



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: 29 September 2021

Appeal Ref: APP/HS2/9

Construction lorry routes for 5 no. worksites in South and West Ruislip

- 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 18 December 2020, reference 75369/APP/2020/4264, was for the approval of lorry routes in connection with the construction of the Colne Valley Viaduct, from the following worksites:
 - Worksite 1: South Ruislip Vent Shaft Main Compound
 - Worksite 2: West Ruislip Portal Satellite Compound
 - Worksite 3: Breakspear Road South Uxbridge Satellite Compound
 - Worksite 4: Northolt Tunnel and Earthworks Main Compound
 - Worksite 5: Harvil Road Realignment Satellite Compound
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Decision

1. The appeal is allowed, and approval is granted for a lorry route in connection with five worksites in the areas of South Ruislip and West Ruislip, as set out in the submission dated 18 December 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 arrangements relating to the routes to be used by large goods vehicles¹ (LGVs) are subject to approval. The grounds on which such approval may be refused, or conditions imposed, are strictly limited. Under sub-paragraphs 6(5)(b) and 6(6)(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. In addition, conditions can only be imposed with the agreement of HS2L, as the nominated undertaker.
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

¹ Defined as goods vehicles of over 7.5 tonnes

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'².

5. Alongside the Act and the Statutory Guidance, there is also a suite of documents known as the Environmental Minimum Requirements (the EMRs). These documents include, amongst others, a Code of Construction Practice (the CoCP) and a Register of Assurances and Undertakings. The CoCP in turn sets out the arrangements for a Route-wide Traffic Management Plan (the RTMP), and a series of Local Traffic Management Plans (LTMPs) and Route Management, Improvement and Safety Plans (ROMISs). HS2L is contractually bound to the EMRs by a Development Agreement. The stated purpose of the EMRs is to define the mechanisms by which HS2L is to engage with local communities and stakeholders, and to implement environmental and sustainability management measures to protect communities and the environment.

Background to the appeal

6. An earlier application (ref. 75369/APP/20/288) for the approval of lorry routes, relating to the same five worksites as in the present appeal, was made in December 2019 and refused by the Council in March 2020. The Council's reasons for refusal related to the effects on the free flow of traffic, particularly in the peak hours.
7. An appeal against that refusal was allowed on 28 July 2020 (Ref. APP/HS2/5). In his decision, the Inspector found that the Council had not provided clear evidence to demonstrate that the lorry routes application ought to be modified and was reasonably capable of being modified in the way that the Council sought. He also found that the two conditions proposed by the Council were unnecessary in the light of the controls already in place through the EMRs.
8. Shortly after the date of the appeal decision on HS2/5, the Court of Appeal (the CoA) handed down its judgement in the case of *R(London Borough of Hillingdon) v SoS for Transport and Another*³, now referred to as the '*Hillingdon 1*' judgement, which quashed an earlier Schedule 17 planning appeal decision (ref HS2/1).
9. Following that CoA judgement, the Council then challenged the HS2/5 appeal decision in the High Court. In April 2021 that challenge was dismissed, in a judgement by the Hon. Mr Justice Ouseley⁴, now known as '*Hillingdon 2*'. An application for leave to appeal against this new judgement was dismissed by the High Court, but subsequently renewed by direct application to the CoA. The outcome of that application is now awaited.
10. As of now therefore, the current position is that the approval granted by the appeal decision in HS2/5 remains extant. That approval permits the use of lorry routes identical to those proposed in the present appeal, to serve the same five worksites. As things stand, that approval can lawfully be implemented, and represents a realistic fallback position. Were it not for the Council's renewed application to the CoA, a fallback situation of this nature, providing an identical approval, would normally be a compelling consideration,

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)

making it unnecessary for me to consider the merits of the appeal proposal afresh. But nevertheless, in view of the circumstances, I have done so, having regard to all the submissions before me.

