

# HS2

## **High Speed Rail West Midlands to Crewe**

**Environmental Minimum Requirements**

Planning Memorandum

February 2021

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## Department for Transport

High Speed Two (HS2) Limited has been tasked by the Department for Transport (DfT) with managing the delivery of a new national high speed rail network. It is a non-departmental public body wholly owned by the DfT.

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# 1 Introduction

- 1.1.1 The Planning Memorandum is one of a suite of documents forming Phase 2a of HS2 Environmental Minimum Requirements (EMR) – the over-arching commitments by the Secretary of State to afford appropriate management and protection of the environment. The components of the EMR are described in paragraph 3.1.1 of the EMR General Principles document. These include requirements on the nominated undertaker to comply with this document, the Heritage Memorandum and undertakings and assurances concerning the project specified in the register of undertakings and assurances, and to adopt and implement the Code of Construction Practice (CoCP) and the Environmental Memorandum. As mentioned in section 2 below, this document also sets out undertakings by relevant planning authorities enabling them to become qualifying authorities under Schedule 17 to the High Speed Rail (West Midlands – Crewe) Bill (the Bill).
- 1.1.2 The Bill provides powers for the construction and operation of HS2. The Bill grants a deemed planning permission for the works it authorises, and establishes a planning regime in Schedule 17 under which certain matters and details of the deemed consent are reserved for subsequent planning authority approval. There will be a considerable number of such submissions under the Planning Conditions Schedule, and this Memorandum seeks to ensure that the process of obtaining these approvals does not unduly hinder construction of HS2. It sets out the arrangements for the processing of submissions, and details the responsibilities of the nominated undertaker and of those planning authorities which choose to sign up to this Memorandum – the qualifying authorities.
- 1.1.3 The nominated undertaker will work with qualifying authorities to support the determination of requests for approval, which will include early and constructive engagement, in accordance with obligations set out in this Memorandum.

## 2 Qualifying authorities

2.1.1 Under the HS2 Bill, Schedule 17, Part 2, Paragraph 13, the Secretary of State is obliged to make an order specifying every relevant planning authority which has, on or before the relevant day, given him or her undertakings with respect to the handling of planning matters under that Schedule which he or she considers satisfactory.

2.1.2 This Memorandum sets out those undertakings. It is binding upon any authority which has chosen to sign it so as to have the additional powers available to qualifying authorities in the Bill, and upon the nominated undertaker. It shall be taken into account in determining matters submitted for approval to qualifying authorities under Schedule 17 – Conditions of Deemed Planning Permission – to the Bill. It is divided into eight principal sections:

- Aim of the Memorandum;
- The Planning Forum;
- Requests for approval;
- Class approval;
- Expeditious handling of requests for approval;
- Applications outside the Bill process;
- Relationships to other documents; and
- Procedures

\_\_\_\_\_ (the authority) hereby undertakes to act in accordance with the terms of this Memorandum.

## 3 Aim of the Memorandum

- 3.1.1 The Bill provides powers for the construction and operation of HS2. Schedule 1 to the Bill describes the 'scheduled works' that the nominated undertaker will be authorised to carry out. A description is provided of the type of work and their location, for example:
- "Work No. 67D – A railway (1.56 kilometres in length) being a realignment of the Norton Bridge to Stone railway commencing at a point 115 metres north-east of the bridge carrying the M6 Motorway over that railway and terminating at a point 25 metres south-west of the bridge carrying that railway over the A34 The Fillybrooks."*
- 3.1.2 The Bill provides for these works to be constructed on land within the lateral limits of deviation (LoD) for the work concerned shown on the deposited plans and provides for an upward LoD of 3 metres from the levels shown on the deposited sections (subject to any exceptions within the Bill or maximum level for any station, depot or shaft shown on the sections). The deposited plans also show a further limit of land to be acquired or used (LLAU), which may be used for ancillary purposes.
- 3.1.3 The Bill deems planning permission to be granted for the works authorised by it subject to conditions set out in Schedule 17 (the Planning Conditions Schedule). That Schedule includes conditions requiring various matters to be subject to the approval of the relevant planning authority, and the extent of these depends on whether or not the authority has elected to become a qualifying authority, that is one that has, on or before the day on which the Bill was reported from Select Committee in the House of Lords, given the Secretary of State undertakings with respect to the handling of planning matters arising under the Planning Conditions Schedule which he or she considers satisfactory.



