

HS2 Church Fenton draft Neighbourhood Plan Regulation 14 consultation response

From: Peter Attwell (Peter.Attwell@hs2.org.uk)

To: sarahchester@sky.com

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Our ref: HS2-SEC-PE-001

Dear Sir/Madam,

Thank you for the invitation to comment on the Church Fenton draft Neighbourhood Plan. HS2 Ltd has the following comments to make.

HS2 Ltd understands that in the event the neighbourhood plan is 'made' the Plan will become part of the Local Authority's statutory development plan for the area. While the Plan's policies form a consideration in terms of development in the area it is perhaps helpful to consider how and to what extent policies can be applied in relation to planning permission required for HS2 Phase 2b. Particularly in light of the planning regime established under the HS2 Act 2017 (the Act), and included within the Phase 2a Hybrid Bill, which has for Phase 1, or will in the case of Phase 2a be used to secure deemed planning permission for the respective sections of the railway and is therefore likely to be replicated for Phase 2b. Whilst yet to be confirmed by Government for Phase 2b, this response is based on the approach applied for Phase 1 and 2a being carried forward. The Act and Hybrid Bill include a separate planning regime which is different to that which is applied in order to determine planning applications under the Town and Country Planning Act 1990 (TCPA).

In order to describe the interaction between the planning regime likely to be established by future legislation and the emerging Neighbourhood Plan, below I have attempted to capture broadly how the consenting regime currently operates with regards to Phase One.

The existing Act's planning regime is complemented by a set of environmental controls known as Environmental Minimum Requirements (EMRs). The EMRs are controls which Parliament considered necessary or sufficient in order to grant deemed planning permission for the railway. Therefore, the Parliamentary process and resulting legislation ensures that an appropriate level of control (e.g. EMRs) is in place to deliver the railway for HS2 phase 2b and grant deemed planning permission for development.

Section 20 of the Act grants deemed planning permission under Part 3 of the Town and Country Planning Act 1990 for HS2 Phase One and associated works ("the Works") between London and the West Midlands, some of the detailed design and construction are subject to further approval. Schedule 17 to the Act puts in place a process for the approval of certain matters relating to the design and construction of the railway which requires the nominated undertaker (the organisation on whom the powers to carry out the works are conferred) to seek approval of these matters from the relevant planning authority.

Deemed planning permission has been granted by the Act requests for approval under Schedule 17 are not planning applications. However, as some of the elements of the detailed design of the railway and associated works require further approval, comparisons can be made between the deemed planning permission granted for the works and that granted for an outline planning permission under the Town and Country Planning Act 1990. The main distinction between the two is that under the Act the grounds on which the planning authority can approve further details and apply conditions are more constrained.

Therefore, were the Neighbourhood Plan to be 'made', relevant policies would only be material to the determination of a request for approval insofar as they relate to the matter for approval and are specified grounds for determining requests for approval. The grounds for determining requests for approval in terms of the HS2 Phase One are provided in Schedule 17 of the Act 2017.

The approvals that are required are carefully defined to provide an appropriate level of local planning control over the works while not unduly delaying or adding cost to the project. Paragraph 4.4 of [HS2 Act 2017 Schedule 17 Statutory Guidance](#) states that planning authorities should not through the exercise of the Schedule seek to:

- revisit matters settled through the parliamentary process;
- seek to extend or alter the scope of the project; or
- modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements, or existing legislation such as the Control of Pollution Act or the regulatory requirements that apply to railways

Therefore it is necessary to consider, were policies of the Neighbourhood Plan to be applied to a request for approval, whether they would engage any of the 3 bullet points set out above. In this instance, focusing particularly on where Parliament in the future is likely to have granted deemed planning permission, or the application of the policy amounts to a modification or replication of existing controls that have been determined to be necessary or sufficient as part of the parliamentary process. Specifically, this could be the case in terms of Neighbourhood Plan policies HSR1 a) and b), and HSR2 a) as EMRs are to be developed to mitigate or avoid environmental effects associated with all aspects of HS2 and deliver sustainable development.

HS2 Ltd has concerns regarding policies HSR1 and HSR2 and the extent to which these policies seek to replicate or modify controls that will be put in place at the time HS2 Phase 2b legislation comes in to effect. It could be interpreted that these policies provide an opportunity to revisit matters that are part of the parliamentary process or are matters which will be for the EMRs to address. This is not the case.

That said, the policies could be re-drafted in a way that assists the local planning authority when it considers requests for approval made under the Schedule 17 Phase 2b equivalent, and, assuming the planning authority opts to be a 'qualifying authority' (a planning authority given a wider range of controls in the approval of detail of the construction works required for HS2 having signed a planning memorandum), by focusing on matters which are relevant to the specified grounds for determining requests for approval (e.g. the preservation of the local environment or local amenity, road safety or traffic flows in the local area, or the preservation of the local historic and natural environment). Such policies could carry weight in circumstances where the planning authority considers and aims to demonstrate that plans and specifications submitted in support of a request for approval could reasonably be modified or the development for which approval is sought be carried out elsewhere within the development's permitted limits. Alternatively, HSR1 and HSR2 as drafted could be applied in the event that HS2 Ltd is required to seek planning permission outside the limits of Act powers (i.e. under the TCPA).

Communities have the opportunity to engage with the parliamentary process and petition Government with regards to development for which the legislation is seeking deemed planning consent.

With regards to policy HSR1 c), HS2 Ltd has a stakeholder engagement strategy which is applied consistently route-wide to communities affected by the railway. The strategy explains how HS2 Ltd will engage with communities affected by the project. The Community Engagement Strategy can be located by clicking [here](#). David Griffiths-Allen, the stakeholder engagement manager, would be happy to discuss this further.

With regards to policy HSR2 b), the HS2 stakeholder engagement team is always happy to discuss additional regeneration opportunities suggested by stakeholders. As you know HS2 Ltd operates a Community Environment

Fund, and, Business and Local Economy Fund. Both funds could provide additional regeneration opportunities or improvements within the local community.

Furthermore, the below may provide some reassurance regarding design. While this relates to HS2 Phase One it is a policy that is likely to be replicated for other phases.

HS2 D1 Design Policy, particularly 3.1 bullets 2 & 3 (extract below).

The above is taken from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672265/D1_-_Design_Policy_v1.8.pdf

Also, there is more recent evidence regarding sustainability than that which is referred to in page 52 and 53 of the Neighbourhood Plan. Extracts are taken from the 2016 post-consultation Sustainability Report by Temple-RSK it is advisable for quotes to be taken from the October 2018 Phase 2B Working Draft Environmental Statement.

It is also considered helpful to remind you that land subject to safeguarding directions continues to be reviewed as the designs of the project are refined following on from the [Phase 2b Working Draft Environmental Statement](#) consultation which took place during Autumn 2018.

HS2 Ltd appreciates that the above comments introduce a planning regime that could well be unfamiliar to the Neighbourhood Plan steering group and the Local Planning Authority. As such, if there are any further questions regarding the above comments please email them to me and I will respond. Alternatively, if it is that the steering group have further questions and the nature of the questions means that a meeting or conference call is likely to provide the best means of support I will make arrangements for this.

Kind regards,

Peter Attwell | Town Planning Advisor | Infrastructure Directorate | HS2 Ltd

Mob: 07909933933 | peter.attwell@hs2.org.uk | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

High Speed Two (HS2) Limited, Two Snowhill, Snow Hill Queensway, Birmingham, B4 6GA | www.gov.uk/hs2

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