DETR
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Interdepartmental Working Group on Blight:

Final Report

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1. Introduction

1.1 It is widely perceived that the emergence of proposals for major infrastructure projects carries with it the potential for depreciation in the local property market and losses to business profitability in addition to the wider benefits the proposals are designed to bring. Although this perception is not new, plans for a high speed rail link from London to the Kent coast have generated a good deal of debate, partly because of the numbers of people affected by the proposals, and partly because of the novelty — in the 20th century — of a plan for the construction of a major new railway. This phenomenon which links depreciation in property values, and business losses, directly to uncertainties generated by proposals for major development projects is known as generalised (or perceived) blight.

House of Commons Select Committee on the CTRL

1.2 The House of Commons Select Committee on the Channel Tunnel Rail Link (CTRL) Bill was concerned at the difficulties experienced by property owners along the routes which had been proposed for the CTRL. Ministers therefore established an interdepartmental working group on blight (IDWGB — 'the Group') to review the scope, cause and effects of blight arising during the various stages of major infrastructure projects and to consider whether any practical changes can be made to the existing arrangements for property purchase and compensation. The full terms of reference are at Annex A.

The work of the group

1.3 A detailed progress report and an account of the representations made to the Group was presented to Parliament on 20 November 1996. In summary, the Group published a discussion paper in June 1996, in response to which more than 60 submissions were received. The Group held a number of meetings with individuals and organisations, including officials from overseas government departments. It also collected evidence on property price trends in areas affected by proposals for major infrastructure projects.

Exceptional hardship

1.4 As a result of an undertaking given to the Select Committee on the Parliamentary Commissioner for Administration, the Government formulated a scheme to provide redress to those affected to an extreme and exceptional degree by generalised blight from the Channel Tunnel Rail Link between June 1990 and April 1994. The review out of which the scheme emerged had a quite different remit to that of the IDWGB and was concerned with generalised blight related specifically to a period of uncertainty about the route of the CTRL during the development of the project. It was not a general consideration of blight and property purchase arrangements. Enquiries about the 'Exceptional Hardship' scheme should be addressed to CTRL Division, Department of the Environment, Transport and the Regions, Zone 3/29, Great Minster House, 79 Horseferry Road, London SW1P 4DR.

1.5 This Report sets out the findings of the IDWGB, with options for change. (Throughout the Report there are explicit references to existing and superseded legislation for England and Wales. However, broadly similar legislative provisions apply for Scotland and the general history and policy behind the compensation regime is the same north and south of the border. The main Scottish provisions are shown, in square brackets, where their English equivalents first appear.)

2. The scope of the review

2.1 Both the Group's Terms of Reference and the context in which it was established clearly determine the focus of the review: blight consequent upon proposals for major infrastructure projects. There is a range of factors, natural and man-made, which may have 'a blighting effect' on property values: coastal erosion or natural emissions from the ground of noxious substances are examples of the former; the vast spectrum of development projects — from a major industrial complex to the unsympathetic redevelopment of an adjoining house — are examples of the latter. It is axiomatic to say that when one buys property one buys into a risk.

Other forms of blight

2.2 These various circumstances have not themselves been subject to scrutiny by the Group but they have not been totally ignored. The Group notes that some circumstances giving rise to blighting effects are accepted by society as a whole. Naturally occurring circumstances are either seen as 'Acts of God', or are wholly predictable, or are fully discernible by the prudent person. Man-induced circumstances are either sanctioned by a democratically controlled planning system, or else are seen as the price society as a whole is prepared to pay in return for allowing people the maximum enjoyment of their property and its potential.

Abandoned mineshafts

2.3 Notwithstanding the Group's terms of reference, it was asked, during the course of its work, to consider the position of those who found that their property had been devalued (or rendered unsellable) by the discovery of abandoned mineshafts nearby. The Group has seen the Report of Trade and Industry Committee into the problems associated with former mineshafts. It recognises that the discovery of abandoned mineshafts in the vicinity of a property may have consequences, both for the insurability and the marketability of the property. However, the Group concluded that, real though this problem is, its nature is so far removed from the problem of generalised blight arising from proposals for major infrastructure developments (problems which, as we shall explain, are rooted in the public's perception of the impact on the property market of future developments) that we would not be able to conduct a thorough examination of it without diverting resources from the primary focus of the review. The Group has therefore been unable to make any recommendations which would address the problems caused by abandoned mineshafts.

'Nuisance' and the balance of rights

2.4 Although an individual may view a development as personally undesirable or disadvantageous — in other words 'a nuisance' — the law of tort [in Scotland, delict] is less vague in its recognition of the concept of nuisance. One cannot sue for nuisance on the sole ground that one's interests would be better served were a legitimate development not to take place, even if one's loss is greater than the developer's potential gain. (The possibility that one's neighbour may wish to develop the land in a way which one considers disadvantageous is one of the risks of property ownership. It is, in the Group's view, a lopsided argument which would seek to deny one's neighbour full enjoyment of his land in order that one may benefit from full enjoyment of one's own.) The rationale for statutory compensation (eg. for injurious affection under Part I of the Land Compensation Act 1973 [Land Compensation (Scotland) Act 1973]) is that the development, having proceeded on the basis of statutory authority, is not susceptible to claims under common law for nuisance. So if the developer's action would not, in other circumstances, be actionable in law for nuisance there are, by extension, no grounds for the compensation regime to provide a proxy remedy.

2.5 In sum, society accepts that circumstances may, from time to time, work to our disadvantage. We are entitled to redress only if our rights under common law or statute have been infringed.

Deciding which forms of blight merit compensation

2.6 Consideration of one particular cause or description of blight must take account of all the other forms of blight which do not attract compensation and then consider how the sort of blight in question is *qualitatively* different from those others. (We do not believe *quantitative* differences to be germane: few would argue that a blighting effect is more deserving of compensation solely because more people are affected by it. If one person affected by a particular circumstance suffers a loss of £1,000, that person is neither more nor less deserving of compensation than another person whose only distinguishing characteristic is that he or she is a member of a *group* of persons, all of whom have suffered a £1,000 loss.)

2.7 There is, in the Group's view, no logic in considering compensation for one cause or description of blight without weighing the merits of the case against the other, non-compensatable, causes of blight. If it is decided that one circumstance merits compensation it would need to be demonstrated why the others do not. In the specific circumstance before the Group failure to do so would place a unique, unjustifiable and illogical burden on that class of development which is concerned with the provision of infrastructure.

2.8 It is also important to consider whether the very action of paying compensation to one person may actually make matters worse for everyone except that one person. (If compensation is deemed to be due to the owner of number 1 The High Street, will that mean that number 2, being next door to a property which is 'officially' devalued, will also be devalued by proximity? And number 3? Such contagion can result in 'snowballing' blight.)

3. Consequences of compulsory purchase

Types of planning-related blight: 'Statutory blight'

3.1 When an interest in property is compulsorily acquired, in whole or in part, compensation is payable. Compensation may also be payable to those living near the project if they suffer direct, adverse effects, known as 'injurious affection'. The law recognises that the formal announcement of an intention to acquire property by compulsion will probably render a property unsaleable: it will be statutorily blighted and certain rights to redress may accrue to the owner. Statutory blight is discussed a little more fully in paragraph 3.3 *et seq* — although its implications permeate the whole of this report.

'Generalised blight'

3.2 However, as alluded to above, it is claimed that there is another form of planning-related blight, unrecognised by statute, which also affects the local property market. This phenomenon is at its strongest during the early stages of project planning, when there is most uncertainty about the impacts of the project, but may continue, to some degree, once the project is built. (For example, property may decline in value if the view has been adversely affected.) It was this second class of blight — 'generalised blight' arising in the context of major infrastructure projects — which the Group was established to consider.

Statutory blight

3.3 It is important that the differences between statutory and generalised blight are fully appreciated. Generally speaking, statutory blight refers to the blighting effects on property of a known probable future intention to acquire by compulsion an interest in the property. It is defined in terms of property which falls within one or more of the paragraphs in Schedule 13 to the Town and Country Planning Act 1990 [Sch 14 of the Town and Country Planning (Scotland) Act 1997]. These statutes recognise the adverse effects that a future intention to acquire an interest in property compulsorily may have on the ability of a landowner to sell the land. Consequently, they provide that, once a formal indication has been given that this will happen, defined classes of owner-occupier may serve a 'blight notice' on the relevant authority. If accepted, a blight notice requires the authority to purchase the claimant's interest in the land. Compensation is assessed as if the interest were being acquired compulsorily (in other words, the owner will receive open market value (OMV) and any adverse effect on value attributable to the scheme will be ignored). Key characteristics of statutory blight are that the detriment suffered by property owners is measurable and unequivocally attributable to the development in relation to which compulsory purchase powers may be used.

