

INDEPENDENT PHASE ONE PLANNING FORUM FOR HS2

PLANNING FORUM NOTE 19

PRINCIPLES FOR DETERMINING REQUESTS FOR APPROVAL UNDER PARAGRAPHS 2 AND 3

Introduction

1. The purpose of this note is to set out the process and principles that decision makers should apply when considering requests for approval under Schedule 17 paragraphs 2 and 3. Decisions should be made in accordance with Schedule 17 to the High Speed Rail (London to West Midlands) Act 2017 and the Schedule 17 Statutory Guidance issued by the Secretary of State (November 2023).
2. The principles are based on the statutory framework, caselaw and previous appeal decisions and provide a guide for decision-makers to use when considering Schedule 17 requests for approval under paragraphs 2 and 3.
3. A simplified process map of the detailed steps set out below is illustrated in Appendix 1.

Step 1: What are the relevant grounds for consideration?

4. The relevant grounds which may be considered under paragraphs 2 and 3 depend on:
 - a. The type of development to which the Schedule 17 request relates; and
 - b. Whether or not the planning authority is a qualifying authority.
5. In general terms, the grounds will be one or more of the following:
 - a. the design or external appearance of the works ought to, and could reasonably, be modified—
 - i. to preserve the local environment or local amenity,
 - ii. to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
 - iii. to preserve a site of archaeological or historic interest or nature conservation value.
 - b. the development ought to, and could reasonably, be carried out elsewhere.
6. Modifications cannot be requested for any other reason and no other grounds may be considered when determining a request.
7. Accordingly, any other kind of adverse impact may not form grounds to require a modification or the imposition of conditions¹. The request should be approved despite the existence of any other impacts.

Step 2: Is there an adverse impact?

8. The statutory language includes ‘to preserve’, ‘to prevent’ and ‘reduce prejudicial effects’ within the Schedule 17 grounds. Therefore, the planning authority should consider whether the design

¹ Paragraphs 2(7) and 3(7) [Schedule 17 of the High Speed Rail \(London - West Midlands\) Act 2017](#)

or external appearance, or location of the works would result in an adverse impact in relation to one or more of the relevant grounds listed in paragraphs 2 or 3.

9. The planning authority would need to establish that an adverse impact would arise, not whether an adverse impact might or could arise.
10. If an adverse impact cannot be identified then a modification may not be requested, conditions may not be imposed and approval should be granted. This is because if there is no adverse impact then there will be no underlying reason why the request for approval "ought" to be modified².

Step 3: Is the identified adverse impact material?

11. Even if there would be an adverse impact on one or more of the statutory grounds, this impact must be "*materially adverse*"³ and not de minimis. This is because minor impacts will not satisfy the statutory requirement that the request "ought" to be modified.
12. If an adverse impact would not be material, then a modification may not be requested, conditions may not be imposed and approval should be granted.

Step 4: Can a modification to the works be made?

13. If there would be a materially adverse impact, the planning authority should consider whether that impact can be avoided, wholly or in part, by a modification to the works.
14. The planning authority itself needs to specify what the modification is⁴. It may not seek to require HS2 to propose a modification⁵.
15. The proposed modification needs to relate to the design or external appearance, or location of the works for which approval has been requested. This is because the grounds in paragraphs 2 and 3 relate only to the design and external appearance, or location of the works for which approval has been sought.
16. For example, if approval is sought for earthworks under paragraph 3, it is not permissible for the planning authority to seek modifications to the proposed sources of material for the construction of the earthworks if this would not in itself modify the design or external appearance or location of them.

Step 5: Would the modification represent an improvement?

17. The planning authority should demonstrate⁶ that its proposed modification would have a beneficial effect⁷ on the identified adverse impact compared to HS2's proposals. If the modification proposed by the planning authority would not perform better than HS2's proposal then conditions may not be imposed and the request should be approved without modification.

