

HMSO publications are available from:

HMSO Publications Centre

(Mail, fax and telephone orders only)
PO Box 276, London SW8 5DT
Telephone orders 0171-873 9090
General enquiries 0171-873 0011
(queuing system in operation for both numbers)
Fax orders 0171-873 8200

HMSO Bookshops

49 High Holborn, London WC1V 6HB
(counter service only)
0171-873 0011 Fax 0171-831 1326
68-69 Bull Street, Birmingham B4 6AD
0121-236 9696 Fax 0121-236 9699
33 Wine Street, Bristol BS1 2BQ
0117-926 4306 Fax 0117-929 4515
9-21 Princess Street, Manchester M60 8AS
0161-834 7201 Fax 0161-833 0634
16 Arthur Street, Belfast BT1 4GD
01232 238451 Fax 01232 235401
71 Lothian Road, Edinburgh EH3 9AZ
0131-228 4181 Fax 0131-229 2734

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,
London SW1A 2JX
Telephone orders 0171-219 3890
General enquiries 0171-219 3890
Fax orders 0171-219 3866

HMSO's Accredited Agents

(see Yellow Pages)
and through good booksellers

©Parliamentary copyright House of Commons 1995
Applications for reproduction should be made to HMSO

ISBN 0-10-219395-9



9 780102 193954

Parliamentary Commissioner for Administration

FIFTH REPORT—SESSION 1994–95

The Channel Tunnel Rail Link and Blight: Investigation of complaints against the Department of Transport

*Presented to Parliament Pursuant to Section 10(3) of the Parliamentary
Commissioner Act 1967*

Ordered by The House of Commons to be printed 8 February 1995

Parliamentary Commissioner for Administration

FIFTH REPORT—SESSION 1994–95

**The Channel Tunnel Rail Link and Blight:
Investigation of complaints against the
Department of Transport**

*Presented to Parliament Pursuant to Section 10(3) of the Parliamentary
Commissioner Act 1967*

Ordered by The House of Commons to be printed 8 February 1995

LONDON: HMSO

- Ministers were fully aware of the implications for generalised blight in reaching their decisions.
- A hardship purchase scheme for the generalised blight arising from CTRL would not have been consistent with national policy and there are no existing powers to provide remedies for such blight.
- There was direct experience from an earlier purchase scheme for the CTRL that an ill defined hardship purchase scheme was more likely to do more harm than good through reinforcing and spreading blight.
- A hardship purchase scheme with loose geographical limits but confined only to a small number of cases could not have been administered fairly and consistently; the cost of administering any scheme more akin to the present hardship scheme but applied over a wide, loosely defined area would have been unacceptable. The absence of a clear basis for defining the physical limits would itself have led any scheme to be challenged on grounds of inconsistency.
- Ministers were well aware of the issues surrounding advance purchase and at no stage, including when MPs raised particular cases, expressed dissatisfaction with BR/UR's policy not to offer purchase until the route had been defined.
- It was improbable that an equitable and affordable scheme could have been devised which would not in itself have worsened blight.
- Officials cannot be expected to invent a purchase scheme which for practical, policy and legal reasons would undoubtedly have been regarded by Ministers as out of the question.

32. You have made it clear that Ministers were entitled to take the decisions that they did in 1990 and 1991 and you do not dispute that Ministers were properly informed about the implications for generalised blight when reaching those decisions. But you criticise the results of those decisions for generalised blight even though Ministers were fully seized of the implications of their decisions and that those implications were based on having no immediate purchase arrangements. Instead Ministers pressed ahead with the development of the project so as to reduce blight as soon as possible. I do not accept that it is maladministration for Ministers and officials to fail to invent a purchase scheme which, for the reasons set out at length above, was known to be out of the question. It is not administrative fault that the most effective measure for dealing with generalised blight happens to be prevention and containment rather than through a purchase scheme. This is simply a fact of life; there are many decisions of Government which can have significant side effects on people, such as exhaust emission standards resulting in the scrapping of some vehicles, for which there is no redress. The generalised blight which you consider to be unreasonable could be addressed sensibly only as part of Ministers' decisions on the way forward for the project. Those decisions were a matter of Ministerial policy.

33. I shall not deal here with the facts of the individual cases that are the subject of your report, but for completeness I should emphasise that none of the properties is particularly close to the CTRL, except one which would be over a very deep tunnel. At no time during the development of the project has there been any specific threat to the properties either because they might need to be demolished or might otherwise be seriously affected.

34. For the reasons already given, and in absence of a convincing case for maladministration, I do not propose to offer redress for any of the cases that you put to me.

16 January 1995

were well aware from their day to day handling of the project of the potential cost of hardship purchase schemes, the clear and direct evidence that such a policy was more likely to do more harm than good, the lack of statutory powers, the policy on generalised blight that applies generally to public projects, the lack of available funding and the necessity that all parts of the route should be treated equitably.

27. The final point in the last paragraph is important. The area of search for refining the route as a whole after the 1991 decision would, at a conservative guess, have included at least £1 billion worth of property, including properties above likely tunnels. Any purchase scheme would have had to apply to the route as a whole and not just the areas in which the present complainants are situated. To have done otherwise would have been unfair to people living in places north of the Medway, such as Cuxton, and to the north of the Thames.

28. You have suggested to me that even the area of search would have been too narrow and that properties 500 metres or more away from a route (which would not, of course, have been defined at that stage) should have been considered for purchase in cases of extreme hardship. Without definition it is impossible to calculate the value of property in the catchment area for such a purchase scheme, but a swathe of Kent, Essex and London would be measured more in billions than millions of pounds. Union Railways (BR's subsidiary for the CTRL project) generally allow for potentially valid hardship claims over a period of a few years from 50% of the total property within a hardship purchase zone. A normal hardship purchase scheme would therefore have been of intolerable cost and would have distorted the property market over a wide area.

29. You put forward the concept of purchase in cases of extreme or exceptional hardship. The hardship schemes operated by Union Railways and by the Highways Agency have been criticised for defining hardship too narrowly. Our own experience with such schemes, and that of BR, is that it is not possible to produce any definition of hardship which would single out a small number of extreme or exceptional cases and which would be equitable and command general public acceptance. Health problems, inability to afford the existing mortgage, the need to care for infirm relatives, divorce, a job outside commuting distance, overcrowding due to an expanding family can all potentially make compelling hardship cases. There is no public consensus that any of these categories is more deserving than the rest.

30. To summarise this part of the reply on the remedies for those affected by blight, I do not accept that it was maladministration for officials not to have proposed a hardship purchase scheme in 1990 and 1991. It was impossible for practical, policy and legal reasons to design a scheme for Ministers to use and it would be an extraordinary proposition that maladministration can arise simply because officials or Ministers failed to provide a remedy to an unremediable set of problems. Ministers did not lack knowledge or advice. The uncertainty, blight and property purchase had always been a controversial area of CTRL policy and so was never far from Ministers' minds. It was raised frequently by MPs seeking purchase in particular hardship cases and Ministers remained content with BR/UR's policy not to buy before the route had been defined.

31. To sum up my response:

- Development of the project was pursued with vigour: it was never in limbo.
- It is quite normal to develop projects without the promise of funding.
- It is not unreasonable, once one funding opportunity closes, to continue developing a project which is needed and where there is scope for exploring how to make it viable and fundable.
- Abandonment would not have removed the generalised blight, whereas deciding on and refining a route would reduce the area of blight.
- Although the project was the first high speed railway to be built in this country, in terms of its blight effects it was no different to many other projects; whether or not the project itself was exceptional is not the issue.
- The time taken for the CTRL has been no more than for an average major road scheme.

Parliamentary Commissioner Act 1967

Towards the end of 1992 two complaints were referred to me by the Member of Parliament for Mid Kent, Mr Andrew Rowe, about the Department of Transport's handling of the proposal to build a new high-speed rail link between London and the portals of the Channel Tunnel fixed link. The Member for Mid Kent made it clear that a number of his other constituents had similar complaints. In 1993 I received complaints referred to me by the Member for Ashford, Sir Keith Speed, and the Member for Tonbridge and Malling, Sir John Stanley. I accepted these also as "specimen" complaints for the constituencies concerned. In the circumstances my investigation has extended to the wider implications of proposals to establish the Channel Tunnel Rail Link project for those persons living along the various routes that have been considered by British Rail and Union Railways.

I regard the Channel Tunnel Rail Link project as having a number of features which, in combination, make it exceptional. The findings I make in respect of the Department of Transport's handling of that project should not be seen as necessarily applying to the Department's handling of other infrastructure projects.

The very high level of Parliamentary and public interest in the provision of rail services to the Channel Tunnel fixed link persuaded me that I should lay a report before Parliament under section 10(3) of the Parliamentary Commissioner Act. That subsection provides for me to lay a special report where it appears to me that injustice has been caused to a person in consequence of maladministration and that the injustice has not been, or will not be, remedied. Paragraphs 46, 47 and 48 of my report show why section 10(3) applies.

On the original complaints referred to me I have reported separately to the Members concerned. Those reports concern the events germane solely to the particular complainants but draw on the details contained in this report which are common to a greater or lesser extent to all the complaints that I have investigated.

