

Approach to Compensation:

A fair deal for those affected by property blight from High Speed 2 (HS2)

This note summarises the approach to compensation that has been led by HS2AA over the last two years with the support of Action Groups, AGAHST, and many other external organisations.

1. Current strategy

Our strategy is to adopt a twin tracked approach of Plan A (challenging decisions already made through legal action and pushing the Property Bond) and Plan B (getting the best from DfT proposals eg removing 'hardship' from the hardship-based scheme and improving other areas of compensation):

- **Legal action**
 - Seeking judicial review of Jan 2012 compensation decision (on basis of deficient consultation)
 - Investigating other legal opportunities eg on preventing the next consultation, contesting a hardship based scheme
- **Lobbying**
 - Press core fairness principles see 3 below. Support with advertising (under fairness slogan)
 - Press for Property Bond (Plan A) for *generalised blight* and a better hardship scheme (Plan B)
 - For other compensation areas ('safeguarding', compulsory purchase, tunnelling impacts, construction) press a 'key principles' list (with details as appropriate eg construction code)
 - Collaborate with other groups arguing for the same/similar outcomes eg NFU, CLA, 51m, CML on Property Bond; approach CPA on better Compulsory Purchase schemes;
 - Contacted all Lords, MPs (phase 1 & Y) to press home our case; use MPs Forum
 - Work with the Y who will represent a whole new group seeking compensation
 - Feed the media 'hardship' stories pressing home the unfairness of the present arrangements
- **2012 Consultation**
 - Collate hardship stories for responses, press, and MPs Comp & Mitigation Forum response
 - Offer sample responses for the consultation on all 5 aspects of DfT's compensation deal
 - Target the Y on compensation issues – MPs, public and local press, conferences
 - Aim for the biggest response ever to a consultation ie 100,000+ (and then press for action eg debate in house). This time we positively organise for mass responses!

We have made good progress with the above strategy. Regular updates are provided to the Interim Board, and for AGAHST/chairs meetings. A presentation was made to MPs Forum in April 2012 with AGAHST. The next hurdle is the consultation. We have plans for an ad campaign; work with others; target properties (eg via newspapers, parish councils etc) to get mass consultation responses

2. Compensation Schemes for HS2

In 2012 Justine Greening announced what she termed a '*fair property and blight deal*' 'to address any blight caused by its proposals for HS2 and to reassure property owners'. This consisted of:

1. A *streamlined purchase scheme* for statutory blight ie compulsory purchase
2. *Sale and rent back* for those in safeguarded area ie land required to build HS2
3. *Streamlined small claims scheme* for construction damage claims
4. A *package of measures* for those being tunnelled under eg before and after surveys
5. A '*refreshed hardship property purchase scheme*' for urgent sales and 'generalised blight' ie those properties that are affected but are not required for HS2

Each of these issues will be covered in the next Consultation, now due to begin in September 2012. The schemes are additional to the statutory compensation which is complex and often confusing. However even these new schemes (eg at (3) the Small Claims Scheme for construction damage) sometimes just cover your existing statutory rights eg your car being damaged by construction.

The last consultation in 2011 focused solely on the *generalised blight* issue where it presented 3 options for those whose properties are affected by HS2, one of which was to be taken forward. These options included the Property Bond that we strongly promoted in the 2010 consultation (with 84% support). Despite increasing support to 98% in 2011 the 'hardship based scheme' (at 5 above) was selected – following on from the Exceptional Hardship Scheme (EHS) that currently operates.

3. Core principles

The essence of the future compensation arrangements should be that

- Schemes are **demonstrably fair** and prevent individuals from suffering **any loss** as a result of a project purported to be in the national interest
- They **provide reassurance** to reduce the uncertainty that causes stress and property blight
- Schemes **fully support** those who want to move, re-mortgage, stay, and/or suffer construction
- **All losers and losses** are covered - business, agricultural units, homes and communities
- Schemes are **open and transparent** in operation and include **appeal** procedures
- They are **tailored** to the circumstances and unusually long time periods involved with HS2.

