



Appeal Decisions

Site visit made on 29 June 2021

by **Paul Dignan MSc PhD**

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/HS2/10

Route from Small Dean Lane, Wendover to the Strategic Road Network.

Appeal Ref: APP/HS2/11

Route from Small Dean Viaduct, Wendover to the Strategic Road Network

Appeal Ref: APP/HS2/12

Route from the Chiltern Tunnel North Portal to the Strategic Road Network

Appeal Ref: APP/HS2/13

Route from three worksites in Buckinghamshire (Little Missenden, Chesham and North Portal) to the Strategic Road Network

- The appeals are made under paragraph 22 of Schedule 17 to the High Speed Rail (London to West Midlands) Act 2017 (the Act) against a failure to determine within the specified timescale requests for approval of large goods vehicles (LGV) routes in respect of worksites required for the construction of HS2 Phase One (London to West Midlands).
 - The appeals are made by High Speed Two Limited (HS2 Ltd) against Buckinghamshire Council.
 - The APP/HS2/10 application Ref BC-LR1-0007 is dated 17 June 2020.
 - The APP/HS2/11 application Ref BC-LR1-0013 is dated 17 June 2020.
 - The APP/HS2/12 application Ref BC-LR1-0010 is dated 17 June 2020.
 - The APP/HS2/13 application Ref ALJ-TP-0132 is dated 2 June 2020.
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Decisions

1. The appeals are allowed, and approval is granted for the applications.

Preliminary Matters

2. Four appeals have been made, all following requests made at about the same time to approve Large Goods Vehicle¹ (LGV) routes for worksites. The work sites all access the A413, some directly and some via short sections of other roads, then the route is along the A413 eastwards towards Amersham, meeting the A355 and turning south to Beaconsfield, where it turns east along a short section of the A40 before turning south on the A355 to join the strategic road network at Junction 2 of the M40. There is significant overlap between the applications and appeals, not least in the application submissions and the appeal documents, so I consider it appropriate to deal with them in a single decision letter. Where necessary I shall distinguish between the appeals.
3. Planning permission is deemed to be granted for the construction of Phase One (London to West Midlands) of the HS2 project by section 20(1) of the Act.

¹ Vehicles over 7.5 tonnes

4. The need for approval of the routes arises from the conditions imposed on the deemed planning permission by Schedule 17 to the Act. Paragraph 6 of Schedule 17 relates to road transport and sub-paragraph 6 (1) states that:

“if the relevant planning authority is a qualifying authority, development must, in respect to the matters to which this paragraph applies, be carried out in accordance with arrangements approved by that authority.”
5. The Council is a Qualifying Authority as set out in the High Speed Rail (London to West Midlands) (Qualifying Authorities) Order 2017. Approval is required under paragraph 6(2) for the routes by which anything is to be transported on a highway by LGV to a working or storage site, a site where it will be re-used, or a waste disposal site. A Qualifying Authority may only refuse to approve arrangements for the purposes of paragraph 6 on the limited grounds set out in paragraph 6(5)(b) which, for the purposes of these appeals, are that the arrangements ought to be modified to preserve the local environment or local amenity or to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, with the proviso that they are reasonably capable of being so modified. Conditions may also be imposed on any approval, but they must be agreed with the nominated undertaker and confined to paragraph 6(5)(b) matters.
6. Paragraph 22 of Schedule 17 enables appeals against Qualifying Authority decisions. Where no decision has been notified to the nominated undertaker an appeal can be made against non-determination, or deemed refusal, after 8 weeks following the receipt of the request for approval, although the period can be extended by agreement. Several extensions were agreed in these cases, although the basis for the extensions is disputed. The main point of dispute on this matter concerns the adequacy of the submissions. The Court of Appeal judgment in the case referred to as *Hillingdon 1*² found that *“the authority is under no duty to process a request for approval from HS2 Ltd unless it is accompanied by evidence and information adequate and sufficient to enable the authority to perform its statutory duty.”* In short, the 8 week period for consideration of the request for approval does not start to run until the planning authority has been provided with adequate and sufficient information. It is the Council’s position that it had not been provided with adequate information to come to a decision on the request for approval when the appeals were made. If that was so then the appeals would not be valid.

Main Issues

7. The main issues are:
 - i) whether the information submitted with the requests for approval of the routes is adequate and sufficient for the purposes of making the determination, such that the appeals were validly made; and
 - ii) whether there is sufficient justification to withhold approval on the basis that the arrangements ought to be modified to preserve the local environment or local amenity or to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, and are reasonably capable of being so modified.

