

# **Cherwell District Council**

## **Council**

**16 May 2017**

<p><b>High Speed Rail - HS2</b> <b>Determination of Schedule 17 Applications for</b> <b>Approval of Details</b></p>
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### **Report of Head of Development Management**

This report is public

#### **Purpose of report**

To seek the agreement of the Council to the proposed revision to the Scheme of Delegation to the Head of Development Management to ensure the expedient determination of applications submitted pursuant to Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To amend the Scheme of Delegation to the Head of Development Management, as set out in the Council's Constitution, to insert the following application type within the list of delegated application types set out in part A of the Scheme.

"Applications pursuant to Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017".

#### **2.0 Introduction**

- 2.1 High Speed Rail (London to West Midlands) Act 2017 (The Act) grants the planning permission for the construction of a high speed railway between London and the West Midlands.
- 2.2 The Act requires the nominated undertaker (the party or parties who will construct the railway) to obtain the further approval of the Local Planning Authorities along the route for certain matters relating to the design and construction of the railway. Approval is required for plans and specifications; matters ancillary to development; road transport; and for bringing into use.

- 2.3 The provisions and the procedure for obtaining further approvals are set out in the Schedules to the Act; Schedule 17 (Conditions of Deemed Consent) refers specifically to the approval of details reserved by the conditions attached to the deemed planning permission.
- 2.4 Local Planning Authorities were offered a choice of a wider or narrower range of control over the approval of details. Authorities who desired to exercise the wider range of control must first become a Qualifying Authority and give satisfactory undertakings concerning the handling of planning matters; these are set out in the HS2 Planning Memorandum which sets out the rules of conduct and the administrative arrangements that both the Qualifying Authority and the nominated undertaker will adhere to during the construction of the railway.
- 2.5 The Council agreed to become a Qualifying Authority in July 2017. The Planning Memorandum was signed on 20/10/2016 and CDC became a Qualifying Authority on 24/2/2017 when the High Speed Rail (London-West Midlands) (Qualifying Authorities) Order 2017 came into effect.
- 2.6 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. 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
  - Site restoration
- 2.7 A Qualifying Authority can only refuse to approve plans or specifications or impose conditions on the specific grounds set out in Schedule 17, these are :-
- i) That the design or external appearance of the works ought to be modified, and is reasonably capable of being so 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,
  - ii) That the development ought to, and could reasonably be carried out elsewhere on land within the development's permitted limits, (i.e. on the land identified within The Act to which the planning permission granted has effect).

- 2.8 The Council has thus accepted obligations concerning the process and the timeliness with which it will determine applications submitted under Schedule 17 of the Act.
- 2.9 It will be expected to determine these applications within the eight week period prescribed in the Act, this begins on the day the application is received by the Council. This differs from applications submitted under the Town & Country Planning Acts where the statutory eight week period only begins after the application is accepted as a valid application by the Council.
- 2.10 It is necessary to ensure the Council has in place a decision making process that will ensure the timely determination of these applications.
- 2.11 If the Council fails to determine an application within the prescribed period, the application will be deemed to have been refused the applicant may then appeal to the Secretary of State who will then determine the application.
- 2.12 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.

### **3.0 Report Details**

- 3.1 The Act establishes the principle of the railway development grants the planning permission for the railway. The expressed purpose of Schedule 17 is to allow final details for specified railway works to be considered by the local planning authority but not to delay or unduly add to the cost of the project. Applications must be determined in accordance with the requirements of the Planning Memorandum (March 2016) and the recently published Schedule 17 Statutory Guidance
- 3.2 Schedule 17 applications will be similar in scope and content to applications submitted under the T&C Planning Acts for the approval of details reserved by condition following the grant of (full) planning permission or for approval of reserved matters following the grant of outline planning permission.
- 3.3 The Council has already adopted a Scheme of Delegation to the Head of Development Management to facilitate the timely determination for some types of planning applications. This currently delegates the determination of applications for the approval of reserved matters and approval of details required by condition. This scheme includes the provision whereby a significant or contentious application may be referred to the Planning Committee. The Scheme thus provides an appropriate flexible process to enable applications to be determined expediently.
- 3.4 The programme of HS2 railway works is divided into two categories, the Enabling Works and the Main Construction Works, the latter will include the submission of applications for the details relating to the design and appearance of key structures including buildings, bridges, embankments and tunnel portals.

