

Executive

High Speed 2 Consultation Responses – Property and Compensation; and Safeguarding

4 February 2013

Report of Head of Strategic Planning and the Economy

PURPOSE OF REPORT

To consider the Council's draft responses to the Governments HS2 consultations on Compensation and Safeguarding.

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| This report is public |
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Recommendations

The Executive is recommended:

- (1) To approve the draft response to the government's two consultation documents as set out at appendix 1 and appendix 2.

Executive Summary

Introduction

1.1 HS2 Ltd Consultations

On 25th October 2012, Patrick McLoughlin, the Secretary of State for Transport, announced the launch of two key public consultations:

- a) Property and Compensation Consultation for Phase 1 of HS2 between London and the West Midlands.
- b) Safeguarding Consultation for Phase 1 of HS2 between London and the West Midlands.

Proposals

- 1.2 The Property Compensation Consultation sets out a proposed package of measures designed for owners and occupiers of property along the London-West Midlands line of the route. These measures reflect HS2's commitment to providing proper compensation and assistance for those affected by the building of the new railway.

The proposals include:

- a streamlined system of advanced and voluntary purchase to simplify the process for property owners in the safeguarded area and provide greater certainty for those property owners outside the safeguarded area in rural areas;
- 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.

Safeguarding directions are intended to protect the line of the route from conflicting developments and are an established practice for large infrastructure projects. The Safeguarding Consultation is aimed primarily at local planning authorities along the line of the route, who will be aware of relevant planning issues in their areas and to whom the directions would apply.

The HS2 Consultation website (<http://highspeedrail.dft.gov.uk/>) includes full details of both consultations, including all relevant consultation documents, maps and fact sheets. Details of how to respond to the consultations are also set out there.

1.3 CDC Response

CDC's response to the consultations is in two parts.

- Part A: Property and Compensation consultation (Appendix A)
- Part B: Safeguarding consultation (Appendix B)

1.4 Implications for CDC as a Planning Authority

A preferred route has been defined which crosses Cherwell district. The proposed safeguarding direction will require the Council to consult HS2 on any planning application which falls within the safeguarded area. Given that 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 cannot object in principle but can put forward issues of concern relating to the details to seek clarification and commitment as appropriate.

Once the safeguarding direction comes into effect the Council will have a legal duty to consult HS2 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. The application information has to be sent by First Class postage to HS2 Ltd. If no response is received within that period then the Council can proceed to decide the planning application as it sees fit. If however HS2 respond, the Council should take into account their response in making its decision. If after receiving HS2 response the Council decided to disregard their suggestions then the Council has to inform the Secretary of State who in turn has 21 days to respond and who 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.

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. However HS2 are not clear on who will meet those additional costs.

The guidance for local planning authorities' states that following a decision being made on a planning application that HS2 were consulted on, the Council should send a copy of that decision to HS2. Further it states that HS2 Ltd intend to agree the consultation procedures and wording for model conditions with the local planning authorities.

The documentation makes it clear that the safeguarded routes may not cover all the land that is required by HS2 to build the route and that as plans for the route are refined, 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.

Consultation with the Council's legal section has highlighted the potential for prospective developers of land to serve a purchase notice on the Council where their proposed development is refused as conflicting with HS2 and that in their view the land no longer has a beneficial use. On receipt of the purchase notice the Council would have to serve a response notice stating that the Council is willing to comply with the purchase notice or that another authority or statutory undertaker would be willing to take on the purchase or that the Council is not willing to comply with the notice. This would potentially result in an increase in work for planning and legal to defend such notices and raises the issue as to whether or not the council has the in-house expertise to defend such notices. In addition the Council would need to use its own capital; resources to fund property acquisitions in the absence of an indemnity from central government or HS2 Limited.

The guidance implies that HS2 would like to receive notification of any permitted development proposals along the safeguarded route. This would be impossible to do in many cases as a lot of permitted development does not go through the Council's Building Control department or indeed needs Building Regulation approval, hence we would not be aware of this.

