

Appendix A: Full CDC draft response to Property and Compensation Consultation

Cherwell District Council makes the following comments prior to a response to the formal questions that form the basis of the consultation:

Impact of Blight and the need for compensation

CDC is aware that blight significantly affects properties the length of all the routes that have been considered to date. As only one route, the 'Preferred Route Option' is being actively considered, it is essential that the impact of blight on the other routes is removed.

It is disappointing to see that none of the consultations since the March 2010 announcement to date have definitively removed the alternative route options from being considered further. All options therefore remain possible until passage of the Hybrid bill, so the considered routes continue to remain and cause property, business and land blight across Cherwell. In some cases, the housing market has completely stagnated and properties now valued at as little around half of the pre-blight value still remain unsold.

Statutory Blight

We note that Statutory Blight affects land which forms part of the 'safeguarded area' now that the Secretary of State has confirmed the line of the route.

We recognise that Statutory Blight is the land required for new infrastructure and as a result the Statutory Blight provisions become available to owners, but we are concerned that land and property is already seriously affected by blight.

Once land is safeguarded a blight notice is served on the local authority to consider buying their property based on the unaffected open market value (OMV), with the reimbursement of legal and other costs and residential property receiving a premium of 10% of the OMV (the Home Loss payment).

We note the availability of Home Loss and Basic/Occupier's Loss payments as compensation based on Section 20 Agricultural Holdings Act 1986, whereby:

- Home loss is additional compensation if the claimant is forced to give up his home
- Basic Loss and Occupier's Loss are further compensation on top of the value of property taken; with Basic loss being 7.5% of the value of the interest taken and for Occupier's Loss this payment being £25,000.

Generalised Blight

We also observe that Generalised Blight has impacted heavily on the property market in the area of the proposed route for HS2 as a result of the planned scheme, due to the 'fear of the future' before the actual full impact of the scheme is known.

While blight is strongest at the point of most uncertainty and least definite information; the situation the District currently faces, if a decision is taken to proceed with HS2, blight can reasonably be expected to have a detrimental effect on the property market in those areas near to the proposed line. We note that for those areas affected by the development of the M40 this period lasted over 20 years.

Compensation and Discretionary Support for Loss

The current exceptional hardship scheme is to be replaced by the provisions of the statutory compensation scheme and the Secretary of State has suggested that 100% compensation will be provided.

We note that statutory compensation for the impact of blight is currently based on Part 1 of the Land Compensation Act 1973, whereby a claim can be made for the loss on the value of property due to the impact of physical factors including noise, dust, vibration, fumes and smoke.

We welcome the acknowledgment of the impact of blight which has led to the Government considering additional support arrangements which would be available to properties which would not need to be compulsorily purchased but would still experience a significant loss in value to their property.

The Government is considering a number of additional discretionary support options to try to ease the effects of blight by introducing a scheme which allows the property market in areas close to the route to function as normally as possible, encouraging people to stay in their homes and villages if the impact of the new line can be mitigated. It states that compensation will be paid fairly and it wishes to avoid buying up large numbers of properties as not in the national interest.

- **Option 1 - A hardship based property scheme**

This was used in HS1 and the current Exceptional Hardship Scheme (EHS) for HS2 and supplement the Statutory Blight payable outside the safeguard zone.

- **Option 2 - Bond Based Scheme (Used by Central Railway Ltd and by BAA for Stansted and Heathrow)**

A land or property owner would apply to the Government for a Bond to purchase the property at a future date. The 'bond' guarantees to the owner that they will be able to sell their property at a future date and at an unaffected market value and the bond is transferable to new owners.

- **Option 3 - Compensation Bond Scheme**

This would be a guarantee that if a property loses significant value compensation will be received for the loss after the HS2 line has opened. Such a bond would compensate the present owners for the difference between what they can sell for (if anything) and the un-blighted price. It is important to note that in Cherwell un-blighted prices were high prior to HS2 because of the rural setting to the District.

Land and property holders would apply for a compensation guarantee certificate, with claims made once the HS2 line has been built and in operation for a year, after which it would be possible to value the impact of the line.

The Government hopes that it would incentivise those people living next to the route to stay in their homes.

There is simply a lack of sufficient detail on the three options on which to take an informed view. We incline to support the idea of a property bond and wish to see a

more flexible Exceptional Hardship Scheme than that which is currently operating, but full detail is essential for all interested parties to take an informed view.

CDC is concerned that there may be a need for different approaches to be taken to address the blight affecting residential and business properties

A Duty of Care

If HS2 is approved, CDC is supportive of the case presented by the NFU for a statutory underpinning being adopted for a new 'Duty of Care' to those affected by blight or 'safeguarding'.