Main issues

11. Although the Council made no formal decision during the prescribed period, it has subsequently set out its position in its appeal statement. The statement makes it clear that the Council takes no issue with regard to the proposed lorry routes themselves. Rather, the Council's concerns are mainly focussed on what they see as a lack of information regarding the numbers of the LGV movements that would take place on them, and the extent to which it would be possible to control those movements.
12. Having regard to all the submissions before me, I consider that the main issues in the appeal are:
 - whether the information provided with the application is sufficient to enable a decision to be made;
 - and if so, whether the proposed lorry routes 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

Adequacy of the information provided

The existing application

13. The application submitted by HS2L in December 2020 comprises an application form, a plan, a list of roads, a written statement, a copy of the ROMIS for the Borough of Hillingdon, and a covering letter.
14. The submitted plan shows the locations of the five worksites for which LGV access is needed, and traces the proposed routes to each of them from the A40, which forms part of the Transport for London Road Network (the TLRN). The list of roads specifies these routes by reference to the relevant start and end points on each one. The list also contains the required declaration regarding the routing of LGVs associated with suppliers and businesses located between a particular worksite and the nearest point on the strategic road network.
15. The written statement contains a more detailed description of the routes, and of the worksites and their access points, and the works to be undertaken at each one. It sets out in summary form the reasons for the choice of routes proposed, and the main alternatives considered. The statement also contains information regarding the estimated daily numbers of LGV movements expected to be generated by each worksite, both for an average day and also for their respective peak construction periods. Information is provided regarding construction working hours, and the method of managing and monitoring LGV movements, through a Vehicle Management System (the VMS), and proposed arrangements for reporting on the operation of this to the local Traffic Liaison Group (TLG) and Community Traffic Working Group. The statement also sets out details of the consultation undertaken, the indicative construction programme, and other related consents, including those required

- or already obtained under other parts of Schedule 17, or other schedules to the HS2 Act.
16. The ROMIS includes a summary of the existing physical restrictions and limitations on the roads in question, and the works or other mitigation measures proposed to overcome these. The ROMIS also provides details of the access points to each of the worksites, and the physical works to each of these that are proposed to be the subject of other consents. In addition, it contains a list of the undertakings and assurances relevant to Hillingdon, to which HS2L has committed through the development agreement and ERMs.
 17. Finally, the covering letter confirms the status of the submitted documents, and the nature of the approval that is sought. It also explains the reasons for the repeated submission.
 18. Having regard to the application as a whole, it seems to me that the application is more than clear as to which routes and roads are proposed to be used for each worksite, and why. The submitted documents explain the context in terms of the HS2 project as a whole and its construction programme, and the purposes for which the proposed lorry routes are needed, and the way in which they would support the timely delivery and completion of the development. The submission also makes clear how the impacts arising from the use of the proposed routes would be managed and mitigated, where possible, through the operation of the ERMs, the ROMIS, and the various other means available under the HS2 regime.
 19. It is not disputed that the application includes all of the items required by Planning Forum Note (PFN) 6, 'Lorry Route Approvals'. Nor is it disputed that the content of the written statement and other submitted documents cover all of the matters listed in PFN 1 'Content of Submissions' and PFN 3 'Written Statements'. These were the most relevant PFNs at the time of submission. Subsequently, a further PFN, No 17, has been issued, and I will return to consider that particular matter further, at a later point in my decision. But be that as it may, the present application does not appear to me to be lacking in terms of any item or information that is identified in any of the PFNs as mandatory, or as normally to be expected.
 20. As the Council points out, accordance with the PFNs is not necessarily enough in itself. But nevertheless, the Statutory Guidance advises, at paragraph 25, that the information necessary for a Schedule 17 submission is generally that defined in the PFNs.
 21. I fully understand the Council's point that they would ideally have preferred to be in a position to have the power to approve, or refuse, other 'arrangements' relating to lorry routes, extending beyond just the definition of which roads are to be used. But as far as I can see, nothing in paragraph 6 of Schedule 17 relating to lorry routes requires approval to be obtained for any other types of arrangements, other than the routes themselves. In this respect, I find no deficiency in the appeal proposal.
 22. In the light of all the above, it seems to me that the application as submitted by HS2L is clear, comprehensive, and to all intents and purposes complete. On this basis, I see no prima facie reason why the appeal cannot be determined based on these submitted documents and their contents.

