

Crossrail 2: reshaping London

For the real regeneration benefits of Crossrail 2 to be captured by the state, a large degree of intervention in terms of both planning and land assembly will be needed argue Richard Guyatt and Anthony McNamee

London's over ground rail network still bears the hallmarks of an early Victorian attempt at infrastructure planning. During the "Railway Mania", the Royal Commission on Metropolitan Railway Termini of 1846 recommended that railways should not encroach into overcrowded London any further south than the Euston Road. Rail was welcome later, but only at sub-surface and then deep tube level. With the exception of what is now the Thameslink route, surface railways linking the north and south of the capital were non-existent.

In our time, burgeoning demand for rail transport in the UK, coupled with London's expansion as a world means cross city rail links are essential. Crossrail 1, to be known as the Elizabeth Line and running East- West, is due for completion in 2017. In October 2015 Network Rail and Transport for London launched a new consultation on the proposed route of Crossrail 2.

Crossrail 2 is not to link particular destinations but to provide a cross London route to relieve pressure at overcrowded terminal stations and to ease congestion on the South West-North East underground railway network.

This article looks at the processes for obtaining powers, with particular emphasis on land assembly. It also looks at the opportunities for regeneration and how land value capture could be achieved by Crossrail 2's promoters.

The proposed Crossrail 2 route (see map overpage)

The proposed northern ends of the tunnels will be at Seven Sisters and Tottenham Hale, connecting with the Great Northern and West Anglia suburban services respectively. The route would run south to Dalston and Angel before heading west to a joint station between Euston and St Pancras. It will head south to Tottenham Court Road, connecting with Crossrail 1, then to Victoria, Chelsea and to Clapham Junction. At Clapham Junction the railway would proceed either via Balham or Tooting Broadway to Wimbledon to connect with the existing south western suburban services.

Process and timetable

Government has confirmed that a Hybrid Bill is the preferred delivery method. The aim is to have a Hybrid Bill deposited within this Parliament. That would mean deposit by 2020 at the latest. Crossrail 2 is unlikely to be operational before 2030.

Hybrid Bills are massive Parliamentary beasts requiring much time and expense to marshal through a Victorian process, with more modern concepts like Environmental Assessment, uneasily shoe-horned in.

In this Parliament, two more HS2 Bills are expected, and the first Bill still has the House of Lords to navigate. Whether a Bill for Crossrail 2 can also be fitted in must be itself a topic of debate.

To achieve the Bill's deposit, extensive land referencing to

establish an accurate snapshot of ownership in one of the most complex areas of land ownership in the world will be required – itself a mammoth task. Detailed environmental assessment of fairly advanced scheme drawings will be needed, as well as a draft Bill for deposit. The Bill then proceeds through both Houses of Parliament, with petitions by persons affected heard in Select Committee – usually in the First House but sometimes held over to the Second House.

In its report following hearings on the First HS2 Bill, published on 22 February 2016, the Commons Select Committee recorded as a criticism:

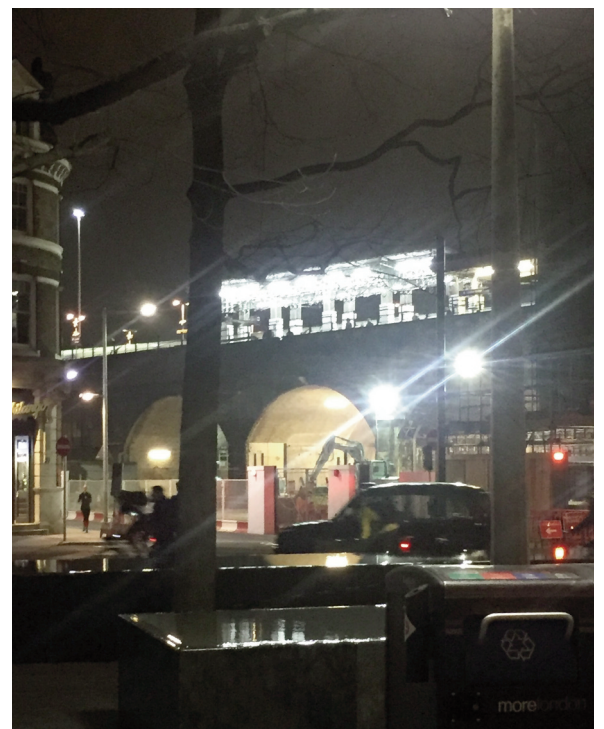
"many of the current petitioning procedures and hearing arrangements have been inherited from previous eras and are no longer fit for purpose".

The process is cumbersome, archaic and can lead to petitioners having to deal with very short deadlines, with little idea of the case against their arguments until a week before they appear.

The Bill will provide consent to build and operate the railway as well as land assembly powers and powers to alter the highway network.

