THE COUNTRY LAND AND BUSINESS ASSOCIATION

RESPONSE TO THE DEPARTMENT FOR TRANSPORT CONSULTATION: HS2 - LONDON – WEST MIDLANDS: PROPERTY AND COMPENSATION

INTRODUCTION

The Country Land and Business Association (CLA) is a membership organisation which represents rural land and business owners. We represent 35,000 individual owners of private property in the countryside, from large to small, many of whom own and manage rural businesses of all kinds. Between them they own and manage about half of the rural land in England and Wales. Accordingly, the subject of Compulsory Purchase, and the blight of properties due to any scheme is significant to our membership. The HS2 proposal affects a large number of our members either directly with proposed land take or indirectly due to their proximity to the three routes so far published.

The CLA has significant experience in Compulsory Purchase and blight matters. We persuaded Government to set up and participated in the "Independent Working Group on Blight" which reported in 1997. We sat on the Compulsory Purchase Policy Review Advisory Group which reported in 2000 and we responded to the Law Commission study into reform of compulsory purchase law. Unfortunately the Government chose largely to ignore the findings of those reports and has not brought forward legislation which may well have contained provisions covering pre-scheme "blight". We do, however, continue to lobby government for more equitable system of compulsory purchase.

The CLA, NFU and CAAV are part of a HS2 Working Group representing the interests of landowners, farmers and rural business. It is confirmed that whilst this is the response of the CLA, the issues within it have had the agreement of that HS2 Working Group.

OVERALL COMMENTS

The CLA is disappointed that, whilst the Department is offering more than the statutory minimum, in many cases it is relying on what it offered for HS1 – a different scheme at a different time.

This consultation should have signalled a marked a step change in the government's approach to compulsory purchase and compensation. It should reflect the needs of the 21 century, and the way in which infrastructure is delivered in a modern world, not one built around legislation better suited to the Victorian era.

Whilst this consultation makes offers above the statutory minimum requirements it needs to go much further if it is to truly offer adequate, not generous, compensation. It needs to focus on the financial impacts on the property and business owner.

Measurements

It is unclear where the measurements within this consultation are taken from. This could make quite a difference if taken from the centre of the proposed railway track, or the centre of the land take.

As the engineering plans for the route are developed there will be varying widths of land take and different requirements for working widths too (embankments, cuttings, tunnels, and

viaducts) before even taking into consideration landscaping issues. The areas needed for these could be considerable and are not detailed anywhere within either the compensation or safeguarding consultation.

Market-based Bond Purchase Guarantee Scheme

Whilst the Department appears to have ruled out a Property Bond Scheme we would like to expand on the CLA's proposal for a "Market-based Bond Purchase Guarantee Scheme" which we believe still warrants further consideration.

The best way in which any new large development can take place is by causing as little disturbance to the surrounding area and the markets operating within it. This is no different with HS2 and the housing, commercial and agricultural property markets.

The best way is to allow everyone, if they wish to, to stay where they are. A system that encourages them to move on a tight time frame will distort the property markets with various waves of activity likely between now and after the Hybrid Bill (through fear of what is proposed) and then in the run up to the construction (for those not wishing to suffer the construction phase) and finally during and after the construction phase (for people who have had land compulsorily acquired).

The Market-based Bond Purchase Guarantee Scheme is not intended to be a property purchase scheme for those that feel compelled to move away within a certain short timescale to avoid financially disadvantages at a later date. Rather, and importantly, the Scheme will provide a safeguard for those who want to stay to do so, without fear of suffering detriment at a later date.

The MPBGS would, in addition to the purchase of affected properties, underwrite property values for those properties adversely affected by the scheme. This should give property owners the security to stay put despite the scheme, secure in the knowledge that in the future should they wish to sell any shortfall directly as a result of the scheme it will be addressed.

Through the MPBGS the scheme operator will not be burdened with the management of a large portfolio of properties that it does not require, and ensure that the market is not flooded with properties where the vendors did not really want to move.

Statutory Blight

In our document Fair Play: "CLA Vision for the Reform of the Compulsory Purchase System" we highlighted the following problems with the current Blight procedure:

- Statutory Blight is only a remedy once a scheme has been confirmed. Often the impacts, generalised blight, are felt well in advance, perhaps even as early as when the proposal is first announced;
- The provisions are sufficiently flexible for the acquirer to be able to sidestep the purchase of a blighted property;
- Even when the Blight Notice is accepted there is nothing to compel the acquirer to act either quickly, or even at all. There is a need for enforcement to ensure that the acquirer follows through on their duty. It is suggested that an Independent Person/Expert might be appropriate to undertake this function;
- A cap on rateable value at £34,800 is outdated, arbitrary and unfair. It is, after all, the scheme that has caused the blight and therefore the scheme must address <u>all</u> the impacts.

