

**Proposed Decision to be taken by the
Portfolio Holder for Sustainable Communities
on or after 18 January 2013**

**High Speed Two: Safeguarding for London to West
Midlands and Property and Land Compensation
Consultations**

Recommendations

That the Portfolio Holder for Sustainable Communities authorises the Strategic Director for Communities, in consultation with the Deputy Leader and the Portfolio Holder, to finalise the County Council's responses to the consultations on the lines indicated in the appendices and to agree a joint response from 51m to the Property and Compensation consultation.

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. On 3rd December 2012, the Judicial Review into High Speed Rail 2 was opened, and Warwickshire County Council is one of 15 councils opposing the high speed rail link. The announcement of a decision on the Judicial Review is expected in January 2013. Meanwhile, HS2 Ltd is proceeding to develop HS2. It is intended that legal powers to build the line in the form of a hybrid bill will be put before Parliament by the end of 2013. Work is due to start on the line in 2017, subject to the hybrid bill being approved.

Consultations and Implications

- 1.2 Two consultations are now being undertaken by HS2 Ltd. One relates to the proposed safeguarding direction and a second covers the proposed property compensation scheme. This report deals with both. However, the proposed safeguarding scheme will more directly impact Warwickshire County Council's planning and minerals policy and planning control functions it therefore contains a more detailed response.
- 1.3 None the less, the issue of the proposed property compensation scheme is also considered in this report. The impact of property compensation is already, and likely, to continue to have an adverse impact on some peoples' health and wellbeing. Warwickshire County Council shares the concerns of many residents and action groups that this issue should be addressed fully, yet expedited efficiently.

2.0 Safeguarding Direction Consultation

- 2.1 Before the Secretary of State makes a formal decision on the safeguarding routes/procedures, HS2 Ltd is undertaking a consultation both on the area of safeguarded land and the procedures to be followed if a safeguarding direction is put into place.
- 2.2 The consultation documents ask a series of questions to which responses are invited. The questions and suggested responses are outlined as an annex to this report (Appendix A). The documents forming part of the consultation include maps showing the safeguarded area, including appendices containing the proposed wording for the safeguarding direction and proposed guidance for local planning authorities on meeting their requirements. There is also a draft impact assessment of the safeguarding proposal. All documents are available to view on HS2 Ltd website, at <http://highspeedrail.dft.gov.uk/consultations/safeguarding-consultation-london-west-midlands>
- 2.3 The timing of this consultation, specifically it preceding the Draft Environmental Impact Assessment and the details of the Y route (north of Birmingham to Manchester and Leeds) in the Council's opinion means that basic supporting evidence and detailed analysis is not available. There are many uncertainties in the scheme particularly the final route. Given the engineering requirements of the line (straight and flat) a small relocation in one area will have knock on effects further down the line, this is important given that the safeguarding area is only 60 metres each side of the line. It is recommended that a further consultation is carried out at a time when the required information is available and HS2 Ltd is able to give proper consideration of all the facts.

The Safeguarded Route

- 2.4 The Safeguarded Route follows the route of the proposed HS2 line through the County. The extent of safeguarded area and the implications of safeguarding differ between the parts of the route that are underground and the parts that are above ground or in a cutting.
- 2.5 The extent of the safeguarded area is 60m either side of the line where the line is above the surface and 30m either side of the outer edge of the tunnels for the tunnel sections. Where the proposed HS2 route is in a tunnel then the safeguarded area only relates to development below the surface, the guidance notes refer to developments with deep foundations although this is not explained in any more detail. Therefore, it is suggested that any planning applications requiring below surface works are provided to HS2 Ltd for comment. Recent correspondence with HS2 Ltd has indicated that it would wish to be consulted on all planning applications where the development involved foundations. However, as this is not clearly stated in the proposed safeguarding direction, and/or associated guidance, clarification of this will be required and referred to in Warwickshire County Council's response.

- 2.6 Where the proposed HS2 route is not in a tunnel, the safeguarding direction will require councils to consult HS2 Ltd on all planning applications within the defined area which again is 60m either side of the proposed route and can include wider areas where, for example, the proposed HS2 route would involve re-building an existing road bridge or provided some new structure to go over or under the line.
- 2.7 Following consultation on the safeguarded area, the Secretary of State of Transport proposes to issue safeguarding directions for HS2 Phase 1. At this stage we do not have a definitive timeline for this.

Implications for Warwickshire County Council as a Strategic Planning Authority

- 2.8 Once the safeguarding direction comes into effect, the relevant Planning Authority will have a legal duty to consult HS2 Ltd on any planning application that falls within the defined safeguarded area. Under the regulations, the Council will have to give HS2 Ltd 21 days to respond. If no response is received within that period, the Council can proceed to decide the planning application as it sees fit. If however HS2 Ltd respond, the Council should take into account its response in making its decision. If after receiving HS2 Ltd.'s response the Council decides to disregard its suggestions, the Council has to inform the Secretary of State. The Secretary of State in turn then has 21 days to respond and may decide to notify the Council that he has no objections to permission being granted on the application, or issue a direction restricting the granting of planning permission for that planning application. If the Secretary of State does not respond within the timeframe the Council can determine the application.
- 2.9 The consultation documents and the cost benefit analysis of the proposed safeguarding direction both state that there will be cost implications for local authorities in providing consultation documents for HS2 Ltd on relevant planning applications. The additional statutory duties and related expenditure proposed for LPAs comes at a time when authorities are seeking to cut costs and find savings. Where additional duties are required, these should be supported by additional resource from HS2 Ltd or central government.
- 2.10 The guidance for LPAs states that following a decision being made on a planning application that HS2 Ltd were consulted on, the Council should send HS2 Ltd a copy of that decision. Furthermore, it states that HS2 Ltd intend to agree the consultation procedures and wording for model conditions with the local planning authorities. We look forward to receiving these and discussing these in detail.
- 2.11 The documentation makes clear that the safeguarded routes may not cover all the land that is required by HS2 Ltd to build the route and that, as plans for the route are firmed up, there may be further safeguarding direction areas or amendments to the earlier safeguarded areas. This means that any consultation procedures set up are likely to need to be reviewed and amended as the HS2 route design is progressed.

