

Cherwell District Council

Executive

3 March 2014

Petitioning the Hybrid Bill on High Speed 2 (HS2)

Report of Head of Strategic Planning and the Economy

This report is public

Purpose of report

To consider the need to petition during the passage of the Hybrid Bill on HS2

To consider recommending to Full Council that a resolution is passed opposing the HS2 Bill.

1.0 Recommendations

The meeting is recommended:

- 1.1 To consider whether Cherwell District Council should petition to oppose the hybrid bill for HS2.
- 1.2 Subject to 1.1 above, to discuss and agree potential petitioning matters as listed in 3.11 below
- 1.3 To consider and, if appropriate, to recommend to Full Council that a resolution is passed opposing the hybrid bill pursuant to section 239 of the Local Government Act 1972 as a necessary pre-requisite to formal petitioning and request the Chief Executive to call an additional meeting of Council.

2.0 Introduction

2.1 Why is Hybrid Bill used?

The government wishes to obtain powers to build the railway in order to buy/lease land and obtain (deemed) planning permission. The government is also seeking permission to make road and waterway diversions (temporarily or permanently). Finally, there is a need to modify statutory undertakers' equipment (divert a water main or a sewer for example). A public or private bill can only be used to seek some of these powers, hence a 'hybrid' is required.

2.2 Public and Private Bills

A public bill can create or amend public legislation (i.e. legislation that applies to everybody). An individual can make representations to MPs, but committees have no right to be heard.

A Private Bill is usually promoted by organisations such as local authorities or companies and only affects only certain individuals. Those same individuals affected have the right to petition and be heard

2.3 Hybrid Bills

Hence, a Hybrid Bill has characteristics of public and private Bills. The **principle** of the proposal is debated in Parliament and the details are **scrutinised** by a Select Committee. Individuals affected by the proposal have a **right** to petition and be heard by the Committee. A principal council can only oppose a public or a private bill by passing a resolution of Full Council in accordance with section 239 of the Local Government Act 1972 – see 7.2. below.

3.0 Report Details

3.1 When is a Hybrid Bill used?

A Hybrid Bill is use for large infrastructure projects of national significance, such as the Channel Tunnel (1987), the Severn Bridges (1992), the Channel Tunnel Rail Link (1996) and the Crossrail project in 2008.

3.2 Hybrid Bill documents

The Bill itself includes a number of key items such as Schedules to the Bill, plans and sections, Estimate of Expense, the Book/s of Reference and supporting documentation such as the Environmental Statement (incl. Code of Construction Practice).

3.3 Hybrid Bill process

The Environmental Statement is the key document upon which the public (and local authorities) can comment. The public consultation on the ES commenced on 25 November 2013. It ends on 27 February 2013. A draft response is in preparation.

3.4 Who can petition and how?

The process is defined by Parliament rather than HS2 Ltd. Anyone 'directly and specially affected' by the Bill can petition in writing, following prescribed format <http://www.parliament.uk/documents/upload/commonspetitioningkit.pdf> (page 4).

But, a petition must be made in person (by the Petitioner or Agent acting on their behalf) to the Private Bill Office. A petition will not be considered by the Committee unless they or their agent appears (i.e. turns up to allotted session).

3.5 Committee powers

The committee has similar but different to departmental Select Committees and it operates more like a court.

Their initial remit is to decide 'locus standi' (i.e. does the petitioner have the status to petition?). It then hears petitions against the Bill, scrutinises all the proposals and reports to House. The committee can amend but cannot reject the Bill.

3.6 Committee members

The Select Committee cannot include any MP's with an 'interest', i.e. along the line of route or linked to the construction or railway industries. Membership is drawn from proportional make-up of the House (i.e. Coalition Government majority).

3.7 Rights of parties

Promoter and petitioner have a right to appear before Committee to make their cases. Petitioners can be heard either in person or by their agent/counsel

3.8 Order of proceedings

The first stage of the process is for the Petitioner to set out how they are affected by the Bill (it is usual to allow petitioner the first and last word). The Petitioner can call witnesses.

The second stage involves the witnesses being cross-examined by promoter, then re-examined by petitioner. Once petitioner's case is made, Counsel for the promoter can call witnesses and witnesses can be cross-examined by petitioner etc.

