



Department
for Transport

High Speed Rail (West Midlands - Crewe) Act 2021

Government response to the consultation on
the draft class approval for matters ancillary
to development under Schedule 17



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Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

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Contents

Introduction	6
Overview	7
Approach on previous projects	7
Consultation	8
Summary of the Secretary of State's decisions	9
Consultation Responses	10
Consultation questions	10
Question 1	12
Question 2	14
Question 3	15
Question 4	17
Question 5	19
Annex A – List of respondents	20

Introduction

1. Section 17 of the High Speed Rail (West Midlands - Crewe) Act (“the Act”) grants deemed planning permission under Part 3 of the Town and Country Planning Act 1990 (“the TCPA”) for the works authorised by the Act. This permission requires that certain approvals are obtained from relevant planning authorities under the planning regime established by Schedule 17 to the Act. Paragraph 4 of Schedule 17 requires approvals relating to how matters that are ancillary to development are managed during construction.
2. Paragraph 5 of Schedule 17 to the Act allows the Secretary of State to make a class approval for some of the matters ancillary to development. These are the matters set out in paragraph 4(2)(a), (b) and (d) to (g). Where a class approval is in effect, the nominated undertaker does not need to seek specific approval, although the nominated undertaker can still apply for approval should the circumstances require it.
3. Before making a class approval the Secretary of State must consult the planning authorities that would be affected by it. This Command Paper details the Secretary of State’s decisions following that consultation.

Overview

4. The Act grants deemed planning permission under Part 3 of the TCPA for the works authorised by it. This deemed planning permission is granted subject to the conditions set out in Schedule 17 to the Act. Schedule 17 requires that certain matters are approved by the relevant planning authority. Amongst the approvals that are required is the approval of matters ancillary to development (paragraph 4 of Schedule 17), otherwise known as 'construction arrangements'. This is the approval of how certain matters are managed during the works. These matters are:
 - handling of re-useable spoil or topsoil;
 - storage sites for construction materials, spoil or topsoil;
 - construction camps;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
5. Apart from construction camps, this is in effect the approval of environmental control measures for the matters identified. For these matters the HS2 Phase 2a draft Code of Construction Practice ("the CoCP") sets out appropriate measures which have been developed in consultation with planning authorities and negotiated through the parliamentary process. The nominated undertaker and its contractors are bound to comply with the measures set out in the CoCP, however by including these matters in the planning conditions schedule to the Act, the relevant qualifying authority will have planning enforcement powers over these matters in accordance with the TCPA.
6. The development of construction camps would be subject to requests for approval and determined by the qualifying authority under Schedule 17.

Approach on previous projects

7. The approval of construction arrangements was similarly required under Schedule 6 to the Channel Tunnel Rail Link Act 1996 and Schedule 7 to the Crossrail Act 2008. However, for these projects there was no option to make a class approval. Instead individual requests for approval were submitted to the relevant planning authorities. This translated into many hundreds of requests for approval that needed to be

generated by the relevant nominated undertaker and considered by the relevant planning authority.

8. On both the Channel Tunnel Rail Link and Crossrail projects (other than for construction camps), the text that was submitted for approval was extracted from the projects' codes of construction practice. These codes, like the HS2 Phase One and Phase 2a CoCP, were developed with the relevant local authorities and set out the measures which would be implemented during construction to control the effects of the works on communities and the environment, including the control measures relevant to the construction arrangements.
9. As a result, hundreds of identical submissions for the generic construction arrangements were submitted by the nominated undertaker for approval and each qualifying authority was approving identical submissions for the generic matters many times.
10. This whole process was administratively burdensome and the only purpose it served was to allow the relevant planning authority to have planning enforcement powers in relation to these matters. Therefore, the High Speed Rail (London – West Midlands) Act (the Phase One Act) included the power to enable the Secretary of State to make a class approval in relation to these construction arrangements. Following a statutory consultation, the Secretary of State made a class approval in April 2017 relating to works authorised by the Phase One Act. Since then, the arrangements for the Phase One class approval has been successfully implemented.

