



Appeal Decision

Site visit made on 21 July 2021

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretaries of State for Transport and for Housing, Communities and Local Government

Decision date: 23 August 2021

Appeal Ref: APP/HS2/14

A422 Brackley Road Compound to the Strategic Road Network

- The appeal is made under paragraph 22 of Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017.
 - The appeal is made by High Speed Two Limited (HS2L) against the failure of Buckinghamshire Council to give notice of a decision within the prescribed period, on an application to approve a submission made under paragraph 6 of the Schedule.
 - The submission, dated 11 June 2020, was for the approval of a lorry route in connection with the Brackley Road Compound.
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Decision

1. The appeal is allowed, and approval is granted for a lorry route from Brackley Road Compound to the strategic road network, as set out in the submission dated 11 June 2020.

Legal framework and related matters

2. Deemed planning permission for the construction of a high-speed railway line from London to the West Midlands was granted by the High Speed Rail (London to West Midlands) Act 2017 ('the HS2 Act'). Schedule 17 of the HS2 Act sets out the conditions of that permission.
3. Paragraph 6 of Schedule 17 provides that, where the relevant planning authority is a qualifying authority (as is the case in this appeal), the routes to be used by large goods vehicles (LGVs) are subject to approval. The grounds on which such approval may be refused are limited. Under sub-paragraph 6(5)(b), these grounds include where the proposed arrangements ought to be modified to prevent or reduce prejudicial effects on road safety or the free flow of traffic, and are reasonably capable of being so modified. The circumstances in which conditions can be imposed on an approval under this paragraph are set out in sub-paragraph 6(6).
4. Paragraph 26 of Schedule 17 provides that in the determination of applications under Schedule 17, regard shall be had to guidance to be issued by the relevant Secretary of State (SoS). Such guidance has been issued by the SoS for Transport and was updated in May 2021, referred to here as 'the Statutory Guidance'¹.
5. Amongst other things, the Statutory Guidance draws attention to a suite of documents known as the Environmental Minimum Requirements (the EMRs), to which HS2L as the nominated undertaker is contractually bound by a

¹ High Speed Rail (London - West Midlands) Act 2017 Schedule 17 Statutory Guidance, updated May 2021

Development Agreement, and the qualifying authorities are bound by various individual agreements and undertakings. These EMRs include the Environmental Statement (the ES), Transport Assessment (TA) and Additional Provisions reports (the APs), the Planning, Environmental and Heritage Memoranda, Planning Forum Notes (PFNs), a Code of Construction Practice, and various route-wide and local traffic management documents derived from these. Together, these EMRs provide for a series of additional local control mechanisms which operate alongside Schedule 17.

6. The relevant legal framework also includes the judgement of the Court of Appeal in *R(London Borough of Hillingdon) v SoS for Transport and Another*², which is now generally referred to as '*Hillingdon 1*'; and that of the Hon. Mr Justice Ouseley in a second case involving the same parties³, in the High Court, known as '*Hillingdon 2*'.

Preliminary matter: validity of the appeal

7. The Council contends that the submission made to them by HS2L was invalid, for lack of adequate information. On that basis, the Council's view is that the prescribed period for determination of the submission was never commenced, and the appeal is therefore invalid.
8. In Schedule 17, the provisions relating to appeals are set out at paragraphs 22-25. Paragraph 22 contains the right to appeal. Sub-paragraph 22(3) states, without qualification, that where a planning authority receives a request for approval under Schedule 17 and fails to issue a decision within the prescribed period (or such extended period as may be agreed), then the provisions of that paragraph, relating to appeals, shall apply as if the request had been refused. The Schedule makes no reference to any circumstances in which an appeal may be turned away or treated as invalid.
9. The Statutory Guidance, at paragraphs 25 and 26, states that the information required to support a Schedule 17 application will generally be that set out in the PFNs. In this context the most relevant PFNs, at the date when the application was made, were Nos 1, 3 and 6. For lorry routes, the documents required are specified in PFN 6: these are a list of roads, a declaration relating to local suppliers, a covering letter, a plan of the route(s), a written statement including the content specified in the PFN, and a Route Management, Improvement and Safety Plan (a ROMIS), the latter also to include specified content. In the present case, the original submission by HS2L appears to have included all of these items. Since then, additional guidance has been added in PFN 17, Information for Decision Making, but that document was only issued in March 2021, some 9 months after the date of the present application.
10. In the *Hillingdon 1* judgement at paragraph 70, the Court of Appeal held that the information and evidence provided with an application under Schedule 17 should be sufficient to enable the determining authority to perform its duty; and that the prescribed 8-week period should not start until adequate information has been provided. But this ruling still leaves the question as to what type and amount of information are needed in any particular case to be considered on the facts and circumstances of that case. In the event of an

