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# Appeal Decision

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretaries of State for Transport and for Housing, Communities and Local Government

Decision date: 28 July 2020

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## Appeal Ref: APP/HS2/5

### **South Ruislip Vent Shaft Main Compound, West Ruislip Portal Satellite Compound, Breakspear Road South Uxbridge Satellite Compound, Northolt Tunnel and Earthworks Main Compound and Harvil Road Realignment Satellite Compound in the London Borough of Hillingdon**

- The appeal is made under paragraph 22 of Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017.
  - The appeal is made by High Speed Two Limited (HS2 Ltd) against the refusal by the Council of the London Borough of Hillingdon of a submission for approval of large good vehicle (LGV) (lorry) routes (conditions in relation to road transport) in respect of a number of worksites required for the construction of HS2 Phase One (London to West Midlands).
  - The application (the Schedule 17 application), reference 75369/APP/20/288, dated 19 December 2019, was refused by notice dated 9 March 2020.
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## Decision

1. The appeal is allowed and approval is granted for the application.

## Procedural Matters

2. The appeal follows the refusal by the Council of the London Borough of Hillingdon (the Council) of a request for approval of lorry routes (conditions relating to road transport) under a condition imposed by Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act). The proposed routes relate to the worksites identified as South Ruislip Vent Shaft Main Compound, West Ruislip Portal Satellite Compound, Breakspear Road South Uxbridge Satellite Compound, Northolt Tunnel and Earthworks Main Compound and Harvil Road Realignment Satellite Compound.
3. HS2 Ltd (the Appellant) submitted the Schedule 17 application on 19 December 2019 and subsequently agreed an extension of time for its determination until 5 March 2020. The Council's decision notice, dated 9 March 2020, sets out the reasons for refusal of the application.
4. HS2 Ltd gave notice of their appeal against the refusal on 17 April 2020. The appeal is submitted under paragraph 22 of Schedule 17 to the Act. Paragraph 23(1) states that, unless the appropriate ministers<sup>1</sup> direct otherwise, their functions in relation to the determination of such appeals must be carried out by a person appointed by them for the purpose. No such direction has been issued in respect of this appeal and I am authorised, under paragraph 23(1) to determine the appeal on behalf of the Secretaries of State.

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<sup>1</sup> Under Schedule 17 the 'appropriate ministers' are the Secretaries of State for Housing Communities and Local Government and for Transport

5. The appeal process is subject to regulations set out in The High Speed Rail (London to West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017 (the Regulations). There is no requirement under the Regulations for a site visit to be carried out and I have not considered one necessary in this instance. The central test in respect of the main issues in the appeal is whether or not the Council has produced sufficient evidence to substantiate its concerns with regard to the alleged prejudicial effects on the free flow of traffic and highway safety. My own assessment of whether or not the local highway network and specific junctions are busy or congested is not relevant to whether or not that test has been met.
6. I have also taken the view that, due to the widespread effects of the Covid 19 virus control measures on economic activity and transport patterns, it would not be possible, for the foreseeable future, for me to observe the network under what the Council and local community might consider to be 'normal' traffic conditions. Carrying out a site visit could, therefore, result in significant delay in the determination of the appeal.
7. A full list of documents submitted by the parties is included as Appendix A to this decision. These are referenced in square brackets within the decision in the following ways:
  - Appellant's Core Appeal Documents: - referenced as [ACAD I], [ACAD II] etc.
  - Appellant's Appendices: - referenced as [A App A1], [A App C2] etc.
  - Council's Appendices: - referenced as [C App 1], [C App 2], etc.
  - Third Party Representations – referenced as TP1 etc.

### **Main Issues**

8. The main issues are:
  - a) Whether a refusal of the application is justified on the grounds under paragraph 6(5) and 6(6) of Schedule 17; and
  - b) Whether the Council has produced sufficient evidence to demonstrate a need for the proposed conditions and whether these are appropriate, having regard to the relevant guidance.

### **Statutory Scheme and Guidance**

9. Under section 20(1) of the Act planning permission is deemed to be granted for the construction of Phase One (London to West Midlands) of the HS2 project. Schedule 17 to the Act imposes conditions on that deemed permission.
10. Paragraph 6 of Schedule 17 relates to road transport and sub-paragraph 6 (1) states that:

*"if the relevant planning authority is a qualifying authority, development must, in respect to the matters to which this paragraph applies, be carried out in accordance with arrangements approved by that authority."*

The Council is identified as a Qualifying Authority (QA) in the High Speed Rail (London to West Midlands) (Qualifying Authorities) Order 2017.

11. The matters to which paragraph 6 applies are the routes by which anything is to be transported on a highway by LGV to:
- a) a working or storage site;
  - b) a site where it will be re-used; or
  - c) a waste disposal site<sup>2</sup>.
12. A planning authority may only refuse to approve arrangements for the purposes of paragraph 6 on very limited grounds. Paragraph 6(5)(b) specifies that these are that:
- a) *the arrangements ought to be modified-*
    - (i) *to preserve the local environment or local amenity,*
    - (ii) *to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or*
    - (iii) *to preserve a site of archaeological or historic interest or nature conservation value,**and are reasonably capable of being so modified."*
13. Sub paragraph (6) states that the "*relevant planning authority may only impose conditions on approval for the purposes of this paragraph-*
- a) *with the agreement of the nominated undertaker, and*
  - b) *on the ground referred to in sub-paragraph (5)(b)."*
14. In relation to appeals made under paragraph 22 of Schedule 17, paragraph 22(2) specifies that:
- "on appeal under this paragraph, the appropriate Ministers may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against, but may only make a determination involving:*
- a) *the refusal of approval, or*
  - b) *the imposition of conditions on approval,*
- on a ground open to that authority."*
15. The Secretary of State for Transport has published the 'Schedule 17 Statutory Guidance' (SG) to guide local planning authorities in the exercise of their functions under the Schedule. I have had regard to the SG in my consideration of the appeal.
16. The Council has acquired QA status by giving undertakings to the Secretary of State with respect to the handling of planning matters under Schedule 17 of the Act. QAs are members of the Planning Forum which is intended to help co-ordinate and secure the expeditious implementation of the planning provisions in the Schedule. The Planning Memorandum [A App D13] sets out the undertakings given by QAs and is binding on those authorities. Amongst other things this requires that, when considering applications for approval, a QA:

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<sup>2</sup> Sub paragraph 6(2)

- shall have regard to construction, cost and programme implications, and shall not seek to impose any unreasonably stringent requirements on the request for approval which might frustrate or delay the project (paragraph 7.2.1);
- shall state clearly and precisely the full reasons for the refusal of an application made to it (paragraph 7.7.1);
- if its decision has been reached on the grounds that the proposed details ought to and could be modified it should include an explanation of how it considers that the modifications should be made (paragraph 7.7.2);
- shall also take into account the assessment and findings set out in the HS2 Environmental Statement (ES), the approved HS2 Code of Construction Practice (CoCP) [A App D12] and any Undertakings and Assurances given by HS2 Limited in relation to the construction of the project (paragraph 9.1.1); and
- shall have regard to the SG (paragraph 9.3.1).

