Response by Cubbington Action Group against HS2 to the HS2 Property and Compensation Consultation

Representation of the Cubbington Action Group against HS2

This submission to the HS2 Property and Compensation Consultation (the Consultation) is made on behalf of the Cubbington Action Group against HS2 (the Group).

The Group is an association of the residents of Cubbington and its environs, constituted in response to the proposals to build and operate the HS2 high-speed train link between London and the West Midlands.

The Group seeks to gather the views of local residents by occasional public meetings and by frequent information stalls at local events, where the opportunity is taken to talk to as many people as possible about the HS2 proposals and its potential impacts upon our community. It is our opinion from these discussions that opposition to the HS2 proposals is virtually unanimous within our community. Certainly, we have not encountered anyone from Cubbington who has expressed views in favour of HS2.

The activities of the Group are controlled by a management committee, whose members are elected to serve for a period of one year at a public annual general meeting of the Group. The governance of the Group is prescribed by a written constitution that was approved by a public meeting of the Group.

This submission has been approved by the management committee.

The Group also has close links with Cubbington Parish Council and our current Chairman is a member of that council. He reports to every meeting of the Parish Council on the activities of the Group.

Representatives of the Group are members of the Offchurch and Cubbington Community Forum.

The Group does not require the information that it has provided to the Consultation to be treated as confidential and plans to publish this submission on its website.

General comment on the Consultation

The "Introduction" to *High Speed Two: Property and Compensation for London-West Midlands* (the Consultation Document) states:

"The Government believes that compensation for property owners affected by the HS2 proposals must reflect the significant impact that comes with the construction of a high speed rail line."

The Group strongly agrees. However, we have been severely hampered in our attempts to judge to what extent the Government's property and compensation proposals are commensurate with the "significant impact" of HS2 by the total failure of the Compensation Document to assess the nature and extent of the property blight that HS2 has caused. On 12th November 2012 HS2 Action Alliance (HS2AA) made a Freedom of Information request to the Department for Transport (DfT) to provide, *inter alia*, "details of [the DfT's] assessment of the effect of HS2 on property values on which [the DfT] based [its] conclusions". In its response of 10th December 2012 the DfT confirms that it holds "information that is relevant to [HS2AA's] request", but elects to withhold the information, citing Section 29 1(a) of the FOI Act, and specifically that:

"It is in the public interest that our forecasts and assumptions in relation to … the effect of HS2 on property values are exempted from public disclosure.

The DfT states its reasons for reaching this conclusion, as follows:

"Experience suggests that public disclosure by the government of forecasts of property price movements, even where the forecasts are expressly tentative, means that participants in the property market begin taking decisions with reference to the forecast, triggering a shift in property prices that may not otherwise have happened. There is also a risk that any such shift could be greater, more widespread, and longer-lasting than the movement that was actually forecast.

"The risk is that disclosure of our underlying forecasts and assumptions used in reaching conclusions on property compensation policies would cause such a shift.

"The property market makes a significant contribution to local economies, and as such, distorting it by releasing these forecasts would affect the local economy along the line of route."

The Group feels that, in the context of the Consultation, this decision is unfortunate, to say the least. We are in complete agreement with the view expressed by HS2AA in a letter to the Transport Secretary of 2nd January 2013 that:

"The information is self-evidently relevant to forming a view as to the appropriateness of the various parameters of the compensation arrangements currently under consultation."

We also agree with the view expressed by HS2AA in the same letter that the decision not to make the information available to consultees "is surely prejudicial" to the process of the Consultation. The Group is certainly of the opinion that not having had such information to hand has restricted our ability to judge the worth of the proposals in the Consultation Document. Without any information on the extent of the blight that HS2 has caused, information that we cannot reasonably obtain from any source other than the DfT, we are being asked to comment with an inadequate picture of the problem.

We also strongly suspect that the Government has also formulated its proposals with little regard for such details. It appears that the distances from the line that have been employed to set the limits of the different compensation regimes proposed are purely arbitrary. In particular, in using HS1 as a model, the Government appears to have taken no account of the potential for the impacts of HS2 to be significantly greater than those resulting from HS1. There are marked differences between the nature of HS1 and HS2 that underlie this observation. For example, HS2 is faster and therefore potentially noisier than HS1, the proposed frequency of services is much greater for HS2 than HS1 (increasing the impact of noise levels), and the tranquil nature of the countryside through which much of the HS2 route will pass is not a feature of the HS1 route.

