HS2: Property compensation consultation 2013

Response by the Council of Mortgage Lenders to the Department for Transport Consultation paper

Introduction

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our 115 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML’s members also lend to support the social housing and private rental markets. This response has been developed through consultation with our members.

2. Further to our consultation responses in July 2011, January 2013, and May 2013, we remain of the view that it is important to provide options that allow the market to continue to function and to protect borrowers and lenders if properties are subject to possession. In the case of possession it is particularly important that the property is able to be sold at an unblighted value so that the borrower is not subject to a shortfall purely as a result of full market price not being able to be obtained.

3. We also urge the government to reconsider the scope of the discretionary compensation measures being considered for HS2. The measures should be extended to properties in the private rented sector. We do not agree with Department for Transport (DfT)’s assertion that these properties will be less affected by generalised blight. It is important to recognise that the private rented sector is playing an increasingly important role in the UK housing market. Those individuals who invest in buy-to-let (BTL) properties are impacted by localised housing market conditions just as much as owner-occupiers. A failure to recognise this through discretionary compensation measures could also have adverse consequences for both BTL lenders and PRS tenants.

Scope of the discretionary compensation measures

Rental properties

4. We disagree with the assertion that those who own rental properties will usually not be affected by generalised blight, and therefore should not be eligible for discretionary compensation under the governmental proposals (see page 18 of the consultation). DfT has failed to outline any supporting justification of its position. It is very likely that landlords whose homes are in an area blighted by HS2 may have to temporarily reduce their rent in order to attract or retain their tenants. Any reduction in rental income is likely to impact both: the tenant, through disruption or lack of funds to invest in the property; and a BTL lender, through an increased risk of mortgage default.

5. An example of this is where the length of tenancies offered are shorter to account for the beginning of the construction. This in turn creates pressure to reduce rent and/or an increasing likelihood of void periods, as the number of potential renters is reduced. Given that BTL finance is generally advanced on the basis of expected rental income, this increases the risk for lenders.

6. Some landlords may need to sell at a time when the market will be impacted by blight. It is likely that in doing so they are forced to accept a lower purchase price for the property, which will either erode any equity in the property or, in the event of negative equity, cause the lender to suffer a bigger loss. It is difficult to see why they should not have the same opportunity to sell their property to the government at an unblighted value in this circumstance. A possible knock-on effect is that lenders may not wish to lend in areas that are sited near proposed routes whilst the risk of blight is present.

7. The private rented sector accommodates around a fifth of households in the UK. The impact of DfT’s proposals on the rental market will have wider effects on the housing market in affected areas, and may even increase the blight risks for owner-occupiers if the same protections are not offered to residential landlords and their lenders. We therefore believe there is adequate justification to offer the same discretionary compensation being proposed for owner-occupiers.
Buy to let and ‘consent to let’

8. It would be useful to have more clarity on how the government will determine whether or not a property is in the private rented sector when an application for compensation is received. In particular, it is not clear whether homeowners who are on ‘consent to let’ agreements with their lender will qualify for discretionary compensation. These are homeowners who have sought and obtained the lender’s consent to rent their property for a limited time.

9. Normally there are extenuating circumstances for ‘consent to let’ to be granted, such as a change in employment location, an armed services posting, or for forbearance reasons. Given these are normally temporary arrangements we believe that the homeowner in this case should qualify for discretionary compensation. If the government deems them ineligible as they are not living in the property, then these home owners will need to be advised so they can take remedial action if possible. This issue is further complicated where borrowers are granted consent to let for forbearance reasons.

Views on the discretionary measures

Express Purchase scheme

10. The express purchase scheme appears to allow reasonable certainty for the housing market to operate within the safeguarding zone. However, we are concerned about the potential impact on those properties that sit above deep-bored tunnels to which, it is proposed, this scheme will not normally apply. We have, in previous responses, challenged the assumption that there is limited blighting of properties over tunnels. This assumption may not be shared by affected property owners and potential purchasers. The consultation document infers, by use of the term ‘would not normally apply’, the circumstances where the policy might apply to properties in those areas near tunnels – but this is not explained in detail. We would like to understand better how the scheme could apply to these properties.