### **The Approach to the Determination of Applications and Appeals**

17. The first decision by the Joint Secretaries of State on an appeal (Ref APP/HS2/1) under paragraph 22 of the Schedule, also in Hillingdon, was issued in March 2019 [A App D3]. The Council sought to challenge that decision in the High Court and the Court's judgment [A App D5] was handed down in December 2019. I understand that the Council has been granted leave to appeal the High Court's judgment in the Court of Appeal but that no date has yet been set for a hearing. Until such time as the Appeal Court hands down its judgment, the High Court judgment<sup>3</sup> sets out the relevant case law on the correct approach to be taken in the determination of applications and appeals made under Schedule 17.
18. In that judgment, Mrs Justice Lang stated that the Act has expressly constrained the decision-making function of local planning authorities in a way that is unusually restrictive in comparison with other types of applications. She ruled that, on a proper construction of the grounds set out in the Schedule, the onus is on the local planning authority to demonstrate that the submission made under Schedule 17 ought to be and is reasonably capable of being modified. This is also stated at paragraph 7.7.2 of the Planning Memorandum.
19. Paragraph 84 of the judgment states that there is no express provision in Schedule 17 empowering the local authority to seek further information from the applicant. Such a power can, however, readily be implied as part of a local authority's decision making function and there is also an implied obligation on the part of the applicant to co-operate with reasonable requests for additional information.
20. Noting that paragraph 4.4 of the SG warns local authorities that they should not seek to modify or replicate controls already available within the Environmental Minimum Standards (EMRs) approved under the Act, the judgment ruled that it is not the purpose of the Schedule 17 procedure to replicate or police the process of investigation set out in the EMRs. The correct

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<sup>3</sup> R (on the application of London Borough of Hillingdon) and The Secretary of State for Transport and others [2019] EWHC 3574 (Admin).

approach is for the local authority to determine the application on the basis that any requirements of the EMRs will be applied by HS2 Ltd or its contractors. It is not the role of the planning authority to seek to enforce controls within the EMRs by withholding approval.

## Reasons

### *Scope of the Application Submission*

21. The parties agree that Paragraph 6(1) of the Schedule requires that development must be carried out in accordance with arrangements approved by the QA but disagree as to what is meant by the term 'arrangements.' My examination of the relevant documents leads me to conclude that the Appellant's interpretation of the purpose of Schedule 17 is correct.
22. If it was Parliament's intention that the Act should specify the routes that HS2 construction traffic should use this would clearly have been set out within the Act. I can see no such stipulation either in the main body of the Act or within Schedule 4, concerned with highways, or Schedule 25, which is concerned with Traffic Regulation.
23. Paragraph 1 of Schedule 25 requires that traffic authorities other than the Secretary of State (SoS) for Transport, must consult the SoS before introducing a new Traffic Regulation Order in relation to a "relevant road". Sub-paragraph 25(3)(b) advises that a relevant road includes a road which is part of a route in relation to which approval has been given under paragraph 6 of Schedule 17 (my emphasis). In my view, this confirms that lorry routes are to be approved as part of the Schedule 17 process.
24. That interpretation is reinforced by a number of statements within Planning Forum Note 6 (PFN6)[A App D14]. These include:

*"Paragraph 6 of Schedule 17 to the...Act ... puts in place certain requirements relating to the approval of arrangements for movements of large goods vehicles ('LGVs') to and from working and storage sites, sites where material will be re-used, and waste disposal sites (referred to collectively in this Note as 'Sites'). These are commonly referred to as lorry route approvals. This Note sets out the approach to making these requests for approval and the contents of submissions" (paragraph 1).*

*"if there are predicted to be more than 24 LGV movements in a day, "the routes used by LGVs between that Site and any special/trunk road need to be approved" (paragraph 2).*

*"The nominated undertaker will submit for approval to the relevant qualifying authority, a list of roads (the 'Main Route(s)') that that will be used by LGVs travelling between the Site and the special/trunk road network" (paragraph 3).*

*"On the basis that the Transport for London Road Network (TLRN) is the equivalent of the trunk road network in London, submissions made to qualifying authorities in or near to London, will seek a general approval of the entire TRLN as being Main Routes" (Paragraph 5)*

25. As a member of the Planning Forum, the Council had full opportunity to attend its meetings and participate in the discussion and approval of PFN6. The Council should, therefore, be fully aware of the contents of that note.
26. In support of its position, the Council refers to evidence given to the HS2 Select Committee by Mr Miller of HS2 Ltd, as recorded in the extract from the transcript in Document C App 1. On my reading of Mr Miller's statement, at paragraph 95, he was advising that the information as to what vehicles were going where and what restrictions were to be applied on the roads would come through the Local Transport Management Plans (LTMP) as being the vehicle through which the extra detail relating to the management of construction traffic would be provided. These would need to be prepared and discussed with the relevant highway authorities. However, I accept that, in referring to the need under what is now Schedule 17, for the highway arrangements to be finally agreed, he stated that this agreement would be with the '*relevant highway authorities*'.
27. This may have been a slip of the tongue but is not correct insofar as the Schedule 17 process is concerned. As set out in paragraphs 2.6 to 2.10 of the Appellant's Response to the Council's Statement [ACAD IV], Schedule 17 does not give any powers or duties to local highway authorities. The power to determine Schedule 17 applications is given to the Council as local planning authority. As established in the High Court judgment, that power is unusually restricted by virtue of the very limited grounds on which applications may be refused.
28. From the above information it is clear that the lorry routes have not been approved within the Act itself and that it is through the Schedule 17, paragraph 6 process that these routes fall to be approved. This does not mean that it is not open to the Council to raise concerns about the effects of the use of the proposed routes on the free flow of traffic and on highway safety, or to contemplate the use of conditions on an approval to remedy specific issues. However, a refusal of a submission made under paragraph 6 of Schedule 17 must only be on one of the grounds listed in sub-paragraph (5) and conditions cannot be imposed unless they meet the requirements set out in sub-paragraph (6). If any condition is proposed, the onus is on the Council to demonstrate that the Schedule 17 submission ought to be and is reasonably capable of being modified in that way.

