

This application seeks approval of the plans and specifications under Schedule 17 of the High Speed Rail (West Midlands – Crewe) Act 2021 for a watercourse crossing, fences, walls and earthworks for the creation of two ecological mitigation ponds and bunds required to support associated works on site on land to the north west of Bower End Farm.

The site lies within the open countryside, which is designated as an Area of Landscape Enhancement, as indicated on the Local Development Framework Proposals Map.

The 8 week determination of this application is 1st November 2022.

RECOMMENDATIONS

That the Schedule 17 application be granted subject to conditions relating to the following:

- 1. Carried out in accordance with the approved plans.**

Reason for Recommendation

The proposed works preserve the local environment and local amenity, do not result in any prejudicial effect on road safety or on the free flow of traffic in the local area and would not adversely affect a site of archaeological or historic interest or nature conservation value. As such there are no design and appearance reasons to refuse to approve the application or grounds to argue that the development ought to, and could reasonably be carried out on, other land.

KEY ISSUES

Consideration of Schedule 17 Applications

Section 17 of the Act grants deemed planning permission under Part 3 of the Town and Country Planning Act 1990 for HS2 Phase 2a and associated works (“the Works”) between West Midlands and Crewe, but 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 that the nominated undertaker (the organisation on whom the powers to carry out the works are conferred) must seek approval of these matters from the relevant planning authority. As deemed planning permission has been granted by the Act, requests for approval under Schedule 17 are not planning applications.

In passing the Act, Parliament has judged such impacts to be acceptable when set against the benefits to be achieved by the Phase 2a scheme.

The purpose of Schedule 17 is not therefore to eliminate all prejudicial impacts on, or to secure the complete preservation of, any sites within the various categories identified in the schedule (set out below). On the contrary, the operation of Schedule 17 is such that there will be cases where a submission must be approved notwithstanding an identified negative impact, unless there are modifications that are reasonably capable of being made.

Accordingly, it is not open to the planning authorities under Schedule 17 to refuse in principle works or development which is covered by the Environmental Statement and approved by Parliament. The impacts have been assessed and planning permission has been granted on that basis. Instead, Schedule 17 offers planning authorities an opportunity to seek modifications to the details submitted that they consider reduce the impacts of a submission if such modifications can be justified.

The Schedule sets out that the Council can only refuse to approve the application, or impose conditions, in the following circumstances:

- (a) The design or external appearance of the works ought to be modified
 - (i) To preserve the local environment or local amenity;
 - (ii) To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area; or
 - (iii) To preserve a site of archaeological or historic interest or nature conservation value; and is reasonably capable of being so modified; or
 - (b) Where the Council consider that the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- (a) Consideration of the Design and External Appearance of the Proposal

This Schedule 17 application seeks approval for excavation to support associated works on site.

The proposed watercourse crossing, fences, walls and earthworks will be associated with the creation of two ecological mitigation ponds and bunds. In particular the application sets out that;

“The proposed ponds within Site 329 will be located within the northern parameters of the site, with two bunds located to the south of the ponds. A watercourse crossing will be created where there is an existing ditch to the north of the site and will enable vehicle access between Site 340 and Site 329. There will be permanent fencing located along the linear strip of land to the west of the site along with the southern corner of the site. Fencing and one gate will be located around the proposed watercourse crossing. One permanent gate will also be located along the linear strip of land to the west of the site.”

Impact on the local environment and local amenity

The fences and gates are of a suitable design for a rural area and the earthworks and tree planting are sympathetic. On this basis, it is considered that the proposals will not have an adverse impact on the local environment and local amenity.

Road safety and the free flow of traffic in the local area

The works are away from any main roads and measures to control road safety and traffic impacts arising from the construction of the works are separately covered and do not fall to be considered with this application. As such the works would not have any detrimental impact on road safety or the free flow of traffic in the local area.

Impact on archaeological or historic interest or nature conservation value

The site is not within, or close to, a known site of archaeological or historic interest or nature conservation value. Notwithstanding this a Location Specific Written Scheme of Investigation has been drawn up in consultation with the County Archaeologist which details the methodology for archaeological surveys and investigations to be implemented prior to construction. Should any heritage assets of such significance be identified during construction that warrant preservation in situ there is a commitment to redesign the submission to avoid impacting the assets leading to a revised Schedule 17 approval request.

- (b) Ought the development, and could it reasonably, be carried out elsewhere on land within the Act limits.

As there are no design and appearance reasons to refuse to approve the application, there are no grounds to argue that the development ought to, and could reasonably be carried out on, other land.

Reducing Inequalities

The Equality Act 2010 says public authorities must comply with the public sector equality duty in addition to the duty not to discriminate. The public sector equality duty requires public authorities to consider or think about how their policies or decisions affect people who are protected under the

Equality Act. If a public authority hasn't properly considered its public sector equality duty it can be challenged in the courts.

The duty aims to make sure public authorities think about things like discrimination and the needs of people who are disadvantaged or suffer inequality, when they make decisions.

People are protected under the Act if they have protected characteristics. The characteristics that are protected in relation to the public sector equality duty are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

When public authorities carry out their functions the Equality Act says they must have due regard or think about the need to:

- Eliminate unlawful discrimination
- Advance equality of opportunity between people who share a protected characteristic and those who don't
- Foster or encourage good relations between people who share a protected characteristic and those who don't

With regard to this proposal and the matters that can be addressed, it is considered that it will not have a differential impact on those with protected characteristics.

APPENDIX

Policies and Proposals in the approved development plan relevant to this decision:-

[Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy ASP6: Rural Area Spatial Policy
Policy CSP1: Design Quality

[Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy N3: Development and Nature Conservation – Protection and Enhancement Measures
Policy N12: Development and the Protection of Trees
Policy N17: Landscape Character – General Considerations
Policy N20: Area of Landscape Enhancement

[Madeley Neighbourhood Development Plan 2018 – 2037](#)

Policy DES1: Design
Policy NE1: Natural Environment

Other Material Considerations include:

National Planning Policy

[National Planning Policy Framework](#) (2021)

[Planning Practice Guidance](#) (2014 as updated)

[High Speed Rail \(West Midlands – Crewe\) Act 2021](#)

[High Speed Rail \(West Midlands – Crewe\) Act 2021 Schedule 17 Statutory Guidance](#) (May 2021)

[Equality Act 2010](#)

Supplementary Planning Guidance/Documents

[Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document](#) (2010)

Relevant Planning History

None.

Views of Consultees

The **Environment Health Division** raises no objections on the basis that construction activities and earthworks will be covered by HS2's Environmental Minimum Requirements and the Code of Construction Practice. These are intended to as far as possible mitigate against the negative effects of dust noise vibration, traffic, light associated with works of this nature.

The **Environment Agency** advises that they have no comments on this application.

Comments are awaited from **Madeley Parish Council**, the **Highway Authority**, and the **County Ecologist**.

Representations

None received.

Applicant/agent's submission

The applicant has submitted, in addition to plans, the following:

- Submission Letter
- Written Statement

All of the application documents can be viewed on the Council's website using the following link:
<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/22/00747/SCH17>

Background Papers

Planning File referred to
Planning Documents referred to

Date report prepared

28th September 2022