

**APPLICATION REFERENCE: PL/2021/00276/CLOPUD**

**Site Address:** Land to the South East of Station Road/Hall Meadow Road traffic island between the Public Highway and the HS2 development site

<b>Proposal:</b>	Certificate of Lawfulness for Proposed Use or Development (CLOPUD) under Section 192 of the Town and Country Planning Act 1990 (TCPA 1990) in relation to the works to create a site construction access for HS2 purposes off Hallmeadow Road, Balsall Common.
<b>Web link to Plans:</b>	<b>Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at:</b>  <a href="https://publicaccess.solihull.gov.uk/online-applications/">https://publicaccess.solihull.gov.uk/online-applications/</a>

<b>Reason for Referral to Planning Committee:</b>	<b>Number of representations received</b>
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<b>Recommendation:</b>	<b>Certificate of Lawfulness of Proposed Use or Development be granted</b>
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**PL2021/00276/CLOPUD – Land to the South East of Station Road, Balsall Common CLOPUD – UPDATE SECTION**

The following pages are provided as update to the initial report published in advance of the Planning Committee meeting dated 30th June 2021. The update is provided following the approval of members to defer a the Lorry route Schedule 17 request at Waste Lane/Kelsey Lane at the meeting pending further information and the deferment of the meeting as a whole following technical IT issues.

**UPDATE ON REPRESENTATIONS RECEIVED**

An update on representations is provided in the same context as the original report. This reflects the perceived overlap in commentary between the first 3 applications on the agenda (detailed below with respective headings) and helps to ensure all views and comments are highlighted for members in a consistent way.

Numbers of signatures on the petition to all 3 applications have increased to 2,717 since the report was published.

Additional representations have been received from the Mayor of the West Midlands, Andy Street CBE and Saqib Bhatti MP in response to **PL/2021/00276/CLOPUD**; **PL/2021/00471/HS2DIS** and **PL/2021/00473/HS2DIS**. Comments are summarised below:

- Support objections from local community;
- These objections focus on a number of material planning considerations, including environmental impact, noise, road safety and air pollution;
- Local communities are right to point out the inconsistencies in the current approach adopted by HS2 when set against the original intent of HS2;
- The petitioners have outlined that their objection is on the grounds that alternative routes have not been adequately considered and that, specifically, the applicant has failed to explain why a continuous trace-line haul route from the Park Lane compound to the Waste Lane compound and onwards to Burton Green, which was HS2's original intent has not been pursued;
- Dedicated haul route across HS2 Land would prevent large volumes of traffic from having to use Balsall Common;
- Issue of displacement parking is at the forefront of residents' concerns;
- Need to consider what is being done to address parking issues at the station and avoid overspill onto local roads if parking restrictions are introduced along Hall Meadow Road;
- Other important issues raised include pedestrian safety and ensuring clear access to the medical centre as well as the prospect of further congestion and increased air pollution as a result of significant increases in HGV movements in these communities;
- Trace line haul route across HS2 land, which would remove HGVs from Balsall Common, would go a significant way to addressing a number of the important concerns being expressed by local residents, and critically, would show that HS2 strives to be a good neighbour in the communities that we serve;
- Alternative route would keep large volumes of traffic away from Balsall Common and off local roads altogether and would minimise further disruption for residents;
- Significant increase in the number of vehicles proposed will result in congestion on local roads and will be detrimental to air quality in residential area;
- Hallmeadow Road is unsuitable in terms of the proposed increase in traffic volume and will be dangerous for pedestrians and residential traffic;
- There is no provision in the plans for overspill parking at Berkswell Station;
- These applications will result in a loss of amenity for Balsall Common residents with no replacement;
- Falls short of the commitment that HS2 made to be a "good neighbour";
- These applications will directly impact on Annora Guest House where the route will run just a few metres from their boundary and is facing the possibility of closure as a result due to the noise, dust and constant construction traffic that will result;

- Neither HS2 Ltd nor BBV Ltd have come up with adequate proposals to mitigate the impact on Annora Guest House;
- The applications will impact on the local environment and the local amenity with the increase in volume of HGV movements on local roads, near to residential properties and will affect the free flow of traffic in the local area;
- Volume of traffic on Waste Lane/Hodgetts Lane and Truggist Lane is unsafe;
- Failure to evaluate credible alternatives which have been put forward by local residents and parish councils for a number of years;
- Strength of petition is a damning indictment of the attitude that HS2 Ltd and BBV have towards the residents of Balsall Common.

These issues are already covered in the officer reports.