² [2020] EWCA Civ 1005

³ [2021] EWHC 871 (Admin)

appeal, that question is one that clearly must fall within the scope of the decision maker who is to determine the appeal.

11. Alongside *Hillingdon 1*, I also note the subsequent commentary contained in paragraphs 208 and 209 of the *Hillingdon 2* judgement. That case, like the present appeal, related to lorry routes. The judgement reinforces my view that the amount and type of information necessary, to enable the determiner to make a lawful decision, may vary depending on the facts of the particular case.
12. In the present case, although there is disagreement between the parties as to whether an extended period for determination was agreed, there is no dispute that the Council did not make a decision, within either the original or extended periods. The Council, in its appeal statement, lists a number of items of additional information which it considers should have been submitted, but none of these appears to correlate with the checklist in PFN 6, nor with the more general requirements in PFNs 1 and 3. Therefore, HS2L's failure to supply that information at the outset did not make the submission invalid. The introduction of PFN 17 at an advanced stage of the process could not make the application invalid retrospectively, and thus does not affect the validity of the subsequent appeal.
13. Having regard to all the above matters, I find no grounds on which to turn the appeal away on grounds of invalidity. Instead, where relevant, I will address matters relating to the adequacy of the information provided, in the context of the substantive issue, as discussed below.

Main issues

14. Although the Council made no formal decision during the prescribed period, its position, as now presented in its statement of case, is that in the event that the appeal is not invalid, "*approval should not be granted, due to the significant adverse impact on road safety or on the free flow of traffic in the local area, contrary to paragraph 6(5)(b)(ii) of Sch.17*".
15. Having regard to all the submissions before me, I consider that the main issue in the appeal is whether the proposed lorry route or any related arrangements ought to be modified, and are reasonably capable of being so modified, having regard to matters of road safety and the free flow of traffic.

Reasons for decision

The Statutory Guidance

16. Paragraphs 20-22 of the Statutory Guidance give advice on the scope of matters that may be considered under Schedule 17, and the relationship between such approvals under the Schedule and the other controls available through the EMRs. Authorities should not revisit matters settled through the HS2 Parliamentary process. Requests for approval should be determined on the basis of the EMR controls already in place. Authorities should not seek to modify those existing controls, nor should they replicate them except where necessary and relevant to the specified grounds.
17. Paragraphs 25 and 26 advise on the information to be submitted. Where additional information is to be required, in excess of that set out in the PFNs, such information should be necessary to the decision, and the need for it explained by reference to the relevant ground for refusal. Where there is disagreement as to the need for requested information, reasons should be

given for that disagreement. All requests for information should be relevant, reasonable, proportionate and necessary.

18. Paragraphs 31-34 relate to the specified grounds for determination. In passing the HS2 Act in 2017, Parliament has taken account of the impacts assessed in the ES, and judged these to be acceptable. The purpose of Schedule 17 is therefore not to eliminate all adverse impacts, including those relating to traffic, and in some cases submissions will need to be approved even though a negative impact has been identified. Modifications may be sought to reduce such impacts, but only where justified, and where they relate to the specified grounds for determination.
19. Paragraphs 42-43 cover lorry route submissions. The Guidance makes clear that the arrangements that are approved must relate only to the routes themselves. Modifications may be made by substituting one route for another. Conditions limiting times or numbers of vehicles must be justified, and should have regard to the effects on the HS2 project's costs and programming.

