

# UPDATE ON THE GOVERNMENT'S CONSULTATION ON HIGH SPEED RAIL

<b>Cabinet Members</b>	Councillor Ray Puddifoot Councillor Keith Burrows
<b>Cabinet Portfolios</b>	Leader of the Council Planning, Transportation and Recycling
<b>Officer Contact</b>	Jales Tippell Planning, Environment, Education and Community Services
<b>Papers with report</b>	None

## 1. HEADLINE INFORMATION

<b>Summary</b>	This report updates the Cabinet on matters regarding the Government's proposals for High Speed Rail, welcomes the effort by the local campaign groups and seeks Cabinet approval for delegated authority to continue to pursue the campaign and any legal challenge should the Secretary of State decide to pursue the proposal.
<b>Contribution to our plans and Strategies</b>	Hillingdon's emerging Core Strategy Hillingdon's Unitary Development Plan Saved Policies 2007 Hillingdon Partners Sustainable Community Strategy
<b>Financial Cost</b>	The Council's 2011/12 Development and Risk contingency includes £100,000 that was earmarked for any potential challenge against the High Speed 2 rail link.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services Policy Overview Committee
<b>Ward(s) affected</b>	Directly – South Ruislip, Manor, West Ruislip, Ickenham, Harefield,

## 2. RECOMMENDATIONS

That the Cabinet:

- 1. Notes the contents of the report;**
- 2. Strongly appreciates the efforts of local residents groups that have been established in response to the HS2 proposal and reaffirms this Council's commitment to work closely with and support them during the campaign;**
- 3. Instructs officers to continue work on opposing the Government's current proposals for High Speed Rail, including joint working with the 51M Group, and to report back to Cabinet on any significant issues and;**

- 4. Agrees that should the Secretary of State for Transport decide to pursue the proposal, that the Leader of the Council can take all necessary action in pursuit of the campaign, including legal action, funding and partnerships with any other local authorities / organisations; and furthermore agrees that delegated authority be given to the Borough Solicitor and the Deputy Chief Executive and Corporate Director of Planning, Environment, Education and Community Services to formally implement any actions directed by the Leader.**

### **3. INFORMATION**

#### **Reasons for recommendation**

The proposed High Speed 2 rail line is likely to be the most significant development proposal in Hillingdon since the 3<sup>rd</sup> Runway. Its adverse impacts are considered to be far in excess of the benefits that will ensue from the proposal.

The Government's decision on whether to proceed with the proposal is likely to be announced in December 2011. At that time it is vital that the Council is in a position to be able to act quickly in terms of making a decision on whether, and on what grounds, it may wish to launch a legal challenge.

The recommendation will allow the Council to effectively respond to the Government's decision, if it needs to take legal action to protect the interests of residents and businesses in the Borough.

By working with the 51M Group, the Council will strengthen its case and benefit from the pooling of resources, funds and expertise.

#### **Alternative Options Considered.**

The alternative option would be for the Cabinet to decide not to investigate any grounds for a legal challenge when and if the Government announces that it will proceed with High Speed 2. This is not considered to be an appropriate option due to the adverse impact that High Speed 2 will have upon residents of the Borough.

#### **Comments of Policy Overview Committee(s)**

None at this stage.

#### **Supporting information**

##### **Background**

1. At its meeting on 28<sup>th</sup> July 2011, the Cabinet reaffirmed the London Borough of Hillingdon's full opposition to HS2 and agreed the Council's response to the Government's Consultation for submission to the Department for Transport. At that time it also endorsed the 51M Group's response to the Government's High Speed Rail Consultation and furthermore, it agreed the 51M Group's response to the London Assembly Transport Committee. Officers were also instructed to continue work on opposing the Government's

current proposals for High Speed Rail, including joint working with the 51M Group, and to report back to Cabinet on any significant issues.

2. Following the July Cabinet meeting, the above mentioned responses were submitted within the specified deadlines. The Leader of the Council, the Cabinet Member for Planning, Transportation and Recycling and officers have since actively worked with the 51M Group and the key developments are reported below.

### The 51M Group

3. The 51M Group has continued to grow and there are now 18 councils which make up the Group, namely:

- Buckinghamshire County Council
- London Borough of Hillingdon
- Aylesbury Vale District Council
- Chiltern District Council
- South Bucks District Council
- Wycombe District Council
- Oxfordshire County Council
- Cherwell District Council
- Lichfield District Council
- South Northants District Council
- Warwick District Council
- North Warwickshire Borough Council
- Warwickshire County Council
- Stratford-on-Avon District Council
- Leicestershire County Council
- Harborough District Council
- Three Rivers District Council, Hertfordshire
- Coventry City Council

4. The 51M Group has been working on a number of matters, including responding on technical issues in relation to the responding to Transport Select Committee, actively raising awareness of the impacts of the High Speed 2 proposal and ensuring that all the councils which make up the Group act in a united and consistent way, so that we do not prejudice any legal challenge that we may wish to make.

### Involvement in the Transport Select Committee

5. The Council actively worked with the 51M Group in preparing its submission to the House of Commons Transport Select Committee. Consideration by the Transport Select Committee included five oral evidence sessions which took place between 21 June and 13 September. The 51M Group were represented at the session on 12 July 2011, by Councillor Martin Tett, Leader of Bucks County Council, Chris Stokes and Professor John Tomaney. At the request of the Transport Select Committee, further supplementary written evidence was submitted on 7 September.

6. The report of the Transport Select Committee (TSC) was published on 8<sup>th</sup> November and may influence the Government's decision on whether to proceed with High Speed 2. The TSC concluded that they 'support a high speed rail network for Britain, developed as part of a comprehensive transport strategy also including the classic rail network, road, aviation and shipping.' This particular conclusion is consistent with the policy of Hillingdon Council since the start of its campaign. The fact remains though, that there is still no overarching transport strategy in place by the Government to give the context the Council feels is required in order to pursue High Speed Rail.

7. The TSC also acknowledged that 'the Government's HS2 proposal could form part of this [high speed] network'. Interestingly they did not state say that HS2 should form part of this network. The TSC went on to state that there should be 'the provision of greater clarity on the policy context, the assessment of alternatives, the financial and economic case, the environmental impacts, connections to Heathrow and the justification for the particular route being proposed.' The TSC also point out that there should be an appraisal of the Y (phase 2) before any decision is made on phase 1.

8. Given all these areas which need to be addressed, the TSC agreed to call on the Government to consider and to clarify these matters before it reaches any decision on HS2. In effect, the TSC is saying that the Government should not make a decision until it has carried out further work.

9. Given the all party support for the concept of HS2, it was inevitable that the TSC report would not reject the HS2 proposal in its entirety. However the TSC does appear to call for a significant amount of extra work to be undertaken on a number of aspects of the proposal. This effectively amounts to a more comprehensive consultation and appraisal to allow for a more considered decision by the Secretary of State.

#### Campaign by local residents

10. Immediately following the announcement of the preferred route the Council was contacted by some residents from Ruislip who were keen to oppose the scheme. They grew in number and formed the residents group 'Ruislip against HS2'. With increased publicity, an increased number of local groups started to form such as 'Harefield Against HS2'. The Council agreed to recognise and work with these groups in the same way as it had previously worked with residents groups during the 3rd Runway Campaign. The separate residents groups later formed together in alliance known as 'Hillingdon against HS2' although the groups have also kept their own identity. A banner to highlight the HS2 campaign was placed on the Civic Centre on 18<sup>th</sup> August 2011.

11. 'Hillingdon against HS2' have been engaged in a vigorous and high profile campaign and have held a number of events, including a march through Ruislip and handing in a petition at 10 Downing Street. They have also used Council car parks and street stalls to raise awareness and gain support. They have received good local and national media coverage during their campaign and Council members and officers enjoy a good working relationship with the members of the group and have continued to support and advise them throughout.

### Other publicity to raise awareness

12. The Cabinet Member for Planning, Transportation and Recycling took part in a BBC interview on 27th Sept at Hillingdon Outdoor Activities Centres (HOAC). This was regarding why the Council was against HS2 and what the impact would be to HOAC.

13. Communications leads for the 51M Group councils are meeting regularly to ensure the communications strategy is delivered. As well as the wider group, regional communications activity is being planned through London and the South East and the Midlands. A briefing document was prepared for use by all the 51M group members and a leaflet encouraging people to write to their local MP was also produced and distributed. The 51M group website has been continually updated with new material and links to media activity.