### **PL/2021/00471/HS2DIS – Waste Lane Schedule 17**

Three additional representations have been received, including one from Balsall Parish Council. Concerns raised within the third party representations are already summarised within the Officer report. The Balsall Parish Council representation, which was in response to reviewing the Committee report, reads as follows:

“I have read the report for this agenda item and have noticed a few factual errors and omissions that need to draw to your attention.

- P5 Statutory consultees - "non-applicable"; but both Balsall and Berkswell Parish Councils responded to the consultation and are statutory consultees for planning applications and are referred to elsewhere in the report. Why were they not included here? Nor are the parish council responses on the planning portal (statutory consultees p1);
- P11 4th last bullet point - I understand that the 2016 request for the promoter to construct a temporary bridge was made by Berkswell Parish Council not Balsall Parish Council;
- P17 - LPA not aware of any complaints - I have personally made 3 complaints directly to BBV (Andy DeBell) about the noise from a very loud "stand clear vehicle turning" whilst standing at the Kenilworth Road/Kelsey lights which disturbs local residents, HGVs in convoy (3 at the lights at the same time), before 08.00 and an HGV driver driving too close to car which was keeping to the max speed limit of 30 mph and would not have had a stopping distance if the car had an emergency stop. Given the number of representations already received SMBC and HS2/BBV are likely to get an increasing number of complaints;
- The report does not mention the Solihull Local Plan Concept Masterplans October 2020 - and the Balsall Common Spatial Diagram on p10 that shows the A452 Kenilworth Road along the length proposed to be used by HS2/BBV being highlighted for "environmental enhancements". Allowing its use by HS2/BBV without any of the mitigation requested by the parish council seems to be in conflict with the concept plan - and residents will consider SMBC is allowing environmental degradation;
- The report does not identify the mitigation requested by the parish council nor our concerns about pedestrians crossing the A452 between the George in the

Tree and Dengate Road roundabouts in order to access Lavender Hall Park - a key green space, heavily used during the last 15 months - asking HS2 to pay for a pedestrian crossing is a minimal but essential road safety requirement;

- Asking HS2/BBV to plan their logistics to avoid movements during the school start/close periods to protect the lings of vulnerable children is a minimum request as more research evidence has come out since the ES on the damage particulates and fumes cause to this group;
- Asking HS2/BBV to ensure there is access to the Medical Centre, a key vaccination centre for residents here and surrounding villages, and pharmacy when open as essential infrastructure is a reasonable requirement as is keeping pedestrian and parking for users of the railway station as life returns to normal.

### **Officer comments**

There is limited requirement for consultation under the High Speed Rail Act, which is highlighted within the report. In the context of the Act, statutory consultees are limited to the Environment Agency, Historic England and Natural England where relevant. SMBC Scheme of delegation requires the Council conducts consultation on HS2 planning matters in accordance with the statutory requirements of the HS2 Act; with any additional consultation or publicity beyond that being at the discretion of the Head of Planning, Design and Engagement Services. In this respect the Council does consult with Parish Council's and Ward Members (as appropriate) to ensure they are notified and able to submit comments. The comments made by both Berkswell and Balsall Parish Councils were therefore included in the summary of representations highlighted in the original reports. This is referenced on Page 10 of the original report pack.

With regards the point about noise complaints, officers would clarify that the LPA is not aware of any complaints having been received by the Council (note paragraph reference on Page 21 of the original report pack).

The Local Concept Masterplan supports the emerging local plan which was submitted to the Planning Inspectorate for public examination in May 2021. Public Hearings are expected to commence in September at which the plan will be scrutinised by independent inspectors. Whilst the weight that can be attached to the draft plan has increased since submission, it is still considered 'limited' given the level of objections and potential for modifications. In that respect the draft Plan makes allowances for the delivery of HS2 and this forms a key part of the overarching strategy. Notwithstanding, the LPA is, through the application before this committee, assessing whether the proposed route is suitable for use by more than 24 lorry movements per day to facilitate construction of HS2, which in itself already has deemed planning permission through the Act. The impacts of the A452/Waste Lane lorry route were assessed as part of the ES, as explained within the original report.

In response to the last three points the section within the original report titled 'to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area' considers whether the arrangements should be modified so to prevent or

reduce prejudicial effects on road safety or on the free flow of traffic in the local area. The original report notes that a Route Management Improvement Safety Plan has been submitted and no measures have been identified as being necessary to facilitate such safe use of the route. SMBC Highways Officer has assessed whether the route is suitable and have raised no objection.

