



Appeal Decision

Site visit made on 23 November 2021

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretaries of State for Transport and for Levelling Up, Housing and Communities

Decision date: 15 December 2021

Appeal Ref: APP/HS2/17

Lorry route in connection with six worksites at Balsall Common

- 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 refusal by Solihull Metropolitan Borough Council of an application for the approval of a lorry route under paragraph 6 of the Schedule.
 - The application, dated 9 February 2021, reference PI/2021/00471/HS2DIS, was refused on 2 August 2021.
 - The application was for the approval of a lorry route in connection with the following worksites:
 - Carol Green Rail Underbridge North Satellite Compound
 - Carol Green Rail Underbridge South Satellite Compound
 - Waste Lane East and West Roadhead
 - Waste Lane Overbridge Satellite Compound
 - Cromwell Lane Satellite Compound
 - Beechwood Farm Accommodation Underpass
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellants state that the appeal is made against the Council's failure to determine the application within the prescribed period. However, the appeal was made on 9 August 2021, and by then the Council had already issued a notice of refusal on 2 August 2021. I can see nothing in Schedule 17 of the HS2 Act that suggests that a decision notice cannot be issued outside of the prescribed period. I have therefore treated the appeal as being against the refusal of permission.

Legal Framework for Schedule 17 Applications

3. 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.
4. 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. Under subparagraphs 6(5) and 6(6), the grounds on which such approval may be refused, or conditions may be imposed, are limited. However, those grounds include where the proposed arrangements ought to be modified, to preserve

the local environment or amenity, or to prevent or reduce any prejudicial effects on road safety or the free flow of traffic, and are reasonably capable of being so modified. In addition, any conditions may only be imposed with the agreement of HS2L as the nominated undertaker.

5. Paragraph 26 of Schedule 17 provides that, in the determination of applications under the Schedule, regard shall be had to guidance to be issued by the Secretary of State (SoS) for Transport. Such guidance has since been issued, and was updated in May 2021¹.

Main Issues

6. Having regard to the relevant provisions of Schedule 17, and all the submissions before me, I consider that the main issues in the appeal are:
 - the effects of the proposed routes on road safety and the free flow of traffic;
 - the effects on the local environment and amenity;
 - whether any realistic alternative route could be adopted, which would be preferable in terms of these specified matters;
 - in the light of the above, whether the proposed route ought to be modified, and is reasonably capable of being so modified; and if so, by what means.

Reasons for Decision

The effects on road safety and the free flow of traffic

7. The proposed route to the six worksites in question would leave the strategic route network at the A45 Stonebridge junction, and then follow the A452 Kenilworth Road, to the village of Balsall Common. After passing through the village centre, the route would turn left into Kelsey Lane, for about 600m or so, before continuing into Waste Lane. Vehicles heading for the Carol Green Underbridge North worksite would then continue via Hodgetts Lane and Truggist Lane. For all of the other five worksites, LGVs would gain access from Waste Lane, and thence via an internal haul road.
8. Kelsey Lane forms part of the B4101, and is also a residential street, within the built-up area of the village. As such, it is an important local route for pedestrians and cyclists, as well as vehicular traffic. Two local schools are within walking distance, and the Lane is likely to be used as a route to these by children, as well as for access to other facilities. The Lane also forms part of a number of local bus routes, with two pairs of bus stops distributed along its length. The speed limit is 30 mph.
9. From the evidence presented, the carriageway width in Kelsey Lane varies between 5.8m to 6.2m. The appellants state that the LGVs that they would expect to use would typically be 2.6m wide. I appreciate that these dimensions are sufficient for two such vehicles to pass each other. However, moving vehicles require more than just the minimum clearance; they need adequate safety margins, both in the centre of the road and to either side. In Kelsey Lane the space available for safety is small. An HS2 lorry passing another LGV, or a bus or farm vehicle, both moving at up to 30 mph, would be likely to result in both vehicles driving close to their respective kerbs.

