

Council

Date of Meeting: 18 July 2019

Report Title: High Speed Rail 2 Phase 2a – Qualifying Authority

Portfolio Holder: Cllr Toni Fox – Planning

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. This report seeks approval for the Council to become a Qualifying Authority for the construction of phase 2a of the High Speed Rail 2 (HS2).
- 1.2. The enactment of the High Speed Rail (West Midlands - Crewe) Bill (“the Bill”) will give deemed planning permission to the scheme which is similar to the grant of outline planning permission under the Town and Country Planning Act. There will be additional detailed designs and other construction works however which will be subject to applications for approval by the Local Planning Authority.
- 1.3. The Bill provides for the Council to become a ‘qualifying authority’ which would then allow the Council to assess and determine such applications subject to certain restrictions on the grounds for refusal as set out in the Bill. However, if the Council decide not to become a qualifying authority, the grounds for refusing any applications are more restricted than those available to qualifying authorities.
- 1.4. It is crucial to the Council to retain as many decision making powers as possible in the assessment and determination of all HS2 related applications in order to ensure that the Council achieve the best and most appropriate outcomes for the local community and minimise the impacts on the wider environment as far as possible.
- 1.5. The Bill requires the Secretary of State to specify which planning authorities have entered into a Planning Memorandum to become a qualifying authority by the time the Bill is reported on by the House of Lords. The

Council must therefore confirm their decision to HS2 Ltd before the Autumn.

2. Recommendation/s

2.1. Council is recommended to:

2.1.1. Become a Qualifying Authority as specified in part 2 of Schedule 17 of the Bill and authorises the Executive Director for Place in consultation with the Monitoring Officer to sign the Planning Memorandum to enable this to happen.

3. Reasons for Recommendation/s

- 3.1. The proposed approach will enable the Council to have greater control over the approval of construction details associated with the High Speed Rail scheme such as the detailed design of permanent structures and an enhanced role in relation to certain enforcement and construction matters. This is essential so that the Council can (acting reasonably and where necessary) seek to either improve or control the detailed design applications. Equally, the greater number of conditions that the Council can consider as Qualifying Authority is considered vital in helping to control and manage the impacts of construction and the scheme on the Borough.
- 3.2. This is necessary to ensure that the impacts of the developments on the local environment and local amenity are fully considered and addressed in line with the approach of the Cheshire East Council Local Plan Strategy.
- 3.3. The process of becoming a Qualifying Authority binds local authorities to act in a particular way through the signing of the Planning Memorandum in respect of determining applications for consent in an expedient manner (within eight weeks in line with statutory determination periods for planning applications), and to being sufficiently resourced to be able to do so. As such, this is being adjudged by all parties involved in the High Speed Rail 2 (Phase 2a) that the decision should be made by Full Council.

4. Other Options Considered

- 4.1. The alternative option is to become a Non-Qualifying Authority. This would mean that the Council would have a much more restricted role in the approval of construction matters, and would only be permitted to consider plans and specifications for buildings. This option therefore provides a narrower degree of control over the impact that the construction of the scheme will have on the local environment and local amenity.

5. Background

- 5.1. In July 2017, the Government introduced a hybrid Bill to Parliament to seek powers for the construction and operation of Phase 2a of HS2. The Bill will grant planning permission for the construction of a high speed railway between Fradley in the West Midlands and Crewe and all associated development works.
- 5.2. The Bill grants what is termed as ‘deemed’ planning permission, which is similar to an outline planning consent, for development authorised by the Bill. However, this “planning permission” will be subject to a number of conditions requiring the nominated undertaker (the party/parties who will construct the railway) to obtain the consent or approval of the Local Authorities along the route for certain matters.
- 5.3. The Bill gives each Local Authority a choice between having a wide or narrow range of controls over the detailed design of permanent structures such as stations and viaducts, and an enhanced role in relation to certain enforcement and construction matters. Those who opt for a wider range of controls are referred to as ‘qualifying authorities’.
- 5.4. A Qualifying Authority will have the responsibility for approving plans and specifications for works such as buildings and road vehicle parks, terracing, cuttings, embankments and other earthworks, fences, walls or other barriers, transformers, telecommunication masts, pedestrian access to the railway line, artificial lighting, waste and spoil disposal and borrow pits. They will not have powers of approval for any works or features of a temporary nature, for anything underground, and for any tunnel or railway track bed.
- 5.5. A qualifying authority can only refuse to approve (or impose conditions in respect of) the plans and specifications on two main sets of grounds:
- a) The design or external appearance of the building works ought to be modified to:
 - preserve the local environment or local amenity;
 - prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified; or
 - b) The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 5.6. Non qualifying authorities will only be able to refuse approval if the design or external appearance of the works ought to be modified to preserve the local environment/local amenity (and is reasonably capable of being so

