

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>Strategic Director of Economy</b>
<b>Date of Decision:</b>	<b>18<sup>th</sup> October 2016</b>
<b>SUBJECT:</b>	<b>HS2: QUALIFYING AUTHORITY UNDER THE HIGH SPEED 2 (LONDON TO WEST MIDLANDS) BILL</b>
<b>Key Decision: Yes</b>	<b>Relevant Forward Plan Ref: 002225/2016</b>
<b>If not in the Forward Plan: (please "X" box)</b>	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
<b>Relevant Cabinet Member:</b>	<b>Councillor Ian Ward - Deputy Leader of the Council</b>
<b>Relevant O&amp;S Chairman:</b>	<b>Councillor Mohammed Aikhlaq – Corporate Resources and Governance O&amp;S Committee</b>
<b>Wards affected:</b>	<b>Hodge Hill, Ladywood, Nechells, Sutton New Hall, Tyburn and Washwood Heath</b>
<b>1. Purpose of report:</b>	
1.1 To update Cabinet on the proposed planning regime for the construction of High Speed 2 (at Appendix 1) and to resolve that the City Council becomes a Qualifying Authority in terms of the High Speed Rail (London – West Midlands) Bill (see para. 5.4).	
1.2 To update Cabinet on the progression of a Service Level Agreement with HS2 Ltd to reimburse the City Council for the additional work generated by the consents and approvals process for HS2.	
<b>2. Decision(s) recommended:</b>	
That the Cabinet:-	
2.1 Agrees that the City Council becomes a Qualifying Authority in relation to the High Speed Rail (London – West Midlands) Bill currently before Parliament.	
2.2 Authorises the Strategic Director of Economy to sign the Planning Memorandum (at Appendix 2) and to take any appropriate steps necessary to bring resolution 2.1 into effect.	
2.3 Authorises the Strategic Director of Economy to agree terms for the Service Level Agreement (SLA) with HS2 Ltd to ensure that the City Council's additional staffing and professional services arising from the implementation of HS2 are fully reimbursed, subject to acceptable terms and conditions.	
2.4 Authorises the Acting City Solicitor to negotiate, execute, complete and seal all relevant documents necessary to give effect to the above recommendations.	
<b>Lead Contact Officer(s):</b>	Richard Cowell Assistant Director Development Planning and Regeneration
<b>Telephone No:</b> <b>E-mail address:</b>	0121 303 2262 richard.cowell@birmingham.gov.uk

### **3. Consultation**

#### **3.1 Internal**

The Strategic Directors of Major Programmes and Projects; and Place as well as the Acting City Solicitor have been consulted on the report and are supportive of the proposals. The Planning Committee has been briefed on the contents of the report on the 29<sup>th</sup> September 2016 and are supportive of the proposals.

#### **3.2 External**

No external consultation has been undertaken as this report concerns a procedural matter regarding how the City Council will respond to the planning regime introduced by the High Speed 2 (London – West Midlands) Bill.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

The successful implementation of HS2 contributes towards the City Council's Business Plan and Budget 2016+, specifically A Strong Economy as well as the growth aspirations of the West Midlands Combined Authority and the HS2 Growth Strategy. The proposal also contributes to meeting the Leader's priority of transforming public transport. The implementation of HS2 is also in accordance with the transport strategies and proposals outlined in Birmingham Connected, the emerging Birmingham Development Plan and the regeneration framework provided by the Curzon Masterplan.

#### **4.2 Financial Implications**

(Will decisions be carried out within existing finance and Resources?)

Regardless of whether the City Council opts to become a Qualifying Authority or not there will be additional demands on the City Council arising from the implementation of HS2 and for this reason a SLA is being negotiated with HS2 Ltd. The SLA will ensure that the City Council is reimbursed fully for the additional work generated by the consents and approvals process for HS2.

#### **4.3 Legal Implications**

HS2 is being taken forward through a Hybrid Bill. The High Speed Rail (London – West Midlands) Bill was deposited in Parliament on the 25<sup>th</sup> November 2013 and is currently at the House of Lords Select Committee stage. This report seeks authority to become a Qualifying Authority in terms of the Bill.

