



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/HS2/15

Construction lorry route for 3 no. worksites to the west of Harvil Road

- 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 the Council of the London Borough of Hillingdon 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 29 January 2021, reference 75596/APP/2021/402, was for the approval of lorry routes in connection with the construction of the Colne Valley Viaduct, from the following worksites:
Worksite 1: Dews Lane;
Worksite 2: Viaduct south embankment, Ickenham ATFS platform and viaduct piers 1-19 and other ancillary works; and
Worksite 3: Viaduct south embankment.
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Decision

1. The appeal is allowed, and approval is granted for a lorry route in connection with three worksites to the west of Harvil Road, as set out in the submission dated 29 January 2021.

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 vehicles¹ (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

¹ Defined as goods vehicles of over 7.5 tonnes

for Transport and was updated in May 2021, referred to here as 'the Statutory Guidance'².

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 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 (the CoCP), a Route-wide Traffic Management Plan (the RTMP), and various Local Traffic Management Plans (LTMPs) and related arrangements 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*³, which is now generally referred to as '*Hillingdon 1*'; and that of the Hon. Mr Justice Ouseley in a second case involving the same parties⁴, in the High Court, known as '*Hillingdon 2*'.

Main issues

7. Although the Council made no formal decision during the prescribed period, it has subsequently confirmed, that its concerns are limited to matters relevant to sub-paragraph 6(5)(b)(ii) of Schedule 17, which relates to the effects on road safety and on the free flow of traffic in the local area.
8. 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

Relevant provisions of the Statutory Guidance

9. 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.
10. 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

² High Speed Rail (London - West Midlands) Act 2017 Schedule 17 Statutory Guidance, updated May 2017

³ [2020] EWCA Civ 1005

⁴ [2021] EWHC 871 (Admin)

such impacts, but only where justified, and where they relate to the specified grounds for determination.

11. 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

12. The HS2 Worksites identified as Nos 1, 2 and 3 in the present application, are located off Harvil Road, midway between the suburb of Ickenham and the village of South Harefield. The nearest point on the strategic road network is Junction 1 of the M40 motorway, approximately 4.2 km to the south-west. The proposed lorry route would link the three worksites to the M40 and strategic network via this junction.
13. From M40 Junction 1, LGV traffic would continue eastwards on the A40 for a distance of about 1.5 km, as far as the Swakeleys junction. This section of the A40 is a dual carriageway with three lanes in each direction. It was formerly classified as a trunk road, and remains included in the Transport for London Road Network. The road has a 70mph limit, central and side crash barriers, and is lit throughout.
14. The Swakeleys junction is a grade-separated roundabout with slip roads, two circulation lanes, and lighting. From there, vehicles would travel northeast on Swakeleys Road for about 600m. This section of Swakeleys Road is urban in nature, with residential frontages, footways, centre lines, bus stops and side-road junctions. The carriageway is of adequate width, with no obvious defects in terms of its construction. The road forms part of the B467, a local distributor route from Uxbridge to Ruislip.
15. At the next, smaller roundabout junction, traffic would take Harvil Road, heading north, for about 1.5 km to Worksite 3, or 2 km to Worksites 1 and 2. Harvil Road is a 'C' class rural road. For the first 500m or so, it has housing on one side, mostly set well back from the road. Within the remainder of its length, it gives access to a number of longstanding industrial businesses, including skip hire, ready-mixed concrete, and aggregates supplies, as well as to a number of other HS2 worksites. The road is mainly straight, and of sufficient width for two large vehicles to pass comfortably. The exception is a short section containing the existing narrow bridge over the Chiltern railway line. However, this section is already planned to be realigned and widened, in order to incorporate the new permanent bridge that will be needed to span the HS2 line as well as the existing railway.
16. Access from Harvil Road to Worksites 1 and 2 will be via a new junction replacing the existing private road Dews Lane, and the access to Worksite 3 will take the form of a new junction off the realigned section of Harvil Road, when that is constructed. I note that all these works, in relation to new or realigned roads, and the formation of new accesses, are subject to separate approval processes, either completed or expected, under other provisions of the HS2 Act, including Schedule 4.
17. On my visit, it was evident that all of these existing roads are physically capable of accommodating LGVs without difficulty, and indeed all are already

used extensively by such vehicles, as well as other traffic. The route involves passing briefly through the suburb of Ickenham, but even on that relatively short part of the route, along Swakeleys Road and the southern end of Harvil Road, there is no apparent issue regarding these roads' physical ability to carry large vehicles. Nothing that I saw suggested to me that any of the roads involved were not suitable or practical for the use now proposed. None of the submissions before me suggest otherwise.