Whether a further traffic impact assessment is needed

23. The Council suggests that the appeal should not be determined without the submission of a traffic impact assessment. However, the HS2 development has already been the subject of two such assessments, in the original HS2 Environmental Statement (the ES) in 2013, and in the 'Additional Provisions 2' Statement (the AP2) in 2015. In both cases these included an assessment of the impacts of construction traffic, including on the specific routes now proposed. These assessments were considered during the Select Committee stages of the passage of the HS2 Bill, and taken account of in Parliament's decision to grant deemed planning permission for the HS2 development.
24. Since the passing of the HS2 Act, HS2L's estimates of LGV numbers have reduced somewhat, and it seems likely that background flows and other components may have risen. HS2L's site-specific traffic management and worksite access proposals have been defined in more detail. The long-term traffic effects of the Covid-19 pandemic are also as yet unknown. The Council is therefore probably justified in its view that the ES and AP2 are no longer fully up-to-date.
25. However, the purpose of those assessments was to inform the in-principle decision on the HS2 project as a whole. That decision has long been settled, and is not for review. The decision required now is much more limited in scope, and its impacts will be only temporary. As such, I see no clear reason why the decision cannot be made on the basis of the evidence already available, plus a visual inspection.
26. Furthermore, there appears to be no disagreement between the main parties that the routes now proposed are the best that can be achieved, within the constraints of the local network. On this latter key point in particular, there is no suggestion by any party that any further traffic assessments could possibly lead to any different conclusion. In these circumstances, it seems to me that such an assessment would serve no relevant purpose.
27. Paragraph 20 of the Statutory Guidance makes it clear that matters that have been settled through the Parliamentary process should not be revisited. In the present case, it seems to me that any requirement for a further traffic impact assessment would inevitably involve reopening settled matters. The effect would therefore be to undermine the decisions already taken by Parliament. Paragraph 26 also requires that requests for information in support of a Schedule 17 application should only be made where the information is relevant, reasonable, proportionate and necessary. To my mind, a requirement for a new traffic impact assessment in the present case would go beyond these parameters, on each count.
28. In the light of these considerations, and subject to consideration of the further matters discussed below, I am drawn to the conclusion that a requirement for a further traffic impact assessment would not be justified.

Other matters relating to traffic assessment

29. The principal reason given by the Council for seeking a further traffic assessment is to provide an evidence base for the imposition of conditions, possibly including limits on the overall numbers of lorry movements, or peak hour restrictions. However, paragraph 42 of the Statutory Guidance makes it

clear that the lorry route arrangements that are to be approved must relate only to the routes themselves, and states that modifications may be made by substituting one route for another. Conditions limiting the times or numbers of vehicles are not ruled out, but must be justified, and should have regard to the effects on the HS2 project's costs and programming. In the present case, it seems clear that any conditions of the nature envisaged by the Council would not represent a modification of the proposed route. Nor is there any apparent prospect that they would have the support of the nominated undertaker. On both these counts therefore, it is difficult to see how such conditions could be permissible within the terms of the relevant guidance; and indeed, more importantly, they would not accord with the parameters of paragraph 6(6) of Schedule 17 itself.