- 2.12 A copy of the safeguarded route will be linked to the Council's planning system (APAS) so that HS2 Ltd can be consulted on relevant planning applications. Further updates to the safeguarded route must be available to an agreed timeline
- 2.13 The guidance implies that HS2 Ltd would like to receive notification of any permitted development proposals along the safeguarded route. This would be difficult to do and would require some agreement with HS2 Ltd once the safeguarding directions are in place. Obviously, some people who know their proposed development falls within the permitted development allowance may well go on to construct that development without informing the planning authority.
- 2.14 The guidance also requests planning authorities to send through details of any extant planning applications. Finally, when the Council reviews its Minerals and Waste Local Plan policies (proposals) map, we will have to show the safeguarded route on our plans and ensure that none of the local plan designations conflict with the safeguarded area.

Implications for Warwickshire County Council as a Land Charges Authority

- 2.15 Under the relevant regulations, any formal safeguarding direction has to be entered into a register of applications and as such appear on relevant land charge searches. Again, this raises issues if the safeguarded areas are amended following a search on a property. The Council will need to keep a record of when the safeguarded areas were amended and be prompt in uploading any amendments into its land charges system to avoid the possible issue of legal action should the incorrect information be given on a search related to a property that is, or was, affected by the safeguarded route.

Implications for Warwickshire County Council as a property owner.

- 2.16 The only Council property directly affected by the proposed HS2 routes is Water Orton Primary School. Part of the playing field is within the draft planning safeguarding zone, but not within the proposed extent of works. There are no proposals to the school that would be affected by the draft planning safeguarding zone.

Safeguarding Direction Consultation Conclusion

- 2.17 Notwithstanding the Council's objection to HS2, a preferred route has now been defined which crosses across the County. The proposed safeguarding direction will require the Council to consult HS2 Ltd on any relevant planning application which falls within the safeguarded area. Given the Council will have to work within the approved legal framework, subject to concerns about additional costs and potential future changes to the safeguarded area, the Council does not object in principle but draws the Portfolio Holder and HS2 Ltd to a number of issues of concern relating to the details and seeks clarification and commitment to reassure all parties of a robust process.

3.1 Property and Compensation consultation

3.1 The Property and Compensation Consultation sets out a proposed package of measures designed for owners and occupiers of property along the London – West Midlands line of the planned HS2 route. The proposals include:

- a system of advanced and voluntary purchase to simplify the process for property owners in the safeguarded area;
- a sale and rent back scheme, to allow homeowners whose property will need to be demolished to sell their homes, but remain living in them as tenants until the properties are required for the railway;
- a hardship scheme, to help those with a need to move during the development of HS2, but who are unable to sell their home despite being outside both the safeguarded area and the voluntary purchase zone;
- a series of measures designed to provide confidence for those in properties above tunnels (before and after surveys, settlement deeds and subsoil rights); and
- a framework for working with local authorities, housing associations and tenants affected by HS2, to agree a joint strategy to replace any social rented housing which is lost.

3.2 The consultation concentrates on the presumption of domestic property; however, there are significant shortfalls in addressing concerns of businesses, particularly rural ones which may be land-based.

3.3 The property and compensation consultation raises several issues for Warwickshire County Council and these are outlined in the response set out in Appendix B.

3.4 Working with local community groups, we are aware of the many concerns facing the affected communities. We are continuing to work with representatives from the various action groups to provide support where appropriate.

4.1 Conclusion

4.1 That the Portfolio Holder for Sustainable Communities endorses the recommendation.

Appendices

Appendix A – HS2 Safeguarding Consultation

Appendix B – HS2 Compensation Consultation

Background papers

1. High Speed Two: Safeguarding for London – West Midlands Consultation
<http://highspeedrail.dft.gov.uk/consultations/safeguarding-consultation-london-west-midlands>
2. High Speed Two: Property and Compensation for London - West Midlands Consultation - <http://highspeedrail.dft.gov.uk/consultations/property-compensation-london-to-west-midlands>

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High Speed Two: Safeguarding for London – West Midlands Consultation

- 1.1 The Government announced in January 2012 that they had decided to proceed with plans to build a new high speed rail line commonly known as High Speed Two (HS2). It is intended that legal powers to build the line in the form of a Hybrid Bill will be put towards parliament by the end of 2013. With work on the line starting in 2017 subject to the hybrid bill being approved. HS2 Ltd launched a public consultation on safeguarding which will run from 25 October 2012 to 31 January 2013.

What is Safeguarding?

- 1.2 To protect the planned HS2 route from additional development the Government is proposing to protect the route by safeguarding directions.
- 1.3 Safeguarding is the process of protecting from future development the land that would eventually be required to build and operate HS2 from development that would conflict with HS2. Safeguarding directions apply primarily to local planning authorities who would be obliged to notify HS2 Ltd of any planning application within the zone. The current consultation proposes a 60 metres wide safeguarding zone on either side of the track.

Current Consultation

- 1.4 This consultation seeks views from relevant Local Planning Authorities (LPA), other key stakeholders and other interested parties in order to inform the Secretary of State for Transport's decisions on safeguarding.
- 1.5 The Secretary of State proposes to issue safeguarding directions to protect the HS2 London to West Midlands route. The aim of this measure is to ensure that new developments along this route do not affect the ability to build or operate HS2 or lead to excessive additional costs.
- 1.6 The consultation presents draft directions, draft guidance on the directions, plans outlining the land proposed to be safeguarded, and explanatory notes for those plans.
- 1.7 This consultation specifically seeks responses to the following questions:
1. Do you agree with the proposal to safeguard, and the content of the proposed safeguarding directions (Annex A)? If not, please explain why
 2. Do you agree with the content of the guidance for Local Planning Authorities on the directions (Annex B)? If not, please explain why.
 3. Do you agree with the geographical coverage of the land to be safeguarded? If not, please explain why.

4. Do you consider that the draft Impact Assessment is a fair reflection of the costs and benefits of the safeguarding proposals on the operation and outcomes of the planning application process? If not, please explain why.

