

The CPA Annual Reform Lecture 2019

Discretionary Blight Schemes

Introduction

1. This paper focuses on whether there is a case for extending the current statutory blight regime so as to encompass what is currently known as generalised blight. The paper considers some, but by no means all, of the discretionary blight schemes that have been and are in operation; considering their features and differences. In so doing we distinguish between **statutory** and **generalised blight** although the latter is not always easy to define. It may very well mean different things to different property owners, as well as comprising different elements at different stages of major infrastructure projects.
2. We also take the opportunity to briefly consider statutory blight, identify some problems and suggest ways that the statutory blight regime could be improved.
3. But first let us set the scene; the wider context of compensation for compulsory purchase. When an interest in property is compulsorily acquired, in whole or in part, compensation is payable. As Lord Nicholls stated in ***Waters v. Welsh Development Agency [2004] 1 WLR 1304 at [1]***: "*My Lords, compulsory purchase of property is an essential tool in a modern democratic society. It facilitates planned and orderly development. Hand in hand with the power to acquire land without the owner's consent is an obligation to pay full and fair compensation.*"
4. Compensation may also be payable to those living near a project if they suffer direct, adverse effects, known as injurious affection.
5. Property ownership carries inevitable risk. Professional investors are typically better placed to assess that risk than ordinary homeowners or small businesses, thus the latter are treated rather differently than the former when it comes to the issue of blight. The improvement and modernisation of infrastructure brings benefits to both land owners and public authorities in terms of increased revenue from taxation. There are winners and losers.

Statutory Blight

6. The law recognises that the formal announcement of an intention to acquire property by compulsion will probably render a property unsaleable; in that instance it will become *statutorily blighted* and, certain rights to redress, may therefore accrue to the owner.
7. Under [section 150](#) of and [Schedule 13 to the Town and Country Planning Act 1990](#), an owner of land may serve a blight notice where that owner has made reasonable endeavours to sell his land but, because of blight caused by planning proposals affecting the land, he has not been able to do, except at a substantially lower price than might reasonably have been expected.
8. Thus the key ingredients of statutory blight are that a claimant must be able to show that he has a "qualifying interest"¹ in a "hereditament or agricultural unit" which has become "blighted land" that (in most cases) he has made "reasonable endeavours to sell" and that he has been "unable to sell" except "at a price substantially lower" than that which might reasonably have been expected. There is no policy guidance as to what these expressions mean. Some of the discretionary schemes discussed later in this paper offer scheme specific guidance on the evidence that would be required to support applications. For example, at Heathrow, quite specific guidance is offered as to how long

¹ The interest must be of an owner-occupier of a non-domestic hereditament that falls below the values prescribed; currently £44,200 in Greater London and £36,000 in the rest of England, and £34,800 in Wales. Or be a resident owner-occupier; or owner-occupier of an agricultural unit, as defined in section 149.

properties should be marketed for, in order to demonstrate that reasonable endeavours to sell have been deployed. Yet no guidance exists in respect of statutory blight.

9. ***Harding v Secretary of State for Transport [2017] UKUT 135*** confirmed the prescribed annual value is distinct from rateable values and the latter does not prevent the service of a blight notice. The decision also confirmed that two plots of land could be treated as a single hereditament where the use of one plot was necessary for the effective enjoyment of the other. The difficulties of proving that one has been unable to sell except at a price substantially lower than might reasonably be expected have been recently demonstrated in the case of ***O'Rourke v Keuper Gas Storage Ltd [2018] UKUT 160*** where the landowner was unable to demonstrate that the failure to sell her property, in the face of a proposal to extend underground storage facilities, was due to blight, in circumstances where her neighbour had sold her property at a lower, market value.
10. Various classes of 'blighted land' are defined in the paragraphs of Schedule 13. These classes include, for example, when land is included in a development plan (which is often the case where town centre regeneration projects are proposed), and where land is safeguarded for a specific purpose (as applies to HS2).
11. The common theme in each class is that the land is the subject of a public plan or proposal, which is either approved or going through the approval process, and which will ultimately require the acquisition of the land (by agreement or by compulsion) for public purposes. The threat of acquisition for public purposes deters potential purchasers of the land thereby blighting the land.
12. The statutory scheme blight is not easy for claimants; indeed, for those affected it must seem impenetrable. A valid blight notice may well be served but a counter notice may nevertheless be served² specifying any one of the grounds of resistance stipulated in section 151. Even if that results in a reference to the Upper Tribunal, where the objection to the blight notice fails, the issue of compensation is not fixed then and there. Compensation will be settled later. If this is not agreed, in the end there may be a need for another reference.
13. Another real practical issue for claimants is what happens if having served the blight notice the property is nevertheless sold; whether by the owner occupier, desperate to move on for perfectly valid family reasons, or for example a mortgagee. Case law treats a sale by the owner occupier in these circumstances as a deemed withdrawal of the blight notice and no compensation then becomes payable even though the seller may very well have suffered additional loss³. In ***Pitman v Nuneaton & Bedworth Borough Council [2013] JPL 1196*** where the mortgagee took possession and sold after service of the blight notice, the tribunal held as it was not a voluntary sale, it should not be treated as withdrawn, but the claim was struck out on the basis that it could not possibly succeed given the fact that the Claimant could not succeed in proving their inability to sell. Thus, the existing statutory blight scheme is not a complete panacea by any means.
14. Notwithstanding the recent 2017 increase for small businesses in Greater London, there is also the rough justice of the annual value of the hereditament for rating purposes, the objective of which is to restrict the entitlement to small businesses. However many, if not most, small businesses in parts of the country find themselves excluded because of property prices. This is unfair and undermines public confidence in the compensation code which in turn undermines public confidence in the use of compulsory purchase powers.
15. From an acquiring authority perspective, the statutory blight provisions are also far from perfect. For example, an acquiring authority may have gone to the time and expense of accepting blight notice, (or unsuccessfully trying to resist one), only to then have to deal with the expense of a contested compensation claim through the Tribunal process, resulting in a determination of compensation

² On grounds set out in section 151

³ Section 156 (4) stipulates that no compensation should be payable in respect of the withdrawal of a notice to treat

payable. However, the Claimant may nevertheless unilaterally withdraw the blight notice, since section 156 enables a blight notice to be withdrawn up to 6 weeks after compensation has been determined.