*Whether a refusal of the application is justified*

29. The Council's decision notice [A App D1] asserts that both the Council and HS2 Ltd have evidence that the HS2 LGV traffic movements will result in congestion on the local road network and will, therefore, prejudice the free flow of traffic particularly in the AM and PM peak. The Council has significant concerns that the arrangements for vehicles moving into and out of worksites are likely to prejudice the free flow of traffic and the safety of other road users. The notice asserts that "*the Council is entitled to refuse the application on the basis that the arrangements referred to in Schedule 17, paragraph 6 ought to be modified to prevent or reduce prejudicial effects on road safety and the free flow of traffic in the local area and are reasonably capable of being so modified.*"
30. The Council has suggested two conditions which it considered could mitigate the reason for refusal. Under paragraph 6(6)(a), conditions can only be imposed with the agreement of the nominated undertaker (HS2 Ltd) and HS2

Ltd was not willing to accept the suggested conditions. The Council maintains that, for this reason, it had no option but to refuse the application.

31. The Council's Statement [C App 12], confirms that its concerns relate primarily to the lorry routes that would use that part of the network including Swakeleys Road, Swakeleys Roundabout, Harvil Road, Breakspear Road South and Ickenham Road. In essence, the objection is that the routes form part of a busy road network which is already heavily used and at capacity, particularly at peak times, and that the additional HS2 LGV movements would result in a prejudicial effect on the free flow of traffic. Suggested Condition 1 seeks that a cap should be placed on the number of HS2 LGVs using specific junctions on the network at peak times in order to reduce the effect of that additional traffic on other road users.
32. In its refusal of the application, the Council relies upon the ground in subparagraph 6(5)(b); i.e. that the arrangements ought to be modified to prevent or reduce prejudicial effects on road safety or the free flow of traffic.
33. The Council's Statement asserts that, as local planning and highway authority, it "*needs to be satisfied that the arrangements will (amongst other things) prevent or reduce prejudicial effects on road safety or the free flow of traffic in the local area*" (paragraph 1.1.5). I consider this assertion to be misplaced because Schedule 17 confers powers and duties on the Council only in its role as local planning authority. I agree with the Appellant that the Council's Statement displays a misunderstanding as to how Schedule 17 is intended to operate.
34. Having regard to the decisions issued in relation to the first two HS2 appeals (HS2/1 and HS2/2) and the High Court Judgment, paragraph 6 requires that approval should only be refused if there is clear evidence that the proposed arrangements would result in prejudicial effects on road safety or the free flow of traffic that need to be prevented or reduced. The burden of proof falls on the Council to demonstrate that the proposed arrangements would be so prejudicial as to require that the Schedule 17 submission should be modified.
35. As set out in paragraph 2.4 of the Appellant's Response to the Council's Statement [ACAD IV], the Council must demonstrate with appropriate evidence that:
  - (i) the use of the proposed routes would, rather than might, lead to the alleged prejudicial effect;
  - (ii) the submission ought to be modified to prevent or reduce that effect (the 'why') and explain what modifications it considers to be required (the 'how'); and
  - (iii) the submission is reasonably capable of being so modified.
36. The Council argues that HS2 Ltd is well aware of problems on the local road network, including that of peak time congestion, and relies upon the Appellant's own evidence to justify the proposed peak time cap on movements. This evidence comprises the ES that formed part of the evidence before Parliament when it passed the Act and a subsequent study commissioned by the Appellant and carried out by Transport for London (TfL). This study [C App 7] was concerned with the '*Reassignment of traffic in Hillingdon in response to*

*HS2 construction traffic and the proposed signalisation of Swakeleys Roundabout.* It is subsequently referred to as the 'TfL Report'.

### The ES Assessment

37. The original ES identified significant adverse effects on the local highway network in Hillingdon. It concluded that changes in traffic flows would lead to congestion and increased delays at a number of local junctions including Swakeleys Roundabout. These effects were identified as residual effects allowing for the identified mitigation including the provisions made in the EMRs. The subsequent 'Additional Provision 2 ES' report, which assessed a lower daily flow of HS2 LGVs than the original ES, also identified significant residual effects and concluded that:

*"despite these reductions in HGV peak traffic flows, the major adverse significant effects on Swakeleys Road and Harvil Road remain unchanged from the main ES".*

38. However, the evidence before me clearly shows that the level of LGV movements assumed in those two assessments was significantly higher than the level now envisaged and which forms the basis of the Appellant's Schedule 17 submission.

39. The Schedule 17 application also seeks approval for the lorry route to and from the South Ruislip Vent Shaft Main Compound but this route would use a different part of the local road network. The routes proposed for LGVs visiting the other constructions sites covered by the application would all need to use that part of Swakeleys Road between its junction with the A40 and its junction with Harvil Road.

40. The Appellant's Statement of Case [ACAD II] (paragraph 6.72) confirms that the original ES was based on an assumed total of 1,860 daily two-way movements over a 12 month period at Swakeleys Road (between the A40 junction and Harvil Road) and that the Additional Provision 2 Assessment assumed 1,460 movements per day over a nine month period on the same part of the network. These figures are not disputed by the Council.

41. In the Schedule 17 submission the total two-way LGV movements generated by all worksites (excluding the South Ruislip Vent Shaft Main Compound) is limited to 480 at the peak of construction activity. This is set out in paragraphs 2.1.76 to 2.1.83 of the Written Statement submitted with the application [A App A5]. The 480 figure is based on a crude aggregation of the peak level of movements for each of these worksites. The figures in the Written Statement are taken from the Appellant's LTMP and the current version of that document [A App D17] sets out the traffic flow forecasts in Table 6.2.

