

**Proposed Decision to be taken by the
Portfolio Holder for Health
on or after 29 November 2013**

HS2: Response to Property Compensation Consultation 2013

Recommendation

That the Portfolio Holder for Health approves the County Council's response to the Property and Compensation Consultation (as set out in Appendix A).

1.0 Background

- 1.1 Warwickshire County Council resolved in December 2010 to oppose HS2 and agreed to work with other local authorities as part of the 51m Group – a consortium opposed to the HS2 proposals which is providing a co-ordinated opposition to the scheme.
- 1.2 The Council supported a Judicial Review with 15 other local authorities and the HS2 Action Alliance into the Government's consultation process, and in particular the decision on the preferred discretionary compensation schemes. The High Court ruled on 15 March 2013 that part of the 2011 consultation which dealt with potential property consultation arrangements did not provide enough information to consultees on the different discretionary compensation scheme proposals. In addition, the basis on which the decision was taken differed from the one which appeared in the consultation documents. Also, the response from the HS2 Action Alliance was not conscientiously considered before the Secretary of State made a decision. As a result of the High Court ruling, the Review of Property Issues document, and the Government's package of discretionary compensation arrangements were declared void. To ensure a full, fair and prompt resolution to compensation issues relating to the railway, the Government gave an undertaking to the Court to launch a fresh consultation on property matters, including the introduction of a property bond not included previously.
- 1.3 The questions being consulted on are as follows:
1. What are your views on the criteria we have put forward to assess options for long-term discretionary compensation?
 2. What are your views on our proposals for an express purchase scheme?
 3. What are your views on the proposed long-term hardship scheme?
 4. What are your views on the 'sale and rent back' scheme?

5. What are your views on our alternative proposals for renting properties to their previous owners?
 6. What are your views on our proposals for a voluntary purchase scheme within a 'rural support zone'?
 7. What are your views on the option to introduce a 'time-based' property bond scheme within a 'rural support zone' as an alternative to the voluntary purchase scheme?
- 1.4 The Property Compensation Consultation 2013 is open to the public to comment on long-term property schemes for Phase One of the HS2 route (London to the West Midlands). The closing date for responses is 4 December 2013. The documents are available to view on the HS2 website at <http://www.hs2.org.uk/developing-hs2/consultations/phase-one/property-compensation-consultation-2013>

2.0 Property consultation proposals

- 2.1 The Property and Compensation Consultation 2013 sets out a proposed package of measures designed for owners and occupiers of property along the London to West Midlands route.
- 2.2 For land or property owners directly on the line of route, the Government may need to buy some or all land and/or property in order to build HS2. Compensation may be available to owner-occupiers of properties near, but not directly on, the line of route who experience physical effects - such as increased noise – once the line is in operation that reduce the value of their homes.
- 2.3 People who own and occupy a property near the line of route and wish to move may find it more difficult to sell their homes, this is referred to as blight.
- 2.4 There is existing legislation and case law which provides for compensation in relation to property blight. It reflects the large variety of circumstances for which compensation must cater, such as any land or property taken from owners and for any loss of value caused by the physical impacts of a scheme.
- 2.5 In addition to the existing legislation, the Government is consulting on a package of measures which include:
- express purchase for qualifying owner-occupiers within the safeguarded area;
 - a long-term hardship scheme which would apply to owner-occupiers who are outside both the safeguarded area and the rural support zone and who have a need to sell their property to avoid suffering hardship because of HS2;
 - options for renting properties to their former owners;

Also, for those who live in a proposed 'rural support zone', a discretionary scheme will offer:

- a voluntary purchase scheme for owner-occupiers up to 120m from the line; or
- a property bond scheme which would provide a transferable bond guaranteeing Government purchase of properties within a rural support zone.

2.6 The property and compensation consultation raises several issues for the Council on behalf of its residents and these are set out in Appendix A.

3.0 Implications for Warwickshire

3.1 The impact of the property compensation scheme will have a significant impact of the population's health, well-being and quality of life. The Council welcomes the attempt to introduce measures to remove complexity from part of the compensation process, but is still seeking clarification on aspects of the content and criteria referenced in the consultation.

3.2 We welcome the proposed introduction of a property bond which could help build confidence in local property values and maintain balance in the property market, while also reduce further property blight.

3.3 We expect the agreed property consultation standards to be applicable for both Phase One and Phase Two to ensure consistency. This is particularly relevant in locations in the north of the county which are affected by both phases of HS2.