- 3.5 The intention is for Enabling Works to proceed along the whole route as soon after Royal Assent as is possible. Local enabling works could include small scale development works required for environmental mitigation measures such the creation of new habitats for species relocation, e.g. ponds, or with replacement tree planting.
- 3.6 The overall number of applications likely to be submitted under Schedule 17 and the frequency and timing of submissions remains uncertain at present. The details for the railway works and the construction programme will be developed by the appointed contractors who will undertake the final design and then obtain any further approval required.
- 3.7 Information provided by HS2 Ltd indicates that following Royal Assent work on only a few Enabling Works projects within the CDC area are expected during 2017. It is currently expected that 25-30 Schedule 17 applications are expected for the main construction phase
- 3.8 It is essential the Council has in place an appropriate process to ensure Schedule 17 applications can be determined in a timely manner before applications are received. The inclusion of this category of application within the current scheme of delegation will allow for such applications to be determined timely and expediently.
- 3.9 It is therefore recommended that the Scheme of Delegation be amended to include within the list of applications where the determination is delegated to the Head of Development Management, the following additional category of application namely :-

“Applications pursuant to Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.”

#### **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The Council is required to determine Schedule 17 applications in a timely manner. Failure to do so could result in the removal of Qualifying Authority status and the consequent loss of the opportunity to influence the final design of key railway structures, works and mitigation measures.
- 4.2 The Council has an effective scheme of delegation to the Head of Development Management through which it already determines applications similar in scope and content to those that will be submitted under Schedule 17. Amending the scheme of delegation to include Schedule 17 applications is considered a proportionate measure to enable these applications to be determined expediently and within the statutory period prescribed.

#### **5.0 Consultation**

- 5.1 None

## **6.0 Alternative Options and Reasons for Rejection**

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

### **Option 1:**

6.2 To not include Schedule 17 applications within the scheme of delegation to the Head of Development Management. This is not recommended.

6.3 If an application can only be determined at a meeting of the Planning Committee, the monthly cycle for meetings will increase the risk an application may not be determined within the prescribed statutory timescale. This would then result in an appeal process for non-determination which would add to the burden on Council resources.

6.4 If the Council should repeatedly fail to determine applications within time or otherwise seriously fail to act in accordance with the Planning Memorandum, the Secretary of State may order that the Council authority shall cease to have the powers of a Qualifying Authority.

### **Option 2:**

6.5 To invoke other constitutional change to establish a process whereby Councillors will convene as and when required to determine an application submitted under Schedule 17. This is not recommended.

6.6 This would increase the burden on Councillors. It is not recommended at this time given the number of applications or the frequency of submissions is not clear, the full impact cannot therefore be assessed.

## **7.0 Implications**

### **Financial and Resource Implications**

7.1 HS2 will pose a new burden for Council services. A Service Level Agreement is being negotiated with HS2 Ltd to ensure that the Council is fully reimbursed for the additional work generated through the consents and approvals process.

Comments checked by:

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### **Legal Implications**

7.2 The proposed amendment to the scheme of delegation requires the approval of full council and will enable the expedient and expeditious determination of applications submitted relating to the HS2 railway. This will reduce the risk associated with persistent non-fulfilment of the obligations set out within the Planning Memorandum which could result in the removal of the Council's status as a Qualifying Authority and the consequent loss of the opportunity to influence the final design of railway works.

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## 8.0 Decision Information

### Wards Affected

Fringford and Heyfords

### Links to Corporate Plan and Policy Framework

The Council's 2016/17 Business Plan strategic priority of Protect the District, via the key objectives of; (1) ensuring the character of the district is preserved; (2) protect the built heritage; (3) preserve the environmental quality of the District; (4) mitigate the effects of High Speed 2 construction.

### Lead Councillor

Councillor Colin Clarke (Lead Member for Planning t)

### Document Information

Appendix No	Title
None	
<b>Background Papers</b>	
None	
<b>Supporting Information</b>	
High Speed Rail HS2 - Qualifying Authority Status - Report of Head of Development Management	
High Speed Rail (London-West Midlands) Draft Environmental Minimum Requirements Annex 2: Planning Memorandum March 2016	
High Speed Rail (London-West Midlands) Act 2017 Schedule 17 Statutory Guidance	
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