Consultation

11. A consultation was launched on 10th November 2020 and closed on 8th December 2020 on the draft class approval for the following matters ancillary to development (paragraph 4(2)(a), (b) and (d) to (g) of Schedule 17):
 - handling of re-usable spoil or topsoil;
 - storage sites for construction materials, spoil or topsoil;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
12. While the consultation was open to the general public, it was aimed at the seven planning authorities that have signed the High Speed Rail (West Midlands - Crewe) Planning Memorandum ("the Planning Memorandum") and become qualifying authorities. Respondents were invited to send their replies to the Department for Transport.
13. The draft class approval was prepared by extracting the relevant text from the draft CoCP. The CoCP details the construction approach that the nominated undertaker will take and the environmental controls that will be implemented. As such, it encompasses the matters ancillary to development. The CoCP has been developed through the parliamentary process and is part of the Environmental Minimum Requirements ("the EMRs"), which are a commitment by the Secretary of State to

Parliament. As such, the approach that the project must take in relation to matters ancillary to development has already been committed to in the CoCP.

Summary of the Secretary of State's decisions

14. The Secretary of State has carefully considered the responses to the consultation and made the following decisions:
 - That a class approval should be made
 - That the class approval should apply to the whole HS2 Phase 2a route
 - That the following amendment should be made to the wording of the class approval:
 - Paragraph 2.1 • The separate handling and storage of different soils, particularly topsoils and subsoils and those recovered from ancient woodlands and any other habitats where the translocation of soils is proposed
 - That no further conditions should be attached to the class approval

Consultation Responses

15. Four responses were received to the consultation on the draft class approval. Respondents addressed some or all of the questions set out in the consultation document, offered comments on the text of the draft class approval, and in some cases made specific suggestions for revised wording and conditions to be attached.
16. Of the four responses received, two were from individual planning authorities, one was a joint response from two planning authorities and one was from a national charity (see Annex A).
17. The summary of responses set out in this document is structured around the questions asked in the consultation document. The Government is grateful for all the responses received, including the general agreement with making a class approval in principle and the suggestions of alternative or additional text which respondents offered. These have been given full consideration. It should be noted that in evaluating the responses to this consultation, the Government has carefully considered each suggestion put forward, rather than reaching a view based on the total number of respondents suggesting each amendment or addition.

Consultation questions

18. The consultation document asked five questions:

Question 1 Do you agree that the Secretary of State should, as proposed, make a class approval under paragraph 5 of Schedule 17 to the High Speed Rail (West Midlands - Crewe) Bill? If no, for what reasons?

Question 2 Are there specific areas or specific descriptions of works for which the class approval should be made? If so, what are these, and why would the control measures be different to those general measures in the draft class approval?

Question 3 Are there any specific locations or works that should not be subject to the class approval? If so, what in the nature of the work or location makes a class approval inappropriate and what control measures would be different?

Question 4 Do you agree that the measures set out in the draft class approval, extracted from the draft Code of Construction Practice are appropriate? If not, what specific amendments do you think are needed and why are they are needed?

Question 5. Do you agree that no further conditions need to be applied to the class approval? If not, what conditions do you think are needed and why are they needed?

19. The responses to each question are summarised and the Government's response is provided in the following sections.

Question 1

Do you agree that the Secretary of State should, as proposed, make a class approval under paragraph 5 of Schedule 17 to the High Speed Rail (West Midlands - Crewe) Bill? If no, for what reasons?

20. There were four responses to this question. Of these responses, four planning authorities and one national charity agreed with the principle of the Secretary of State making a class approval and welcomed the reduced administrative burden it would bring. Notwithstanding general agreement with the principle of a class approval, the respondents raised a number of matters for clarification and points of concern with the content of the draft class approval. The concerns raised are summarised below.

Government response

21. One respondent set out that they expect the process to be applied responsibly by the promoter, noting that the making of a class approval should not alter the level of protection provided to communities or the environment, or that the 'No Net Loss of Biodiversity' objective will not be negatively affected. The making of a class approval does not alter the level of protection for communities or the environment as qualifying authorities will also retain the ability to take planning enforcement action with respect to the arrangements approved by a class approval. The matters to which the arrangements relate are exactly the same under a class approval as they would be under an individual application to qualifying authorities. Separate from the class approval, the nominated undertaker is required to comply with the requirements of the EMRs, which include the CoCP.