42. In Table 6.2, forecast flows are given as ranges rather than absolute figures. It can be seen that the 480 peak two-way trip estimate is reached by adding together the maximum figure for each of the four worksites of interest. A footnote confirms that the average daily combined flows are for the 'busy periods' for each of the sites. The fourth column indicates a variation in the duration of the likely busy period for each of the sites of between 2 and 16 months. Hence, although construction activity within this part of Hillingdon might extend over 4 years and 9 months, the 'average' traffic levels indicated in Table 6.1 would be experienced over relatively short periods within this

overall timescale. In addition, as not all worksites will reach their peak level of activity at the same time, the 480 figure represents a worst case scenario (paragraph 3.8 of the Appellant's Response to the Council's Appeal Statement).

43. Table 6.1 also provides an estimated average combined two-way LGV flow of 310-420 LGVs for that section of Swakeleys Road south of Harvil Road. This appears to be consistent with paragraph 2.1.4 of the Council's Statement which notes that the construction programme will result in a maximum of a little over 400 LGVs per day at Swakeleys Roundabout (which is the junction through which all of the proposed routes pass). Hence, although there could be some 480 two-way trips on the network as a whole during the busiest period, the 'average' flow this section of Swakeleys Road is estimated at around 420 additional LGVs.
44. Even the 480 daily total is substantially lower than either of the figures used in the original ES or Additional Provision 2 assessments. Both assessments concluded that the additional LGV movements would have a prejudicial effect on the free flow of traffic in this part of the network. However, given the very much higher daily flows that were assumed in those assessments, those findings do not demonstrate that the much lower level of movements now envisaged would also have that effect. The original ES and Additional Provision 2 conclusions cannot, in my view, be relied upon as evidence that the use of the lorry routes as now proposed would, as opposed to might, result in a prejudicial effect on the free flow of traffic.
45. I note the Council's references to comments made by members of the Select Committee with regard to traffic and air quality problems in Hillingdon. Those comments may have reflected the understanding that those Committee members had gained of the evidence set out in the original ES and Additional Provision 2 assessments. However, they do not and cannot, in my view, carry any weight in terms of providing clear evidence that the much lower LGV movements now envisaged would have a prejudicial effect on the free flow of traffic on the local network.
46. It is also important to note that the outcome of the Select Committee's examination of the Bill, including its consideration of the evidence submitted by the Council on the adverse impacts of construction traffic, was that the Act was passed and deemed planning permission was granted. Although Parliament no doubt had regard to the EMRs and the various undertakings and agreements given by HS2 Ltd in reaching its conclusions, the Act does not set specific limits on LGV flows on the road network within Hillingdon. It must, therefore, be assumed that Parliament concluded that the assessed impacts were acceptable, notwithstanding its expectation that additional work would be undertaken to try to further reduce those impacts.

#### The TfL Report

47. Parliamentary approval of the Act was accompanied by a legal agreement (the Hillingdon Agreement) between the Council, HS2 Ltd and the SoS for Transport [A App D18] which required that further work be undertaken to reduce the impact of construction traffic on the road network in the Borough. This included a target of reducing two-way LGV movements to 550 per day or less (Clause 6.1).

48. The Council asserts that the fact that the Appellant commissioned this study provides “*yet more evidence that the reduced traffic numbers arising from the legal agreement were still likely to cause problems on the network.*” I consider this to be unfounded since the commissioning of this study logically flowed from the Appellant’s obligations under the Hillingdon Agreement.<sup>4</sup> In any event, the presence of ‘*likely problems*’ falls considerably short of the evidential burden required, under Schedule 17 paragraph 6, to demonstrate that the 480 daily peak flows now assumed would result in a prejudicial effect on the free flow of traffic or highway safety.
49. The TfL Report considered scenarios including (a) the baseline case in 2021 without HS2 traffic; and (b) the baseline case in 2021 with HS2 traffic. It is asserted (paragraph 3.2.24 of the Council’s Statement) that these assessments demonstrated existing capacity problems and that the HS2 LGV movements would exacerbate problems in peak hours. The Council’s case is that the figure of 550 daily movements, as assumed in that study, is sufficiently close to the 480 underpinning the Schedule 17 submission such that it can be concluded that the LGV movements now envisaged would also have a prejudicial effect.
50. The 550 figure is some 12% larger than the 480 now envisaged. I accept that it reflects the Schedule 17 assumptions as closely as reasonably possible given that no separate modelling or assessment of the 480 daily total has been carried out. However, there is doubt as to whether that is what TfL assumed when preparing their report.
51. Section 1 of The TfL Report [C App 7] explains that it presents results from an update of a previous study by Mott MacDonald in December 2015. The report used a TfL traffic model for that part of London including Hillingdon, with updated traffic count data collected at five sites in the study area in December 2017. However, Section 4 states that the Mott MacDonald Study estimated the levels of extra traffic resulting from the HS2 construction and that “*the same levels have been assumed for this new study*”. The Appellant explains that, as the Mott MacDonald Study was completed in December 2015, it could not have used the 550 total daily movements target set out in the Legal Agreement (dated August 2017) as the work on this reduction had not been undertaken at that time.
52. The Appellant’s assertion is confirmed by Figure 16 of the TfL Report which shows the assumed HS2 construction hourly flows; these are stated as one-way flows. The AM and PM peak flows were assumed to be the same (as indicated by identical figures appearing in each carriageway of the highway links concerned). The hourly flows for Swakeleys Road between Swakeleys Roundabout and Harvil Road are 177 and those for Harvil Road are 120. These are measured in PCUs<sup>5</sup> and, with a PCU value of 2.3 for each large truck, amount to one-way LGV flows of 76.9 on Swakeleys Road and 52.1 on Harvil Road. As noted at paragraph 3.29 of the Appellant’s Response to the Council’s Appeal Statement [ACAD IV], these figures accord with the levels set out in Table 1 of HS2 Ltd.’s response to the HS2 Select Committee, dated 24 September 2015 [A App E1].
53. That table shows assumed two-way LGV flows of 146 on Swakeleys Road and 96 on Harvil Road. Allowing for minor differences resulting from the way the

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<sup>4</sup> Section 5 of A App D18

<sup>5</sup> Passenger Car Units

figures were rounded in the different traffic models these figures are essentially the same as were assumed in the Additional Provision 2 Assessment presented to the Select Committee. The TfL Report's conclusions about the likely effect of HS2 LGVs on the free flow of traffic were, therefore, based on the Additional Provision 2 flows of 1,460 extra LGV movements per day. This is a substantially greater number than the 480 peak figure underpinning the Schedule 17 application. Accordingly, I find that the TfL Report does not provide clear evidence that the use of the lorry routes as now envisaged would result in the prejudicial effects alleged by the Council.