4.0 Conclusion

4.1 That the Portfolio Holder for Health endorses the recommendation to support the response to the consultation.

Appendices

Appendix A – Warwickshire County Council's response to Property Compensation Consultation 2013

Appendix B – Glossary

	Name	Contact Information
Report Author	Christopher Cresswell	christophercresswell@warwickshire.gov.uk 01926 418646
Head of Service	Louise Wall, Sustainable Communities	louisewall@warwickshire.gov.uk 01926 412422
Strategic Director	Monica Fogarty, Communities	monicafogarty@warwickshire.gov.uk 01926 412514
Portfolio Holder	Cllr Bob Stevens	bobstevens@warwickshire.gov.uk

Warwickshire County Council's response to Property Compensation Consultation 2013

Appendix A provides an overview of the proposals for property compensation and the county council's response to each one within the explicit question. For reference, these proposals are similar to the October 2012 consultation but supersede the previous packages.

A Glossary of terms is provided in Appendix B.

1. Compensation policy

1.1 A number of criteria to decide the most appropriate long-term discretionary property compensation scheme are proposed by the Government. They are:

- a. fairness
- b. value for money for the taxpayer
- c. maintaining community cohesion along the route
- d. feasibility, efficiency and comprehensibility;
- e. functioning of the housing market
- f. providing the best balance between the criteria for the different compensation schemes or packages being offered.

Consultation question 1. What are your views on the criteria we have put forward to assess options for long-term discretionary compensation?

1.2 The council agrees that this should not be a 'one size fits all' approach but the published criteria is open-ended and leaves the process open to a subjective approach which is heavily stacked in the Government's favour when deciding discretionary compensation cases. The council expects the Government to remove the ambiguity which exists in the current description of the criterion, in particular where there is a lack of definition. For example, in the reference to the functionality of the housing market there is no explanation as to what is considered to be a 'normal' property market. This needs to be addressed with clear guidelines on how normality is defined.

1.3 The council is a strong advocate of maintaining community cohesion and minimising any potential adverse effects of a transient population caused by HS2. More consideration must be given to creating stability in the community and limiting the impact of the railway through a cohesive approach to housing and social mobility.

2. Express Purchase

2.1 The Government is proposing to exercise its discretion in how the statutory blight provisions will work for HS2 in two specific ways, by accepting blight notices from eligible property owners:

- a. without regard to whether the property would be needed for construction or operation of the railway, provided the property is wholly within the safeguarded area

b. without requiring the owner to demonstrate reasonable endeavours to sell their property.

2.2 The intention is to give those within the safeguarded area some certainty about whether the Government will buy their property without eroding their right to the full payments that are available under the compensation code.

2.3 To help reduce the uncertainty involved in this process, the Government proposes to accept Blight Notices from all eligible property owners whose properties are entirely within the safeguarded area, even if it is not yet clear whether the property would actually be needed for the construction or operation of the railway.

2.4 There is a proposal to introduce a process of 'express purchase' for HS2 for eligible property owners within the safeguarded area, subject to qualifications, who could issue a Blight Notice without having to attempt to sell their property. Instead, they would only have to show that their property was within the safeguarded area.

2.5 If the Secretary of State agrees to purchase a property under express purchase, the Government will pay the full entitlement, as under the compensation code. The payment would be:

- a. the full un-blighted open market value of the property, or the value of the property if there was no HS2, plus a further 10 per cent up to a maximum of £47,000 (for residential properties), known as the 'Home Loss Payment'
- b. plus the reasonable costs of moving.

2.6 It is important to note that the approach to express purchase does not normally apply in areas where safeguarding had been put in place to protect land above deep-bored tunnels or any other sub-surface works. The safeguarding in these areas relates only to the land beneath the surface rather than land which is well beneath the surface.

Consultation question 2. What are your views on our proposals for an express purchase scheme?

2.7 The Council broadly welcomes the initiative to remove the complexity and uncertainty involved for home and landowners affected by HS2. In particular, we acknowledge the positive step to accept Blight Notices from all eligible property owners whose properties are within the safeguarded area, regardless of whether the property is needed by HS2.

2.8 One note of caution is that this element of the scheme is only available to property owners whose holdings are entirely within the safeguarded area. This automatically disqualifies anyone whose property is less than 100 per cent within this boundary. The Council requests that this is amended in order for the scheme to be flexible to accept all applications from those whose properties are partially within the safeguarded area, rather than being considered by an ad-hoc approach.