modified) or the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

5.7. In addition qualifying authorities will be able to enforce construction arrangements relating to:

- handling of re-useable spoil or topsoil;
- road transport;
- storage sites for construction materials, spoil or topsoil;
- construction camps;
- works screening;
- artificial lighting;
- dust suppression; and
- road mud control measures.

5.8. These may be subject to a class approval by the Secretary of State, in which case the relevant qualifying authority would be consulted before such approvals are made. Should the Secretary of State not make a class approval, these arrangements are subject to approval by the relevant qualifying authority.

5.9. Construction arrangements relating to construction camps, and lorry routes with more than 24 lorry movements per day would also require individual approval from the relevant qualifying planning authority; along with the bringing into use of any scheduled work or depot.

5.10. Councils wishing to become Qualifying Authorities are required to sign the “Planning Memorandum”. This document sets out rules of conduct and administrative arrangements for both the Local Planning Authorities and the nominated undertaker.

5.11. It requires the Council to commit to dealing with applications for consent in an expedient manner (within eight weeks in line with statutory determination periods for planning applications), and to being sufficiently resourced to be able to do so.

5.12. Becoming a Qualifying Authority therefore involves a commitment by the Council to deal with applications appropriately and within specified timescales, in return for control over a wider range of matters than it would otherwise have.

5.13. This commitment has resource implications: the Council will receive application fees to cover the costs associated with dealing with these consents and approvals, or HS2 Ltd. will provide a financial contribution to the Council to deal with the additional workload. This contribution would

come through a Service Level Agreement (SLA) between the Council and HS2 Ltd to cover the costs of handling the applications and any additional work required to support their determination. The Council is engaging with HS2 Ltd. through the Planning Forum to obtain the number of applications and exact timetable as early as possible to assist in determining the extent of resources required and implications on the service.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. Councils wishing to become Qualifying Authorities are required to sign the “Planning Memorandum”.

6.1.2. The Planning Memorandum sets out rules of conduct and administrative arrangements for both the local planning authorities and the nominated undertaker of the works. It is part of a suite of documents forming the Phase2a of HS2 Environmental Minimum Requirements.

6.1.3. The Planning Memorandum regulates the details of the deemed planning consent that are reserved for local planning authority approval. It sets out the undertakings made by Qualifying Authorities in return for the additional planning controls referred to above.

6.1.4. Signing the Planning Memorandum and becoming a Qualifying Authority:

- Is legally binding;
- Gives CEC a greater degree of control over planning conditions;
- Does not fetter CEC’s discretion to withhold approval of planning conditions but stipulates certain expectations as to the stringency of conditions

6.1.5. CEC’s status as a Qualifying Authority can be withdrawn in certain circumstances.

6.1.6. It provides for the establishment of a Planning Forum which will meet regularly to assist with the effective implementation of the planning provisions in the Bill in order to help co-ordinate and secure the expeditious implementation of those planning provisions.

6.1.7. Due to the national importance of the HS2 infrastructure project Qualifying Authorities are required to have regard to construction, cost and programme implications.