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

10. The footways in Kelsey Lane are directly adjacent to the carriageway. Their width is said to vary from 1.98m down to 1.15m; but from the various parties' measurements, and my own observations, most sections appear to be around 1.4m – 1.5m. Whilst in many cases this width is sufficient to allow users to pass, it is likely that on most such occasions, one of those involved will be required to move to the edge of the footway, close to the moving traffic. In other cases, such as those involving people in wheelchairs, or with dogs, or parents with buggies or escorting children, it is probable that some will have to step off the kerb. Furthermore, at only one of the four bus stops in the Lane is there any separate waiting space for passengers; at all the others, there is the potential for the footway to be blocked, or for queues to overspill. Nowhere along the Lane is there any provision for cyclists, other than either sharing the main carriageway with motorised traffic, or encroaching onto the footways.
11. Having regard to the foregoing, it seems to me that adding up to 176 extra HS2-related LGV movements per average day, or 200 in the peak construction phase, as now proposed, would result in a significant worsening of safety conditions for pedestrians, cyclists and other non-motorised road users in Kelsey Lane.
12. I appreciate that the use of Kelsey Lane, and indeed the proposed route as a whole, was anticipated in the Environmental Statement (the ES), which was presented to Parliament during the Select Committee stages of the HS2 Bill. I also note that the numbers of LGVs forecast now are less than those expected at that time. As the Statutory Guidance makes clear, there is no requirement for Schedule 17 applications to eliminate all adverse impacts, and particularly those that have already been taken into account in the passing of the 2017 Act. But nevertheless, the present application must be considered in the light of all the considerations that are relevant now. The effects on safety throughout the route were clearly considered relevant at the time of the ES, and I can see no reason why they should not remain so in the present context.
13. I note that Kelsey Lane has been used by HS2 lorries previously, pursuant to a Schedule 17 approval granted in September 2019, which permitted up to 100 LGV movements per day for purposes relating to enabling works at Waste Lane. Those works are now said to have been completed, and according to the appellants, the use of the route for that purpose did not give rise to any recorded accidents or safety incidents. But this previous usage was for a shorter period of time, and by a lower number of vehicles. As such, this is not conclusive as to the level of risk posed by the present proposal.
14. The swept path diagram submitted by the appellants demonstrates that LGVs could negotiate the turn into Kelsey Lane without undue danger. But the focus of my concern is for the passage of vehicles along the Lane itself. This concern is not alleviated by any of the submitted material.
15. HS2L states that the number of movements on the proposed route would reduce to 40 per day, when a possible alternative route from the north-west is brought into use. Until then however, the number would continue at 176 - 200 per day, and for the reasons that I have identified, that level of use gives me cause for concern with regard to safety. I do not doubt that the alternative route is a realistic possibility, and I will comment on that aspect later in my decision. But the appellants appear to have given no clear indication or assurances as to its timing, or that of any consequent reduction in vehicle

- numbers on the appeal route. I have therefore considered the appeal proposal on the basis of the average and peak movements provided.
16. I note the contents of the Local Traffic Management Plan (the LTMP), the Route-wide Traffic Management Plan (the RTMP), the Route Management, Improvement and Safety Plan (the ROMIS), and the Code of Construction Practice (the CoCP). The measures to which HS2L has committed through these documents are extensive and wide-ranging. In particular, HS2L is to be commended for innovative measures such as driver training and awareness kits relating to vulnerable road users, as well as others such as vehicle safety equipment, blind spot minimisation, fleet operator quality schemes, and route and flow monitoring. I also note that HS2L's contractors will be bound to use their best efforts to minimise adverse impacts. I have no doubt that the combined contribution of these identified measures to the cause of road safety will be a positive one. But even so, it seems unlikely that any of these could compensate for the specific safety risks that are evident at Kelsey Lane.
 17. It appears that a Road Safety Fund of up to £2.4m will be available for identified safety improvement schemes relating to HS2, throughout the Borough. Again I have no reason to doubt that this fund will have a beneficial impact. But in the absence of any specific measures for this particular route, there is no evidence that the particular impacts that I have identified at Kelsey Lane could be mitigated in this way.
 18. The Highway Authority has not raised any objection to the proposed route, but that does not mean that no objection is warranted. I have considered the appeal in the light of the matters raised by all parties, including the concerns of the Borough Council and other interested parties.
 19. The A452 is a dual-carriageway road, designed for all types of vehicular traffic. Although it passes through the centre of Balsall Common, close to shops, a library, and the Heart of England Secondary School, that section of the road for the most part has wide carriageways, grass verges separating the footways from the road, and residential service roads on either side; and there are also two signalised crossings, and several other crossing points with pedestrian refuges. Waste Lane, Hodgetts Lane and Truggist Lane are fronted by sporadic residential properties, and the latter is narrow and winding, but all of these are mainly rural in nature, and are unlikely to generate significant numbers of pedestrians or cyclists. In any event, in Hodgetts Lane and Truggist Lane the expected number of LGV movements would be only 10 per day, even in the peak working period. Consequently I agree that on these roads the effects on highway safety would be unlikely to be significant. However, this does not in any way diminish my concerns about safety in Kelsey Lane.
 20. On no part of the proposed route does it appear that the numbers of HS2-related LGVs would cause the total vehicle flows to exceed the network's physical capacity. Although there is said to be some existing congestion at the A452/Kelsey Lane junction, there is no evidence that the additional vehicles now proposed would exacerbate that situation to any significant extent. I am satisfied therefore that the proposed route would not unduly affect the free flow of traffic. But this does not affect my conclusions regarding the matter of highway safety.
 21. I therefore conclude, for the reasons explained above, that the lorry route now proposed would have a significant adverse effect on highway safety in Kelsey