4. 'Generalised blight'

From the outset in 2010 our campaign focused on those whose property is not required to build HS2 but who will be affected by it (ie *generalised blight*). Principally this was because

- Statutory compensation means waiting until HS2 is operating (in 15yrs+) and even then is limited
- Government wanted then, as now, to limit compensation to a hardship based purchase scheme. We know HS2 affects a large number of people – over 170,000 properties¹ (homes, businesses, farms etc) are within 1km of phase 1 or 250m of a tunnel. By restricting the arrangements to 'hardship' criteria they are covering a tiny minority of those affected. The EHS has proved this.

Our approach is:

Plan A: press for the *Property Bond*. A briefing sent to MPs on the Phase 1 and Y is attached at Annex A. It provides background to the issue, argues why a hardship approach is unacceptable and what was wrong with the reasons given for rejecting the Property Bond. It attaches details of a recommended Property Bond purchase scheme that is based on private sector best practice.

Plan B: remove 'hardship' from the hardship-based scheme. The rules need to be relaxed: as long as a *hardship principle* remains at its core any scheme is defective and inappropriate. See Annex B.

5. Other compensation areas

The principles that should apply to the other areas of compensation are at Annex C. These have not to date been developed to the same degree of detail although they could eg a Construction Code.

6. Next steps

¹ Nationally 70% of homes are owner occupied, 13% privately rented, 8% housing associations and 9% local authorities. London has lowest ownership (57%), SE highest (74%); HS2 route and the Y is over 70%.



When the 2012 consultation is published this note will be reviewed. Sample responses will be developed consistent with our strategy.

April 2012 Parliamentary Briefing :To MPs on HS2 route: A fair deal for those affected by property blight from High Speed 2 (HS2)

We are concerned about the compensation arrangements that Government are putting in place for your constituents affected by blight from High Speed 2.

We were able to have the opportunity to present our concerns at the MP's Compensation and Mitigation Forum on 17 April 2012, and attach a short presentation and brief we presented.

For those whose property is not required to build HS2 but who will be affected by it (ie by *generalised blight*) the compensation arrangements are to be confined to those who suffer hardship:

- **For Phase 2 (the Manchester and Leeds legs of the Y)** an Exceptional Hardship Scheme (EHS) will apply from when a preferred route is announced (in Autumn 2012) until a final route is agreed (in early 2014) when the new Phase 1 arrangements are likely to apply
- **For Phase 1 (the London to West Midlands leg)** EHS applies until the new arrangements outlined by Justine Greening on 10 January 2012 are introduced in Autumn 2012 (when 'safeguarding' applies). We now know that the new scheme is to be a 'refreshed hardship-based property purchase scheme' (with details to be settled in a further May consultation).

Despite Justine Greening's announcement that the new arrangements were to '*address any blight caused by its proposals for HS2 and to reassure property owners*' they provide completely inadequate protection and no reassurance to those affected. We believe that there are better solutions that meet the Government's own stated objectives, and have received widespread support from many organisations and individuals who responded to the 2011 consultation, but who have been ignored.

Background

When the Labour Government published plans for HS2 in March 2010 there was an immediate adverse effect on the property market for properties in the general vicinity of the proposed route. Property sales collapsed and some properties have lost as much as 40% of their value. The Government had expected this, and simultaneously commenced a consultation on a hardship based compensation scheme – the EHS. This scheme provides for purchasing properties at unblighted prices provided the applicant had a qualifying reason for urgent sale and met very stringent tests. The EHS is closely modelled on the CrossRail and road compensation schemes.

In the 2010 consultation on EHS, some 84% of respondees did not support the proposed EHS but asked for a property bond scheme that had been developed by HS2 Action Alliance, which is based on private sector best practice (in Central Railways and BAA). While the Government still proceeded with the EHS – it agreed to consult on further proposals in 2011.

The Government made statements, promising to go further to addressing blight than with any previous project, and proclaiming the principle that if individuals suffered significant loss as a result of a project in the national interest they should be fairly compensated:

*'...Where a project which is **in the national interest** imposes significant **financial loss on individuals**, I believe it is **right and proper** that they should be **compensated fairly** for that loss.*

*'...We shall seek to **go further** than has happened with previous such infrastructure schemes....'*

*'... developing European jurisprudence in the area of property rights and the need for Governments to compensate is pointing towards **more generous** compensation becoming the norm, and I suspect that will be the case for future projects.'* Hansard, Hammond, 20/12/2010

*'...introduction of the [HS2] scheme recognises the **unique nature of the proposed line**, which is only the second high speed rail project to be considered in the UK and which **differs significantly** from its predecessor in terms of its design, operation and potential market'.* Hammond, 26/6/2010

