

# HS<sub>2</sub> PROPERTY AND COMPENSATION FOR LONDON- WEST MIDLANDS

Decision document – Properties above Tunnels



# **HS2 Property and Compensation for London-West Midlands**

**Decision document – Properties above Tunnels**

Presented to Parliament  
by the Secretary of State for Transport  
by Command of Her Majesty

November 2013

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# 1 Introduction

## 1.1 High Speed Two

- 1.1.1 On 10 January 2012 the Secretary of State for Transport announced that the Government had decided to proceed with plans to build a new high speed rail network (High Speed Two, 'HS2'), and that it would be built in two phases.
- 1.1.2 Phase One will run between London Euston and the West Midlands, with a new station built in central Birmingham, linking to the existing West Coast Main Line (WCML) north of Lichfield. Phase One will also provide a direct link with Continental Europe through HS1 and the Channel Tunnel.
- 1.1.3 Phase Two will extend the high speed rail network from the West Midlands to both Manchester and Leeds. The proposed route will include stations at an East Midlands Hub near Toton, Sheffield Meadowhall in South Yorkshire, Leeds, Manchester Airport and Manchester Piccadilly. The proposals also include further connections to the existing East Coast Main Line and West Coast Main Line.
- 1.1.4 The Secretary of State for Transport has now laid a hybrid Bill before Parliament to secure legal powers to construct and operate Phase One of the railway. If authorised, construction of Phase One would begin around 2016, with the line expected to open in 2026.
- 1.1.5 This document explains the ways in which the Government intends to maintain confidence in the values of properties that are above tunnels along the Phase One route. It should be read alongside the information paper about ground settlement deposited in Parliament with the *High Speed Rail (London – West Midlands) Bill*.

