

High Speed Two: London-West Midlands – Property and Compensation Consultation

Response of the Compulsory Purchase Association

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This is the response of the Compulsory Purchase Association to the consultation on the property and compensation proposals relating to the London-West Midlands section of HS2.

The Compulsory Purchase Association's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation. The CPA has some 500 members practising in this field, including surveyors, lawyers, accountants, town planners and officers of public authorities. The CPA attempts to take an objective and balanced position on matters within its remit, taking into account the points of view of all those involved in compulsory purchase and compensation.

The content of this response has been endorsed by the CPA's National Committee.

What are your views on the proposed advanced purchase process?

The CPA broadly welcomes the proposals for the advanced purchase scheme and the modification to the existing statutory code so that affected property owners will not have to demonstrate reasonable endeavours to sell.

That is not to say, however, that the CPA is satisfied with the state of the general law on blight as it currently stands. The CPA regards blight as a major problem associated with infrastructure projects, the effects of which are at their highest at the beginning of a scheme.

The CPA is on record as supporting the implementation of the recommendations of the IDWGB on blight.

There is a problem where, following acceptance of a blight notice, a claimant has no ready means of securing an early conclusion of the matter. The CPA has its own proposals to deal with this issue, which were set out in its evidence to the Growth and Infrastructure Bill Public Bill Committee¹.

¹See <http://www.publications.parliament.uk/pa/cm201213/cmpublic/growthandinfrastructure/memo/gib44.htm>

The CPA also regards the rateable value limit for business premises of £34,800 as being too low and would support its abolition, as recently called for by the CLA². Most businesses will not be able to serve blight notices, will not have the capital to relocate before compensation is paid and will not be able to obtain planning permission to extend operations on their present sites. Given that there is a desperate need to create more jobs, not run businesses down in this economic climate, the Government needs to give more consideration to the treatment of businesses affected by HS2.

There is also the problem that if HS2 is not ultimately built, businesses will not receive any compensation for the losses incurred in the years during which they were in the “shadow” of HS2. If the financial limit on businesses serving blight notices is removed altogether, then businesses which want to avoid the uncertainty of continuing on their present sites and/or want to expand, can require the Government to purchase those sites now and relocate.

The CPA also notes that the consultation paper does not make it clear that loss payments and disturbance payments would be paid under the advanced purchase scheme. This should be clarified.

Finally, whilst the consultation paper states that in the event of HS2 serving a counter-notice the applicant could refer to the Lands Chamber for the dispute to be decided, the consultation does not make it clear that a dispute as to the level of compensation in general could similarly be referred to the Lands Chamber for determination. Again, this should be made clear.

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

Again, the CPA broadly welcomes the proposals for the voluntary purchase zone.

But the Government recognises, in para. 2.13 of the consultation paper, that in rural areas the impact of HS2 is likely to be felt more widely than in urban areas. In fact the CPA knows of cases where the impact is already being felt in areas well beyond 120 metres from the line. Residents in villages in Northamptonshire and the West Midlands beyond the 120 metre limit report that it is not possible to find purchasers for their homes. The Government should therefore give consideration to extending the zone for more than 120 metres on either side of the line in rural areas.

In the light of the above, the Government should also reconsider whether there should be a voluntary purchase zone in urban areas.

The implication of para. 2.17 of the consultation paper (“the VPZ would apply to the same categories of property owners who, if they were within the safeguarded area, would be eligible to serve a blight notice”) is that there would be no requirement for people seeking to take advantage of the scheme to demonstrate reasonable endeavours to sell. But it should be clarified that this is indeed the case.

² Fair Play: CLA vision for reform of the compulsory purchase system para. 3.1

As noted above, the CPA also regards the rateable value limit for business premises of £34,800 as being too low.

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

The CPA broadly welcomes the proposals for the sale and rent back scheme.

There is however no obvious reason why the sale and rent back scheme should not also apply to small businesses. The Government should give consideration to extending the scheme to those as well.

Lastly, it is not clear whether or not the requirement to have made reasonable endeavours to sell will be waived, similar to the Advanced Purchase Scheme, and this needs to be clarified.

What are your views on the proposed approach to the application of the hardship criterion for the long term hardship scheme for Phase 1?

Again, the CPA broadly welcomes this.

But para. 4.8 of the consultation paper requires applicants to show that they have received no offer to purchase their property within 15% of its unblighted value. The statutory blight provisions require only that a person has made reasonable endeavours to sell and has not been able to other than “at a price substantially lower than that for which it might reasonably have been expected to sell” in the absence of the blight. The CPA recommends that this more flexible test is adopted in the scheme. This would allow for normal variations in valuation to be taken into account without introducing a “blind spot” where owners may suffer a loss of up to 15% of value without qualifying for the scheme. For an “average” property, a 15% loss of value would be in the order of £45,000. Such a loss is more than sufficient to cause hardship.

The CPA also queries the criterion requiring a property “to have been on the market for at least 12 months”. Greater flexibility than this should be built in, eg by the substitution of a requirement for the property to have been marketed for “a reasonable period having regard to all the circumstances”. This would allow a range of pressures on a property owner to sell their home to be taken into account.

Para. 4.8 also states that applicants would have to demonstrate that HS2 was the primary reason for their inability to sell. The CPA understands that the proposed scheme should not inadvertently compensate people for general market conditions not due to the HS2 proposals. However, requiring the applicant to demonstrate that HS2 is the cause of their inability to sell is an onerous condition that would be difficult to meet in practice.

The CPA therefore recommends that this provision should be included in the scheme as a possible defence for the Government. The most common reason for properties failing to sell within a reasonable time is overpricing. With comparison to other properties on the market outside the area affected by HS2 it would be relatively easy to establish if a property was overpriced. This could be done much more objectively than trying to demonstrate the reason

for an absence of buyers, particularly where there have been no potential buyers from whom to elicit reasons for not progressing to purchase.

Para. 4.9 – no prior knowledge. The CPA understands the reasoning behind this requirement but unfortunately its presence serves as a further deterrent to potential buyers. As the HS2 proposals are now in the public domain, it also raises the question of whom, if anyone, a vendor should sell an affected property to if any purchaser is to be penalised by exclusion from the hardship scheme.

What are your views on the proposed process for the operation of the long term hardship scheme for Phase 1?

The proposed scheme is intended to operate where the property owner-occupier has an urgent need to sell their property. The CPA therefore recommends that the receipt of an application, convening and reporting of a panel and a decision by the Secretary of State be undertaken within a period of not more than six weeks.

We would further recommend that completion of the purchase is undertaken within 28 days of the acceptance of the offer unless a later date is requested by the applicant or the applicant fails to adduce satisfactory title.

We note further that para. 4.23 states that there will be no right of an oral hearing before the Hardship Panels. The CPA considers that the Panels should have the discretion to allow an oral hearing if they think it would help them to reach a fair decision.

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

We do not have any specific observations under this heading.

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?

We do not have any specific observations under this heading but commend the thinking behind the aims expressed.

CPA
30 January 2013