

HS2 Draft Planning Memorandum – Decision on Qualifying Authority Status

Cabinet Member: Councillor A Lax and Councillor I Eadie

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Agenda Item: 5

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Key Decision? YES

Local Ward Members All Wards within Phase 2a of HS2 – Alrewas and Fradley, and Armitage with Handsacre, Colton and The Ridwares



CABINET

1. Executive Summary

- 1.1 The purpose of this report is to seek authority to sign the HS2 Planning Memorandum, the effect of which is that Lichfield District Council will become a 'Qualifying Authority' for the purposes of the High Speed Rail (West Midlands - Crewe) Bill (the Bill). Those authorities choosing qualifying status are given greater control over the detailed design and external appearance of buildings and structures along the route. In agreeing to these controls, qualifying authorities are required to handle requests for approval in an expeditious manner, and to ensure appropriate delegated authority and Committee procedures are in place.

2. Recommendations

- 2.1 That the Cabinet approves the signing of the Planning Memorandum to become a 'Qualifying Authority' for the purpose of the High Speed Rail (West Midlands - Crewe) Bill (the Bill).
- 2.2 That Council be requested to amend the Constitution to include the determination of all planning matters submitted under Schedule 17 (the Planning Conditions Schedule) of the Bill, in line with the current provisions that already exist for Phase 1 of HS2 matters under Schedule 17 of the High Speed Rail (London – West Midlands) Act 2017 as set out in the attached Appendix A.

3. Background

- 3.1 The Bill will grant planning permission for the construction of a high speed railway between the West Midlands and Crewe. The line would be built between a junction with Phase 1 of HS2, near Fradley Wood, and a junction with the West Coast Main Line, near Crewe. The permission will be subject to a number of conditions requiring the nominated undertaker (the party/parties who will construct the railway) to obtain the approval of Local Planning Authorities along the route for matters of detail, including the design of buildings and structures – such as bridges and tunnel portals.
- 3.2 The Bill gives each Local Planning Authority a choice between having a wide or narrow range of controls over the approval of such details. Local Authorities opting for a wider range of control are referred to as 'Qualifying Authorities.' The Council is already a Qualifying Authority for Phase 1 of HS2 which is planned to be built between London and the West Midlands. This was agreed by Cabinet and Full Council in 2017. At its meeting of 21st May 2019 there was a notice of motion for the leader to write to Government to request that all enabling works for HS2 in Lichfield District should be paused until the notice to proceed to main works contractors has been approved, and also that, as required by the Department of Transport, notice to proceed should not be given until management capability, affordability of contracts and robustness of revised business case have all been proven. The Council

see no reason why the District should suffer significant disruption and long term environmental destruction until detailed design and cost has been approved. The Council therefore asked that HS2 Ltd significantly improves the effectiveness of its community engagement with those impacted by the line.

3.3 Whilst it is noted that this request has been made, the Council needs to prepare for the current Bill for Phase 2a being enacted. It is therefore necessary for the Cabinet and Council to make a decision associated with the current Bill for Phase 2a and the requested involvement and status of the Council in determining detailed planning matters. Qualifying Authorities are responsible for issuing approvals in relation to the detailed design and appearance of buildings, structures and features of the scheme. Under Schedule 17 (the Planning Conditions Schedule), the nominated undertaker is required to submit requests for approval to Qualifying Authorities for the following:

- plans and specifications;
- construction arrangements;
- bringing into use; and
- site restoration schemes.

3.4 Similar to the grant of reserved matters approval following outline planning permission, the approval of these details does not extend to the principle of their construction, as they would be permitted by the Bill itself. Examples of typical buildings, structures and features include:

- Road vehicle parks;
- Bridges, viaducts and tunnel portals;
- Terracing; cuttings; embankments and other earthworks;
- Fences and walls;
- Transformers and Telecommunication masts;
- Site restoration;
- Pedestrian access to the railway line;
- Artificial lighting.

3.5 If the Council decided to be a non-qualifying authority, it would have a significantly reduced role, effectively losing control over the majority of buildings, structures and features being constructed within the District.