- 6.1.8. The Planning Memorandum does not fetter CEC's ability to refuse a request for approval of conditions but requires that CEC shall not seek to impose any unreasonably stringent requirements on the requests for approval of any construction arrangement, plans or specifications, mitigation scheme or site restoration scheme, which might frustrate or delay the project, or unreasonably add to its cost. In particular, it should not seek to impose unreasonably stringent requirements or standards in respects of land use, planning, design or environmental matters.
- 6.1.9. Due to the time pressures on the project, CEC will be expected to put in place appropriate internal decision-making arrangements to ensure that the 8 week period for determining requests is achieved. If adherence to the normal committee cycle would make it difficult to reach decisions in accordance with the timetable, consideration should be given to authorising greater delegated powers for officers and/or the formation of a dedicated sub-committee. A final decision on the route for decision making can be discussed and agreed with the Portfolio Holder once a more detailed understanding of the likely application numbers is known.
- 6.1.10. If CEC repeatedly fails to expedite requests for approval, or seriously fails to expedite a request in line with the stipulated timescale, or repeatedly or seriously fails to act in accordance with all the requirements of the Planning Memorandum, the Secretary of State may have sufficient grounds to order that CEC shall cease to have the additional powers of a Qualifying Authority. Prior to being disqualified, the nominated undertaker and the Secretary of State would discuss with CEC concerns regarding its performance and the performance of the nominated undertaker.
- 6.1.11. Where CEC refuses a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision.
- 6.1.12. The Planning Memorandum does not relate to applications for permission to construct over-site development - namely certain non-rail-related development over operational structures such as stations and vent shafts. These will be taken forward under the normal planning process.
- 6.1.13. Finally, it should be noted that any applications for permission are unrelated to any assurances obtained through the petitioning process. These assurances are dealt with separately as there is a contractual obligation to comply with all relevant assurances made by HS2. A unilateral written commitment is made to Parliament and an undertaking

is also given that HS2 will take the necessary steps to secure compliance with any assurances made.

6.2. Finance Implications

6.2.1. Given that signing the Planning Memorandum gives the Local Planning Authority a greater range of controls, this will require more resources to process and deal with applications compared to if the Council chose to become a non-qualifying authority. However, the Service Level Agreement (SLA) between the Council and HS2 Ltd is intended to cover all costs associated with processing Schedule 17 applications and therefore there should not be any negative cost implications to the Council from becoming a qualifying authority. Any costs will be accounted for within the Council's Development Management budget.

6.3. Policy Implications

6.3.1. HS2 is supported in the Cheshire East Local Plan Strategy under Strategic Priority One which states that promoting economic prosperity by creating conditions for business growth will be delivered by (amongst other things) maximising the opportunities that may be offered by High Speed 2 Rail Links (HS2).

6.4. Equality Implications

6.4.1. All public sector authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their powers authorities must have regard to the effect of any differential impacts on groups with protected characteristics. In deciding to become a qualifying authority the Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010.

6.4.2. The enhanced controls provided for in becoming a qualifying authority should have a positive public benefit when it comes to the PSED.

6.5. Human Resources Implications

6.5.1. It shall be necessary to ensure that sufficient resource is allocated in Planning, Highways, and Legal Services to support determination of the applications within the timescales required.

6.6. Risk Management Implications

6.6.1. Key risks to the Council relate to ability of officers to determine the applications within the required statutory timescales and staff resource implications associated with the additional workload.

6.6.2. This will be managed through the use of the SLA between the Council and HS2 Ltd to secure additional finance to ensure sufficient resources to manage the process effectively. Early engagement with HS2 Ltd has already taken place about the likely timing and number of future applications which will also enable staff resource to be managed well in advance of any increased workload. This engagement will continue with early pre-application discussions

6.7. Rural Communities Implications

6.7.1. The route of the scheme passes through a number of rural communities which are likely to be subject to applications for the approval of detailed designs or other associated developments. Each application for approval would enable an assessment of the relevant environment effects for those matters that the Council is able to control under the Bill.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

6.10. Climate Change Implications

6.10.1. There are no direct implications for climate change but environmental considerations will form part of the process that the council will undertake in assessing the scheme.

7. Ward Members Affected

7.1. Those wards affected would be those covered by the route of HS2 phase2a which are: Haslington, Wybunbury, Crewe south and Crewe East

7.2. There are potential wider implications of HS2a for all Wards

8. Consultation & Engagement

8.1. There is no statutory provision for public consultation on the planning approval process outlined in the hybrid bill however public consultation and engagement has taken place as part of the wider HS2 phase 2a project.

9. Access to Information

- 9.1. Details of the HS2 phase2a Qualifying Authority process can be found in the 'Main Provisions of the Planning Regime' information paper prepared by HS2. This is available to view on the following link.
- 9.2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627917/B2_Main_Provisions_of_the_Planning_Regime_v1.0.pdf

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: David Malcolm

Job Title: Head of Development Management

Email: david.malcolm@cheshireeast.gov.uk