



Department
for Transport

House of Commons High Speed Rail (London -
West Midlands) Bill Select Committee

Promoter's Response to the Select Committee's First Special Report of Session 2015-16

February 2016

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Introduction

1. This document constitutes the response of the Promoter of the High Speed Rail (London - West Midlands) Bill to the First Special Report of the 2015-16 session published on 17 December 2015 by the House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill (hereafter referred to as the Bill).
2. The Bill is being promoted by the Secretary of State for Transport. Responsibility for delivering the various actions that are outlined in this response will rest with either HS2 Ltd, the Department for Transport or the relevant Nominated Undertaker. The term 'Promoter' and 'we' is used at various points in this document to encompass all of these parties.
3. This response aims to address, in turn, the matters raised by the Select Committee in their report, where an action from the Promoter is sought. Where appropriate, the response sets out a timescale for further progress on an issue and to providing an update at a later date.

Promoter's response

In paragraph 5 of the report, the Select Committee notes:

"... the overall acceptance numbers definitely need improving. The NTS guidance should be further reviewed and improved to make the application process more inviting."

4. While the Promoter has already undertaken several exercises to advertise the availability of the Need to Sell (NTS) scheme and the eligibility requirements, it is accepted that it is always possible to improve guidance of this type. We will undertake a review of the language in the NTS guidance to reduce the perception of it being uninviting or daunting in terms of the evidential requirements of the application process. In doing this we will consider how to best utilise the suggested wording put forward by the Select Committee. We will aim to make any such revisions in time for the launch of NTS for Phase 2a of HS2.

In paragraph 6 of the report, the Select Committee notes:

"The scheme should recognise the potential cumulative effects of Phases One and Two in some areas."

5. The NTS guidance already notes that 'the Panel and decision maker will also take into consideration whether there is any additional generalised blight resulting from the route of Phase Two' when making a judgement on criterion 3, 'effort to sell and the impact of blight'. The practical impact of this is that the cumulative effects from Phase One and Phase 2a or 2b are given the appropriate recognition when assessing relevant applications.

In paragraph 7 of the report, the Select Committee notes:

“...applications pending for more than eight weeks should automatically be reviewed to determine why there is a problem.”

6. The Select Committee also requested an update on the improvements being made to the time taken for processing NTS applications. In order to improve application processing times, a larger pool of decision makers has been identified and trained from existing senior civil servants in the Department. Over the past 3 months, the average time taken for an applicant to receive a decision has already reduced to 6.7 weeks. This period does not include the time taken by an applicant may take to provide additional information.
7. In response to the Select Committee request, the Promoter commits to reviewing all outstanding cases on a regular basis and writing to any applicants for whom it has taken, or is likely to take, longer than 8 weeks for a decision to be provided. This letter will be sent within the 8 week period and will set out the reasons why a decision on the application is still pending and provide a clear indication of the target date for having a decision sent to the applicant.

In paragraph 8 of the report, the Select Committee notes:

“...a fair reason to want to release capital should generally suffice, as should the “age and stage” of homeowners...It will often be right for homeowners in such positions to be able to sell without having to go to any length to demonstrate their inability to sustain home running costs.”

8. The Select Committee requested data on how many “age and stage” applications had been successful so far. Most NTS applicants citing retirement as part of their compelling reason to sell are being accepted (in a minority of cases, after a second application in order to address the decision maker’s comments on the first application) - out of 37 cases, 24 were accepted.
9. Of the remainder, 11 applications were declined on the basis of not meeting criterion 5 (compelling need to sell), however 2 of these were successful on reapplication. Overall, this represents a higher acceptance rate for this group of people than for the scheme as a whole. The Promoter continues to believe that this shows that NTS is functioning well for this group, as only 9 individuals that made a case for retirement as their compelling need to sell have not been successful.
10. Having already recognised the concerns of the Select Committee on this issue, the Promoter is already undertaking work to understand what options may be available to help address them. Early analysis has revealed the complexity of the issues involved, which precludes the Promoter from offering a substantive response at this point. The Government intends to outline its position as part of its wider response to the Phase 2a property consultation in Spring 2016.

