

Draft Statutory Guidance Planning Forum consolidated comments – March, July, December 2015 & May 2016

No.	Paragraph (April 2014)	Issue	HS2/DfT response	Notes (all paragraph references relate to the 3 rd Draft May 2016)
1	1 – 3	North: No comment		
2	1 – 2	South: No comment		
3	3.2	South: Should be explicit in stating that it is not a planning application.	To include.	Text added to paragraph 3.1.
	3.3	North: Typo identified 'choose' to 'chose'.		Removed.
4	4	South: Include text of CIL and s106.	To include.	Section 5 added. This confirms that CIL cannot apply to requests for approval under Schedule 17. It also clarifies the position with regard to Section 106. This is that there is nothing in the Bill that disapplies Section 106. It explains the highly limited circumstances in which Section 106 agreements could be appropriate.
5	4	LPAs consider that text should be explicit about what is not covered by the planning regime, e.g. plant and machinery, temporary structures, not looking at the environmental effects again as these have already been considered. Also include what is deemed to be reasonable giving some rural examples, as Crossrail examples are all urban, e.g. will LAs be able insist on stone or dressed stone finishing for some bridges in local areas?	To include.	Text has not been added on plant and machinery as it is felt that the definition of building in paragraph 28 of the Schedule is already unambiguous and does not require further guidance. Section 6 has been added to clarify the situation regarding temporary structures. Paragraph 4.4 has been extended to make explicit that the purpose of Schedule 16 is not to ensure compliance with the Environmental Minimum Requirements and other controls. Paragraph 7.2 has been expanded to be explicit that locally appropriate finishes could be considered through the Schedule 17 process.
6	4	The Chair observed that the first bullet repeats what is in the Planning Memorandum Section 5. HS2 Ltd agreed that where there is text repeated between the Planning	To include.	Guidance to reflect same text as Planning Memorandum where relevant.

		Memorandum and the Statutory Guidance, if the text is necessary in both, it should be the same.		
	4.2	North: Typographical error 'bringing into use'.		Corrected in the third bullet of 4.1 (no typo in 4.2)
	4.3	North: Suggestion that reference to the appeals process associated with site restoration schemes be included.		No change made. Paragraph 22(1) of Schedule 17 is clear that the appeals process applies to all approvals under Part 1 of the Schedule. Given this there is no need to repeat it in the Guidance for site restoration schemes.
	4.4	South: Suggestion that the wording is revisited in 4.4 to state that the grounds in Schedule 16 still apply and that 4.4 does not override these controls.		No change made. Nothing in paragraph 4.4 implies that it overrides the grounds in the Schedule. The paragraph explains what is considered to be outside the scope of the Schedule. It should be noted that ultimately the legislation will take precedence over the guidance.
	5.1	South: Suggested wording change 'A Section 106 should not seek to'. South: (Second bullet point) clarification sought on whether 'alter' is the correct terminology.		No change made. The wording is correct in that the S106 agreements should not be sought for those purposes. S106 agreements can be sought where they meet the criteria in paragraph 5.2. Alter is the correct term. It should be noted that this refers to the altering the scope of HS2 rather than altering the scope of elements of elements of HS2 which may fall within the Schedule 17 and hence potential be subject to a S106 agreement.
7	5.3	LPAs want more detail on how internal design of listed buildings is addressed.	To include.	Paragraph 7.4 has been added to explain that where a request for approval under Schedule 17 seeks to alter the interior of a listed building then the buildings historic character would be material to the consideration of the request given the grounds in the Schedule.
8	5.3	South: LBC queried whether internal design applies to permeability of the station site.	To clarify.	Internal design of the station and how it provides for permeability is material to the determination of approvals of plans and specifications insofar as it relates to the relevant grounds in the Schedule. It should be noted that the scope of Schedule as set out in paragraph 4.4 does state that Schedule 17 should not be used to expand the grounds or alter the scope of the project.