2.9 The Council notes that in the previous consultation this was called the 'advanced purchase scheme'. Despite the name change to 'express purchase scheme' there is no indication of the timescales associated with the purchase of any property which

qualifies under this scheme. The Council insists on clarification on timescales to remove any further uncertainty.

2.10 As with the advance purchase scheme, the express purchase scheme remains focussed on the circumstances of residential and commercial owner-occupiers. Tenancies are not given the same level of consideration. It is therefore essential for the final scheme to include provision to adequately compensate those with Shorthold Tenancy Agreements of six months or more in duration. Additional provision must be made to similarly cover affected licensees.

2.11 Properties above tunnels are not currently afforded the same rights as those in the defined safeguarding area. In order to protect and lessen the impact of the railway on these properties, the council expects the Government to introduce a safeguarding area for the line below the surface which equates to the distance above ground, which is 60 metres, either side of the track. This would ensure that properties above tunnelled areas will benefit from the proposed compensation schemes and would be considered fair and reasonable.

3. Long-term hardship scheme

3.1 For property owners who have “strong personal reasons” for selling their home but are unable to do so, other than at a significant loss because of HS2, the Government is proposing to introduce a long-term hardship scheme (LTHS) for Phase One to assist owner-occupiers outside the safeguarded area and the rural support zone who will suffer hardship if they are unable to sell their homes but are not eligible for the other financial packages.

3.2 Applicants to the LTHS would be asked to provide evidence to demonstrate that they satisfy the scheme’s proposed criteria, which would be considered by a majority independent panel. The panel would consider applications and make a recommendation to the Secretary of State for Transport on whether they should be accepted or not. Successful applicants would have their property purchased by the Government at 100 per cent of its un-blighted, open market value using the process outlined under the ‘voluntary purchase scheme option’.

3.3 The five published criteria, all of which would have to be met for an application to be successful, are:

- a. property type
- b. location of property
- c. effort to sell
- d. no prior knowledge
- e. hardship

Consultation question 3. What are your views on the proposed long-term hardship scheme?

3.4 The Council welcomes the time reduction in the ‘effort to sell’ criterion from 12 months to six months. Although this will hopefully reduce the amount of time a property owner will be affected by hardship, consideration must be given to those who have a more pressing need to sell to ensure fairness. Also, specific measures

for those who need to sell their property ahead of retirement are a positive addition to the previous proposal.

3.5 There are no measures contained in any of the compensation packages for anyone encountering remortgaging issues. The adverse impact in the property market caused by HS2 will provide serious problems for property owners who are attempting to remortgage their homes once a fixed term has expired. Many property owners face negative equity if a lender is unable to offer a mortgage on realistic terms. Given that this compensation scheme is designed to protect people from a significant loss, the Council expects greater clarity on behalf of property owners affected in this way of how this issue can be satisfactorily addressed.

3.6 The Council agrees that the assessment panel should be independent and fair, and operate a system whereby applications are considered promptly and decisions made contemporaneously.

4. Sale and rent back scheme

4.1 The previous consultation offered a 'sale and rent back scheme', which would apply only to those whose homes needed to be demolished to build and operate the railway. This scheme is reproduced with an added alternative approach which would allow the Government to extend sale and rent back to all homes purchased by them through an HS2 property purchase scheme. It would enable eligible homeowners to sell their homes to the Government and remain in residence as tenants until the property is needed for construction.

4.2 The aim of this scheme is to enable eligible homeowners to realise the equity in their property but remain in their home as tenants until they chose to move or the property was needed for construction – whichever came sooner. These homeowners would still be entitled to a home-loss payment, paid at the moment of sale, and reasonable moving costs which would be paid when they moved to another property

4.3 To be eligible, applicants must be able to serve a Blight Notice, and be the owner-occupier of a residential property that is likely to be demolished to make way for the construction or operation of HS2.

Consultation question 4. What are your views on the 'sale and rent back' scheme?

4.4 The scheme as it stands only applies to owner-occupied properties within the safeguarded area and excludes business premises. This policy would discriminate against those who use part of their property as live and work spaces and are not automatically eligible for the sale and rent back scheme. The proposal as it stands disregards these different circumstances and provision must be made in the scheme to include the option for businesses.

4.5 The scheme will allow homeowners on the route to remain in their homes and part of the community for a longer period of time without losing out financially. The Council cautiously welcomes the intention to reduce further blight caused by large numbers of vacant properties in a specific area but requests that this scheme is

opened up to all properties which are eligible to serve a Blight Notice in the interests of fairness.