## 4 Planning Forum

- 4.1.1 The Qualifying Authority shall join with other qualifying authorities and the nominated undertaker (together with representatives from the relevant Government departments) in establishing a Planning Forum (the Forum) to help co-ordinate and secure the expeditious implementation of the planning provisions in the Bill.
- 4.1.2 The authority signing this Memorandum in order to become a Qualifying Authority under the Bill's planning regime also becomes a member of the Forum and is obliged to take into account its conclusions. Where appropriate, specialist or technical matters relevant to the statutory functions of the qualifying authorities will be referred to the relevant sub-group of the Forum.
- 4.1.3 The Forum will meet regularly to assist with the effective implementation of the planning provisions in the Bill. In order to help co-ordinate and secure the expeditious implementation of those planning provisions, the Forum will prepare Planning Forum Notes on related matters, which will set out standards and practices to be followed by those implementing the Planning Conditions Schedule.
- 4.1.4 The Forum will consider common design items for certain structures associated with the railway (such as bridges, acoustic barriers or retaining walls for example). Unless there are particular local circumstances relevant to the grounds in paragraphs 2 and 3 of Schedule 17 to the Bill, there will be a presumption in favour of the approval of such designs when submitted.
- 4.1.5 In considering the requests for approval, qualifying authorities will have regard to the Planning Conditions Schedule contained in the Bill, the conclusions of the Forum and the Planning Forum Notes. Qualifying authorities will also have regard to any statutory guidance given under paragraph 27 of the Planning Conditions Schedule.
- 4.1.6 The nominated undertaker will have regard to the conclusions of the Forum and the Planning Forum Notes in preparing the requests for approval.

## 5 Requests for approval

### 5.1 Determining qualifying authority

5.1.1 The determining authority under the Bill provisions is summarised in the table below:

Type of submission	Determining Qualifying Authority
<b>Unitary Areas</b>	
All planning matters for approval under the Planning Conditions Schedule	Relevant unitary authority
<b>Non-Unitary Areas</b>	
Plans and specifications and construction arrangements about waste and soil disposal and excavation of bulk materials from borrow pits.  Construction arrangements comprising lorry routing	County Councils
All other planning matters for approval under the Planning Conditions Schedule	District Councils

### 5.2 Types of request for approval

5.2.1 The Planning Conditions Schedule in the Bill requires the nominated undertaker to submit requests for approval to qualifying authorities for the following:

- construction arrangements;
- plans and specifications;
- bringing into use; and
- site restoration schemes.

5.2.2 Schedule 17 to the Bill sets out the grounds on which the qualifying authority may impose conditions on approvals, or refuse to approve the requests for approval.

### 5.3 Matters ancillary to development

5.3.1 The nominated undertaker will submit requests for approval of matters ancillary to development (construction arrangements) relating to road transport and construction camps, as these will not be covered by a class approval for generic matters (see section 6), for any other construction arrangements required by the Planning Conditions Schedule for which class approvals are not given, and for any case where the nominated undertaker wishes to depart from a class approval given.

### 5.4 Plans and specifications

5.4.1 The nominated undertaker will submit to the authority plans and specifications for certain permanent above-ground building works, in accordance with paragraphs 2 and 3 of the Planning Conditions Schedule.

## **5.5 Bringing into use**

- 5.5.1 The nominated undertaker will submit to the qualifying authority a bringing into use request under paragraph 9 of the Planning Conditions Schedule, for most scheduled works, apart from any which are below ground, and maintenance depots. The purpose of bringing into use requests is to ensure that appropriate mitigation has been incorporated, and no such work can be brought into use without such approval.

## **5.6 Site restoration scheme**

- 5.6.1 The nominated undertaker will be required in the circumstances specified in paragraph 12 of the Planning Conditions Schedule to implement a site restoration scheme as agreed with or approved by the authority, or failing agreement, as determined by the relevant Secretaries of State.

## 6 Class approval

6.1.1 A class approval may be made by the Secretary of State (paragraph 5 of Schedule 17) for the following generic construction arrangement matters:

- the handling of re-usable spoil and topsoil;
- storage sites;
- site screening;
- artificial lighting;
- suppression of dust; and
- mud on the highway.