W K REID
Parliamentary Commissioner
for Administration

January 1995

has been delayed because of rejection of the Private Bill by the Commons Select Committee; approval is to be sought by means of a Transport and Works Order. It remains Government policy that CrossRail should proceed as a joint venture with a substantial private sector contribution. The involvement of private finance in transport infrastructure will be increasingly common under a Government initiative, to which a high priority has been attached, and this will continue to affect project development. There will therefore be more occasions on which Ministers will have to decide whether there are reasonable grounds for believing that the private sector can be attracted to projects to justify continuing with their development.

21. In my judgement, and that of Ministers at the time, the generalised blight effects of CTRL were not materially different from those of many other projects and as such it did not fall outside the scope of the national policy, which is not to compensate for generalised blight.

22. In framing remedies for those affected by blight, Governments have to strike a difficult balance between the desire to provide help for all those affected and the need to produce a system which is equitable to administer, affordable and is not in itself counter-productive by exacerbating blight. As a result, statutory blight is quite tightly defined by reference to various trigger events, such as the issue of a safeguarding notice, which involve having defined a route or location shown on a plan. In the absence of a specifically defined proposal there is no remedy for blight. Given that very clear policy context and the fact that the CTRL was by no means unusual in terms of the generalised blight caused, I cannot accept that it would have been appropriate for the Department to invent a special remedy. There is no question of national blight policy being out of date: following a review the legislation was amended as recently as 1991.

23. The 1990 and 1991 decisions were therefore taken in the context of a clear and up to date national policy on generalised blight. There was also, as you know, experience of earlier voluntary and hardship purchase schemes. At an earlier stage of the project BR offered voluntary purchase for properties 120 metres either side of the centre line of the railway and considered purchase in cases of hardship beyond this. At South Darenth, Istead Rise and Warwick Gardens (Peckham) there became a problem of snowballing blight as more people moved away, the character of the community changed and so more people wished to move. The problem was not confined to the voluntary purchase zone but spread into the area where hardship purchase was available. The existence of purchase arrangements was often used by estate agents as reason not to market properties and building societies not to lend on them (the argument being that the properties must be seriously affected if BR is willing to buy them).

24. All parties drew the lesson from the South Darenth experience that the offer of voluntary and hardship purchase is such a powerful distortion of the property market, particularly when the property market is weak generally, that it has to be used with considerable caution. The other key lesson is that it is dangerous to make offers, particularly in cases of hardship, unless and until the likely construction and operational impacts are known. It is all too easy for a well meaning purchase offer to exacerbate any blight problem. All of this was well known to Ministers at the time of the 1990 and 1991 decisions as they were still dealing with the problems that remained at South Darenth and Peckham.

25. As you point out, officials advised Ministers that there would be unavoidable short term continuation of blight if they reached certain decisions on the future of the project. Ministers took their decisions understanding fully the short term uncertainty that might flow from them. They judged that pressing ahead with refining the route as soon as possible was the best means of ameliorating the inevitable blight.

26. It was clear to Ministers and officials that purchase should not be considered until the route had been defined. No purchase schemes had been put forward by BR as evidenced by the Secretary of State's request to BR in his 9 October 1991 announcement of the selection of the Easterly preferred route corridor "to consider what voluntary purchase arrangements may be necessary, and when". Ministers

compensate should be the same. The only other issue that might be relevant is the period of the blight. For the CTRL this is nothing exceptional in length, including by comparison with major or controversial projects, nor was it needless or unreasonable. I do not see how the CTRL is materially different from other projects in the *blight effects* generated. In no case do we provide a remedy for generalised blight.

17. Although I do not feel that the “exceptional nature” of the project is the real issue, I ought perhaps to address some of the points in your report on this matter. As you say, this is the first proposed new high speed railway in this country. There has, of course, been considerable experience in France, and many local representatives concerned with the CTRL have been taken there to see how noise and other impacts can be successfully mitigated. The new railway can and will be built with proper noise protection measures, as in France. The protection is achieved through the choice of alignment, the engineering treatment (eg a cutting or tunnel) and the provision of mitigation measures (false cuttings, bunds, noise screens, low vibration track bed). At an early stage a comprehensive set of design aims was published which define maximum increases in noise for all sensitive receptors (homes, schools etc). This was backed up by a promise of noise insulation for those (relatively few) homes that will not benefit sufficiently from noise mitigation at source. The aim overall has been that the CTRL should have an environmental impact no greater than other transport infrastructure projects in this country taking account of anticipated trends. There was therefore no reason to assume that the noise impact would be worse than existing roads and railways or new roads.

18. Perhaps the most unusual feature of the CTRL is the small numbers of homes likely to be demolished: the Ove Arup alignment was forecast to require the demolition of only a handful of properties. Of course public apprehension about the CTRL may have been exaggerated, but there are all sorts of fears attached to many projects which defy rational analysis. Fears are also made more acute by the very process of consultation on options for any type of project because action groups opposing different options tend to exaggeration to make their case. Fears of noise are also not unusual. They are more serious for proposed new airports or runways, for which mitigation cannot be so readily focused on sensitive receptors as can be achieved for the CTRL.

19. You suggest that the area affected by uncertainty and period of the uncertainty is exceptional. The geographical effect is certainly not exceptional: RUCATSE (the study of future airport needs in the South East) affects a wide area of SE England and roads schemes can cause wide localised blight, for example on both sides of a town. The fact that the CTRL has been planned as a whole gives an exaggerated impression of the area of uncertainty generated compared with a major road scheme because the uncertainty for a road scheme may be phased over many years as each section is planned in turn. The period of uncertainty for the CTRL is also not exceptional and examples are given below.

20. The point that the CTRL project was maintained without the promise of funding is cited as further evidence that the CTRL was exceptional. I have mentioned to you a variety of cases where more time was taken than originally envisaged. The following are just a few examples. The East London River Crossing was not approved by Ministers after a largely favourable Inspector’s report because of the possible impact on London City Airport; another part of the route through Oxleas Wood was later dropped and the project is on hold. The M3 at Winchester and the M40 across Otmoor both involved changes of route and more than one inquiry and actions in the Courts. The Birmingham Northern Relief Road had been through public inquiry but was then turned into a private finance initiative requiring both a competition to select a promoter and then for the promoter to review and amend the design as he wished. The whole of the roads programme has been rationalised with some projects continuing only on an extended timescale: later they could be suspended or abandoned. Progress with the Jubilee Line Extension was halted temporarily before and after Royal Assent to the Private Bill pending private sector contributions. The Lewisham extension of the Docklands Light Railway has been approved but is on hold until finance is secured. CrossRail

Channel Tunnel Rail Link

1. My report contains the following sections:
 - **Jurisdiction** explains my powers (paragraphs 2-3).
 - **Brief History of the Channel Tunnel Rail Link (CTRL) project** describes the events since the inception of the current project in 1987 up to the present (paragraphs 4-21).
 - **Blight** sets out my understanding (taking account of advice from the Department of Transport—DOT) of the legal framework which governs compensation for statutory blight and other related matters (paragraphs 22-30).
 - **Compensation** is an outline of the various house purchase and compensation schemes that were operated at different times by British Rail (BR) and Union Railways (UR) (paragraphs 31-39).
 - **My findings** are set out on how DOT administered the project as a whole (paragraphs 40-46).
 - **A summary** of my discussions with DOT on my findings is set out in paragraphs 47-48.
 - **Conclusions** (paragraphs 49-50).

Appendix 1 lists the acronyms used in the report and their meanings. Appendix 2 is a map showing the various routes publicly proposed at different times by the railway companies during the course of the events that are the subject of my investigation. Appendix 3, based on technical advice from DOT, concerns the effects of noise arising from infrastructure projects. Appendix 4 provides the main points in the response of the Permanent Secretary of DOT to my report, on which in accordance with my normal practice he was invited to comment in draft. I have included it exceptionally, in order to present fairly my report and DOT’s reactions to it, after seeking and obtaining his agreement to proceed in this way. The comments made by the Permanent Secretary reflect his Department’s view of the issues in my report, and of the arguments I have put forward in it and during subsequent correspondence.

Jurisdiction

2. My sole remit is to investigate the administrative actions taken by or on behalf of those central government departments and other non-departmental public bodies which are listed in Schedule 2 to the Parliamentary Commissioner Act 1967. BR and UR are not so listed. Under section 3 of the Transport Act 1962 it is the duty of the British Railways Board (the Board) to provide railway services in Great Britain. The details of the various compensation schemes they ran are matters for BR and UR and are not within my remit. Where I comment upon the actions of BR and UR in this report, I do so only to set in context the actions of DOT who are the subject of my investigation.

3. It is not for me to question the merits of government policy, whether that policy is based on legislation or not. Under section 12(3) of the Parliamentary Commissioner Act I am precluded from questioning the merits of a discretionary decision taken by a department without maladministration. This means that, if the proper procedures have been followed and all the relevant factors taken fully into account, I cannot challenge the merits of the decision reached.

A Brief History of the Channel Tunnel Rail Link

4. **1986** On 12 February 1986 the Governments of the United Kingdom and France signed a treaty agreeing to the construction and operation by private concessionaires of a fixed link underneath the English Channel.

