



Department  
for Transport

# High Speed Rail (London-West Midlands) Act 2017

## Schedule 17 Statutory Guidance

**Moving Britain Ahead**

February 2017

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# Contents

1.	Introduction	4
2.	Purpose of the Guidance	5
3.	Deemed planning permission for HS2 Phase One works and the conditions of deemed planning permission	6
4.	Scope of Schedule 17	7
5.	Section 106	8
6.	Temporary works	9
7.	Grounds for determination	10
8.	Requests for additional details	12
9.	Modification to the request for approval	13
10.	Imposition of conditions	14
11.	Validation	15

# 1. Introduction

- 1.1 Under paragraph 26(1) of Schedule 17 to the High Speed Rail (London – West Midlands) Act 2017 (the “Act”) the Secretary of State can issue statutory guidance (“the Guidance”) to planning authorities about the exercise of their functions within Schedule 17 – Conditions of Deemed Planning Permission (the Planning Conditions Schedule) of the Act<sup>1</sup>. A planning authority is required to have regard to this Guidance when considering a request for approval made under Schedule 17 to the Act<sup>2</sup>.
- 1.2 Schedule 17 is a development of the planning schedules to the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008 which have a proven record of ensuring high quality design and environmental protection. The purpose of Schedule 17 is to ensure there is an appropriate level of local planning control over the HS2 Phase One construction works while not unduly delaying or adding cost to the project.
- 1.3 As the Act passed through Parliament, views on the content of the draft Guidance (2014 and 2015) were sought from the planning authorities along the HS2 Phase One line of route. All views were considered and where appropriate, these comments have been incorporated into this document.
- 1.4 The Guidance is not legislation and where there appear to be differences between the Guidance and the Act, the provisions of the Act will take precedence. Where the Guidance says that something must be done, this means that it is a requirement in either primary or secondary legislation, and a footnote gives the appropriate provision. In all other instances, paragraph 26(2) of Schedule 17 to the Act stipulates that planning authorities must have regard to the information contained in this Guidance.
- 1.5 The Secretary of State may choose to update or revoke the Guidance<sup>3</sup>.

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<sup>1</sup> Paragraph 26(1) of Schedule 17.

<sup>2</sup> Paragraph 26(2) of Schedule 17.

<sup>3</sup> Paragraph 26(4) of Schedule 17.

## 2. Purpose of the Guidance

- 2.1 The purpose of the Guidance is to provide further information and guidance to all planning authorities that will determine a request for approval under Schedule 17 to the Act. The Guidance also highlights the key differences in the processes and controls conferred to planning authorities under Schedule 17 and the powers they use to routinely determine planning applications under the Town and Country Planning Act 1990.

### 3. Deemed planning permission for HS2 Phase One works and the conditions of deemed planning permission

- 3.1 Section 20 of the Act grants deemed planning permission under Part 3 of the Town and Country Planning Act 1990 for HS2 Phase One and associated works (“the Works”) between London and the West Midlands, but some of the detailed design and construction are subject to further approval. Schedule 17 to the Act puts in place a process for the approval of certain matters relating to the design and construction of the railway which requires that the nominated undertaker (the organisation on whom the powers to carry out the works are conferred) must seek approval of these matters from the relevant planning authority. As deemed planning permission has been granted by the Act requests for approval under Schedule 17 are not planning applications.
- 3.2 As some of the elements of the detailed design of the railway and associated works require further approval, comparisons can be made between the deemed planning permission granted for the works and that granted for an outline planning permission under the Town and Country Planning Act 1990. The main distinction between the two is that under the Act the grounds on which the planning authority can approve further details and apply conditions are more constrained.
- 3.3 The roles that a planning authority has in the determination of different requests for approval and the grounds on which they can determine them are set out in the Schedule 17. Under this Schedule, planning authorities that have signed the High Speed Rail (London-West Midlands) Planning Memorandum, the qualifying authorities<sup>4</sup>, have a greater range of controls than those planning authorities that have not signed it, the non-qualifying authorities.

