



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	HS2 Update and Qualifying Authority status for the purposes of the High Speed Rail (Midlands to Crewe) Bill	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team 17 July 2019	X
	Leader and Deputy Leaders 22 July 2019	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group [DATE]	N/A
	Council 16 September 2019	X
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Economic Growth Communities and Health Committee [DATE]	N/A



Is this an Executive Decision:	NO	Is this a Key Decision:	YES
Is this in the Forward Plan:	NO	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:			

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **Angela Wakefield**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Council

Date: 16th September 2019

REPORT TITLE: HS2 Update and Qualifying Authority status for the purposes of the High Speed Rail (Midlands to Crewe) Bill

PORTFOLIO: Regeneration and Planning Policy

HEAD OF SERVICE: Sal Khan

CONTACT OFFICER: Naomi Perry Ext. No. x1611

WARD(S) AFFECTED: Bagots, Yoxall and Needwood Wards

1. Purpose of the Report

- 1.1. This report seeks to update Members on the outcome of the Phase 2a Additional Provisions (2) Select Committee Report, the mechanisms and legislative basis for dealing with Schedule 17 applications and recommends that the Local Planning Authority seeks Qualifying Authority status.

2. Background

- 2.1. High Speed 2 (HS2) is the new high speed railway line proposed to improve travel and connectivity both within the UK and also with connections to the Continent. It is designed to create space on overcrowded networks and enable large numbers of people to move more effectively.
- 2.2. The line is to be developed in two phases. Phase 1 will run from London to the West Midlands whilst Phase 2 will run from the West Midlands in a Y-shaped network linking Birmingham with Manchester and Leeds via the East Midlands. As a result Phase 2 is split in to two sub-phases. Phase 2a will run from Birmingham to Crewe whilst Phase 2b will extend the route from Crewe to

Manchester on the West Coast and the West Midlands to Leeds along the East Coast.

- 2.3. On 30 November 2015 the then Chancellor George Osborne confirmed that the Phase 2a route will be accelerated from the West Midlands to Crewe and is expected to open in 2027, six years ahead of the remainder of Phase 2. The route is subject to its own Hybrid Bill, which seeks powers to build the route, which was deposited in Parliament on 17 July 2017.
- 2.4. It is common for changes to be made to proposals in a Bill, as design development and discussions with landowners, occupiers and other parties take place. Amendments to a Bill are known as Additional Provisions (AP's). To date two AP's have been deposited and as such have been subject to a petitioning period and scrutiny through Select Committee procedures.
- 2.5. Of interest to East Staffordshire Borough and the subject of this report is Additional Provision 2 (AP2).
- 2.6. The Department for Transport deposited a second Additional Provision to the Bill on Friday 8 February 2019. Petitioning against the second additional provision opened at 11 a.m. on Friday 15 February and closed at 1 p.m. on Friday 15 March. 82 petitions were submitted. Following Select Committee hearings in April the Committee reported the Bill on 5 June 2019 as amended in Committee.

3. Contribution to Corporate Priorities

- 3.1. HS2 is an infrastructure project promoted in the national interest.

4. HS2 Update for Additional Provision 2

- 4.1. The route of the proposed Phase 2a does not extend into East Staffordshire Borough. The relevance of the proposals for the Borough is the incorporation of the infrastructure necessary to power the train.
- 4.2. The amended proposal in AP2 is for HS2 Ltd. to build an electricity substation just south of the B5234 Abbots Bromley Road at Parkgate (1 mile west of Newborough) where there are existing high voltage overhead power cables. The proposal includes a 7.7km double run of 27 pairs of overhead electricity pylons 250-300 metres apart rising and falling with the topography of the landscape and connecting with the Newlands Auto Transformer Feeder Station.
- 4.3. Power will then be cabled from this new substation in a south westerly direction, through Bromley Hurst and across the Blithe Valley to Newlands Lane near Colton, where it will be used as the sole power source for phase 2a (Birmingham to Crewe).

