High Speed Two: Safeguarding for London to West Midlands – consultation Questions response of 51m alliance of councils

1. Do you agree with the proposal to safeguard and the content of the proposed safeguarding directions? If not, please explain why.

1.1 51m is opposed to the proposed HS2 scheme. However, should HS2 be taken forward by the Government it is right that processes should be introduced in order to raise awareness and so that potential implications can be taken into account in plans and property related decisions. It is clear from the impact assessment in Appendix C that no alternatives to safeguarding have been considered so it is therefore difficult to understand how the Government has developed the view that *'safeguarding is likely to be the best way forward of achieving this'*.

2. Do you agree with the content of the guidance for local planning authorities on the directions? If not please explain why.

No, 51m does not agree for the following reasons:

2.1 Processing of applications – given the time constraints, the costs of producing paper copies of planning application documentation and the Government's drive towards e-government why is it necessary for documents to be sent via first class post when councils could provide an electronic link to relevant planning applications via its public access system. Electronic access to applications should be used or HS2/the Government should meet the additional costs.

2.2 Consultation on permitted development – whilst it may be useful for HS2 Limited to be kept informed of permitted development proposals, permitted development is by its very nature permitted and as such developments which fall within the permitted development allowances will not always be made known to the local planning authority. Therefore it would not be possible or cost effective for 51m to provide HS2 Limited with such information.

2.3 Local plans – whilst 51m accepts that it would be difficult to have polices that conflict with the HS2 safeguarded area on its policies map if the policy designation relates to a development plan document which has already been examined and approved it would be costly and time consuming to amend the designation if the original decision to designate an area through a development plan had to be re-examined. Surely if a local plan designation was promoting for example a development site then when a subsequent planning application was submitted for that development the conflict with the safeguarded area could be addressed without the need to amend the local plan allocation. Conflict on a policies map should only be considered when the local plan or development plan documents are revised.

3. Do you agree with the geographical coverage of the land to be safeguarded? If not please explain why.

3.1 51m has concerns that the areas shown to be safeguarded will be subject to change this will make consistent decision making and or amendments to policies

maps difficult. Changes will also have resource implications for local authorities which need to be addressed and clarified as to where the additional resources will be derived from. Every effort should be made to set safeguarding right first time. It is assumed that HS2 Limited has safeguarded the minimum amount of land necessary.

3.2 51m also has concerns that the proposed safeguarded area has not accounted for environmental sites as stated in the general notes. These have not been considered within the safeguarding proposals which show a 'standardised approach' to the proposals that may indicate a shortfall in detail.

3.4 The proposed Safeguarding Directions were not accompanied by a Strategic Environmental Assessment (SEA). 51m is currently considering whether the Safeguarding Directions are a plan or programme in respect of which the SEA Directive and Regulations require a SEA to be carried out and consulted upon during its preparation and before its adoption.

4. Do you consider that the draft impact Assessment is a fair reflection of the costs and benefits for the safeguarding proposals on the operation and outcomes of the planning application process? If not please explain why.

4.1 It is noted that the assessment identifies a definite cost to local planning authorities to deal with the additional administrative burden of responding to service of Purchase Notices, processing planning applications to consult with HS2 limited and potentially with the Secretary of State. Whether this is or is not a fair assessment cannot be tested at this stage. While a cost is indicated there is no indication on who will pay the additional costs. Given the additional work required in relation to a Government backed scheme and imposed on the Council and its local council tax payers it is considered that the Government/HS2 Limited should meet any additional costs in full.

4.2 The Draft Impact Assessment has not considered alternative safeguarding distances other than 60m. The Council would have expected a range of options to have been considered to ensure the most appropriate safeguarding distance has been identified. This could then take account of other relevant impacts and local mitigation zones.

Additional point

4.3 HS2 Limited is requested to define what is meant by 'subsoil' and 'significant foundations' in relation to safeguarded areas, in the proposed guidance notes, for the parts of the route that are in tunnel.

High Speed Two: Property and Compensation for London to West Midlands – Consultation
Questions responses of 51m alliance of councils

1 What are your views on the proposed advanced purchase process?

This question is unduly restrictive. It is necessary to consult not just on the "process" but also on the principles and merits of the compensation being proposed.

1.1 The advanced purchase process unfairly excludes large businesses and landlords of properties, and homes being rented out. For example, residential landlords may need to sell their properties early too but are unable to do so as their property is located within a safeguarded area. Similarly those owning a single home but who rent it out to cover their costs (having moved and rented in another location) are being excluded.

