

Constitution Committee

Date of Meeting: 5 October 2020

Report Title: High Speed Rail 2 Phase 2a – Procedure for Decision Making

Portfolio Holder: Cllr Toni Fox – Planning

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The purpose of this report is to seek approval for the proposed decision-making arrangements for High Speed Rail 2 (HS2) to ensure that appropriate officer delegated authority and where necessary Planning Committee procedures are in place to deal with applications submitted in relation to works along the route of Phase 2a of HS2.
- 1.2. The route is anticipated to be approved in principle via the enactment of the High Speed Rail (West Midlands - Crewe) Bill (“the Bill”). The decision making arrangements set out in this report will enable the Council to handle requests for the approval of relevant details in an expeditious manner and to comply with the strict timescales imposed.

2. Recommendation

- 2.1. That the Constitution Committee consider and note the content and conclusions of the report and approve the decision-making arrangements for the determination of all planning matters submitted under Schedule 17 (the Planning Conditions Schedule) of the Bill as set out in the report and agree to all necessary amendments to the Council Constitution as required to secure these provisions.

3. Reasons for Recommendation

- 3.1. The recommended approach would allow the Council to ensure appropriate officer delegated authority and where necessary Planning Committee procedures are in place to enable officers to deal with applications

submitted in relation to works along the route of Phase 2a of HS2 in a timely manner and meet the timescales set out in the Planning Memorandum.

4. Other Options Considered

- 4.1. The alternative option is to retain existing decision-making arrangements. Without a change in the Constitution, there is a risk that the Council would be unable to determine Schedule 17 Applications in a timely manner. As a result of this, the Council would lose its Qualifying Authority status and its determination powers; and the Secretary of State would take all decisions on Schedule 17 Applications.

5. Background

- 5.1. The Bill will grant planning permission for the construction of a high speed railway between the West Midlands and Crewe. The Bill grants what is termed as 'deemed' planning permission. This 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 Planning Authorities for various matters of detail along the route. These works do not fall within the scope of control covered by the Town and Country Planning Act and will require a separate approval under the Bill. They will be known as 'Schedule 17 Applications'.
- 5.2. At its meeting of 18 July 2019, Full Council approved the signing of the Planning Memorandum to become a Qualifying Authority for the purposes of the Bill. As a Qualifying Authority, the Council has responsibility for determining Schedule 17 Applications.
- 5.3. A Qualifying Authority is responsible for issuing approvals in respect of details of the design and appearance of key structures and other elements of the scheme, but that responsibility does not extend to the principle of the construction which is permitted by the Act itself. This deemed planning permission is therefore similar in nature to an outline planning permission. Structures and features that the appropriate Qualifying Authority will be able to consider details for include:
 - Buildings and vehicle parks
 - Terracing
 - Cuttings
 - Embankments and other earthworks
 - Fences and walls
 - Telecommunication masts
 - Power take-off compounds

- Artificial lighting
- Bridges and viaducts
- Borrow pits and waste disposal sites

5.4. 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 Bill limits.

5.5. The determination of Schedule 17 applications under the Bill is a regulatory function of the Council and therefore can be determined by either Planning Committee or delegation to officers. However, Schedule 17 Applications do not fall within the remit of the existing Council Constitution. In order to allow decisions to be made, alternative decision making arrangements therefore need to be agreed by Members.

5.6. It is important to note that the prescribed time period in the Bill for the Local Planning Authority to determine Schedule 17 Applications is 8 weeks from receipt. There is no validation process so the clock starts on receipt. If the Council fail to determine the application within this period it would be deemed to be approved unless an agreed extension of time is in place. If a Qualifying Authority repeatedly fails to expedite requests for approval or seriously fails to act in accordance with the Planning Memorandum, the Secretary of State may order that an authority shall cease to have the powers of a Qualifying Authority. Consequently, the decision-making powers that the authority has for determining Schedule 17 applications would be significantly reduced, with the Secretary of State making the ultimate decision.

5.7. Additionally, if a Qualifying Authority is looking to seek amendments, they will be required to fully justify that such a modification is reasonable, and that it can be made without, for example, adding unduly to the cost or programme of HS2, or conflicting with the operational requirements of the railway. This would need to be done within the prescribed period of 8

weeks. The scope of matters for consideration and the timescale for considering the Schedule 17 Applications are therefore very constrained and it will be important that officers negotiate any amendments and deal with such submissions in a timely manner.

- 5.8. The applications are likely to be for relatively minor works in the initial phases, but could be substantial in number and frequency. As such in view of these points, and the need to ensure that the applications are dealt with within the set timescales, there is a risk that the anticipated volume of work could have a significant impact upon the capacity of the Planning Committee to consider these additional items within the required period.
- 5.9. For these reasons, a cascaded delegated authority is sought to allow the Head of Planning to determine approvals under Schedule 17 (the Planning Conditions Schedule) of the Bill.
- 5.10. The approach to Committee reporting would broadly reflect that of the existing process for determining planning applications, allowing Members the opportunity to 'call-in' such approvals – subject to specifying relevant planning reasons and following agreement with the Head of Planning in liaison with a Principal Planning Officer.