Lane. Whilst this impact is not determinative as to the outcome of the appeal, it is nevertheless sufficient in my view to justify consideration as to whether any preferable alternative route is available, and whether the proposed route should be modified. I will address these matters later in my decision.

The effects on the local environment and amenity

22. The Council's concern with regard to environmental and amenity impacts is focussed on the issue of noise and disturbance, and specifically on the section of the A452 that passes through Balsall Common. In this context, the Secondary School, village facilities, and residential properties on this section of road are seen by the Council as sensitive receptors.
23. It is common ground that the most relevant quantified assessment relating to HS2 construction traffic noise is that in the original ES. That assessment indicated an increase of 3dB in the outdoor noise level at Waste Lane during the peak construction months. There is no technical noise evidence before me relating to any other locations on the route.
24. The number of LGVs generated on the A452, as a result of the proposed new route, would be the same as that on Waste Lane (excluding the short section of the latter to the east of the Overbridge Compound), i.e. 176 per average day or up to 200 per peak day. However, the volume of existing traffic on the A452, and thus the existing background noise level there, is clearly far greater than on any part of Waste Lane. It follows that, compared to the existing situation, the increase in noise on and around the A452 would be less than the 3dB that would be experienced at Waste Lane. Indeed, in the absence of any other quantified evidence, it seems to me that the impact on the A452 and nearby receptors would be likely to be significantly less than that figure.
25. In addition, as the Council acknowledges, the figure of a 3dB increase was based on a projected peak traffic generation figure which was some 20% higher than the peak daily figure now said to be expected, and 46% higher than the figure for an average day. I also note that the School, and many of the residential properties in the vicinity of the A452, are set well away from the road itself, and separated from it by trees or other dense vegetation. These considerations reinforce my view that, although the introduction of additional lorry movements would add to the existing background noise level to some degree, the extent of the increase experienced in the vicinity of the A452 would be well below 3dB. At such a level, it seems to me that the noise impact on the receptors identified would not be unduly harmful.
26. I note the concerns raised by some other parties with regard to air pollution and air quality, including those who have drawn my attention to a particular case in south London where the death of a child was linked to traffic emissions. Even though it is said that all of HS2L's LGVs would meet the latest 'Euro VI' standards, there seems little doubt that adding any additional lorry movements to existing roads, would contribute to some degree towards worsening air quality conditions, especially on the A452 and Kelsey Lane, which are within the built-up area. However it appears that in the ES, the impacts of the proposed route on Nitrogen Dioxide (NO₂) and larger particulate matter (PM₁₀) were classified as 'negligible'. I also note that local monitoring at Balsall Common has found the levels of NO₂, and of both PM₁₀ and PM_{2.5} particulate matter, to fall well within the relevant National Air Quality Objectives or other

recommended guidelines. Whilst these latter results do not take account of the current appeal proposal, they indicate that there is little likelihood of the proposed scheme causing these recognised thresholds to be exceeded.

27. I therefore conclude that, based on the information available, the proposed route would be likely to have only minor impacts on noise and air quality within the built-up area of Balsall Common. In themselves, these effects on the local environment and amenity would not be so significant as to warrant consideration of alternative routes or the need for modification.
28. But nevertheless, in this case I have already concluded that such other alternatives should be considered, for reasons of highway safety. Paragraph 6(5) of Schedule 17 makes it clear that local environmental and amenity impacts are relevant considerations in any decision relating to HS2 lorry routes. Consequently, even though the impacts that I have identified relating to noise and air quality are relatively low-level ones, it seems to me that they cannot properly be excluded from any comparison between alternatives.

