



Department  
for Transport



Department for Levelling Up,  
Housing & Communities

Kate Radford  
Eversheds Sutherland (International) Ltd  
115 Colmore Row,  
Birmingham  
B3 3AL

Our ref: APP/HS2/19  
Your ref: PL/2022/00256/HS2DIS

10 May 2023

Dear Madam

**HIGH SPEED RAIL (LONDON TO WEST MIDLANDS) ACT 2017 – SCHEDULE 17  
APPEAL MADE BY HIGH SPEED TWO LIMITED (HS2 LTD) AGAINST THE DECISION  
OF SOLIHULL METROPOLITAN BOROUGH COUNCIL TO REFUSE APPROVAL FOR A  
LORRY ROUTE SERVING FIVE WORKSITES AT BALSALL COMMON  
APPLICATION REF: PL/2022/00256/HS2DIS**

*This decision was made by Baroness Vere of Norbiton, Parliamentary Under Secretary of State (Aviation, Maritime and Security) on behalf of the Secretary of State for Transport, and Baroness Scott of Bybrook, Parliamentary Under Secretary of State (Faith and Communities and Lords Minister) on behalf of the Secretary of State for Levelling Up, Housing and Communities*

1. We are directed by the Secretary of State for Transport and the Secretary of State for Levelling Up, Housing and Communities (henceforth “the Secretaries of State”) to say that consideration has been given to the report of the Inspector, Grahame Gould BA MPhil MRTPI, dated 21 October 2022, regarding your client’s appeal against the decision of Solihull Metropolitan Borough Council (“the Council”) to refuse your client’s application under paragraph 6 of Schedule 17 to the High Speed Rail (London – West Midlands) Act 2017 (“the Act”) for a lorry route to the following works sites:
  - Carol Green Rail Underbridge South Satellite Compound;
  - Waste Lane East and West Road Head;
  - Beechwood Farm Accommodation Underpass;
  - Waste Lane Overbridge Satellite Compound; and
  - Cromwell Lane Satellite Compound;

Department for Levelling up, Housing & Communities  
Phil Barber, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

[pcc@levellingup.gov.uk](mailto:pcc@levellingup.gov.uk)

Department for Transport  
Paul Stewart, Decision Officer  
High Speed Rail Group  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

[HS2notices@dft.gov.uk](mailto:HS2notices@dft.gov.uk)

under application ref: PL/2022/00256/HS2DIS, dated 8 February 2022 (“the Schedule 17 application”).

2. On 23 June 2022, the parties were notified that this appeal would be subject to joint determination by the Secretaries of State, in pursuance of paragraph 23(1) of Schedule 17 to the Act. The Act authorises the construction of the HS2 railway from London to the West Midlands and comprises Phase One of the project.

### **Inspector’s recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed subject to the imposition of a condition.
4. For the reasons given below, the Secretaries of State agree with the Inspector’s conclusions, and agree with his recommendation. They have decided to allow the appeal subject to the imposition of a condition. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Policy and statutory considerations**

5. In reaching their decision, the Secretaries of State have had regard to Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 and the High Speed Rail (London – West Midlands) Act 2017 Statutory Guidance (“Statutory Guidance”).

### **Main issues**

6. The Secretaries of State agree that the main issues are those set out by the Inspector at IR12. Those issues are:
  - a. whether the road transport route arrangements, most particularly as they relate to the use of Kelsey Lane and Waste Lane, would be unsafe warranting their refusal on the grounds stated in paragraph 6(5) of Schedule 17 to the Act; and
  - b. if so whether those arrangements ought to be modified and would be capable of being so modified, so as to make the arrangement acceptable.

### *The proposed LGV route*

7. The Secretaries of State note that the Council’s position is that notwithstanding the Traffic Control Measures (TCMs) for Kelsey Lane, that neither that road nor Waste Lane would be suitable to support the volume of LGV movements generated by the construction works (IR13). They further note that the Council considers that these roads have insufficient width to enable two LGVs to pass one another in opposite directions without causing harm to road users and pedestrians using the adjoining footways (IR13). Note has also been taken of the issues raised by the Council in respect of the Inspector’s reasons for dismissing appeal APP/HS2/17 and the Council’s contention that the TCMs would not adequately address the harm to the safety of non motorised users that were identified by the Inspector in dismissing the previous appeal (IR14).
8. The Secretaries of State have had regard to the matters set out by the appellant concerning the impact of LGV movements for the A452, Kelsey Lane and Waste Lane which were assessed in the Environmental Statement (ES) that was submitted to Parliament as being subject to 257 two-way LGV movements per day, with the impact on the proposed route being assessed as “minor adverse” (IR21). They have noted that the

appellant now envisages that at a maximum the proposed LGV route would generate a daily average of 176 two-way LGV movements with a daily peak of 188 two-way movements, and that would therefore not exceed the effects for safety and capacity previously identified in the ES even without taking account of the potential for further reduction in LGV movements if the alternative route via Hallmeadow Road becomes available (IR21). The Secretaries of State have noted an appeal representation made by an interested party that has referred to an accident on Waste Lane involving HS2 construction traffic and the appellant's argument that the two separate incidents occurred at a location not forming part of the proposed LGV route and did not involve LGVs (IR23). The Secretaries of State have also noted the appellant's evidence that the proposed LGV route would not involve any alterations to increase the width of the footways in Kelsey Lane and Waste Lane (IR24).

9. For the reasons given at IR43-IR46, the Secretaries of State agree with the Inspector that the use of the proposed LGV route would have a lesser impact for pedestrians using Kelsey Lane and Waste Lane than the worst-case scenario assessed in the ES and found to be acceptable by Parliament (IR43). The Secretaries of State have taken account of paragraph 6 of Schedule 17 to the Act and the advice in the accompanying Statutory Guidance that in some instances there may be adverse effects arising from HS2's construction which cannot be eliminated and that a request for an approval of arrangements may only be refused if they ought to be modified and are reasonably capable of being so modified (IR43).
10. The Secretaries of State agree with the Inspector at IR45 that there is potential for HS2 LGV use of Kelsey Lane to be prejudicial to pedestrian safety on any occasions when other LGVs and/or buses were passing in opposite directions and there were also pedestrians using the footways or waiting at the bus stops. However they note that that potential impact for pedestrians was assessed as being not unacceptable in the ES, with that impact being based on a higher number of LGV movements than is now envisaged by the appellant (IR45).
11. The Secretaries of State note that in submitting the application the appellant has made a commitment to implement TCMs. The Secretaries of State agree that those measures, if implemented, would reduce the potential for conflict between LGV movements and pedestrians by reducing the speed for all vehicular traffic using Kelsey Lane. They further agree that the availability of the TCMs would reduce the potential for there to be conflict between pedestrians and other non motorised users. The Secretaries of State agree for the reasons given with the Inspector's conclusion that implementation of the proposed TCMs would be a modification to the proposed LGV route that would go a significant way to addressing the safety concerns identified by the Inspector who dismissed appeal APP/HS2/17 (IR46).
12. For the reasons set out at IR47-59 the Secretaries of State agree that in the particular circumstances of this case, the imposition of condition 1 would neither be inappropriate under paragraph 6 of Schedule 17 nor would it be contrary to the policy and guidance included in the National Planning Policy Framework of 2021, the guidance for imposing planning conditions included in section 21a of the Planning Practice Guidance and the Statutory Guidance, including paragraph 42 of the Statutory Guidance (IR57). The Secretaries of State further agree with the need for the amended wording of condition 1, as set out at IR58, and reproduced at Annex A below.
13. The Secretaries of State, in the particular circumstances of this case, agree with the Inspector's interpretation of modifying arrangements under paragraph 6 of Schedule 17

and as such they do not consider that they need to consider alternative options for securing the implementation of the TCMs, namely a planning obligation under section 106 of the Town and Country Planning Act 1990 or amendment to the ROMIS prior to the appeal's determination (IR60).