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<sup>4</sup>Paragraph 2(13) of Schedule 17

## 4. Scope of Schedule 17

- 4.1 Schedule 17 sets out the approvals required to be obtained by the nominated undertaker. These approvals are:
- plans and specifications;
  - matters ancillary to development;
  - road transport; and
  - bringing into use.
- 4.2 Approval of matters ancillary to development, road transport and bringing into use are only required if the planning authority has opted to become a qualifying authority under Part 2 of Schedule 17. The range of works that require plans and specifications approval depend on whether the planning authority is a qualifying authority. Non-qualifying authorities have a narrower ambit in considering requests for approval under paragraph 2 of Schedule 17 and non-qualifying authorities are not required to approve plans and specifications under paragraphs 3 or 7.
- 4.3 The nominated undertaker is also required to agree site restoration schemes with the planning authority.
- 4.4 These approvals have been carefully defined to provide an appropriate level of local planning control over the works while not unduly delaying or adding cost to the project. Planning authorities should not through the exercise of the Schedule seek to:
- revisit matters settled through the parliamentary process;
  - seek to extend or alter the scope of the project; or
  - modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements, or existing legislation such as the Control of Pollution Act or the regulatory requirements that apply to railways.

## 5. Section 106

5.1 The Act does not disapply Section 106 of the Town and Country Planning Act 1990. Therefore, Section 106 agreements can potentially be entered into in relation to requests for approval under Schedule 17. This should only happen where the tests set out in paragraphs 203 to 205 of the National Planning Policy Framework are met. Additionally, a Section 106 agreement must only relate to the work for approval and the relevant grounds in Schedule 17. A Section 106 should not be sought to:

- revisit matters settled through the parliamentary process;
- seek to extend or alter the scope of the project; or
- modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements, or existing legislation such as the Control of Pollution Act or the regulatory requirements that apply to railways.

## 6. Temporary works

- 6.1 Approval of plans and specifications is required for development consisting of building works. The term “building works” is defined in paragraph 2(8) of Schedule 17 and excludes a temporary building. Approval of plans and specifications is not therefore required for temporary works. For building works ancillary to scheduled works, “temporary” is defined as a building that it is intended to remain in place for no longer than two years after the date the scheduled work is brought into use (paragraph 2(9) of the Schedule).

## 7. Grounds for determination

- 7.1 For all approvals under Schedule 17, the Schedule specifies the grounds that are relevant. When determining a request for approval a planning authority must only consider the grounds relevant to that approval<sup>5</sup>. Therefore requests may only be refused, conditions be imposed, and modifications to submissions or additional information requested, where they relate to the grounds specified for determining the request for approval.
- 7.2 Careful consideration of the grounds is therefore needed when determining a request for approval as these set out the matters a planning authority can take into account when making a decision. For example, in determining a request for approval of a building, one of the grounds is that the design or external appearance ought to be modified to preserve the local environment or local amenity. This ground should therefore be applied by the planning authority to ensure the design and/or external appearance of the building or construction work is appropriate to its local context. This could include the use of locally appropriate finishes to buildings, although this would need to be considered with other material considerations.
- 7.3 This ground should not be used to require a modification to the interior of a building, such as to create permeability, unless it could be demonstrated it is needed to not adversely affect/injure the local environment or amenity or to prevent or reduce prejudicial road safety or traffic flow effects. The experience of a passenger in the building and/or the operational efficiency of the building, in this instance, would not be material to the decision by the planning authority. Nor in the case of a proposed building or structure, or modification of an existing building, is there the ability to use this ground to require improvements and enhancements to the local area, as opposed to preserving its amenity. Enhancements are requirements that are beyond what is necessary and reasonable to mitigate the effects of the works and ensure a suitable quality of design. Similarly, as the ground refers to the preservation of local environment and amenity it cannot be used to require that designs be modified to facilitate future development not authorised by the Act.
- 7.4 Where the request for approval alters the interior of a listed building the ground relating to the preservation of a site of historic interest will be material insofar as the works affect the building's special character and interest.
- 7.5 With regard to approvals of details of building and other construction works only the actual design, external appearance and siting of the works for which plans are submitted for approval are relevant, and conditions imposing requirements as to the maintenance or operation of the works may not be imposed. This is because the matter for approval is the design and external appearance of the building or work, not its use. Schedule 17 should not therefore be used to control matters such as opening times and/or cleaning regimes.

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<sup>5</sup> Paragraphs 2(5), 2(6), 3(6), 4(6), 6(5), 7(6) and 9(5) of Schedule 17

- 7.6 When considering requests for approval for which the grounds include the preservation of a site of archaeological or historic interest this ground should be taken to include the preservation of the setting of listed buildings. This ground should be applied in conjunction with other material considerations.
- 7.7 Planning policy and other considerations material to planning applications under the Town and Country Planning Act 1990 are only material to the determination of a request for approval under Schedule 17, insofar as they relate to the matter for approval (i.e. a building for HS2 Phase One) and the grounds specified for determining the request for approval.
- 7.8 When determining a request for approval planning authorities should not seek to control matters that are subject to other approvals under Schedule 17. For example when determining a request for approval relating to building or construction works under paragraph 2 or 3 of the Schedule, a planning authority should not seek to determine whether the work for approval provides appropriate mitigation for the effects of relevant scheduled work as that is a matter which is determined under paragraph 9 of Schedule 17.