Finally, the Petitioner has the right of reply.

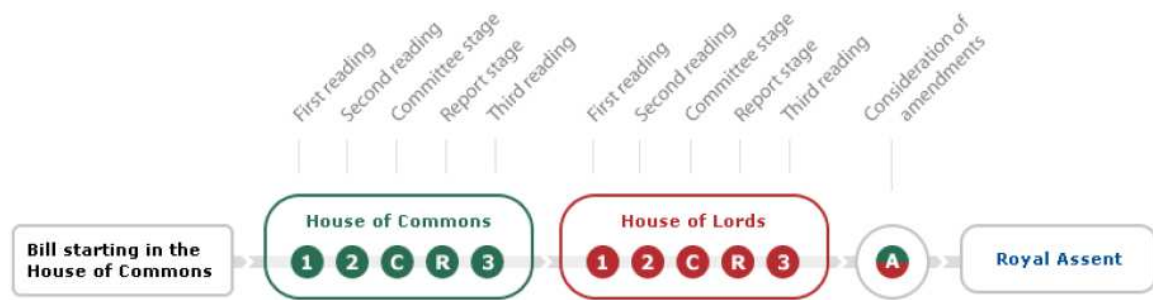
3.9 Potential changes

The Select Committee has powers to suggest changes to the Bill. If Parliament agrees they can instruct the promoter to change the Bill.

Additional powers can subsequently be sought by another consents process through a planning application, the Transport and Works Act (TWA) or a Development Consent Order (DCO).

3.10 Estimated timetable for passage of the Hybrid Bill

See next page



Stage	Estimated date*	Comments
House of Commons		
1st reading	End of November hybrid Bill deposited <i>(Source: Commons Private Bill Standing Orders 27 and 27A)</i>	<ul style="list-style-type: none"> • Bill is deposited + supporting documentation (including Formal ES) • Formality - authorises Printing of Bill (though will be electronic). • Checks compliance with the House's rules (Standing Orders) before the second reading can take place.
Public consultation on Formal ES	Possibly end January 2014	<ul style="list-style-type: none"> • Will be for a minimum of 56 days once Bill deposited <i>(Source: Paving Bill Motion).</i>
ES Examiners Report published	Possibly end February/early March 2014	<ul style="list-style-type: none"> • Examiners Report must be submitted to the House within a period determined by the independent assessor in consultation with the relevant Minister (no earlier than 28 days after close of consultation period). • A period of 14 days must then elapse before 2nd reading.
2nd reading	Earliest date would be mid March 2014	<ul style="list-style-type: none"> • Establishes general principles of HS2 and the key features. • Once stage finished there will be no other opportunity to argue about the principle (business case etc). • Launches petitioning period.
Petitioning period	Period of time to submit petitions defined at second reading	<ul style="list-style-type: none"> • Petitions can be submitted from anyone who is affected by the Bill and can be made personally or through Parliamentary agents. • Set out detailed matters of concern together & request for a specific response or remedy. For example – petitioners may question elements of the proposed route/ effect on particular properties.
Select Committee**	Starting in April/May/June 2014 onwards. (Total length	<ul style="list-style-type: none"> • Made up of MP's who are not directly affected by the route. • Opportunity to present the case to Select Committee if not able to reach an agreed position with DfT officials

