

Cherwell District Council

Executive

4 July 2016

<p>High Speed Rail – HS2 Qualifying Authority Status</p>

Report of Head of Development Management

This report is public

Purpose of report

To consider whether the Council should become a “qualifying authority” (‘Qualified Authority’) or a “non-qualifying authority” for the purposes of the High Speed Rail 2 Hybrid Bill.

1.0 Recommendations

The meeting is recommended to:

1.1 Authorise

- (i) Cherwell District Council becoming a Qualifying Authority in relation to the High Speed Rail (London to West Midlands) Hybrid Bill and authorises the signing of the HS2 Planning Memorandum and the Service Level Agreement between the Council and HS2 that will provide the costs of implementing the consequent planning regime, and
- (ii) Recommend to Full Council to agree that constitutional and scheme of delegation changes will be necessary to ensure the satisfactory implementation of the Planning Memorandum.

2.0 Introduction

- 2.1 The High Speed Rail (London-West Midlands) Bill has completed the House of Commons Select Committee stage and has now progressed to being considered by the appointed House of Lords Select Committee. At this stage it is not known how long the House of Lords Committee will have to sit to hear petitions, but it’s hearings will commence in June 2016. It is aimed that the Bill will achieve Royal Assent by the end of 2016.

- 2.2 The HS2 Bill will grant planning permission for the construction of a high speed railway between London and Birmingham. The Bill defines the role that authorities will have in approving the final design of the railway and how it will be constructed. The nominated undertaker (the party/parties who will construct the railway) will need to obtain the approval of the Local Planning Authorities along the route for matters of detail, including the detailed design and materials of buildings and structures such as bridges and tunnel portals as specified in the Bill. These are set out in Part 2 Schedule 17 (Conditions of Deemed Consent) in relation to the planning process.
- 2.3 HS2 set up the Planning Forum for Phase One (London – Birmingham) as the main vehicle for communicating with local authorities along the proposed route and the forum is attended by officers from each relevant Council, HS2 and the Department for Transport. The Planning Memorandum currently being drafted through the Planning Forum sets out the requirements of planning authorities and the nominated undertaker, in respect of all applications to build HS2 phase 1 and the associated infrastructure.
- 2.4 The Bill gives each Local Planning Authority a choice between having a wide or narrow range of controls over the approval of these details. Authorities opting for the wider range of controls are referred to as a “Qualifying Authority”. The Council will need to take a decision on whether to become a Qualifying Authority before the end of the House of Lords process.

3.0 Report Details

- 3.1 Qualifying authorities will be responsible for issuing consents and approvals in respect of the detailed design and appearance of structures and other elements of the scheme, but that responsibility does not extend to the principle of the construction which is permitted by the Bill itself. Examples of structures and features that a Qualifying Authority will be able to consider 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
 - Site restoration
- 3.2 If Cherwell District Council chose to become a Qualifying Authority it will have responsibility for the details of most of the above matters, with the exception of borrow pits and waste disposal sites which would be dealt with by Oxfordshire County Council as minerals and waste planning authority (should they also

choose to become a qualifying authority). The County Council would also play the lead role in considering lorry routeing.

- 3.3 If the Council decided to be a non-qualifying authority it would have a significantly more restricted role thereby effectively losing what little control there is over the majority of features and structures within the District.
- 3.4 The implications of becoming a Qualifying Authority are therefore gaining increased control over planning matters subject to the Council undertaking to agree to a number of requirements concerning process and the timeliness of dealing with the Schedule 17 applications that would be made.
- 3.5 A Qualifying Authority can only refuse to approve plans or specification or impose conditions on the grounds set out in Schedule 17 which are broadly:-
 - i) **That the design or external appearance of the works ought to be modified:**
 - a) To preserve the local environment or local amenity
 - b) To prevent or reduce prejudicial effects on road safety or the free flow of traffic in the local area or
 - c) To preserve a site of archaeological interest or nature conservation value, and is reasonably capable of being so modified
 - ii) **That the development ought to, and could reasonably be carried out elsewhere on land within the development's permitted limits**
- 3.6 a) This aspect would only relate to development within especially sensitive areas such as Historic Parks. It should be noted that the intended planning regime indicates that it would only be appropriate to raise an objection to the design or details of a particular structure or works if the impact of that design would be very significant within the surrounding area, being beyond that which might reasonably be expected as part of the railway scheme. This provision is aimed at preventing LPAs from unreasonably delaying this important infrastructure project.
- 3.7 A non-qualifying authority does not sign the Planning Memorandum but will be able to approve the detailed design of permanent structures but will have a more restricted role in the approval of construction matters and have a more restricted range of potential refusal issues. Other matters would therefore remain with the nominated undertaker. Given the contentious nature of the project it is considered important to maintain as much local control as possible and takes full advantage of the powers that would be conferred on it by becoming a Qualifying Authority.
- 3.8 Councils wishing to become a Qualifying Authority are required to sign the "Planning Memorandum". This is a document that sets out the rules of conduct and administrative arrangements for both the LPA and the nominated undertaker leading up to and during the construction of the railway. The document has been the subject of discussions with the local planning

authorities along the route via the Planning Forum, and a final version has now been produced.

