



From Lord Berkeley

To Andrew Stephenson MP,  
Minister of Transport  
Department for Transport  
London SW1

14 July 2014

Dear Andrew,

### **The HS2 Phase 1 Development Agreement**

I write in connection with the original and amended Development Agreements between HS2 and the Department for Transport with a number of questions.

The Development Agreement for HS2 dated December 2014 sets out in some detail the obligations of HS2 in respect to its owner, the Department for Transport.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389368/HS2\\_development\\_agreement\\_December\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389368/HS2_development_agreement_December_2014.pdf)

This document contains 122 instances of the words 'Review Point', and there are three such Review Points which HS2 had to pass to be given various levels of 'operational delegations' for Phase 1.

The purpose of these review points was determined as:

#### *27.1 Review Point Purpose*

*A Review Point Process shall operate to enable HS2 Ltd to be granted certain operational delegations conditional on the satisfactory demonstration of certain business capabilities (including capabilities relating to people, systems and processes appropriate to the particular stage of the Project) and on the satisfactory submission of certain key documents. The achievement of a Review Point will be determined at the discretion of the SoS.*

The section relevant to Notice to Proceed reads:

#### *27.5 Operational Delegations Document*

*(A) In respect of Phase One, following the achievement of:*

*(1) Review Point 1 for Phase One, the SoS shall grant to HS2 Ltd appropriate additional financial and/or contractual delegations for that Review Point, including to:*

*(a) undertake all aspects of the procurement (but not contract award) of the Delivery Contracts for Phase One; and*

*(b) implement the Land and Property Strategy, including negotiation of all land and property transactions relating to Phase One, subject to submitting such transactions to the SoS for approval;*

*(2) Review Point 2 for Phase One, the SoS shall grant to HS2 Ltd appropriate additional financial and/or contractual delegations for that Review Point, including to enter into and subsequently manage all aspects of the Delivery Contracts, provided that all Delivery Contracts relating to the construction of any Works for Phase One include provisions which prohibit the commencement of the construction of any Works before the issue of a notice to proceed by HS2 Ltd (a "Notice To*

*Proceed”) and provisions containing zero cost break clauses which apply in the event of termination prior to the commencement of construction. For the avoidance of doubt, HS2 Ltd shall not be granted any delegation to issue any such Notice to Proceed until the Phase One Review Point 3 Date; and*

*(3) Review Point 3 for Phase One, HS2 Ltd shall be granted appropriate additional financial and/or contractual delegations for that Review Point, including to:*

*(a) issue Notices To Proceed under the Delivery Contracts relating to the construction of any Works for Phase One and subsequently to manage all aspects of those Delivery Contracts until the Final Delivery Date for Phase One; and*

*(b) implement the funding regime as set out in the Funding Annex,*

From the evidence which I have seen, it would appear that HS2 has failed to meet the conditions relating to each of these review points and, in some cases, continues to fail. For example, in 2016, in spite of failing Review Point 1, it was apparently given the operational delegations anyway. Land and Property Transactions for Phase 1, a condition 1(b) for Phase 1, are still not complete.

**Could you please therefore let me have full details and copies of the ‘key documents’ provided by HS2 as required by the Development Agreement in support of their request to meet each of these three Review Points, the dates when your Department approved the achievements of the Review Points and when Parliament was informed of this ?**

The High Speed 2 Phase 1 Bill received Royal Assent on 23 February 2017, and it would appear that HS2 Ltd had still not met the conditions relating even to the first condition by this time, even though Parliament would have been under the impressions that it had done so.

However, I have noted that there was an amended version of the Development agreement published in 17 July 2017 and again in 26 November 2018. The latter version:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/769850/hs2-development-agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769850/hs2-development-agreement.pdf)

removes all the above details of the three Review Points and the conditions attached to them. In the original document there were 122 instances of the phrase 'Review Point', but in the revised version, this dropped to zero. It may be that there is an explanation of why the Department broke its own rules on Review Points by referring to the annexes of this latest document but unfortunately this 180-page document has over 60 pages completely redacted. The most relevant annex which is not redacted, Annex 5.2 Annual Reports, covers what DfT requires from HS2 on an annual basis, referring to Clause 23.7 and the High Speed Rail (Preparation) Act 2013.

However, the series of reports relating to this Act which I have seen covering the three years 1 April 2015 to 31 March 2018 (the latest one is [High Speed Rail \(Preparation\) Act 2013 Expenditure Report: 1 April 2017 – 31 March 2018: Moving Britain Ahead](#)), certainly do not cover the issues listed in Annex 5.2 in a satisfactory manner nor the much more onerous requirements for information contained in the original Development Agreement to which I refer above.

Either way, by deleting the Review Points from the later version of the Development Agreement, Ministers have thus removed all of the safeguards that had been put in place to make sure the project was on track and taxpayers money was not wasted, safeguards which were in place at the time of the passage of the 2017 Phase 1 Act. Without this information, parliament is not able to hold government to account in the manner expected when the original Development Agreement was in place during the passage of the Phase 1 Bill.

So I have the following questions for you:

- 1. Why did the Department of Transport remove the requirements for compliance with the Review Points in the original Development Agreement?**
- 2. When and how did the Department inform Parliament that the original Development Agreement had been superseded, with most of the review points and conditions removed?**
- 3. What are the requirements in the later Development Agreement which supersede those in the original Development Agreement, and where are the annual reports which respond to these requirements?**
- 4. How is the current Development Agreement appropriate to cover the recent changes to the overall HS2 plans in respect of management of works and Euston Station and the study currently under way in connection with Phase 2B?**

From the information which I have summarised above, it would appear that these changes to the Development Agreement and continuing failure to inform Parliament in a regular and consistent basis were and are intended to mislead parliament. The May 2020 Report of the PAC makes similar strong criticism, as did my Dissenting Report on HS2 dated January 2020; it is surely time to accept in public the comments in the letter sent by S of S Patrick McLaughlin MP to Chancellor George Osborne MP dated 11 May 2016 saying, and I paraphrase, 'We cannot build HS2 for the price, but let's keep any increase totally secret otherwise Parliament may not approve the Phase 1 Bill.'

I look forward to your comments. I am also sending this to Meg Hillier MP, Chair of the PAC and Huw Merriman MP, Chair of the Commons Transport Committee.

Best wishes, Yours, Tony

Tony Berkeley