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## HS2: GETTING YOUR OWN BACK?



No sooner had the Prime Minister announced that the Manchester arm of HS2 had been scrapped than articles in the press were, understandably, full of speculation as to whether those who had been deprived of their land, or even their homes, would be entitled to 'first refusal' if or when the property was sold off as is the apparent intention.

For example, the author of one article commented that *"The government is expected to offer former landowners the first chance to repurchase the land they were forced to sell..."*. Another stated that *"There is currently no right for the original landowner to get their land back. HS2 Ltd may sell the land on the open market, and it could be bought by anyone."*

The reality is somewhere between the two. A duty in certain circumstances for an acquiring body to offer land back to the original owners is set out in Guidance on Compulsory Purchase Process and The Crichton Down Rules published by DLUHC.

The Crichton Down Rules represent *"non statutory arrangements under which surplus government land which was acquired by, or under a threat of, compulsion ... should be offered back to former owners, their successors, or to sitting tenants."* Local authorities and other statutory bodies with compulsory purchase powers are recommended to follow the Rules, but they are mandatory for *"all government departments, executive agencies and non departmental public bodies in England ... which are subject to a power of direction by a minister."*

The 'acquiring authority' for HS2 is the Secretary of State for Transport; therefore the Rules apply in some circumstances, primarily where properties have been acquired compulsorily, but not where they were bought by agreement: in the absence of Royal Assent having been given for the Manchester arm or a valid blight notice being served, such acquisitions are not treated as having been "under a threat of compulsion". They expressly apply though to interests acquired following the successful service by the owner of a 'blight notice' requiring the purchase of their interest.



Where the Rules do apply, the general rule is that HS2 must offer the former owner the opportunity to buy the property back before seeking to dispose of it elsewhere.

There are however a number of exceptions, including where the character of the property has “materially changed” (for example by a building previously on the land having been demolished); where the property is needed by another government department; and where, in the opinion of HS2, the area of land is so small that its sale would not be commercially worthwhile.

A significant issue is that the property will be offered back at the current market value as determined by HS2’s valuer. It might be expected that this would be similar to the purchase price paid by HS2 when it acquired it, but in some cases values may have risen significantly since then. The former owners will also have to pay their own costs including Stamp Duty.

The Rules will also be of little comfort to those who sold their homes and bought another.

It is not yet clear what the government will do in those cases where the Rules do not apply. It is worth remembering though that the 1954 ‘Crichel Down affair’, after which the Rules were named, led to scandal and the resignation of the minister responsible when the government reneged on a promise to offer land bought by the Air Ministry back to the former owners. The Prime Minister could probably do without a repeat of that right now!

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