54. In the absence of other evidence, I conclude that the Council has not demonstrated that the proposed arrangements with regard to the routing of LGVs to the worksites at the West Ruislip Portal Satellite Compound, Breakspear Road South Uxbridge Satellite Compound, North Tunnel Earthworks Main Compound and Harvil Road Realignment Satellite Compound would have a prejudicial effect on the free flow of traffic on the local road network. There is, accordingly, no justification for the refusal of the application on this ground.
55. The Appellant suggests that the Council does not object to the proposed route to serve the South Ruislip Vent Shaft Main Compound. It is not fully clear from the Council's submissions that this is the case.
56. Draft Condition 1 expressly excludes the route to the South Ruislip Vent Shaft from the first part of the condition, which otherwise requires that the lorry routes should not be used until a scheme to reduce and limit LGV movements in the peak hours has been approved by the Council. However, the draft condition does propose that Victoria Road and the Long Drive signal controlled junction should be subject to such limits. As Victoria Road and its junction with Long Drive would, in my understanding, be used only by LGVs travelling to or from the South Ruislip Vent Shaft Main Compound, the condition does seek a modification in respect of that route.
57. No separate evidence of congestion problems on that part of the network has been submitted. I can, accordingly, only assume that the Council relies upon the original ES and the Additional Submission 2 Assessment to substantiate those concerns. As they assumed much larger figures than the flows now proposed, I do not consider that these assessments serve to demonstrate that the additional LGV movements now envisaged would have a prejudicial effect on the free flow of traffic either on Victoria Road or though the Victoria Road/Long Drive junction.
58. The representations submitted by interested parties also refer to traffic congestion on the local network and the problems experienced even "*before enduring a possible maximum of 550 LGV a day*".<sup>6</sup> As noted earlier in this decision, Parliament granted deemed planning permission on the basis of the effects identified in the original ES and Additional Provision 2 assessments. These both assumed a much higher level of daily movements than either the 550 target set in the Hillingdon Agreement or the 480 limit now envisaged at the peak of the construction activity. Whilst I do not reject the concerns raised by interested parties, their comments do not constitute the clear evidence required to demonstrate that the proposed lorry routing arrangements and level of LGV movements envisaged in the Schedule 17 submission would have a prejudicial effect on the free flow of traffic or on highway safety.

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<sup>6</sup> Paragraph 5 of Mr Cable's submission.

*Whether the Council has produced sufficient evidence to demonstrate the need for the conditions and whether the proposed conditions are appropriate.*

Proposed Condition 1

59. The Council has raised concerns as to the effect of additional HS2 LGV movements throughout the day but the main purpose of proposed Condition 1 is to limit the number of LGV movements on specific parts of the network at peak times. The condition would require the Appellant to submit a scheme to reduce and restrict LGV movements at such times, including methods of recording and reporting the movements on a weekly basis to the Council.
60. I note the Appellant's assertion, at paragraph 3.36 of its Response to the Council's Statement, that the proposed evening peak of 4.30 to 6.00 PM referred to in the draft condition is longer than the PM peak assessed in the TfL Study. I consider that inconsistency to be of relatively minor significance, given my finding that the TfL assessment was based upon substantially larger daily flows than those now envisaged. For this reason, the TfL Report's conclusions do not provide the evidence needed to demonstrate that the LGV movements now envisaged would result in prejudicial effects on the free flow of traffic at peak hours.
61. This finding is supported by the TfL Report's conclusion that the adverse effects of those higher traffic flows could be mitigated to a large extent by the partial signalisation of Swakeleys Roundabout without an adverse effect on other junctions<sup>7</sup>. Had the Council decided to progress with that mitigation, it seems unlikely that it would be concerned about the lower level of LGV movements now proposed or see a need for the proposed condition. Irrespective of its reasons for not proceeding with a mitigation that was expressly identified in the Hillingdon Agreement,<sup>8</sup> those conclusions do not support the Council's contention that the TfL report serves as evidence that unacceptable peak time effects would result from the lower level of daily movements now proposed.
62. The Council asserts that there would be an uneven spread of the 480 daily movements resulting in elevated levels in the peak hours. I am satisfied that, for the reasons set out in paragraphs 4.7 to 4.10 of the Appellant's response to the Council's Statement, this reflects a misunderstanding of the data. The Appellant accepts that there would be a slightly higher flow than the hourly average in the evening peak hour but this does not, on its own, serve as evidence of a prejudicial effect at the PM peak.
63. On this basis alone, proposed Condition 1 does not satisfy the paragraph 6 requirement that conditions be imposed only on the ground that the proposed arrangements "*ought to be modified*". There is no clear evidence that the number of movements now envisaged would have such a prejudicial effect as to require the proposed routing arrangements to be modified in the way that the Council suggests.
64. In my judgment proposed Condition 1 conflicts with Paragraph 4.4 of the SG, which specifies that planning authorities should not, through the exercise of the Schedule, seek to modify or replicate controls already in place such as within the EMRs. Paragraph 10.3 also states that conditions that conflict with commitments or controls contained in the EMRs should not be imposed. This is

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<sup>7</sup> Paragraphs 3.45 – 3.49 of ACAD IV and page 24 of C App 6.

<sup>8</sup> Section 5 of the Hillingdon Agreement [A App D4].

because “ *these controls would have been considered necessary or sufficient by Parliament when it approved deemed planning permission*”.

