The Planning Inspectorate

Appeal Decision

Site visit made on 4 August 2020

by David Richards BSocSci DipTP MRTPI

an Inspector appointed by the Secretaries of State for Transport and for Housing, Communities and Local Government

Decision date: 18 November 2020

Appeal Ref: APP/HS2/8
Land north of Chiltern Mainline, east of the River Pinn, west of High Road/Ickenham Road, Ruislip

- The appeal is made under paragraph 22(1), schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act) against the imposition of conditions on an approval of a Schedule 17 submission.
- The appeal is made by High Speed Two Limited (HS2 Ltd) against the decision of the London Borough of Hillingdon.
- The application Ref 75317/APP/2019/4141, dated 27 December 2019, was granted approval by notice dated 22 May 2020 subject to conditions.
- The approved submission relates to the new above ground section of railway, including the West Ruislip Portal, the Portal Headhouse and Site Compound, substation building, part of the West Ruislip Retained Embankment and associated permanent works, including lighting, earthworks (including retaining walls) boundary/security fencing (location only) and noise barriers.
- The conditions in dispute are No 1 and 2 which state that:
  1. Prior to the commencement of works on the above ground headhouse structure and substation, the applicant should submit a scheme for the use of living screens to soften the appearance of the structures or provide suitable justification as to why they are to be omitted. The scheme for living screens or their omission must be agreed in writing with the Local Planning Authority. The development must proceed in accordance with the agreed arrangements.
  2. Prior to the operation of the railway, a scheme for the monitoring and reporting of noise and vibration specific to this proposal shall be agreed in writing with the Local Planning Authority. The scheme shall identify the type and location of monitoring equipment and the frequency and mechanism for reporting such information to the Council. The scheme shall set out the process for securing additional noise mitigation (above and beyond that identified through the HS2 Act) and how and when this will be implemented. The operation of the railway specific to this proposal must be carried out in accordance with the approved scheme.

Decision

1. The appeal is allowed and the approval Ref 75317/APP/2019/4141, granted approval by notice dated 22 May 2020 is varied by the deletion of Conditions 1 and 2.

Procedural Matters

2. I have been appointed, under paragraph 23(1), Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act) by the Secretaries of State for Transport and for Housing, Communities and Local Government to

determine the appeal on their behalf. I have followed the procedures set out in the High Speed Rail (London – West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017 (the Regulations), March 2017[1]. I visited the area affected by the submission and surroundings on an un-accompanied basis on 4 August 2020, viewing the land from the public highway network, the overbridge adjacent to West Ruislip Station and publicly accessible footpaths.

Main Issues

3. The main issues are whether the Conditions satisfy the relevant statutory tests; and whether Condition 1 is necessary to protect the visual amenity of residents; and whether Condition 2 is necessary to protect residents from the effects of noise and vibration.

Relevant Legislation and Guidance

4. Under section 20(1) of the Act planning permission is deemed to be granted for the construction of Phase One (London to West Midlands section) of the High Speed Two (HS2) development as authorised by the Act. Section 20(3) specifies that Schedule 17 to the Act imposes conditions on that deemed planning permission.

5. The Schedule 17 Submission relates to the new above ground section of railway, including the West Ruislip Portal, the Portal headhouse and Site Compound, substation building, part of the West Ruislip Retained Embankment and associated permanent works, including lighting, earthworks (including retaining walls) boundary/security fencing (location only) and noise barriers.

6. This appeal is concerned with the lawfulness or otherwise of Conditions 1 and 2. It is not necessary to consider the remainder of the Works covered by the submission, as these have been approved and there is no dispute as to their acceptability. The relevant works for the purpose of Condition 1 are the Portal Headhouse and Substation building, while the relevant works for Condition 2 are the noise barriers.

7. The Council is identified as a qualifying authority in the High Speed Rail (London – West Midlands) (Qualifying Authorities) Order 2017. In respect of the Portal Headhouse and Substation building, paragraph 2(7) of Schedule 17 provides:

   "(7) The relevant planning authority may only impose conditions on approval for the purposes of this paragraph on a ground referred to in sub-paragraph (5) or (6) (as the case may be)."