1.2 The 10% home-loss payment and the cap of £47,000 for qualifying property owners (e.g. residential owner-occupiers) are both inadequate and arbitrary. The 10% should be increased and the cap removed. No increase has occurred since 2008. On the basis that there is a correlation between property values and inconvenience/loss in being forced to move house, then it is unfair to cap the maximum home-loss payment. A higher percentage should be adopted to reflect the fact the sale is not at the time of the persons choosing and there will inevitably be uncompensated losses with such a process. The Government should be both fair and flexible in terms of the amount of home-loss payment which it is prepared to pay.

1.3 It is also not clear who will be responsible in determining the un-blighted market value of a property and whether this will relate to the correct value before the very first HS2 announcement or the already affected value when the detailed route was announced.

There needs to be greater clarity on the rules for properties that only fall partly inside the safeguarded zone.

2 What are your views on the proposed voluntary purchase zone for rural areas?

This question is unduly restrictive. It is necessary to consult not just on the "zone" but also on the principles and merits of the compensation being proposed.

2.1 Information on the extent of blight should have been provided in order to justify the basis of the VPZ. Instead the evidence that is available on blight has been refused under FOI. It is therefore difficult to give informed comments, and in particular on the extent to which the properties within this zone include the majority of those covered by blight or not.

2.2 The 120m has only been justified by DfT on the basis that this was used for HS1. HS1 however is not an appropriate comparator:

- HS1 was environmentally less destructive (travelling at lower speeds and with far less frequency)
- It was well over 20 years ago and the approach to compensation has developed since then
- HS1 did however include home-loss payments that are being excluded from the HS2 scheme in the VPZ
- Most importantly the difficulties that surrounded the HS1 compensation arrangements were very substantial and led to Government establishing the "Interdepartmental Working Group on Blight". It was this group that recommended a new approach to dealing with generalised blight e.g. a property purchase bond.

2.3 It is nevertheless unfair that this proposed scheme is restricted just to rural areas as urban areas and those over deep bore tunnels will and are suffering property blight too. Again no evidence has been provided to support this proposal. For example, there are likely to be urban residential home owners whose properties do not fall within the safeguarding area but are losing value from the HS2 proposals.

2.4 The proposal that the VPZ will extend up to 120m either side of the line, where the land has not already been safeguarded is at best arbitrary. It should be based on other considerations as well as distance. It ignores topography, as well as the different impacts of HS2 (in cuttings, viaduct etc).

2.5 A simpler and fairer approach would be to define the qualifying properties by reference to those suffering a 'loss in market value' due to HS2. This can be determined by property valuers and would provide a more transparent and objective basis to determining the VPZ. It would also apply across rural and urban areas alike, and to those above tunnels.

2.6 As our response under Question 1 notes there needs to be greater clarity on the rules for properties that only fall partly inside the zone. This is a particular issue in rural areas where gardens may often be large and be part of the amenity of the property.

2.7 The consultation is flawed in the sense that the consultation document fails to explain how applications under the VPZ will be assessed i.e. what criteria will be used and how will it be applied?

2.8 It is unfair that it is being proposed that additional compensation payments to property owners is excluded, particularly as noted above they were included in the HS1 equivalent scheme. The Government should, as an absolute minimum, be responsible for meeting the costs of moving house.
The valuation approaches in the VPZ differ from proposals outlined in Phase 1 hardship scheme and it is not clear why different approaches have been proposed. This needs to be reviewed.

2.9 There may also be wider community impacts to such proposals where those in rural areas are unable to remain in the District as a result of a shortage of alternative properties.

3 What are your views on the proposals for a sale and rent back scheme?

3.1 We welcome the introduction of a scheme that allows property owners to rent back their own property until it is required. It also helps the community to reduce the number of empty properties that might otherwise be created in the area. However we consider the terms of the scheme are too narrowly defined. The following points arise:

- It is unfair that businesses and landlords are excluded from the scheme, and that it be confined to residential home-owners being compulsory purchased rather than all properties in the Safeguarded Zone. It is noted that the Government recognises that business occupiers need to be assessed on a case by case basis. However, the consultation document does not make it clear whether a scheme to assess such businesses will be provided.

- The Government should give clear commitment to such a scheme and provide detailed guidance about how it would be operated. It should be noted that businesses, particularly small ones, may have sounds reasons for wanting to participate in the sale and rent back scheme.

- There is no explanation as to the level of market rent which is to be payable. It should be made clear that it would be significantly discounted from the unblighted rent to reflect the area in which the property is located will be adversely affected by the HS2 proposals.