5. **1987** On 23 July 1987 the Channel Tunnel Act 1987, which provided the necessary statutory framework for the fixed link and associated works, received Royal Assent. The Act contained provisions relating to the construction and operation of a railway system through the Channel Tunnel and the improvement of railway connections from the Tunnel through south-east England. Section 40 of the Act required the Board to prepare a plan by 31 December 1989 stating the measures they proposed to take with the aim of securing the provision or improvement of international rail services to various destinations in the United Kingdom; in preparing the plan they were to have regard to the financial resources that were likely to be available to them. Section 42 of the Act prohibits the payment

by the Secretary of State for Transport of grants to BR towards capital expenditure incurred in improving or developing public passenger transport in relation to international railway services. The Act conferred no powers on any body to construct a new high speed rail line between a London terminus and the Channel Tunnel portals.

6. In August 1987 DOT published a report on the likely impact on Kent of the Channel Tunnel. The report recognised that the capacity of BR's existing lines might eventually become a constraint on the traffic carried. A joint consultation committee, chaired by the Minister for Public Transport and comprising members from government departments, the Channel Tunnel concessionaires, local authorities and BR, was formed to find ways to make the most of the expected benefits of the tunnel while minimising its environmental impact. The Minister for Public Transport asked a BR study team to produce a report by June 1988 examining the implications of the need for extra rail capacity. Their remit included making recommendations on the creation of additional capacity including the possibility of new routes.

7. **1988** The BR study report was published on 14 July 1988. The main conclusions were that capacity limitations on the existing lines would be felt by the end of the century and that there was no real alternative to building a new line, either alongside existing routes or on new alignments. It was envisaged that trains could run at speeds of up to 180 miles per hour along sections of the new route. The report identified four possible routes which the new line might follow, stressing that these were not specific alignments but only a general indication of the areas through which the line might pass. It suggested that detailed survey and design work should begin on the first three routes in order to establish a preferred route. That further work was expected to take two years and was seen as a prerequisite to any decision to seek Parliamentary approval for the construction of additional infrastructure capacity. In a DOT press release issued the same day the then Secretary of State for Transport welcomed the report while recognising that much further work needed to be done. He sought reactions from the private sector, which had recently expressed an interest in participating in the provision of new rail infrastructure, and said that BR were aware of the need to be extremely sensitive to environmental concerns. He also said that he would keep in close touch with BR and that any scheme that was promoted by them or the private sector would need to be justified commercially and would not be able to proceed until Parliament had approved the necessary legislation.

8. Publication of the three suggested routes (see map at Appendix 2) caused widespread concern among residents in Kent living close to a route that their homes would be blighted for years to come. On 10 November BR announced the introduction of a hardship scheme to buy blighted properties situated within the corridor of a proposed route from individuals who had been in the process of selling a property when the route was announced and had been unable to complete the sale (see paragraphs 31 and 32 below).

9. **1989** On 15 February 1989 BR wrote to DOT saying that it was probable that the CTRL project would face a substantial financial shortfall and that on current information it was unlikely that the Board would be prepared to endorse it as being commercially viable. On 17 February the Secretary of State proposed in a paper to the Prime Minister that BR should proceed to announce their preferred route on 8 March and at the same time should announce proposed compensation arrangements. The Secretary of State observed that the economic viability of the project in the shorter term might depend on the participation of the private sector and proposed that BR should press ahead with discussions with private sector consortia who had shown interest in the CTRL scheme and should be ready to introduce a Private Bill in the House of Commons in November of that year. The Prime Minister's office wrote to DOT on 23 February agreeing that BR should proceed and plan for an announcement on 8 March. There would be some uncertainty in the short term for the private sector in formulating their proposals for participation in the project, but it would be important that the announcement should not give a major incentive to the private sector to look for a public subsidy. BR's announcement should not, therefore, give a commitment to the date of

85/337 on environmental assessment. Ministers decided that they could not ignore the alternatives to BR's favoured route despite the likely short term delay. The advantage of the Ove Arup conceptual route was that it produced benefits where wanted in East London which made its environmental impact more acceptable, whereas the Southerly route produced no benefits for South London and was fiercely opposed. The Easterly route became even more strongly favoured publicly than the Southerly route to the extent that the latter may well have been incapable of winning planning approval (a factor that Ministers took into account at the time).

12. You seek to make a distinction between positive and negative decisions and this appears to depend on whether there is "undue delay". This rather supposes that there is a predestined path for a project in the way in which it is developed. In fact all projects tend to evolve with the survival of the fittest option at each stage, which is frequently an option that was not anticipated and requires extra work and short term "delay". Decisions are taken for a variety of reasons, often in combination. Some may be a direct consequence of the process of progressing the project (eg responding to public consultation or an inspector's report), but others may arise for external reasons (eg a shortage of finance or a conflict with another policy objective). All such decisions are an essential part of the planning process. You may not see the decisions on the CTRL as positive and forward moving, but they contributed to a project which is now sufficiently robust to go into a Hybrid Bill for approval and for which a private sector competition is being held.

13. Again for the 1991 decision there was positive action in the selection of the route corridor based on Ove Arup's proposals. Considerable resources were devoted to refine the route speedily with two possible outcomes which would both alleviate generalised blight (ie blight not related to a defined route): a project that could be taken forward (as has happened), or a route that could be safeguarded for future use. Ministers did not just take account of the problem of blight when selecting a route corridor, they pressed ahead with the refinement of the chosen route as the only practicable means of ameliorating blight.

14. To summarise this section of my reply, I do not accept that the decisions taken in 1990 placed the project "in limbo". The promise of funding is not the sole or even a normal test of whether it is reasonable to continue with any project. The extra capacity provided by CTRL was still needed and there was sufficient prospect of producing a potentially workable project to justify continuation. Moreover abandonment would not have been credible and so would have exacerbated blight. Development of the project was pursued with vigour and there is no evidence of it ever being in limbo; pressing ahead with the refinement of the chosen route as Ministers wished was in fact the only practicable means of managing blight. All projects evolve: alternatives have to be explored and if they prove to be better, possibly because external circumstances have changed, they have to be judged seriously even if delay results. Such delay is often no more than short term and can save greater delay in the long run from avoidable approval difficulties. I do not find it convincing to argue that the CTRL has been delayed when from the start of planning to opening is likely to be around 14 years, which is the average for major trunk road schemes and a good deal better than the 20 or more years taken by the more controversial ones.

15. I now turn to the "exceptional nature" of the project. All major projects differ in their detail, but there are considerable similarities as explained below. However the issue is surely not whether the CTRL was an exceptional project, but whether the actual blight effects resulting from it were in some way so different from those arising on any other project as to justify a departure from the normal policy approach.

16. The Department's policy approach to blight, reflected in the legislation and procedures by which remedies are provided, is to provide consistency of treatment by reference to the effect of the blight, not by reference to its cause. Thus the same rules apply for those affected by a highly controversial six lane motorway scheme as for a small, widely supported bypass. The rules rely as far as possible on objective measures such as noise effects or distance rather than on more subjective perceptions. There is no obvious logical basis for treating people differently simply because of the scale or area of the blight; the principle of whether or not to

CTRL had yet to be studied and this was a source of potential revenue and subsidy which would not be precluded by Section 42 of the Channel Tunnel Act. This had the potential for meeting the funding gap which would enable the Government to fulfil its wish for the project to be built in the private sector. But that wish was not an immutable decision and it also remained a possibility that building the project in the public sector—with its greater ease in producing a viable project—might be afforded beyond the three year span of public expenditure planning.

7. If one funding proposal closes, the promise of other funding is not the sole or even a normal test of whether it is reasonable to continue with a project. All relevant factors have to be considered. In the case of the CTRL some of the key factors are described in the following extract from a submission to Ministers of 30 March 1990:

“In these circumstances [the failure of the joint venture], the Government could decide to abandon the project entirely on the grounds that the private sector was not prepared to finance it and it was too risky a project for BR to undertake. However, it is likely that a new line will be commercially viable for BR at some point in the future and it could be argued that it would be foolish to lose the benefit of the work and expenditure which has been undertaken so far. Unless there is a categorical assurance that the line would never be built (which seems an untenable position), blight in Kent would continue.”

8. This quotation challenges what seems to be an implicit assumption in your report that, given that the EuroRail scheme had proved unacceptable, abandonment was an option which would have avoided the problems of uncertainty which are the subject of the complaints. In practice there would have been continuing pressure from Eurotunnel, the local authorities, MPs, European Commission and public for the CTRL to be built and so abandonment would not have ended uncertainty and blight.

9. I also have considerable difficulty with your concept of a project in limbo, since Ministers' decisions on the future of the project in 1990 were backed by substantial public investment in a sizeable development team within BR and eighteen consultancies to produce, with all reasonable speed, a thorough analysis of options for taking forward the CTRL, which was published in 1991. It would be odd to view this as anything other than determination by Government to find a workable way forward for the project having decided that it had a sufficiently promising future to justify continuation. This was the best means of bringing uncertainty to an end as soon as possible.