65. HS2 Ltd and its sub-contractors are contractually bound to comply with the EMRs. These include the General Principles, the CoCP, the Route Wide Transport Management Plan (RTMP), the LTMP and the Vehicle Management System (VMS). These documents do not form part of the Schedule 17 application but do provide relevant information to which the decision maker should have regard. As established in the High Court judgment, the correct approach is for the application to be determined on the basis that any requirements of the EMRs will be applied by HS2 Ltd and its contractors. It is not the role of the Schedule 17 planning process to seek to enforce controls within the EMRs by withholding approval.
66. Paragraph 1.1.3 of the General Principles requires that EMRs should ensure that the environmental effects of construction works are no greater than those assessed in the ES. Paragraph 1.1.5 requires that HS2 Ltd should, in any event, use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts.
67. The further work undertaken since the Act was passed has resulted in the number of predicted LGV daily movements in this part of Hillingdon being limited to 480, rather than the 1,860 (original ES) or 1,460 (Additional Provision 2) that were considered by the Select Committee. This is consistent with the Appellant’s obligation within the Hillingdon Agreement to use reasonable endeavours to limit two-way daily LGV movements at Swakeleys Roundabout to 550.<sup>9</sup> It is reasonable to assume that, as a result of that reduction in LGV movements, the adverse impacts of HS2 construction traffic will also have been reduced below those predicted in the ES and Additional Provision 2 assessments.
68. There is no specific limit on peak hour movements in the EMRs. However, the Hillingdon Agreement (paragraph 6.1) requires the Appellant to reduce, so far as reasonably possible, the number of HGV (LGV) movements at Swakeleys Roundabout during the AM and PM peaks. Pursuant to paragraphs 3.1.1 and 3.1.4 of the General Principles document, the Hillingdon Agreement has the status of an EMR. The General Principles confirms that the SoS requires HS2 Ltd to comply with all of the arrangements provided for in the EMRs (paragraph 1.1.1) and that it is contractually bound to do so (paragraph 1.1.4). This commitment forms part both of HS2 Ltd.’s duty, as nominated undertaker, and its contractual obligation to the Council under the Hillingdon Agreement. The Council is, therefore, already empowered to require the Appellant to demonstrate, with appropriate monitoring data, how that commitment is being achieved.
69. The Hillingdon Agreement sets out what was agreed between the Council, HS2 Ltd and the SoS for Transport in August 2017. The agreement does not specify a maximum number of LGV movements at any junction or on any part of the network at peak times. Neither does it require that any specific number of movements should be agreed. Together with the other controls within the Act and the EMRs, the Hillingdon Agreement reflects the settled position regarding the traffic concerns raised by the Council in its evidence to the Select

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<sup>9</sup> Section 6.1 of the Hillingdon Agreement [A App D]

Committee. It was on this basis that Parliament was content for the Act to be given Royal Assent and for deemed planning permission to be granted.

70. Through its proposed Condition 1 the Council seeks to renegotiate that agreed position by introducing new and additional controls. A condition requiring that maximum peak time numbers be set would equate to a modification of controls that are already provided within the EMRs. That would conflict with the statement in the SG (paragraph 4.4) that planning authorities should not, through the exercise of the Schedule, seek to modify or replicate controls already in place within the EMRs or elsewhere. Having regard to the basis on which Parliament gave its consent, the proposed condition is also inconsistent with the requirement, in that same paragraph, that Schedule 17 applications should not be used to revisit matters settled through the parliamentary process. The proposed requirement for recording and reporting LGV peak time movements on a weekly basis also represents a modification or duplication of controls that are already in place.
71. The Act makes the Appellant responsible for undertaking the monitoring and management of traffic movements; this duty does not fall upon the Council. This is to be achieved through the various elements of the EMRs. For example, section 14 of the CoCP requires that the impacts of construction traffic on the local community are minimised where reasonably practical and that appropriate measures are taken to ensure that the local transport network can continue to operate effectively. The RTMP includes a large number of controls on LGV traffic which have been discussed and agreed with the relevant highway authorities. It includes a requirement for a monitoring and compliance team to deal with matters such as the collection of vehicle flow data and compliance with approved routes and with specific undertakings and agreements (paragraph 5.4.4.5). It also requires that a Transport Liaison Group (TLG), including representatives of the relevant highway authorities, be established and maintained throughout the works.
72. The Hillingdon Agreement is one of the undertakings and agreements referred to in paragraph 5.4.4.5 of the RTMP and is, therefore, covered by the monitoring requirement. This requires that the Appellant collect data on traffic movements, including movements at Swakeleys Roundabout, to ensure that the 550 limit is not breached. This was confirmed in the Appellant's email to the Council, dated 3 March 2020 [A App C1]. This stated that, as the ES was based on average flow assumptions in peak hours, reporting to the TLG will include average figures for flows to and from the worksites at these times. It also confirmed that flows in any one hour will be managed to ensure that no new significant adverse effects arise. The Council will, therefore, be provided with data on LGV flows at the peak times that it is concerned about.
73. The TLG provides the mechanism for monitoring data to be shared and for the Council to raise concerns about particular issues that might be experienced as a result of the construction traffic movements. The obligations under the CoCP and RTMP, with regard to the management of traffic so as to minimise the effect on the community and the road network, also require that the Appellant engage with such concerns and take reasonable measures to address any issues that are agreed to be causing an unacceptable effect on the free flow of traffic or on highway safety. As emphasised by the Appellant, at various places in their evidence, its ability to respond to such issues is enhanced because the LTMP is a living document which will be subject to annual review and which can

be changed, as necessary, to amend existing traffic management measures or to introduce new measures.