3.6 There are two grounds on which structures, buildings and features forming part of the railway may be refused or permitted, subject to conditions of a qualifying authority. These are:-

- i) That the design or external appearance of the works ought to be modified:
 - a) To preserve the local environment or local amenity,
 - b) To prevent or reduce prejudicial effects on road safety or the free flow of traffic in the local area, or
 - c) To preserve a site of archaeological or historic interest or nature conservation value,

And, in respect of which, the relevant aspect of the scheme is reasonably capable of being so modified.

- ii) That the development ought to, and could reasonably, be carried out elsewhere on land within the developments permitted limits. [*This aspect would only relate to development within especially sensitive areas, such as Historic Parks*].

- 3.7 In determining requests for approvals, it would only be appropriate to raise an objection to the detailed design of a particular building, structure or feature if the impact of that design would be very significant in the surrounding area, beyond that which might reasonably be expected to be part of the railway scheme.
- 3.8 It is important to note that the reduced level of control applying to 'non-qualifying authorities' only enables refusal in respect of reasons i(a) and ii above – all other matters would remain with HS2. Therefore, given the concern over HS2's impact on heritage assets and the local road network, it is important that the Council takes advantage of the available powers conferred on it becoming a Qualifying Authority. This would also be consistent with the approach taken on Phase 1 of the route.
- 3.9 Councils wishing to become 'Qualifying Authorities' are required to sign the 'Planning Memorandum.' This document sets out the rules of conduct and administrative arrangements for both the Local Planning Authorities and nominated undertaker leading up to and during the construction of the railway. Importantly, it requires the Council to commit to dealing with applications in an expeditious manner (i.e. within 8 weeks), and to being sufficiently resourced to do so. The applications are likely to be for relatively minor works, but could be substantial in number and frequency.
- 3.10 In view of the level of interest that is likely to be generated by the proposals that come forward; the possibility that numerous such applications will be submitted either at the same time or in short succession; and the need to ensure they are dealt with particularly expeditiously, there is a risk that the anticipated volume of work could have significant impact upon the capacity of the Planning Committee to consider these additional items within the required period.
- 3.11 For this reason, in relation to Phase 1, delegated authority was given to Senior Officers to determine approvals under Schedule 17 (the Planning Conditions Schedule) of the Bill, subject to conditions in which such approvals will be reported to the Planning Committee. The approach to Committee reporting reflected that of the existing process for determining planning applications, allowing Members the opportunity to 'call-in' such approvals – subject to specifying planning reasons. It is recommended that this approach is also taken for the consideration of Schedule 17 submissions for Phase 2a. This will require the necessary update of the wording of the scheme of delegation to include reference to HS2 Phase 2a.
- 3.12 It is anticipated that the Council will be reimbursed for the cost of dealing with the additional applications by way of a Service Level Agreement (SLA) between the Council and HS2. Discussions in this regard are anticipated to mirror arrangements that are already in place for Phase 1 where officer time is reimbursed by HS2 on a cost-recovery basis. Proposals will be reported back to Cabinet in due course for relevant authority to be given. From the work carried out to date on Phase 1 the officer resources committed to the consideration of planning proposals has involved 9 applications and attendance and relevant liaison meetings regarding this phase of the project. The application proposals have principally involved ecological enabling projects, such as the construction of ponds and the erection of a bat house. There are anticipated to be approximately 5 further applications for Phase 1 in the coming year. These are likely to include more significant infrastructure such as the erection of bridges and viaducts. To date, the time of both planning officers and specialists, such as the Council's ecologist, has been recovered in accordance with the existing Service Level Agreement. This has resulted in an income of approximately £5,000 to cover the cost of service provision in 2018.
- 3.13 The work carried out to date on Schedule 17 approval requests has been managed within existing staff resources. The scheduling work anticipated on Phase 2a projects will assist in the review of resources going forward. This will ensure that all planning application casework, including the HS2 approval requests, can move forward with appropriate resources without impacting upon our performance on determining planning applications. It is anticipated that any resource requirements are addressed from the SLA for the project when this is brought forward in due course.
- 3.14 In summary, becoming a Qualifying Authority involves a continued commitment by the Council to deal with applications appropriately and with agreed timetables, in return for greater control over a

wider range of matters than would otherwise be the case. It should be noted that prior to any submissions being made, the works to construct the railway will already have the equivalent of outline planning permission, and as such, the Council will only have the powers to consider the reserved matters (i.e. design and appearance) for specified buildings, structures and other features along the route. This will need to be clearly communicated to all stakeholders involved in the process, so there is a clear understanding of what the planning regime can influence and control at the local level.

