

REVIEW OF THE PETITIONING PROCEDURES ON HYBRID BILLS

SUBMISSION OF THE LONDON BOROUGH OF CAMDEN

9th December 2016

BACKGROUND

The London Borough of Camden petitioned the House of Commons and the House of Lords in its own right and supported the local community in doing the same during the High Speed 2 (HS2) hybrid Bill's progression through the parliamentary process.

While the Council endeavoured to assist those affected by the HS2 Bill in the borough, the overwhelming view received from the community was that the process was difficult for the lay person to access and understand, making it almost impossible for many to put an effective case to the respective Select Committees on the issues concerning them.

The Leader of the Council, Sarah Hayward, made this point when she gave evidence to the House of Commons Select Committee on 1 December 2015 and again when giving evidence to the House of Lords on 6 September 2016. In particular in the House of Lords Select Committee she said:-

*"...this process is very difficult to navigate, particularly for vulnerable residents, particularly for people who run small businesses and are trying to juggle... keeping a business afloat, keeping a family and navigating what can sometimes appear quite byzantine procedures. People have made personal sacrifices, including financial sacrifice, to be able to do this, and I would urge the Committee to try and rethink this process for future Hybrid Bills. And we'd be happy to help, making recommendations about how we can make it easier, particularly, for residents in communities who found this so difficult."*¹

As a result of the submission in the House of Commons, the Chair of the House of Commons Select Committee asked the Council to provide a list of recommendations, which was duly submitted on 24 January 2016. A copy is **attached** for ease of reference.

The Council welcomes this review and lists below its suggestions for how to improve the petitioning procedure for future hybrid Bills. It will be seen that these suggestions use the specific experience the Council had of the HS2 hybrid Bill but these will equally relate to future infrastructure projects that are progressed through the hybrid Bill process.

¹ HS2 Bill House of Lords Select Committee transcript, Monday 6 September 2016, paragraph 166

RECOMMENDATIONS FOR IMPROVING THE PETITIONING PROCESS

Recommendation	Detail
<p>1. Helping petitioners to navigate the process</p>	<p>As Councillor Hayward stated at the House of Lords Select Committee on 6 September 2016, the process is very complicated for Petitioners to navigate. It is acknowledged that the clerks of both Houses sought to provide assistance to those lay people petitioning, as did the Council. However, the very formal language required in drafting an acceptable Petition, the difficulty of finding and then understanding the Standing Orders, the cost and the strict adherence to official procedures during the process all combined to prevent some people affected by the HS2 scheme from appearing to make representations to the respective Select Committees.</p> <p>The House of Commons Select Committee itself recommended in its Second Special Report dated 22 February 2016, that that the <i>“traditional petitioning language required is old-fashioned and off-putting. To make the process more inclusive, the language used in Hybrid Bill petitioning can be brought up to date, in line with changes agreed by the House for public petitions”</i> and <i>“We also believe there would be merit in revisiting the somewhat Victorian language and complex architecture of the private business standing orders, from which much of the hybrid bill procedure derives, to bring that up to date and make the standing orders more accessible. With the prospect of several more hybrid bills in the near future, these and other procedural updates will be worthwhile, and needed”</i></p> <p>The Council endorses this view.</p>
<p>2. Abolish fees</p>	<p>The Council considers there should be no payment required to Petition. People shouldn't have to pay to participate in a democratic process. The feedback the Council received at numerous community meetings was that this was a prohibitive fee for many people and on the basis of that it is our view these fees should be scrapped altogether.</p>
<p>3. Work collaboratively</p>	<p>A greater emphasis should be placed on partnership</p>

	<p>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.</p> <p>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. One of the frustrations experienced by the Council was that it 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. For example, noise mitigation. If the Nominated Undertaker had shared its noise modelling with the Council earlier, the Council could have helped identify properties which it considered would require noise mitigation and also the number of individual units contained within an apartment building, therefore reducing uncertainty for residents.</p> <p>The Council considers that this would allow a more open and transparent scheme and the access to information would negate the need for the Council to take such a full list of issues and also so many petitioners in the community to take a case through the Select Committee process.</p>
<p>4. Broaden the scope and decision making powers of the Nominated Undertaker</p>	<p>The Nominated Undertaker, HS2 Ltd, approached the discussions with a narrow focus which was led by the cost of engineering considerations and meeting Environmental Impact Assessment requirements. They were unwilling to engage with the Council 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</p>

