permission is submitted until approval is given: the schemes are the Assisted Relocation Scheme (ARS) at Stansted; and Early Mover Scheme (EMS) at Heathrow. These are for anyone in the designated area wanting to move. The rules of each seem to be the same
- A Property Protection Scheme (PPS) gives owners (and some others) the right to sell their property at a guaranteed indexed price once planning permission for the runway is granted.

Key points on the Assistance Schemes (ARS and EMS) are:

- When HOSS was consulted on at Stansted, the ARS proposals contained 'hardship' requirements which were dropped in response to the consultation (and do not apply to Heathrow or Gatwick)
- The schemes have a threshold of 15% reduction from indexed market value (like EHS) justified as necessary to indicate a discernable difference from variations in estimates. Once exceeded, full value is paid, and BAA purchase the property
- The schemes will also give financial assistance towards sale costs for those who move but do not qualify under the 15% reduction requirement, capped at 5% of the property value i.e. the sale of the property is made on the open market (not to BAA) at somewhere between 85% and 100% of market value, but BAA will contribute towards sale costs

Key points on the PPS (which is like the Central Railway scheme, that was commended by the Government (DETR)) are:

- The PPS is an option to sell the property to BAA at the full runway-free price level once the runway was known to go ahead (with no threshold, or hardship rules)
- Because the PPS was available before the runway was settled and transfers with the property, properties can be sold in the normal way, with the option transferring to the new owner (who may later choose to sell to BAA)
- There are slight differences in how the indexation in prices works from the Central Railway scheme.

At Heathrow, BAA have given a letter of undertaking to introduce the scheme should they announce their intention to apply for planning permission, with the Assistance scheme (EMS) arrangements applying from then until they receive planning permission, after which the PPS applies.

3.3 Crossrail Hardship Scheme

The Crossrail Hardship Scheme (CHS)¹¹ was developed for Crossrail in 2005, for those needing to sell properties that will be or are adversely affected by the construction of Crossrail.

Key points on CHS are:

- The CHS addresses loss of value resulting from its construction activities. It contains hardship requirements (the same ones as in our EHS) and a 15% threshold loss in value (again the same as our EHS)
- It lasts throughout the construction period (unlike our EHS)
- Eligibility is to those whose 'property enjoyment is seriously affected' by the *prospect* of construction or construction itself (though the definition maybe easier to apply once construction has begun).

The Crossrail scheme is running now, and has many similarities to the EHS, which is not helpful to getting EHS changed, except in the matter that CHS applies throughout the construction stage while EHS does not; CHS has potentially wider eligibility (but in practice may not), and applies to small business (which EHS does not).

3.4 CTRL Hardship Scheme

The Union Railways Ltd Discretionary Purchase Scheme¹² for CTRL:

- Uses the same 'hardship' rules as EHS for reasons for moving (divorce, financial difficulties, medical condition)
- Has the same 15% loss threshold, to qualify for market value compensation
- Requires the property will be affected by noise (with stated thresholds set) and loss of value unless medical factors apply.

It applied from route selection to when the line opened in 2003. It closely follows that operated by the Highways Agency (under Section 246(2A) of the Highways Act 1980¹³. Diminution of property value as a test of eligibility (i.e. whether the owner's enjoyment of the property was seriously affected) was added as a consequence of a Court of Appeal Judgement in 1994 (Colonel David Owen v SoS for Transport).

Prior to the Union Railways scheme for CTRL, British Railways Property Board (BRPB) operated a Voluntary Purchase Zone (120m either side of the CTRL centre line) offering to buy properties falling within it¹⁴. They used a not dissimilar figure to that used by the Highways Agency for motorways (about 100m).

We have an uncorroborated report that the zone was widened to ¼ mile either side of the track, following Michael Portillo MP taking up a case. Details are being sought.

When considering noise levels, blight schemes used by developers for CTRL, apparently used the same 66 decibel noise contour that BAA schemes apply¹⁵.

