

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO PLANNING COMMITTEE**

05 November 2019

Report Title: Delegated Authority to Determine Applications Pursuant to Schedule 18 of the High Speed Rail (West Midlands – Crewe) Bill (act following its assent)

Submitted by: Executive Management Team

Portfolios: Leader of the Council – Corporate and Service Improvement, People and Partnerships

Ward(s) affected: Whitmore, Maer and Madeley

Purpose of the 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 18 of the High Speed Rail (West Midlands-Crewe) Bill.

Recommendation

To amend the Scheme of Delegation to the Head of Development Management, as set out in Part 3 of the Council's Constitution, to insert the following application type within the list of delegated application types set out in Appendix 4 Item 10 of the Constitution.

"To determine all application pursuant to Clause 21 Schedule 18 of the High Speed Rail (West Midlands-Crewe) Act 2019" (once the Act comes into force).

And that this is exercised by

"Executive Director (Commercial Development and Economic Growth)"

Reasons

1. Applications pursuant to Schedule 18 of the High Speed Rail (West Midlands-Crewe) Act 2019 will not be planning applications and they are not identified within the Scheme of Delegation as being dealt with through the Council's Planning team.
2. To ensure that the submissions pursuant to Schedule 18 of the High Speed Rail (West Midlands-Crewe) Act 2019 (when it comes into force) can be dealt with under delegated authority.

1. **Background**

1.1 High Speed Rail (West Midlands – Crewe) Act 2019 (the 2019 Act) will grant planning permission for the construction of a high speed railway between West Midlands to Crewe being the second phase of the proposal. This is pursuant to High Speed Rail (London to West Midlands) Act 2018 (the 2018 Act) which grants the planning permission for the construction of a high speed railway between London and the West Midlands.

1.2 Under the provisions of Schedule 18 of the 2019 Act, the requirements for HS2 to apply for Listed Building consent for the identified structures or buildings are disapplied. (the structures and

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buildings are not delisted). Instead, the Secretary of State for Transport enters into undertaking requirements with the Council in the form of Heritage Agreements (HA).

- 1.3 These agreements are in the form of deeds relating to the works proposed. These are currently with the Council in draft form for consultation with the Conservation Officer. The purpose of the consultation is not to agree the principle of the buildings or structures affected which is already determined by the route of HS2 but moreover, to agree the broad details within Heritage Method Statements within the HA providing a guide as to appropriate levels of detail required to be submitted in the submission stage to ensure that the works to be undertaken are acceptable. The Heritage Method Statements also agrees who should be consulted as part of the process.
- 1.4 As these are deed agreements, once these details have been agreed, the HA will be reported to Full Council in November 2019.
- 1.5 As stated above, pursuant to the Heritage Agreement, there is a requirement that, prior to the commencements of works on site, the nominated body submits the specific details of works required by the Heritage Method Statement and it is the submission of these details which are the subject of this report.
- 1.6 Once these detailed applications are made, the Council has 8 weeks to either approve or refuse them. However, as part of the process, amenity groups are consulted which means the Council cannot determine the application in the first 6 weeks unless a response is received earlier.
- 1.7 The Council cannot reasonably withhold permission but can seek amendments. The nominated body can either agree with the amendments or appeal the decision.
- 1.8 Should the Nominated Undertaker be unhappy with the refusal, amendment or should the Council fail to determine the application in the 8 week time period the application can be the subject of an appeal to the Secretary of State.

2. **Issues**

- 2.1 By signing the deed the Council has accepted obligations concerning the process and the timeliness with which it will determine applications submitted under Schedule 18 of the Bill.
- 2.2 It will be expected to determine these applications within the eight week period prescribed in the Bill, this begins on the day the application is received by the Council. This differs from applications submitted under the Town & Country Planning Act where the statutory eight week period only begins after the application is accepted as a valid application by the Council.
- 2.3 It is necessary to ensure the Council has in place a decision making process that will ensure the timely determination of these applications.
- 2.4 If the Council fails to determine an application within the prescribed period, the application can appeal to the Secretary of State who will then determine the application.

3. **Proposal**

- 3.1 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 18 of the High Speed Rail (West Midlands - Crewe) Act 2019 when it comes into force.”

4. **Reasons for Proposed Solution**

It is essential the Council has in place an appropriate process to ensure Schedule 18 applications can be determined in a timely manner. The inclusion of this category of application within the current scheme of delegation will allow for such applications to be determined timely and expediently.

5. **Options Considered**

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

Option 1

5.2 To not include Schedule 18 applications within the scheme of delegation to the Head of Development Management. This is not recommended.

5.3 If an application can only be determined at a meeting of the Planning Committee, the 4 weekly cycle for meetings will increase the risk that an application may not be determined within the prescribed statutory timescale, particularly given the 6 week consultation period for these submissions. This would then result in an appeal process for non-determination which would add to the burden on Council resources.

5.4 Where the Council fails to make a decision in time the application will be appealed against for non-determination and the Council loses control of the decision making process

Option 2

5.5 Include the Schedule 18 applications within the scheme of delegation and treat them as if they were a planning application with the same call-in provisions. This is not recommended.

5.6 The uncertainty of an application being called-in or not and this process being linked to the 4 weekly cycle for meetings will increase the risk that 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.

5.7 Again, where the Council fails to make a decision in time the application will be appealed against for non-determination and the Council loses control of the decision making process

Option 3

5.8 To invoke other constitutional change to establish a process whereby Councillors will convene as and when required to determine an application submitted under Schedule 18. This is not recommended.

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

6. **Legal and Statutory Implications**

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

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HS2 railway. This will reduce the risk associated with persistent non-fulfilment of the obligations set out within the deed agreement and loss of control of the decision making process if appeals are made against non-determination of the applications.

7. **Equality Impact Assessment**

N/A

8. **Financial and Resource Implications**

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

9. **Major Risks**

If the Council fails to determine an application within the prescribed period, the application will be deemed to have been refused and the applicant may then appeal to the Secretary of State who will then determine the application.

10. **Sustainability and Climate Change Implications**

N/A

11. **Key Decision Information**

N/A

12. **Earlier Cabinet/Committee Resolutions**

The Council resolved to become a Qualifying Authority on 24th July 2019.

13. **List of Appendices**

None.

14. **Background Papers**

None.

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