14. The Secretaries of State have had regard to the appellant's proposed "embargo" on the use of the route between 08.20 and 09.00 hours and 15.00 and 16.00 hours, where practicable. It is noted that the purpose is to avoid the use of the proposed transport route during school drop off and collections times. The Council has suggested the imposition of Condition 2 to preclude the use of the proposed route (IR61). It is further noted that the appellant resisted the imposition of this Condition on the grounds that it would duplicate provisions of the EMRs and the Council has provided no evidence to justify its imposition (IR62). The Secretaries of State note at IR63 that the Council has not provided a detailed justification for the imposition of Condition 2. They also note that the Highway Authority's advice did not include a recommendation for Condition 2's imposition, with the Highway Authority accepting that if the alternative route via Hallmeadow Road could not be provided then the use of Kelsey Lane and Waste Lane would not be unacceptable (IR63). For the reasons given at IR64 the Secretaries of State agree with the Inspector that the imposition of Condition 2 has not been justified as being necessary.
15. The Secretaries of State agree with the Inspector for the reasons given that, with the implementation of the TCMs for Kelsey Lane, there would be no prejudicial effects on road safety on Kelsey Lane and Waste Lane (IR65) and that as such a refusal to use the proposed LGV route could not be justified (IR66).

#### *Alternative routes*

16. The Secretaries of State have concluded that with the implementation of the TCMs the proposal will have no prejudicial effect on road safety justifying a refusal. As such, in line with IR67, they conclude that there is no need for them to consider whether the proposed route would be reasonably capable of being modified.
17. However, they have noted that significant consideration has been given to the matter of alternative routes, and the keenness among the Council, residents and other parties, as well as on the part of the appellant for the use of the alternative route via Hallmeadow Road (IR68). They have therefore noted the analysis which the Inspector has put forward in IR68-74, taking into account that this analysis was put forward by the Inspector to assist deliberations in circumstances which, in the light of their conclusion in paragraph 16 above, do not apply (IR67).
18. The Secretaries of State note that the appellant has obtained the approval for Hallmeadow Road being used as a road transport link under Schedule 17 of the Act, that a lawful development certificate for a link to the internal haul road has been issued by the Council and that negotiations are on-going to secure rights over the parts of the haul road link subject to third-party ownership (IR68). They further note the Inspector's conclusion that there is no doubt it would be easier for the appellant to use the alternative route rather than to make significant use of Kelsey Lane and Waste Lane; however such use would only become practical once rights over the third-party land falling outside the Act limits had been obtained (IR69). They further note the Inspector's conclusion that until such time as it has either been purchased or leased the required third-party land the route via Hallmeadow Road should not be considered as a genuine alternative to the proposed LGV route (IR69), and that even with the availability of Hallmeadow Road some use of Kelsey Lane and Waste Lane would be unavoidable (IR70-71). They further note

the Inspector's conclusions at IR72 that the existing bridge could not practically be used as a temporary WCML crossing, and his conclusions at IR73 that a temporary bridge would not be a modification that would reasonably be capable of being made to the proposed HGV route.

19. The Secretaries of State note the Inspector's conclusions at IR74 that he is not persuaded that either of the suggested alternative routes can be treated as being reasonable alternatives to the proposed use of Kelsey Lane and Waste Lane.

### **Planning conditions**

20. The Secretaries of State have given consideration to the Inspector's analysis at IR46-67, the recommended condition set out at the end of the IR and the reasons for it, to paragraph 6 of Schedule 17 of the Act and the relevant Guidance. They have carefully considered the question of necessity, given the conclusion in paragraph 9 above that the use of the proposed LGV route would have a lesser impact for pedestrians using Kelsey Lane and Waste Lane than the worst-case scenario assessed in the ES and found to be acceptable by Parliament. However, given their findings at paragraph 11 above that implementation of the TCMs would reduce the potential for conflict between LGV movements and pedestrians by reducing the speed for all vehicular traffic using Kelsey Lane; would reduce the potential for there to be conflict between pedestrians and other non motorised users; and would go a significant way to addressing the safety concerns identified by the Inspector who dismissed the previous appeal, overall they are satisfied that the condition recommended by the Inspector complies with the policy tests set out at paragraph 6 of Schedule 17 and that the condition set out at Annex A should form part of their decision.

### **Overall conclusion**

21. Given their conclusion that with the implementation of the TCMs a refusal could not be justified, the Secretaries of State conclude that the appeal should be granted, subject to condition.

### **Formal decision**

22. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspector's recommendation. They hereby allow your client's appeal and grant approval to the Schedule 17 application, subject to the imposition of the condition set out at Annex A.
23. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Schedule 17 to the Act.
24. A copy of this letter has been sent to the Council.

Yours faithfully

*Phil Barber*

Authorised by the Secretary of State  
for Levelling Up, Housing and Communities  
to sign in that behalf

*Paul Stewart*

Authorised by the Secretary of State  
for Transport to sign in that behalf

*This decision was made by Baroness Vere of Norbiton, Parliamentary Under Secretary of State (Aviation, Maritime and Security) on behalf of the Secretary of State for Transport, and Baroness Scott of Bybrook, Parliamentary Under Secretary of State (Faith and Communities and Lords Minister), on behalf of the Secretary of State for Levelling Up, Housing and Communities*

## **Annex A Condition**

### **Condition 1**

*The road transport route hereby approved shall not be used by large goods vehicles above the movement level requiring approval stated in paragraph 6(4)(b) of Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017 (the Act) until all of the highway mitigation measures for Kelsey Lane shown on the drawings included in Appendix 2 of the Written Statement (Document Reference 1MC08-BBV-TM-STA-NS01\_NL05-000001) have been installed. Following the installation of all of the highway mitigation measures for Kelsey Lane those measures shall be retained for so long as the road transport route is used by large goods vehicles above the movement level requiring approval specified in paragraph 6(4)(b) of Schedule 17 of the Act.*



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# Report to the Secretaries of State for Transport and for Levelling Up, Housing and Communities

**by Grahame Gould BA MPhil MRTPI**

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

**Date: 21 October 2022**

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HIGH SPEED RAIL (LONDON – WEST MIDLANDS) ACT 2017  
SOLIHULL METROPOLITAN BOROUGH COUNCIL  
APPEAL AGAINST REFUSAL OF SCHEDULE 17 SUBMISSION

Site visits made on 22 and 23 June 2022

Road transport route in connection with five worksites at Balsall Common



## **Appeal Ref: APP/HS2/19**

### **Road transport route in connection with five 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 of an application for the approval of a lorry route to the following works sites:
  - Carol Green Rail Underbridge South Satellite Compound;
  - Waste Lane East and West Road Head;
  - Beechwood Farm Accommodation Underpass;
  - Waste Lane Overbridge Satellite Compound; and
  - Cromwell Lane Satellite Compound.
- The application, reference PL/2022/00256/HS2DIS, dated 8 February 2022, was refused by notice dated 31 March 2022.