Blight

Statutory Blight occurs when the value of land is reduced as a result of a particular scheme and an owner is unable to sell the land as a result. Schedule 13 of the Town and Country Planning Act 1990 specifies circumstances when statutory blight arises. >>>



Richard Guyatt is a partner in the planning and infrastructure team at Bond Dickinson

For Crossrail 2 the first 'safeguarding direction' to protect the Crossrail 2 route from development was made in 1991. Safeguarding has been updated since, most recently in 2015. Safeguarded land may qualify for 'statutory blight' resulting in compensation being potentially claimable. This continues until powers of compulsory purchase are exercised.

Beyond the geographical and physical boundaries of statutory blight will be land whose owners perceive is suffering from the blighting effects of the proposals. Infrastructure proposals are bound to cause uncertainty and concern to both residential and business occupiers, which are only heightened by the length of time that the consenting process will take.

HS2 have provided a number of hardship-related property acquisition schemes which set the bar high compared to the statutory requirements. Whether Crossrail 2 will be more restrictive is not yet known. The market in London is very different, with infrastructure seen as a positive, not blighting, impact on the market. As the scheme's benefits will be spread both more broadly and more locally, generalised blight is likely to be less of an issue for Crossrail 2.

Land Assembly

It is unusual for large areas of land to be purchased by private treaty before a Bill is enacted, although some acquisitions may occur in exceptional hardship or other specific cases. Once powers are available the promoters will have 5 years to commence the compulsory land assembly process for the identified land.

Land will be required mainly for stations, maintenance access, depots for rolling stock and for tunnel portals where connections to the surface network are made. In addition, temporary land take for construction compounds and associated works will be required.

Subsoil acquisition tends to be mechanical in nature, with muted objection and minimal compensation.

How compensation works

The underlying principles of compensation following compulsory purchase are built up in statute and case law, collectively known as the Compensation Code. The guiding principle is that an owner is to be put in the same position as if their interest had not been taken. Land is valued on an open market basis, disregarding any impact on value due to the scheme.

Owners and occupiers of land to be acquired can in addition claim a "basic loss payment" and "occupier's loss payment". The basic loss payment is currently 7.5% of the value of the owner's interest in the land up to a maximum of £75,000. The occupier's loss payment is the higher of 2.5% of the value of the occupier's interest or calculated by reference to the area of land or building, up to a maximum of £25,000. [footnote – the

CLG's reform proposals published on 21 March 2016 propose reversing of the 7.5%/2.5% split, making the occupier's payment the higher percentage)

Where compensation cannot be resolved by agreement it will be determined by the Lands Chamber of the Upper Tribunal, with a right of appeal on point of law to the Court of Appeal.

Disturbance compensation

Crossrail 2 will need land above ground for new stations/modifications to existing stations. The principle of equivalence requires that dispossessed owners have their relocation costs, including moving premises, and associated professional fees repaid. Lost profits are also a head of disturbance claim.

If a business cannot be relocated then the lost profits form part of the claim for extinguishment of the business.

Value capture through the Compensation Code?

In the 19th Century the Metropolitan Railway ensured its network's patronage by developing the now famous Metroland estates in North West London, around its stations. Buying large areas of rural Buckinghamshire for housing development, controlled only by the company's own building schemes, meant that the establishment of housing was both feasible and profitable.

This is clearly not possible for Crossrail 2. The railway will pass through some of the most densely populated areas of the country. How then to capture land value increases as a result of the inevitable uplift in land prices resulting from Crossrail 2?

