



HS2 RESIDENTS' COMMISSIONER

Report 7 – September 2017

Summary

The summer of 2017 has continued to be busy for High Speed Two (HS2) Ltd. There have been property and communication announcements on Phases One, 2a and 2b of the route.

This report will first summarise the status of each of the property schemes. It will then look at HS2 Ltd's progress to date on implementing the Bynoe recommendations.

I will also be looking in detail at recent commitments made by the Department for Transport (DfT). These include the Phase 2b property consultation response, published as 'High Speed Two Phase 2b; Crewe to Manchester, West Midlands to Leeds and beyond – Property Consultation Response', as well as HS2 Ltd's commitment to urban compensation.

The property schemes

I have continued to monitor the property schemes and contribute to the ongoing discussions with the Government on improving these.

I have also been lobbying the former Parliamentary Under Secretary of State at DfT, Andrew Jones MP, about the discretionary property schemes for HS2. I am pleased to say that, as a result, the DfT has undertaken to review all of these discretionary property schemes this year. This commitment was confirmed in the Phase 2b property consultation response mentioned above. As part of this review, the DfT will also consider other discretionary blight schemes currently operating in the UK.

HS2 discretionary property schemes have now been opened to people affected in all three phases along the line of route. Applications to the Rural Support Zone from people affected by the Phase 2b route are now being received.



Phase One, Phase 2a and Phase 2b Express Purchase Zone

The Express Purchase Zone applies to some properties in the surface safeguarded area. All those affected who may be eligible should already be aware of their entitlement. People who live in this area and satisfy residency requirements can serve a blight notice on the Government.

Blight notices are now being progressed on all areas of the line of route.

The Government election purdah periods during the spring and early summer caused some delays to decision-making on blight applications. Some Phase 2b applicants in particular were affected. These periods of purdah are imposed by central government between the announcement of a local or general election and its outcome. As a national infrastructure project, HS2 was directly affected by these restrictions. These restrictions have now been lifted and negotiations recommenced.

HS2 Ltd needs to do more to make sure that people affected by purdah, and similar delays, are advised of the potential impact as soon as practicable. It also needs to keep people informed of any delays. A number of blight applicants whose notices had been accepted experienced considerable anxiety where these were not progressed during purdah.

Express Purchase will continue to operate until the HS2 programme requires properties to be acquired. At that time, the legal compulsory purchase process will take precedence.

As of 31 August 2017, 738 blight notices had been received, of which 531 have been accepted and a further 21 are in process.

Phase One, Phase 2a and Phase 2b Rural Support Zone

The Rural Support Zone (RSZ) is the area outside the surface safeguarded area and up to 120m from the centreline of the new railway in rural areas, and where the route is not in a deep tunnel.

As of 31 August 2017, 193 applications had been received, of which 130 have been accepted and 50 are being assessed. There have been a high number of new applications from Phase 2b. This has led to a short-term backlog in dealing with cases.



Phase One, Phase 2a and Phase 2b Need to Sell

The Need to Sell (NTS) scheme is open to owner-occupiers who can show that they have a compelling reason to sell their property, but have not been able to do so – other than at a substantially reduced price – as a direct result of the announcement of the HS2 route.

As of 31 August, 488 applications have been received, 174 of which have been accepted and a further 114 are waiting for a decision.

The acceptance rate onto this scheme varies from one phase to another. A number of applications from Phase 2b have been rejected because they didn't provide all the information the NTS panel needs. The NTS scheme is evidence based. The panel can only accept that the criteria have been met, and progress the application, where applicants provide evidence to support their statements.

Following comments made during the House of Lords Select Committee hearings, HS2 Ltd has published further guidance. This sets out examples of successful and unsuccessful applications under the fifth criterion - the compelling reason to sell. These examples are given for guidance purposes only, as each case will be considered on its own merits.

In addition, the HS2 website on gov.uk now includes headline details of acceptances, especially for compelling reasons to sell. These are not as detailed as some people would have liked. HS2 Ltd has to balance the need for data protection with the need to provide enough information to be useful to future applicants.

Homeowner Payments - Phase One

The Homeowner Payments (HOP) scheme was introduced in February for properties within 300m of the centreline of the route, following the grant of Royal Assent for Phase One.

Uptake of the scheme has been good and, as of 31 August, 631 applications had been received. Already, 501 of these have been accepted and a further 102 are in progress. Over 350 applicants have now received payments and the administration of the scheme appears to be working extremely well.



Property schemes - general

The consultation for the Phase 2b discretionary schemes is complete, and the report published. A number of statements and commitments made by the DfT have emerged in the process, some of which will be enacted by HS2 Ltd.

