

STREAMLINING THE PETITIONING NEGOTIATIONS PROCESS – Note from LB Camden, January 2016

Cllr Hayward London Borough of Camden: *“Through more than four years of negotiation, yesterday we agreed almost everything we had originally asked for. Huge sums of public money have been spent by ourselves and by HS2 to finally reach agreement yesterday. There has to be a better way of making these negotiations more efficient and better value for money in the future...”*

I would add to that that we are able to do this as a public authority that’s able to hire specialist staff, solicitors, barristers, etc. to help us make our case. Imagine that, then, with four years of uncertainty for our residents and businesses and I really think that this process must be streamlined in future, and perhaps it’s something that the committee could make recommendations to the relevant department or the new Infrastructure Commission to try and help negotiations.”

HS2 Select Committee Transcript 1st December 2015 at paragraphs 82 and 83

Background

The London Borough of Camden (LB Camden) responded to the Government’s first formal consultation on HS2 in July 2011 and included an outline of the mitigation measures that would be needed as a result of the scheme. From this point the Council continued to work up the detail of these mitigations which it is worth noting have not changed significantly since this initial response and are broadly the same as those agreed in the form of the assurances. During this time the leader of the Council has met with various Transport Secretaries and the Chief Executives of HS2 Ltd and Network Rail in an attempt to develop and agree the necessary mitigations.

LB Camden’s position has always been that despite its opposition to the scheme it wanted to work with HS2 Ltd in order to ensure that should HS2 go ahead, the impacts arising from the construction of HS2 were fully mitigated and the scheme was the best that it could be for Camden’s communities. It was agreed that Mitigation Working Groups would be set up in late 2012/early 2013 and they met on a monthly or bi-monthly basis from that point up until LB Camden’s appearance at Select Committee.

Despite these regular meetings the only major agreement that was reached with the Secretary of State (via negotiations with HS2) in advance of the intensive negotiations that began in the weeks leading up to Select Committee, was on replacement housing. The driver for the housing agreement was the required lead in time to plan and build the new homes in order for residents to move in advance of the demolition of their existing homes. Even then it was only finalised at the last possible moment, despite discussions taking place over 2.5 years. On other matters where there was no such time limit no agreements were reached until just before Select Committee.

LB Camden also worked with London and Continental Railways (LCR) and the DfT in order to enable Maria Fidelis to be consolidated onto one site away from the main construction site at Euston. HS2 Ltd. is not a party to this agreement.

Select Committee Request

At the request of the HS2 Select Committee, the following recommendations are made by the London Borough of Camden to make negotiations more efficient and better value for money and increase the potential to achieve outcomes that are mutually acceptable to both promoter and petitioner.