- There is no explanation as to what type of tenancy will be given - what protection will be afforded to the tenants and what rights will they have?

- There appears to be no consideration of letting standards that would also be relevant if the property owner became a tenant.

- The scheme has simply not been properly thought through - the proposed "value for money test" potentially penalises the poorest homes but apart from this, what is the point of spending money on repairs to a property which will be demolished at some future stage?

3.2 One possible structure to prevent this from happening is set out as follows:

1. The Government enters into a legally binding agreement with the property owner whereby it agrees to purchase the property at a future date;

2. The full purchase price is payable to the property owner on exchange of contracts;

3. Legal Completion (i.e. the date that the transfer of the legal title takes place) will be set for a future date to coincide with the date that the property is

needed for construction works. The completion date could be determined at a future point in time – for example, the completion date will be 6 months after the time when either the Government or the property owner serves a notice to complete.

4. In consideration of the purchase price being paid in advance and completion being delayed, the property owner pays an agreed monthly sum to the Government.

3.3 The above structure would mean that the creation of a landlord and tenant relationship is avoided as the need for properties to be improved would be removed. It would also remove the inherent unfairness and uncertainty of the proposed "value for money test" which, as explained above, potentially penalises the poorest home owners whose properties are in a poor state of repair.

4 What are your views on the proposed approach to the application of hardship criterion for the long term hardship scheme?

Again the question is unduly restrictive. There are five criterions on which the scheme depends, not just hardship.

4.1 A prime concern with including any hardship criterion as part of the long term compensation scheme is that the hardship rules relate to a person's circumstances. They do not therefore have anything to do with the extent of blight (i.e. the diminution in value of property) being suffered. 51m believe the effect of applying such rules is largely to reduce the number of successful applicants. It is however unfair to penalise individuals so that they pay for HS2 both as a taxpayer and by suffering a personal loss in their largest asset i.e. the value of their property that they are then not compensated for.

4.2 The hardship criterion should therefore be dropped from the Long Term scheme. There is precedent for doing this in other consultations where the final scheme post consultation was approved by Government (on airport expansion at Stansted in 2004).

4.3 Section 4.22 and 4.23 states that you will rely on aerial photography rather than site visits. Although we agree this may be quicker it is felt that this will not allow for a fair judgement.

4.4 **Property owners criterion:** In terms of qualifying property owners it is also unfair to exclude small businesses from the scheme as they may have a pressing need to sell/relocate to meet changing business needs. They are currently included in the current EHS scheme, and also in the equivalent Crossrail Scheme. Similarly it is unfair to exclude second homes and landlords who may require funds for their retirement.

4.5 **Location Criterion:** location' criterion that the panel consider in relation to whether a property will be 'substantially adversely affected by the construction or operation of the railway' is very subjective in nature, particularly as no guidelines are given as to the outer distance from the line within which a property must be situated in different topologies.. It may therefore be inconsistently applied in practice. A

simpler and more transparent approach (as suggested for the VPZ at question 2) is to use whether the market value of the property has been diminished as a result of HS2.

4.6 **No prior knowledge of HS2 criterion**: this serves to depress property prices in the area. This is because a new purchaser in the area of HS2 knows they cannot qualify for the long-term scheme and so naturally will only purchase at a discounted price. This criterion therefore bakes the blight in long term, and should be dropped.

Further, individuals may have had sound and justifiable reasons for acquiring properties in spite of the HS2 proposal, and have been outside the 200m line that meant it showed up on their local authority search. It is therefore unfair to expect owners of properties to have had deemed knowledge of HS2 from as early as March 2010.

4.7 **Efforts to sell criterion**: The criterion that requires an owner to have the property on the market for 12 months before applying is excessive. Under EHS it is 3 months. It is well beyond the average period currently being experienced, and given it is a long-term scheme (for 15 years or more where it applies to work being done for the Y) it must be appropriate to varying property market conditions.

4.8 It is unreasonable to use a threshold of 15% of market value to debar applicants who receive offers within this figure from the long term scheme. The threshold amounts to a substantial sum and no justification is provided for why those who are affected by HS2 (that is said to be in the national interest) should suffer this loss. The loss might typically equate to a year's pre-tax salary. The percentage threshold figure should be much lower.

4.9 Under the proposals there is no protection for the individual against agents making purchasers aware that the property owner may apply for long term compensation. Without such protection prospective buyers are alerted to the opportunity of making an offer within 15% of the price. This is a flaw within the current EHS and we see no proposals to change this under the new scheme.