18. From my tour of the area, it was evident that any alternative route to the three worksites in question would have some significant drawbacks. Any route which involved approaching from the north would be longer in total, with a greater distance on relatively minor roads. Any such route would also have to pass through South Harefield village, and either Harefield itself or Denham Green. Of these options, the shorter would be via Moorhall Road and the A412, but this would have to cross the Colne Valley, and also pass under the Denham railway bridge which has limited headroom. None of these options appears to offer any advantages over the route proposed in the present application, and none has been proposed in preference. Nothing in any of the evidence suggests that any other route is available. To my mind, the proposed route via the A40, Swakeleys Road and Harvil Road is clearly the best and most suitable route available for these three worksites.
19. It is not disputed that the route now proposed is the one that was assumed and tested for these worksites in the original TA, and subsequent APs, which formed part of the ES for the HS2 project, and which was therefore taken into account in the Parliamentary processes leading to the granting of royal assent to the HS2 Act.
20. All the evidence therefore leads me to conclude that the proposed route is in principle suitable for the purpose of providing access for LGVs to Worksites Nos 1, 2 and 3. Moreover, based on the submissions before me and my own observations, it is clearly the best and most appropriate route available for that purpose.

Free flow of traffic

21. The Council's principal concern appears to relate mainly to congestion at the Swakeleys roundabout on the A40, and at the Swakeleys Road/Harvil Road roundabout, especially in the morning and evening peak hours. It is not disputed by the appellants that these junctions suffer from congestion at peak times, with attendant problems of delay and emissions.
22. The application states that the three worksites are expected to generate an average total of 40 LGVs per day between them, increasing to 60 per day in the busiest construction periods. These are mostly to be spread evenly over a 10-hour working day on weekdays, and 5 hours on Saturdays, but with some movements outside these hours for one extra hour before and after the core hours. The overall duration of the works at the three worksites is estimated as 4 years and 10 months. Based on these submitted details, it is clear that the use of the proposed route in connection with these three HS2 worksites would add, to some degree, to the existing traffic on Swakeleys Road and Harvil Road, and to the congestion at the two junctions in question.
23. However, the Council acknowledges that these concerns, regarding traffic issues in Hillingdon, were drawn to the attention of the Select Committees of

both Houses of Parliament during the passage of the HS2 Bill. From the Council's evidence in the present appeal, it is clear that submissions regarding congestion in Ickenham and Harefield, amongst other locations, were presented in person to the House of Commons Committee by the Council itself, and by local residents and by the local Member of Parliament. Further oral submissions were also made in the House of Lords, which included specific reference to the Swakeleys roundabout. These submissions are noted in the Select Committees' respective reports.

24. In addition, Parliament had before it the original ES, including the TA, and the various supplementary assessments in the subsequent APs. Those assessments incorporated traffic flow modelling for selected junctions, including the Swakeleys Road/A40 and Swakeleys Road/Harvil Road roundabouts. As the Council again recognises in its present evidence, these assessments identified that, even without HS2, peak-hour traffic in this part of Hillingdon did not flow freely. As a result, the ES identified that the increased flows during construction would lead to increased congestion and delays at some junctions, including the Swakeleys and Harvil Road roundabouts.
25. In the light of all this evidence therefore, it seems clear beyond doubt that Parliament's decision to proceed with the HS2 Act in 2017, which included the grant of deemed planning permission, was taken in the knowledge that the development would involve some temporary worsening of local traffic conditions in this part of Hillingdon, including at the two junctions of particular concern to the Council in this appeal. Indeed, it is difficult to conceive of such a decision being taken without an expectation of some disruption of this kind. I appreciate that since then background traffic conditions and forecasts may have changed in detail, but to my mind that is only to be expected. The numbers of LGVs suggested in the present application seem to me broadly in line with the assumptions tested in the ES and subsequent assessments. All of the available evidence suggests that the impact of the HS2 LGVs on the route now proposed is unlikely to differ significantly from that which was expected in 2017.
26. I note that various other controls or control mechanisms are also in place, by virtue of the ERMs. Amongst these, the 'Hillingdon Agreement' is said to commit HS2L to use reasonable endeavours to limit all HGV (over 3.5 tonnes) movements at the Swakeleys roundabout to a maximum of 550 per day, and so far as reasonably practicable to reduce the numbers of such movements during the am and pm peaks. This agreement is evidently designed to mitigate the development's impacts on congestion at the junction. There seems no reason why granting approval for the present application should affect the Council's ability to enforce the terms of the agreement in any way, and therefore the additional control that it gives to the Council would continue to be available.
27. In addition, the LTMP for Hillingdon states that a Vehicle Monitoring System (VMS) has been brought into use, which enables HS2L to limit the numbers of peak hour vehicle trips to correspond with the modelling assumptions in the TA. As a result, it is stated that the vehicle numbers at Swakeleys roundabout have been further limited, to accord with the Hillingdon Agreement, and also to set further, percentage-based limits during the peak hours. The LTMP goes on to state that the actual numbers of movements, together with next-period forecasts, will be reported on a regular basis to the Hillingdon Local Traffic