Generalised blight

16. Generalised blight is another form of planning-related blight, currently unrecognised by statute, which also affects local property markets. It has been said that this phenomenon is at its strongest during the early stages of project planning, when there is most uncertainty about the impacts of the project, but it may continue to varying degrees once the project is built. The phasing of a project may extend blight in temporal terms.
17. This paper considers generalised blight in the historical context of the Channel Tunnel Rail Link, a project which caused much angst among landowners near the various options considered over the years. We then turn to consider the more recent discretionary blight schemes that have been developed. These include schemes which offer land owners support ahead of when statutory blight kicks in, as well as schemes which extend geographically to land not required to be taken but which is nevertheless affected by the scheme. Of these, the airport schemes followed the behest of government as set out in the White Paper. Infrastructure projects taken through Parliament have also been developed blight schemes perhaps as a result of pressure whether from DfT or members of Select Committees.
18. It is not the function of this paper to debate whether generalised blight exists, or its extent; but it is noteworthy that High Speed Two (HS2) Ltd, created in January 2009, commissioned **CB Richard Ellis** (“CBRE”) to conduct a blight study by considering the effect of the announcement of HS2 on local housing market housing activity, for a six month period before and after the announcement of the HS2 route in March 2010.⁴ CBRE reported that media commentary suggested shortly after the March 2010 announcement, that houses within 500 metres of the track may lose as much as 20% on the asking price.
19. CBRE looked at housing market transactions using land registry data by reference to post codes. Zone A were properties which shared the same post code sectors as the proposed route itself. Zone B were the properties relating to the next postcode sector and Zone C was the next one beyond that. The authors also distinguished between flats, terraced houses and semi-detached houses, and rural and urban areas. They also considered separately areas close to tunnel exits.
20. CBRE observed the study did not account for other factors affecting housing markets along the route. They noted that possibly specific factors like new residential development, investment in other transport infrastructure or the growth of employment centres may affect results. Nevertheless, they concluded “the consistency of the results pointed to a relationship between the proximity to the route and weaker values and transaction levels following the announcement.”

⁴ <https://www.gov.uk/government/publications/houses-and-other-properties-along-the-proposed-hs2-route>

Figure 1. Changes in values following the announcement of the proposed route

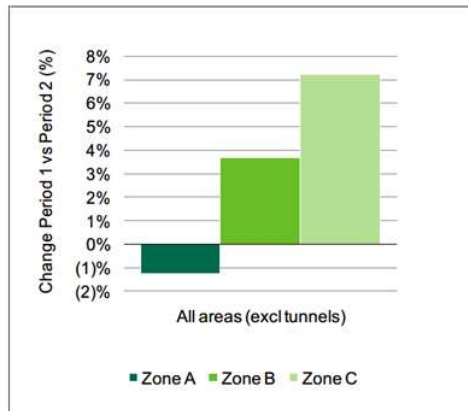
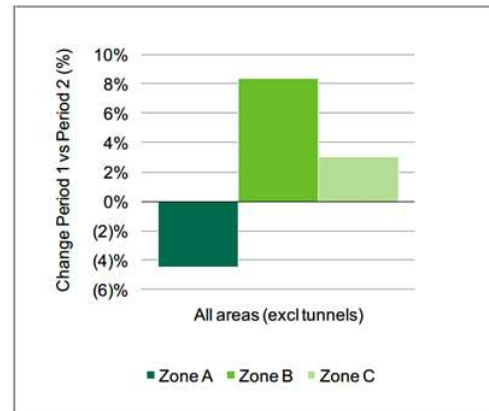


Figure 2. Changes in sales volumes following the announcement of the proposed route



21. CBRE identified a weakness in housing market areas next to the proposed route, with more weakening in prices and volumes in rural rather than urban areas. Surface areas around tunnel portals showed a negative change in prices and volumes whereas conversely where the line proposed was underground positive change was noted.

The Channel Tunnel Rail Link

22. Following the 1987 Channel Tunnel Act, British Rail ("BR") published in 1988 a report identifying four possible routes for what became the Channel Tunnel Rail Link ("CTRL"), whilst at the same time the Department of Transport ("DOT") published a press release asking for reactions to BR's proposals. Unsurprisingly, there was consternation amongst those living and working in the vicinity of the four possible routes.
23. In March 1989 a **Voluntary Purchase Scheme**⁵ was initiated by BR, whilst in 1990 safeguarding directions were introduced. These safeguarded 240-metre-wide zones relating to surface sections and 150-metre-wide zones relating to tunnels. It was made clear that these zones would be redefined as design work progressed. By the following year, in 1991, the Government indicated that it supported not BR's preferred route, but rather a route further east via Stratford which was better aligned to the regeneration of the Thames Gateway. The following year, the Union Railway Company was formed and by 1994 fresh safeguarding directions were issued relating to, by this stage, EU's preferred route which was aligned to the more easterly Government route via Stratford.
24. Finally, CTRL was promoted via a Hybrid Bill. Schedule 13 to the Town and Country Planning Act 1990, was extended⁶, with effect from 1st January 1993, to include paragraph 23. Thus, land authorised to be acquired under section 1 or 3 of the Transport and Works Act 1992 became potentially statutorily blighted, as does land which falls within the limits of deviation within which powers of acquisition are exercisable. In addition, land which is the subject of a proposal contained in an application made in accordance with the rules may also be potentially subject to blight.
25. Nevertheless, and perhaps unsurprisingly during the progress of the Bill through the House of Commons Select Committee very great concern was expressed about the impact of generalised blight, particularly through the period 1990 to 1994, and the Government gave an undertaking to the Select Committee to formulate a scheme to provide redress. Hence an **exceptional hardship**

⁵ According to Hansard 31/3/1994 this scheme was only open to those on surface safeguarded land and not those whose land would be affected by tunnels.

⁶ Paragraph 23 of Schedule 13 was inserted by section 16 (2) of the Transport and Works Act 1992.

scheme⁷ came into effect was focused on the period between June 1990 and April 1994. This was quite distinct from the **voluntary purchase scheme** then operating. In 1996 in the second reading in the House of Commons of the CTRL Bill an attempt was made to amend the Bill to effectively include a project specific extension of the statutory blight scheme. In seeking to resist that amendment the then Minister for Railways and Roads suggested that the effect would be to generate what he described as “snowballing blight”. In other words, when a property is deemed to be sufficiently devalued to warrant intervention by a buying agency, its neighbour will become tainted by proximity. In the end, the proposed amendment was withdrawn in the face of the Minister promising that any recommendations made by the **Interdepartmental Working Group on Blight**⁸ (the Group), who were then investigating blight, would be made available to all those affected by the CTRL proposal.

26. The terms of reference for the Group established in the 1990s was, inter alia, to review the scope, cause and effects of blight arising during the various stages of major infrastructure projects and to consider whether any practical changes could be made to existing arrangements for property purchase and compensation, bearing in mind the concerns of the House of Common Select Committee on the Channel Tunnel Rail Link (CTRL) Bill about those whose properties declined in value because of the perception of potential purchasers rather than because of any physical effects. Various Kent and East London MPs, some of whose constituents were hit by blight in the years leading up and during the passage of the enactment of the Bill were vocal and instrumental in establishing the Group. The group was tasked to consider whether it is possible to define “generalised blight in a way which would meet the concerns of the Select Committee without increasing or extending the blighting effects of major proposals.”
27. The Group identified the meaning of generalised blight as typically taken to describe *any actual or assumed* depreciation in the value of the property which may be attributed to a proposal for an *infrastructure scheme*. They did suggest this only applied to land not actually required to be taken.
28. The Group defined generalised blight, in the context of their report, as a phenomenon characterised by:
 - A significant depression in the capital values of properties; in any instance, the circumstances giving rise to the loss being of a nature distinct from those surrounding non-infrastructure developments;
 - In a circumscribed geographical areaand one in which the loss being:
 - realised; and
 - wholly and demonstrably consequent upon a proposal for a major infrastructure development,is not offset by quantifiable benefits associated with the proposal, nor is it of a duration so short as to constitute, in any rational assessment, a normal and reasonable risk associated with ownership of property.
29. The Group considered nineteen specific but wide-ranging suggestions. One of these was that discretionary powers to purchase severely affected land should be replaced by a scheme of compensation to make good the difference between “unaffected” and “affected value”. They noted that the only discretionary powers available to authorities to mitigate the effects of blight in advance of the works were introduced by section 62 of the Planning and Compensation Act 1991. This

⁷ According to Hansard 31/3/1994 this scheme applied to those outside the safeguarded area who could prove hardship and where predicted noise levels were above the threshold proposed for noise insulation.