	dependent on number of petitions)	and HS2 Ltd. <ul style="list-style-type: none"> • Can take months/ over a year (Crossrail sat from Jan 2006 to Nov 2007) Committee decides issues raised in petitions.
Standing Committee	Date unknown	<ul style="list-style-type: none"> • MPs may table amendments after hearing the petitioners.
<i>Potential Public Consultation on any further environmental information</i>	<i>Date unknown – could also occur prior to second reading</i>	<ul style="list-style-type: none"> • <i>If further environmental information is needed to make the ES compliant with the EU directive there will be a minimum of 42 days for comments to be submitted. Again comments will have to be published and a summary from the independent assessor.</i>
<i>Potential report on further environmental information</i>	<i>Note above</i>	<ul style="list-style-type: none"> • <i>14 days must elapse before the third reading (unless environmental information is issued before second reading in which case it will need to be 14 days before the second reading).</i>
Report and Third Reading	Date unknown	<ul style="list-style-type: none"> • House considers Bill and may amend or reverse standing committee changes. • This concludes the Commons stage and the Bill is then sent to the House of Lords.
House of Lords		
1st reading & petitioning period	Date unknown	<ul style="list-style-type: none"> • The same process is then repeated in the Lords. • Petitioners can petition the House of Lords which presents further opportunity for objectors to petition and to appear before a select committee.
2nd Reading	Date unknown	
Select Committee**	Date unknown	<ul style="list-style-type: none"> • Crossrail Select Committee was appointed on Feb 2008 & dissolved May 2008.
Report & 3rd reading	Date unknown	
Commons Consideration of Lords' amendments	Date unknown	<ul style="list-style-type: none"> • Further amendments can be made.
Royal Assent	2015	<ul style="list-style-type: none"> • General election is in May 2015***

3.11 What matters could CDC petition on?

Cherwell Council has 'Locus Standi' as it represents all of those affected within the district.

By way of protecting both resident and taxpayers within the district, the key consideration is to only petition on matters where it might be seen to be 'reasonable' to expect the promoters to change the bill.

As the principal purpose of the bill is to 'seek permission' to build the railway, the scheme design only needs to be of 'sufficient' detail to enable the passage of the Bill. Hence requests for micro changes to specific sections of the route are inherently unlikely to be successful.

It is therefore suggested that CDC focuses on a number of matters of principle relevant to a rural district and considers areas where changes to methodology or design characteristics will have a net benefit to specific locations in the district. The five principle areas suggested for advancement to petition are:

1. **Noise Standards:** the current guidance is that noise mitigation is NOT considered necessary where average Decibel levels are below 50dBA. In short, an urban area will receive mitigation where noise levels are anticipated to rise from, for example 45dBA to 51dBA, whereas a rural area, such as South Northamptonshire could see levels rise from 25dBA to 49dBA without any mitigation. Further, that suggested night-time max decibel levels (dB Max) are at that which may provoke sleep disruption. Hence, petitioning to achieve a drop in one or more of these levels is suggested.

These are matters of relevance to the impact of the line through Cherwell.

2. **Visual Impact and Intrusion:** the current scheme proposes the use of consistent and largely 'urban' design cues for infrastructure such as roads (off-road access and on-road re-alignments), viaducts and culverts. It is suggested that CDC petitions on the use of designs more appropriate to a rural setting.

These are matters of relevance to specific sites in Cherwell District which CDC is identifying through its mitigation assessment.

3. **Local Design Standards:** as above, the current scheme proposes the use of consistent and largely 'urban' design cues with no specific requirement to 'integrate' the design into the natural setting. To support a more generic 'rural' design principle, it is recommended that CDC petitions on the specific use of locally occurring and present existing design cues to complement our local built and natural heritage and respect our designated conservation areas.

These are matters of relevance to the impact of the line through Cherwell District.

4. **Construction Issues:** the current guidance is generally vague with regards to both construction traffic routes and site access. Petitioning on this issue could seek commitments on which roads would and would not be used and the specific times at which compounds and construction sites would be accessed. With respect to construction traffic, any potential petition would need to seek advice from (and be aligned with) Oxfordshire County Council as the designated highways authority.

These are matters of relevance to the impact of the line through Cherwell District.

5. **Height of Line:** the current proposals restrict horizontal deflections of the line (i.e. changes to the exact route with respect to East or West). However, vertical deflection (i.e. changes to the height of the line) is effectively unrestricted. Petitioning on this matter would seek to restrict the variation to a set number of metres above or below the current proposal.

These are matters of relevance to specific sites in Cherwell which CDC is identifying through its mitigation assessment.