Question 1 – "What are your views on the proposed advance purchase process?"

The Group welcomes the proposals to "relax" the use of Counter-Notices and not to enforce the "all reasonable efforts" requirement. Much as these proposals will be welcomed by those directly affected however, the number of property owners that will benefit is very small when compared to any reasonable measure of the likely numbers currently blighted by the HS2 proposals. Our estimate, based upon information from

HS2 Ltd for the safeguarding zone as currently drawn, is that somewhere in the region of 750 owners is the maximum possible number of beneficiaries.

The maps issued by HS2 Ltd show no dwellings in Cubbington are within the safeguarded zone, so as things stand at the moment no Cubbington resident stands to benefit from the advance purchase scheme.

The Group feels that uncertainties of the type disclosed in paragraph 2.6 of the Consultation Document regarding the treatment of properties that lie only partially within the safeguarded zone are unsatisfactory, and are likely to lead to inconsistencies in the treatment of property owners in this situation. We feel that it is necessary for the Government to draft more precise proposals that will remove such ambiguity.

The Group feels that the treatment of landlords and second home owners is unnecessarily discriminatory, in that they do not qualify for any of the proposals in the Consultation Document, save for an undertaking to consider such owners "on a case by case basis" for the sale and rent back scheme (paragraph 3.7 of the Consultation Document). Whilst we recognise that these exclusions originate from the statutory compensation eligibility requirements (in section 149 of Chapter II of Part VI of the Town and Country Planning Act 1990), and have also applied to the HS2 Exceptional Hardship Scheme (EHS), we feel that the Government should review the plight of these owners sympathetically and propose enabling legislation, if necessary, to improve their lot.

In making this recommendation, the Group is mindful that, faced with the effects of HS2 blight, some property owners who have relocated for employment, family or health reasons have elected to rent out their former homes and postpone a sale until such time as market conditions improve. Whilst such individuals are technically both landlords and second home owners they would not be so were it not for the blight caused by HS2.

The Group feels that the only satisfactory way to avoid any unfairness to this class of owners is to make all landlords and second home owners eligible for the benefits of all of the schemes proposed for the Consultation.

Paragraph 1.19 of the Consultation Document advises that, "It is also possible that additional property or land outside of the safeguarded area may be required as construction and engineering plans are further refined". Since eligibility for the proposed advanced purchase scheme and sale and rent back scheme will be dependent upon the situation of the applicant's property regarding the safeguarded zone and compulsory purchase intentions, it is essential that published maps of the safeguarded zone are kept fully up to date, and that owners are notified of any changes to compulsory purchase requirements without any undue delay. The Group requires confirmation from HS2 Ltd that this will be done.

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

The Group understands that the establishment of a voluntary purchase zone (VPZ) extending to 120 metres from the centreline of the track is a proposal directly copied from what was offered to compensate property owners affected by HS1. We feel that, in applying the same principles as were used for HS1, the Government has failed to realise the fundamental differences between HS1 and HS2 that we alluded to under the section "General comment on the Consultation", above.

In particular, no justification has been provided in the Consultation Document for the choice of 120 metres for the extent that the VPZ extends either side of the line. No attempt has been made to relate this dimension to the geographic extent of the blight caused by HS2. Any assumption that a choice made for HS1 is automatically also applicable to HS2 ignores the fundamental differences between HS1 and HS2 that we have identified.

In any case, the Group does not think that a fixed dimension for the VPZ is at all appropriate, since the impact of HS2 will depend upon a number of factors (such as track geometry and local topography), not just distance. This inescapable fact is recognised in the description of Criterion 2 for the EHS scheme given in *High Speed Two – Exceptional Hardship Scheme (EHS): Updated Guidance and Application Form*, which includes the passage:

"There is no fixed distance within which a property must be situated in order to satisfy this criterion … the particular characteristics of the property, including its position and its surroundings (for example whether there is other built development between the property and the route and whether the route is over a viaduct or in a cutting) will be considered when forming a view as to the degree to which it would be affected by the new high speed rail line."

