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Crossrail Act Schedule 7 Guide

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1. Introduction

- 1.1 This document is a guide for local authority planning officers. It describes the planning regime that has been put in place by the enactment of the Crossrail Bill. A Glossary of key terms is provided at the end of this report.

Deemed Planning Permission

- 1.2 The Crossrail Act (2008) (subsequently referred to in this document as the “Crossrail Act” or the “Act”) gives deemed planning permission for the proposed works, subject to the conditions imposed by Section 10 and Schedule 7 to the Act (Attachment 1), which requires plans and specifications for the operations and works and construction arrangements to be approved by relevant local authorities. In essence, this means that the principle of the railway is established and can no longer be challenged.
- 1.3 The extent of the deemed planning permission is determined by works covered by Schedules 1 and 2 of the Act and by the limits set out in the deposited Parliamentary Plans. Schedule 1 of the Act describes the 'scheduled works' that the nominated undertaker will be authorised to carry out. The descriptions set out the type of work and their location, for example:

'Work No 1/3A - A railway (10,809 metres in length, in tunnel) commencing by a junction with Work No 1/3 at its termination, passing eastwards and terminating beneath a point 140 metres west of the junction of Stepney Green with White Horse Lane.'

- 1.4 The Act also provides for the scheduled works to be constructed on land within the lateral limits of deviation (LoD) shown on the deposited plans and sections and provides for an upward limit of deviation which is mostly 3 metres from the levels shown on the deposited sections but in a limited number of places is 6 metres (subject to any maximum level for any station, depot or shaft shown on the sections). The deposited plans also show further land to be acquired or used outside the limits of deviation, which may be used for ancillary works authorised under Schedule 2 of the Act.
(<http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/plansandsections>).

Nominated Undertaker

- 1.5 The powers to construct Crossrail and make submissions under Schedule 7 to the Act are vested in the 'nominated undertaker'. The Act gives the Secretary of State the ability to nominate that undertaker. The undertaker nominated for majority of Crossrail works is Cross London Rail Links Limited (CLRL). London Underground Limited has also been nominated as undertaker for a section of work at Tottenham Court Road and Bond Street

Schedule 7 to the Act.

- 1.6 Schedule 7 to the Act defines the detailed planning regime which will apply to the local planning authority (LPA) affected by works to construct and operate Crossrail. It sets out the items requiring further detailed approval for both permanent works and the construction arrangements. It also sets out the grounds on which the planning authority can refuse to approve (or impose conditions in respect of) the plans and specifications. The nominated undertaker has the right to appeal against the decision of the LPA to refuse or impose conditions on an approval, and against non-determination of plans and specifications.

Schedule 16 to the Act

- 1.7 Schedule 16 of the Act allows the Secretary of State, by direction, to specify conditions of the planning permission deemed to be granted under the Act which is in addition to, or in substitution for, those set out in Schedule 7 to the Act for facilities reinstating those discontinued by the Crossrail works. The discharge of such conditions and any related appeals are carried through the normal planning process as set out in the General Development Procedure Order.

Qualifying Authorities

- 1.8 Local Authorities who have given the Secretary of State undertakings with respect to the handling of planning matters under Schedule 7 which he/she considers to be satisfactory, have become 'qualifying authorities'. The advantage to the LPA of being a qualifying authority is that the conditions require the nominated undertaker to submit plans to them for approval for a range of both temporary and permanent works, thereby giving the LPA a greater degree of control over the works, much more so than if it was 'non qualifying'.
- 1.9 Qualifying authorities have entered into a Planning & Heritage Memorandum. The Planning & Heritage Memorandum ensures that the process of securing Schedule 7 approvals does not unduly hinder the construction of Crossrail and requires authorities to use best endeavours to determine approvals within eight weeks, by adopting measures such as dedicated staffing and use of delegated authority for decision making where appropriate.

2. The Crossrail Planning Regime

- 2.1 The Schedule 7 regime is a different planning regime to that which usually applies in England (i.e. the Town and Country Planning Act) and is different in terms of the nature of submissions and the issues that the local authorities (LAs) can have regard to in determining requests for approval.
- 2.2 Schedule 7 to the Crossrail Act sets out the matters or operations or works that require further detailed approval from LPAs. There are two main types of approvals required under Schedule 7: one for permanent works and one for temporary. The details of the permanent works that will be submitted are commonly referred to as 'plans and specifications' (reflecting the description within paragraphs 6, 15 and 21 of Schedule 7), whilst the temporary works details to be submitted are commonly referred to as 'construction arrangements' (reflecting the description in paragraphs 7, 16 and 22 of Schedule 7). A summary of the matters for approval is set out in table 1 below.