⁸ <https://www.compulsorypurchaseassociation.org/detr-report-on-blight.php>

inserted section (2A) into section 26 of the Land Compensation Act 1973, empowering authorities who propose to carry out public works on blighted land, to also acquire other land by agreement, the enjoyment of which will be seriously affected by the carrying out of the works or the use of the public works. In practise, the Group found problems with these powers, for example they only apply if the public works are on blighted land. Some were able to meet the criteria for the exercise of the discretion while others could not. They considered this was divisive as an unsuccessful applicant might suffer as much as the successful applicant. They also noted that the use of discretionary powers did not affect the statutory entitlement to Part 1⁹ compensation.

30. The Group also noted there was an expectation that the market would reflect the eligibility for Part 1 compensation (in other words, the purchaser of a dwelling which is liable to be injuriously affected would pay the full unblighted value of the house in the knowledge that compensation for injurious affection would eventually be forthcoming), but there was no clear evidence that this was always happening. The Group noted that normally when an authority acquired a house it fully compensates the vendor. They noted that if the house was then sold for a reduced price before the scheme was completed, the authority could find itself having to compensate the purchaser for injurious affection; thus paying compensation twice. On the other hand, if the landowner sold the blighted land at a loss and the purchaser then picked up the Part 1 compensation, the original landowner/vendor is left bearing the loss. Yet if the acquiring authorities do not sell on, they face the problem of what to do with the acquired houses and so the Group considered the very fact of their acquisition can blight other properties. Thus, they considered that discretionary schemes can have a domino blighting effect. As a result, the Group concluded that those whose properties were likely to be injuriously affected, ought to be provided with a fully tradable guarantee to compensation under part 1, which might state that compensation would be no less than a certain sum.
31. The Group considered a number of proposals involving the purchase of blighted or potentially blighted properties. They noted that all of them involved to a greater or lesser extent increases in public expenditure and all ran some risk of causing blight to snowball. However, the Group concluded that a property purchase scheme that had been devised at that time by the Central Railway Limited came closest to addressing the identified concerns. The essentials of that scheme included:
- A twenty-one-year option agreement that gave the owner the right to sell their property to Central Railway at an agreed price; exercisable once construction work has started in the owner's area. The right is one way, so it was not an obligation to sell;
 - The price was based on "fair open market value" ignoring any possible effect of Central Railway's proposals;
 - Index linked, upwards only, to Halifax plc's existing houses index for the relevant region;
 - If the owner carried out improvement which added value, Central Railway agreed to increase the price to reflect this;
 - Option agreement automatically transferable with the property;
 - Landowners could exercise other statutory rights – but if they did, they could not then exercise their rights under the property protection scheme;
 - Allowance for moving costs and stamp duty costs on the alternative property purchased.

⁹ of the Land Compensation Act 1973 that entitles the landowner from whom no land is acquired to claim compensation for the diminution in value of their property arising from certain physical factors (i.e. noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of the works.

32. The Group felt the Central Railway served to encourage the continued operation of a local property market in circumstances where it might otherwise falter. They proposed a new property purchase guarantee and compensation scheme accordingly.
33. Since then, such discretionary schemes have been offered on a scheme by scheme basis by those promoting major infrastructure schemes. The context and nature of major infrastructure schemes varies considerably. Someone owning a property near existing fixed infrastructure which needs renewal and/or expansion might be said to be taken less by surprise than someone who finds themselves owning land needed for HS2. But blight will potentially affect them both.
34. The question is whether such discretionary schemes should be put on a statutory footing. If so, should they each be run along the same principles? Who would benefit from such an arrangement? The infrastructure promoters and their shareholders? The affected owners of homes and businesses in the areas where the market fails? The professionals advising? What is the current position and what is wrong with it? Are acquiring authorities/scheme promoters doing enough? Would it be any different if there was an attempt to define generalised blight and embrace it in a statutory scheme?
35. This paper will now consider some of the recent and current schemes available, including schemes related to both rail and airport expansion infrastructure and assesses any common themes. This list is not exhaustive; it is recognised that others exist in the field of nuclear and other energy infrastructure.

Crossrail

36. In November 2005 Information Paper C8¹⁰ was first published¹¹ which set out the Crossrail's policy on the purchase of property in cases of hardship. At this stage land which had been subject to safeguarding directions issued by the Department of Transport became blighted land for the purposes of the Town and Country Planning Act 1990. I have not found any indication that this scheme has closed.
37. The **hardship policy** was designed to extend to properties which were not required for the Crossrail proposals or which were subject to subsoil acquisition only but whose owners may consider their properties to have been seriously affected by the construction of Crossrail. In recognition of the hardship that some people with a "qualifying interest" may consider that they will suffer, the Crossrail policy came into effect with immediate effect from November 2005. It was designed to run until one year after the coming into the operation of the railway, when the provisions of Part 1 of the Land Compensation Act 1973 would kick in.
38. The qualifying conditions of the Crossrail scheme included the following:
 - a. Qualifying Interest: an applicant must have a qualifying interest in the property for the purposes of the 1990 Act.
 - b. The property is not required for the Crossrail scheme: the property must not be required for the acquisition, whether in whole or in part, for the Crossrail scheme subject to the exceptions for subsoil acquisition only.
 - c. Enjoyment must be seriously affected by Crossrail: that is enjoyment of the property must be affected by construction or proposed construction of Crossrail. The information paper advises *"whilst each case will be considered on it's own merits it is most likely that any serious effect upon the enjoyment of the property will be caused by one or more of the following : noise, vibration, dust, artificial lighting and obstruction to a right of way or access. The applicant will be required to specify the cause of the serious effect and provide such information about the serious effect which might reasonably be required by the acquirer.*

¹⁰ <http://www.crossrail.co.uk/about-us/crossrail-bill-supporting-documents/information-papers>

¹¹ Subsequent versions were produced

For an effect on the enjoyment of the property to be considered serious it must be sustained over a period of time for not less than 3 months and not be transitory or trivial in character”

d. There must be a compelling reason to sell. Crossrail’s guidance advised:

“3.5.1 The applicant must demonstrate that there is a compelling reason to sell and that save for circumstances falling under paragraph 3.5.2 d) hardship will occur if a sale is not possible.

3.5.2 The following are the grounds that constitute compelling reasons for the purposes of this hardship policy.

- a) A need to move to larger or different premises, e.g. the need to accommodate a larger household or to move home for employment or business purposes.*
- b) Financial pressures that require the sale of the property e.g. the need to realise assets as part of a divorce settlement or in connection with a business or due to a threat of repossession.*
- c) The applicant, or a dependant living with the applicant, has developed a medical condition which necessitates selling and which is not related to the proposed scheme, e.g. a disability which prevents a person from negotiating stairs.*
- d) Where the serious effect is itself a compelling reason to move:*
 - i) the applicant, or a dependant living with the applicant, has a medical condition which is likely to be severely aggravated by physical factors caused by the construction works, e.g. noise or dust, or*
 - ii) if the carrying out of construction works does or is predicted by the Promoter to affect the enjoyment of the property for a continuous period of not less than three months to such an extent that continued occupation of that property is not reasonably practicable.*

3.5.3 An application for hardship based upon ground (c) or (d)(i) above must be supported by satisfactory written medical evidence.