This view is repeated in paragraph 4.7 of the Consultation Document, which relates to Criterion 2 of the proposed long term hardship scheme:

"We do not however believe that it is appropriate to set a fixed outer distance from the line within which a property must be situated in order to satisfy this criterion. This is because the impact of HS2 will vary from area to area depending on the topography of the land and the construction of the line – e.g. whether the railway is in cutting or on viaduct."

The Group concurs with this view, but feels that if it is true for the long term hardship scheme, then it is equally true for the voluntary purchase zone. We cannot understand why the Government is proposing to employ a different approach for the two schemes.

The maps issued by HS2 Ltd show no dwellings in Cubbington are within the VPZ; so as things stand at the moment no Cubbington resident stands to benefit from the voluntary purchase scheme. We do, however, have two properties within our catchment area that lie just outside of the limit of the VPZ. These both lie on the A445 Leicester Lane and the Group believes that both of these properties are likely to be badly affected by HS2. At the point where the proposed route will cross the A445 the track is approximately at grade and the A445 will need to be raised to cross over the track on a new road bridge, compounding the impact. Yet the properties will not qualify for the voluntary purchase scheme.

The Group is disappointed that the Government has not seen fit to match the compensation payments paid in the safeguarding zone in its proposals for the voluntary purchase scheme. It is our understanding that home-loss payments and the reimbursement of removal expenses were included in the payments made under the equivalent scheme for HS1, so we are at a loss to understand why it is proposed that they are excluded from the scheme as proposed for HS2.

We do not accept the reasons for the reduced compensation payments given in paragraph 2.19 of the Consultation Document. The underlying reason, though not directly expressed, appears to be that the Government does not consider that the owners of properties in the VPZ "need" to move. It may well be that no such owner will be forced out of his home by a compulsory purchase order (CPO), but the impacts of HS2, real or imagined, may be sufficient stimulus to drive owners away. In such circumstances whether a CPO is likely or not seems totally irrelevant.

The Group feels that to proceed for HS2 on terms that are inferior to those offered for HS1 would be a retrograde step.

Whilst the residents of Cubbington will not be directly affected by it, the Group's sense of fair play compels us to comment that we regard the decision to exclude properties in "urban areas" from the benefits of the voluntary purchase scheme as discriminatory and unfair. We have noted the reasons for this exclusion given in paragraphs 2.13 and 2.16 of the Consultation Document. Whilst we agree that, due to a number of factors, the impacts of HS2 upon residents are likely to be more severe in rural areas, we do not see this as sufficient justification to exclude properties in urban areas from the benefits of the voluntary purchase scheme entirely. We suspect that this decision may have been made on cost grounds, rather than on the basis of what is fair.

We strongly urge the Government to rethink this decision and suggest that a solution that applies different rules to the drawing of the VPZ boundary in urban areas may be a suitable compromise.

For similar reasons to those that we expressed against Question 1, the Group regards uncertainties of the type disclosed in paragraph 2.20 of the Consultation Document regarding the treatment of properties that lie only partially within the voluntary purchase zone as unsatisfactory. Again we suggest that the Government should draft more precise proposals that will remove any ambiguity.

The Group notes, from paragraph 2.17 of the Consultation Document, that the classes of property owners that will be eligible for benefits under the voluntary purchase scheme are the same as those defined for the advance purchase scheme. For the same reasons as we gave in our response to Question 1, we wish to see the scope of the eligibility requirements widened to include landlords and owners of second homes.

The Group notes that the property valuation procedures for the voluntary purchase scheme and the long term hardship scheme, as described in paragraphs 2.18 and 4.17 of the Consultation Document, are not consistent. We suggest that the same approach should be employed across the two schemes.

The Group understands that, with the VPZ boundaries set as currently proposed, the maximum number of properties that will qualify for the voluntary purchase scheme along the whole stretch of the Phase 1 HS2 line is 813, but that not all of these are likely to be acceptable within the rules of the scheme. On a route-wide basis the voluntary purchase scheme will, accordingly, have very little impact on HS2 blight and the property value losses of the many residents living along the line.

The Group strongly suggests that the voluntary purchase scheme, as currently proposed, is insufficient and that the boundaries of the VPZ should be expanded to encompass more properties.

