

Mike Cooke  
Chief Executive  
London Borough of Camden  
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4 February 2016

**By email only**

Dear Mr Cooke

**High Speed Rail (London – West Midlands) Bill**

**Petition No.0184, AP20142, AP3072 London Borough of Camden – Assurances regarding planning matters**

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. 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), as lead local authority on planning regime matters associated with Schedule 16 of the Bill.

With reference to the above the Promoter and the Borough have engaged extensively and sought to resolve the objections raised by the Borough, as lead local authority. As a result of this engagement HS2 is able to offer the assurances in the following areas – the details of which are provided in detail in this letter, along with clarification on a number of additional points raised:

**Assurances:**

1. Agreeing conditions – para. 2(7)(a) and para. 3(7)(a), Schedule 16
2. Time period for submission of detail of restoration scheme – para. 12(3), Schedule 16
3. Time period for determination of Schedule 16 requests for approval
4. Class approval – para. 4 and para. 5, Schedule 16

**Clarifications:**

1. Non – scheduled Works - Clause 19 (2) of the Bill
2. Non – scheduled Works - Clause 20 (1) of the Bill
3. Switching off Act powers – clause 21 of the Bill
4. Grounds for refusal of building details – para. 2(5)(a), Schedule 16
5. Temporary buildings – para. 2(9), Schedule 16
6. Road transport – para. 6(4), Schedule 16
7. Bringing into Use – para. 9, Schedule 16
8. Forward programme
9. Best endeavours – Planning Memorandum
10. Consultation on requests for approval – para. 18, Schedule 16

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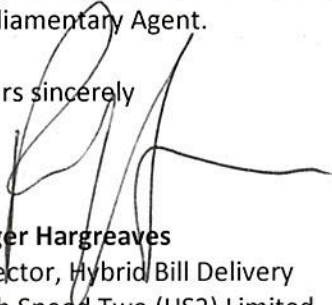
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11. Directions restricting powers of approval – para. 19, Schedule 16
12. Compulsory reference of requests for approval – para 20 (1), Schedule 16
13. Appeals procedure – para. 25(2), Schedule 16

These assurances are provided on the understanding that they reflect the entirety of the Borough, as lead local authority, concerns on planning matters associated with Schedule 16 of the Bill.

I have copied this letter to Alistair Lewis (Sharpe Pritchard), who I understand is acting as your appointed Parliamentary Agent.

Yours sincerely



**Roger Hargreaves**

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

cc. Alastair Lewis (Sharpe Pritchard) [alewis@sharpepritchard.co.uk](mailto:alewis@sharpepritchard.co.uk)

## **1. Agreeing conditions – para. 2(7)(a) and 3(7)(a), Schedule 16**

The Crossrail Act 2008 included an equivalent provision in sub-paragraph 7(5) of Schedule 7 to the Act, which put in place the process for the approval of 'construction arrangements' including agreeing conditions. This provision did not in any way limit the planning authority controls as the grounds on which a planning authority could seek to impose a condition remained, as these were set out in the table in paragraph 7 of that Schedule. The purpose of the requirement was to avoid ultra vires or unreasonable conditions being imposed on the approvals. Had the nominated undertaker not agreed to a condition that was within the scope of Schedule 7 then the planning authority could have refused the request for approval. In no instance did a Crossrail planning authority refuse a request for approval because the nominated undertaker would not agree a condition. Under the Crossrail Act 2008 there was not a requirement for conditions on the approval of plans and specifications to be agreed with the nominated undertaker. Under the Crossrail Act 2008 there was not a requirement for conditions on the approval of plans and specifications to be agreed with the nominated undertaker.

We recognise the planning authorities' concern with regard to agreeing conditions on plans and specifications approvals under Schedule 16 of the Bill and as such the Promoter is therefore willing to offer the following assurance:

*1.1 The Secretary of State will remove para. 2(7)(a) and para. (3)(7)(a) of Schedule 16 of the Bill.*

## **2. Time period for submission of detail of restoration scheme – para. 12(3), Schedule 16**

Schedule 16, para. 12 states that the nominated undertaker must after the discontinuation of the use of any site for carrying out operations ancillary to the construction of any scheduled works, restore the site in accordance with a scheme agreed with the relevant planning authority.

Schedule 16, para. 11 provides for the operations to be discontinued as soon as reasonably practicable after the completion of the scheduled work. It may not always be practical to submit a restoration scheme before construction has finished. The suggestion that site restoration schemes are agreed prior to the occupation of sites is impractical as at the time of occupation in most instances the detailed design will not be finalised and hence it would not be possible to agree restoration schemes.