9	5.3	North: LPAs want clarification on what is considered to be an enhancement.	To clarify.	Paragraph 7.3 has been expanded to provide further guidance on this.
10	5.4	LPAs want to understand what is considered to be 'maintenance and operation': for example, are balancing ponds, car parks etc included.	To clarify.	Paragraph 7.5 has been expanded to provide further explanation of the situation regarding conditions relating to operation and maintenance.
11	6	South: Clarify whether the 8 week timeframe applies once a request for additional information is made. HS2 Ltd confirmed that it would not be appropriate to have text on pre-application discussion in the Guidance as it is specific to actual Requests under Sch. 16 of the Bill.	To clarify.	Section 8 has been updated to confirm that determination period for the approval of further information requested by planning authorities is eight weeks.
12	6.1	North: LPAs consider 'more important' is not appropriate terminology.	To amend.	Section 8 has been updated to now refer to 'some elements' rather than 'more important' elements.
	6.1	North: General request to provide reference to the specific section of the Bill defining 'temporary works'.		Reference to paragraph 2(9) included in the final sentence of 6.1.
13	7.2	South: Discussion on scale of vent shaft, the size of which would have to be justified based on operational requirements.	To amend reflecting discussion.	Paragraph 9.2 has been amended to provide greater clarity.
14	7.4	As at section 4 Chair noted Planning Memorandum repetition where wording should be the same.	To amend.	Section 7.4 (now 8.4).
	7.3	South: Request that HS2 Ltd response to comment 8 on 'permeability' is reflected in this paragraph.		Amendment made.
	7.5	Typographical error – final sentence should read 'and / or'.		Phrase in final sentence reads 'and/or'.
15	8	LPAs consider that list of standard/model conditions should be included in the Guidance.	To include.	It is not appropriate to include model conditions in the statutory guidance as it can only provide guidance on the provisions in the Bill. HS2 Ltd intends that a Planning Forum Note on model conditions will be prepared and considered by the Planning Forum.
	8.3	North: Request that 'additional information' is defined in the Statutory Guidance as to avoid confusion with the extension of determination periods (as set out in the Planning Memorandum).		Paragraph 8.1 amended to make it clearer that additional information is something that is required when approving plans and specifications rather than information requested during the determination process.
16	9	Discussion on validation process and role of Planning Forum papers to set out content of submissions etc.	To include reference to	It is not appropriate to include these matters in the statutory guidance as it can only provide guidance on the provisions in the Bill.

			Planning Forum Papers.	HS2 Ltd intends that Planning Forum Note on the contents of submissions will be prepared and considered by the Planning Forum.
	Paragraph (May 2016)			
17	3.1	South: Should the paragraph for clarity refer to the HS2 Works as defined in the Bill/ Act at Schedule 1?		<p>It is not just Schedule 1 works which benefit from the deemed planning permission granted by the Bill. Works are also authorised by paragraph 2 of, and Schedule 2 to the Bill.</p> <p>3.1 of the Guidance refers to Section 20 which is the section that will define what will benefit from the deemed planning permission. This reference to section 20 is considered sufficient.</p>
18	5.1	South: I've not seen a section in the Act which dis-applies the CIL Regs. If they are disapplied for CIL then the paragraph section should make it clear that Section 123 list items can then be funded from s106 and the bar under the CIL Regs doesn't apply as they've been disapplied. This may be important for approvals in Wycombe district where a CIL is place and Aylesbury Vale where CIL is being developed alongside the emerging Local Plan.		<p>The Statutory Guidance relates to secondary approvals under Schedule 17, so CIL would not fall within this as it is chargeable on primary planning permissions.</p> <p>Therefore paragraph 5.1 of the Statutory Guidance will be removed as it does not relate to the Schedule 17 process.</p>
19	5.2	South: Should s278 should be referenced?		Paragraph 26(1) of Schedule 17 permits the Secretary of State to issue statutory guidance about the exercise of functions under Schedule 17, so it is not within the remit of this guidance to interpret s278. However, planning authorities should not make entering into a s278 Agreement a condition of granting Schedule 17 approval, so we propose that the guidance makes this clear.
20	9.2	Case law notably the Tesco's case makes it clear that 'reasonable' ness judgements are a matter for the decision maker in balancing all the material considerations. The decision maker is the QA albeit on limited grounds. Suggest this paragraph makes clear the public law decision making isn't fettered.		The Guidance makes it clear that it is the planning authority that ensures a decision is reasonable. Given the statutory context there are certain modifications that it could not be reasonable to require. The guidance therefore gives examples of these, but it does not fetter the planning authority's ability to make a decision as to reasonableness.

21	10.2	South: The Act does not bar appeals against conditions, therefore the QA may impose conditions which the NU has to appeal rather than the QA refusing approval if conditions are not agreed.		Correct. The Statutory Guidance would be material to the determination of the appeal.
22	10.4	South: Is the paragraph then by logical extension saying that if the NU doesn't appeal the NU agrees that the conditions meet the five tests in the NPPF?		No. That a nominated undertaker does not appeal a decision does not inherently mean a condition meets the tests in the NPPF.
23	11.2	South: Regarding commencement on the day of submission, is this the same process used for Crossrail? Concern that if requests are not made via Planning Portal, i.e. by post, then there will be a delay in the LA receiving the request and thus less time to determine the request.		Crossrail does not use the Planning Portal. HS2 Ltd intends to use the Planning Portal. This has been discussed at Planning Forum and it is intended a Planning Forum Note will be prepared on its use.