Generalised blight

3.4 Generalised blight, being unrecognised in statute, can mean whatever the user of the phrase wishes it to mean. However, the term is typically taken to describe any actual or assumed depreciation in the value of property which may be attributed to a proposal for an infrastructure scheme. (Some argue that generalised blight also encompasses lost business profits. The position of businesses is considered in paragraph 3.6 *et seq* below.) This depreciation in property values may arise because of the perceived risk that the property will be acquired for the scheme and/or because of the perceived risk that the use of the works may have an adverse effect on the property, its surroundings or any business carried on in it. But whereas proposals for development may coincide with a reduction (or indeed increase) in property values, the causal link between the proposed development and the depreciation (or appreciation) is more difficult to establish than in the case of statutory blight. Moreover, statutory blight is the wholly predictable and measurable consequence of a defined action or sequence of actions. This is not the case with generalised blight, whose effects depend primarily on the attitude of possible purchasers of the property. These attitudes are susceptible to misperception, misrepresentation and uncertainty. Indeed, the Group concludes that, in many instances, generalised blight is the product of all three.

Focus of the review

3.5 The Group was not established expressly to review the law relating to compulsory acquisition, nor to assess the basis upon which compensation should be paid. However, it quickly became evident that uncertainty or dissatisfaction with some aspects of existing arrangements for compulsory acquisition and compensation sometimes served to heighten anxiety about what might happen if a proposed major infrastructure project were to materialise. The Group noted that most of the discussion generated by the discussion paper published in June 1996 concerned *statutory*, rather than generalised blight. The Group has therefore considered existing law and practice in this light.

Businesses and blight

3.6 But before offering a more precise definition of generalised blight it is necessary to consider the position of business owners under the existing code. A number of respondents from the business community claimed that the current compensation code is skewed to an unfair degree towards providing redress for residential owner-occupiers, leaving business unfairly neglected by comparison. Any consideration of redress for the effects of generalised blight should not, they argue, ignore the losses suffered by businesses. The Group recognises that the current compensation code does provide to residential owner-occupiers redress which is not available to all businesses. However, in the Group's view, it is entirely appropriate that, to the extent that compensation funded out of the public purse exceeds the value of the property being acquired, decisions have to be made as to where that relief should be targeted.

Protection for businesses

3.7 But it is not the case that businesses are unprotected under the current code. The acquiring authority is (save in very exceptional circumstances) obliged to pay the OMV of the interest in the commercial property which it is acquiring, just as it is for owner-occupied residential property. This figure is usually agreed in negotiation between the parties concerned. (If agreement cannot be reached, the case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes.) In certain circumstances (provided that the property was acquired by the authority on or after 25 September 1991) the property owner may become entitled to a further payment of compensation if, within ten years after the acquisition of the property, a planning decision is made which, if it had been made before the property was acquired, would have meant that the OMV would have been higher.

Loss of profits

3.8 There is also an entitlement to compensation for reasonable expenses or losses which a business owner may have had to incur as a direct result of the compulsory purchase, including net losses unavoidably caused to trade or business. The acquiring authority will also pay the proper legal costs of conveyance of the property they are buying.

Evidence of losses

3.9 Evidence of uncompensated losses to businesses was presented to the Group, although, to the extent that the losses were a consequence of blight at all, they mostly related to statutory rather than generalised blight. An example is that of a developer who bought a row of commercial properties with a view to redevelopment but could not obtain planning consent to do so because of a subsequent safeguarding direction. The nature and size of the property precluded the serving of a successful blight notice.

Non-blight losses

3.10 Other scenarios leading to business losses (or non-realisation of speculative profits) may be imagined. Land may be acquired beside a road with a view to developing, for instance, a motor service facility, such development subsequently being rendered uneconomic by the construction of a bypass which diverts most of the through traffic. Or improved transport infrastructure in one commercial area may reduce the attractiveness of available properties in another. But in neither instance is the loss — indisputably a consequence of a development decision — the result of 'blight' in any accepted planning sense, even if the changed trading conditions have caused the business to lose money. An equivalent loss can be asserted by the small shopkeeper whose business is affected by the development of a supermarket in the vicinity.

Gratuitous benefits

3.11 The Group recognises the potential for such losses. But it also recognises complementary scenarios in which businesses receive gratuitous benefits. That same bypass or infrastructure development which thwarts the speculative intentions of one land owner will bring a windfall benefit to the owner(s) of land adjoining the new development. One speculator loses, another gains.

Business risks

3.12 The Group notes that infrastructure developments are not the only influences affecting speculative investments. Returns on investment are to an extent proportional on the totality of the risks involved. The investor who speculates on land may gain (without the need to share those gains with his benefactor) or lose (without right to recompense from him) as a consequence of the perfectly legitimate actions of the owner of adjacent land. Equally, the investor who proceeds with a development may, with equal legitimacy, thwart the speculative intentions of his neighbour without being called upon to compensate him.

Betterment levies

3.13 It is open to any government to recognise business losses and profits and seek to temper them, either by compensating when the development potential of land is reduced by an external action, or by exacting a betterment levy when a gratuitous benefit is bestowed. Arguably, balancing one against the other would be more equitable to the taxpayer. However, the Group is aware of the difficult history of betterment levies, particular in the post-war period. It would clearly be impossible for a nation to carry out business on the principle that any person or body may claim *or should repay* the difference in any case where the lawful use of another's property affects the value of neighbouring property, for better or worse.

3.14 **The Group does not believe that businesses are unfairly treated under the existing compensation code. It acknowledges that legitimate development of land by one party may have consequences for another. However, in the Group's view, such consequences are part and parcel of the accepted risks of business.**

How to define generalised blight

3.15 The Group has noted the view expressed by a number of correspondents which supports a broad definition of generalised blight along the lines set out in paragraph 3.4. However, the adoption of so all-embracing a definition — especially a definition in which the rather imprecise concept of 'attribution' rather than something closer to 'proven causation' is a central criterion for inclusion — would conflict with the requirement to provide a definition which avoids increasing or extending generalised blight Any definition must also be capable of being interpreted financially, with the effects being objectively quantifiable.

Identifying and quantifying losses

3.16 This throws up difficulties: how to quantify a perceived loss; how to identify that proportion of the loss which is wholly and incontrovertibly a consequence of a proposal for, or consideration of, a major infrastructure project (as distinct from, for example, losses arising from changes in the level of national or local demand for particular properties); and how to measure such losses against those which might be caused by any other non-infrastructure development proposal. The quantification of any claimed loss, or the apportionment of such loss to a proposal for a major infrastructure development is, like any assessment of value, likely to be subject to a margin of error. These points need to be resolved before it is possible to assess the merits of additional compensation for loss, or the desirability of any form of additional support for the local property market.

3.17 Nevertheless, the Group recognises that, for a variety of reasons which are discussed below, proposals for (or consideration of) major infrastructure projects clearly do have the potential to affect prices in the local property market. It also believes that the phenomenon is capable of description and definition in isolation from any consideration of redress. Indeed, it is only when the problem is defined that appropriate steps can be identified and taken to reduce the incidence of that phenomenon.

A definition of generalised blight

3.18 **The Group therefore defines generalised blight in the context of this report as a phenomenon characterised by:**

— a significant depression in the capital values of properties; in any instance, the circumstances giving rise to the loss being of a nature distinct from those surrounding non-infrastructure developments,

— in a circumscribed geographical area

and one in which the loss being

— realised, and

— wholly and demonstrably consequent upon a proposal for a major infrastructure development,

is not offset by quantifiable benefits associated with the proposal, nor is it of a duration so short as to constitute, in any rational assessment, a normal and reasonable risk associated with ownership of property.

Major infrastructure project

3.19 As the Group suggested in the 1996 discussion paper, in default of any dictionary definition of 'major infrastructure project', conventional planning usage, together with the circumstances under which the IDWGB was established, dictated that the Group should focus on major transport infrastructure projects — roads, railways, airports *etc.* In the

event, given that much of the ensuing discussion concerns matters of general principle, the relative precision of the review's focus does not necessarily preclude wider extrapolation of the Group's findings.

4. Property price study

4.1 A short pilot study was commissioned from a major building society to see whether it was possible, using data on transactions for which they were the mortgagee, to identify patterns or trends in property transactions and values in an area where generalised blight had been alleged. The pilot study looked at the part of Kent affected by alternative routes for the Channel Tunnel Rail Link. Although the society concerned accounts for about 25% of the mortgage market in Kent, when analysed, the sample size in areas close to the alternative CTRL routes was limited. It was also noted that the period under consideration (from 1988) coincided with the much wider down-turn in the property market and that many of the properties identified were in areas where other adverse environmental factors (eg existing major roads and railways) were having an impact. The researchers concluded that "when the property market fell, properties in good residential areas continued to sell whereas those with adverse environmental features may have struggled to sell without substantial discounting in a buyers market. It was clearly going to be difficult in some areas to apportion falls in transaction volumes and prices due to the adverse environmental factors and the impact of the CTRL." The difficulty of disaggregating the various influences on transactions, and the small sample, means that the researchers' findings are not secure and cannot be extrapolated.