I have drawn out these commitments later in this report so that I can monitor their implementation. The impacts of these commitments will be felt by all property owners close to the line of route on all three phases.

Holding HS2 Ltd accountable

In April 2016, HS2 Ltd appointed Ian Bynoe to produce a report on HS2 Ltd's complaint handling and community engagement. The report and its recommendations for action can be found at: www.gov.uk/government/publications/ian-bynoe-report-on-hs2-ltds-complaints-handling-and-community-engagement.

Since my last report, HS2 Ltd's focus on implementing Bynoe's recommendations has increased significantly. Progress is now reported monthly at the Chief Executive's Community and Stakeholder Engagement Panel. Part of the panel meeting is attended by the Construction Commissioner as well as me. This ensures that we are both kept up to date on progress against the commitments made. It also gives us the opportunity to engage in key community issues that concern our roles.

The HS2 Community Engagement strategy has now been published at: www.gov.uk/government/publications/hs2-ltds-community-engagement-strategy.

It is HS2 Ltd's stated intention that all of the Bynoe recommendations are completed by the close of this year. Parliament and the public expects me to hold HS2 Ltd to account. I will continue to monitor and report on progress and, if necessary, will also report where progress is lacking.

As part of HS2 Ltd's assurances, a new Residents' Charter was introduced in July. This sets out 10 crucial commitments HS2 Ltd has now made to residents along the line of route.

The full text of the charter can be found at: www.gov.uk/government/publications/hs2-residents-charter. It has developed beyond the original Residents' Charter, which only applied to those residents directly affected by the line of route. The new Residents' Charter now encompasses the communities most impacted by the construction and operation of the railway.



The current focus for the community engagement teams is on developing local engagement and communication programmes for all Phase One community areas. These programmes are at varying stages, and enable tailored engagement to meet the needs of individual communities. Any community group affected by Phase One that has not already started an engagement programme with HS2 Ltd can write to me at residentscommissioner@hs2.org.uk. I will pass this information to the relevant community lead for the area.

I am aware of communities in Phases 2a and 2b where the line of route has only recently been confirmed, or is still in consultation, or where changes have been announced as a result of the Phase 2a Environmental Statement. These changes will continue to arise as the design of the railway matures. Some areas will have impacts removed while others will be newly impacted.

A number of individuals and community groups have written to me believing that they have been misled by HS2 Ltd. They have drawn this conclusion based on discussions held before the recently announced changes. As I wrote in an earlier report, HS2 Ltd has to find a difficult balance while it explores options for constructing the railway. It needs to keep communities informed at the same time as not alarming individuals unnecessarily when their land is under consideration as an option. That is why, usually, communities are not informed until a change is approved by the appropriate Government departments. The downside of this approach is that changes can come as an unwelcome shock.

A letter I recently received from a resident illustrates the other end of the spectrum. Their view was that HS2 Ltd should create a totally new access route across fields rather than using an established lane for a nine-month period. To the resident who did not want to be inconvenienced for a short time, this made complete sense. To the potential newly affected landowners, it would not have made sense, and nor does it make sense to HS2 Ltd on cost grounds.



Commitments

In a variety of places, the DfT and HS2 Ltd have made commitments on property matters. They are not to be confused with the 'undertakings and assurances' given to individuals and groups during the parliamentary process. Those are held in a central list and monitored regularly.

These commitments are separate and directly affect those who can access the property schemes. I have drawn these commitments together to make it easier to monitor them and hold HS2 Ltd to account for their delivery.

Urban compensation

A number of parties have written to me about introducing an urban compensation scheme. This was first referred to in the Phase One House of Lords Select Committee report (HoLSC). It concerns additional compensation for the severe and prolonged disturbance arising in urban areas from the construction of the railway. Urban areas are, by definition, excluded from the Rural Support Zone discretionary property scheme. The HoLSC report stated:

"We make a strong recommendation, therefore, that those households in Camden, and any in Hillingdon and Birmingham, that are so threatened by construction noise as to be entitled to noise insulation, should be treated in the same way as if they were within 120m of the line of route in an area where the Rural Support Zone (RSZ) applies. Eligibility to noise insulation is an objective test, involving independent experts."

In response, the Government stated that compensation should be offered for properties subject to severe and prolonged noise and disturbance resulting from the construction of HS2. This compensation should be additional to any statutory remedy for which they may be eligible, and introduced in a timely way.

HS2 Ltd has provided no further details, to date, on what it proposes by way of additional compensation. The Phase 2b property consultation response published by the DfT in July stated:

"This scheme will be launched before the start of the main works, i.e. in spring 2018 for Phase One. While we expect that the majority of those who will be eligible for this scheme will be in urban areas, we agree with the Committee that those in rural areas who also suffer prolonged noise and disturbance because of issues such as spoil heaps will also be eligible. This scheme will therefore apply across the entire route, firstly for Phase One and we expect also, in due course, for Phase 2a and Phase 2b."