6.1.2 The Secretary of State will consult the relevant authorities concerned on the content of the class approval. A class approval may be made subject to conditions which the nominated undertaker would be required to adhere to. Generic measures approved under a class approval will be subject to the same planning authority enforcement processes as would apply to construction arrangements approved under paragraph 4 of Schedule 17.

## **7 Expeditious handling of requests for approval**

### **7.1 Dedicated staff**

7.1.1 The qualifying authority must ensure that sufficient planning staff (and other relevant disciplines which may be required such as heritage, traffic or environmental health) resources are made available in order to process requests for approval in a timely manner, undertake pre-application discussions and attend meetings. Resources should be made available to provide sufficiently for any potential peaks in submissions from HS2, to cover for annual leave and any other absences.

### **7.2 Importance of expeditious handling of requests for approval**

7.2.1 HS2 is an infrastructure project of national importance. The qualifying authority shall accordingly have regard to construction, cost and programme implications, and shall not seek to impose any unreasonably stringent requirements on the requests for approval of any construction arrangement, plans or specifications, mitigation scheme or site restoration scheme, which might frustrate or delay the project, or unreasonably add to its cost. In particular, the qualifying authority shall not seek to impose unreasonably stringent requirements or standards in respects of land use, planning, design or environmental matters. In this context, the qualifying authority shall give due weight to any conclusions reached by the Select Committee (subject to any modifications made by Parliament) which are relevant to matters submitted for approval (or agreement).

### **7.3 Timeframes for approval of requests**

7.3.1 In recognition of the tight construction programme, the qualifying authority shall use reasonable endeavours, subject to its obligations under statute and statutory guidance from the Secretary of State, to determine any request for a relevant approval within the timetable referred to in paragraph 23(4) of the Planning Conditions Schedule (i.e. eight weeks) or, whenever possible, a lesser period. Where practicable, the nominated undertaker will respond quickly to requests for information or clarification to assist the planning authority in the timely processing of requests.

7.3.2 If the content of a request for approval, as set out in the relevant Planning Forum Note is not provided, an extended determination period will be agreed between the qualifying authority and the nominated undertaker in accordance with Schedule 17, paragraph 23(4).

7.3.3 Where additional details of a request for approval are submitted under paragraph 2(3), 3(4), 7(4) (as appropriate) of the Planning Conditions Schedule, the authority shall use its reasonable endeavours to make its decision on the approval expeditiously, and in any event within eight weeks after the date of submission of additional details.

7.3.4 The qualifying authority shall not require the nominated undertaker to vary the extent or content of a request for approval to include matters which could reasonably be

included in a subsequent request (unless it is necessary for the determination of the first request).

- 7.3.5 When a qualifying authority wishes to agree conditions with the nominated undertaker it shall propose them at least seven days prior to the determination date of the request for approval, which will assist in determination within the eight-week period.

## **7.4 Decision-making processes**

- 7.4.1 When necessary, the qualifying authority shall put in place appropriate internal decision-making arrangements to ensure that this timetable for determining requests is achieved. If adherence to the normal committee cycle would make it difficult to reach decisions in accordance with the timetable, consideration should be given to authorising greater delegated powers for officers and/or the formation of a dedicated sub-committee.
- 7.4.2 Where only part of a request can be determined within this timetable, the qualifying authority shall not seek unreasonably to delay determination of the remainder. In consultation with the nominated undertaker the qualifying authority may grant approval for those aspects or subsidiary packages of works which they have been able to determine.

## **7.5 Nominated undertaker**

- 7.5.1 To facilitate effective consultation and ensure that requests for approval are determined within the timetable referred to above, the nominated undertaker shall engage in proportionate forward discussions about prospective requests for approval with the qualifying authority and statutory consultees. Forward discussions will, as relevant, include design development, submission dates and planning committee cycles.
- 7.5.2 When designs of HS2 works are submitted for approval, the nominated undertaker shall, where reasonably necessary for the proper consideration of the design proposed, provide an indication or outline of the appropriate mitigation measures (if any) which it intends to submit subsequently under paragraphs 9 or 12 of the Planning Conditions Schedule. Where the works for approval will have a mitigating effect in relation to operational noise from the railway or new roads, the nominated undertaker will provide information to show, so far as is reasonably practicable at that stage in the design process, how the noise mitigation performs and the expected conditions. While not material to approvals under paragraph 2 or 3, this information will provide reassurance in advance of the request for approval under paragraph 9 that the mitigation is appropriate, and will present an opportunity to raise concerns.
- 7.5.3 In order to assist qualifying authorities with their resource planning, the nominated undertaker will, every quarter, provide a forward plan of requests for approval anticipated in the next six months. The nominated undertaker will notify the relevant qualifying authority if there is a significant change to the forward plan. The nominated undertaker will provide information to the Planning Forum, prior to Royal Assent, on the programming of submissions, so far as reasonably practicable.