14. An event, most likely at the House of Commons is being planned at which awareness of the impact of the HS2 proposals will be highlighted to those MPs who may not have yet committed to the 'no' campaign.

15. Specifically in Hillingdon, media activity is being delivered locally as well as regionally to keep HS2 high on the media agenda. The Leader of the Council has led the campaign on behalf of the Council and continues to meet regularly with Government Ministers and Council Leaders.

### Parliamentary issues

16. Members are aware that the concept of HS2 is supported by all three main political parties. Despite originally saying that Labour were reviewing its commitment to the scheme, the Labour Party's Shadow Transport Secretary Maria Eagle confirmed the party's support at the Labour Party Conference in Sept 2011. A letter stating that the Labour Party had reservations about the scheme, but would not seek to oppose the scheme in Parliament, was received by the 51M group on 25<sup>th</sup> October 2011.

17. Philip Hammond moved to Secretary of State for Defence being replaced by former Treasury Minister Justine Greening. Members will be aware that the Council already has an established working relationship with Justine Greening from the 3rd Runway Campaign, although this reorganisation is unlikely to change the Government's apparent intentions

18. A Parliamentary debate on the proposed HS2 rail scheme went ahead on 13 October 2011. Whilst the debate was not well attended by MPs, the overwhelming majority of speakers were firmly against the scheme, including MPs from inner London such as Frank Dobson (MP for Holborn and St Pancras) and the north such as Fiona Bryce (MP for Congleton). It appeared that those supporting the scheme were still unable to give any clear evidence in support of their views.

### Issues regarding the work of HS2 Ltd

19. On 26 July 2011 DfT instructed HS2 Ltd to analyse the consultation responses, advice on the issues raised in the consultation and update the business case. Working in partnership with 51M and following sound legal advice, it was agreed that the DfT's instruction to HS2 Ltd amounts to a very unfair process. Therefore a letter was sent to the

Government on behalf of 51M by the legal advisor on 4<sup>th</sup> August 2011 raising this issue of 'fairness' of the instruction.

20. On 11 October, the Council received a letter from HS2 Ltd stating that 'operating under the remit set out by the Secretary of State in his letter of 26<sup>th</sup> July 2011 of making preparations to enable the next phase of work on the London to West Midlands section (should the project proceed), we are setting up a series of meetings for local authority officers in November 2011 to discuss how we work closely with local authorities in the next stage'. The Council was therefore invited to attend a meeting at the HS2 Ltd offices on 1<sup>st</sup> November.

21. The view of the Leader of the Council was that it would be inappropriate, and a waste of resources, to meet with HS2 Ltd for the purpose of furthering the proposal before a decision has been made by the Secretary of State. A letter was therefore sent on 14th October 2011 to HS2 Ltd, again by working in partnership with 51M and following sound legal advice, to advise HS2 Ltd that we have made it clear that our consultation response has been made on the basis that the consultation is genuine and that the Secretary of State will approach the decision with an open mind. We explained that we have also expressed concerns in our consultation response regarding issues surrounding the consultation process itself. We pointed out that in the circumstances, we consider it would be inappropriate, and a waste of resources, to meet for the purpose of furthering the proposal before a decision has been made by the Secretary of State. In addition we noted that HS2 Ltd may have a private interest in a future for the HS2 proposal, but this does not justify their attempt to prematurely and unnecessarily harness local authority assistance and resources.

#### Preparation for a legal challenge

22. In the event that the Government decides to proceed with the current proposal for high speed 2, 51M will seek independent legal advice on whether there are any grounds for making an application to judicially review the Secretary of State's decision. Judicial review is likely to be the main option as this allows the courts to supervise bodies exercising public functions to ensure that they act lawfully and fairly. The scope of judicial review is limited both in its availability and function and the role of the court in judicial review proceedings is not to remake the decision being challenged, or (except for the purpose of considering its lawfulness) to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached in order to assess whether that decision was vitiated by some flaw.

23. The timing of an application for permission to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose. Any application made will need to clearly identify the grounds for judicial review and be supported by a convincing case.

24. The recognised grounds currently available for judicial review can broadly be classified under four heads:

- Illegality: which arises when a decision-maker exercises a power wrongly or improperly purports to exercise a power that it does not have (Ultra Vires). Using this ground it is possible to challenge, amongst other decisions, such as Acts of Parliament and delegated legislation that are inconsistent with EU law; UK delegated legislation that is inconsistent with an Act of Parliament or a decision of a public body that is inconsistent with EU law, an Act of Parliament or delegated legislation.

- Irrationality: where the decision "is so unreasonable that no reasonable authority could ever have come to it" (Wednesbury unreasonableness)
- Procedural unfairness: which will arise if the decision-maker has not properly observed the relevant statutory procedures, such as a failure to consult or to give reasons, such as a flawed consultation process.
- Legitimate expectation: which arises because a public authority may, by its own statements and/or conduct, be required to act in a certain way, where persons have an expectation as to the way in which it will act.

25. The question of remedies is often critical in judicial review proceedings, as it may determine not only whether it is worthwhile bringing a claim, but also whether permission will be granted to bring the claim in the first instance. With regard to judicial review proceedings, a claimant may seek one or more of three forms of final relief, all of which are discretionary.

- An order quashing the decision in question (quashing order)
- An order restraining the body under review from acting beyond its powers (prohibiting order).
- An order requiring the body under review to carry out its legal duties (mandatory order).

26. However, owing to the very nature of judicial review, in many cases, even if there has been a serious procedural flaw in a decision-making process, the best a claimant could hope for would be for the court to remit the decision back to the decision-maker to look at it again on a proper basis and there is every chance that the decision-maker may still lawfully come to the same decision as it did the first time.

### **Financial Implications**

As outlined above the Council is part of a consortium of 18 Local Authorities that have agreed to share the costs of the specialist consultancy 51M, with different Authorities undertaking to support the fund to different values. Hillingdon Council initially committed to fund up to £100,000 of costs. This has been earmarked within the Risk contingency to meet the council's commitment to this fighting fund. The Leader of the Council has indicated that he will ask Cabinet to commit a further sum of £100,000 from Risk Contingency when required.

### **4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

The proposed HS2 Rail Line is likely to be the most significant development proposal in Hillingdon since the 3rd Runway. The HS2 route runs straight through the Borough. About 60% of the route is through built up areas and 40% goes through the open Green Belt. None of it is in tunnel. The effects on residents, service users and communities will therefore be significant.

## **Consultation Carried Out or Required**

High Speed 2 is a Government proposal and notwithstanding this, Hillingdon Council held residents meetings on 2nd December 2010, 24th March 2011, 9<sup>th</sup> June 2011 and 14<sup>th</sup> July 2011. The Council also included a reply card in the May/June 2011 edition of Hillingdon People magazine, asking people whether they 'do not support the Government's current proposals for HS2 because there is not sufficient justification on economic or environmental grounds for it' or whether they do 'support the Government's current proposals for HS2'. The overwhelming majority of residents oppose the proposals for High Speed 2 and therefore the Council is committed to taking further action if the Government decides to proceed with the scheme.

## **5. CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and is satisfied that £100,000 has been included in the 2011/12 Development and risk contingency to meet the costs of any challenge against the High Speed 2 rail link. It should be noted that there could be a possible further call on the general contingency, in the event of costs increasing or any political decision made to further contribute to the High Speed 2 rail link challenge fund.

Monitoring of this contingency, will be done through the monthly budgetary monitoring process and resourcing needs for future years will be identified through the Medium Term Financial Forecast (MTFF).

### **Legal**

If legal action is to be commenced in relation to the Government's decision, it would have to be done by way of a judicial review in the High Court. Any application for judicial review must be brought promptly and in any event within three months of the date that the grounds for the application first arose. Therefore, if the Council decides to commence judicial review proceedings, either on its own or jointly, it must do so within these time limits.

If the Government make a decision to proceed with the current proposal for high speed rail, Leading Counsel's advice will need to be sought on behalf of the 51M group to establish whether there are sufficient grounds to launch a challenge, balancing the costs against the benefits of doing so.

Once a decision has been issued by Government and Leading Counsel's advice obtained, a further update will be provided to Cabinet. This is likely to be early 2012.

### **Corporate Landlord**

Property within the ownership of London Borough of Hillingdon will be significantly affected by High Speed 2 as set out in the Cabinet report of July 2011.



## **6. BACKGROUND PAPERS**

Transport Select Committee (TSC) report on High Speed Rail - published on 8<sup>th</sup> November 2011  
Previous Cabinet Reports