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

On the basis of the current proposals for the safeguarding zone, no properties in Cubbington will come within the scope of the proposed sale and rent back system. The Group is disappointed that this is the case, as we feel that the opportunity to receive payment for one's home, and yet to be able to remain in residence, will remove some of the stress, both emotional and financial, that moving home entails.

We understand that the maximum number of properties that will be able to benefit from this scheme is even less than for the voluntary purchase scheme, at 338. The actual number of properties that qualify will be even less than this figure, when ownership class exclusions are taken into account.

For this reason, the Group does not view this scheme as contributing to the alleviation of blight, but rather to reducing the impacts of moving house upon a very small number of individuals.

The Group does not feel that the limitation of the scheme to properties scheduled for demolition is necessary. In particular, we do not view the justification of this limitation given in paragraph 3.6 of the Consultation Document as sufficient.

The Group notes, from paragraph 3.5 of the Consultation Document, that the classes of property owners that will be eligible for the benefit of the sale and rent back scheme are the same as stipulated to be able to issue a Blight Notice. For the same reasons as we gave in our response to Question 1, we wish to see the scope of the eligibility requirements widened to include landlords and owners of second homes. In connection with this, the Group notes that a degree of ambiguity has been introduced by paragraph 3.7 of the Consultation Document. For similar reasons to those that we expressed against Question 1, the Group regards uncertainties of this type as highly undesirable. Again we respectfully suggest that the Government should draft more precise proposals that will remove any ambiguity.

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

The Group is totally incredulous that, following a gathering of views as a part of the wider HS2 public consultation in the summer of 2011 and after fifteen months of deliberation, all the Government has been able to come up with for the residents of Cubbington is virtually a continuation of the "stopgap" scheme that was put in place in a hurry, and was only intended to last until a "better" scheme was put in place.

We have seen the EHS in operation. The Group's view is that the primary aim of the scheme, and those administering it, has been to limit the number of "payouts" to the absolute minimum. In this it, and they, have been signally successful; in 28 months of operation only 100 acceptances have been issued, an average of under four per month. For reasons that we will elaborate on in our response to Question 5, we also regard the operation of the scheme as deeply flawed; it is an affront to the principles of natural justice.

But the position is actually worse than this. The proposed long term hardship scheme has some "tweaks" applied that appear to make the chances of benefiting from it even less than under the EHS. These include changes to the ownership eligibility requirements and in the time that a property must have been on sale. We can only see

this tightening of the rules as retrograde. In view of the appallingly low payout rate of the EHS, surely the Government should be looking to improve the scheme, not make it harder to qualify. The Group's view is that the long term hardship scheme will do very little to improve the lot of our residents and, over the route as a whole, will have negligible affect on the generalised blight that the HS2 proposal has caused.

The Group wishes to comment in detail on the five criteria identified in paragraphs 4.4 to 4.10 of the Consultation Document. We note that these are the same five criteria as are employed to judge eligibility for the EHS, with some modifications made to the details.

Criterion 1 (property type) - We note from paragraph 4.5 of the Consultation Document that, unlike the EHS, owner-occupiers of business premises, owner-occupiers of agricultural units and mortgagees repossessing a property have been omitted from the list of eligible owners, without any reasons being given. The Group regards this as a retrograde step, particularly as it has been done without an explanation being offered. In the absence of any good reason being offered and in the interests of fair treatment for all, we wish to see these classes of applicants restored to eligibility. Also, for the same reasons as we gave in our response to Question 1, we wish to see the scope of the eligibility requirements widened to include landlords and owners of second homes.

Criterion 2 (location of property) - We note from paragraph 4.6 of the Consultation Document that the panel will be required to consider if a property "will be substantially adversely affected by the construction or operation of the railway" when judging whether this criterion has been satisfied. This phrase has been substituted for the "on the line of the route or in close proximity to the route" used for the EHS; no justification for this change, or explanation of its significance, has been provided. The Group considers that, aside from this, the "new" version is as ill-defined as the "old" and exhibits the same weakness in that it requires the panel to make a value judgement. In this respect, it is very prone to inconsistency in application, resulting in unfairness. The Group feels that the panel will be incapable of making judgements about the impact of the location of any property upon the extent of blight, and has the view that Criterion 2 should be assessed on the basis of evidence of market loss from qualified valuers. We respectfully suggest that Criterion 2 should be drafted to provide clear and unambiguous guidance to the panel on this basis.