Work is ongoing within HS2 Ltd to agree an urban compensation policy, and I urge it to provide details on these proposals as soon as possible.

Review of the property schemes

The Government response to the 2016 HS2 Phase 2b property consultation included a number of commitments and assurances. I have set these out below, together with the current position as I understand it:

- **Statutory blight acquisition process**
Statement: The Government accepts that the entire statutory blight process can be too long. HS2 Ltd is working to improve the acquisition procedure from the claimant's perspective, so providing clarity in terms of timescales and processes. HS2 Ltd now achieves initial determinations well within the statutory two months and will work to drive down the time it takes to complete the negotiation and conveyancing process.

Property acquisition by a government department does not proceed at the pace of a transaction in the general housing market. This can be a source of considerable frustration for applicants.

HS2 Ltd has key performance indicators for the average time taken at every stage of the acquisition process for each of the property schemes. While there will always be exceptions to the rule, it should be possible to provide applicants with the average time taken at each stage. This will help to manage expectations.

Wide variance between the phases, in time taken at each stage of a given property scheme, should not exist. It suggests that working practices across the HS2 Land and Property directorate are not consistent. More needs to be done to consolidate the process at each stage so that there is parity between the phases.

Applicants to the NTS scheme are given reasonable guidance on the time taken at each stage of the process. Blight applicants should get similar guidance once their application has been accepted. HS2 Ltd must consistently strive to improve the average time taken at each stage. This will require continual process management and close control over its external suppliers.



- **Need to Sell, Criterion**

Statement: The Government will ... shortly publish detailed information relating to the compelling reason to sell criterion as part of the NTS guidance. This will include examples of successful and unsuccessful compelling reasons to sell. It will include aspects of the guidance that was previously published and later withdrawn, which respondents told us they found helpful.

The revised guidance has now been published and can be found at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/640428/hs2_need_to_sell_guidance_and_faqs.pdf. It provides future applicants with a better indication of the evidence needed to support their application. In addition, HS2 Ltd is now publishing statistics on how often each compelling reason, broken down by category, is successful or unsuccessful. These can be viewed at: www.gov.uk/government/publications/hs2-phase-one-exceptional-hardship-scheme-applications-statistics.

- **Need to Sell Scheme – Accessibility**

Statement: The Government is also undertaking further work to improve accessibility, including:

- Collecting information from applicants to reach a better understanding of the difficulties encountered when making an application, allowing resources and engagement to be tailored to address any issues uncovered.
- Seeking feedback from those that have applied to the scheme to help improve the guidance as well as how applications are handled.
- Production of informative material for those who might have difficulties completing and submitting an application, including both written and video resources.
- The provision of additional guidance to individual applicants who are facing difficulties making an application.

Work, long overdue, on providing assistance in this area has now started. The Government has given its approval for HS2 Ltd to:

- identify resources to provide additional guidance to individuals, and
- produce better information for those with potential difficulties in making an application to any of the schemes.



HS2 Ltd has given no time frame for implementing these commitments. I will be closely monitoring this matter. HS2 Ltd should bring in these commitments, and properly publicise them to those who need them, as soon as possible.

- **Homeowner Payments - Levels**

Statement: Some respondents observed that, at fixed levels, proposed payments under the scheme would devalue in real terms over time with inflation and that those living on Phase 2b of the route would receive less in real terms compared to property owners along Phase One of the scheme who are able to apply now.

Inflation is currently at low levels. Although we have no current plans to raise HOP payments with inflation, we agree that it would be sensible to review whether HOP cash payments should be adjusted to reflect inflation in the future.

The DfT advises that it will review homeowner payment levels immediately before introducing the HOP scheme for each future phase. The DfT also advises that it will keep these under review for the duration of their operation.

- **Atypical properties**

Statement: There was general support for the Government's long-standing position that there will be some cases that are so exceptional that special arrangements should be made to deal with them appropriately. The Government's position on this has not changed and cases involving atypical properties/ circumstances will continue to be handled sensitively and outside of the non-statutory schemes.

HS2 Ltd has not published any details on how to apply to the atypical scheme, on the basis that each application will be unique. While I concur with this view, HS2 Ltd still needs to set out what is likely to be accepted as an atypical property.

In general, the only properties likely to qualify are those that:

- are significantly affected by the construction or operation of the railway, and
- do not fall within the defined scheme criteria for one of the existing schemes.

