




HS2 Compulsory Purchase and Compensation Briefing

Compulsory Purchase Association

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PETITIONING A HYBRID BILL

Jon McLeod
Weber Shandwick



weber
shandwick

engaging. always.

Petitions

- Any individuals or groups with *locus standi* that oppose the Bill can petition against it: Crossrail attracted 113
 - Disputes over and challenges to *locus standi* can be referred to the Court of Referees
- Petitions must be deposited within a stipulated time in the Private Bill Office
 - They must conform to the rules for petitions against Private Bills
- If no petitions deposited, the Bill heads straight to a standing committee or a committee of the whole House: unlikely!
 - Opposed Hybrid Bills are referred to a special Select Committee, which operates in the same way as a Private Bill Committee

Procedure in Committee

- A positive Vote in Second Reading means that the Bill's promoters (HS2) do not need to establish the need for the Bill
- The petitioners therefore make their case to the Committee first, calling witnesses if necessary
 - Witnesses normally examined under oath
 - The promoters are then heard in reply bringing in their own witnesses as required
- The Committee then considers the substance of the Bills, and makes amendments as it sees fit
 - The Bill is then reported to the House and resumes its passage akin to Public Bills
 - The Committee may also make a special report to the House regarding findings it has made about the proposed legislation
 - Committees are wont to 'write their own rules' on procedure

Considerations for petitioners

- **Collective or individual?**
 - Committee will want to hear from genuinely representative organisations, who can give evidence of membership or support
- **Focus on the issues**
 - The House will have endorsed the principle of the Bill, therefore what are its unintended consequences or in what way will it not achieve its aims?
- **Use of experts**
 - Investment in authoritative written and oral expert evidence is likely to prove worthwhile
- **Campaign support**
 - Ensure that your principal arguments are well-publicised and known to those in both Houses with an interest in the legislation and the project
- **Two bites of the cherry**
 - Commons and Lords: which arguments are likely to gain most traction in which House?

The Compulsory Purchase Process

Paul Astbury

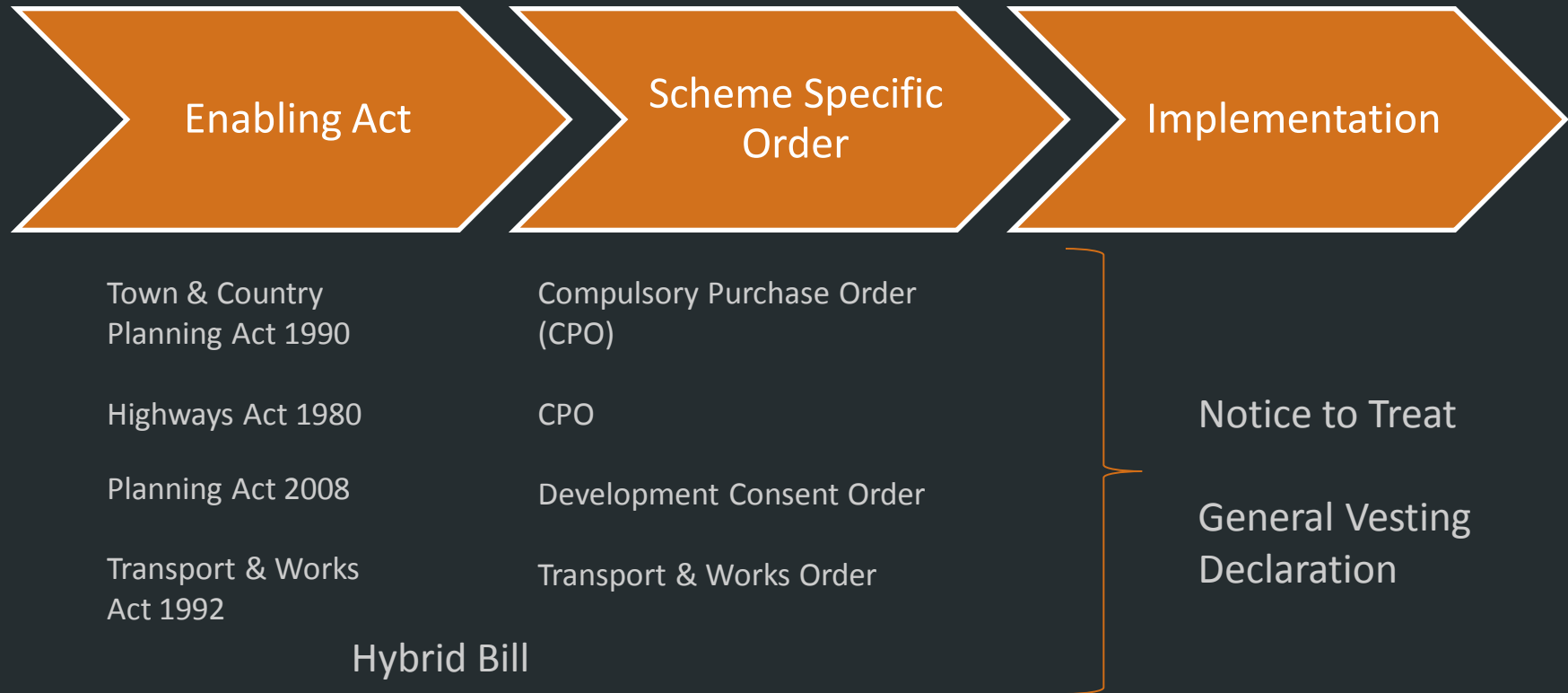
Compulsory Purchase and Regeneration Director, GL Hearn

