

HOUSE OF LORDS

Select Committee on the High Speed Rail  
(London - West Midlands) Bill

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Special Report of Session 2016–17

# High Speed Rail (London - West Midlands) Bill

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### *Select Committee on the High Speed Rail (London - West Midlands) Bill*

The Select Committee on the High Speed Rail (London - West Midlands) Bill provides individuals and bodies directly and specifically affected by the bill with the opportunity to object to the bill's specific provisions and to seek its amendment, although not to object to the principle of the bill.

### *Membership*

The members of the Select Committee on the High Speed Rail (London - West Midlands) Bill are:

Lord Brabazon of Tara	Baroness O'Cathain
Lord Elder (from 25 May 2016)	Lord Plant of Highfield (until 25 May 2016)
Lord Freeman	Lord Walker of Gestingthorpe (Chair)
Lord Jones of Cheltenham	Lord Young of Norwood Green

### *Declaration of interests*

See Appendix 1

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

### *Publications*

All publications of the Committee are available at:

<http://www.parliament.uk/high-speed-rail-london-west-midlands-bill-select-committee-lords>

### *Parliament Live*

Live coverage of public sessions of the Committee's meetings are available at:

<http://www.parliamentlive.tv>

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## SUMMARY

We were appointed on 5 May 2016 and we heard our final petition on 1 December. Across 101 public meetings of the Select Committee on 64 sitting days, we heard almost 300 *locus standi* challenges and over 300 substantive petitions. While this does not equate to the length of proceedings in the House of Commons, our task has nevertheless been an onerous one. We are grateful both to the petitioners who appeared before us and to the promoter. For the most part, our meetings were conducted in a courteous and constructive atmosphere.

This bill is controversial and we have been left under no illusions as to the strength of feeling it generates. The bill, following its remaining stages in the House of Lords and Consideration of Lords Amendments in the House of Commons, is likely to gain Royal Assent shortly. We suggest that this only represents the end of the beginning for this project. As the railway is constructed over the coming years, it will be imperative that the promoter engages effectively with all interested parties to ensure that, as far as possible, disruption and inconvenience are kept to a minimum. In this regard, the promoter faces an enormous task and we cannot stress enough the importance of effective and timely public engagement, something which, we were told time and again, could be improved upon.

Turning to our principal, general recommendations, we have deleted subsections (1) to (3) of Clause 48 of the bill as they are undesirable and unnecessary. On compensation, we consider that those households in Camden and other urban areas, which are most severely threatened by construction noise, should be treated in the same way as if they were within 120 metres of the line of route in an area where the Rural Support Zone (RSZ) applies. The consequence is that owner-occupiers in these areas will be entitled to participate in the Voluntary Purchase Scheme, including its Cash Option. This is, as we acknowledge, a bold recommendation but we conclude that the Secretary of State's non-statutory compensation scheme does not at present strike a fair balance between town and country residents, mainly because it is based on the incorrect assumption that it is inconvenience and disruption during the operational phase that is the sole or main grievance for those who live close to the line of route. Clause 48 is addressed in Chapter Ten. Additional compensation is addressed mainly at the end of Chapter 7 and at the end of Chapter 8.

# High Speed Rail (London - West Midlands) Bill

## CHAPTER 1: INTRODUCTION

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### The HS2 Phase One hybrid bill

1. The High Speed Rail (London - West Midlands) Bill contains the legislative powers required to construct Phase One of a proposed new national high speed rail network, High Speed 2 (referred to hereafter as HS2).<sup>1</sup> HS2 will be the first major rail route to be constructed north of London since the nineteenth century. Phase One (“HS2(1)”) involves the construction of new high speed lines between London and the West Midlands. The central London terminal is to be at Euston Station (which will be reconfigured) and the central Birmingham terminal at Curzon Street. Intermediate stations will be located at Old Oak Common, West London (linking with Crossrail), and at Birmingham Airport. The new lines will connect with the existing rail network at Handsacre, north of Lichfield, thus enabling the expansion of the high speed rail network in the future.
2. It is anticipated, subject to the passage of the bill and the receipt of Royal Assent, that construction of HS2(1) will begin in 2017, and will be completed and operational by 2026. The Government have stated that they aim to introduce, in due course, a further hybrid bill which would make provision for Phase 2a (“HS2(2a)”), taking the line to Crewe by 2027, and a third bill for the rest of Phase Two (“HS2(2b)”), with the extended network to be open by 2033.
3. The High Speed Rail (London-West Midlands) Bill, promoted by the Department for Transport (the promoter), is a hybrid bill. This means that while it is a public bill (of general application and giving effect to Government policy), it contains provisions which adversely affect the private interests of certain individuals and organisations. Procedurally, this means that while for most purposes it proceeds as a public bill, during certain stages of its passage it is treated in a similar way to a private bill. The hybrid bill procedure enables persons whose property interests are directly and specially affected by the provisions of the bill, and also (as a matter of discretion) bodies and individuals concerned on behalf of community interests, to deposit a petition<sup>2</sup> against the bill and be heard in public proceedings in a Select Committee under a quasi-judicial procedure akin to that used for private bills.
4. The bill was introduced to the House of Commons on 25 November 2013. Its two volumes were accompanied by a 50,000 page environmental statement setting out the local and route wide effects of HS2(1). It was given a Second Reading on 28 April 2014 and the bill was committed to a Select Committee following the agreement of a motion in the House of Commons on 29 April 2014.

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1 The construction of the railway will be carried out by one or more Nominated Undertakers. It would seem likely that one of these will be HS2 Ltd which has thus far been responsible for design preparation.

2 A petition is a summary of objections to particular aspects of the bill.

### The House of Commons Select Committee

5. Proceedings in the House of Commons Select Committee were extremely lengthy. 2,586 petitions were deposited against the bill and its Additional Provisions, of which 1,918 petitions were deposited against the bill itself and 668 were deposited against Additional Provisions.<sup>3</sup> The Select Committee began sitting in July 2014 and concluded hearings in February 2016 after 160 days of sittings.
6. During proceedings in the House of Commons Select Committee, five sets of Additional Provisions were introduced. Additional Provisions (as is more fully explained in Chapter 2) are significant changes which are likely to lead to a further round of petitions. In the House of Commons, the changes were either initiated by the Government or requested by petitioners. They consisted mainly of changes to the areas of land to be compulsorily acquired under the bill, or to the particular works detailed in its schedules. The Additional Provisions were accepted by the Select Committee and included in the bill. A number of changes to the clauses of the bill were also proposed to the Select Committee, and accepted by them.
7. The House of Commons Select Committee produced three reports:
  - House of Commons High Speed Rail (London–West Midlands) Bill Select Committee, *First Special Report of Session 2014–15*, HC 338, 23 March 2015.
  - House of Commons High Speed Rail (London–West Midlands) Bill Select Committee, *First Special Report of Session 2015–16*, HC 698, 17 December 2015.
  - House of Commons High Speed Rail (London–West Midlands) Bill Select Committee, *Second Special Report of Session 2015–16*, HC 129, 22 February 2016.
8. There is a great deal of valuable background and contextual material in these reports and we do not intend to summarise or duplicate such material here. We do, however, wish to highlight, by way of context for our proceedings, the Committee’s summary of its work, as set out in its final report, *Second Special Report of Session 2015–16*:

“We have directed a number of amendments to the proposed HS2 Phase One project. Notably, we have directed a longer Chilterns bored tunnel, greater noise protection for Wendover, better construction arrangements in Hillingdon, and a remodelled maintenance depot at Washwood Heath to maximise local job opportunities. We have said there should be a coherent approach to the redevelopment of Euston.

In many cases not specifically mentioned in this report we have intervened to encourage fairness, practical settlements, the giving of assurances, or better mitigation.

We have recommended amendments to the operation of the discretionary compensation schemes which we believe will result in greater fairness

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<sup>3</sup> House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, *Second Special Report of Session 2015–16*, HC 129, 22 February 2016, para. 2. Available online: <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf> . We refer to this report frequently; we do not intend to provide the full reference on each occasion.



and a more functional property market in areas near to the proposed line.”<sup>4</sup>

The recommendations proposed and directions given by the House of Commons Select Committee were agreed very substantially, indeed almost in full, by the promoter.

9. Following proceedings in the Select Committee, the bill was committed to a Public Bill Committee which sat in March 2016 and made no amendments to the bill. Report Stage and Third Reading were held on 23 March and the bill was sent to the House of Lords.

### **Appointment of the House of Lords Select Committee**

10. The bill was introduced into the House of Lords on 23 March 2016 and received its Second Reading on 14 April. We were appointed on 5 May with the following membership:

- L Brabazon of Tara (Conservative)
- L Freeman (Conservative)
- L Jones of Cheltenham (Liberal Democrat)
- B O’Cathain (Conservative)
- L Plant of Highfield (Labour)
- L Walker of Gestingthorpe (Crossbencher and *Chairman*)
- L Young of Norwood Green (Labour).<sup>5</sup>

Shortly following appointment, Lord Plant of Highfield resigned due to ill health. He was swiftly replaced by Lord Elder from the Labour benches. Prior to appointment, proposed Members of the Committee had to be clear that they had no local or personal interests in the bill, thus ensuring their impartiality. We agreed at the outset that Lord Freeman would serve as informal deputy Chairman and informal Whip. Our quorum was stipulated to be four, though there was seldom an occasion when this was threatened. All seven Members were present for at least 90 per cent of our hearings.

### **A review of hybrid bill procedure**

11. On 19 May 2016, coincidentally the day that our formal proceedings opened, a review of hybrid bill procedure was launched jointly by the Chairman of Ways and Means in the House of Commons and the Chairman of Committees in the House of Lords.<sup>6</sup> That there should be a review of how to modernise procedure on hybrid bills was a recommendation of the House of Commons Select Committee in its *Second Special Report*. Guidance stated that submissions should initially address experience of Commons procedures

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4 House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, *Second Special Report of Session 2015–16, HC 129*, 22 February 2016, Summary. Available online: <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>

5 Party balance was the same as that for the previous Lords hybrid bill Committee: See House of Lords Select Committee on the Crossrail Bill, *First Special Report of Session 2007–08, HL 112*, 27 May 2008. Available online: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcross/112/112.pdf>

6 See: <http://www.parliament.uk/business/news/2016/may/review-of-petitioning-procedures-on-Hybrid-bills/> [accessed 1 December 2016]

only. Lords procedures would be consulted on at a later date when there had been experience of petitioning before the Lords Committee. This latter consultation was launched in November 2016.

12. We do not wish to dwell unduly on this ongoing review in our report—we made an initial submission to the review earlier this year and will make a further submission now that our proceedings have concluded—but the review did provide important context. If hybrid bill procedure, and the experience of following it in the House of Commons Select Committee, had been considered to be appropriate and fit for purpose, a review would not have been recommended by that Committee, or jointly commissioned by the Chairmen. Time and again during our proceedings, we encountered difficulties with the current procedure. It became abundantly clear to us that petitioners found it cryptic and complex to understand, and labyrinthine to navigate.
13. We hope that the review can, in due course, devise a radically reformed hybrid bill procedure which rationalises and clarifies the current system. We sincerely hope to have been the last Select Committee to operate under the current procedure. As noted above, our report is not the vehicle for informing the review; nevertheless, in describing the process we followed, it is inevitable that we may occasionally make observations which are pertinent to the review.

### Acknowledgments

14. Before setting out in the following chapter the nature of our role and how we conducted our work, it is important that we acknowledge a wide range of people who contributed to the operation and work of the Select Committee. The machinery underpinning the operation of a Committee such as this one is very considerable, with a cast of thousands and many moving parts.
15. We wish to thank: David Walker, Programme Manager, who timetabled the hearings with tact, skill and diplomacy; Lucy Lagerweij and her Parliamentary Management Team at HS2 Ltd. who provided appropriate and helpful assistance to the Committee, not least in the provision of the voluminous evidence folders; the promoter's counsel and expert witnesses, who were courteous and professional throughout; the doorkeepers, the *Hansard* reporters, the broadcasting and sound staff, who attended every minute of our public hearings and who performed their duties admirably; MPs and their staff for whom helping constituents with negotiating the petitioning process has been a major undertaking; local authorities and their officers for whom engaging with the process has made heavy demands on their resources (which in the case of many rural parish councils are very limited); and Residents' Associations and similar groups which worked tirelessly to prepare their submissions.
16. Above all, however, we wish to acknowledge the hundreds of individual petitioners who travelled to Westminster in their own time, and at their own expense, to come to Committee Room 4 and have their say. We acknowledge that many found the process stressful and esoteric. We must also reserve a word for the Roll B agents, stalwarts of their local communities, who represented large numbers of individual petitioners and went to great lengths to co-ordinate and organise submissions.

17. Finally, we must express our thanks and appreciation to the staff of the Committee, led by our Clerk, Christopher Clarke, who has throughout our proceedings been unfailingly diligent, tactful and a source of wise advice. The Committee and Christopher Clarke also wish to pay tribute to the Clerk to the House of Commons Select Committee, Neil Caulfield, whose death at an early age occurred as we were beginning our work. He gave superb service to the Commons Committee and he is deeply missed. The Clerk to our Committee wishes to place on record the debt that he owes to Neil for briefing him on the HS2 project, and hybrid bills generally, ahead of our proceedings.

## CHAPTER 2: THE SELECT COMMITTEE IN THE HOUSE OF LORDS

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### Who petitioned?

18. The petitioning period ran from Thursday 24 March 2016 (the day after First Reading in the House of Lords) to Monday 18 April.<sup>7</sup> In total, 821 petitions were deposited. This number was far less than had been deposited in the House of Commons but was broadly consistent with previous experience of the number of petitions deposited in the Second House. Almost all those who deposited petitions had also done so in the House of Commons.

### The Role of the Select Committee

19. Select Committees considering hybrid bills do not operate in the same way as other Select Committees. They are quasi-judicial in nature, and function in a way more akin to a court. We were mindful throughout of this distinction. We took the view that it was undesirable and inappropriate to engage in protracted correspondence outside of the proceedings in Committee. We therefore discouraged petitioners from writing to us, with some effect.
20. Our role was to address petitions arguing for mitigation, compensation and adjustment to meet adverse effects of the bill on particular interests. It was not our role to consider any objections to the principle or policy of the bill, which was a matter settled at the Second Reading debate. The principle of the bill includes the route (within the limits of deviation) as proposed in the bill. Most petitioners understood the limited extent of our powers. There was, however, some debate about whether we, as a Committee of the Second House, could consider changes to the bill which would require an Additional Provision. As noted above, five sets of Additional Provisions were brought forward in the House of Commons.

### Additional Provisions

21. An Additional Provision (AP) is a change to the bill that goes beyond the scope of the existing bill powers. The *Second Special Report* of the House of Commons Select Committee put it as follows:

“Additional provisions are amendments to the Bill powers which go beyond the scope of the original proposals and which may potentially have adverse direct and special effects on particular individuals or bodies, over and above any effects on the general public.”<sup>8</sup>

22. The previous House of Lords hybrid bill Select Committee on the Crossrail Bill had set out its view on whether it had the power to make an amendment which would have given rise to an Additional Provision as follows:

“On a Private Bill, it is not possible to introduce a Petition for Additional Provision in respect of a Bill in the Second House, as this is expressly forbidden by Private Bill Standing Order 73. Procedure in a Select Committee on a hybrid bill ‘broadly follows the procedure on

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7 The 26 day petitioning period compared with 22 days afforded to the Crossrail Bill and 18 days for the Channel Tunnel Rail Link Bill—the last two hybrid bills.

8 House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, Second Special Report of Session 2015–16, HC 129, 22 February 2016, para. 8. Available online: <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>

an opposed private bill'. We therefore concluded that we had no power to make an amendment which would have amounted to an Additional Provision, unless we were specifically instructed to do so by the House. We received no such instruction.”<sup>9</sup>

23. We heard extensive procedural argument on the issue of Additional Provisions on 30 June 2016 and we made our ruling on 7 July (Appendix 3). It bears reading in full, but in summary, we ruled, in line with the settled practice, that we had no power to make an amendment to the bill which would amount to an Additional Provision, unless we were instructed to do so by the House. No such instruction was received.
24. We took the view that for the House to give an instruction for an Additional Provision to be included in the bill would be contrary to well-settled practice—practice based on principles of fairness. Although a hybrid bill is a public bill, it resembles a private bill in that it adversely affects private interests, and fairness requires that those affected should have the opportunity of presenting petitions against the bill in both Houses of Parliament. Those adversely affected by an Additional Provision ordered in the House of Lords, as Second House, would be denied that opportunity in the House of Commons, as First House, unless the bill were to be returned to a Select Committee of the Commons.
25. The crucial point is that almost every Additional Provision which solves or mitigates difficulties for one group of people raises new difficulties for another group. That is why petitions against Additional Provisions are permitted and why parliamentary practice regards it as unfair for Additional Provisions to be introduced in the House of Lords as Second House.
26. During proceedings, we did not entirely close down argument for measures which, the promoter asserted, would require an Additional Provision, as we thought it appropriate that petitioners were given opportunity to make their case. On all occasions, however, once it became clear to us that an Additional Provision would be required we could not support the petitioner’s case.

### **Working practices and programming**

27. We decided that we would first hear from petitioners from the Birmingham area and proceed south-east along the route. We determined, however, that we would pause our south-bound journey after the Parliamentary summer recess and hear petitioners from the Euston and Camden areas before resuming progress south. Petitioners from the Euston and Camden areas had been heard last in the House of Commons and we were made aware of a perception that they had been disadvantaged by appearing at the end of almost two years of hearings. We appointed Mr David Walker of Winckworth Sherwood as Programme Manager, a role that he had fulfilled in the House of Commons most effectively, and did so again.
28. We also agreed to undertake site visits, though they would be different in character to those conducted by the House of Commons Select Committee. We decided that they would be exercises in basic route familiarisation only and would not involve public engagement or the hearing of petitions by proxy. On 24 and 25 May 2016, we visited the Birmingham area and travelled along

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<sup>9</sup> House of Lords Select Committee on the Crossrail Bill, *First Special Report of Session 2007–08*, HL 112, 27 May 2008, para. 26. Available online: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcross/112/112.pdf>

the route as far south as Steeple Claydon in North Buckinghamshire. On 5 September, we visited the Euston and Camden areas. On 19 October, we visited Buckinghamshire (taking in localities from which we received many petitions, such as Wendover and Great Missenden) and the Hillingdon area in West London, and on 25 October, we visited Old Oak Common. All these visits were valuable exercises and we are grateful to all those involved in their organisation, especially Jeffrey Wright, Select Committee and Witness Manager, HS2 Ltd.

29. Our proceedings opened on 19 May 2016 when we heard the Opening Statement from the promoter and were given an overview of the project from an engineering perspective by Professor Andrew McNaughton, Technical Director, HS2 Ltd. By way of background and to assist us in our work, we heard further presentations from the promoter in the sittings that immediately followed on compensation, environmental controls and noise (a presentation on tunnelling followed later). As part of the noise presentation, we visited the Arup sound laboratory for a demonstration of the noise which might be made by a high speed train as it passed a location in the Aylesbury area as compared to ambient noise. All these presentations and the visit to Arup were instructive.
30. All our meetings, except private deliberative meetings, were held in public, broadcast on Parliament TV, and recorded in verbatim transcripts made available on our website the following day. Exhibits submitted for petition hearings were also posted on our website.

#### *Locus Standi* (the right to be heard)

31. Having heard the promoter’s introductory presentations, our first substantive task was to consider *locus standi* challenges. In order to be heard as of right, petitioners against hybrid bills need to be able to show that provisions of the bill directly and specially affect them in respect of their own property rights; the function of the petitioning process being specifically to protect those who may suffer particular adverse effects beyond effects felt by the public at large. Petitioners who cannot show that they are specially and directly affected by the bill are ruled to lack *locus standi*. This means that they are not permitted to present their petitions before the Select Committee, except possibly under the discretions in Standing Orders (SO) 117 and 118 of the House’s *Standing Orders relating to Private Business*.
32. In the House of Commons, the promoter took a cautious approach to challenging *locus standi*; just 24 out of 1,918 petitioners were challenged.<sup>10</sup> The House of Commons Select Committee commented in its *Second Special Report* that this approach was “understandable.” The Committee continued:
 

“At the start of proceedings and without the benefit of a recent comparable hybrid bill on which to base its decisions, a hybrid bill committee could be expected to want to show latitude to petitioners. (On Crossrail, the promoters challenged no petitions at all.)”<sup>11</sup>

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10 22 of the 24 challenges were upheld. The promoter challenged the *locus standi* of 35 out of 182 AP2 petitions, three out of 144 AP3 petitions, 165 out of 278 AP4 petitions, and 13 out of 22 AP5 petitions. None of the AP1 petitions was challenged.

11 House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, Second Special Report of Session 2015–16, HC 129, 22 February 2016, para. 393. Available online: <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>

The Committee, however, added: “With the benefit of nearly two years’ experience, we believe that there should be a stricter approach to *locus standi*.”<sup>12</sup>

33. The promoter heeded this conclusion and took a radically different approach in the House of Lords, challenging 414 of 821 petitioners. Petitioners, understandably, were confused and dismayed. They could not comprehend how they could have *locus* in the House of Commons but not in the House of Lords. Moreover, they found the documentation provided by the promoter explaining the reasons for the challenge arcane, opaque and unhelpful. We have considerable sympathy with them. The issuing of *locus* challenges was a matter for the promoter but it was clear to us that the promoter’s radical shift in approach, and the manner in which it was done, did little to ameliorate already strained relations between the promoter and some petitioners.
34. *Locus standi* hearings were held in June and July 2016. We allowed 25 petitioners to return and present their petitions. Some of them established *locus standi* as of right, and others obtained an exercise of discretion under SO 117. The promoter dropped challenges against 22 petitioners after considering our initial rulings. We upheld the rest of the challenges we heard. In all, 47 petitioners (about 11 per cent) progressed to a full hearing of a petition that had been challenged. Many petitioners (almost 100), after studying the Committee’s initial rulings, did not take up the opportunity to defend their *locus*.
35. Our five substantive rulings on *locus standi* can be found in Appendix 2 and we will not repeat our reasoning here. But we stress that the review of hybrid bill procedure should have particular regard to the standing orders governing *locus standi* and a range of ancillary issues to which our rulings allude. The rules governing *locus standi* and the current procedure are not fit for purpose. We were compelled to take a firm line, being bound by the current rules. But we were well aware that we were operating in an anachronistic nineteenth century framework that did not serve petitioners well—nor ourselves in trying to give petitioners a proper hearing.

### Hearing petitions and approaches to decisions

36. In July 2016, we began hearing from petitioners whose *locus* had not been challenged or to whom we had granted *locus*, starting in the Birmingham area. This was not a straightforward task. Throughout the process, we were frequently met with marked differences between the claims of petitioners and the responses of the promoter. It was also problematic to try to mediate between, and if possible reconcile, competing interests in the same area—where, for instance, a County Council, a Parish Council, a Residents’ Group and individual petitioners might, to a greater or lesser extent, be in conflict. Throughout, we have tried to balance individual, local and commercial interests with the wider national interest, including the interests of taxpayers and constraints on public expenditure.
37. We encouraged petitioners, when raising the same or very similar issues, to group together and avoid undue duplication and repetition.<sup>13</sup> We were

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<sup>12</sup> House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, Second Special Report of Session 2015–16, HC 129, 22 February 2016, para. 394. Available online: <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>

<sup>13</sup> We made a procedural statement to these ends on the morning of 19 July 2016.

mindful of the extent to which repetition and duplication had characterised much of the proceedings in the House of Commons. We had some limited success in reducing repetition and we are grateful to those petitioners who appreciated that we were not assisted by constant repetition of essentially the same points. It was, and remains, our clear view that there is no relationship between repetition and persuasiveness.

38. It became clear at an early stage that an important, if not principal, purpose of our hearings was to provide a forum for petitioners and the promoter to discuss outstanding issues. Petitioners and the promoter would frequently draw attention to prior correspondence and it was clear that the prospect of a hearing had served to concentrate minds and inject some momentum and urgency into discussions which may have stalled. It was uncanny how petitioners, often after a period of silence, would receive correspondence from the promoter in the days prior to their hearing, if not the night before.
39. We heard many complaints from petitioners that the promoter was slow to respond during negotiations and that interaction with the promoter could be sporadic and frustrating. Moreover, it was put to us that the promoter seemed, on occasion, to wish to go back on commitments previously given in good faith. It is impossible for us to come to a judgment on all such allegations, but as the bill moves towards Royal Assent and the building of the railway begins, it will be imperative that communication between the promoter and petitioners is timely and constructive—on both sides. We consider this issue further in Chapter Ten.
40. Over 100 petitioners chose not to appear before us at all and many formally withdrew their petitions—not least a host of corporate petitioners—after the completion of satisfactory negotiations with the promoter. We were glad that numerous petitioners were either able to settle with the promoter in this way, or at least appear before us with a much reduced list of petitioning points. In several cases, we encouraged petitioners and the promoter, when they appeared close to possible agreement at our hearings, to continue to negotiate and reach a satisfactory outcome. This seemed a better and more practical way to proceed than for us to intervene heavy-handedly. The Clerk to the Committee has sought to monitor the progress of negotiations and in certain instances we asked the promoter to provide updates where we were anxious that negotiations were fractured or stalling. It has not been an easy task to keep the progress of negotiations under review, but we hope that we have been able to provide direction and prompt action where we felt commitments and assurances were not being honoured as diligently as they ought to have been.
41. The following chapters contain some general recommendations as well as conclusions and comments on specific petitions and specific areas affected by the bill. The bill itself contained mitigation against adverse effects and Additional Provisions brought forward in the House of Commons have provided further mitigation. For the most part, we have commented only on cases where we thought it necessary to intervene.<sup>14</sup> In all other cases, we were either satisfied with the undertakings and assurances offered by the promoter to the petitioner, or we were satisfied that the successful completion of well-progressed negotiations would suffice.

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14 Such an approach was adopted by the House of Commons Select Committee.



42. The Register of Undertakings and Assurances is an important resource in this regard. Maintained by the promoter, it details all commitments offered throughout the parliamentary proceedings of the bill, recording in a single document all the individual undertakings and assurances given to petitioners and to Parliament. The Register will help to ensure that the nominated undertaker, the Secretary of State for Transport, and any other organisation exercising the powers provided for by the Act, complies with them throughout the project.

### Directions given during proceedings

43. In certain cases, we decided that a specific, early decision, ahead of our report, would be desirable—to avoid uncertainty in stressful cases and to allow detailed, time-consuming work to commence.
44. On 20 July 2016, we ruled that Robert and Patricia Edwards (petition no. 011), whose personal circumstances and livelihood are severely affected by the railway, should receive a home loss payment and should be paid any additional costs such as stamp duty land tax on a replacement residential property, domestic removal costs and similar extras that might be payable, had their property been located within the safeguarded area. Our ruling was accepted by the promoter and we sincerely hope that the promoter and the petitioner can work together effectively to ensure that the outcome we directed is achieved.
45. In a similar vein, on 16 November 2016, we heard the petition of Mr Paul Kelleher and his wife, Sonia Kelleher (petition no. 263), who live at Hill House, Chalfont Lane, West Hyde, in very close proximity to what will be the largest and busiest of all the compounds in the entire HS2 Phase One project. We ruled the following day that the promoter should offer to acquire their house on the same terms, including home loss payment, as if their house had been safeguarded and acquired under the express purchase scheme.
46. On 21 November 2016, at the end of a protracted sitting where we did not reach all the petitioners due to be heard that day, we indicated our provisional view that the case of Mr Gustavson (one of the petitioners we did not reach) ought to be treated in the same way as the two petitioners referred to above. The promoter heeded our steer and duly offered Mr Gustavson (petition no. 066) the same terms for acquisition of his land as if it were being compulsorily acquired.

### This report

47. The following chapter considers specific petitions about which we wish to make a recommendation or comment. Chapters 4 to 6 set the petitions mentioned in Chapter 3 in their geographical context and refer briefly to some other decisions. In Chapter Seven, we have described the Euston and Camden areas in some detail since parts will be severely affected during the lengthy construction phase, and we make some far-reaching recommendations as to compensation. Chapter 8 is solely dedicated to the issue of compensation, and will be of interest to many petitioners. Similarly, Chapter 9 on environmental issues and Chapter 10 on other route-wide issues have general applicability, as well as providing comment on specific cases.

48. Appendix 4 details the amendments we have made to the bill. Our most substantial amendment is to Clause 48, but we have also amended Clause 4 to omit a parcel of land at Coleshill. The other amendments are technical in nature and were proposed to us by the promoter. We are happy to accept them. Appendix 5 contains our ruling on the case of Clive and Margaret Higgins (petition no. 180), residents of Rosehill Farm, Steeple Claydon. Due to ill-health, Mr Higgins was not able to travel to Westminster, so we had to consider written submissions from the petitioner and the promoter. Appendix 7 considers two petitions heard very late in the process where we only very recently received written submissions. Finally, to assist the reader in understanding some of the detail that follows, we highlight the numerous maps available on the promoter's website.<sup>15</sup>

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<sup>15</sup> See: <https://www.gov.uk/government/collections/hs2-plan-and-profile-maps-between-london-and-the-west-midlands>

## CHAPTER 3: DIRECTIONS ON SPECIFIC PETITIONS

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### Introduction

49. As noted in the previous chapter, we do not intend to comment on all the petitions that we heard or the countless issues that were raised. In this chapter, we will only discuss a small number of cases where we feel that comment or direction is necessary. Later chapters have wide applicability and will be of interest to a great many petitioners. Individuals and communities to which we do not expressly refer in this chapter, or those that follow, may be disappointed, but they should not conclude that we are dismissive of their concerns, merely that either we do not recommend, or we cannot envisage, what further mitigation could be proposed when balanced against the need to build the railway. Alternatively, we judged that petitioners' concerns could be covered generically, for example, under the headings of compensation (Chapter 8) or route-wide issues (Chapter 10).
50. It is up to petitioners to make the case for alterations to the scheme. On many occasions we were left unconvinced that measures proposed by petitioners were either proportionate, necessary or desirable. We do not intend this conclusion to be a criticism, but the current procedure is often seen by petitioners as an invitation to address technical matters such as, by way of example, issues of engineering, traffic management and environmental science; and through no fault of their own, petitioners are not always well placed to do so. The promoter, by contrast, can call on acknowledged experts. Equally, we do not criticise the promoter for calling on the services of experts; it would be perverse if it did not do so. It is also important to note that the views expressed by the promoter's independent experts are often subject to peer review, a prominent example being the Acoustic Review Group (see paragraph 368).
51. In a great many cases, we conclude that negotiations between the promoter and petitioners should take their course and are likely to be successful. Indeed, in many instances, only minor details still separated petitioners and the promoter and we decided that there was no need for us to intervene. Often, by the time we heard from petitioners, discussions with the promoter had been taking place for several years and in most cases (but with some striking exceptions) a lot of common ground has been established and many of the principal concerns of petitioners have been alleviated. This does not mean that petitioners are no longer concerned about the impact of the construction and operation of the railway, but we surmise that there is finally a broad recognition that the scheme will proceed and that petitioners, rather than resisting the entire bill, are now coming to terms with its impacts and are beginning to plan accordingly.
52. On many occasions, it appeared that outstanding points of difference were either so detailed that they ought to be resolved at the detailed design stage or that they were founded on misapprehensions, which, we hope, our hearings helped to remedy. In some cases, it was clear that petitioners were still seeking to alter the scheme radically, often arguing for proposals which would require an Additional Provision, and we, as noted in Chapter 2, were powerless to intervene, even if we had been minded to do so. We sensed that a number of petitioners remain so opposed to the scheme that hearings served as a means of expressing their strong feelings rather than contesting meaningful mitigation measures.

**Edward McMahon (petition no. 008)**

53. Mr McMahon resides and runs his business from Horsley Brook Farm, Lichfield, Staffordshire. The farm, which extends to about 68 ha, is used exclusively for the training of racehorses. HS2 has had a profound effect on Mr McMahon's business and his life. The railway line will cross his farm and 40 per cent of his land has been identified for safeguarding. His business will cease because the safeguarding interrupts his gallops and makes the whole of his land unsuitable for the training of racehorses.
54. While progress had been made in several areas, Mr McMahon raised concerns about compensation for the extinguishment of his business and sought the diversion of a bridleway to allow unfettered access and enable him to operate what will remain of his land holding. The promoter indicated that it was hopeful that agreement could be reached both on compensation, though they were some way apart on valuation, and on the bridleway. There appeared to be grounds for optimism and we believed that a fair arrangement could be reached.
55. Progress, however, appeared to stall and we revisited the case with the promoter. A letter from the promoter to Mr McMahon of 26 October 2016 seems to have got matters moving in the right direction. As with the Banister family below, the promoter must ensure that it gives high priority to cases where the railway will have a devastating effect on people's lives. We trust that the promoter will do everything possible to assist Mr McMahon, who has had to endure a great deal of stress and uncertainty about his family's future, and we urge that a generous outcome should be arrived at as soon as possible.

**Laurence, Matthew and Alison Reddy (petition no. 243)**

56. The petitioners are the owners of Parklands, Kingsbury Road, Marston, Birmingham. Their property, in which they have invested a lot of money, will be required for the construction of the railway because it is at the location of the extensive Kingsbury railhead. Mr Reddy stressed the importance of receiving fair compensation for his family's land. The promoter confirmed that the petitioners will be entitled to compensation for the loss of their property, and that compensation should reflect the fair value of the property (including development value, apart from the HS2 scheme). This petition caught our attention because of the dramatic effect that the railway will have on this family. We hope that negotiations can proceed smoothly. Again, we urge the promoter to engage effectively with a family which could hardly be more affected by HS2.

**HW Taroni Metals Ltd (petition no. 594)**

57. The petitioner operates a long-established recycling business from Railway Sidings, Aston Church Road, Birmingham. The petitioner is set to lose 80 per cent of its business premises and Mr Taroni, the managing director, has realistically accepted this. He explained, however, that there is an outstanding dispute over a three-metre strip of land which, according to the promoter, is required for the widening of Aston Church Road. The permanent loss of this land, coupled with the need for a temporary seven-metre working area would, Mr Taroni told us, render the business unviable and lead to the loss of 24 jobs. That would, with current levels of unemployment in the district, be a very serious matter.

58. The promoter pointed to significant assurances that had been given to the petitioner, resulting in a position whereby substantial interference with the part of the site in question had been reduced to this three-metre strip, which the company's petition had described as capable of being accommodated. The promoter sought to justify the need for the three-metre strip and also the seven-metre worksite to allow for the road to be constructed. Encouragingly, the promoter stated that it would seek to minimise the time period during which the worksite was needed.
59. We do not conclude that the promoter is taking the three-metre strip unnecessarily. Nevertheless, we have great sympathy with the petitioner, whose positive and constructive attitude is to be applauded, and we direct that the petitioner's legitimate interests must be central to the detailed design stage so that, if at all possible, the three-metre strip can be reduced and the business can remain viable, while accommodating the requirements of the highway authority. We also hope that the period of time for which the seven-metre worksite is required can be reduced as far as possible.

#### **Coleshill Estate (petition no. 523)**

60. The Coleshill Estate, to the east of Birmingham, extends to some 720 ha and has been held in the same family ownership since 1496. The petitioners (a group of family trustees who have already seen parts of the estate, which is in a natural transport corridor, taken for three different motorways) are now faced with the acquisition of about 22 per cent of what remains. But they concentrated their concerns on the proposed acquisition of about 3.3 ha of land at Brickfield Farm ("the Brickfield land") so as to replace public open space at Heath Park, Chelmsley Wood. This land is to be transferred to the local authority, Solihull Metropolitan Borough Council.
61. The petitioners asked us to remove the acquisition of the Brickfield land from the bill. Their evidence was that there is already enough public open space in the locality, and that Solihull MBC (as part of a consortium) is proposing to sell some public open space for housing, including the Bluebell Recreation Ground, which is directly adjacent to Heath Park. The petitioners put it to us that it was at the very least surprising that the promoter is (apparently at Solihull MBC's request) seeking to acquire land for new public open space while the local authority is proposing to build on what public open space it already has in this location. The petitioners also pointed out that the land in Heath Park to be lost permanently to HS2 is only 0.7 ha, whereas 3.3 ha are to be taken from the Estate to replace it, amounting to almost five times as much land. This was said to be disproportionate and unjustifiable.
62. In response, the promoter countered that the only suitable replacement open space that it had been able to identify was the Brickfield land. The promoter conceded that the land being taken was larger than the land permanently lost from Heath Park, but that there was a case to take a more substantial area of replacement land in order to overcome the issue of fragmentation. Heath Park is at present a single piece of park land, whereas after the railway is built, though people will be able to use what is left of it, they will have to cross the main road to get to the additional land. The suitability of the Brickfield land would be lost unless it is large enough to attract people to use it.

63. We are not convinced by the promoter's case for the acquisition of the Brickfield land from the Coleshill Estate. We regret that the hard-pressed people of Chelmsley Wood are to lose even a small part of Heath Park, and we very much hope that Solihull will revisit the proposed development of the Bluebell Recreation Ground. That is not an issue for us, but we understand from a recent letter that it will not be taken for housing. We conclude that the acquisition should be removed from the bill. We have therefore amended Clause 4.

**Diddington Lane (Victoria Woodall and 50 others, petition no. 637)**

64. Petitioners from Hampden-in-Arden in the Solihull MBC area raised the issue of Diddington Lane, which leads north from the village to the A 452. Initially, Diddington Lane was to be closed, but as a consequence of the adoption of Additional Provision (AP) 2 in the House of Commons, it is to be re-aligned and kept open to through traffic in order to enable access to farms. Opening the lane to through traffic, it was argued, would increase the volume of traffic in the village. While we have some sympathy with the representations made to us, we cannot recommend that the decision taken in AP2 and endorsed by the House of Commons Select Committee should be reversed. The difficulty we faced with this issue was that when the promoter's original proposal was questioned by some (in particular, the Packington Estate) the promoter responded by modifying the proposal. This, perhaps predictably, upset others. We were put in the situation in which we could only hear opposition to the AP2 proposal and not the objections to the original proposal. Any action to restrict traffic on the lane, without closing it, must be for the highway authority.

**Burton Green Village Hall Trustees (petition no. 760)**

65. The petitioners stressed the importance of the relocation of the village hall in Burton Green, Warwickshire, as a like-for-like replacement. The promoter has already agreed to provide a new village hall, as the existing one is so close to the line of route that it will have to be demolished. The trustees' evidence was that, as a result of the new hall's position on a lower site, there is a problem about making a connection with the main sewer. The problem is capable of being solved, if necessary, by the installation of an electric pump. Nevertheless, we draw attention to the matter here as the principle of equivalent replacement is important, and amenities in places like Burton Green, where the railway will have a severe impact, must not be lost or downgraded. The village hall is an important element of local life. Like-for-like replacement in Burton Green, and elsewhere on the route, must mean precisely that.
66. But this petition has another aspect. Where the promoter has agreed to provide new premises as a like-for-like replacement, and to pay all reasonable architects', surveyors' and other professional fees, the prospective owners of the new building should look to these professional advisers as their first port of call if they need help. They should not expect the promoter to "micromanage" the project, nor should they regard proceeding with a petition as their first recourse.

**Andrew and Jennifer Jones (petition No. 706)**

67. This is in the end another case of equivalent replacement. The petitioners, who reside at 34 Hodgetts Lane, Burton Green, will have some of their land

taken as a result of HS2. While the promoter has been able to reduce the extent of the land required for the project, it remains necessary for it to acquire a strip of land at their south-western boundary. Currently, this area is where the petitioners' stables are located.

68. The petitioners expressed concern about the replacement of their stables. Their stables, whilst in some state of disrepair, are entirely functional. Their anxiety centred on the contention that if their land is valued on the basis of their dilapidated stables, they would not be able to afford new, replacement stables at an estimated cost of £40,000. Nor would they be allowed to build sub-standard stables.
69. In response, the promoter set out the compensation to which the petitioners were entitled, concluding that it was likely that compensation would exceed the cost estimate for new stable buildings. This is to be welcomed and we hope that matters can be taken forward promptly so that the petitioners' stables, which are important to them, are replaced appropriately and at no cost to the petitioners.

**Ivan, Heather and Nancy Banister (petition no. 749)**

70. The Banister family are the freeholders of Warden Farms, located in the Parish of Chipping Warden and Edgcote in South Northamptonshire. The business has developed and diversified over many years and appears to be very successful. Warden Farms will be severely affected by HS2; the land is directly affected both by the construction of a green tunnel, and by the construction of a bypass. For the duration of the construction works, Mr Banister will not be able to farm significant areas of his land because they will be in the possession of the nominated undertaker's contractors for the purposes of constructing the railway. As Mr Mould QC, representing the promoter, put it to us: "Mr Banister's farmholding faces a significant and relatively prolonged period of disruption from the construction of HS2."<sup>16</sup> Moreover, Mr Banister will experience permanent land take for the tunnel and will also have land taken permanently for the line of the bypass. Mr Banister drew attention to a raft of issues requiring attention, including uncertainty over the extent of the land take, uncertainty over the strategic and financial impact on his business, and uncertainty over the tax consequences.
71. Unfortunately, it emerged that the promoter had failed to engage regularly with Mr Banister in recent times. Mr Mould apologised on behalf of the promoter and stated that measures would be taken at once to ensure that the petitioner and the promoter could begin to take matters forward. We understand that a meeting duly took place on 29 November 2016.
72. While this was welcome news, and we hope that resolution can now be reached on all points, this has been a regrettable episode. The predicament facing the Banister family merited regular and sustained engagement and they should not have been forced to come and talk to us to stimulate action. We urge both parties to work together to ensure a successful outcome. It is in the nature of large infrastructure projects that there are undeserving casualties, such as Warden Farms, but the goal must be to ensure that this

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<sup>16</sup> Transcript of oral evidence taken at the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Thursday 20 October 2016, paragraph 12. See: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/high-speed-rail-london-west-midlands-bill-lords-committee/high-speed-rail-london-west-midlands-bill/oral/41504.pdf>

petitioner, and all others in similar circumstances, are properly compensated and do not suffer more than is truly unavoidable as a result of a scheme not of their making. We consider route-wide farming issues relevant to this petition and others in Chapter 10.

#### **Mr and Mrs Raitt (petition no. 041)**

73. Mr and Mrs Raitt are the freehold owners of 1 Manor Cottages, Banbury Lane, Lower Thorpe, Oxfordshire. They are the only remaining residents in the tiny hamlet of Lower Thorpe as two houses are to be compulsorily acquired and demolished and the only two others have already been acquired by HS2 Ltd. The property falls within the Rural Support Zone, meaning that they are entitled to ask for their property to be purchased at full, unblighted market value at a time of their choosing—the Voluntary Purchase Scheme.
74. The dispute centred, however, on whether Mr and Mrs Raitt should receive additional payments equivalent to the payments they would receive if their property was within the safeguarded area. Mr and Mrs Raitt are the only remaining inhabitants of a settlement which has been destroyed by the project. This is a special case and we direct that the petitioners should receive payment of unblighted market value for their property, home loss payment, and all additional costs, such as removal costs, legal fees and stamp duty on their new home, as they would if their property was within the safeguarded area.

#### **Chetwode Parochial Church Council (petition no. 074)**

75. Mr Clare and Ms Naylor, who represented all the Chetwode petitioners, provided a shining example of best practice. As was said in the House of Commons, they were model petitioners, and we commend them on their clear and concise presentations. Ms Naylor drew attention to a range of discrete issues on behalf of the residents of Chetwode, a scattered village of 42 houses and farms. It used to have a population of 123 people, but that number has already fallen significantly. One quarter of the houses have been bought, or are in the process of being bought, by HS2 Ltd. Church attendances, which were very good for such a small village, have dropped accordingly. Mr Clare called the Lord Bishop of Oxford as a witness, and they both spoke movingly about anxieties over the future of the church.
76. The church of St Mary and St Nicholas has stood since the twelfth century and is Grade I listed. It has some of the oldest stained glass in England, in good condition, and is, as Mr Clare put it, “the magnetic pull that has bonded the community.”<sup>17</sup> Mr Clare asked that the church be given a financial endowment that will generate an income to cover future maintenance. HS2 will reduce the community’s ability to discharge this responsibility. The church, he said, was almost certainly going to have to close due to the depopulation of the village and the loss of the congregation. Fundraising activities, such as holding concerts, will be compromised with the advent of HS2.

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17 Transcript of oral evidence taken at the High Speed Rail (London - West Midlands) Bill Select Committee meeting on 1 November (pm) - paragraph 11. See: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/high-speed-rail-london-west-midlands-bill-lords-committee/high-speed-rail-london-west-midlands-bill/oral/42525.pdf> [accessed 1 December 2016]



77. The promoter drew attention to arrangements that had been put in place which were adequate at this stage to secure the physical protection of the church and to secure the environment within the church in such a way that it will still be acceptable for its continued use for divine service and for the holding of concerts. Furthermore, the promoter submitted that it was possible to be perhaps over-fearful of the risk of prolonged and long term depopulation, and of a lack of community spirit on the part of new residents coming into the village after the railway has been constructed. An endowment, the promoter argued, need not be considered at this stage. An endowment might need to be considered in the future, but it was appropriate to see how matters unfolded; in essence, the question of an endowment was not something that needed to be resolved now.
78. We agree with the promoter's stance. It must be right to wait and see. We wish, however, to place on record our firm conviction that it is imperative that this historic village should have a future, and that, if need be, measures are taken to ensure that the church can continue to flourish and remain at the heart of Chetwode life. It would be a tragedy if Chetwode Church were to become a monument to the impact inflicted by HS2.

#### **Springfield Farming Ltd (petition no. 132)**

79. The petitioner, Mr Lewis, owns about 52 ha of arable agricultural land off Nash Lee Road, near Wendover, Buckinghamshire. Mr Lewis harboured a range of concerns, and his relations with the promoter appear strained. His principal source of disquiet centred on caveats given in relation to a commitment from the promoter to provide an alternative haul route. The promoter confirmed that the intention, barring any unforeseen circumstances, is to move the haul route off Mr Lewis' land.
80. The promoter conceded, however, that it was not possible to provide Mr Lewis with absolute certainty about the future; hence, the assurances given to Mr Lewis necessarily contained a series of caveats. A point made regularly by the promoter, and one with which we have some sympathy, is that it can be very difficult to provide absolute certainty at this stage of the project. We would agree that a delicate balance must be struck between mitigating impacts on petitioners and ensuring that the project is taken forward in an effective and timely fashion. Nevertheless, we consider that Mr Lewis' case for the provision of an alternative haul route is a strong one and we urge that strenuous efforts are made, and no stone left unturned, in work to provide the alternative haul route that he seeks.

#### **Mr Geoffrey Brunt (petition no. 338)**

81. The petitioner owns a farm near Wendover consisting of 18 ha of arable and pasture land, some of which is required for the project. The petitioner drew two issues to our attention. First, he raised concerns about a grass field of about three ha, which has a footpath running through it. In order to get the very small number (as the petitioner credibly claims) of people who use the path over the proposed railway line, an earth ramp will have to be put in. The imposition of a ramp and the consequential planting for screening is to be done in such a way as to destroy his field, when an alternative configuration was possible, the petitioner told us. Conceding that the loss of some land was necessary, he maintained that the promoter did not need to take so much high quality farmland.

82. Second, the petitioner expressed misgivings about a proposed drainage area. He argued that it is simply not needed and valuable land is being lost as a result. He told us that the promoter said it was necessary in case of an onein100years flood. The petitioner, however, explained in some detail how his knowledge of the area indicated that there is no real need for a drainage area.
83. In response, the promoter explained that they were trying to balance competing interests: the impacts on the farm vis-à-vis access to the countryside, retaining an amenity by screening and flood risk protection. Moreover, the promoter was operating within a complicated regulatory framework: on flood risk, the Environment Agency and the local drainage authority have an interest; as regards the footbridge, the local highways and the district council were involved. The promoter stated that at the detailed design stage, it might be possible to improve the situation for the petitioner but for the time being no commitments could be given.
84. We sympathise with the petitioner's case, which was well-made and compelling. While we acknowledge the number of regulatory actors involved and cannot opine on technical detail, we recommend that at the detailed design stage the most serious consideration should be given to the petitioner's case. The most strenuous efforts must be made to help the petitioner and we fully expect him to receive a much better outcome than the current proposal.

**Robert and Sara Dixon (petition no. 600), James Adam and Others (petition no. 378), Sheila Ansell (petition no. 822) and Rosemary and Ian Chisholm (petition no. 370)**

85. Ms Sara Dixon spoke energetically on behalf of the petitioners who all live on the London Road in Wendover. A number of issues were raised by the petitioners, who will be severely affected by the railway, but the one we alight on is the issue of the impact of construction traffic on the ability of residents to walk around and go about their lives in their immediate environment. Ms Dixon stressed that they did not wish to become a cut-off community.
86. The promoter argued that while they recognised the concerns of the London Road residents, the introduction of HS2 construction traffic would not materially worsen the existing conditions on what was already a busy road. The provision of a pedestrian crossing to Kumar's Garage, we were told, had been considered but ruled out. The promoter, however, indicated that they were willing, in conjunction with Buckinghamshire County Council, to consider how the situation could be improved. This is to be welcomed. It is imperative that London Road residents are able to go about their daily business safely and with the minimum of inconvenience.
87. We therefore direct that the promoter should work with the highway authority, Buckinghamshire County Council, to provide improved and continuous footpaths on the London Road between Rocky Lane and the point where the high-speed railway will cross it on a viaduct. The London Road will be even more dangerous and difficult to cross on foot, especially for children and the elderly.

**Mary Godfrey and Claudia and Crescenzo D'Alessandro (petition nos. 386 and 249)**

88. The petitioners are neighbours, living at 2 and 3 Hunts Green Cottages, Hunts Green, The Lee, Great Missenden, Buckinghamshire. They expressed concerns about the proximity of a proposed spoil heap (175m) and the impact that noise and dust would have on their health, well-being and their immediate environment. They argued that the spoil heap should be moved so it was further away from their properties. In response, the promoter highlighted an assurance stating that it would, subject to obtaining planning permission, move the spoil heap to the other side of the railway—significantly further away from the Hunts Green Cottages. We sympathise with the petitioners' case, which was well made, and we urge the promoter to do everything possible to deliver on their assurance. A good outcome would appear possible.

**Iver Parish Council, Ivers Community Group and Richings Park Residents' Association (petition nos. 639, 702 and 666)**

89. The petitioners drew attention to the impact of construction traffic on Iver. As a result of the construction of HS2 in Old Oak Common, the Heathrow Express depot has to be moved to Langley, near Slough.
90. As it was, the petitioners argued, the area was already under considerable strain on account of many other proposed infrastructure projects in the locality, for example, the construction of Crossrail and Western Rail access to Heathrow. HS2 was set to bring 500 HGVs a day onto the local roads, adding to the existing congestion, and compounding concerns about noise, pollution and safety. Other communities, the petitioners argued, had received dedicated funding on account of the special effects that the railway would have on them: Calvert,<sup>18</sup> Great Missenden (£500,000) and Slough (£6.25 million). The petitioners requested that Iver also receive dedicated funding to offset the impact of the project.
91. The promoter conceded that HS2 would, for the period of construction of the depot, add significant numbers of HGVs throughout the day to existing traffic flows. Construction impacts, however, whilst significant, would only last for around a year, and would cease when the depot had been constructed. There was no case for Iver to receive a specific funding allocation. Instead, the community had the opportunity to bid for funding under the community and environment fund and the business fund, and the recently introduced road safety fund.
92. We have found the principal point raised by these petitioners difficult, not least because comparisons with other locations on the route are both invidious and in a sense irrelevant—each case needs to be determined on its own merits. It does seem to us, however, that Iver is a special case and we invite the promoter to re-consider whether the provision of a specific allocation might be appropriate.

**Double 4 Limited (petition no. 293)**

93. The petition was concerned with the Willesden Euroterminal site in west London. At present, some areas of land within the Euroterminal site are

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<sup>18</sup> A fund of £1m is to be provided for mitigating amenities in the parishes of Twyford, Steeple Claydon, Calvert and Charndon.

leased or licensed to Double 4 Ltd, a company which provides storage facilities and supports distribution companies by providing commercial yard facilities so that heavy goods vehicles and other commercial vehicles can be parked. It also performs a socially useful function in recovering broken-down or crashed vehicles from the streets of London. The promoter requires the site to store excavated material for removal by rail and to bring in aggregates and other material by rail. Double 4's contention was that there is room for those activities to take place and to retain some space for Double 4's operations.

94. This site is of vital importance to the project and after carefully considering the evidence put to us we conclude that it is probably the case that there is not room on the site for Double 4 to operate alongside HS2. We sympathise, however, with the situation this company finds itself in and while we cannot support their principal requests, we endorse Double 4's fall-back position that the promoter should do what it can to help find an alternative site, of at least 7,547 square metres, within reasonable proximity of the Willesden Euroterminal site.

## CHAPTER 4: STAFFORDSHIRE TO OXFORDSHIRE

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### Birmingham, Staffordshire, Solihull

95. Once the first phase of the project is in operation, the main destination for travellers from Euston will be the new station to be built at Curzon Street, Birmingham (the terminus of the original London to Birmingham Railway which began operating from Euston in 1837). That is an appropriate point at which to begin a brief survey which first moves north to Staffordshire and then follows the line of route in a south-easterly direction.
96. There were few petitions relating to central Birmingham or to the area of the rolling stock maintenance depot to be built (with associated regeneration) at Washwood Heath, to the east of central Birmingham. But there were two weighty petitions which we heard near the end of our sittings. One, concerned with a site at Washwood Heath, is considered in Appendix 7. The other concerned part of a site of the new Curzon Street Station. Most of the other problems in these districts seem to have been resolved at an early stage.
97. Quintain City Park Birmingham Ltd (petition no. 405) is an experienced developer which has a long lease of a development site in central Birmingham, the landlord being the city council. There is outline planning permission for a mixed development of offices, flats and a hotel. The site (at present used as a car park) covers part of the land on which the new Curzon Street station is to be built. Quintain wishes to participate in the development of the part of the station devoted to non-railway use. The eminent architect, Sir Terry Farrell, gave evidence and showed us a preliminary design for two towers at the corners of what will be the west front of the station, rising 36 floors above the level of the station roof, and containing offices, flats and a hotel.
98. Sir Terry emphasised the importance of a unified design for the new station and its immediate surroundings, and we concur in that. But we cannot agree that Quintain's leasehold interest in a relatively small part of the site (for which it will receive full compensation) entitles it to participate in the new development. On the contrary, it would be likely to make it more difficult to achieve the aim of a unified design. We would, however, encourage Quintain to compete in the pending design process.
99. Water Orton was an outlying village which is now almost part of suburban Birmingham and it is in a sensitive position close to the "delta" of lines to the east of the city. The relocation of its school was agreed in the House of Commons. Before us, the parish council obtained further reassurance about tree planting and use of the haul road (which will not however be suitable for all types of construction traffic).
100. There were also relatively few petitions from Staffordshire, and some of those that were presented were premature in that they related to the second (2a) phase of the HS2 project (in one such case of acquisition of most of a farm we were able to ensure that the petitioner knew about his rights in respect of safeguarded land). Most of the petitions in this county related to the Kingsbury railhead, a complex development which is going to be used for both phases. Mr Reddy and his family (see paragraph 56 above) are one group of landowners most affected in this area.
101. Further north, near Lichfield, Mr McMahon owns Horsley Brook Farm. His life and livelihood are profoundly affected by the first phase of the project,

as set out in paragraphs 53–55 above. Near Tamworth, Aston Villa Football Club have a large training ground with state-of-the-art training pitches and facilities. Our conclusion on their petition, which had to be adjourned, is in Appendix 7. The future of the Grimstock Hotel (mentioned in the *Second Special Report* of the House of Commons Select Committee at paragraph 58) was eventually agreed, but only after long delay.

102. The Coleshill Estate is a largely agricultural estate, which has been in the ownership of the Wingfield-Digby family since the end of the fifteenth century. Its position in a natural transport corridor between Coleshill and Chelmsley Wood has led to earlier acquisitions of land for motorways. Our conclusion on their petition is at paragraphs 60–63 above.
103. A short way to the south is Hampton-in-Arden. Petitions were presented by its parish council and others, raising issues which had already been considered by the Select Committee in the House of Commons (paragraphs 63–66 of their *Second Special Report*). The principal issue was the future of a road known as Diddington Lane (paragraph 64 above).

### Warwickshire

104. The line of route then passes between Balsall Common to the west and Berkswell to the east. We heard several petitions relating to this area. Several petitioners referred to the importance of the Kenilworth Greenway. We share their view that it is a most important local amenity enjoyed by walkers, cyclists and equestrians. We consider, however, that the promoter's proposals offer a satisfactory solution to a difficult problem, which was also raised by petitioners from Burton Green.
105. Burton Green is a little further south and one of the villages most directly affected by the project. The line of route bisects the village and the railway will pass through a cut-and-cover tunnel about 900m long. Its length was extended by AP2, which was bought forward in July 2015. The tunnel will provide noise protection to most of the houses in the village, especially those grouped on either side of Cromwell Lane, which is almost at a right angle to the line of route. We had several petitions from other villagers, especially residents of Hodgett's Lane and Red Lane, and also from the trustees of the village hall, which is to be relocated (see paragraphs 65–69 above).

### Northamptonshire

106. At Chipping Warden we were seriously concerned about the position of Mr Banister, who has over the years built up a large and successful farming business (paragraphs 70–72 above). But we were not persuaded by other issues raised on behalf of Chipping Warden, especially as the promoter is making a substantial contribution to road realignment benefiting the village. At Lower Thorpe, a tiny hamlet north-east of Thorpe Mandeville, the small community will be virtually destroyed by the construction of the Lower Thorpe viaduct. The situation of Mr and Mrs Raitt, who now appear to be the only inhabitants left, is truly exceptional and calls for special treatment (paragraphs 73–74 above).
107. The village of Radstone, a short way north of Brackley, will be seriously affected. Most of the residents' concerns, however, were met in the House of Commons (*Second Special Report*, paragraph 82) and the petition of the Radstone Residents' Group was withdrawn. There were two petitions to

our Committee. Both were focused on the Need to Sell Scheme, and the application of Mrs Herring, the only individual petitioner, had been accepted by the time her petition was heard.

108. Some petitioners objected to what they thought would be the intrusiveness of the Wormleighton maintenance loops. The railway will at this point be twice its normal width, but the loops will be used largely as an area where trains used for track maintenance can be kept, and the loops will be at a low level and well protected.

