Shaw Review: Draft Response for Bedford Borough Council

Introduction

Bedford Borough Council welcomes the opportunity to respond to the Scoping Document for the Shaw Review dated November 2015. The Council is also a party to the East-West Rail consortium whom will be making a response to the consultation but the Borough has additional matters in the context of rail industry structure and Network Rail that affect non East-West Rail issues.

Our rail technical advisors, JMP Consultants, have prepared this response that has been agreed by Council Officers.

As a general position the Council is pleased to see the question of the long term structure of Network Rail being addressed and how this may impact on investment levels and processes and how 'third parties' secure the continued development of rail as an effective mode of mass transportation.

We welcome the general assumption that rail travel will continue to grow in the foreseeable future; the Council has a strong policy position that concurs with this statement subject to access the rail network being available for residents.

In the scoping report's discussion on 'Structure' (para 3.1) we are disappointed to not find local authorities identified as a key factor in the industrial landscape within the rail industry sits. As a local planning authority we can influence long term trends in land use development and therefore the market for rail travel.

Question 1: What are your views on the scope of Network Rail's functions?

It is correct that a National Infrastructure Provider for rail is in place the real matter for the review is accountability and the ability to match accountability with delivery. There could be benefit in establishing autonomous unit to deliver major enhancement projects. The Council's main interest in this concept would be for East West Rail but equally this could also apply to the Midland Mainline electrification.

Question 2: Have we failed to mention any specific and important factors?

Within the list of activities the review fails to recognise the obligations that NR has as a public body to provide for general government policy outcomes in its management approach – e.g. economic growth and housing investment. When this baseline requirement is taken into account the question for the review becomes how the alternative operational models perform to deliver these outcomes.

Question 3: What are your views on these accountability arrangements and their effectiveness?

The review, when taking as a starting point of 2019, needs to recognise the irrelevance of the HLOS / SOFA process in a publically accountable rail infrastructure provider. In effect the current arrangements have been overtaken by the reclassification and are currently not fit for purpose.

Question 4: Have we correctly identified and defined Network Rail's customers?

No, local authorities are highly dependent on the rail infrastructure provider to deliver their land use planning and transportation agendas and such should be recognised as a customer that benefits from rail infrastructure provision and as a facilitator of the market for rail travel through land use planning decisions.

Question 5: How effectively are customer needs and expectations met by Network Rail at present?

The inability of NR to deliver its stated programmes leads to a view that customer needs are not being met. The pressure to seek to deliver it CP5 HLOS commitments is preventing resources being deployed to 'uncontested' services which would benefit more local and third party funded initiatives. Engagement with route planning and route enhancement teams is generally a frustrating experience limited by a lack of a stable personnel base.

Question 6: Should direct customer pressure on Network Rail be strengthened? If so, how might this be achieved?

The key issue here is to define whom the customer is; as we have stated above the lack of interaction between the infrastructure provider and those with accountability for other policy areas is a major cause for concern. In terms of pressure on delivery the real issue has moved from being financial under the pre-reclassification regime to one of political pressure through elected representatives. Only a structure that delivers nationally required outcomes is acceptable so pressure is not the point, rather it is the accountability mechanisms that secure delivery that are at issue.

Question 7: Are there more positive incentives for delivery which would be useful? Are any of these incentives more effective than others?

Again the incentives for delivery need to be reflected in the accountability mechanisms. The current system that creates a bow-wave of late delivery with follow on consequences is unacceptable. There could be arguments to prevent this by separating ‘operations’ from ‘enhancements’ with stand-alone approaches to accountability for each. Also there needs to be incentives in place beyond the ORR volume incentive for allowing additional services viz the operational performance regime and for the delivery of localised improvements e.g. new stations which often occur through the non-contestable services regime.

Question 8: Is there a case for changing the route structure and what are the advantages and disadvantages of different approaches to disaggregating the network, for example on the basis of:

- physical, political or economic geographies?
- service type, e.g. commuter services, inter-city services and regional services?

Again the issue is not about internal structure per-se but about the level of achievement and how this accounted for. In our case aligning to service geography rather than service type makes some sense given our location at the fringe of the London commuter area but also with a central role in East West Rail and as a key location on the Midland Mainline.

Question 9: Does the current balance of responsibilities between the routes and the centre seem at the right level? Are there any further responsibilities that should be devolved or centralised?

We have no specific comment other than to note that uncontested services to deliver our policy objectives require a greater management focus. Again, these can be nationally or locally delivered as necessary but what is required is a focus on accountable actions and timely and effective decision making.