### **PL/2021/00473/HS2DIS – Hallmeadow Road, Balsall Common**

Two additional representations have been received including one from residents of Annora House. Further comments are summarised below:

- The plan submitted shows acoustic fencing positioned within the boundary of our property – on our land – and for less than half of the length of our garden for which we have not been asked for permission, would not want it and would not accept it on our land;
- Will not tolerate losing some of our land to mitigate for noise created by HS2 traffic;
- At the end of the garden, the noise bunds do not go the full width of the garden and are omitted at the corner where LGVs will be turning, probably making more noise;
- The ridge of the bund covers less than half the width of the front garden along which the haul route goes along the whole width, this is totally ineffective;
- HS2/BBV have yet to come up with noise modelling information;
- HS2/BBV have advised that there is no other mitigation that they will consider, they refuse to accept that this will result in the closure of our business, which will take away our household income; they refuse any type of arrangement whereby they could take occupancy of our B&B rooms for their contractors to maintain our income;
- No detail on how impact on Annora House of additional LGV movements has been explored;
- Impact on Annora House is as a direct result of the Schedule 17 request;
- CLOPUD application side steps any issues that planning permission could bring up.
- Documents requested to be submitted at time of screening opinion not included within supporting documents.

In response to this representation the impact on 314 Station Road, Annora House, is detailed within the original officer report.

### **PL/2021/00276/CLOPUD – Land to the South East of Station Road, Balsall Common**

One additional representation has been received. Comments are summarised below:

- Majority of land identified of the provision of proposed haul road is within the ownership and control of Colchurch Properties Limited (Colchurch);

- The identified haul road route cannot be secured without the consent of Colchurch;
- Colchurch will not support any temporary or permanent works that will frustrate the delivery of the residential allocation (BC1 Station Road) as identified in the emerging Local Plan;
- The proposed route is undeliverable and needs to be reconsidered by HS2;
- Colchurch will support a revised temporary haul road that will accommodate the future residential development of the emerging allocation;
- HS2 proposed haul road presents the prospect of impacting upon the deliverability of the access to the allocated site and early delivery of housing development;
- The proposals should be subject of Environmental Impact Assessment;
- These impacts must be considered as part of the overall HS2 project within this part of the scheme corridor and not in isolation and without due regard to the inevitable cumulative effects;
- The additional arm on the Station Road/Hallmeadow Road roundabout is to be subject to a separate application – from a technical perspective these applications need to be considered in tandem as the design of the additional arm on the roundabout will impact the alignment of the haul road;
- Earthworks associated with haul road appear very close to 314 Station Road, Annora House. There may be insufficient space to deliver the earthworks in this location;
- Concerns whether the first section of haul road at 7.3m is wide enough;
- Not clear how construction traffic will access/egress the haul road safely;
- Concerns raised regarding the site access design;
- The layout of existing roundabout does not provide sufficient space to accommodate a new arm;
- It is not possible to deliver a safe/access/egress to/from the roundabout without reconfiguring the existing layout;
- Haul road would conflict with the proposed site access for Barrett's Farm, as well as the proposed bypass.

In response to the above representation, land ownership issues are private matters that are not material to the consideration of the application.

The residential allocation (BC1 Station Road) identified in the emerging local plan is not forecast to deliver housing within the first 5 years of the plan period.

A screening opinion under the Environmental Impact Assessment Regulations was provided by the LPA in 2020 and the development was not considered to require an EIA.

The design of the haul road access will need to be the subject of a Schedule 4 submission under the High Speed Rail Act when the technical design will be considered in terms of highway safety.

## **EXECUTIVE SUMMARY**

This application takes the form of a Certificate of Lawfulness of Proposed Use or Development under Section 192 of the Town and Country Planning Act 1990, which seeks a formal determination from the Local Planning Authority as to whether planning permission is required or not for a proposed use or development.

The proposed works are for the creation of a temporary site access road for HS2 construction purposes, including associated earthwork bunds for mitigation, on land off Hallmeadow Road/Station Road roundabout, Balsall Common, on land that lies outside of 'Act Limits' (taking into account the Limits of Deviation and Limits of Land to be Acquired or Used) set out in the High Speed Rail (London to West Midlands) Act 2017.

This submission is closely related to two, separate schedule 17 requests for approval, relating to lorry routes at Hall Meadow Road (PL/2021/00473/HS2DIS) and Waste Lane, Hodgetts Lane and Truggist Lane (PL/2021/00471/HS2DIS). These requests for approval appear elsewhere on this agenda.