Criterion 3 (effort to sell) - We note from paragraph 4.8 of the Consultation Document that it is proposed for the long term hardship scheme to extend the minimum period that a property must have been on sale from the three months that applies for the EHS to twelve months. The reason given in that paragraph for this quadrupling of what was deemed appropriate for the current hardship scheme is "to take account of the difficult market conditions currently being experienced across the country". The Group fears that, if the Government persists with this proposal, it will result in the long term hardship scheme exacerbating existing hardship situations. The majority of hardship situations require urgent solutions, and as time goes by without resolution it is often the case that the extent of the hardship increases. For the Government to require hardship cases to wait twelve months before being eligible to apply for relief demonstrates an extraordinary lack of compassion.

Whilst it is also a condition of the EHS that an applicant becomes ineligible if an offer within 85% of the unblighted market price is received during the sale period, the Group has never understood the logic of this. It seems totally unfair for a successful vendor to be expected to stand a loss of up to 15% on the sale of his property, when an unsuccessful vendor, but successful scheme applicant, will receive the full unblighted market price in compensation.

Also this requirement fails to distinguish between an "offer" and a "sale". For example, the Group has recently come across a case where a sale was agreed but the purchasers were unable to contract for the sale due to an inability to secure a mortgage on a property blighted by HS2; the surveyor appointed by the mortgagee valued the house at £0 for mortgage purposes.

Of course, mortgages are often not associated with a sale, but are applied for by home owners to finance some additional requirement, such as home extensions. It would appear to follow, from the example just given, that HS2 blight may affect the ability of some home owners to secure a second mortgage. This problem does not appear to be addressed at all by the long term hardship scheme proposals.

The Group also notes that paragraph 4.8 requires the applicant "to demonstrate that HS2 rather than any other factor was the primary reason they had been unable to sell their property". No indication is given in the Consultation Document of how the Government expects an applicant to satisfy the panel in this matter. We respectfully request that clear and unambiguous guidance is provided as to what is expected.

Criterion 4 (no prior knowledge) – Whist the condition set out in paragraph 4.9 of the Consultation Document appears, on the face of it, to be reasonable, the group feels that the Government may not have taken due account of the impact that it may have on the willingness of any subsequent would-be purchaser to agree a sale. The problem is that, whilst the vendor may satisfy this criterion, the purchaser on any subsequent sale would not.

The Group notes, from the statistics provided in response to Freedom of Information request FOI12 406, that as at 1st May 2012 (the most recent statistics provided in that FOI response) no EHS applications had been rejected citing failure to comply with Criterion 4. This suggests that the Government may consider that dropping, or modifying, Criterion 4 would be a low-risk course.

Criterion 5 (hardship) – This criterion betrays the Government's total lack of compassion and fairness in its past and proposed dealings with property owners impacted by the HS2 proposals. It is clear that the purpose of this criterion is not to establish a scheme that will work to the general benefit of those who suffer financial loss on house sales, but one which will restrict taxpayer liability by confining eligibility to a small fraction of that group, due to the imposition of an arbitrary "hardship" requirement. The Group's view is that the acceptability of the long term hardship scheme, on the basis that it is the only proposal for compensation that is applicable to the residents of our community, may be determined considering this one criterion alone; it is most emphatically not acceptable to us and we demand a scheme with wider scope.

The Group notes the proposal in paragraphs 4.10 to 4.13 of the Consultation Document to take a longer term view on the question of hardship. We welcome this proposal,

subject to seeing how it is applied in practice. The Group are pleased that the Government has recognised the practice of using a property as a means of saving for retirement, something that is not mentioned in the EHS guidance document {*High Speed Two – Exceptional Hardship Scheme (EHS): Updated Guidance and Application Form*}. However, our welcome is qualified by fears of whether any real benefit will be felt by the majority of downsizing couples, due to the potential for the rigorous application of a hardship test by the panel.

The Group can find no reason to object to the proposal in paragraph 4.18 of the Consultation Document to limit the validity of offers to six months. We welcome the proposal in paragraph 4.19 for reapplications to be tested only on any criteria that the initial application did not satisfy.