74. The obligation on HS2 Ltd and its contractors to have a VMS in place provides for changes to be made quickly in the event that any significant issues should arise. In its response to the Council, dated 7 February 2020 [A App C1], the Appellant's contractor confirmed that the VMS will limit the number of LGVs able to book into each of the worksites during peak periods and that this will ensure the free flow of traffic. The contractor advised that the VMS can be amended to reduce the number of vehicles able to book in certain time slots, should there be a specific issue or evidence of traffic disruption, and that updates on the predicted and actual figures will be given at TLG meetings.
75. I note the Council's concern that the VMS has not been shared with the Council and is not before me but I do not consider that this prevents me from placing reliance on it as part of the controls that are already in place. The Appellant and their contractors are required to adopt and operate a VMS and this can, reasonably, be considered to form part of the existing controls provided for within the EMRs. Both the Council, and I as the decision maker in respect of the appeal, should proceed on the basis that this suite of controls will be implemented and complied with by the Appellant.
76. Given that these mechanisms are already in place I see no justification for the more onerous requirement of weekly reporting as sought in the proposed condition. I consider that, in proposing this requirement, the Council is seeking to use the Schedule 17 process as a means of policing the traffic monitoring and management requirements set out in the EMRs. That is not the purpose of the Schedule 17 application and approval process.
77. For these reasons I find that proposed Condition 1 seeks to modify or replicate controls already provided for in the EMRs and is contrary to paragraph 4.4 of the SG. The condition is, therefore, unnecessary and fails to meet the tests of acceptability for planning conditions set out in paragraph 55 of the National Planning Policy Framework (Framework).

#### Proposed Condition 2

78. The Council's second proposed condition requires the submission of a scheme of detailed proposals for how access and egress for LGVs from each of the worksites can be managed so as to maintain a free flow of traffic and the safety of other road and non-road users. It also requires the Appellant's subsequent adherence to the agreed scheme. As worded, the condition requires that the scheme be submitted to and "*approved in writing by the highway authority*". Schedule 17 does not convey any powers on the Council as highway authority or enable the local planning authority to delegate its power to approve and enforce any conditions on a Schedule 17 approval to another body. In its current form the condition would not be acceptable and should not be imposed.
79. On a simple reading the suggested condition also fails to set out clearly how the Council considers that the Schedule 17 submission should be modified. Instead, it places responsibility on the Appellant for defining appropriate measures. Proposed Condition 2 does, accordingly, fall short of the requirement in paragraph 7.7.2 of the Planning Memorandum<sup>10</sup> that, where the

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<sup>10</sup> Page 272 of A App D.

authority's decision has been made on the basis that some aspect of the operation ought to be modified, its decision should include an explanation of why and how it should be modified (my emphasis).

80. The Council asserts (paragraph 4.3.1 of its Statement) that the evidence demonstrates justification for 'significant concerns' about the access and egress arrangements from all of the worksites. That evidence comprises statements about the nature of the roads from which access would be gained and how busy these are, and a set of photographs [C App 9, 10 & 11] which identify some of the specific movements that LGVs would need to perform while travelling to or from the worksites. No accident records or other data has been submitted to identify specific risks or hazards on the relevant sections of the network.
81. Having carefully considered the Council's submissions, my conclusion is that, overall, they constitute general assertions about the nature and sensitivity of certain parts of the network. They do not, however, serve to demonstrate that the movement of LGVs to and from worksites would, as opposed to might, have a prejudicial effect on the free flow of traffic or highway safety. Those submissions do not meet the evidential burden, under paragraph 6, that is required to demonstrate that the Appellant's Schedule 17 submission ought to be modified.
82. The purpose of proposed Condition 2 was also explained in the Planning Officer's email to the Appellant [A App C1], dated 24 February 2020. This stated that *"we need to ensure that vehicles turning across the carriageway are done safely (i.e. a banksman or stop go controls); and that the VMS... does not result in a queue of lorries on the highway, and there is a general safe approach to access and egress from the site."*
83. In Appeal Ref HS2/2 the Inspector and the Secretaries of State accepted the need for a condition that placed a restriction on LGVs making a right turn out of a specific worksite. That condition differed from proposed Condition 2 in that it introduced a clear and specific modification to the application submission. There was also full agreement, between the Appellant and Council, that clear evidence existed as to the need for that restriction on highway safety grounds and that the arrangements for the proposed lorry routes ought to be modified in that way. As noted by the Appellant at paragraph 4.25 of their response to the Council's Statement, the need for a right turn ban had been contemplated in the LTMP but this did not expressly require such a restriction.
84. In the current appeal, although the Council has raised general concerns about the movement of LGVs across other traffic, it has not provided sufficient evidence to demonstrate a strong highway safety reason for imposing any restrictions on specific movements. There is, therefore, no clearly demonstrated need for the imposition of proposed Condition 2. I consider that it would also conflict with the SG requirement that planning authorities should not use the Schedule 17 process to modify or duplicate controls that are already in place.
85. Paragraph 14.2.4 of the CoCP requires that LTMPs be produced in consultation with the highway and traffic authorities, emergency services and other key stakeholders. Amongst other things, the LTMPs are to include permitted access routes for all construction traffic, main access and egress points for worksites and the proposed traffic management strategy. The RTMP sets out a number of

detailed requirements in respect of vehicle access management (section 4.10) to ensure that project standards for vehicle booking, safety and management are met. These include the requirement for the deployment, training and supervision of traffic marshals, the operation and monitoring of a vehicle booking system and the recording of data including on non-compliance with any of the project standards and requirements.

86. Paragraph 2.3.3 of the LTMP states that the Schedule 17 lorry routes application has been informed by the LTMP and by the Route Management, Improvement and Safety Plan (ROMIS). The LTMP (paragraph 6.4.1) confirms that all construction traffic will be managed through the VMS as described in section 4 of the RTMP. The central purposes of the VMS, including the vehicle booking system and the use of traffic marshals, include those of ensuring the safe operation of the access points and the avoidance of queuing of construction traffic on the highway. Further details on the operation of individual access points was provided by the Appellant's contractor in a telephone discussion with the Council, a transcript of which is included in Document C App C2.
87. In that discussion the presence of gate marshals and the operation of VMS at each of the sites was confirmed. Confirmation was also given that access from Ickenham Road would be left turn only with no need for LGVs to cross the highway; that swept path analysis had shown that LGVs can egress from Clacks Lane safely; and that the turning point would be manned. In relation to Harvil Road, the contractor confirmed that signage would be used to alert other road users to the presence of the access; that there would be gate staff at the access; and that an assurance of no queueing on the highway is a key part of the mitigation measures.
88. Only in relation to Breakspear Road South did the contractor indicate that further assessment was required to determine whether signalling or additional signage would be needed on the highway to ensure that LGVs could manoeuvre safely. If the use of temporary traffic signals or other such measures is proposed there is already a requirement within the Act, under the provisions within Schedule 4 (Highways), for the Appellant to seek the Council's approval of those measures, in its role as local highway authority.
89. I consider that the various measures already in place are sufficient to ensure the safe operation of the worksite access and egress points and avoid the need for LGVs to queue on the highway. The Council's stated objectives in respect of the proposed condition could, therefore, already be met through the operation of these measures. Should any issues or concerns be identified, the Council would be able to raise these with the Appellant. Such matters could be aired and discussed at the TLG with subsequent changes being made to the VMS and, if appropriate, to the LTMP to introduce any necessary remedial measures.
90. The operation of the LTMP and VMS is secured through the EMRs and Schedule 4 requires the Council's approval (as highway authority) for certain works to or interference with the highway. As in respect of other parts of the Act and the EMRs, it should be assumed that the Appellant and its contractors will implement and comply with these measures so as to avoid or minimise adverse effects.
91. Taking these various provisions into account, I find that proposed Condition 2 would have the effect of duplicating and modifying controls already provided

