

HIGH SPEED TWO PHASE 2a INFORMATION PAPER

B2: THE MAIN PROVISIONS OF THE PLANNING REGIME

This paper outlines the main provisions of the planning regime proposed for the Proposed Scheme.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (West Midlands-Crewe) Bill which is now enacted. It was finalised at Royal Assent and no further changes will be made.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

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B2: THE MAIN PROVISIONS OF THE PLANNING REGIME

1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in phases: Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. Phase 2b will extend the route to Manchester, Leeds and beyond. The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In July 2017, the Government introduced a hybrid Bill¹ to Parliament to seek powers for the construction and operation of Phase 2a of HS2 (the Proposed Scheme). The Proposed Scheme is a railway starting at Fradley at its southern end. At the northern end it connects with the West Coast Main Line (WCML) south of Crewe to allow HS2 services to join the WCML and call at Crewe Station. North of this junction with the WCML, the Proposed Scheme continues to a tunnel portal south of Crewe.
- 1.4. The work to produce the Bill includes an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs)², which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.5. The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. The nominated undertaker will be bound by the obligations contained in the Bill and the policies established in the EMRs. There may be more than one nominated undertaker.
- 1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the Proposed Scheme have been reached.

¹ The High Speed Rail (West Midlands – Crewe) Bill, hereafter 'the Bill'.

² For more information on the EMRs, please see Information Paper E1: Control of Environmental Impacts.

2. Overview

- 2.1. This information paper outlines the main provisions of the planning regime proposed for the Proposed Scheme, which would come into force upon enactment of the Bill. The provisions vary depending on whether the local planning authority opts to become a qualifying authority or a non-qualifying authority.
- 2.2. The design of the Proposed Scheme to date provides the level of detail necessary for the purposes of the Bill and the requirements of the Environmental Impact Assessment Regulations. The level of detailed design necessary to enable the Proposed Scheme to be constructed has yet to be carried out, and will not be completed until after the Bill has secured Royal Assent.
- 2.3. Once it is complete the nominated undertaker will need to apply to local authorities along the route for approval of the detailed design of a range of elements of the Proposed Scheme. This will allow local planning authorities to ensure that the design of permanent structures fits into the local environment. Local planning authorities will also be able to input into the approval of certain construction matters and have a level of control over their enforcement. Section 7 below outlines the role of local authorities in the approval of detailed works before they are brought into use.

3. Qualifying and non-qualifying authorities

- 3.1. The Bill gives each local planning authority a choice between having a wide or narrow range of controls over details. Local planning authorities opting for a wide range of controls are referred to as qualifying authorities. They will be required to sign the Planning Memorandum, which is currently in draft form. This sets out rules of conduct and administrative arrangements for them and the nominated undertaker. The local planning authorities who have opted to become qualifying authorities will be identified by the Secretary of State in accordance with part 2 of Schedule 17 after Royal Assent. Qualifying authorities will be able to approve the detailed design of permanent structures such as viaducts, and also have an enforcement and approval role in relation to certain construction matters.
- 3.2. Those choosing not to sign the Planning Memorandum are referred to in the Bill as non-qualifying authorities and will be able to approve the detailed design of permanent structures, but will have a more restricted role in the approval of construction matters.

4. Approval of detailed design

- 4.1. A local planning authority that becomes a qualifying authority under Part 2 of Schedule 17 will be required to approve plans and specifications for works such as buildings and road vehicle parks, terracing, cuttings, embankments and other earthworks, fences, walls or other barriers, transformers, telecommunication masts, pedestrian access to the railway line, artificial lighting, waste and spoil

disposal and borrow pits. They will not have powers of approval for any works or features of a temporary nature, for anything underground except any part of a station available for use without a ticket, nor for any tunnel or railway track bed.

- 4.2. The local planning authority can only refuse to approve (or impose conditions in respect of) the plans and specifications on the grounds specified in Schedule 17. There are, in broad terms, two main sets of grounds on which the work may be refused or conditioned by a qualifying authority:
 - a) The design or external appearance of the building works 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 is reasonably capable of being so modified; or
 - b) The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 4.3. In determining whether or not to grant approval to a request or to impose conditions upon an approval, a local planning authority should consider, amongst other things, whether the proposals are consistent with the EMRs. These set out principles that the nominated undertaker should follow in developing the detailed design and that may be taken into account by planning authorities when considering requests for approvals of the plans and specifications. They will also need to consider the statutory guidance produced by the Secretary of State for Transport under paragraph 26 of Schedule 17.
- 4.4. A non-qualifying local planning authority will be required to approve plans and specifications for buildings. Non-qualifying authorities will only be able to refuse approval if the design or external appearance of the works ought to be modified to preserve the local environment or local amenity, and is reasonably capable of being so modified, or the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

5. Construction controls

- 5.1. The nominated undertaker will be bound, through the EMRs, to adopt and implement the Code of Construction Practice (CoCP) for the Proposed Scheme. A draft of the CoCP have already been consulted on with the relevant local planning authorities and statutory bodies. Other commitments in the EMRs will govern construction, including a commitment that the nominated undertaker's contractors will seek consents under section 61 of the Control of Pollution Act 1974 in relation to noise generating activities and hours of working.
- 5.2. In addition qualifying authorities will be able to enforce construction arrangements relating to:

- handling of re-useable spoil or topsoil;
 - road transport;
 - storage sites for construction materials, spoil or topsoil;
 - construction camps;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
- 5.3. Construction arrangements relating to handling of re-useable spoil or topsoil; storage sites for construction materials, spoil or topsoil; works screening; artificial lighting; dust suppression; and road mud control measures are likely to be generic. These may be subject to a class approval by the Secretary of State under paragraph 5 of Schedule 17 to the Bill without the need for approval by the relevant qualifying authority.
- 5.4. The Secretary of State when making a class approval may attach conditions to it and must consult the local planning authorities before making the class approval. Should the Secretary of State not make a class approval, these arrangements are subject to approval by the relevant qualifying authority.
- 5.5. Construction arrangements relating to construction camps, which provide temporary residential accommodation for construction staff, and road transport (i.e. lorry routes with more than 24 lorry movements per day on roads between the relevant sites and the nearest trunk road or motorway) are site specific and so require individual approval from the relevant qualifying planning authority.
- 5.6. Qualifying authorities may refuse approval if the arrangements ought to be modified to preserve the local environment or local amenity, or to prevent or reduce the prejudicial effects on road safety, or on the free flow of traffic in the local area, and are reasonably capable of being so modified.
- 5.7. Other parts of the Bill also offer control over related construction arrangements. Paragraph 1 of Schedule 4 requires highway authority approval of plans and specifications of any design of a new access onto, or the alteration of, a highway used by vehicular traffic as a result of the construction or operation of the Proposed Scheme, if the location is shown on the deposited plans. If the location is not shown on the deposited plan consent for this access or alteration is required from the highway authority.
- 5.8. Under the provisions of the CoCP, the nominated undertaker will have to prepare a Traffic Management Plan which will outline the traffic control measures and routes on public highways that will be used during construction. The Plan will take account of the requirements and advice of the highway authority and other authorities, and will provide a framework for the preparation of submissions under Schedule 17.

6. Restoration of construction sites

- 6.1. Where a site is used only for construction purposes, the site must be restored in accordance with a scheme submitted to the local planning authority within four months of the discontinuation of works at the site. Where no such scheme is agreed, the site must be restored in accordance with a scheme determined by the appropriate Ministers.

7. Bringing works into use

- 7.1. The bringing into use of any scheduled work or depot, except to the extent that the work is underground, is subject to prior approval by the qualifying local planning authority. The qualifying local planning authority must grant prior approval if it considers that there are no reasonably practicable measures which need to be taken for the purposes of mitigating the impacts of the work, or its operation, or if it has approved a mitigation scheme for that purpose submitted by the nominated undertaker. The qualifying local planning authority can only refuse or impose conditions upon such a scheme if it is satisfied that it is expedient to do so on the grounds that the scheme ought to be modified, and is reasonably capable of being so modified, in order to preserve the local environment, local amenity, a site of archaeological or historic interest, or in the interests of nature conservation.

8. Context Report

- 8.1. Paragraph 16 of Schedule 17 to the Bill requires the nominated undertaker to deposit with a relevant local planning authority a document setting out its proposed programme of requests for approval. It also requires that the requests themselves be accompanied by a document which explains how the matters to which the request relates fit into the overall scheme of the works. It is intended that these requirements will be met by the nominated undertaker producing a document which contains this information for each local planning authority, and these documents will be referred to as context reports. These documents should be submitted to the local planning authority prior to any request for approval being made to that authority.

9. Consultation

- 9.1. The nominated undertaker will be required under the Planning Memorandum to engage in forward discussions with local planning authorities about prospective requests for approval. This facilitates effective consultation and helps to ensure that requests for approval of the plans and specifications and construction arrangements are determined within the timetables referred to in Schedule 17.

10. Determining planning authority

- 10.1. In the areas of Cheshire East and Shropshire (which are unitary authorities) the determining authority for all submissions under Schedule 17 is the unitary council. In areas with two tiers of local government (ie district and county

councils) the district planning authority is the determining authority for all approvals except for any required approvals relating to the following which are determined by the county planning authority:

- approvals in relation to development consisting of the disposal of waste or spoil and the excavation of bulk materials for borrow pits; and
- approvals of the routing of large goods vehicles.

11. Non-material changes to approvals

- 11.1. Schedule 17 enables local planning authorities to make, at the request of the nominated undertaker, non-material changes to approvals that they have already made under the Schedule without the need for the nominated undertaker to submit a whole new approval request. These would be amendments of a minor kind, which would not affect the substance or impact of the approvals subject to the changes.

12. Appeals

- 12.1. Under part 3 of Schedule 17, the nominated undertaker has the right of appeal to the appropriate Ministers against any local planning authority decision to refuse a request for relevant approval or against the conditions which an authority has imposed in granting approval. For this purpose, references to the appropriate Ministers are to the Secretary of State for Housing, Communities and Local Government and the Secretary of State for Transport, acting jointly.
- 12.2. The nominated undertaker can also appeal if no decision has been made within eight weeks of the receipt of the request by the local planning authority or such extended period as may be agreed between the parties. Under the Bill non-determination is treated as refusal. Notice of the appeal must be given within 42 days of the decision or of the last day of the appropriate period. Part 3 of Schedule 17 provides for the handling and determination of such an appeal.
- 12.3. The appropriate Ministers may allow or dismiss the appeal or vary the decision of the local planning authority, but may only make a determination involving the refusal of or imposition of conditions on an approval on grounds which were open to the authority itself under Schedule 17.

13. Compliance and enforcement

- 13.1. Overseeing compliance with approvals and planning conditions falls to the local planning authority as an integral part of its planning responsibilities. Approvals under the planning regime in the Bill will be enforceable under the Town and Country Planning Act 1990. It will be for the local planning authorities to decide whether and to what extent it is expedient to take action to enforce planning control in relation to a breach of condition or approval which they consider has taken place within their area.

- 13.2. Compliance with the planning regime will be achieved through supervision of the construction and operation of the Proposed Scheme by the nominated undertaker, monitoring by the local planning authority and observation by the public.

14. More information

- 14.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2