4. Current state of development of schemes

4.1 Discretionary Schemes

The discretionary schemes for Crossrail, CTRL and the Highways Agency are all very similar. For properties not required for a project but adversely affected by it, all had/have discretionary schemes to purchase an owner occupier's property at unblighted values if:

- The property is or will be affected by noise etc and loss of value during construction (*CTRL, Crossrail, Highways Agency* schemes), or
- The property is or will be affected by noise etc and loss of value when the project is complete and operational (but excluding properties tunnelled beneath) (*CTRL, Highways Agency*), and
- The loss of value is greater than 15% (*CTRL, Crossrail, Highways Agency*), and
- The owner has a 'pressing need to move' for reasons that qualify under the hardship rules (to take up a new job, financial pressure e.g. divorce settlement, expanding family, medical condition, need to go into nursing home or sheltered accommodation) (*CTRL, Crossrail, Highways Agency*).

The schemes all apply from when the route is selected until the project is complete.

Importantly the BAA and Central Railway property protection schemes remove the hardship rules and the 15% loss requirement. They were also the first schemes that specifically focused on addressing the blight that arises before the project is even approved. This approach was encouraged and supported by Government. These schemes represent private sector best practice.

4.2 The Interdepartmental Working Group on Blight

The Interdepartmental Working Group on Blight produced its Final Report in December 1997 (op cit.). Amongst other considerations it emphasised five key points that caused it to recommend a profoundly different approach to that developed in our report:

- The lawful development of adjacent land may devalue properties, and this is one of the risks of property ownership
- The purpose of compensation arrangements for major infrastructure development is to provide the redress that would be available through common law, had there not been statutory immunity for the project's developer
- Common law gives redress only for nuisance, not loss of view, peace and quiet, tone of the area or amenity, which are not enjoyed as of right
- To provide new rights for property owners affected by major infrastructure development where there is none for other property owners is anomalous, and in the Working Group's view is neither logical or equitable
- Extending compensation beyond tight boundaries would encourage blight to spread.

The Working Group's approach fails to appreciate:

- The special position of the government in imposing major infrastructure developments
- The difference between the extent of blight and the extent of *compensated blight*
- That failure to compensate for loss in market value rather than nuisance is a key cause of generalised blight

Government's special position

For major infrastructure projects, it is not a matter of a balance between the rival property rights of different individuals, with one exercising freedom to the detriment of another. It is the

Government deciding to do something that would otherwise be impossible. It overturns the normal planning restrictions that would prevent inappropriate development by private land owners. This is a special situation and needs a particular remedy.

To illustrate, a purchaser may acquire a property in an area of outstanding natural beauty, confident that there is virtually no prospect of an inappropriate development being allowed nearby: it simply would not get planning consent. He accepts that there will be severe restrictions on how he develops his own property – any development or change must comply with strict requirements if it is allowed at all. There is a market premium for unspoilt countryside and tranquillity – and the reasonable certainty of it remaining like that. The same applies to other locations (albeit to a lesser extent); where the planning framework operates to limit private development in order to preserve the character of the locality.

The Government, in overturning normal restrictions, frustrates the reasonable expectations of residents and other property owners. People may not have a right to a view, but they should have a right to compensation when a Government does something to their detriment that would not otherwise have been allowed.

The Report appeals to symmetry, if the Government compensates losses in value it should recover increases where a development enhances value. This is an odd argument: the purpose of the infrastructure project is to create a net benefit for society in general. The issue is surely not to prevent people from benefiting, but how to mitigate the harm done to those individuals or communities who are disbenefited. The situation is even more stark when neither the individuals nor the communities in which they live obtain any direct benefit to compensate for the property and community blight that the project brings (as with HS2).

It is plainly wrong that Government exercises its power to the disadvantage of a small set of individuals to achieve a common good, without recompense.

Extending compensation beyond a tight boundary does not spread blight

The Final Report talks of extending blight through extending compensation to where there are losses in value beyond some tight boundary. This ignores the real mechanism of blight. Property blight occurs because individuals acting freely in the property market choose not to live near the planned, in progress, or complete project. They take these decisions in the light of such information as is available. If purchasers think (rightly or wrongly) that life would be less pleasant in a particular property because of the project, they will require a discount. If blight is compensated the effects of blight do not spread. A tight geographical boundary arbitrarily debars claims beyond it, which still leaves property owners beyond the boundary to suffer the losses – it in no way prevents the losses or stops blight spreading.

Admittedly insensitive management of properties acquired by the developer of the infrastructure (e.g. leaving properties empty and boarding them up rather than using short lets or reselling) can exacerbate the problem.