- 4.4. Known as the Parkgate proposal the amendment became necessary following earlier petitioning and additional information supplied by the National Grid. The original proposal for the power source to be located at Rugeley Power station and provide two power circuits was found to be unsuitable with a third circuit deemed to be necessary for security of supply.
- 4.5. A consortium of parishes most affected by the HS2 proposals comprising of Newborough, Hoar Cross and Abbots Bromley including several affected parishioners petitioned the Government. The basis of their petition was to argue that other alternative pylon routes should be explored instead of the Parkgate proposal or where no suitable alternative exists, to underground cables from Newlands to Parkgate to mitigate the landscape impact the power supply pylons would have.
- 4.6. HS2 Ltd. provided a briefing to Members on the 21 November 2018 outlining the basis of AP2. A briefing was given to LDL in January 2019 whereupon it was decided not to petition the Government over AP2 proposals.
- 4.7. The Borough Council provided a letter of support to the Parkgate consortium with respect to their undergrounding suggestion at both the Petitioning and Select Committee stages.
- 4.8. Select Committee Report Findings**
- 4.9. Five options for the routing of the pylons were explored by the Select Committee. Option 5 which represented the Parkgate option provided the strongest electrical connection according to the National Grid expert. The Select Committee agreed with his assessment, stating that Option 5 provided the best route for overground pylons given the undulating landscape (and thus mitigating) and the additional financial commitment of £65M to underground the cables.
- 4.10. The Select Committee did however recognise that there will be a particular danger to birds from the nearby Blithfield reservoir. The West Midland Bird Club successfully argued that bird diverters should be installed on the pylons in order that both migrating and non-migratory birds do not fly into the wires and are killed. The Select Committee go on to instruct HS2 to install bird protectors on the pylon wires across the valley sections between Newlands Lane National Grid sub-station and the Parkgate substation. HS2 are expected to act on advice from the West Midland Bird Club on the most appropriate sections on which to install the protectors. As set out in their petition a 5km stretch requires protection which has been estimated as a cost of £300,000.
- 4.11. Appendix C Provides two plans identifying the route chosen as the preferred route by the House of Commons Select Committee.
- 4.12. Promoter's response to the Select Committee's Third Special Report of Session 2017-19**

- 4.13. Published on the 24 June 2019 by the Department for Transport, The Bill's Promoter, this report aims to only address the matters raised by the Select Committee in their report where an action from the Promoter was sought or where a clarification was deemed to be beneficial.
- 4.14. In terms of the New Grid Supply Point with the overland pylons between Parkgate and the Newland Auto Transformer Feeder the station, the Promoter welcomes the Select Committee's decision on the power supply connection.
- 4.15. Additionally the Promoter has given assurances to the West Midlands Bird Club requiring the nominated undertaker to install bird diverters on the pylon wires across the valley, acting on the recommendations of the Club on the most appropriate sections on which to place diverters.

4.16. Qualifying Authority Status

- 4.17. Setting aside the issue of whether HS2 Phase 2a will go ahead and assuming that the Bill will achieve Royal Consent by the end of the year, there are a number of issues to be made aware of that require discussion and possibly action.
- 4.18. When enacted, the Bill will grant deemed planning permission for the HS2 project. The level of detailed design necessary to enable development to be constructed has yet to be carried out, so the deemed planning permission is subject to a series of items that require the approval of the planning authorities along the route.
- 4.19. The Hybrid Bill 'disapplies' the majority of national legislation and regional/local policy which would normally be relevant to a major infrastructure project, meaning that the Council will not be able to consider consents and approvals in the context of the Town and Country Planning Act or the Council's Local Plan.
- 4.20. The Bill prescribes, in broad terms, two main sets of grounds upon which works may be considered for refusal or condition:
1. The design or external appearance of the works ought to be modified;
 - a) To reserve the local environment or local amenity;
 - b) To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - c) To preserve a site of archaeological or historic interest or nature conservation value; and
 - d) Are reasonably capable of being so modified; OR
 2. The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 4.21. The Schedule 17 Approval process is the simplified planning regime that supports the deemed consent. It can be thought of as a Discharges of

Conditions application you would expect to receive to discharge the detail of scheme through the Town and Country Planning Acts.