For instance, a property adjacent to a new maintenance depot, but more than 120m from the line of route, might be considered under the atypical property scheme. HS2 Ltd should also provide guidance for applicants on what evidence they need to demonstrate that their property is atypical.



The Land and Property team is best placed to advise potential applicants on the process.

- **Tunnelling**

Statement: In the autumn, HS2 Ltd proposes to introduce a bespoke package of targeted communications to areas where tunnelling will be undertaken. This will include fact sheets, further information events, one-to-one advice surgeries in partnership with local authorities and members of parliament, and briefings for professionals such as estate agents.

I will be monitoring this commitment to make sure that it is undertaken in a timely manner. The first event is currently being planned by the HS2 Manchester area engagement team as a follow up to the recent information events.

- **Property schemes review**

Statement: The Government is committed to keeping all aspects of the property compensation and assistance package under review throughout the lifespan of the project. To this end, a review of non-statutory schemes is planned for later this year. Further details will be published in due course.

The DfT has recently begun identifying what parts of the schemes it intends to review at this time. Its view is that the schemes have recently been subject to close scrutiny in the Phase 2b property consultation.

I agree that the overall schemes were subject to some analysis during the consultation period. In my view, though, this does not amount to a review of the non-statutory schemes. I will be pressing for a thorough review. This should include an assessment of discretionary property schemes that have operated in past infrastructure projects, along with those operating now.

It is already more than two months since this statement was made. I urge the Government to provide the “further details” as a matter of urgency.

- **No prior knowledge**

Statement: ... after considering the recommendations made by respondents, the Government agrees that there is a case that some flexibility could be granted to those with prior knowledge of HS2, but where the compelling reason to sell could not have reasonably been foreseen at the time of their purchase. We also believe that in these situations, applicants should have to show that further blight has occurred since purchasing their property.



... In light of this, the Government will investigate the impact of providing this level of flexibility before deciding whether to introduce changes to the criterion. A decision on whether to implement any changes will be dependent on the results of this work.

After calling for a review of this criterion for some two years, I am pleased the Government will finally investigate this area. I will be pushing for this to be undertaken by the end of this year.

It should form part of the non-statutory schemes review - rather than being commissioned separately, which would undoubtedly delay it.

- **Property bond**

Statement: The Government will commit to re-examining the case for a property bond in future. The Government will consider the different types of property bond that could be introduced, and will also consider if a property bond should only operate in certain designated areas, or at certain times in the timeline of a route's development and construction as well as other issues. This is not a statement of Government support for a property bond, but a commitment to keep under review the benefits and risks of a property bond scheme for this project. More details will be made available in due course.

The case for a property bond was examined in 2013, before introducing the current schemes. That investigation did not look in detail at other blight schemes already using a form of property bond. These include EDF Nuclear New Build at Hinkley Point and Horizon in Wales. The bond schemes there have been operating successfully for some years, albeit the geographical areas involved are different in scale and complexity. The DfT has started the process to enable a re-examination of the case for a property bond.

I will be maintaining the pressure to make sure that the report published fully considers those schemes already operating.

- **Rolling stock depot (RSD) impacts**

Statement: A number of respondents called for the provision of compensation for residents living near a RSD. The Government would like to examine the case for assistance schemes in these areas and will look into options as part of the previously mentioned review of non-statutory property schemes.

A review of the impacts of such depots during their construction and operation is overdue. To date, the focus has been on the impact of construction and operation along the line of route. That ignores these areas set slightly away from the line of route, but substantially impacted.

Again, the details of this review should be published as soon as practicable.

- **Alternative dispute resolution mechanism**

Statement: One respondent raised as an issue the lack of a formal dispute mechanism for valuations under the scheme ...

The 2b Property Consultation Response does not address this issue, however in January 2017 the then Minister for Transport, Andrew Jones MP stated ...

An Alternative Dispute Resolution (ADR) mechanism for the HS2 project will be in place by May, when land for the railway starts to be permanently compulsorily acquired.

I recently saw the first draft of this document. I understand from HS2 Ltd that individuals serving a blight notice can request ADR, and HS2 Ltd will consider their request.

I urge HS2 Ltd to publish, without further delay, how the ADR mechanism works. It should explain how individuals facing a compulsory purchase order can access the ADR mechanism. Land for the railway has already started to be compulsorily required, and the first residential CPOs will be served shortly.

ADR will only apply in the case of Express Purchase and statutory blight. Valuations made under the discretionary schemes (RSZ and NTS) are reached by a different method.

Next steps

I will be attending a number of engagement events in the next quarter, across all three phases of the route.

I will also be participating in the recently announced Mexborough Advisory Forum and in the upcoming review of the property schemes.