6. Approach to Decision Making for Schedule 17 Applications

- 6.1. The proposed approach has been identified as the best option to provide a necessary degree of flexibility to ensure that the appropriate level of decision-making is applied to each application based on the specific considerations of that case; whilst also providing the appropriate level of Member scrutiny.
- 6.2. Schedule 17 Applications would be determined as follows:
 - Delegated Authority to the Head of Planning to determine all applications and notifications submitted in relation to HS2 matters in consultation with the Principal Planning Officer; subject to the provisions below.
 - All live applications, including Member call-in's, to be reviewed fortnightly and considered for Planning Committee determination by the Head of Planning and Principal Planning Officer. Both officers to jointly determine whether a delegated or committee determination is appropriate (and if a committee determination is necessary, the specific planning committee) based on the scale, complexity and level of public scrutiny of each application.

- In line with the existing procedures for Members, any request for call-in by the relevant Local Ward Member must be received within 15 days of the issue of the electronic notification of the application; and must set out the material planning consideration(s) specific and relevant to the matters which can be considered under Schedule 17 which warrant the application going before Planning Committee.
 - The scheme of delegation shall be subject to a review after 6 months in consultation with the Head of Planning and the Chairs of Planning Committees to ascertain whether any changes are necessary to the scheme of delegation as lessons are learned throughout its application.
- 6.3. The type of applications which would be referred to planning committee for determination would likely be of a scale and nature that present more significant impacts to the local environment and amenity; or present complex planning and environmental considerations which requires appropriate scrutiny by Members. Examples of such applications could include:
- Development of large-scale bridges and viaducts;
 - Significant ground engineering works;
 - Creation of borrow pits;
 - Buildings which are of a scale and nature which may create impacts beyond the immediate locality.

Other procedural arrangements – consultation and notification

- 6.4. Under the HS2 Bill, there is no statutory requirement for the Council to carry out any consultation on Schedule 17 applications with any other parties other than key statutory bodies (Natural England, English Heritage and the Environment Agency) and no requirement to inform the public on receipt of such submissions.
- 6.5. In view of the restrictions the HS2 Bill places on the Council in terms of timescales for determination and the matters that can be taken into consideration, the Council would not carry out any formal consultation with local residents and Parish Councils on Schedule 17 submissions.
- 6.6. The Council however recognises that there may be high levels of interest in any HS2 related developments. In order to ensure local people and Members are therefore kept up to date and made aware of all applications, and in order to reflect the existing procedures for all planning applications, the Council would as a minimum undertake the following:

- Write to inform the affected Parish Councils on the route of the receipt of a Schedule 17 application;
- Write to inform all neighbours immediately adjoining the relevant part of the route;
- Notify Local Ward Members of all Schedule 17 Applications;
- Provide Local Ward Members with the opportunity to request that the application be 'called-in' for a committee determination – subject to specifying relevant planning reasons and following agreement with the Head of Planning in liaison with a Principal Planning Officer;
- Make full details of all Schedule 17 submissions (including plans and supporting documents) available to view on the Council's website. The purpose of this process is to keep the public informed, but the Council will not be requesting comments.

7. Amendment to Council Constitution

- 7.1. The proposed amendments to the scheme of delegation as outlined above will require an amendment to the Council Constitution.
- 7.2. The Council Constitution details the current Scheme of Delegation in relation to the extent of powers delegated to Executive Director of Place. The powers are delegated further through Local Schemes of Delegation to the Head of PLanning. This is detailed in Annex 1 to this report along with the proposed amendments sought.
- 7.3. The Council Constitution also details the current terms of reference for Northern and Southern Planning Committee, and Strategic Planning Board. This is detailed in Annex 2 to this report along with the proposed amendments sought.
- 7.4. It is recommended that Members approve the proposed amendments to the Council Consitution in order to ensure appropriate delegated authority and Planning Committee procedures are in place to deal with requests for approval of detailed design and external appearance of buildings and structures along the route of Phase 2a of HS2.

8. Implications of the Recommendations

8.1. Legal Implications

- 8.1.1. Councils who have signed up to be Qualifying Authorities are required to sign the "Planning Memorandum". The Planning Memorandum sets

out rules of conduct and administrative arrangements for the local planning authorities.

8.1.2. Due to the time pressures on the project, the Planning Memorandum requires the Council 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 Planning Committee cycle would make it difficult to reach decisions in accordance with the timetable, the Council should give consideration to authorising greater delegated powers for officers.

8.1.3. If the Council 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 the Council shall cease to have the additional powers of a Qualifying Authority.

8.1.4. Failure to secure the appropriate decision-making powers for determining Schedule 17 Applications could put the Council at risk of missing deadlines set out in the Planning Memorandum and in turn losing the decision-making powers secured under Qualifying Authority status.

8.2. Finance Implications

8.2.1. There are no changes to the MTFs needed as a result of these changes to decision-making arrangements. Any costs associated with staff time will be covered by budgets held within the Planning service..

8.3. Policy Implications

8.3.1. 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).

8.4. Equality Implications

8.4.1. 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.

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

8.5. Human Resources Implications

8.5.1. It shall be necessary to ensure that sufficient resource is allocated to support determination of the applications within the timescales required.

8.6. Risk Management Implications

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

8.6.2. 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 the staff resource to be managed well in advance of any increased workload. This engagement is continuing with early pre-application discussions.

8.7. Rural Communities Implications

8.7.1. 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.

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

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

8.9. Public Health Implications

8.9.1. There are no direct implications for public health.

8.10. Climate Change Implications

8.10.1. There are no direct implications for climate change.

9. Ward Members Affected

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

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

10. Consultation & Engagement

10.1. 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.

11. Access to Information

11.1. 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.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627917/B2_Main_Provisions_of_the_Planning_Regime_v1.0.pdf

12. Contact Information

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

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