

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY THE LONDON RESORT COMPANY HOLDINGS
LTD FOR A DEVELOPMENT CONSENT ORDER**

RELEVANT REPRESENTATION

ON BEHALF OF



HS1 LIMITED

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Introduction

1. This relevant representation is made on behalf of HS1 Limited (“**HS1**”). HS1 holds the 30-year concession from the Secretary of State for Transport (“**SOST**”) to own, operate and maintain High Speed 1, the 109km rail line between St Pancras International and the Channel Tunnel. HS1 also owns, operates and maintains the stations along the route: St Pancras International, Stratford International, Ebbsfleet International and Ashford International. HS1 is responsible for the safe running and operation of the railway and associated infrastructure (“**Railway**”). Eurostar International and London South Eastern Railway use the Railway to operate, respectively, trains to Europe and domestic services (“**Passenger Services**”).
2. HS1 is the “nominated undertaker” designated pursuant to ss.34(1) and 34(4) of the Channel Tunnel Rail Link Act 1996 (“**CTRLA 1996**”) and is authorised to construct, maintain and operate the Railway¹. HS1 is therefore a statutory undertaker for the purposes of the Planning Act 2008 (“**PA 2008**”)² and is identified as such in the application for development consent (“**Application**”).
3. Further, under the HS1 Concession Agreement dated 14 August 2009 and amended and restated on 16 July 2010, 27 March 2015 and 18 December 2017 (“**Concession Agreement**”), HS1 has a general duty to give effect to the “Asset Stewardship Purpose” in respect of all HS1 Railway Infrastructure. This purpose is the operation and maintenance, renewal and replacement, and planning and carrying out upgrades:
 - a) in accordance with Best Practice;
 - b) in a timely, efficient and economical manner; and
 - c) as if HS1 were responsible for the stewardship of the HS1 Railway Infrastructure for the period of 40 years following the date that any such activities are planned or carried out.
4. The Asset Stewardship Purpose is found at Section 1 to Schedule 10 (Asset Stewardship and Periodic Review) of the Concession Agreement, which is publicly available³. HS1 was consulted in 2015 and 2020 by London Resort Company Holdings Ltd (“**Promoter**”) in relation to the proposed London Resort (“**Project**”). On both occasions it provided detailed responses based on the information available at the time. HS1 has also met with the Promoter on a number of occasions between 2015 and 2021 to discuss the effects of the Project on the Railway.
5. HS1 remains supportive of the Project in principle, subject (inter alia) to its effects on the Railway being acceptable. HS1 recognises that the proposal has the potential to have a transformational impact on Ebbsfleet and the wider area and which, together with the Garden City, could finally realise the regeneration aspirations behind the original concept of a high speed railway between London and Kent. The potential for additional passenger demand on HS1 also suggests the advent of a new phase of investment in the services and infrastructure of the high speed rail network, and we welcome this subject to further detailed assessment.
6. However, as a critical piece of national infrastructure and under our Concession Agreement obligations HS1 must also seek to protect its infrastructure from the potential risks that this development poses. Therefore, for the reasons set out in this representation, HS1 objects to the

¹ See Part 1 of CTRLA 1996 and, in particular, ss.1 and 14.

² As a person “authorised by an enactment to construct, work or carry on ... any railway ... undertaking” within the meaning of s.8(1)(a)(i) of the Acquisition of Land Act 1981

³ <https://highspeed1.co.uk/media/5k5oyaem/supplement-to-concession-agreement-december-2017-2.pdf>

Application in its current form. Further, HS1 considers that any examination of the Application should be put on hold until the Promoter has:

- a. rectified the deficiencies outlined below; and
- b. provided further information pursuant to Regulation 20 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“**2017 Regulations**”),

in order that HS1 and the Examining Authority can better understand and assess the likely effects of the Project and the effectiveness of the mitigation that is proposed.

Summary of Representation

7. The Environmental Statement accompanying the Application fails to assess the effects of the Project on rail transport, as required by the Scoping Opinion. This means that it is impossible for the Examining Authority or SOST to reach a reasoned conclusion as to the effects of the Project on rail transport and, in particular, whether these are likely to be significant. Similarly, no other participant in the examination is able to comment meaningfully on these effects.
8. The Environmental Statement also fails to assess the effects of the compulsory acquisition of Car Parks C and F, and part of Car Park D, at Ebbsfleet International station, which represent a substantial part of HS1’s parking provision. Without this information it is not possible for HS1 to assess the likely impact of the Project on its undertaking, for other participants in the examination to understand the intention of the Promoter, nor for the Secretary of State to fully examine the Application.
9. The increased demand for rail transport generated by the Project is likely to require additional platform capacity at St Pancras International station and additional stabling for up to five trains on the Railway. Again, the Environmental Statement does not assess the effects of either, nor is there any certainty that they can or will be delivered if the Project receives development consent. Further, there is no means proposed by which funding for the required improvements to train services and the rail network will be secured. If mitigation cannot be provided or funded by the Promoter, the Railway would be overwhelmed by the additional demand. This would cause severe detriment to HS1’s existing services and passengers both domestically and internationally. It would also prevent the Promoter from meeting their rail mode share targets.
10. International Way, a private road owned by HS1, has been identified by the Promoter as a construction vehicle route to the main development site once a temporary haul road has been completed. The Promoter currently has no rights to use International Way, but it has not been included within the Application boundary and no rights to use it have been sought in the draft Development Consent Order.
11. HS1 has serious concerns as to the adequacy of the approach the Promoter has taken to the identification of land and rights proposed to be acquired and the identification of and engagement with persons with relevant land interests. Table 8-1 in the Statement of Reasons contains numerous errors in relation to the identification of HS1 interests and the type of acquisition sought by the Promoter. These errors give a misleading impression of the impact of the proposals on HS1 and make it difficult to understand what case it has to meet at the examination of the Application.