² Paragraphs 2(5)(a) and 3(6)(1-6) [Schedule 17 of the High Speed Rail \(London - West Midlands\) Act 2017](#)

³ Paragraphs 19 and 43 [Schedule 17 Appeal Decision APP/HS2/4](#)

⁴ Paragraph 7.7.2 [HS2 Planning Memorandum](#) and paragraph 12 [PFN 5 Conditions, Additional Details and Particulars Reserved Agreed](#)

⁵ Paragraph 46 [Schedule 17 Appeal Decision APP/HS2/8](#)

⁶ Paragraphs 53 and 59 [High Speed Rail \(London-West Midlands\) Act 2017 Schedule 17 Statutory Guidance](#)

⁷ Paragraph 47 [Schedule 17 Appeal Decision APP/HS2/22](#)

Step 6: Does the potential improvement justify the modification?

18. If the proposed modification would have a beneficial effect (in terms of reducing the identified adverse impact), the planning authority should then consider whether such modification (a) ought to and (b) can reasonably be made.
- a. There must be sufficient benefit from the modification in terms of avoiding the identified adverse impact to outweigh any potential disbenefit⁸ to HS2 or more generally, such as by way of adding unduly to costs or delays to the programme of HS2 Phase One, pollution, public safety or traffic congestion⁹. This is because the grounds in paragraphs 2 and 3 require it to be demonstrated that a modification ought to be made – it is not enough for that modification to be merely desirable or sensible¹⁰.
 - b. Also, if the disbenefits would impose an unreasonable burden on HS2 such that the works could not "reasonably be modified" then the modification would not be permissible.
19. If either of these elements (a) or (b) is not satisfied then the modification may not be sought, conditions may not be imposed and the request should be approved.

Step 7: Can the modification be secured by a condition?

20. If the two tests in step 6 (a) and (b) are satisfied, the planning authority may consider whether it is appropriate to impose a condition. A condition is the means by which a modification is effected.
21. Any condition requiring a modification should be clearly described and specific in nature. This is to provide certainty for both HS2 and the public record of the approved works.
22. It is not permissible for a condition to require HS2 to submit a modified design for the planning authority's subsequent approval¹¹.
23. Paragraph 58 of the Schedule 17 Statutory Guidance provides that the 'six tests' in the NPPF should be used in order to evaluate whether a condition is appropriate. For example, if the proposed condition would not be necessary or reasonable then it should not be imposed and the request should instead be approved without imposing that condition¹².
24. In addition, when considering whether a condition is necessary, reasonable or otherwise appropriate, the planning authority should have regard to the environmental minimum requirements ("EMRs"). Where a proposed condition duplicates or conflicts with an existing

⁸ Paragraphs 68 and 68 [Schedule 17 Appeal Decision APP/HS2/22](#)

⁹ Paragraphs 29 and 36 [Schedule 17 Appeal Decision APP/HS2/4](#)

¹⁰ Paragraph 60 [Schedule 17 Inspectors Report APP/HS2/2](#)

¹¹ Paragraph 12 [PFN 5 Conditions, Additional Details and Particulars Reserved Agreed](#)

¹² For example - Paragraph 51 [Schedule 17 Inspectors Report APP/HS2/2](#); Paragraphs 16 and 18 [Schedule 17 Appeal Decision APP/HS2/3](#); Paragraphs 15, 24, 26, 27 and 29 [Schedule 17 Appeal Decision APP/HS2/4](#)

EMR control¹³ then this means that it would not be appropriate to impose the condition and the request for approval should be approved without it.¹⁴

Step 8: Should the request be refused or a condition imposed?

25. If, following the above consideration, it is appropriate for a condition to be imposed to secure the modification to the works, the request should be approved subject to that condition.
26. A request may only be refused if Steps 1 to 6 are satisfied, but it is not possible to impose a condition following consideration under Step 7. Refusal of a request should only occur as a last resort.

¹³ Paragraph 22 [High Speed Rail \(London-West Midlands\) Act 2017 Schedule 17 Statutory Guidance](#)

¹⁴ For example - Paragraph 52, 61 and 66 [Schedule 17 Inspectors Report APP/HS2/2](#); Paragraphs 14 and 17 [Schedule 17 Appeal Decision APP/HS2/3](#); Paragraphs 20, 23 and 24 [Schedule 17 Appeal Decision APP/HS2/4](#)

Principles for Determining Requests for Approval under Paragraphs 2 and 3

