



### Publication of the Hybrid Bill - a significant milestone...

With the recent Supreme Court hearing into High Speed 2 (HS2) coming to a close, and judgment yet to be handed down, the Government has stuck to its legislative timetable and introduced to the House of Commons the first Hybrid Bill for HS2 phase one – *the High Speed Rail (London-West Midlands) Bill*, a significant milestone in the HS2 project.

The Bill is effectively the planning application for the scheme and will give the Government the powers it needs to construct and operate phase one of HS2, which comprises one track in each direction running from London (Euston) to Birmingham (Curzon Street), with intermediate stations in West London (Old Oak Common) and at Birmingham Airport. Once Royal Assent has been achieved, it is expected that construction of phase one will begin in 2016/2017, allowing the line to open in 2026.

The Bill is deliberately similar to the legislative regime for Crossrail (*Crossrail Act 2008*) and the Channel Tunnel (*Channel Tunnel Rail Link Act 1996*), which also provided a unique set of provisions to ensure that there were no legal obstacles (in terms of other statutory instruments or further consents) which would prevent development from taking place.

In addition to the deemed planning permission for the works, the Hybrid Bill also specifically deals with: the compulsory acquisition of land and separately airspace and subsoil; the grant of new property and statutory access rights (with criminal sanctions for obstruction); the imposition of restrictive covenants. There is also a potentially limitless power for compulsory acquisition of land for regeneration and development opportunities arising out of HS2 phase one. This is already attracting attention in the press for its unique and far-reaching remit.

#### Deemed planning permission

The Bill provides HS2 phase one with deemed planning permission for the detailed works specified in Schedule 1 of the Bill and shown on the plans deposited with it. Limited conditions (contained in Schedule 16) are imposed on the deemed planning permission which can be enforced by the relevant local planning authority for that part of HS2.

Local planning authorities will also have the power to approve the details of buildings to be constructed, altered or extended under the Bill, although they will only be able to impose a condition (or refuse consent) on limited grounds, that the proposed arrangements *'ought to be modified to preserve the local environment..., local amenity'* and only on the basis that the proposed arrangements are *'reasonably capable of being so modified'*. Whilst local planning authorities will be pleased to see that they can have some influence on the proposed scheme, if the *'arrangements'* cannot be reasonably modified (and reasonableness in this context will no doubt be heavily influenced by timing and economic factors), the reality may be that they have little influence.

#### Power to construct and maintain HS2 Phase I

The primary purpose of the Bill is to authorise the construction and maintenance of HS2 phase one. Further ancillary works are also permitted where required to reduce the impact of construction, maintenance or operation, such as landscaping or other mitigation works.

#### Compulsory acquisition of land, airspace, and subsoil

The Bill grants the necessary powers to acquire land (including airspace and / or subsoil) for the phase one works to be carried out. These powers will expire 5 years from the date of Royal Assent, although the Government is empowered to extend this period for up to a further 5 years. The compulsory acquisition powers also allow land to be compulsorily purchased for the relocation of businesses displaced as a result of the construction of phase one.

The Bill contains detailed provisions in Schedule 5 about the purposes for which individually identified parcels of land may be compulsorily acquired. These include the *'[p]rovision of worksite and access for construction'*, *'[i]nstallation of ground anchors'*, and/or the *'[p]rovision of environmental mitigation'*. The relevant purposes are tabled against individual parcels of land identified on the deposited plans.

Broadly, the Bill applies the compulsory purchase order regime to the HS2 phase one works (including provisions relating to compensation, applying the well-established *'injurious affection'* test), save to the extent expressly dis-applied or varied by the Bill itself. One such disapplication applies where only part of an owner's land interest consisting of a house with a park or garden or a factory is being acquired. Ordinarily, an owner would have had the ability to require the whole of the property to be acquired on the ground that taking part only would result in a material detriment to the remainder of the land (the alternative procedure is set out in Schedule 10). This is likely to significantly reduce both the extent of land required and costs of acquisition for the Government.