As the type of application suggests, this proposal is a legal test and in its determination, the decision maker is determining if that legal test has been met. The supporting information which accompanied the application has been considered having sought legal advice and it is considered that on the balance of probabilities, the works are permitted under Part 4 Temporary Buildings and Uses, Schedule 2 of the Town and Country Planning (General Permitted Development Order) 2015 (GPDO).

## **MAIN ISSUES**

The main issue in this application is:

- Whether the proposed development constitutes permitted development under Part 4, Temporary Buildings and Uses, of the Town and Country Planning (General Permitted Development) Order 2015.

## **CONSULTATION RESPONSES**

**Statutory Consultees** The following Statutory consultee responses have been received:

None applicable

**Non Statutory Consultees** The following Non-Statutory consultee responses have been received:

SMBC Legal – Following review of the information submitted with the application, on a balance of probabilities, the proposed development falls within the Permitted Development rights as afforded by the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 4, Class A.

## **PUBLICITY**

There is no requirement under the Town and Country Planning (General Development Procedure) Order 2015 for applications of Certificates of Lawfulness for Proposed Use or Development to be advertised in the same way as a planning application as the application is a matter of law and comments on the merits of the proposal are not relevant.

Third party representations have been received to this application with some responses also including comment on the schedule 17 requests for approval lorry routes at Waste Lane, Hodgetts Lane and Truggist Lane and Hallmeadow Road (PL/2021/00471/HS2DIS and PL/2021/00473/HS2DIS). Representations to the latter two submissions/application have also made reference to matters relating to the application which is the subject of this report. Therefore, the number of representations received to each of the three submissions/applications are as follows:

PL/2021/00276/CLOPUD - 174 objections. A further 34 anonymous objections were received.

PL/2021/00471/HS2DIS (Waste Lane) - 233 objections. A further 41 anonymous objections were received, as well as 2 in support

PL/2021/00473/HS2DIS (Hallmeadow Road) – 348 objections. A further 55 anonymous objections were received. 41 representations have been received in support, plus 8 anonymous representations in support. 5 neutral comments were received

A Petition to all 3 submissions on change.org was presented to full Council on 13<sup>th</sup> April with approximately 2,100 signatures and this has increased to 2,704 signatures (at the time of publication of this report).

Due to the cross referencing of representations between the three submissions/application, a summary of all representations received to PL/2021/00276/CLOPUD, PL/2021/00473/HS2DIS and PL/2021/00471/HS2DIS is as follows:

### Objection to Haul Road off Hallmeadow Road, Station Road Roundabout, Balsall Common PL/2021/00276/CLOPUD (material considerations):

- Question the use of the word ‘temporary’ – how can 5 years be classified as temporary;
- HS2’s use of the word temporary is an excuse to minimise the massive negative effects the proposal will have on residents and wider community;
- Any temporary structures and works, made using permitted development rights, must be removed, and the land reinstated to its original condition, as soon as reasonably practicable after operations are finished;

- There is no commitment to reinstatement in application PL/2021/00276/CLOPUD other than generalised references within the request for and EIA Regulations Screening Opinion.

All other representations to Haul Road off Hallmeadow Road, Station Road Roundabout, Balsall Common PL/2021/00276/CLOPUD (not material):

General

- Impact on residential amenity, freedom to enjoy one's home and daily life;
- Increased noise;
- Increased air pollution;
- Increase dangers to health, safety and wellbeing, mental health;
- Quality of life should not be reduced further;
- No consideration being shown to Balsall Common residents;
- Impact on Human Rights;
- Will quickly constitute a statutory nuisance under the Environmental Protection Act 1990 (EPA), including noise, diesel fumes, mud on the roadway turning to dust and accumulations of deposits resulting in possible ongoing damage to air quality and the subsequent health of residents;
- Impact on ecology and biodiversity;
- HS2 should not be allowed to further decimate the landscape;
- Impact on structure of homes;
- Negative effects on climate change;
- Impact on green belt;
- Very special circumstances have not been demonstrated;
- Number of trucks per day will cause massive disruption to local roads;
- Proposals suggest 200 HGV movements per day but earlier figures suggested 800 could be expected so there is a very real risk numbers could escalate;
- Do not believe local roads in and around Balsall Common can accommodate the number of HGV's that HS2 Ltd want to use on a daily basis;
- Increased traffic will increase safety hazards for pedestrians;
- During COVID pedestrians find themselves straying into the road to ensure social distancing;
- Who will clean the roads;
- Queueing lorries will be a feature on roads and lanes as they wait to access compounds and construction sites;
- BBV have stated that the proposed lanes are too narrow for lorries to safely pass;
- During Peak hours for movement to and from school (8.30-9.30am and 3.15-3.45pm) HS2 lorries should be prevented;
- No constructive thinking of the whole area;
- What further assessments have been completed e.g. Traffic Assessment;
- Do not think the benefits of HS2 outweigh the loss of amenity of thousands of local residents and road users;
- No details of hours of operation submitted;

