

**AGENDA MANAGEMENT SHEET**

**Name of Committee** Portfolio Holder (Environment) Decision Making Session

**Date of Committee** 30 April 2010

**Report Title** Exceptional Hardship Scheme for Properties Affected by the Proposed Route of the High Speed Rail (HS2)

**Summary** On 11 March 2010, Government announced plans for a High Speed Railway (HS2) from London to Birmingham and beyond. The Preferred Route passes through Warwickshire. This report recommends that the Council supports the principle of an Exceptional Hardship Scheme for residential owner-occupiers proposed by Government in relation to HS2.

**For further information please contact** Andy Cowan - County Planner  
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**Would the recommended decision be contrary to the Budget and Policy Framework?** No

**Background Papers** <http://www.dft.gov.uk/pgr/rail/pi/highspeedrail/>  
[www.dft.gov.uk/consultations/open/2010-18](http://www.dft.gov.uk/consultations/open/2010-18)

**CONSULTATION ALREADY UNDERTAKEN:-** *Details to be specified*

- Other Committees  .....
- Local Member(s)  Councillor J Appleton  
(With brief comments, if appropriate) Councillor M Doody  
Councillor P Fowler  
Councillor Mrs J Lea  
Councillor B Moss  
Councillor D Shilton  
Councillor B Stevens  
Councillor J Whitehouse
- Other Elected Members  Councillor R Sweet



Cabinet Member  
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)

Councillor A Cockburn – supports the report.

Chief Executive

.....

Legal

I Marriott

Finance

.....

Other Chief Officers

.....

District Councils

.....

Health Authority

.....

Police

.....

Other Bodies/Individuals

.....

**FINAL DECISION**

**NO** (If 'No' complete Suggested Next Steps)

**SUGGESTED NEXT STEPS :**

*Details to be specified*

Further consideration by this Committee

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To Council

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To Cabinet

Report to Cabinet on 22 April 2010 and further reports to Cabinet as the HS2 proposal proceeds to formal consultation (expected to commence in Autumn 2010).

To an O & S Committee

Special Overview and Scrutiny Committee Meeting on 28 April 2010.

**Portfolio Holder (Environment) Decision Making Session  
– 30 April 2010**

**Exceptional Hardship Scheme for Properties Affected by the  
Proposed Route of the High Speed Rail (HS2)**

**Report of the Strategic Director for  
Environment and Economy**

**Recommendation**

That Warwickshire County Council supports the early implementation of the proposed Exceptional Hardship Scheme for owner-occupied residential properties affected by the proposed route of the rail link. In its response to the consultation on the scheme the County Council should request that the scheme be extended to cover commercial properties and in particular those occupied by small businesses.

**1. Introduction**

- 1.1 On 11 March 2010 Government announced its Preferred Route for a high speed railway (HS2) from London to the West Midlands. The Government recognises that the proposals can have an adverse impact on home owners who need to sell their property but are prevented from doing so because of the effect of the Government's unconfirmed proposals on property values.

**2. Exceptional Hardship Scheme**

- 2.1 If and when there are confirmed plans for HS2 route, affected residential and agricultural property owners will have access to statutory blight provisions – enabling affected owners to require properties to be purchased and providing for compensation for disturbance etc. However, Government now recognises that the announcement of such proposals yet to be confirmed can have an adverse impact on home owners who need to sell their properties and are being prevented from doing so because of the effect of the Government's unconfirmed proposals on property values.
- 2.2 Specifically in relation to its proposed Preferred Route for HS2, the Government proposes to introduce an Exceptional Hardship Scheme (EHS), the details of which have been extracted and copied in **Appendix A**. In summary, this Scheme would provide for the Government to purchase properties of residential owner-occupiers if they can demonstrate that they had a pressing need to sell at that time and they would suffer hardship if they had to wait until the statutory blight provisions to be triggered by the HS2 proposal preferred route being confirmed. The full EHS

consultation paper can be viewed on the DfT website at [www.dft.gov.uk/consultations/open/2010-18](http://www.dft.gov.uk/consultations/open/2010-18). The consultation closes on 20 May.

- 2.3 Obviously it is important that Government canvasses public views on major schemes, such as this, before it finally makes up its mind. However, as the County Council advised in 2002 in relation to the proposed options for new and expanded airports, this can cause hardship to some people who have an exceptional need to sell their properties. The types of personal circumstance identified in the proposed EHS appear to cover the most likely situations that residential owner-occupiers may find themselves in and there are no geographical limits specified to limit the scope for them being considered. However, in particular the owners of small businesses could also be adversely affected by the proposed rail line. Therefore, it seems appropriate that these should also be included in any exceptional hardship scheme. The County Council in its response to the consultation will recommend that the scheme be extended to cover commercial properties at the very least small those of businesses.
- 2.4 Therefore, the Government's proposed Exceptional Hardship Scheme is to be welcomed and should be supported in principle provided its scope is extended to cover commercial properties, at the very least those of small businesses. It should be brought into effect as soon as possible to minimise the distress experienced in those particular instances where there is a legitimate case to be addressed.