#### **4.4 Public Sector Equality Duty (see separate guidance note)**

No equality analysis has been undertaken as this is a procedural matter in terms of the City Council's proposed approach to the planning regime to be introduced by the Hybrid Bill. It is noted that the Government is assessing equality issues on the HS2 scheme and line

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/484618/C\\_S439A\\_Final\\_Routewide\\_EqIA\\_Update\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484618/C_S439A_Final_Routewide_EqIA_Update_web.pdf))

## **5. Relevant background/chronology of key events:**

5.1 The Government plans to implement a new high speed rail network (HS2), connecting Birmingham to London, Manchester and Leeds. This is a major national infrastructure proposal that would be progressed over several years, by two Hybrid Bills through Parliament. Phase One of the network, between London and the West Midlands (including into Birmingham City Centre), will be progressed through the first Hybrid Bill, which was deposited in Parliament on 25th November 2013. Within the city, HS2 Phase One will include a new rail line from Water Orton through Castle Vale, Bromford, and Saltley to a new City Centre station at Curzon Street. Phase Two, between the West Midlands, Manchester and Leeds, will be progressed through a further Hybrid Bill. This report is concerned with the Phase One Hybrid Bill.

5.2 The Phase One Bill is currently in the House of Lords Select Committee stage and it is anticipated that Royal Assent will be secured in late 2016 / early 2017.

5.3 A Hybrid Bill is the process used to deliver key infrastructure projects of national importance including High Speed 1 (the Channel Tunnel link) and Crossrail. In effect the Bill grants planning permission (similar to an outline approval) for the new railway and will authorise amongst other things

- The construction of significant works including the new station at Curzon Street.
- The compulsory acquisition of the necessary land to construct and operate the new railway.
- Significant alterations to the public highway.

5.4 The design of the railway to date provides the level of detail necessary for the purposes of the Bill and the requirements of the Environmental Impact Assessment Regulations. The level of detailed design necessary to construct the scheme has yet to be carried out and will not be carried out until Royal Assent (this detailed design will be progressed by the 'nominated undertaker(s)' (the party or parties who will construct the railway)). The permission granted by the Bill for the construction of the railway will be subject to a number of conditions requiring the 'nominated undertaker' to obtain the consent or approval of the local planning authorities along the route for certain matters. The Bill gives each local planning authority a choice between having a wide or narrow range of controls over the approval of construction details. Local planning authorities opting for a wider range of controls are referred to as 'Qualifying Authorities'. Appendix 1 sets out the main provisions of the proposed HS2 planning regime.

5.5 Qualifying Authorities will be responsible for issuing consents and approvals in relation to matters such as buildings and road vehicle parks; terracing; cuttings; embankments and other earthworks; fences; walls or other barriers; transformers; telecommunication masts; pedestrian access to the railway line; artificial lighting; waste and spoil disposal; and borrow pits. This will therefore include both the new Curzon Station building in the City Centre and the Rolling Stock Maintenance Depot and Network Control Centre at Washwood Heath. To become a Qualifying Authority the local planning authority is required to sign the Planning Memorandum (see Appendix 2). Local planning authorities that do not sign the Planning Memorandum are known as 'Non-Qualifying Authorities', will have a more restricted role and will only be able to approve plans and specifications for buildings.

5.6 There are, in broad terms, two sets of grounds on which works may be refused or conditioned by a Qualifying Authority.

**i. That the design or external appearance of the works ought to be modified:**

- a) To preserve the local environment or local amenity,
- b) To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area,
- c) To preserve a site of archaeological interest or nature conservation value; and
- d) Is reasonably capable of being so modified.

**ii. That the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.**

Non-Qualifying Authorities will only be able to refuse approval under grounds ia&d) and ii).

5.7 Qualifying Authorities are also given additional controls beyond those that they might normally have under planning legislation. For example they will be able to enforce construction arrangements relating to the handling of re-usable spoil or topsoil; road transport; storage sites for construction materials, spoil or topsoil; construction camps; works screening; artificial lighting; dust suppression; and road mud control matters. Qualifying Authorities may refuse approval if the arrangements ought to be modified to preserve the local environment or local amenity, or to prevent or reduce the prejudicial effects on road safety or on the free flow of traffic in the local area; and are reasonably capable of being so modified. The bringing into use of any scheduled work or depot, except to the extent that the work is underground, is also subject to the prior approval by the qualifying local planning authority.

