

Mike Cooke
Chief Executive
London Borough of Camden
Camden Town Hall
Judd Street
WC1H 9JE

4 February 2016

Dear Mike

**High Speed Rail (London – West Midlands) Bill
Petition No.0184, AP20142, AP3072 London Borough of Camden – Assurances regarding construction
noise and vibration and section 61 consents**

I am the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (London – West Midlands) Bill ('the Bill') currently before Parliament. Further to the letter of 3 December I am writing to you on behalf of the Secretary of State for Transport to set out the assurances that the Secretary of State is willing to give in order to address some of the concerns expressed by the London Borough of Camden (the Borough) regarding the impact of Phase One of HS2 (known as 'the Proposed Scheme').

With reference to the above petitions the Promoter and the Borough have engaged extensively through the HS2 Local Authorities Noise Consortium ('LANC') in order to resolve the objections raised by the Borough. This engagement has highlighted a number of issues and HS2 is able to offer assurances and explanation regarding the following areas – the details of which are provided in detail in this letter:

1. HS2 LANC statement of Expectation
2. Information Paper E23: Control of construction noise and vibration
3. Development of HS2 Noise Insulation and Temporary Relhousing policy (NITR)
4. Process for implementation/complaints about the HS2 NITR
5. s.61 Control of Pollution Act 1974 consents
6. Other changes to the CoCP

1. HS2 LANC statement of Expectation

HS2 LANC have recently shared a statement of expectation which sets out matters on which the LANC members wish to engage with the Nominated Undertaker. HS2 LANC has stated that this engagement is only where applicable to the works that are relevant to the individual Local Authority concerned, and where such a requirement for that engagement has been confirmed by that Authority. HS2 Ltd has welcomed this document and looks forward to engaging with Local Authorities on these matters.

The Promoter has already committed to discussing these measures further with all local authorities to determine how best these suggested standards may be incorporated into the process. Assurance 5.2

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(below) also commits that HS2 lead contractors will engage early with local authorities on their proposed construction design and BPM so that local authorities can understand and comment on the measures proposed prior to the contractor making a s.61 application.

The Promoter is willing to offer the following assurance in this regard:

1.1 The Promoter will ensure that the Nominated Undertaker and its contractors will have regard to the Statement Of Expectations (SOE) submitted to Select Committee on 2 December 2015 by the HS2 Local Authorities Noise Consortium, or updated or amended versions as agreed by the Nominated Undertaker and the relevant local authority, in the preparation of applications under s.61 of the Control of Pollution Act 1974 and the engagement with the relevant local authority prior to these applications where:

- a local authority has indicated in writing to the Nominated Undertaker that it would like the Nominated Undertaker and its contractors to have regard to the relevant version of the Statement of Expectation; and*
- insofar as any of the measures identified in SOE are relevant and proportionate to the application in question.*

2. Information Paper E23: Control of construction noise and vibration

The Promoter and HS2 LANC have engaged positively on HS2's route-wide construction noise and vibration policy as currently set out in Information Paper E23 ('IP E23') 'Control of Construction Noise'. Through meetings with HS2 LANC a number of questions and issues were raised about the wording of this policy. As a result of this engagement HS2 Ltd has revised Information Paper E23 as set out below.

Information Paper E23 now includes commitments to apply the relevant aims of the Noise Policy Statement for England to the Lowest Adverse Observed Adverse Effect Levels (LOAEL) and Significant Observed Adverse Effect Levels (SOAEL) previously set by the Promoter. This means the Promoter will take all reasonable steps to minimise noise and, where this is not possible, offers of noise insulation or temporary rehousing will be considered. E23 clarifies that the LOAELs and SOAELs provided do not prejudice local authorities with respect to s.61 consents, local authority controls under CoPA ss.60 and 61 will apply as normal.

The Promoter has also recognised that tonal and impulsive noise can be disturbing and may result from some of its construction activities. As a result, the Promoter has updated IP E23 to ensure that such noise characteristics are considered when identifying the reasonable steps which can be taken to minimise construction noise and vibration.