On 21 March the Treasury and CLG published a consultation document¹²

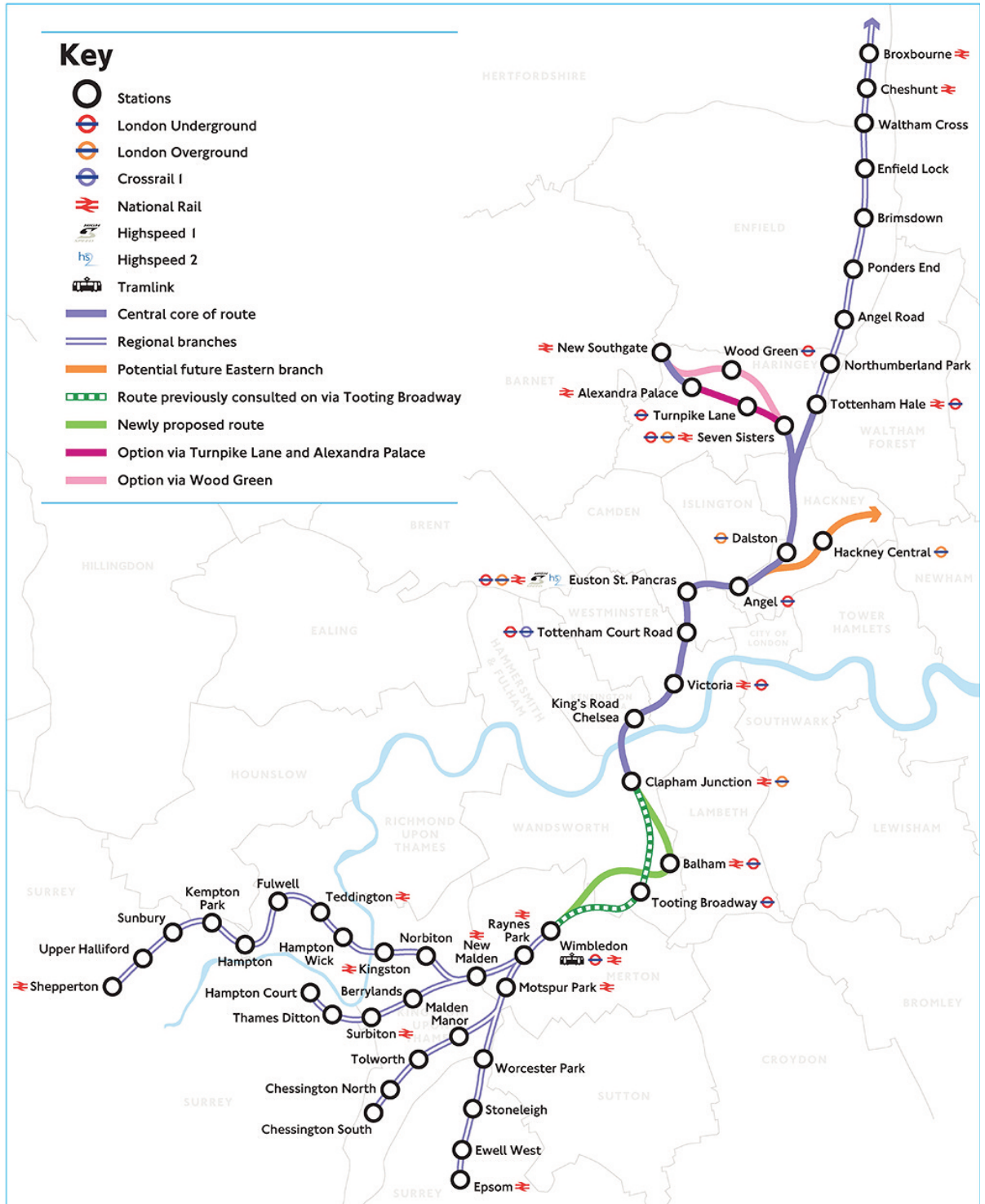
which contains some interesting suggestions clearly aimed at promoting infrastructure in London and elsewhere.

Section 1 of the consultation document includes a section headed "A clearer way to identify market value". It deals with the widely quoted, but infrequently understood, concept of the "no scheme world". This describes the principle that land taken for public powers through a CPO process should not be valued having regard to the underlying scheme. The topic was the subject of significant litigation, most notably in the context of the East London Line in the last House of Lords decision before the establishment of the UK Supreme Court – the *Spirerose* decision.

The consultation proposes that there should be a clearer definition of the project to be disregarded and an indication of whether it forms part of a larger underlying scheme:

"projects are closely associated in both space and time, and the regeneration project is only viable because of the new transport scheme, it seems reasonable to be able to deem that the transport scheme forms part of the regeneration project. If

Crossrail 2 route (autumn 2015)



this is so, it can be disregarded and the land for the regeneration project can be acquired at pre-transport scheme values".

This proposal represents a fundamental change in compensation valuation and allows a well advised acquired authority to seek to take full advantage of the land value increase arising from its associated development of infrastructure.

In the context of the overall costs for Crossrail 2, allowing cheaper land valuation (albeit with already significant London

prices applying) for associated schemes may possibly allow capture a small part of costs through improved receipts from assembling land for regeneration purposes near to Crossrail 2's new stations.

But on its own this proposed legislative change is unlikely to be enough because it is likely local planning authorities and not the Mayor will be leading regeneration schemes. Without the use of Mayoral Development Corporations around station sites, >>>

value capture by altering valuation principles may not work.

Conclusions

The wait for Crossrail 2 has been long and is far from over. Many years of intensive engineering, surveying and legal time is required before the tunnel boring machines set to work. In the context of ever increasing costs, not least the value of the real estate required for construction, the Government and the Mayor may be looking to secure land as cheaply as possible and with the maximum ability to secure for other related regeneration schemes land it can turn at a profit arising from the Crossrail 2 scheme.

The current proposals for CPO reform may have some impact for Crossrail 2 but not without additional legislative activity, either in the Crossrail 2 Bill itself, or in the establishment of Mayoral Development corporations around key stations.

For the real regeneration benefits to be captured by the state, a large degree of intervention in terms of both planning and land assembly will be needed – which may not be welcome by the boroughs currently holding regeneration powers.

1 *Spireose Limited –v- Transport for London [2009] UK HL 44*
 2 "Consultation on further reform of the compulsory purchase system"
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1509062/Further_reform_of_the_compulsory_purchase_system_-_consultation.pdf