12. The Application proposes the compulsory acquisition of a large number of interests in Crown Land, including those belonging to HS1. Such interests may only be acquired with the consent of the SOST. The Promoter has not demonstrated that such consent is likely to be forthcoming, and HS1's position is that it should be refused.
13. Further, as HS1 is a statutory undertaker, any order granting development consent for the Project may only include provision authorising the compulsory acquisition of HS1's land or rights therein if this can be done without serious detriment to the carrying on of HS1's undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good. The Promoter has made no case in this regard and no adequate information has been provided in respect of any compensation land that the Promoter may be proposing. As matters stand, serious detriment to HS1's undertaking would result from the Project. As such, the Secretary of State cannot be satisfied that the inclusion of these provisions would not cause serious detriment to the carrying on of HS1's undertaking or that other suitable replacement land would be available.
14. Finally, in the event that development consent is granted, satisfactory provision must be made for:
 - a. interface between the Project and HS1's undertaking, including during both construction and operation;
 - b. the inclusion of protective provisions in HS1's favour; and
 - c. the inclusion of requirements mandating that HS1 is consulted during the approval of details by the local planning authority.

Deficiencies in the Application

15. As already noted, the Application is deficient in a number of respects and to such an extent as to make it unsuitable for examination in its current form. We set out below a non-exhaustive list of the major problems.

Environmental Statement

16. In its June 2020 Scoping Report, the Promoter had sought to scope out of its environmental impact assessment any impacts on rail transport on the basis that "*the proposals would utilise existing rail network and services*" meaning "*no significant changes are expected, and rail transport is to be scoped out of the assessment*"⁴. However, the Secretary of State's Scoping Opinion dated July 2020 ("**Scoping Opinion**") contains the following requirement:

The Scoping Report suggests that the impacts to the rail transport will be less than significant since the existing rail network will be utilised. The Scoping Report does not provide any information regarding the anticipated number of additional rail passengers and the pressure this would place on existing services. Accordingly, the ES should include an assessment of the impacts to rail transport where significant effects are likely to occur. The Applicant should make effort to agree the approach to the assessment with relevant consultation bodies.

⁴ See paragraph 9.79

17. Regulation 14(3)(a) of the 2017 Regulations requires that the Environmental Statement accompanying the Application must be based upon the Scoping Opinion. Regulation 14(3)(b) further requires that the Environmental Statement must include the information reasonably required for reaching a reasoned conclusion on the significant effects of the proposed development. The Promoter’s Environmental Statement must, therefore, include an assessment of the effects on rail transport, including the information reasonably required to reach a reasoned conclusion as to whether they are likely to be significant.
18. The Environmental Statement does not do this. Consequently, as matters stand, the environmental statement is inadequate and it is necessary for it to contain further information. The Promoter’s Transport Assessment of December 2020 (“**TA**”), which appears at Appendix 9.1 of the Environmental Statement⁵, notes that rail is a “*core component*” of the Promoter’s public transport strategy and that the Railway’s proximity to the Project means that “[t]he strategy uses rail as much as possible”⁶. It is further stated that the Promoter’s strategy “*is centred around the HS1 route, with Ebbsfleet International station being the primary rail access point*” to the Project. The TA attempts to forecast the likely increased demand for rail travel as a result of the Project, but it makes no assessment of existing capacity, noting only that this information will follow when the conclusions of an independent capacity study are known. In the absence of an assessment of existing capacity it is impossible to assess the impact of the Project on that capacity.
19. While acknowledging that a further joint independent capacity study (“**Capacity Study**”) is underway, HS1 considers that, if existing capacity is not yet known, and is not before the Examination of the Application, it is impossible for the Examining Authority or SOST to reach a reasoned conclusion as to the effects of the Project on rail transport and, in particular, whether these are likely to be significant. Similarly, no other participant in the examination is able to comment meaningfully on these effects.
20. The Environmental Statement is inadequate in that it simply does not contain enough information to reach an informed judgment as to those matters. Further information is required. As such, pursuant to Regulation 20 of the 2017 Regulations (“**Regulation 20**”), HS1 invites the Secretary of State through the Examining Authority to suspend consideration of the Application until the Promoter has provided that information, assessed the effects and provided details of and funding mechanisms for any necessary and identified mitigation.

Parking Provision at Ebbsfleet International

21. The Application proposes compulsory acquisition of Car Parks C and F, and part of Car Park D, at Ebbsfleet International. This represents a substantial part of HS1’s parking provision. The Promoter appears to have undertaken no analysis, either in the Environmental Statement or otherwise, as to the effects of this. The Off-Site Parking Plan that accompanies the application merely states that the Promoter will “*continue to review parking conditions at Ebbsfleet with HS1*”⁷. The Environmental Statement considers the effects of the Project on parking only from the perspective of a likely increase in parking demand “*within a reasonable walking distance*” of the Project⁸. There is no analysis of the effects of the acquisition of car parking spaces at Ebbsfleet International on parking in that locality, nor of the effects on HS1’s undertaking, the wider rail network or the

⁵ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000428-6.2.9.1%20ES%20Appendix%209.1%20Transport%20Assessment%20\(1%20of%2033\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000428-6.2.9.1%20ES%20Appendix%209.1%20Transport%20Assessment%20(1%20of%2033).pdf)

⁶ See paragraph 11.3.1

⁷ See paragraph 3.3.1

⁸ See paragraph 9.34

transport system more generally. This is another respect in which the Environmental Statement is inadequate and HS1 again invites the Secretary of State to suspend consideration of the Application under Regulation 20 until this analysis has been carried out.

