

HS2 Hybrid Bill– London to West Midlands

Schedule ~~16~~17 - Draft Statutory Planning Guidance

[Draft – For Phase One Planning Forum Discussion]

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1.0 Introduction

- 1.1. Under paragraph 26 (1) of Schedule ~~e-16e 17~~ to the High Speed ~~Two-Rail (London – West Midlands)~~ Act [20XX] (the HS2 Act) the Secretary of State can issue statutory guidance to planning authorities about the exercise of their functions within Schedule ~~e-16e 17~~ – Conditions of Deemed Planning Permission (the Planning Conditions Schedule) of the HS2 Act. A planning authority is required to have regard to this Statutory Guidance when considering a request for approval made under Schedule ~~e-16e 17~~ to the HS2 Act¹.
- 1.2. The Planning Conditions Schedule to the HS2 Act 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. Their purpose is to provide an appropriate level of local planning control over the works while not unduly delaying or adding cost to the project.
- 1.3. As the HS2 Bill passed through Parliament, views on the content of the Draft HS2 Statutory Planning Guidance (2014 ~~and 2015~~) were sought from planning authorities along the HS2 London to West Midlands line of route. Where appropriate, these comments have been taken account of in this document.
- 1.4. The Guidance is not legislation and where there appear to be differences between the Guidance and the legislation (The HS2 Act X), the legislation always 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 ~~e-16e 17~~ to the HS2 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 HS2 Statutory Planning Guidance.

2.0 Purpose of the HS2 Statutory Guidance

- 2.1. The purpose of the HS2 Statutory Planning Guidance (the Guidance) is to provide further information and guidance to all planning authorities that will determine a request for approval under the Planning Conditions Schedule. The Guidance also highlights the key differences in the processes and controls conferred to planning authorities under the Planning Conditions Schedule and the powers they use to routinely determine planning applications under the Town and Country Planning Act 1990.

¹ [Paragraph 26\(2\) of Schedule 17](#)

3.0 Deemed Planning Permission for HS2 Works and the Conditions of Deemed Planning Permission

- 3.1. ~~Section 19~~Section 20 of the HS2 Act grants deemed planning permission for the high speed railway and associated works (the HS2 Works) between London ~~to and the~~ West Midlands, but some of the detailed design and construction are subject to further approval. Schedule ~~16~~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 HS2 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 ~~16~~17 are not planning applications as planning permission has already been granted.
- 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 HS2 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 HS2 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 Schedule ~~16~~17 - the Planning Conditions Schedule. Under this, planning authorities that have signed the HS2 Planning Memorandum, the qualifying authorities², have a greater range of controls than those planning authorities that choose not to sign it, the non-qualifying authorities.

4.0 Scope of the Planning Conditions Schedule

- 4.1. Schedule ~~16~~17 sets out the approvals required to be obtained by the nominated undertaker. These approvals are:
- plans and specifications;
 - matters ancillary to development; and
 - ~~bringing~~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 ~~16~~17. The works that require plans and specifications approval depend on whether the planning authority is a qualifying authority.
- 4.3. The nominated undertaker is also required to agree site restoration schemes with the planning authority.

² Schedule ~~16~~17, Part 2, Paragraph 13, HS2 Act

4.4. These [approvals](#) have been carefully defined to provide an appropriate level of local planning control over the HS2 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 HS2 Bill process;
- seek to extend or alter the scope of the project; or
- modify or replicate controls already in place, either specific to HS2 such as the Environmental Minimum Requirements, or existing legislation such as the Control of Pollution Act or the regulatory requirements that apply to railways.

5.0 Community Infrastructure Levy and Section 106

5.1. As requests for approval under Schedule [16e 17](#) are not planning application they cannot be subject to Community Infrastructure Levy.

5.2. The Act does not disapply Section 106 of the Town and Country Planning Act 1990. Potentially therefore Section 106 agreements can be entered into in relation to requests for approval under Schedule [16e 17](#). This should only happen where the tests set 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 [16e 17](#). A Section 106 should not be sought to:

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

6.0 Temporary Works

6.1. Approval of plans and specifications is not 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)).

7.0 Grounds for Determination

7.1. For all approvals under Schedule [16e 17](#), the Planning Conditions Schedule specifies the grounds that are relevant. When determining a request for approval a planning authority must only consider the grounds relevant to that approval³. Therefore requests may only be refused; conditions be imposed; and modifications to submissions or additional information requested, where they relate to the grounds.

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

³ [Paragraphs 2\(5\), 3\(6\), 4\(6\), 6\(5\), 7\(6\) and 9\(5\) of Schedule 17 to the HS2 Act](#)

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 adversely affected / injured the local environment or amenity. 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.

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 16e 17~~ should not therefore be used to control matters such as opening times and/or cleaning regimes.

7-5-7.6. 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 the Planning Conditions Schedule, insofar as they relate to the matter for approval (i.e. a building for HS2) and the grounds.

7-6-7.8. When determining a request for approval planning authorities should not seek to control matters that are subject to other approvals under the Planning Conditions Schedule. 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.

8.0 Requests for Additional Information

- 8.1. When approving plans and specifications the planning authority may impose a requirement on the approval that the nominated undertaker submits additional information 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 information includes 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 information is eight weeks.

9.0 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 is it can be made without, for example, adding unduly to the cost or programme of HS2, or conflicting with the operational requirements of the railway. As an example, a critical element of vent shaft headhouse 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 ~~16~~ 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.

10.0 Imposition of conditions

- 10.1. Where a planning authority considers it necessary to impose a condition on an approval of plans and specification, approval of matters ancillary to development or approval of road transport under the provisions of the Planning Conditions Schedule, it may only do so where it has the agreement of the nominated undertaker⁴. The purpose of this is to allow the

⁴ Paragraphs 4(7) and 6(6) of Schedule 17

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. When determining any request for approval conditions should not be imposed which conflict with controls or commitments contained in the High Speed Two 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.

~~10.3.~~ With regard to buildings and other construction works, paragraphs 2 and 3 of the Planning Conditions Schedule 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.

~~10.3-10.4.~~ The requirements of paragraph 206 of the National Planning Policy Framework (2012) apply to the imposition of conditions to approvals under Schedule 17.

11.0 Validation

- 11.1. The Planning Conditions Schedule 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 local planning authority 'validates' it.