Table 1: Summary of Matters and Works for approval

Submission Type	Operations or Works for Approval
Plans and Specifications (permanent works)	<ul style="list-style-type: none"> - Bridges and Viaducts - Stations and Ticket Halls - Vent Shafts - Fences (location only) - Earthworks - Noise Barriers - External Lighting - Car Parking - Radio Masts
	Matter for Approval
Construction Arrangements (temporary works)	<ul style="list-style-type: none"> - Road Transport - Handling of re-usable spoil and topsoil - Storage Sites - Construction Camps (where relevant) - Screening - Artificial Lighting - Suppression of Dust - Control of Mud on Highways

2.3 Paragraph 8 (1) of Schedule 7 also provides that to the extent that the development consist of: the disposal of waste or spoil, or (b) the excavation of bulk material from borrow pits shall not be begun until the local planning authority has, at the request of the nominated undertaker approved a scheme for the restoration of the land on which the development is to be carried out.

2.4 It should be noted that S7 construction arrangement approval is not required in relation to transportation on a special or trunk road or in relation to transportation to a site where the number of large goods vehicle movements (whether to or from the site) does not on any day exceed 25. In addition the following works are not for approval under Schedule 7:

- Railway track, signalling and overhead gantries;
- Any tunnel, earthwork, or railway bed;
- Temporary buildings;
- Furniture, finishes and signage;
- Plant and machinery (including station escalators);
- Anything underground, except where part of a station is intended for use by members of the public without a ticket.

2.5 Schedule 7 also sets out the grounds on which an LPA can refuse or impose conditions in respect of Schedule 7 submissions (see paras 3.19 – 3.23). The LPA must adhere to these grounds and identify the relevant grounds when refusing or conditioning a request for

approval. Grounds that are not contained within the relevant part of Schedule 7 cannot be used to justify refusal or conditioning.

- 2.6 The grounds for the imposition of conditions and/or the refusal of Schedule 7 submissions are limited in comparison to normal Town and Country Planning legislation, due to requirements within the Act itself and Crossrail's Environmental Minimum Requirements (EMR) including the Planning and Heritage Memorandum (to which all qualifying authorities sign up).

3. The Schedule 7 submission process

- 3.1 The following section provides a step-by-step explanation of how the submission under Schedule 7 will be made and how local planning authorities (LPAs) should process these submissions.

Context Reports

- 3.2 In order to establish the project-wide context within which LPAs should consider requests for approval under Schedule 7, the nominated undertaker is required under Paragraph 25(b) to produce Planning Context Reports. These will be a reference point for LPAs providing a broad overview of the project, a brief description of the main works and their relationship with the rest of the project. The reports will include an indication of the location of the scheduled and ancillary works to which requests for approval are expected to relate. These reports must be submitted to the LPA prior to any submission being made to them for approval under Schedule 7.

Information to accompany a Schedule 7 submission

- 3.3 As outlined above, Schedule 7 is a completely separate regime to that of the Town and Country Planning Acts (TCPA), meaning that the nominated undertaker does not need to conform to standard national planning requirements such as submission under the 1APP system or the statutory requirement for the inclusion of a Design and Access Statement with all planning applications.
- 3.4 In addition, the format and content of the submissions will be different from a TCPA planning application as the submissions will reflect the matters for approval under Schedule 7. Also, the two main types of submission (plans and specifications and construction arrangements) will differ markedly.
- 3.5 With plans and specifications submissions, the emphasis will be on illustrating the details that require approval in plan form at the appropriate level of detail. With regard to submissions for stations and intermediate shafts, although not required to under the Act, the project has offered to produce Design and Access Statements (for information), as a demonstration of commitment to high quality of design and access for all.
- 3.6 For construction arrangements submissions, it is not usually possible or practical to submit information in the same predominantly graphic form as for the permanent works and so information will mostly be provided in textual form.
- 3.7 As set out in Planning Forum Notes 1 and 2 a Schedule 7 submissions will include the following items:

Table 2: Submission contents

Submission Type	Item
Plans and Specifications	Submission Letter
	Application form ('proforma')
	Appropriate plans
	Written Statement (for information)
	Design and Access Statement (where appropriate/for information)
	Samples of materials/finishes (where appropriate)
Construction Arrangements	Submission Letter
	Application form ('proforma')
	Details of the construction arrangements
	Any relevant supporting material including an Environmental Management Plan for environmentally sensitive work sites identified in the Environmental Memorandum (for information).