The nominated undertaker will use reasonable endeavours to submit a site restoration scheme, for the agreement of the qualifying authority, prior to the discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works.

In agreeing the site restoration scheme the planning authority can request a time limit for the site restoration, and in this way each scheme can be considered on a case by case basis rather than imposing a standard time limit along the entire route.

To address the planning authorities' concern, the Promoter is willing to offer the following assurance:

*2.1 The Secretary of State will require the Promoter to include additional text in the Planning Memorandum to state:*

*'The nominated undertaker will use reasonable endeavours to submit a site restoration scheme, for the agreement of the qualifying authority, prior to the discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works.'*



### **3. Time period for determination of Schedule 16 requests for approval**

To clarify, Clause 19 of the Bill will grant deemed planning permission for the works authorised by it. This deemed planning permission is subject to the conditions in Schedule 16 to the Bill which require certain approvals be obtained from the relevant planning authority. Schedule 16 does not seek to create an alternative regime for the granting of planning permission, as planning permission for the relevant works will have been deemed at Royal Assent. Rather, Schedule 16 puts in place a process for the approval of certain details analogous to the discharge of a condition under the Town and Country Planning Act or a prior approval under Part 11 of the General Permitted Development Order. As the planning authority will be approving certain details of development which has already planning permission rather than considering an application for planning permission, eight weeks is an appropriate determination period.

Further to this the Draft Planning Memorandum, the requirements which will apply should the planning authority opt to become a 'Qualifying Authority' under Part 2 of Schedule 16, puts in place an obligation on the nominated undertaker to take certain actions to assist the planning authority with the determination of requests for approval under Schedule 16. These include engaging in pre-submission consultation, providing a forward plan of requests, and assisting with consultation. In their role as a planning authority under the Town and Country Planning Act, the planning authorities determine planning applications in eight weeks including proposals subject to consultation, and where appropriate, consideration by its planning committee.

Para. 12(5)(b) of Schedule 16 allows for the eight week determination period to be extended when agreed by the nominated undertaker and the relevant planning authority. Therefore, if there are circumstances which reasonably prevent making a determination in eight weeks then there is a process to extend the determination period. It is not appropriate to agree from the outset certain planning submissions for which the time period for determination will be extended, as the presumption should be to determine within the appropriate period rather than aim to fail to meet the obligations.

The equivalent provisions of the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008 both had a determination period of eight weeks and these regimes operated effectively and resulted in the projects delivering high quality design.

If the content of requests for approvals, as set out in the relevant Planning Forum Note (to be developed by Planning Forum - agenda item Q.1 2016) is not provided, then an extended determination period will be agreed between the qualifying authority and the Nominated Undertaker in accordance with Schedule 16 section 22, para. (4).

There are existing commitments for the nominated undertaker to assist planning authorities in determining requests for approval in Information Papers and in the Draft Planning Memorandum.

Information Paper C13 *Local authority funding and new burdens arising from HS2* sets out the Promoter's position in relation to funding resources. The draft Service Level Agreement has been circulated to planning authorities, and meetings with each planning authority are being scheduled to discuss.

With regard to supporting planning authorities to meet their obligations in determining requests for approval, the Promoter is willing to offer the following assurances to address planning authorities' concerns:

#### *3.1 The Secretary of State will require the Promoter to amend or include additional text in the Planning Memorandum, as follows:*

- *Additional text at para. 1.1.2 will state: The nominated undertaker will work with qualifying authorities to support the determination of requests for approval, which will include early and constructive engagement, in accordance with the obligations set out in this Memorandum.*



- *Para. 7.5.1 will be amended to state: To facilitate effective consultation and ensure requests for approval are determined within the timetable referred to above, the nominated undertaker shall engage in proportionate forward discussions about prospective requests for approval with the qualifying authority and statutory consultees. Forward discussions will, as relevant, include design development, submission dates and planning committee cycles.*
- *Para. 7.5.2 will be amended to state: In order to assist qualifying authorities in their resource planning, the nominated undertaker will every quarter provide a forward plan of requests for approval anticipated in the next six months. The nominated undertaker will provide information to Planning Forum, prior to Royal Assent, on the programming of submissions, so far as reasonably practicable.*
- *Para. 7.6.2 will be amended to state: Prior to an authority being disqualified the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker.*
- *Additional text at para. 7.3.1 to state: If the content of requests for approvals, as set out in the relevant Planning Forum Note is not provided, then an extended determination period will be agreed between the qualifying authority and the Nominated Undertaker in accordance with Schedule 16 section 22, para. (4).*
- *Paragraph 7.3.1. will be amended to substitute the words 'reasonable endeavours' for 'its best endeavours'.*

#### **4. Class approval – para. 4 – 5, Schedule 16**

Construction arrangements are described in para. 4 of Schedule 16 as matters ancillary to development. Apart from construction camps, this are in effect the approval of environmental control measures for the matters identified.