In paragraph 10 and 11 of the report, the Select Committee note that valid reasons for needing to sell should include:

“...Accessibility [to] schools...the need to be close to a new business venture...applicants with infirmities who were struggling with stairs... couples [who would otherwise need to live apart for all but very short periods.]”

11. NTS does not have an exhaustive set of reasons for meeting criterion 5, a compelling reason to sell. As set out in the April 2014 decision document to the 2013 property consultation, the Promoter was keen to ensure that individuals in challenging circumstances would not be put off from applying to NTS because they did not feel that their circumstances warranted the label ‘hardship’. We instead introduced the need for a ‘compelling reason to sell’, to reflect more accurately the intention that applicants should be able to demonstrate that they ‘need’ to sell their property and that the Government therefore ought to assist the individual directly.
12. Providing a list of specific circumstances which demonstrate a ‘compelling reason to sell’ could have resulted in a hard-edged set of inflexible rules. It is important that the panel is free to consider the merits of each individual case put to them.
13. All the examples set out in the Select Committee report could represent valid reasons for meeting criterion 5. The Promoter fully agrees with the Select Committee that there will be many applications to the NTS that include the above listed circumstances which should be, and in fact are being, accepted under criterion 5. However, it is also true, and in line with the policy intention that the decision on individual cases will vary depending on the individual circumstances even though the ‘headline’ issue appears the same. The Promoter will clarify that the specific examples noted by the Select Committee are all potentially valid reasons for being able to demonstrate a compelling reason to sell as part of the revision to the guidance set out in para 4 above. This clarification will be communicated to the NTS panel accordingly.

In paragraph 12 and 13 of the report, the Select Committee notes:

“There is some scope for recognising those who are especially proximate to urban construction—including in parts of Camden—by way of communal benefit or benefits.”

“...particular rural locations that are severely affected by construction...”

14. The Promoter’s first recourse when addressing the impact caused by the construction and operation of the new rail line is always to mitigate that impact as far as possible. Despite these efforts, there are a number of examples where the Promoter has recognised that there will be an ongoing impact that cannot be further mitigated. In these scenarios, we have, where appropriate, provided bespoke solutions for those affected parties. Examples of this include the Promoter’s use of the ‘atypical properties’ approach to pursue two property

purchases in Kingsbury which were located in very close proximity to a railhead and construction compound. The Promoter has also offered assurances to Camden to provide replacement open spaces, funding for a construction skills centre, a replacement community motorcycle club and funding for a new linear park. Additionally, the Promoter has provided assurances to specific residents in Camden to temporarily rehouse them in equivalent housing for periods during which they are likely to suffer unacceptable impacts from construction activity that is proximate to their residences.

15. In practice, the Panel already takes into account proximity to intensive construction sites as they recognise the adverse impact from construction activity which will, in some specific locations, be difficult to mitigate fully.
16. On this subject, the Promoter has already announced a Community and Environment Fund and Business and Local Economy Fund in recognition of the fact that there is a need to provide additional benefits for those communities who in despite the mitigation measures we will provide, will still experience impacts from the construction of HS2. We consider Camden will be well-placed to make bids to these funds.

In paragraph 14 and 15 of the report, the Select Committee notes:

“A rateable value limit currently set at £34,800... has been applied to the discretionary compensation schemes by extension from the statutory blight regime that derives from the Town and Country Planning Act 1990.

We think in respect of HS2 this limit may be too low...we have asked for figures on how many businesses in Drummond Street, Camden exceed the limit... we may seek a review of the current limit.”

17. The current rateable value limit for statutory blight came into force on 1 April 2010 and increased the rateable value (RV) limit for blight notices to £34,800. This was to reflect changes to non-domestic rating assessments as a result of the 2010 rating revaluation.
18. There has been no revision to non-domestic rateable values since then, so there should be no reason to change the RV limit for the purposes of blight notice qualification. When a rating revaluation takes place, the RV limit for blight notices will be reviewed at that stage. The current expectation is that this will take place in 2017.
19. This is a tried and tested method, which has been used successfully to date. We believe it continues to represent the most practical system of assessing which businesses within the safeguarding limits should qualify for serving blight notices in advance of needing the relevant land for the construction of the new rail line. By extension, we feel that it is sensible to continue to maintain the link to this level for applicants with business premises applying for NTS.