3.5.4 Ground (d) is directly related to the construction works. In the case of ground (d)(i) or (ii), an offer will not be made to buy earlier than nine months in advance of the start of the construction works in the vicinity. If an application under this ground is made early in the life of the scheme the applicant may be asked to reapply later.

3.5.5 Ground (d)(ii) applies where there has been or is predicted by the Promoter to be hardship for a continuous period of at least three months. The Crossrail Noise and Vibration Mitigation Scheme (see Information Paper D9, Noise and Vibration Mitigation Scheme, available from <http://billdocuments.crossrail.co.uk>) provides for noise insulation or temporary re-housing where there may be a serious noise effect on the occupation of a dwelling for a shorter period. That scheme normally applies only to residential property and excludes the requirement for the enjoyment of a dwelling to be affected for a three-month period.

- e. Reasonable endeavours must be made to sell but the applicant must have been unable to do so except at a price at least 15% lower than that for which it might reasonably have been expected to sell in the absence of the Crossrail scheme. The guidance advises the length of exposure time may vary with market conditions but must be sufficient to allow the property to be brought to the attention of an adequate number of potential purchasers. No minimum period is stipulated. An applicant would presumably need to take advice on what would be the appropriate period.*
- f. Fore knowledge: the applicant would not be eligible if at the time of the purchase of his or her property interest, he or she knew or should have known of the Crossrail scheme. The guidance specifies that the hardship policy “will not normally” apply, if the applicant purchased the property after it was included in the safeguarding directions or, in relation to a*

property unaffected by safeguarding, after 28 October 2004, the time when the Crossrail information centre publicised the scheme.”

39. Prior to enactment of the Crossrail Bill, a panel was appointed to process applications for hardship. The Secretary of State appointed an independent lay member. In terms of establishing market value both assuming the absence of the Crossrail scheme and taking account of the scheme, the panel were able to instruct two independent two professional qualified valuers. Importantly, the instruction was made in the joint name of the Secretary of State and the applicant, and both valuations were entirely at the cost of Crossrail Limited. If the hardship application was accepted, offers to purchase are made based on an average of the two.
40. If the difference between the two valuations was equal to or greater than 10% of the higher valuation, the scheme provided that the valuation be referred to an independent expert, appointed by the President of RICS, whose assessment of value shall be final.
41. The Panel consider each application and submitted a written report to the Secretary of State to decide the application in accordance with the hardship policy. That said the guidance advised that the Secretary of State may exceptionally consider a payment in a case falling outside the policy on a case by case basis.
42. Only where the physical effect of the scheme i.e. noise or dust is likely to severely affect a medical condition or the effect of the construction is that a continuous occupation of not less than three months is not reasonably practical, will disturbance compensation, home loss or basic loss payment, an occupiers home loss payment if applicable and surveyors and legal fees be payable. In all other cases of hardship, the payment will only be made for the market value of the applicant's qualifying interest.
43. Offers are open for acceptance for a one-month period. Rejection of an application does not prevent another application.
44. Although I understand there was little take up of this scheme, there is currently no publicly available information as to the cost, efficacy or perception of the scheme. This is a theme to which this paper will return later.

Gatwick Airport Limited

45. In 2004/2005, in the context of uncertainty about increased airport capacity, whether at Gatwick, Heathrow or Stansted and the fact that the s106 obligation constraining Gatwick from building a second runway would expire in 2019, Gatwick developed a voluntary scheme to guarantee the value of eligible properties should they decide in the future to take forward the second runway project. At the same time, exhorted by the White Paper, they also developed a scheme for those living within the certain noise contours beyond the airport. Gatwick Airport consulted on both schemes.
46. The stated aims of their property market support bond scheme were to:
 - a. Firstly, guarantee the market value of affected properties so that people can buy in the area, safe in the knowledge that when they sell their property, value should not be affected by blight.
 - b. Secondly, provide voluntary support to affect property owners years earlier than the law requires.
 - c. Thirdly, enable people to sell their property to Gatwick at an unblighted market rate if they decided to apply for planning permission for a new runway.
 - d. Fourthly, reimburse property owners for their moving and legal costs when they sell to Gatwick and pay them an additional home loss payment of 10% of the selling price if planning permission was obtained.

47. The **property market support bond** scheme was for people with property on the land safeguarded for a potential new runway (whose land therefore would potentially come to be blighted with the meaning of the statutory scheme) and the **homeowner support scheme**, for people living outside the potential expanded airport but who would be newly affected by medium to high levels of noise.



48. The property market support bond scheme began from 3 October 2005 and was designed to provide a bond to home owners living in the identified extended airport boundary. The bond is a guarantee that if Gatwick announces its intention to apply for planning permission for a second runway, they would buy the bond holders' property at a price which is index linked to June 2002 property prices, provided the bond holder met the eligibility criteria at the time the bond is exercised. In theory it was said to be possible to apply for the bond at any point up until the grant of planning permission. It was made clear that once permission was granted the scheme would end because the statutory blight provisions would apply. When Gatwick announces its intention to apply for a new runway permission the land owner could then decide whether they wanted to redeem their bond and sell to Gatwick. Whether the landowner wanted to sell or not, the idea was the scheme supported the value of the property and thus the property market.
49. Home owners would only be eligible if they had lived in the property for at least six consecutive months.
50. In terms of the valuation, Gatwick's RICS valuer initially assessed value after a site visit. Although an owner could also instruct their own valuer, Gatwick would only be responsible for fees if the valuer carried out the valuation in accordance with Gatwick's formal instructions, including giving the valuation to Gatwick in the first instance, who would then send it to the home owner. If the two values were within 10% of each other the average was to be taken, if more than 10% then Gatwick would arrange a third valuation and the valuation would be the average of the closest two.
51. Once the property was sold and vacated, Gatwick would also pay reasonable disturbance costs, legal sale and purchase costs and the cost of stamp duty on the property sold but only so long as a replacement property was purchased. In addition, Gatwick offered a contractual right to voluntary home loss payment of 10% of the value of the property with no cap, once planning permission was granted.

