



High Speed Two – Exceptional Hardship Scheme

A voluntary purchase scheme for property owners whose properties may be affected by a high speed rail link between London and the West Midlands

Consultation



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1. Purpose of Consultation

Introduction

- 1.1** This consultation paper seeks your views on the Government's proposals to introduce an exceptional hardship scheme to protect the interests of residential owner-occupiers of properties the value of which may be seriously affected by the preferred route option for a new high speed rail link between London and the West Midlands, and who can demonstrate that they have an urgent need to sell their properties.

High Speed Two

- 1.2** In January 2009, the Government set up High Speed Two Limited (HS2 Ltd) to advise on the development of high speed rail services between London and Scotland. At the end of December 2009 HS2 Ltd delivered to the Secretary of State for Transport a report which concluded that there was a strong business case for a high speed line from London to the West Midlands, and contained a recommended detailed route plan for such a line.
- 1.3** The Command Paper *High Speed Rail*, published on 11 March 2010 sets out the Government's response and preferred route option for a link between London and the West Midlands, including timescales for taking the work forward and next steps. The Government also published HS2 Ltd's report and related background papers. The Command Paper will be followed in the autumn by a period of full public consultation which will give all interested parties an opportunity to comment on the preferred route option between London and the West Midlands and on the Government's assessment on high speed rail before final decisions are taken. Copies of the Command Paper and HS2 Ltd's report can be found at the following link: www.dft.gov.uk/highspeedrail.
- 1.4** The preferred route option (if adopted) between London and the West Midlands, as set out in *High Speed Rail*, has the following main elements:
- a London terminus station at Euston;
 - a Crossrail interchange station at Old Oak Common in West London;

- the main route of the high speed line. This would run in tunnel from near Euston, surfacing in West London to follow the route of the existing Chiltern Line, leaving London near Ruislip. It would proceed largely in tunnel from the M25 as far as Amersham, and then continue to the west of Wendover and Aylesbury, partly in tunnel and partly following the existing A413 and Chiltern Line corridor. It would then deploy the largely-preserved track bed of the former Great Central Railway, and continue north to enter Birmingham from Water Orton, to terminate at a new city centre station. In addition, prior to entering the city, a link would be built to the West Coast Main line at Lichfield, enabling services to continue at conventional speeds to destinations further north;
- an option for an interchange station on the outskirts of Birmingham;
- a central Birmingham terminus station in the Eastside regeneration area (HS2 Ltd's Fazeley Street site).

1.5 Information on the Government's preferred route option is available at a number of different levels of detail on the Department for Transport's website (reference above) and also on a CD-ROM (available free, on request to HS2 Ltd Enquiry line (telephone number: 020 7944 4908) or DfT Publications (telephone number: 0300 123 1102 or e-mail: dftinf@capita.co.uk):

- detailed plan and profile route maps;
- outline maps in the *Route Engineering Study*;
- a high level summary in the Command Paper *High Speed Rail* (also published as a printed document and available for purchase from The Stationery Office).

What are we consulting on?

1.6 In order to minimise uncertainty for those people whose properties may be affected by the preferred route option for a high speed line, the Government is considering the introduction later this year of a non-statutory exceptional hardship scheme ("EHS"). Under this scheme, residential property owners whose properties may be affected, and who can demonstrate that they satisfy the criteria for the EHS, would be able to apply for their properties to be bought by the Secretary of State.

1.7 Section 2 of this consultation paper sets out the proposed details of the EHS, on which we would welcome views.

Who should read this consultation?

1.8 Copies of this consultation paper have been sent to the bodies listed at Annex B.

- 1.9** While this consultation will be of most immediate interest to people owning property on or adjacent to the preferred route option from London to the West Midlands, we would also welcome responses from anybody else with an interest.
- 1.10** The Government has asked HS2 Ltd to undertake further work to produce detailed route options and recommendations for the extension of High Speed Two beyond the West Midlands to Manchester and Leeds. Once it has received and considered these further options, the Government would envisage consulting on an extension of the EHS in relation to its preferred route options on these sections of any high speed network.

2. The Proposals

What are the Objectives of an Exceptional Hardship Scheme?

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

Existing protections

- 2.2** As explained in paragraph 1.3, it is proposed to hold a full public consultation in autumn 2010 on proposals for a high speed line. Following this, the Government will need time to consider the responses to the consultation. If it then decides to proceed with a high speed rail link, it would announce its proposed route and would then seek powers from Parliament to build the new line. The necessary arrangements would also be made to safeguard the route¹.
- 2.3** The effect of safeguarding would be to trigger the statutory blight provisions under the Town and Country Planning Act 1990. These apply where the promoter of a transport scheme has given notice that they are looking to acquire property, or affect it by their proposals, and entitles a person with a qualifying interest² in that property to serve a blight notice on the relevant authority (in the case of High Speed Two, the Secretary of State). This may result in the Secretary of State purchasing the property in question. These provisions apply to certain commercial³, agricultural and residential land, and there is no requirement to demonstrate exceptional hardship.

¹ Safeguarding is a process under which the Secretary of State issues directions under the Town and Country Planning (General Development Procedure) Order 1995. These directions are given to local planning authorities and are designed to protect route corridors which have already been identified for building transport and other projects. Once the directions are made, where a third party submits certain types of planning applications which affect these route corridors – for instance to erect a new supermarket – the applications need to be reviewed in order to safeguard the development of the project which is the subject of the directions.

² This term is defined in section 149 of the Town and Country Planning Act 1990.

³ In the case of commercial land, the provisions are restricted to land which has an annual rateable value which does not exceed £29,000.

Exceptional Hardship

- 2.4** However, the Government recognises that until it makes a decision on any high speed rail link there will be uncertainty as to whether the line will be built, exactly what route any such line would follow and which properties may need to be purchased to construct or operate it, as well as which other properties may be affected during the construction period or once any new line is open.
- 2.5** This means that, in some cases, there may be an effect on property values in the immediate vicinity of the preferred route option in the period before statutory protection is available.
- 2.6** There is no statutory remedy to address this, but the Government accepts that those adversely affected should have access to some form of redress. This is why it intends to introduce a non-statutory EHS which would be available to eligible residential property owner-occupiers who can demonstrate that they have an urgent need to move before the statutory protection takes effect.
- 2.7** The EHS is intended as an interim measure, which would remain in place only until such time as the statutory blight provisions apply. If the Secretary of State decided to use compulsory purchase powers to acquire land from its owner later on, following a decision on the final route of any new line, or the owner of a nearby property would be injuriously affected⁴ by the construction or operation of any line, then the normal statutory provisions for the assessment and payment of compensation would apply.

Proposed Introduction of an Exceptional Hardship Scheme

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

Who would the Exceptional Hardship Scheme Cover?

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

⁴ Injurious affection is the effect of acquiring land for a public project on any neighbouring or remaining land; for instance, where only part of a person's land was purchased compulsorily by a scheme promoter how would this affect the value of the remainder of the owner's property and what compensation would be payable to the owner.

Criteria to determine qualification for the exceptional hardship scheme

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

Type of Property and Qualifying Interests

- 2.12** At the time of applying for the EHS a person must have a “qualifying interest” in a residential property which they are attempting to sell. This means that they must be the owner-occupier⁵ of the property. If the property is commercially let or if the occupier does not own the property and is a residential tenant subject to a periodic tenancy⁶ then they will not have a qualifying interest or be eligible for the EHS. Owners of non-residential properties would not be eligible for the EHS. Owners of residential properties which are not the owner’s main place of residence – e.g. second homes – would also not be eligible.

Exceptional Hardship

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

⁵ In this document, the terms “owner-occupier” is used to refer to someone who must have occupied the whole (or a substantial part) of the property as a private dwelling and who has either a freehold interest in the property, or a leasehold interest consisting of a tenancy granted or extended for a specified term of years of which at least 3 years remain unexpired.

⁶ This is a tenancy which is not granted for a fixed period of time but which can be ended by either party on the giving of the appropriate notice e.g. a standard rental agreement.

Effort to Sell

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

Prior Knowledge of High Speed Two Proposals

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

Exceptional Hardship Scheme Principles and Criteria

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

How would the Exceptional Hardship Scheme Operate?

Process

- 2.19** Where a residential property owner-occupier has an urgent need to sell their property and believes that the value of that property had been affected by the High Speed Two preferred route option, they would be able to apply to the Secretary of State to purchase their property under the EHS. It is proposed to set up a panel of experts, including independent members, which would consider individual applications and make recommendations to the Secretary of State as to whether they should be accepted. The panel would consider each application on its own merits, according to how far it meets the criteria set out in paragraphs 2.10 to 2.17 above.
- 2.20** Where the Panel recommended that the Secretary of State should offer to buy a particular property, independent valuers would be appointed to assess its value, based on unaffected realistic open market value (that is, what would have been the value of the property without any adverse effect arising from the High Speed Two preferred route option).

- 2.21** The valuation would not cover additional costs, such as the seller's agents & legal fees or removal costs, on the grounds that if the property owner was already looking to sell their property they would normally expect to have to meet these costs themselves. In addition the Secretary of State would not make any payments as part of the EHS process which could be payable later on if the property was subject to compulsory acquisition. For example this would include home loss payments, which are fixed sums payable to persons displaced from property where compulsory purchase takes place.

Dealing with applications

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

Operation of the Exceptional Hardship Scheme

- 2.25** Do you agree with the proposed system for operating the proposed EHS? If not, what alternative arrangements would you suggest?

3. Summary of Consultation Questions

Introduction of an Exceptional Hardship Scheme

- Should the Department for Transport introduce an Exceptional Hardship Scheme ahead of decisions on whether, and if so how, to proceed with a high speed route?

Exceptional Hardship Scheme Principles and Criteria

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

Operation of the Exceptional Hardship Scheme

- Do you agree with the proposed system for operating the proposed Exceptional Hardship Scheme? If not, what alternative arrangements would you suggest?