Lack of full market value compensation spreads blight

It is the lack of availability of full compensation that spreads blight. Until the new infrastructure is created and functional for some time there is uncertainty about its impact on the locality. First there is uncertainty about route, then the effects of construction, then that of operation itself. All these features may adversely affect the value of properties to different degrees. As with existing arrangements some owners will suffer uncompensated losses at every stage, there is a risk for purchasers if they buy in the locality of a potential or chosen route. This risk makes it a rational choice to purchase in the locality only if a discount is given. For owner occupiers, their home typically represents the greater part of their personal assets. It is natural therefore for purchasers to seek a large discount and not put their savings in jeopardy – even for properties that may prove to be nowhere near the final route, or if they are will not be materially affected by it.

This would be avoided should the Government undertake to compensate all blight (in the form of property value loss) from the project. People would buy knowing that should the property

value be damaged by the major infrastructure project, they will be protected. The risk is thus removed, and with it much of the blight.

1997 Draft Scheme

A Draft Property Purchase Guarantee and Compensation Scheme was attached to the Interdepartmental Working Group Final Report. It recognises that uncertainty and anxiety related to proposals for major infrastructure projects can have adverse effects on the local property market. It states at the start of the document:

'The first imperative is to provide, to those who own or wish to purchase property who may be affected by a proposed major infrastructure development, reassurance about two things:

- a. that they will be adequately compensated if their property is adversely affected by the proposed development; and*
- b. that should they wish to move, the property market will continue to operate'.*

The Draft scheme which is then proposed provides a transferable guarantee (like the Central Railway and BAA schemes) that give the open market purchaser certain rights. It was proposed to cover two situations:

- *Statutory blight:* the transferable guarantee would be to pay what is currently paid on compulsory purchase (i.e. blight free value, plus 10% (but capped), plus costs, i.e. all as now), but also with a new blight premium.

It is argued that this proposal would allow the property market to continue to function in the period before the promoters of developments need to purchase the properties for construction purposes, while still allowing the property owner to move and be compensated. Whether it would work would probably depend on the size of the new blight premium (compared with the current arrangement of the affected owner serving a blight notice on the promoter, as they are currently allowed to do by law).

The purpose of this proposal is to also prevent the situation that currently causes promoters to have to buy the houses long before they are required, to board them up while they await demolition and hence spread the blight corridor itself

- *Properties not required, but affected:* the transferable guarantee would be to pay *either* what the Land Compensation Act 1973 will provide for the 'physical effects' when the railway is running (i.e. at least 17 years hence for HS2) *or* the promoters (i.e. HS2 Ltd) current estimate of that figure, whichever is the higher.

The guarantee is not therefore to maintain the open market blight-free value. It does not take into account the non physical effects (view and amenity) that are excluded from Land Compensation Act calculations. Consequently, in order to sell the property, the seller will still need to provide a discount from the blight-free price to the purchaser, because the guarantee falls short of restoring the bright free value, and ignores the impact of construction activities.

It is difficult to see how the Draft Scheme would have achieved its stated purpose i.e. to put confidence back into the property market, or deliver adequate compensation to the owner who has suffered the loss. This is because it takes compensation for nuisance to be adequate compensation (still leaving owners bearing a loss), and fails to appreciate that market confidence requires the removal of the risk of losses for property owners.

The intention was that the Draft Scheme would have replaced the 'statutory blight' provisions and also the discretionary schemes.

4.3 Conservative Party statements

Theresa Villiers (Conservative Shadow Secretary for Transport) has at least raised the

question of 'whether Labour will match our promise to review the blight rules to see whether we can do more to help those affected by whichever route is chosen' (*Source: House of Commons, 11 March 2010*).

5. Human rights

Under the European Convention on Human Rights (that was given effect in UK law by Human Rights Act 1998) there are some protections but the state can still interfere with the enjoyment of property:

- Article 8 provides that 'Everyone has the right to respect for his private and family life, his home and his correspondence' and prohibits interference with this right by the state, unless the interference is in accordance with law and necessary in the interests of national security, public safety, economic well-being of the country, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.
- Article 1 of the First Protocol to the Convention expands on this and states that 'Every natural person or legal person is entitled to the peaceful enjoyment of his possessions', but again, this is subject to exceptions where it is in the public interest and is in accordance with law (and the general principles of international law).