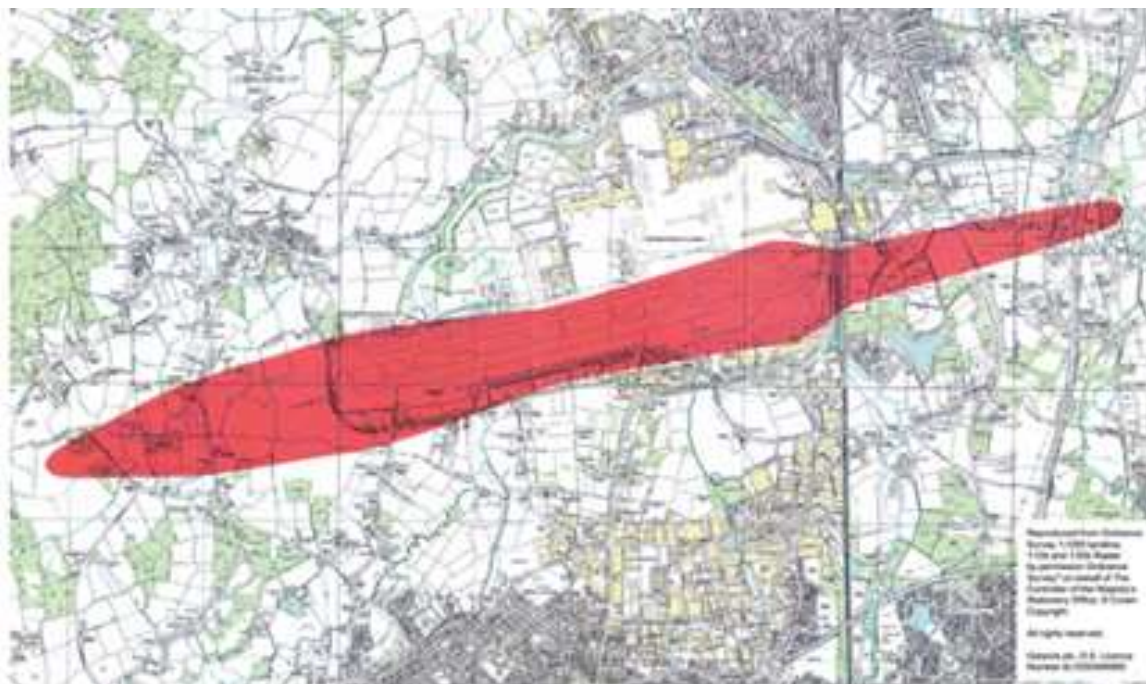
THE PROPERTY MARKET SUPPORT BOND PROCESS

Stage 1 – Applying	Stage 2 – Valuing your property	Stage 3 – Selling your property
Step 1 Check your eligibility	Step 1 Gatwick's valuer values your property at June 2002 prices	Step 1 If you sell before we announce we are applying for planning permission, attach the Bond to the sale details. The Bond belongs to the new owner
Step 2 Complete the form	Step 2 We let you know if a survey is needed	Step 2 If we announce we are applying for planning permission, you can request us to buy
Step 3 Send us the form	Step 3 You can choose to appoint a surveyor and an average value is agreed	Step 3 Contact Gatwick and ask us to buy
Step 4 We will check it and contact you	Step 4 If there is a difference of more than 10%, a third survey will be conducted. The value will be the average of the closest two	Step 4 We update the valuation
		Step 5 You can ask for substantial improvements to be taken into consideration
		Step 6 We might want to see the property again and require a new valuation
		Step 7 The sale goes ahead. You receive disbursements 28 days after completion
		Step 8 If planning permission is granted, we will pay you an additional 10% of the agreed value of your home

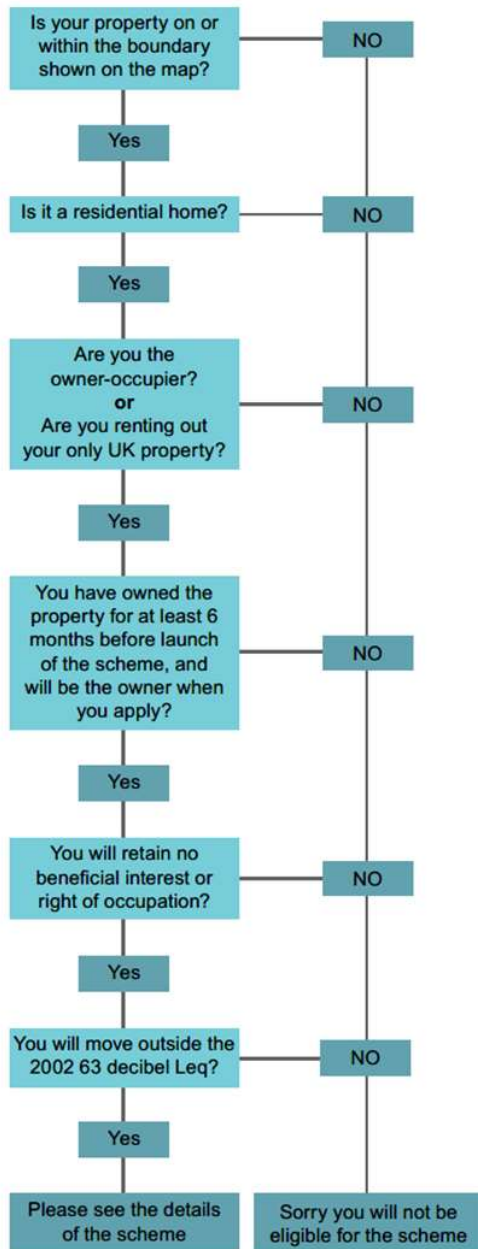
52. The Home Relocation Assistance Scheme was also the subject of consultation. The White Paper had asked airport operators to introduce voluntary assistance for households in areas subject to high levels of noise. This was designed to help those who are living in the identified 69 decibel Leq contour area¹², at the time of publication with help with the costs of moving to a quieter area to. Only one package per property was on offer. Those eligible had to have been owner occupiers for at least six months. The scheme proposed a payment of 1.5% of the sale price of the house plus a lump sum of £5000 up to a maximum of £12,500. Following consultation some landlords who were working away from home and renting out their properties were also included in the scheme so long as this was the only property they owned.
53. There is no information that we have found that is publicly available which details the extent of the take up of the schemes.

¹² Described in the White Paper, The Future of Transport (December 2003) as exposed to high levels of aircraft noise.

54.



You are eligible for the Home Relocation Assistance Scheme if:



The table below gives you an illustration of the amount of Home Relocation Assistance available for properties of different prices.

