

**APPELLANT'S STATEMENT OF CASE**

**PREPARED ON BEHALF OF HIGH SPEED TWO (HS2) LIMITED**

**APPEAL AGAINST REFUSAL BY CAMDEN LONDON BOROUGH COUNCIL OF  
SCHEDULE 17 SUBMISSION FOR APPROVAL OF ARRANGEMENTS FOR LARGE  
GOODS VEHICLE (LGV) ROUTES (LORRY ROUTES)**

**WORKSITES AT EUSTON APPROACHES AND ADELAIDE ROAD**

LPA reference: 2019/4700/HS2

DLA Piper Reference: TI/PC/380900/292

1. INTRODUCTION

- 1.1 This Statement of Case has been prepared by DLA Piper (UK) LLP on behalf of High Speed Two (HS2) Limited ("**Appellant**").
- 1.2 This appeal is made under Paragraph 22, Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017 ("**Act**") against the refusal by London Borough of Camden ("**Council**") in respect of a submission ("**Submission**") made by the Appellant under Schedule 17 of the Act for the approval of arrangements regarding large goods vehicle (lorry) routes ("**Routes**") in respect of the worksites at Euston Approaches and Adelaide Road ("**Worksites**").
- 1.3 The Appellant's Statement of Case is structured as follows:
- 1.3.1 section 2 sets out the provisions of the Act which are pertinent to this appeal, clarifying that the process under the Act is distinguished from that under the Town and Country Planning Act 1990;
- 1.3.2 section 3 explains the proposed works by reference to the relevant documents comprised within the Submission;
- 1.3.3 section 4 **Error! Reference source not found.** identifies how and where the Site and its location are described in the Submission;
- 1.3.4 section 5 then identifies and explains the various guidance and supporting documents that have been introduced to supplement the Act, including the environmental minimum requirements ("**EMRs**"), and explains how they create a mechanism which controls the delivery of phase one of High Speed Two;
- 1.3.5 having extensively set out the statutory framework and the relevant associated guidance, section 6 then sets out the Appellant's case and addresses each of the matters relevant to the determination of this Appeal, including consideration of comments made by the Council with respect to particular aspects of the Submission; and
- 1.3.6 section 7 summarises the conclusions of the Appellant's case.
- 1.4 Pursuant to paragraph 22(3) of Schedule 17 to the Act, the Council did not notify the Appellant of its decision on the Submission within the *appropriate period*. In the absence of written agreement to the extension of the *appropriate period* between the Council and the Appellant, paragraph 22(3) of Schedule 17 to the Act provides that the Appellant may treat the Submission as having been refused by the Council.
- 1.5 The *appropriate period* is defined in paragraph 22(4) of Schedule 17 to the Act as being eight weeks following the day on which the Submission was received by the Council or such extended period as may be agreed between the Council and the Appellant. For the purpose of the Submission, the Appellant and the Council agreed to extend the period for determination of the Submission to 15 April 2020.
- 1.6 Accordingly, pursuant to paragraph 22(3) of Schedule 17 to the Act, the Council is deemed to have refused the Submission and to have notified the Appellant of its decision to do so on 15 April 2020.
- 1.7 Consequently, there is no decision notice providing reasons for refusal.

## 2. LEGISLATIVE FRAMEWORK

- 2.1 For the purposes of this Statement of Case, unless otherwise indicated, all references to statutory provisions are references to the Act and reference to paragraphs are to paragraphs in Schedule 17 to the same.
- 2.2 It should be noted that the Secretary of State for Transport and the Secretary of State for Housing, Communities and Local Government (the "**Appropriate Ministers**") have recently issued a decision notice which clearly sets out the correct operation of the Act and its associated guidance pursuant to appeal reference APP/HS2/1 ("**Appeal Decision**"). A copy of the Appeal Decision is located at Appendix D1<sup>1</sup> and, as will be demonstrated throughout this Statement of Case, supports the Appellant's submissions in this Appeal.
- 2.3 The approach taken by the Secretaries of State in the Appeal Decision was also recently upheld by the High Court<sup>2</sup> ("**Judgment**"). This provides further support for the Appellant's submissions in the present Appeal<sup>3</sup>.
- 2.4 The Appropriate Ministers have also issued a second appeal decision (the "**Lorry Route Appeal Decision**") in which an approach consistent with that set out in the Appeal Decision and endorsed by the High Court in the Judgment was taken in the specific context of an appeal under paragraph 6. This is directly relevant to the present Appeal under paragraph 6 and demonstrates the correct approach to determining the present Submission<sup>4</sup>.
- 2.5 Planning permission for the carrying out of the development authorised by the Act ("**Phase One**") is deemed to have been granted for the purposes of Part 3 of the Town and Country Planning Act 1990 ("**1990 Act**") by virtue of section 20(1) of the Act. Pursuant to section 20(3) of the Act, such deemed permission is subject to the conditions contained in Schedule 17.
- 2.6 The Schedule 17 process has been likened to a reserved matters application pursuant to an outline planning permission under the 1990 Act, whereby the principle of development has already been accepted but certain details are subject to further approval.<sup>5</sup> The grounds on which

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<sup>1</sup> A copy of the Planning Inspector's report to the Secretaries of State, with which they disagreed, is located at Appendix D2 for reference.

<sup>2</sup> A copy of the Judgment is located at Appendix D3.

<sup>3</sup> Whilst the local planning authority to which the Appeal Decision relates has applied to appeal against the Judgment, it remains good law and is binding for the purpose of Schedule 17 submissions (including the present Submission) unless and until overturned by the Court of Appeal.

<sup>4</sup> Copies of the Lorry Route Appeal Decision are located at Appendix D4 and the associated Inspector's Report at Appendix D5 for reference.

<sup>5</sup> Please refer to paragraph 3.2 of the High Speed Rail (London - West Midlands) Act 2017 Schedule 17 Statutory Guidance, accessed via: <https://www.gov.uk/government/publications/high-speed-rail-london-to-west-midlands-act-2017-schedule-17-statutory-guidance> . A copy is also located at Appendix D6.

a local planning authority can refuse a submission under Schedule 17 are limited to those set out within the relevant paragraph of Schedule 17 to the Act. As noted in paragraph 9 of the Appeal Decision, this is a key distinction between the Schedule 17 process and decision-making under the 1990 Act and reflects the fact that the Act has already settled the principle of development and authorised the construction of Phase One. Paragraph 15 of the Appeal Decision is clear that "*when determining a request for approval a planning authority must only consider the grounds relevant to that approval.*" The limited statutory role of the Council under Schedule 17 is also explained at paragraph 93 of the Judgment.

2.7 The deemed planning permission has been granted on the basis of the impacts which were assessed and reported as part of The High Speed Two (HS2) Phase One Environmental Statement ("**Environmental Statement**")<sup>6</sup>. Parliament has judged such impacts as being acceptable in the context of Phase One.

2.8 The Submission relates to proposed arrangements for lorry routes and so it is paragraph 6 of Schedule 17 that sets out the relevant conditions. It should be noted that paragraph 6 only applies if the relevant planning authority is a qualifying authority for the purposes of the Act (paragraph 3(1)). By paragraph 13, a qualifying authority is a planning authority so specified by an order of the Secretary of State. The Council is identified as a qualifying authority in the High Speed Rail (London – West Midlands) (Qualifying Authorities) Order 2017.

2.9 In respect of lorry routes, paragraph 6 provides:

"(5) *The relevant planning authority may only refuse to approve arrangements for the purposes of this paragraph on the ground that—*

(a) *the arrangements relate to development which, for the purposes of regulating the matter in question, ought to and can reasonably be considered in conjunction with development which has deemed planning permission under section 20(1) and which is to be carried out in the authority's area, or*

(b) *the arrangements 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 are reasonably capable of being so modified.*

(6) *The relevant planning authority may only impose conditions on approval for the purposes of this paragraph—*

(a) *with the agreement of the nominated undertaker, and*

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<sup>6</sup> Published 25 November 2013. The Environmental Statement can be accessed via: <https://www.gov.uk/government/collections/hs2-phase-one-environmental-statement-documents#guide-to-the-environmental-statement>

(b) *on the ground referred to in sub-paragraph (5)(b).*"

2.10 As set out in paragraph 1.2 above, this appeal is made under paragraph 22 and is made against the Council's refusal to approve the Submission made under Part 1 of Schedule 17. Paragraph 22 provides:

*"Where the nominated undertaker is aggrieved by a decision of a planning authority on a request for approval under Part 1 (including a decision to require additional details), it may appeal to the appropriate Ministers by giving notice of the appeal in the prescribed form to them and to the authority whose decision is appealed against within 42 days of notification of the decision."*

2.11 The "*appropriate ministers*" for the purposes of paragraph 22 are the Appropriate Ministers. Paragraph 23 provides that appeals under Schedule 17 are to be determined by the Appropriate Ministers, unless the Appropriate Ministers direct otherwise. The Appropriate Ministers have delegated this function to the Planning Inspectorate, whilst retaining the ability to "recover" the appeal, should they deem it necessary.<sup>7</sup>

2.12 It should be noted that the appeal mechanism under the Act is different from that under section 78 of the 1990 Act and paragraph 22(10) prevents an appeal under section 78 of the 1990 Act if a right of appeal is available under Schedule 17.

2.13 Paragraph 25(1) provides that appeals shall be determined by way of written representations unless the person deciding the appeal directs otherwise. The Appeal Decision and Judgment are categorical as to the correct operation of Schedule 17 and so it is submitted by the Appellant that written representations is the appropriate format for this Appeal.

2.14 Paragraphs 25(2) and (3) permit the Appropriate Ministers to make regulations in relation to appeals under paragraph 22, which they have done in the form of the High Speed Rail (London - West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017.

2.15 In addition, the Department for Transport has issued guidance on how the appeal process should work in practice ("**Appeals Guidance**").<sup>8</sup>

2.16 Unlike an appeal under section 78 of the 1990 Act, the Planning Inspectorate is not being asked to consider the appropriateness of the development as a whole as part of this process. Rather, paragraph 22(2) sets out the question before the Appropriate Ministers:

*"on an appeal under this paragraph, the appropriate ministers may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against, but may only make a determination involving -*

(a) *the refusal of approval, or*

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<sup>7</sup> Paragraph 23(2)

<sup>8</sup> The Appeals Guidance can be accessed via:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690162/planning-appeal-procedures-recovered-appeals-call-ins.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690162/planning-appeal-procedures-recovered-appeals-call-ins.pdf)

(b) *the imposition of conditions on approval,*

*on a ground open to that authority."*

- 2.17 Therefore, any decision by the Inspector to refuse the Appeal must be confined to and satisfy paragraph 6(5) of Schedule 17, notably:
- 2.17.1 whether the Routes ought to and can reasonably be considered in conjunction with development which has deemed planning permission under section 20(1) of the Act; or
  - 2.17.2 the Routes ought to and could reasonably be modified:
    - 2.17.2.1 to preserve the local environment or local amenity;
    - 2.17.2.2 to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area; or
    - 2.17.2.3 to preserve a site of archaeological or historic interest or nature conservation value.
- 2.18 Should the Inspector be minded to refuse the appeal under sub-paragraph (a), the Inspector would be required to issue a decision notice explaining why the Route ought not to be approved, on the grounds in paragraph 6(5).
- 2.19 If the Inspector is minded to refuse the appeal under sub-paragraph (b), the Inspector would also be required to issue a decision notice explaining why and how the Routes should be modified to satisfy the tests of paragraph 6(5)(b).
- 2.20 If the Inspector is minded to grant the Appeal subject to conditions, the Inspector should note that this can only be on one of the grounds listed under paragraph 6(5)(b) and **must** have the approval of the Appellant. If the Inspector is minded to seek to impose any conditions the Appellant would welcome discussions with the Inspector as to the appropriateness of any proposed condition(s).
- 2.21 The Inspector's decision notice would also need to evidence why and how the Routes should be modified to satisfy the tests of paragraph 6(5)(b) of Schedule 17 and how the imposition of a condition is subsequently justified.
- 2.22 It is a critical characteristic of paragraph 6 that the onus is on the decision-taker to demonstrate that each component of the relevant test is made out - paragraph 30 of the Appeal Decision and paragraphs 80 to 81 of the Judgment are clear on this point. As this Statement of Case will demonstrate, the Council has failed to undertake this exercise and has demonstrated a lack of understanding of the positive obligation on it to justify any refusal or imposition of conditions under Schedule 17.

### 3. PROPOSAL

- 3.1 The Routes are required as a measure to facilitate access to, and egress from two worksites in the Euston area. These Routes are required to allow various works, such as the construction of retaining walls and the excavation of vent shafts and railway cuttings for Phase One, to be carried out by the Appellant.
- 3.2 It should be noted that, in accordance with paragraph 6(2), the Submission only relates to, and seeks approval for routing for large goods vehicles<sup>9</sup> over 7.5 tonnes to and from the following Worksites: at the Euston Approaches and Adelaide Road.
- 3.3 Further details on the proposal are located in sections 2, 3.7 and 3.8 of the Written Statement accompanying the Submission.<sup>10</sup>

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<sup>9</sup> As defined in section 121 of the Road Traffic Act 1988: "*large goods vehicle*" means a motor vehicle (not being a medium-sized goods vehicle within the meaning of Part III of this Act) which is constructed or adapted to carry or to haul goods and the permissible maximum weight of which exceeds 7.5 tonnes";

<sup>10</sup> Appendix A5.

4. THE SITE AND LOCATION

- 4.1 The location of the Worksites and their characteristics are comprehensively set out in section 3 of the Written Statement accompanying the Submission and so are not duplicated in this Statement of Case.<sup>11</sup>

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<sup>11</sup> Appendix A5, pages 15 to 28.



## 5. THE ACT AND ASSOCIATED GUIDANCE

- 5.1 Section 2 above summarises how Schedule 17 operates within the context of the Act. This section of the Statement of Case summarises how associated guidance has been introduced to control and monitor how the Appellant delivers Phase One.

### Statutory Guidance and Development Agreement

- 5.2 As explained in paragraph 7 of the Appeal Decision and paragraph 18 of the Judgment, paragraph 26(1) of Schedule 17 allows the Secretary of State to issue statutory guidance and planning authorities are required by paragraph 26(2) to have regard to such guidance in the exercise of their functions under Schedule 17. In exercise of this power, the Secretary of State published guidance in February 2017 ("**Guidance**")<sup>12</sup>.

- 5.3 Paragraph 4.4 of the Guidance states that the approvals under Schedule 17 have been:

*"carefully defined to provide an appropriate level of local planning control while not unduly delaying or adding cost to the project. Planning authorities should not through the exercise of the Schedule seek to... 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."*

- 5.4 Pursuant to a Development Agreement which governs the relationship between the Secretary of State for Transport and the Appellant for the delivery of the entire HS2 Two project,<sup>13</sup> the Appellant is contractually obliged "*to comply with and discharge the Undertakings, Assurances and Requirements.*"<sup>14</sup> Clause 1 of the Development Agreement contains definitions and interpretations for the agreement and provides that the Environmental Minimum Requirements ("**EMRs**") (as explained below) form part of the Undertakings, Assurances and Requirements to which the Appellant is contractually obliged to adhere.

- 5.5 The relevance of the Development Agreement is noted at paragraphs 21 and 86 of the Judgment and in paragraph 10 of the Appeal Decision which states:

*"As the nominated undertaker appointed by the Secretary of State under the HS2 Act, HS2 Ltd is required under the HS2 Development Agreement to adhere to the arrangements provided for in the EMRs in designing and constructing the works for Phase One of the HS2 project."*

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<sup>12</sup> 1.1 A copy of the Guidance is located at Appendix D6 and can be accessed via:

<https://www.gov.uk/government/publications/high-speed-rail-london-to-west-midlands-act-2017-schedule-17-statutory-guidance>.

<sup>13</sup> Dated 8 December 2014 and amended on 17 July 2017 and accessed via: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629173/hs2-development-agreement-july-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629173/hs2-development-agreement-july-2017.pdf) . Relevant extracts from the Development Agreement are located at Appendix D7 of this Statement of Case.

<sup>14</sup> Please see clause 10.1(N) of the Development Agreement

5.6 It is therefore clear that Schedule 17, the Guidance and the EMRs (as explained below) are intrinsically linked and form an overarching framework that the Appellant must adhere to and which the Council must take account of and not seek to replicate or modify. The Appeal Decision supports this analysis throughout<sup>15</sup> and this approach was upheld in the Judgment.

### **Environmental Minimum Requirements**

5.7 In addition to the controls contained in the Act, there are a number of further mechanisms that are applicable to the Appellant when delivering Phase One. One such control is the EMRs which are a suite of documents which have been developed in consultation with local planning authorities and other relevant stakeholders in relation to the control of the environmental impacts of the design and construction of Phase One. As explained above, the Appellant is contractually bound to comply with the controls set out in the EMRs.<sup>16</sup>

5.8 The EMRs are explained and set out in the High Speed Rail (London-West Midlands) Environmental Minimum Requirements General Principles document published by the Secretary of State in February 2017 ("**General Principles**")<sup>17</sup>. The General Principles are accompanied by a number of annexures.

5.9 As explained by paragraph 11 of the Appeal Decision, "*The EMRs set out the environmental controls with which HS2 Ltd and its contractors are required to comply.*" Therefore, it is clear that the Appellant is required to adhere to the EMRs when designing and constructing Phase One.

5.10 This is supported by paragraph 1.1.3 of the General Principles:

*"The controls contained in the EMRs, along with powers contained in the High Speed Rail (London - West Midlands) Act (the Act) and the Undertakings given by the Secretary of State, will ensure that impacts which have been assessed in the ES will not be exceeded..."*

5.11 In order to achieve the stated aim of delivering Phase One so that its impact is as assessed in the Environmental Statement, paragraph 1.1.1 of the General Principles provides that "*The Secretary of State will require the nominated undertaker to adhere to the arrangements provided for in the Environmental Minimum Requirements (EMRs) in designing and constructing the Phase One of High Speed Two Works.*"

5.12 Paragraph 1.1.5 of the General Principles provides that "*the nominated undertaker will in any event ... use reasonable endeavours to adopt mitigation measures that will further reduce any*

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<sup>15</sup> See for example paragraphs 11, 18, 38 and 40 of the Appeal Decision.

<sup>16</sup> An introduction to the EMRs and the control of environmental impacts for Phase One is available in "*High Speed Two Phase One Information Paper E1: Control of Environmental Impacts.*" A copy of this information paper is located at Appendix D8.

<sup>17</sup> A copy of the General Principles is located at Appendix D9. Copies of the General Principles and annexures (which together make up the EMRs) are available at:

<https://www.gov.uk/government/publications/environmentalminimum-requirements>

*adverse environmental impacts caused by Phase One of HS2, insofar as these mitigation measures do not add unreasonable delays to the construction programme."*

- 5.13 Further, paragraph 1.1.4 provides that "Any nominated undertaker will be contractually bound to comply with the controls set out in the EMRs and as may be developed during the passage of the Act through Parliament." This contractual obligation is set out in the Development Agreement.
- 5.14 The Appeal Decision, the General Principles and Development Agreement therefore make clear that the Appellant is contractually obliged to comply with the controls and measures contained within the EMRs.
- 5.15 The components of the EMRs are set out in paragraph 3.1.1 of the General Principles and include a requirement on the Appellant as the nominated undertaker to comply with, amongst other documents:
- 5.15.1 the Code of Construction Practice ("CoCP") at Annex 1 to the General Principles<sup>18</sup>; and
- 5.15.2 the Planning Memorandum at Annex 2 to the General Principles<sup>19</sup>.
- 5.16 Paragraphs 6.17 to 6.35 below explain how the EMRs operate within the context of the Submission.

### **Planning Forum**

- 5.17 Annex 2 to the General Principles is the Planning Memorandum. Amongst other issues, the Planning Memorandum sets out the importance of the Planning Forum and places a requirement on qualifying authorities, as a requirement of them continuing to be so designated, to abide by the conclusions of the Planning Forum.<sup>20</sup>
- 5.18 The content required for a submission pursuant to paragraph 6 of Schedule 17 is defined in Planning Forum Note 6 (Lorry Route Approvals).<sup>21</sup>
- 5.19 The content of Planning Forum Note 6 was agreed by the Planning Forum on 2 November 2017.<sup>22</sup> The Council had full opportunity to attend meetings of and participate fully in the

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<sup>18</sup> A copy is located at Appendix D10.

<sup>19</sup> A copy is located at Appendix D11

<sup>20</sup> Please refer to paragraph 4 of the Planning Memorandum.

<sup>21</sup> A copy of Planning Forum Note 6 is located at Appendix D12.

<sup>22</sup> Please refer to Minute 5 of the minutes of the Planning Forum's meeting on 2 November 2017, a copy of which is located at Appendix D13 and can also be accessed via:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679437/hs2\\_p\\_hase\\_one\\_planning\\_forum\\_minutes\\_november\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679437/hs2_p_hase_one_planning_forum_minutes_november_2017.pdf)

deliberations of the Planning Forum and frequently availed itself of that opportunity, including through participation in the specialised highways sub-group.

- 5.20 Paragraph 7 of Planning Forum Note 6 sets out the documentation that must be submitted in support of a submission pursuant to paragraph 6, as follows:

***"For Approval***

*A list of roads (or a plan) for approval (the Main Route(s))*

*A requirement for suppliers/businesses located between the special/trunk road network and the HS2 Site to use the most appropriate route between the supplier/business site and the Main Route(s). The most appropriate routes will be discussed at the relevant Local Traffic Liaison Group.*

***For Information***

*A covering letter (including a definition of the works to which the proposed routes relate).*

*A plan showing the routes (if not submitted for approval.)*

*A written statement which:*

*i) describes the Sites*

*ii) describes the works at each Site; and*

*iii) provides a summary of the lorry route information from the Local Traffic Management Plan which will include predicted LGV numbers and timings.*

*A Route Management, Improvement and Safety Plan (ROMIS) which will be submitted for information prior to the commencement of main civils works.*

*The contents of the ROMIS will be as described in section 4.3 of the Route Wide Traffic Management Plan. The ROMIS will include:*

*i) a summary of any physical changes necessary to facilitate the use of the route by LGVs; and*

*ii) a summary of measures required to ensure the safety and free flow of traffic in the proximity of the worksite access points."*

## 6. THE APPELLANT'S CASE

- 6.1 The Appellant's case is straightforward. In accordance with the requirements of the EMRs and Planning Forum Note 6, it has provided the Council with the necessary documentation in order for it to determine the Submission. The Submission complies with the requirements of the EMRs and Planning Forum Note 6 and given the failure by the Council to adduce sufficient evidence that the Submission ought to and is reasonably capable of being modified, this Appeal should be allowed. The Appeal Decision and the Judgment are clear that in such circumstances a submission under Schedule 17 should be approved and that it is the EMRs which create a framework and govern the Appellant's future conduct when constructing and operating Phase One.
- 6.2 This section of the Statement of Case will demonstrate how the Council has failed to provide sufficient justification for the modification of the Routes and consequently why the imposition of conditions or refusal of the Submission is not appropriate and why the Appellant cannot agree to the imposition of conditions on this basis.
- 6.3 The section is structured as follows:
- 6.3.1 A summary of the general approach that should be taken by decision-makers under Schedule 17 in relation to proposed modifications of the Submission or the imposition of conditions in light of the Act, associated Guidance and the EMRs.
  - 6.3.2 Demonstration that the Submission complies with the requirements of the Schedule and Planning Forum Note 6.
  - 6.3.3 Reasons for refusal and points not in dispute.
  - 6.3.4 Specific comments on the Council's position with respect to the Euston Approaches Worksite.
  - 6.3.5 Specific comments on the Council's position with respect to the Adelaide Road Worksite.

### **General approach to modifications and the imposition of conditions**

- 6.4 As set out above, paragraphs 6(5) and 6(6) of Schedule 17 provide that the Council may only modify the Submission or impose conditions on approval of road transport arrangements on the ground that the Routes ought to be, and are reasonably capable of being, modified to:
- 6.4.1 preserve the local environment or local amenity;
  - 6.4.2 prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area; or
  - 6.4.3 preserve a site of archaeological or historic interest or nature conservation value.
- 6.5 Paragraph 6(5)(b) is clear that in order to impose such a condition, it is necessary for the planning authority to justify that the arrangements "*ought to be modified*" and "*are reasonably capable of being so modified*". Therefore, the burden is on the Council to provide evidence to justify a modification.
- 6.6 This is made clear in paragraph 7.7.3 of the Planning Memorandum:

*“Where the authority’s decision in relation to the determination of construction arrangements<sup>23</sup> has been reached on the grounds that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers modification should be made and where.”*

6.7 Indeed, this position is supported by both the Appeal Decision and the Judgment<sup>24</sup> which, although they relate to a separate provision under Schedule 17, support the principle that the Council must provide evidence to substantiate a refusal or the imposition of conditions under Schedule 17 on the grounds that the arrangements ought to be modified and are reasonably capable of being so modified.

6.8 Where the Council seeks to impose conditions, there is a further requirement that this must be with the agreement of the Appellant.

#### Statutory Guidance

6.9 As set out above, the Guidance is clear in paragraph 4.4 that: *“Planning authorities should not through the exercise of the Schedule seek to modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements”*.

6.10 Paragraph 10.3 of the Guidance also emphasises that conditions should not be imposed which conflict with controls or commitments contained in the Environmental Minimum Requirements.

6.11 Furthermore, paragraph 38 of the Appeal Decision and paragraph 86 of the Judgment repeat the point that the Council should not seek to replicate the controls of the EMRs and paragraph 39 of the Appeal Decision also adds that *“It is not the purpose of the Schedule 17 procedure to replicate or police the process of investigation set out in the EMRs, but rather to complement it.”*

6.12 Paragraph 10.5 of the Guidance provides that the requirements of paragraph 206 of the National Planning Policy Framework (2012) ("**2012 NPPF**") apply to the imposition of conditions under Schedule 17 of the HS2 Act.

#### NPPF

6.13 The 2012 NPPF has since been replaced by the National Planning Policy Framework published in February 2019 ("**NPPF**") and the relevant paragraph relating to planning conditions now appears at NPPF55:

6.14 *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”*

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<sup>23</sup> Paragraph 5.1.1 of the Planning Memorandum makes clear that lorry routes are "construction arrangements".

<sup>24</sup> See paragraph 30 of the Appeal Decision and paragraph 80 of the Judgment, for example.

- 6.15 To assist with the interpretation of the NPPF, the Government has published National Planning Practice Guidance ("NPPG"). The NPPG provides guidance on the use of planning conditions and is therefore relevant to the interpretation and application of NPPF55.
- 6.16 It is notable that the NPPG advises that conditions requiring compliance with other regulatory regimes will not meet the test of necessity.<sup>25</sup> Therefore, any condition that conflicts with paragraphs 4.4 and 10.3 of the Guidance will fail to comply with NPPF55 and so will also be in conflict with paragraph 10.5 of the Guidance.

#### EMRs

- 6.17 Annex 1 to the General Principles is the Code of Construction Practice ("CoCP"), which contains a series of proposed measures and standards of work that HS2 should adhere to throughout the Phase One construction period.
- 6.18 Section 14 of the CoCP deals with traffic and transport, imposing various controls to protect the impacts from construction traffic:

*"During construction works, the nominated undertaker will require that the impacts from construction traffic on the local community (including all local residents and businesses and their customers, visitors to the area, and users of the surrounding transport network) be minimised by its contractors where reasonably practicable."<sup>26</sup>*

- 6.19 Furthermore, the CoCP ensures that measures are taken to ensure the local community, economy and transport networks can continue to operate effectively and requires that a number of mitigation measures and controls will be required in order to achieve this:

*"The nominated undertaker will require that public access is maintained, where reasonably practicable, and appropriate measures will be implemented to ensure that the local community, economy and transport networks can continue to operate effectively. Where this is not reasonably practicable, alternative measures shall be identified to maintain continual public access, especially for pedestrians and cyclists, to routes in the vicinity of the construction sites and discussed at the relevant local traffic liaison group meetings where appropriate. The impact of road-based construction traffic will be reduced by implementing and monitoring clear controls on vehicle types, hours of site operation, parking and routes for large goods vehicles."<sup>27</sup>*

- 6.20 In order to reduce potential transport impacts during construction, the CoCP requires that route-wide, local and site-specific traffic management measures are implemented during the construction of Phase One (paragraph 14.2.1).

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<sup>25</sup> see NPPG paragraph 21a-005-20140306.

<sup>26</sup> Paragraph 14.1.1 of the CoCP

<sup>27</sup> Paragraph 14.1.2 of the CoCP

### Route-wide Traffic Management Plan ("RTMP")

- 6.21 One measure is to implement route-wide measures through the use of an RTMP. A copy of the RTMP for Phase One is located at Appendix D14 and contains route-wide generic measures which, "*codifies discussions held with the highway authorities along the line of route via the Highway Sub Group to the Planning Forum established for each phase of the project. The RTMP takes into account the best practice used during the delivery of similar large construction projects.*" (paragraph 1.1.5)
- 6.22 Section 4 of the RTMP specifically deals with traffic flow management and is relevant for lorry route approvals submitted under Schedule 17.<sup>28</sup>
- 6.23 The Submission seeks approval for routes to be used by lorries which are over 7.5 tonnes. In respect of lorries over 7.5 tonnes, the RTMP sets the following specific controls<sup>29</sup>:
- "Required to follow approved lorry routes (for flows forecast to be more the 24 per day to or from a site).*
- Required to avoid specific routes in accordance with Undertakings and Assurances.*
- Required to follow driver and safety requirements (as set out in the RTMP)*
- Principal contractors required to have fleet management quality plan"*
- 6.24 Therefore, there is a specific EMR control which requires lorry drivers to adhere to pre-approved routes.
- 6.25 Paragraph 4.5 of the RTMP sets out the requirement for local traffic management plans ("LTMPs") which shall apply on a localised basis. LTMPs are considered in further detail below.
- 6.26 Paragraph 4.5.4.5 of the RTMP places a requirement on the Appellant, in accordance with its undertakings and assurances, to employ a monitoring and compliance team. This team is required to review matters using risk based approach, such as:
- "a. compliance with lorry routes (where approval has been necessary)*
  - b. compliance with specific U&As*
  - c. correct collection of vehicle flow data by the contractor*
  - d. compliance with the project's driver and vehicle safety standards*
  - e. traffic management is deployed in accordance with plans submitted for consultation or consent (or as reasonably adjusted)*
  - f. compliance with road cleansing requirements"*

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<sup>28</sup> Paragraph 4.3 of the RTMP

<sup>29</sup> Table 4.1 of the RTMP



6.27 Furthermore, paragraph 4.6.1.1 sets out the sanctions for a failure to comply with the RTMP:

*"Failure to follow an approved route (for LGVs), will result in an incident recorded in the Nominated Undertaker's Safety and Incident management system (HORACE) and will require action from the Principal Contractor (previously known as a TENs). Issues related to non-compliance may be reasonably be discussed at the relevant TLG meeting."* [sic]

6.28 There are a clear series of control measures placed on the Appellant, one of which requires the Appellant to closely monitor the operation of lorry routes and to record and take appropriate action in the event of a breach.

#### Matters to be addressed in LTMP

6.29 Another measure required by the CoCP and referenced in the RTMP is an LTMP which, pursuant to paragraph 14.2.4 of the CoCP should be produced prior to commencement of the works and should contain, amongst other measures:

- "• *permitted access routes and accesses for construction traffic; ...*
- *a list of roads which may be used by construction traffic in the vicinity of the site, including any restrictions to construction traffic on these routes, such as the avoidance of large goods vehicles operating adjacent to schools during drop-off and pick-up periods and any commitments set out in the HS2 Register of Undertakings and Assurances; ...*
- *the proposed traffic management strategy..."*

6.30 The CoCP specifically addresses lorry management at paragraphs 14.2.5 and 14.2.6, requiring that LTMPs contain certain details where appropriate, including the, "*timing of site operations and timing of traffic movements,*" and, "*local routes to be used by lorries generated by construction activity*".

6.31 Finally, monitoring is specifically provided for in paragraph 14.4 of the CoCP:

6.32 "*The nominated undertaker will require its contractors to undertake such monitoring as is necessary to ensure compliance with the requirements of this CoCP, and this will include the maintenance of records of traffic management measures. The monitoring programme, the approach to regular consultation with highway authorities and emergency services and the control processes will be set out in the lead contractors' EMSs*"

#### The Appellant's LTMP for this Submission

6.33 In accordance with its responsibilities under the EMRs, the Appellant has produced a draft of the LTMP<sup>30</sup>. The Council was provided with a draft on 13 June 2019 (prior to the Submission being made) and invited to comment on it. An updated draft was also sent to the Council on 5 August 2019 incorporating various changes made in response to stakeholder feedback. The most recent updated version of the LTMP was also sent to the Council on 20 January 2020.

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<sup>30</sup> A copy of the latest draft of the LTMP is located at Appendix B2.

- 6.34 Paragraph 14.2.4 of the CoCP requires that LTMPs are produced in consultation with the highway and traffic authorities, as well as the emergency services and other relevant key stakeholders. There has been extensive engagement between the Appellant and the Council with regard to the content of the LTMP<sup>31</sup> and this has resulted in amendments to the LTMP being incorporated to address the Council's concerns.
- 6.35 The detailed provisions of the LTMP include:
- 6.35.1 site boundaries and the main access/egress points for worksites and compounds;
  - 6.35.2 permitted access routes and accesses for construction traffic, including local routes to be used by lorries generated by construction activity;
  - 6.35.3 phasing of works;
  - 6.35.4 timing of site operations and timing of traffic movements;
  - 6.35.5 the proposed traffic management strategy;
  - 6.35.6 a list of roads which may be used by construction traffic in the vicinity of the site including any restrictions to construction traffic on these routes, such as the avoidance of large goods vehicles operating adjacent to schools during drop off and pick-up periods and any commitments set out in the register of Undertakings and Assurances;
  - 6.35.7 temporary and permanent closures and diversions of highways and other public rights of way;
  - 6.35.8 other measures which will affect the highway, such as details of the proposed vehicle holding area at ZSL London Zoo; and
  - 6.35.9 regular operation of traffic liaison groups with key stakeholders to ensure that programmes of HS2 works are shared and which will assist with the Council to carry out their highway network management duties.

#### **Submission compliant with Planning Forum Note 6**

- 6.36 As described above at paragraph 5.20 of this Statement of Case, the Appellant was required to provide to the Council various documents in support of the Submission. The Appellant accordingly provided:
- 6.36.1 a list of roads for approval<sup>32</sup>;

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<sup>31</sup> Please refer to Appendices C1 through C4 for relevant copy correspondence and meeting notes.

<sup>32</sup> A copy of the list submitted for approval with the original Submission is located at Appendix A2. A further sequential list of roads was also submitted in draft for information only and is located at Appendix B3.

- 6.36.2 a requirement for suppliers/businesses located between the special/trunk road network and the Worksites to use the most appropriate routes<sup>33</sup>;
  - 6.36.3 a covering letter including a definition of the works to which the Routes relate<sup>34</sup>;
  - 6.36.4 a plan showing the Routes (for information)<sup>35</sup>;
  - 6.36.5 a written statement<sup>36</sup> describing the Worksites and the works at each Worksite together with a summary of the information in the LTMP; and
  - 6.36.6 a ROMIS<sup>37</sup> including a summary of any physical changes necessary to facilitate the use of the Routes by LGVs and measures required to ensure the safety and free flow of traffic in proximity to the Worksite access points.
- 6.37 The Submission was also accompanied by a completed application form, although this is not itself a requirement of Planning Forum Note 6<sup>38</sup>.
- 6.38 The Council has previously raised the question of whether it was required to deal with the Submission under paragraph 16 which requires that:
- 6.38.1 the Appellant prepare and deposit with the Council a programme document setting out the proposed submissions under Schedule 17; and
  - 6.38.2 the Submission be accompanied by a document setting out how it relates to the works authorised by the Act.
- 6.39 The Appellant confirmed to the Council on 9 January 2020 that the programme document – referred to as the 'Context Report'<sup>39</sup> - had been prepared and this was deposited with the Council in October 2017. In addition, the covering letter to the Submission explains how the works to which the Submission relates fit into the works authorised by the Act<sup>40</sup>.
- 6.40 The Appellant has submitted to the Council all the documents it is required to have done under Schedule 17 and Planning Forum Note 6. The Council has received all the information the

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<sup>33</sup> See page 3 of Appendix A2.

<sup>34</sup> Appendix A3

<sup>35</sup> Appendix A4

<sup>36</sup> Appendix A5

<sup>37</sup> Appendix A6

<sup>38</sup> A copy is located at Appendix A1 for completeness.

<sup>39</sup> A copy is located at Appendix B1.

<sup>40</sup> Appendix A2

Appellant is required to submit at this stage in the process and the Planning Forum Note, together with the EMRs, will ensure that the correct level of information will be provided at appropriate junctures whilst the Routes are in use and the works to which they relate are being carried on.

### **The reasons for refusal and matters not in dispute**

- 6.41 As stated above, the Council failed to determine the application within the *appropriate period*. Therefore, it did not provide a reason for refusal and has not provided any evidence that the Submission ought to be refused for any of the tests set out in paragraphs 6(5)(a) or (b). Furthermore, to justify a refusal under paragraph 6(5)(b), the Council needs to demonstrate that the Routes ought to and could reasonably be modified. Paragraph 30 of the Appeal Decision and paragraph 81 of the Judgment are clear that it is for the Council to provide evidence in this regard.
- 6.42 So far as the Appellant is aware, it is not in dispute that this Submission falls within the scope of Schedule 17 and does not relate to development which ought to and could reasonably be considered in conjunction with development which has deemed planning permission under section 20(1) of the Act. Therefore, paragraph 6(5)(a) is not satisfied and so any reason for refusal must satisfy the tests under paragraph 6(5)(b).
- 6.43 In addition, based on discussions between the Appellant's agents and the Council prior to the Submission being made to the Council and during the intervening period, the Appellant does not understand that the Council considers modifications or conditions are required in order to preserve a site of archaeological or historic interest or nature conservation value.

### **Euston Approaches Worksite: approval agreed in principle**

- 6.44 Insofar as the Routes relate to the Euston Approaches Worksite, the Appellant understands that the Council has no in-principle objection to their being approved and that its outstanding concerns with the Submission related principally to the Adelaide Road Worksite. As far as the Appellant is aware from the (lengthy) correspondence, the Council's position was that it was willing to approve the Routes insofar as they related to the Euston Approaches Worksite.
- 6.45 The Council subsequently – at a very late stage in February 2020 – raised the possibility of one of the loops along Grafton Way being removed from the Routes. The Appellant understands that the Council's underlying concern was that the use of the Grafton Way loop (which runs past the University College Hospital) might affect access for emergency vehicles. The Council has not provided evidence – such as traffic modelling or relevant data – to justify the assertion that any particular impact would arise in this regard.
- 6.46 Without prejudice to the Appellant's case – set out with reference to the Appeal Decision and the Judgment above – that the onus is on the Council to provide evidence to justify any proposed modifications, the Appellant would draw attention to the fact that it has already had extensive discussions regarding the Routes directly with the hospital. No objections were raised by them to the use of this loop during those discussions. On this basis, the Appellant does not consider that there is any reason why the Routes should be modified in this way.
- 6.47 In addition, the Appellant has also assessed whether it would be feasible for the Routes to operate should the Grafton Way loop be removed. The conclusions of that assessment were that the retained loop along Osnaburgh Street would have insufficient capacity to absorb the displaced traffic. As such, even if it were the case that the Routes ought to be modified to

remove the Grafton Way loop (which the Appellant does not concede), it is clear that they are not reasonably capable of being modified in the way suggested by the Council.

- 6.48 On this basis, the Appellant submits that it is clear that the Euston Approaches Routes ought not to be modified, are not reasonably capable of being modified in the way suggested by the Council and they should now be approved in this Appeal in accordance with the principles for decision-making set out in the Schedule, the Appeal Decision and the Judgment.

**Adelaide Road Worksite: no evidence to justify refusal**

- 6.49 When considering arrangements submitted to it for approval under paragraph 6, it has been shown that the Council should consider all of the information provided to it and reach a conclusion based on that information.

- 6.50 For the Appellant's part, it has provided the Council with the necessary information, which is consistent with the EMRs (and the associated documents) and the requirements set out in Planning Forum Note 6. The Appellant therefore considers that it has provided the Council with the requisite level of information and that this is sufficient for the Council to determine the Submission within the narrow confines available to it under paragraph 6.

- 6.51 In making such a determination, paragraph 7.7 of the Planning Memorandum is clear that the Council must provide a justification for its decision if it wishes to refuse the Submission. It has been shown throughout this Statement of Case that in order to justify a refusal or the imposition of conditions, the Council must demonstrate why the Submission ought to be modified and is reasonably capable of being so modified.

- 6.52 Paragraph 7.7.1 provides:

*"Where an authority refuses approval of a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision."*

- 6.53 Paragraph 7.7.2 provides:

*"Where the authority's decision in relation to the determination of plans and specifications has been reached on the ground that some aspect of the operation or work ought to be modified and is reasonably capable of being modified, or that the development ought to be and could reasonably be carried out elsewhere within the relevant limits, the authority shall include an explanation of why and how it considers the modifications should be made."*

- 6.54 Paragraph 7.7.3 of the Planning Memorandum further provides that:

*"Where the authority's decision in relation to the determination of construction arrangements has been reached on the grounds that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers modification should be made and where."*

- 6.55 As a qualifying authority, the Council was involved in the preparation of the Planning Memorandum through its extensive participation in the Planning Forum has signed it and is bound by its terms.<sup>41</sup> Therefore, it is not sufficient for the Council to simply refuse the

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<sup>41</sup> Paragraph 2.1.2 of the Planning Memorandum.

Submission or to impose conditions - it must provide a justification for its decision and must show how the Submission ought to be modified.

- 6.56 Notwithstanding that the Council has failed to justify its refusal, on the basis of discussions between the Appellant's agents and the Council prior to the Submission being made to the Council and during the intervening period, the Appellant understands that the Council's underlying concerns relate to the alleged impact of the Routes relating to the Adelaide Road Worksite:
- 6.56.1 on local amenity (particularly for local residents); and
- 6.56.2 on road safety and the free flow of traffic (particularly along Camden High Street).
- 6.57 The Appellant acknowledges that the Council has expressed preferences for alternatives to the Adelaide Road Routes proposed by the Appellant. The Appellant's preferred route has been referred to as Route 'A' and the Council's alternatives as Routes 'B', 'C' and 'D'<sup>42</sup>.
- 6.58 The Appellant explained at a meeting held on 21 November 2019 between its agents and the Council why Route 'B' was not viable and Route A continued to be preferred<sup>43</sup>. Similarly, whilst the Appellant entered into appropriate discussions with the Council on Route 'C' and may have been willing to agree a condition to modify the Submission accordingly, this alternative was also rendered unviable as a result of changes to the road network outwith the control of the Appellant and the Council<sup>44</sup>.
- 6.59 On 19 February, 2020<sup>45</sup>, the Council confirmed that it wished to pursue a new alternative Route 'D' in relation to the Adelaide Road Worksite. This proposal had first been mooted on 20 January, 2020, and it is not clear why the Council required an entire month to confirm its position. The Appellant requested that the Council provide a proposed draft condition explaining the proposed modifications for its consideration on 27 February, 2020, but this has not been forthcoming.
- 6.60 Indeed, the Council has provided no draft conditions whatsoever despite several requests from the Appellant and despite this being an action expressly agreed with the Council<sup>46</sup>. This also represents a failure to comply with paragraph 7.3.5 of the Planning Memorandum which provides:

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<sup>42</sup> A plan showing these four routes is provided for information only at Appendix D15.

<sup>43</sup> A copy of the meeting note is located at Appendix C3 and the Appellant's concerns are also summarised in the email from Lucy Neal sent on 22 November 2019 at 12:13 at pages 83 to 84 of Appendix C2.

<sup>44</sup> An explanation of the Appellant's position is located at Appendix C1.

<sup>45</sup> That is, the day before the agreed extension to the appropriate period was due to expire.

<sup>46</sup> See, for example, relevant copy correspondence located at pages 5, 98, 100 and 129 of Appendix C2 and the meeting note at Appendix C4.

*"When a qualifying authority wishes to agree conditions with the nominated undertaker it shall propose them at least seven days prior to the determination date of the request for approval, which will assist in determination within the eight-week period. "*

- 6.61 In addition, the Council has not provided any evidence to justify its contention that the Routes ought to be modified from Route 'A' to Route 'D' or that they are reasonably capable of being so modified. Without prejudice to the foregoing, the Appellant does not consider that the Adelaide Road Routes ought to be modified to Route 'D': this would entail the Route going through a predominantly residential area and passing by a greater number of schools, parks, places of worship and community facilities than Route 'A'<sup>47</sup> and the additional cost and time required render this alternative proposal not viable. As a result, Route 'A' as set out in the original Submission remains the Appellant's preferred scheme .
- 6.62 More generally, the Council has failed to progress the Submission in a timeous manner. It has not determined the Submission within the timetable referred to in paragraph 22(4) (i.e. eight weeks), but has instead insisted on multiple lengthy delays. It will be seen from the copy correspondence provided with this Statement<sup>48</sup> that a significant part of the delays by the Council in the determination of the Submission were to enable the completion of 'consultation periods', a step that is not required by the Act, the General Principles, the Planning Memorandum or the EMRs. This is representative of the needless and unjustified delay attributable to the Council's behaviour.
- 6.63 In so acting, the Council has failed to recognise the importance of the tight construction programme for Phase One and has not had due regard to the construction, cost and programme implications of its approach to the Submission. This now poses a significant risk of frustrating or delaying the project, or unreasonably adding to its cost, and runs counter to the Council's obligations in paragraphs 7.2.1 and 7.3.1 of the Planning Memorandum.
- 6.64 Therefore, as shown throughout this Statement of Case, the Council has clearly failed to meet the statutory and EMR requirements placed upon it. In failing to do so, the Council is failing to adhere to the terms and objectives of the Planning Memorandum.

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<sup>47</sup> These sensitive uses are shown on the plan at Appendix D16 for information only.

<sup>48</sup> cf. Appendix C2

## 7. CONCLUSIONS

- 7.1 The Appellant is required to submit a certain level of information when making a Schedule 17 submission. It has been clearly shown that the Appellant has provided the Council with the requisite information in order to approve the Submission.
- 7.2 The EMRs have been created to demonstrate that a critical piece of infrastructure in the UK is delivered appropriately. The EMRs and associated documents ensure the Council will receive the necessary information and documentation in due course, at appropriate stages in the process. They also serve to ensure that a collaborative approach is adopted throughout Phase One between the Appellant, local planning authorities and other relevant expert bodies. It is the EMRs that contractually bind the Appellant to deliver the Works in the appropriate manner.
- 7.3 Further, the Council "opted in" to becoming a "qualifying authority". Non-qualifying authorities are forced to rely on the EMR process as a mechanism for ensuring the Appellant delivers Phase One appropriately. The Council should not be second-guessing or modifying a process which has already undergone Parliamentary scrutiny and ensures Phase One is delivered appropriately. The Schedule 17 process was not designed to allow local planning authorities to opt in and subsequently reconsider the entire Schedule 17 process - refusing submissions without proper consideration of the EMRs.
- 7.4 In declining to determine this Submission, the Council is deemed to have refused it. Whilst in these circumstances there are no formal 'reasons for refusal' as such, the Appellant understands from the extensive discussions between its agents and the Council both prior to the Submission being made and over the past several months that the Council has no objection to the approval of:
- 7.4.1 the Routes relating to the Euston Approaches Worksite subject to a suggested removal of the loop along Grafton Way, but as set out above no objections were raised by University College Hospital to this element and the retained loop along Osnaburgh Street would not in any event have sufficient capacity to absorb the displaced lorry traffic;
  - 7.4.2 any of the Routes on the basis set out in paragraph 6(5)(a) of the Schedule; and
  - 7.4.3 any of the Routes on the basis that they ought to be modified in order to preserve a site of archaeological or historic interest or nature conservation value.
- 7.5 With respect to the Routes relating to the Adelaide Road Worksite, the default position under the Act is that arrangements should not be modified by the imposition of conditions unless it can be demonstrated by the Council that they ought to be and are reasonably capable of being imposed. Paragraph 30 of the Appeal Decision and paragraph 80 of the Judgment are clear that the onus is on the Council to demonstrate that the Routes ought to and could reasonably be modified. This is both a requirement of the Act and the Planning Memorandum.
- 7.6 The Appellant has considered various potential alternative Routes for the Adelaide Road Worksite put forward by the Council, but these are not viable. The Appellant's position in this regard has been provided to the Council. Accordingly, the Council has provided no evidence sufficient to justify a refusal or the imposition of conditions on this or any other basis. For this reason alone, the Appeal should be allowed.
- 7.7 Notwithstanding the above, the Appellant appreciates that conditions can be appropriate where they are justified, do not duplicate controls in the EMRs and meet the tests set out in paragraph 6(5)(b). Accordingly, the Appellant has invited the Council to provide draft conditions for its



consideration, but these have not been forthcoming. The Council has therefore not provided sufficient evidence to demonstrate that the imposition of conditions or modification of the Routes is necessary.

- 7.8 For these reasons, the Appellants respectfully request that the Appeal is allowed.
- 7.9 In the event the Inspector is minded to allow the Appeal subject to conditions the Inspector would be required to issue a decision notice explaining why and how the Routes should be modified to satisfy the tests of paragraph 6(5)(b) of Schedule 17 and any such conditions would require the agreement of the Appellant.