20. However, we are, of course, willing to have discussions with all business owners from whom land will be required and will apply discretionary measures where considered appropriate.
21. The Promoter has undertaken a review of the number of businesses in Drummond Street, adjacent to Euston Station that may be caught by the £34,800 RV limit. Of 44 commercial properties, 29 (66%) are below the £34,800 RV limit, and 15 (33%) are above the limit. In this respect, a clear majority of businesses in Drummond Street are therefore already in scope of NTS and those in safeguarding have the ability to serve a blight notice under the terms of the statutory compensation code.

In paragraph 16 of the report, the Select Committee notes:

“In too many cases, financial scrutiny is excessively intrusive ... guidance still talks about presenting “as much supporting evidence as you can provide” ... applicants should not automatically be asked whether they want to consider submitting more evidence.”

22. The Promoter will consider how it might better clarify what evidential requirements relating to financial matters may help support an application as part of the revision to the guidance referred to in para 4. In doing so we will make it clear that any scrutiny required will only relate to reasonably verifying the circumstances set out as the reasons for making the application (criterion 5). Our aim has always been to ensure that the Panel have enough information to make a reasoned recommendation. We do not want applicants to feel the process is intrusive, but equally we do not want applications to be rejected simply because they did not provide enough information. A balance needs to be struck.
23. As set out in paras 11-13 above, in developing the NTS policy, the Promoter has not sought to limit applications for discretionary assistance to only those who would suffer financial hardship. However, where an applicant sets out a reason of financial hardship as their ‘compelling reason’ under criterion 5 of the NTS scheme, it is incumbent on the Promoter when assessing the eligibility of the applicant to undertake a reasonable amount of scrutiny into the applicant’s circumstances. This is not least in order to ensure that the Promoter is able to fulfil the duty to the taxpayer and Parliament to ensure that public monies are spent in a fully accountable and auditable fashion.
24. Applicants are not automatically asked to consider whether they wish to submit further financial (or any other relevant) evidence to support their applications. This only happens if, following an initial check of the application by HS2 Ltd, it seems apparent that the Panel, who will assess the application, may potentially reject the application due to insufficient evidence. It is clearly preferable to offer the applicant an opportunity to augment their application with additional evidence as opposed to having the application rejected and having to reapply. All suggestions for additional evidence are made alongside very specific examples of the type of information that may help support an application.

In paragraph 17 and 28 of the report, the Select Committee notes:

“evidence of an over-zealous approach to seeking medical evidence to support claims of infirmity. ... This needs more sensitive handling and a proportionate approach.”

“Applicants should not have to incur substantial expense in obtaining medical opinions. It might be that applicants should be invited to put the Panel directly in touch with their general practitioner for follow-up, and to save time.”

25. The majority of NTS applications received by the Promoter that refer to a medical issue as the compelling reason to sell, are accompanied by supporting evidence from an appropriate medical professional that supports the application. On those occasions when this is not the case, the Promoter invites the applicant to provide additional evidence in an effort to ensure the Panel does not reject the application for reasons of lack of evidence. The Panel will wish to provide parity of treatment for applicants relying on medical evidence for the purposes of their NTS application.
26. The Promoter, of course, agrees that this should not be done in an over-zealous manner and, therefore, commits to only contacting the applicant on one occasion after the application has been submitted to request additional medical information and to being very specific in terms of the request when doing so. If in making this request, the relevant HS2 Ltd case officer is made aware of a substantial expense that the applicant may have to incur as a result, the case-officer will be prepared to discuss alternate methods to provide the necessary evidence.
27. Although the Promoter has no objection to what the Select Committee are seeking to achieve by proposing the Panel obtain additional supporting evidence directly from medical practitioners, in practice it may be difficult to achieve. Even after having gained prior agreement, any request for information about a patient/ex-patient from their medical or therapeutic practitioner is likely to be difficult to obtain without the practitioner referring back to the applicant due to rules on data protection and confidentiality. Applicants are also potentially likely to consider the suggestion of a more pro-active investigation of their claims to be far more intrusive than the current system where the applicant provides the information themselves.