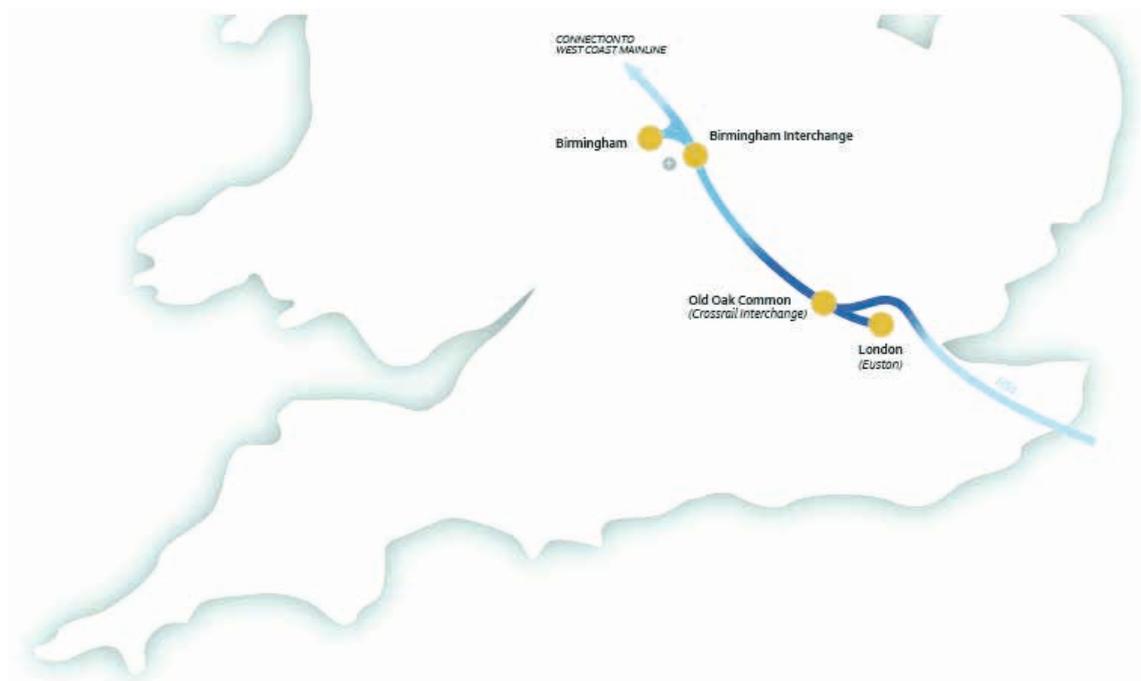


Figure 1: Phase One of the High Speed Two (HS2) rail network

## 2 What did we consult on?

### 2.1 The purpose of the consultation

- 2.1.1 The Government intends to introduce discretionary property compensation arrangements in respect of HS2. Between October 2012 and January 2013 ('the October 2012 consultation') the Government consulted on potential options for a package of discretionary compensation measures for property owners and occupiers whose properties may be affected by the HS2 project.
- 2.1.2 The consultation also included details of proposed measures relating to properties above tunnels and how the Government proposed to work with relevant local authorities, housing associations, and affected tenants where it is necessary to compulsory purchase social rented housing.
- 2.1.3 This document addresses only the measures relating to properties above tunnels i.e. chapter 5 of the October 2012 consultation. It should be noted that the approach laid out below applies only to Phase One of HS2 and does not represent a binding commitment for other transport or infrastructure projects.

### 2.2 Further consultation

- 2.2.1 The Government is currently re-consulting on discretionary compensation schemes for owner-occupiers. This follows a ruling of the High Court on 15 March 2013 which found that a decision announced in January 2012 to rule out further consideration of a property bond as a potential method of property compensation was unlawful because the consultation which had led to that decision had been unfair as it did not provide enough information to consultees on the discretionary compensation scheme proposals; and the basis of the decision was different to that consulted on. The Judge also found that *HS2 Action Alliance's* consultation response on compensation was not conscientiously considered.
- 2.2.2 The Judge did not specifically rule on the October 2012 consultation. He did not comment on the merits of particular schemes and made no suggestion that the package of compensation measures consulted on between October 2012 and January 2013 was unfair.
- 2.2.3 In response to the judgment, the Government undertook to consult again on elements of discretionary property compensation relevant to the judgment. This did not include our approach to properties above tunnels or lost social rented housing. We are therefore able to publish this document, clarifying the Government's decisions following the October 2012 consultation.

### 2.3 Overview of the proposals

- 2.3.1 The proposals were devised in response to the 2011 HS2 consultation. It was clear that many people who responded to that consultation were concerned about the possible effects of tunnel construction on properties above HS2 tunnels. Further, there was also concern that local property markets might be adversely affected by tunnelling activity.

- 2.3.2 The Government consulted on three measures to address concerns around tunnelled sections of HS2. First, a commitment to undertake (and pay for) surveys that would provide an independent assessment of tunnel-related ‘settlement’ on a case by case basis, enabling HS2 Ltd to pay for any necessary repair work caused by tunnel-related settlement.
- 2.3.3 We also consulted on a proposal to introduce ‘settlement deeds’. These deeds were designed as a legally binding confirmation that HS2 Ltd (or any future owner of the infrastructure) would be responsible in perpetuity for resolving settlement, subsidence or vibration issues caused by tunnelling. The intention, as laid out in the consultation document, was that the settlement deeds would reassure owners, potential purchasers and mortgage and insurance companies that they would not be liable for repairing damage caused by HS2 tunnelling.
- 2.3.4 Finally, the consultation included details regarding the purchase of subsoil rights. Where a property is located above a proposed deep-bored tunnel, it was suggested that, as we have done with similar infrastructure projects (for example Crossrail), a payment be made to property owners which would represent the perceived value of the subsoil. Further, it was proposed that a fixed contribution may be made towards professional fees in connection with advice claimants may seek in relation to the acquisition. The land or buildings on the surface would not be purchased under these proposals.
- 2.3.5 Consultation respondents were asked to submit their views on the following question:  
**“What are your views on the Government’s proposals to restore confidence in properties above tunnels?”**

## 3 The Government's decision

### 3.1 Response analysis

3.1.1 Dialogue by Design was contracted as an independent analysis organisation to collate and analyse these responses, publishing a detailed summary report outlining the main themes, comments and suggestions which were presented across the full range of consultation responses. This report was published on 12 September 2013, and can be viewed at: <http://www.hs2.org.uk/news-resources/publications>

3.1.2 Responses to the question about proposals relating to properties above tunnels can be found in chapter 9 of that report. The Government received a total of 29,492 responses to the consultation from a range of individuals and organisations. Of these, 25,094 included an answer to question 6 of the October 2012 consultation document.