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

An applicant to any "hardship" scheme will generally have found themselves in a distressing situation and may not see any way out of current difficulties. Much will be riding on the outcome of the application. The administrators and adjudicators of such a scheme owe it to all applicants to treat them with the utmost understanding, consideration and, above all, consistency and fairness.

To all intents and purposes the panel that will adjudicate on applications to the long term hardship scheme will operate as a tribunal. The Group's view is that this status places the obligation upon the panel to operate justly and in accordance with the established practices of the Law. As we have already contended, it is paramount that the panel should operate to ensure that applicants are treated fairly, but adherence to the Law places even more specific obligations upon the panel.

The Group firmly believes that the Government should, in the operation of the long term hardship scheme, have due regard for the maxim coined almost a century ago by Lord Chief Justice Hewart:

"… it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

Rex v Sussex Justices; Ex parte McCarthy [1924] 1 KB 256 at 259.

It appears to be the intention, more or less, to carry on the ways of the EHS in the proposed *modus operandi* of the long term hardship scheme. If this is a correct reading of the intention, then this would perpetuate the grave injustices that have been committed in the operation of the EHS. Justice has most emphatically not been "seen to be done", as the detail of the deliberations of the EHS Panel has not been made known to applicants, but even with full release of information it would be hard to see "justice" as a quality governing the Panel's procedures. Specifically:

- The exclusion of the applicant from his panel hearing contravenes a fundamental principle of our legal system; the right of open justice. This practice is not only fundamentally unjust, but it engenders dissatisfaction with panel decisions. The practical problems that the Government feel may arise from allowing the applicant to attend the panel hearing, as set out in paragraph 4.23 of the Consultation Document, are insufficient grounds to deprive applicants of a basic legal right. The minor irritations identified, that open justice would "significantly

lengthen the time taken to reach a decision" and make "the process overly bureaucratic", must be suffered in the interests of the applicant's human rights.

- Unlike any example of a tribunal that we can think of, the EHS scheme does not provide for any appeal mechanism that allows an aggrieved applicant to refer a panel decision to a person or body independent from HS2 Ltd. The Group finds this inexplicable; the right of appeal is a fundamental protection from injustice. For the long term hardship scheme, as proposed, also to lack this facility is fundamentally wrong.
- The Group understands from its contacts with applicants to the EHS, that the practice has been to gather any additional evidence that the EHS Secretariat deems necessary for the EHS Panel to come to a decision, without necessarily making reference to the applicant. Indeed, the applicant is advised that this may happen in the section "Application Process" of the document *High Speed Two – Exceptional Hardship Scheme (EHS): Updated Guidance and Application Form*. Whilst we do not object to the EHS Secretariat obtaining its own evidence, we consider that it then follows that it is incumbent upon the EHS Secretariat to disclose any such evidence to the applicant. Further any such disclosure must be made at the earliest possible opportunity in order to allow the applicant time to refute the evidence and gather any counter-evidence that he can. Our understanding is that this disclosure has not happened with the EHS scheme; such handling of evidence would not be tolerated in a court of law.

  This topic is not discussed in the Consultation Document. The Group urges the Government to review the procedures proposed for the long term hardship scheme to ensure that appropriate rules of evidence, consistent with fair play and normal courtroom procedures, are devised and published for the scheme.

Bearing in mind that it is stated in paragraph 4.21 of the Consultation Document that, "confidence in the independence and fairness of a long term hardship scheme will be crucial to its successful operation", we feel sure that the Government will want to address the problems of fairness and justice that we have observed in the operation of the EHS, in its proposals for the new scheme.

The Group welcomes the advice in paragraph 4.26 of the Consultation Document that a "detailed guidance document" will be produced for the long term hardship scheme.

We note the proposal in paragraph 4.22 of the Consultation Document to provide the members of the long term hardship scheme panel with aerial photographs to assist them to decide whether Criterion 2 has been satisfied. Whilst the Group has no objection to this proposal, indeed we feel that the panel members should be furnished with everything possible to help them to make a correct decision, we regard aerial photography as a helpful addition to, rather than a replacement for, site visits. Whilst we note the opinion given in paragraph 4.23 that site visits would "significantly lengthen the time taken to reach a decision", we do not think that this is a sufficient reason for the panel members not to make site visits. Such visits will not only improve the accuracy of the panel's decisions but will enable panel members to meet the applicant in an informal setting. This should help to improve applicant satisfaction with the process and decisions of the panel.