10. Turning to the 1991 decision, similar considerations apply as to why there was nothing abnormal or unreasonable in the decision to continue developing the project. In summary these were:

- there was a still a perceived need for the project and so the blight would not end if the project were to be abandoned;
- blight could best be limited in area by seeking to refine the chosen route as soon as possible, rather than have a wide area of blight for an unlimited period if the project had been abandoned;
- the traffic forecasts (which would become more predictable once the Channel Tunnel opened) might change the revenue predictions;
- the opportunities for commuter benefits which might attract subsidy;
- the benefits to the country from regeneration of the East Thames Corridor that the CTRL would help realise, which might strengthen the case for subsidy;
- the other route options might, against expectations, produce a more economic project; and
- the public and EC desire to see the CTRL built might increase, possibly justifying UK and EC subsidy and public funds (eg EIB).

11. In 1991 Ministers decided that it was right to consider alternative routes further since these had been gathering support. To have declined to do so would have made the Government vulnerable to challenge for breach of EC Directive

commencement of the work on the project, although it would be necessary for some indication of the timetable to be given. Once the announcement had been made it would be important for rapid progress to be made with the project. There would be major difficulties if a Private Bill were not introduced in November 1989.

10. On 8 March BR announced their preferred route, which differed significantly from the route options identified in the study report of 14 July 1988 (see map at Appendix 2). BR now proposed that the route should run in a tunnel from King's Cross to Waterloo and from there on existing lines to a sub-surface junction near Peckham Rye; then through tunnels to Swanley; alongside existing lines to South Darenth; on a new line to a North Downs tunnel; and cross the Medway at Halling and then go on to Detling. The line would then run alongside the M20, through a new tunnel at Ashford where an international passenger station would be constructed and then alongside existing tracks to the Channel Tunnel itself. At the same time BR introduced a voluntary purchase scheme (VPS) with the aim of alleviating blight (see paragraphs 33 to 35 below). Under the scheme BR would offer immediately to buy any residential property within the 240 metre wide corridor of their preferred route. In June BR announced refinements to the route through London and in September they gave further details of engineering and planning proposals.

11. On 1 June BR told DOT that they intended to take the project forward as a joint venture between themselves and the private sector. A number of private groups had already expressed an interest in participating in such a venture and a short-list of two was drawn up in September. Neither of the short-listed groups had at that stage suggested that the project was commercially viable but it was thought that one of them (the consortium) might have proposals for making it viable. On 3 November the Secretary of State announced in a written answer in the House of Commons that BR had selected the consortium to be their joint venture partner. The Secretary of State said that it was for BR and their partner to determine the best route and terminals and that it would not be sensible or practicable for them to examine other possible alternative proposals and projects. BR and the consortium would then have to seek Parliamentary approval for their plans. The Secretary of State accepted BR's judgement that it would be prudent to wait until all the details of the route had been finalised before introducing a Private Bill. On 14 December the Secretary of State said, in a written answer to a Parliamentary question, that BR had published the plan required of them under section 40 of the Channel Tunnel Act 1987 (paragraph 5) and that BR were confident that their existing network had sufficient capacity for the additional Channel Tunnel traffic for a number of years before a new line would be needed. Meanwhile, BR had concluded that the Private Bill which it had been proposed should be introduced in November 1989 (paragraph 9) and which would have allowed the route to be safeguarded (paragraph 24 below) should be postponed for a year. A main consideration had been the expected difficulty in persuading Parliament to consider the Bill if BR were unable to demonstrate that the new line was likely to be built in the foreseeable future. Legal advice received by DOT was pessimistic about the prospect, as matters stood, of a Private Bill being passed by Parliament and suggested that, if the Government decided instead to promote a Hybrid Bill, it would have to stand behind all the provisions of the Bill as fully as if it were a government project.

12. **1990** On 30 March the joint venture partners put a submission to DOT which indicated that they had been unable to devise a project which could be financed by the private sector without financial support from the Government. In a statement in the House of Commons on 14 June the Secretary of State said that BR and the consortium had agreed that there was not a basis on which the project might be taken forward in the private sector at that stage. Although the joint venture had identified measures which substantially improved the commercial prospects of the international passenger business, the costs of the project were likely to exceed income by a wide margin. To bridge the gap the joint venture had sought a capital grant from the Government of £500 million towards the use of the new line by commuter services and a loan of £1 billion on which they would not make any repayment or pay interest until the year 2010. The Secretary of State said that those proposals were unacceptable. He was asking BR to complete their studies with the

aim of maximising the benefits to international passengers and commuters alike. He said that views expressed in the House and elsewhere about alternative routes were unlikely to produce a more viable project, but that in order to satisfy themselves BR had commissioned a report by consultants on proposals for routes to King's Cross via Stratford. The Secretary of State also said that there was broad agreement on the route between the North Downs and the Channel Tunnel and it would now be right to issue planning directions, after consultation with BR and the local authorities, to safeguard that section of the route. In the meantime the VPS would continue to apply to the whole of the route published in September 1989 (when further details of the preferred route had been announced—paragraph 10).

13. On 11 September DOT informed local authorities affected by the proposed route that the Secretary of State had made directions under the Town and Country Planning (General Development Order) 1988 to safeguard the route corridor between the North Downs and the Channel Tunnel terminal with effect from 13 September. The safeguarded zone consisted of a band approximately 240 metres wide along the surface sections of the proposed line; a band 150 metres wide on land where the route would pass through tunnels below; and such other land as might be required for construction and similar works. DOT said that BR would shortly be undertaking public consultation on the engineering details and environmental impact mitigation measures. The safeguarding directions would be altered to take account of any refinements to the route which BR might subsequently make. DOT said that the blight provisions of the Town and Country Planning Act 1990 (paragraphs 24 to 28 below) would apply to property affected by the safeguarding while BR's VPS, which covered most of the safeguarded route, would continue to apply. DOT later told my officer that their understanding at the time was that the usual blight provisions of the 1990 Act applied to property affected by surface safeguarding, but not to property affected by sub-surface safeguarding; recent legal advice has been that safeguarding does not generate statutory blight under the provisions of the 1990 Act for the CTRL (see paragraph 25).

14. 1991 On 3 May 1991 BR sent DOT their views on the route the new line should take. Their preference remained for a southerly approach to London. DOT, who were hoping to be in a position to announce the route by the end of July, saw a need to seek additional facts and figures from BR. DOT considered BR's proposals and concluded that there would be a funding gap of £1.46 billion which would need to be bridged before a return of 8% (the rate of return required under Treasury rules for public sector projects) could be achieved. DOT continued to work on the assumption that BR's preferred route would be the one chosen. On 5 July the then Secretary of State for Transport sent a minute to the Prime Minister setting out in detail the various issues arising from the handling of the CTRL project. He recommended that BR's preferred route should be adopted. On 25 July he sent a further minute to the Prime Minister in which he said that it would be unreasonable and irresponsible to delay the choice of a route given the anxiety and uncertainty experienced by those in the area affected over the last three years. He suggested that a firm decision should be made that the project would proceed along the preferred route or that the project was dead. He observed "To provide, for the first time in recorded history, a physical link between all parts of our island and mainland Europe requires a long-term vision for our economy and the way in which we think of ourselves and are perceived by others. The rail link is not, therefore, just another investment project and we shall be ridiculed if we appear to treat it in that way. It has become a symbol, both at home and abroad, of our whole approach to Europe and our ability to look beyond the short-term".

15. On 14 October, in a statement in the House of Commons, the Secretary of State said that the Government's preferred route was "on the lines" of one proposed by the consulting engineers, Ove Arup, rather than BR's southerly route. The preferred route would enter London from the east, via Stratford, would provide additional capacity when needed and would minimise the impact of the line on the environment. Its construction would involve the acquisition of few domestic properties and there would be fewer properties close to the line, more of which would be in tunnel. The choice of the easterly route also made the most of opportunities for business development along the East Thames corridor. The

APPENDIX 4

VIEWS OF THE PERMANENT SECRETARY OF THE DEPARTMENT OF TRANSPORT, SIR PATRICK BROWN

CHANNEL TUNNEL RAIL LINK

1. I shall first of all deal individually, and in some detail, with each aspect of your argument leading to the finding of maladministration: the "exceptional" nature of the project, the decision to pursue it when there was "no firm prospect that the line would be built", the need to invent a hardship purchase scheme outside the scope of legislation and Government policy on generalised blight generally, the effectiveness and feasibility of any such scheme and the suggestion that the particular cases merited action. Since I do not accept any aspect of this argument, it is important to explain why this is so before considering all of the issues together.

2. As a general comment, it seems to me odd that the report should focus so much on *cause* rather than *effect*: national policies on blight and compensation do not discriminate by *cause*. There is an appropriate type of blight and compensation policy at each stage in the development of a project, which is not dissimilar for all projects at a comparable stage and there are similar trigger events between stages and policies.

3. In your letter to me you accept that although it is not possible to say what the natural life of any project will be, you regard the CTRL as having been brought to a dead end by the decisions of Ministers in 1990 and 1991 because funding was not in prospect and thus the project was placed in "limbo". The argument falls into several parts: the reasonableness of continuing the project without secured funding; whether the project was worth continuing and could potentially be viable; whether abandonment was a solution to uncertainty; whether finding a workable project was pursued with vigour; the distinction that you seek to draw in the report between positive and negative decisions; and the overall time taken. I shall deal with each matter by reference to the 1990 and 1991 decisions by Ministers.