Under Schedule 7 of the Crossrail Act, Crossrail submitted individual planning submissions for generic construction arrangements for each site several times. This essentially involved copying text for the relevant topic from the Crossrail Construction Code. As a result Crossrail prepared submissions of identical construction arrangements along the line of route, for qualifying authority approval. Each qualifying authority was approving identical submissions for the generic matters many times. The same approach was taken for the approval of the similar matters under Schedule 6 to the Channel Tunnel Rail Link Act.

The purpose of including the provision for the Secretary of State to make a class approval is to streamline the construction arrangements approval process, which is of benefit to qualifying authorities and the nominated undertaker in terms of efficiency savings. The making of a class approval does not affect any of the qualifying authority's powers and controls that they would otherwise have. The qualifying authority will retain the ability to take planning enforcement action with respect to the arrangements approved by the Class Approval.

On Royal Assent the Code of Construction Practice will be finalised, and it is this version of the Code of Construction Practice, that will inform the preparation of the class approval made by the Secretary of State following consultation with the planning authorities. The extensive consultation that has taken place, and will continue, on the Code of Construction Practice will ensure the correct controls are put in place.

The Promoter is willing to offer the following assurance to address the planning authorities' concern:

*4.1 The Secretary of State will require the Promoter to include additional text in the Planning Memorandum, at paragraph 6 Class Approvals to state that 'Generic measures approved under a Class Approval will be subject to the same planning authority enforcement processes as would apply to construction arrangements approved under para. 4 of Schedule 16.'*



## **Clarifications:**

### **1.Non – scheduled Works - Clause 19 (2) of the Bill**

Non-scheduled Works are identified in clause 2 and Part 1 Schedule 2 to the Bill, and broadly, are those works required for the purposes of or in connection with the Scheduled Works, listed in Schedule 1 of the Bill. Non-scheduled works can be temporary or permanent works and can mostly only be undertaken within Act limits. The one exception to this is works for the support of buildings which can take place within the relevant distances set out in paragraph 6(1) of Schedule 2 to the Bill.

Clause 19 (3) of the Bill states that Schedule 16 imposes conditions on the deemed planning permission which is granted by clause 19 (1). Schedule 16 applies equally to both Scheduled Works and Non-scheduled Works, in that planning authorities approve the design (plans and specifications) of each work, in accordance with the grounds set out in Schedule 16. Clause 19 (2) of the Bill ensures that the deemed planning permission and Schedule 16 only applies to Non-scheduled Works if they have been assessed as part of the preparation of the HS2 Environmental Statement, and subsequent Supplementary Environmental Statements, are not likely to result in significant environmental effects, and are not exempt development under EIA Regulations.

To note that one of the grounds identified in Schedule 16 para. (5)(b) is that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits. Given Non-Scheduled Works can be undertaken anywhere within Act limits (subject to the provisions of clause 19(2)), this ground enables the planning authority to refuse the detailed design of a Non-scheduled Work if the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

Clause 19 (1) and (3) applies to both Scheduled and Non-scheduled Works, that is the deemed planning permission and Schedule 16 approvals process applies to both. Schedule 16 only differentiates between the two types of work, at para. (9)(2) related to the bringing into use of certain scheduled works.

Clause 47 of the Bill provides for compulsory acquisition of land for regeneration or relocation, and should be read in conjunction with Information Paper C11 *Regeneration Compulsory Purchase Policy and Over Site Development*. Any development proposals for sites compulsorily purchased under clause 47 would be subject to planning approval processes under the Town and Country Planning Act.

### **2.Non – scheduled Works - Clause 20 (1) of the Bill**

Although taken literally, this clause only applies to Scheduled Works, in practice it does apply to Non-scheduled Works too, as by their very nature they can only be carried out for the purposes of or in connection with the Scheduled Works.

### **3.Switching off Act powers – Clause 21 of the Bill**

Clause 21 (1) of the Bill provides the ability for the Secretary of State (SoS) to switch off the deemed planning permission granted by Clause 19.

If the deemed planning permission is not switched off by the SoS, then the planning authority will continue to have an approving role under Schedule 16. When the SoS does switch off the deemed planning permission, maintenance of the railway will be undertaken under permitted development rights.