Alternative routes

29. The appellants and other parties draw my attention to various suggested alternative routes, all based on approaching the six named HS2 worksites from a north-westerly direction, instead of passing through Balsall Common to approach from the south. Whilst these suggestions take a variety of different forms, all would involve vehicles exiting from the A452 at one of the existing junctions to the north of the village, onto either Park Lane or Hallmeadow Road, before eventually transferring onto HS2L's existing or proposed internal haul roads. Some options, including that favoured by the Council, also include the use of an existing bridge at Truggist Hill Farm, or a replacement structure, to connect between HS2L's operations to the north and south of the existing West Coast Main Line. I have considered fully the information provided by all parties with regard to these possible alternatives.
30. I note that a Schedule 17 application for the use of Hallmeadow Road as an HS2 lorry route was approved by the Council in July 2021. At the same time, a certificate of lawful development was granted for the construction of a new access road into the HS2 working area, from the Hallmeadow Road/Station Road roundabout. HS2L states that this new entrance will provide access directly to the Carol Green Underbridge South Compound, and also to a new internal haul road, described as the Hallmeadow Road to Burton Green haul road. It is clear from the submitted documents that this haul road is intended to link Carol Green South to the Waste Lane Overbridge worksite, and to the Roadhead, and to the Beechwood Farm and Cromwell Lane sites. Consequently, it seems to me that by routeing LGVs along Hallmeadow Road, and via the proposed Station Road access, onto the internal haul road, it would be possible to access five out of the six worksites in question, without the need to use Kelsey Lane, Waste Lane, or that part of the A452 that runs through Balsall Common.
31. This alternative route would not directly serve the Carol Green Underbridge North Compound. In view of the conflicting evidence regarding the Truggist Hill Farm bridge, I agree that that structure cannot be relied on for this purpose; nor would it be reasonable to rely on any replacement, for which there appears little current prospect. However, on my visit I saw that an alternative access to the Underbridge North Compound appears to be already

available, via a haul road from the Park Lane worksite. I also saw that temporary traffic signals were in operation at the point where that route crosses Station Road, and that HS2 personnel were in attendance. I saw no sign of any difficulties with this arrangement, and I am not aware of any reason why it should not be seen as a durable solution for this particular worksite. But in any event, given that the stated number of lorry movements associated with the North Compound is below the threshold for Schedule 17 approval, it seems likely that a separate stand-alone solution for this site would be relatively easy to find if necessary. To my mind therefore, it is not essential for the purposes of this appeal that any alternative route relating to the other five worksites should also serve the Carol Green North Compound.

32. With regard to highway safety, the alternative route that I have identified, via Hallmeadow Road and the Station Road roundabout, would avoid the use of Kelsey Lane, and thus avoid the significant safety risks that I have found with the appeal proposal. There is no suggestion that this alternative route would introduce any similar or commensurate safety issues elsewhere. Hallmeadow Road itself is designed to modern standards, with adequate carriageway width, a verge and segregated footway, a dedicated cycle path, few junctions, and no frontage development or individual private accesses. Some kerbside parking currently takes place, but it appears that a scheme has already been agreed to replace this with off-road parking bays. In all these respects, Hallmeadow Road would be significantly safer than most sections of the appeal route. The Station Road roundabout currently has three arms, and the proposed new HS2 access would add a fourth; in principle such an arrangement would appear to be fairly conventional, and there is no suggestion that this could not be designed safely. In terms of highway safety therefore, it seems to me that the alternative route that I have identified would be clearly preferable to the present appeal proposal.
33. In terms of local environmental and amenity considerations, whilst I have found only minor impacts in terms of noise and emissions, the alternative route would reduce those impacts further, by avoiding any roads in close proximity to residential properties or heavily-used community uses. The new access road from Station Road would pass fairly close to commercial premises and a British Legion hall, but none of these can be described as especially noise-sensitive uses. With regard to air quality, the new route would involve a substantial reduction in the distance that LGVs would need to travel on the public road network. Consequently, total vehicle emissions would be lower than those resulting from the appeal route. Overall therefore, it seems to me that the impacts of the alternative route on the local environment and amenity would be likely to be somewhat less than those of the appeal route.
34. The availability of the alternative route is dependent on the construction of the proposed new access from Station Road, and I note that the new access road is outside the limits defined in the HS2 Act. Furthermore, as noted earlier, HS2L appears not to have made any formal public commitment either to the implementation of this new route or its timing. But nevertheless, HS2L has clearly stated in their submissions that bringing the alternative route into use is their firm intention. Indeed the company seeks to rely on the contention that the appeal route would then be less heavily used. On the balance of the evidence, it seems reasonable to conclude that HS2L does have the ability to implement the Station Road access, and to do so without much delay; and that