4. The background to Ministers' decision in 1990 was that EuroRail had been selected by British Rail (BR) in a competition as a prospective joint venture partner. EuroRail judged that they could make the scheme into a viable investment for the private sector. Although they reduced the costs, they proposed a level of public subsidy and limited risk transfer that the Government decided was unacceptable. You make a particular point that the project was kept alive without a promise of funding.

5. There cannot be many transport schemes, whether road, rail, urban transport or airport, for which funding is committed during a stage comparable to the CTRL development process. This is for the practical reason that until a project has been reasonably well developed it is not known how much it will cost; the economic viability; the environmental acceptability; the public acceptability; when construction might start; the priority compared with other similarly developed schemes; and the availability of public funding/subsidy for transport infrastructure. The development process is much longer than the forward three year view of public expenditure planning and in fact commitments are not usually made until planning permission has been obtained. Any private sector involvement may be negotiated during the development or approval processes—the CTRL negotiations leading to the 1990 decision started at a relatively early stage—but final commitments are not usually made before the granting of planning permission and sometimes a little time after this (as, for example, in the case of the Jubilee Line Extension).

6. In 1990 it was concluded that the project was not then viable for the private sector as a risk bearing venture with a rate of return reflecting that risk. But this did not mean that the project was unviable in the future for the private sector sole/joint venture with further traffic growth, or for the public sector with its lower required rate of return. Moreover the scope for developing the commuter provision of the

APPENDIX 3

Noise

1. Noise is a function of the pressure and frequency of sound. Sound pressure is expressed in decibel (dB) units. Frequency of sound is important in assessing perceived loudness, since the human ear is not equally sensitive to all pitches. For that reason a weighting network is used which takes account of the ear's response to different frequencies. This is referred to as "A" weighting, and sound levels are described in units of dB(A). A difference of 3 dB(A) between two noise levels is just perceptible to the human ear and an increase of 10 dB(A) means roughly a doubling of perceived loudness.

2. Different indices can be used to measure sound. The L_{A10} level is used for measuring road traffic noise in the UK, and represents the noise level in dB(A) which is exceeded for 10% of the time. It is expressed as the arithmetical average of a specified number of hourly L_{A10} values. The L_{Aeq} level has been adopted for the assessment of railway noise, as it is particularly suitable for describing a noise which consists of occasional short periods of sound between long relatively quiet periods. L_{Aeq} describes the level of (hypothetically) steady sound that, over the period of measurement, would deliver the same noise energy as the actual intermittent or time varying sound. When quoting the L_{Aeq} it is important to stipulate the time period concerned. The highest noise level produced by a sound source, in dB(A), is expressed by the index L_{Amax} . Noise levels which are measured using different indices cannot be directly compared.

3. In the case of highway developments the Noise Insulation Regulations 1975, made under the 1973 Act, require the relevant highway authority to carry out, or make grant in respect of, insulation work on buildings against noise caused or expected to be caused by the use of a new or altered highway. To be eligible for insulation a building has to be not more than 300 metres from the nearest point of the highway. The duty to provide insulation arises when the use of the new or altered highway increases, or is likely to increase, the noise level at a point one metre in front of the facade of a building by 1 dB(A) and where the noise is not less than the specified level of 68 dB(A) $L_{10\ 18\ hours}$ (from 06.00 to 24.00). I understand that DOT propose to make regulations which will provide similar noise insulation provisions for new or altered railways, but which will additionally include a specified night-time noise level. Draft regulations issued for consultation proposed specified levels of 68 dB(A) $L_{Aeq\ 18\ hours}$ (from 06.00 to 24.00) and 63 dB(A) $L_{Aeq\ 6\ hours}$ (from 00.00 to 06.00). DOT told me that in proposing those levels, they took account of the particular characteristics of railway noise.

4. DOT also told me that, for the CTRL, noise protection is part of the design process and is achieved through the choice of alignment and the use of cuttings, bunds and noise barriers (as has been done for high speed lines in other countries). To guide this process, noise design aims were established and published at an early stage. They comprise: increases in $L_{Aeq\ 24\ hour}$ at the facade of homes not to equal or exceed 3 dB(A); the maximum passing noise at the facade of homes not to exceed 85 dB(A) between 22.00 and 06.00 (ie L_{Amax}); and where the increase in $L_{Aeq\ 24\ hours}$ exceed 3 dB(A) outside non-residential sensitive receptors (eg schools and offices) and public open space, this should not exceed specified L_{Aeq} for the period of the L_{Aeq} for the period of the day in use for each receptor. The assessment contained in the Environmental Statement is that between 20 and 40 homes (depending on train speed) along the 67 mile long CTRL will nevertheless not be protected sufficiently through the design and mitigation of the route, and will therefore be eligible for insulation under the proposed regulations.

Secretary of State said that he would shortly make a direction varying the safeguarding directions so as to exclude the section of the route west of Detling, where the proposed Ove Arup route diverged from the safeguarded line. He had asked BR to withdraw the VPS from houses along the southerly route between Swanley and Detling, and at Peckham, and to consider what voluntary purchase arrangements they thought would be necessary in the future. He had also asked them to bring the easterly route up to a state of development at which it could be safeguarded. On 5 November DOT cancelled the safeguarding provisions announced in September 1990 (paragraph 13) for that part of the route west of Detling.

16. **1992** In January 1992 the Treasury invited DOT to consider appointing BR formally as their agent. After obtaining legal advice, DOT wrote to the Treasury saying that they could not treat BR as their agent for work done and still to be undertaken since the announcement of the preferred route because the Secretary of State could only engage an agent to do what he might do himself and he did not, as BR did, have the powers to construct and operate a railway. After extended discussion by officials of the Board, DOT and the Treasury, the Secretary of the Board wrote to DOT on 1 July formally applying under the Transport Act 1962 for permission to set up a new, separate company to handle the rail link project. BR said that the new company would provide a clear focus for the project and a contact point for any future private sector approaches to participate in the venture. On 27 July DOT informed the Board of the Secretary of State's agreement. The formation of a wholly owned subsidiary company called Union Railways (UR) was announced by BR on 28 July.

17. Some two months earlier, on 21 May, the new Secretary of State for Transport had said in a written answer to a Parliamentary question that he had asked BR to define a route which would allow the construction of a two track railway capable of carrying freight. On 9 June the Secretary of State said in a written answer to a question from the Member for Tonbridge and Malling that the Government had no intention of altering the preferred route corridor announced in October 1991 (paragraph 15). The Member subsequently put down a written question asking whether the Detling to Malling section of BR's original southerly route, from which safeguarding had been withdrawn (paragraph 15), was outside the preferred corridor referred to in the answer of 9 June. The Minister for Public Transport replied on 16 July saying that the Government had never suggested that the precise Ove Arup alignment could or should be considered as being definitive. On 10 August the Minister for Public Transport confirmed, through a press release, that the new line would be designed to take freight as well as passengers if there was sufficient demand.

18. **1993** On 14 January and 24 February 1993 BR submitted to DOT reports by UR on the new line. On 16 March the Chancellor of the Exchequer said in his budget statement that the Government had now decided to make a firm commitment to the CTRL project and that the private sector would be invited to come forward with bids to take the project forward as a joint venture. He also said that the London terminus would now be St Pancras rather than King's Cross. On 22 March the Secretary of State made a statement in the House of Commons about the new line. He said that UR's report had offered a series of options but no recommendations on the precise route. The Government had decided that public consultation should now take place on a route (see map at Appendix 2) which largely followed the safeguarded route from the Channel Tunnel to Detling, except at Ashford where the line would now run to the north of the town. West of Detling the line would pass through a tunnel four kilometres long under Blue Bell Hill before crossing the Medway alongside the M2 bridge; the line would approach London from the east, through Stratford and terminate at St Pancras. UR had been asked to undertake further work on the environmental, planning, safety, engineering and other aspects of the proposals and to complete a thorough consultation exercise on the proposals by mid-October. Final decisions would then be taken on the route so that its entire length could be safeguarded. Until that time the existing safeguarding directions would remain in force, except along two parts of the former route superseded by the latest announcement. The Secretary of State said that UR would be made into a government-owned company and that the

APPENDIX 2

intention was to transfer the project to the private sector in due course. After safeguarding had taken place the project would proceed by means of a Hybrid Bill. After the Secretary of State's announcement UR introduced an unpublished hardship scheme (paragraph 38). DOT received UR's report on the route of the new line on 28 October. On 11 November the Secretary of State announced plans to bring the private sector into the project before the Hybrid Bill went before Parliament.