Loss Payments

Currently home loss payments are limited to 10% on a maximum of £47,000. This capped figure is arbitrary, too low and fails to recognise the real costs (both financial and emotional) of losing your home. In the CLA document "Fair Play" the CLA suggests that the maximum cap is abolished.

In our document "Fair Play" we suggest that an overall uplift payment of 30% of the total proved loss should be paid to cover all the additional loses that arise out of the compulsory purchase scheme which are more difficult to quantify but never the less very real (time, inconvenience, emotional, timescales, market conditions etc).

Part 1 Claims

The consultation needs to consider the considerable disparity between those entitled to put in Part 1 claims and those able to submit full claims for compensation. In some cases these areas of land are adjacent.

Under part 1 you are only able to claim for the impact of the operation of the railway (noise, dust, lighting etc) and any claim can only be submitted a year after the scheme has opened.

- This means that no advance claims can be made throughout the 10 years that HS2 is being constructed and it could be 20 years from the date the scheme was first announced when a claim can be made. Throughout that time the person has still had to live through all the uncertainty of the scheme and whilst he has had no land taken he may have suffered considerably, but this is not recognised.

- With his basis of claim being so narrow it is likely that the individual/business will suffer many other losses that cannot be compensated for – despite these losses being both real and quantifiable.

Whilst this consultation goes someway to try and address these issues, additional measures are still required and are detailed within the specific section in the response.

2 ADVANCE PURCHASE SCHEME (APS) AND VOLUNTARY PURCHASE ZONE

ADVANCE PURCHASE SCHEME

The CLA very much welcomes the recognition by the government that there are considerable failings in the Statutory Blight provisions and that these proposals seek to, in part, address them.

However, the APS falls short because it only applies to a limited number of property categories and tenures. In order for it to address the shortcomings in the Blight provisions it needs to be applicable to:

- Landlords of residential and commercial properties who are unable to re-let as a result of the scheme. Premises would otherwise be left empty and subject to vandalism and unlawful occupation;
- Landlords and tenants, of all properties, who make a joint application;
- All relevant properties, even if only part is taken. More often than not only part of a property holding falls within a scheme, and therefore allowing only discretionary consideration re-introduces all that is currently lacking in the statutory blight provisions and that this scheme is trying to overcome

In addition there needs to be:

- No upper cap on the open market value or rateable value;
- A strict timetable so that an applicant knows when his application will be considered and when the purchase will take place. There also needs to be compulsion on the acquiring authority to adhere to that timescale.

Although the APS is a voluntary scheme and goes, in part, beyond the current statutory provisions, the CLA still believes that there is a need for an Independent Person/Expert to enforce correct and fair application of the scheme and there should be a right of appeal to that Independent Person/Expert

VOLUNTARY PURCHASE ZONE

The CLA welcomes a voluntary purchase scheme outside the statutory safeguarded area.

We make the following comments:-

1. **Extent of the rural area** – we agree that the scheme should reflect the particular circumstance of the rural area; however the northern and southern boundaries exclude areas, rural in nature both inside the M25 and west of the Water Orton junction. We recommend that, in order to deal with this anomaly, the boundary of the scheme be set in the North of Birmingham Road (just north of J4a of the M6) and in the South at Ickenham.

2. **Qualifying interest –** In common with the statutory blight qualification we believe that the restriction of businesses with a rateable value above £34,800 is an anomaly in the compulsory purchase system which needs to be rectified. We recommend that there be no rateable value limit placed upon business property.

3. The CLA is concerned that landlords of residential and business property are ineligible for this and other compensation measures in this consultation. The owner of

a residential or business property could well find that their tenant vacates the property leaving it vacant and without a rent passing. The blight imposed by the HS2 scheme may make it impossible for the landlord to re-let the building. Owners of vacant residential and business property should be eligible to apply to the Voluntary Purchase Scheme.

4. **The lateral extent of the Voluntary Purchase Scheme** – We agree with the rationale set out in section 4.7 of the consultation outlining why it is not appropriate to set an outer limit to the proposed long term hardship scheme. On this basis we question why a rigid limit of 120m is set for the voluntary purchase zone. We believe that a more objective boundary be drawn which takes account of the impact of the railway on any particular property. The boundary should, as 4.7 accepts, "vary from area to area depending on the topography of the land and the construction of the line....". The CLA believes 120m should be the minimum extent of the Voluntary Purchase Zone.

