HIGH SPEED TWO PHASE ONE INFORMATION PAPER

C7: BUSINESS RELOCATION

This paper outlines how businesses directly affected by Phase One of HS2 will be provided with help to relocate. It also covers the use of compulsory purchase powers for this purpose as a last resort.

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the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.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.

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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. Overview

2.1. This paper sets out HS2 Ltd's approach to helping businesses and other organisations that will have land taken for the construction or operation of the Proposed Scheme. In this paper "businesses" refers to commercial undertakings,

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

including urban and rural businesses, charities, community facilities and sports and leisure clubs.

3. Compensation

3.1. Businesses displaced by the Proposed Scheme will be compensated under the Compensation Code which consists of relevant compulsory purchase legislation and cases.

3.2. Where businesses are displaced from their existing premises by compulsory purchase of those premises for public works, the Compensation Code recognises the importance to those businesses of being able to relocate to another site. In addition to payment of the open market value of the interest in the land acquired compulsorily, the Compensation Code normally provides for the cost of such relocation to be taken into account under the heading of disturbance compensation.

3.3. There is a separate Information Paper (C8: Compensation Code for Compulsory Purchases) that introduces the Compensation Code. In addition there is a series of five booklets published by the Department for Communities and Local Government covering the subject. Booklet 2 (Compensation to Business Owners and Occupiers) and Booklet 3 (Compensation to Agricultural Owners and Occupiers) specifically deal with businesses.

3.4. These booklets can be found here: www.gov.uk/government/collections/compulsory-purchase-system-guidance

4. Practical assistance with relocation

4.1. Experience suggests that in the great majority of cases businesses will be able to use their compensation payments and the open property market to relocate their operations. To assist in this process the nominated undertaker will establish at their own cost an agency service to assist those businesses that will have land taken for the construction and operation of Phase One of HS2.

4.2. The agency service will help firms ascertain their property requirements and provide information on appropriate alternatives to meet their reasonable accommodation needs.

4.3. The agency service will work with property agents, landowners, and developers as well as the Department for Business Innovation & Skills, Local Enterprise Partnerships, local authorities and other relevant organisations identified to ensure reliable and effective information is provided.

4.4. The agency will not act as adviser or negotiator to displaced businesses in formulating their claims for compensation. Claimants may be able to recover reasonable professional costs of appointing their own agents for such purposes. An Information Paper covering this aspect is also available (Information Paper C9: Recovery of Costs by Property Owners).

5. Additional time to relocate

5.1. It is important that affected businesses are able to plan their relocations with as much advance notice as possible in order to ensure the smooth transition of operations from one location to another.

5.2. The provisions within the Bill require that at least three months' notice of entry prior to entering and taking possession of a property is provided. However, the Secretary of State or his nominated undertaker will make arrangements to provide affected businesses with a longer period of notice of entry, where this is reasonably practicable. In such cases the Secretary of State's overall aim will be to provide as long a period as is reasonably practicable commensurate with the coordinated progress of the construction of the Proposed Scheme.

6. Financial assistance with relocation

6.1. As a discretionary measure, not required by the Compensation Code, financial support may be offered in advance of taking possession to enable a business' relocation by:

- payment of up to 90% of the nominated undertaker's estimate of the compensation, to support cash flow;
- payment of reasonable interim professional fees, to support cash flow; and
- early acquisition and leaseback of a business' existing site to allow a new property to be acquired and developed while the business continues to operate at its current premises.

6.2. This will be dependent on the circumstances of the individual cases and subject to the negotiation of suitable terms, and to obtaining all necessary budgetary and other approvals.

7. Bill Powers to acquire land for relocation

7.1. The measures set out above are designed to ensure that the great majority of businesses and other organisations affected by the Proposed Scheme will be able to find and relocate to suitable alternative premises in a timely manner.

7.2. However, for some more specialised businesses with specific site or location requirements there may be a very limited supply of alternative premises and it may take some time to find, acquire, prepare and develop such sites.

7.3. Where the claimant establishes that his business cannot reasonably be relocated from its current premises, he is entitled, under the Compensation Code, to be compensated for the total extinguishment of the business, the amount payable being the value of his business as a going concern.

7.4. While the Secretary of State considers this is a fair basis for compensation, he recognises the potential impact that extinguishments could have on the wider

communities affected. He expects the nominated undertaker will take all reasonable steps to avoid or to limit the total number of extinguishments.