**Summary of Recommendation:** That the appeal be allowed subject to the imposition of a condition.

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### **Procedural and Preliminary Matters**

1. The Secretaries of State directed on 23 June 2022 that they will jointly determine the appeal under the terms of paragraph 23(1) of Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act). The reason for the recovery of this appeal being because it *"raises important or novel issues of development control and/or legal difficulties"*.
2. Paragraph 6 of Schedule 17 of the Act requires the appellant to apply to the Council, as a Qualifying Authority, to approve the arrangements for the use of large goods vehicle<sup>1</sup> (LGV) routes in connection with the construction of the High Speed Railway (HS2). Under paragraph 6(4)(b) approval for transportation arrangements need only be sought when the number of LGV movements to a works/construction site (whether to or from a site) would exceed 24 per day. Paragraph 6(5)(b) outlines the general grounds on which a request for approval to use an LGV route may be refused. The Council refused to give its approval to the use of the proposed LGV route on the grounds 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 ..."*, pursuant to paragraph 6(5)(b)(ii).
3. The current application was submitted following the refusal of the arrangements for the use of a very similar LGV route by the Council on 9 February 2021 (application reference PI/2021/00471/HS2DIS)<sup>2</sup>. Following that decision an appeal was made (reference APP/HS2/17) and that appeal was dismissed on 15 December 2021 because of a concern that the proposed use of Kelsey Lane, as part of the LGV route, *"... would have a significant adverse effect on highway safety ..."* (paragraph 21 of appellant's appeal appendix 1.4). In dismissing the previous appeal, the Inspector identified a particular concern with regard to the potential for the construction traffic to cause conditions that would be prejudicial to the safety for pedestrians, cyclists and other non-motorised users (NMUs) using Kelsey Lane.

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<sup>1</sup> I.e. vehicles over 7.5 tonnes (paragraph 1.7 of the appellant's Statement of Case)

<sup>2</sup> The currently proposed LGV route is intended to serve five construction sites, while under the earlier application the proposed route would have served six construction sites

4. I undertook unaccompanied site visits on 22 and 23 June 2022. Following those visits I requested on 5 July the appellant and the Council to submit various documents and to respond to points of clarification and questions (hereafter referred to IQ1, IQ2 etc) concerning, amongst other things: accident rates for part of the proposed transport route; progress with the constructing a haul road; progress with securing rights to use third party land as a construction site access; and the conditions suggested by the Council. The appellant and the Council both submitted their responses to the IQs on 14 July 2022.
5. In connection with the appeal the appellant has submitted a large number of documents as appendices. For the ease of identification of that documentation, hereafter I have used an abbreviation of 'AA' preceding the number used in the appellant's document list.

### **The Proposal and Site and Surroundings**

6. Approval is sought for a LGV route involving the use of:
  - The A452/Kenilworth Road between its junctions with the A45 and the B4101/Kelsey Lane; and
  - The entire length of Kelsey Lane and part of Waste Lane (the B4101) westwards from its junction with Kelsey Lane to the accesses serving five construction compounds/works sites.

The A452 north of Balsall Common is a dual carriageway subject to speed limits between 50 and 60 miles per hour (mph). The single carriageway section of the A452 through Balsall Common's mixed use (housing, town centre uses and schools) built up area is subject to a 30mph speed limit. Kelsey Lane is subject to a 30mph speed limit and is lined by dwellings on both sides of this road. Waste Lane for the most part is rural in character and subject to a 40mph speed limit, although its western end is subject a 30mph limit. The A452 and B4101 both form part of bus routes.

7. The proposed LGV route would be used by vehicles transporting plant, aggregates and other construction materials, excavated materials and concrete for pouring or that has been precast. The appellant expects that across a 34-month construction period per day on average the proposed route would generate 176 two-way movements (ie 88 inbound and 88 outbound movements) rising to a peak of 188 two-way daily LGV movements (Table 3 in AA1.3). During the twelve-month demobilisation period for the works sites accessed directly via Waste Lane it is expected that the proposed LGV route would generate 60 two-way movements per day.
8. The construction compounds that would be served by the proposed LGV route are the Carol Green Rail Underbridge South Satellite Compound; the Waste Lane Road East and West Head; the Beechwood Farm Accommodation Underpass; the Waste Lane Overbridge Satellite Compound; and the Cromwell Lane Satellite Compound. The proposed LGV route is shown on the plan submitted for approval (AA1.2<sup>3</sup>) and it would provide LGV access to HS2 works sites to the east of Balsall Common. A copy of the proposed LGV route plan is included as Appendix A to this report.

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<sup>3</sup> Document 1MC08-BBV-TM-DDE-NS01\_NL05-000001 Revision C02

9. In response to the safety concerns raised as part of the dismissal of appeal APP/HS2/17, the appellant has made "... a range of commitments to improve highway safety ..." (AA1.1) by introducing a series of traffic calming measures (TCM) in Kelsey Lane. Those measures would involve introducing:
- a 20mph speed limit along the entire length of Kelsey Lane;
  - the installation of digital speed notification signs to reinforce the proposed 20mph speed limit;
  - a road narrowing between Kelsey Lane's junctions with Meeting House Lane and Windmill Lane, coinciding with Kelsey Lane's narrowest section to create a priority for eastbound traffic;
  - a painted mini roundabout at the junction between Kelsey Lane, Waste Lane and Windmill Lane; and
  - the setting back of the westbound stop line at the junction between Kelsey Lane and the A452 to create more manoeuvring space for LGVs turning into Kelsey Lane from the A452.

The locations for the proposed TCMs are shown in the "Drawing Pack" (AA1.5), a suite of drawings submitted with the application for information (paragraph 3.2.1 in AA1.3).

10. The appellant has submitted that the installation of the TCMs would be secured via a temporary Traffic Regulation Order (TRO) under the provisions of Schedule 4 (Interference with Highways) of the Act.
11. The appellant also intends to manage deliveries by LGVs to avoid the peak hour periods of 08:20 to 09:00 and 15:00 to 16:00 and to manage and monitor the driving standards of its hauliers and drivers through, amongst other things, the operation of Construction Logistics and Community Safety Scheme (CLOCS).

### **Main Issues**

12. The main issues are:
- whether the road transport route arrangements, most particularly as they relate to the use of Kelsey Lane and Waste Lane, would be unsafe warranting their refusal on the grounds stated in paragraph 6(5) of Schedule 17 of the Act; and
  - if so whether those arrangements ought to be modified and would be reasonably capable of being so modified, so as to make the arrangement acceptable.

### **The Case for the Council**

#### *The proposed LGV route*

13. It is considered, notwithstanding the proposed TCMs for Kelsey Lane, that neither that road nor Waste Lane would be suitable to support the volume of LGV movements generated by the construction works. It is contended that Kelsey Lane and Waste Lane are of insufficient width to enable two LGVs to pass one another in opposite directions without causing harm to road users and pedestrians using the adjoining footways.

14. In support of that proposition attention has been drawn to the Inspector's reasons for dismissing appeal APP/HS2/17, most particularly the concerns voiced in the decision letter at paragraphs 10 and 11 about the narrowness of the footways in Kelsey Lane and the limitation that places on the ability of pedestrians to pass one another or to negotiate people waiting at the bus stops without the need to step out onto the carriageway (AA1.4). The Council has submitted that it does not consider that the TCMs would adequately address the harm to NMU safety identified by the Inspector in dismissing the previous appeal. That is because while the TCMs would reduce vehicle speeds that of itself would not provide greater separation between pedestrians and LGVs.