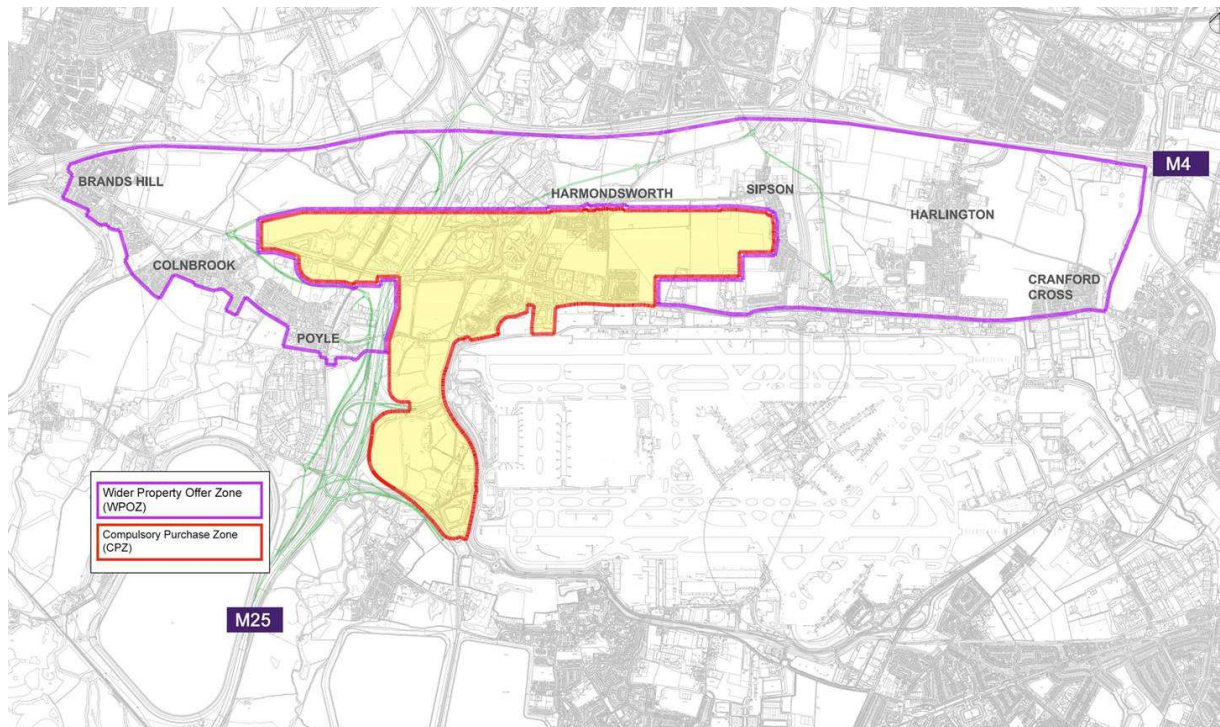
Property price	1.5% of value	Lump sum	Total
£100,000	£1,500	£5,000	£6,500
£150,000	£2,250	£5,000	£7,250
£200,000	£3,000	£5,000	£8,000
£250,000	£3,750	£5,000	£8,750
£300,000	£4,500	£5,000	£9,500
£350,000	£5,250	£5,000	£10,250
£400,000	£6,000	£5,000	£11,000
£450,000	£6,750	£5,000	£11,750
£500,000	£7,500	£5,000	£12,500

56. As a result of the [Aviation strategy call for evidence](#) and further analysis, in June 2018 government set out its support of airports beyond Heathrow making best use of their existing runways, subject to related economic and environmental considerations being considered. This document forms part of the government's wider [Aviation strategy](#) and sets out the detail of the 'making best use' policy.
57. In response Gatwick produced a 2018 Draft Airport Masterplan for consultation. They have not yet indicated the way forward for any future discretionary schemes.

Heathrow

58. According to press reports between 2005 and 2010 Heathrow's then owner, BAA, bought 247 of the 548 properties in the village of Sipson under its voluntary property market support bond scheme. Purchased homes were index linked from a 2002 base which was chosen as it marked the start of the blight period caused by speculation about the airport expansion. However, the scheme was scrapped in 2010 when the new coalition Government immediately ruled out Heathrow expansion, a commitment on which of course it subsequently reneged.
59. In April 2017 an interim property hardship scheme ("PHS") was introduced at Heathrow for property owners who could demonstrate that they met the eligibility criteria. This included demonstrating that their property fell within the Airport National Policy Statement Annex boundary and that Heathrow's hardship criteria was met. The PHS aims to assist eligible property owners who have a compelling need to sell their property, but who have been unable to do so except at a substantially reduced price, as a direct result of the proposals for Heathrow and, as a consequence face, significant hardship. Under the PHS property owners who can demonstrate that they meet the eligibility criteria will be able to have their property purchased by Heathrow at its unaffected open market value. This is a supplementary discretionary policy intended to operate in parallel with the existing statutory regime.
60. Following the Government's decision to designate the airport's national policy statement on 26 June 2018, Heathrow and the Department for Transport agreed that Heathrow would provide and operate an amended version of the interim property hardship policy in relation to those properties falling within the boundary of the area identified within the airport's NPS boundary.
61. Applications have been open from 1 February 2017 under the interim PHS and will remain open until the construction of the new north-west runway has begun. At that point in time Government has identified the need to continue the hardship scheme is to be reconsidered.
62. Under the PHS owner occupiers of residential properties are also eligible for compensation proposed by Heathrow for properties located within the **Compulsory Purchase Zone** ("CPZ") and the **Wider**

Property Zone (“WPZ”) in which Heathrow is offering better terms for properties if owners can afford to wait to have their properties acquired. Owner occupiers of properties within these zones will be able to sell their properties to Heathrow and receive compensation for the unaffected open market value of the property (excluding development value), a home loss payment of 25% of the unaffected open market value of the property (excluding development value), plus Stamp Duty costs, reasonable legal fees, and removal costs. The catch is that the compensation offer is only payable in respect of eligible properties once development consent has been granted for the third runway project and Heathrow has decided to proceed with its construction. Thus, Heathrow appears to be seeking to incentivise people to delay payment of compensation until they have decided to proceed with construction in return for enhanced home loss payments of 25% above open market value.



63. This is a commercially advantageous since it delays payment until such time as Heathrow have the necessary permissions and have decided to proceed. It might be seen to be another way of effectively dealing with generalised blight for those with pocket deep enough. There can be little doubt that Heathrow took a tactical decision weighing up the risks including substantial opposition in coming forward with a discretionary scheme offering enhanced home loss payments of 25% above market value. That offer of 25% was made a time when it was not clear which option Government would choose, but it is a figure that will surely raise expectations elsewhere?
64. Five criteria that need to be satisfied to enable a property to be purchased by Heathrow under the PHS include:
 - a. A qualifying interest;
 - b. No prior knowledge;
 - c. Proximity to runway;
 - d. Efforts to sell; and
 - e. Hardship.
65. The Proximity criterion is deemed to be met if properties are within the CPZ and the WPZ. The

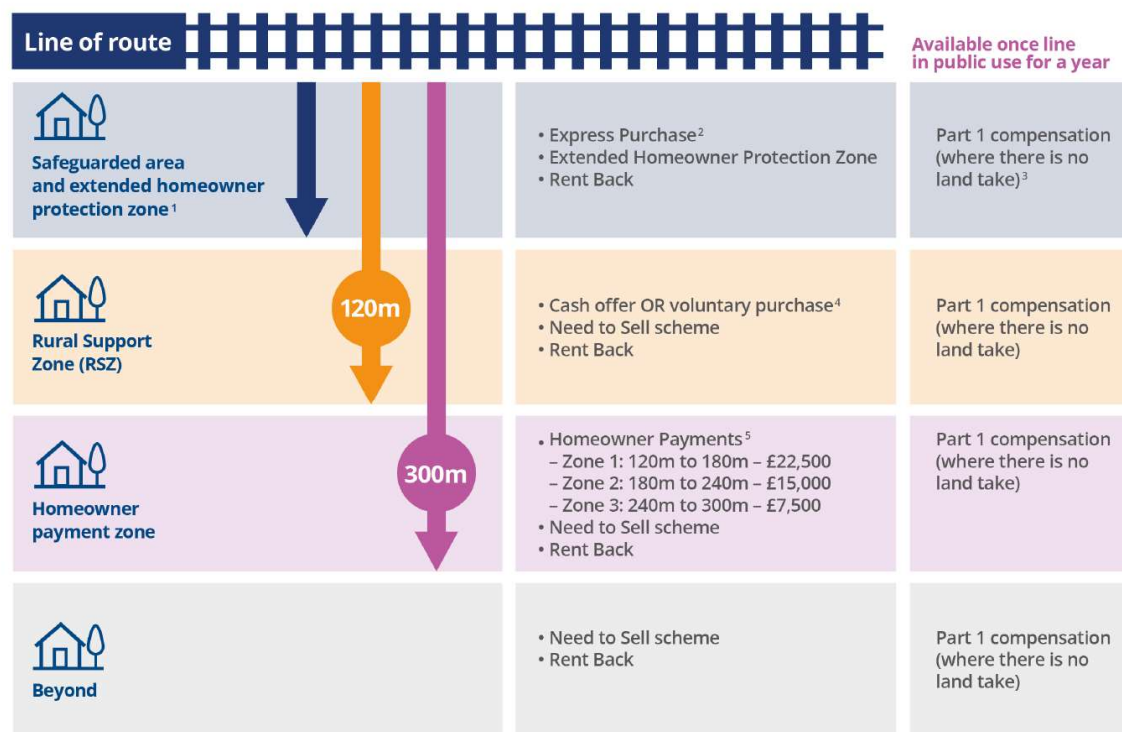
efforts to sell criteria is met when an applicant can demonstrate that reasonable efforts have been made to sell the property and an offer has not been received within 15% of its unaffected open market value. The evidence required to demonstrate that reasonable efforts have been made to sell the property will normally be established if realistic advice is sought from three recognised local agents as to a realistic current unaffected asking price and that asking price is adopted in the marketing for the property, properties valued under £450,000 are marketed for a minimum of three months, properties valued in excess of that but under £1m for a minimum period of six months, and properties with an asking price of over £1m are marketed for a minimum period of twelve months.