4.6 It is unclear what the test for value for money of a property consists of. The Council expects a published set of criteria for this test to ensure that the process is fair and transparent and that the owner is fully informed of the market data. This also applies to the reference for a more stringent test closer to the start of the construction phase.

4.7 There are no guidelines issued on the role and effect of any land access arrangements for HS2 agreed by owners who become tenants. There must be a clear set of guidelines published by the Government to ensure that individuals and companies associated with the railway are governed by rules and regulations.

4.8 As the scheme will be open for a limited period only, the Council expects a timetable of dates for applications to be published well in advance of the cut-off times.

4.9 To avoid penalising owners who are not residing in a property for a period of time, there must be a clear definition of what is classed as “short term” in this respect.

5. Alternative approach

5.1 Some properties already purchased under the Exceptional Hardship Scheme have been rented to their former owners. This has established a principle that rental of properties to their former owners need not be restricted to those properties which area to be demolished. These rentals have been achieved using routine mechanisms for property management to ensure value for money for the taxpayer.

It is proposed, as an alternative to the sale and rent back scheme, that the Government takes an approach to management of all of all its purchased properties to include an option of rental to the previous owner-occupier where it is economic to do so.

Consultation question 5. What are your views on our alternative proposals for renting properties to their previous owners?

5.2 In principal, the Council supports the proposal to offer all affected properties the opportunity to rent property back to the Government and remain in residence as tenants.

5.3 The Council does have reservations about some aspects of this proposal, namely that standard leases will be used. There is no clarification as to what is considered ‘standard’ and whether there would be any flexibility included to allow tenants to negotiate adjustments to the lease. This must be reviewed.

5.4 As with the sale and rent back scheme, it is unclear in this policy what the test for value for money of a property consists of, and whether the process would be transparent. The council wishes to see clarification on these points.

6. Establishing a rural support zone

6.1 Due to the generalised blight on the property market caused by HS2, not just inside the safeguarded zone but elsewhere, the Government is consulting on alternative discretionary scheme options for rural areas that would be available to people who live within a specified distance of the proposed line, but outside the safeguarded area. This region, or 'zone', would be called the 'rural support zone' (RSZ).

6.2 The southern boundary for the new RSZ has changed from the predeceasing proposal, the voluntary purchase zone. The northern boundary remains at the HS2/West Coast Main Line junction at Water Orton.

6.3 There are many factors at this stage of the project which could contribute to generalised blight but it is not possible to measure it precisely. However, it is generally accepted that blight is more readily felt in rural areas, which are by their nature less accustomed to large-scale developments or construction sites.

6.4 The proposal set out in the consultation is for a RSZ to be brought in as soon as possible and remain in operation until one year after Phase One of HS2 became operational. Once the railway has been open for one year, eligible property owners would be able to make a claim for Part 1 compensation payments under the Land Compensation Act 1973.

6.5 The Government is considering two options for providing support to property owners within the proposed RSZ:

- a. establishing a discretionary voluntary purchase scheme available to people who live up to 120m from the centre of the proposed line but outside the safeguarded area
- b. establishing a property bond scheme operating within a distance-based boundary set with reference to further assessment of costs and benefits.

Consultation question 6. What are your views on our proposals for a voluntary purchase scheme within a 'rural support zone'?

6.6 The Council supports the extension of the voluntary purchase scheme to a wider rural area and acknowledge that this is designed to help rural residents whose lives are impacted by the railway and may not be catered for otherwise.

6.7 The proposed boundary of 120 metres either side of the line does restrict the scheme somewhat and limits evaluation to distance only. This must be used as a guide only and flexibility should be built in for properties which are affected by other factors, for example noise, visual intrusion, or loss of a link to an amenity.

6.8 There is no current policy being proposed for the subsequent sale or management of properties purchased under this scheme. This needs to be reviewed. The Government must develop a strategy to make provision to sell or let the properties on the open market to avoid the prospect of empty properties causing further blight. Conversely, this strategy must avoid flooding the market at any given time and artificially deflating house prices and causing added blight to previously unaffected properties.

6.9 It is our view that one year after the opening of the railway is too long for eligible property owners to wait to make a claim for payments under the Land Compensation Act. We expect clarification on the reasons why this timescale has been proposed and call for a quicker implementation and resolution to those who wish to exercise this option.

7. Property bond

7.1 Since the Government set out its initial proposals for Phase One of HS2, numerous organisations and interest groups - including Warwickshire County Council - and individuals have argued that the Government should implement a property bond scheme to assist property owners affected, or potentially affected, by HS2.