- 4.22. Schedule 17 submissions are not planning applications and will serve only to agree design and construction detail of the specified works.
- 4.23. Local Planning Authorities have a choice between having a wide or narrow range of controls over these approvals. Local Planning Authorities wishing to have a greater range of controls are referred to as 'Qualifying Authorities' for the purpose of Part 2 Schedule 17 of the Bill. Local Planning Authorities are required to inform the Secretary of State if they wish to become a Qualifying Authority before the conclusion of the House of Lords Select Committee (expected September 2019). Further detail on the breadth of the controls is contained in Appendix A.
- 4.24. Local Planning Authorities who wish to become a Qualifying Authority are obliged to sign the Planning Memorandum which forms part of the Environmental Minimum requirements. The Planning Memorandum sets out rules of conduct and administrative arrangements for both the planning authority and the nominated undertakers(s). A copy of the draft memorandum is in Appendix B. Following attendance at the Phase 2a Planning Forum on 17 July it was confirmed that the Planning Memorandum is a 'fixed' document despite its 'draft' status.
- 4.25. The rules of conduct and administrative arrangements include, for example:
 - Participating in pre-application discussions with the nominated undertaker(s);
 - Determining Schedule 17 applications within 8 weeks or an extended deadline agreed with the nominated undertaker; and
 - Ensuring adequately experienced staff are available to process applications.
- 4.26. The Planning memorandum includes the requirement for the LPA to deal with applications expeditiously and to be sufficiently resourced to do so. If a Qualifying Authority repeatedly fails to expedite requests for approval or seriously fails to act in accordance with the Planning Memorandum the Secretary of State may order that an authority shall cease to have the powers of a Qualifying Authority.
- 4.27. The Planning Memorandum expects the Qualifying Authority to put in place appropriate internal decision-making arrangements to ensure that the 8 week timetable is adhered to and consideration will need to be given to authorising greater delegated powers for officers.
- 4.28. Another obligation on Qualifying Authorities is attendance at Planning Forum meetings. The Planning Manager already does this. The Planning Forums are held jointly with other local planning authorities on the route and the nominated

undertaker. The meetings are intended to discuss standards and practices associated with the effective implementation of the planning provisions in the Bill.

- 4.29. The Planning Forum will consider common design items for certain structures associated with the railway such as acoustic barriers or retaining walls. Qualifying Authorities are required to have regard to the discussions of the Planning Forum when determining Schedule 17 applications.
- 4.30. The provisions set out by the Act do not include the same statutory publicity and consultation requirements that apply to planning applications, and instead require a 'Qualifying Authority' to consult solely with the Environment Agency, Historic England and/or Natural England, as and where relevant. There is no requirement to consult any other persons or bodies, erect site notices or send out neighbour notification letters. HS2 Ltd has a primary role of liaising with communities on applications and this role will be set out in their Community Engagement Strategy. HS2 are also committed to pre-application discussion with the LPA.

Conclusion

- 4.31. There are significant benefits associated with becoming a Qualifying Authority. Although the proposed HS2 scheme by way of the Bill gaining Royal Assent will have deemed planning permission, local planning approval will still be required for detailed design submissions, across the pylon route. As a Qualifying body the Borough Council will have the maximum level of control when considering plans.

Next Steps and Timeframes

- 4.32. In an email received by the Chief Executive on the 4 July 2019 from HS2 Ltd., the Borough Council was asked if it intends to become a Qualifying Authority by signing the July 2017 Version of the Planning Memorandum (in Appendix B). A response was sent indicating that subject to discussions with Members officers will be recommending that Qualifying Authority status will be sought. The email essentially put authorities on notice to undertake the necessary internal processes to put them in a position whereby the Planning Memorandum can be signed and returned by post to the Department for Transport before the day on which the Bill is report from the House of Lords Select Committee. As set out in this report the Select Committee is likely to sit for hearings in September which would lead to the Lords reporting from the Select Committee in October/November. This timetable will keep the Bill on track for Royal Assent before the end of the year. The following provides timetabling relating to the receipt of Schedule 17 approvals.

- Formal appointment of Early Works Contractors, May 2019
- Beginning of Pre-application discussions, Autumn 2019

- HS2 Phase 2a Royal Assent, December 2019
- First Schedule 17 submissions for early works, Q2 2020

5. **Financial Considerations**

This section has been approved by the following member of the Financial Management Unit: Anya Murray

Service Level Agreements (SLA) are being developed with each local authority – pre and post Bill. These Service Level Agreements can be entered into irrespective of Qualifying or non-Qualifying Authority status. This is in recognition of the additional financial burden the work associated with processing Schedule 17 applications and attendance at Planning Forum would impose on authorities and is in accordance with the Department for Communities and Local Government's 'New burdens doctrine'.

The purpose of the SLA is to fully reimburse the affected planning authorities for the costs they incur. Importantly, this would extend to covering the additional work associated with Qualifying Authority status.

The SLA is clear on what is considered to be appropriate for payment. Work already undertaken by the Planning Manager attending Planning Forum Meetings and associated workload and also following a number of bespoke meetings with HS2 is already eligible to retrospectively claim back money.

The SLA will also extend to environmental health officers who will have an increase in workload relating to environmental matters during the construction phase. Appendix 2 sets out a draft SLA for East Staffordshire Borough and paragraph 9 provides details on the maximum daily rate that the Borough Council can claim.

The process of determining Schedule 17 applications therefore does not conform to the normal application fee charges. The SLA allows for officer time spent determining applications to be claimed.