The Promoter also accepts that there may be special cases which it will need to consider when applying the Noise Insulation and Temporary Rehousing policy as set out in Appendix B of IP E23. As a result of discussions with the Borough, the Promoter has now included specific criteria which will be used to identify residents who will be offered temporary rehousing as a result of being exposed to significant levels of construction related ground-borne noise and vibration. The Promoter has also committed to liaising with local authorities to identify further criteria which could be applied to identifying other residential special cases, such as night-workers or those with medical conditions that may be seriously aggravated by construction noise, regarding noise insulation and temporary rehousing.

HS2 LANC have asked for a further amendment to paragraph 3.6 of IP E23 to clarify that local authority controls under CoPA 1974 are not prejudiced by the LOAELs and SOAELs set out in E23. The Promoter agrees that the wording will be updated to the following in response to this concern:

“The Lowest Observed Adverse Effect Levels and Significant Observed Adverse Effect Levels presented in Tables 1 and 3 of Appendix A do not prejudice local authorities’ powers and obligations under Sections 60 and 61 of the Control of Pollution Act 1974. In particular, in determining an application by the Nominated Undertaker or his contractors for a consent under Section 61 of the Control of Pollution Act 1974, a Local Authority will remain under an obligation to have regard to the need for ensuring that the Best Practicable Means are employed to minimise noise, notwithstanding any declared Lowest Observed Adverse Effect Levels and Significant Observed Adverse Effect Levels presented in this Information Paper.”

HS2 LANC have also requested that amendments are made to paragraphs 3.1 and 3.2 which sets out the Nominated Undertaker’s responsibilities with respect to the LOAELs and SOAELs contained in E23. The Promoter does not accept the need for these changes. As stated in paragraph 3.6, paragraphs 3.1 and 3.2 do not restrict a local authority’s controls under CoPA and instead offer complimentary assurances that reflect the Noise Policy Statement for England.

In respect of the technical references in paragraph 20 of Appendix A of E23 the Promoter is willing to offer the following assurance:

2.1 The Promoter will ensure that the technical references listed in Paragraph 20, Appendix A of Information Paper E23, and any consequent changes to the numerical values or noise and vibration indicators in Tables 2 and 4 of Appendix A of Information Paper E23, will be updated to the corresponding published versions current at the time of Royal Assent.

Other minor amendments have been made based on further discussion with HS2 LANC. The Promoter will keep IP E23 under review and update as necessary prior to Royal Assent.

3. Development of HS2 Noise Insulation and Temporary Rehousing policy (NITR)

HS2 Ltd has indicated at meetings with LANC that it’s policy on NITR, currently set out in Appendix B of E23, will be developed further as the Bill moves towards Royal Assent. HS2 LANC have recognised this, and have asked for assurance that the project will continue to develop its NITR policy with local authorities.

Paragraph 13.2.14 of the draft Code of Construction Practice (CoCP) states that:

“The nominated undertaker will develop and seek to agree with local authorities a noise insulation and temporary re-housing policy that will set out all roles, responsibilities and actions required in respect of these measures.”

The Promoter confirms that this will be the case and advises that this further development is expected to take place through the Environmental Health sub-group of the Planning Forum (or a relevant equivalent).

HS2 LANC have questioned whether HS2’s noise insulation package, provided under the NITR policy, will be compliant with relevant Building Regulations. HS2 Ltd is able to clarify that the Bill does not disapply the Building Regulations 2010 for the installation of noise insulation and associated mechanical ventilators to residential buildings. The noise insulation package will therefore comply with these regulations as far as is already required by law. Ventilation to be installed by the Nominated Undertaker will be consistent with the specifications in the Noise Insulation Regulations. As stated above, the NITR policy, which includes the noise insulation package, will be discussed with local authorities and further developed as appropriate.