### 3.2 What did we learn?

3.2.1 The responses show that the majority of respondents considered the proposals to be unfair or inadequate to reassure the owners of properties above tunnels. This said, a small number consider no measures would be sufficient to restore confidence. Some respondents also considered that the proposals did not include compensation for a loss of property value or take account of the potential long-term impacts arising from tunnels.

3.2.2 Specific concerns were raised regarding the longevity of the commitment to property owners should ownership of the railway change; a desire to extend eligibility for other discretionary schemes to those properties located above tunnels; and the potential for vibration or noise to affect such properties once the line became operational.

### 3.3 Impacts of tunnels in the UK

3.3.1 As well as consulting on proposals to address public concerns regarding tunnelling, the Government also made a commitment to undertake a further evidenced assessment of the impact that recent tunnels in the UK have had on the properties and people above them and the measures taken to ensure perceptible vibration impacts were avoided. This assessment was published on 12 September 2013. The full document and a non-technical summary of it can both be found at: <http://www.hs2.org.uk/news-resources/engineering-documents>

3.3.2 The non-technical summary includes material about:

- the effects that tunnels can have on properties;
- how ground movement is controlled including evidence to show that ground movement has diminished in recent decades as a result of improved techniques;
- the tolerance of structures of different types to ground movement;
- how impacts of tunnelling are reduced;
- improvements in reducing noise and vibration from tunnels; and
- how and where more detail can be found.

3.3.3 The conclusion of the report is set out in the box below.

Historically, some rail tunnels have been a source of annoyance from noise and vibration. In more recent years, these problems have been addressed and techniques to calculate the noise and vibration have been developed. Measurements have confirmed that these effects can be calculated with reasonable accuracy. The predictions are based on:

- existing knowledge of vibrations caused by trains travelling at a range of speeds;
- knowledge of the performance of buildings, depending on their construction type and height;
- measurement of the ground properties for each section of tunnel; and
- performance of different track types.

Not only are modern tracks constructed more accurately than previously, but monitoring regimes ensure that the rails and wheels are maintained to a higher standard. This ensures that the track produces less vibration than earlier railways.

A range of track forms can be employed to reduce the vibration passed from the rail to the tunnel structure. The track system will be designed and specified to reduce potential adverse impacts caused by ground-borne vibration within the requirements for a safe, reliable and maintainable railway.

*Impacts of Tunnels in the UK, September 2013*

3.3.4 The Government’s intention in setting these details out at this stage is that property owners, potential purchasers, mortgage lenders and others will be reassured. All the evidence suggests that the impacts from HS2 tunnelling and other underground excavations will be minimal. Nevertheless, the Government remains committed both to mitigating against the potential impacts and to ensuring that there is redress should any owner-occupiers be adversely affected.

3.3.5 In order to provide further assurance to property owners, it is important to note that under Part 1 of the Land Compensation Act 1973, owner-occupiers of dwellings, small businesses and agricultural units may claim for any reduction in the value of their property as a result of the physical effects of the operation of the railway. This includes, for example, loss of value caused by noise or vibration. Such claims can be made once the infrastructure in question has been operational for one year, allowing the actual physical effects and their impact on property values to be measured. Part 1 compensation applies to projects such as the HS2 scheme, not excluding infrastructure in tunnels.