Question 10: Can you point to any specific economies of scale that should be protected at national rather than route level?

We have no specific comments other than to note that separating enhancements and operations would provide a greater focus for each.

Question 11: What processes and capabilities need to be in place (at both the centre and route level) to support Network Rail’s current devolved structure?

In our view the issue is not about processes but about culture and attitude. NR is currently a block to progress behind a veil of technical standards. Whilst these need to be retained to ensure system integrity and safety NR needs to change culture to a problem solving organisation that recognises its role in delivering wider policy objectives. NR appears to spend the majority of its time defending why change cannot be achieved rather than seeking to engender new, particularly non engineering, approaches and the delivery of wider policy objectives. As such, the pro-active business ethic by which NR is seeking to engender with contractors through EIC and Alliances (for example) needs to be reflected in the business elements that deal with network capability and third party schemes. We also see need to simplify GRIP to be consummate with scheme cost / size. A replacement for the ECAM price adjuster is needed to allow for concentration on project management activity rather than retrospective financial management.

Question 12: Drawing on your previous experiences where relevant, what would be the potential impact on your organisation of further structural change within Network Rail?

At our level the effect of structural change would be limited. What is needed is more effective business continuity to manage the shifting sands of personnel that the current structure creates.

Question 13: What are the strengths and weaknesses of Network Rail's current approach to planning enhancements?

The real issues are about time and accountability as cost is now a direct matter for central government through the reclassification process unless the review recommends otherwise. The current processes are proscriptive and limit managerial flair to tackle delivery challenges with project deliverability being focused on managing process and not on achieving customer outcomes. In terms of enhancements reliability on early cost estimates without design certainty and lack of suitable treatment of risk contingency and limited programme information would appear to set the dangerous circumstances that Hendy is now dealing with. The current regulatory system encourages use of early cost and project information which when coupled with ineffective regulation and accountability leads to the outcomes of defective planning appearing.

Question 14: What are the strengths and weaknesses of Network Rail's current approach to delivering enhancements?

The approach to delivering enhancement in the current system is based on an arbitrary and pre-determined regulatory settlement and is limited to meeting the regulatory settlement requirements rather than the actual and evolving needs of the railway. This leads to an inability to divert resource to 'quick wins' or local initiatives which for a council such as Bedford creates significant challenges. Equally when resources are allocated the very nature of the current approach leads to the inevitable 'revolving door' of NR personnel and lack of incentives for NR to follow through to delivery. The overlap between sponsors and scheme delivery teams creates an unclear division of responsibility and accountability.

Question 15: How well do the current delivery and planning processes work for projects of different sizes?

Again the currently one size fits all regulatory approach and NR's lack of effective resource management appear to mean that scaleability is not achieved. GRIP is prescriptive and fails to offer a 'lite' approach for smaller investments or third party schemes where NR's risk beyond 'asset protection' matters is nominal.

Question 16: Are there any useful models or precedents from other sectors or countries for long term infrastructure planning and delivery processes that we should consider, including in relation to management of and engagement with suppliers during the planning process?

The evolving Highways England licence model is worthy of consideration. The fundamental and EU inspired disconnect between wheel and rail is better managed in Europe. A trial of vertical integration would seem to be essential, particularly in an area such as Bedford where multiple service geography and route functions are present.

Question 17: What would be the most important structural features of any future infrastructure provider?

Accountability for its decision making processes would in our view be the most critical element of whatever structure is brought forward. Effective local decision making from our perspective would appear to be a crucial factor in the Council's policy objectives for rail (and transportation more widely) being achieved. A certain level of local accountability should be welcomed and delegated authority seen as a positive rather than a negative management tool.

Question 18: Are there any other processes which we have not highlighted, either within Network Rail or the wider industry, which could be improved?

The question of land disposals and the seeking of 'betterment' payments by Network Rail for land released for development by new infrastructure (e.g. bridges) should be reviewed. In effect the current regime taxes the achievement of wider public policy issues e.g. housing growth and in many cases simply results in public money being recycled for no clear purpose. As noted above, the 5 year periodic review process is now an unnecessary complication to the rail industry structure going forwards.

Question 19: Do you have any views on how the relationship between the periodic review process and other processes with which you are involved could be improved?

See the comments above about the ongoing validity of the HLOS and SOFA process should the current publically funded arrangements continue. Also a periodic review process does not sit comfortably with a public investment / private equity model where long term obligations often under concession arrangements allow genuine investment and risk transfer.

Question 20: What criteria should be used to assess structural options under consideration? How, if at all, should these criteria be prioritised?