Environmental Minimum Requirements

- 3.8 The original Environmental Statement for Crossrail was published in February 2005. It has been supplemented by a number of additional volumes as further information has become available, and in the light of proposed changes to the project. It is the intention of the Secretary of State to carry out the project so that its impact is as assessed in the Environmental Statement (ES).¹ The Secretary of State will require the nominated undertaker to adhere to the arrangements provided for in the Environmental Minimum Requirements (EMR) in designing and constructing the Crossrail Works.
- 3.9 The controls contained in the EMR along with powers contained in the Act and the Undertakings given by the Secretary of State will ensure that impacts which have been assessed in the ES will not be exceeded, unless any new impact or impacts in excess of those assessed in the ES:
- results from a change in circumstances which was not likely at the time of the ES; or
 - would not be likely to be environmentally significant; or
 - results from a change or extension to the project, where that change or extension does not itself require environmental impact assessment under either (i) article 4(1) of and paragraph 22 of Annex 1 to the EIA Directive; or (ii) article 4(2) of and paragraph 13 of Annex 2 to the EIA Directive; or
 - would be considered as part of a separate consent process (and therefore further EIA if required).

¹ Supplementary Environmental Statements were published in May 2005, January 2006, November 2006 and May 2007. In addition Environmental Statements have been published for each of the four sets of Additional Provisions tabled by the Promoter in January 2006, May 2006, November 2006 (Erratum published Jan 2007) and May 2007.

- 3.10 Any nominated undertaker will be contractually bound to comply with the controls set out in the EMR and as were developed during the passage of the Act through Parliament. The EMRs comprise a number of documents, including the Construction Code, the Planning and Heritage Memorandum, and the Environmental Memorandum.

Validation of Schedule 7 submissions

- 3.11 The different Crossrail planning regime means that LPAs' validation checklist will not be relevant for Schedule 7 submissions. No specific details are contained in either the Crossrail Act or the Planning and Heritage Memorandum on the documents required to be included within a Schedule 7 submission. Paragraph 9.1 of the Planning and Heritage Memorandum states that *'the nominated undertaker shall submit requests for approval of construction arrangements, plans and specifications, and mitigation schemes in compliance with guidelines on standardised proforma, plans processing and handling of amendments to be drawn up by the Forum...'*. In recognition of this, Planning Forum Note 1 (Content of Submissions and Standard Templates) was prepared, and in order to expedite the handling of requests for approval under the Crossrail planning regime, validation checklists have been prepared, one each for Plans and Specifications and Construction Arrangements requests for approval. The relevant validation checklist will be completed by or on behalf of the nominated undertaker and will accompany each request for approval. The completed checklists will assist the staff at planning authorities in ensuring that all the material required for Schedule 7 requests for approval has been supplied. These check lists are set out in Planning Forum Note 3 Validation Checklists.

Calculation of fees for Schedule 7 submissions

- 3.12 Separate fee regulations have been put in place for applications made under Schedule 7. These are structured to align directly with the works for approval within Schedule 7 and are broadly based on the TCPA system of calculating the fee on the amount of floorspace created (Appendix 3)

Public Consultation

- 3.13 The Act, the EMR and the Planning and Heritage Memorandum impose certain obligations on the Project concerning consultation. The Act only requires that the following statutory consultees are issued with a copy of the submission and invited to make representations:
- Natural England (for works that impact on nature conservation);
 - English Heritage (for works that impact on sites of archaeological or historic importance); and
 - the Environment Agency (for works that impact on the quality of water or aquatic environments).
- 3.14 A separate Planning Forum Note has previously been produced providing further guidance on consultation arrangements (Planning Forum Note 7 – Consultation on Requests for Approval under Schedule 7). As set out in this note if a local authority has agreed, the nominated undertaker will send copies of submissions to these consultees on behalf of the planning authority when they make a submission to the LPA for approval. The purpose of this is to help the LPA to determine the submission quickly as the consultees will receive a copy as soon as the submission is made, thereby allowing them to make any comments to the LPA early on in the submission process.