Group (LTG) and to the Community Traffic Working Group, on both of which the Council is represented. I see no reason to doubt that these commitments will be adhered to.

28. I note that the Council has decided not to proceed at present with the partial signalisation of the Swakeleys roundabout, which was apparently offered by HS2L, and was assessed by Transport for London (TfL) as being capable of reducing the forecast congestion and delays due to HS2 traffic. I appreciate that this decision reflected what the Council saw as uncertainty as to any consequential impacts elsewhere in the network. However, there seems no reason why further consideration could not be given to this option at a later stage in the construction period if necessary, through the on-going cooperative procedures that are in place, including the LTG.
29. Having regard to all of the above, I find nothing to change my conclusion that the lorry route now proposed is suitable for the purpose of accessing the three worksites in question, and is the best available route for that purpose.

Road safety

30. Similar considerations apply to road safety. Harvil Road, Swakeleys Road and their junctions are currently used by all forms of traffic, including pedestrians and cyclists. However, both roads have continuous footways where needed, and both junctions have crossing facilities with dropped kerbs and tactile paving. At the Swakeleys roundabout, the pedestrian routes are largely segregated from the vehicular traffic, and where these cross the slip roads, they are laid out as formal 'zebra' crossings, with road markings and belisha beacons. At the southern end of Swakeleys Road, close to the junction with Warren Road, there is also a signal-controlled 'pelican' crossing. There is no evidence before me as to any particular accident record on any of these streets or junctions, and I find nothing to suggest that any are inherently dangerous.
31. The LTMP makes provision for new signage in Harvil Road to warn drivers of the presence of two public rights-of-way, and additional 'keep clear' markings at the Swakeleys Road/Warren Road junction to facilitate turning movements and avoid blockages. The Route Management, Improvement and Safety Plan (the ROMIS) for Hillingdon provides for the clearance of roadside vegetation in Harvil Road, to improve visibility. The approved scheme for the new Dews Lane junction provides for temporary traffic signals to control and facilitate turning movements, in and out. No other specific safety hazards appear to have been identified by any party. I see no reason to doubt that these proposed mitigation measures will be implemented, and will be effective in enhancing safety on the proposed route.
32. In addition, I note that HS2L is bound by contractual commitments in the CoCP and RTMP, which include a requirement that the impacts of construction traffic on local communities be minimised where reasonably practicable, together with various general duties in respect of safe operating procedures, safety training and local safety initiatives. These EMR commitments give some grounds for confidence that the proposed route would be operated with a reasonable care, thus providing some degree of further mitigation.
33. In summary, the addition of HS2 construction traffic would add to the number of LGVs on Harvil Road, Swakeleys Road and the Swakeleys junction, and the possibility that this would increase the safety risks cannot be ruled out. But

the granting of deemed planning permission for the HS2 development makes it necessary that those vehicles must be accommodated somewhere within the local road network. From the evidence before me there is nothing to suggest that the dangers posed on the route now proposed would be greater than on any other. None of the evidence on these matters therefore causes me to depart from my earlier conclusion, that the route now proposed is suitable and is the best available route for the purpose.