### **4.Grounds for refusal of building details – para. 2(5)(a), Schedule 16**

The grounds set out in Schedule 16 para. 2(5)(a) provide for a qualifying authority to refuse to approve plans and specifications on grounds that include the design or external appearance ought to be modified to preserve the local environment or local amenity, or to prevent or reduce prejudicial effects on road safety



or on the free flow of traffic in the local area. The 'design' referred to at para. 2(5)(a) includes internal design.

With regard to expanding grounds under para. (2)(5)(a) to include compatibility with over site development and Network Rail proposals at Euston, given that there are no committed schemes for over site development, at any of the proposed locations for HS2 stations it is difficult to understand how this would work in practice. To date the provision of infrastructure within the Bill, to facilitate future over site development has been subject of discussion with DfT, HS2 Ltd and the relevant planning authority. Ultimately it will be a commercial decision as to the viability of over site development and to what extent the station design can facilitate future development, for example supporting column strength, decking etc. If this was to be included as a ground in Schedule 16, with no committed scheme to demonstrate compatibility with, how would the planning authority apply the proposed ground? It would in effect not be possible to define a reasonable modification to the scheme. Would the planning authority compensate the nominated undertaker for facilitation costs incurred if the scale of the potential over site development was not realised? Rather than expanding the grounds, as suggested, the over site development and compatibility with Network Rail proposals, should continue as part of commercial and growth strategy discussions at each station location.

The stations will be designed to accommodate the passengers that will be expected to use the station. Sizing the interior of the station to accommodate footfall resulting from OSD would be material to the determination of the request only insofar as it relates to the grounds set out in Schedule 16.

#### **5. Temporary buildings – para. 2(9), Schedule 16**

Schedule 16, para. 2(9) establishes legal parity with existing legislation for temporary buildings. For example Class A, Part 4 of the Town and Country Planning (General Permitted Development) Order 2015 sets out the permitted development circumstances for temporary buildings. Although Schedule 16 para. 2, does not apply to temporary buildings, ultimately if a planning authority believes that the nominated undertaker is not complying with the deemed planning permission, for example by leaving a temporary building in situ longer than permitted by the Bill or by erecting temporary structures that do not benefit from the deemed planning permission granted by Clause 19, then the planning authority can take enforcement action under Town and Country Planning Act processes.

It is noted that there is no limit in the GPDO. Schedule 16 provides for temporary buildings to be considered to be 'permanent' if they are in place longer than two years after the date on which the scheduled work has been brought into use, and therefore subject to approval under Schedule 16. Schedule 16 is more restrictive than the GPDO, and as such it is not proposed to make an amendment.

#### **6. Road transport – para. 6(4), Schedule 16**

Schedule 7 para. 3 of the Crossrail Act provides the same approval mechanism for lorry routes as that in Schedule 16 of the Bill, including the qualification that the requirement to approve does not include movements that do not exceed 24 on any day.

The purpose of para. 6(4)(b) of Schedule 16 to the Bill is to remove the need for approval for small construction sites, for example for utility works, as the small number of lorries would not result in impacts that require management through Schedule 16. The provisions of the Code of Construction Practice would still apply under these circumstance and the preparation of a local traffic management plan and discussions at highways liaison groups could incorporate arrangements for these smaller sites.

Although large construction sites could have different access points, para. 6(4)(b) applies to the construction site, and not to each individual access point.

Although lorry routes will not be approved for construction sites that do not exceed 24 movements on any day, section 14 of the 3<sup>rd</sup> Draft Code of Construction Practice (CoCP) sets out how local area traffic



management measures will be applied with the preparation of Local traffic Management Plans in consultation with the highways and traffic authorities, the emergency services and other relevant key stakeholders. Section 14.2.4 of the CoCP sets out what the LTMPs will include. Discussion on the boundaries of LTMPs is to take place at the Highways subgroup to the Planning Forum on 18<sup>th</sup> November.

#### **7. Bringing into Use – para. 9, Schedule 16**

Bringing into Use approvals do not apply to underground works. This is a change from Schedule 7 to the Crossrail Act. The rationale being that for such works the necessary mitigation will be ensured through the application of other controls such as approvals under Schedule 31 and the agreement of site restoration schemes under Schedule 16.

With regard to underground works where there will be public access such as the subway at Euston Road (Work No. 1 / 3), the planning authority would be approving plans and specifications for above ground works, and where it forms part of a station, the below ground elements.

With regard to providing for water table mitigation, this would be covered by the Protective Provisions in Schedule 31 of the Bill.