*The alternative route via Hallmeadow Road*

15. It is acknowledged that the highway authority<sup>4</sup> (HA) did not object to the use of the proposed LGV route (paragraph 4.8 of the Council's Statement of Case [SoC]). However, attention has been drawn to the HA having stated in its consultative comments that the use of an alternative route via Hallmeadow Road (the alternative route)<sup>5</sup> would be safer because there would be no potential conflict between NMUs and LGVs. The HA having identified Kelsey Lane and Waste Lane as forming part of the only route if the alternative route could not be delivered by the appellant.
16. It is recognised that the purpose of Schedule 17 is not to eliminate all prejudicial impacts and that in some instances requests for approval will need to be approved "... notwithstanding an identified negative impact, unless there are modifications that are reasonably capable of being made"<sup>6</sup>. However, an alternative route via Hallmeadow Road could be used. In that regard attention has been drawn to some of the conclusions about the alternative route made by the Inspector in determining appeal APP/HS2/17. Reference has also been made to a Schedule 17 approval having already been given to use the alternative route and a certificate of lawful development having been issued confirming that the formation of a construction access at the junction between Hallmeadow Road and Station Road (the junction) would not require express planning permission<sup>7</sup>.
17. It is therefore contended that because of the safety concerns relating to the use of part of the proposed LGV route, and with the availability of an alternative route, that the proposed LGV route should be modified to avoid Kelsey Lane and Waste Lane. The Council does not accept the appellant's contention that Hallmeadow Road is not a reasonable alternative because some of the land required to create a link with HS2's continuous internal haul road between Waste Lane and its Park Lane compound<sup>8</sup> is currently controlled by third parties (the third-party land)<sup>9</sup>. Details of the extent and alignment of the haul road link are shown on the eleventh slide in Appendix 2

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<sup>4</sup> Part of this unitary local authority

<sup>5</sup> Notated in part as a green line on the map included as part of the third slide in AA9.2

<sup>6</sup> Paragraph 32 of the High Speed Rail (London-West Midlands) Act 2017 Schedule 17 Statutory Guidance of May 2021 (AA2.1)

<sup>7</sup> Respectively under application references PL/2021/00473/HS2DIS and PL/2021/00276/CLOPUD

<sup>8</sup> A compound off the A452 to the north of Balsall Common

<sup>9</sup> Some of the third party land is owned by the Council while the remainder is owned by a company known as Colchurch Properties Limited

accompanying the appellant's "Response to Third Parties"<sup>10</sup>. There is an agreement between the appellant and the Council to use the third-party land in the Council's ownership, while the appellant has undertaken vegetation clearance in respect of the other third-party owned land (paragraph 4.19 of the Council's SoC).

18. During the life of this appeal part of the third-party land owned by the Council has become the subject of a claim for adverse possession from an additional landowner. That application will be determined by Her Majesty's Land Registry. In an appeal submission made on 23 June 2022 the Council has advised it is resisting the claim and considers it is without merit. The Council in responding to its IQ1(b) has advised<sup>11</sup> it does not know how long it will take to determine the application for adverse possession.
19. It has been contended that creating the haul road link and forming the access at the junction would not unreasonably delay HS2's construction (paragraphs 4.21 and 4.22 of the Council's SoC). The Council has also submitted that it does not accept the appellant's proposition that even with the alternative route there would still be a need to make some use of Kelsey Lane and Waste Lane.
20. Attention has been drawn to the appellant having undertaken vegetation clearance in April 2022 within the third-party land, which the Council considers brings into question the appellant's submissions about it not having control over the third-party land.

## **The Case for the Appellant**

### *The proposed LGV route*

21. The impact of LGV movements for the A452, Kelsey Lane and Waste Lane was assessed in the Environmental Statement (ES)<sup>12</sup> that was submitted to Parliament. The assessment in the ES having been based on the proposed LGV route being subject to 257 two-way LGV movements per day, with the effect on the A452, Kelsey Lane and Waste Lane assessed as "minor adverse" (section 6.2 of the appellant's SoC). It is now envisaged that at a maximum the proposed LGV route would generate a daily average of 176 two-way LGV movements, with a daily peak of 188 two-way movements (Table 3 in AA1.3). The now predicted use of the proposed LGV route would therefore not exceed the effects for safety and capacity previously identified in the ES. That would be without the potential for further reduction in LGV movements if the alternative route via Hallmeadow Road becomes available.
22. The proposed LGV route already benefits from an approval granted by the Council for 50 two-way LGV movements (that is a maximum of 100 movements) per day to facilitate the undertaking of enabling works for HS2's construction (the 2019 route). When the enabling works were being undertaken the appellant was not notified of any complaints or issues relating to the use of the 2019 route. The proposed route is currently being used by LGVs pursuant to paragraph 6(4)(b) of Schedule 17 of the Act, which allows

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<sup>10</sup> The section of the haul road link between the roundabout at the junction between Hallmeadow Road and Station Road and the dot and dash line notated "LLAU" is third party land which as of 14 July 2022 was not under the appellant's control and is not within the Act limits

<sup>11</sup> Email of 14 July 2022

<sup>12</sup> The reports for Community Forum Areas 18 and 23

transportation to a site where the number of LGV movements does not exceed 24 movements per day. In connection with that use the appellant is unaware of there being any accidents or safety issues (paragraph 2.4 of the appellant's SoC).

23. An interested party in making appeal representations<sup>13</sup> has referred to an accident on Waste Lane involving HS2 construction traffic. In response to IQ2 for the appellant it has advised<sup>14</sup> that it is aware that there have been two separate incidents at Waste Lane's junction with Hodgetts Lane involving contractors' vehicles. However, those incidents occurred at a location not forming part of the proposed LGV route and did not involve LGVs.
24. The proposed LGV route arrangements would not involve any alterations to increase the width of the footways in Kelsey Lane and Waste Lane. Widening the carriageway and/or the footways in those roads would require the use of private land outside the Acts limits. However, under HS2's Road Safety Fund (RSF) the Council has been allocated £2.35 million which can be spent on measures to mitigate the effects of construction traffic. However, the Council has not chosen to spend RSF funding on mitigation measures for Kelsey Lane<sup>15</sup>.

*The alternative route via Hallmeadow Road*

25. It has always been the intention for the proposed LGV route to be used with the internal haul road between Hallmeadow Road and Burton Green<sup>16</sup>. The worst-case expectation being that the proposed LGV route would generate in the region of 200 two-way movements per day. It being envisaged that the maximum use of the proposed LGV route would be of the order of 40 two-way movements once a purpose-built site access was available at the junction, so that the haul road could be accessed (to the south of Berkswell station). That would enable the majority of the LGVs to use Hallmeadow Road rather than Kelsey Lane and Waste Lane, ie use the route outlined in green as opposed to blue on the map included in the third slide of AA9.2.
26. The appellant has further explained that the reduced use of the proposed LGV route would also be dependent on the construction of a new permanent crossing of the West Coast Main Line railway (WCML) to the east of Station Road (paragraphs 2.5 and 2.6 of the appellant's SoC). The expected distribution of LGV movements using the proposed LGV route, the alternative route and the haul road being shown in the table included in the sixth slide in AA7.4<sup>17</sup>.
27. Paragraph 2.3.9 of the written statement accompanying the application (AA1.3) explains that it is the appellant's intention to use the alternative route as soon as it would be practicable to do so. However, that would be dependent on third-party land excluded from the Act limits, needed for the access at the junction and the haul road link, being available.