22. HS1 has 5,513 surface car parking spaces serving Ebbsfleet International, which are a vital part of its undertaking. Land for a further 3,487 spaces is also safeguarded to serve potential future need. The Application gives no information as to how many spaces will be lost, nor any clear information as to how many replacement spaces will be provided and/or how that would be achieved. The draft DCO makes provision for the construction of a multi-storey car park of “up to” 1,200 spaces⁹ and to “relocation of affected car parking spaces within ... Car Park D”¹⁰. In neither case, however, is it clear whether this will replace all of the car parking spaces that would be lost, nor whether the re-provided spaces would be as convenient and commodious. Without this information it is not possible for HS1 to assess the likely impact of the Project on its undertaking, for other participants in the examination to understand the intention of the Promoter, nor for the Secretary of State to fully examine the Application.

Omissions from Project description

23. HS1 and the Promoter are currently awaiting publication of the conclusions of the Capacity Study. However, initial findings suggest that additional platform capacity is likely to be required at St Pancras International to accommodate the extra services required to meet increased passenger demand generated by the Project. St Pancras International is a Grade 1 Listed station with limited room for expansion. The provision of such platform capacity will therefore be extremely hard to accommodate and a feasibility study will be required to understand whether this is possible.
24. The provision of additional platform capacity at St Pancras International is likely to be of fundamental importance in terms of the Promoter achieving their predicted rail mode share. Despite this, St Pancras International is not included within the Development Consent Order limits and no assessment of any effects on the station has been carried out in the Environmental Statement. Further, since the works required additional platform capacity are not yet known, no provision is made in the draft Development Consent Order for the authorisation of those works. Nor does the draft Development Consent Order does not contain provisions such as a *Grampian* requirement securing such works. As such, there can be no certainty that they can or will be delivered if the Project receives development consent. HS1 considers that the Application should not be examined further until these problems have been rectified.
25. The initial findings of the capacity study also identify the potential need for stabling for up to five trains on the Railway, as well as provision for trains to be turned round adjacent to Ebbsfleet International without detrimental effects on existing services. No location has been identified for such stabling or other works. Again, this means that the environmental impact of such development has not been assessed, nor provision made in the draft Development Consent Order to authorise it. This is another respect in which the Application is deficient and in relation to which further information should be required.
26. Additionally, the Application identifies International Way as a construction vehicle route to the main development site once a temporary haul road has been completed. International Way is a private road owned by HS1 that provides a dedicated access to both Ebbsfleet International and Carparks D and F for HS1’s customers. International Way has not been included within the Application boundary and no rights to use it have been sought in the draft Development Consent

⁹ See Work Nos. 23 and 25, only one of which may be built

¹⁰ See Work No. 28a ad 28b

Order. The promoter has not to date had any discussions with HS1 about the use of the road. HS1 has serious concerns about the use of International Way for construction traffic and considers that such use should be assessed so that any adverse impacts can be understood and, if necessary, mitigated.

Identification of Interests in Land

27. HS1 has serious concerns as to the adequacy of the approach the Promoter has taken to the identification of land and rights proposed to be acquired and the identification of and engagement with persons with relevant land interests.
28. A comparison of the Statement of Reasons with the Book of Reference reveals the former to contain a number of inaccuracies. For example, Table 8-1 of the Statement of Reasons suggests that no permanent acquisition of HS1 land is proposed, whereas the Book of Reference identified a number of plots where “*all interests and rights ... except those of the Crown*” are intended to be acquired. Similarly, Table 8-1 does not accurately identify all of the plots in which HS1 has an interest. HS1 believes that the correct position, based on the Book of Reference, is as follows:

Statutory Undertaker	Type of Acquisition	Plot number
HS1 Limited	Acquisition of permanent rights and temporary possession	40, 287, 294, 295, 296, 298, 299, 300, 302, 303, 304, 305, 312, 313, 314, 320, 321, 326, 327, 328, 329, 334, 335, <u>353</u> , <u>368</u> , 369, 370, 371, <u>372</u> , 375, <u>378</u> , 381 , 390 423 , 424 , 447
	Permanent acquisition of subsoil / airspace and temporary possession	215, 323, 325
	Permanent acquisition of land	<u>30</u> , <u>39</u> , <u>48</u> , <u>52</u> , <u>53</u> , <u>54</u> , <u>56</u> , <u>86</u> , <u>103</u> , <u>105</u> , <u>136</u> , <u>139</u> , <u>170</u> , <u>171</u> , <u>179</u> , <u>213</u> , <u>214</u> , <u>215</u> , <u>277</u> , <u>278</u> , <u>282</u> , <u>292</u> , <u>293</u> , <u>297</u> , <u>301</u> , <u>306</u> , <u>311</u> , <u>316</u> , <u>317</u> ,

29. Entries shown underlined and in bold type are missing from the Promoter’s Table 8-1. Those shown in strike through are incorrectly listed as HS1 interests in the Promoter’s Table 8-1.
30. These errors give a misleading impression of the impact of the proposals on HS1 and make it difficult to understand what case it has to meet at the examination of the Application. The Application should not be examined further until these serious errors have been corrected.