The wording of the Convention and the Act are identical in this area.

Recent major infrastructure schemes (e.g. airport expansions) have demonstrated during their Bill stages how they have complied with both Article 8 and 1. They must follow all the appropriate procedures and demonstrate they are in the public interest.

In human rights terms the issue becomes one of striking a fair balance between the competing interests of the community as a whole (the public interest) and the private individual (his quiet enjoyment of his land). There is case law (*Dennis v Ministry of Defence 2003*) that leans on the European courts decision (*S v France*) that says that 'compensation may have to be paid to individuals whose rights are infringed by that undertaking in order to achieve a fair balance between the interests of the individual and the community' (para 117). In *Dennis v MOD* (para 63) the judge concludes 'common fairness demands that where the interests of the minority, let alone an individual, are seriously interfered with because of an overriding public interest the minority should be compensated'.

Whether HS2 acts in a manner that contravenes human rights (and is actionable as such) will require specialised legal advice.

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- ¹ HS2 – Exceptional Hardship Scheme, Department of Transport, March 2010
 - ² Interdepartmental Working Group on Blight, Final Report; and Draft Property Purchase Guarantee and Compensation Scheme, DETR, December 1997.
 - ³ DfT New Line Capacity Study, Environmental review at scheme & route level, Temple Group Ltd, May 2007
 - ⁴ Standard Information Note SN/BT/70 on Railway: Channel Tunnel Rail Link Act 1996, in House of Commons Library; last updated 17 March 2010
 - ⁵ Central Railway Property Protection Scheme, March 2004
 - ⁶ Interdepartmental Working Group on Blight, Final Report; DETR, December 1997
 - ⁷ Future of Air Transport, White Paper, 12 December 2003
 - ⁸ Home Owner Support Scheme, BAA Stansted, September 2004
 - ⁹ Home Owner Support Scheme, BAA Heathrow, July 2005
 - ¹⁰ Director of Stansted Generation 2 Project (in e-mail to DfT Airports Policy Division of 24.08.2004), released under FOI Act and available on DfT archive
 - ¹¹ C8 – Purchase of Property in cases of Hardship, Crossrail, December 2005
 - ¹² Union Railways Ltd Discretionary Purchase Scheme, revised September 1997
 - ¹³ Blight and Discretionary Purchase, Highways Agency, December 2007
 - ¹⁴ DfT New Line Capacity Study, Environmental review at scheme & route level, Temple Group Ltd, May 2007; and Standard Information Note SN/BT/70
 - ¹⁵ Home Owner Support Scheme BAA Heathrow, July 2005 (in Q2 response to consultation)

Annex B – Review of Exceptional Hardship Scheme (EHS)

The stated aim of the EHS is to protect the interests of homeowners whose property may be *seriously affected* by the 11 March 2010 announcement of the ‘preferred route’ and who can show an *urgent need to sell* and would suffer *exceptional hardship* if they had to wait until the statutory protections apply.

Principles and criteria

The key principles of the scheme are:

Full market value compensation (as if no HS2) if all the criteria are met:

- Residential owner-occupier
- A ‘pressing need to sell’ causing ‘exceptional hardship’ if they had to wait. The potentially eligible circumstances are given as:
 - Change in employment location
 - Extreme financial pressure
 - Accommodation of an enlarged family
 - Need to move into sheltered accommodation (or equivalent) or
 - Medical condition of a family member in the property
- ‘On or in close vicinity’ of the ‘preferred route’ (excludes those tunnelled under)
- Have tried to sell – been on the market for at least 3 months and had no offers within 15% of its full market value (as if not HS2)
- Can demonstrate that the inability to sell is due to HS2, and not for example a slow market
- Has no prior knowledge of the HS2 before acquiring the property.

The EHS proposal fills a gap in the statutory arrangements. Specifically it makes provision for the Secretary of State (SoS) to buy owner-occupied residential dwellings that are blighted in advance of the route being settled. This covers the eventuality that no one wishes to purchase the property while the area is under consideration but the route is not settled. In effect it starts earlier than other Government schemes, as while the route is ‘preferred’ it has not been selected.

Review of EHS provisions

1. Home owner restrictions:

It is unreasonable to restrict the scheme to homeowner occupiers – rather than agricultural and commercial owners (especially small businesses) and landlords – everyone should be entitled to get on with their lives without detriment from HS2.