The proposed route

20. The Brackley Road Compound lies on the A422, a single-carriageway, non-trunk, 'A-class' road running between the towns of Brackley and Buckingham. About 1.5km to the west is the roundabout junction where the A422 intersects with the A43 trunk road, a dual carriageway which forms part of the designated strategic road network. The proposed lorry route to serve the Compound would run straight along this 1.5km section of the A422, between these two points. No other roads are included in the proposal.
21. The Compound is stated to be the point of access for working areas on the section of the HS2 route from Calvert to Helmdon. The works which are to be undertaken in that section include new structures, earthworks, highway works and utilities. Deliveries of aggregates and other materials are to be brought from railheads at Banbury and Kidlington, via the M40, A34 and A43, and then onto the A422. The A422 is the only part of this route for which approval under paragraph 6 of Schedule 17 is required.
22. On my visit, I saw that the section of the A422 that serves the Brackley Road Compound is built and maintained to a good standard. It has good visibility, adequate width, kerbs, road markings and signage. A 50mph speed limit is in place. At the entry onto the A43 roundabout there is a widened approach with an extra lane, a central island and lighting. The only intervening junctions between this and the Compound are two minor side-roads, two public rights-of-way, and a few farm tracks. In addition, this section of the A422 passes through open arable land, with no settlements, frontage development or residential properties of any kind. In all these respects, the proposed route appears to be of a high quality and entirely suitable for use by LGVs.
23. Whilst on my visit I was also able to tour the surrounding area. This exercise confirmed for me, as is clear from any map of the area, that apart from the proposed route itself, no other sensible alternatives are realistically available. Any other route between the Brackley Road Compound and the strategic road network would not only be many times longer, but would also have to pass through one or more of the nearby towns or villages, and would almost certainly involve the use of minor roads as well as the A422 itself. Any such alternative route would be likely to be significantly more costly and also more

objectionable to local communities. In any event, no alternative routes have been suggested by any party.

24. It appears not to be disputed that the route now proposed is also the one that was assumed, for the purposes of the original HS2 ES and TA assessments in 2013, and also in the subsequent APs. As far as I am aware, no other alternatives to this route were considered in those assessments.
25. It is acknowledged by HS2L that a temporary roundabout and visibility splays will need to be formed at the access to the Compound site, and that a separate application will be needed for these works under Schedule 4 of the HS2 Act. However, I see no reason to doubt that approval will be forthcoming for those works, or that they will be carried out in compliance with that approval. For the purposes of the present application therefore, these matters need not be considered further. As far as I am aware, no need has been identified for any other physical works to the route.
26. None of these matters appears to be in dispute. Based on these considerations, it seems beyond doubt that the route proposed in HS2L's submission is not only the best available, but to all intents and purposes the only logical route for the purposes of serving the Brackley Road Compound.

Road safety and the free flow of traffic

27. The Council's principal concern appears to relate to congestion at the A422/A43 roundabout. I appreciate that, in its other role as a Highway Authority, the Council has responsibilities for managing Buckinghamshire's road network, and an important part of that role involves minimising congestion, with its attendant delays, costs and environmental impacts. Even though the particular junction in question is outside the county boundary, traffic queuing on the A422 could extend into Buckinghamshire, and would in any event affect the local residents and businesses who use that road. The construction of HS2 will generate a significant amount of extra traffic, and this will include cars, vans and smaller HGVs, none of which are subject to control through Schedule 17, as well as the LGVs which are the subject of the present application. I fully accept that the result during the 4-year construction period is likely to be a worsening of traffic conditions in the area.
28. However, localised temporary impacts of this kind were clearly anticipated and identified in the original ES and TA, and the subsequent APs, including at this particular junction. The likelihood of some increase in congestion and delays at this point was therefore known about and taken into account in the Parliamentary process. I appreciate that since that time traffic forecasts may well have changed in some respects, but over the course of time that is only to be expected. In any event, in this case it appears to be agreed that the forecast daily numbers of LGVs are within the range that was assumed and assessed in the TA.
29. I note that the forecast number of smaller, non-LGV vehicles is now higher than previously expected. But the present application is only concerned with LGVs, and it is therefore only those vehicles that are relevant. I also note that the Council's concerns now appear to relate to the A43 as well as the A422. But the A43 does not form part of the route applied for, and LGV or other traffic movements on it, whether generated by HS2 or not, are outside the scope of Schedule 17.