- 1.8 Warwickshire County Council is concerned with the timing of this consultation and specifically it preceding the Draft Environmental Impact Assessment and the details of the Y route (north of Birmingham to Manchester and Leeds). The Council believes that these should have informed the recommendations within this consultation. Without the necessary full evidence base being available the Council has misgivings over the basis of the consultation report and would suggest that a further safeguarding consultation be carried out subsequent to all the necessary information being available to allow informed recommendations to be made.
- 1.9 Indeed the EIA process relating to this project is at a relatively early stage with the Scope and Methodology Report (SMR) only published on 4th September 2012. This is a technical document that outlines the environmental topics which will be assessed as part of the Environmental Impact Assessment. It sets out the survey methods that are to be used, which geographical areas will be included and the period of time over which effects will be assessed. However it is not an EIA and does not provide an assessment of the likely environmental impacts. The approach to this consultation is therefore flawed as the full environmental impacts cannot have been fully assessed and the impacts of HS2 phases 1 and 2 (Specifically the Y) need to be considered together. Thus the true costs and impacts of HS2 and the necessary route safeguarding for HS2 cannot have been adequately examined at this stage

Response to questions.

Question 1: Do you agree with the proposal to safeguard, and the content of the proposed safeguarding directions (Annex A)? If not, please explain why.

- 1.10 Whilst Warwickshire County Council does not accept the merits of the proposed HS2 line it does recognise the requirement to safeguard land in order for large scale infrastructure projects to occur. Safeguarding areas of land is common practice within Planning and Development Management and something which relevant Planning Authorities are unlikely to have difficulty in implementing.
- 1.11 The draft safeguarding direction would direct local planning authorities to consult HS2 Ltd on any planning application which falls on land within the limits shown on the safeguarding plans.
- 1.12 There is no information relating to any criteria which HS2 Ltd would be required to follow. There is a significant danger that if the consultee were not subject to clear and precise guidance that developments which are acceptable in planning terms would be needlessly delayed by objections from HS2 Ltd. It is difficult to assess the appropriateness of safeguarding without an understanding of what rules and guidance HS2 Ltd would be required to follow. Draft Guidance should have been produced as part of this consultation to adequately demonstrate that safeguarding is the most appropriate option and that appropriate guidance and safeguards will be in place. Any guidance should be clear and easy to understand in order to avoid discrepancies in implementation. Such guidance should also be available for members of the public, developers, local authorities and other interested parties. Allowing such guidance to be available for general view would enable schemes to be tailored to minimise impacts upon the safeguarding area and reduce the potential for HS2 Ltd to raise concerns.
- 1.13 The statutory requirement to notify a new organisation on planning applications also has potential to delay the determining of planning applications. Under resourcing of statutory consultees is something which has an impact on the planning system as a whole and not just that individual consultees. Under resourcing often results in late submission of responses towards the end of the statutory time frame. In some instances late in the process the consultee will request further information which adds additional time and has resource implications delaying the processing of planning applications in a manner contrary to the spirit and policies of the National Planning Policy Framework (NPPF). Having regard to the above any statutory consultee must be adequately resourced, set out clearly what service they will

deliver and within which time frames and operate in a proactive manner where practical. The consultee must also be accountable for their responses and a clear complaints procedure should be developed and published. Central Government have been clear that the planning system should not place unnecessary burdens upon developers and it is imperative that any objections raised by HS2 Ltd are reasonable and timely. There is no evidence within the consultation to suggest that the detailed consideration has been given to how HS2 Ltd would implement their role in the planning process.

- 1.14 In addition to the above it is recommended that any HS2 Ltd Consultee response team be available to participate and comment at the pre application stage. Pre application advice is considered to be an important element to the development management process. Pre application Advice is something which developers also value as a mechanism to reduce financial expenditure and time through early engagement and establishing the potential acceptability of the proposal as well as providing some clarity and guidance of the planning process.

Question 2: Do you agree with the content of the guidance for Local Planning Authorities on the directions (Annex B)? If not, please explain why.

- 1.15 The draft guidance for LPA's on safeguarding directions (Annex B) gives a clear indication of instances where HS2 Ltd must be consulted. The guidance does however place additional burdens which will incur costs upon LPAs including:

- Copies of all decisions on which HS2 Limited have been consulted to be sent to their safeguarding team.
- Required to refer applications which LPAs are minded to approve contrary to the advice of HS2.
- Requirement to send material by first class post.
- LPAs required to receive purchase notices.
- Inclusion of safeguarding details on local land charges register.
- Inform HS2 Ltd of proposals to carry out works under article 3 and schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
- Inform HS2 about any extant planning permissions affecting land within the consultation zone.
- Review of pending planning applications.
- In preparing local plan documents safeguarding areas should be included on proposals map and proposals.

- 1.16 Significant burdens in the form of additional officer time and subsequent costs will be placed on Local Authorities within Warwickshire given that one third of the proposed line (Phase 1) and more in phase two would pass through the County. Burdens
- 1.17 Warwickshire County Council currently notify interested parties who have responded of any decision made via letter; however we do not automatically include the decision notice as this is available on our website. The inclusion of a decision notice or a bespoke letter with the decision notice attached would require the County Council to modify its current procedure to enable compliance with the draft direction. It is suggested that directing interested parties, including HS2 Ltd, to the web documentation would be adequate.
- 1.18 Referral to the Secretary of State for Transport where HS2 Ltd raise(s) objection is clear, what is absolutely unclear is the criteria used by HS2 Ltd to assess the impacts. In addition objections raised by HS2 and potential referral would have additional resource implications on the determining authority. There is potential for determination times for applications to be delayed and certain applications which would have been determined under delegated powers may now be required to be considered by elected members which again adds additional time to the overall process. The role of HS2 Ltd therefore has a real potential to delay the planning process and burden already stretched Local Authorities with further statutory requirements. The additional statutory duties and related expenditure proposed for LPAs comes at a time when authorities are seeking to cut costs and find savings. Where additional duties are required these should be supported by additional resource from HS2 Ltd or central government.
- 1.19 The rejection of applications purely on the grounds of incompatibility with HS2 may give rise to an increase in appeals which will have to be defended by the relevant planning authorities. Again this will impact on resources and Warwickshire County Council would expect reimbursement from HS2 Ltd.
- 1.20 There a requirement to send consultations to HS2 Ltd Safeguarding team via first class post. There is no acknowledgement that different planning authorities have different methods of notification. Some may include postage by second class whilst allowing additional days for delivery or others electronic notification. It is disappointing that notification in accordance with each Local Planning Authorities' own established procedures are not considered adequate. If councils were bound to individually notify each statutory consultee in a tailor made manner then the resource implication could be substantial. The inflexibility allowed within the direction is considered

by the Council to be problematic and unreasonable and should be addressed by HS2 Ltd.