Effect of the Project on Passenger Services and the Railway

31. The Transport Assessment states at 9.30 that “*Changes in demand resulting from the Proposed Development are likely to have an effect on the existing services and stations in the locality. A separate Rail Strategy Plan (document reference 6.2.9.1, Appendix TA-U) has been developed to identify potential constraints and any improvement that may be necessary*”. The Transport Assessment goes on to state that the Rail Strategy “*ensures that there is sufficient capacity from an on-train and station concourse perspective*”. However, the Rail Strategy then goes on to acknowledge that the detail of specific mitigation is still being discussed.
32. HS1 acknowledges that since the submission of the DCO the Promoter has been engaging with rail operators (including HS1) in order to understand the effects of the new demand generated by the Project on existing services. However, HS1 does not consider that the Promoter is yet in a position to state that sufficient capacity has been ensured. The potential effects are only just becoming apparent to all parties and significant additional work is required to understand the feasibility and costs of interventions required to mitigate these effects.
33. In summary, the draft findings of the Capacity Study show that:
 - a. There is insufficient capacity on existing High Speed services between St Pancras and Ebbsfleet International to accommodate the additional passenger demand created by the Project.
 - b. New rolling stock (up to five 12 car trains) will be required to accommodate the additional demand. This is likely to be in the form of a shuttle service between St Pancras International and Ebbsfleet International (also stopping at Stratford International) with 2 trains per hour initially and increasing to 4 trains per hour once Gate 2 opens.
 - c. There is insufficient platform capacity at St Pancras International to accommodate the new shuttle services and new platform capacity is likely to be required. Detailed feasibility work needs to be undertaken to ensure this can be accomplished within the heritage constraints of St Pancras and without detriment to the provision of platforming for other operators.
 - d. Additional stabling for up to five trains would be required on the Railway, as well as provision for trains to be turned round adjacent to Ebbsfleet International without detriment to existing services.
 - e. There is likely to be shortfall in operational costs associated with the new shuttle services, which will need to be covered by the Promoter.
 - f. Significant infrastructure interventions will be required at St Pancras International and Ebbsfleet International in the form of additional escalators, lifts, ticket gates and security and border facilities to accommodate the additional flows of domestic and international visitors.
34. If any of the above elements of mitigation cannot be provided or funded by the Promoter then the Railway would be overwhelmed by the additional demand. This would cause severe detriment to HS1’s existing services and passengers both domestically and internationally. It would also prevent the Promoter from meeting their rail mode share targets.
35. Further feasibility studies are required into the provision of additional infrastructure requirements at St Pancras International and Ebbsfleet International. Once these requirements are known, a

mechanism must be put in place for securing the required mitigation both practically and financially. HS1 considers that the required funding must be provided by a suitably worded undertaking for the benefit of HS1. Since a development consent obligation would benefit the local planning authority, which is not able to secure the necessary capacity on the railway (although it may have an interest in regulating such provision), that would not be a suitable means of securing this critical provision. The Project should not be examined without clear information as to its impact on the Railway being available to both HS1 and the Examining Authority, together with clear information as to how that impact will be mitigated and funded. The Project should not be consented without such mitigation being secured along with provision for its funding.

Acquisition of HS1 Land and of Rights in HS1 Land

Crown Land

36. HS1 holds land for the purposes of its undertaking under leases granted by the Secretary of State for Transport ("**DfT**"), which holds the immediately superior interests (either as freeholder or head-leaseholder).
37. In these circumstances, the land in question constitutes Crown Land and section 135 of the PA 2008 is engaged. This provides that any development consent order granted in respect of the Project may include provision authorising the compulsory acquisition of HS1's interests (or any other rights) only if the appropriate Crown authority consents. The SOST is the appropriate Crown authority for this purpose. In the absence of any consent from SOST, no provision to authorise the compulsory acquisition of HS1's inferior interests or rights over the relevant land parcels (as the case may be) may be included in the proposed DCO.
38. HS1 understands that the Promoter has not undertaken any engagement with DfT in this regard, nor is there any indication in the Application documents as to how the Promoter intends to obtain such consent. HS1's position is that no such consent should be given by SOST. HS1 considers it unlikely that the Promoter will be authorised to acquire HS1's land. The failure by the Promoter to address this issue adequately or at all is a fundamental flaw in the Application. The Application should not be examined further until the Promoter addresses this key point.

HS1 Land

39. HS1 objects to any proposed acquisition or temporary possession of its land or the acquisition of any rights therein. There should be no provision in any DCO for the Project that allows this.
40. No adequate explanation from the Promoter has been provided as to the justification for each plot of land currently identified for potential acquisition or temporary possession, or over which the Promoter intends to seek the power to acquire rights. Without prejudice to the generality of this objection, HS1 objects on the following grounds in particular:
 - a. Areas of HS1 car parking provision are included within the Land Plans with no adequate details of proposals for replacement car parking. No adequate case is made for its inclusion and it should be removed.
 - b. Powers are sought over the Thames Tunnel Southern Portal Access Road. This area also contains a HS1 maintenance compound, which is important HS1 infrastructure and must

remain quickly and easily accessible to HS1 at all times. The design must be amended to avoid any requirement to take access over the Access Road or to acquire any of this land.

- c. Powers are sought over the access road to land south of Galley Hill Road. This vital area of operational railway can only be accessed via the existing tunnel under Galley Hill Road and HS1 must maintain its own dedicated access route to this land.
41. As set out above, HS1 is a statutory undertaker within the meaning of section 127(8) of the PA 2008, being authorised to carry on a railway undertaking pursuant to CTRLA 1996. As well as being Crown Land, all of the land in respect of which the Promoter proposes to secure powers of compulsory acquisition (of interests or rights) or of temporary possession was acquired by HS1 for the purposes of this undertaking. For example, the provision of Ebbsfleet Station and its associated car parking, tracks, train control infrastructure, maintenance compounds and access roads.
42. In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of HS1's land or rights therein if this can be done without serious detriment to the carrying on of HS1's undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good.
43. The Promoter has made no case in this regard and no adequate information has been provided in respect of any compensation land that the Promoter may be proposing. As matters stand, serious detriment to HS1's undertaking would result from the Project. As such, the Secretary of State cannot be satisfied that the inclusion of these provisions would not cause serious detriment to the carrying on of HS1's undertaking or that other suitable replacement land would be available. Again, HS1 submits that the Application should not be examined further until the Promoter has provided this information.