7.2 A property bond scheme provides eligible property owners, at an early stage of the project's development, with a specific and binding promise of a well-defined, individual settlement, which the property owner can redeem in specified circumstances. If the bond recipient transfers the property to a third party, the bond would also be transferred to the same third party. Settlements are defined through independent professional property valuations.

7.3 There are two types of property bond proposals - a 'time-based' property bond scheme with a specific promise to purchase an individual property at a defined time, such as a specific event or a marketing period. Alternatively, a 'value-based' property bond scheme has a specific promise to compensate for any difference between the price an individual property achieves in the open market, and a specified price which that property is likely to achieve in the absence of the relevant major development.

7.4 The aim of property bond schemes is to ensure that property owners do not suffer unreasonable losses because of any reductions in the market value of their properties, caused either by the direct impact of the proposed development, or 'blighting' effects of the proposed development on local property markets.

Consultation question 7. What are your views on the option to introduce a 'time-based' property bond scheme within a 'rural support zone' as an alternative to the voluntary purchase scheme?

7.5 In theory, a property bond scheme can help build confidence in property values and maintain equilibrium in the property market, while also serving to prevent or reduce property blight. The Council cautiously welcomes this as alternative proposal but requires further clarification and detail as to whether it would provide a better solution to the express or voluntary purchase schemes.

7.6 It is accepted by the Government that a well-designed property bond scheme has the potential to improve the position of property owners affected by HS2 and would deliver policy objectives on fairness, property market function and community cohesion. The Council would support a scheme which provided a fairer deal for the owner, and supplied a greater degree of certainty and stability for individuals and the community as a whole.

7.7 There is a sound case to be made for bond schemes underpinning market value and eliminating the distortion of a large Government acquisition of properties in an area. However, unlike the voluntary purchase scheme, it does contain the requirement of a six month marketing period before becoming effective. Although the Government's view is that this is necessary to provide an opportunity for the market to function normally, the Council is concerned that this scheme would fail to serve property owners who have reasons to execute a quicker sale.

7.8 The Council recognises that a voluntary purchase scheme and a property bond scheme would not be able to work in tandem on the basis of the need to market a property for a period of time under the bond scheme which would undermine the benefits it could ultimately bring to the area.

7.9 If there is to be a clearly defined boundary for this scheme, the Council expects it to be more generous than the 120 metres being proposed, and to include some leeway to allow more flexibility for property owners who are affected by differing landscapes and factors and do not necessarily fall within the specified distance.

Glossary

Blight: Planning proposals such as HS2 may have an adverse effect on property so that an owner-occupier is unable to realise the market value that would have been obtainable had the owner's land not been affected by the proposals because prospective purchasers, having learned of the planning proposals, either will not proceed with the purchase or will only offer a lower price.

Blight Notice: A Blight Notice is a means of asking the Government to purchase a property on compulsory purchase terms before it is needed for construction.
Exceptional Hardship Scheme (EHS): The existing interim measure introduced to assist homeowners who have an urgent need to sell, but because of HS2, cannot do so or can do so only at a substantially reduced price.

Initial preferred route: On 28 January 2013, the Secretary of State for Transport announced an initial preferred route for Phase Two. A public consultation on this route will run until 31 January 2014. Subject to the outcome of this consultation, along with on-going development work, the route could change in the future.

Owner-occupier: An owner-occupier is anyone who owns a property (either outright or with a mortgage) as a freehold or on a fixed term of years lease (with at least three years unexpired) and has it as their principal residence or place of business. This is as laid out in the Town and Country Planning Act 1990.

Rural support zone (RSZ): The area within which the Government proposes to introduce either a voluntary purchase scheme or a property bond scheme. The RSZ would apply in rural areas only, running from where the latest proposed HS2 route crosses Moorhall Road, close to the boundary between Buckinghamshire and the London Borough of Hillingdon to the junction with the West Coast Main Line. It would not apply south of Moorhall Road, or for the section of track towards central Birmingham to the west of the Delta junction at Water Orton. It would also not apply to areas where the line is in deep-bored tunnels. The distance of the outer boundary from the line of the route would be dependent on the scheme which was chosen.

Safeguarding: Safeguarding is a planning tool which aims to ensure that new developments which may conflict with planned infrastructure schemes do not affect the ability to build or operate HS2 or lead to excessive additional costs.

Un-blighted open market value: This is the value that a property would have on the open market if the cause of blight were removed – for example, if there were no plans for HS2.