Compulsory purchase powers to acquire land for the relocation of businesses

7.5. In exceptional cases, clause 49(1) of the Bill provides a power to promote an order to purchase compulsorily an alternative site in order to reduce the risk of total extinguishment of a business displaced by the Proposed Scheme occurring, by securing the planned and timely relocation of that business.

7.6. The Secretary of State expects to exercise that CPO power only in cases where all of the following criteria are met:

- as a result of the exercise of any power under the Bill, the site on which the whole or any part of the business has previously been carried on is no longer reasonably capable of being used for the purposes of the business;
- there is a significant risk that the business will face total extinguishment as all other options for relocation, within the timescales of the HS2 project on reasonable market terms, have been exhausted; and
- the Secretary of State considers that it is in the public interest that the business is relocated because the relocation will secure the retention of a significant number of jobs, or the relocation will secure the retention of key community assets or facilities, or the business is otherwise of strategic local or regional importance.

7.7. If the Secretary of State is satisfied that all the above stated criteria have been met in any particular case, he will then decide whether he should exercise the power under clause 49(1) of the Bill.

7.8. All cases will be considered on their merits and will be subject to the submission by the claimant of an appropriate business-case demonstrating that the above criteria have been met and giving supporting evidence. It will also be subject to the agreement of suitable terms for the acquisition of the current site in accordance with the Compensation Code and the relocation to the new site.

7.9. The proposal to use the power and the supporting business case will be considered by an independent expert commissioned by the nominated undertaker who will report to the Secretary of State making a recommendation.

7.10. The Secretary of State will take the report into account in deciding whether, subject to the procedures mentioned below, the power should be exercised.

7.11. The power to make a Compulsory Purchase Order (CPO) under clause 49(1) is subject to the same procedures and safeguards as apply to the making of other CPOs. A CPO may be made only if there is a compelling case in the public interest to justify its use. Landowners and other interested persons affected by a proposed CPO have the right to object to its confirmation. If such objections are raised, the case for and against the proposed CPO must be examined by an

independent planning inspector at a Public Inquiry or public hearing. As part of his examination the inspector must consider the proportionality of making the proposed CPO, in the light of its impact on affected landowners and other interested persons.

7.12. It will also be necessary to show there is no planning impediment to the land being used for the relocation of the business; for example, that it is not necessary to obtain planning permission, or if planning permission is required, that there is no obvious reason why it would be withheld. There are no powers under clause 49 to provide planning permission for any replacement development.

7.13. It should be noted that the use of the clause 49(1) power will not in any way imply or warrant that the property to be acquired under the CPO is suitable for the relocation of the business, legally or physically. It will be the claimant's responsibility to obtain all such assurances and evidence, including site investigations, title investigations and planning permissions, or other consents as may be required and to demonstrate such to the nominated undertaker's satisfaction.

Powers to reinstate businesses within the Bill limits

7.14. Under clause 50 of the Bill, the Secretary of State has power to reinstate (either on its existing site or on different land within the Bill limits) an undertaking where he judges the public interest demands such reinstatement.

7.15. In some cases the works required for reinstating a business on land within the Bill limits will have the benefit of deemed planning permission but, depending on the nature of the works, it may be necessary to apply for planning permission under the Town and Country Planning Act 1990.

7.16. The exercise of these powers is subject to the same criteria as specified in paragraph 7.6. In addition, the Secretary of State will need to be satisfied that the following circumstances exist before he is willing to exercise the clause 50 power:

- that the nature of the undertaking is such that it is highly unlikely that planning permission would be obtained for the reinstatement of the facility on other land;
- that suitable land is available within the Bill limits that is no longer required for the construction and operation of the Proposed Scheme; and
- that there is a clear and compelling case in the public interest for the reinstatement to prevent the extinguishment of the facility.

7.17. Examples of undertakings whose facilities may meet these criteria include:

- businesses that are of significant strategic importance to the wider regional or national economy and whose discontinuance would lead to a significant number of job losses, have implications for the retention of key specialist

skills of national importance and have profound consequences for the communities and regions affected; and

- community facilities that provide vital and irreplaceable services for the area whose loss could have profound social implications such as affecting the cohesion of the community or the effective functioning of the local area.

8. More information

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

For more information on the Compensation Code and how it applies to businesses, see: www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-2-compensation-to-business-owners-and-occupiers