

Hybrid Bills – The Democratic Deficit

The implications of the HS2 proposals are beginning to sink in. What has not yet been understood is the means by which it is intended to implement them. The proposals will be embodied in a so-called Hybrid Bill which will be presented to Parliament at the end of 2013 and if passed will become an Act. The term Hybrid is actually of little significance. A Hybrid Bill is simply one that has the characteristics of both a private and public bill because it is of general interest (i.e. public) but with mainly local effects (i.e. private).

The real significance of any HS2 Hybrid Bill is that it is a means of authorising national infrastructure projects (usually of national significance) without obtaining planning consent under existing Town and Country Planning legislation. It bypasses all the normal procedures we are used to, whereby large and controversial projects such as HS2 are “called in” and a Public Enquiry is held before an Inspector from the Town and Country Planning Inspectorate. The inspector is versed in planning law and planning issues and writes an independent report at the end of the Enquiry. Anyone can attend the Enquiry and give verbal or written evidence, including local Residents' Associations. Plans and documents are produced; expert witnesses appear and can be cross-questioned. Public Enquiry procedures could be improved; there are too many lawyers and they sometimes go on for far too long, but they are open, public procedures. At the end the Minister can reject the findings of the Inspector but that is a political decision and seen as such.

With the Hybrid Bill procedure there is no Public Enquiry. Instead there is a period of “public consultation,” which in this case took place in the 5 months between February and July 2011. Over 50,000 responses were received. We now know that the majority were opposed to the plans, but in January 2012 the Minister for Transport (Justine Greening) announced the government's decision to proceed. Because HS2 Ltd. did not have to complete its plans until the Bill appears in 2013 there was an extraordinary lack of detail available during the “consultation”, including the absence of an Environmental Impact Assessment. The patent inadequacy of the “consultation” may be the occasion for local authorities and others to challenge the Minister's decision in the courts.

The only opportunity that the general public will have to directly influence the Hybrid Bill proceedings is at the Committee Stage. Individuals and organisations with a direct interest in the Bill (local authorities, landowners, residents' associations etc.) may petition to give evidence to the Select Committee. There then follows a complex procedure involving two committees which decides whose petitions will be heard. At the last Hybrid Bill (Crossrail) hearing there were 466 petitions of which 205 were heard. Petitioners are likely to make the most impact if parties with related interests pool their resources and act as one. There is only a brief window of opportunity in which to petition, the procedures are complex and the petitioner will face a panel of Q.C.s who, at this stage, will be unwilling to give any ground. None of the M.P.s through whose constituencies HS2 runs will be permitted to sit on the committee.

The Bill will be extremely complex and detailed and all kinds of construction companies and legal bodies will contribute to its preparation. The government has admitted that the current cost of the project has already reached the best part of a billion pounds and will continuously rise as preparation of the plans proceeds.

There is a sting in the tail. The Bill will contain clauses that permit the Minister to implement a range of detailed changes to facilitate the development, after it has received the Royal Assent. These changes will be contained in Statutory Instruments which may be approved or rejected, but not amended, by a Statutory Instruments Committee on which the government has a majority. There is no referral back to Parliament.