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<sup>13</sup> Representations of Barrie Howarth

<sup>14</sup> Email of 14 July 2022

<sup>15</sup> Paragraph 2.6 of the appellant's response to the Council's appeal SoC

<sup>16</sup> Paragraph 2.5 of the appellant's SoC

<sup>17</sup> It should be noted that this table is included in a presentation given on 20 July 2021 in connection with an earlier application and identifies the maximum number of daily two-way LGV movements as being 200 when there was a need to serve six works sites while the number of daily two-way movements is now identified by the appellant as ranging between 176 and 188

28. In relation to the determination of the previous appeal (APP/HS2/17), although the Inspector found that there would be a significant adverse effect on highway safety in Kelsey Lane that impact was not considered to be *"... 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"* (paragraph 21 of AA1.4). The package of physical mitigation measures proposed for Kelsey Lane<sup>18</sup> would lower traffic speeds and are intended to address the Council's safety concerns and their provision would be secured through the provisions of Schedule 4 of the Act. That mitigation being *"... offered to improve the situation notwithstanding that the impacts were assessed in the ES and were considered acceptable such that the Act was passed with these taken into account"* (paragraph 6.2.19 of the appellant's SoC).
29. The appellant has submitted in section 7.2 of its SoC that the alternative route should not be considered as being a "true alternative" and would not be a reasonable modification because:
- its availability is dependent on the appellant securing the use of two parcels of land currently in third-party ownership, over which the appellant does not have control;
  - there is no guarantee that one of the third-party landowners, Colchurch Properties Limited (CPL), will agree a sale with the appellant, it is unknown when a transfer would be completed and a link to the haul road from the public highway cannot be provided without this third-party land being available;
  - a requirement to use the alternative route would result in additional costs and delay, because in the meantime the use of Kelsey Lane and Waste Lane would be restricted to no more than 24 LGV movements per day;
  - even if the third-party land was secured promptly, undertaking the works needed to form the access at the junction, create the haul road link and provide verge parking in Hallmeadow Road are expected to take six to nine<sup>19</sup> months to complete;
  - the availability of the alternative route would not negate the need to use Waste Lane and Kelsey Lane because the use of those roads would be necessary while the haul route was being extended and the access was being formed; and
  - as establishing the alternative route would require the use of some land beyond the appellant's control, the modification to the Schedule 17 application favoured by the Council does not accord with paragraph 48 of the Statutory Guidance<sup>20</sup> (AA2.1), which states *"... any proposed amendment to the request for approval which would be outside the nominated undertaker's control, outside Act powers ... would not be considered reasonable"*.

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<sup>18</sup> Described above under the heading of the Proposal and Site and Surroundings

<sup>19</sup> Reduced to eight months in the appellant's response to IQ4 on 14 July 2022

<sup>20</sup> The High Speed Rail (London-West Midlands) Act 2017 Schedule 17 Statutory Guidance of May 2021

30. In responding to IQ6 for the appellant it has advised<sup>21</sup> that in terms of gaining control over the third-party land owned by CPL, the negotiations commenced in August 2019. Thereafter meetings and negotiations concerning a lease have continued. As of 14 July 2022<sup>22</sup>, the position was that a draft lease had been agreed but it has not been entered into, pending a separate agreement being concluded between the Council and the appellant, which is being affected by the previously mentioned claim for adverse possession.
31. Clearance works concerning CPL's land were undertaken under a temporary licence, but that licence is not equivalent to the lease that is being sought. Those clearance works were undertaken because of the seasonality of when they can be undertaken, to avoid possible future delay and in the hope that a lease will be obtained<sup>23</sup>.
32. Under the provisions of paragraph 6(5)(b) of Schedule 17 an application for approval may only be refused if the transport route ought to be modified and is reasonably capable of being modified. It is therefore not sufficient to demonstrate that a route can be modified, such a modification must also be reasonable (paragraph 8.1.2 of the appellant's SoC). Securing a modification to a route can only be brought about through imposing conditions.
33. As no suitable alternative route is available a modification could not be secured by imposing a condition or conditions (paragraph 8.1.5 of the appellant's SoC). In passing the Act Parliament has recognised that there would be some adverse impacts, but those impacts have been judged as being acceptable when set against the benefits of HS2. When regard is paid to the wording of paragraph 6 of Schedule 17 of the Act there will be instances when transport routes will need to be approved even though there may be an adverse impact. The process of obtaining approvals under Schedule 17 of the Act does not require the removal of harm nor does it allow for refusal on the grounds that there would be harm<sup>24</sup>.
34. Should the proposed LGV route not be approved, and reliance were placed on using the alternative route, it is predicted that would add eight months to the 34-month construction period for this stretch of HS2<sup>25</sup>.

### **Other Matters**

35. There is no statutory obligation to consult on planning submissions under Schedule 17. Notwithstanding that at the application stage the Council consulted with members of the public and in the region of 200 representations from interested parties were made. Representations from interested parties have also been submitted in connection with this appeal. Many of those representations raise concerns that overlap with the Council's position with respect to highway safety and the potential availability of alternatives. Other representations relating to matters such as air quality and traffic noise (local amenity) have also been made.
36. For matters not already covered above, a summary of the views expressed by interested parties and the appellant's responses are outlined below.

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<sup>21</sup> Email of 14 July 2022

<sup>22</sup> Ibid

<sup>23</sup> Paragraphs 2.11 and 2.13 of the appellant's response to the Council's SoC

<sup>24</sup> Ibid Paragraph 2.7

<sup>25</sup> Response to IQ5 included in its email of 14 July 2022



### *Alternative Routes*

37. As an alternative to using Kelsey Lane and Waste Lane some interested parties have suggested that either the existing Truggist Hill Farm accommodation bridge (the bridge)<sup>26</sup> could be used as an LGV route and construction plant crossing of the WCML or a temporary bridge crossing of the WCML should be installed. The bridge is to the south of Truggist Lane and lies a few hundred metres to the east of Berkswell station. It is contended using either the existing bridge or a temporary replacement would enable LGVs and construction plant to cross the WCML and thus make use of the HS2 haul road, including the plant crossing on Station Road to the north of Berkswell Station. It is contended that would avoid LGVs needing to use Kelsey Lane and Waste Lane.
38. The bridge is a brick structure designed to permit farm traffic to cross the WCML. The bridge has been the subject of periodic maintenance inspections by Network Rail and the most recent of those was in June 2020 (AA12.6). Network Rail is of the view that the bridge is now subject to a series of defects, cumulatively necessitating its refurbishment, rendering it unsuitable for any extensive use by the appellant. Given that the bridge would need to be fully rebuilt, which of itself would take up to 24 months and be available no sooner than the permanent HS2 overbridge authorised by the Act (paragraph 2.3.16 in AA1.3). To construct a replacement bridge either short duration possessions or full “blockades” (extended line possessions) of the WCML would be required and each of those typically would need to be booked with Network Rail 12 to 24 months in advance of their use (paragraph 2.3.21 of AA1.3).
39. Notwithstanding the existing bridge’s current state of repair, the appellant has submitted that it would not be a suitable WCML crossing for delivery vehicles and construction plant. That is because the bridge would need to be used by vehicles weighing up to 70 tonnes that would also be up to 4.0 metres wide (74<sup>th</sup> page in AA9.1]). An alternative route reliant on the use of the existing bridge was unsuccessfully petitioned for in the House of Lords<sup>27</sup>.
40. The appellant therefore considers that the existing bridge could not be relied on and that a temporary bridge would need to be provided. That temporary bridge’s construction would require three pre-booked blockades of the WCML<sup>28</sup> and add 15 months to the construction programme<sup>29</sup>. It has been predicted constructing a 220-metre-long temporary bridge would generate a total of 7,500 LGV movements, while occupying more land than is available<sup>30</sup>. There is also a concern that providing a temporary crossing of the WCML would encroach into to floodplain of Bayleys Brook<sup>31</sup>.
41. A temporary crossing of the WCML, whether that be achieved using a rebuilt bridge or a new temporary structure would involve impacts exceeding those assessed in the ES. The appellant is of the view that a modification to the proposed LGV route could not be justified on the grounds of preserving the

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<sup>26</sup> A photograph of the bridge and its immediate context is shown on the sixth slide in AA7.1

<sup>27</sup> Paragraph 2.21 of the appellant’s SoC

<sup>28</sup> Slide 6 of AA.7.5

<sup>29</sup> Paragraph 2.11 in the appellant’s response to third (interested) parties

<sup>30</sup> 3,750 movements during its construction and a further 3,750 movements during the removal of the temporary bridge as explained in slides 8 and 9 of AA.7.1

<sup>31</sup> Ibid slide 7

local environment or local amenity under paragraph 6(5)(b)(i) of Schedule 17 of the Act. It is argued that is because providing such a temporary crossing would: increase the number of LGV movements; extend the construction programme; increase the risk of flooding; involve additional construction works as the temporary structure would need to be removed once the permanent crossing of the WCML was available<sup>32</sup>. The estimated cost for constructing and removing a temporary bridge is between £10 and £12 million (slide 6 in AA.7.5).