The Bill also enables the acquisition of airspace and subsoil (distinct from the whole of the land interest), and likewise dis-applies the ability for the owner to require the whole of the land to be purchased. However, in relation to subsoil only, the owner will retain the right to require the whole of the property to be acquired where the 'material detriment' test can be established, but only where a cellar, vault, arch or other construction forming part of a building is to be acquired.

### Regeneration and Development Opportunities

The Bill contains a unique and some are saying *'limitless'* and *'unprecedented'* right to compulsorily acquire land where the Government considers that the construction or operation of HS2 phase one gives rise to an opportunity for regeneration or development of that land (section 47). This could see the Government achieving a windfall if acquiring land for large scale commercial and residential development near to a station for example, but also for targeted growth beyond the HS2 terminals. This right is potentially very far reaching and has no geographical limit so long as the opportunity can properly be said to arise from HS2 phase one.

### Grant of property rights and the imposition of restrictive covenants

The Bill grants the necessary powers to acquire limited rights in land required for the phase one works, which includes temporary access and possession where required temporarily for construction works for example to prevent the need to compulsorily acquire the entire freehold interest where this is not necessary. This includes power to acquire or create easements and other rights, and also to impose restrictive

covenants for the protection of tunnels and ground reprofiling on the limited parcels of land identified in Schedule 7.

In assessing compensation for any new right or imposition of a new restrictive covenant, the Bill provides that regard shall be had, not only to the extent of depreciation in value in the land, but also to the damage to be sustained by the owner of the land caused by severance of other land of the owner or *'injuriously affecting'* that other land. It is not immediately clear on what basis the grant of a new access right or the imposition of a restrictive covenant will amount to severance for these purposes: on a strict interpretation, compensation in this context may therefore be limited to depreciation in value alone.

### Statutory access rights

Aside from the grant of legal property rights and extending the remit of the Bill beyond HS2 phase one, the Bill also grants the statutory right for a duly authorised person to enter land in connection with a Bill or proposed Bill authorising a high speed rail line to conduct surveys or facilitate compliance with EU environmental protection. This explains in part why the Bill extends to the whole of the UK, even though all of the HS2 phase one works are situated in England, as it gives the necessary statutory access rights for phase two and beyond.

The access right only extends to land which is within 500 metres of the centre of a proposed line of route, and entry into residential land must first be authorised by a Justice of the Peace (in England and Wales) or a Justice of the Peace or sheriff (in Scotland), and such authorisation will be valid for a period of 6 weeks. Entry under the Bill will only be authorised where: all reasonable attempts to obtain consent have been made; and there is likely to be a Bill in Parliament to authorise the high speed rail line (if there is not already one), i.e. a Command Paper has been published.

The Bill makes it a criminal offence to wilfully obstruct any duly authorised person from exercising this statutory right of entry.

### Environmental statement

Alongside the Bill, the Department for Transport (DfT) has also published an open consultation into the Environmental Statement (ES) for HS2 phase one, which is intended to satisfy the 'public participation' element which the Government is obliged to carry out as part of the Environmental Impact Assessment Directive.

The consultation closes on 14 January 2014 at 11.45am and DfT has already come under criticism for the short timescales given the sheer size of the supporting ES (some 50,000 pages). Any objections raised will be compiled and presented to Parliament in the form of a Command Paper during the second

reading of the Bill, which will not take place until February 2014 at the earliest. This is the principal way that MPs can take into account any representations which are likely to form the basis for how they vote and / or whether any amendment to the Bill is tabled in the House. Any such amendment will be concentrated on the detail and protective provisions

rather than wholesale amendments to the scheme, powers or the proposed route. However, we do anticipate that the Government's broad powers for compulsory acquisition to realise redevelopment opportunities arising out of HS2 will be significantly reduced and restricted as the Bill progresses.

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