4.2 Nevertheless, the researchers concluded that there was some evidence of a stronger decline in the volume of transactions in areas close to the routes, compared to similar residential areas away from the routes. This might indicate a reluctance to buy in areas affected by uncertainty over the CTRL route, although the decline might equally be attributable to existing environmental factors. This was strongest in the period immediately following the emergence of rival routes in 1989. However, there is also evidence to suggest that more normal transaction levels resumed within a couple of years. No clear trends in prices were discernable.

4.3 In view of the researchers' findings, it was concluded that a full-scale study would not be productive.

5. Overseas experience

5.1 The Group was asked to look at overseas arrangements for compulsory acquisition and compensation. It was clearly essential that we should have done so, as the regimes applying in certain European countries — especially France — are often held up as models which we should emulate. A sub-Group met government officials in Paris, Bonn and the Hague, and the Group received briefings from a number of other European states, from Japan and from the United States.

5.2 Before considering how other countries approach compulsory acquisition and compensation, it is important to bear in mind that these matters are components in entire jurisprudential, statutory and fiscal systems. It is not always possible to cherry-pick those discrete elements of foreign systems which are perceived to be attractive and simply graft them onto our own, without necessitating a string of consequential changes, not all of which would be desirable.

5.3 Those who admire the French system frequently cite the 'premiums' above the open market value of property which, they assert, are payable to those whose property is acquired by compulsion for the purposes of major infrastructure development. No such premiums are payable. French officials (including a representative of SNCF) stated unambiguously that compensation for compulsory acquisition is based on the open market value of the interest in the property being acquired. As in this country, those acquiring property at public expense are constrained to achieve the best value for money: any inclination on the part of those negotiating for the acquiring authority to let prices drift upwards would influence the open market value of neighbouring properties.

5.4 As suggested in the Progress Report, the Group suspects that the self-imposed *ceiling* of +10% the acquiring authority customarily places on negotiations with property owners about what the open market value for a property actually is (to some extent, a subjective figure) is misconstrued by some as a premium paid in all cases. In fact, the French system lacks an equivalent of the Home Loss Payments which, in the UK, provide an additional 10% (up to a maximum of £15,000) to the open market value.

5.5 Detailed enquiries into the German, Dutch, Belgian, Japanese and US systems, and briefings received from other countries all reveal systems under which compensation for compulsory acquisition is based on the open market value of the interest in property being acquired. We found no evidence of any country paying compensation for generalised blight.

5.6 **The Group concludes that adoption of the French system of compulsory acquisition and compensation, as set out in the '*Code de l'expropriation*', or the system of any other country in respect of which we have evidence, would bring no net increase in benefits.**

6. Categories of representation

6.1 A number of proposals emerged during the course of the Group's work, partly in response to the discussion paper, partly from the Group's own deliberations. Some addressed the operation of the planning process, suggesting schemes to reduce the incidence (or the severity of the effects) of generalised blight; some addressed the existing arrangements for compulsory acquisition, and the payment of compensation for injurious affection; and some advocated an extension to the existing arrangements to provide redress for those who might claim to have suffered financial disadvantage as a result of generalised blight. This is how they are grouped below.

6.2 The Group noted that some proposals were matched by equal and opposite counter-proposals. The dichotomies produced by these divergences of view merely illustrated to the Group how problems associated with a phenomenon born of (mis)perception, (mis)understanding and uncertainty may not easily be resolved. In section 7 suggestions put to the Group are presented (sometimes collated) at the head of each paragraph, with the Group's conclusion following.

7. Suggestions for change

7.1 **Suggestion: 'The facility should exist whereby proposals which are contained in structure plans, but in respect of which the appropriate authority has formally resolved not to proceed, may be removed from the plan under a fast-track process'.**

7.1.1 This suggestion addresses the issue of the continued blighting effect of a development proposal which, although contained in a development plan, will almost certainly not be pursued. Although the proposal may effectively be redundant, its continued existence on the face of the development plan (structure plan, UDP or local plan) may serve to prolong its blighting potential.

7.1.2 The Group, whilst doubting that those professionally involved in property transactions would fail to look beyond local plans in their searches (and should therefore be able to identify most of the development proposals which are unlikely to proceed), nevertheless recognises that the arrangements which underpin the development plans process can have the perverse result of making the plan an unwitting extenuator of blight. The extended process under which development plans are prepared and formally adopted or approved (being characterised by extensive consultation, the depositing of the plan for objections to be made, the hearing of objections at examination in public or inquiry and the adoption of modifications) makes the removal of discrete elements a time-consuming and expensive process. The removal from a plan of one element may have consequences for other elements, calling for further amendment of the plan's policies and proposals. And yet, in the circumstance of the relevant authority deciding that it will not proceed with proposals for a development, those proposals are *de facto* — if not *de jure* — no longer an integral part of the development strategy of the area.

7.1.3 All local authorities are enjoined to keep their development plans up to date. There is therefore a regular process of review. Redundant proposals should certainly be removed from the plan at the earliest formal opportunity, and relatively self-contained alterations to the plan can be made reasonably quickly. Local authorities may wish, in addition, to consider whether a formal record of a resolution of a relevant authority not to proceed with an element contained within a development plan might be permanently associated with all definitive copies of the plan. Alternatively, some other way may be found to make known the existence of such formal resolutions to those referring to the plan.

7.1.4 **The Group, whilst recognising the blighting potential represented by the continuance within a development plan of redundant proposals for major infrastructure projects, does not believe that the development plans process need be amended. However, the Group notes that Department of the Environment, Transport and the Regions, in its forthcoming consultation on a revised PPG12, will stress to local planning authorities the importance (a) of including in the plan only those development proposals which have a realistic prospect of coming to fruition within the term of the plan; and (b) removing from plans elements which have become redundant.**

7.2 **Suggestion: 'No proposals for development should be published unless and until resources for their complete execution are guaranteed.'**

7.2.1 It was argued — with road programmes being a favourite example — that schemes were proposed but their execution sometimes delayed, often indefinitely, by the unavailability of resources. The consequence was that a proposal might have the potential to blight property for many years, with the blight being lifted only when the resources become available or when a decision is taken to abandon the proposal.

7.2.2 The Group recognises the blighting potential of a scheme whose completion is adjourned until resources become available. However, for publicly funded projects the suggestion conflicts with the fundamental principle of central government accounting which is predicated upon the three year Public Expenditure Survey (PES) cycle. A major road is seldom completed in less than 12 years, from inception to first use — a consequence, amongst other factors, of extensive public consultation, and environmental and geological assessment. Indeed, it may not be clear that a proposal *should* proceed until exhaustive discussion, study, assessment of alternatives *etc.* have been completed. It is, in the Group's view, neither practicable to telescope this process into three years, nor to attempt to circumvent the PES process by attempting to commit in advance resources which may not be available at a future date.

7.2.3 Increasingly, major infrastructure projects will be funded from private finance. In those cases the private developer is usually unwilling to take the risk of the statutory approval process and financing for the project is not put in place until after the project has been granted the necessary permission. A requirement to earmark private finance resources in advance of publication and approval of a project is not practicable.

7.2.4 **For these reasons the Group does not support this suggestion.** However, for private finance projects in particular, **the Group recommends that further guidance should be issued to those responsible for the programmes concerned to ensure that the blighting effect of speculative proposals are fully appreciated by the proposer.**

7.3 **Suggestion A: 'The period between the emergence of a proposal and its eventual confirmation should be shortened, either by streamlining the planning process; or imposing a statutory timetable for progressing from initial proposal to submission of planning application.'**

Suggestion B: 'Speculative proposals should not be allowed unless and until a full feasibility study had been carried out.'

7.3.1 It being widely accepted that public uncertainty is either a cause or an extenuator of generalised blight, it follows that all possible ways of reducing the period of uncertainty should be explored.

7.3.2 Development control legislation is primarily concerned with the processing of planning proposals once these have been set out in a formal planning application. While Departments encourage pre-application discussions between local planning authorities and applicants, they do not set down any timescale within which a development proposal must reach the application stage, neither do they believe it would be desirable to.

7.3.3 As regards suggestion 'A', the Group believes that it would be very difficult to define when ideas for a particular site had reached the stage of an 'initial proposal' and what degree of change to that initial proposal would then be allowable. Adoption of suggestion 'A' would also remove an important freedom which landowners currently enjoy to consider different options for using their land, to locate the necessary finance within a timescale which suits their circumstances and the particular nature of the site concerned. Developers may quite reasonably move away from their original proposals for a variety of reasons — changes in the local property market, an upturn or downturn in the economy, a wish to respond to local concerns *etc.* It could be very wasteful of both private and public resources if such proposals had to be taken through the full planning process.

7.3.4 In considering different options for developing the site, the developer is bound by section 54A of the Town and Country Planning Act 1990 [section 25 of the Town and Country Planning (Scotland) Act 1997]. This provides for the generality of planning applications to be determined in the light of the development plan for the area unless material considerations indicate otherwise. Plan preparation involves a considerable amount of public consultation and the intention is that it should give both developers and local communities a degree of certainty about the types of development which will and will not be acceptable on a particular site.