22. One respondent felt the class approval process should consider off-site (such as traffic) and cross local authority border impacts, and to ensure that qualifying authorities are each notified accordingly in the context of the regulations and guidance. In response, the class approval itself covers only the matters referred to under paragraph 4 of Schedule 17; traffic control is subject to separate control under Schedule 17 and the EMRs. Other controls of impacts are through the EMRs as set out in the General Principles to ensure any cross boundary impacts are managed. Paragraph 7.5.5. of the Planning Memorandum already requires the nominated undertaker to ensure authorities are informed about relevant submissions when they are not the determining authority.

23. One respondent had concerns relating to numerous cases where the wording of the class approval was too vague to be meaningful or enforceable in planning terms, e.g. terms such as 'reasonable regard(s)', 'where practicable', and 'medium term'. This was referenced in their response to the other questions in the consultation.
24. In response, the principle of applying controls with similar language to that used within the class approval is a well-established practice in granting planning consent for major infrastructure projects. Examples of this include the Transport and Works Act Orders for the Northern Line Extension, Bank Station Capacity Upgrade, East West Rail (Phase 1) and HS2 Phase 1. The Orders apply planning conditions requiring compliance with codes of construction practice which are similarly worded and are enforceable by the relevant planning authority under the TCPA. Likewise, the A14 Cambridge to Huntington Improvement Scheme and Hinckley Point C Development Consent Orders are subject to requirements to comply with their respective codes of construction practice, which are enforceable through the Planning Act 2008.
25. A further example is Westminster City Council's Code of Construction Practice, compliance with which is secured by the planning authority through planning conditions. The wording of the class approval would not impede the ability of a qualifying authority to take planning enforcement action if it considered that the nominated undertaker was not fulfilling the measures identified in the class approval. If, having raised a concern with the nominated undertaker as to how the class approval was being applied and the nominated undertaker could not justify how its actions were meeting the requirements of the class approval reasonably, planning enforcement action could be taken. Where the nominated undertaker is relying on a qualification of the commitment (such as a limitation to what is reasonably practicable) the onus would be on the nominated undertaker to demonstrate that it is correctly and reasonably complying with what is required.
26. On a related point, one respondent said they felt that the wording could also allow unacceptable impacts to arise where it is deemed necessary even with the Environmental Statement and its proposals for best practice measures and mitigation. In response, it should be noted that Schedule 17 approvals do not operate in isolation. They are only part of the mechanism by which the overall effects of HS2 are controlled and limited, and they function in combination with the EMRs. There are also further mechanisms within the Act and documents supporting the Act that will control changes to the project and therefore provide reassurance as to the extent of the actual impacts of the construction and operation of the Proposed Scheme. The nominated undertaker will not simply be free to change the design and working practices at will or without any control. Overall the nominated undertaker and its contractors are bound to comply with the measures set out in the EMRs, and further information is provided within [HS2 Phase 2a Information Paper E1](#).

Conclusion

27. The Secretary of State has reviewed the evidence provided and concluded that it is appropriate to make a class approval under Schedule 17 to the Act.

Question 2

Are there specific areas or specific descriptions of works for which the class approval should be made? If so, what are these, and why would the control measures be different to those general measures in the draft class approval?

28. There were no responses to this question.

Government response

29. The Secretary of State has concluded that there are no specific areas or specific descriptions of works for which the class approval should be made.

Question 3

Are there any specific locations or works that should not be subject to the class approval? If so, what in the nature of the work or location makes a class approval inappropriate and what control measures would be different?

30. Three planning authorities responded to this question. Comments were generally about biodiversity and highways matters, with sensitive locations suggested that should not be subject to the class approval.

Government response

Biodiversity assets

31. In relation to artificial lighting, it was proposed that the class approval should not apply in areas recorded as important for significant bat populations and assemblages such as Ravenshaw Wood. In this regard the class approval requires lighting to be designed, positioned and directed so as not to unnecessarily intrude on ecological receptors (as well as other considerations), with the minimal luminosity necessary. In addition, there are licensing requirements to comply with if bats are identified within work areas as identified in 9.1.4 and 9.2.6 of the CoCP. The overall approach is considered best practice and it is unclear what an alternative approach would entail and the benefits it would bring.