PAUL GALLAND  
Strategic Director for Environment and Economy  
Shire Hall  
Warwick

9 April 2010

**Portfolio Holder (Environment) Decision Making Session  
– 30 April 2010**

**Exceptional Hardship Scheme for Properties Affected by the  
Proposed Route of the High Speed Rail (HS2)**

**HS2 Exceptional Hardship Scheme - The Government's Proposals**

**What are the Objectives of an Exceptional Hardship Scheme?**

- 2.1 On 11 March, the Government published its Command Paper setting out its preferred route option for a new high speed rail link between London and the West Midlands and potentially beyond.

**Existing protections**

- 2.2 As explained in paragraph 1.3, it is proposed to hold a full public consultation in autumn 2010 on proposals for a high speed line. Following this, the Government will need time to consider the responses to the consultation. If it then decides to proceed with a high speed rail link, it would announce its proposed route and would then seek powers from Parliament to build the new line. The necessary arrangements would also be made to safeguard the route<sup>1</sup>.
- 2.3 The effect of safeguarding would be to trigger the statutory blight provisions under the Town and Country Planning Act 1990. These apply where the promoter of a transport scheme has given notice that they are looking to acquire property, or affect it by their proposals, and entitles a person with a qualifying interest<sup>2</sup> in that property to serve a blight notice on the relevant authority (in the case of High Speed Two, the Secretary of State). This may result in the Secretary of State purchasing the property in question. These provisions apply to certain commercial<sup>3</sup>, agricultural and residential land, and there is no requirement to demonstrate exceptional hardship.

**Exceptional Hardship**

- 2.4 However, the Government recognises that until it makes a decision on any high speed rail link there will be uncertainty as to whether the line will be built, exactly what route any such line would follow and which properties may need to be purchased to construct or operate it, as well as which other properties may be affected during the construction period or once any new line is open.
- 2.5 This means that, in some cases, there may be an effect on property values in the immediate vicinity of the preferred route option in the period before statutory protection is available.
- 2.6 There is no statutory remedy to address this, but the Government accepts that those adversely affected should have access to some form of redress. This is why it intends to introduce a non-statutory EHS which would be available to

eligible residential property owner-occupiers who can demonstrate that they have an urgent need to move before the statutory protection takes effect.

- 2.7 The EHS is intended as an interim measure, which would remain in place only until such time as the statutory blight provisions apply. If the Secretary of State decided to use compulsory purchase powers to acquire land from its owner later on, following a decision on the final route of any new line, or the owner of a nearby property would be injuriously affected<sup>4</sup> by the construction or operation of any line, then the normal statutory provisions for the assessment and payment of compensation would apply.

### **Proposed Introduction of an Exceptional Hardship Scheme**

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

### **Who would the Exceptional Hardship Scheme Cover?**

- 2.9 The aim of the EHS would be to protect the interests of residential owner-occupiers of properties the value of which may be seriously affected by the preferred route option for a new high speed rail link between London and the West Midlands, and who can demonstrate that they have an urgent need to sell their properties before any decision was taken which might trigger the application of the statutory blight provisions.

### **Criteria to determine qualification for the exceptional hardship scheme**

- 2.10 The owner-occupiers of residential properties on or in the close vicinity of any of the sections of the preferred route option (see paragraphs 1.4 and 1.5 above) could qualify for the EHS, subject to their meeting the other criteria set out in paragraphs 2.12 to 2.17.
- 2.11 Where the preferred route option is in tunnel we would expect any blighting effects of the proposals to be limited. Given this, the EHS would not apply to properties above tunnelled sections. More details on which sections of the preferred route option it is proposed to place in tunnel can be found in the detailed plan and profile route plans, mentioned in paragraph 1.5.

### **Type of Property and Qualifying Interests**

- 2.12 At the time of applying for the EHS a person must have a “qualifying interest” in a residential property which they are attempting to sell. This means that they must be the owner-occupier<sup>5</sup> of the property. If the property is commercially let or if the occupier does not own the property and is a residential tenant subject to a periodic tenancy<sup>6</sup> then they will not have a qualifying interest or be eligible for the EHS. Owners of non-residential properties would not be eligible for the EHS. Owners of residential properties which are not the owner’s main place of residence – e.g. second homes – would also not be eligible.