for within the EMRs and would conflict with paragraph 4.4. of the SG. By definition the condition is, therefore, unnecessary and does not meet the tests set out in paragraph 55 of the Framework.

### **Other Matters**

92. Some interested parties have raised concerns about the effect of HS2 construction traffic on air quality within Hillingdon. I understand that this is an important issue for the local community. However, I note from the Applicant's response to Third Party Representations [ACAD III] that the ES predicted the Air Quality effects of construction traffic as being "*negligible*" or "*no longer a significant effect.*" I have no evidence to contradict those findings and agree with the Appellant that, due to the subsequent reduction in the estimated number of LGV movements, the effects are likely to be within or lower than those predicted levels.
93. Paragraph 6 of Schedule 17 identifies that approval of an application may be withheld on the ground that the proposed arrangements ought to be modified to preserve the local environment or local amenity. However, there is no clear evidence before me to demonstrate that the air quality effects of the LGV movements now envisaged would be so adverse as to demonstrate that the submission ought to be modified for this reason.

### **Conclusions**

94. For the reasons set out above, I find that the Council has not provided clear evidence to demonstrate that the lorry routes application ought to be modified and is reasonably capable of being modified in the way that the Council seeks. I also find that the two conditions proposed by the Council do not meet the necessity test in paragraph 55 of the Framework and conflict with paragraph 4.4. of the SG.
95. Accordingly, I conclude that the appeal should be allowed and that approval should be given to the application, as made under Schedule 17 of the Act, without any modification.

*Paul Singleton*

INSPECTOR.

## **APPENDIX A: LIST OF DOCUMENTS**

### APPELLANT'S CORE DOCUMENTS

- ACAD I Notice of appeal
- ACAD II Appellant's Statement of Case
- ACAD III Appellant's Response to Third Party Comments
- ACAD IV Appellant's Response to Council's Statement of Case

### APPENDICES TO APPELLANT'S CORE DOCUMENTS

- A App A1 Application Form
- A App A2 List of Roads (for approval)
- A App A3 Covering Letter (for information)
- A App A4 Plan showing the Routes (for information)
- A App A5 Written Statement (for information)
- A App A6 Route Management, Improvement and Safety Plan (ROMIS) (for information)
- A App B1 Draft Local Traffic Management Plan (LTMP) (superseded)
- A App C1 Emails sent to LBH between December 2019 and March 2020
- A App C2 Note of teleconference between Council and Appellant 26 February 2020
- A App D1 Application Decision Notice
- A App D2 LBH Officer Report
- A App D3 APP/HS2/1 Appeal Decision Letter
- A App D4 Inspector's Report on APP/HS2/1 Appeal
- A App D5 High Court Judgment relating to APP/HS2/1 Appeal Decision: London Borough of Hillingdon v SoS Transport and Others [2019] EWHC 3574 (Admin)
- A App D6 APP/HS2/2 Lorry Route Appeal Decision Letter
- A App D7 Inspector's Report on APP/HS2/2 Appeal
- A App D8 Schedule 17 Statutory Guidance
- A App D9 Development Agreement extracts
- A App D10 Information Paper E1: *Control of Environmental Impacts*
- A App D11 General Principles
- A App D12 Code of Construction Practice (Annex 1 to General Principles)

- A App D13 Planning Memorandum (Annex 2 to General Principles)
- A App D14 Planning Forum Note 6
- A App D15 Planning Forum Minutes – 2 November 2017
- A App D16 Route-Wide Traffic Management Plan (RTMP)
- A App D17 Draft LTMP (Current version)
- A App D18 Legal Agreement between LBH Council, Appellant and others dated 17 August 2017
- A App E1 Table 1 – LGV movements assumed in Mott McDonald Study and TfL Report
- A App E2 Minutes of LBH Cabinet Meeting 25 October 2018
- A App E3 TfL Slides re Reassignment of traffic in Hillingdon in response to HS2 construction traffic and the proposed signalisation of Swakeleys Roundabout

#### COUNCIL DOCUMENTS (APPENDICES TO WRITTEN STATEMENT)

- C App 1 HS2 Transcript Schedule 17 paragraph 95
- C App 2 LBH Committee Report 4 March 2020
- C App 3 LBH Decision Notice for Appealed Application
- C App 4 LBH Committee Minutes 4 March 2020
- C App 5 LBH Map of Proposed Lorry Routes
- C App 6 Legal Agreement between LBH, Appellant and SoS for Transport dated 17 August 2017
- C App 7 TfL Study re Reassignment of traffic in Hillingdon in response to HS2 construction traffic and the proposed signalisation of Swakeleys Roundabout
- C App 8 LBH letter to Commissioner of Transport at TfL dated 5 November 2018
- C App 9 Photographs of Clacks Lane junctions
- C App 10 Photograph and aerial image of proposed access from Old Dairy Road onto Victoria Road (Ruislip Vent Shaft access)
- C App 11 Aerial image and photograph of proposed new junction on Breakspear Road South
- C App 12 Council Statement of Case

#### THIRD PARTY REPRESENTATIONS

- TP1 Mr B Cable dated 11 May 2020
- TP2 Ruislip Residents Association (Phil Taylor) dated 13 May 2020
- TP3 Ickenham Residents Support Group (June Reyner) dated 12 May 2020

TP4 Hillingdon HS2 Resident Support Group (Lottie Jones) dated 12 May 2020