### 3.4 Alternative proposals

3.4.1 Some responses expressed a desire for properties affected by tunnelling for HS2 to benefit from further discretionary compensation measures, such as those proposed for properties affected by HS2 but not located above deep bored tunnels. The proposed schemes that were in question at the time are subject to re-consultation

and further information can be found in *HS2 Property Compensation Consultation 2013 (September 2013)*. The consultation document is available at: [www.hs2.org.uk](http://www.hs2.org.uk).

3.4.2 A decision about whether or not these measures should be introduced, and whether they should be available to properties above tunnels, will be made following that consultation. The decisions in this document are therefore without prejudice to the outcome of the HS2 Property Compensation Consultation 2013.

3.4.3 Some respondents raised the issue of the interaction between construction and compensation. The subject of mitigating the surface construction activities related to tunnelling is more properly for the Environmental Statement or the code of construction practice, which were released with the hybrid Bill.

### 3.5 Comments out of scope

3.5.1 Some responses included suggestions for the introduction of further tunnelled sections along the Phase One route. Questions of whether to run a section of the route in tunnel are design refinements. These suggestions are therefore not relevant to this consultation.

### 3.6 Summary of general conclusions

3.6.1 It is important to clarify that the Government does not seek to provide a complete guarantee of any level of house prices. Experienced property professionals report that generalised blight – i.e. the negative effect on property values in the immediate vicinity of a proposed scheme – is a temporary problem. Apart from a small number of properties in the immediate environs of a scheme, values can be expected to recover when the scheme is operational and the full effects of it are known.

3.6.2 The Government considers that it is unreasonable to expect taxpayers to compensate for temporary reductions in values of homes – reductions which will be reversed in time as more certainty is available about the scheme and its effects on property, and generalised blight dispels and property prices recover.

3.6.3 However, the Government considers that it is fair and appropriate to compensate for the costs of repairing damage to property in the event that damage does occur.

### 3.7 Three policies for properties above tunnels

3.7.1 We have decided to implement three policies for properties above tunnelled sections of Phase One of HS2:

- Before and after surveys.
- Settlement deeds.
- The purchase of subsoil rights.

3.7.2 We have noted the need to provide detailed information about these policies. Information about before and after surveys and about settlement deeds is provided in an information paper about ground settlement published alongside the hybrid Bill. Rather than duplicate detail from that information paper this document will refer to the relevant sections of the information paper where that detail can be found.

## 4 Before and after surveys

### 4.1 Background and Decision

- 4.1.1 Though the Government believes that the impacts from HS2 tunnelling and other underground excavations will be minimal, we have nevertheless committed to undertaking (and paying for) surveys of those properties above tunnels that are considered to be at the greatest risk of settlement. Such surveys would be carried out before and if necessary after construction. In the consultation we set out further details of the proposals and asked for the public's views on whether our proposals to monitor and limit the impact of settlement were sufficient.
- 4.1.2 Before and after surveys will reveal whether any damage has occurred to properties on the surface as a result of HS2 tunnelling work. Before underground works commence, HS2 Ltd engineers will collect information about local soil and groundwater conditions. This will be used to calculate whether any settlement is likely to occur. The potential impact of this settlement will also be assessed.
- 4.1.3 We have concluded that the Government should introduce a system of before and after surveys as proposed, subject to some minor considerations discussed below.

### 4.2 What you said and the Government's response

- 4.2.1 Responses demonstrated support in principle for before and after surveys, though some respondents attached a caveat to their support.
- 4.2.2 The exact criteria and methodology for identifying 'at risk properties' were queried by some respondents. We are now able to provide this information in the information paper about ground settlement that accompanies the hybrid Bill.
- 4.2.3 Further, we were asked to consider whether all properties within 30m of a tunnelled section of the route could be made eligible for before and after surveys should their owners feel concerned about the potential impacts of tunnelling. We have considered this input carefully, but have concluded that the identification of those properties most at risk of settlement should be engineering-led as described in the information paper about ground settlement rather than determined by an arbitrary distance unrelated to factual data.
- 4.2.4 A 'before' survey (known as a 'Schedule of Defects') would be carried out in advance of underground works in the area on all properties assessed to experience 10mm or more of settlement by the assessment process described in detail in the information paper about ground settlement. This will involve a visual inspection of the interior and exterior of the property in question to identify and record any existing defects.
- 4.2.5 The most prominent issue raised through the consultation was a desire for the surveys to be carried out by an independent third party. We recognise that this will be necessary in order to give property owners confidence in the fairness of the system. The way this will be achieved is set out in section 5 of the information paper on ground settlement.
- 4.2.6 Some respondents expressed a wish to see further details about how the surveys will be carried out in practice. However, the 'before' surveys will not begin until at