4.10 51m does not believe that a hardship based scheme that includes hardship criteria is acceptable (other than in the short term) because it is not based on fair and justified criteria. The vast majority of those affected by HS2 would not qualify under such a scheme (as we demonstrate in our additional comments) meaning affected individuals would have to bear the financial loss.

5 What are your views on the proposed process for the operation of the long term hardship scheme?

5.1 The proposed process is convoluted. The panel should be wholly independent in nature in order to preserve the integrity of the process and consideration should be given to introducing some form of appeal process for unsuccessful applicants.

5.2 At the appeal stage an applicant should be able to appear in front of the panel, either themselves or be represented.

5.3 There should be flexibility over the criteria used to assess reapplications otherwise applicants may be put off from reapplying, thinking that if the same criteria are used, it is likely that the same decision will be reached.

5.4 Purchase offers should not be limited to six months. This is too short a period and it should be extended to at least twelve months.

5.5 The use of aerial photographs may be useful but undue weight should not be placed on them and equal consideration should be given to all other information available before the panel. It is felt that site visits are appropriate to allow a fair decision to be made.

5.6 The proposal to introduce detailed guidance for applicants needs to be carefully thought through. It should be produced in an understandable format and should not confuse applicants. A helpline should be provided.

6 What are your views on the Government's proposals to restore confidence in properties above tunnels?

6.1 The proposed scheme is likely to be inadequate as it is only concerned with giving reassurance about the tunnelling impacts on properties and ignores all issues of property blight itself. Property blight i.e. diminution in the value of the property, is likely to arise as people have an aversion to coping with possible remedial works, and will be concerned about the potential effects of noise and vibration from the operation of HS2 (that are not mentioned in the tunnel guarantees).

6.2 It is unfortunate that the Government has not clearly set out how it will identify ''at risk'' properties. If the Government's objective is to address people's lack of confidence about the impact of tunnelling, then it should offer the scheme to all persons within a defined distance from the tunnel. The distance should be no less an area than the safeguarded area - it should not be restricted to properties located within 30 metres on plan of tunnelling works and who will receive the Settlement Deed .

6.3 It is unclear how those who have a Settlement Deed but no initial survey can have their claim substantiated. The 2-year time limit for the second survey should be extended.

6.4 The proposals only undertake to repair damage from tunnelling with no mention of other construction issues e.g. ventilation shafts or the subsequent impacts from the operation of the railway itself e.g. noise and vibration.

6.5 The Government should not be sending ill-thought through letters to residents ahead of the close of the consultation period in relation to possible sub-surfacing works as this only serves to engender distrust in the Government.

6.6 A proposed payment of £50 to represent the perceived value of the subsoil is at best derisory and does not appear to be based on anything at all. The fact that this was what Crossrail paid is not a credible basis of justification. Similarly, the sum of £250 for professional fees is completely unrealistic in that it is far too low.

7 What are your views on how the Government should work with local authorities, housing associations and affected tenants to agree a joint strategy to replace any lost social rented housing?

7.1 The information which has been provided within this chapter is so sparse that it is difficult to provide any type of meaningful response. However, it is worth pointing out that secure tenants of local authorities will expect no diminution to their rights as a result of the HS2 proposals and therefore local authorities will expect the Government to work with them so as to ensure that their tenants are properly protected.

7.2 51m supports the replacement of any social rented housing affected by HS2 and the Government should commit to working with local authorities, housing associations and affected tenants to develop a strategy for replacing any lost social rented housing.

7.3 You highlight that local authority and housing association tenants have more limited rights to statutory compensation than homeowners. However, there needs to be recognition that such tenants will face the same level of upheaval as homeowners in having to leave their home and re-locate elsewhere. In some cases, tenants will have lived in their homes for many years and will face concern and anxiety about having to move elsewhere through no choice of their own. This cannot simply be addressed with a flat rate home loss payment of £4,700. Measures will need to be in place to give wider support to those tenants who have to move. This will need to cover practical advice and support with coping with the move (especially for tenants who are vulnerable due to age or medical grounds) and financial support to cover removal costs, re-connection fees etc.

7.4 Section 6.4 refers to developing options for providing high quality replacement housing and states that "if practical, such housing should be provided in the same area as that which is lost, to avoid ties with local areas being broken." This is too loosely worded. There should be clear duty to re-house the tenant in the same area. The recent "Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012" placed great emphasis on local authorities ensuring that temporary accommodation for homeless households is secured as close as possible to where the household was previously. This was in order to minimise disruption to education, employment, care responsibilities and social and family links. Those authorities who have re-located households some distance away from their previous home have been heavily criticised by Government. It would be inconsistent if, on the one hand, Government was requiring Councils to re-house homeless families in the same area but, on the other hand, it was prepared to allow tenants disrupted by HS2 to be re-housed some distance away from their previous home.

