HIGH SPEED TWO PHASE ONE INFORMATION PAPER

C6: DISPOSAL OF SURPLUS LAND AND OVER-SITE DEVELOPMENT

This paper explains how landowners will be offered the opportunity to re-acquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for HS2, where that land is not required for the operation of HS2.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

The Helpdesk can be reached at:

High Speed Two (HS2) Limited
Two Snowhill, Snow Hill Queensway
Birmingham, B4 6GA

by email: HS2enquiries@hs2.org.uk

or by phone: 08081 434 434 (lines are open 24 hours)

Version 1.5
Last updated 23rd February 2017

C6: DISPOSAL OF SURPLUS LAND

1. Introduction

1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.

1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.

1.3. In November 2013, HS2 Ltd deposited a hybrid Bill[1] with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.

1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.

1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.

1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the project have been reached.

2. Land disposal policy

2.1. Virtually all the land compulsorily acquired for HS2 will be used permanently for the construction and operation of the new railway. However, there may be some circumstances where land compulsorily acquired becomes surplus to

[1] The High Speed Rail (London – West Midlands) Bill, hereafter 'the Bill'.

requirements after construction works are complete. In those cases, in accordance with the Crichel Down Rules, and subject to key Guiding Principles set out in this document, landowners may be offered the opportunity to buy back land, at market value, that has been compulsorily purchased from them.

2.2. The key elements of the Land Disposal Policy, which will apply where that land is acquired by compulsory purchase under the powers of the Bill, are set out in this paper.

2.3. The interpretation of 'materially changed' will follow the approach set out in the Crichel Down Rules, which is also summarised below.

2.4. Nothing in this policy is intended to affect the rights to compensation of owners of an interest in land that is compulsorily acquired for the Proposed Scheme.

2.5. This policy applies the Crichel Down Rules to property acquired under compulsory purchase powers and under statutory blight only. The Crichel Down Rules do not apply to:

- Property purchased by private treaty agreement (where the power to acquire the land under compulsory purchase did not exist at the time of acquisition);
- Property purchased under discretionary property compensation schemes (save where the property owner was also entitled to serve a blight notice at the time of acquisition).

3. General approach

3.1. Where any land has been acquired compulsorily for the construction of the Proposed Scheme and is no longer required for the satisfactory completion of the works, or not required in connection with the operation of HS2, it will be sold subject to the Crichel Down Rules.

3.2. The Crichel Down Rules ("the Rules") have been developed for over half a century and have been endorsed by previous governments . They provide for the circumstances in which land acquired by or under threat of compulsion or statutory blight, but no longer required for public purposes, will be offered back to the former owners, their successors or sitting tenants as the case may be. The rules also apply to land acquired under the statutory blight provisions (but not to land acquired by agreement in advance of any liability under these provisions). The Rules are set out in the Department for Communities and Local Government Guidance on Compulsory Purchase Process and The Crichel Down Rules (see link at 7.2). The basic principle behind the Rules is that where government wishes to dispose of land to which the Rules apply former owners will, as a general rule, be given first opportunity to repurchase the land at current market value, provided it has not materially changed in character since acquisition.

3.3. It should be noted that the Rules are commended to statutory bodies but it is recognised that an authority's approach to the disposal of surplus land will

depend on their particular function and circumstances. It should also be noted that the requirement to offer land back is not unqualified but subject to limitations and exceptions set out in the Rules themselves. Any land disposal under Crichel Down Rules by the Secretary of State will be subject to changes to the Crichel Down Rules which might be made in the future.

3.4. In particular, by virtue of Rule 10, there will be no obligation to offer land back to the former owner where the land has materially changed in character. Examples of where this may occur are when HS2 works have involved substantial alterations to existing buildings to change their character or where new works or buildings have been erected on open land. When deciding whether works have materially altered the character of the land, a consideration which will be taken into account would be the likely cost of restoring the land back to its former use.

3.5. At HS2 station and working sites, there will be works involving the demolition of existing buildings and the construction of the railways works. Following completion of the railway works some of these sites (or parts of former sites) may become available for disposal; in such circumstances, it is unlikely the Crichel Down Rules would require an offer back, as there will have been a material change in character of the land.

4. Guiding principles

4.1. Where the Secretary of State intends to dispose of an interest in a site to which the Crichel Down Rules apply, holders of Qualifying Interests will, subject to the provisions of this Policy, be given first opportunity to acquire that interest at the market value before it is offered to the general market.