least 2016. While we are able to give the information now set out in the information paper on ground settlement, we intend to publish further guidance about how the surveys will be conducted closer to the time when surveys are carried out – once we are in a position to provide more precise and definite information. This will cover how the surveys will be carried out, the steps that property owners may wish to take in preparation for a surveyor's visit and other details of the operation of the surveys that would be useful for owners to know. We do not currently expect this to happen before the autumn of 2015.

4.2.7 Once tunnelling and other underground work in the local area has been completed, individuals who reasonably believe damage has occurred as a result of that work will be able to request an 'after' survey. Consultation respondents asked about the timescales for this. Section 5 of the information paper about ground settlement gives details of the timescales for requesting an 'after' survey and how owner-occupiers could ensure the independence of that survey. While it is unlikely that any damage will occur, it is reasonable to expect that if there is any damage it will become evident within two years of the line becoming operational and in general that will be the timescale for requesting an 'after' survey.

4.2.8 Should any evidence of damage resulting from HS2 tunnelling or other underground excavations be identified by comparing the 'before' and 'after' surveys, HS2 Ltd (or its successor) will assume responsibility for the cost of repairs. Repairs are discussed in detail in section 6 of the information paper about ground settlement.

### 4.3 Next steps

4.3.1 We do not consider it viable for 'before' surveys to take place more than six months in advance of construction. For example, unrelated factors could otherwise reasonably cause damage to a property in the intervening period. Therefore, as the time for the 'before' surveys approaches – no earlier than 2016 due to the estimated construction timetable – we will set out in more detail how before and after surveys will be conducted. Meanwhile, the best source of detailed information is the information paper about ground settlement that accompanies the hybrid Bill.

## 5 Settlement deeds

### 5.1 Background and Decision

- 5.1.1 We have always been clear both that the effects of HS2 tunnelling will be minimal and that the undertaking of before and after surveys will protect property owners above tunnels from the costs of repairing damage caused by HS2 tunnel construction. However, we also recognise that it is of paramount importance that we communicate this guarantee as clearly as possible to property owners, mortgage or insurance companies and the wider market.
- 5.1.2 It was with this aim in mind that we proposed in our consultation a system of 'Settlement Deeds'. We described these as providing a legally binding confirmation regarding responsibility for resolving issues such as settlement, subsidence or vibration issues caused by tunnelling. Settlement deeds have already been used in connection with other major projects, such as Crossrail.
- 5.1.3 We proposed that HS2 Ltd, or any future owner of the infrastructure, would be named in the deeds as the responsible party in instances such as those laid out above. We also stated that costs incurred, including professional fees related to a claim against a deed, would also be covered by HS2 Ltd.
- 5.1.4 Specifically, we laid out that the deeds would be made available, on request, to all properties within 30m on plan of tunnelling works. The 30m distance is based on the precedent set by Crossrail.
- 5.1.5 We can now confirm that a system of settlement deeds will be introduced for Phase One of HS2.

### 5.2 What you said and the Government's response

- 5.2.1 The most frequent comments from respondents in relation to settlement deeds were with regard to extending eligibility, and specific proposals included availability to all properties affected or to all homeowners within the safeguarded area for settlement deeds. We have decided to use a flat distance measure (30m) for this purpose because it is intended that the system will be introduced before precise calculations about the risk of settlement have been completed. Following consideration of consultation responses and further engineering advice, we have decided to extend eligibility for settlement deeds to those properties within 30m of retained cuttings, shafts and box structures forming part of the works authorised to be carried out under the Bill. The reason for this is that these are the areas where settlement (below ground movements) are also more likely to occur, as they are the sites where below ground excavation will take place. More information about this is in the information paper on ground settlement.
- 5.2.2 Some consultation responses commented that settlement deeds would address concerns about the effects of tunnel construction, but not the effects of the tunnels once the railway has come into operation. These comments are correct. On reflection we recognise that in our consultation document we should have described settlement deeds as a measure for resolving only settlement or subsidence issues caused by the tunnelling process or other underground excavations. Part 1 compensation already

exists as a remedy for reductions in property values caused by the physical effects of the operation of the railway.

- 5.2.3 Many consultees believed that assurances such as settlement deeds should be extended to all properties affected by HS2. However, settlement could only be an issue where there are underground excavations including tunnelling and Part 1 of the Land Compensation Act 1973 already provides for statutory compensation if the value of a property is reduced by the physical effects of the railway once in operation. Part 1 falls within the existing compensation code and is therefore a tried and tested means of dealing with such cases. It is not, therefore, necessary to extend settlement deeds to those properties which are not located above deep bored tunnels or in the vicinity of other below surface excavation, where settlement is most likely to occur as a result of the construction of HS2. It should be noted that should a settlement deed be issued against a property, this will not prevent the property owner from making a claim for Part 1 compensation.
- 5.2.4 Many respondents questioned the Government’s confidence that settlement impacts can be minimised. They argue that the possible impacts of settlement have not been properly assessed or considered. Since the consultation closed, however, the Government has published a detailed document outlining the effects of tunnels on property in the UK. This report conveys the Government’s latest understanding of the effects of tunnelling on properties and our policy on settlement deeds should be considered in this context. The Government remains confident that effects will be minimal.

### 5.3 Duration of settlement deeds

- 5.3.1 The Government has reflected further on whether settlement deeds should be offered in perpetuity as proposed in the consultation paper. Such an approach would create a framework for and expectation of compensation against a background of increasing difficulty, as time passed, in proving damage had originated from HS2 tunnelling or other underground excavations and not from any other cause. In order to protect the taxpayer, it would be necessary to challenge claims where there could be other causes for the damage than HS2 and, as time went on, an increasing proportion of claims would be contested. Therefore a settlement deed available in perpetuity could not in practice represent a trouble-free remedy for individuals to seek redress for an indefinite period. To avoid raising false expectations, the Government now takes the view that settlement deeds should have a finite time limit.
- 5.3.2 Where settlement does occur, it is expected that the majority of settlement would become apparent by the time underground construction has ceased and therefore some time before the railway comes into operation. We are aware from the consultation that people are concerned that settlement may continue over a longer period and that they believe that the operation of the railway could lead to further settlement. There is no reason for that to be the case, but we understand that if we are to give confidence to people that any potential damage from settlement will be made good, we need to take that belief into consideration in determining the lifetime of settlement deeds.
- 5.3.3 As stated in paragraph 5.3.2 settlement is anticipated to have ceased by the time the railway comes into operation. It seems therefore sensible to set a time period

from that date. As settlement is anticipated to have ceased by the opening of the railway there is no overwhelming reason to favour one particular time period over another. We consider therefore that it is reasonable to follow the approach taken by Crossrail and to set this period at two years after public services begin through the tunnel. This strikes a balance between an excessively long duration during which the value of deeds to property owners would diminish, and the desire by Ministers to give the public confidence in the approach that will be taken to HS2 tunnelling and other underground works. Furthermore, where settlement is still taking place after two years, it would be monitored (see the information paper on ground settlement) and 'after' surveys would not be conducted in any event until three months after the settlement ceased.

## **5.4 Next steps**

- 5.4.1 A sample settlement deed is included in the information paper on ground settlement deposited with the hybrid Bill.
- 5.4.2 HS2 Ltd will provide further details in due course about how and when to apply for a deed.