Whichever compensation option is finally adopted CDC would wish to see a number of principles incorporated into the final compensation scheme to protect property and land owners' interests and to ensure that an open market can continue.

CDC believes that the principles of compensation should be:

- Duty to act fairly.
- Duty to pay promptly.
- Duty to pay a fair market value, with the value determined by an independent valuation based on the pre-scheme market price.
- Duty to minimise impact on victims' interest.
- Duty to indemnify victims against losses caused by acquirers' agents and contractors.
- Duty to maintain aftercare and contact details for on-going management issues.
- Duty to consult with land owners and land managers who will remain in situ after the completion of the scheme to agree a wide range of accommodation works.
- Effective enforcement, with the appointment of an independent person to act as ombudsman to ensure fair play and compliance with a code of practice/Duty of Care and to hold the acquirer to account and resolve disputes effectively.
- Duty to index link the value of a property bond.
- Duty on all financial institutions to respect the value and tradability of the property bond.
- Duty to take all aspects of blight into account. To recognise that blight does not just affect those properties or land within a narrowly defined geographical area, but those affected by noise and other disruption.

Financial Strain in a Rural Economy

This district has a large elderly population and that proportion is increasing. This is significant to the consultation since those retired home-owners, or those approaching retirement, are either using their property to fund their pension or are not in a position to raise finance or re mortgage to fund a move away from the train line. In some cases, half of the value of their asset-based pensions has been lost. With no means and/or desire to move, this has effectively slashed the value of their pensions and leaves a significantly reduced asset in their will.

Many of the businesses affected by the proposal are farms or rural enterprises operating at a marginal profit especially since the recession of 2008. There is

growing evidence that these businesses are finding it more difficult to raise investment or re-finance because of proximity to the proposed train line.

CDC is concerned that no mention has been made as to how the compensation package is perceived by the financial institutions that hold mortgages on many affected properties.

Road Closures

Finally, there must be consideration of the net effect of road closures on households and businesses. Whilst a road closure and detour may be a small inconvenience at one level, it will have significant financial impacts on some. A five-mile daily detour (ten miles round-trip) over an eighteen month period amounts to more than 5000 miles and could cost a homeowner in excess of £1000.00 in fuel alone. For a small business running a fleet of commercial vehicles this could well be in excess of £10,000 per annum. There appears to no consideration of the consequential effects of this type of disruption.

Formal Consultation Response

CDC makes the following comments in relation to the specific questions asked in the consultation on Property and Compensation:

Q1: What are your views on the proposed advanced purchase process?

A: CDC does not support the proposals in a number of areas:

Firstly, the potential to reject a Blight Notice if only 'part of the property is required'.

At 2.5 it states "Under the statutory provisions an acquiring authority (in this case the Government) can reject a Blight Notice and serve a Counter-Notice, refusing to purchase a property within the safeguarded area on one or more grounds: for example if the property is not required to build or operate the railway, or if only part of the property is required."

This final statement above is not acceptable. A property that is so close to the proposed scheme that it requires part of it to be demolished, MUST be purchased, should the owner serve a Blight Notice.

- Definition of 'Property': Is this just permanent residential or commercial properties or does it include out-buildings, walls, gardens etc. This is specifically in reference to 'purchase of property should it be required to construct the railway'.
- Owner Occupier: why does this only apply to owner occupiers, when for example a house could be owned by a parent, child, sibling or other relative and simply because the 'owner' does not live in the property, the 'family home' is excluded from the scheme. In addition, clarity is sought in the case of farms and large rural homes diversifying and adding annexes or rental properties to the property. Are these categorically excluded?
- Home-Loss Payments: how are these determined? Is this based on the March 2010 valuation? And what is the situation if the property not originally at risk has been 'improved' since a modification to the route. Is this increase

in value lost? And further, should the housing market improve, is the valuation 'fixed' at March 2010 or a true reflection of its market appraisal 'without HS2'.

Further, the value placed on 'tranquillity' within the district is likely to increase. So that a home-owner selling a property is likely to find a 'similar' property within district, but unaffected by HS2, to have risen in value considerably. In direct contrast to properties that have lost half of the value due to proximity to the proposal, those at the greatest distance from the line could see a significant increase in value.

Q2: What are your views on the proposed voluntary purchase zone for rural areas?

A: CDC believes that it is not acceptable to rely on a 'fixed' distance for a voluntary purchase zone (VPZ). Many factors will influence the impact of the proposed scheme. At 2.2 p13, it clearly states that the VPZ "will ensure that those most affected by the railway can secure easy access to compensation." This is not the case due the factors outlined below.