Highways impacts

32. One respondent was seeking Construction Traffic Management Plans and Framework / Operational Travel Plans to be prepared with highway authorities to ensure vehicular traffic generated by construction areas and operational facilities can be minimised wherever practical. In response, traffic control is subject to separate control under Schedule 17 and the EMRs and not through class approval in relation to the matters referred to under paragraph 4. Further information on the management and controls of highways and traffic are provided [HS2 Phase 2a Information Paper E3 and E4](#).
33. In accordance with the HS2 Phase 2a CoCP, a Phase One and 2a Route-wide Traffic Management Plan (RTMP) has been prepared and consulted on with the highway authorities and emergency services along the line of route. The CoCP also requires the preparation of Local Traffic Management Plans (LTMP) as well as Travel

Plans and indicates the level of consultation and engagement required as they are developed. The RTMP sets out the principles and objectives for the management of transport, highways and traffic during the delivery of the works, and the LTMP set out matters such as confirming proposed lorry routes and lorry movements, significant works programmes for highways and other appropriate controls at the local level.

34. The RTMP sets out the detail on how LTMP and Travel Plans are to be prepared and consulted on. For the earlier enabling activities, LTMP and Travel Plans will be within a combined document. Consultation on these plans will be undertaken through the Local Traffic Liaison Group (TLG) meetings which are being established along the line of Phase 2a in accordance with the CoCP and the RTMP.
35. For both the handling of re-usable spoil and topsoil, and storage sites, one respondent proposed that additional local controls to mitigate highways impacts in the vicinity of Woore may be needed if works authorised by the class approval are not confined to the site.
36. The impacts of construction traffic on the highway is set out within the Environmental Statement and the project is required to ensure that no new significant adverse impacts arise during construction in accordance with the EMRs General Principles. Highways consents are matters for Schedule 4 and 32 of the Act, and the routes of construction traffic by vehicles over 7.5t is controlled by Schedule 17 of the Act where there are more than 24 movements to and from a site within a 24 hour period.
37. It is for the highway authority and the nominated undertaker with their relevant contractors to agree, for any particular case, what temporary highway mitigation schemes will be covered within the main HS2 works. Where funding is not to be provided out of the main HS2 budget, it will be for the highway authority to consider whether this would be an appropriate use of their HS2 Road Safety allocation, including whether the work in question would contribute to the aims of the fund. Assuming that the use of the fund follows that for Phase One of the HS2 project, then the highway authority will be able to utilise its allocation to mitigate the effects of construction traffic and leave a legacy of road safety schemes along the line of route.
38. With artificial lighting, clarity was sought by a respondent that the provision of safe routes for non-vehicle users affected by lorry routes also applies within the class approval. Matters related to lighting are set out within paragraph 5.2 and 4.4 of the class approval. Under paragraph 4.4, lighting will be provided where appropriate to site boundaries with sufficient illumination to provide a safe route to the passing public. Approvals of lighting for lorry routes are not a matter for class approval. Changes to the road network will be subject to consultation and, as necessary, consent of the highway authority in accordance with Schedule 4 and 32 of the Act.

Conclusion

39. The Secretary of State has reviewed the evidence provided and concluded that there are no specific locations or works that should not be subject to the class approval.

Question 4

Do you agree that the measures set out in the draft class approval, extracted from the draft Code of Construction Practice are appropriate? If not, what specific amendments do you think are needed and why are they are needed?

40. Three planning authorities responded to this question. This included support subject to comments about biodiversity, road mud control measures, heritage and contaminated land.

Government response

Biodiversity assets

41. Respondents proposed that in addition to referring to soils from ancient woodlands, the class approval should also ensure that soil from other habitats are treated in the same way. In line with the EMRs, the nominated undertaker will have several specialist requirements in place for contractors to handle and store soil appropriately. To ensure this requirement is clear in planning terms, paragraph 2.1 of the class approval has been amended to:

“...• The separate handling and storage of different soils, particularly topsoils and subsoils and those recovered from ancient woodlands and any other habitats where the translocation of soils is proposed;”

42. This point was further expanded with a proposal for the location of storage sites within designated biodiversity sites or habitats of principle importance to not be covered by the class approval, noting that it is currently a qualified requirement within the draft. This same matter was also raised for works screening. The class approval already seeks to make sure that suitable controls are in place for storage sites to minimise environmental effects, with wider ecological management measures set out in chapter 9 of the CoCP. It should also be noted that any impacts on such sites will have been already assessed within the Environmental Statements for the Phase 2a scheme, with appropriate mitigation included within the proposed scheme. On this basis it is felt reasonable to have a qualified approach for this within the class approval that seeks to minimise environmental effects where practicable.