30. The Council also bases its argument on the fact that existing roads within the Borough are subject to high volumes of traffic, and are frequently congested. From my observations on my visit, and all the other evidence, I have no difficulty in accepting that this is the case, and that the roads forming part of the routes now proposed are no exception. In such an area, it would not be realistic to imagine that a project of the scale and complexity of HS2 could be carried out without exacerbating this existing congestion to some degree. However, the HS2/5 Inspector found that the additional impact that would be contributed by the HS2 LGVs would not be significant. In any event, as the Council acknowledges, congestion impacts in Hillingdon were identified in the ES and AP2 and taken account of in the passing of the HS2 Act. In this context, paragraph 31 of the Statutory Guidance comments that the deemed planning permission was granted in the knowledge of the impacts reported in the ES, and these impacts were judged by Parliament to be acceptable when set against the benefits of the HS2 scheme. Paragraph 32 adds that the purpose of Schedule 17 is not to eliminate all prejudicial impacts, and that there will be cases where submissions must be approved despite some negative impact. To my mind it is also self-evident that congestion is not unique to Hillingdon or to the routes now proposed. In the light of these considerations, the fact that the area suffers from congestion does not change my view that a new traffic assessment would serve no purpose in relation to the present appeal, and therefore is not justified.
31. The Council has particular concerns regarding the Swakeleys roundabout. The 'Hillingdon Agreement' seeks to limit the number of HS2 heavy-goods vehicles (HGVs) at that junction, including both LGVs and smaller HGVs of over 3.5 tonnes, to a maximum of 550 movements per day. The agreement also requires HS2L to reduce the numbers of movements in the am and pm peak periods, so far as practicable, by various specified measures. Without a new, detailed traffic assessment, including a breakdown of the different types of vehicle and times of day, the Council considers that it cannot be certain that the approval of the lorry routes now proposed would not result in this agreement being breached. I appreciate the difficulty that the Council perceives. But the agreement is a freestanding commitment, which as far as I can tell would remain binding upon HS2L, irrespective of any approvals granted under Schedule 17. In the Statutory Guidance, paragraph 21 states that Schedule 17 requests should be determined on the basis of the EMR controls already in place. The question of how HS2L's performance against the agreement should be monitored or enforced seems to me to be a matter to be resolved between the relevant parties, within the terms of that agreement

itself. These are not matters for the present appeal. The existence of the Hillingdon Agreement therefore does not justify requiring a traffic assessment to be submitted for the purposes of the appeal.

Further matters raised relating to lack of information

32. I fully accept the importance and relevance of the *Hillingdon 1* judgement. In it, the CoA held that the information provided with a Schedule 17 application must be sufficient to enable the authority to perform its duty and make a lawful decision. But *Hillingdon 2* makes it clear that, in the case of an appeal, the question as to what type and quantity of information should be considered sufficient will be a matter for the Secretaries of State, or their appointed Inspector. In my view it is clear that these are matters that will vary between one case and another, depending on the particular facts and circumstances. In the present appeal, the decision to be made, under paragraph 6 of the Schedule, is simply whether the proposed lorry routes are suitable and acceptable. For the reasons explained above, I have found that the information already submitted is adequate for the purposes of making my decision on that matter.
33. I note that PFN 17 'Information for Decision Making' advises on the circumstances in which further information may be requested. Traffic assessments and junction modelling are given as examples of 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; such requests should only be made where relevant to understanding the impact, and whether a modification is necessary, having regard to the grounds specified in Schedule 17 paragraph 6. The PFN also comments that the effect of the *Hillingdon 1* judgement is not to allow an authority to have all the information that it would expect for a decision under other planning legislation. The information sought should be only that which is necessary for the purposes of the grounds specified in paragraph 6. PFN 17 does not change the mandatory requirements set out in PFN 6, and makes it clear that any additional requests will need clear justification. In the present case, for the reasons already given, I find no such justification.
34. It is true that the National Planning Policy Framework (the NPPF) advises that transport assessments are required for major developments. However, that advice is clearly intended to apply to applications to carry out development. The present appeal proposal relating to lorry routes is not such an application, as it does not propose any development. Rather, it seeks to discharge a condition on a development which is already permitted, and which has already been the subject of traffic impact assessments during that process. Nothing in the NPPF suggests that the requirement for transport assessments should be applied to applications of this type.

Conclusion on the adequacy of the submitted information

35. For the reasons set out above, I consider that the submitted documents are clear as to the proposed route, and they include all of the necessary information to allow a decision to be made as to the suitability and acceptability of that route. None of the other matters raised changes that conclusion. A traffic impact assessment would not assist and is not necessary. I am

therefore satisfied that the information and evidence before me are a sufficient basis on which to make my decision.