In paragraph 18 and 19 of the report, the Select Committee notes:

“assessment panel worked from a set of confidential assumptions about inability to sell. Furthermore, where local estate agents have a policy of insisting on up-front fees for marketing because of HS2, that should normally be assumed to be a sufficient indication of blight to meet the criterion on failure to market successfully. The NTS guidance should make this clear The Department's report says that neighbouring properties might experience different marketing success. Given the injustice potentially felt through different assessment of neighbouring

properties there could nevertheless be a starting point assumption that properties such as semi-detached houses will be treated similarly.”

28. The Promoter accepts that when considering applications against criterion 3 (effort to sell and the impact of blight), HS2 Ltd will ensure the Panel and decision maker are aware of previously successful applications in relation to properties close to the applicant’s property, especially neighbouring properties.
29. In order to allow for some necessary discretion on the part of the decision maker, an application with respect to a property that neighbours (or is in close proximity to) a property that has previously been the subject of a successful application under criterion 3, will not automatically qualify against criterion 3. However in such situations, but the decision maker will need to provide clear reasons for why that is the case.
30. In providing evidence for criterion 3, the NTS guidance already sets out in para 3.1.20 that: “...evidence that a number of local estate agents have refused to market the property due to HS2 is considered key information. In this situation, we would not expect a property to be fully marketed. Evidence that agents have refused to market the property should be either letters or emails from estate agents to the applicant.”
31. The Promoter will further clarify in the revision of the guidance (referred to in para 4 above) that this includes cases where the estate agent is refusing to market the property without an upfront fee having been paid due to the blight from the proposed HS2 route.

In paragraph 20 of the report, the Select Committee notes:

“Need to Sell applicants have complained that outside valuers appointed by HS2 may not understand the local market. ...We would prefer a panel appointment system that takes more account of the need for local market knowledge.”

32. We are working to implement a revised process for the valuation of properties for NTS that will allow the use of local valuers.

In paragraph 21 of the report, the Select Committee notes:

“We have asked the Department to consider whether the requirement not to have received an offer within 15% of the realistic asking price should be reviewed in the case of the London property market, where asking prices are often achieved or even exceeded.”

33. The Promoter accepts that a review should be undertaken on this issue and commits to doing so route-wide, not just for London. Following this review, we will

implement any consequential amendments to the NTS process in time for the launch of the Phase 2a NTS scheme.

In paragraph 22 of the report, the Select Committee notes:

“Some people have more than one property. ...if applicants can demonstrate that an affected property is a financial strain, the need to sell should mostly be assessed in terms of the sustainability of the property itself.”

34. The NTS policy, aims to provide flexibility for the Promoter to consider a range of circumstances. If an applicant has more than one property this is not a reason for disqualification from eligibility. The Promoter accepts that, in the appropriate circumstances, an application demonstrating a financial strain arising from the property that is the subject of the application, should be, and will be, assessed in the most part with respect to the sustainability of that property and not any additional properties owned by the applicant.
35. Where an applicant's additional property does represent a significant asset that could affect the outcome of an application, the Promoter will be sympathetic to individual circumstances and will provide the applicant with an opportunity to discuss and better appreciate these before passing on the case for a Panel decision.

In paragraph 23 of the report, the Select Committee notes:

“Reluctant landlords ... should be clarified that this extends to, for example, military personnel who are homeowners renting out a property because they are in military accommodation. Clergy living in church accommodation”.

36. The Promoter accepts that the definition of reluctant landlords can include military personnel living in military accommodation and members of the clergy living in clergy housing. However, a key consideration of any such circumstances will need to include whether the applicant was indeed resident at the property in question, in advance of moving to either military or clergy housing.

In paragraph 24 of the report, the Select Committee notes:

“... we would like the Department to look at whether exceptions or provisions should be made to the overall approach on rented properties where, for example, rental income provides a critical element of a small pension.”

37. The Promoter has not seen any evidence to indicate that rental incomes have been negatively depressed as a result of HS2 Ltd and believes that it is important to maintain the 'owner-occupier' status as the foundation of eligibility for all discretionary compensation. However, we are, of course, willing to have discussions with all affected parties and apply specific discreet discretionary measures where considered appropriate.
38. For clarity, with respect to para 22 of the Select Committee report, when assessing applications, additional rented properties that provide an important

element of income are not discriminated against on the potential capital value of the rented property.