glhearn.com



Create / Develop / Protect / Enhance

The Compulsory Purchase Process



Two Routes to Implementation

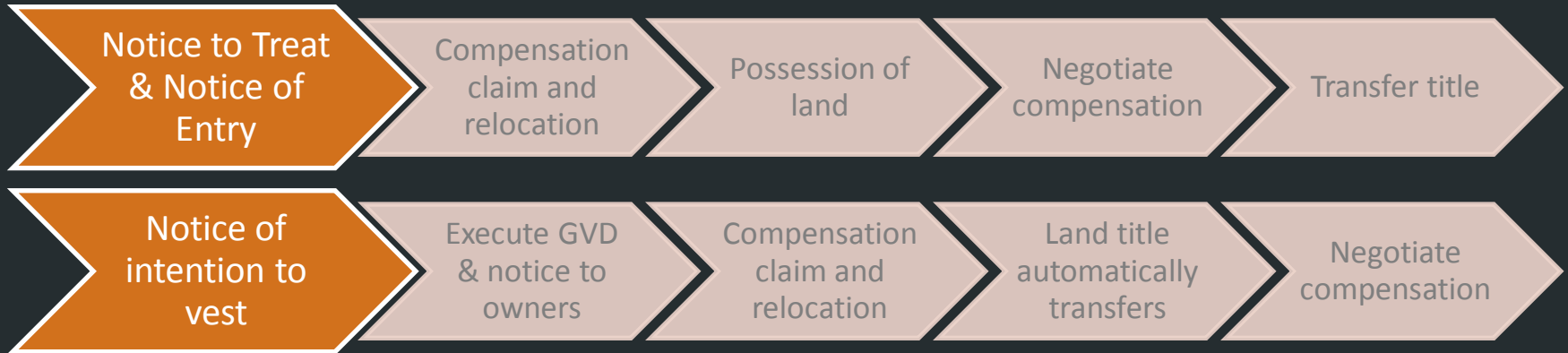
Notice to Treat

- “Traditional” method
- Flexible
- Entry onto land can be enforced
- Title must be conveyed by owner
 - Usually only on agreement of compensation
 - Can be enforced but requires potentially expensive (time and/or ££) Lands Tribunal reference