	<p>of the culture of the organisation.</p> <p>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).</p> <p>Decisions can be held up because lack of authority/desire to make funding commitments or to take particular decisions. This was exacerbated by the fact that more senior people only engaged in meaningful negotiations immediately before Select Committee. The Council understood the pressures HS2 Ltd. was under, but had there been more people of equivalent seniority actively seeking agreement with petitioners earlier then it is likely that issues would have been resolved earlier, reducing the cases required to be heard by the Select Committee.</p>
<p>5. Draw on the knowledge of the Local Authority</p>	<p>A number of the points raised by individual petitioners could have been addressed by more effective working with local authorities by HS2 Ltd. 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.</p>
<p>6. Establish a shared set of objectives</p>	<p>While understanding that, by its very nature, there are going to be points of disagreement, HS2 Ltd refused to recognise that there were problems with the scheme in advance of the Select Committee process, repeatedly referring to Environmental Minimum Requirements and the individual mitigations proposed as meeting the issues raised. The Council found this frustrated its ability to meaningfully negotiate with the Nominated Undertaker and only served to waste time and resources on both sides. As an example, a matter of weeks before the Council's appearance at the House of Commons Select Committee, HS2 Ltd recognised the need to assess</p>

	<p>and mitigate the impacts on a much wider range of properties than those which it had assessed in the Environmental Statement. This is a point that the Council had repeatedly raised with them for some considerable time. 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 public money and assisted the local community, perhaps preventing the need for them to raise it in Select Committee as they went on to do.</p>
<p>7. Establish a clear structure and timetable for negotiations</p>	<p>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 Department for Transport about what was happening and when. All important decisions were taken in the final few weeks before the appearance at 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> <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>
<p>8. Give the Promoter’s Response Document (PRD) a more meaningful role</p>	<p>The PRD as received was vague and as such was unhelpful in leading to a resolution. It would be more construction for the PDR to set out any offers made by</p>

	<p>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. Earlier receipt of the Promoter's Response Document would also be welcomed and in that regard it could be used as a case management tool.</p>
<p>9. Sharing Assurances</p>	<p>The Council believes that if the Nominated Undertaker or Promoter could share their assurances quicker then potential petitioners have sight of what has been offered to others that may be relevant to them, thereby negating the need to appear before the Select Committee.</p> <p>Currently the emphasis is for the petitioner to find out information about previous committee sessions for themselves, which has not worked in practice as individuals have less resources/awareness of the Committee process and should not be penalised for being completely up to speed with other petitioner's cases.</p> <p>In order to overcome this the Council would suggest the Committee Clerk, the Promoter's Parliamentary Clerk or perhaps a new programme manager-type role should be created to be responsible for highlighting the relevant points to them in advance for their appearance in order for them to consider what has been said, provided or agreed could allow them to adjust their case accordingly.</p>
<p>10. Ensure proper engagement on the draft Code of Construction Practice (CoCP) and Local Environmental Management Plan (LEMP)</p>	<p>A number of petitions were lodged in relation to issues that were or that could have been addressed in the CoCP and LEMP. These petitions could have been avoided with more effective engagement by the Nominated Undertaker before petitions were required to be submitted, including properly considering and addressing comments provided. Again, this could have saved a significant amount of time at the respective Select Committee hearings.</p>
<p>11. Ensure Petitioners get a fair</p>	<p>It is recognised that the respective Select Committees</p>

<p>hearing</p>	<p>faced a large number of petitioners who inevitably raised similar issues throughout the process. This led to some understandable frustration being expressed by Select Committee members about the repetition in submissions. However, this is the only chance that members of the public who face years of detrimental impacts caused by the scheme have to describe the impacts of the scheme² and how it will affect them and they have to make this case in a very formal situation that can be incredibly intimidating for those who are not used to attending Parliament.</p>
<p>12. Locus Standi</p>	<p>The House of Commons Select Committee recommended in its Second Special report dated 22 January 2016 at paragraph 385 that "<i>Clearer, and authoritative, guidance is needed on what constitutes locus standi</i>".</p> <p>The current procedure states that Petitioners must be "specially and directly affected" to petition, but it is unclear what this means and access to precedent cases on this point is not readily available to the general public meaning that some petitioners who could have been eligible to petition on the basis of precedent cases did not have that information available to them to make such a case.</p> <p>It would no doubt save time and resources at Select Committee if local authority ward councillors or MPs could appear to speak on behalf of local constituents and represent the view of several people who would otherwise petition individually.</p>
<p>13. Provide ex gratia payments for petitioners</p>	<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</p>

² It could be said the consultation response to the Environmental Statement was the public's chance to influence the decision-maker; however the responses were summarised very broadly for the House of Commons and did not focus on the substance of the individual issues raised.

	<p>process. 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. Potential Petitioners may have been put off participating in the Parliamentary process by the cost.</p>
<p>14. Learning lessons to improve the process for authorities in the next phase of the scheme</p>	<p>A review should be commissioned (with a call for evidence from a range of Phase One Petitioners, including individuals, businesses and community groups) to focus on what the expectations of the negotiations with HS2 Ltd. process were and how it was delivered.</p>

The Council hopes the above assists in moving the process towards a more accessible and collaborative system, that is easily accessible by those affected by the impacts on the infrastructure being considered by the hybrid Bill.