5. The VPZ is not shown around the road improvement areas, but properties affected by these proposals will also suffer a significant impact.

6. **How the outer limit of the Voluntary Purchase Zone is referenced** – Notwithstanding the comments in 4 above we believe it is incorrect to reference the distance in the VPZ to the centre line of the railway. If HS2 are to reference the zone by a linear distance it should be measured from the outer limit of the proposed land purchase. At tunnel entrances the VPZ should extend to properties above or adjacent to these entrances.

7. **Costs** – Whilst we accept the point that this is a voluntary scheme, those applicants who do apply to the scheme will not do so lightly. In fact the sale is as a result of the blight caused by the scheme. Clearly all applicants will have greater costs associated with this scheme than they would through a standard sale of property. The need for professional and legal advice (over and above the cost of valuation) is essential. We believe that an applicant should be entitled to reclaim his/her professional costs, removal costs and stamp duty in addition to the open market value of their property. We also believe that a residential owner should receive a payment equivalent to the home loss payment.

8. **Property straddling boundaries** – The proposal to consider properties straddling boundaries of either the safeguarded area or the VPZ should not allow for any discretion if any part of the freehold property falls into the particular area and an applicant should be able to apply. Semi detached houses and terraces should be included in their entirety.

3 SALE AND RENT BACK SCHEME

The CLA welcomes any scheme which makes the process of compulsory purchase more flexible for dispossessed property owners. The ability to undertake an early sale of property but with the opportunity to remain as a tenant of the government is a good thing. We make the following comments on the scheme proposed in the consultation.

1. Eligibility

    - Restricting this scheme to owner occupied properties in the safeguarded area limits the scope for this scheme to fulfil its function to give greater flexibility to those who will have their property purchased. There appears to be no reason why a house could not be rented back to the former owners whatever the scheme (APS, VPS or hardship). We understand that properties purchased under these schemes will be rented out in any event;
    - We believe a sale and rent back scheme should be available to businesses that own and occupy their premises. The relocation of a business takes time and many businesses would welcome the opportunity to release capital tied up in property to be used for relocation whilst still being able to trade in their former premises;
    - Likewise, the opportunity to sell and rent back agricultural land should be considered, albeit there may be limited uptake. There may be a limited market of agricultural land in any year and if all the agricultural land for the scheme is purchased in a single year the demand to replace agricultural land in the market would be impossible to fulfil. A sale and rent back scheme may well flatten demand and allow the market for replacement land to fulfil the demand over a longer period. It would also allow agricultural businesses to restructure well in advance of the scheme. Clearly, other heads of compensation should be left in abeyance (i.e. disturbance injurious affection and severance etc).

2. The Application Process

    - There appears to be an overly complex and bureaucratic system once a house is accepted onto the scheme. Such complexity is likely to fuel the stress and anxiety which the scheme is trying to prevent;
    - A number of our members occupy old or difficult to maintain and often unusual rural properties. The rigid scheme rules as set out would prevent many of them from making use of this scheme. It seems to be ludicrous for HS2 to purchase a property, spend lots of money on it before leasing it back to the very people who were happy there in the first instance when the property is going to be demolished. There needs to be the scope for HS2 to apply for a court order to contract out of the obligations imposed on landlords on short term leases (less than 7 years) under the Landlord and Tenant Act 1985 and this should also be extended to longer tenancies if required. Legislation should provide for contracting out of the statutory obligations imposed in the Energy Act 2011 on domestic properties.
    - Not all owner occupied properties are maintained to a standard acceptable for letting as an assured short-hold. We believe that the scheme should contain the flexibility for the government and the seller to reach a compromise in terms of the subsequent letting both in terms of repairs, improvements and rent;
    - To maintain flexibility there would be merit in reaching an agreement to contract out of the Landlord and Tenant Act and agreeing a full repairing lease with the tenant, with no obligation on the tenant (former owner) to do

anything more than to keep the property in the same state of repair. After all, these properties are likely to be demolished. Such flexibility should therefore enable more to pass the “value for money test”;

- The parties should be free to agree sub-market or nominal rent as part of any sale and rent back agreement. Such flexibility may help the parties agree the market value of the property if it included the rent back at a low rent. Again there appears no reason why such an approach would be an inappropriate use of public money.