- 1.21 The requirement for inclusion of safeguarding details on local land charges register will require each relevant Local Authority to update their mapping systems and therefore will have resource implications. The costs which could be significant have not been accounted for and again the burden of them would fall on the Local Authority rather the Central Government or HS2 Ltd. This needs to be reviewed.
- 1.22 Under article 3 and schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) significant development can be carried out which falls outside of the control of the Local Planning Authority. It is not clear how HS2 Ltd would use such information and any attempt to scupper development being carried out under permitted development rights within the safeguarding area would have significant impacts upon exiting commercial, residential and agricultural activities. In many circumstances there is no requirement for the developer to notify the Local Planning Authority of their intension or completion of development which constitute permitted development. Having regard to the above HS2 Ltd Safeguarding Team would get an extremely incomplete picture of such developments. In addition this request has further significant resource implications on the relevant Local Authority. HS2 Ltd should make it clear what purposes they propose to use this data for in order to be transparent in the public interest.
- 1.23 In order to inform HS2 Ltd about any extant planning permissions affecting land within the consultation zone Warwickshire County Council must insist that further guidance is produced explaining the scale of the development which they are interested. If this request relates to all planning permissions of any scale and nature it is likely to have very significant resource implications on Local Planning Authorities which the cost benefit analysis in our opinion have not taken account of Warwickshire County Council would expect reimbursement for this additional work.
- 1.24 There is also a requirement for Local Planning Authorities to review pending planning applications. Again clarification of the scale and nature of application is essential. It is a concern that planning applications which may have been subject to pre applications discussions, negotiations etc. may suddenly receive objections from HS2 Ltd. In addition some applications will have been considered by the relevant Planning Committee and have resolutions to grant subject to the agreement of S106. If consultation was required to be carried out on schemes which have been thorough a committee process this would not only delay the overall process but could result in conflict with formal

committee resolutions. This is likely to have significant resource implications for planning authorities along the route of the line.

Question 3: *Do you agree with the geographical coverage of the land to be safeguarded? If not, please explain why.*

Methodology

- 1.25 The Council is not convinced that a robust assessment of the impacts and required safeguarding areas has been carried out.
- 1.26 There is no evidence within the consultation documentation to demonstrate that the methodology followed by HS2 Ltd is justified and reasonable. Paragraph 1.16 of the consultation document states that the draft safeguarding plans 60m either side of the line reflect, "HS2 Ltd's present judgement of typical safeguarding requirements where no particular engineering and planning consideration arise". There is no information provided to justify how this figure has been derived. How then can this distance be considered anything other than conjecture given that the EIA is still being drafted and that HS2 might be expected to have worse impacts than previous high speed railways, with a line speed of up to 400k/hr which would be approximately a third faster than Channel Tunnel Rail Link (HS1), TGV and other European high speed lines. The Council stress the need for full consideration of the environmental impacts to be considered as part of this consultation.
- 1.27 Paragraph 1.18 of the consultation document recognises that further planning work and community engagement may well affect the future land requirements for HS2. It should also be recognised that the EIA may well affect land and even route requirements and therefore without this as a minimum there is potential to sterilise areas of land through safeguarding on the presumption that the route will remain as currently proposed which surely cannot be the basis of any meaningful consultation.
- 1.28 Paragraph 1.19 acknowledges the potential for future design and planning work to result in land being added or removed from its safeguarding designation. As the consultation document acknowledges, the designation of land within a safeguarding area can have significant impacts on the future use, potential and ultimately value of land and property. It is for this reason that the Council are concerned that designating a safeguarding area at such an early stage may unnecessarily prejudice the future development of sites within the safeguarding area.

Minerals and waste site implications

- 1.29 There are a number of waste and mineral sites within Warwickshire which would be impacted on by the proposed route from either the safeguarding area falling within sites or potentially preventing future expansion.
- 1.30 The Council has mapped the extent of works for the route, as well as 60m and 120m buffers to provide an indication of the safeguard area and voluntary purchase zones respectively. In the absence of the Environmental Impact Assessment findings, a 1km buffer has also been included in the event that potential amendments to the route are required. Based on this mapping, there appear to be impacts on the following minerals and waste sites. Please refer to the supplementary maps fig.1 (ref: Min/NW), fig. 2 (ref: Was/NW) and fig. 3 (Ref:Was/SDC) and supplementary table 1 for waste site number references.

Minerals sites and/or allocations

- 1.31 Middleton Hall Quarry – this is a permitted site for sand and gravel extraction. The corner of the site is clipped by the line route, as well as the 60m safeguard area and the 120m voluntary purchase zone. It is understood that extraction has ceased and the mineral is exhausted, however a significant void remains as the site is undergoing landfill restoration. The proposed line may potentially reduce existing landfill capacity and prejudice the proposed restoration scheme.
- 1.32 It should be noted that part of the developed area was identified as a Preferred Area ('Site PA1 – Middleton Hall Extension') for sand and gravel extraction in the Minerals Local Plan (1995). Although part of the allocated area has not been developed, the allocation remains until the new minerals plan is adopted. Furthermore, an area was also submitted as a potential allocation in the emerging Minerals Plan (Minerals Core Strategy Revised Spatial Options Site 2 – Lower Farm, Bodymoor Heath). The undeveloped allocation and the MCSRSO Site submission fall within 200m of the route.
- 1.33 Dunton Quarry – this is a permitted site for sand and gravel extraction. The eastern boundary of the site lies approx. 40m west from the route and therefore falls within the safeguard area. Although extraction appears to have ceased, permission was granted in March 2012 for the extraction of the remaining 107,000 tonnes. This planning permission is in place and extraction

of material can lawfully commence at any point within the life of the planning permission. This therefore has the potential to prejudice the proposed HS2 route and any move to compulsory purchase or prevent extraction would sterilise the mineral. Sterilisation would be detrimental to Warwickshire's mineral land bank which is already significantly below the 7 year level required by the NPPF.

- 1.34 It must be noted that the proposed route cuts through an area allocated as a preferred area for sand and gravel extraction ('Site PA2 – Lea Marston') in the Minerals Local Plan (1995). Planning applications have been submitted previously for this site and it has also been promoted as a potential allocation in the emerging Minerals Plan ('Minerals Core Strategy Revised Spatial Options Site 21 – Hams Lane, Lea Marston').
- 1.35 There is also an allocated site (AS1 – Bodymoor Heath) within 1km of the route – this was identified as an area of search for sand and gravel extraction. The allocation will remain until the new minerals plan is adopted.
- 1.36 Sites located outside of the safeguarding areas but within 1km have the potential to be affected by any realignment of the proposed HS2 line or alterations and restrictions encompassed on the highway network as a result of the proposal and the Y route.

Waste sites and/or allocations

- 1.37 Dunton Landfill and MRF (KSD Recycling Ltd) – The eastern boundary of the site lies approx. 40m west of the route and therefore falls within the safeguard area and voluntary purchase area. Planning permission has been granted for the remaining sand and gravel deposits on site (approx. 107,000 tonnes) to be extracted and exported from site, the remaining previously landfilled materials to be excavated and processed into secondary/recycled aggregate, and the continued use of the site for the recycling of imported waste materials (including construction and demolition wastes and Incinerator Bottom Ash sourced for the Coventry Energy from Waste Plant) into secondary/recycled aggregates. The site has processed up to 500,000 tonnes per annum (tpa) in the past. The proposed operations would be completed by the end of 2021 and the site restored to agriculture. The site is considered to be of County and regional importance in terms of delivering Construction and Demolition (C&D) waste recycling capacity.
- 1.38 Coleshill Sewage Treatment Works (Severn Trent Water Ltd) – the existing works currently provides approx. 12,000tpa of biological treatment capacity. Part of the site is also permitted for thermal treatment of sewage sludge and lies approx. 20m east of the proposed route and therefore falls within the

safeguard area and voluntary purchase zone. It is understood that there may be further waste proposals in the pipeline for this site.

- 1.39 Packington (Sita UK) – there are numerous waste operations at the site. The western boundary of the permitted landfill area lies approx. 210m east of the proposed route. The landfill currently provides 525,000 tpa of non-hazardous waste management capacity, the most of any waste management site in the County. In addition, there is an operational wood shredding facility (processing up to 45,000tpa), an operational composting site (processing up to 60,000tpa) and an operational wood waste recovery operation (processing up to 104,000tpa) within the landfill site area. There has also been a resolution to grant planning permission for a [proposed development of a heat and material recovery facility](#) for horticultural uses via anaerobic digestion with renewable power generation, polytunnels and associated infrastructure, processing up to 50,000tpa. It is understood that the road leading to the access into the landfill is intended to be remodelled and a new access is likely to be required. The associated highway works to A446 may also encroach upon the surface water lagoon in the landfill. It should also be noted that the whole Packington site was allocated as a Materials Recovery Facility in the Waste Local Plan (1999). This allocation remains until the Waste Core Strategy is formally adopted. The Packington site is therefore a waste management site of strategic importance for the County (and arguably the region) and delivers a significant proportion of the County's waste management/treatment capacity.
- 1.40 Flexdart Scrapyard – this site lies approx. 600m east of the route and is permitted to process up to 75000tpa of scrap metals.
- 1.41 Coleshill Quarry - lies within 1km east of the proposed route. The site is exhausted of mineral but landfill restoration is ongoing. Site inputs are currently unknown but a considerable void remains. There is also a materials recycling facility with a temporary permission at Coleshill Quarry which processes a substantial amount of Construction and Demolition (C&D) waste with a capacity to process 50000 – 90000 tonnes per annum.
- 1.42 Ufton Landfill (Biffa Waste Services) – this lies approx. 420m west of the proposed route. The site largely takes non-hazardous waste, although there is a hazardous waste cell that can take stabilised non-reactive hazardous waste – in this case, cement bonded asbestos. The site currently handles approx. 100,000tpa. Permission has also been granted for in-vessel composting (operational) and a MRF (non-operational) permitted to process up to 40,000tpa.

Conclusion on Mineral and Waste Site Consideration

- 1.43 In conclusion, the Council requires that all operational or permitted sites are recognised and that any impacts from HS2 are reduced to the fullest extent possible or are appropriately mitigated to ensure their continued operation. This would be in accordance with Policy CS8 (Safeguarding of Waste Management Sites) of the Warwickshire Waste Core Strategy.
- 1.44 If the sites listed above are lost to HS2, there will be a significant adverse impact on the Council in that it may be unable to meet its future waste management capacity and mineral provision requirements. If the HS2 proposal results in any loss of provision, it is unreasonable for the Council to be expected to meet the shortfall as this will result in significant costs in terms of time and resources (already invested by the Council to secure the sites' planning permission). HS2 Ltd will therefore need to ensure that any impacts on these sites are avoided, satisfactorily mitigated or adequately compensated or offset to overcome any such potential impacts.

Minerals Safeguarding

- 1.45 In accordance with paragraph 143 (bullet point 3) of the National Planning Policy Framework, Warwickshire County Council has defined Minerals Safeguard Areas (MSAs)/Minerals Consultation Areas (MCAs) *"in order that known locations of specific mineral resource of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked."* Furthermore, para. 144 of the NPPF states that *"...local planning authorities should...not normally permit other development proposals in minerals safeguard areas where they might constrain potential use for these purposes."*
- 1.46 The MSAs/MCAs have been developed by the British Geological Survey. The MSAs/MCAs are delineated using the mineral resource area with a 250m buffer for minerals that do not require blasting, and 500m for those that do. The purpose of the buffer is to safeguard the mineral resource from proximal development. The methodology used takes account of the case studies provided in 'A guide to minerals safeguarding in England' (McEvoy et al, 2007), which is widely considered to be the authoritative guidance on minerals safeguarding. Given that mineral development and rail construction may share the same impacts (noise, dust, fumes, vibration etc.), it is questioned how the 60m safeguard area is considered appropriate in this case, when up to 250m has been used for minerals safeguarding purposes. It is extremely concerning that the proposed safeguarding areas is significantly less than these established standards particularly given the lack of necessary evidence to support such a reduced distance. This should be reviewed.

1.47 Notwithstanding, every effort should be taken to prevent the unnecessary sterilisation of minerals resources along the route. The attached drawing (Number 1) entitled 'hs2 safeguarding route - minerals safeguarding areas' shows that the proposed route, safeguarding area and the voluntary purchase zone lie within the Council's defined sand and gravel and cement raw materials MSAs. The NPPF advises that prior extraction of the mineral should take place where it is practicable and environmentally feasible, if it is necessary for the non-mineral development to take place. This would not only prevent sterilisation of the mineral, but the material could be used on site, offering significant sustainability benefits. In accordance with the NPPF, the Council considers that a full minerals assessment must be undertaken (with borehole evidence as appropriate) so that an assessment can be made as to whether prior extraction of the mineral is practicable and environmentally acceptable.

Question 4: *Do you consider that the draft Impact Assessment is a fair reflection of the costs and benefits of the safeguarding proposals on the operation and outcomes of the planning application process? If not, please explain why.*

1.48 The Draft Impact Assessment is not considered to fully analyse the impacts, risk, and effects of the proposed safeguarding route. There have been a very limited number of options considered (only two in total). One of the options (option 0) is to do nothing which is used as the baseline option. The Draft Impact Assessment has not considered alternative safeguarding distances other than 60m (option1). The Council would have expected that numerous options would have been considered in order to ensure that the best safeguarding distance has been identified.

1.49 HS2 Ltd appear to have not given due consideration to other alternatives within the Draft Impact Assessment. The draft assessment acknowledges that there has been no consideration of alternative distances because, "to do so would undermine safeguarding's primary purpose as a planning and engineering tool". The Council do not accept that this is a correct synopsis of the situation. In our opinion the Draft Impact Assessment should have looked at greater and shorter distances in order to identify any other impacts that need to be considered. A smaller distance may have shown to be acceptable and could have reduced the potential sterilisation of land that would be under the 60m buffer be designated as safeguarding land. In addition consideration of increasing the overall distance is extremely important particularly as the consultation documentation acknowledges that the safeguarding distances will need to be increased in certain areas to mitigate against local impacts. The lack of this level of detailed consideration does significantly concern the Council. Option 1 (60m) is based on HS2 Ltd's judgements and assessment both of which the Council at the current time do not have confidence in. There

is little justification provided to demonstrate that the 60m zone is the only option other than to "do nothing".

- 1.50 The Draft Impact Assessment acknowledges that LPA's will have to assess the impact of HS2. It acknowledges that LPA's will incur addition costs, however there is no detailed assessment of what this actually means and therefore the impacts are not considered to have been adequately considered and analysed.
- 1.51 The Draft Impact Assessment is also not able to monetise the benefits to HS2 Ltd and land-owners and instead only mention the benefits such as removal of risk to both parties. The assessment appears rather one-sided and does not critique the strengths, weaknesses, opportunities and threats to the Council's satisfaction.
- 1.52 The Draft Impact Assessment in the Council's opinion, lacks basic supporting evidence and detailed analysis. It is recommended that a further consultation is carried out at a time when the required information is available and HS2 Ltd are able to give proper consideration of all the facts. Without the necessary background work it is considered that the consultation lacks the information to inform the recommendations.

High Speed Two: Property and Compensation for London – West Midlands Consultation

1.1. The Government announced in January 2012 that they had decided to proceed with plans to build a new high speed rail line commonly known as High Speed Two (HS2). It is intended that legal powers to build the line in the form of a hybrid bill will be put before Parliament by the end of 2013. With work on the line starting in 2017 subject to the hybrid bill being approved. HS2 Ltd launched a public consultation on property and compensation which will run from 25 October to 31 January 2013.

Statutory Compensation

1.2. HS2 will be the longest infrastructure project undertaken in Britain and the blight period faced by residents and businesses along the line and particularly in Warwickshire in HS2 Ltd's own terms will be for 'a long period'. The first passenger service is expected in 2026. One year after the trains start running (2027) residents are eligible to make a claim under Part 1 of the Land Compensation Act 1973 for reduction in the value of property as a result of the physical effects of the operation of the railway. The Secretary of State for Transport at the start stated 'that no individual should suffer significant loss'.

1.3. The overall focus of the proposals is on owner occupiers and small businesses, and whilst some consideration has been given to some tenancy arrangements these do not reflect all those affected.

1.4. Whilst we welcome the additional compensation proposals being submitted in response to the exceptional nature of HS2 there remains very serious concern about the timing. The failure to provide any information about the route of the Y undermines the consultation. In some areas notably in North Warwickshire there will be numbers of people (individuals and businesses) and communities who will ultimately find themselves on the route of the Y, but are not being consulted now in a meaningful way (because they do not know whether or not they are affected) on a matter that could ultimately be of great interest to them. This could also lead to an unequitable situation on compensation between Phases 1 & 2.

Consultation on small claims scheme

1.5. Warwickshire County Council would welcome the opportunity to respond to proposals for a small claims scheme to help those who incur damage to their property as a result of HS2 construction works. We await the detail of this as

part of the formal public consultation on the Code of Construction Practice, which will set out HS2 Ltd's approach to minimising the impacts of construction on local communities.

Business Compensation

- 1.6. The consultation concentrates on the presumption of domestic property. There are significant shortfalls in the small business compensation package as there is almost no detail on 'relocation related costs' for a business should the property it occupies be needed or become unsuitable as a result of HS2.
- 1.7. The consultation does not provide for commercial businesses and in particular the compensation for land and resources, this should be reviewed and business compensation addressed.

General Comments

- 1.8. The final compensation scheme should apply to both residential and business premises and to owners of agricultural land, the current proposals do not.
- 1.9. Any scheme should aim to ensure that as far as possible the property market continues to operate normally in the affected areas. This should cover not only those who wish to move but also address the issues surrounding re-mortgaging where property owners may find it difficult or impossible to re-mortgage, or at best face high interest rates and or larger capital investment.
- 1.10 The final compensation scheme should be fair and transparent and should offer a consistent approach, so that those property owners affected are clear on the processes. The proposed scheme shows a number of inconsistencies for example in the valuation of property - an approach is proposed in the advanced purchase and voluntary purchase scheme which is not consistent with the approach in the hardship scheme proposal.