- Not made aware that application had been submitted;
- Query consultation with local residents and businesses;
- Application falls outside the scope of the HS2 Act;
- Development outside the HS2 Act limits must satisfy the requirements for ecological protection;
- In addition, any temporary and works have to comply with relevant conditions in the HS2 Act;
- ROMIS does not reflect HS2 100% Euro VI emission standard after 2020;
- Failure to provide full information needed for Environmental Assessment;
- Condition should be imposed that forces temporary cessation in vehicle movements if emissions of NOx and Particulate Matter breached safe levels;
- Would like reassurance that HS2 will resurface road to pre-construction standard;
- HS2 Ltd manipulation of Schedule 17 Planning Applications is disappointing especially as a legal precedent is written in law which clearly lays out what is required of the nominated undertaker, (HS2 Ltd) when navigating the Schedule 17 planning process;
- Buckinghamshire Council have objected to HS2 applications for lorry routes through their county;
- Poor responses from HS2 (such as time, or money for them being an issue) are not to be accepted;
- Has Solihull Council undertaken traffic surveys along the routes HS2 have put in applications for;
- Photos supplied with application are misleading;
- Concern about management of the LGV fleet – what monitoring will take place;
- The two planning applications overlap. It would appear that the applicant claims that application PL/2021/00473/HS2DIS, if granted, would result in a reduction of traffic on Kenilworth Road covered by PL/2021/00471/HS2DIS. However, that is not shown in the numbers. As such the applications do not provide a clear and comprehensive view of what is being applied for in terms of the numbers of vehicles using the roads. As such it is not possible to conduct a proper evaluation of two applications which interact;
- The use of Hallmeadow Road merely 'reduces' numbers however the reduced numbers have not been published within the current applications which leaves reductions open to unexplained change;
- Object to HS2 trying to save money at the expense and safety of local residents when a better solution all round has already been proposed.

#### Objections to Waste Lane/Truggist Lane Lorry Route (PL/2021/00471/HS2DIS)

- Alternative to use Hallmeadow Road would be a better solution, it's a shorter distance and will bypass the village;
- Large number of homes which directly front the A452 that would be affected;

- Balsall Common is already over-developed and the Kenilworth Road through the village already at bursting point;
- This route will cause even more congestion at an already busy junction between A452 and Kelsey Lane;
- Kenilworth Road is a residential road with little distance between the houses and passing traffic;
- Route would pass the school where children walk;
- HGVs have insufficient turning circle at Kelsey Lane/A452 traffic lights;
- Limited visibility at Meeting House Lane and Kelsey Lane junction;
- Concerns over increase in accidents at Waste Lane/Windmill Lane bend;
- The applicant does not take into account the significant use of the rural lanes by vulnerable users, including pedestrians, cyclists and horse riders;
- The proposal for additional traffic along Hodgetts Lane and Truggist Lane is of particular concern, due to their narrowness and poor safety record;
- Given the high level of road and soft verge damage to Hodgetts Lane and surrounding roads within the last 6 months, it is apparent that HS2 traffic is already freely using Hodgetts Lane to service their Carol Green depot and other surrounding activities;
- Hodgetts Lane is a very popular public lane for leisure;
- With the already steady increase of road traffic and in particular HGVs / LGVs and large plant vehicles the roadway in Hodgetts Lane is already deteriorating resulting in pot holes, collapsed verges, all due to very evident large vehicle damage;
- The lane leading to Truggist Lane Junction appears to have experienced collapsed drainage issues;
- Already serious disruption to traffic movement in Hodgetts Lane due to large vehicles;
- Risk of roadway and soft verge collapsing and blocking waterway at Truggist Lane entry/exit;
- Hodgetts Lane is too narrow for the passing of LGVs and plant;
- Railway Bridge on Hodgetts Lane showing signs of structural fatigue and is unsuitable for HGVs/LGVs and plant etc;
- Damage to property frontages;
- The road junction at Hodgetts and Waste Lane is renowned for numerous serious traffic collisions over the last few years and extra traffic will only escalate the issue at this junction which could ultimately lead to serious injury or further fatalities;
- There are a number of local liveries that use this route and horses are regularly seen being walked along Waste Lane and Hodgetts Lane;
- Bus stops on route used by children getting school bus who will have no protection;
- Bridge on Waste Lane is too narrow for two construction vehicles to pass;
- The two planning applications overlap. It would appear that the applicant claims that application PL/2021/00473/HS2DIS, if granted, would result in a reduction of traffic on Kenilworth Road covered by PL/2021/00471HS2DIS. However, that is not shown in the numbers. As such the applications do not

provide a clear and comprehensive view of what is being applied for in terms of the numbers of vehicles using the roads. As such it is not possible to conduct a proper evaluation of two applications which interact;

- Access from properties along roads, and particularly near Beechwood Tunnel bridge, is obscured by the bridge parapet effectively making it a blind exit causing a serious collision risk;
- Beechwood Tunnel bridge is narrower than the road and cannot accommodate HGV's in either direction without risking the parapet wall;
- The turn at the junction of Truggist Lane and Hodgetts Lane is too narrow to accommodate HGV's in either direction without posing a severe risk of collision;
- Would like reassurance that HS2 traffic will not be using Windmill Lane;
- Would like 'No HS2 traffic' signs installed at each end of Windmill Lane and the junction with Hob Lane – it is understood that these signs were provided for Old Waste Lane;
- Concern that the pressure from multiple HS2 related HGVs will finally cause the road adjacent the ditch bank [on Hodgetts Lane/Truggist Lane] to subside into the stream.

#### Objections relating to Hallmeadow Road Lorry Route (PL/2021/00473/HS2DIS)

- Hallmeadow Road is a residential road and unsuitable for construction traffic;
- Impact on residents of Annora House, 314 Station Road;
- Haul route will force business at Annora House to close without recompense;
- Hallmeadow Road is a residential road and the only access to the GP surgery;
- Safe access to Balsall Common Health Centre will be affected;
- Traffic from people visiting the health centre cannot be mixed with heavy construction traffic;
- The side of the road is used by cars parking for the nearby railway station and medical practice including for the COVID vaccination programme;
- Concerns that trucks will take a short cut through Station Road and through the village;
- Parking on road would need to be suspended so that there is space for HGV's which would mean parking would disperse to the nearby housing estates and GP surgery car park;
- Medical centre staff park off site on Hallmeadow Road to free up car parking spaces during COVID vaccination project and restrictions would have a significant effect on staff as there is nowhere else for staff to park;
- Displacement of on street car park to local residential roads;
- Alternative car parking facility would need to be provided;
- In 2020 were told that an alternative temporary car park would be provided but now we have been told that no alternative will be built;
- The promised extension to the station car park has been withdrawn;
- Would need parking restrictions on local residential roads;

- Concerned that people will start to use Medical Centre car park whilst travelling by train and unable to finance cost of a two way barrier for patient parking only;
- Roundabout already tight. Has a safety assessment been done on new access;
- Visibility of Lavender Hall roundabout coming from Berkswell is limited;
- Bus stop would be affected – where will this move to;
- Speed bumps are unsuitable for HGV's;
- Traffic calming measures would need to be removed resulting in no physical requirement to observe speed limits;
- Suitable traffic calming measures were required as part of the Berkswell Gate Housing development for safety reason;
- Speed limit should be reduced from 40mph to 30mph;
- No. of lorries will impact vehicles accessing Berkswell Gate, as there is no other access how will traffic be managed in and out of the estate;
- Traffic flow problems could have a significant effect on emergency services gaining access to Berkswell Gate estate;
- Riddings Hill and Grovefield Crescent are on an incline which will be dangerous for vehicles in icy conditions;
- Residents of Berkswell Gate development would experience impairment of property values and might wish to obtain compensation from the applicant;
- Lorry route would have an adverse impact on rail travellers using main pedestrian route to Berkswell Station [Station Road];
- How will footpath from Hallmeadow Road to the Lakes be accessed;
- If approved would need to ensure provision of means so that pedestrians can safely cross Hallmeadow Road and the new construction road on Station Road;
- Pedestrian crossing (identified by BBV/HS2 in papers from meeting in Nov 18/Jan 19) at junction of Hallmeadow Road and Station Road does not feature as part of mitigation proposed which is a safety hazard;
- Impact on listed Brickmaker's Arms pub;
- Impact on Lavender Hall park and its wildlife;
- Noise of continual HGVs will disrupt Specsavers Hearing Clinic which consults from Balsall Common Health Centre;
- Hallmeadow Road route will impact more people than if trucks go through village;
- Papers from 2018/2019 meetings advised that full use of Hallmeadow Road was to be strictly time limited;
- Loss of trees;
- The only described alternative is use of A452 Kenilworth Road, Kelsey Lane and Waste Lane.

Representations in support of Hallmeadow Road Lorry Route  
(PL/2021/00473/HS2DIS)

- Support use of Hallmeadow Road – less traffic through the village itself;
- Support as long as a new car park is provided;
- Village of Balsall Common will not be as impacted on as it would if alternative routes were used through the village;
- Any other route through Balsall Common would mean using roads with housing on both sides, housing on Hallmeadow Road is only one side and the distance from that housing is far greater than anywhere else in the village;
- Reduced risk of accident to school children from Heart of England School and reduced risk of traffic accidents in school area;
- Reduced noise levels along Kenilworth Road, generated by HGV's
- Reduced risk to pedestrians;
- Houses on Hallmeadow Road are set much further back from road than those on Kenilworth Road;
- HS2 plans originally were to use Hallmeadow Road;
- Plans for Balsall Common bypass should be fast tracked to support limiting number of HS2 and general traffic coming through village.

#### Comments relating to possible alternative routes

- Alternative routes have not been adequately considered;
- Concerns of impact of construction traffic through Balsall Common and potential to create a continuous haul road between Park Lane and Waste Lane was raised in petitions to the Bill Select Committee in the Commons and the Lords;
- A continuous Trace-Line haul route was promised, disingenuously by HS2 Ltd on several occasions however HS2 have continually failed to make good their promise;
- Extensive records of alternative options having been raised with HS2 Ltd have been provided;
- Current applications contain sparse reference to the evaluation of any alternatives;
- The only described alternative is use of A452 Kenilworth Road, Kelsey Lane and Waste Lane;
- A continuous, self-contained construction haul route from Park Lane compound to Waste Lane Compound onwards to Burton Green should be pursued as HS2's original intention;
- The applicant has failed to explain why a continuous, self-contained construction haul route cannot be achieved in line with its own previous advice;
- The applicant has failed to disclose their justification for not using Truggist Hill Farm Bridge as a temporary crossing point over the West Coast Main Line for HS2 construction traffic until the new Carol Green Rail Underbridge is constructed;
- Alternative to use a road which was designed for a high volume of traffic – this would not disrupt village life and would leave the least impact when construction complete;

- Condition needed for use to cease as soon as an alternative becomes available;
- The wilful destruction of the daily lives of the affected residents and communities living, in close proximity to the proposed lorry routes, is unacceptable when a viable alternative exists;
- HS2 have already proved adept at building major bridges (M42) with minimal disruption so a temporary HS2 only bridge should be easy;
- Extensive records of alternative options having been raised with HS2 Ltd have been provided;
- Current applications contain sparse reference to the evaluation of any alternatives;
- In 2014 Berkswell and Balsall Parish Council asked for local roads not to be used for construction traffic in a petition to the Bill Select Committee in the Commons;
- In 2016 Balsall Parish Council made a more detailed demand and requested the Promoter construct a temporary bridge or strengthen and widen the Truggist Farm bridge;
- Current application states no alternatives have been considered;
- While there would be additional cost in providing the rail crossing, there would be a benefit to the contractors in terms of operational efficiency;
- Balsall Parish Council favour the use of Hallmeadow Road as a delivery route for HS2 traffic ahead of the Kenilworth Road and Kelsey Lane option. The Parish Council's position remains strongly that a haul route should be established on HS2 land to avoid this use of village roads.

## **PLANNING ASSESSMENT**

National Planning Policy Guidance states that *"in summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required"*.

*A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.*

*In determining an application for a prospective development under Section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"*

Accordingly, it falls to be considered whether the proposal falls within the criteria of Part 4 - Temporary Buildings and Uses, of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, which states:

*Part 4 Temporary Buildings and Uses, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015*

*“Class A – temporary buildings and structures*

*A. Permitted development*

*The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*

*A.1 Development not permitted*

*Development is not permitted by Class A if—*

- (a) the operations referred to are mining operations, or*
- (b) planning permission is required for those operations but is not granted or deemed to be granted.*

*A.2 Conditions*

*Development is permitted by Class A subject to the conditions that, when the operations have been carried out—*

- (a) any building, structure, works, plant or machinery permitted by Class A is removed, and*
- (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, reinstated to its condition before that development was carried out.”*