3. Tenancy Contract

    - As stated above there appears no reason why a variety of tenancy contracts to suit the individual situation might be used;
    - In the situation of the railway not going ahead we believe that sellers should be able to include in the sale contract the terms upon which a re-purchase could take place. The inflexibility and the lack of statutory standing of the Crichel Down Rules makes it imperative that a contractual re-purchase by the original owner is available as part of the sale contract. There needs to be some provision to shelter the former owner from greatly inflated prices in a buoyant property market should he wish to re-purchase a property that was not in fact demolished.

4. Other Issues

    - Applicants making use of this scheme should be able to recover their reasonable costs incurred in receiving professional advice.

4 LONG TERM HARDSHIP SCHEME

The CLA is pleased that the Department has dropped the adjective “extreme” which has not been helpful in HS2’s current “Exceptional Hardship Scheme” (EHS) which over time appears to have become harder and harder to access. It would almost seem that you have to be “on your knees” before it is considered that the criteria has been met (i.e. you have spent all your savings and have almost nothing left); if you have any personal resources it would appear that you are not in a position of “extreme” hardship.

The CLA is also pleased that the Department recognise that there is a need for a long term purchase scheme beyond the immediate environs of HS2 to cover the impacts that HS2 will have over a wider area.

However, there is also a problem with the definition of hardship which can lead to variable interpretations: anything from a little difficulty to severe suffering, depending on the interpretation at the time.

Going back to first principles, no landowner or occupier should be worse off as a result of the scheme going ahead, than he would have been if there has been no scheme. On that basis you should not have to prove hardship or a substantial adverse effect, both of which are open to hugely variable interpretation. Proving adverse affect should be sufficient.

4.1 Past experience may show that final impact of a scheme is sometimes less than the impact perceived at the outset. However, the real problem is that the planning and construction phases take so long (20+ years perhaps) and during that time a person or business that remains *in situ* has a continuing period of suffering with no guarantee of things improving.

Property Type

4.5 There is an inference in this section that the only people that will be affected by HS2 in this context are those whose main residence will be affected. This is clearly not the case; all property within an area will be affected by HS2 and there will be problems letting houses, agricultural units, and commercial premises. The same issues apply to second homes in the same way as they do to an individual’s main residence. They will all suffer the same problems – as a direct result of the scheme - and they should be treated in exactly the same way.

Location of Property

4.6 The definition of “substantially adversely effected” sets the bar very high and introduces an unnecessary degree of subjectivity. Stroud’s Judicial Dictionary of Words and Phrases describes “substantial” as a word of no fixed meaning, it is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole (Terry’s Motors Ltd v Rinder [1948] S.A.S.R 167). This could mean that many will suffer as a direct result of HS2 financially without any recompense as they do not meet this stringent criterion.

4.7 The CLA welcomes that Department’s desire not to set outer limits to the area because as the document rightly states the setting of every area is different and the impacts will be different. There will also be significant impacts around the entrances to tunnels and property (commercial and residential) that lie above these tunnels. Although tunnelling is commonplace within urban areas it is less so in rural areas and the safeguards set out in section 5 of this document will perhaps be well understood by purchasers in rural areas. Therefore this scheme should still be available around and along tunnelled lengths. Where there is no impact then there will no basis for a claim.

Effort to Sell

4.8 The CLA sees that the marketing requirement of 12 months to be excessive. It should be apparent after only a few months of active marketing whether the property is going to sell. EHS currently demands 3 months which is an appropriate length of time for this scheme. It is also inappropriate to suggest that the vendor should suffer a 15% loss as a direct result of the scheme. Evidence of the inability to sell could be evidenced through a marketing report and the market conditions at the time which can be provided by the vendor's agent.

No prior Knowledge

4.9 The completion of contracts for sale is legally the date of the purchase. However many will have exchanged contracts weeks or months ahead of completion or entered into agreements from which they cannot escape. It is important that these categories of claims are not caught out by the imposition of a cut off date.

There is also concern that until all the details are released (exact track location and elevation, land take, landscaping, bridges, viaducts, tunnelling and gantry dimensions and locations) the impact could be worse for some recent purchasers than they may have thought when they purchased, for example, in December 2010.

The CLA is concerned that with the benefit not being able to pass to a future purchaser then it will encourage claims to the scheme during the planning, legislative and construction phases of the scheme when the impacts could be at their worst. If it were possible to pass on this safeguard to a future purchaser who remains *in situ* until after completion when the impact might be less which may reduce the number of purchases actually required.

Hardship

The CLA opposes the definition of hardship; it is too subjective and is open to manipulation by the acquiring authority, and open to challenge through the courts which adds to uncertainty.