In addition, there is no requirement to obtain Building Regulation approval as planning permission has already been granted. Therefore we have no record of those properties that do not have Building Regulation approval as there is

no penalty like there is under planning enforcement.

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. Tracking down such development and finding suitable scaled drawings could be time consuming and costly. Consultation with the Building Control Section has confirmed that whilst they would probably handle most developments resulting from permitted development through the building control process, building control applications are treated as confidential and cannot be revealed to third parties.

The guidance also requests local planning authorities to send through details of any extant planning applications. Finally when the Council reviews its 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.

1.5 Implications for CDC as a Land Charges Authority

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. 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. Being in or out of a safeguarded area could have an impact on property values and make a house sale fall through depending on the safeguarded status of the property at the time the search is submitted. Consultation with the legal section has led them to suggest that this could also lead to additional work and costs for the legal department.

1.6 Outcome of the Judicial Review

The Judicial Review took place in December 2012. At the time of preparing the report, the Judicial Review had just ended. Whilst not seeming sympathetic with all of the arguments presented, Lord Justice Ousley did question the DfT lawyers at length about why alternative routes were not more fully considered.

The announcement on the outcome is imminent and Members will be updated as soon as this is made.

1.7 Key Dates

- 2013: DfT Consultation on Environmental Statement
- 2015: Hybrid Bill is taken through parliament (CDC will be invited to submit evidence)
- 2015: Earliest date for compulsory purchase powers
- 2017: Earliest proposed start date for construction

- 2024: Testing
- 2026: High-speed line operational

Conclusion

- 1.8 The report has identified substantial flaws within the Governments proposed approach to compensation and safeguarding.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 To adopt the draft response to the government’s two consultation documents

The following options have been identified. The approach in the recommendations is believed to be the best way forward

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| Option One | Do nothing. |
| Option Two | Respond as proposed. CDC is the Local Planning Authority and the only public body able to respond on matters of detail relating to the route now that it has been confirmed by Government. Failure to discharge this role will leave the District at considerable disadvantage. |
| Option Three | Amend the proposed response. |

Consultations

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| Legal Services | See report |
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Implications

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| Financial: | <p>The preparation of the draft response has been met from existing resources. However should the direction come into effect, there will be cost associated with consulting HS2 Ltd on any planning applications affected by the safeguarded area.</p> <p>The government has agreed to financially reimburse a proportion of local authorities’ time spent on HS2-related work. However this ‘Cost Recovery Scheme’ only relates to official HS2 work and will reimburse the authority for expenses incurred in providing officer attendance at official HS2 meetings and the professional services in areas where expertise has been sought by them, e.g. noise. Time spent in challenging the proposals, making consultation responses and dealing with ‘day-to-day’ support of parishes and residents will not be recoverable. The scheme permits back-dating to the commencement for the financial year 2012/13. CDC is currently identifying costs in relation to a single financial year-end claim in</p> |
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March 2013.

Comments checked by Karen Curtin, Head of Finance and Procurement 03000030106

Legal:

See report and draft response at Appendix A & B.

Comments checked by Kevin Lane, Head of Law and Governance. 03000030107

Risk Management:

There are major implications for the District from the DfT proposal. For the property compensation consultation it is important to learn from the experiences of HS1 where a united voice from affected authorities was found to be more effective in negotiations, than individual views.

Comments checked by Claire Taylor Performance Manager 01295 221563

Wards Affected

Fringford

Corporate Plan Themes

- Accessible, Value for Money Council
- District of Opportunity
- Safe and Healthy
- Cleaner Greener

Lead Member

Councillor Michael Gibbard
Lead Member for Planning

Document Information

| Appendix No | Title |
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| Appendix A | Full draft response to Property and Compensation consultation |
| Appendix B | Full draft response to Safeguarding consultation |
| Background Papers | |
| None | |
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