Other schemes are not similarly restricted e.g. Crossrail, nor BAA’s scheme. There are existing precedents for how to limit a wider definition e.g. property rateable values.

2. Hardship qualifications unreasonable:

The limitation to ‘extreme hardship’ conditions requires that anyone who does not qualify can only move by accepting the loss in market value. This is unreasonable, given it will probably be a significant period before final route (if any) is settled for those who will lose their properties – and more than 17 years before others are eligible for any compensation. In natural equity, everyone should be free of the depressive effects of HS2 and be allowed to sell at full HS2-free market values.

While the hardship reasons are borrowed from other similar schemes e.g. Crossrail, there are many other good reasons for wanting to move besides those listed, e.g. a contraction in

family size (not just expansion), a desire to retire elsewhere, and protecting ones children's inheritance which for most people is their property.

Following consultation BAA abandoned the hardship restriction.

3. *Geographical location determining eligibility:*

'On or in close vicinity' is insufficiently clear and prone to be narrowly interpreted. Similar wording is typically interpreted as around 100 metres or so for highway schemes, and CTRL used 120 metres from the centre line of the railway (although we have an uncorroborated report that a quarter of a mile was adopted in a case involving Michael Portillo MP). Furthermore, those being tunnelled under are also excluded from EHS.

The rule ignores the real extent to which HS2 damages property values. Select committees have accepted that owners of properties some distance from CTRL have suffered loss of value and not been recompensed. Any guideline that uses a uniform distance from the line, ignores this reality.

The essence of an AONB is tranquillity and beauty: property prices are high reflecting this. Noise pollution consequently has a far greater adverse impact on an AONB than in an urban area. Any guideline that uses a 'noise contour' ignores the fact a decibel level in an urban environment is very different from the same decibel level in a quiet country valley.

A fairer rule is one where the market decides if there has been a loss in property value.

4. *Level of protection:*

Actual market prices must fall below 15% of the HS2-free market value for EHS to apply as owners are ineligible if they receive an offer of more than 85% of the HS2-free value. Those needing to sell must accept up to a 15% loss – should anyone be prepared to buy it at this level. If the market price is depressed below 85% of the HS2-free level, for example falling to 75% of the HS2-free value, 100% is then payable under the scheme.

The use of the 85% threshold is unreasonable:

- It is unfair that only severely blighted properties can secure full market value compensation; while the owners of properties that are moderately/slightly blighted have to fund the entire loss (ranging from 1-14.9%) themselves
- For practical reasons it is argued that such schemes need to adopt a 'discernable' loss in value. Because estimates of individual market valuations can vary by up to 10%, a larger figure is said to be needed e.g. 15%. There are other methods by which a smaller 'discernable' loss could be identified e.g. the use of two or three independent valuations would reduce the size of the variation, and hence the size of 'discernable' loss
- DfT state in their EHS FAQs if the property is proving hard to sell the owner might accept a slightly lower offer. This both ignores HS2 being the cause of the problem and is also inconsistent with giving 100% if the threshold is exceeded!¹
- There are other factors that already act as a disincentive to prevent the scheme from being overwhelmed by applicants e.g. compensation is based on professional market 'red book' valuations (that are conservative); the sale process will take longer; the inconvenience of the process and there will be other costs.

The BAA and Central Railway schemes had no threshold, and as a result the schemes were recognised as fairer and more acceptable in (BAAs) consultation process.

5. *Time limits to qualify:*

How to fulfill the requirement that the inability to sell is due to HS2 blight may be problematic in the current property market, where lack of buyers could be attributed to a general slowness in the market.

Potential beneficiaries could find themselves trapped trying to demonstrate that the difficulty related to HS2, until the route was settled and the scheme terminated. The EHS offers a minimum period of 3 months for the property being on the market.

A fixed time limit is needed. BAA set periods depending on property price level – from 6 to 12 months, and did not require other evidence to demonstrate relevant blight. This seems a more reasonable model to adopt, but needs to be adapted to reflect local property market conditions. Estate agents in the area (but not locality) could provide the basis for tailored values.