4.10 Whilst the inclusion of a list of criteria may be illustrative, it may become prescriptive and lead the panel to make judgements on applications with reference to the "tone" of the list which seems to favour reasons for the elderly rather than younger families (need to move by virtue of marriage, birth of children etc). In addition, access to the scheme should be allowed because an individual wishes to move but cannot do so because of HS2, not that they have to submit to a panel so that others may make a judgement. Potential vendors are put in this position by HS2 and it is therefore HS2's duty to provide a way forward.

The CLA does however welcome the final paragraph within 4.10 which allows for prequalification of the criteria which is most helpful. This paragraph appears to allow individuals to pre-qualify for the scheme in advance without having to meet the other criteria. The CLA welcomes this aspect which is not too distant from the Market-based Bond Purchase Guarantee Scheme suggested by the CLA. The main difference is that a MBPGS would not force the sale of the property and if the property was sold then the new purchaser would be secure in the knowledge that the value of his purchase was still protected. Details of the MBPGS as featured in the 1st section of this response and in the attached copy of the CLAs "Fair Play" paper.

4.11 – 4.13 Welcome

The Application Process

4.16 The CLA is concerned that assessments can only be made by valuers from a pool selected by HS2. In any area these valuers may not be the most expert depending on the type and location of that property. It is important that these valuers are completely independent and cannot be seen to be acting in the interests of the Department or HS2. The applicant should be able, if he so chooses, to instruct and pay his own valuers (recouping the costs from the Department) to ensure total independence from the acquirer.

4.17 The CLA is content for HS2 to instruct from a pool of valuers. The ability to instruct a 3rd valuation where there is a 10% discrepancy is also helpful

4.18 Whilst a time limit is placed on the applicant to accept the offer a clear enforceable timetable must also apply to the acquirer.

4.20 The CLA is content with a 6 month offer window but this must be backed by a strict enforceable purchase timetable. We are content with the re-application criterion providing that there are no other changes to an applicant's position during that time. For example, an application as a result of redundancy might have been unsuccessful, but need to sell as a result of impending divorce (which was unforeseen at the time of the previous application) might have a better chance of success 3 months later in different circumstances.

The Panel

4.21 The independent members of the Panel should have a good understanding of HS2, landowning, commercial, residential and agricultural issues as well as having a good understanding of the Hybrid Bill/Act and compulsory purchase legislation. Their remit should be fair application of the scheme, not any allegiance to HS2 or the Department.

4.22 Welcome

4.23 The CLA believes that there is a need to allow site visits and hear individual verbal statements; to restrict this will be to prevent a fair assessment of the case. It is also important that the panel has, and is seen to have, all the facts before making the decision. Anything less would show a blatant disregard for the adverse impacts inflicted on individuals or businesses who, through no fault of their own, end up suffering directly as a result of a government scheme.

Guidance to applicants

4.25 – 4.26. This is welcome but any guidance also needs to set out the standard to which the panel is expected to work, and place certain obligations on them to ensure that they operate swiftly and fairly. The Panel may also wish to seek independent advice as well

Summary

- There should not be a judgment of hardship, but just a difficulty in marketing the property as a direct result of HS2;
- The scheme should be called the HS2 Long Term Purchase Scheme;
- All property should be included within this scheme - commercial, agricultural and residential;
- The phrase "substantially adversely affected" should be replaced with simply "adversely affected"
- There should only be a requirement to market the property for 3 months and there should not be a requirement for property owners to suffer a 15% drop in value;
- This scheme should be available around and along tunnelled areas as well;
- Assessment of Hardship should not be criteria based, but just based on the adverse impact of HS2 on that property and the market generally. The CLA do however welcome the ability to pre-qualify;
- A Market-based Property Bond Guarantee Scheme might deliver this more effectively and cheaply;
- Applicants should be able to appoint their own valuers;
- The panel needs to have suitably informed and experience independent members.

5 PROPERTIES ABOVE TUNNELS

Whilst tunnels are common place in urban areas, they are less common in rural areas. Although it can be argued that rural tunnels do exist in connection with major infrastructure projects (e.g. rail and roads) they are, on the whole, less well understood and there may be concern during the planning and development phases as well as over their existence many years into the future which may affect their value and marketability.

There are substantial earthworks associated with the construction of the tunnel, covering a much larger area than just the railway track. There may also be significant landscaping around the mouth of any tunnel. These changes can influence the marketability and value of a property to.

Because of these issues there must be the ability to access both the Advance Purchase Scheme and the Long-term Hardship Schemes where such an impact can be proven

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31 January 2013

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