The Department for Transport has confirmed its preferred Phase 2b route for HS2, though unlike with Phase 2a it has made a safeguarding direction in parallel with public consultation on various route options rather than awaiting the outcome of consultation. Whilst owners and businesses falling within the safeguarded area will now be able to claim blight, safeguarding creates uncertainty given the changes that will result from the consultation.

On 15 November, the Department for Transport announced its preferred route for Phase 2b of HS2 (comprising a western leg from Crewe to Manchester City Centre, and an eastern leg from the West Midlands to Leeds via Sheffield). At the same time a Safeguarding Direction was made for the land along this preferred route.

DfT’s approach for Phase 2b has differed from the way in which the Phase 2a route (between Fradley and Crewe) was confirmed. In that case, the Government commenced a consultation exercise on the proposed safeguarding for the preferred Phase 2a route in November 2014 and a safeguarding direction was only made in November 2015 as part of their response to that consultation and the Government’s conclusions over the preferred route.

This is not to say that there hasn’t been any consultation on Phase 2b route. Initial consultation on this route was first published in July 2013. HS2 Chairman Sir David Higgins

The November 2016 announcement acknowledged that the preferred Phase 2b route has taken the 2013 consultation into account and it is the case that they have taken on board the majority of the Higgins recommendations. However, where more substantial changes have been made to the Higgins recommendations the Government has opted to simultaneously publish a consultation on these ‘refinements’ (comprising three possible alterations to the western leg, and 4 possible changes to the eastern leg) which closes on 9 March 2017. Rather than waiting to confirm the safeguarded area against a final preferred route after March 2017, the November 2016 Safeguarding Direction captures both the preferred route and additional areas subject to the consultation with immediate effect.

Read the route refinement consultation document and associated response papers.

In its Impact Assessment the Government stated that the decision to safeguard the whole area now was aimed at preventing “conflicting development that may otherwise affect the construction and operation of the railway, and avoid the associated costs to developers and the HS2 project.” Those affected by this decision could argue they had a legitimate expectation that they would be consulted on the proposals prior to the issuing of a safeguarding direction, as had been the case for Phase 2a. This could have avoided areas of land being subjected to potential blight, as well as avoiding the uncertainty over current areas of safeguarding which end up being dropped when the final route is settled. Equally, the present consultation is confined to specific areas of proposed refinement of the Phase 2b route and excludes submissions on the route as a whole where more modest changes may have been introduced.

There is still scope for those with an interest in the land within the refinement areas to make submissions on the proposals, but it must be recognised that the effects of safeguarding already apply to their land.

But what does safeguarding mean in practice for those with development aspirations?

The latest safeguarding requires the relevant local planning authorities to consult with HS2 Limited in advance of determining planning applications within the identified areas of land (subject to specific exemptions), and where any decision to grant permission is proposed that
conflicts with the HS2 recommendations the application must be referred to the Secretary of State for Transport who has 21 days within which to make a direction to either restrict or refuse the proposed grant of permission if he chooses.

Safeguarding also triggers the statutory blight provisions allowing owners of land or property to serve a Blight Notice on the Secretary of State for Transport requesting that the Government purchase the affected property. Such notices are assessed against specific statutory criteria, with different rules applying to residential and business premises. Additional interim compensation and assistance schemes were also announced by the Government in association with the Phase 2b safeguarding, and consultation on an extended scheme of compensation and assistance measures is open until 9 March 2017.

For those now affected by the safeguarding, decisions made regarding the use and development of your properties may now be affected. As it will be some time before any HS2 Phase 2b legislation is confirmed it will be vital to start keeping clear and relevant records of decisions now. This would include identifying and recording examples of market comparables (as accessing this information later on may prove difficult), keeping clear notes on how investment and operational decisions are being influenced by the safeguarding, and recording the management time spent dealing with such activities. For landlords of tenanted properties, even where these remain fully let, there may be merit in identifying and recording whether the tenant profile has changed as a result of your site being subject to safeguarding.

Although those falling within the present Phase 2b safeguarding direction now have the right to serve a blight notice, and there are good reasons for diligent record keeping on the way in which the safeguarding may affect the land, it is worth noting that in considering assessment of potential compensation it is not yet possible to make an application for a “Certificate of Appropriate Alternative Development” under section 17 of the Land Compensation Act 1961.

Such certificates relate to the mechanisms for arriving at market value for the land under section 1-18 of the 1961 Act, and assumptions of potential planning consents which could reasonably be expected to be granted for the land. But they cannot be applied for until the acquiring authority (in this case DfT or HS2 Limited) benefits from compulsory purchase powers and has either made a written offer to purchase or a relevant notice for the compulsory acquisition of the property has been served. This is going to be some time from now, but there are still many things that property owners and business can be doing to ensure that they have the best evidence available when they need it.
If you have any questions regarding the latest safeguarding or the associated public consultation, please just get in touch with either Tim Smith or Robert Gowing. Our emails are Tim.Smith@blplaw.com and Robert.Gowing@blplaw.com.

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