

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO
COUNCIL**

Date: 21 February 2018

Report Title: Petitioning on the High Speed Rail (West Midlands – Crewe) Bill

Submitted by: Executive Director – Regeneration and Development

Portfolios: Planning and Regeneration

Ward(s) affected: Loggerheads and Whitmore, Madeley

Purpose of the Report

The Government is proposing to develop a high speed rail line between Fradley (Lichfield) and Crewe - High Speed 2, Phase 2a - as part of a wider high speed rail network which will link London with Birmingham, Manchester and Leeds.

On 17 July 2017 a Hybrid Bill relating to High Speed 2 Phase 2a was deposited in Parliament - enactment of the Bill will give the Government the powers to build and operate a high speed rail line as proposed.

This report provides Members with information in order that they may consider petitioning Parliament on the Hybrid Bill.

Recommendations:

That, subject to the views of Cabinet, Members resolve to:-

- 1) agree to the principle of petitioning the High Speed Rail (West Midlands - Crewe) Bill and;
- 2) delegate authority to the Cabinet Member for Planning and Regeneration in consultation with the Executive Director (Regeneration and Development) to:
 - a) develop the scope of the Borough Council's petition to Parliament, in consultation with the relevant Members and Officers of Staffordshire County Council (including the commissioning of Parliamentary Agents) and;
 - b) co-ordinate the petitioning of the Hybrid Bill before Parliament and in so doing, to seek any necessary approvals for the expenditure of resources, if required.

Reasons:

To ensure that the Council follows the relevant procedural rules and regulations in the event that the Council wishes to petition against HS2 Phase 2a proposals in order to minimise the potentially harmful impact of the proposals upon the communities of interest in the Borough.

1. Background

- 1.1 High Speed 2 is a Government backed and promoted proposal to develop a high speed rail line between London, Manchester and Leeds. Phase 1 of the line from London to Birmingham, and to a point near Fradley in Lichfield District, from where there will be a connection with the existing West Coast Mainline (near Handsacre, Rugeley) was granted Royal assent in February 2017. Phase 2a is proposed to extend the line from Fradley to Crewe, and passes through the Borough. Phase One is expected to become operational by 2026 followed by Phase 2a in 2027 and Phase 2b (Crewe to Manchester and Birmingham to Leeds) in 2033.
- 1.2 A Hybrid Bill covering Phase 2a of High Speed 2 was formally laid before Parliament, supported by a full Environmental Statement. It had its first reading on 17 July 2017. The Environmental Statement was open for consultation until 30 September 2017. The County Council led a comprehensive joint response with the affected District and Borough Councils, including the Borough Council. Views of Parish Councils and other key stakeholders were also taken into account where possible.
- 1.3. The Bill had its second reading on the 30th January 2018. Hybrid Bills are commonly used to deliver nationally important infrastructure projects where Parliamentary approval is required. Hybrid Bills pass through both Houses of Parliament before receiving Royal Assent. Upon gaining Royal Assent the Bill will become an Act of Parliament, granting powers to build, operate and maintain the new railway.
- 1.4 At the second reading Members of the House of Commons (MPs) have decided that the principles of the Bill are acceptable and the proposals now go forward for detailed scrutiny. A Select Committee of MPs has been set up to determine whether the Bill is appropriate as deposited or needs to be changed in any way.
- 1.5 Immediately following the second reading of the Bill a call has gone out for “petitions” to be lodged by interested parties. This petitioning period ends at 5pm on Monday 26th February 2018.
- 1.6 The Hybrid Bill offers the only opportunity for local authorities, local communities, individuals and other interested parties to challenge the Government’s proposals and seek to have changes made to the proposed scheme. This process is known as ‘Petitioning’ which involves a formal notice being made to Parliament by an affected party to have their views heard by a Select Committee and then subject to that wish being acceded to by Parliament, that party duly presenting its case.
- 1.7 Members should be aware that it is not possible at this stage to object to the principle of the Scheme.