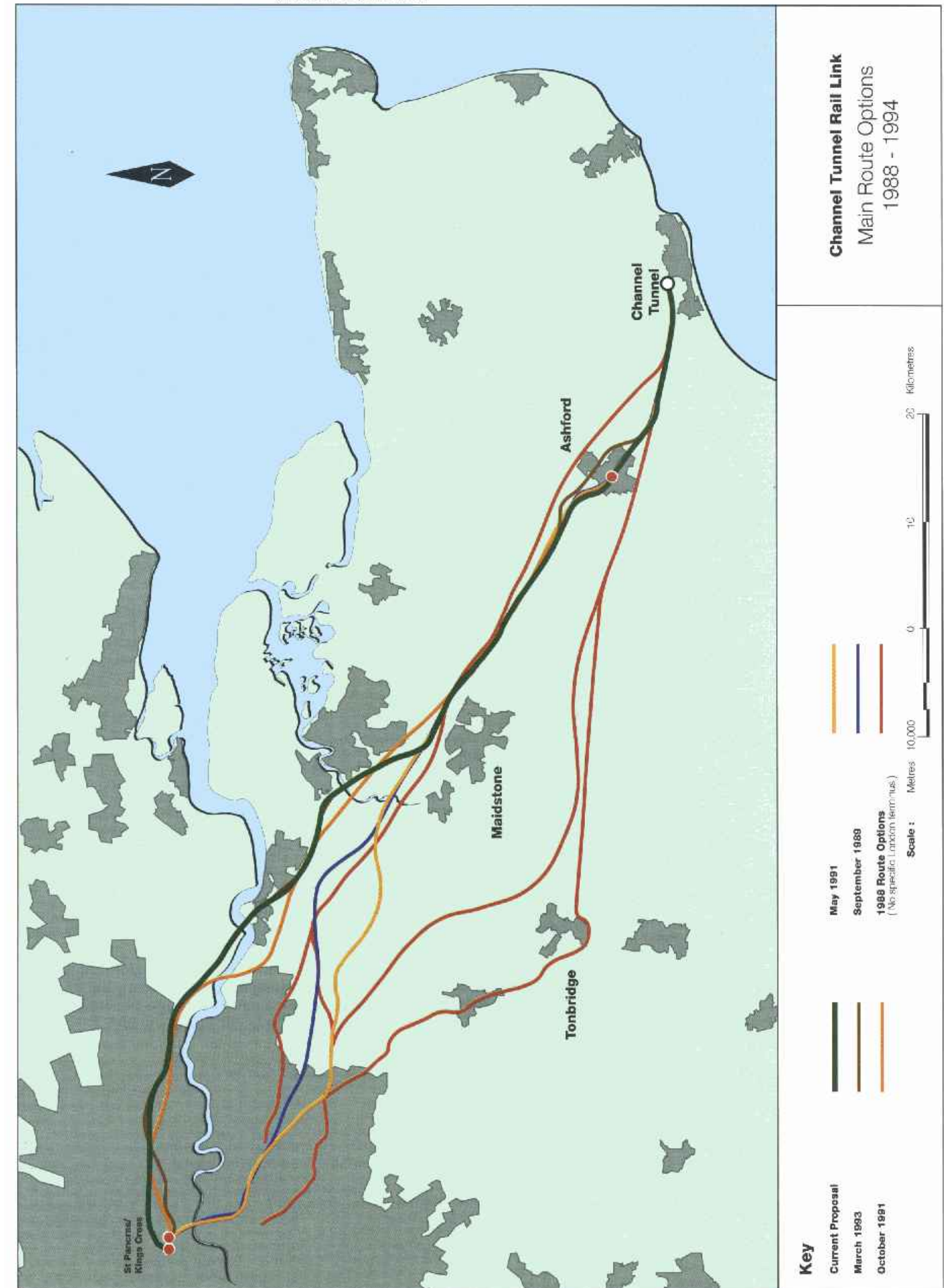
19. In December DOT received legal advice that the restrictions placed upon the payment of grant by the Government by section 42 of the Channel Tunnel Act 1987 (paragraph 5) did not apply to private sector projects and would not apply to BR either, once it was privatised, as envisaged by the Railways Act 1993. DOT were advised that it would be necessary to decide whether to incorporate in the proposed Hybrid Bill the principle of preventing grants for capital expenditure on international railway services. After consultation with the Treasury DOT decided to change their policy and agreed to pay a subsidy towards the project. DOT officials advised the Secretary of State that this change would have a profound effect on their approach to the project as there would no longer be any point in seeking to maximise the domestic benefits of the new line and the aim would instead be to minimise the total public sector contribution required.

20. On 23 December the Secretary of State wrote to the Prime Minister giving details of the route that he proposed to announce the following month. He explained that the cost of a long tunnel through the North Downs in Mid Kent was very substantial. A report prepared by an interdepartmental group of officials did suggest, however, that a long tunnel through Mid Kent would be a clear first choice on environmental and consultation grounds if any further tunnels were to be built, whereas a decision to revert to the central route through Ashford would solve a major consultation problem, but would not be justified on cost and environmental grounds.

21. **1994** On 24 January 1994 the Secretary of State made a statement in the House of Commons about the Government's final conclusions on the route (see map at Appendix 2). He confirmed that St Pancras was preferred to King's Cross as a London terminal. He said that the route would include tunnels under the North Downs at Hollingbourne and at Sandway. Some detailed points remained finally to be resolved; whether at Pepper Hill in Kent there should be a tunnel or an alignment round it; and whether at Ashford the line should follow the northerly route (paragraph 18) or a central route—a matter which UR had been asked to consider urgently. Decisions had also still to be made on the intermediate stations between Ashford and London. The Secretary of State said that he would issue directions within a few weeks to safeguard the route he had announced. Those directions would replace all existing directions. The Secretary of State said that a Hybrid Bill was being drafted, to be ready by Autumn 1994, on the basis of the safeguarded route. It is only when that Bill has been passed that the legislation to build the CTRL will be in place. The Government were willing, in principle, to provide substantial financial support for the project in recognition not only of the significant domestic transport and regeneration benefits (but see paragraph 19) of the new line, but also of some of the large benefits to international passengers. The Secretary of State issued safeguarding directions on 25 February for the entire length of the route save for the Pepper Hill and Ashford areas (paragraph 39) where the route had still to be finalised. On 28 April the Secretary of State said in a written answer in the House of Commons that the line would skirt round Pepper Hill while in Ashford a central route was considered the best solution. The Secretary of State added that those sections of the route would also be safeguarded (that was done on 23 June) and that the whole route was now finalised. Guidance on safeguarding issued by DOT in December 1994 referred to the VPS and said that properties qualifying for purchase, and the terms of purchase, would be the same as if the blight provisions of the 1990 Act applied (see paragraphs 13 and 25).

Blight and related matters

22. A dictionary definition of blight is: "anything that injures, destroys, depresses or frustrates" and of planning blight: "a fall in value . . . of property in an area caused by uncertainty about its planned future." That is a popular view but it does not satisfy the requirements of the law. An owner of property which cannot



APPENDIX 1 — GLOSSARY

The Board	—	British Railways Board
BR	—	British Rail
CTRL	—	Channel Tunnel Rail Link
dB	—	Decibel
DOT	—	Department of Transport
UR	—	Union Railways
VPS	—	Voluntary Purchase Scheme
The 1971 Act	—	Town and Country Planning Act 1971
The 1973 Act	—	Land Compensation Act 1973
The 1990 Act	—	Town and Country Planning Act 1990

be sold except at a substantially lower price than would otherwise be realised because it lies in the path of, or close to, the proposed route of road or railway development works (paragraph 26 below) or is devalued because of physical factors during the construction of the works or their use (paragraph 27 below) expects to receive equitable compensation. I have therefore decided to set down in this section of my report my brief understanding of the statutory position.

23. According to “Boynton’s Guide to Compulsory Purchase and Compensation” planning blight is the term used to describe the situation which occurs when prospective purchasers of property are deterred from buying because there is a proposal that an authority with compulsory purchase powers will acquire the property at some future date.

24. The statutory provisions relating to blight are to be found in sections 192 to 207 of the Town and Country Planning Act 1971 (the 1971 Act) as extended by sections 68 to 81 of the Land Compensation Act 1973 (the 1973 Act) and later consolidated in sections 149 to 171 of the Town and Country Planning Act 1990 (the 1990 Act). The effect of these provisions is to enable the owners of properties affected by planning blight to compel the public authority responsible for the proposal to acquire their properties in advance of need at an unblighted price. The provisions apply to any land which may be required for the purposes of the functions of a government department, local authority or statutory undertaker. Under paragraph 14(l) of the Town and Country Planning General Development Order 1988 the Secretary of State may issue a direction restricting the grant of planning permission by a local planning authority within a defined zone. The issue of such a direction is known as safeguarding. The primary purpose of a safeguarding direction is to ensure that the defined zone remains available for the proposed development. It also brings into play the statutory blight provisions described above. Thus, once safeguarding directions have been issued, those persons living within the safeguarded zone have available the statutory blight provisions.

25. The situation described in the preceding paragraph applies when compulsory purchase powers for a specific project are being sought under an existing enactment. For example, the Highways Act 1980 gives the Secretary of State powers to acquire land compulsorily by Order for highways purposes. In the case of the CTRL, however, the legal position is rather different. Because the powers to acquire land compulsorily for the CTRL are being sought by primary legislation (the Channel Tunnel Rail Link Bill currently before Parliament) the statutory blight provisions will come into effect only when the Bill is enacted. However, under the VPS (paragraph 33) affected home owners have been treated as if statutory blight had been triggered from the point of safeguarding. The homes that qualify for voluntary purchase, and the terms of compensation, are the same as if the provisions of the 1990 Act applied to the CTRL safeguarded zone.