42. Given the environmental, delay and cost implications of providing a temporary crossing of the WCML it is considered it would be more appropriate to construct the permanent crossing of the WCML. Constructing that permanent crossing will take in the region of 21 months and once complete it would form part of a continuous haul road which would thereafter be used until the completion of the civil engineering phase of the construction works<sup>33</sup>.

### **Inspector's Assessment and Reasons**

#### *The proposed LGV route*

43. The appellant has predicted that the peak LGV use for Kelsey Lane and Waste Lane at 188 two-way movements per day (paragraph 2.7.1 in AA1.3) would be fewer than the 257 two-way daily movements assessed in the ES (paragraph 6.2.1 of the appellant's SoC). I consider it is clear that the use of the proposed LGV route would have a lesser impact for pedestrians using Kelsey Lane and Waste Lane than the worst-case scenario assessed in the ES and found to be acceptable by Parliament. In that regard paragraph 6 of Schedule 17 of the Act and the advice in the accompanying Statutory Guidance recognise that in some instances there may be adverse effects arising from HS2's construction which cannot be eliminated and that a request for an approval of arrangements may only be refused if they ought to be modified and are reasonably capable of being so modified.
44. Paragraph 32 of the Statutory Guidance makes clear the purpose of Schedule 17 is not to "... *eliminate all prejudicial impacts ... including prejudicial effects on traffic safety and flow ... On the contrary, 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*". Paragraph 33 goes on to explain "... *it is not open to the planning authorities under Schedule 17 to refuse in principle works or development which is covered by the Environmental Statement and approved by Parliament. The impacts have been assessed and planning permission has been granted on that basis. Instead, Schedule 17 offers planning authorities an opportunity to seek modifications to the details submitted that they consider reduce the impacts of a submission if such modifications can be justified*".
45. I agree with the Inspector who determined the previous appeal (APP/HS2/17) that in places Kelsey Lane's carriageway width means that there is limited room for LGVs travelling in opposite directions to pass one another without coming close to the kerbs and thus the footways on both sides of this street. That coupled with the restricted footway widths, which are generally around

<sup>32</sup> Paragraph 2.17 of the appellant's Response to Third Parties

<sup>33</sup> Slide 4 in AA7.5

1.4 to 1.5 metres wide<sup>34</sup>, means that there is potential for LGVs to come into very close contact with users of the footways. There would therefore be potential for HS2 LGV use of Kelsey Lane to be prejudicial to pedestrian safety on any occasions when other LGVs (whether they be HS2 vehicles or not) and/or buses were passing in opposite directions and there were also pedestrians using the footways or waiting at the bus stops. However, that potential impact for pedestrians was assessed as being not unacceptable in the ES, with that impact being based on a higher number of LGV movements than is now envisaged by the appellant.

46. In submitting this Schedule 17 application the appellant has made a commitment to implement the TCMs. Those measures, if implemented, would reduce the potential for there to be conflict between LGV movements and pedestrians by reducing the speed for all vehicular traffic using the Kelsey Lane. I am in no doubt that the availability of the TCMs would reduce the potential for there to be conflict between pedestrians and other NMUs. The commitment to undertake the TCMs did not form part of the previous request for the approval arrangements and therefore were not before the Inspector who determined appeal APP/HS2/17. I consider the implementation of the TCMs would be a modification to the proposed LGV route that would go a significant way to addressing the safety concerns identified the Inspector who dismissed appeal APP/HS2/17.
47. Drawings showing the location and nature of the TCMs have been submitted with the appealed application (AA1.5). However, those drawings have been submitted for information only, as explained in section 3 of the appellant's written statement (AA1.3). The TCMs would be a "temporary interference" to the highway and as such would require the HA's consent under Schedule 4 of the Act. However, that consenting mechanism would relate to obtaining approval for the technical design of the TCMs and would not require their implementation. So, while the technical design of the TCMs would need to be consented there would be no obligation on the appellant to undertake those works as and when they were consented under Schedule 4.
48. In section 4 of the appellant's SoC it is explained that the appellant is contractually bound to comply with various environmental minimum requirements (EMRs) ensuring HS2 is delivered without the impacts assessed in the ES being exceeded. Amongst other documents the EMRs include a code of construction practice (CoCP) which sets out a series of proposed measures and standards for the works. In relation to traffic and transport section 14 of the CoCP requires impacts from construction traffic on the local community to be minimised, where reasonably practicable.
49. To reduce potential transport impacts the CoCP requires that route wide, local and site-specific traffic management measures are implemented. To that end the appellant has produced a route wide traffic management plan (RTMP [AA3.3]) and a local traffic management plan (LTMP [AA3.4]). Applications made under paragraph 6 of Schedule 17 are to be accompanied by a "Route Management, Improvement and Safety Plan" (ROMIS), submitted for information only and a ROMIS (AA3.2) has been submitted. However, section 10 of the ROMIS, titled "List of highways mitigation measures on construction routes in Solihull", does not list any mitigation measures (page 26 in AA3.2),

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<sup>34</sup> Paragraph 2.1.11 of AA1.3

with the identification of the intended TCMs for Kelsey Lane postdating the ROMIS' publication. Accordingly, the commitment to provide the TCMs cannot currently be considered as forming part of the EMRs that the appellant is required to comply with.

50. While the TCMs would be route specific mitigation measures, they do not form part of the road transport arrangements for which approval has been sought and it is therefore unclear on what basis the appellant considers their implementation would be secured. The Council in section 6 of its SoC has requested a "Grampian" type condition be imposed on any approval for the proposed LGV route (Condition 1). Condition 1 states:

*"The Lorry Route shall not be brought into use until such time that all the traffic mitigation measures on Kelsey Lane/Waste Lane, as detailed in Appendix 2 of the Written Statement have been provided."*

51. The appellant in connection with the appeal's determination has been resistant to Condition 1's imposition<sup>35</sup>, submitting that imposing conditions requiring compliance with other regulatory regimes will not meet the test for necessity referred to in the National Planning Policy Framework of 2021 (the Framework) and the guidance for imposing planning conditions included in section 21a of the Planning Practice Guidance (PPG). The appellant arguing that some of the TCMs would be secured via the making of a TRO, further to a submission being made under Schedule 4 of the Act. The appellant has also contended that what the Council is seeking would be contrary to paragraph 51 of the Statutory Guidance which states:

*"Conditions should not be imposed which reserve for future approval matters which are integral to the approved works being sought. While, as noted above there is a power to require additional details in relation to works that does not extend to deferring approval to integral elements of that development."*

52. With respect to the TCMs the appellant wrote to the Council on 28 March 2022<sup>36</sup> (AA10.1) stating *"We believe that the measures proposed are capable of being secured by conditions on a consent ..."*. There has therefore been an inconsistency in the appellant's position with respect to whether the implementation of the TCM's should or should not be subject to a condition.
53. IQ1 for both the appellant and the Council sought further observations from them about suggested Condition 1. The appellant observed<sup>37</sup> that the imposition of a condition would ultimately be a matter for the Secretaries of State, but such a condition would not relate to a modification because it would not secure any change to the proposed LGV route. In opposing Condition 1's imposition it appears that appellant's interpretation of modification under paragraph 6 of Schedule 17 is a narrow one, involving substituting one or more roads within a route with another road or other roads.
54. Neither Schedule 17, most particularly paragraphs 6 and 30 (Interpretation) nor the Act in its sections, most particularly section 68 (Interpretation), define modification. Within the context of possible refusals for requests for LGV route

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<sup>35</sup> Section 3.2 of the appellant's response to the Council's SoC

<sup>36</sup> Ie prior to the appealed application's determination by the Council on 31 March 2022

<sup>37</sup> Email of 14 July 2022

arrangements (paragraph 6(5) Schedule 17) there is no reference to a modification being limited to just changing one or more roads within a transport route. That differs for example with the situation for requests for the approval of plans and specifications for building works, with paragraph 2(5)(b) of Schedule 17 referring to one ground of refusal being that "*... the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits*".