We have no specific comments beyond noting our priority for genuine local accountability to be built into any proposed system brought forward.

Question 21: Do you have any views on whether the RAB remains a relevant concept for the railway, and, if not, what should replace it?

The RAB as a mechanism for securing debt finance against an artificial regulated asset value would appear to be outdated given the reclassification of the investment debt as full blown government debt. As asset use charges (predominantly Track and Station access charges) are also underwritten by government a finance movement of the balance between debt and charges is an artificial construct and still a burden on public expenditure. Local schemes that (for example) increase station values could be funded by private debt with capped IRRs to encourage risk transfer from the public sector.

Question 22: How should financial risk be managed in Britain's rail infrastructure in the future?

This issue in our view is about risk allocation rather than how financial risk should be managed *per se*. We would see risk management processes as a basic tenant of infrastructure scheme management irrespective of funding structure. Given the government support for income (through track access grant, fares support through TOCs and direct project support through the current periodic review process) the railway effectively works in the mode of 'shadow tolling' as practised by Highways England in managing its DFBO contract roads (e.g. M40, A50) but within discrete five year cycles. This gives no genuine opportunity for risk transfer as the risk level is in effect reset every five years. Therefore a carry-over mechanism if five year reviews continue would seem to be prudent and capable of being used as a risk incentive tool. In terms of the question, the separating of operational financial risk and enhancement financial risk would add greater clarity and accountability.

Question 23 Do you have any views on how Britain's railway infrastructure should be funded in the future, regardless of corporate structure?

We see a situation where public funding is not required as unachievable in the medium term and possible into the longer term. The approach by which this funding is channelled to the industry needs to be revised. Protecting TOCs against unexpected five yearly review outcomes through support for increasing track access charges appears perverse given that the reclassification of NRs debt as public in effect discredits the five year review and independent arbitration process. Greater transparency of capital structure with capped IRRs on a scheme by scheme or route by route basis could be a possible way forward to provide accountability at the correct level. We see the role of LEPs and local government to channel funding as a critical driver for accountable investment using a partnership approach to ensure wider policy objectives are achieved.

Question 24: What positive case studies are there (e.g. international examples in the railway sector, other sectors internationally/in the UK), where more affordable and sustainable funding and financing structures have been implemented, with or without private sector capital input? And how do you think the lessons learnt could be applicable to Britain's railway infrastructure?

Question 25: What are your views on the enabling factors facilitating a sustainable and affordable capital structure for Britain's railway? What factors would be required specifically for private sector capital introduction?

The Council's principle interests are in service provision and infrastructure enhancements to allow service enhancements. The capital structure is not a key issue provided the cost of securing the capital does not affect the attractiveness of rail to users.

Question 26: What are the types of investors that may be interested in investing in Network Rail, any of its functions, or in select parts of it? And for these types of investors, can you indicate:

- key attractions;
- risk appetite;
- required enabling factors.

The Council's key issue in terms of investment channels is the availability of capital for enhancements that benefit the Council's residents and businesses rather than the institutional model employed. From the Council's perspective investment by third parties (e.g. property developers, local government and TOCs) in smaller enhancements should be made easier to allow rail to play its part in facilitating key priorities such as economic development and house building.

Question 27: What characteristics do you think enhancement projects would need to have to attract private sector investment and to what extent and in what form would public sector support would be needed? What types of financing structure could be brought to bear?

The Council's view is that long-term investment in enhancements requires a funding / debt servicing regime that is not automatically subject to five yearly review / resetting. Public service concession contracts to deliver and operate enhancements of relevance to the Council e.g. new stations could be a way of securing external funds with IRRs capped and 'clawback' mechanisms to protect against private sector 'super profits' made on the back of for any elements of parallel public investment. The Council has already played a part in securing planning based investment by third parties e.g. through planning processes and these should be recognised in any new structure as a way of funding enhancements, particularly those of a more local nature. Other sources of public funding should be explored in parallel to the seeking of private funds; these may include planning gain channelled through local planning authorities.

Question 28: What incentive mechanics or control structures on Network Rail would facilitate third party involvement in the financing of enhancement projects?

As discussed in our comments on question 27. The key is for NR to allow the third parties to construct suitable investment 'deals' without veto provided that long term asset integrity is guaranteed through step in rights and that overall Treasury funding requirements can be met.

Question 29: Do these feel like the right risks? Has anything been missed that it is vital to consider at this stage?

We see the speed of delivery as being key to an effective reset of the infrastructure providers structure. In this regard the examples of prompt delivery in Europe and France in particular should be considered.