

CONSULTATION ON REQUESTS FOR APPROVAL UNDER SCHEDULE 17

Introduction

1. Schedule 17 (paragraph 18) to the High Speed Rail (West Midlands – Crewe) Act defines the instances when three statutory bodies: Environment Agency (EA), the Historic Buildings and Monuments Commission for England (Historic England - HE) and Natural England (NE) will be invited to make representations on requests for approval. The purpose of this note is to establish the process for sharing the material with consultees in practice.

Process for consultation with statutory consultee

2. Table 1 identifies which type of requests for approval are likely to be referred to the statutory bodies (any request for approval beyond those identified in the table that meets the criteria in Schedule 17 paragraph 18 will also be referred to the relevant body). Table 1 provides guidance and does not preclude any request for approval being referred to one of the statutory consultees.

Table 1: Types of approval under Schedule 17 which are likely to be relevant to the Schedule 17 statutory consultees

Requests for Approval	EA	HE	NE
Plans and Specs	Where appropriate	Where appropriate	Where appropriate
Lorry Routes	N/A	N/A	N/A
Construction Arrangements	N/A	N/A	Where appropriate
Site Restoration	N/A	N/A	Where appropriate
Non-material change	N/A	N/A	N/A
Bringing into use	Where appropriate	Where appropriate	Where appropriate

3. Regarding the use of the term ‘where appropriate’ in the above Table 1 – the following defines the circumstances when these bodies will be invited to make representations:
 - a. Environment Agency: requests for approval of Plans and Specifications will be sent to the Environment Agency when they meet the criteria in paragraph 18(1)(c) to (e) of Schedule 17.
 - b. Historic England: requests for approval of Plans and Specifications will be sent to Historic England when they meet the criteria set out in paragraph 18(1)(f) of Schedule 17.
 - c. Natural England: requests for approval of Plans and Specifications will be sent to Natural England when they meet the criteria in paragraph 18(1)(a) and (b) of Schedule 17.
4. HS2 Ltd will submit Schedule 17 requests for approval via the planning portal (see PFN 8). It is assumed that requests for approval will be shared with the relevant statutory consultees through existing back office systems. The relevant statutory consultee/s will be notified of the submission by the relevant planning authority.

Process for non-statutory consultation

5. Planning authorities may, within the determination period, consult on requests for approvals beyond the requirements of paragraph 18. It is for planning authorities to decide the extent of any consultation beyond that required by statute.
6. HS2 Ltd will submit Schedule 17 requests for approval via the planning portal (see PFN 8). It is assumed that requests for approval will be shared with the relevant non-statutory consultees through existing Planning Portal systems.

Consultee responses and decisions making

7. Through the operation of Schedule 17 it has become apparent that consultation responses are one cause of delayed decisions. Delayed responses from consultees and how responses are managed are contributing to delayed decisions. The section below set out how these should be managed.

Non-responses from statutory consultees

8. The statutory requirements for consultation are set out in paragraph 18 of Schedule 17.
 - 18(4) does not require that a decision cannot be made until a statutory consultee has responded.
 - Therefore, decisions can be made and the Planning Memorandum's emphasis on prompt decisions indicate that in the absence of a response the planning authority should make a decision.

Non-responses from internal consultees

9. Qualifying authorities will have sufficient staff to ensure timely responses to requests for approval (Planning Memorandum 7.1.1) who will be involved where relevant in the pre-submission process.
 - Internal consultees should have seen and commented on material at the pre-submission stage and there should be no new comments on the request for approval unless the submitted scheme has changed materially since the pre-submission engagement.
 - The effect of the Planning Memorandum's emphasis on prompt decisions is that if an internal consultee has not responded the planning authority should make a decision.

Non-responses from non-statutory consultees

10. If a qualifying authority chooses to consult beyond the requirements of 18(4) this should not delay a decision and a lack of response is not a reason to delay.

Planning authority consideration of non-material consultee responses

11. When a qualifying authority receives comments, its role is to assess them in the light of principles that govern the operation of Schedule 17.

12. Responses from consultees to Schedule 17 often raise matters which would be material to TCPA applications but are not material to Schedule 17 requests for approval, for example the principle of the works or their operation. Part of the role of a qualifying authority is to consider any request for approval based on the relevant matters and grounds in Schedule 17. This includes filtering those comments not material to Schedule 17. Such comments should not be factored into Schedule 17 decision making. It is the responsibility of qualifying authorities to deal with such comments and respond to them as they see appropriate. It is not for the nominated undertaker to respond to non-material comments as part of the determination of the Schedule 17 request for approval.