

INDEPENDENT PHASE 2a PLANNING FORUM FOR HS2

PLANNING FORUM NOTE 7

BRINGING INTO USE APPROVALS

Introduction

1. This note sets out the purpose of a Bringing Into Use approval, the form of submission and the timing of such approvals including the circumstances where an early Bringing into Use approval may be submitted to a planning authority.
2. There may be certain requests for approval that require further information, Annex 1 to PFN17 provides general guidance on the level and type of information which may be appropriate to Schedule 17 decisions. Through pre-application discussions planning authorities should identify to the nominated undertaker any additional information it considers is necessary to make a decision on the forthcoming application.

Scheduled works

3. Schedule 1 to the High Speed Rail (West Midlands – Crewe) Act 2021 sets out the scheduled works the nominated undertaker is authorised to construct and maintain for Phase 2a of High Speed 2. A description is provided of the type of work and their location, for example:

“Work No. 48 – A railway (9.00 kilometres in length) commencing by a junction with the termination of Work No.17 at a point 835 metres south-east of the junction of Bridleway Tixall 0.1629 with Hanyards Lane and terminating at a point 1155 metres north-west of the junction of Yarlet Lane with the A34 Stone Road”.

Bringing Into Use Approvals

4. Paragraph 9 of Schedule 17 to the Act requires the nominated undertaker to submit a Bringing into Use request for most scheduled works and railway depots. Paragraph 9 (1) of Schedule 17 states:

“If the relevant planning authority is a qualifying authority, no work to which this paragraph applies may be brought into use without the approval of that authority.”

5. This requirement applies to all scheduled works, except to the extent that the work is underground and any depots constructed for or in connection with the maintenance of railway vehicles or track (paragraph 9 (2)).
6. The purpose of Bringing Into Use approvals is to ensure that the nominated undertaker takes all reasonably practicable measures for the mitigation of the work.
7. Under paragraph 9 (4), approval must be granted if:
 - no reasonably practicable measures for mitigating the effect of the work on the environment or local amenity need to be taken, or
 - the planning authority has approved a mitigation scheme submitted by the nominated undertaker.

8. A mitigation scheme may be submitted under paragraph 9(4)(b) in advance of a Bringing into Use requested submitted under paragraph 9(1). Paragraph 9(5) defines the grounds for determining or imposing conditions on mitigation schemes.
9. Under paragraph 10, where a scheme is approved the nominated undertaker must carry out the scheme and comply with any conditions subject to which the scheme is approved, but implementation of the scheme is not a pre-condition of the bringing of the works into use.

Mitigation in approved design

10. The design of HS2 will seek to blend the operational infrastructure into the landscape and townscape and to generally reduce the effect on the environment. Some works, such as earthworks and permanent noise barriers, will be purely for mitigation. To a large extent, therefore, the mitigation will be an integral part of the design rather than a separate element and will have previously been approved by the planning authority under paragraphs 2, 3, 7 and/or 12 of Schedule 17, or Schedule 16 (paragraph 5) prior to a Bringing into Use request being made.
11. Mitigation relevant to scheduled works may also have been approved under protective provisions in Schedule 32 (for example drainage details approved by the drainage authority). Paragraph 9 of Schedule 17 also allows for a specific mitigation scheme to be submitted for approval prior to a Bringing into Use request.
12. The reasonably practicable mitigation of the schedule work will therefore be largely built into designs that will already have been subject to requests for approval under other provisions of the Act, prior to a Bringing into Use request being made. Appendix A illustrates the possible components of a mitigation scheme relevant to a scheduled work.
13. In approving the plans and specifications submission relating to the scheduled works, the planning authority is approving the form of the works that will comprise a large portion of the mitigation for the scheme. As required by paragraph 7.5.2 of the Planning Memorandum where reasonably necessary for the determination of the request for approval of plans and specifications an indicative mitigation scheme beyond that subject to the approval of plans and specifications will be provided for information, for example planting and seeding.
14. Planning Forum Note 10 describes the details of indicative mitigation to be submitted to the local authority as required by the Planning Memorandum.

Form of Submission

15. Bringing Into Use submissions will consist of a letter identifying the scheduled work(s) for which Bringing Into Use approval is being sought. The letter will list all the relevant plan numbers and submissions in relation to approvals or agreements previously obtained, for example under paragraphs 2, 3, 7 or 12 of Schedule 17, or Schedule 32. In order to enable the local planning authority to determine whether all reasonably practicable measures for mitigating the effect on the environment or local amenity have been taken when determining the Bringing Into Use request, HS2 will provide a consolidated plan or plans showing the final proposed mitigation scheme. Consolidated mitigation plans will be provided unless the mitigation for the scheduled work in question is already shown on a single set of approved drawings.

16. The consolidated mitigation plans will clearly indicate any components of the overall mitigation scheme that have been previously approved. The consolidated mitigation plans will be at a scale suitable to the Bringing Into Use request being sought, within the range 1:2500 – 1:10,000).
17. For ecology the mitigation information supplied will be:
- A plan/plans showing areas (m²) of habitat creation.
 - The plan(s) will be annotated to indicate the habitats to be created, with information on species selection.
 - Programme of habitat establishment including management durations.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
18. For landscape the mitigation information supplied will be:
- A plan/plans showing areas (ha) of landscape mitigation earthworks and planting. For landscape planting the plan will be annotated to show the proposed species.
 - The plan will include contour lines for mitigation earthworks.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
19. For community effects where mitigation will be provided through the provision of new facilities or the improvement of existing facilities the mitigation information supplied will be:
- A plan/plans showing the new facilities.
 - The plan will be annotated to indicate the purpose and use of the mitigation works.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
20. In respect of noise mitigation, the performance of the final noise mitigation scheme relating to a scheduled work or works will be in the format defined in Planning Forum Note 16 (Appendix A).
21. The final mitigation scheme will, as far as reasonably practicable, take into account any comments local authorities have made or indicative mitigation details submitted in accordance with paragraph 7.5.2 of the Planning Memorandum. The local authority may wish to refer to previous comments on indicative mitigation proposals when determining the Bringing Into Use request.
22. In order to assist with determination HS2 will have pre-submission discussions on the form and content of any mitigation scheme in line with the requirements of the Planning Memorandum.
23. Where mitigation schemes are submitted in advance of Bringing into Use requests, these will also contain the information listed above.

Scheduled Works (Temporary)

24. Approval for Plans and Specifications is not required for temporary building works (Schedule 17, Paragraph 2 (8)). Therefore for temporary scheduled works submissions for bringing into use cannot include approved plans.

25. In most instances all practicable mitigation measures for temporary scheduled works such as conveyors will already have been imposed through the HS2 Phase 2a Code of Construction Practice. Therefore no additional mitigation plans will be required. However, the nominated undertaker will through the pre-submission process consider with the relevant local planning authority whether any further mitigation measures are appropriate.

Timing of Submissions

26. Generally, Bringing Into Use approval will be sought towards the end of construction. Approval for several scheduled works may be sought at once. HS2 will seek to agree the best approach to packaging of Bringing Into Use requests with local authorities. Some scheduled works will need to be brought into use before the railway and hence approval will be sought earlier. For such works Bringing Into Use requests for approval may be made prior to, or at the same time as construction.