² London Borough of Hillingdon v the Secretary of State for Transport and others [2020] EWCA Civ 1005

Reasons

Whether the information submitted is adequate and sufficient

8. The Government has produced statutory guidance to planning authorities under paragraph 26(1) of Schedule 17 about the exercise of their functions under Schedule 17. It highlights the key differences in the processes and controls conferred to planning authorities who become Qualifying Authorities under Schedule 17 and the powers they use to routinely determine applications for planning permission under the Town and Country Planning Act 1990. Qualifying Authorities are required by Paragraph 26(2) to have regard to the guidance. Amongst other things, the guidance makes clear that they should not revisit matters settled through the parliamentary process, seek to extend or alter the scope of the project, or modify controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements (EMRs), or existing legislation such as the Control of Pollution Act. The guidance recognises that Qualifying Authorities require sufficient information to make decisions under Schedule 17, and advises that the information necessary to make a decision is generally that defined in the Planning Forum Notes, which reflect the collaborative decisions of the Planning Forum.
9. When the Act was passed by Parliament there was an acceptance that there would be impacts on the environment, and it had before it the Environmental Statement (ES), modified and supplemented on a number of occasions³ to account for design or programme changes. It is the stated intention of the Secretary of State for Transport to carry out the project so that its impact is as assessed in the ES. To this end nominated undertakers are required to adhere to the arrangements provided for in the EMRs. The EMRs are supported by, amongst other things, a Code of Construction Practice (CoCP) and a Planning Memorandum. The ES was supported by modelling and assessment work to ensure that the impacts of the construction and operation of the proposed scheme were duly considered, including providing substantive analysis for the Transport Assessment and establishing the likely impact and possible traffic and transport mitigation required. The ES included forecast vehicle flow movements, so it is only where movements on a route are likely to be in excess of those set out in the ES, or materially different, that impacts need be assessed.
10. The HS2 Ltd Local Authority Planning Forum facilitates liaison between stakeholders, including local planning authorities, and those which become Qualifying Authorities have undertaken to follow the outputs of the forum. Its consensus-based outputs include guidance and outline documentation on the exercise of powers. Planning Forum Note 6 sets out the information that should be provided with requests for approval of lorry routes, while Forum Note 17 provides general guidance on the operation of the Schedule 17 planning regime. It should be read in conjunction with the Schedule 17 Statutory Guidance. Qualifying Authorities must only address relevant considerations when making a determination under Schedule 17. Therefore any information requested should be relevant to the limited specified grounds of refusal. In respect of LGV routes, paragraph 6(5) of the Act limits the grounds upon which the local Qualifying Authority can refuse to approve arrangements. The most

³ The most relevant to these appeals is the Supplementary Environmental Statement 3 and Additional Provision 4 Environmental Statement SES3 and AP4 ES – VOLUME 5 Technical appendices: Transport Assessment (October 2015). I shall refer to this as AP4.

relevant ground in this case is that the arrangements ought to be modified to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area. The guidance makes clear also that the operation of Schedule 17 is such that there will be cases where a submission must be approved notwithstanding an identified negative impact, unless there are modifications that are reasonably capable of being made.

11. Annex 1 to this Planning Forum Note sets out further guidance on what information could be required to make Schedule 17 decisions. While there may be certain requests for approval that require further information, the Annex provides general guidance on the level and type of information which may be appropriate to Schedule 17 decisions, and the nominated undertaker is expected to provide such information as is requested as being reasonably required to make Schedule 17 decisions, or explain why such information is not considered necessary to the determination. The information that is necessary to enable the impact of the proposals to be evaluated by the local Qualifying Authority is that which is relevant to the specified grounds, and it should be reasonable and proportionate.
12. The scope of approvals under paragraph 6 is defined in paragraph 6(2) as being ‘...the routes by which anything is to be transported on a highway by a large goods vehicle...’. The arrangements that are approved by the planning authority must relate to the routes to be used themselves, and details of arrangements for vehicle monitoring and the management of accesses, access designs approved under Schedule 4, and the provision of works to be carried out to the route would not fall within the scope of approvals under paragraph 6.
13. Annex 1 to Planning Forum Note 17 expects requests for approval to identify the route or routes to be used by LGVs (including the direction of entrance/ egress to a site or sites). The proposed timing of the use of a route or routes and the numbers of LGVs to use a route or routes should also be provided. The Note also gives examples of further information which may be necessary to allow the authority to consider a request for route approval, but which are not themselves subject to approval under paragraph 6. These are traffic assessments, modelling of traffic flows at individual junctions in certain circumstances, and cumulative LGV flows from all HS2 works.
14. The written submissions accompanying all 4 applications detailed the proposed routes as required by Planning Forum Note 6, along with estimated LGV numbers and timings. The rationale for the particular route, along with alternatives considered, was also set out, and a Route Management Improvement and Safety Plan (ROMIS) document was provided for information. The ROMIS includes a summary of any physical changes necessary to facilitate the use of the route by LGVs; and a summary of measures required to ensure the safety and free flow of traffic in the proximity of the worksite access points. In respect of the APP/HS2/13 request, further information on vehicle numbers with forecast monthly average daily and AM and PM peak daily movements was provided in October 2020. In respect of the other 3 appeals, an assessment note in October 2020 sought to address the Council’s concerns about impacts on specific junctions, but only where the vehicle flow movements exceeded the ES forecast flow movements.