Recommendations for Streamlining the Negotiations Process

Recommendation	Detail
1) Learning lessons to improve the process for authorities in the next phase of the scheme	A review should be commissioned (with a call for evidence from a range of Petitioners including individuals, businesses and community groups) to focus on what the expectations of the negotiation process were and how it was delivered.
2) Work collaboratively	A greater emphasis should be placed on partnership working with all stakeholders in order to find a way forward via assurances as early as possible. This should happen in all cases, even where the stakeholder is opposed to the scheme in principle. In the case of Local Authorities, discussions should be approached less as commercial negotiations and more as two public sector bodies working collaboratively to achieve the best outcomes e.g. LB Camden would only receive information from HS2 Ltd. on various aspects of the scheme once they were finalised and made public, despite the wealth of local information available that could have fed into and helpfully shaped the scheme and appropriate mitigations.
3) Draw on the knowledge of the Local Authority	A number of the points raised by individual petitioners could have been addressed by more effective working with local authorities to resolve the broad issues regarding construction impacts (which have been informed via conversations with local communities). This is likely to have led to a number of individual petitioners being reassured that their issues were being addressed and may have saved the Select Committee time by not petitioning themselves.
4) Establish a shared set of objectives	While understanding that, by its very nature, there are going to be points of disagreement, there were issues, such as the habitability of properties that HS2 Ltd refused to recognise was a problem in advance of the Select Committee process, repeatedly referring to EiA legislation and the individual mitigations proposed. A matter of weeks before Select Committee HS2 Ltd recognised the need to assess and mitigate the impacts on a much wider range of properties than those identified in the ES. Had HS2 Ltd given these assurances earlier, the additional time could have been used to plan and install mitigation measures in a measured way rather than having to rush to complete the work in the limited amount of time now available before construction begins. This would also have saved a significant amount of money.
5) Broaden the scope of the Nominated Undertaker	HS2 Ltd. approached the discussions with a narrow focus which was led by the cost of engineering considerations and meeting EiA requirements. They were unwilling to engage with LB Camden when broader concerns were raised that proposals did not address the impacts of the scheme. Because of this difference in approach it was not possible to agree objectives and therefore discussions (through the mitigation working groups) progressed in an unplanned and ad hoc fashion. It is difficult to say whether this was because of the scope of the brief they were asked to deliver or because of the culture of the organisation.
6) Adopt a solution focused approach to negotiations	All parties should take time to understand differing perspectives and maintain an outcome based view; to avoid a narrow perspective (such as focusing on engineering issues to the exclusion of their broad impact on the community).
7) Establish a clear structure and timetable for negotiations	The lack of commitment to respond to mitigation asks resulted in discussions playing out over an extended period arguably to no purpose, with a lack of communication from HS2 Ltd and DfT about what was happening and when. All important decisions were taken in the final few weeks before the appearance at

	<p>Select Committee. A clear understanding on when decisions could be taken and advance agreement on timelines for responding to asks and requests for information would have made it easier to plan resources. The game of “chicken” was played too hard by HS2 Ltd. with concessions being made at the very last minute when it finally registered that the Council was fully intending to appear before Select Committee. It is unclear why agreement on matters such as the Construction Skills Centre were so drawn out as it is clear they could have been agreed much earlier in the process.</p>
8) Active case management	<p>It may be helpful for the Select Committee (or some other independent body) to become involved in more active case management. Directions could be given, and might include (in more significant cases) earlier exchange of evidence and a requirement to make offers of assurances to petitioners within a given timescale.</p>
9) Ensure the right people are involved with the appropriate brief	<p>Decisions can be held up because of a lack of authority/ desire to make funding commitments or to take particular decisions. This became particularly evident as more senior people only engaged in meaningful negotiations immediately before Select Committee. We understand the pressures they were under, but had there been more people of equivalent seniority actively seeking agreement with petitioners earlier then there would have been less of a last minute push.</p>
10) Give the Promoters Response Document (PRD) a more meaningful role	<p>The PRD as received was vague and as such was unhelpful in leading to a resolution. It would be more constructive for the PRD to set out any offers made by the promoter in response to petitioning points raised. In practice letters setting out the proposed offers were only provided in the days leading up to the Council’s Select Committee appearance. It would also be helpful if the responses where no offer was made were less generic and addressed the particular issues more specifically.</p> <p>Earlier receipt of the PRD would also be welcomed and in that regard it could be used as a case management tool</p>
11) Provide ex gratia payments for petitioners	<p>Whilst recognising that the Select Committee is bound by the Parliamentary Costs Act 2006, the Select Committee could recommend reimbursement of petitioner costs if after hearing evidence it is of the view that the Promoter should have been reasonably expected to provide an assurance on a particular issue at an earlier point in the process.</p> <p>Given the complexity of the process as a whole we would suggest an independent advisory body is established ahead of the next Hybrid Bill and resources to support communities are considered by this organisation.</p>
12) Ensure proper engagement and consultation on the draft CoCP and LEMP	<p>A number of petitions were lodged in relation to issues addressed in the CoCP and LEMP which could have been avoided with more effective engagement beforehand, including properly considering and addressing comments provided.</p>