The Group welcomes the advice in paragraph 4.15 of the Consultation Document that failed applicants will be given "a full explanation of why [their] application was unsuccessful". The experience of the Group is that too often the rejection letters sent to failed applicants to the EHS scheme have given insufficient information.

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

No properties in Cubbington are above tunnels; this will remain the case even if our proposal to tunnel under South Cubbington Wood, in order to save this ancient woodland from destruction, is accepted. However, the Group has some comments to offer on the proposals to reassure the owners of properties above tunnels.

The Group welcomes any proposals that may "provide reassurance to existing owners and occupiers" of properties above tunnels. However, what is proposed is such a limited scheme that we doubt that it will achieve its stated aim.

Whilst the Group welcomes the undertaking in paragraph 5.7 of the Consultation Document to publish "a clear, thorough and fully-evidenced assessment of the UK's recent history of tunnelling", we have doubts that HS2 Ltd has sufficient credibility with local communities for any such publication to carry any weight with those who may have concerns. Any such document would probably be believed about as much as the sound booth demonstrations in the summer of 2011. Accordingly, we believe that, to have any credence, it is essential that this document must be produced by a truly independent and trusted organisation such as the Institution of Civil Engineers.

Whist the Group understands why the sub-surface safeguarding area normally extends 30 metres either side of the track, we consider that this is far too small a distance to limit the tunnel "guarantees". We believe that fears about the impacts of tunnels, particularly due to subsidence and vibration, are likely to extend to the owners of properties outside of this very small zone.

Accordingly, the Group requires a clear undertaking to be given that the sub-surface safeguarded zone above tunnels will have no relevance to the proposals in section 5 of the Consultation Document.

In addition, the Group makes the following specific recommendations:

- Regarding the proposals to carry out "Schedule of Defects" surveys in paragraphs 5.9 to 5.11 of the Consultation Document, we believe that any property owner in the vicinity of a bored tunnel should be able to request such a survey, rather than only the owners of properties identified as at risk by HS2 Ltd.
- Regarding the proposals in paragraph 5.12 of the Consultation Document, we believe that a property owner in the vicinity of a bored tunnel should be able to request an "after" survey at any time, not just within two years of the opening date of HS2.
- Regarding the proposals in paragraph 5.16 of the Consultation Document, we believe that a limit should be established for vibration levels and that this should be published, together with a justification for the level chosen.
- Regarding the proposals in paragraphs 5.15 to 5.17 of the Consultation Document, we cannot see why Settlement Deeds need to be limited to within 30 metres of

the tunnel centreline; they should be available to any property owner on request. Regarding the comment in paragraph 5.17 that further details of Settlement Deeds will be provided "closer to the time of construction", we suggest that these should include proposals for transferring a deed to a new owner if the property is sold.

Question 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?

The Group does not believe that the provisions described in section 7 of the Consultation Document will have any impact upon Cubbington. However, as local taxpayers, we are anxious that all costs associated with the provision of replacement social housing should be borne by the HS2 project, and that no burden should be placed on local authority finance.

General impression of the proposals in the Consultation Document

In his "Foreword" to the Consultation Document the Secretary of State for Transport describes the compensation proposals as "an innovative package of measures". We feel bound to say that we have failed to detect any "innovation" in the package described in the Consultation Document. What the package appears to be is a combination of statutory relief, with some discretionary elements, a reworking of the scheme put in place for HS1, with reduced benefits, and a virtual clone of the HS2 EHS, with further restrictions on eligibility. So where is the innovation?

The press release from the Government that was put out to mark the publication of the Consultation Document was headed "Government unveils generous HS2 compensation package". Again, we cannot say that we have found any evidence of generosity in the Consultation Document. The proposals will leave the vast majority of property owners suffering the effects of HS2 property blight unable to seek any relief for losses that they may suffer in normal property sales or remortgaging transactions. Such people are bound to be at a loss to find much generosity in the Government's proposals.

The Rt Hon Philip Hammond MP, when he was Transport Secretary, told the House of Commons in connection with HS2:

"I have indicated that we will seek to go further than has happened with previous such infrastructure schemes in the UK, because it is right and proper that individuals who suffer serious financial loss in the national interest should be compensated."