7.3.5 The Group is aware that departments have taken various steps to ensure that planning applications are dealt with promptly. The Government has set local planning authorities the target of deciding 80% of planning applications within eight weeks. In Scotland the equivalent target is two months. However, the Scottish Office Development Department recently set tighter targets of 90% for minor householder applications and 85% for minor business and industry and other minor development applications. This recognises that there are a minority of more complex applications which will take longer to decide. The Department of the Environment, Transport and the Regions publishes a six-monthly planning performance checklist which ranks individual district planning authorities according to their performance against the '80% in eight weeks' target. Since September 1996, the checklist has also given separate figures on individual local authorities' performance in deciding industrial and commercial applications. In December 1996 the Scottish Office Development

Department began publishing details of individual authorities' performance in deciding planning applications in the six-monthly 'Planning Bulletin'.

7.3.6 Applicants have the right to appeal to the Secretary of State on grounds of non-determination if their application has not been decided in eight weeks [2 months in Scotland] (or any longer period which they have agreed with the local planning authority). In addition, it was announced in March 1996 that local authorities in England and Wales would be asked to give a date by which a decision would be reached where a planning application had not been decided in eight weeks. Advice on this was included in the 'Know Where You Stand' booklet recently published by the Cabinet Office. This advises that: 'The council should decide your planning application within eight weeks. A few applications raise difficult questions that take longer to decide. If the council needs longer, it will tell you why and give you the date by which it expects to make a decision. In the few cases where this is not possible, the council will explain what still needs to be done and how long this is likely to take.' Similar advice was issued by the Scottish Office Development Department in January 1997 as an addendum to Planning Advice Note 40 'Development Control'.

7.3.7 Departments are also concerned that planning appeals should be determined as quickly as possible and a new circular has recently been issued dealing with best practice in the operation of public inquiries and other planning appeal procedures in England and Wales. This emphasises, amongst other things, the need to make the appeal system more efficient, less expensive and more user-friendly for all parties. A Consultation Paper was published in January 1997 on proposed changes to the appeals system which would deliver these sought-after increases in efficiency and effectiveness. In Scotland new procedure rules for planning inquiries came into effect in May 1997, along with new best practice advice, in a revised and updated circular the emphasis of which is on improving the efficiency and effectiveness of the inquiry process without impeding the ability of those with an interest from taking part.

7.3.8 **The Group does not believe that it would be helpful to set an overall time limit for the determination of planning applications.**

7.4 **Suggestion A: 'There should be greater public participation in the process leading up to the submission of planning applications for major infrastructure projects/No decisions should be taken behind closed doors.'**

Suggestion B: 'Full, accurate and timely information on all aspects of a proposal for a major infrastructure project should be published by the developer.'

7.4.1 It is possible that some of these difficulties which suggestion 7.3 'A' seeks to address could be overcome if a significant part of the preparatory work were carried out before the proposal enters the public domain, as advocated in suggestion 7.3 'B'. This, of course, does raise the very practical problem of how one could disguise much of the indispensable preparatory fieldwork. Surveyors, geologists and others attempting to carry out their work discreetly would soon be spotted — raising understandable fears about what sort of development it might be that necessitated clandestine operations.

7.4.2 But a more important question relates to how this behind the scenes work could be reconciled with suggestion 7.4 'A' — a suggestion which reflects the desire for increased participation in the planning process which has been evident over the years? On the other hand, is it really practicable — or desirable — for all preliminary discussions and decisions to be released into the public domain? Many decisions will need to be made before a fully coherent proposal is produced: to publicise every idea, option and working hypothesis would: (a) tend to inhibit the full consideration of all options, and (b) spread generalised blight far more widely than would otherwise be the case.

7.4.3 Suggestion 7.3 'B' on the one hand and 7.4 'A' on the other — each of which is founded upon a perfectly defensible premise — being mutually exclusive, the Group suspects that the optimum solution lies somewhere in between. The task is for all those involved in the process to identify and agree that middle way. The Group cannot reconcile the conflicting desires for more and less openness. Intuitively, it supports the maximum dissemination of information, subject to the imperative of keeping confidential information, the premature disclosure of which might serve to extend generalised blight. The desire for greater consultation and openness over the planning of major infrastructure developments is reflected in the draft supplement to Planning Policy Guidance 13: Transport (1994) issued for consultation between February and May 1997. This offers guidance on bringing the planning of trunk roads within the Regional Planning Guidance system and should result in a greater involvement of local authorities, developers, transport operators and environmental organisations, and a wider consideration of transport and land use solutions. The guidance explicitly warns regional conferences of the risk of creating generalised blight by proposing 'wish lists' of projects which are unlikely to be affordable, whether by the public or private sector. The proposal to publish this guidance has been put on hold pending the outcome of the Roads Review, the preparation of the White Paper on integrated transport policy and the development of proposals on Regional Development Agencies.

7.4.4 **The Group recommends that a code of practice on the dissemination of information by major infrastructure developers be drawn up, in consultation with local authorities and other interested parties.**

[*Note: This recommendation was approved by Ministers in advance of the conclusion of the Review. A draft Code of Practice on the dissemination of information during the various stages of major infrastructure developments is published for public consultation along with this Report.*]

7.5 **Suggestion: 'Before any scheme is announced, the exact perimeters and boundaries should be defined. Safeguarding directions and limits of deviation should be as narrow as possible.'**

7.5.1 Whilst recognising that initial boundaries and limits of deviation which subsequently contract must, by their nature, spread any potential for blight beyond the area which is finally delineated, the Group concludes that exact perimeters and boundaries will usually only become apparent as the proposal is developed and after initial analyses and assessments are completed.

7.5.2 The Group accepts that the perimeters and limits of deviation of proposed developments, and the consequent safeguarding directions should be defined as narrowly as possible.

7.5.3 **The Group has no evidence to suggest that safeguarding directions are currently drawn more widely than the exigencies of the proposed development require.**

7.6 **Suggestion: 'The adequacy and comprehensibility of information on the rights of those facing compulsory acquisition which is generally available should be evaluated.'**

7.6.1 In the period before the details relating to a proposed development are finalised, many may fear that their property rights will be affected. In the period following publication of the details, it will become clear to some that their property rights will certainly be affected by the development. This may involve the compulsory acquisition of the freehold of all or part of their property, or some lesser interest in it; or it may presage an interference in their enjoyment of their property. Either way, it is highly probable that this will be the first occasion on which they have been faced by such circumstances and they will, in all likelihood, be uncertain (or totally unaware) of the statutory procedures which will follow and of their rights under them.

7.6.2 The Department of the Environment, Transport and the Regions, the Welsh Office and the Scottish Office publish booklets dealing with various aspects of compulsory purchase and compensation. Those for England and Wales are freely available and are distributed, as a matter of policy, by the Highways Agency whenever they propose to acquire property by compulsion. In Scotland the booklet is currently being updated and will also be widely available on request. The Group notes that, whereas the booklets seem to be drafted in user-friendly, Question and Answer format, no research has been undertaken to assess either their comprehensibility to the average person or the extent to which their existence is known.

7.6.3 **The Group recommends that the Department of the Environment, Transport and the Regions, the Welsh Office and the Scottish Office jointly should consider commissioning research into the effectiveness of the booklets.**

7.7 **Suggestion: 'The basis for calculating the open market value of a property subject to compulsory purchase should be changed to include a 'premium' which reflects the compulsion on the owner to sell the property.'**

7.7.1 The question of how compensation for compulsory purchase should be assessed is not new, having been discussed in Parliament, the Courts and outside over many years and in many countries. Indeed, suggestion 7.7 might well have been advanced in the UK *verbatim* 150 years ago. Given that the current position is the culmination of decades of argument, counter-argument, legal precedent and statutory provision, the Group believes that a clear understanding of the development of compensation policy, including the rationale of the current 'no-premium' system, is essential if we are to avoid steps being taken which experience has shown to be unsatisfactory. A concise account is given in Annex C.

7.7.2 As the annex explains, the basis for assessing compensation for compulsory purchase has changed over the years. In the 19th century the Courts (but not Parliament) effectively decided that a 10% premium on the open market value of the property was a fair recompense for the disagreeability of *compulsion*. An Act of 1919 introduced six basic rules for assessing compensation based on the concept of the willing buyer and the willing seller, both operating in an open market. After some complicated and, ultimately, unsatisfactory attempts to regulate the value of land by imposing artificial ceilings, and further legislation in the 1950s, the Land Compensation Act 1973 [Land Compensation (Scotland) Act 1973] provided for a separate, discrete, payment — a 'Home Loss Payment' — to recognise the personal upset and distress people suffer when they are compulsorily displaced from their homes.