In paragraph 25 of the report, the Select Committee notes:

“We accept that having an HS2 representative person on the Phase Two Exceptional Hardship Scheme panel is important ...it is not clear why, however, 15 HS2 representatives are needed... their role should be confined to information provision.”

39. The Promoter can confirm that the NTS Panel is fully independent as distinct from the EHS scheme, which was designed to be an interim scheme. Each Phase Two EHS Panel meeting, of three Panel members, has always comprised two independent lay professionals (one of whom chairs) and one senior member of (non-property team) HS2 Ltd staff, to provide a range of experience.
40. All EHS Panel members rightly provide equal input to the review and subsequent discussion of cases at Panel meetings. This lower reliance on a pool of external Panel members compared to the NTS reflects the earlier stage of the Phase 2 route development.
41. The Promoter has consulted on replacing the EHS for Phase 2a and similar steps may be taken for Phase 2b. Given this, the Promoter does not consider it sensible to change the membership and operation of the Phase Two EHS Panel at this time.

In Paragraph 25 the Select Committee also requests

“...figures on how many Panel decisions have been overturned by department officials against and in favour of applicants.”

42. The Promoter has not overturned any NTS Panel recommendations where they were in an applicant's favour (i.e. a decision to accept being overturned and rejected). 20 applications have been overturned from a reject to a decision to accept, in favour of an applicant.

In paragraph 25 of the report, the Select Committee further notes:

“Many parliamentary colleagues have members of staff whose entire time is spent on liaising with NTS applicants. They should have access to specific help from HS2 so that they can help applicants make easier progress.”

43. The Promoter agrees to provide the requested access to HS2 Ltd staff. Indeed, this type of assistance is already available and has been provided to a number of

MP's offices who have worked very positively and effectively with HS2 Ltd. The Promoter will commit to writing to all the relevant Line of Route MPs and providing specific contact details of individuals in HS2 Ltd who will be able to assist them with constituents who are applying to NTS.

In paragraph 27 of the report, the Select Committee notes:

“The starting point should be that acceptances stand as acceptances, although we accept that whether and in what circumstances the owners continued marketing their property may be relevant.”

44. There is no requirement for applicants to take their property off the market at any point ahead of commencing the conveyancing process. It is, in fact, in the interest of all parties if the applicant wishes for the property to continue to be marketed throughout the application process. If a suitable offer is made this can be accepted and a sale can proceed in the normal way without the Government having to intervene.
45. The position put forward by the Select Committee is that, in all but the rarest of circumstances, once a decision has been made to accept an application that decision should stand. This mirrors how the scheme has operated to date. However, the exception to this is where the Promoter has clearly indicated to the applicant that the decision to accept is at risk due to specific actions on behalf of the applicant (such as accepting parallel offers on the property whilst going through the conveyancing process with HS2 Ltd). Where this is the case, the Promoter will consider overturning a decision to accept. This is stated on pp16-17 of the current NTS guidance. To not allow for such a scenario would open up the Promoter for public criticism for inappropriately interfering in a functioning property market and be unfair to the other potential buyers involved.

In paragraph 28 of the report, the Select Committee notes:

“It would be reasonable for the Residents Commissioner or Parliamentary Ombudsman to have a role in assessing performance or in addressing complaints...”

46. The Resident's Commissioner has already defined her role with respect to the consideration of the NTS scheme and is providing feedback to the Promoter on an ongoing basis with respect to the specific and general application of the policy.
47. The Commissioner has interpreted her role as:

- “... holding HS2 Ltd accountable for the way in which it communicates with residents who are affected by its proposals, particularly in regard to property measures and to ensure that these communications take place in the clearest and plainest language possible.”; and
- “... to keep the policies that underpin these schemes under review. If there are anomalies, or areas where the policy needs further consideration, I will seek to address these issues. However, it is important that the schemes themselves are given time to operate and become established before they are reviewed.”

48. The most recent report from the Resident’s Commissioner reports on a review of how each of the discretionary property schemes is operating and observations on community engagement from the Promoter.

49. The Parliamentary Ombudsman already has the ability and scope of function to investigate and offer remedy to complainants with respect to the application of the Promoter’s discretionary compensation policy and does not need additional instruction to do so. The Promoter will, of course, work constructively with the Office of the Parliamentary Ombudsman in any such circumstance.