Question 1: Views are sought on how the Government is proposing to exercise its discretion in operating the statutory blight provisions for the advanced purchase of properties for HS2.

What are your views on the proposed advanced purchase process? (Chapter 2 of the Consultation Document)

- 1.11 It is our understanding that the proposed advanced purchase process, will be in addition to the current statutory system of compensation which outlines payments for owner occupiers and tenants with at least 3 years of the contractual term remaining whose property needs to be compulsorily purchased. Tenants and licensees who are displaced from their home may also be eligible for home-loss payments under the Land Compensation Act 1973. It is understood that compulsory purchase powers for HS2 will only be available after the HS2 hybrid bill has achieved Royal Assent.
- 1.12 The focus of the proposed advanced and voluntary purchase process is limited to residential owner-occupiers, owner-occupiers of small business premises and owner occupiers of agricultural units. The final scheme should reflect that of the statutory system, with regards eligibility and include tenants with at least 3 years of the contractual term as well as proposals to cover licensees.
- 1.13 The proposals do not offer any additional compensation to commercial or agricultural land owners who we understand have recourse to the statutory system of compensation and as a result are being treated differently.
- 1.14 The proposed route has been in the public domain for some time and some owners have moved on, renting their property whilst they relocate for employment, family or health reasons. Given the choice of selling at a lower value due to blight or leasing the property; many owners are likely to choose the latter in order to follow employment or family commitments. In such circumstances it is unfair to treat these properties as second homes, or the owners as landlords and therefore ineligible for compensation under the advanced purchase scheme. This should be reviewed.
- 1.15 There is continuing concern and frustration over the repeated delay in plans and information; including the delay to the Y route and the launch of consultation on the interim compensation arrangements for property owners affected by Phase 2. Parts of North Warwickshire will be affected and are therefore being disadvantaged by the current process being launched in isolation.
- 1.16 Warwickshire County Council welcome the proposal that eligible property owners within the safeguarded areas should be able to issue a Blight Notice

without having to show they have made 'all reasonable endeavours' to sell their property on the open market.

- 1.17 We understand the onus is on the property owner to demonstrate they are within the safeguarded zone. We understand from HS2 Ltd that the safeguarded area is not fixed, as it is possible that additional property or land outside the safeguarded area may be required as construction and engineering plans are further refined. Emphasis should therefore be on plans /maps being produced which are accurate and timely, as well as HS2 Ltd agreeing to notify property owners/occupiers directly, when plans change.

Question 2: Seeks views on proposals to introduce a Voluntary Purchase Zone (VPZ) in rural areas.

What are your views on the proposed voluntary purchase zone for rural areas? (Chapter 2 of the Consultation Document)

- 1.18 The proposed boundaries of the voluntary purchase zones (up to 120 metres either side of the line) should be based on other considerations as well as distance, for example noise contours and varying distances dependant on whether the property is adjacent to a green tunnel/cutting/at grade or viaduct. Particularly as HS2 Ltd state the route corridor for HS2 is now fixed but the precise line of the route is not. Warwickshire has at least one example where the proposed zone would mean that property owners would be unfairly treated; in the village of Gilson all the properties bar 6 are within the designated safeguarded area. This should be reviewed and a holistic whole community approach adopted.
- 1.19 The proposals for valuing property as part of the property and compensation arrangements are vague and do not provide certainty as to the independent nature of the agencies or the criteria for their selection (local versus national agencies) and their subsequent knowledge of the local property market. This needs to be reviewed.
- 1.20 The valuation approaches in the voluntary purchase zone differ from proposals outlined in the Phase 1 hardship scheme; it is not clear why two different approaches have been proposed and demonstrates a lack consistency. This needs to be reviewed.
- 1.21 We understand that for properties that are only partially within the VPZ the proposals are to consider each one on a case by case basis. In the examples given it would seem that average sized gardens and properties will be

considered, but applications where only a small part of a much larger property lies within the VPZ will be contested. Given that these are rural properties it would be helpful to understand how 'average' will be determined and what criteria will be used to make the assessment. This section needs to be reviewed.

- 1.22 There is concern that the VPZ proposal is to take effect 'as soon as possible following the completion of this consultation', however the precise line of route within the route corridor has still to be fixed. It is unfair to expect people to prove their property is within the 120m of the line of route without accurate maps. Therefore we consider that if no wholesale redrawing of maps is undertaken by HS2 Ltd, then at the least, there should be a redrawing of those parts of the of the route where the line is. Emphasis should therefore be on plans /maps being produced which are amended .accurate and timely, as well as HS2 Ltd agreeing to notify property owners/occupiers directly, when plans change.

Question 3: Seeks views on the Government's proposals on

- eligibility for the sale and rent back scheme
- the application process for a sale and rent back scheme
- how the tenancy agreement would work for the sale and rent back scheme

**What are your views on the proposals for a sale and rent back scheme?
(Chapter 3 of the Consultation Document)**

- 1.23 The scheme proposed applies only to owner occupied dwellings within the safeguarded area and excludes business premises. There is concern that in some instances owners of properties which serve as live work spaces are being disadvantaged as they are not eligible for the sale and rent back scheme.
- 1.24 The additional support provided by sale and rent back to those whose homes need to be demolished is welcomed. The proposals provide owners with an option to stay in their homes and reduces the number of vacant properties along the route and the further blight that results.
- 1.25 Furthermore it is recognised that whilst the construction of HS2 will take some time, renting out property to previous owners may assist in keeping communities together an aspect which should be a priority in rural locations and will help community cohesion.
- 1.26 Whilst we welcome the recognition that flexibility is offered on a case by case basis, there also concerns that this in turn means that the scheme's eligibility is unclear. A consistent approach should be adopted. For example where an owner occupier had moved out only in the short term, they would be eligible for

the sale and rent back scheme. No definition is provided of short term. This needs to be reviewed.