3.12 Response from HS2 Ltd

A meeting was held between officers from Cherwell District Council on the HS2 Ltd Petition Manager (Area South) on 30 January 2014 which are relevant to the issues being considered in this report. The five 'potential' petitioning areas were discussed in broad terms and the following comments were made on behalf of HS2 Ltd in relation to them:

- 1. Noise Standards:** these have been agreed through the consultation on the scope and methodology at the time of the Draft Environmental Statement (July 2013). Different noise standards would necessitate a new Environmental Statement
- 2. Visual Impact and Intrusion:** the final detailed design of the scheme will take place in 2015/16. Qualifying local authorities (i.e. those that agree to sign the planning memorandum in Spring 2014) will be consulted on and have influence over the final design. The Environmental Statement (including published photomontages) is intended to represent the 'worst case scenario' and some of the more detailed mitigation is not shown.
- 3. Local Design Standards:** there is a drive towards reducing on-site costs, hence the design is likely to be uniform along the length of line, with for example, bridges built off-site in modular units and transported to construction sites.
- 4. Construction Issues:** HS2 is not able to confirm exact details of which routes will be used and when until the final design stage in 2015/16. The details will be included in the Local Environmental Management Plans (LEMPS) that Cherwell District Council will be consulted on.
- 5. Height of Line:** the published standards permit the line to be lowered without any restriction, but not raised by more than 3 metres. However, any change in elevation is limited by the land that has been safeguarded. For example, constructing a deeper cutting or moving bunds further away from the line (to negate the sound impact of a raised bridge) would only be possible within the safeguarded area (this includes land identified for construction or mitigation that may then be returned to its previous use such as agricultural). In short, this effectively limits the amount of vertical deviation from the proposed route.

3.13 Next Steps on HS2

The Draft CDC Response to the Environmental Statement requires refinement prior to submission. In addition, the section-by-section analysis of the issues raised through parish consultation requires completion.

Should the Executive recommend to Council that Cherwell proceed to the petitioning stage, the current anticipated timescale would require petition preparation during March, then approval and submission to Parliament in early May 2014. The CDC Response to the Environmental Statement and the section-by-section analysis of issues would both inform the detail of the petition.

Whilst the exact timing of 'petition hearing' is unknown, past hearings on rail infrastructure projects have progress geographically. Hence, whether the process

begins by considering issues at London (Euston) or Birmingham (Curzon Street), it is 'likely' that local issues will be considered in the Autumn/Winter of 2014.

This is the point at which we 'may' be required to appear in parliament before the Hybrid Bill panel.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The impact upon the district and its residents of proposed mitigation measures is anticipated to be very high. Officers do not feel that the published material provides sufficient reassurance that adequate mitigation will be implemented.

5.0 Consultation

This report has been informed by continuing discussions at meetings attended by local District Councillors, the local Member of Parliament, Parish Councils affected by the routes and representatives of the local action group.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The alternative is not to petition. This option is not recommended as the impact upon the district and its residents of proposed mitigation measures is anticipated to be high.

7.0 Implications

Financial and Resource Implications

- 7.1 There is a financial implication to petitioning. It is difficult to be definitive on the costs as the breadth and depth of petition is as yet undetermined. It is intended to petition in collaboration with South Northamptonshire Council to secure economies of scale.

There is an existing HS2 reserve, which currently stand at £14,000 which could be utilised to fund this task.

Comments checked by:

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Legal Implications

- 7.2 If the Council is to petition it will be necessary to appoint external parliamentary agents to act on its behalf. It is intended to petition in collaboration with South Northamptonshire Council.

Section 239 of the Local Government Act 1972 enables a local authority to oppose a public or private bill where it is satisfied that it is expedient to do so, but only in

accordance with the procedure set down by the Act. There must be a resolution to oppose passed by a majority of the whole number of the members of the Council whether present and voting or not (i.e. at least 26 members) and there must be an advertisement published at least 10 clear days before the meeting in one or more newspapers circulating in the Council's area giving notice of the meeting and its purpose.

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8.0 Decision Information

Key Decision (Cabinet/Executive reports only) or delete if not Cabinet / Executive report

Financial Threshold Met: no

Community Impact Threshold Met: no

Wards Affected

Fringford

Links to Corporate Plan and Policy Framework

A Cleaner, Greener Cherwell

Lead Councillor

Councillor Michael Gibbard - Lead Member for Planning

Document Information

Appendix No	Title
None	
Background Papers	
None	
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