7.5 Providing a high quality replacement social rented home in the same area may present difficulties depending on the location. Some areas may have little alternative social housing stock and limited development opportunities. Consequently, there will need to be consideration given to providing capital funding support to local

authorities and housing associations to give them the opportunity to acquire replacement properties in the same area on the open market in order to provide a high quality replacement.

7.6 Section 6.4 also includes the statement “if reasonable within the context of the broader Euston rebuild such housing should be provided ahead of the need to compulsorily purchase the existing social rented housing. This would minimise the need for people to move.” It is not clear what this paragraph means when it refers to minimising “the need for people to move”. If it is referring to replacement housing being provided ahead of any CPO, then the tenants will still need to move and the points made above regarding compensation and support will still apply.

Other comments on the Compensation Proposals:

51m is extremely concerned about the blighting impacts of the HS2 proposals on residents, businesses and local communities. This blight is already apparent and there will be blight for at least a further 14 years and in reality, probably much longer, given inevitable delays. The proposals are inappropriately limited by arbitrary distance limits, the application of personal based hardship rules and do not address the real extent and effects of blight.

The Government should have published the data they have on blight. In its absence it is difficult to give an informed response. But the number of properties inside the two published zones are just less than 2000, and if those qualifying under the long term scheme are similar to those under EHS (another 500 properties) this will total about 2500 properties being eligible for compensation over the 15 year period. This figure can be set against the:

- The 172,000 properties originally contacted by DfT/HS2 Ltd for the 2011 consultation that settled the compensation principle – these were those within 1km of the line (or 250m of a tunnel); and
- The 43,000 properties contacted by DfT/HS2 Ltd for this consultation. These properties are within 500m of the line or 150m in urban or tunnelled areas.

Whichever figure is used it is very clear that only a very small proportion of properties that are expected to be affected by property blight will be compensated by these proposals.

It is hard to see how the proposals recognise the ‘exceptional nature’ of HS2, being based on the precedents of schemes such as HS1 and Crossrail. It is clearly an exceptional scheme in terms of speed and unpredictability of impacts such as noise. Unlike any other UK major transport infrastructure there will be no access to HS2 between London and Birmingham. Normally house prices go down during construction but up afterwards due to local access. This will not happen between London and Birmingham.

There is no recognition in the Government’s proposals that communities, who will endure years of construction and disruption, will be compensated. There should be community funds as there are going to be for other schemes such as wind farms.

There should be equivalent green spaces created for those that are lost as a result of HS2.
Other than the existing statutory regime, which would not be effective until HS2 is operational, (and is as we note below inadequate) the Government has failed to offer any measures to compensate home owners for the diminution in value of their properties. They either get the full unblighted price under the compensation schemes or nothing.

Property blight already exists. It is easy to see how the value of property is being diminished by the HS2 proposal, before it even goes ahead. In this situation, a property owner who is not within the VPZ or safeguarded area is likely to lose money if they are forced to sell their house at a lower value as a result of HS2. And this assumes that they can find a buyer. A recent response to an MP has shown that 68% of those who submitted applications under the EHS (over 400) had no offers whatsoever. This adds to the general evidence that such projects not only deflate prices but lead to property market stagnation. This consequently affects the ability of homeowners to move or re-mortgage in the extensive period between now and the date when HS2 becomes operational. This is extremely unfair.

For the majority of blighted property owners their only chance for compensation will be making a claim under Part 1 Land Compensation Act 1973 after HS2 has been operating for a year i.e. 2027 at the earliest. We note that while this was described in the Compensation Proposals no question was asked about its terms. This is despite this being the category that most properties will inevitably fall into.

Part 1 claims can currently only take into account the 'nuisance factors' of HS2 e.g. physical factors like noise, dust, light pollution. It ignores for example views, and amenity factors that can make up a significant part of the price of a property. Such compensation should instead be based on the loss in market value due to HS2. This would be a fairer basis, and particularly for those that suffer the years of construction and disruption blight.

In summary as 51m's response to the 2011 consultation noted we do not believe a hardship based scheme can address the true nature and extent of property blight from HS2. As we said then "51m considers that the second option, the bond based scheme, is in all probability the best of the three options [then proposed] because it has the most potential to meet the relevant criteria". We remain of this view.