2. Issues

- 2.1 On Phase 1 Staffordshire County Council and Lichfield District Council took the decision to formally petition the Hybrid Bill. They appointed Parliamentary Agents and legal Counsel to act on their respective behalf in this process. Officers can confirm that they did achieve some notable success in securing changes to the proposal including a significant change to the vertical alignment of the route.
- 2.2 It is known that Staffordshire County Council is likely to petition on Phase 2a and have retained the same Parliamentary Agents. Whilst the two authorities may share the same concerns over the contents of the Bill, there may be matters which the Borough Council wishes to petition on which Staffordshire County Council does not, and therefore whilst to petition may duplicate in part what Staffordshire County Council does, the Council cannot rely on the County Council petitioning on all matters the Borough Council is concerned about. Therefore the relevant Members and Officers of the two Councils are engaging with one another in order to clarify the need or otherwise of the Council petitioning on its own – i.e. there may be considerable scope for jointly commissioning any technical or legal expertise and it may be deemed appropriate for the County Council to take a more prominent or leading role.
- 2.3 When the Select Committee comes to deciding whether or not to accept a petition it will want to establish what the interest is of the petitioner. If the Committee does not believe that a petitioner has a direct link to the matter being raised under the petition, it can disallow the petition and prevent the petitioner being heard. Parliamentary Agents have advised that this 'rule' applies to any prospective petitioner and is intended to ensure the process of petitioning is not abused.
- 2.4 On phase 1 Staffordshire County Council was advised that whilst it is appropriate for it to petition generally - being a local authority covering the area within which part of the route will be built and operate - the Select Committee may wish to enquire as to the specific grounds that Staffordshire County Council were using to justify this approach. Such questioning is unlikely to occur where the County Council is raising issues about matters for which it has direct responsibility for e.g. Highways/transportation matters. Where matters lie outside its areas of responsibility but are the responsibility of the Borough Council (e.g. Planning, noise nuisance, cemetery-related concerns, etc.), the view of Parliamentary Agents was that to avoid problems occurring at the Select Committee stage and to ensure that issues such as those that would fall within the remit of the Borough Council are presented and heard, the Borough Council should be seeking to petition. Further legal advice will be sought in this regard taking account of earlier comments about the scope for joint working with the County Council taking account of resource considerations.

- 2.5 Petitioning against a Parliamentary Bill requires specialist knowledge and expertise in drafting the petition and presenting this to the Select Committee. Parliamentary Agents are solicitors approved by the House of Commons and Lords to undertake this work on behalf of bodies seeking to petition. Staffordshire County Council has appointed Parliamentary Agents “Sharpe Pritchard” to advise and assist on HS2.
- 2.6 Costs would be incurred in appointing Parliamentary Agents to advise the Borough Council on petitioning issues, to draft and submit the petition and for assisting in making the Council’s case at Select Committee stage. The Parliamentary Agents would also support the Borough Council in discussions with High Speed 2 Limited on issues prior to Select Committee stage where there could be the prospect of reaching agreement, depending on the matter which is the subject of the petition, and thus preventing the need for matters to be taken forward.
- 2.7 It would seem prudent to at least engage the Parliamentary Agents retained by Staffordshire County Council. This may enable any costs to be shared or for the Borough Council to be satisfied that it’s representation could be taken forward by the County Council’s submission (i.e. to avoid duplication of effort and wasting resources). Further discussions will be taking place with colleagues at the County Council in this regard.
- 2.8 It is difficult at this moment to identify the precise costs likely to be incurred by the Council in matters leading up to the Select Committee stage but it is hoped that these can be met from existing budgets. Clearly officers would seek any necessary approvals for additional expenditure, should that be required, in due course.
- 2.9 The other area of potential expense would be the possibility of having to appoint legal counsel to appear at the Select Committee. Again advice on this would need to be taken at a later date but as alluded to above there may be potential for joint working arrangements between the County Council and the Borough Council to reduce or completely negate the cost of representation.
- 2.10 Members should be aware that it is normal procedure prior to the Select Committee stage for a Bill promoter to seek to reduce the level of objections or the range of matters to be discussed before the Committee (indeed this is what happened at Lichfield in Phase 1).
- 2.11 Turning from the process aspects to the potential impact of the proposals contained within the Hybrid Bill there are a number of concerns that could be raised. These relate to the impact of the route on the landscape and amenity of the Borough and the effects on local communities of the route’s construction and subsequent operation.