7.7.3 The 1973 Act, as modified, and then the Planning and Compensation Act 1991, culminated in the system which is currently in force. Under this system, Home Loss payments are based on the open market value of an owner-occupier's interest, or a flat rate payment of £1,500 for others. The amount of Home Loss payments was (generally speaking) thus set at 10% of the open market value of the owner's interest in the property, subject to a maximum of £15,000 and a minimum of £1,500.

7.7.4 Farm Loss Payments (which are intended to offset any temporary loss of yield which may occur when a former owner-occupier farmer, compulsorily displaced from the whole of his land, takes up farming elsewhere on land which is unfamiliar) have also been made since 1973.

7.7.5 There is no evidence that these additional payments materially reduce the dissatisfaction felt by those whose land is acquired nor that they materially reduce the time needed to negotiate the purchase. It should be noted that Home Loss payments are separate from, and additional to, disturbance payments which are designed to offset eligible expenditure directly related to the enforced move (legal expenses and other fees, carpet and curtain modifications *etc.*)

7.7.6 At £15,000, the ceiling figure for Home Loss Payments is arbitrary, and any arbitrary cut-off point is bound to cause some ill feeling. But this raises the more fundamental question: is there a linear correlation between the degree of 'personal upset and distress which people suffer when they are compulsorily displaced from their homes' and the capital value of the property which is the subject of compulsory acquisition? Does the personal upset and distress suffered by the owner of the £150,000 house merit £15,000 whilst the personal upset and distress suffered by the owner of the £75,837 house (the UK average house price) merit 'only' (and exactly) £7,584? Or can it be argued that the owner of the compulsorily acquired house which was worth £150,000 in 1989 (when the housing market was buoyant) was distressed to the sum of £15,000 whilst the owner of an identical house in the same location, but in 1992 when the value of the house had fallen to £120,000, was distressed only to the sum of £12,000?

7.7.7 **The Group notes that Home Loss payments provide compensation for the personal upset and distress of an enforced move but accepts that the current basis for calculating Home Loss Payments may not necessarily be the most**

equitable. The Group recommends that views be sought on alternative ways of determining the appropriate level of Home Loss payments.

7.7.8 **However, the Group has addressed the question of an additional premium in its consideration of a new regime of compensation for compulsory purchase, and this is developed in the Group's proposal for a Property Purchase Guarantee and Compensation Scheme (see separate document).**

7.8 **Suggestion: 'Compensation under Part I of the Land Compensation Act 1973 should be payable within the current statutory period of twelve months from the start of operation of a new project.'**

7.8.1 To qualify for compensation under Part I of the Land Compensation Act 1973 the claimant must have bought the property before the date the works first came into use ('the relevant date'). The claim cannot usually be submitted before the first anniversary of the coming into use of the works ('the first claim date'). The object of the year's delay is to allow the extent of the use of the works to be apparent. Compensation under Part 1 is payable for any loss of value resulting from the effects of certain, defined, physical factors, *eg.* smell, fumes and vibration. It is assessed by reference to values at the relevant date and will reflect the use of the works at that time and any reasonably anticipated increase.

7.8.2 There are provisions that allow a claim to be lodged immediately before disposal if a claimant sells the property within the first year after the works have been brought into use.

7.8.3 **The Group has addressed the issue of the timing of compensation under Part I of the 1973 Act in its proposal for a Property Purchase Guarantee and Compensation Scheme (see separate document).**

7.9 **Suggestion A: 'The £50 devaluation threshold under Part I of the LCA should be (a) increased, or (b) abolished.'**

Suggestion B: 'Compensation under Part I of the Land Compensation Act 1973 should not require the owner to demonstrate depreciation.'

7.9.1 The 1973 Act provides that compensation is not payable for a loss of under £50. This figure has remained unchanged since it was set in 1973. The average house price in 1973 was about £10,000 and the margin of error in a property valuation is usually held to be between plus or minus 5%. So even when the Act was passed, the *de minimis* level (at 0.5% of the average house price — and a correspondingly lower percentage for more expensive properties) was much smaller than the fall in value which could be confidently identified as being due to the works. The average house price in the UK in the second quarter of 1997 was £75,837 — of which £50 represents less than 0.07% of the value.

7.9.2 One of the consequences of the low threshold is that acquiring authorities receive claims from many people who may have 'suffered' a very slight — even theoretical — loss but one which is impossible to prove. To reduce the costs of dealing with such claims there seems to be a tendency on the part of acquiring

authorities to settle them, causing unnecessary expense in terms of compensation and costs.

7.9.3 The Group accepts that the £50 threshold is too low. There appear to be two approaches to deriving a new figure: an increased sum which is still expressed as a flat rate (say, £2,500), or a figure which is a percentage of the unaffected open market value of the property. Each approach has advantages and disadvantages. Adopting a flat rate figure (whatever it is) is straightforward but £2,500 — or even £5,000 — is still too small a figure to be meaningful in respect of a house worth £200,000 whilst representing a significant depreciation in the value of a house worth £50,000.

7.9.4 This suggests that the threshold figure should be expressed as a percentage of the value of the property. But, as discussed above, the value of a property is subject to a margin of error of up to 10%. Probably the most accurate expression of the value of a property is as a range of values — 'between £60,000 and £66,000'. It might be more appropriate, therefore, if any threshold figure which is expressed as a percentage should refer to the 'median' (mid-point) of those two reasonable values — in this case, £63,000. However, this solution lacks the advantage of simplicity.

7.9.5 **The Group therefore recommends that the threshold figure of £50 should be reviewed. View should be sought on the appropriate methodology for determining the new figure.**

7.9.6 **The Group notes that Part I payments are expressly designed to compensate property owners who have suffered loss. If no loss is demonstrated, the basis for the payment of compensation is lacking.**

7.10 **Suggestion: 'Steps should be taken to ensure that affected property owners with negative equity are able to move if they wish to do so.'**

7.10.1 It was suggested by some respondents to the Group that those home-owners whose property was worth less than the mortgage secured on it faced particular difficulties 'when trying to sell in a blighted market'. Some advocated special help to enable them to move. To give full effect to this suggestion as sometimes presented, the acquiring authority would need, where necessary, either itself to provide a loan sufficient to enable the affected owner to discharge the existing mortgage and purchase an alternative property; or else underwrite in whole or in part such a loan provided by a bank, building society or other mortgage lender.

7.10.2 The first requirement would necessitate primary legislation. Some acquiring authorities have powers to grant mortgages but in the case of local authorities these do not extend to loans exceeding the value of the property. In relation to the second requirement, local authorities have powers under section 442 of the Housing Act 1985 (as amended by the Housing Act 1996) to enter into agreements to indemnify mortgages but again primary legislation might be required to ensure that these powers, and those of other acquiring authorities, can be used to help borrowers with negative equity.

7.10.3 These detailed points aside, the objective behind the suggestion is to ensure that borrowers with negative equity (currently 0.6% of mortgagors, 0.4% of all homeowners) who are subject to compulsory acquisition can acquire an alternative property of equivalent value. For the reasons outlined below, this objective can be achieved in all but the most exceptional cases by the current compensation code and the negative equity schemes which are already available from mortgage lenders.

7.10.4 Department of the Environment, Transport and the Regions estimates suggest that around 64,000 of UK households were in negative equity in the second quarter of 1997 — far fewer than in the peak in 1992. The number of households affected is continuing to fall as house prices rise. The Group notes that all main commentators forecast that house prices will continue to rise next year.

7.10.5 As noted above, the statutory compensation code provides that owners of compulsorily purchased property are compensated on the basis of the current open market value of the property, with Home Loss payments and reimbursement of all reasonable expenses incurred as a result of the acquisition.

7.10.6 Almost all of the main mortgage lenders have schemes in place to assist borrowers with negative equity who need to move home. Most schemes involve either a transfer of the existing mortgage to an alternative property of equivalent value, or the provision of a new loan of 100% of the valuation of the new property *plus* the negative equity from the existing property up to a maximum of £25,000 or 125% of the purchase price.

7.10.7 To the extent that a new or transferred mortgage under a lender's negative equity scheme involves costs for the owner (for example, a new mortgage indemnity premium) that would not otherwise have arisen, the owner can expect them to be reimbursed by the acquiring authority under the statutory compensation code along with other reasonable expenses arising from the compulsory acquisition of their property.

7.10.8 Subject to the limits described in paragraph 7.10.6, lenders' negative equity schemes are generally available to any borrower who can demonstrate the ability to service the debt. In most cases, where the alternative property is of equivalent value to the property being acquired, monthly mortgage payments should remain broadly similar under the new mortgage, though some schemes do charge a higher rate of interest on the negative equity element of the loan. In general, therefore, the only borrowers who are likely to fall outside lenders' criteria are those whose negative equity is greater than £25,000 and those who have an unsatisfactory payment record on their existing mortgages. The former constitute only a very small proportion of households with negative equity — itself a very small sub-set of all homeowners. In the case of the latter, it is questionable whether it is in the interests of either the acquiring authority or the borrower for the authority to provide or underwrite loan finance where the borrower is unlikely to be able to service the debt.