8. Sub-paragraph 5 provides that *'If the relevant planning authority is a qualifying authority, it may only refuse to approve plans or specifications for the purposes of this paragraph on the ground that—*

   (a) the design or external appearance of the building works ought to be modified—

   (i) to preserve the local environment or local amenity,

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

(ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or

(iii) to preserve a site of archaeological or historic interest or nature conservation value,

and is reasonably capable of being so modified, or

(b) the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.' and

9. For the noise barriers (referred to in the Act as noise screens), paragraph 3(7) provides:

'*The relevant planning authority may only impose conditions on approval for the purposes of this paragraph on a ground specified in the table in sub-paragraph (6) in relation to the work in question'*.

10. The table in sub-paragraph (6) provides (insofar as is relevant to noise screens)

Noise screens

That the design or external appearance of the works ought to, and could reasonably, be modified—

(a) to preserve the local environment or local amenity,

(b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or

(c) to preserve a site of archaeological or historic interest or nature conservation value.

If the development does not form part of a scheduled work, that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.'

11. Paragraph 22(2), Schedule 17 of the Act states:

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

(a) the refusal of approval, or

(b) the imposition of conditions on approval,

on a ground open to that authority.'

12. Paragraph 26(1) of Schedule 17 to the Act empowers the Secretary of State to give guidance to planning authorities in the exercise of their functions under that Schedule. Paragraph 26(2) states that a '*planning authority must have regard to that guidance'*. In exercise of this power, the Secretary of State published Guidance in February 2017. Paragraph 4.4 of the Guidance states that: '*Planning authorities should not through the exercise of the Schedule seek to modify or replicate controls already in place, either specific to HS2 Phase One such as the Environmental Minimum Requirements* (EMRs)*, or existing legislation….'*.

13. Paragraph 10.5 of the Guidance provides that the requirements of paragraph 206 of the National Planning Policy Framework (2012) (2012 NPPF) apply to the imposition of conditions under Schedule 17 of the Act. The 2012 NPPF has since been replaced by the National Planning Policy Framework published in February 2019 (NPPF) and paragraph 55 is now the relevant paragraph relating to planning conditions. This states that: '*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*'

14. The operation of the law in respect of this approvals process under Schedule 17 of the Act has recently been considered by the High Court: London Borough of Hillingdon v the Secretary of State for Transport and others [2019] EWHC 3574 (Admin). The Application related to a previous decision[2] by the Secretaries of State on an appeal concerned with a submission under Section 17 (Ref APP/HS2/1) relating to a wetlands mitigation site, also made to LB Hillingdon.

15. That judgment was successfully challenged by the local planning authority in the Court of Appeal (CoA), which gave its judgment on 31 July 2020 [Neutral Citation Number: [2020] EWCA Civ 1005][3]. The Appeal Court judges concluded at paragraph 10 that "*… the duty to perform an assessment of impact, and possible mitigation and modification measures under Schedule 17, has been imposed by Parliament squarely and exclusively upon the local authority. It cannot be circumvented by the contractor taking it upon itself to conduct some non-statutory investigation into impact. We also conclude that the authority is under no duty to process a request for approval from HS2 Ltd unless it is accompanied by evidence and information adequate and sufficient to enable the authority to perform its statutory duty.*"

16. The CoA judgment set out a number of other principles that are relevant to this appeal determination:

17. Para 68*: " .. Schedule 17 operates on the clear premise that an authority is under a duty to perform an evaluation of the impact of submitted plans and specifications on the identified planning interests … there is no basis in the Schedule for the duty that is imposed on the authority to be delegated or sub-contracted to any third party, including of course HS2 Ltd, or for that duty to be abrogated by any other instrument (save for primary legislation) and in particular non-legislative guidance material."*

18. Para 69: " *With respect, in our judgement, both the Judge and the Secretaries of State erred in concluding that references in the Statutory Guidance which urged planning authorities to avoid "modifying or replicating controls already in place" served to limit the power and duties of an authority. Such Guidance simply cannot in law have the effect of stripping from an authority the powers and duties it has imposed upon it under statute in relation to "control". If the Guidance is, fairly read, to be construed otherwise then, as the Guidance itself expressly acknowledges the Act, including Schedule 17, take precedence. The same inevitably goes for the EMRs.".*

