

Channel Tunnel Rail Link – Revised Planning Memorandum

A report by Head of Planning Applications Group to Planning Applications Committee on 11 September 2007.

Summary – Channel Tunnel Rail Link – revised planning arrangements following completion of the high speed rail link.

Recommendation: agrees that a revised and simplified Planning Memorandum be put in place and recommends to the CTRL High Level Forum that the Planning Forum is closed following the October 2007 meeting.

Unrestricted

1. Section 1 of the Channel Tunnel Rail Link (CTRL) opened in 2003. CTRL, now renamed High Speed 1 (HS1), will start operations later this year, with the first train leaving from St Pancras, London in November.
2. During the construction of the rail link, Local Authorities such as Kent that had signed up to the Planning Memorandum as 'qualifying authorities' were able to exercise the powers in Schedule 6 of the Channel Tunnel Rail Link Act 1996. This gave the authorities, including this authority, the right under a simplified planning regime to receive applications and exercise controls over a wide range of CTRL construction works and arrangements. These related to waste and spoil disposal, borrow pits and construction routes. A Planning Memorandum set out the standards that both the promoter and local authorities were to follow in requesting and determining planning applications.
3. The Channel Tunnel Rail Link Act remains in force following completion of the railway. This special planning regime will continue to be the process by which HS1 gains approval for future development - albeit such developments are likely to be infrequent, small scale and of local rather than of cross boundary or route wide interest.
4. A Planning Forum was established by the High Level Forum as the primary focus of officer liaison to ensure the successful operation of common procedures and interpretation of the Act, to facilitate the expedited handling of applications, and to resolve issues of cross boundary or route wide concern. It has produced a large number of guidance notes, generally considered binding on all the participating authorities.
5. The Planning Forum considers that a simplified Planning Memorandum reflecting the new operational circumstances is now appropriate (see attached as appendix 1). The Forum also considers that its own continued existence is no longer required once HS1 is in operation.

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6. The Channel Tunnel Rail Link Planning Forum is asking all qualifying authorities to agree to the revised Memorandum and the closure of the Forum. The intention is to report to the next, and probably the last, High Level Forum on 10 October at which the Secretary of State could give effect to the recommendations.

RECOMMENDATION

7. Now that construction of the high speed rail link is virtually complete, I RECOMMEND that this Committee:
- (i) agrees that a revised and simplified Planning Memorandum be put in place as set out in Appendix 1; and
 - (ii) RECOMMENDS to the CTRL High Level Forum that the Planning Forum is closed following the October 2007 meeting.

Case Officer: Sharon Thompson

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Background documents – see section heading
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**CHANNEL TUNNEL RAIL LINK
REVISED SIMPLIFIED PLANNING MEMORANDUM**

Note: the footnotes in this Memorandum are explanatory only and do not form part of this Memorandum).

Introduction

1. Under the Channel Tunnel Rail Link Bill ("the Bill"), Schedule 6, Part I, paragraph 1, the Secretary of State is obliged to make an order specifying every relevant local authority which has, on or before the relevant day, given him undertakings with respect to the handling of planning matters arising under that Schedule which he considers satisfactory.
2. The Planning Memorandum sets out those undertakings. It is binding upon any authority which has chosen to sign it so as to have the powers available to qualifying authorities in the CTRL Act and (through the Development Agreement with the Secretary of State for Transport) upon the nominated undertaker. It shall be taken into account in determining matters submitted for approval to qualifying authorities under Schedule 6 to the CTRL Act. It is divided into sections:
 - General Principles
 - Requests for Approval
 - Procedures
3. This Revised Planning Memorandum sets out the undertakings relevant to the application of Schedule 6 after CTRL has commenced commercial operations.
4. ("the authority") hereby undertakes to act in accordance with the terms of this Memorandum.