As part of the next 2011 public consultation on HS2, Government put forward three types of scheme to address generalised blight, and asked if consultees agreed with them. The three options were:

- A **hardship-based** property purchase scheme
- A **bond based property purchase** scheme, and
- A **compensation bond** scheme

Little detail was provided on these options, and many consultees felt it impossible to give an informed response. Others were confused as the consultation question itself did not ask or say just one option would be selected for a further consultation. Notwithstanding, 98% of those expressing views on the merits of the three options supported the property bond (the second option) – including the Council of Mortgage Lenders (CML), the British Banking Association (BBA), The National Farmers Union (NFU), the Country Land & Business Association (CLA), National Association of Estate Agents (NAEA) and 51m (18 councils opposing HS2).

HS2AA developed a Property Bond scheme and submitted it in Consultation (see attached Annex).

Justin Greening nevertheless selected a hardship-based option for those subject to generalised blight.

Why a 'refreshed hardship scheme' is neither a fair deal nor provides reassurance

A hardship scheme supports only a minority of those who suffer loss in property value. Any scheme for which the great majority are not eligible has serious deficiencies:

- **It traps most affected people** in their properties – depriving them of the freedom to move or remortgage for 15-20 years without suffering serious financial loss. A hardship scheme is not a solution for HS2's timescales
- **Generalised blight is exacerbated** by the knowledge that losses would not be compensated when people want to sell (it is knowledge of full compensation for all those affected that injects confidence into the property market and controls blight).
- The **property market is paralysed**, as sales crystallise losses in property values
- People **lack the very reassurance** Government claim to offer ie that of fair compensation, – either they know they will not qualify or cannot be sure they will. The EHS rules and decisions are highly restrictive and not transparent. Just 61 properties have been sold under EHS in 19 months – with over 80% applicants rejected. This is a 100+ mile stretch of route where HS2 Ltd say 172,000 properties lie within 1km of the line – showing how few it has helped in practice.

What should the decision have been?

The Government should have selected the **bond-based property purchase** scheme. This would allow property owners to apply to Government for an undertaking to purchase the property at a future trigger date – if they wish to move and a private buyer cannot be found at the unblighted price. The bond transfers with the property, so it underpins the value of the property – giving confidence to

lenders and purchasers that there will be a buyer at the unblighted price if they wish to sell in future. This secures lending & remortgaging at unblighted prices, which is crucial to purchasers and owners.

Such a bond scheme was operated successfully by Central Railways and BAA, and was commended as the most effective arrangement against blight by a government group. The CML said in their response to the 2011 consultation that only a bond-based property purchase scheme had the potential to support lending at unblighted values.

Why the Government's reasons for rejecting a property bond scheme are invalid

Government rejected the property bond approach by reason of **cost, risk** and lack of **unambiguous support** from the consultation. The first two reasons are not expanded upon, but it is clear that all three reasons do not stand up to scrutiny. Interestingly Government had set out five issues against which the options were to be considered for the consultation (see Attachment). The decision however made no reference to them, and they plainly favour the property bond approach.

On the **level of cost** to the taxpayer:

- Blight costs should be part of HS2 scheme costs (on the 'polluter pays' principle)
- If Government is right and the eventual level of blight is minor after the mitigation measures, then any appreciable loss of value will only be temporary and in total be minimal
- Government can bear the cost and, if it wishes, wait for the market to recover in a way that individuals cannot over the 15/20 year period which is the HS2 circumstances
- While Government has said there are winners (by stations) and losers (elsewhere) this does not justify the injustice of forcing losers to bear costs resulting from HS2
- The net additional cost of compensation is only for the loss that is not already covered under statutory compensation for physical nuisance (payable a year after operations commence)
- There is no cost should HS2 be cancelled before its trigger date (as for Central Railways)

On the **risk** in exacerbating blight (by changing the balance of rented to owner occupiers):

- Any risk is temporary and under Government's own control (they can sell properties they acquire at a loss if they prefer – which is the only option open to residents – or rent them)
 - Evidence of 'ghettos' eg Sipston at Heathrow and Kent for HS1 involved the promoter land-banking, and was not the simple result of compensating generalised blight
 - Property management is an issue, and boarding up properties rather than letting or re-selling may spread blight, but again, this is under the Government's own control
 - What extends blight is uncertainty and peoples fear of buying into a blighted area and having an uncompensated loss, so removing this fear contains blight eg by a protective property bond; also applying a stamp duty exemption as an incentive to encourage private sales.