[2] Ref APP/HS2/1
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783136/hs2-colne-valley-appeal-decision-letter.pdf
[3] https://www.judiciary.uk/wp-content/uploads/2020/07/R-oao-Hillingdon-LBC-v-Secretary-of-State-for-Transport-judgment-31-July-2020-002.pdf

19. Para 70*: "It follows from the statutory scheme that, if HS2 Ltd fails to furnish an authority with information and evidence sufficient to enable the authority to perform its duty, then the authority is under no obligation to determine the request. It is also evident from the statutory scheme that, since HS2 Ltd cannot proceed to carry out works without an approval, it has a concomitant duty to furnish an authority with such evidence as is necessary and adequate to enable the authority to perform its allotted statutory task. If for some reason, HS2 Ltd does not do this then the correct approach is not to refuse the request for approval … but instead to decline to process the request until such time as adequate evidence and information has been furnished."*

The case for the London Borough of Hillingdon (LBH)

Condition 1

20. The Council is generally supportive of the design work that has gone into the above ground works related to the headhouse structure. It has been subject to design, is not a bland structure and the approach to an essentially functional structure is welcomed. However, it will be prominent from the adjoining residential area as well as from Ruislip Golf Course. It will be 10m high, on top of the tunnel portal, and present a stark image towards the rear gardens of properties. Whilst planting will in time soften views from the golf course, this is not the case with views from the Greenway, as the potential for large scale planting is restricted due to the proximity of the Chiltern Line. Condition 1 therefore aims to achieve a design that is softened by further planting to reduce the effect on the amenity of residents.

21. The Council considers that the design of the headhouse ought to be modified and is reasonably capable of being so modified. A living screen can be achieved through the location of planters or through direct planting into the ground. The condition is worded to allow further discussion of the exact scope and type of living screen, or for HS2 to explain why it would not be necessary.

Condition 2

22. The tunnel portal at West Ruislip will be the first point at which the high speed operation of the railway transitions from below ground to surface level. To the north of the tunnel portal is Ruislip Golf Course and to the north east, there are sensitive residential receptors. To manage the noise impacts, the scheme includes a number of specific measures which include 'at source measures' within the fabric of the design (for example noise barriers), and 'at receptor' measures i.e. additional noise insulation at properties.

23. For the parliamentary approval stage, noise impacts were entirely based on modelling. This modelling was undertaken before the trains were designed and the exact details of the tunnel portal and noise barriers known. Noise monitoring will inevitably be required to understand the actual impacts so that the efficacy of the noise attenuation measures are understood in real terms and the actual impacts on residents determined.

24. Following the handing down of the CoA judgment referred to above, the Council submitted further comments at my request. The Council drew attention to a number of specific paragraphs in the judgment, in particular paragraphs 70, 75, 78, and 80 – 82. Given that the CoA has overturned the High Court's decision, quashed the First Appeal Decision and has remitted it

back to the Secretary of State to consider afresh in the light of the CoA's ruling, the entire basis on which this appeal is predicated is flawed and misconceived. The Appellant's wholesale reliance on the case that relevant authorities should avoid modifying or replicating other controls that are available through the EMRs is simply no longer sustainable in view of the CoA ruling. The CoA could not have been clearer that nothing in the EMRs or Statutory Guidance can, in law, oust the statutory duty of a local planning authority or in any way modify or limit it. At their highest, they contain matters which, in performance of its statutory duty, an authority should take into account, but they do not bind it.

25. The CoA has ruled that it is wrong in principle to reverse the responsibility to require the local planning authority to justify a refusal in the absence of adequate information, on the basis that there is some burden of proof imposed by statute on the local planning authority.

26. The Council considers that both disputed conditions indicate a willingness on its part to adopt a collaborative approach, which derives support from the CoA in paragraph 11 of the judgment.

The case for HS2 Ltd

27. The Appellant considers that the conditions are in conflict with the statutory tests set out in paragraphs 2 and 3 of Schedule 17 to the Act. As a result they are unlawful and should be removed from the decision notice.

Condition 1

28. Paragraph 2 of Schedule 17 requires that, in order to justify the imposition of the condition, the Council must demonstrate that the design or external appearance of the relevant works ought to be modified and that they are reasonably capable of being so modified. That this is for the Council to demonstrate is supported by the Appeal Decisions and the Judgment.