7.5.4 The nominated undertaker will use reasonable endeavours to submit a site restoration scheme, for the agreement of the qualifying authority, prior to the discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works.

7.5.5 In order to assist with the expeditious handling of submissions, where a request for approval is made by the nominated undertaker under the Planning Conditions Schedule, then for information purposes:

- if the site to which the request relates is on or close to an authority boundary, and is likely to impact upon it, a copy will be sent to the adjacent authority;
- if the request relates to lorry routes which pass through the areas of adjoining authorities, a copy will be sent to those adjoining authorities; and
- in non-unitary areas, a copy will be sent to the non-determining authority.

## **7.6 Delays in/refusal to determine**

7.6.1 If the qualifying authority repeatedly fails to expedite requests for approval, or seriously fails to expedite a request in line with the timescale set out in paragraph 23(4) of the Planning Conditions Schedule, or repeatedly or seriously fails to act in accordance with all the requirements of this Memorandum, the Secretary of State may have sufficient grounds to order that the authority shall cease to have the powers of a qualifying authority under the Bill provisions. Prior to an authority being disqualified, the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker.

7.6.2 The approval of requests for approval by qualifying authorities will be monitored through the Planning Forum.

## **7.7 Justification for decision**

7.7.1 Where an authority refuses approval of a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision.

7.7.2 Where the authority's decision in relation to the determination of plans and specifications has been reached on the ground that some aspect of the operation or work ought to be modified and is reasonably capable of being modified, or that the development ought to be and could reasonably be carried out elsewhere within the relevant limits, the authority shall include an explanation of why and how it considers the modifications should be made.

7.7.3 Where the authority's decision in relation to the determination of construction arrangements has been reached on the grounds that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers modification should be made and where.

## **8 Applications outside the Bill process**

- 8.1.1 There may be instances when it will be necessary to obtain permission for works which are not the subject of deemed consent granted by the Bill. Should the nominated undertaker seek permission through the normal planning process, the qualifying authority shall consider and determine the application expeditiously under normal planning procedures.
- 8.1.2 This Memorandum does not relate to applications for permission to construct over-site development – namely, certain non-rail-related development over operational structures such as stations and vent shafts. These will be taken forward under the normal planning process.



## **9 Relationship to other documents**

### **9.1 Environmental Statement and EMR**

9.1.1 In determining requests for approval, the qualifying authority shall take into account the assessments in the Environmental Statement, the arrangements in the CoCP, the Heritage Memorandum, the Environmental Memorandum, and any relevant undertakings and assurances concerning the project specified in the Register of Undertakings and Assurances.

### **9.2 Planning Context Report**

9.2.1 The qualifying authority shall have regard to the Planning Context Report under paragraph 16 of the Planning Conditions Schedule. This report is to include an indication of the location of scheduled and non-scheduled works to which requests for approval are expected to relate.

### **9.3 Statutory guidance**

9.3.1 The qualifying authority must have regard to statutory guidance issued by the Secretary of State in accordance with paragraph 27 of Schedule 17 to the Bill.

## 10 Procedures

- 10.1.1 The nominated undertaker shall submit requests for approval of construction arrangements, plans and specifications, and mitigation schemes in compliance with guidelines on standardised pro forma to be drawn up by the Forum.
- 10.1.2 The HS2 Bill makes provisions for the putting in place of regulations for fees for applications for approval under Schedule 17. The regulations may provide that, where fees are agreed directly with a qualifying authority, the fees prescribed by the regulations will not apply.
- 10.1.3 Where the nominated undertaker is aggrieved by a decision of a planning authority on a request for approval, they may appeal the decision to the appropriate Ministers. Appeals can also be made if requests for approval are not determined within the time period set out in the Bill. Unless the appropriate Minister/s direct otherwise, their functions in relation to the determination of appeals will be carried out by the Planning Inspectorate. Appeals will be dealt with on the basis of written representations unless the person deciding the appeal directs otherwise.







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