55. I am therefore of the view that the interpretation for modifying arrangements under paragraph 6 of Schedule 17 is broader than that which appears to have been adopted by the appellant and could include securing the implementation of physical works to a proposed transport route. In that regard I am mindful of paragraph 42 of the Statutory Guidance stating "*... The arrangements that are approved by the planning authority must relate to the routes to be used themselves. For example, details of arrangements for vehicle monitoring and 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. Modifications can be made to the submitted routes by the local planning authority by substituting one route for another ...*". Paragraph 4 of the Statutory guidance makes clear it "*... is not legislation and where there appear to be differences between the Guidance and the Act, the provisions of the Act will take precedence*".
56. If my interpretation of paragraph 6 is correct, and notwithstanding what is stated in the Statutory Guidance, I consider it would be possible for an approval of the arrangements for the proposed LGV route to include a condition requiring the implementation of the intended TCMs, ie a condition along the lines of Condition 1. That is because a consent obtained under Schedule 4 would address the technical design for the TCMs, but it would not secure their delivery in the way that a Grampian type planning condition would. I consider the imposition of a condition along the lines of Condition 1 of itself would not reserve for future approval matters which would be integral to the Schedule 17 approval being sought, given that consent for the TCMs has not been made integral to the arrangements for which approval is being sought.
57. The imposition of a Grampian condition, along the lines of suggested Condition 1, would relate to the implementation of the TCMs and not their detailed design. Were such a condition to be imposed, I consider that would neither be inappropriate under paragraph 6 of Schedule 17 nor would it be contrary to the policy and guidance included in the Framework, the PPG and the Statutory Guidance. In particular, I consider the imposition of such a condition would not be contrary to the advice in paragraph 42 of the Statutory Guidance, because the condition of itself would not be creating a means for the Council's approval of the TCMs.
58. To aid the precision and enforceability of the Council's suggested wording for Condition 1, I consider it would need to be amended to state:

The road transport route hereby approved shall not be used by large goods vehicles above the movement level requiring approval stated in paragraph 6(4)(b) of Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017 (the Act) until all of the highway mitigation measures for Kelsey Lane shown on the drawings included in Appendix 2 of the

Written Statement (Document Reference 1MC08-BBV-TM-STA-NS01\_NL05-000001) have been installed. Following the installation of all of the highway mitigation measures for Kelsey Lane those measures shall be retained for so long as the road transport route is used by large goods vehicles above the movement level requiring approval specified in paragraph 6(4)(b) of Schedule 17 of the Act.

59. IQ1 for both the appellant and the Council sought their comments about my suggested amendments to the wording for Condition 1. Neither the appellant nor the Council made any comments about the substance of the amended wording for Condition 1<sup>38</sup>, with the appellant reiterating its view that the imposition of a condition would not concern a change to the proposed LGV route.
60. If the Secretaries of States disagree with my interpretation of modification for the purposes of paragraph 6 of Schedule 17, but consider the implementation of the TCMs would be necessary and should be secured as part of any approval of arrangements that they might grant, then I consider the appellant would need to either enter into a planning obligation under section 106 the Town and Country Planning Act 1990 (TCPA) or amend the ROMIS (AA3.2) prior to the appeal's determination. If the Secretaries of State are minded to allow this appeal, then they may wish to pursue with the appellant the submission of either a planning obligation or an amended version of the ROMIS. Given the concerns about the status of EMRs raised by the Court of Appeal in its 'Hillingdon 1' judgement<sup>39</sup> I consider the making of a planning obligation would be preferable to reliance being placed on an amended ROMIS.
61. As part of the package of intended mitigation measures for the proposed route the appellant intends that were reasonably practicable there would be an "embargo" on the use of the route between 08:20 and 09:00 hours and 15:00 and 16:00 hours. The purpose of that being to avoid use of the proposed transport route during school drop off and collection times (paragraph 2.2.3 of AA1.3). In that regard the Council has suggested a condition which would preclude the use of the proposed LGV route between 08:30 and 09:30 hours and 15:30 and 16:30 hours (Condition 2 in section 6 of the Council's SoC).
62. The appellant is resistant to Condition 2's imposition because as part of the fulfilment of the EMRs LGV movements will be scheduled to reduce deliveries as far as reasonably practicable outside school drop off and collection times. Condition 2 would therefore duplicate the provisions of the EMRs and the Council has not provided any evidence justifying Condition 2's imposition<sup>40</sup>.
63. The Council in its SoC has not provided a detailed justification for the imposition of Condition 2. The HA's advice prior to the appealed application's determination did not include a recommendation for Condition 2's imposition, with the HA accepting that if the alternative route via Hallmeadow Road could not be provided then the use of Kelsey Lane and Waste Lane would not be unacceptable.

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<sup>38</sup> The parties' respective emails of 14 July 2022

<sup>39</sup> R. (on the application of London Borough of Hillingdon Council) v Secretary of State for Transport, Secretary of State for Housing, Communities and Local Government & High Speed Two (HS2) Limited [2020] EWCA Civ 1005 (AA4.1)

<sup>40</sup> Section 3.3 of the appellant's response to the Council's SoC

64. I consider the provision of the TCMs, through securing a speed reduction along Kelsey Lane would reduce the potential for there to be conflict between LGVs and pedestrians to an acceptable level. I also consider it likely that the appellant's contractors for reasons of operational efficiency would be likely to minimise the use of the proposed LGV route during the peak hours for traffic, which would include the school dropping off and collection times. I therefore consider that the Condition 2's imposition has not been justified as being necessary.
65. I conclude that with the implementation of the TCMs for Kelsey Lane, which the appellant has promoted itself, there would be no prejudicial effects on road safety on Kelsey Lane and Waste Lane. Should the Secretaries of State agree with me that a consent under Schedule 4 of the Act and the commitments made in the submitted Schedule 17 application would be insufficient to secure the delivery of the TCMs, the implementation of the TCMs could, in my view, be secured through the imposition of a condition on an approval for the proposed LGV route or by the appellant entering into a planning obligation under section 106 of the TCPA.
66. With implementation of the TCMs I consider a refusal to use the proposed LGV route could not be justified. If the Secretaries of State conclude that it would be inappropriate to impose a condition under paragraph 6 of Schedule 17 or require the appellant to enter into a planning obligation, then I am of the view that it has not been demonstrated that the effect on highway safety in Kelsey Lane and Waste Lane would be so prejudicial as to warrant the refusal of the application. That is because the use of the proposed LGV route has already been deemed to be approved by the Act and the number of LGV movements would be below the number that Parliament found would be acceptable when it passed the Act.
67. Should the Secretaries of State conclude that the use of the proposed LGV route would have a prejudicial effect on road safety, there would then be a need for them to consider whether the proposed route would be reasonably be capable of being modified. To assist deliberations under those circumstances, below I have provided an assessment for the alternative routes that been put forward.