On it lacking '**unambiguous support**' (DfT say only 4,402 backed it and 'the vast majority of those that respondeddid not comment either way):

- 98% of those who did respond on the options backed it, including the experts, this was even more than in the 2010 EHS consultation (84%)
- Many of the respondents said there were insufficient details to give informed comment

- Many who did not comment did not even see the 3 options (they were not in the Summary Document HS2 Ltd sent to those who responded in writing (over 11,000)
- The consultation question itself (Question 7) did not actually ask for comments.

What can you do about it?

We are sure that you will be concerned about the unfair treatment of your constituents, and will want the situation remedied. There is an overwhelming case that Justine Greening should think again and put in place compensation arrangements for generalised blight that treat everyone fairly and recognise the lengthy timescales of the HS2 programme. Were you to make known your belief that she should do this, she might well recognise the need to revise her decision

Attachment

1. Property Bond proposal (made by HS2AA in the 2011 consultation)

Eligible property owners apply to HS2 Ltd for a Property Bond that transfers with their property and applies until one year after HS2 is operational. The Bond guarantees that HS2 Ltd will purchase the property at full 'unblighted market value' (in their role as purchaser of last resort) if:

- The HS2 project has reached a specified trigger point, eg planning date such as Hybrid bill; and
- No private buyer is found at the unblighted price when the owner wants to sell.

Eligible properties to be stamp duty exempt for the life of the bond (encouraging private sales). The Bond can also be used for re-mortgaging purposes.

Any unredeemed Property Bond that applies at termination (eg 2027) to a blighted property entitles the then owner to 'loss in value' compensation (as distinct from current statutory compensation).

Recommended Scheme rules

Eligibility: property owners who suffer a 'loss in property market value' due to HS2, and who move, remortgage or remain in their property until a year after HS2 is built (2027 earliest)

Process: eligible owners can apply to HS2 Ltd for a Property Bond any time after the start date, provided they meet the 'general conditions'. The bond can only be redeemed from HS2 Ltd (for the 'unblighted market value') when the trigger point has passed – only private sales apply until then. There would be no qualifying reason for sale, restrictions on proximity to line or tunnel, noise etc, or threshold loss. The sole test would be there being a financial impact on market value due to HS2

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

- A property must have been marketed for a minimum period (determined by price bands)
- No 'serious offers' at blight-free value (with evidence to justify this value) be made
- The belief that its reduced value is due to HS2 must be reasonable and evidenced

'Loss in value' is market determined i.e. blighted price is based on what people will offer to pay.

'Unblighted market value' is professionally independently estimated using recognised procedures (RICs). If the unblighted value is not more than the best serious offer, the owner pays valuation costs.

Appeals: an independent appeals process to operate for eligibility, process and valuations.

2. Government's approach to compensation (from Feb 2011 Consultation document²)

Government's approach (its 5 stated issues) for the property deal for 'generalised blight' was

- Assisting those whose properties lose significant value
- Enable the normal functioning of the property market
- Reassuring now that fair compensation will be paid
- Enabling people to stay in their homes and communities
- Avoiding Government owning large numbers of properties

HS2AA asked in the consultation that these principles to be amended to (changes in bold):

- **Fully** compensating those whose properties **lose value (to be the prime criterion)**
- Enable normal functioning of property market **so people can move or re-mortgage**
- **Support mortgage lenders accept unblighted values for lending/remortgaging purposes**
- Reassuring now that fair compensation will be paid
- Enabling people to stay in their homes and communities

² Para 18 of Annex A Blight and Compensation of Feb 2011 main Consultation document).

- Avoiding the government **unnecessarily** owning large number of properties

ANNEX B

Re-defining the ‘hardship based purchase scheme’ for generalised blight

The EHS has resulted in very few sales to HS2 Ltd (61 in over 19 months along 100 miles of route) with compensation restricted to a minority of those who are affected. The scheme is inappropriate for the long term nature of this project (see Annex A).