No compelling case in the public interest

44. Section 122(3) of the PA 2008 provides that a development consent order that includes compulsory acquisition powers may be granted only if there is a compelling case in the public interest for compulsory acquisition. The Promoter's (limited) analysis of this vital statutory requirement is set out at paragraph 6.25 to 6.61 of the Statement of Reasons. There is only cursory consideration of the potential adverse impact of the Project at paragraphs 6.54 to 6.58.
45. Importantly, the balancing exercise described at paragraphs 6.59 to 6.61 of the Statement of Reasons considers only the interaction of the putative public benefits of the Project versus the private loss that would be suffered by those whose land or interests in land are proposed to be acquired. There is no consideration of the adverse impact on HS1's undertaking and the Passenger Services described above in these representations and, crucially, these adverse impacts would clearly be prejudicial to HS1's ability to continue to carry on its undertaking in the public interest. This competing public interest has not been considered by the Promoter at any point and, consequently, the Promoter's analysis of the putative "compelling case in the public interest" is fundamentally defective.

Impediments to implementation

46. As matters stand, there are a number of physical and legal impediments to the implementation of the Project, including, but not limited to:

- a. The consent of the SOST to the acquisition of interests in Crown Land is required, but the Promoter has not demonstrated that this is likely to be obtained. As noted previously, HS1's position is that such consent should not be granted.
 - b. Additional platform capacity at St Pancras International is likely to be required, but there is no certainty that they can or will be delivered if the Project receives development consent.
 - c. Similarly, there is likely to be a requirement for additional stabling for up to five trains on the Railway, as well as provision for trains to be turned round adjacent to Ebbsfleet International without detrimental effects on existing services. Again, as matters stand there is no certainty that they can or will be delivered if the Project receives development consent.
 - d. International Way, a private road owned by HS1, has been identified by the Promoter as a construction vehicle route to the main development site once a temporary haul road has been completed. The Promoter currently has no rights to use International Way, but it has not been included within the Application boundary and no rights to use it have been sought in the draft Development Consent Order.
47. The Promoter is unable to show that delivery of the scheme will not be prevented by these impediments, as required by the Secretary of State's policy at paragraph 15 of *Guidance on Compulsory purchase process and The Criche Down Rules*¹¹. HS1 considers that powers of compulsory acquisition should not be granted to the Promoter through the Development Consent Order until it has demonstrated that this issues are capable of being resolved.

Interface between the Project and HS1's undertaking

48. Once the Application is made suitable for examination, there still remain a number of key issues that must be resolved regarding the interface between the Project and HS1's undertaking, including: traffic and access; station operation; utilities; safety; water management; and control over construction and works on or near HS1 infrastructure.
49. The effects of traffic generated during the Project's construction and operation are not adequately assessed. Road access to Ebbsfleet Station during construction and the impact of construction traffic are unclear; in particular, whether vehicular and pedestrian access to the Station will be maintained or what the phasing of construction might be. Sufficient access to the station and links between HS1 carparks and the station must be maintained at all times to avoid detriment to HS1's undertaking.
50. There is also inadequate information on how road access to Ebbsfleet Station would be managed once the Project is operational. For example:
- a. The plans show the provision of a new entrance to Carpark D off a re-provided section of International Way. However, the provision of a new roundabout appears to serve no purpose and HS1 is concerned about how traffic arriving at the carpark by mistake would be able to turn around.
 - b. HS1 has a compound and head house located in the centre of the proposed Project site adjacent to the Thames Tunnel Southern Portal. Immediate access to this compound at all

¹¹ July 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964686/CPO_guidance_-_with_2019_update.pdf

hours is critical to HS1 in terms of operating and maintaining the railway. An existing access road in HS1 ownership follows the northeastern side of the railway from the Northfleet Industrial Estate to the compound and tunnel portal. The plans appear to show this access road being permanently acquired by the Promoter and therefore HS1's access to the tunnel compound would be lost. Access via internal London Resort roads is not acceptable to HS1. HS1 requires its own dedicated access route to the tunnel portal for the purposes of its undertaking. HS1 also objects to a London Resort internal access road being routed over the Tunnel Portal, as this would cut off access to the compound. HS1 considers that the internal access road should be routed around the compound.

51. New car parking spaces and drop off areas serving the Station will need to be put in place before the existing ones are lost. HS1 needs to understand where the replacement bus, coach and taxi facility is to be located and ensure that it complies with the requirements of HS1's undertaking. Replacement car parking must also be no less convenient and commodious than the existing spaces. No adequate information has been provided in this regard in order to enable HS1 to assess whether planned car parking provision or forecourt reprovision is sufficient to avoid serious detriment to HS1's undertaking arising from the Project.
52. It will be essential for continued supplies of all requisite utilities (electricity, gas, water, sewerage, waste, etc) to be provided to the railway and the Station during both construction and operation of the Project. These matters remain to be addressed and no adequate information has been provided in this regard by the Promoter.
53. In particular, the Station foul drainage is currently pumped off to Northfleet sewage treatment works. There is limited service in and around the Station and therefore any increase in transport or an adjacent transport hub cannot rely on the Station provision.
54. All of the above issues must be adequately assessed during the examination of the Application and any DCO must contain adequate protection for HS1's undertaking in these regards. In addition, during construction and operation, it will also be essential for reasons of safety that:
 - a. HS1 and its operatives continue to be able to access maintenance strips, which must be preserved and maintained, or re-provided on any 'new' land owned by the Promoter.
 - b. Convenient depot and compound access is achieved.
 - c. Sufficient space is available so as to ensure that there is a safe evacuation area for the Station and trains – any development proposed or carried out by the Promoter must not compromise the evacuation process. Emergency procedures for the Project must align with HS1 evacuation procedures for clash avoidance.
 - d. A full assessment and design submission concerning both accidental and hostile vehicle incursion (or other foreign object incursion) onto HS1 property is provided to HS1's satisfaction to ensure all incursions are designed for and mitigated against in compliance with current standards.
 - e. Lighting and solar glare from development or vehicles adjacent to or near the railway are suitably prevented and mitigated, with a particular emphasis on eliminating the risk of glare to the safety of oncoming trains.
55. The temporary and permanent surface water management strategy must be subject to particular scrutiny by the Examining Authority. Historical and ongoing drainage issues in this area have

placed HS1 at significant risk of closure. This is not just precipitation run-off but includes management of the ditches and drainage systems for which there are several discharge consents in place by third parties. This matter remains to be addressed by the Promoter.