When offering temporary re-housing to residents, the Promoter recognises that residents may incur costs in addition to the temporary accommodation, but has not set out in IP E23 how these additional costs will be considered. It has been raised through HS2 LANC that the policies of other projects stipulate these compensatory items in more detail. The Promoter is willing to offer the following assurance in this regard:

- 3.1 The Promoter will require the Nominated Undertaker to develop its policy of temporary rehousing to include measures to compensate for, or otherwise fund, the reasonable costs directly caused by being temporarily rehoused. Such measures to be incorporated in the Noise Insulation and Temporary Rehousing policy currently outlined in Appendix B of information paper E23 by Royal Assent. Reasonable costs are expected to include, where appropriate and without prejudice to generality of meaning, the cost of:*
- a. Appropriate temporary alternative accommodation*
 - b. Removals*
 - c. Storage and insurance of personal effects*
 - d. Insurance for vacated properties during any period of temporary rehousing*
 - e. Kennelling and/or catteries for pets*
 - f. Disconnection/ re-connection of utilities*

4. Process for implementation of/complaints about the HS2 NITR

HS2 LANC have commended the complaints/advisory service offered by Thames Tideway which has a role in reviewing and deciding upon the noise insulation provided to occupiers (which is part of a wider 'Trigger Action Plan'). HS2 LANC have questioned why HS2's process is different. It is understood that Thames Tideway instigated such a system of independent review as there was concern that there was no regulatory oversight of its policies with respect to noise insulation. The Promoter would like to emphasise that the NITR will form part of the Environmental Minimum Requirements (EMRs) for HS2. The Nominated Undertaker will be directly responsible to the Secretary of State for Transport for implementing its policies and complying with these Environmental Minimum Requirements. Any perceived failure to do so can be reported to the Secretary of State who can take action to enforce the requirements Parliament will have approved at Royal Assent. The Promoter therefore considers that the Nominated Undertaker is best placed to implement its own policy, reporting directly to the Secretary of State for any breaches in its EMRs.

HS2 LANC have also raised the importance of an independent body which can handle disputes arising from the noise insulation policy, in situations where the EMRs have not been breached. The Promoter recognises the value and importance of an independent mediator who can provide clear and impartial guidance in a dispute between the Nominated Undertaker and an individual or body impacted by the construction of HS2. For this reason, following the example of the Channel Tunnel Rail Link and Crossrail, HS2 will have an independent Construction Commissioner in place during its construction period (previously referred to as a 'Complaints Commissioner'). The Construction Commissioner will be appointed and monitored by an independent body, made up of a diverse range of stakeholders involved with HS2. While this independent body will set the exact terms of reference for the role, it is intended that the Construction Commissioner will mediate in disputes over the application of HS2 policy – including the provision of noise insulation or temporary rehousing packages – where a complaint has been raised by an individual or body.

Information paper G3: Complaints Commissioner sets out that "If someone is unhappy with any aspect of Phase One's construction, the first step would be to complain to the nominated undertaker. If the complainant feels that the complaint has not been satisfactorily addressed through the normal procedure, they can put their case to the Complaints Commissioner." In this event the Commissioner is expected to "mediate in unresolved disputes between the project and individuals or bodies."

It is envisaged that, if an occupier of a property is dissatisfied with the service they have received under the NITR, they will be able to escalate issues to the Construction Commissioner, after having appealed to the decision-maker (Nominated Undertaker). This process mirrors that currently suggested by Thames Tideway. The HS2 Construction Commissioner is expected to mediate in the matter, taking independent expert advice if necessary, in order to make a recommendation to the project. If the occupier is dissatisfied with the Construction Commissioner's recommendation, or the Nominated Undertaker refuses to implement it, the occupier can request that their MP raise the matter with the Parliamentary Health and Service Ombudsman who will undertake a further, independent review. In cases where the EMRs have been breached, as stated above, matters can be raised with the Secretary of State for Transport irrespective of this process.

On previous projects the role of Construction (or 'Complaints') Commissioner has proved to be an effective system for resolving disputes between the project and its stakeholders, raising awareness of the complaints process amongst those impacted by construction and identifying ways in which a project can improve its services and reduce the complaints it receives. The Promoter is confident that this process will ensure that affected stakeholders have a robust means of recourse against the project if they are dissatisfied with the application of its noise insulation policy. HS2 Ltd is committed to developing the NITR with local authorities through the Planning Forum and is happy to discuss ways in which this can best fit with the Construction Commissioner process.

