

PLANNING ACT 2008

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

**APPLICATION BY NATIONAL HIGHWAYS LIMITED FOR A
DEVELOPMENT CONSENT ORDER**

RELEVANT REPRESENTATION

ON BEHALF OF



HS1 LIMITED

Introduction

1. This relevant representation is made on behalf of HS1 Limited (“**HS1**”) in respect of the Development Consent Order (“**DCO**”) application for the proposed A122 Lower Thames Crossing (the “**Project**”) made by National Highways Limited (“**National Highways**”).
2. 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**”).
3. 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.
4. Further, under the HS1 Concession Agreement dated 14 August 2009 and amended and restated on 16 July 2010, 27 March 2015, 18 December 2017 and 5 July 2022 (“**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.
5. 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 from October 2018 to June 2022 by National Highways in relation to the Project. HS1 has also met with National Highways on a number of occasions between March 2015 to present day to discuss the effects of the Project on the Railway.
6. HS1 is supportive of the Project, especially given the congested nature of the A2 in the Ebbsfleet area and the delays that this regularly creates for users of HS1 services travelling to Ebbsfleet International Station. The additional capacity created on the A2 would be critical in terms of releasing development and regeneration opportunities in the Ebbsfleet area and in turn driving growth on the HS1 rail network through new housing and employment opportunities.
7. However, as a critical piece of national infrastructure and under its Concession Agreement obligations, HS1 must also seek to protect its infrastructure, land and rights from the potential risks that this development poses. Therefore, for the reasons set out in this representation, HS1 will require appropriate protection in the DCO.

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 [REDACTED]

Interface between the Project and HS1

8. HS1 will interface with the Project along the A2 at the southern edge of the Project's proposed route. The proposed works will impact HS1's infrastructure between the Singlewell Infrastructure Maintenance Depot at Henhurst Lane and land east of Brewers Road.
9. In this location, new road structures will be located in close proximity to, and in some occasions on, HS1 land, and a number of new structures are proposed which may have an interface with HS1 assets.

Acquisition of HS1 Land and of Rights in HS1 Land

10. 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).
11. HS1 objects to National Highways exercising powers of survey, compulsory acquisition or temporary possession ("**compulsory powers**") in relation to HS1 land under the DCO without HS1's consent. HS1 submits that protective provisions in the DCO must prevent the exercise of compulsory powers by National Highways unless HS1 agrees to this.
12. As already noted 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. All of the land in respect of which National Highways 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. 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. National Highways has made no case in this regard. As matters stand, serious detriment to HS1's undertaking would result from the Project.
13. The land in question also 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 in any event.
14. National Highways has been in discussions with both DfT and HS1 regarding the land required by National Highways for the Project. The intention is for these discussions to continue and the parties will update the Examining Authority on progress in due course.

Protective provisions and additional requirements

15. HS1 requires protective provisions to be included within the DCO to ensure its interests are adequately protected and to ensure compliance with relevant safety standards. HS1 is working with National Highways in relation to the protective provisions for inclusion within the DCO, along with any supplementary agreements which may be required. HS1 and National Highways will keep the Examining Authority updated in relation to these discussions.

16. HS1 are particularly concerned about the issues set out below:
 - a. access to HS1 depots;
 - b. access and egress measures adjacent to or near HS1's railway or equipment;
 - c. protection of and access to critical electrical infrastructure;
 - d. ownership and maintenance of under track crossings;
 - e. construction activity safety, including control of wind-blow debris;
 - f. permanent errant vehicle protection;
 - g. permanent fencing and security measures;
 - h. surcharging;
 - i. signage;
 - j. planting and landscaping close to the railway; and
 - k. drainage.
17. HS1 and National Highways have held detailed discussions in relation to these matters, as set out in the Statement of Common Ground between the parties.
18. In addition to protective provisions, HS1 should be consulted in appropriate cases where DCO Requirements are relevant to its interests. For example, HS1 should be consulted in relation to construction and handover environmental plans, landscaping and ecology, surface and foul water drainage, traffic management, construction travel plans and fencing. In many cases, this can be achieved by HS1 being added to the list of consultees set out in the following documents:
 - a. Table 2.1 of the Code of Construction Practice;
 - b. Table 2.1 of the outline landscape and ecology management plan; and
 - c. Table 2.1 of the outline traffic management plan.

Summary

19. As detailed above, HS1 is a statutory undertaker and responsible for the safe running and operation of the Railway and its associated infrastructure. Further, HS1 has a general duty under the Concession Agreement entered into with the SOST for the operation and maintenance of the Railway.
20. HS1 will interface with the Project along the A2 at the southern edge of the Project's proposed route. The proposed works will impact HS1's infrastructure between the Singlewell Infrastructure Maintenance Depot at Henhurst Lane and land east of Brewers Road. This will mean that new road structures will be located in close proximity to, and in some occasions on, HS1 land, and a number of new structures are proposed which may have an interface with HS1 assets. As a critical piece of national infrastructure, and under its Concession Agreement obligations, HS1 must seek to protect its infrastructure, land and rights from the potential risks that the Project poses.

21. HS1 requires protective provisions to be included within the DCO to ensure its interests are adequately protected and to ensure compliance with relevant safety standards. The following issues are those which HS1 are particularly concerned about in relation to the Project:
 - a. access to HS1 depots;
 - b. access and egress measures adjacent to or near HS1's railway or equipment;
 - c. protection of and access to critical electrical infrastructure;
 - d. ownership and maintenance of under track crossings;
 - e. construction activity safety, including control of wind-blow debris;
 - f. permanent errant vehicle protection;
 - g. permanent fencing and security measures;
 - h. surcharging;
 - i. signage;
 - j. planting and landscaping close to the railway; and
 - k. drainage.
22. In addition to protective provisions, in appropriate cases HS1 should be consulted where requirements are relevant to its interests. HS1 have been in discussions with National Highways and both parties will keep the Examining Authority updated in relation to these discussions.
23. HS1 objects to National Highways exercising powers of survey, compulsory acquisition or temporary possession in relation to HS1 land under the DCO without HS1's consent. The protective provisions must prevent the exercise of compulsory powers by National Highways unless HS1 agrees to this.
24. HS1 reserves the right to make further representations as part of the examination process but in the meantime will continue to work with National Highways with a view to reaching a satisfactory agreement on all remaining issues. The parties will update the Examining Authority on the progress of these discussions in due course.