15. So far as the appeal routes are concerned, forecast excess traffic was due to a site further along the A413, the Wendover Green Tunnel North Portal and associated batching plant site, for which a request for route approval had yet to be made, though it is proposed to use the appeal routes. None of the sites the subject of these appeals were forecast to be above the ES forecast, but adding in the Wendover Green traffic, which originally was to use a different route, indicated that there would be forecast flows in excess of the ES flows at peak hours and substantive changes in forecast flows through 2 junctions, one of which would require flow management by the undertakers to ensure that ES vehicle flows are not exceeded in the PM peak. This would be managed through the Local Traffic Management Plan (LTMP) and a Vehicle Management Booking System, as explained in a Vehicle Management Supplementary Note provided to the Council in November 2020.
16. The assessment notes of October 2020 were updated with additional information in December 2020 providing updated HGV⁴ numbers (albeit about 95% are expected to be LGV) expected to travel to and from the worksites along with monthly total and summary peak daily movements. This update included a commitment from the undertaker of the APP/HS2/13 sites to cooperate with the undertaker of the other sites and the Wendover Green Tunnel site to manage traffic flows through the junction requiring flow management to avoid exceeding ES peak flows.
17. Further correspondence between the parties up to March 2021 included identifying where details of HS2 construction traffic in Buckinghamshire were to be found in the HS2 Ltd hybrid bill documentation, and the methodology used for assessment of increased flows.
18. By this point there appeared to be no issues between the Council and the undertakers regarding the impact of HS2 traffic generated by the specific worksites the subject of the appeals on the routes specified. There appears to be no dispute that the LGV traffic flows were not forecast to exceed the ES forecasts, nor that there was likely to be impacts on road safety or the free flow of local traffic over and above that considered acceptable by the passage of the Act that might be attributable to the use of the appeal routes by LGV traffic from the specific sites. Ultimately it seems clear that most of the justification for additional information concerned the Wendover Green Tunnel traffic.
19. The requests for approval in this case differ significantly from that considered in the *Hillingdon 1* Court of Appeal judgment. In that case, no information was provided to the local planning authority, so that it was never in a position to conduct its statutory duties to evaluate the plans and specifications in that case for their impact upon relevant planning interests. In the appeals before me the requests for approval were accompanied by the details of the arrangements specified by Planning Forum Note 17 Annex 1, to which the Council are required to have regard, and of course the Council is a participant in the Forum. The further information provided was also in line with the examples given in Note 17.
20. The Council considers that the information was nonetheless inadequate to enable it to make a determination, and hence considers that the time period in which to make a decision, 8 weeks, never commenced. It considers that further

⁴ Vehicles over 3.5 tonnes

detailed information is required in order to understand the cumulative impacts of the construction activities and vehicle trips on different sections of the A355 route in particular and how that compares with the relevant forecast in the ES. Specific shortcomings identified by the Council relate to understanding the details of the methodology used to derive forecast traffic flows on different sections of the routes, details of the cumulative impact of LGVs, cars and light goods vehicles, and how cumulative impacts of all vehicles relates to those in the ES.