- the need to carry out these construction works is not likely to be a significant impediment to bringing the alternative route into use.
35. The alternative route is also reliant on the completion of the internal haul road, from Carol Green to Burton Green. From my observations on my visit, it appears that some sections of that haul road remain to be installed. But the haul road is equally required for the use of the route proposed in the appeal scheme. This therefore cannot be seen as any impediment to the alternative route.
36. HS2L contends that the use of Hallmeadow Road and the new Station Road access should not be viewed as an alternative to the appeal route, but rather as a mitigation for it. However, it is difficult to see the rationale for this contention. Based on the appellants' own submissions, when the Hallmeadow Road/Station Road access becomes available, most of the lorry movements proposed for the appeal route would transfer over to that route. The implication therefore is that these two routes would both serve a largely similar function. There is no evidence that both routes are necessary, or that one must follow after the other. Based on the evidence before me, it seems to me that once the alternative route becomes available, the appeal route would no longer be needed. It follows, for the purposes of the present appeal, that the Hallmeadow Road/Station Road route must be a viable alternative to the appeal proposal.
37. I appreciate that this alternative route that I have identified was not the one considered in the ES. But the approval of the Hallmeadow Road Schedule 17 application, and the related certificate of lawfulness, is a significant change of circumstances since that time. I also note that a route similar to this was rejected during the Parliamentary process. However, that option appears to have included a bridge, and was therefore not the same.
38. I conclude that the alternative route via Hallmeadow Road and Station Road is a practical and realistic alternative. Compared to the appeal proposal, that route would reduce the adverse effects of the HS2 development in terms of highway safety, noise and air pollution. Overall therefore, the alternative route would be preferable to that put forward in the appeal proposal.

Whether the proposed route ought to be, and is reasonably capable of being, modified; and by what means

39. In the light of my findings on the matter of highway safety, there are strong grounds for seeking to modify the proposed lorry route, in order to avoid the use of Kelsey Lane, where the use of that road by up to 200 LGVs per day would cause significant risks to non-motorised road users. The alternative route already proposed by HS2L itself, via Hallmeadow Road and a new access from Station Road, would provide the means to avoid Kelsey Lane, and would significantly reduce the overall level of highway safety risk, compared to the appeal proposal. Whilst the impacts of the appeal route on the local environment and amenity would not be unacceptable, the use of this alternative route would further reduce those impacts too. From the appellants' own submissions, the alternative route appears to be achievable and deliverable without undue delay.
40. Having regard to all these matters, I conclude that the proposed route ought to be modified, to reduce the likely prejudicial effects on road safety, and to

preserve the local environment and amenity. The route as modified should incorporate Hallmeadow Road and a new access road from the Station Road roundabout. These would take the place of the section of the A452 south of Hallmeadow Road, together with Kelsey Lane, Waste Lane, Hodgetts Lane and Truggist Lane.

41. Based on all the evidence before me, I also conclude that the proposed route is reasonably capable of being modified in this way. This conclusion takes account of my earlier finding that the alternative route is deliverable, and the fact that a similar proposal appears to have been already approved.
42. Having reached this conclusion, I have considered carefully whether the necessary modifications could be secured by way of an approval subject to conditions. However, the modifications that would be required are substantial, amounting to the substitution of an entirely different route in place of more than half of that currently proposed. In addition, by virtue of Schedule 17 paragraphs 6(6) and 22(2), any conditions may only be imposed with the agreement of the nominated undertaker. In the present case, the appellants have given no such agreement, and their submissions in support of this appeal give me no reason to think that such agreement would be forthcoming. And in any event, it appears that an approval subject to the modifications that I have outlined would, in effect, merely duplicate the approval already granted by the Council in July 2021. For these reasons, I consider that the modifications that would be needed to make the proposed route acceptable are not reasonably capable of being achieved by way of a conditional approval.
43. My earlier conclusion that the proposed route ought to be modified, based on the reasons already explained, is unaffected by this further finding that such a modification cannot reasonably be made by condition. In such a situation, paragraph 6(5) of the Schedule provides for an application to be refused. In the present case, I conclude that a refusal is the only appropriate outcome.

Conclusion

44. For the reasons set out above, I have found that the proposed lorry route ought to be modified to prevent significant harm to highway safety, but the modifications that would be necessary cannot be secured by condition. I have taken account of all the other matters raised, but none changes these conclusions.
45. The appeal is therefore dismissed.

J Felgate

INSPECTOR