

STATEMENT OF CASE
on behalf of the LONDON BOROUGH OF CAMDEN

INTRODUCTION

1. This statement of case is submitted on behalf of the London Borough of Camden (“the Council”) in response to an appeal to the appropriate ministers made by High Speed Two (HS2) Limited (“HS2 Ltd”) against the Council’s failure to determine an application by HS2 Ltd under paragraph 6 of Schedule 17 of the High Speed Rail (London-West Midlands) Act 2017 (“the HS2 Act”) for approval of arrangements relating to the routes by which anything is to be transported to and from the Adelaide Road and Euston Approaches worksites.
2. This statement of case is submitted pursuant to regulation 8(3)(b) of the High Speed Rail (London-West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017 (“the 2017 Procedure Regulations”).
3. As will be apparent from the correspondence and meeting notes included in Appendix C to the Appellant’s Statement of Case the Council and HS2 Ltd engaged in extensive discussions in relation to the application made under paragraph 6 of Schedule 17.
4. During the course of those discussions the Council’s officers had put forward an alternative route for access to the Adelaide Road worksite and had suggested that conditions may be imposed to allow the routes proposed for access to and egress from the Euston Approaches worksite to be approved. The discussions on those issues had not been completed by the time that the Appellant decided to appeal for non-determination.
5. At the time that the appeal was made the Council’s officers were in the course of preparing a report on the application. That officer report (“the OR”) has now been completed and is attached to this statement as **Appendix 1**.

6. The Council has also drawn up a list of suggested conditions, which were sent to HS2 Ltd on 22 April 2020; that list of conditions was appended to the OR.
7. The Council's case in outline is as follows:

Adelaide Road Worksite

- a. The route proposed by the Appellant for LGVs to access the Adelaide Road worksite includes the use of the northern part of Camden High Street. The use of Camden High Street by LGVs will increase the risk of vehicles colliding with pedestrians and thereby prejudice road safety.
- b. The arrangements submitted ought to be modified to reduce the prejudicial effects on road safety.
- c. The arrangements submitted are reasonably capable of being modified by adopting route D, which uses Camden Street to avoid using part of Camden High Street.
- d. The application relating to routes to gain access to and provide egress from Adelaide Road worksite should be refused.

Euston Approaches Worksite

- e. The use of roads on the Regents Park Estate (Robert Street and Stanhope Street) by LGVs will increase the risk of vehicles causing injury to pedestrians using those roads and thereby prejudice road safety. In addition, the use of those roads would cause harm to and therefore not preserve, local amenity.
- f. The use of Harrington Square by LGVs would not preserve the local amenity of those living in and using the square.
- g. The use of Eversholt Street by LGVs accessing the Euston Approaches worksite would prejudice road safety and the free flow of traffic. Save when traffic diversions are in operation or otherwise agreed by the Council, the use of Eversholt Street is not necessary as LGVs can use Hampstead Road.
- h. If the Appellant agrees, conditions can be imposed to mitigate those adverse impacts, and the arrangements are reasonably capable of being modified by the conditions put forward by the Council or some variation on them.

- i. If such conditions are not imposed, the application relating to routes to gain access to and provide egress from the Euston Approaches worksite should be refused.

The Euston Approaches and Adelaide Road Worksites

- j. The use of the Grafton Way loop by LGVs will prejudice the free flow of traffic, and a condition should be imposed to prevent use of the Grafton Way loop by LGVs during such time as the Osnaburgh loop is available.
- k. The approval of routes should be limited to the time when the worksites are proposed to be in operation.
- l. Subject to the agreement of the Appellant, conditions should be imposed to restrict use of the Grafton Way loop and to restrict the time during which the arrangements proposed are approved.

LEGISLATIVE FRAMEWORK AND ASSOCIATED GUIDANCE

8. The legislative framework and the associated guidance are identified in the Appellant's Statement of Case.
9. The Council does not take issue with the Appellant's summary of the legislative framework set out in its Statement of Case save as follows:
 - a. The matters required to be submitted in an application for approval under paragraph 6 of Schedule 17 to the HS2 Act are not 'defined' in Planning Forum Note 6 as averred in paragraph 5.18 of the Appellant's Statement of Case.
 - i. A note produced by a Planning Forum may provide guidance, but cannot prescribe or (to use the Appellant's word) 'define' what is necessary to fulfil a statutory requirement.
 - ii. The matters to which paragraph 6 of Schedule applies are set out in paragraph 6(2)

(2) The matters to which this paragraph applies are the routes by which anything is to be transported on a highway by a large goods vehicle to—

 - (a) a working or storage site,
 - (b) a site where it will be re-used, or
 - (c) a waste disposal site.
 - iii. The matters are the 'routes' by which anything is to be transported.
 - iv. In order for an application to fall within paragraph 6, it must relate to routes. A mere list of roads, with no indication as to how the roads are to be used to create a route, would not be sufficient to constitute an application under paragraph 6. If a list of roads were to be provided enabling different routes to be followed, a qualifying authority or consultee would be unable to assess the impact arising from the use of the roads listed.
 - v. HS2 Ltd.'s application was accompanied by a list of roads (Appellant's Appendix A2).

- vi. A plan showing routes for approval was submitted ‘for information’ (Appellant’s Appendix A4 and as referred to at paragraph 6.36.4 of the Appellant’s Statement of Case).
 - vii. The Council has treated the plan showing the routes (Appellant’s Appendix A4) as being part of the application (as being a plan submitted for approval) as without it the application would be defective.
- b. The Council do not accept that (as alleged at paragraph 2.22) they have failed to understand the onus on a decision maker to demonstrate that the arrangements proposed ought to be modified on one or more of the grounds set out at paragraph 6(5) of Schedule 17 and are reasonably capable of being so modified (see paragraph 80 of the judgment in ***R (LB of Hillingdon) v. Secretary of State*** [2019] EWHC 3574 (Admin)¹). In the OR the Council’s officers have addressed those grounds, and in this statement of case the Council demonstrate how that onus has been discharged.
- c. Conditions
- i. Paragraph 6(6) of Schedule 17 provides:
 - (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
 - (b) on the ground referred to in sub-paragraph (5)(b).
 - ii. At paragraphs 6.9 to 6.16 of its Statement of Case the Appellant refers to guidance and planning policy on the use of conditions. Amongst that guidance and policy is the advice contained in paragraph 206 of the NPPF that conditions must be relevant to planning, relevant to the development permitted and reasonable in all other respects.

¹ Appellant’s Appendix D3

- iii. Those elements of the policy are a statement of the legal principles relating to conditions imposed when granting planning permission as set out in ***Newbury v. Secretary of State*** [1981] AC 578 at page 599H.
- iv. Those limitations on the use of conditions when granting planning permission are derived from the statutory context.
- v. Similarly when considering the imposition of conditions on approval of applications made under paragraph 6 of Schedule 17 the statutory context must be considered.

- vi. A condition which had the effect of making a substantive change to the route as submitted for approval:
 - 1. Would result in a change in substance to the proposal put forward in the application.
 - 2. If such a condition altered the nature of the route approved (i.e. was inconsistent with the description in the application) it would offend against the principle that applies when considering planning applications.
 - a. Although the process is different, similar principles are likely to be applied when considering conditions imposed when giving approval under Schedule 17.
 - b. A condition attached to a planning permission will not be valid if it alters the extent or the nature of the development permitted².
 - 3. Would or could deprive any party who made representations on the application for approval of the chance to comment on the alternative route.
 - 4. Would fall into a similar category of case to that described in Hillingdon judgment³ as requiring a further application.

² ***Cadogan v Secretary of State for the Environment*** (1992) 65 P & CR 410 at page 413

³ ***R (LB of Hillingdon) v. Secretary of State*** [2019] EWHC 3574 (Admin) at paragraph 86, Appendices to the Appellant's Statement of Case D3

vii. It is, to say the least, doubtful that it would be lawful for a local authority, when approving an application made under paragraph 6 of Schedule 17, to impose a condition which required LGVs to follow a route which was in substance different from that which was applied for.

10. It follows that if the Inspector accepts the Council's case, that arrangements for access and egress to the Adelaide Road worksite should be modified to reduce prejudicial effects on road safety and is reasonably capable of being modified by following Route D, then the proper course of action is to refuse to approve the arrangements, as the alternative of imposing a condition (if the Appellant agreed to its imposition) which required the route to be changed from Route A to Route D, would require LGVs to follow a route which was in substance different from that which was applied for.

THE COUNCIL'S CASE

11. The Council relies upon and does not repeat the analysis set out in the OR (see **Appendix 1**). The conditions suggested by the Council are included as an Appendix to the OR.

Adelaide Road Worksite

The Council's Primary Case

12. The Appellant seeks approval for Route A.
13. Route A includes use of the northern section of Camden High Street from the junction with Parkway junction to the Chalk Farm/Castlehaven Road junction.
14. This section of Camden High Street is heavily used by pedestrians, including commuters and tourists. It gives access to Camden Town underground station and to the Camden markets.
15. Although the footways in Camden High Street have been widened, they have insufficient capacity to accommodate all the pedestrians who use this stretch of the High Street, and pedestrians spill out into the carriageway. Pedestrian counts taken in 2019 are referred to in the OR. On some days, the counts for one side of Camden High Street exceed 45,000.
16. In the 3 year period from 2016, there were 76 recorded casualties between the Hampstead Road/Harrington Square junction and the Camden High Street/Chalk Farm Road/Castlehaven Road. This included 1 pedestrian fatality and 10 serious casualties, 5 of which involved pedestrians and 4 involving cyclists. The accident data shows a cluster of collisions at the Camden High Street/Camden Road/Parkway junction. Between January 2016 and December 2018 there were 20 collisions involving pedestrians along that part of Camden High Street which lies between the junction with Parkway and the junction with Chalk Farm Road.
17. The Council have taken action to reduce the number of LGVs using this section of Camden High Street. In January 2020, survey information indicated that 164 LGVs used Camden High Street between 0800 and 1800.

18. If movements to the Adelaide Road worksite were to add 40-50 LGV movements per day to this section of Camden High Street that would be an increase of approximately 27.5% in the number of LGVs.
19. The introduction of additional LGV movements into such an environment would increase the risk of further collisions between LGVs and pedestrians occurring. The introduction of those additional LGV movements would have prejudicial effects on road safety.
20. In response to the current public health emergency footways have been widened on the eastern side of the section of Camden High Street (south from the junction with Camden Road).
21. The need for social distancing is likely to cause pedestrians to seek to use the carriageway, thereby increasing the risk of conflict between vehicles and pedestrians. For the reasons given above, absent the need to respond to the Covid 19 emergency the introduction of additional LGV movements would have prejudicial effects on road safety. The circumstances associated with the current public health emergency will further increase the risk of conflict between pedestrians and LGVs (accessing and egressing the Adelaide Road worksite) in Camden High Street.
22. It is clear that the Route A arrangements ought to be modified to reduce the prejudicial effects on road safety.
23. The arrangements are reasonably capable of being modified by adopting Route D which avoids the relevant part of Camden High Street.

Response to the Appellant's Statement of Case

24. It is noteworthy that, despite the length of its Statement of Case the Appellant's only substantive attempt to engage with the merits of the case in relation to the route to and from the Adelaide Road worksite is at paragraph 6.61.
25. For the reasons set out above, and contrary to the case set out at paragraphs 6.49 to 6.64 of the Appellant's Statement of Case) the Council has:
 - a. Specified the reasons for the decision (paragraph 7.7.1 of the Planning Memorandum).

- b. The Council has explained why and how modifications should be made and where, by specifying an alternative route (paragraphs 7.7.2 and 7.7.3 of the Planning Memorandum).
 - c. Provided draft conditions, although for the reasons set out when discussing the legislative framework, the Council's reason for refusal could not be overcome by imposing conditions.
26. The Appellant asserts (at paragraph 6.61 of its Statement of Case) that the Route D alternative would not be viable. The Appellant provides no evidence to support this assertion.
27. Route D provides a direct route on to the TLRN at Camden Street. The Appellant refers to a greater number of schools, parks, places of worship and community facilities than on Route A (as shown on the map at the Appellant's Appendix D16). However, all those facilities, except for Castlehaven Open Space and Hawley Primary School, are located adjacent to the TLRN or the SRN and are therefore already on a route considered suitable for and used by LGVs. Potential impact on Hawley Primary School could be ameliorated by imposing a condition restricting use of the route during school pick up and drop off times.
28. The application so far as it relates to the routes to and from the Adelaide Road worksite should be refused on the ground that the route proposed ought to be modified to reduce prejudicial effects on road safety, and that the route is reasonably capable of being modified by adopting Route D.

Euston Approaches Worksite

The Council's Primary Case

29. The LGV routes submitted for approval include the following arrangements:
- a. LGVs approaching the worksite along Euston Road from the east will require the use of either the Osnaburgh loop or the Grafton Way loop.
 - b. If LGVs are unable to make a right turn on to Hampstead Road when leaving the worksite from Access Point 3, they will have to use the Harrington Square loop.

- c. LGVs using Access Point 1 will use Robert Street and Stanhope Street on the Regents Park Estate.
- 30. Use of Access Point 1 can be avoided if access is available via the Granby Terrace Bridge (to Access Point 2) or from Access Point 3 (on Hampstead Road) using a haul road through the worksite. The Council acknowledges that there will be times during the works (during Phase 2 from August 2020 until January 2022) when access is not available via Granby Terrace Bridge.
- 31. Regents Park Estate roads
 - a. Robert Street and Stanhope Street are listed as local roads in the Council's Network Management Plan; such roads should only be used by HGVs for essential deliveries.
 - b. The Regents Park Estate roads are used by schoolchildren walking to and from Netley School.
 - c. The use of Robert Street and Stanhope Street by LGVs at school pick up and drop off times would increase the risk of collisions between school children and LGVs and thereby have a prejudicial effect on road safety.
 - d. One element of local amenity in the Regents Park Estate arises from the relatively limited use of the estate roads by LGVs. The traffic calming measures introduced by the Council has contributed to the limited use of LGVs and the consequent increased levels of local amenity arising. The use of Robert Street and Stanhope Street by LGVs will cause harm to local amenity, whether by severance, and/or by the visual effects of increased LGV movements and/or perceived or actual impact on noise levels, and on air quality.
- 32. The Council accepts that the arrangements are not reasonably capable of being modified by removing Access Point 1 and thereby avoiding the need to use Stanhope Street and Robert Street. However, the prejudicial effect on road safety arising as result of the use of Stanhope Street and Robert Street can be reduced, and local amenity can be preserved, by imposing conditions.
- 33. The Council have put forward conditions which seek to:
 - a. Limit the use of Access Point 1 to those times when alternative access is not available (proposed condition (1)).

- b. Prevent the use of Stanhope Street and Robert Street at school pick up and drop off times (proposed condition (2)).
 - c. To restrict the use of Park Village East by LGVs at school pick up and drop off times other than by LGVs carrying concrete to the worksite (proposed condition (3)).
 - d. Provide that Robert Street can only be used westbound (proposed condition (4)).
34. Those conditions meet the requirements of paragraph 6(6)(b) of Schedule 17 as they are necessary to preserve local amenity and to reduce the prejudicial effects on road safety on the Regents Park Estate. In addition, the arrangements proposed are reasonably capable of being modified by those conditions.
35. The use of the Harrington Square loop
- a. The use of the Harrington Square loop by LGVs will cause harm to local amenity in the square.
 - b. It is proposed that a new access be created on to Hampstead Road at Access Point 3. In the draft LTMP (Camden Sector 1 Main Works LTMP revision C03 dated 20/01/20, para 3.8.9, included in the Appellant's Appendix B2) it is contemplated that, subject to TfL approval, a signal controlled junction will be formed to as to allow vehicles to exit the worksite and turn right (southbound) on to Hampstead Road.
 - c. If LGVs can turn right when exiting the worksite on to Hampstead Road there would be no need to use the Harrington Square loop.
 - d. A condition which provided that, in the event that LGVs exiting the worksite on to Hampstead Road can turn right, the Harrington Square loop should not be used would be necessary to preserve local amenity and would meet the requirements set out at paragraph 6(6)(b) of Schedule 17.
 - e. The Council have put forward suggested condition (6).
36. The use of Eversholt Street
- a. Eversholt Street is likely to be under increased traffic demand with potential for congestion giving rise to adverse impacts on road safety and the free flow of traffic.

- b. Eversholt Street, a local road, is included in the routes put forward for approval.
- c. LGVs accessing and egressing the Euston Approaches worksite can use Hampstead Road, which forms part of the TLRN.
- d. Use of Eversholt Street by LGVs will have an adverse impact on the free flow of traffic and cause prejudice to road safety.
- e. There is an alternative to Eversholt Street, namely Hampstead Road.
- f. The Council have put forward suggested condition (5) which would prevent use of Eversholt Street by LGVs accessing the Euston Approaches worksite unless otherwise agreed by the Council or if directed to do so by temporary traffic diversions.
- g. Such a condition would meet the requirements of paragraph 6(6)(b) of Schedule 17 as it would prevent or reduce prejudicial effects on road safety and or the free flow of traffic in the local area, and the arrangements proposed in the application would be reasonably capable of being so modified (as there is an alternative route).

Response to the Appellant's Statement of Case

- 37. The Appellant contends (6.47 of the Appellant's Statement of Case) that the Osnaburgh loop has insufficient capacity to accommodate the displaced traffic.
- 38. The Appellant has provided no assessment to demonstrate that the addition of LGVs accessing and egressing from the worksite would cause the capacity of the gyratory to be exceeded.
- 39. During the course of discussions the Council's officers requested details of the numbers of LGVs anticipated to use the Grafton and Osnaburgh loops; the officers were not satisfied with the information provided but were and remain prepared to engage in further discussions with HS2.
- 40. Absent a capacity assessment, which in order to be robust would include assumptions as to the number of LGVs using the gyratory and the times of such use, it cannot properly be concluded that the Osnaburgh loop has insufficient capacity to accommodate likely LGV movements.

41. In any event, for the reasons set out below, use of the Grafton Way loop, would have prejudicial effects on the free flow of traffic.

The Adelaide Road and Euston Approaches Worksites

The Grafton Way Loop

42. The Grafton Way loop
- a. Grafton Way has one lane flowing towards the west.
 - b. The junction of Grafton Way and Tottenham Court Road operates at close to capacity. On occasions, vehicles back up along Grafton Way as far as Beaumont Place.
 - c. There is a danger that if the queue of vehicles on Grafton Way becomes too long, access to the Accident and Emergency Department of University College Hospital (“UCLH”) and to the UCLH construction site on the south of Grafton Way will be obstructed.
 - d. The use of Grafton Way by LGVs accessing and egressing the Euston Approaches worksite will add to the traffic flows at a junction, which is already operating close to capacity, and which gives rise to queuing, and as a result will have a prejudicial effect on the free flow of traffic in the local area.
43. An alternative to the Grafton Way loop exists, namely the Osnaburgh loop. The Council acknowledges that there may be times during which the Osnaburgh loop is not available and that, in those circumstances, it may be necessary to use the Grafton Way loop.
44. In order to reduce prejudicial effects on the free flow of traffic, it is the Council’s case that a condition should be imposed, to prevent use of the Grafton Way loop by LGVs unless the Osnaburgh loop is closed to traffic. The arrangements are reasonably capable of being modified in that way, as access and egress can be maintained using the Osnaburgh loop. Such a condition would satisfy the requirements of paragraph 6(6)(b) of Schedule 17. The Council’s suggested condition (11) addresses this issue.

The time over which the routes may be used

45. It is contemplated that the Euston Approaches worksite will be used in four phases covering a period from 2020 to 2026.
46. The excavation, removal of excavated material and construction activities are scheduled to take place at Adelaide Road worksite from 2020 to Q1 2025 (paragraph 3.8.14 of the Appellant's Written Statement, at the Appellant's Appendix A5).
47. The use of the routes proposed for approval will not preserve local amenity, and will have prejudicial effects on road safety and the free flow of traffic.
48. It is accepted that, notwithstanding those adverse effects, it will be necessary for LGVs to access and egress from the worksites during such time as they are operational. However, there is no need for LGVs to access and egress the sites when the works programmes have been completed, and the routes submitted for approval are reasonably capable of being modified by imposing a time limit. Suggested condition (10) would comply with paragraph 6(6)(b) of Schedule 17. The Council requests that the Inspector seek to ascertain whether HS2 Ltd would agree to such a condition.

Conditions

49. The Council has suggested the imposition of 11 conditions as referred to above.
50. The Council notes that the Appellant has indicated that it would welcome discussions with the Inspector as to the appropriateness of any proposed conditions (Appellant's Statement of Case paragraph 2.20). The Council requests that the Inspector should invite the Appellant to agree to the conditions suggested by the Council or to some variation of them which the inspector considers to be appropriate.

Compliance with the Planning Memorandum

51. The Council notes that whether or not the Council has complied with the Planning Memorandum is not an issue for determination on this appeal, and the Council requests that the Inspector makes no finding on that issue.

52. The Council does not accept the assertion (in particular at Appellant's Statement of Case 6.63) that it has failed to adhere to its obligations under the Planning Memorandum.
53. As recognised by the Appellant (at paragraph 6.62 of its Statement of Case) time was taken by the Council to consult the local community. In the Council's view, it is entirely reasonable to consult those who may be affected by the proposed LGV routes. Indeed, it would have been unreasonable not to consult those likely to be affected.
54. Paragraphs 7.31 and 7.33 of the Planning Memorandum require a qualifying authority to use reasonable endeavours. It is the Council's case that they used reasonable endeavours, having regard to their view that it is reasonable to consult those who are most likely to be affected by a proposal.
55. The Council also notes that the Appellant agreed, on a number of occasions, that the time for determination of the application be extended.

CONCLUSION

56. For the reasons given, the Council's case, as set out in outline at paragraph 7 above, is made out.
57. The Council request that the Inspector
- a. Refuse to approve the arrangements proposed for access to and egress from the Adelaide Road worksite.
 - b. Indicate to the Appellant that the arrangements for the Euston Approaches worksite will only be approved if the Appellant agrees to the conditions put forward by the Council or a suitable variation of them.

Appendices

1. Officers' Report
2. ***Newbury v. Secretary of State*** [1981] AC 578
3. ***Cadogan v Secretary of State for the Environment*** (1992) 65 P & CR 410