26. In the case of a trunk road scheme the safeguarded zone may be 67 metres from the centre line of a proposed road or any other such distance as the Secretary of State may specify. The 67 metre zone is typically used when a route corridor has been defined but detailed design has not progressed sufficiently for a narrower definition to be appropriate; even so blight notices served in respect of properties within the zone are not generally accepted if the property will not be required for construction of the road. Safeguarding will be modified and the zone reduced when detailed design allows. In the case of railways and urban transport projects a tailor-made zone is normally defined at the outset. For the CTRL, DOT have said, the safeguarded zone of surface interest has been drawn to cover the homes that need to be taken for construction and all purchase applications within the safeguarded area are accepted.

27. Under section 193(1) of the 1971 Act (section 150(1) of the 1990 Act) an owner-occupier may serve a notice upon the appropriate authority to purchase his or her interest in a blighted property. An owner-occupier is defined in section 203(1) of the 1971 Act (section 168 of the 1990 Act) as a person who owns and has occupied a property for at least six months before the date on which he or she served the appropriate authority with a notice. “The appropriate authority” means the Government department, local authority or any other body by which the land is

liable to be acquired (section 205(1) of the 1971 Act and section 169 of the 1990 Act). The person serving the notice has to show that he has made reasonable endeavours to sell his interest in the property but has been unable to do so except at a price “substantially lower” than that for which he might have expected to sell it if it did not fall within the development plan. If the appropriate authority wish to dispute the blight notice they may object by serving a counter notice. If no agreement is reached between the two parties, the matter may be resolved by reference to the Lands Tribunal.

28. The term “blight” is often used in a wider sense to describe the state of affairs in which property values are affected by near-by public development or by the actions, or proposed actions, of the appropriate authority. Even where the statutory blight provisions described above are not apt, some relief may be obtained through the 1973 Act for the injurious affection caused by public works. A person may claim compensation where the value of an interest in land depreciates as a result of certain physical factors—caused by the use of public works—such as noise, vibration, smell, fumes, smoke, artificial lighting and the discharge on to the land of any solid or liquid substance. A claim may not be made, however, until 12 months after the date on which the works are first used. Section 20 empowers the Secretary of State to make regulations for buildings to be insulated against noise caused or expected to be caused by the use of public works (other than at an aerodrome) or for grants to be made in respect of the costs of such insulation. Section 26 provides that a responsible authority may acquire by agreement land for the purpose of mitigating any adverse effect which the existence or use of any public works (not including a highway) has or will have on the surroundings of the works. The owner-occupier’s enjoyment of the land in question has to be seriously affected by the carrying out of public works at the construction or alteration stage or by the use of public works. Section 246 of the Highways Act 1980, as extended, makes similar provision in respect of highways developments.

29. Section 62 of the Planning and Compensation Act 1991 amends both the 1973 Act and the Highways Act 1980 by empowering the responsible authority to acquire by agreement land the enjoyment of which by the owner-occupier will in the authority’s opinion be seriously affected by the carrying out of the public works or through the use of the works. In January 1992 the Minister for Roads and Traffic announced new guidelines and said that the Secretary of State could use those new powers in order to alleviate hardship caused by road construction schemes by buying off-line property (that is property not safeguarded) which in his opinion was suffering from serious “blight by proximity”. Each case would be considered on its merits but as a guideline DOT would normally expect the qualifying properties to lie within about 100 metres of the centre line of the road. Those provisions do not apply to the CTRL. However, the Board have general powers to acquire property by agreement.

30. While the issue of a safeguarding notice is the normal means of bringing the planning blight provisions into play for trunk road, rail and urban transport projects, it is only one of a number of circumstances, listed in Schedule 13 to the 1990 Act, which can trigger the statutory planning blight provisions. Although the precise trigger varies depending on the nature of the project and the authority responsible for it, all involve some form of formal published proposal with the land requirements sufficiently well defined for the chosen route (in the case of linear projects) or site (for non-linear projects) to be defined on a plan. Blight in terms of the dictionary definition referred to in paragraph 22 above may occur to varying degrees before any of the circumstances in Schedule 13 come about: as a result of public consultation on possible routes or sites; because a project has been announced and possible sites or routes are under investigation; or—even earlier—because a feasibility study is being undertaken into whether or not a project should be pursued. Such blight is often referred to as “generalised blight” to distinguish it from those circumstances where the statutory planning blight remedies apply.

Compensation Arrangements

31. *BR’s Hardship Scheme: November 1988*
On 10 November BR announced details of a scheme to purchase certain properties affected by the proposals published in July 1988 which identified possible routes

Conclusions

49. I do not suggest that all those whose individual complaints I have investigated—and others whose complaints I have not investigated—would have merited a remedy had DOT accepted my findings and arranged to consider redress for those who suffered extreme or exceptional hardship. Unless the effect of my laying this report before Parliament is to change the DOT response to my findings, those affected will not have even the opportunity to have a claim considered in the light of my investigation.

50. For the reasons I have set out in this report I have found that there was maladministration by DOT. For the reasons given in his response the Permanent Secretary disagrees. As I see matters, there has been injustice arising from maladministration which has not been remedied. I therefore lay my report before Parliament.

route. Safeguarding of the route through Kent was introduced in September 1990 but that did not remove blight; nor was it likely to since BR were (as I have already noted) studying other route options. It certainly did not resolve the problems of some of those whose complaints I subsequently investigated. I have found nothing in the papers to suggest that DOT gave any thought to whether anything else might be done and, if so, what. The Secretary of State acknowledged the problem in his minute of 25 July 1991 to the Prime Minister. Action was taken four months later when the Ove Arup route was adopted. Adopting a significantly different route caused further uncertainty and prolonged blight. I have seen no evidence that DOT even then addressed the question whether some form of redress should be considered for persons for whom it was not otherwise available, nor that they did so in the period that followed. The position changed only when DOT formally announced a change of policy in December 1993—that a public subsidy would be paid towards the project enabling the announcement soon afterwards of a final route, save for some adjustments. Once those adjustments had been made in April 1994 the project was once more in a position where it could be taken forward and from that point, therefore, there was a prospect that uncertainty and blight arising from it might begin to reduce. I regard the period between June 1990 and April 1994 as the one associated with the maladministration I have identified. I recognise that DOT could not realistically have devised a scheme to cater for all those affected, in the relevant period, by generalised blight. Nevertheless it is my view that some provision should have been considered for cases of exceptional or extreme hardship.

46. The maladministration I find, in summary, is this. The effect of DOT's policy was to put the project in limbo, keeping it alive when it could not be funded. That increased uncertainty and blight in the period from June 1990. The position was not the same as that pertaining when a road scheme is introduced—the project raised exceptional difficulties and exceptional measures were called for. Persons not covered by the compensation schemes may have suffered as a result of the delay in settling the route. DOT had a responsibility to consider the position of such persons suffering exceptional or extreme hardship and to provide for redress where appropriate. They undertook no such consideration. That merits my criticism.

Discussions with DOT

47. As is my usual practice, under arrangements long approved by the Select Committee on the Parliamentary Commissioner for Administration, I sent my report to the Permanent Secretary in draft, inviting him to comment on its factual content and to say whether his Department would offer a remedy for the maladministration I had found. The Permanent Secretary told me that he did not share my view that his Department had acted maladministratively and that he did not, therefore, propose to offer any remedy. The main points of the Permanent Secretary's response are set out at Appendix 4 to this report. In the very unusual circumstances of this investigation it seems to me right to set out as fully as possible the Department's views and their reasons for dissenting from my own. The points made by the Permanent Secretary did not persuade me to alter my findings: I did not see his response as countering the arguments which caused me to reach those findings.

48. There are two issues raised by the Permanent Secretary to which I must respond in this report. He suggested that I had acted outside my statutory remit in that I have, in effect, criticised decisions taken as a matter of Ministerial policy. I reject that suggestion. I make my jurisdiction clear in paragraphs 3, 42 and 44. Nowhere do I comment, adversely or otherwise, on policy as such. I comment only on its effects. For the sake of clarity, I comment also on what the Permanent Secretary says at paragraph 28 of Appendix 4. Had DOT accepted my findings, any scheme to address cases of extreme or exceptional hardship would have been for DOT to devise. As I show in paragraphs 45 and 46 it was not my intention that any such scheme should have a wide compass. On the contrary, I would have thought it appropriate for DOT to be prepared to acknowledge that in certain exceptional cases of hardship—necessarily a very limited number—redress might be considered. I fully recognise that Departments must have regard to demands made on taxpayers generally when they consider granting redress to individuals.

for the CTRL (paragraph 7). The introduction of the scheme was prompted by concern that publication of the proposals had led to a drop in property values along the relevant route corridors and, in particular, that some individuals who had been in the process of selling their homes when the proposals were announced had found themselves unable to do so (paragraph 8).