Vesting Declaration

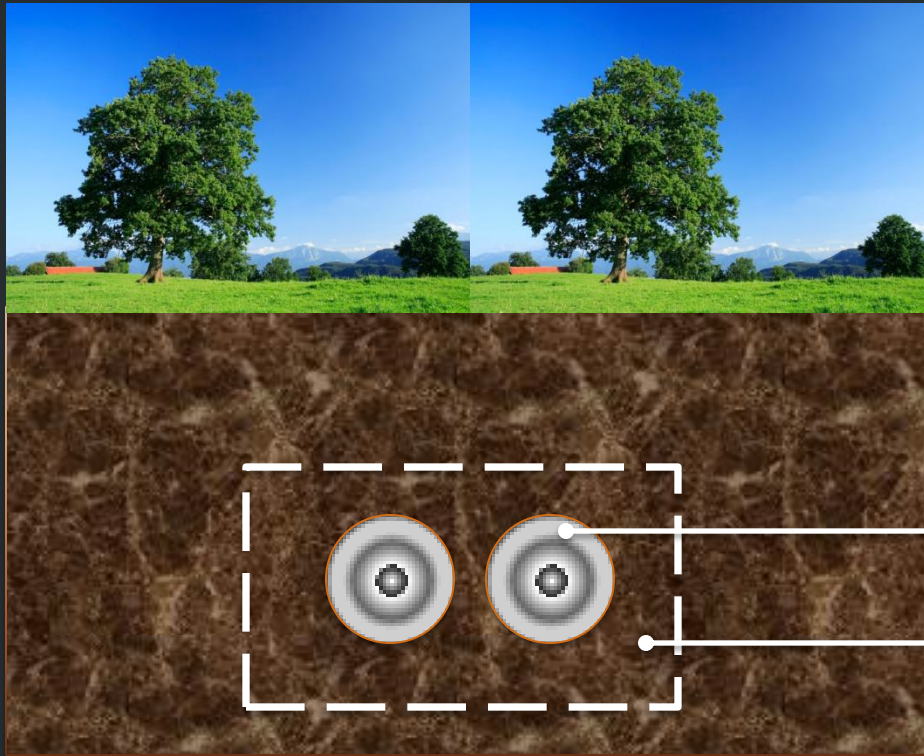
- Title transferred automatically (no conveyance or landowner action required)
- Inflexible on timing and extent of acquisition
- Entry onto land can be enforced
- Process can take slightly longer but not usually an issue in practice
- Automatic title transfer can appear draconian

Process Summary*



*after Hybrid Act comes into force

Tunnel Acquisitions



Note: Tunnel depth *not* representative

Tunnels

“Flying” freehold acquired

Further Reading / Notes

- DCLG Compulsory Purchase Booklets
- Notice to Treat – form, see s.5 Compulsory Purchase Act 1965.
- Vesting Declarations - Compulsory Purchase (Vesting Declarations) Act 1981. Timing s.3-5
- Ignoring improvements after Notice to Treat – Acquisition of Land Act s.4
- Previous Hybrid Acts for large rail schemes
 - Channel Tunnel Rail Link Act 1996
 - Crossrail Act 2008



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HS2 – proposals for compensation

by

Meyric Lewis

31 January 2013





4 main elements to be aware of

Advanced purchase scheme

Voluntary purchase zone scheme

Sale and rent back scheme

Long term hardship scheme





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Also

Proposals for properties affected by tunnelling

Proposals for impact on social rented homes





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Advanced purchase scheme

For properties in “safeguarded area”

ie 60m either side of the line

Blight notices accepted without the need to show
“reasonable endeavours to sell”



Advanced purchase scheme (cont'd)

Properties partly within safeguarded area to be considered on a case by case basis

Scheme does not apply to properties above tunnels (see below)

Owner can remain under 'sale and rent back' (below)





Voluntary purchase zone scheme

120m either side of line

Only applies in rural areas, ie not inside the M25 and not for the section of track towards central Birmingham

Unblighted value determined by averaging two valuations



Voluntary purchase zone scheme (cont'd)

If a difference of 10% between the two valuations, HS2 would pay for a third

No more compensation payable

Again, properties partly within VPZ considered on a case by case basis





Sale and rent back scheme

For owner-occupied residential properties which are likely to be demolished

Not for landlords or businesses





Sale and rent back scheme (cont'd)

Property valued

Costs of repair (to lettable standard) estimated

Rent calculated on basis of repairs

(Value for money test required – more stringent closer to time of construction)



Long term hardship scheme

For properties outside VPZ

- (1) owner-occupied residential property
- (2) substantially adversely affected by construction /operation of railway



Long term hardship scheme (cont'd)