Alternative Options	<ol style="list-style-type: none"> 1. The Council could decide not to take the opportunity to become a Qualifying Authority, but would relinquish those planning powers provided by Schedule 17 of the Bill, and in turn, reduce the influence it could have on managing and mitigating the physical impact of buildings, structures and features on the District's built and natural environment. 2. Should the Council not amend the Constitution it would have no delegated authority to determine Schedule 17 approvals – impacting on its ability to determine applications expeditiously within the required timeframes. Failure to meet those timeframes could result in the Council losing the additional powers of a Qualifying Authority.
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Consultation	<ol style="list-style-type: none"> 1. None.
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Financial Implications	<ol style="list-style-type: none"> 1. One of the objectives of the Service Level Agreement would be to ensure that the work undertaken by Council in determining these applications is fully reimbursed on a cost recovery basis.
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Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> 1. Becoming a Qualifying Authority will ensure that the Council has influence over the physical development of HS2 - seeking to preserve the historic, built and natural environment along its route and maintaining the District as a clean, green and welcoming place to live.
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 1. Becoming a qualifying authority will ensure the Council can engage with stakeholders in the process, thus enabling them to contribute and influence the decision making process in an open and transparent manner.
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Crime & Safety Issues	<ol style="list-style-type: none"> 1. There will be no impact upon our duty to prevent crime and disorder within the District (Section 17 of the Crime and Disorder Act, 1988).
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	Risk Description	How We Manage It	Severity of Risk (RYG)
A	The Council decides not to become a Qualifying Authority – reducing its ability to influence the physical development of HS2 and its impact upon the built and natural environment.	Clearly highlight the benefits of 'Qualifying Status' which can be delivered on a cost recovery basis through an agreed SLA.	Yellow. There could criticism from the community that the Council had failed to take the opportunities available to fully engage in the process of managing and mitigating the physical development of HS2.
B	The Constitution is not updated to ensure appropriate delegated powers are in place to handle applications within the required timescales.	Amend the Constitution at Full Council.	Yellow. Without appropriate delegated authority in place the Council runs the risk of losing powers conferred as a result of not being able to

			meet those challenging deadlines.
C	The ability to secure additional planning officer resource, should Phase 2a work be heavy leading to current staffing levels proving insufficient.	Engage with the developer through scheduling and pre-application stages and through having an appropriate Service Level Agreement in place to cover the cost of officer provision.	Yellow – Without appropriate planning officer resource in place there could be an impact on the delivery of the development management service for other customers.

Background documents

Relevant web links:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627556/E177_Draft_EMRS_Planning_Memorandum_WEB.pdf

Appendix A

CONSTITUTION

PART 3

SCHEME OF DELEGATION TO OFFICERS

APPENDIX A

SCHEME OF DELEGATION OF PLANNING DECISIONS

2.17 To determine all matters submitted under Schedule 17 (the Planning Conditions Schedule) of either the High Speed Rail (London-West Midlands) Act 2017 or the High Speed Rail (West Midlands – Crewe) Act 20xx, unless the application includes Council owned land or buildings; or a written call-in request is made by a Member which is in accordance with the HS2 Planning Memorandum proforma, which explains the planning reasons for the call-in. In relation to any application (Schedule 17 approval), which benefits from delegated authority to determine, if in the opinion of at least two of the following officers: Director of Place and Community; Head of Development Services, Planning Development Manager, and Principal Planning Officers, it is considered appropriate for the Planning Committee to determine the application, then the matter shall be reported accordingly.