#### *Alternative routes*

68. There is a keenness amongst the Council, residents and other parties, as well as on the appellant's part that the alternative route via Hallmeadow Road be used. There is clear evidence of the appellant seeking to promote the use of that alternative route. Firstly, the appellant has obtained approval for Hallmeadow Road being used as road transport route under Schedule 17 of the Act and a lawful development certificate for a link to the internal haul road has been issued by the Council<sup>41</sup>. Secondly, negotiations are on-going to secure rights over the parts of the haul road link subject to third-party ownership.
69. There is no doubt for the appellant it would be far easier to use the alternative route rather than make significant use of Kelsey Lane and Waste Lane. While the appellant has approval under Schedule 17 to use Hallmeadow Road, the use of that road as an LGV route would only become practical once rights over

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<sup>41</sup> Under the provisions of the Town and Country Planning Act 1990 (as amended)

the third-party land falling outside the Act limits have been obtained. I agree with the appellant that until such time as it has either purchased or leased the required third-party land the route via Hallmeadow Road should not be considered as a genuine alternative to the proposed LGV route.

70. I am also of the view that even if the appellant secures control over the third-party land and establishes the haul road link that would not totally avoid the use of Kelsey Lane and Waste Lane. That is because it would be extremely unlikely that the whole of the haul road link could be constructed directly from the public highway heading eastwards, with it being more likely that the works for the link would need to progress from east to west. Until such time as the haul road link was available the only way the Carol Green rail underbridge south, Waste Lane Road head, Beechwood Farm accommodation underpass, Waste Lane overbridge and Cromwell Lane works sites could be accessed by LGVs would be via a route including Kelsey Lane and Waste Lane. I therefore consider that there would be a need to make use of Kelsey Lane and Waste Lane, with that use diminishing, as the appellant has explained, once the haul road link was fully available for use.
71. The use of the haul road by LGVs would clearly be preferable to the use of Kelsey Lane and Waste Lane. However, even with the availability of an alternative route via Hallmeadow Road, I consider some use of Kelsey Lane and Waste Lane would be unavoidable and that would not be incompatible with the appellant's EMR commitment in its CoCP to make "*... use of internal haul routes for construction vehicles to minimise the need to use public roads ...*" (page 71 in AA2.4).
72. Having regard to the positions of Network Rail and the appellant with regard to the existing bridge's state of repair and its dimensions, even following its refurbishment, I consider it could not practically be used as a temporary WCML crossing. That is because this bridge was designed to be nothing other than an accommodation structure serving a farm and was never intended to be used by large numbers of construction vehicles.
73. With respect to constructing a temporary bridge, given: the time needed to build it and the associated extension to the overall duration of the construction programme; and the additional LGV movements its construction would yield, with allied adverse environmental effects, I am not persuaded that providing such a structure would be a modification that would reasonably be capable of being made to the proposed LGV route.
74. I am therefore not persuaded that either of the suggested alternative routes can be treated as being reasonable alternatives to the proposed use of Kelsey Lane and Waste Lane.

### **Recommendation**

75. For all of the reasons given above I recommend that the appeal is allowed subject to the imposition of the following condition:

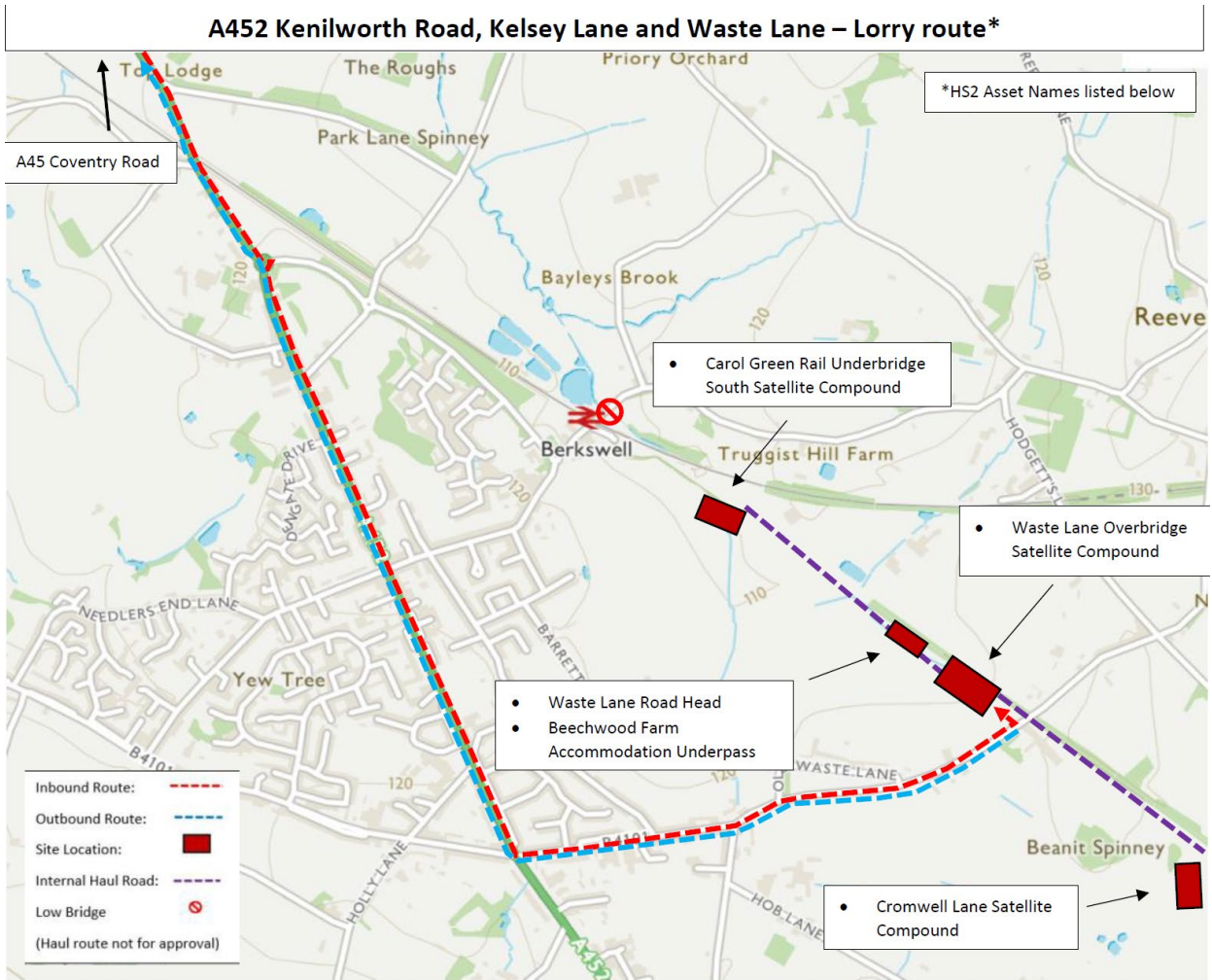
The road transport route hereby approved shall not be used by large goods vehicles above the movement level requiring approval stated in paragraph 6(4)(b) of Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017 (the Act) until all of the highway mitigation measures for Kelsey Lane shown on the drawings included in Appendix 2 of the



Written Statement (Document Reference 1MC08-BBV-TM-STA-NS01\_NL05-000001) have been installed. Following the installation of all of the highway mitigation measures for Kelsey Lane those measures shall be retained for so long as the road transport route is used by large goods vehicles above the movement level requiring approval specified in paragraph 6(4)(b) of Schedule 17 of the Act.

*Grahame Gould*  
INSPECTOR

## Appendix A





# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.