He also said, on the same occasion that:

"… developing European jurisprudence in the area of property rights and the need for Governments to compensate is pointing towards more generous compensation becoming the norm, and I suspect that that will be the case for future projects."

(Both in Hansard for 20th Dec 2010, Column 1207).

Mr Hammond's promises "to go further" and for "more generous compensation becoming the norm" appear to be in sharp contrast to the remarks attributed to Simon Burns MP, Minister of State for Transport, in the press release referred to above:

"The compensation package announced today is comparable with the arrangements put in place for homeowners affected by the construction of HS1."

In fact, in terms of the amount of compensation to be paid, the package described in the Consultation Document is worse than the HS1 scheme.

So where are the improvements promised by Mr Hammond?

The question that the Government must answer was encapsulated by David Wolfe QC, counsel for the HS2 Action Alliance, in his opening remarks on day 8 of the HS2 judicial review (page 16, line 24 to page 17, line 13 in the transcript):

"My Lord, the backdrop then to the overall issue here is whether the people who just happen to live and own properties close enough to be affected by HS2 -- and you will have seen, my Lord, that HS2 Limited contacted 172,000-odd households for the purpose of consultation on that basis …

"…whether those people should personally suffer in support of the claimed public interest in HS2, including through the loss of value in their homes and, arising from that, a potential inability to move or remortgage over a period of 15-plus years."

The Group is in no doubt that the answer to Mr Wolfe's question is a resounding no. However, we are equally sure that the proposals in the Consultation Document will do little to ease the suffering that he identifies.

The number of property owners likely to be helped by the Government's proposals is small: the maximum number who will benefit from the advanced purchase scheme is, on current figures, about 750, the voluntary purchase scheme around the same total, and the long term hardship scheme, if it operates at a similar level to the Exceptional Hardship Scheme, will help about four owners a month. These totals will not make much of a dent in Mr Wolfe's 172,000-odd.

The Group contends that the Government is ignoring the "duty of care" that it owes to "people who just happen to live and own properties close enough to be affected by HS2" in order to keep the costs of the HS2 project down. Put bluntly, the Government appears to be expecting those unfortunate people to help finance HS2, in some individual cases to the tune of six-figure sums.

For these reasons, the Group rejects the package of proposals in the Consultation Document as "not fit for purpose". It is time for the Government to accept significant revisions to the advance and voluntary purchase schemes and to discard the proposed long term hardship scheme. In place of the hardship-based scheme the Group wishes to see a proposal that compensates for loss without the requirement to demonstrate hardship.

We require the Government to go back to the drawing board and look for a better way forward. As a starting point, we suggest that it goes back to the proposals in "Annex A" of the document *High Speed Rail: Investing in Britain's Future: Consultation* and in particular the "property bond scheme" described in paragraphs 24 and 25. Although this approach was rejected by the Government in Chapter 7 of the document *High Speed Rail: Investing in Britain's Future – Decisions and Next Steps*, and this rejection is restated in the Consultation Document, we believe that it offers a much more intelligent, and potentially more efficient, way of addressing the generalised blight

issue; it is surely right that the Government should rescue this proposal from the waste bin and reconsider it.

Although the Government has yet to put its faith in the property bond approach, it has already been selected for some privately-funded developments (e.g. BAA at Heathrow and Stansted and Grand Central Railways), albeit, as pointed out in the Consultation Document, for schemes that did not reach full completion. The principle also has the support of the British Bankers' Association, the Council of Mortgage Lenders and the National Association of Estate Agents. For the Government to reject this proposal out of hand, in the face of support from such eminent quarters, seems very strange indeed.

The Group also feels that the current consultation represents a good time for the Government to review the recommendations on the statutory compensation regime of three bodies: the Interdepartmental Working Group on Blight (reported in 1997), the Compulsory Purchase Policy Review Advisory Group (reported in 2000) and the Law Commission study (Law Com No 286, 2003, and Law Com No 291, 2004). The findings of these bodies appear to have had little impact on Government policy, so far.

We also wish to recommend the proposals of the Country Land and Business Association (CLA) to the Government (*Fair Play: CLA Vision for Reform of the Compulsory Purchase System*). As well as proposing some improvements to compulsory purchase procedures, that we support, this report also confirms the support of the CLA for a property bond scheme.