- 3.9 The prescribed period for the LPA to determine Schedule 17 applications is proposed in the Bill to be 8 weeks. If the LPA fail to determine an application within this period it would be deemed to be approved and the LPA would not therefore have any control over those works and related mitigation. If the Council choose to become a Qualifying Authority we will therefore need to consider our application processes and decision mechanisms to ensure that we can comply with such requirements. This may involve delegation changes and/or a special board or committee with delegated authority, and therefore constitution changes that will require Council approval.
- 3.10 The Development Management team will also need to be properly resourced to deal with applications expeditiously. Many of the applications may be minor in nature, but some, such as bridge design, embankment/cutting design etc. may be more complex and contentious. As Cherwell has a relatively short section of the line the number of applications may be restricted, but can be expected to come in over a short (1 to 2 year) period.
- 3.11 In respect to staff resources, if a LPA is looking to refuse an application they need to fully justify and provide a designed and costed alternative within the prescribed period (8 weeks) and this may involve engaging resources or skills to do this particularly in respect of the construction of bridges/vent shafts.
- 3.12 HS2 are proposing that the Council will be reimbursed for the cost of dealing with the additional workload resulting from these applications and approvals by way of either the payment of application fees (at a scale that has yet to be set out) or by funding via a Service Level Agreement (SLA). The latter may be able to also cover the cost of engaging in pre-application discussions which will inevitably be required and is therefore likely to be the preferred option. Collective and individual discussions with LPAs on SLAs are on-going.
- 3.13 It should be noted that the extent of that control will need to be clearly communicated in an appropriate way to the public so that there is a clear understanding of the expectations in being a Qualifying Authority and the level of influence over the matters identified above in paragraph 3.1 above. Also that the works to construct the railway will have the equivalent of outline planning permission such that the Council will only be able to consider aspects of the reserved matters (i.e. the details of design and materials, etc.) in the manner described in this report.

4.0 Conclusion and Reasons for Recommendation

- 4.1. Becoming a Qualifying Authority involves a commitment by the Council to deal with applications appropriately and within specified timescales, in return for greater control over a wider range of matters than would otherwise be the case.

- 4.2 It is considered important that the Council retains as much control as it can over the detailed matters relating to the HS2 proposals, and to do so it is recommended that it would be in the Council's interests to become a Qualifying Authority.

5.0 Consultation

- 5.1 None.
- 5.2 It is known that other LPAs along the line are giving active consideration to this matter, and to date of those authorities we know about, all are being recommended to become Qualifying Authorities.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The alternative option is to not become a qualifying authority. This has been rejected in our assessment and is not recommended as the Council would not be able to exercise the maximum control over elements of this contentious scheme.

7.0 Implications

Financial and Resources Implications

- 7.1 There will be a cost to the Council in staff and/or consultant expertise terms to enable the timely handling of the additional Schedule 17 applications that are expected to be submitted under this planning regime. This cost will fall upon the Council whether or not we choose to become a Qualifying Authority. The intention of the promoters is to ensure that the Council will be reimbursed for this cost by either a fee submitted with each application or by a SLA between HS2 and the Council.

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Legal implications

- 7.2 A Qualifying Authority undertakes to deal with applications within a strict timescale. To enable this to be met the Council will need to give further consideration to administrative and democratic mechanism changes, with potential changes to the constitution.

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8.0 Decision Information

Key Decision

Financial Threshold met: **No**

Community Impact Threshold Met: **No**

Wards affected

Fringford and Heyfords directly

Links to Corporate Plan and Policy Framework

Cherwell: A District of opportunity;
Cherwell: Safe Green, Clean

Lead Councillor

Councillor Colin Clarke, Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	High Speed Rail (London-West Midlands) draft Environmental Minimum Requirements Annex 2: Draft Planning Memorandum
Appendix 2	High Speed Two Information Paper B1: The main provisions of the Planning Regime
Background Papers	
None	
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