21. The appellant has given assurances that the methodology used is that set out in the ES Scope and Methodology Report, and it considers that it is appropriate to base the cumulative assessments (all vehicles) on the assumptions used in the ES until travel surveys can be undertaken. Since the ES and supporting documents, including updates, are public documents I find it difficult to accept the Council's assertion that it has been unable to undertake a meaningful comparison of projected traffic flows provided for the purposes of the approval requests with the ES flows. Nonetheless, I can understand the Council's concerns about the overall effect of HS2 construction activity on the combined route, particularly as there is already considerable congestion in some of the common sections of highway, as I saw on my site visit. However, the ES, considered during the passage of the legislation, did envisage significant adverse effects as a result of the overall development, and the significant change from ES assumptions is due to traffic from the Wendover Green Tunnel North Portal site, which was to use another route.
22. What the Council seeks is a single request for approval of the A413/A355/A40 route covering all of the construction activities and vehicle trips generated by all of the sites proposing to use the route, that is an application that includes the Wendover Green Tunnel North Portal site traffic, in order to understand how the impact compares with relevant forecasts in the ES. It claims that this is fundamental to the Council being able to carry out its statutory duty.
23. However, as the *Hillingdon* ⁵ judgment makes clear, an authority may only grant approval under Part 1 of Schedule 17 at the request of the nominated undertaker (paragraph 15), and it is evident from the legislative scheme that HS2 Ltd decides at what point in time it submits a request for approval. Hence the Council must consider the requests for approval as they are made, once it is furnished with adequate information. It must also, as far as I can see, consider each request on its own merits, though other approvals will be material considerations insofar as they may affect traffic flows. It is evident from the documentation supplied for each of the requests, at least with the October 2020 additional information, that traffic flows generated by the sites relevant to the requests, including at peak times, would not exceed the AP4 ES forecasts. In view of that I consider that the Council had been supplied with adequate and sufficient information to determine the 4⁶ requests by at least October 2020.
24. Paragraph 22(4) of Schedule 17 sets the period for determination of requests for approval as 8 weeks following the date of receipt, though the *Hillingdon* judgment indicates that this period would only commence once adequate and sufficient information had been provided to the local planning authority. I

⁵ Para 21

⁶ The request for approval of the routes the subject of APP/HS2/13 originally covered 4 sites, but one, the Amersham Vent Shaft site, was provisionally approved to avoid delays in the construction programme.

consider therefore that the 8-week period commenced on 7 October 2020 for the APP/HS2/10-12 requests, and 13 October 2020 for the APP/HS2/13 request.

25. The local planning authority and the nominated undertaker may agree extensions to the period for determination, and two extensions were agreed subsequent to the October 2020 submissions, the second ending on 5 February 2021. The Council asserts that these were not paragraph 22(4) extensions, albeit in correspondence between the parties this is not entirely explicit, but as agreements between the relevant parties to extend the period for determination that were made after adequate information was provided, that is after October 2020, I consider that they should be treated as extensions for the purposes of paragraph 22(4).
26. Where the local planning authority has not notified the nominated undertaker of its decision on the request within the appropriate period, or as extended by agreement, an appeal may be made against deemed refusal within 42 days. These appeals were all made within 42 days of 5 February 2021, the date of the last agreed extension, hence must be treated as valid.

Whether the requests should be approved

27. As set out above, requests can only be refused on the grounds that the arrangements ought to be modified to preserve the local environment or local amenity or to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, and the arrangements must be reasonably capable of being so modified. The Council's stance is that it did not have sufficient information and so did not make a decision, but nor did it indicate what decision it would have made on these specific requests had it determined them.
28. There is an approval requirement for LGV routes even where they have already been identified and assessed in the ES, but routes that are identified and have been the subject of traffic assessments in the ES, in which I include the AP4 amendments, and which remain within the parameters of those assessment should require little scrutiny by the local planning authority, given the very limited grounds for refusal. While I appreciate that the addition of traffic to the network as a result of the proposed changed routing for the Wendover Green Tunnel North Portal would need detailed scrutiny as a departure from the ES, approval of the appeal routes would not undermine that process.
29. So far as these specific routes are concerned I have not seen anything to indicate that the arrangements ought to be modified, nor have I seen anything to indicate that they are reasonably capable of being modified given the limited available alternative routes to the strategic road network and the pressing timescale for the construction programme. The Council has not suggested any conditions, but in view of the extensive systems for control and response to highways matters contained within the EMR and associated documents, the obligations placed upon the nominated undertaker to comply with undertakings and assurances, the Route Management Improvement and Safety Plan, and the role of the LTMP as a living document through which unforeseen issues can be appropriately addressed, I consider that no conditions need be attached to these approvals.

30. Overall, I consider that there is not sufficient justification to withhold approval on the basis that the arrangements ought to be modified to preserve the local environment or local amenity or to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area.
31. Accordingly, I conclude that the appeals should be allowed and that approval should be granted on the requests made under Schedule 17 of the Act without any modification.

Paul Dignan

INSPECTOR