11. Our preference is that these properties should be included within the scope of the express purchase scheme, as this would the best level of certainty for all properties within the safeguarding zone, and also simplifies the options by removing the exception for these properties.

Long term hardship scheme

12. We support the proposal for a long term hardship scheme. With regard to the property type criteria, as in previous responses we have submitted, we would argue that second homes should be included in the scope, if they meet the other criteria and the property is blighted. This is because there may be equally good reasons for the second home to be sold to alleviate hardship. From a lender’s perspective, if a mortgage exists on the security, this will still have major implications for the lender both in terms of repossession and potentially significant loss.

13. In terms of the effort to sell criterion, as explained in previous responses, we draw your attention to lenders’ regulatory requirements to mitigate losses (or maximise any surplus arising from the proceeds of sale) through obtaining the best price for the property¹, which in some cases may mean that they have to consider early offers. We feel that in a repossession situation, there should be recognition of this and a requirement to show a minimum of 6 months marketing should be relaxed.

Sale and rent back scheme

14. We have no substantive comments on this option, only to support the concept of such a scheme to help lessen the impacts of acquisition on the housing market in local areas. The DfT may wish to liaise with DCLG and the HCA, both of which were involved in designing a state-backed ‘mortgage-to-rent’ scheme to help prevent repossessions.

¹ FCA Handbook, MCOB 13.6.1R
The rural support zone

15. DfT proposes that the rural support zone (RSZ) excludes those areas where the line is in deep bored tunnels. We would challenge the assumption that the properties in those areas may not experience the same level of impact or blight and would argue that they should be included within the RSZ.

Property bond scheme and voluntary purchase scheme

16. In previous responses to consultations on HS2, lenders have favoured a property bond scheme as a compensation tool as it allows for valuations and purchase of affected properties on an unblighted basis, therefore providing a measure of certainty for owners and the lenders who have security on the properties. However, the voluntary purchase scheme also allows for this and appears to be simpler than the property bond scheme to administer. We also recognise that property bond schemes are untested in the United Kingdom.

17. Our preference is therefore for the voluntary purchase scheme. If, in the alternative, a property bond scheme was selected as a compensation measure, we would favour a time, rather than value based bond scheme, for the reasons set out in the consultation paper and the Deloitte report. However, lending in any individual case is a matter for individual lenders and decisions would still be taken on an individual basis.

Social housing measures

18. We note the government's proposal to work with local authorities, housing associations, tenants and other key stakeholders to ensure the replacement of any social housing lost as a result of HS2. As part of this engagement, we would expect to see full and transparent engagement with all affected housing associations and their funders (banks, institutional and capital market investors) to ensure all concerns, including financial and valuation implications, are fully understood and addressed.

Summary

19. We welcome the government's aims to provide discretionary compensation for those affected by HS2. In the main, the measures proposed appear to offer certainty, particularly for owner occupiers. However, the housing market affected by blight from HS2 includes privately rented properties and we are very concerned that the government has made a false assumption that the blight suffered by residential landlords is somehow less than that of owner-occupiers. Discretionary compensation should therefore be extended to the private rented sector.

20. To discuss this response in more detail, please contact Jennifer Bourne (020 7438 8929).

Consultation questions:

1. What are your views on the criteria we have put forward to assess options for long-term discretionary compensation?

The proposed criteria seem sensible.

2. What are your views on our proposals for an express purchase scheme?

See paras 10-11 above

3. What are your views on the proposed long-term hardship scheme?

See paras 12-13 above.

4. What are your views on the ‘sale and rent back’ scheme?

See para 14 above.
5. What are your views on our alternative proposals for renting properties to their previous owners?

We have no specific comments on this.

6. What are your views on our proposals for a voluntary purchase scheme within a 'rural support zone'?

See paras 15-16 above.

7. What are your views on the option to introduce a 'time-based' property bond scheme within a 'rural support zone' as an alternative to the voluntary purchase scheme?

See paras 16-17 above.

4 December 2013