5.8 Local planning authorities wishing to become a Qualifying Authority are required to sign the Planning Memorandum which sets out the administrative arrangements and required conduct in terms of the approval process for both the local planning authority and the nominated undertaker. This includes the requirement for the local planning authority to deal with applications in an expedient manner and to be sufficiently resourced to do so. It is likely that the timescale for applications will be 8 weeks (which is the statutory determination period for non-major planning applications). This is more challenging for major applications such as the new station and depot (the statutory period for such applications which would require an environmental statement would normally be up to 16 weeks). This places more emphasis on the need for a thorough pre-application process for the more significant applications and Planning and Regeneration officers will continue to press HS2 Ltd to ensure that the pre-application process and the Local Design Review Board is adequately resourced and sufficient time is allowed.

5.9 Planning Committee was briefed on the proposed planning regime and the proposal to become a Qualifying Authority on the 29th September 2016. Planning Committee supported the proposals emphasising the importance of HS2's arrival to the City and the benefits of becoming a Qualifying Authority would have.

5.10 The City Council, along with other local authorities along the route have been involved in negotiating the form and content of the Planning Memorandum with HS2 Ltd and the final version of this is appended to this report (Appendix 2). To date only initial information on the likely volume of consents is available from HS2 Ltd, nevertheless it is likely that a significant amount of extra work will be generated over the lifetime of the scheme. It is proposed to take a further report to Planning Committee once further information is available setting out the likely scale and nature of future applications and how these would be processed (including proposed delegated authorities).

5.11 It is recognised by the Department for Transport that the cost of processing approvals and consents will constitute a new burden on the City Council across a range of disciplines including planning, highways, environmental health and as lead local flood authority. The City Council will have to put in place sufficient resources to deal with applications and submissions made for the HS2 project including a Project Manager to deal with forward planning. It is proposed that these additional costs are fully reimbursed by HS2 Ltd under a SLA, which is expected to include provision of technical/mapping information and input; data; attendance at forums and groups for planning, highways and environmental issues; dealing with applications made under Schedule 17 of the HS2 Bill for approval of drawings/ specifications for HS2 related works, construction and building submissions; traffic management plans; flood and heritage issues; and other technical work needed for the overall project. The SLA is currently the subject of negotiations between the City Council and HS2 Ltd and is expected to run until 2026 (which is the end of the Phase 1 HS2 construction period). It is anticipated that this reimbursement will cover the time of existing or new staff to deal with the extra work incurred (rather than through a set fee). As such work would be undertaken on a time basis using hourly rates to reflect the actual costs incurred. The objective of the SLA is to ensure that the City Council is reimbursed fully for the additional work generated by the consents and approvals process for HS2.

5.12 In conclusion it is recommended that the City Council become a Qualifying Authority because of the greater control it gives the local planning authority over the new high speed line into Birmingham and the impact it has upon the environment as well as residential and business communities within the city. This requires the City Council to give a commitment to deal with applications appropriately and within specified timescales. To become a Qualifying Authority the City Council must sign the Planning Memorandum before the end of the House of Lords Select Committee hearings (likely to be in the Autumn).

## **6. Evaluation of alternative option(s):**

6.1 The City Council could choose to be a Non-Qualifying Authority however this would give the City Council less control over this significant infra-structure project and its impact upon the environment and communities of Birmingham.

## **7. Reasons for Decision(s):**

7.1 The decision to become a Qualifying Authority would give the City Council further control over the proposed HS2 scheme than it would otherwise have. By progressing the SLA the City Council will be reimbursed for the additional burdens generated by the HS2 consents and approvals process.

<b>Signatures</b>	<b><u>Date</u></b>
Councillor Ian Ward – Deputy Leader of the Council	.....
Waheed Nazir – Strategic Director for Economy	.....

**List of Background Documents used to compile this Report:**

1. High Speed Rail (London – West Midlands) Bill (as amended in the High Speed Rail (London – West Midlands) Bill Select Committee).
2. Relevant Officers files on the matter, save for confidential documents.

**List of Appendices accompanying this Report (if any):**

1. High Speed 2 Information Paper; B1: The Main Provisions of the Planning Regime
2. High Speed Rail (London – West Midlands) Draft Environmental Minimum Requirements Annex 2: Draft Planning Memorandum

<b>Report Version</b>	4	<b>Dated</b>	22 Sept 2016
-----------------------	---	--------------	--------------