4.2. The Secretary of State will determine the nature of the interest to be offered and the terms of any transfer. In so doing he will have regard to the following principles:

- the proper completion and operation in the public interest of the works as authorised by the Bill;
- the paramount requirement to protect the future safe and efficient operation of the railway;
- the need to fulfil any undertaking given by the Secretary of State in respect of the Bill or comply with any legal obligations to which he is subject;
- the need to secure in the public interest the carrying out of development or redevelopment associated with the works, in accordance with the planning, environmental and heritage considerations applicable to the sites affected; and
- the need for the land disposal to achieve the best value reasonably obtainable.

4.3. This policy seeks to strike the right balance between ensuring the project is implemented successfully and protecting the principles of disposing of land no longer required for the scheme.

5. Qualifying interests

5.1. The holders of the following "Qualifying Interests" may qualify for the offer back of an interest under the terms of this policy:

- former freeholders of the whole or part of a site; or
- where the freeholder does not wish to buy back the site, the former leaseholder who had a lease of the property which had an unexpired term of more than 21 years at the time the property is being disposed of, may (at the discretion of the Secretary of State) be offered the freehold interest;
- the successors of anyone who would have fallen into either of the above categories where, had the property not been acquired, the land interest would clearly have devolved upon those successors under a former owner`s will; or
- where there was fragmented ownership of their site at the date the property was acquired or occupied for railways works under the provisions of the HS2 Bill as enacted, a consortium of former owners who have indicated a wish to purchase the land collectively; and
- in certain circumstances where a dwelling has a sitting tenant at the time of the proposed disposal, the freehold will first be offered to the sitting tenant. If the tenant declines to purchase the freehold it will then be offered to the former owner although this may be subject to the tenants continued occupation. It should be noted however that this does not apply to agricultural units and only applies to certain types of tenancy agreement.

6. Exceptions

6.1. In the following circumstances, the Secretary of State may decide that the property should not be offered back under the Crichel Down rules:

- where the works have materially changed the character of the land since the acquisition, examples may include:
    - where a building with land was originally compulsorily acquired for HS2 and the building was demolished for incorporation of some, although not all of the land within the proposed railway, and some land becomes surplus;
    - where property has been compulsorily acquired under material detriment i.e. where part only of the land is required but the affect of the scheme is so material that the owner forces the promoter to acquire all of the property;

- to sites that, in the opinion of the Secretary of State, are of such a nature or so small or isolated that their sale would not be commercially worthwhile;
- where agricultural land that has been severed is no longer capable of farming economically;
- where it makes sense to pool the land with adjoining ownerships in a joint disposal;
- where it is decided by the Secretary of State that all or part of the surplus land forming a site is needed for railway purposes or associated redevelopment, regeneration, or the relocation of a business affected by HS2, or it is required by a Railway Authority, Infrastructure Company, Operator or otherwise;
- where former owners are not prepared to commit to provisions that protect the future safety and operation of HS2 or any railway with which HS2 interconnects both during construction and thereafter;
- where the site is needed, in the opinion of the Secretary of State, for railway purposes or associated redevelopment, regeneration or the relocation of a business affected by HS2;
- where the site is required for environmental mitigation, and where the former landowner is unwilling or unable to accommodate those requirements for recreation of community facilities or wildlife habitats;
- where planning consent has not been obtained by the Secretary of State at the time of disposal and the value of surplus land is so uncertain that clawback provisions would be insufficient to safeguard the public purse, and where competitive sale is advised by the Department for Transport`s professionally qualified valuer and specifically agreed by the Secretary of State;
- where holders of Qualifying Interests are not prepared to comply with the details of any undertakings given by the Secretary of State or nominated undertaker to planning authorities;
- where former owners are not prepared to pay the market value of the site or are not prepared to offer terms that the Secretary of State considers to represent best value having regard to all the circumstances; and,
- where the Secretary of State considers that in the public interest the land should be transferred to another Public Body with compulsory purchase powers.

7. Over-site development and the HS2 Phase One Bill

7.1. Over-site development describes commercial and residential development that can be built over and around the permanent operational structures of the Proposed Scheme (such as stations), and is not related to the operation of HS2 (such as offices, shops or homes).

7.2. The Bill does not seek approval for any over-site development. Consent for any such development will be applied for and determined through normal planning processes. However, the Bill contains ancillary powers which allow for certain works to enable over-site development (e.g. additional foundations and columns and deck structures) to be constructed as part of the Proposed Scheme.

7.3. The Bill also puts in place requirements in respect of the environmental assessment of over-site development. It defines the circumstances where the planning application for such development which is proposed to replace a building demolished or substantially demolished for HS2 must be accompanied by an environmental impact assessment.

8. More information

8.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2

8.2. For more information on the compensation code and the Crichel Down Rules see: https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance