

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2014-2015

HIGH SPEED RAIL (LONDON - WEST MIDLANDS) BILL

Against – On Merits - Praying to be heard by Counsel, &c.

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE PÉTITION OF THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS

SHEWETH as follows:-

1. A Bill (hereinafter called "the Bill") has been introduced into and is now pending in your honourable House entitled "A Bill to make provision for a railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Old Oak Common in the London Borough of Hammersmith and Fulham to a junction with the Channel Tunnel Rail Link at York Way in the London Borough of Islington and a spur from Water Orton in Warwickshire to Curzon Street in Birmingham; and for connected purposes".
2. The Bill is presented by Mr Secretary McLoughlin.
3. Clauses 1 to 36 set out the Bill's objectives in relation to the construction and operation of the railway mentioned in paragraph 1 above. They include provision for the construction of works, highways and road traffic matters, the compulsory acquisition of land and other provisions relating to the use of land, planning permission, heritage issues, trees and noise. They include – at Clause 2 – provisions for nominated undertakers to, among other things, carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of any of the works authorised by the Act. They include clauses which would disapply and modify various enactments relating to special categories of land including burial grounds, consecrated land, commons and open spaces, and other matters, including

overhead lines, water, building regulations and party walls, street works and the use of lorries.

4. Clauses 37 to 42 of the Bill deal with the regulatory regime for the railway.
5. Clauses 43 to 65 of the Bill set out a number of miscellaneous and general provisions, including provision for the appointment of a nominated undertaker to exercise the powers under the Bill, transfer schemes, provisions relating to statutory undertakers and the Crown, provision about the compulsory acquisition of land for regeneration, reinstatement works and provision about further high speed railway works. Provision is also made about the application of Environmental Impact Assessment Regulations.
6. The works proposed to be authorised by the Bill (“the Authorised Works”) are specified in Clauses 1 and 2 of the Bill and Schedule 1 to the Bill. They consist of scheduled works, which are described in Schedule 1 to the Bill and other works, which are described in Schedule 2 of the Bill.
7. Your Petitioner, the Royal Society for the Protection of Birds (the RSPB) is a body incorporated by Royal Charter dated 3 November 1904 and by Supplemental and Confirmatory Charter dated 24 April 1996. The RSPB is the largest nature conservation organisation in Europe, with a membership of over 1.1 million, over 30,000 of whom are resident in the local authority districts that will be directly affected by the construction and operation of the railway authorised by the Bill. The principal objects of the RSPB are to conserve wild birds and the wider environment on which wild birds depend, maintaining bird numbers, diversity and natural geographic distribution; to conserve natural and semi-natural habitats and to re-create habitats; to encourage others to practise the conservation of wild birds and habitats; and to promote knowledge of conservation through education and research. In furtherance of this object, the RSPB has been active in creating nature reserves throughout the United Kingdom and in May 2014 owned or managed 212 reserves, extending over more than 150,000 hectares. The RSPB’s land includes Middleton Lakes nature reserve in Warwickshire and Staffordshire, access to which will be affected by the works proposed to be authorised by the Bill. Your Petitioner works beyond its nature reserves to promote its objects throughout the UK, and is recognised by national and local government and other statutory agencies across the UK as having expertise on the effects of policy and development proposals on biodiversity in the area in which those whom it represents live. The RSPB’s principal office is at the Lodge, Sandy, Bedfordshire, SG19 2DL.

Our regional office headquarters with responsibility over the counties of Buckinghamshire, Oxfordshire, Northamptonshire, Warwickshire and Staffordshire and the Metropolitan District of Solihull is at 46 The Green, South Bar, Banbury, Oxfordshire, OX16 9AB. Our regional office headquarters with responsibility over the London Boroughs is at 1st Floor, Pavilion View, 19 New Road, Brighton, East Sussex, BN1 1UF. Our regional office headquarters with responsibility over the county of Hertfordshire is at Stalham House, 65 Thorpe Road, Norwich, Norfolk, NR1 1UD.

8. Your Petitioner's rights and interests are injuriously affected by the Bill, to which your Petitioners object for reasons amongst others, hereinafter appearing.
9. The RSPB is concerned that the information provided in the Environmental Statement is incomplete in key respects and therefore underestimates the full impacts of the scheme. We believe that further survey work should be undertaken in relation to impacts along the route on habitats and species of principal importance and habitats and species protected by legislation.
10. We are also concerned that no Biodiversity Offsetting report has yet been published by HS2 Ltd. Without clear and accurate information about the location and scale of expected losses/damage and gains/improvements to habitats of principal importance, we do not believe it is possible for Parliament or for HS2 Ltd to assess the impacts of the project proposals. A full report should be published as soon as reasonably practicable.
11. Information arising from the aforementioned surveys and report should be open to public consultation and the surveys, report and consultation responses should be considered by Parliament before final decisions are reached.
12. The RSPB believes that the Environmental Statement wrongly extends the definition of mitigation to include compensation, contrary to the approach set out in the National Planning Policy Framework ("the NPPF"). In the NPPF, compensation is defined as an option of last resort where harm cannot be avoided or mitigated. We are concerned that misapplying the concepts of mitigation and compensation has led to erroneous conclusions in the Environmental Statement about the levels of residual harm likely to be caused to, among other places, Mid Colne Valley Site of Special Scientific Interest ("SSSI") and Helmdon Disused Railway SSSI.

13. We explain our specific concerns in relation to the SSSIs below, but we emphasise this is a point of principle, as well as detail. We believe that by misidentifying compensation as mitigation, the Environmental Statement seriously misrepresents the level of adverse effect that the authorised works will cause to biodiversity and which must be addressed. Where harm cannot be avoided, or fully mitigated, such as at these SSSIs, residual adverse effects must be openly acknowledged and then addressed through compensation: creating that compensation does not “undo” the harm that was caused in the first place, which is what the Environmental Statement effectively says by concluding there is no residual adverse effect on these sites.
14. The RSPB considers that these deficiencies render the Environmental Statement unfit for its intended purpose. Our views on potential means of addressing the weaknesses of the Environmental Statement in this regard are set out below.
15. The RSPB is concerned that by using a modified form of the biodiversity offsetting metric found in the Defra offsetting pilot work, the method for calculating no net loss of biodiversity employed by the promoters of the Bill is flawed. As a result, the promised Biodiversity Offset report is unlikely accurately to account for losses and gains to habitats of principal importance. In particular, by including “irreplaceable” habitats such as ancient woodland within the biodiversity offsetting metric and implying that such habitats can be replaced by creating a significantly larger area of completely new habitat and by relocating woodland soils, the promoters of the Bill are likely to reach a false conclusion about the effects of the authorised works on biodiversity when the Biodiversity Offsetting report is published.
16. HS2 Ltd appears to accept in the Environmental Statement that habitats like ancient woodland are irreplaceable. Yet it contradicts itself by suggesting that compensation and offsetting is possible for these same habitats, in the 19 instances cited in the Environmental Statement where direct loss of ancient woodland is unavoidable. We believe that the promoters of the Bill cannot achieve their aim of no net loss to biodiversity, at least in terms of irreplaceable habitats. A more realistic and transparent approach would be to exclude irreplaceable habitats from the offsetting calculation, acknowledge the loss while carrying out the best possible mitigation, and aim for no net loss across the remaining habitats of principal importance.
17. Furthermore, we recommend that a clear audit trail of the impacts on habitats and other special features within SSSIs is provided completely separately from the Biodiversity

Offsetting report, identifying:

- residual adverse effects that cannot be mitigated and which require compensation;
- those residual adverse effects than can be compensated for (leading to no net loss);
and
- those residual adverse effects that cannot be compensated for (leading to net loss).

18. The RSPB is concerned that at Mid Colne Valley SSSI, HS2 Ltd has – without evidence to support its position – overlooked or downplayed likely residual adverse effects on open freshwater habitats and wintering and breeding birds of this habitat, which are features of special interest of this SSSI. We believe adverse effects are likely to arise owing to the direct and indirect loss of open freshwater habitats beneath a viaduct; by fragmentation of some remaining areas of open freshwater habitats by the same works; and by displacement of water birds from these habitats into other areas of the site which are already used by the same or similar bird species. Furthermore, by not acknowledging that the aforementioned effects are likely, or at least that there is a reasonable risk of these occurring, HS2 Ltd has not followed the precautionary principle and has not considered what further measures for mitigation and compensation should be employed. We are concerned that a false conclusion (or at least, an unsubstantiated one) has been drawn that there are no likely significant residual effects on the features of interest of Mid Colne Valley SSSI other than in terms of loss of ancient woodland. Our views on potential means of overcoming the weaknesses of the Environmental Statement in this regard are set out below.
19. The RSPB is concerned that at Helmdon Disused Railway SSSI, HS2 Ltd has reached an erroneous conclusion in the Environmental Statement that there are no likely residual significant effects on the habitats and other features of special interest of this SSSI. We believe that the correct conclusion should have been that there is an unavoidable adverse effect due to the partial destruction of the SSSI that cannot be mitigated, and therefore there is a residual adverse effect for which compensation is required.
20. Furthermore, we believe that a clear opportunity for effective mitigation has been overlooked by HS2 Ltd, namely the positioning of a habitat overbridge to reconnect the two parts of the SSSI once construction of the high speed railway at this location is complete. A bridge would have multiple benefits both in reducing the fragmentation effects on the SSSI that the Environmental Statement identifies as significant at a national level, and reducing the risk of Natterer's bats colliding with trains if they cross the route at this point, another issue raised in the Environmental Statement. A bridge

would obviate the need for the physical barriers currently proposed on either side of the route as it crosses this SSSI – barriers that may be effective at reducing collision risk to bats, but which are likely to exacerbate the fragmentation effects on the features of interest of the SSSI. A bridge could restore ecological connectivity and enable efficient management of the whole site – whether done by machine or by grazing animals – relatively quickly, while over a much longer timescale the adjoining compensation habitat begins to approach that within the SSSI in terms of quality. The habitat overbridge must be designed to bear a suitable depth of soil to sustain grassland and scrub vegetation, for occasional vehicles (e.g. a tractor) to pass over it, and wide enough to mitigate buffeting air currents on butterflies and other species for which the SSSI is designated. The amendment to the Bill that we seek to address this concern is described below.

21. The RSPB is concerned that the authorised works will lead to a significant adverse impact on the population of Bechstein's bats in the Bernwood Forest area, and perhaps even the total loss of this population in the longer term. Bechstein's bats are protected by virtue of being listed on Annex IV of Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and Part 3 of the Conservation of Habitats and Species Regulations 2010 (as amended). We believe that HS2 Ltd has not taken into consideration the highly equivocal scientific evidence for the potential of overbridges to mitigate barrier and habitat fragmentation impacts and collision mortality risks on bats. We are also concerned that the HS2 Ltd has not taken into consideration the length of time needed before the woodland habitats proposed to be created will become mature enough to function as effective mitigation for Bechstein's bats. Our views on potential means of overcoming the weaknesses of the Environmental Statement in this regard are set out below.
22. The RSPB is concerned that in respect of barn owls, the mitigation and compensation proposals do not include the full range of measures needed to address the impacts on this species. We believe that in addition to new nest boxes to be sited more than 1.5 kilometres from the railway works proposed to be authorised by the Bill, new foraging habitat will also be needed in the form of rough grassland to support and sustain barn owls using these boxes.
23. Furthermore, we are concerned that no mechanism has been identified so far that will enable the Secretary of State to secure mitigation or compensation for barn owls or any other species or habitat of importance beyond the limits of the works proposed to be

authorised by the Bill, which are generally much less than 1.5 kilometres from the line of the proposed high speed railway. Our views on potential means of securing such mitigation and compensation, including for barn owls (and any other species or habitat so affected), beyond the limits of the authorised works are set out below.

24. The RSPB is concerned that HS2 Ltd has made no provision for or commitment to monitor and review its predictions about the impacts of the authorised works. As previously stated, we are concerned that some of the predictions made in the Environmental Statement about impacts on statutory sites, and on species and habitats of principal importance, are based on equivocal scientific evidence or on no evidence at all. We are also concerned that HS2 Ltd has made some ambitious claims for the effectiveness of some mitigation and compensation measures, including the effectiveness of overbridges and the speed with which newly created habitats might approach maturity, but have made no commitment to monitor and review the effectiveness of those measures. Neither has HS2 Ltd explained what course of action might be needed if any of its predictions prove to be inaccurate. Our suggested means of addressing this concern are set out below.
25. The RSPB has described our various concerns about the impact on biodiversity of the works proposed to be authorised by the Bill. We request four amendments to the Bill which would help address these concerns, and a firm assurance in relation to the impacts of construction of HS2 on our interests at Middleton Lakes nature reserve.
26. The first amendment the RSPB seeks is the inclusion of a safeguarding clause in the Bill that confirms that no work will begin on construction of the authorised works until:
 - all ecological survey work has been completed and the results have been subject to consultation with experts who are not promoters of the Bill;
 - the mitigation and compensation package has been reviewed in light of this additional information, and;
 - the mitigation and compensation package has been agreed with interested parties as being deliverable and likely to succeed.
27. The additional information to be provided must include the Biodiversity Offsetting report and a “balance sheet” of impacts on sites, habitats and species that distinguishes clearly between adverse effects that can be mitigated in full, residual adverse effects than can be compensated for (leading to no net loss of biodiversity) and residual adverse effects that cannot be fully compensated for (leading to net loss of

biodiversity).

28. As stated above, we believe that irreplaceable habitats should be excluded from the Biodiversity Offsetting metric, and that there should be a clear audit trail of the impacts on habitats and other features of interest within SSSIs provided separately to the Biodiversity Offsetting report
29. The second amendment we seek is for the Bill to include a clause providing the Secretary of State with powers to secure additional mitigation and compensation measures outside the current limits of the Bill, where these are necessary. Such measures have already been identified by HS2 Ltd as necessary to mitigate impacts on barn owls, by providing nest boxes on land outside the limits of the Bill. Other similar measures may well prove necessary if any of HS2 Ltd's assumptions about impacts on features of nature conservation interest prove wrong. We identify three possible alternative approaches.
30. First, the Bill could be amended to grant powers to the Secretary of State to acquire additional land compulsorily where he considers that the construction or operation of Phase One of High Speed 2 gives rise to a need for mitigation or compensation that cannot be met within the current limits of the Bill. Such an amendment could closely follow the format of Clause 47(1), wherein the Secretary of State is granted powers to acquire land for regeneration or development purposes. This is our preferred approach, because it provides guarantees that additional mitigation or compensation can be secured, and does not rely on a voluntary approach by willing land owners.
31. A second option would be for an amendment to the Bill to grant the Secretary of State power to establish a biodiversity mitigation and compensation fund against which bids can be made to carry out measures needed beyond the limits of the Bill. Such an approach is consistent with that carried out in relation to High Speed 1 (the Channel Tunnel Rail Link) but has the drawback that it still relies on willing land owners outside the limits of the Bill to implement effective mitigation or compensation on behalf of the Promoters of the Bill, and there are fewer guarantees that such measures can be secured in perpetuity.
32. The third option would be for the limits of the Bill to be altered before Third Reading to encompass sufficient additional land to guarantee that the full range of additional mitigation and compensation measures likely to be needed can be delivered within it.

We recognise that this could be a problematic solution given that the interests of many additional land owners and occupiers might be affected.

33. The third amendment to the Bill that the RSPB seeks is for a requirement to be placed on the promoters of the Bill to establish an ecological review group with appropriate terms of reference and process of arbitration to be determined. Such a group should comprise representatives from the promoters of the Bill, the relevant statutory agencies and other appropriate ecological experts. The terms of reference for the ecological review group should include:

- receiving annual reports from the promoters of the Bill based on a monitoring programme of loss and damage to biodiversity arising from construction and operation of High Speed 2;
- receiving annual reports on the delivery and performance of the mitigation and compensation package;
- the right to scrutinise the field data gathered for the purpose of these reports;
- identifying remedial action to be carried out by the promoters where implemented mitigation and compensation measures are shown not to be working as anticipated; and
- offering advice on the dispensation of funds for mitigation and compensation measures outside the land covered by the Bill, if such a fund is established.

34. The fourth amendment to the Bill that the RSPB seeks is that the list of works within the Parish of Radstone at Schedule 1 of the Bill the works as shown on sheet 2-77 (Volume 2.2, Calvert – Burton Green) should be amended to include the provision of a habitat overbridge to reconnect the remaining parts of Helmdon Disused Railway SSSI as described above.

35. In addition to the above amendments to the Bill, the RSPB seeks a firm assurance or undertaking from the promoters of the Bill in relation to our interests and rights over land near Middleton Lakes nature reserve, in Warwickshire. We rely on access via Bodymoor Heath Lane to enter Middleton Lakes nature reserve, which we own and manage for nature conservation and public enjoyment of nature. We enjoy a permanent easement along the track leading from Bodymoor Heath Lane opposite Primrose Cottage, running north towards Coneybury Farm. The permanent easement provides for your petitioners to pass and re-pass, over and along the track at all times and for all purposes. The easement also allows for access with or without vehicles including coaches, buses, minibuses, cars, bikes, heavy goods vehicles and agricultural vehicles.

The easement is for use by us, and our agents, visitors, members, contractors, employees and all others authorised by us. Part of Bodymoor Heath Lane, its junction with the A4091 Tamworth Road, its junction with the aforementioned track, and part of the track itself are shown within the limit of land to be acquired or used as shown on sheet 3-52 (Volume 3.2, Curdworth – Handsacre) deposited with the Bill. We request confirmation that the rights of your petitioners, their members, and members of the general public to enter and enjoy Middleton Lakes nature reserve will not be unreasonably obstructed during construction of the works proposed to be authorised by the Bill.

36. For the foregoing and connected reasons your petitioners respectfully submit that, unless the Bill is amended as proposed variously above, and a clause added to the Bill requiring a net gain of biodiversity to be secured, and that the Bill is revised as a result of further ecological investigations, the Bill should not be allowed to pass into law.
37. There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioners and their rights and interests and for which no adequate provision is made to protect your Petitioners.

YOUR PETITIONER THEREFORE HUMBLY PRAY your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their Counsel, Agents and witnesses in support of the allegations of this Petition against such of the clauses and provisions of the Bill as affect the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.



Colin George Frank Wilkinson

Agent for the Royal Society for the Protection of Birds ("The RSPB")

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2014-15

HIGH SPEED RAIL
(LONDON - WEST MIDLANDS)
BILL

PETITION OF THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS

AGAINST, By Counsel, &c.

Colin G F Wilkinson

RSPB

[Redacted]

[Redacted]

Tel: [Redacted]