29. Condition 1 seeks to reverse the statutory position by requiring the Applicant to justify the status quo, thus avoiding the Council having to justify a modification. Therefore the condition is outwith Schedule 17 and cannot be imposed as a matter of law.

30. The Council's uncertainty as to the Requirement for the relevant works to be modified is further demonstrated by the Officer report, which states that *"further work to screen the headhouse and substation using some form of living wall should be explored further."* It is also notable that neither the Decision Notice, Minutes, Officer Report nor Transcript define or describe the term "living screen". In the absence of such a description, the Council has not only failed to identify why the relevant Works ought to be modified, but has also failed to meet the test of precision under paragraph 55 of the NPPF.

31. In addition to being unlawful, by its very nature Condition 1 fails to meet the test under paragraph 2 of Schedule 17.

Condition 2

32. Condition 2 requires the submission of a scheme for the monitoring of noise and vibration, including the process for securing additional noise monitoring. It does not seek to modify the relevant Works.

33. Paragraph 3 of Schedule 17 requires that, in order to justify the imposition of Condition 2 in relation to noise screens, the Council must demonstrate that the design or external appearance ought to be modified, and are reasonably capable of being so modified. Condition 2 is therefore outwith the scope of Paragraph 3 and consequently unlawful.

34. It is also clearly stated in the guidance that: 'Planning authorities should not through the exercise of the Schedule seek to modify or replicate controls already in place, either specific to HS2 Phase One such as the EMRs, or existing legislation …'. Condition 2 duplicates the controls set out in Paragraph 9 of Schedule 17. Paragraph 9(1) provides that 'If the relevant planning authority is a qualifying authority, no work to which this paragraph applies may be brought into use without the approval of that authority'. The provision applies to 'any relevant work'. Sub paragraph 4(a) affords the Council the opportunity to refuse to grant approval to a submission under paragraph 9 if it considers that there are reasonably practicable measures which need to be taken to mitigate the effect of the work or its operation on the local environment or amenity. Sub-paragraph 5 affords the Council the opportunity to refuse to grant approval if it considers that a mitigation scheme submitted by the Appellant ought to be modified.

35. Therefore, paragraph 9 provides the Council with the opportunity to address any concern such as the scheme of noise and vibration mitigation, and is the appropriate mechanism for this exercise, as is confirmed in paragraph 7.5.2 of the Planning Memorandum. In addition , paragraph 7.8 of the Guidance provides that *'When determining a request for approval planning authorities should not seek to control matters that are subject to other approvals under Schedule 17. For example when determining a request for approval relating to building or construction works under paragraph 2 or 3 of the Schedule, a planning authority should not seek to determine whether the work for approval provides appropriate mitigation for the effects of relevant scheduled work as that is a matter which is determined under paragraph 9 of Schedule 17.'*

36. Furthermore, Condition 2 seeks to modify or replicate existing controls set out in the EMRs. Paragraph 3.1.4 of the General Principles requires that the nominated undertaker shall comply with all the undertakings and assurances specified in the HS2 register of Undertakings and Assurances. These include measures and obligations relating to noise and vibration, including monitoring requirements and measures to address any deviation of noise and vibration from expected conditions. If the monitoring demonstrates that measured performance is worse than expected conditions, corrective action to improve existing performance and prevent future loss of performance may be required. The Council has failed to appreciate that it is not necessary for monitoring to be addressed in the submission, it being dealt with elsewhere and ultimately to be approved by the Council pursuant to paragraph 9.

37. In summary, the scheme for noise and vibration monitoring required by Condition 2 amounts to a duplication of the EMRs with which the Appellant is duty bound to comply.

38. With regard to advice in the NPPF2019 and associated Planning Policy Guidance (PPG), which applies to conditions attached to a Schedule 17 approval, any condition which requires compliance with other regulatory regimes will not meet the test of necessity. Condition 2 is such a condition.