Whether the proposed routes ought to be modified, and are reasonably capable of being so modified

36. The proposed routes to the five worksites in question involve a mixture of 'A' and 'B' class and unclassified roads, in a variety of urban and semi-rural environments. Whilst all of these roads appear physically capable of accommodating LGVs, none are necessarily ones where one would normally want to encourage additional LGVs. But the HS2 development clearly makes it necessary for LGVs to access the various worksites in the area, including those that are the subject of the present appeal. In these circumstances, the selection of lorry routes is therefore, in part, a matter of choosing the least unsatisfactory options available.
37. In this regard, given the density of the local network and the number of potential options that might potentially require consideration, it would have been helpful if the explanation given by HS2L under the heading of 'Route Rationale and Options Considered' had been more detailed. However, as noted earlier, it is not disputed that the routes now proposed are the same as those previously chosen as the basis for the ES and AP2 assessments. From the evidence before me, it seems that those exercises were conducted with thoroughness and rigour, and that they were subjected to a high level of scrutiny through the Select Committee process. I therefore draw some comfort from the fact that the evaluation of alternatives has evidently extended beyond that presented now. In addition, I note that the same routes were found acceptable by the Inspector in the HS2/5 appeal decision.
38. But to my mind, by far the most significant consideration in this context is the fact that the Council does not now seek to dispute that, for the purposes of the worksites in question, the routes now proposed are the best available. Whilst the Council's position is one of opposition to the present appeal, it has also made clear that, without the submission of further information, this would equally be its position in relation to any other routes. And although in the present appeal the Council has not expressed any view as to the comparative merits of the routes now proposed, neither does it appear to have at any stage identified any preferable alternative. Given the number of times that these matters have now been aired, it seems to me that if any other options were considered by the Council to be more advantageous than those which are the subject of this appeal, then those other options would surely have emerged by now.
39. I note the representation made by the Council of the London Borough of Ealing, through whose area part of the proposed route to the South Ruislip Vent Shaft worksite would run. That representation raises a question as to whether Eastcote Lane North could be avoided, but also acknowledges that both of the alternatives to that road, via Station Approach or Bridgewater Road, are constrained by low railway bridges. Having viewed both of these roads and bridges on my visit, it is clear to me that neither of these alternatives would be a safe or practical option for use by fully loaded LGVs carrying aggregates or other building and civil engineering materials as would be required in this case. I also note that these roads will be particularly affected by utility works. I am therefore satisfied that neither Station Approach or Bridgewater Road would

represent a satisfactory or realistic alternative to the proposed route to the South Ruislip site.

40. No specific issues relating to road safety or the free flow of traffic have been raised in relation to any of the routes in the appeal proposal. But in any event, a range of site-specific physical measures are identified in the ROMIS and the LTMP. These include signage, road markings, clearance of vegetation, temporary access works, temporary footways, traffic signals, changes to street furniture, an off-road haul route connecting two of the worksites, and localised widening and a protective slab at the haul road crossing point on Breakspear Road. These measures are clearly designed to mitigate the potential impacts on safety and traffic flow. I see no reason to doubt that they will be delivered and will be effective. I note the Council's comments regarding what they see as the limitations on their input to the ROMIS and LTMP processes. But these are the systems put in place under the regime established by the HS2 Act and the EMRs; such criticisms therefore have no bearing on the present appeal. From all the evidence available to me, I can find no evidence that any issues relating to safety or traffic flow render the lorry routes now proposed unacceptable.
41. No party has proposed any modification to the routes proposed in the application, or suggested that the routes ought to be modified. In the light of my findings as set out above, I can see no grounds to suggest that any such modification should be made.
42. In these circumstances, it is not necessary for me to consider whether any modification is reasonably capable of being made.
43. I conclude that the proposed lorry routes are the best that can be achieved within the constraints of the local road network. As such, no modification is necessary.

Conclusion

44. For the reasons set out above, I find the information submitted with the application sufficient to enable a decision to be made. I also find no reason why the proposed lorry routes ought to be modified.
45. I have taken account of all the other matters raised, but none causes me to depart from these conclusions.
46. The appeal therefore succeeds, and approval under the terms of Schedule 17 paragraph 6 is granted.

J S Felgate

INSPECTOR