## 8. Requests for additional details

- 8.1 When approving plans and specifications the planning authority may impose a requirement on the approval<sup>6</sup> that the nominated undertaker submits additional details relating to the building or work approval. The purpose of this provision is to enable the planning authority to approve some elements of the works and leave subsidiary issues for a subsequent decision. Such requests allow planning authorities' approval of further details of the design that they may reasonably require, while not delaying the determination of the request for approval. Examples of such requests for additional details include the submission of building materials and/or finishes for approval.
- 8.2 As the request for further information forms part of the determination of the request for approval this power cannot be used to expand the types of things which are subject to approval, or the grounds on which approval may be withheld.
- 8.3 The determination period for the approval of additional details is eight weeks<sup>7</sup>.

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<sup>6</sup> Paragraphs 2(3), 3(4), and 7(4) of Schedule 17.

<sup>7</sup> Paragraph 12(5)(a) of Schedule 17

# 9. Modification to the request for approval

- 9.1 When determining a request for approval a planning authority may consider that the submission made by the nominated undertaker should be modified. A planning authority can only require a request for approval to be modified where that modification relates directly to the grounds for refusal and where the design can be reasonably modified.
- 9.2 It is entirely appropriate for planning authorities to seek design changes when requests for approval are made to avoid injury to the character and appearance of the local area. However, it is necessary for the planning authority to ensure such a modification is reasonable, that it can be made without, for example, adding unduly to the cost or programme of HS2 Phase One, or conflicting with the operational requirements of the railway. As an example, a critical element of vent shaft head house design will be to ensure that the railway can be ventilated as required, so any request to modify the size of the vent shaft would not be reasonable if it conflicted with the operational requirements of the railway. However, if the requested change was reasonably capable of being made without affecting the operation of the railway then its design could be modified through the Schedule 17 process to reduce its size. Likewise, any proposed amendment to the request for approval which would be outside the nominated undertaker's control, outside Act powers or which conflicts with a parliamentary commitment would not be considered reasonable.

# 10. Imposition of conditions

- 10.1 Where a planning authority considers it necessary to impose a condition on an approval of matters ancillary to development or approval of road transport under the provisions of Schedule 17, it may only do so with the agreement of the nominated undertaker<sup>8</sup>. The purpose of this is to allow the nominated undertaker and the planning authority the opportunity to agree whether the condition is necessary and appropriate, and would not unreasonably impede the building and operation of the railway, prior to the planning authority issuing its decision. It also avoids the potential for delay that would result from decisions being issued with inappropriate conditions. In the event that the nominated undertaker and the planning authority cannot agree on the inclusion of a condition, the planning authority may choose to refuse the request for approval.
- 10.2 Conditions should not be imposed which reserve for future approval matters which are integral to the approval being sought. While, as noted above in paragraph 8.1, there is a power to require additional details in relation to works that does not extend to deferring approval of integral elements of that development.
- 10.3 When determining any request for approval, conditions should not be imposed which conflict with controls or commitments contained in the Environmental Minimum Requirements. This is because these controls would have been considered necessary or sufficient by Parliament when it approved deemed planning permission for the railway.
- 10.4 With regard to buildings and other construction works, paragraphs 2 and 3 of the Schedule 17 puts in place a process for the approval of permanent works. Therefore, in approving the design, external appearance and siting of any of the permanent works, the planning authority may not impose a condition limiting the period which they may be retained or used. This would inherently conflict with the permanent nature of the work subject to the approval and would fall outside of the grounds on which conditions can be imposed.
- 10.5 The requirements of paragraph 206 of the National Planning Policy Framework (2012) apply to the imposition of conditions to approvals under Schedule 17.

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<sup>8</sup> Paragraphs 4(7) and 6(6) of Schedule 17

# 11. Validation

- 11.1 Schedule 17 does not include a process of validation akin to that for applications made under the Town and Country Planning Act 1990. In addition, the information that will be submitted by the nominated undertaker with a request for approval will not be required to comply with a planning authority's Planning Application Validation Check List.
- 11.2 Therefore the determination period for requests commences on the day of submission rather than the date a planning authority 'validates' it.