- 3.15 In addition Planning Forum Note 7 sets out when, with local authority agreement copies of submission will be sent to other interest parties e.g., Transport for London and/or local residents and community groups identified by local authorities.
- 3.16 If the LPA felt that certain work did impact on nature conservation, a site of archaeological or historic importance of the quality of water or aquatic environments, but the nominated undertaker had not sent a copy to the relevant body then the LPA could carry out its own consultation.

Determination Period/Part Determination

- 3.17 Due to its status as an infrastructure project of national importance, paragraph 10.2 of the Planning and Heritage Memorandum states that *'in recognition of the tight construction programme, the authority shall use its best endeavours...to determine any request for a relevant approval within the timetable referred to in paragraph 30(4) of the Planning Conditions Schedule i.e. eight weeks from the date on which a request was received by the planning authority after which the nominated undertaker may appeal or, whenever possible, a lesser period.'*
- 3.18 Paragraph 4.3.3 of the Planning and Heritage Memorandum states that where only part of a request for approval can be determined within the eight weeks, the LPA shall not seek unreasonably to delay determination of the remainder and, in consultation with the nominated undertaker, should seek to grant approval for those aspects or subsidiary packages of works which they have been able to determine. This means, for example, that if a submission has been made for construction arrangements and one of these matters is still the subject of negotiation after eight weeks a decision should be made on those matters on which agreement has been reached.

Grounds to impose conditions, refuse a request for approval

- 3.19 Unlike a TCPA planning application, the LPA can only refuse to approve (or impose conditions in respect of) a Schedule 7 submission on the basis of the grounds specified in Schedule 7. This is complex and it is suggested that the Act is referred to in applying conditions or considering refusal (Schedule 7 is attached in Appendix 2), but in summary for plans and specifications, there are two main grounds on which a submission may be refused or conditioned, as set out in Paragraph 6(4) of Schedule 7:
- That the design or external appearance of the work ought to be modified to preserve the local environment, local amenity or sites of historic interest or nature conservation value, or to prevent or reduce prejudicial effects on road safety or the free flow of traffic in the local area, and is reasonably capable of being so modified; or
 - That the development ought to, and could reasonably, be carried out elsewhere within the relevant limits shown in the deposited plans that accompanied the Act.
- 3.20 There is one main ground on which the proposed construction arrangement may be refused, as set out in Paragraph 7(2):
- That the arrangement ought to be modified to preserve the local environment or local amenity or to prevent or reduce the prejudicial effects on road safety or on the free flow of traffic in the local area, and are reasonably capable of being so modified.
- 3.21 Model conditions are set out in Planning Forum Note 9. It should be noted that the LPA can only impose conditions on construction arrangements with the agreement of the nominated undertaker.

- 3.22 The nominated undertaker will be bound, through the Environmental Minimum Requirements (EMRs), to adopt and implement the Crossrail Construction Code. In determining requests for approval of construction arrangements or plans or specifications, the local authority should therefore, take into account the assessments in the Environmental Statement, the arrangements in the Construction Code, the Environmental Memorandum, any relevant undertakings and assurances to Parliament, and any other relevant considerations. Other commitments in the EMR will govern construction including a commitment that nominated undertaker will be required to obtain consents under Section 61 of the Control of Pollution Act 1974 in relation to noise generating activities and hours of working.
- 3.23 Submissions for approval under Schedule 7 are effectively for 'reserved matters' further to the deemed planning permission that the Act provides. Therefore, conditions must not further 'reserve the reserved matters' by requiring additional details to be submitted and approved prior to the development commencing. Further information in the form of plans or further details of materials may be requested, however, as set out in paragraph 4.3.2 of the Planning and Heritage Memorandum, an LPA also shall not require the nominated undertaker to vary any part of the submission for approval or include additional details that could reasonably be dealt with as a subsequent submission (unless it is necessary for the determination of the first request). Conditions must also not be attached in respect of matters that are covered elsewhere in Schedule 7 (i.e. restoration).

Scheme Revisions

- 3.24 Design development may result in design changes being made that require new ('revised') planning submissions. Where design changes are minor (i.e. not deemed materially different), the nominated undertaker will submit a revised submission under Schedule 7 seeking approval of revisions to the originally submitted and approved details. Any materially different design changes would be submitted as a new application.

Discharge of Conditions

- 3.25 The discharge of conditions attached to an LPA's granting of consent for a Schedule 7 submission, will be dealt with in the same way as under the TCPA regime. However, the Planning and Heritage Memorandum states that the LPA shall '*not seek to impose any unreasonably stringent requirements*' on any applications '*which might frustrate or delay the Project*'.