30. With regard to safety, there is no suggestion in the evidence before me that the relevant section of the A422 has any significant accident record. From my observations, and with the benefit of the planned improvement to the Compound entrance, there seems no reason why its use by LGVs should give rise to any undue danger.
31. I note that concerns have been raised regarding the potential risk of vehicles diverting, during times of congestion, away from the A422 and through nearby villages including Turweston. I agree that this would be undesirable, but Turweston is not on the proposed route. In any event, given Turweston's proximity to the Brackley Road Compound, it seems to me that the possibility of rat-running through the village is not directly related to the choice of LGV route. Moreover, if measures are needed to control such rat-running, other means are available under the EMRs, including through the on-going local procedures relating to the Local Traffic Management Plan (the LTMP), the ROMIS, and the Traffic Liaison Group (the LTG).
32. I conclude that there is no evidence that the approval of the LGV route now proposed would have any adverse effect on either road safety or the free flow of traffic.

Adequacy of the information provided

33. In paragraph 31 of its statement, the Council sets out the additional information which it suggests should have been provided. This includes forecasts of the total trip generation, broken down between types of vehicle, peak and non-peak hours, and peak/non peak operating phases. And alongside this, the Council would have wished to see a comprehensive methodology statement; comprehensive summaries of the relevant information from the previous ES figures, and of the differences between this and the updated forecasts; a comparison with junction modelling outputs and explanation of the methodology used; and a summary of the residual significant effects, with further analysis of the differences from the ES.
34. As I understand it, the Council's reasons for wishing to have this additional information are so that it could consider whether any conditions or limits should be imposed in relation to numbers of vehicles or times of use. However, for the reasons already explained, I have found that the route proposed by HS2L is suitable for LGV traffic, and is the best route available to serve the Brackley Road site. I have also found that the impact of the route has already been taken into account in the granting of deemed planning permission for the HS2 development. These considerations clearly weigh in favour of approval, and it seems highly unlikely that the provision of any amount of additional information could change that conclusion.
35. In the light of the *Hillingdon 1 and 2* judgements, it is now established that the determining authority in a Schedule 17 application is entitled to seek information which is necessary for the purposes of making a lawful decision. In the present case however, that decision is whether the proposed lorry route is acceptable in the form now proposed, or should be modified. There is nothing else in the application that can be approved or modified, except the route itself. Nor is there any requirement in paragraph 6 of the Schedule for anything else to be considered, apart from the route. Paragraph 6 does allow for consideration of conditions, but only where needed for the purpose of modification. In this case the Council's request for additional information is

indeed directed at possible conditions, but with no apparent intent or prospect that such conditions would involve any modification to the route. In the circumstances, I see no reason why a lawful decision cannot be made without further information.

36. I appreciate that PFN 17 provides that further information, including traffic assessments, modelling and cumulative information, may be required in some circumstances. But the PFN makes it clear that this kind of information should not be expected in all cases, and indeed states that further information may only be requested where relevant to whether a modification is necessary, having regard to the grounds specified in Schedule 17 paragraph 6. It seems clear from this that where any information additional to the standard requirements set out in PFN 6 is to be sought, this will need clear justification on a case-by-case basis. In the present case, the Council's requests for further information have not been so justified. In the circumstances, having regard also to paragraph 26 of the Statutory Guidance, the information requested appears to me to be neither relevant, reasonable, proportionate, nor necessary.
37. The submitted documents are clear as to the proposed route, and include all of the relevant mandatory information. I am satisfied the information and evidence before me are sufficient for me to make my decision.

Whether any modification ought to be made, and is reasonably capable of being made

38. No specific modifications of any kind have been proposed or identified by any party. Given my earlier findings as to the suitability of the proposed route and the lack of alternatives, I see no reason why any modification to the proposed arrangements ought to be made.
39. Although the Council argues in general terms that conditions should be considered, the evidence presented does not explain what modifications would be brought into effect through such conditions, or how that would fall within the terms of paragraph 6 of Schedule 17. For the reasons given elsewhere in this decision, I am not persuaded on either count.
40. Nothing in Schedule 17 prevents approval being granted unconditionally, without modification. Indeed, that seems to me the default position, except where there is a clear reason why the submitted proposal is unacceptable on one of the grounds specified.
41. In view of the above, it is not necessary for me to consider whether any modification is reasonably capable of being made.
42. I conclude that no modification to the proposed arrangements should be made.

Conclusion

43. For the above reasons, I conclude that the appeal should succeed. The approval sought is therefore granted.

JS Felgate

INSPECTOR