6. Ending scheme when route selected:

It is not reasonable that the scheme ends when the route is settled and ‘statutory blight’ provisions are triggered (when Councils start ‘safeguarding’ the route):

- The statutory provisions only give protection to those with properties that will be compulsorily purchased (i.e. are on the route line itself, within the limits of deviation, or required to build and operate the HS2)
- Many other properties will be ‘blighted’ in the everyday sense and suffer loss of market value, besides those that need to be acquired for the project. They will have no basis for compensation until a year after HS2 is operational (a minimum of 17 years later). On average people move every five years, so homeowners can expect to suffer from needing to sell in a depressed market.
- Other major infrastructure projects operate schemes that apply after the routes are selected and during the construction phase, albeit the schemes are discretionary (e.g. Highways agency, Crossrail, CTRL, and BAA).

It is possible that when the route is selected, the Government will bring forward further discretionary schemes to address property values, but the EHS consultation material gives no basis for expecting this. If such schemes were introduced it is plausible that they would follow the same format, with the same criteria.

Alternatively it might be proposed to adopt the 1997 Draft proposal that is based on the Land Compensation Act payments. As discussed at Annex A (4.2) such a scheme would not meet the objectives.

7. Discretionary nature of scheme:

The Scheme is proposed to be non-statutory and discretionary. Provided that there are reasonable mechanisms for establishing market value, all individuals should be entitled to the protections, and not be subject to arbitrary exclusion.

8. Lack of appeal provisions and checks/balances:

There are no arrangements for an applicant to appeal the market value that the independent valuers determine for the property. Other schemes provide some redress e.g. Crossrail Hardship Scheme uses two valuers and if their answers differ by more than 10%, a third is appointed. BAA have similar arrangements.

9. Details and definitions

There are a number of key terms in the EHS that are not adequately defined (e.g. the five ‘hardship’ circumstances); or whose meaning raises further questions (e.g. whether simply receiving any *offer* within 15% of market price disqualifies an applicant).

Both of these examples are clarified in similar schemes e.g. Crossrail Hardship Scheme. This poses problems for the current consultation process, as it is unclear exactly what is being consulted on.

Further clarifications are required for:

2.7 'remain in place only until such time as the statutory blight provisions apply'

At what time will the statutory blight provisions apply? – When the route is selected after the Public Consultation in autumn 2010 or some other time.

Does the EHS continue to apply to properties that are not covered by the statutory blight provisions, i.e. properties not required to be acquired for the railway to be built?

2.10 'on or in the close vicinity of'

What is meant by 'in the close vicinity of'? Is this defined as properties that are expected to be subject to the statutory blight provisions if the preferred route option is selected (i.e. ultimately subject to compulsory purchase or will suffer injurious affection (e.g. be expected to be due compensation for nuisance during construction or under the Land Compensation Act 1973)?

Is it intended to use a set physical criterion as a guideline– e.g. distance from the centre of the track for determining (as with similar public sector hardship schemes)? If so what will the guidelines be?

2.14 Are the listed circumstances for extreme hardship to be understood to have the meaning as amplified in the Crossrail, CTRL, and Highways Agency Hardship Schemes? See 'Crossrail Information Paper: C8' (Version 3 20/11/07) paragraph 3.5; Union Railways Ltd Discretionary Purchase Scheme paragraph 5a – 5d; and 'Guidelines for Discretionary Purchase under S246(2A) of the Highways Act 1980 of land in advance of the start of Works, paragraphs 6a – 6d.

2.14 'extreme financial pressure'

What circumstances constitute 'extreme financial pressure'?

2.14 'a medical condition'

What medical conditions qualify?

2.15/2.20 price and value:

Is there a difference between the 'open market property price' (2.15) and 'unaffected realistic market value' (2.20)?

2.15/2.22 'on the market for at least 3 months':

Does a property need to have already been on the market at the scheme's inception, or can it qualify subsequently?

2.15 'no offer received':

Does any offer over 85% of the blight-free value count to disqualify an applicant, or can those that are withdrawn or not progressed (potential purchaser not able to proceed – e.g. not sold own house) be disregarded?

2.16 'demonstrate'

What is considered adequate for an owner to 'demonstrate' the ability to sell was seriously affected and that this is directly related to the HS2 preferred route option?

¹ HS2 EHS Some Frequently Asked Questions issued 29 March 2010 available on DfT website. Q2