4. How to respond

- 4.1** This is a Department for Transport consultation, being carried out by High Speed Two Ltd on the Department's behalf.
- 4.2** The consultation period began on 11 March 2010 and will run until 20 May 2010; please ensure that your response reaches us by that date.
- 4.3** As agreed by the Secretary of State, this consultation period is slightly shorter than the standard length for government consultations in order to allow the EHS to come into effect as soon as possible, should the Government decide to proceed with it, while still providing a reasonable period for consultees to consider the scheme proposals and to respond to them.
- 4.4** If you would like further copies of this consultation document it can be found both at the Department for Transport and HS2 Ltd websites at: www.dft.gov.uk or: www.hs2.org.uk
- 4.5** Please send consultation responses to:
High Speed Two Ltd – Exceptional Hardship Scheme Consultation
55 Victoria Street
London
SW1H 0EU
e-mail: ehsconsultation@hs2.gsi.gov.uk
- 4.6** When responding, please state whether you are responding as an individual or are representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 4.7** If you have any suggestions as to others who may wish to be involved in this consultation process, please contact us.
- 4.8** If you have any queries about this paper or on the High Speed Two proposals, you can contact us by email at: hs2enquiries@hs2.gsi.gov.uk or by telephone on: 0207 944 4908.

What will happen next?

- 4.9** Ministers will decide whether and, if so, how to take forward the exceptional hardship scheme once they have considered the responses submitted to the Department as part of this consultation and having taken into account a range of factors including the call on public expenditure. A summary of responses will also be published on the DfT website at www.dft.gov.uk later in the year, and paper copies will be available on request.

Freedom of Information

- 4.10** Information provided about individuals in the response form and in any other responses to this consultation will be processed by the Department for Transport and its agents only for the purposes of this consultation exercise in accordance with the requirements of the Data Protection Act 1998.
- 4.11** According to the requirements of the Freedom of Information Act 2000, all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your email system will not be regarded as binding on the Department.

Annex A: Code of Practice on Consultation

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

The Code contains seven criteria. They should be reproduced in all consultation documents. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

The Seven Consultation Criteria

- 1. When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- 2. Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- 3. Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- 4. Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- 5. The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 6. Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- 7. Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the code of practice is available on the Better Regulation Executive web-site at: <http://www.berr.gov.uk/files/file47158.pdf>.

If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

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Annex B: List of Consultees

Individual local Authorities

- Greater London Authority
- London Borough of Barnet
- London Borough of Brent
- London Borough of Camden
- London Borough of Ealing
- London Borough of Hammersmith and Fulham
- London Borough of Harrow
- London Borough of Hillingdon
- London Borough of Islington
- London Borough of Kensington and Chelsea
- Westminster City Council
- Hertfordshire County Council
- Leicestershire County Council
- Northamptonshire County Council
- Oxfordshire County Council
- Staffordshire County Council
- Warwickshire County Council
- Birmingham City Council
- Coventry City Council
- Dudley Metropolitan Borough Council
- Sandwell Metropolitan Borough Council
- Solihull Metropolitan Borough Council
- Walsall Metropolitan Borough Council
- Wolverhampton Metropolitan Borough Council

- Aylesbury Vale District Council
- Central Bedfordshire District Council
- Cherwell District Council
- Chiltern District Council
- Dacorum District Council
- Daventry District Council
- Lichfield District Council
- North Warwickshire District Council
- Nuneaton and Bedworth District Council
- Rugby District Council
- Slough District Council
- South Buckinghamshire District Council
- South Northamptonshire District Council
- South Oxfordshire District Council
- Stratford-on-Avon District Council
- Tamworth District Council
- Three Rivers District Council
- Warwick District Council
- Wycombe District Council
- Welsh Assembly Government
- Scottish Government

Other Interested Bodies

- ACTVaR
- Advantage West Midlands
- Age Concern
- Association of North East Councils
- Birmingham International Airport
- BAA
- British Chambers of Commerce
- British Retail Consortium
- Campaign for Better Transport
- Campaign for the Protection of Rural England
- CBI
- Centro
- Chilterns Conservation Board
- Chiltern Society
- Citizens Advice
- Commission for Integrated Transport
- Commission for Rural Communities
- Council for the Protection of Rural England
- Council of Mortgage Lenders
- County Councils Network
- Country Land and Business Association
- Crown Estate Commissioners
- Disabled Persons Transport Advisory Committee
- East of England Regional Assembly
- East Midlands Regional Assembly
- East of England Development Agency
- East Midlands Development Agency
- English Heritage
- Environment Agency
- Equality and Human Rights Commission
- Federation of Small Businesses

- Forum of Private Businesses
- 4NW
- Friends of the Earth
- Help the Aged
- Homes and Communities Agency
- Local Government Yorkshire and Humber
- London Development Agency
- Local Government Association
- London Councils
- National Association of Local Councils
- National Association of Estate Agents
- National Farmers Union
- National Trust
- Natural England
- NEC Group
- Northern Way
- North West Regional Development Agency
- One North East
- Passenger Transport Executive Group
- Royal Town Planning Institute
- South East of England Development Agency
- South East England Partnership Board
- Sustainable Development Commission
- Town and Country Planning Association
- Transport for London
- West Midlands Leaders Board
- Yorkshire Forward

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