39. In response to my request, the Appellant submitted further comments following the handing down of the CoA judgment.

40. The Appellant identifies key principles emerging from the Judgment by reference to extracts from paragraphs 68, 72, 73, 74, 76, 77, 84 and 89, in particular that the EMRs do not supplant the statutory regime of planning enforcement, but are matters for authorities to take into account. It is not part of the Council's case that it had insufficient information before it to consider the submission, as demonstrated by the fact that the Council approved the submission, albeit subject to the disputed conditions. The central point is that the conditions are ultra vires, being outwith the decision-making function of the Council under Schedule 17 (2) and (3). Condition 1 seeks to reverse the statutory tests under Schedule 17(2), while Condition 2 is not a condition which seeks to modify the relevant works and as such is beyond the scope of Schedule 17(3).

41. Paragraphs 72 and 73 of the CoA judgment support the Appellant's view that the conditions are unlawful, as the grounds on which conditions can be imposed are limited to those set out in Schedule 17 (2) and (3). Furthermore, the judgment makes it clear that there is no basis for the Council's duties in determining the Schedule 17 application to be delegated to any other party, including HS2, which is effectively what Condition 1 does. The Council has not raised any substantive challenge to the Appellant's case that the conditions are unlawful, and the Appeal should succeed on these points alone.

Inspector's Reasons

42. The grounds on which a qualifying authority may impose conditions on a Schedule 17 application for approval are limited to those set out in Schedule 17(2) and (3). Any condition should also comply with the standard test for conditions contained in NPPF paragraph 55.

43. With regard to Condition 1 I consider that the Condition does not meet the relevant tests in paragraph 2 of Schedule 17. The Council has not demonstrated that the design or external appearance of the Headhouse and substation ought to be modified, or is capable of being so modified. In fact it welcomes and makes positive comments about the design approach, while suggesting that it would be prominent in certain views and that residential amenity could be protected by a living screen.

44. The headhouse will be formed by one principal element at a continuous, single storey height of 7.2 metres, with a footprint of 25.4 x 26.7 metres, with one basement level. The exterior finish of the headhouse building will be predominantly timber with metal doors and louvres. The building will have a green roof on top as a means of promoting ecological connectivity throughout

the area. The adjacent substation will be some 4.2 m in height with a footprint of 10 x 5 m.

45. While I acknowledge that the headhouse building will be prominent in views from the rear of dwellings on The Greenway, I consider that it represents high quality design which is appropriate for its purpose, and which has sought as far as possible to moderate the visual impact through the use of a considered, sculptural design approach using appropriate materials for the elevations. Submission drawing 1MC04-SCJ_SDH-LS-DPH-SS05_SL07-481102 rev CO1 shows a photomontage of the view from properties on The Greenway at Year 15. While the building appears somewhat prominent, I consider that it would not be unreasonably dominant or unattractive in the outlook from the rear of the properties due to the inherent design quality and the separation distance provided by rear gardens and the intervening Chiltern Line. I acknowledge that this is a matter of judgement, and the Council is fully entitled to take a different view. However I am not persuaded of the Council's view that a Green Wall would significantly mitigate what in any event I consider to be an acceptable visual impact. Accordingly I do not find that the condition is necessary to achieve an acceptable appearance.

46. The Council has not specified how the design should be modified, but has suggested that screening of the headhouse and substation using some form of living wall should be explored further. The disputed condition is accordingly worded to permit further discussion with the Appellant as to the exact scope and type of screen, or indeed to allow the Appellant to demonstrate that a living screen would be unachievable or unviable. At the very least, this muddles the responsibility for determining what would be found acceptable, or what might be considered an acceptable reason for not providing the screen. Clarity and precision as to what is expected is a fundamental requirement of any lawful condition.

47. There is considerable uncertainty in the Council's statement as to what form the screen should take, i.e. whether it should be planted in the ground or in containers. There is acknowledgement that the opportunity for direct planting is constrained by the proximity of the works to the railway. Container planting would imply an on-going maintenance requirement, and there is no certainty that such an arrangement would be effective.

48. I acknowledge that the CoA judgment urges the Appellant and local planning authorities to adopt a collaborative approach in order to avoid delays to the implementation of the project, and that is what the condition purports to do. However it is also necessary to meet the NPPF tests of necessity and precision, and I consider that Condition 1 fails to do this. I conclude that the condition is imprecise and should not have been imposed.