Para. 9 of Schedule 16 provides for bringing into use approval by the qualifying authority for Scheduled Works, that is the principle works of the railway. Non-scheduled Works would be subject to bringing into use approval insofar as they were part of the scheme to mitigate the effect of a specific Scheduled Work.

With regard to the subway under Euston Road, as the subway is connected to Euston Station, it is subject to plans and specs approval (see para. 28 of Schedule 16 - definition of 'building' (g)). The subway would not be subject to bringing into use approval but as para. 9 is to approve the mitigation of effects, rather than approving design, it is at the plans and specs approval stage that the planning authority can consider the design of the subway, in the context of local amenity.

#### **8. Forward programme**

It is intended that the construction programme will be discussed with Planning Forum in 2016, and the Promoter will schedule it as an agenda item during 2<sup>nd</sup> quarter of 2016.

#### **9. Best endeavours – Planning Memorandum**

With regard to 'best endeavours' the definition shared with Planning Forum in June 2015 is:

*'Best endeavours is a well used legal expression which is often used in contractual documents and has been considered by the courts. It obliges the party to take all those steps in their power which are capable of producing the desired results being steps which a prudent, determined and reasonable [obligee], acting in his own interests and desiring to achieve that result, would take.'*

By signing the Planning Memorandum, qualifying authorities are giving the Secretary of State undertakings with respect to their handling of planning matters, so as to have the powers available to them as set out in the Bill.

By using their best endeavours the qualifying authority is obliged to take all steps in their power which are capable of determining requests for approval within the identified timeframes. This reflects the need to avoid unnecessary delay in implementing a project of strategic national importance.

By taking all steps in their power which are capable of producing desired results being steps which are prudent, determined and reasonable it is not anticipated that these steps would result in bankruptcy.

#### **10. Consultation on requests for approval – para. 18, Schedule 16**

There is no requirement to consult the community under Schedule 16 to the Bill. The Schedule 16 submissions are not the same as planning applications under Town and Country Planning Act processes. It is our understanding that the London Borough of Camden's SCI applies to planning applications, and would not therefore apply to planning submissions under Schedule 16.

Information Paper D1 Design Policy states the nominated undertaker's commitment to involving communities in design development along the line of route. This includes stations, key design elements and common designs. The approach to implementing this commitment is currently being developed and will be shared with Planning Forum by the end of the year.

With regard to community consultation following the submission of requests for approval to the relevant planning authority by the nominated undertaker, although it is at the discretion of the planning authority to consult communities during the 8 week determination period, it is anticipated that the nominated undertaker will undertake a similar approach to that undertaken for Crossrail, which will be discussed at Planning Forum and individually with each planning authority in 2016.

As a general approach, once the main works contracts have been awarded communities will be engaged on preferred options for the particular work within their area. This approach will apply to stations and key design elements as set out in Information Paper D1 Design Policy. Following this round of early engagement the design for a preferred option will be developed, during this stage engagement will continue with the planning authority as part of pre-submission discussions. The Schedule 16 submission to the planning authority, will include detail of the community engagement undertaken, and will include notifying certain amenity groups, interest groups, voluntary organisations, emergency services, as agreed with the planning authority, that the Schedule 16 request for approval has been submitted to the planning authority.

The approach to community engagement in design development will be an agenda item at Planning Forum on 9<sup>th</sup>/10<sup>th</sup> December. This will include setting out those works identified as 'key design elements' in the context of Information Paper D1. From London Borough of Camden's point of view, in addition to Euston station, communities will be engaged on Granby Terrace Intervention Building, Mornington St Ventilation Building, Euston Portal Headhouse, Adelaide Road vent shaft and Alexandra Place vent shaft.

Within the general approach, the Promoter will develop the specifics of the community engagement mechanisms with each planning authority, including how Camden's community representative group can inform the engagement process.

#### **11.Directions restricting powers of approval – para. 19, Schedule 16**

Para. 19 (1) of Schedule 16 states that the appropriate Ministers may by directions restrict a planning authority's powers in relation to the giving of approval under Part 1 of Schedule 16. As interpreted in para. 28 of Schedule 16, appropriate Ministers means the Secretary of State for Communities and Local Government and the Secretary of State for Transport, and in relation to the carrying out of any function, means those Ministers acting jointly.

#### **12.Compulsory reference of requests for approval – para 20 (1), Schedule 16**

See response above to interpretation of 'appropriate Ministers'.

#### **13.Appeals procedure – para. 25(2), Schedule 16**

It is likely that the appeals procedure will be similar to that established by Statutory Instrument for the Crossrail Act.