

High Speed Rail: HS2 Ltd Route 3 confirmed

10 January 2012

Our friends at Knight Frank have prepared the following briefing note of the impact of today's announcement of the confirmation of HS2's Route 3:

Now that we know the position, namely that the Government has decided to proceed with High Speed Rail and, specifically, HS2 Limited's "Route 3", albeit amended to increase the extent of tunnels, it is essential that those who have not given thought to the impact and the necessary steps to be taken turn their minds to the next stages in the process.

Whereas we have a settled intention, we do not yet have, in the legal sense, "a scheme". This means that there is still no mechanism (other than the Exceptional Hardship Scheme (EHS)) by which those adversely affected can claim compensation.

The original timetable indicated that the Government would consult with the relevant local Planning Authorities for "a three-month period in early 2012" as regards the safeguarding of the route. It seems therefore that the route will not be safeguarded until 10th April 2012, at the earliest.

Once the route is safeguarded however, everything changes. Previous indications are that the EHS will then close and the provisions of Statutory Blight will then apply.

It is important to note that Statutory Blight is only relevant where land is required for the construction or use of the railway. Should that be the case, and in the event that the property is adversely affected to the extent that it is incapable of being sold at anything other than a marked discount from its unaffected value, then a case can be brought for the property to be compulsory acquired in its entirety. It is not possible to bring a Statutory Blight claim where no land is required nor is it possible in respect of only part of the property. This makes Statutory Blight claims for farms and estates unlikely and frequently impossible. We are also expecting details of a second voluntary compensation scheme to be announced – some of the potential concepts have been aired through the public consultation process. As yet the detail is unclear. Whereas it is less than ideal for those adversely affected, initial indications would suggest that some form of Bond Scheme is preferred. There will be qualifying criteria in, we imagine, much the same way as the EHS – but until we have certainty as to the detail of the scheme it is impossible to provide further guidance or advice.

It would be usual for any significant infrastructure project, once safeguarded, to be subject to improved central Government funding and in such circumstances it may be possible for those adversely affected to negotiate direct with HS2 Limited (or, as is considered more likely, the Department for Transport) in respect of small disposals of land to facilitate the construction of the railway and in place of a later compensation claim. This will not be relevant for everyone – but in some cases it may be worthy of consideration.

In due course and once the enabling legislation, probably a hybrid bill, has been passed and Compulsory Purchase Orders made, Notices To Treat will be served. This is the trigger for the first possible claim date for those where property is required for the construction or use of the railway. The legislation is complex and slightly archaic and those affected should draw some consolation from the

fact that, as is usual with compulsory purchase, the reasonable professional fees of the surveyor and solicitor acting for the claimant are covered by the acquiring authority.

For those whose property is not required for either the construction or use, the ability to claim compensation (other than via any second voluntary compensation scheme) is via the Land Compensation Act 1973 which enables claimants to file their claim (with certain exceptions) one year after the railway has been first used – anticipated to be 2026.

In summary therefore, for those where no land is likely to be required, there is little that can be done other than to ensure that the title and occupational structure is in the best possible shape so as to justify a valid and legitimate claim to be brought. Applicants for compensation will then have to either wait until the scheme has been completed, or hope that the second voluntary scheme will be of some assistance.

For those where land is required, consideration should be given as to which is the most appropriate option, whether it be Statutory Blight, negotiation with the acquiring authority, the second voluntary compensation scheme (when announced and if relevant), or the statutory provisions following service of a Notice To Treat.

As is the case with property, each potential claim needs to be considered on its merits and taking into account the personal circumstances of the owner/claimant.

James Del Mar
Head of Knight Frank HS2 Team