HS2

66. HS2 is a scheme which affects both urban and rural areas and which is to be built in phases. Phase 1 covers the London to Birmingham Route. In the surface safeguarding area people with a qualifying interest can serve a blight notice. The Hybrid Bill for Phase 1 has now been enacted. The **express purchase scheme** essentially works like a blight notice in that the Government buys the property at an unblighted open market value and in addition pays the reasonable costs of moving and a home loss payment equivalent to 10% of the property's open market value up to the current £63,000 limit. While it is modelled on the statutory blight scheme, importantly the express purchase scheme: (a) does not require a claimant to demonstrate reasonable attempts to sell the property; (b) enables a blight notice on the whole property to be accepted if more than 25% of the land or any part of the dwelling is within the safeguarded zone; and (c) provides for an extended homeowner protection zone for properties formerly in the safeguarding zone. In other words, if the land later falls out of the safeguarding zone, the homeowner is still eligible for protection even though plainly not eligible for statutory blight. According to the HMG Review of Non -Statutory Property Schemes for HS2 ("HMG Review"), as of 30 September 2018, 347 properties had been acquired as a result of statutory blight notices being served including applicants under the Express Purchase Scheme at a total cost of £261.90 million.
67. In addition to the express purchase scheme, in the **Rural Support Zone** ("RSZ")(defined as properties outside the safeguarded area and up to 120 metres from the centre line of the HS2 railways in rural areas) there are two discretionary scheme options for eligible owners (defined as owner occupiers or leaseholders with 3 years remaining who purchased property pre 11 March 2010 with no prior knowledge of HS2).
68. Under the **Voluntary Purchase** scheme, the Government buys back properties at 100% of their unblighted open market value but does not cover disturbance (e.g. legal fees or removal costs) or home loss payments. Alternatively, the **Cash Offer** scheme is a lump sum equivalent to 10% of the unblighted open market value of the property from a minimum lump sum of £30,000 up to a maximum of £100,000. These may be said to represent an alternative means of dealing with generalised blight to property bond/purchase schemes.
69. It is the case that the eligibility criteria follow the usual pattern in the sense that applicants must have a qualifying interest (owner occupiers or leaseholders with 3 years remaining), whose property is wholly or partly within the RSZ (partly is defined as 25% of the whole for these purposes), and must have not been aware of the proposed HS2 route when they purchased their property. According to the HMG Review, as at 30 September 2018, a total of 62 properties had been acquired under the voluntary purchase option at a total cost of £28.32m and 179 offers had been made under the Cash Offer option at a total cost of £6.72m.
70. Valuations under these schemes are done by two independent valuers. The claimant chooses the first valuer and the second valuer will be from the HS2 Limited's panel of RICS valuers, but HS2 Limited pays for both valuations. According to the HS2 property guide, if the two valuations are within 10% of each other, the agreed value will be the average of the two. If they differ by more than 10%, an additional valuation will be obtained and the average of the two closest valuations is to be taken.

71. There is also the **Homeowner Payment** scheme. This scheme is available to eligible owners of properties between 120 and 300 metres from the line of the route where it runs on the surface in rural areas. The aim of the scheme is for people living near the route to receive an early share of the future economic benefits of the HS2 scheme. Eligible owner occupiers can claim a lump sum of £7,500, £15,000 or £22,500 depending on the band that their property falls into. According to the HMG Review, as at 30 September 2018, a total of 689 property owners had applied for payment at a total cost of £8.84m
72. In addition to these schemes, HS2 also operate a **Need to Sell** scheme which is available in both urban and rural areas and has no geographical boundary. The objective of the scheme is to support property owners who face an unreasonable burden. It is available to eligible claimants, subject to five qualifying criteria which include demonstrating that they have ‘a compelling reason to sell’ (a key criticism of the scheme) and that they have made reasonable efforts to sell. The applicants must also have brought their property before the 11 March 2010, which is when the route for Phase One was first announced. This need to sell scheme replaces the earlier exceptional hardship scheme. The ultimate discretionary decision is made by a senior civil servant on recommendation from an HS2 Ltd Panel. Importantly, and despite vocal criticism of the scheme, there is no independent appeals mechanism. According to the HMG Review, as at 30 September 2018, a total of 173 properties had been acquired under this scheme at a total cost of £261.90m.
73. Hardship based non-statutory schemes were the subject of an earlier 2011 consultation scheme and, as a result, HS2 chose to proceed on a hardship-based scheme rather than a property bond basis. Following a successful judicial review of that decision, a fresh 2013 consultation exercise was embarked upon based on a proposal by Deloitte.
74. In addition, in December 2013 DfT and HS2 Ltd commissioned PWC to provide analysis and advisory work on a Potential Property Bond Scheme.
75. The defining characteristic of a property bond scheme or ‘PPSS’ is that eligible property owners, typically at an early stage of a project’s development, would be given a specific and binding promise of a well-defined, individual settlement, which the property owner would be entitled to redeem in specified circumstances. If the bond recipient transfers the property to a third party, the bond would also be transferred to the same third party.
76. There are two key types of property bonds: time-based and value-based. Both tend to operate during the planning and development phase of an infrastructure project. Time-based schemes promise to purchase a property at an unblighted price if it has not sold on the open market within a defined time, whereas a value-based scheme promises to compensate for any difference between the price an individual property achieves in the open market, and a specified price which that property would be likely to achieve in the absence of the relevant major development.
77. The then Government concluded in its formal response to this consultation that the property bond concept “has merit” but that the concept remained largely “untested and unproven in practice”. Such uncertainty left the then Government unwilling to accept the risks and potential financial exposure for the taxpayer which it considered would attend the introduction of a property bond. The predicted lengthy timescale for introduction of a bond scheme was also cited as a factor in preferring what became the voluntary purchase scheme.
78. Despite this decision, the property bond concept continued to find support, and during a 2015 consultation on property compensation schemes for HS2 Phase 2a, and a November 2016 consultation on property schemes for Phase 2b, it was noted that some respondents felt the concept had not been given proper consideration. The Government maintained its previous position on the concept after the 2015 consultation. However, after the 2016 consultation, Government acknowledged that it had again been proposed by respondents and, committed to re-examining the case for a property bond.
79. The 2018 technical consultation on the Property Price Support Scheme concept was the means by

which the Government exercised its commitment to re-examine the case for the property bond, although this was not a statement of Government support for the concept. The results of this consultation were limited, in part due to the low number of responses. Therefore, as part of the commitment to investigate the property bond concept more fully, the Government has indicated it will use the expert panel of industry specialists to help develop an evidence base for the value of using a Property Price Support Scheme and its variations, along the HS2 line. Government's previous reluctance suggests that generalised reform to provide for a blanket property bond scheme seems highly unlikely, and that if the concept is thought to be worth testing, at least on a pilot basis, it will likely be done on a project by project basis.