- 2.12 In many parts along the route, HS2 will be very prominent in the landscape particularly where it is on viaducts and embankments such as between Madeley Park Wood and Madeley. Construction activities will result in the loss of existing properties and significantly increase the number of vehicles using some rural roads. In addition the works will result in the destruction of important nature conservation assets. To the north of Madeley the route involves the loss of a substantial part of an Ancient Woodland.
- 2.13 More particularly from the Council's operational services perspective Members should be aware that the proposed route would be in close proximity to the Council's cemetery at Manor Road, Madeley along with a cluster of Listed Buildings nearby. It would seem extremely difficult (almost impossible) to mitigate the environmental impact both during the construction phase and at the time that the rail would be in operational use. It is noteworthy that there is an estimated 10 years of capacity at the cemetery.
- 2.14 Work is currently on-going to determine the number of petitioning issues which could be taken forward. At this stage officers consider that the key areas are:-
- (a) In order to minimise potentially serious harm to the landscape, likely significant noise impacts from haul routes and work compounds and interests of acknowledged importance both during the construction phase of the project and when completed, such as the loss of ancient Woodland to the north of Madeley, there should be a proper assessment of the potential to join the Whitmore Heath and Bar Hill (Madeley) tunnels - the so-called "longer deeper tunnel" option;
 - (b) In the event that the longer deeper tunnel option is not pursued, achieving the most satisfactory design solution to the Madeley viaduct and its approaches. Whilst the design will be subject to the planning regime set out in Schedule 17 of the Bill, the importance of the appearance of the viaduct at some 20 metres in height cannot be minimised, and an undertaking to provide a design-led solution rather than a cost-driven engineering solution is required to mitigate the visual intrusion into the valley, the Madeley Conservation Area to the north, and the setting of the various Listed Buildings in the locality. In addition further mitigation should be sought to minimise the adverse impact upon the Council's cemetery in Manor Road, Madeley;
 - (c) Improved programming of construction operations including the routing of construction traffic away from residential properties to minimise the potential for nuisance being caused to the reasonable amenities of local residents and;
 - (d) In general securing improved mitigation of the affects of the construction and operation of the HS2 line on the environment of the Borough.

3. Proposal

- 3.1 That, subject to the comments of Cabinet, the Council resolves to petition against the Bill at this stage thereby protecting the Council's position in making representation directly itself whilst liaising with the County Council and legal representatives to determine the scope for either joint representations or for the Borough Council's concerns aligning with those of the County Council.

4. Reasons for the Preferred Solution

- 4.1 Failure to petition would leave the Council in a weak position, with no means of directly securing improved mitigation for the Borough unless changes are achieved by other petitioners. There is a risk that where matters lie outside the County Council's areas of responsibility (principally as a Highway Authority) but are the responsibility of the Borough Council (e.g. amenity considerations such as landscape impact and noise) it may be necessary for the Borough Council to petition. It is noteworthy that HS2 Ltd. have not sought to offer any assurances or negotiate on any of the petitioning points described in this report up to this stage.
- 4.2 It is clear from the information contained within the formal Environmental Statement and Hybrid Bill that significant elements of the design require improvement in Staffordshire, and will have a substantial impact on the local environment and countryside if left unchallenged.
- 4.3 Therefore it is recommended that Council petitions against the Bill in order to attempt to secure improvements to the scheme and safeguard the interest of the Borough's communities of interest (both residents and businesses).

5. Financial and Resource Implications

- 5.1 Costs will be incurred in the submission of a petition; £20. However as indicated above the likely cost of preparation of evidence and appearances before the Select Committee, if required, is difficult to predict with any accuracy due to a range of unknown factors (including the number of petitions that could be received, the process the Select Committee will undertake to assess the petitions and the wider debate of the Bill through the formal stages within the House of Commons).
- 5.2 It is hoped that any costs up to the Select Committee stage can be met from existing budgets. It is anticipated that the Council's position will become clearer over the coming weeks and months and that any necessary budgetary approvals will be sought as required. From a cost perspective the most significant issue will be whether the Borough Council appears at the Select Committee (represented by

Parliamentary Agents) or settles by agreement with HS2 Ltd., thus avoiding such an appearance.

- 5.3 As explained earlier officers and relevant Members will engage with colleagues at Staffordshire County Council (who will be petitioning against the Bill on a number of points) in the hope that the Borough Council's interests may be assimilated into their petition. The Borough Council will at least seek to share associated costs with the County Council where there is a common interest and where appropriate (without undermining the case), avoid costs altogether.

6. Outcomes Linked to Corporate Priorities

- 6.1 The petitioning of Government as described would align with the Council's priorities in relation to protection of the natural and built environment.

7. Legal and Statutory Implications

- 7.1 Legislative provisions exist that allow the Council to petition the Government in this matter. There will be a requirement for the Council to seek legal advice on the finer points of the law in order that the Council can determine, in consultation with Staffordshire County Council, the most appropriate approach to protect the interests of the Borough's communities.

8. Major Risks

- 8.1 If Members are satisfied that there is a need to seek improvements to the proposals to mitigate harm to the interests of acknowledged importance the main risk lies in the Council not petitioning at this stage.

9. Key Decision Information

- 9.1 This is an urgent decision because of the timescales associated with the petitioning of Government following the second reading of the Hybrid Bill and it is a key decision because it affects two wards.

10. Background Papers

- 10.1 [High Speed Rail \(West Midlands – Crewe\) Bill
Phase 2a Environmental Statement Staffordshire Authorities Joint
Response](#)