The hardship principle needs to be dropped. The May consultation may suggest some changes from the EHS, but key points for a ‘refreshed’ hardship scheme are:

- Full compensation at 100% market value with no qualifying threshold loss
- ‘Hardship’ reasons to be replaced to include all personal and business reasons for moving
- Rigorous clear transparent rules with an effective appeals process

Such relaxations reflect that anyone who can only sell their property at a loss suffers some degree of ‘hardship.’ The scheme should not therefore continue to define ‘hardship’ as it has previously.

Specifics and justification

Eligibility criteria – ‘urgency’ of moving should be removed (it’s wholly inappropriate for 15/20 yrs)

Qualifying personal hardship circumstances: – these are too narrowly defined (eg financial, medical, go into a home, divorce, new job location, upsizing, inherit affected property from deceased).

‘Hardship’ should be removed, redefining qualification to also include at least: downsizing, retirement, moving to be nearer family, schools, other personal reasons, refused re- mortgage, loss of business. There is precedent for removing hardship rules following public consultation (under BAA’s scheme)

Threshold of loss: – no loss at all should be required. It should not be (as under EHS and other schemes) that a 15% or more loss must be demonstrated (ie no offer at up to 15% of unblighted market value). A 15% loss is several years’ salary for some owners. It is unreasonable for people to accept losses of up to 15% (to qualify for 100% compensation), or not to sell for 15/20yrs.

Proximity to HS2 route: – the test should be whether HS2 is causing loss in market value (independently assessed by RICs). It should **not** be a physical test of proximity or after expected mitigated impact (using barriers) or noise level which is not yet known and importantly does not determine property market behaviour and hence the loss which is what is being compensated. Those by, near or over tunnels (green or full bore) should not be excluded.

Unblighted market value: this should be independently assessed (using recognised RICs procedures) using more than one firm knowledgeable about the area/local market.

Openness and transparency is required on scheme rules, criteria and basis of decisions. This should include disclosure of all evidence obtained by HS2 Ltd; greater clarity on scheme rules; consistency of assessments (eg rules on impact of HS2; expectations on marketing price reductions; interpretation of urgency and qualifying personal circumstances; re-applications should not re-open criteria already accepted).



Appeals: there should be an independent appeals panel, including a non-specialist observer who provides a public report.

ANNEX C

Principles for other areas of compensation

There are several other areas of compensation apart from *generalised blight* that will be consulted on. At this stage particular concerns are:

The Construction Code

There should be compensation for communities for construction issues eg extra local traffic, more heavy traffic, reduced access, negative impact of construction site, noise, dust, light pollution, 24 hour working. This can be handled through an agreed Construction Code that should include:

- Limiting working hours on and to weekdays and excluding hours between 22.00 to 06.00
- Investment fund for each locality (to compensate for damage, increased wear and tear, security, alternative amenities etc)
- Reinstatement of all amenities (footpaths, woods, etc) when construction complete
- Trees replaced as advised by community experts eg woodland trust
- Protection of archaeological and architecturally important sites and ancient woodland

There should be penalties if the code is not adhered to.

During construction and afterwards other provisions should apply:

- Businesses to be compensated for loss in business
- The right to a rent review for council tenants and those on long leases

Prior to construction a loss in market value should be valid grounds for council tax appeal (see below)

Compensation specific to tunnelling

There should be compensation for all properties affected by tunnelling (tunnelled under or near to) eg caused by subsidence, vibration etc. This should include provisions made under the Irish scheme (for DART), and should include:

- Purchase of subsoil rights
- Before and after structural surveys to enable any property damage to be identified (including subsequent surveys to identify any longer term effects)
- Full uncapped rectification of property damage for as long as the property exists

Specific changes to statutory compensation/arrangements

Statutory compensation under Land Compensation Act (Part 1 claims) should be based on loss in market value (and not the 'nuisance' value which is confined to the physical factors only ie noise, vibration, artificial lighting and so excludes amenity, views etc)

Council tax legislation should be amended such that an appeal can be based on a material change in market value (and not a change in the 'physical state' of the locality ie that construction has begun.)

Compulsory purchase flat rate/capped compensation sums should be updated eg the home-loss payment of 10% of value but capped at £47k; the home-loss payment to tenants (in certain circumstances) of £4,700.



Council tenants whose homes are required for the line should be rehoused (as now), but similarly those affected by the HS2 line should be considered for re-housing and a right to a rent review.