(3) unsold despite all reasonable efforts

(4) not purchased when reasonably expected aware of HS2

(5) where owner would suffer hardship if not able to sell

Determination by panel – offer time-limited to 6 months

Properties affected by tunnelling

“before” survey undertaken and schedule of condition prepared

‘Settlement deeds’ provided – HS2 responsible in perpetuity for settlement, subsidence or vibration caused by tunnelling (costs and fees too)

£50 for subsoil rights and £250 contribution to fees





Proposals for impact on social rented homes

Social housing tenants eligible for a home loss payment entitled to £4700

HS2 aim to work with authorities, housing associations and affected tenants so options are developed for high quality replacement social rented housing; if practical, in the same area; and, if reasonable, provided in advance of compulsory acquisition



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HS2: compulsory purchase and compensation

Part 1 compensation for noise

Richard Honey



Part 1 of the Land Compensation Act 1973

- Where no land acquired for the scheme
- Compensation re the use of the railway (£50 minimum)
- Caused by specified physical factors including noise, vibration, smell, fumes, artificial lighting etc
- Compensation where the value of property is depreciated by the physical factors
- Not re construction and not for loss of view, personal inconvenience or suffering, etc

Depreciation in the value of the property

- Effect of the factor, eg noise, must be sufficiently large to have affected value in the open market
- Value property 1 year after railway first used on a switched on/off basis, taking account of any mitigation included
- Take account of reasonably expected intensification
- Only that depreciation attributable to new factors arising from the use of the railway
- Depends on nature of property / purchasers, state of the market, situation of the property (eg if already noisy), etc

Conditions for making Part 1 claims

- Claim after first claim day (1 year after railway first used following completion)
- Subject to a final 6 year limitation period for any litigation
- Must own a qualifying interest in the property when the railway first used and when claim made (see s2 LCA 1973)
- Covers homes, agricultural property and small businesses
- Must in effect be owner occupiers
- Owner includes lease with more than 3 years left to run

Part 1 compensation claims

- LCA 1973 sets out the rules on making claims in s3
- Be careful about claims firms (eg surveyors or solicitors) who take on large numbers of claims and operate on a no win no fee basis
- Tribunal has said:
“settlements arrived at by surveyors charging on such a basis are inherently unreliable, because one does not know the motives that led the surveyors to make the recommendations to their clients that they did”
- Use a qualified, professional surveyor to assess the claim

Part 1: further information sources

- VOA Land Compensation Manual Section 14

www.voa.gov.uk/corporate/Publications/Manuals/LandCompensationManual/toc.html

- ODPM booklets:

“Compensation to Residential Owners and Occupiers”

“Compensation to Business Owners and Occupiers”

“Compensation to Agricultural Owners and Occupiers”



Compulsory Purchase Compensation

Presentation by Richard Asher FRICS

Director, Savills

31st January 2013

Compulsory Purchase Compensation

- CPO Originated in C19th
- Based on a range of Acts of Parliament from 1845 to 2004
- Also based on a large body of case-law
- Highly complex provisions
- Perhaps too complex???

Compulsory Purchase Compensation

Basic Principal



Equivalence:

“The property owner / occupiers should be put in no better and no worse position financially than they would have been if the interest had not been acquired.”

Compulsory Purchase Compensation

Compensation for:

Land Taken:	Market value ignoring the scheme
Disturbance:	Costs associated with relocating homes and businesses
Loss of Profits:	For businesses both temporary and permanent
Extinguishment:	Permanent closure of business
Severance:	Compensation for splitting a property in two
Injurious Affection:	Compensation to land not taken in the same ownership.

Compulsory Purchase Compensation

Compensation:

Loss Payments:	<ul style="list-style-type: none"> - Home loss - Owners loss - Occupiers loss
Reinvestment Costs:	<ul style="list-style-type: none"> - Investment property
Statutory Interest:	<ul style="list-style-type: none"> - From date of entry
Fees:	<ul style="list-style-type: none"> - Including surveyors fees, & legal costs.

Compulsory Purchase Compensation

Appeals:

- On compensation to Lands Tribunal – now called Upper Tribunal (Lands Chamber).
- To Court of Appeal and Supreme Court – on points of law only.
- Law Commission report – rejected by John Prescott in December 2003.