49. The Council comments that it is unreasonable to expect the Council to provide detailed architectural or construction drawings which could be given to contractors to implement. I do not consider that the operation of Schedule 17 requires such detail from the Council, but it does require a reasoned and precise justification for a modification to the design or appearance of the works which has not, in my view, been provided.

50. With regard to Condition 2, the Council accepts that it would not be appropriate to require a modification to the design or appearance of the proposed noise barriers, and has not suggested that they should be built in a different location, but has attached a condition which requires further noise monitoring and aims to secure noise mitigation if monitoring during operation indicates that it is necessary to protect the amenity of residents.

51. The eastern extent of the noise barriers will be from a point approximately 8m to the west of the portal mouth, where the railway alignment is just below ground level. The barriers will extend to the western extent of the application boundary (and will continue for the remaining length of the above ground section of railway, though this will be the subject of a separate submission). The barriers will be located parallel to, and approximately 3m either side of the tracks, in close proximity to the noise source. The barrier on the north (golf course) side will be 2.5 metres in height, with the barrier on the south side (bordering the Chiltern Line railway) 5 metres in height (both dimensions measured from the top of rail). These replicate the assumptions in the Environmental Statement (ES) (as amended). They will be constructed with absorptive material to the rail-facing side. The design adopted has the upper part of the barriers cranked inwards, on both sides. In addition to softening the visual appearance of the barrier, this allows the diffracting edge of the barrier to be moved closer to the track, thereby increasing the acoustic performance by reducing the transmission of noise. The outward facing panels will also contain a suitable architectural treatment to ensure that their external appearance is sympathetic to the surroundings.

52. Paragraph 3 (6) of schedule 17 expressly states that that a condition may only be imposed on the ground that the design or external appearance of the works ought to, and could reasonably, be modified. Condition 2 does not do this, and is accordingly outside the scope of Paragraph 3 (6). The Council has expressed its view that the design may need to be altered in the future, but has not established why it would be necessary or said what would be needed.

53. I acknowledge that the operational noise impacts of the scheme have been assessed on the basis of modelling, but this is entirely appropriate. The modelling methodology and the conclusions in terms of impact have not been questioned. Parliamentary approval for the scheme was granted on the basis that the assessed noise and vibration impacts would not be exceeded.

54. The Schedule 17 submission was accompanied by a "Noise Demonstration Report – Ruislip Portal S2", submitted to provide additional information to assist in the appraisal of the noise effects of the scheme and the effectiveness of the proposed barriers. The purpose of the report is to demonstrate that noise from the operational railway has been reduced "as far as reasonably practicable", and that assurances relating to railway noise have been satisfied. The summary of the results for the design noise levels show that the number of dwellings where the lowest adverse effect level (LOAEL) would be exceeded would be 102 in the daytime and 127 at night. This represents a significant reduction from the ES assessed figures of 148 (daytime) and 156 (night). I consider it provides clear evidence that the predicted noise impacts assessed in the ES (as amended) would not be exceeded and would remain comfortably within the assessed parameters of what has been deemed acceptable.

55. I also note the Appellant's view that there are other controls available through the EMR regime that would ensure these limits were not exceeded. However, while this is a matter to which decision makers should have regard, the CoA judgment expressly states that nothing in the Statutory Guidance or the EMRs can remove the duty of the local planning authority to assess the environmental impacts, and I have not relied on these provisions in reaching my conclusions.

56. In my judgement, the information provided by the Appellant in support of the Schedule 17 application is sufficient and adequate to demonstrate that these permitted impacts would not be exceeded. The scheme includes provision for extensive noise barriers. The Council has not suggested that these would have an unacceptable appearance, or should be constructed elsewhere within the limits of development.

57. In summary, I conclude that Condition 2 is outwith the terms of Paragraph 3(6) of schedule 17, in that it does not relate to the design and appearance of the proposed noise barriers, and does not indicate that they should be erected elsewhere.

58. For the reasons given above I conclude that the grounds for imposing conditions set out in Paragraphs 2 and 3 of Schedule 17 are not met. Neither of the conditions satisfy the tests for imposing conditions set out in the NPPF. Therefore, having regard to all matters raised, I find that the appeal should succeed. I will vary the approval of the submission by deleting the conditions.

David Richards

INSPECTOR