## 6 Subsoil rights

### 6.1 Background and Decision

6.1.1 Under English law, freehold ownership of land includes the ground below the surface to an unlimited depth. Therefore, in order to build the tunnels and other underground structures required for HS2, the Government must acquire the land beneath the surface through which they will pass.

6.1.2 Our consultation included reference to the Crossrail scheme, whereby a nominal payment of £50 was made to represent the perceived value of the subsoil. Additionally, £250 was paid, where applicable, as a contribution toward professional fees associated with the purchase. Following the consultation, the Government has decided to replicate this system for Phase One of HS2.

### 6.2 What you said and the Government's response

6.2.1 The value of the payment for subsoil rights was challenged by 204 respondents in total, who felt that £50 was an insufficient payment for the subsoil. A smaller number of respondents commented that the £250 offered for professional fees was inadequate.

6.2.2 The Government considers that £50 is a suitable token payment for subsoil for which there is generally no market. Furthermore, we can clarify that, should HS2 Ltd proceed to acquire the subsoil by means of a General Vesting Declaration then it would pass into the Secretary of State's ownership without any need for conveyancing. Property owners would not need to appoint a conveyancer or solicitor. The £250 fee is based on an estimate of the reasonable time it would take a surveyor to consider and advise on the value of the subsoil, but it would be paid to owner-occupiers regardless of whether they actually did appoint a surveyor.

6.2.3 A number of respondents sought confirmation of whether or not this policy would restrict their own subsoil developments, such as basement developments. The London Borough of Camden noted this as a particular issue in their area. It is important to note that property owners are not compelled to accept an offer for their subsoil and may wish to seek professional advice in this respect.

6.2.4 Finally, some responses noted that property owners in rural areas may need to make greater use of legal or other professional advice, for instance in order to address issues surrounding the change of a water course or the loss of an aquifer.

6.2.5 Again, it is important to stress that the acceptance of the compensation offer is not mandatory. Property owners can employ professional advisors and pursue a claim for further compensation should they wish to. Such claims could include recovery of professional fees.

### 6.3 Next steps

6.3.1 HS2 Ltd will publish further details about the acquisition of subsoil rights after the hybrid Bill has passed into law.

# 7

## Glossary

### Blight/Generalised Blight

Planning proposals such as HS2 may have an adverse effect on property so that an owner-occupier is unable to realise the market value that would have been obtainable had the owner's land not been affected by the proposals because prospective purchasers either will not proceed with the purchase or, having learned of the planning proposals, will only offer a lower price.

### Compensation Code

The compensation code is the collective term for the principles derived from both statute and case law, relating to compensation for compulsory acquisition, which ensures that when land is needed to build an infrastructure project, the owners receive compensation. Detailed guidance on compulsory purchase can be found at: <http://tinyurl.com/ljnmdw6>

### Crossrail

A railway line being built across London. Crossrail will connect 37 stations, including Heathrow airport and Maidenhead in the west with Canary Wharf, Abbey Wood and Shenfield in the east.

### General Vesting Declaration

A Compulsory Purchase Order can be exercised either by the service of a notice to treat, or the execution of a General Vesting Declaration (GVD).

A GVD is a formal procedure that enables the acquiring authority to assume both the title and the right to possession of the land to be acquired. The authority must wait two months after sending out a preliminary notice before it can make a GVD. It will then send all owners and occupiers a notice announcing the GVD and giving them the date when it will formally own and take possession of the property. This date must be at least 28 days away.

### Part 1 compensation

Compensation which may be claimed by owner-occupiers of dwellings, small businesses, and agricultural units under Part 1 of the Land Compensation Act 1973 for any reduction in the value of their property as a result of the physical effects of the operation of the railway. This can be claimed only after the scheme has been open for one year.

### Subsoil

The part of the land which is below the natural surface.

### Subsoil Rights

English property law recognises that, unless specified otherwise, freehold ownership of land includes the ground below the surface to an unlimited depth.



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