## **Exceptional Hardship**

- 2.13 Residential property owner-occupiers would have to be able to demonstrate that they had a pressing need to sell their property at that time and that they would suffer exceptional hardship if they had to wait until such time as the statutory blight provisions applied.
- 2.14 It is proposed that the following circumstances would be regarded as potentially giving rise to such need and related extreme hardship:
- a change in employment location;
  - extreme financial pressure;
  - the accommodation of an enlarged family;
  - a requirement to move into sheltered accommodation, a nursing home, or with other family members;
  - a medical condition suffered by a family member living in the property.

## **Effort to Sell**

- 2.15 Applicants would have to demonstrate that they had already made reasonable efforts to sell their property; that it had been on the market for at least 3 months and that no offer had been received within 15% of its existing open market property price (that is the price it would most likely have fetched other than for the High Speed Two preferred route option).
- 2.16 Applicants would also need to demonstrate that their ability to sell their property had been seriously affected and that these difficulties were directly related to the High Speed Two preferred route option, rather than other factors (for example that the property market in their area was already slow and that broadly similar properties that were not close to the Government's preferred High Speed Two route option were also affected).

## **Prior Knowledge of High Speed Two Proposals**

- 2.17 An applicant would not be eligible for the EHS where they bought their property at a time when they could reasonably have been expected to have been aware of the High Speed Two preferred route option.

## **Exceptional Hardship Scheme Principles and Criteria**

- 2.18 Do you agree with the proposed principles underpinning the proposed EHS? If not, what alternative arrangements would you propose, including specific criteria for determining qualification for the scheme?

## **How would the Exceptional Hardship Scheme Operate? Process**

- 2.19 Where a residential property owner-occupier has an urgent need to sell their property and believes that the value of that property had been affected by the High Speed Two preferred route option, they would be able to apply to the Secretary of State to purchase their property under the EHS. It is proposed to

set up a panel of experts, including independent members, which would consider individual applications and make recommendations to the Secretary of State as to whether they should be accepted. The panel would consider each application on its own merits, according to how far it meets the criteria set out in paragraphs 2.10 to 2.17 above.

- 2.20 Where the Panel recommended that the Secretary of State should offer to buy a particular property, independent valuers would be appointed to assess its value, based on unaffected realistic open market value (that is, what would have been the value of the property without any adverse effect arising from the High Speed Two preferred route option).
- 2.21 The valuation would not cover additional costs, such as the seller's agents & legal fees or removal costs, on the grounds that if the property owner was already looking to sell their property they would normally expect to have to meet these costs themselves. In addition the Secretary of State would not make any payments as part of the EHS process which could be payable later on if the property was subject to compulsory acquisition. For example this would include home loss payments, which are fixed sums payable to persons displaced from property where compulsory purchase takes place.

### **Dealing with applications**

- 2.22 Should the Government decide to introduce an EHS, the scheme would come into force on the date of announcement and applicants who consider that they met the eligibility criteria would be able to apply to the Secretary of State for consideration with immediate effect.
- 2.23 The Secretary of State would be required to determine each application within three months of receipt. Where the Secretary of State offered to buy the property in question, the applicant would have two months to decide whether to accept the offer.
- 2.24 The EHS would be entirely discretionary. In other words, the Secretary of State would be under no automatic obligation to buy any individual property, and the applicant would be under no obligation to sell the property if the Secretary of State offered to buy it.

#### Notes:

- 1 Safeguarding is a process under which the Secretary of State issues directions under the Town and Country Planning (General Development Procedure) Order 1995. These directions are given to local planning authorities and are designed to protect route corridors which have already been identified for building transport and other projects. Once the directions are made, where a third party submits certain types of planning applications which affect these route corridors – for instance to erect a new supermarket – the applications need to be reviewed in order to safeguard the development of the project which is the subject of the directions.
- 2 This term is defined in section 149 of the Town and Country Planning Act 1990.
- 3 In the case of commercial land, the provisions are restricted to land which has an annual rateable value which does not exceed £29,000.
- 4 Injurious affection is the effect of acquiring land for a public project on any neighbouring or remaining land; for instance, where only part of a person's land was purchased compulsorily by a scheme promoter how would this affect the value of the remainder of the owner's property and what compensation would be payable to the owner.
- 5 In this document, the terms "owner-occupier" is used to refer to someone who must have occupied the whole (or a substantial part) of the property as a private dwelling and who has either a freehold interest in the property, or a leasehold interest consisting of a tenancy granted or extended for a specified term of years of which at least 3 years remain unexpired.<sup>6</sup> This is a tenancy which is not granted for a fixed period of time but which can be ended by either party on the giving of the appropriate notice e.g. a standard rental agreement.