¹ Usually 60m in rural areas. ² Surface safeguarding only. ³ Compensation for any reduction in the value of property as a result of the physical effects of the operation of the railway. ⁴ Applies to rural areas only and does not extend to areas beyond deep tunnels. ⁵ Available now for Phase One; only available for Phase 2a and 2b after Royal Assent of the respective Bills. Applies to rural areas only and does not extend to areas beyond deep tunnels.

Concluding Thoughts and discussions points

80. In terms of the statutory blight provisions, as I have discussed, the regime is far from perfect and some may conclude, is ripe for reform. From a claimant perspective, revising or more radically removing all together the rateable value threshold and relaxing/ removing the 12-month occupation requirement (which is not consistent with many if not most discretionary schemes), to serve a blight notice would be welcome. Many discretionary schemes comprise of more generous provisions than the statutory blight scheme. Why should those affected by statutory blight be worse off? From an appropriate authority perspective, removing the ability of the Claimant to 'change his mind' and withdraw the blight notice after learning what compensation has been awarded to them would be helpful. Such technical reforms would require primary legislation and are therefore unlikely in the current Brexit climate where Parliamentary time is limited as are resources.
81. Alternatively, therefore, a more deliverable option would be to address the absence of any national policy or guidance on the statutory blight provisions. Such national guidance/ policy could helpfully clarify, among other things, what is meant by the often hotly disputed "*reasonable endeavours to sell*" and "*unable to sell except at a price substantially lower than that which might reasonably have been expected*" statutory requirements. Such guidance could draw from best practice in the

discretionary schemes.

82. Turning to consider generalised blight, as will be seen from the above discussion, there are a myriad of 'enhanced' discretionary blight schemes being offered by scheme promoters for major infrastructure projects. The devising of bespoke schemes with differing scopes, rights, and qualifying criteria is thought by some to have created a claimant 'post code lottery' where the level of support received depends entirely upon where the claimant's property is located and the level of funding it has. The recent spate of discretionary schemes has also raised expectations that such packages will now be offered as standard threatening the principle of equivalence which traditionally underpins the Compensation Code. The increasingly generous packages now being offered (e.g. Heathrow) also raises the question whether it is appropriate for scheme promoters with deep pockets to seek to "buy off" opposition to major infrastructure schemes although advocates of such an approach would argue that if this reduces resistance to new development enabling the public benefits of schemes to be realised earlier then that is a good thing.
83. Notwithstanding the increasing volume of such discretionary schemes and the recent HMG Review of the HS2 non-statutory schemes, it would be fair to say that their overall effectiveness is largely unproven and would need to be carefully scrutinised before the case for putting discretionary schemes on a statutory footing could be made more forcefully. Government could and should require all those operating such schemes to provide data as to take up of them as set out below, but also including data about those who tried but failed to participate in such schemes.
84. In summary, a detailed independent review and assessment of the discretionary blight schemes would be most helpful in this area to inform next steps. Among other things, it would be useful for such an independent review to consider:
 - a. The take up for the discretionary schemes;
 - b. The percentage of claims accepted by the scheme promoter;
 - c. The average timescales for processing discretionary schemes;
 - d. Acquiring authority and claimant perspectives on the discretionary schemes;
 - e. The public perception of the discretionary schemes;
 - f. Any identifiable 'baseline' for the discretionary schemes; and
 - g. Whether they have reduced opposition to new development
85. In addition, the scope of such an independent review could perhaps be broadened to consider major infrastructure schemes more generally including, for example, issues such as whether it is right to allow safeguarding to continue seemingly indefinitely (e.g. land has been safeguarded for Crossrail 2 since 1991). In addition, and perhaps more radically, consideration could be given as to whether scheme promoters should be required to prepare a full property budget and impact study before securing the necessary powers for major infrastructure schemes. Such a study could include assessing the potential impacts of major infrastructure schemes and scheme promoters strategies for addressing/mitigating these impacts such as, for example, relocation strategies for affected residents and businesses. Consideration should be given to running a pilot studies to consider the effectiveness of such tools .
86. There is also a case perhaps for identifying best practice protocols in several areas. For example, the approach to establishing values is varied. Whilst it must surely be appropriate that the promoter pays for them, why should the promoter commission the valuer? Can an intermediary appoint the valuer or can the valuers be jointly appointed with their reports going to both parties simultaneously? Should the average of two always be taken if they are within 10% or rather the higher figure? If the difference between the two is more than 10% is it fairer for the RICS President to appoint a third valuer whose opinion is binding? Should the promoter appoint a third and take the

average of the higher two or the closest two? Would it be simpler as well as fairer to have a common approach to these issues?

87. In operating the need to sell schemes, HS2 stipulates that the owner occupier must market the property for at least three months. It is helpful for a minimum period to be stipulated. If it is good enough for the HS2 schemes why not adopt that period, or at least a period, universally? How helpful is it to leave the home owner with no guidance on this other than the need to seek professional help?
88. More generally, consideration should be given as to whether discretionary schemes should have an independent appeals process built into them to improve trust and confidence and accountability in the administration of the schemes? For example, for the Thames Tideway Tunnel scheme, a non - statutory off-site mitigation and compensation policy was promoted, among other things, which established an independent advisory service, an independent compensation panel, and an independent complaints commissioner.
89. However, very much at first blush, and in the absence of such a detailed independent review to inform next steps, a generic legislative option for discretionary schemes seems to me to be problematic. First, it is hard to see how mandating a 'one size fits all approach' would work given the very different nature of major infrastructure projects whereas discretionary schemes can be specifically tailored to meet the scheme specific needs and blighting effects of the particular infrastructure project. Second, even if a case for legislating at this interval could be made, Government are highly unlikely to take this proposal forward in the current Brexit climate when Parliamentary time for 'business as usual' Bills is probably limited if not non-existent.
90. For these reasons, therefore, I am attracted to the more deliverable idea of robust Government guidance being issued in the statutory and discretionary schemes areas as a first step. Such guidance could clarify the statutory blight notice requirements and encourage and promote best practice for non- statutory schemes whilst retaining the scheme specific flexibility that discretionary schemes can and do offer.
91. In addition, Government must commission a pilot study to assess the effectiveness of a property bond scheme. It is simply not good enough to suggest there is insufficient evidence without taking positive steps to investigate and gather up such evidence. The current opportunities to do so must not be squandered.

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30th April 2019