Adequacy of the information provided

34. 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. Where any additional information is to be required, 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. All requests for information should be relevant, reasonable, proportionate and necessary.
35. For lorry routes, the most relevant PFN at the date of the application was PFN 6, 'Lorry Route Approvals', which specifies the documents required for submission. These are a list of roads, a declaration relating to local suppliers, a covering letter, a plan of the routes, a written statement and a ROMIS. The written statement is to include a description of the sites and works, a summary of relevant information from the LTMP, predicted LGV numbers and the timing of the works. The ROMIS is to include details of any physical changes to the route, and measures to be taken at site access points. In the present case, all of these items appear to have been included in HS2L's original submission to the Council, in January 2021.
36. Subsequently, PFN 17 'Information for Decision Making' has been issued. This new PFN does not change the mandatory requirements set out in PFN6 but gives advice on the circumstances in which additional information may be requested. Such requests should only be made where relevant to understanding the impact of the use of a route, and whether a modification is necessary, having regard to the grounds specified in Schedule 17 paragraph 6. Having regard to the contents of both of these PFNs, I am satisfied that the proposal which is before me in this appeal does not lack any of the information required to comply with them, or with the relevant Statutory Guidance.
37. The Council argues that a new traffic impact assessment should be submitted, with updated baseline information and junction modelling, based on a full breakdown of HS2 traffic including non-LGV commercial vehicles and workforce cars, cumulative impacts with other HS2 worksites, and the distribution of trips across the day and through the construction period. However, this would mean repeating and re-running much of the work that was carried out for the purposes of the Parliamentary process leading up to the passing of the HS2 Act. The present application for a single lorry route is much more limited in scope. Given that I have found the route now proposed to be so clearly the best and most suitable available for the worksites in question, it seems to me unlikely that any amount of further assessment or modelling could alter this conclusion. In these circumstances, none of the further information suggested by the Council seems to me to be necessary for the purposes of determining the present application. Requiring such information would therefore be disproportionate, and irrelevant to the outcome of the appeal.

38. The Council does not dispute that its reason for seeking this additional information is to inform the consideration of possible conditions. However, paragraph 6 of Schedule 17 only allows conditions to be imposed where they are necessary for the purpose of modifying the submitted proposals. The Statutory Guidance makes it clear that such a modification should relate to the route itself. In the present case, since the submitted route has been found to be the best available, there is no apparent reason why any part of it should need to be substituted or otherwise modified. HS2L's submission makes no other proposals than the route itself, and there is therefore nothing else in the submission that could be open to modification. Indeed, nothing in paragraph 6 requires anything else other than the route itself to be proposed or considered. In these circumstances, it follows that even if the additional information sought by the Council were provided, there would be little realistic prospect that this would open the way to the imposition of any conditions that would be permissible under paragraph 6. This reinforces my view that in this case requiring further information would serve no useful purpose.
39. I am aware that PFN 17 identifies TAs and junction modelling as examples of further information which may be requested in some cases. But the PFN also makes it clear that this kind of information should not be expected in all cases, and that any such requests will need clear justification. In the present case, for the reasons already given, I find no such justification.
40. I appreciate that the National Planning Policy Framework (the NPPF) advises that TAs are required for major developments. However, that advice seems to me to be directed mainly at applications for planning permission, and the present appeal proposal is not such an application. In any event, the TA already submitted at the Parliamentary stage has fulfilled that requirement.
41. In addition to the above matters, the Council also suggests that details are needed as to the timing and sequencing of the proposed temporary traffic signals at Dews Lane, and also at Breakspear Lane in Ruislip. I accept that these could have some effect on traffic patterns in the area but, for the same reasons as already explained, this would not alter the merits of the route now proposed, nor would it justify imposing conditions to modify that route.
42. I fully acknowledge that following the *Hillingdon 1* judgement, the information provided with a Schedule 17 application must be sufficient to enable the authority to perform its duty and make a lawful decision. Moreover, that ruling is unchanged by *Hillingdon 2*. But it is clear in my view that the amount and type of information that are necessary for that purpose will often vary between one case and another, depending on their own particular facts and circumstances. It also seems to me that, on appeal, the question of the adequacy of the information must be a matter for the decision maker in that appeal.
43. In the present case, for the reasons set out above, the submitted documents are clear as to the proposed route, and they include all of the relevant information to allow a decision to be made as to the suitability and acceptability of that route. I am therefore satisfied that the information and evidence before me are a sufficient basis on which to make my decision.

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

44. 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 preferable alternatives, I see no reason why any modification to the proposed arrangements ought to be made.
45. 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.
46. 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.
47. In view of the above, it is not necessary for me to consider whether any modification is reasonably capable of being made.
48. I conclude that no modification to the proposed arrangements should be made.

Conclusion

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

J S Felgate

INSPECTOR