HS2 Ltd submit that the proposal to create a temporary site access for HS2 construction purposes, on land off Hallmeadow Road/Station Road roundabout would be permitted under Part 4 Temporary Buildings and Uses, Schedule 2 of the Town and Country Planning (General Permitted Development Order) 2015. This is on the basis of a covering letter and associated evidence, including reference to appeal cases which HS2 Ltd consider supports their application. Within their submission, HS2 Ltd make the following points:

- Class A allows land to be used temporarily as a construction compound (“Compound Land”) in connection with operations being carried out on adjoining land (“Operations”) provided that planning permission or deemed planning permission has been granted for those operations. The deemed planning permission for the HS2 works is set out in section 20(1) of the HS2 Act, which states :

*“Planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the carrying out of development authorised by this Act. This is subject to the other provisions of this Act”*

- There is nothing in the HS2 Act that disapplies the normal operation of the General Permitted Development Order outside the Act limits, meaning that there is nothing in any of the legislation that would prevent Class A being used to facilitate HS2 construction, provided that the requirements of Class A are complied with.

- Categories of buildings, structures and other works that may be provided on the Compound Land are broad and could include the creation of access tracks.
- HS2 Ltd assert that the development is for temporary works required in connection with and for the duration of operations being carried out on land or land adjoining the land. Accordingly, the site construction access directly adjoins land on which HS2 works are to be carried out.
- The operations referred to are not mining operations.

In considering whether the proposed works can be permitted under Part 4 Temporary Buildings and Uses, Schedule 2 of the Town and Country Planning (General Permitted Development Order) 2015, SMBC Solicitor has reviewed the evidence submitted and the relevant legislation in relation to this application. The following observations are made:

The access road and associated earthwork bunds required for mitigation clearly fall within the “works” referred to in Class A of the GPDO.

The works are to be carried out on land which adjoins land within the Limits of Deviation, as authorised by the HS2 Act. Access to such land is required to facilitate the HS2 development, which has deemed consent under the HS2 Act. This also meets the requirements of class A of GPDO.

The works are not mining operations.

There appears to be an absence of case law on the definition of a temporary period. The wording of the GPDO refers to the “duration of operations” being or to be carried out on, in, under or over that land or on land adjoining that land. This implies that the temporary nature of the works can be for the duration of the operations, which in this case is stated as being for 5 years. Thereafter, Class A states that the works benefiting from permitted development would need to be removed and, as soon as reasonably practicable, the land would need to be reinstated to its condition before that development was carried out.

Third party representations note that the application makes no commitment to reinstatement. In this case reinstatement would need to be implemented after the use of the access road comes to an end. Reinstatement would therefore be a matter for action at the appropriate time and is covered as per the requirements of Class A.

Many of the third party representations received relate to the merits of the proposal which cannot be taken into consideration under the legislation related to this application.

Third party representations also point out the potential for alternative routes to be utilised to access the HS2 work sites which do not involve one, other, or both of the identified lorry routes indicated under Schedule 17 requests for approval PL/2021/00471/HS2DIS and PL/2021/00473/HS2DIS.

Class A of the GPDO states that development is permitted for the following:

*“The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.”*

In considering whether the access arrangements are “required” in the event of the availability of other alternative access arrangements, the following points should be noted:

Class A of the GPDO does not state that a development needs to be the only option available, to be considered “required” in connection with operations being or to be carried out on, in, under or over that land or on adjoining land. The existence of alternatives is a relevant consideration in assessing the *planning merits*, which, as noted above, are not a factor in a determination under section 192. Therefore, if other routes are available in preference to the route, subject of this application, this is not a matter for this application. Having regard to the above, SMBC Solicitor is satisfied, on a balance of probabilities that the proposed development falls within the PD rights as per the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) Schedule 2, Part 4, Class A.

On this basis officers are content that the proposed use as detailed in the applicant’s supporting statement would fall within Schedule 2, Part 4, Class A of the GPDO and as such planning permission would not be required for the proposed development. Therefore, it is considered that on a balance of probabilities the Certificate of Lawful Use or Development should be granted for the works required to create the access road which include earthworks for mitigation bunds.

Should Members be minded to grant this application then the technical details of the site access would need to be secured through Schedule 4 of the High Speed Rail (London-West Midlands) Act which are determined by SMBC as local highway authority.

## **CONCLUSION**

Based upon the information submitted it is considered that the proposed use and development would fall within Schedule 2, Part 4 of the Town and Country Planning (General Permitted Development) Order 2015 and as such planning permission would not be required.

## **RECOMMENDATION**

For the reasons outlined above it is recommended that this application be approved and a Certificate of Lawfulness of Proposed Use or Development be granted.