7.10.9 **The Group therefore concludes that the existing statutory compensation code provisions, and mortgage lenders' existing negative equity schemes, provide a satisfactory means by which the vast majority of affected home owners with negative equity can purchase an alternative property of equivalent value if they wish to do so. The Group does not believe that further statutory provisions for this purpose are either necessary or desirable.**

7.11 **Suggestion: 'The blight notice procedure should be simplified/speeded up.'**

7.11.1 Blight notices may be served on the acquiring authority by resident owner-occupiers, by owner-occupiers of agricultural units, or by owners of business premises with an annual rateable value (in England and Wales) not exceeding £18,000 (£21,500 in Scotland). If the acquiring authority accept the blight notice they will buy the property. However, they may serve a counter-notice of objection on or more statutory grounds. For example, if they need only part of the property, a counter-notice can say so. Or the authority may say that they have no intention of acquiring any part of the property. If the server of the blight notice objects to the counter-notice, the matter may be referred to the Lands Tribunal [Lands Tribunal for Scotland].

7.11.2 If the authority does not serve a counter-notice within two months, or if the Lands Tribunal rejects the counter-notice, the blight notice automatically takes effect. The authority will then be obliged to buy the property. In a straightforward case the authority might accept the blight notice and open negotiations without waiting for the two months to expire.

7.11.3 **The Group, whilst accepting that there may always be scope for improved efficiency, does not believe there is scope for the blight notice procedure to be significantly speeded up.**

7.12 **Suggestion: 'The £18,000 rateable value limit on the ability to serve statutory blight notices in England and Wales (£21,500 in Scotland) should be (a) abolished, or (b) increased.'**

7.12.1 For reasons outlined in paragraph 3.6 *et seq* the Group does not believe there is a compelling case to offer further relief to owners of businesses by abolishing the rateable value limits. However, whilst noting the differing rating circumstances which pertain in England and Wales on the one hand, and Scotland on the other, the Group does not believe that these are sufficient to justify the disparity between the rateable value limits. In any event, since the business rating systems are now fully harmonised there is less justification for the difference.

7.12.2 **The Group recommends that the current limit in England and Wales should be increased to £21,500. The Group further recommends that future updates are harmonised.**

7.13 Suggestion: 'Investment owners should be empowered to serve blight notices.'

7.13.1 The Group notes that there are degrees of investment owner (as, indeed, their are degrees of businesses). A large company may have many millions of pounds invested in property: a home-owner may have a single extra property which is rented out to provide an income (or to await a more favourable market in which to sell). Given the costs to an acquiring authority of purchasing property which it may not need for some time, the suggestion — if accepted — would have the taxpayer shield the investment owner from one of the risks of ownership.

7.13.2 A person who had capital and has used it to purchase property with a view to securing an income, or has inherited property and decided to let it but not occupy it, has a choice. If they choose to invest (or retain an investment) in property, and the value of the investment falls because of lawful activities of a public authority, there is, in the Group's view, no compelling reason why they should benefit from the blight provisions and so be supported, normally, by a payment out of public funds. Not all blighted property is acquired and it must be maintained or otherwise managed if not demolished.

7.13.3 Moreover, there is no reason, in the Group's view, why an investment owner, perhaps forcing a sale at a time when market conditions made it convenient to sell, should actually benefit from public funds since the land compensation code is intended to achieve neutrality, *ie* to leave a person no better and no worse off than before.

7.13.4 The Group does not believe that a convincing case has been made for allowing investment owners to serve blight notices.

7.14 **Suggestion: 'There should be no requirement for a property owner to show, prior to the issue of a blight notice, any attempt to sell.'**

7.14.1 The requirement to prove efforts to sell where compulsory purchase has been authorised has been relaxed in recent years. The Group accepts that there may be scope for clarifying the precise requirement but believes there to be no case for to removing the requirement in every instance. Although inability to sell is not proof of blight, it is difficult to demonstrate blight without this evidence.

7.14.2 **The Group does not agree with this suggestion.**

7.15 **Suggestion: 'Legislation covering compulsory acquisition and compensation should be consolidated and codified.'**

7.15.1 It has been suggested that legislation and procedures relating to compulsory acquisition and compensation should be consolidated and codified, particularly for the benefit of practitioners who deal only occasionally with these matters.

7.15.2 **The Group accepts that consolidation of legislation is often helpful. It also notes that non-statutory schemes and procedures are contained in a number of documents. The Group therefore recommends that consideration should be given to codifying all non-statutory schemes and procedures, and consolidating the statutory provisions which relate to compulsory acquisition and compensation as and when a suitable legislative opportunity arises.**

7.16 **Suggestion: 'The Lands Tribunal procedures should be streamlined.'**

7.16.1 The Land Tribunal's role (in the context of planning blight) is to determine disputes about the amount of compensation to be paid when properties are acquired, and about the validity of blight notices. It has the status of the High Court and cases are normally presented by counsel, instructed by solicitors and with valuers called as expert witnesses. Thus, a minimum of three professionals have to be paid and, as the Lands Tribunal normally awards costs against the unsuccessful party, the total amount of fees at risk is substantial.

7.16.2 The Lands Tribunal for England and Wales introduced simplified procedures in April 1996 which updated the language of the rules and introduced a simplified procedure, similar to arbitration, for certain smaller cases. Before April there was (and until the effect of the changes becomes apparent there may continue to be) a widely held view that the cost and complexity of Lands Tribunal proceedings meant that many claimants were unable to dispute offers of compensation when these were seen as being unfairly low. The main changes to the rules were:

— the introduction of a new simplified procedure of disposing of small cases quickly and cheaply;

— a simplification of the procedure for deciding cases without a hearing;

— stronger provision concerning pre-trial reviews and discovery;

— a power to debar where a party has failed to comply with the Rules;

— an extension of sealed offer procedure to all cases; and

— the introduction of a general power to award interest on awards.

7.16.3 The Group notes that these changes became effective on 1 May 1996 — one month before the publication of the discussion paper. The Group suspects, therefore, that most or all of the criticisms of the Lands Tribunal procedures will have been made probably without the benefit of detailed consideration of the changes and certainly without any experience of their effects.

7.16.4 **The Group concludes, therefore, that there is currently no case for recommending to the Lands Tribunal that procedures should be further reviewed, but that the position should continue to be monitored.**

7.17 **Suggestion: 'Loss of amenity in an area caused by a major infrastructure development should attract compensation.'**

7.17.1 The existing compensation code is predicated upon the belief that it is proper to provide compensation in those instances where, but for the immunity provided by statute, the common law would otherwise provide a remedy for nuisance. To provide a new remedy for this class of property owner where none exists in common law for all other classes would be to create an anomaly which has, in the Group's view, no basis in equity or logic.

7.17.2 There are other difficulties with this suggestion. 'Amenity' is possibly more difficult to define even than generalised blight. But even if a definition were to be agreed, title to property does not include (and has never included) title to any notional local 'amenity', unless the deeds make an express provision. View, peace and quiet, tone of an area and the establishment of a new local facility - to the extent that they exert a beneficial influence on house prices - are benefits which, whilst widely enjoyed, are not enjoyed as of right. Accepting the argument that the loss of gratuitous benefits should attract compensation would suggest that a levy should be imposed upon all property owners every time a development *improves* the amenity of an area, including, for instance, the construction of a bypass or the destruction of an eyesore leading to better views (or yet the closure of a railway line).

7.17.3 **The Group does not accept the argument that the loss of amenity in an area creates any moral entitlement to compensation, neither does it accept the corollary - that a betterment levy should be imposed when property owners secure a gratuitous benefit when an amenity is provided or improved.**

7.18 **Suggestion: 'The discretionary powers to purchase severely affected land should be replaced by a scheme of compensation to make good the difference between 'unaffected' and 'affected' value.'**

7.18.1 Under the Land Compensation Act 1973 public authorities who propose or carry out public works have a statutory obligation to compensate for injurious affection once those works are brought into use. They may also have discretionary powers to purchase properties which are affected but which are not required for the scheme before, during, or in the year after construction.

7.18.2 The only powers available to authorities to mitigate the effect of blight in advance of the works are limited to discretionary purchase and were introduced in s62 of the Planning and Compensation Act 1991. They are applicable only if there is a proposal to work on blighted land.