The geology, geography, topography and prevailing wind will all determine the net effect of the scheme. There will likely be those very close to the line that will feel little or no effect and others at a great distance, possibly miles that will suffer adverse visual intrusion or the effects of sound or vibration on their property. Whilst the principle of a VPZ is right, there needs to be a case-by-case analysis of impacts on individual properties and consideration for including those with an evidenced and demonstrable impact in this voluntary scheme.

Moving costs: The cost of a house move is typically £10K - £20K. If a property is purchased with the VPZ, why are moving costs not covered?

Q3: What are your views on the proposals for a sale and rent back scheme?

CDC considers that it is unfair that businesses and landlords are excluded from the scheme. It is noted that the Government recognises that business occupiers need to be assessed on a case by case basis. However, the consultation document does not make it clear whether a scheme to assess such businesses will be provided.

Further, the cost of rental must be at a level that permits all of those affected to afford the repayments. It must also be borne in mind that the effect of blight in the local area will significantly reduce property purchase and rental values. Hence a property owner that sells would likely be able to rent a property similar to their own in the locality during the period of construction at well below un-blighted market value.

The sale and rent back scheme should include a home-loss payment. It should be noted that the people who want to take advantage of this scheme would be the same category of people who would be eligible for the Advanced Purchase Scheme which provides for a home-loss payment. The Government has not justified why those individuals taking advantage of the sale and rent back scheme should be treated less favourably.

- Route Change: Clarity is sought on what the situation would be if the proposed route changes after purchase.
- Rental Agreements: We are aware of cases in Kent (HS1) where properties were purchased, and tenants wished to leave during construction, but were

'tied' into long tenancies. Clarity is sought on the agreements to which those selling their homes would be expected to agree.

Q4: What are your views on the proposed approach to the application of the hardship criterion for the long term hardship scheme?

CDC is concerned that the vast majority of previous applications under the Exceptional Hardship Scheme were rejected (in excess of 80%), and further that there was little consistency between those that were, or were not, accepted.

The revised scheme clearly states that:

"4.4. The Government believes that applications to a long term hardship scheme should be considered as fairly and transparently as possible".

CDC thinks it is unfair to exclude landlords and businesses from the scheme as they may have a pressing need to sell/relocate. For example, landlords may require funds for their retirement and businesses may need to relocate to meet changing business needs.

Further, the '15%' rule is extremely unreasonable (offer within 15% of the asking price). In cases where a property owner has a 95% mortgage, this could leave them in serious negative equity.

As a previous Secretary of State for transport, Phillip Hammond, stated, *'nobody should suffer significant loss'*.

Q5: What are your views on the proposed process for the operation of the long term hardship scheme?

A: CDC believes that the scheme and the resultant blight and uncertainty have already put homeowners under considerable stress. To further 'expect' homeowners to 'show that they will suffer hardship' (4.10, p 22) is unreasonable. If a homeowner in an area affected by blight, wishes to sell their property, there should be a system for 'expressions of interest' rather than full application which may then receive a rejection many months later. An 'expression of interest' could be assessed very quickly (possibly by a third agency). If a homeowner 'may' be eligible, then a full application should then be encouraged.

Applications should also be assessed independently rather than by HS2.

Q6: What are your views on the Government's proposals to restore confidence in properties above tunnels?

A: The Government has not clearly set out how it will identify 'at risk' properties.

If the Government's objective is to address people's lack of confidence about the impact of tunnelling, then it should offer the scheme to all persons within a defined distance from a proposed tunnel. The distance should relate to the safeguarded area - it should not be restricted to properties located within 30 metres of tunnelling works.

A proposed payment of £50.00 to represent the perceived value of the subsoil does not appear to be based on anything at all. Similarly, the sum of £250.00 for professional fees is totally unrealistic.

Q7: 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?

A: The information which has been provided within this chapter is so limited that it is difficult to provide any type of meaningful response. However, secure tenants of local authorities will expect no reduction to their rights as a result of the HS2 proposals and therefore local authorities will expect the Government to work with them so as to ensure that their tenants are properly protected.

Consideration must also need to be given to how the Government is going to approach those properties where local authority tenants have exercised the right to buy their homes and the compensation proposals outlined earlier in the document will need to be applied.

Finally, there is no justification for the proposed home-loss payment of £4,700. Why should there be such a differential between the £47,000 maximum payable to owner occupiers and just ten-percent of this sum to those in social-rented housing.