Road mud control measures

43. One respondent wanted to ensure the efficacy of the proposed road mud control measures, including the interface with winter gritting routes, given past experiences on rail projects and the potential for safety risks. It was requested that this is given due consideration in LTMPs and where relevant for Schedule 17 that the highway authority is consulted. In addition to the requirements being included in the class approval and CoCP, road mud control measures are also captured within the RTMP and therefore form a part of the requirements on the nominated undertaker and its contractors. The provision of arrangements – and their effectiveness – will be reviewed as a part of the scope of the dedicated compliance team put in place by the nominated undertaker. Issues regarding mud on road can be raised during the construction phase by the community or highway authority through the normal channels of communication with the nominated undertaker and are promptly reviewed and actioned where the project is responsible as appropriate.

Heritage

44. One response proposed additional text to paragraph 4.2 of the class approval to ensure the location of fencing and hoardings do not unnecessarily impact historic features. Identified impacts upon heritage assets are set out in the Phase 2a Environmental Statement. This assessment includes physical impacts upon extant and below ground assets, as well as impacts upon heritage assets due to changes in setting. The commitments to address HS2's impact upon the Historic Environment are set out in the HS2 Heritage Memorandum as part of the EMRs, with the due regards being set out in paragraphs 2.1.1-2.1.3. As such, appropriate controls are already in place to limit potential impacts upon heritage assets, including through the installation of fencing and hoarding.

Contaminated Land

45. A respondent was seeking the class approval to reiterate the requirements of BS 3882: Specification for topsoil and requirements for use and for their developers guide to be referenced. Chapter 11 of the CoCP sets out the approach that will be taken to land contamination in building the proposed scheme, including reference to key documents and guidance relevant for planning purposes. This supports the risk based approach to assessing potentially contaminated land to ensure that materials are suitable for their proposed use. The CoCP does not contain any measures considered necessary for planning purposes to include in the class approval. It is also not considered necessary to include further details within the class approval on BS 3882 or make reference to Guides for specific areas as Parliament has decided the necessary controls within the CoCP which will also help achieve route wide consistency.

Conclusion

46. The Secretary of State has reviewed the evidence provided and concluded that it is appropriate to make a class approval under Schedule 17 to the Act, and that it is appropriate to provide some additional wording to Section 2 of the class approval on soils for certain habitats.

Question 5

Do you agree that no further conditions need to be applied to the class approval? If not, what conditions do you think are needed and why are they needed?

47. There were three responses to this question, including support for the proposed conditions, with some related matters already addressed within responses to the other questions. Of these, one respondent proposed additional conditions.

Government Response

48. A respondent was seeking to add conditions relating to contaminated land, linked to their response in Question 4. They were seeking:
- to add requirements for soil / materials brought to a site for use in soft landscaping areas to be tested for contamination and suitability prior for use prior to importation or placement, and
 - prior to first use of the scheme, evidence / verification information shall be submitted to and approved in writing by the Planning Authority.
49. As set out in response to this matter in Question 4, the CoCP sets out the approach that will be taken to land contamination in building the proposed scheme, including reference to key documents and guidance relevant for planning purposes. This supports the risk based approach to assessing potentially contaminated land to ensure that materials are suitable for their proposed use. This includes the requirement to consult with regulatory bodies on a preferred option before implementing the remediation strategy (paragraph 11.2.7 of the CoCP). As such, appropriate controls are already in place to manage land contamination on sites.

Conclusion

50. The Secretary of State has reviewed the evidence provided and concluded that it is appropriate to make a class approval under Schedule 17 to the Act with no further conditions to be added.

Annex A – List of respondents

51. The following organisations submitted a response to the consultation on the draft class approval:

Lichfield District Council and Staffordshire County Council (joint response)

Shropshire Council

Cheshire East Council

Canal and River Trust

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