HS2 LANC have also raised the need for transparent, open advice on the HS2 NITR policy. The Promoter recognises the value of this and the importance of such advice being trusted in the community. The Promoter is therefore willing to offer the following assurance:

4.1 The Promoter will actively engage with HS2LANC on the provision of advice to the public in relation to eligibility and application of the construction noise and vibration mitigation package. Such considerations will include but not be limited to an independent advisory service. The Promoter will progress the engagement and will report back to the House of Commons Select Committee on progress, and in any event will aim to conclude considerations by the time the Bill reaches the House of Lords.

5. s.61 Control of Pollution Act 1974 consents

There has also been positive engagement with HS2 LANC, relating to the procedures which shall be put in place for the preparation and processing of prior consent applications under Section 61 of the Control of Pollution Act 1974, including the identification of Best Practicable Means ('BPM').

As stated above, the HS2 CoCP will require HS2 contractors to implement BPM during construction works to minimise noise at residential properties and other sensitive receptors. Contractors will also seek local authority consent under s.61 CoPA 1974.

HS2 LANC have raised several concerns about this process including questions the information that will be provided and engagement that will take place before s.61 applications are made. These concerns related to whether HS2 contractors would seek to engage with local authorities on their intended s.61 applications and allow local authorities to review a draft before having to make a decision on a formal application as well as how HS2 would seek to involve neighbouring authorities who may experience noise impacts from works outside their area. Further concerns were raised over the BPM that the project would consider and how early this would be shared with local authorities as construction plans develop.

HS2 Ltd has found these meetings to be of benefit in highlighting these concerns and identifying means by which the Nominated Undertaker and their contractors can work with local authorities to ensure the s.61 process moves smoothly.

The Promoter is therefore willing to offer the following assurances to answer these concerns:

5.1 The Secretary of State will incorporate the following text into the draft Code of Construction Practice in substantially the form in which they appear below and the draft Code of Construction Practice will not be further revised so as to make these commitments less onerous on the Nominated Undertaker than the text below.

5.1.1 "The contractor will be required to undertake early engagement with the relevant local authority on Section 61 matters. Where reasonably practicable, a draft version of any Section 61 application shall be submitted in advance of the submission of the final version to allow the relevant Local Authority sufficient time to review and comment."

5.1.2 "Where works that are to take place in one local authority area are predicted to give rise to noise that could cause disturbance in a neighbouring local authority area, the Section 61 application will be made to the authority within which the construction activities are located and include a noise assessment carried out at locations that represent all neighbouring noise-sensitive receptors, and with a copy sent to the relevant neighbouring local authority or authorities."

5.2 The Promoter will require the Nominated Undertaker and its contractors to use reasonable endeavours to engage with relevant local authorities, as early as is reasonably practicable after each lead contractor is appointed, in a series of regular meetings leading up to, and during, the works that will be carried out under the relevant contract for construction of HS2 in a local authority area. Without prejudice to what may or may not be included in such meetings, it is envisaged that initially these meetings will focus on sharing information relating to the local authority area as to the forward programme of design activities, s.61 submissions under the Control of Pollution Act 1974 and subsequent construction works. As early as is reasonably practicable, the Nominated Undertaker and its lead contractors shall use such meetings to share the intended construction plan for works in the relevant local authority area and the Best Practicable Means (BPM) planned for these works at that stage of design. These meetings shall then be used to update the local authority as to the development of construction plans and BPM with a view to expediting the consent process under s.61 Control of Pollution Act 1974.

It is understood that these commitments are welcomed by HS2 LANC.

6. Other Changes to the CoCP

HS2 LANC also requested an amendment made to the CoCP regarding excavated material removed by rail. The Promoter is willing to offer the following assurance in relation to this request:

6.1 The Secretary of State will incorporate the following text into the draft Code of Construction Practice in substantially the form in which they appear below and the draft Code of Construction Practice will not be further revised so as to make these commitments less onerous on the Nominated Undertaker than the text below.

6.1.1. "The Nominated Undertaker will explore options for maximising, in so far as reasonably practicable and within existing Bill powers, the volume of excavated material removed by rail

whilst balancing the wider environmental impacts to the local community with the impact on rail passenger services."

These assurances are offered on the basis that they reflect the entirety of the Borough's remaining concerns on this issue and that they will not be appearing in the House of Commons on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to be 'RH', with a long horizontal flourish extending to the right.

Roger Hargreaves
Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