- 1.27 The value for money test for the sale and rent back scheme must be transparent and open to scrutiny, and the process should ensure that the owner has all the information including the proposed rent costs to make an informed decision whether to proceed or not.
- 1.28 Should the property fail the value for money test we understand that this provides owners with the option to remain in occupation until their property is compulsory purchased or they pursue the Blight Notice process.
- 1.29 Clarification is required on the role and effect of any land access agreements signed previously by owners who then become tenants.
- 1.30 Whilst it is understood that the sale and rent back proposal will be limited by the construction timetable, a publicly available timetable of such cut off dates should be published in advance and should form part of a broader communication commitment.

Question 4: Views are sought on the Government's proposed approach for applying the hardship criterion to HS2 hardships scheme applications. In addition views are sought on operation of the long term hardship scheme and specifically;

- Proposal to limit the duration of offers made under the hardship scheme to 6 months
- Proposal to limit the consideration of reapplications to these criterion or criteria that were unsuccessful during the previous application

What are your views on the proposed approach to the application of the hardship criterion for the long term hardship scheme for Phase 1? (Chapter 4 of the Consultation Document)

- 1.31 We welcome that the long term hardship scheme serves to help some property owners who have strong personal reasons to move but cannot do so other than at significant loss, because of HS2.
- 1.32 It is noted that it is inappropriate to set a fixed outer distance from the line within which an eligible property must be situated. However there is concern that the impact of HS2 will vary 'area to area depending on the topography of the land and type of construction of the line' (para 4.2, High Speed Two: Property and Compensation for London- West Midlands) which calls in to question the viability of setting a VPZ 120 metres either side of the track.

- 1.33 Clarification is sought as to why owners of non-residential properties would not be eligible for the long term hardship scheme.
- 1.34 There are concerns that applicants will need to prove that HS2 is the reason that their property has not sold. The criteria that the property needs to be on the market for at least 12 months prior to an application, appears excessive. Relocation to take up a new job, changes in family circumstances or even medical condition would require a much shorter timescale to realise assets and this criteria should be reviewed on a case by case basis.
- 1.35 In principle limiting the duration of an offer to 6 months seems fair, however there should be the ability to review this on a case by case basis.
- 1.36 Clarification is requested on how and when the proposed Hardship Scheme will replace the existing process and how will the winding up of one and the start-up of the next be handled to ensure a seamless transfer. This aspect needs to be reviewed.
- 1.37 In the case of unsuccessful applicants there is concern that reapplication within 6 months of the original decision will only normally be considered against the criteria upon which the previous application was refused. This aspect needs to be reviewed.

Question 5: Views are sought on the proposals for the process for the operation of the long term hardship scheme for Phase 1, as well proposals for,

- the use of aerial photography by the panel to help them better understand the landscape a property and line of route sits in.
- producing detailed guidance for applicants

What are your views on the proposed process for the operation of the long term hardship scheme for Phase1? (Chapter 4 of the Consultation Document)

- 1.38 The compensation arrangements proposed have several shortcomings. They do not address remortgaging issues; for example where no additional or re-mortgage is available, a mortgage is available but on terms that are much more expensive than would be normal or it is only available if the mortgager contributes substantial additional capital. This needs to be reviewed.
- 1.39 Remortgaging issues are not addressed by any of the schemes proposed and this should be addressed at the earliest opportunity. This needs to be reviewed.
- 1.40 There is a reliance on aerial photography to assist HS2 Ltd consideration of cases. There is a concern as it appears those affected will not be given the opportunity to put their case either through site visits or personal appearances

before the panel and whilst aerial photography provides a view it is not the full view. It is also not made clear who would fund the cost of producing the aerial photographs and the independence of those producing these. Aerial photographs taken in the height of summer will provide a very different view from those taken in the depth of winter where foliage cover will be reduced and the impact of the visual blight will be at its greatest. Timing is therefore critical. The reliance on aerial photography needs to be reviewed.

1.41 In agreement that the proposed panel should be seen to be independent and fair and that the independent members (including their selection criteria and who will meet their costs) along with details of other members of the panel and terms of reference should be transparent.

1.42 In agreement that detailed guidance should be produced. There is however concern that no definitive timescales have yet been provided.

Question 6: This question seeks views on,

- Whether the Government's proposals to monitor and limit the impact of settlement are sufficient
- How settlement deeds should work for HS2 in order to reassure property owners
- How the purchase of subsoil rights should be carried out for HS2

What are your views on the Government's proposals to restore confidence in properties above tunnels? (Chapter 5 of the Consultation Document)

1.43 The proposals raise several concerns including; how the remedial work will be undertaken and the timescales for completion of these works.

1.44 Concerns that whilst the likelihood of any damage is seen to be minimal, that proper arrangements are in place to ensure the cost of repairs are met and that property owners are supported. What assurances will there be that appropriately qualified contractors will be available to complete such remedial work, given that not many contractors will have experience of rectifying damage resulting from a high speed rail tunnel. Further assurances are required.

1.45 The payment of £50 for the perceived 'value' of subsoil is considered inadequate as it does not take into account the potential value of the resource (e.g. the presence of valuable minerals such as sand and gravel) or the potential area of land to be impacted and/or sterilised. These should be reviewed.

1.46 Warwickshire County Council recognise that that settlement deeds are an appropriate means of reassuring property owners above a tunnel. Similarly we

would favour settlement deeds being made available to all property owners whose property is located within 30 metres shown on plans of tunnelling work, indeed we would propose that the distance should be equal to that offered as part of the safeguarding area, that is 60 metres either side of the track

Question 7: This question seeks views on how Government can best work with affected parties to develop a joint strategy on social rented homes.

What are your views on how the Government should work with local authorities, housing associations and affected tenants to agree a joint strategy to replace any lost social rented housing? (Chapter 6 of the document)

- 1.47 Although Warwickshire County Council is not a housing authority, it supports replacement of any social rented housing affected by HS2.
- 1.48 We understand that the Government will commit to working with local authorities, housing associations and affected tenants to develop a strategy for replacing any lost social rented housing.
- 1.49 This joint approach is welcome from Government and we would expect that this would include the development of a compensation package for landlords and those tenants directly affected. In addition to the home-loss payment government should also be seeking to provide disturbance payments to cover the associated costs of tenants moving properties. In addition Government should also be looking at mechanisms to compensate landlords for any potential loss in income where the social rented properties cannot be replaced ahead of compulsory purchase.