7.18.3 In practice authorities (which are mostly highway authorities) using the discretionary purchase powers have experienced a number of problems:

a. as the powers are discretionary there are inevitably some unsuccessful applicants. Some fail because they do not meet the requirements of the statute in that they have no 'qualifying interest' in the property, or the authority considers that their enjoyment will not be seriously affected. Others fail because they are unable to meet the requirements for the exercise of discretion, or because the authority has failed to exercise its discretion at all. The Group believes that the result is divisive and potentially unjust to the extent that some are compensated and others are not, even though the unsuccessful applicants may suffer as much (or greater) loss as the successful;

b. the use of the discretionary powers does not affect the statutory entitlement to Part I compensation. Although there is an expectation that the market will reflect the eligibility for Part I, (in other words, the purchaser of a dwelling which is liable to be injuriously affected would pay the full unblighted value of the house in the knowledge that compensation for injurious affection would

eventually be forthcoming) there is no clear evidence that this always happens. Normally, where an authority acquires a house it fully compensates the vendor. If it then sells the house for a reduced price before the scheme is completed, it finds itself having to compensate the purchaser for the injurious affection caused by the scheme, thereby paying out compensation twice: once in the form of a discount, once in the form of a cash payment. (The original vendor is neither better nor worse off; the highway authority is worse off, having had to pay compensation twice; and the purchaser is unduly better off, having received double compensation.) If, however, the vendor fails in an application for discretionary purchase and sells significantly below the unblighted value, the vendor loses part of the value of the property and the purchaser benefits by receiving the Part I compensation for a loss he may not have borne. In such cases justice suggests that the Part I should have been paid to the original vendor who is the one bearing the loss. However, the market does not appear to work that way;

c. if the authority decides that it will not sell houses bought under discretionary powers until the scheme is completed — and thus avoid the payment of Part I — it faces the problem of what to do with the house in the interim, which might be a period of a number of years. Unless it can manage the properties in such a way that it does not affect the marketability of other houses in the area, it can find its very presence has a blighting effect which provokes more applications for purchase. It is arguable that the effects of purchases made as a result of a scheme proposal are 'scheme effects' to be taken into consideration when assessing whether enjoyment has been seriously affected. The use of discretionary purchase powers can therefore have a domino effect.

7.18.4 **The Group believes that these inequities may be alleviated (but probably not removed entirely) if vendors of property which is likely to be injuriously affected were provided by the promoter with a fully tradeable guarantee of eventual compensation under Part I. The guarantee might state that the compensation would be not less than a certain sum. This option is explored more fully in the draft Property Purchase Guarantee and Compensation Scheme (see separate document).**

7.19 **Suggestion: 'A property purchase scheme should be available for those affected by blight.'**

7.19.1 A number of proposals involving the purchase of blighted (or potentially blighted) properties were made to the Group. All involved, to a greater or lesser extent, increases in public expenditure and all ran some risk of causing blight to snowball. (When one house is deemed to be sufficiently devalued to warrant intervention by a buying agency, its neighbour will be tainted by proximity.) Nevertheless, the Group thought that a property purchase scheme devised by Central Railway Limited (CRL) as part of their proposal for the construction of a freight railway system linking the Channel Tunnel, London and the Midlands, using powers contained in the Transport and Works Act 1992 came closer than any other to addressing these concerns.

7.19.2 The railway proposal which generated the property purchase scheme did not receive Parliamentary approval. However, the scheme was intended to

guarantee to current and prospective property owners that their investment in their property would not be adversely affected by the proposed railway. The scheme, which was targeted mainly at properties that might be required for the development is described in a CRL document, reproduced (by permission of CRL) at Annex D.

7.19.3 The main advantage for the participants in the purchase scheme is that the value of their property is guaranteed at some time in the future by a legally enforceable agreement. Property can be sold with this guarantee still in place at or around unaffected market value; ie the effect of blight has been removed as far as the properties in the purchase scheme are concerned. Obviously, the guarantees have a market value only as long as the developer and/or his proposal are credible forces in the market, but the theory is that if either or both lose credibility and the proposal does not proceed, the market will return to its unaffected level anyway.

7.19.4 The advantage of the purchase scheme as far as the developer is concerned is that spending before construction starts can be kept to a minimum. Assuming that the purchase scheme is capable of being applied to land as well as land with property, no land/property is acquired in advance of construction and there is therefore no outlay and nothing to be managed.

7.19.5 This exposes a third advantage: if the proposal does not proceed to the construction stage there is no nugatory expenditure on land/ property.

7.19.6 **The Group believes that a scheme which offers a guarantee of future value — possibly an enhanced value — for a property which is statutorily blighted, coupled with guarantees in respect of compensation under Part I of the Land Compensation Act 1973, may serve to encourage the continued operation of the local property market in circumstances where it might otherwise falter. A proposal for a new Property Purchase Guarantee and Compensation Scheme is set out in the separate document with that title.**

Interdepartmental Working Group on Blight
December 1997

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ANNEX A

Terms of reference

To review the scope, cause and effects of blight arising during the various stages of major infrastructure projects and to consider whether any practical changes can be made to the existing arrangements for property purchase and compensation, bearing in mind the concerns of the House of Commons Select Committee on the Channel Tunnel Rail Link (CTRL) Bill about those whose properties decline in value because of the perception of potential purchasers rather than because of any physical effects. In meeting this remit the working party will consider in particular:

- whether it is possible to define 'generalised blight' in a way which would meet the concerns of the Select Committee without increasing or extending the blighting effects of major proposals;
- the extent and duration of the effects of blight on property values both in the shorter and longer term and the interaction with other local and national valuation effects;
- the scope for minimising blight by adopting a different approach to the provision of infrastructure and the selection of sites and the effect of such an approach on the existing arrangements for public consultation and participation in planning decisions;
- any relevant overseas experience;
- the likely costs of any new arrangements and their effect on the provision of infrastructure;
- any wider effects of any new arrangements on property values generally, including a comparison with the values of properties affected by other development proposals;
- if any remedy for those affected by 'generalised blight' is considered appropriate, the practical application of such a remedy including the basis on which it might be determined, the eligibility of property owners, the geographical coverage in relation to the development proposals and the point at which it might be offered; and
- any implications for the existing principles of the land compensation code or for the current arrangements for discretionary purchase.

In carrying through this work the working party will also have regard to the principles of good administration.

ANNEX B

Membership of the Interdepartmental Working Group on Blight

The Department of the Environment, Transport and the Regions

The Scottish Office

The Department of Trade and Industry

The Ministry of Defence

The Department of Culture, Media and Sport

The Department for Education and Employment

The Ministry of Agriculture, Fisheries and Food

The Home office

The Treasury

The Welsh Office

The Valuation Office Agency

The Highways Agency

ANNEX C

The legislative background to home loss payments

1. The Lands Clauses Consolidation Act 1845 [Lands Clauses Consolidation (Scotland) Act 1845] was the first general procedural code on compulsory purchase but it contained no guidance or rules on how compensation should be assessed. So it fell to the Courts to fill the gap left by the Act. In practice a valuation for the property was decided and then 10% was added in recognition of the fact that the sale was forced on the land owner. This has been described as "*the added sop of 10% to soften the blow of compulsory acquisition*" (*per* Lord Denning in *Harvey v Crawley Development Corp.* [1957])

2. This 'added sop' was removed by the Acquisition of Land (Assessment of Compensation) Act 1919 which was passed largely to deal with the difficulties caused by the failure of the 1845 Act to provide statutory rules. This had led to payment of what were seen as excessive amounts of compensation due to the natural sympathy of the Courts towards people whose property was subject to compulsory purchase. The 1919 Act introduced the six basic rules for assessing compensation based on the concept of a willing buyer and willing seller both operating in the open market. These rules still form the nucleus of the system, as enacted in section 5 of the Land Compensation Act 1961 [Land Compensation (Scotland) Act 1963].

3. Between 1944 and 1959 there were attempts to regulate the value of land by imposing artificial ceilings. These led to several complicated systems, involving the registration of different land transactions and payment of compensation for various planning decisions in the local registers which are maintained by local authorities.

4. A planning decision could lead to a claim for compensation against the then Planning Minister (or, after establishment of the Department of the Environment in 1970, the Secretary of State for the Environment). Also, if planning circumstances changed, claimants could be required to repay compensation previously paid in respect of, for example, an earlier refusal of permission. The consequences of these attempts to control land values artificially were still evident as recently as 1991, when the provisions were finally repealed.

5. The basis for assessing and paying compensation returned to open market value under the Town and Country Planning Act 1959. There then followed a busy period during the 1960s and early 1970s when there were several influential reports, extensive consultation and, finally, undertakings given by Government to make compensation more generous whilst retaining the basic principles of paying compensation for the compulsory purchase of a person's interest in property at open market value. In particular, there were reports by JUSTICE (the British section of the International Commission of Jurists) and the Urban Motorways Committee. These and other proposals were fed into proposals set out in the White Paper '*Development and Compensation - Putting People First*' (Cmnd. 5124), which was presented to Parliament in October 1972.

6. Paragraph 36 of the White Paper explained the rationale behind making an extra, but quite discrete, payment as recommended by the Urban Motorways Committee 'as a mark of recognition of the special hardship of compulsory dispossession from one's home'. (Paragraphs 54-56 of the White Paper described how the Government proposed to respond to representations made on behalf of agricultural interests. The proposals became the farm loss payment. See also booklet No 4 in the series '*Land Compensation - Your Rights Explained*'.)