Right of appeal

- 3.26 As set out in paragraph 30 the nominated undertakers have the right to appeal to the Secretary of State against the decision of the LPA to refuse or impose conditions on an approval, and against non-determination. On an appeal the appropriate Ministers may allow or dismiss the appeal, but may only make a determination involving the refusal of or imposition of conditions on, approval on grounds open to that local authority.

Works outside Act limits

- 3.27 It may be necessary to construct works outside the defined limits, applications will be made under TCPA legislation in the normal way.
- 3.28 It should be noted that under Schedule 2 paragraph 5(9) works for the mitigation of settlement are permitted outside of Act limits without the need to obtain planning permission.

Bringing into use

- 3.29 Paragraphs 9 and 17 of the Act require the nominated undertaker to submit details of mitigation (although works at stations and depots are excluded) before the railway can be brought into use. In particular cases, a condition under paragraph 6(8) may be appropriate to provide for specific landscaping where this is necessary to preserve local amenity and where the matter of landscaping can be determined at a later stage. However, this should only be done in exceptional circumstances.
- 3.30 In submitting details of design and external appearance for a building, the nominated undertaker may also wish to give an outline indication of what a landscaping scheme under paragraph 9(3)(b) or 17(3)(b) of the Schedule will in due course provide.
- 3.31 For works on land not required as part of the permanent works, paragraphs 8, 11, 19, and 23 of Schedule 7 require restoration schemes to be approved within 6 months of the bringing into use. However, it should be noted that the principal objective of such schemes is restoration, not landscaping of it.

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GLOSSARY

Construction Arrangements Submissions	Submission in relation to the temporary works required for the construction of the railway, as set out in Paragraphs 7, 16 and 22 of Schedule 7.
Construction Code	Part of the Environmental Minimum Requirements. This means the series of objectives and measures to be applied generally throughout the construction period to maintain satisfactory levels of environmental protection and limit disturbance from construction activities, which
Crossrail	The railway that runs between the termini at Heathrow, Maidenhead, Shenfield, and Abbley Wood
Crossrail Works	Works in relation to the design, construction, commissioning and completion of Crossrail authorised by the Crossrail Act
Environmental Management Plans (EMPs)	The Environmental Minimum Requirements state that the Project shall develop and implement the Environmental Management Plans envisaged in the Construction Code. The plans will set out how the Project will deliver the environmental requirements, and how issues that arise will be handled to ensure compliance with relevant environmental legislation and the Project's environmental policies.
Environmental Memorandum	The memorandum relating to the environmental aspects of the design and construction of the Crossrail Works,
Environmental Statement (ES)	The Environmental Statement describes the findings of the assessment of likely significant environmental impacts (both negative and positive) which has been undertaken for the Crossrail project on behalf the Secretary of State.
Limits of Deviation	Horizontal limits of deviation are shown on the

deposited plans define the maximum extent of the railway and ancillary works listed in Schedule 1 to the Act.

Vertical limits of deviation which are generally standard; not exceeding three metres upwards and to any extent downwards except in relation to three specified sections of tunnel where an upward limit of six metres is provided (the Act provides that where an upper limit for a station, depot or shaft is shown on the deposited plans, the power to deviate is subject to that upper limit).

Nominated Undertaker

The organisation(s) appointed by the Secretary of State to design, construct, operate and maintain Crossrail. Only nominated undertakers may make submissions under Schedule 7

Planning and Heritage Memorandum

The memorandum setting out undertakings given by the local authorities with respect to the handling of planning and heritage matters for the Crossrail Works. Attached as part of appendix 1

Planning Forum

In accordance with paragraph 3.1.1 of the Planning and Heritage Memorandum a Planning Forum has been established. The Planning Forum meets regularly and provides an open forum to discuss project-wide issues and any matters relating to the determination of Schedule 7 submissions.

Planning Forum Notes

Planning Forum Notes set out agreements between Planning Forum members and the nominated undertakers on the procedures to be followed in the determination of Schedule 7 submissions.

Plans and Specifications Submissions

Submissions in relation to the permanent works required for the construction of the railway, as set out in Paragraphs 6, 15 and 21 of Schedule 7.

Secretaries of State

Secretary of State for Transport and the Secretary of State for Communities and Local Government.

APPENDICES

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