There are no financial issues arising from this Report. The process of determining Schedule 17 applications is financially neutral regardless of whether Qualifying Authority status is sought.

At this stage, it is unclear what commitment and resource will actually be needed and this will be the subject of further reports if required.

6. **Risk Assessment and Management**

The main risks to this Report and the Council achieving its objectives are as follows:

Positive (Opportunities/Benefits):

- i. HS2 Phase 2a has the potential to unlock economic benefits cross the West Midlands.

Negative (Threats):

- ii. If the LPA were to remain as a non-qualifying authority they would have fewer controls over the quality of development coming forwards.
- iii. There is a risk associated with the failure to effectively determine the applications made.

The risks do not need to be entered in the Risk Register.

7. Legal Considerations

*This section has been approved by the following member of the Legal Team:
Sherrie Grant*

The Council has a legal responsibility to determine applications made in accordance with legislative requirements and processes. Amendments to part 3 of the Constitution will be necessary to ensure that the planning committee functions so they have the authority to determine the applications which shall be submitted once the bill has been passed.

8. Equalities and Health

Equality impacts: The subject of this Report is not a policy, strategy, function or service that is new or being revised

9. Human Rights

There are no Human Rights issues arising from this Report

10. Sustainability

(including climate change and change adaptation measures)

Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) N/A

11. Recommendation(s)

It is RECOMMENDED that the Council:

i) agrees to East Staffordshire Borough Council becoming a Qualifying Authority in relation to the HS2 Bill; and

ii) delegates authority to the Head of Services Sal Khan in consultation with the Cabinet Member for Regeneration and Planning Policy, to undertake all necessary steps required to become a Qualifying Authority, including the signing of the Planning Memorandum and Service Level Agreement.

12. Background Papers

N/A

13. Appendices

Appendix A: Breadth of Controls

Appendix B: Draft Planning Memorandum

Appendix C: Plans identifying the route of the Parkgate Proposal

Appendix D: Draft pre-Royal Assent SLA

Appendix A: Breadth of Controls

The following will gain permission through the Bill:

Schedule 1 works

- Described in the Bill
- works are the main works to be authorised by the Bill – locations identified on plans and sections which must be located within specific Limits of Deviation (LOD) for that work.

Schedule 2 works

- Not described in the Bill.
- works are the ancillary works.
- do not have specific locations identified on the Bill plans.
- Must be within the Limits of Land Used and Acquired (LLAU).

The hybrid Bill plans show and define the horizontal and vertical LOD for all schedule 1 works and the LLAU for the ancillary or schedule 2 works.

The following paragraphs outline the four main areas under which submissions will be received under Schedule 17 of the Bill and the different powers that Qualifying and Non-Qualifying Authorities have.

Approval of Design

A Qualifying Authority will be required to approve plans and specifications for matters such as:

- Building and road vehicle parks;
- Terracing;
- Cuttings;
- Embankments and other earthworks;
- Fences, walls or other barriers;
- Transformers;
- Telecommunications masts;
- Pedestrian access to the railway line;
- Artificial lighting;
- Waste and spoil disposal; and
- Borrow pits.

There are two broad areas under which applications may be conditioned or refused by Qualifying Authorities;

3. The design or external appearance of the works ought to be modified;
 - e) To reserve the local environment or local amenity;

- f) To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - g) To preserve a site of archaeological or historic interest or nature conservation value; and
 - h) Are reasonably capable of being so modified; OR
4. The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

Construction Controls

Qualifying Authorities will be able to enforce construction arrangements relating to:

- handling of re-useable spoil or topsoil;
- road transport;
- storage sites for construction materials, spoil or topsoil;
- construction camps;
- works screening;
- artificial lighting;
- dust suppression; and
- road mud control measures.

Qualifying Authorities will only be able to condition or refuse these submissions if:

1. The arrangements ought to be modified:
 - a. To reserve the local environment or local amenity;
 - b. To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - c. Are reasonably capable of being so modified.

Non-Qualifying Authorities will not have these powers.

Restoration of Construction Sites

These powers apply to all authorities (Qualifying and NON-qualifying) and require the nominated undertaker to apply for details to show how a site will be restored following its use for construction purposes.

Bringing into use

These powers apply only to Qualifying Authorities and require the nominated undertaker to apply for confirmation that any scheduled work or depot may be brought into use. Approval must be granted if there are no reasonably practicable measures which need to be taken for the purposes of mitigating the impacts of the work, or its operation, or if a mitigation scheme has been approved. There are also restrictions on whether a submission can be refused or conditioned.