7. The Land Compensation Bill was introduced in the House of Commons on 9 November 1972 and the Act received Royal Assent on 23 May 1973, giving effect to policies outlined in the White Paper.

8. Advice contained in paragraph 21 of the Annex to DOE Circular 73/73 states unequivocally that 'The intention of these special [Home Loss] payments is to recognise the personal upset and distress which people suffer when they are compulsorily displaced from their homes.' It is recognised that there are similarities between the *concept* of 'the additional sop' of 10% as created by the Courts before the 1919 Act, and the *concept* of an additional payment for the loss of one's home. But the *purpose* of the home loss payment was, and continues to be, as stated in para 21 of the Annex to DOE Circular 73/73.

9. At the time of the 1973 Act, a massive revaluation had been carried out and rateable values of property changed. The multipliers used at that time would have reflected the difference between the rateable values before and after 1 April 1973 when the new rateable values took effect.

10. The 1973 Act itself received Royal Assent on 23 May of that year so it had to provide a formula for persons displaced from their homes before and after 1 April. But in general terms, the payment from 1 April 1973 was based on a multiplier of three times the rateable value, subject to a maximum payment of £1,500 and minimum of £150. This remained unchanged until the Home Loss Payments Order 1989 (SI 1989/24) which took effect on 16 January 1989. The effect of this instrument was that the multiplier was increased to 10 times the rateable value, with the minimum payment of £150 increased to £1,200. In practice, this meant that a person displaced between 16 January 1989 and 31 March 1990, would have been entitled to no more than £1,500 and no less than £1,200. Then on 1 April 1990, when domestic rateable values were abolished, a flat rate of £1,500 took effect by virtue of the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (SI 1990/776).

11. This instrument was, of course, a temporary arrangement, until the Planning and Compensation Bill was introduced in the Lords on 16 November 1990. Before the Bill was introduced it had already been decided to make a substantial increase in the level of the payment based, inevitably, on the open market value of an owner-occupier's interest, or a flat rate payment of £1,500 for others. The amount of Home Loss payments was (generally speaking) thus set at 10% of the open market value of the owner's interest in the property, subject to a maximum of £15,000 and a minimum of £1,500.

ANNEX D

Central Railway Property Protection Scheme

(reproduced by kind permission of Central Railway plc)

Central Railway plc is promoting a railway system linking the Channel Tunnel, London and the Midlands. It is primarily intended to carry lorries on trains -something for which the existing railways are not suitable. Its proposed route includes sections of "new railway" were the company would reinstate dismantled former railways or add new tracks alongside existing railways or roads.

Whether or not the railway will be built is uncertain: there must be a lengthy approvals procedure and the company needs to raise a very large amount of money to pay for construction.

The company is extremely concerned about the effects on local home owners of possible blight - especially during the inevitable period of uncertainty. It has developed a scheme to avoid it, and people should benefit financially from Central Railway's proposals.

The company is operating a generous compensation scheme which is intended to protect those who might be affected by the construction and operation of new railway. The scheme covers property which could be needed for construction of sections of new railway. It can also cover neighbouring properties where common sense suggests that people will be affected regardless of legal definitions.

Under the scheme, many agreements have already been signed with householders along the proposed route.

HOW THE PROPERTY SCHEME WORKS

The aim of the scheme is to guarantee to current owners and prospective buyers alike that their investment in their property will not be adversely affected by the company's proposals. Indeed they should benefit.

The company will enter into legally binding agreements under which it agrees to purchase a home or other property in the future but at a price agreed now. Potential buyers will know that they can recover their investment from the company by exercising the agreement if Central Railway goes ahead. If the Railway does not go ahead, the property and its value are of course unaffected.

VALUE OF AGREEMENTS

The agreed price at which the company can be made to buy in due course will be existing market value plus some premium where appropriate The company is asking owners themselves to suggest the price they believe is fair, and if it is reasonable the company will agree it. The level of any premium will depend on the degree to which the property could be affected.

The agreements come into force when signed by the property owner but the company undertakes to buy the property only if construction work begins on building new railway locally.

The price when agreed will be index - linked (upwards only) to a regional house price index to ensure that it keeps pace with any beneficial developments in the housing market. There is also a moving allowance of £3,000. The agreement has been designed by our lawyers to be simple and not require expensive checking.

KEEPING PROPERTY MARKETABLE DURING UNCERTAINTY

The agreement is specifically designed to ensure the continued saleability of peoples homes during the period of uncertainty whilst Central Railway is trying to secure approval and then construction finance.

During this time some owners covered by the scheme may want to sell their properties. The agreements are intended to help *such* people make a sale at a normal market price because they are potentially valuable and they transfer automatically to purchasers of the relevant property. Thus someone selling a house can tell the potential buyer that they would gain if the railway were built. The company is ready to work with estate agents and relevant lawyers to explain the operation of the scheme to potential buyers.

NOTICE

Reasonable notice of construction work beginning in each area would be given to owners of property covered by the scheme.

CASH FOR OWNERS WHO STAY PUT

Only relatively few properties covered by the scheme will need to be demolished. More properties will either lose an area of land or be only indirectly affected. Owners of such properties may well wish to stay in their homes, rather than exercise their rights under the scheme to make Central Railway buy. In such cases, once construction of the railway begins, the company will be ready to buy the arrangement back for cash. The agreements last for 21 years from signing so people living next to the line would not have to take any decisions immediately upon receiving notice of construction.

GRAHAM M CORY
PLANNING DIRECTORATE

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17 DECEMBER 1997

Dear Sir or Madam,

The Final Report of the Interdepartmental Working Group on Blight
The City University Business School Report of Research into the Operation of CPOs

I believe you may be interested in the statement made today by Richard Caborn, Minister of State at the Department of the Environment, Transport and the Regions, in response to a Parliamentary Question:

"I have today placed copies of the final report of the Interdepartmental Working Group on Blight in the Library. The report is accompanied by a draft Code of Practice on the dissemination of information during the various stages of major infrastructure developments. I have also deposited copies of the report of the research conducted by the City University Business School into the operation of compulsory purchase orders which is published today by The Stationery Office.

"The Interdepartmental Working Group on Blight was set up to review the scope, cause and effects of blight arising during the various stages of major infrastructure projects and to consider whether any practical changes can be made to the existing arrangements for property purchase and compensation throughout Great Britain.

"The Group has identified a number of options. One relates to the desirability of improving information flows at all stages of major infrastructure developments, and this provided the impetus for the Code of Practice. A further tranche of recommendations relates to relatively small-scale amendments to existing legislation. However, one recommendation (that a new property purchase guarantee and compensation scheme should be devised) would, if it were accepted, involve major changes to legislation. I should emphasise that this recommendation, which is born of a desire to reduce or eliminate generalised blight, does not undermine the fundamentals of the existing blight and compensation arrangements.

"The Group points out that although the focus of the review was generalised blight consequent upon proposals for major infrastructure projects, responses to the discussion paper issued in June last year suggested that the most effective remedy might lie in changes to the arrangements for addressing statutory blight. However, the Group, in seeking to ameliorate the worst effects of generalised blight in this way, has not sought to reassess compulsory purchase and compensation law in its entirety, nor has it considered it consistent with its terms of reference to recommend changes to the law which are not germane to the issue of generalised blight.

"The Group has delivered a detailed report on a subject of some complexity. None of the issues is clear-cut, nor are any of the options it has identified free from wider consequences. For this reason I am anxious that the report should be made widely available for discussion and comment before I, together with my ministerial colleagues in Scotland and elsewhere, give further consideration to its findings. I am therefore publishing the report of the Interdepartmental Working Group on Blight, the draft Code of Practice and the draft Property Purchase Guarantee and Compensation Scheme. Comments from all those with an interests are invited by 31 March."

The report of the City University Business School into the operation of compulsory purchase orders may be obtained direct from The Stationery Office or its agents, price £32. Copies of the final report of the Interdepartmental Working Group on Blight, together with the draft Code of Practice on the dissemination of information during the various stages of major infrastructure developments and the draft Property Purchase Guarantee and Compensation Scheme, are enclosed. Although all these documents are Crown Copyright, the Department hereby consents to copies being made of the final report of the IDWGB, the Code of Practice and the draft Property Purchase Guarantee and Compensation Scheme (but ***not*** the report of the City University Business School).

As you will have noted in Richard Caborn's statement, Ministers are keen to elicit comments from all those with an interest in these matters before taking any decisions. If you wish to comment, either on the final report of the Interdepartmental Working Group on Blight (including the Code of Practice and the draft Property Purchase Guarantee and Compensation Scheme), or on the report of the research conducted by the City University Business School into the operation of compulsory purchase orders, you should address them to me at the above address, to arrive no later than 31 March 1998. Further copies of these papers (except the City University report) may be obtained from Haydn George on 0171-890 3926.

Yours faithfully,

GRAHAM M CORY
Secretary to the Interdepartmental Working Group on Blight