56. To the extent that the Works are identified in the draft Development Consent Order that directly affect the Railway, these must be carried out by HS1 and not the Promoter. The Development Consent Order must contain suitable provisions to allow grant HS1 the necessary powers to carry out such works. Further, the Promoter must not carry out works near the Railway without proper control and oversight by HS1. Construction activity alongside HS1 will need to be tightly controlled with particular attention to:

- a. collapse radius of cranes, piling rigs, concrete pumps or any other plant and equipment;
- b. control of wind-blown debris;
- c. control of dust emanating from sites towards the railway;
- d. control of dirt and spoil from site vehicles being deposited upon local roads, or being picked up by commuter/public vehicles and deposited on HS1 parking areas or roads;
- e. vibration from driven piles or ground improvements;
- f. structural stability of all structures in regards to excavations or surcharging from stockpiles or from currently proposed or future works over HS1 tunnels;
- g. excavations within track support zone or structure support zones;
- h. buried services protection and relocation/diversion;
- i. the potential for electromagnetic interference with electrical or electronic apparatus or other equipment owned, used or relied upon by HS1;
- j. ongoing access arrangements for the public and staff to the Station;
- k. ongoing access 24/7 365 days per year to HS1 equipment rooms, depots and transformer compounds located along the route;
- l. ongoing access to the maintenance strip alongside the railway;
- m. the footbridge extension will need consideration with regard to HS1 operations and safety. A full technical submission will be required. Structural separation and clear delineation of ownerships and responsibilities must be agreed with HS1. There must be no adverse effects on the existing structure;
- n. works to the chalk spine beneath Galley Hill Road must adequately consider HS1 assets; and
- o. whilst the Thames Tunnel Southern portal access road has been indicated by the Promoter as a possible access route (and not withstanding our objection at 28b above), heavy construction plant or abnormal loads will need separate approvals due to the presence of shallow tunnels and buried services.

Need for protective provisions and additional requirements

57. In light of the foregoing outstanding issues, HS1 has serious concerns due to the fact that the draft DCO submitted by the Promoter has no protective provisions for the benefit of HS1. HS1 is a statutory undertaker for the purposes of the PA 2008 and operates its undertaking in the public interest. The approach taken by the Promoter is not in accordance with Planning Inspectorate Advice Note 15, which states that:

*Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.*¹²

58. HS1 requires protective provisions to be included in its favour. The applicant for the proposed Lower Thames Crossing Development Consent Order, Highways England, agreed to this in similar circumstances and HS1 considers that HS1's assets as affected by the Project should be treated in the same way.

59. In particular, the Promoter must :

- a. be prevented from exercising any of the powers conferred by articles 20 (Authority to survey and investigate land), 21 (Compulsory acquisition of land), 22 (Power to override easements and other rights), 24 (Compulsory acquisition of rights and imposition of restrictive covenants), 29 (Acquisition of subsoil or air-space only), 30 (Rights under or over streets), 31 (Temporary use of land for carrying out the authorised development), 32 (Temporary use of land for maintaining the authorised development) and 33 (Statutory undertakers) in respect of any railway property without HS1's consent, either through the inclusion of additional protective provisions or by omitting HS1's land from the scope of the order outright;
- b. not prevent pedestrian or vehicular access to any HS1 property without HS1's consent;
- c. not acquire or use or acquire new rights over any HS1 property under the powers conferred by any order except with HS1's consent;
- d. discuss and secure HS1's approval of any plans for the proposed works and must not undertake any works upon, across, under or over or in the vicinity of HS1's land or undertaking prior to such approval being given;
- e. be required to undertake any protective works, whether temporary or permanent, as HS1 may reasonably require to ensure the safety, security, stability, operation and maintenance of HS1's undertaking;
- f. permit HS1 to elect to carry out itself the works aforementioned;

¹² See paragraph 4.1 https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf

- g. indemnify HS1 in respect of any and all losses, claims, demands, actions, proceedings, damages, matters, costs, expenses and liabilities whatsoever and howsoever arising in any way from, in connection with or relating to the Promoter, the works or the Project; and
- h. provide Public Liability insurance meeting HS1's requirements.

60. In addition, further detailed requirements must be included in any development consent order granted in respect of the Project to require HS1's consultation in relation to the approval of details addressing:

- a. foundation design;
- b. drainage;
- c. construction activity safety;
- d. site investigations near to HS1 (either above tunnels or adjacent to railway assets);
- e. demolition methodology;
- f. excavations, to include size depth and proximity to HS1's property and assets;
- g. imposed loads, such as stockpiles;
- h. vibration;
- i. permanent errant vehicle protection/incursion mitigation;
- j. permanent fencing and security measures;
- k. access and egress measures adjacent to or near HS1's railway or equipment;
- l. planting and landscaping close to the railway;
- m. electromagnetic compatibility;
- n. dazzle, glare and distraction from lighting and vehicles or other light emitting sources such as fireworks or displays or solar reflection;
- o. control of maintenance risk arising from future maintenance of the Project; and
- p. risk of malfunction of HS1's isolating transformer to the Project and appropriate mitigation.

61. This list is not necessarily exhaustive.

62. The Development Consent Order must contain adequate protection for the Railway in the form of Requirements. The Appendix contains a set of planning conditions prepared by Network Rail (High Speed) Asset Protection on HS1's behalf, which give an indication of the matters HS1 would seek to be dealt with by way of Requirements.

APPENDIX

Network Rail (High Speed) Asset Protection**Response to planning consultation**

Address:	London Resort		
LPA:			
Planning ref:	Statutory Consultation September 2020 OP-4019	Our ref:	OP-5000#0
Date of this response:	17 September 2020		

Required Conditions**1. Foundation design**

Condition: Prior to the commencement of development, details of the design of the foundations and other works proposed below existing ground level shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Construction activity shall then be carried out in compliance with the approved details unless previously agreed in writing by the Local Planning Authority in consultation with HS1.

Reason: To ensure that loads on, and settlement of, HS1 tunnels, structures, track and other infrastructure do not prejudice the safety or operation of HS1.

2. Drainage design

Condition: No water or effluent shall be discharged from the site or from the permanent works onto HS1 or its associated drainage system. Prior to the commencement of development details of the design of the drainage shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Construction activity shall then be carried out in compliance with the approved details unless previously agreed in writing by the Local Planning Authority in consultation with HS1.

Reason: To enable HS1 to satisfy themselves that there is no increased risk to HS1 arising from the development.

3. Construction activity safety

Condition: Prior to the commencement of development a construction phase/management plan shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. The plan shall include but not be limited to:

- Control of windblown debris, dust and materials
- Maintaining access to all HS1 gates and compounds throughout construction
- On-site vehicle movements and parking, including any temporary errant vehicle protection
- Site layout arrangements
- Site security and fencing arrangements.
- Safeguarding of ALL buried services
- Storage of combustible/hazardous materials
- Position and operation of cranes, piling rigs and any other plant.
- Details of any excavations and stockpiles

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- Details of any ground improvements or compaction
- Use of any UAV's for photography

Construction activity shall then be carried out only in compliance with the approved method statement unless previously agreed in writing by the Local Planning Authority in consultation with HS1.

Reason: No such information has been provided and is required in order to manage the risk that the construction activity presents to the safety, security and operation of HS1.

4. Site investigations near to HS1 (either above tunnels or adjacent to railway assets)

Condition: Prior to the commencement of site investigations involving a borehole or trial pit deeper than one metre, details of the location and depth of site investigations including a method statement shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. This activity shall then be carried out only in compliance with the approved details unless previously agreed in writing by the Local Planning Authority in consultation with HS1.

Reason: No such information has been provided and is required in order to ensure that the borehole or trial pit is at an acceptable vertical and horizontal distance from tunnels, the operational railway or other assets as advised by HS1 so that it does not compromise the integrity, safety or operation of HS1.

5. Demolition

Condition: No demolition activity shall take place until the proposed methodology has been submitted in writing to and approved by the Local Planning Authority in consultation with HS1. Demolition activity shall then be carried out in accordance with the approved details unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change.

Reason: No such information has been provided and demolition activity could pose a risk to the safety, security and operation of HS1.

6. Excavations

Condition: Prior to the commencement of any construction activity engineering details of the size, depth and proximity to HS1 of any excavations shall be submitted in writing to and approved by the Local Planning Authority in consultation with HS1. Excavations shall then be carried out in accordance with the approved details unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change.

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Reason: No such details have been provided. To ensure that the stability HS1 tunnels, structures, track and other infrastructure is not prejudiced.

Informative: If the excavation is within the zone of influence of HS1 infrastructure an engineering design will be required from the developer for approval in advance of excavation.

7. Imposed loads

Condition: Prior to the commencement of any construction activity, details of the size, loading and proximity to HS1 of additional ground loads such as stockpiles shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Works shall be carried out in conformity with the approved details unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change

Reason: To ensure that the stability of HS1 tunnels, structures, track and other infrastructure is not prejudiced.

Informative: If the stockpile is within the zone of influence of HS1 infrastructure an engineering design will be required from the developer for approval in advance of excavation.

8. Vibration

Condition: Prior to the commencement of any construction activity details of the plant and equipment proposed which are likely to give rise to vibration (such as pile driving, demolition and vibro-compaction of the ground) together with predicted vibration levels, shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Activities likely to cause vibration in the vicinity of HS1 infrastructure such that a peak particle velocity (PPV) of 5mm/s may be exceeded at the railway boundary will be subject to agreement in advance.

Where activities could give rise to PPV of 5mm/s or greater, a vibration and settlement monitoring regime shall be submitted in writing to for approval by the Local Planning Authority in consultation with HS1. It shall be put in place prior to the start of works. HS1 shall be provided reasonable access to the results of monitoring

Reason: No details of vibration have been provided. To ensure that vibration does not prejudice safety, operation and structural integrity of HS1.

9. Permanent errant vehicle protection

Condition: Prior to the commencement of development details of permanent errant vehicle protection measures to protect the HS1 railway and associated equipment shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. These errant vehicle

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protection measures shall be installed prior to the occupation of the site and shall be retained in working condition unless otherwise agreed in writing with the Local Planning Authority in consultation with HS1.

Reason: No such measures exist and none are proposed in the development. Activity associated with the development poses a new risk to the safety, operation and maintenance of HS1 as a result of vehicles breaching the railway boundary fence.

10. Permanent fencing and security measures

Condition: Prior to the commencement of development details of fencing and security measures along the length of the site adjacent to or near HS1 railway or equipment shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. This fencing shall be installed prior to the occupation of the site and shall be retained as an effective barrier unless otherwise agreed in writing with the Local Planning Authority in consultation with HS1.

Reason: To maintain the security of HS1 and comply with HS1 security requirements. The existing fencing is inadequate for the change of use of the adjacent area and the development proposed introduces a risk of trespass and vandalism on HS1.

11. Access

Condition: Prior to the commencement of development details of access and egress measures along the length of the site adjacent to or near HS1 railway or equipment shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. These permanent access arrangements shall be installed, or existing ones maintained until the agreed new layout has been installed.

Reason: To maintain the accessibility of HS1 and comply with HS1 maintenance requirements. Any changes to HS1 access rights must provide for suitable timely unhindered access no more burdensome than the existing measures..

12. Planting and landscaping close to High Speed 1

Condition: Prior to the installation of any planting and landscaping details shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Unless otherwise agreed in writing with the Local Planning Authority in consultation with HS1, the planting scheme shall be

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installed in accordance with the approved scheme and maintained in accordance with this condition.

Reason: To permit access for maintenance purposes to the HS1 fence. To prevent trespass and vandalism risk from trees which could provide a climbing aid for unauthorised persons to scale the fence. To control incidences of reduced traction and braking force as a result of leaves on the line (a particular risk on the 1 in 40 gradients which are common on HS1, and which are steeper than on other railway main lines).

13. Electromagnetic compatibility (EMC)

Condition: Prior to the commencement of development the developer shall provide an assessment of Electromagnetic compatibility (EMC) to demonstrate that the design is compatible with EMC regulations. This assessment shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Unless otherwise agreed in writing with the Local Planning Authority in consultation with HS1, the design shall be implemented in compliance with approved scheme.

Reason: No such details have been provided and the nature of the development is such that it gives rise to concerns about EMC emissions. EMC emissions which are not compliant with the regulations could cause disturbance to HS1 equipment. HS1 must be able to confirm that no such risk exists.

14. Dazzle, glare and distraction from lighting and vehicles or other light emitting source such as fireworks or displays

Condition: The permanent lighting scheme shall be so designed to avoid dazzle and glare which could cause hazard or distraction to operators of HS1. Prior to the commencement of any lighting installation details of the lighting scheme, including any visual screening shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Unless otherwise agreed in writing with the Local Planning Authority in consultation with HS1, the permanent lighting scheme shall be implemented in accordance with the approved details.

Reason: Lighting can interfere with sighting of signals and compromise the safe operation of HS1. No detail of the lighting has been provided.

15. Dazzle, glare and distraction from solar reflection

Condition: The development shall be so designed to avoid dazzle and glare from solar reflection which could cause hazard or distraction to operators of HS1. Prior to the commencement of development the reflectivity and the orientation of specular (i.e. polished) reflective surfaces such as glazing or non-matt metal shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Unless otherwise agreed in

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writing with the Local Planning Authority in consultation with HS1, the approved scheme shall be implemented.

Reason: Depending upon the orientation of the façade or component and the position of the sun, specular reflection can interfere with sighting of signals and compromise the safe operation of HS1. No detail of the potential for this has been provided.

16. Control of maintenance risk

Condition: Prior to the commencement of development proposals for those elements of maintenance of the development which could prejudice the safety, operation or maintenance of HS1 shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. The details shall include:

- Cleaning of windows or facades adjacent to HS1 railway or equipment
- routine maintenance of the façade facing HS1
- access at height within 20m of HS1
- use of plant with a collapse radius within 4m of the HS1 boundary.

The design shall then be carried out only in accordance with the approved details unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change.

Reason: No such information has been provided and is required to manage the risk to the safety and operation of HS1 arising from maintenance of the development.

17. Risks from transformer

Condition: In view of the proximity of the HS1 isolating transformer, the developer should prior to the commencement of development undertake an assessment of the risk it poses to the development, incorporate appropriate mitigation into the development and submit the details in writing for approval by the Local Planning Authority in consultation with HS1.

Reason: The isolating transformer is an oil-filled transformer and, in the event of a serious malfunction, presents a possibility of explosive rupture of the oil tanks. No risk assessment has been undertaken and no mitigation has been incorporated in the development to manage the risk.

Informatives

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18. Further consultation and agreement

Informative: The Developer shall enter into discussions with HS1 and their Engineer, Network Rail (High Speed), as soon as practicable to assist in identifying the likely effect of the development on HS1 or HS1 Property.

Contact: HS1 Ltd
5th Floor, Kings Place, 90 York Way, London, N1 9AG
safeguarding@HS1.co.uk

Reason: The nature of the proposed development is such that detailed discussion is required concerning the design, construction, future maintenance and demolition of the development to ensure that it does not compromise the integrity, safety, security, operation, maintenance and liabilities of HS1.

19. Protective Provisions Agreement (PPA)

Informative: The developer is expected to enter into a PPA with HS1. This is a legal agreement between HS1 and the developer covering safeguards, processes, responsibilities and cost recovery.

Reason: The nature and scale of the proposed development is such that detailed discussions, agreements and indemnities are required in respect of the design, construction and future maintenance of the development in order to protect HS1.

20. Costs incurred

Informative: The developer shall agree to pay the costs incurred by HS1 and Network Rail (High Speed) in reviewing and approving the development.

Reason: Costs to be incurred from a development reside with the developer.

21. Noise

Informative: The developer is reminded of his obligation to ensure appropriate mitigations are adopted to protect the development from noise from HS1.

Reason: The developer is responsible for ensuring that the development meets statutory requirements.

22. Covenants

Informative: The applicant is reminded that covenant(s) apply to the site covering the following issues:

- land/property use

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- discharge of drainage
- electromagnetic radiation
- use of plant and other equipment
- landscaping
- construction
- demolition
- changes to, location of, and management of, vegetation
- changes or additions to all structures
- fencing
- storage of goods, refuse or other materials
- activities within the maintenance strip.

Reason: The covenant has been entered into with the owner or previous owner of the land in order to protect HS1.

23. Rights of access

Informative: The applicant is reminded that HS1 has the right to access the maintenance strip and other gates and compounds along the line of the development

Reason: HS1 requires access to operate and maintain the HS1 railway, including in emergency. This right is normally contained in the sale/transfer of land agreement.

24. Maintenance strip

Informative: The applicant is reminded that a maintenance strip exists alongside the HS1 fence. No development or planting should take place within this strip. Access to this strip is required across the site.

Reason: The maintenance strip has been specifically provided to allow for safe and adequate maintenance of HS1 and is allowed for in the sale/transfer of land agreement.