32. The criteria governing the scheme were:

- (i) applicants had to be "resident owner-occupiers" within the meaning of section 203 of the 1971 Act (paragraph 27);
- (ii) the property had to be situated within the preferred corridor for one of the first three routes (paragraph 7); and
- (iii) in BR's opinion be likely to be subject to compulsory purchase if one of those routes were to be selected and a railway on it authorised;
- (iv) applicants had to demonstrate that:
 - (a) the need to sell the property arose for reasons unconnected with the CTRL;
 - (b) reasonable endeavours had been made to sell the property;
 - (c) the property could not be sold except at a substantially reduced price, for reasons connected with the CTRL proposals; and
 - (d) serious financial hardship had resulted.

33. *Voluntary Purchase Scheme: March 1989*

On 8 March 1989, when the preferred route was announced (paragraph 10) BR also announced details of a voluntary purchase scheme (VPS). Under the VPS BR undertook to purchase, by negotiation, *any* residential owner-occupied property situated within a 240 metre corridor running from Swanley to Cheriton along the preferred route. The width of the corridor was determined by an assumed requirement of 40 metres for the track to be built plus a further 100 metres on either side of the new line. In addition BR continued to operate the 1988 hardship scheme.

34. Under the VPS BR would offer to:

- (i) purchase any residential property at its value disregarding the effect of the proposed rail link; and
- (ii) make a disturbance payment covering the cost of removal, reasonable legal and survey fees and a home loss payment in accordance with normal compulsory purchase practice.

35. In the explanatory leaflet which BR issued on the subject of compensation under the VPS they said that owners who did not wish to sell their properties would be offered noise insulation before construction began if noise resulting from the use of the CTRL was calculated to exceed 70 dB(A) 24hr Leq (a noise standard similar to that applied in the case of new roads). The leaflet said that reliable sound contours could not be produced until detailed alignments of the rail link had been finalised. Should noise levels *outside* the 240 metre zone exceed 70 dB(A) 24hr Leq BR would make a similar offer of noise insulation (see Appendix 3). UR told my officers that the effect of the VPS was counter-productive. The relatively generous width of the corridor led to fears that the effects of the new line would be much more than UR expect them to be. Those fears led to blight snowballing so that it affected whole communities such as South Darenth and Istead Rise.

36. *September 1990*

In September 1990 the Secretary of State issued safeguarding directions for the preferred route from Upper Halling to the CTRL portal at Cheriton. The VPS remained in force.

37. *October 1991*

After the Secretary of State's announcement in October 1991 that the CTRL would run along the lines of the Ove Arup route (paragraph 15) the safeguarding directions west of Detling were removed. UR told my officers that no formal hardship scheme operated for the de-safeguarded areas. BR/UR were concerned that, if they bought any property that lay outside the VPS, that would be seen as an

indication of where the route was likely to go (with a consequent effect on property prices) whereas the position was that there had been insufficient engineering work carried out at that time on the Ove Arup route to say with any certainty where the line would eventually run. The VPS remained in force east of Detling.

38. *March 1993*

After the Secretary of State's announcement in March 1993 (paragraph 18) UR decided to operate an unpublicised hardship scheme for persons affected along the western (de-safeguarded) part of the route. Very little property was bought under that scheme which was similar to the 1988 scheme except that, so DOT's papers show, properties generally had to be within 67 metres of the centre line of the route to be considered under the scheme. UR and DOT told my officers that that distance—which is the same as for a safeguarded road scheme (paragraph 26)—served only as a “coarse sift” as to possible eligibility.

39. *1994 safeguarding*

After the Secretary of State's announcement in January 1994 (paragraph 21) fresh safeguarding directions were issued covering the full length of the route announced, except at Pepper Hill and Ashford, replacing the original directions and specifying the exact land-take that would be necessary for the construction and operation of the CTRL. In April the Secretary of State announced final decisions on the route at Pepper Hill and Ashford and said that those sections of the route would also be safeguarded (paragraph 18).

Findings

40. It was always likely that a project of the size and nature of the CTRL would create major problems, not least for DOT. I have kept that firmly in mind when considering my findings on the complaints put to me about DOT's handling of the project. In considering DOT's role I have had particular regard to their relationship with BR and their successors UR. If BR and UR had been acting as DOT's agents—a proposition which DOT rejected—I would have had to consider their part in the events of the last seven years. From my study of the papers I do not consider that they were so acting (and I note that they received legal advice that they could not treat BR as their agent—paragraph 16). I find that DOT could not be held responsible for the administrative actions of the railway companies.

41. Two important points emerged from the Permanent Secretary's initial comments to me. First, the various twists and turns of the story were the result of government policy. Second, compensation for those affected by the new line was the responsibility of BR and UR. In this instance policy decisions on whether the line should be built, where it should run, when it should commence, who should build it and how it should be financed were government decisions on which I offer no comment. It is not for me to opine on the merits of the various compensation schemes introduced at different times by BR and UR or their administration of those schemes—although I note, for the record, that those schemes appear to have been in accord with, or more generous than, the compensation schemes which apply in the case of highway developments. I have looked to see whether DOT brought any undue influence to bear to restrict the scope or administration of the BR/UR schemes as has been suggested in some of the correspondence that I have seen. I have found no evidence that they did so.

42. The considerations I set out above might in some eyes amount to a persuasive case why I should not find that DOT had acted maladministratively. The more I looked at the circumstances surrounding the complaints, however, the more I was ineluctably drawn to the conclusion that DOT *had* acted maladministratively and in a way that resulted in unremedied injustice. Although policy matters as such are not for me, I may certainly examine, and if appropriate find fault with, the administration which inevitably flows from the formulation and introduction of policy. When a Department introduces a policy it is incumbent upon it to have considered the effects of that policy and whether steps need to be taken to mitigate those effects. What measures a Department may deem appropriate is a matter for the Department. I may not look into discretionary decisions reached without maladministration. In my view it is unquestionable maladministration not to have considered the effects of the policy upon those to be affected by it. Such maladministration is more evident when the problems caused to individuals by the

implementation of a policy become apparent but still no action is taken to consider a remedy. I have found that that is what happened in respect of the CTRL.

43. By their very nature, all major transport infrastructure projects are likely to cause blight, as understood by the layman (paragraphs 22 to 30), when first introduced. That is in my view unavoidable, and is not in itself evidence of maladministration. The compensation schemes which I describe in paragraphs 31 to 39 of this report do not necessarily provide relief for every single person affected, to some degree, by a major new project. All such schemes must have limits; the compensation scheme which goes too far may *increase* blight and extend a problem to a wider population. The planning process is a lengthy and exhaustive one. While debate continues about where a new road—or railway—will run, there will be a degree of uncertainty. It appears to me that there comes a point in the development of any project when uncertainty begins to lift because the route becomes settled. Where there is undue delay in settling a route which is to be constructed—no matter how good the reason for delay may be—DOT's duty must be to ensure that the effects of the continued uncertainty are kept to a minimum.

44. The problems arising from the proposal to establish the CTRL were particularly acute. Widespread blight (which had not, apparently, been foreseen, since no advance arrangements were made to address the problems it caused) occurred after BR announced the four routes in July 1988; thereafter there was an obvious danger that unusually high levels of anxiety and uncertainty would continue in relation to the project which was rarely far from the news. That difficulty has been exacerbated because of the exceptional nature of the CTRL project. It is the first major railway to be built in Britain this century. Those affected were unable to assess the likely impact upon themselves, there being no directly comparable development. The speeds at which the trains are likely to travel exceed those previously possible in this country. The decision to develop a new line had been taken by an outside body (BR) and so DOT became involved in a scheme that was partly in existence. Large scale property purchase had begun at a much earlier stage and was more extensive than would be the case in a typical road scheme. As was later found, one of the effects of the geographical extent of BR's compensation schemes was to introduce snowballing blight. DOT's policy on the establishment of the link had two key components: a new line would be needed at some point; its construction would have to be financed largely by the private sector. As early as February 1989 DOT had been advised by BR that, as matters then stood, the project was not commercially viable. The perceived solution was to seek private sector involvement, but even when that was done, no genuine way forward was found because the necessary funding was not forthcoming. That was the position while the joint venture was in place—the request for government funding was rejected—and when the Secretary of State made his announcement in June 1990. That announcement left open the possibility that the preferred route might alter as a result of BR's further studies; so, even though broad agreement on the route through Kent was identified, that route could not be regarded as settled. The announcement was silent as to there being at that time no firm prospect that the line would be built because there was no finance in place or in prospect to fund its construction. The decision to keep the project in play and to await BR's further studies without any reasonable prospect of the necessary private funding was a policy decision which DOT were entitled to take, and I make no comment on it. I comment on the *effect* of that policy approach. It was to prolong the uncertainty and associated blight for a period of unknown duration with no certainty that the position would be resolved. At that point I perceive DOT's maladministration began.

45. It is apparent that some householders will have suffered for that prolonged period who were not catered for by the existing compensation schemes; and since their plight was in consequence of the policy approach adopted, DOT had a responsibility to consider whether some redress should be available to such persons. The compensation schemes addressed the effects of the possible physical proximity of the route. In my view, the delay in arriving at definitive decisions on the route caused problems which the compensation schemes were not designed to solve because the schemes were necessarily tied to definite decisions about the