General Principles

5. So far as reasonably practicable, the nominated undertaker shall endeavour to adopt solutions that will reduce the adverse environmental impacts that construction and operation of the Channel Tunnel Rail Link ("the Rail Link") will cause, having regard to the need to maintain project viability and operational requirements.
6. Submissions for approval of or plans and specifications^{1*}, will be subject to the CTRL (Assessment of Environment Effects) Regulations 1998.
7. The CTRL is an infrastructure project of national importance. The authority shall accordingly have regard to construction cost and operational implications, and shall not seek to impose any unreasonably stringent requirements on requests for approval or agreement of any

^{1*} i.e. the plans and specifications in respect of an operation or work mentioned in the left-hand column of the table in paragraph 6(2), 15(2) or 22(2) (as appropriate) of the Planning Conditions Schedule.

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construction arrangements, plans and specifications, mitigation scheme^{2*} or site restoration scheme^{3*}, which might frustrate or delay the works.

8. In determining requests for approval of construction arrangements, the authority shall take into account, and the nominated undertaker shall adhere to the Code of Construction Practice.
9. Construction programme will continue to be tight because of the constraints of an operational railway, so the authority shall use its best endeavours, subject to its obligations under statute and to guidance from the Secretary of State for Communities and Local Government in Planning Policy Guidance Notes, Planning Policy Statements and Circulars, to determine any request for a relevant approval within the timetable referred to in paragraph 32(5) of the Planning Conditions Schedule (i.e. eight weeks) or, whenever possible, a lesser period.
10. To facilitate effective consultation and ensure that requests for the approval of plans and specifications are determined within the timetable referred to above, the nominated undertaker shall, wherever possible, engage in forward discussions about prospective requests with the authority and statutory consultees^{4*}.
11. Where an authority refuses approval of plans and specifications or construction arrangements, or imposes any condition on such approval, it shall (in addition to specifying the ground or grounds for its decision under the Planning Conditions Schedule) state clearly and precisely the full reasons for its decision.
12. In particular, where the authority's decision in relation to the approval of plans and specifications has been reached on the ground that some aspect of the operation or work ought to be modified and is reasonably capable of being modified, the authority shall include an explanation of why and how it considers the modification should be made. Where the authority's decision has been reached on the ground that the development ought to, and could reasonably, be carried out elsewhere within the pertinent limits specified in the Act, the authority shall include an explanation of why it considers the development should, and could reasonably, be sited elsewhere.
13. Where the authority's decision in relation to the approval of construction arrangements has been reached on the ground that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers the modification should be made.
14. If the authority repeatedly fails to expedite requests for approval, or seriously fails to expedite a request, in line with the timescale set out in paragraph 32(5) of the Planning Conditions Schedule, or repeatedly or seriously fails to act in accordance with all the

2* i.e. the scheme referred to in paragraph 9 or 17 (as appropriate) of the Planning Conditions Schedule.

3* i.e. the scheme referred to in paragraph 8, 11, 19 or 24 (as appropriate) of the Planning Conditions Schedule.

4* i.e. the bodies referred to in the table in paragraph 27(4), and in paragraphs 28(1) and 29(1) of the Planning Conditions Schedule.

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requirements of this Memorandum, the Secretary of State may well have sufficient grounds to order that the authority shall cease to be a qualifying authority.

Requests for Approval

Construction Arrangements

15. The planning regime in the Act will require development authorised by:

Part I of the Act in the area of any qualifying authority to be carried out in accordance with construction arrangements which have been approved by that authority, and which cover the matters detailed in paragraph 7(2), 16(2), 23(2) or 25(1) (as appropriate) of the Planning Conditions Schedule.

16. The nominated undertaker will be required to adopt the Code of Construction Practice which has been published and consulted upon with local authorities. This sets out the general objectives and measures to be applied to all construction works on the Rail Link to maintain satisfactory levels of environmental protection and limit disturbance from construction activities.

Operations and Works

17. The table in paragraph 6(2), 15(2) or 22(2) (as appropriate) of the Planning Conditions Schedule indicates the extent of matters which the authority can consider as grounds for refusal or for imposing conditions on approval.
18. The authority will be able to impose conditions on approvals for plans and specifications of works falling within the table in paragraph 6(2), 15(2) or 22(2) (as appropriate) of the Planning Conditions Schedule. However, the conditions must relate directly to those grounds which are specified in the relevant table as grounds for refusal and take account of established [Government] guidance on planning conditions (The authority will not be able to impose conditions on approvals relating to construction arrangements except where the conditions are agreed beforehand between the nominated undertaker and the authority).
19. Where additional details of a development, required under paragraph 6, 15 or 22 (as appropriate) of the Planning Conditions Schedule, are submitted for approval, the authority shall use its best endeavours to make its decision on the approval of those additional details expeditiously, and in any event within not more than four weeks after the date of submission of those additional details.

Site restoration schemes

20. The nominated undertaker will be required in the circumstances specified in paragraph 8, 11, 19 or 24 (as appropriate) of the Planning Conditions Schedule to implement a site restoration scheme as agreed with or approved by the authority, or failing agreement, as determined by the Secretaries of State for Transport and Environment.

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Mitigation

21. When applying for approval of plans and specifications and construction arrangements affecting sites of archaeological, historical or nature conservation interest, the nominated undertaker shall adopt a sensitive approach to development, within the physical constraints imposed by the Rail Link works and so far as reasonably practicable, having regard to the need to operate and maintain the CTRL. In particular, the nominated undertaker shall where practicable preserve important archaeological and historical features of sites of archaeological or historical interest. This obligation to adopt a sensitive approach shall encompass a commitment to appropriate mitigation measures, which may include recording, restoration, or relocation.
22. In taking forward the detailed design of the Rail Link, the nominated undertaker shall take account of the principles set out in Planning Policy Guidance Note (PPG) 16: Archaeology and Planning (DoE 1990).
23. Where potentially important archaeological remains not foreseen in the programme of archaeological work are discovered during construction, the nominated undertaker shall allow a period of not less than 28 days, commensurate with the construction timetable, for recording and excavation. At the end of that period the nominated undertaker's works will be able to continue unhindered. Where the Secretary of State for Transport is notified of a decision by the Secretary of State for Culture, Media and Sport, following the receipt of advice from English Heritage or representations from the authority that remains investigated under these provisions are of exceptional national importance, he may after consulting the nominated undertaker extend the period available for recording and excavation, or require the nominated undertaker to take such steps as are feasible in engineering terms to preserve the remains. In those circumstances, the nominated undertaker shall comply with the Secretary of State for Transport's decision.
24. The nominated undertaker shall maintain a Landscape Ecology and Agriculture Management Plan for land within the operational boundary of the CTRL.

Environmental Management System

28. The nominated undertaker shall maintain an Environmental Management System which will be used to help ensure compliance with the CTRL's published Environmental Policy.

Procedures

29. The fee regulations will apply. The authority shall not delay or seek to delay the consideration of a request for approval pending payment by the nominated undertaker of the fee calculated in accordance with the fee regulations. If at the end of the period referred to in paragraph 32(5) of the Planning Conditions Schedule there is a dispute as to the fee payable, and the amount which is the authority's view as to that fee has not been paid, the authority shall be entitled not to determine the request for approval (i.e. issue its decision letter) but shall do everything necessary to reach a decision and shall notify the nominated undertaker of what its decision would be if the fee calculated under the regulations were

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paid. This is without prejudice to the nominated undertaker's right to appeal where by the end of that period the nominated undertaker - disputing the correctness of the view of the authority as to the amount of the fee - has not paid that fee but has paid instead what it considers to be the correct fee under the regulations.

30. To assist the authority and to save time, the nominated undertaker shall copy requests to a standard list of consultees nominated by the authority, but it shall remain the authority's responsibility to copy requests to any other interested parties it may wish to consult and to take account of all relevant comments received from all consultees in reaching its decisions.
31. Government regulations and/or guidelines will also set out the way in which the procedures and timetable for appeals set out in the CTRL Act will be implemented, including the manner in which evidence should be submitted. The nominated undertaker and the authority shall comply with those regulations and guidelines. The Inspectorate or the relevant Government Office will issue a formal notification on behalf of the appropriate Ministers.