## CHAPTER 5: BUCKINGHAMSHIRE

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109. The county of Buckinghamshire will contain about 29 per cent of the whole length of the HS2 phase one line. The route through the northern part of the county is mainly through level agricultural land, including some of the Vale of Aylesbury. The route approaches the higher ground of the Chilterns Area of Outstanding Natural Beauty (AONB) as it passes close to Wendover, a small town that will be significantly affected during both the construction period and when the railway is in operation. The railway will then pass over two viaducts and enter deep-bored twin tunnels at South Heath (near Great Missenden), continuing in the tunnels as far as West Hyde (just beyond the M25, and the point from which the tunnelling will start).<sup>19</sup> There will be five vent shafts at or near Chesham Road, Little Missenden, Amersham, Chalfont St Giles and Chalfont St Peter. Ecological issues relating to the Chiltern AONB are addressed in Chapter 9.

### Chetwode, Twyford, Steeple Claydon and Calvert

110. Chetwode is a small village with a long history and the ancient parish church of St Mary and St Nicholas. The line of route will pass to the east of the village in a shallow curve, protected as far as possible by an artificial cutting and substantial earthworks. There will be two overbridges, one for a footpath and one for the road at School End, with a more substantial overbridge for the A421 about two km to the north. The construction and operation of the railway will have a significant impact on 25 dwellings in the village. The House of Commons Select Committee (*Second Special Report*, paragraph 88) considered a request for mitigation by way of a bored tunnel, but ruled against it on grounds of cost. We have reluctantly reached the same conclusion, but we urge that every effort should be made to make the mitigation of noise by earthworks as effective as possible.
111. We wish to record that the residents of Chetwode have shown a commendable degree of community solidarity in facing the serious problems presented by HS2. They have made a joint presentation emphasising that although some houses close to the line are already empty, having been purchased by the promoter, the remaining residents wish to continue as a lively and cohesive community. There are further observations in paragraphs 75–78 above.
112. Twyford, Steeple Claydon and Calvert will all be affected by the Calvert Infrastructure Maintenance Depot which is to be constructed immediately to the east of the HS2 line of route, extending eastwards along the line of the existing railway from Bletchley to Bicester and Oxford (this line is likely to be developed as the upgraded East-West line, but those plans are not part of the HS2 project). This depot will be very large, since it is to serve as the base for the maintenance of the railway tracks and other infrastructure on the railway to be built as the first phase of HS2. Steeple Claydon is to the north of the most easterly part of the site. Twyford is to the west of the line of route and fairly close to the north-west edge of the site.
113. Calvert is also to the west of the line of route, and separated from the depot site by two lakes which have formed in excavations made when there was a large brickworks in the vicinity. To the south of Calvert is an EFW (energy

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<sup>19</sup> Important context for our consideration of mitigation measures in Buckinghamshire are the significant changes directed by the House of Commons Select Committee, not least the provision of a longer Chilterns bored tunnel.



from waste) plant supported by a rail-to-road transfer station. The promoter proposes to move the transfer station so that it will be on the east of the line (that is, further from the village). A proposal for a sustainable placement area close to the transfer sidings has been dropped, reducing the disruption in that area (see also Appendix 6).

114. Twyford, like Chetwode, has a fine old church for which the promoter has been asked to provide an endowment fund. We could not support that request, for the same reason as in the case of Chetwode. The village will be affected by some noise and traffic congestion, but there will be protection from substantial earthworks, and also tree planting on the line of the disused railway. Adequate routes for local traffic will be maintained throughout the construction phase, and construction traffic will travel northwards to the A421 near Buckingham. It has a successful cricket team with a ground not far from the line of route, but the ground will be sheltered by earthworks and trees. A fund of £1m is to be provided for mitigating amenities in the parishes of Twyford, Steeple Claydon, Calvert and Charndon (which is to the west of Calvert).
115. Steeple Claydon is closer to the depot site but its road links will be less affected, an overbridge on Addison Road being the only significant change. Calvert's road links will be affected, but access by the School Hill Green road will be maintained. The re-sited waste transfer sidings will have a dedicated road and overbridge. Sheephouse Wood and other ancient woodland will be preserved.

### **Aylesbury and Stoke Mandeville**

116. Quainton, to the north-west of Aylesbury, is the home of the Buckingham Railway Centre, a popular attraction with a large collection of locomotives and a short stretch of working track. We decided that we should not recommend expensive modifications to a bridge in the hope of assisting what is a very uncertain chance of the Centre being able to extend its working track. Also in the vicinity is Waddesdon Manor, a much-visited National Trust property which will not be materially affected by the project.
117. The new railway will then come close to the south-west edge of Aylesbury, a busy town which is in the process of expansion. The Town Council and Coldharbour Parish Council raised concerns about the proximity of the line and asked for changes to its level at this point (while also raising concerns about flooding). We were satisfied that the proposed changes are not feasible, and that the closest houses (in the area known as Hawkslade) will be adequately protected. Indeed, there are plans for further housing in this area.
118. Stoke Mandeville (a settlement with about 6,000 residents, and a world-famous hospital) will be affected by the new railway passing to the south-west, but benefited by the diversion of the A4010 (which will cross the new line by the Stoke Mandeville overbridge). The Stoke Mandeville Combined School has a special section for children whose hearing is impaired. Increased noise might interfere with their particular educational needs, but we were satisfied that the increased noise level will be barely above LOAEL, a technical term which we explain in Chapter 10.

### Wendover

119. Wendover is an attractive and historic market town with a population of about 9,000. It is popular with visitors to the Chilterns, especially those walking on the Chiltern Way. It will be more directly affected by the first phase of the HS2 project than any rural settlement of comparable size. The bill's proposals have provoked more petitions from Wendover and its neighbourhood, proportionately to its population, than from any other group of residents. The force and sincerity of their feelings are not diminished by the fact that many of their petitions were in almost identical terms, and some failed to identify the location of the petitioner's home. If they lived some way away from the line of route these petitioners were liable to be met by a successful challenge to their *locus standi*.
120. Almost all these petitioners sought as their primary remedy a bored tunnel passing through the whole AONB and continuing north of Wendover (which is not itself included in the AONB). The House of Commons Select Committee considered this proposal in great detail but rejected it, primarily on the grounds of cost, but it recommended the extension of the bored tunnel (originally to be 13.4 km long) to South Heath (this was the most important change made by AP4, introduced on 12 October 2015). The Committee also recommended a short southwards extension, proposed by the promoter, of the cut-and-cover tunnel originally planned for Wendover. There is a full record of these deliberations in the Committee's *Second Special Report* at paragraphs 112–133. Our own report has already recorded (paragraphs 21–26 and Appendix 3) our ruling that we (as Second House) could not consider changes requiring an Additional Provision without a direction (which was not given) from the House. Nevertheless we did think it right to hear some further argument based on the supposition that an order under the Transport and Works Act 1992 could be as effective as an Additional Provision in enabling further compulsory purchase.
121. As matters stand at present, therefore, the high-speed railway will approach the north-west of the town in a cutting, and will then enter a cut-and-cover tunnel running in a shallow curve to the southern portal just beyond Bacombe Lane. Ellenborough Road and Bacombe Lane will be closed (and some houses on them acquired and demolished) during the construction phase. They will then be reinstated, with Bacombe Lane realigned. The cricket club's ground will be relocated (paragraph 126 below).
122. It is important to note that the whole built environment of Wendover (apart from some houses in Ellenborough Road and Bacombe Lane, and some to the west of the London Road on the south side of the town, near Rocky Lane) is separated from the line of route by a busy main road, the A413, and by an existing working railway (the Marylebone to Aylesbury line). The town, especially on its west side, is already much less tranquil than the villages to the north of the county. The promoter has agreed to the erection of many noise barriers of different heights, including some to be erected (in conjunction with the highway authority) which will provide protection from the A413 rather than the high-speed railway. The largest are to be 6m high.
123. The provision of more and larger barriers does, however, create new problems. They provide the best protection against noise but they are visually intrusive. As the House of Commons Select Committee commented (*Second Special Report*, paragraph 135) there is a trade-off between mitigating noise and

visual effects. In our view, the promoter has achieved a reasonable balance between the two, and we do not recommend any further change.

124. We direct (paragraphs 85–87 above) that the promoter should work with the highway authority to provide improved and continuous footpaths on the London Road between Rocky Lane and the point where the high-speed railway will cross it on a viaduct.
125. There is a particular issue about St Mary’s church in Wendover, which is square on to the south portal and about 250m from it. This church has for many years been used not only for divine service but also for concerts and for regular meetings of the local branch of University of the Third Age. Mitigation measures have already been directed by the House of Commons Select Committee, and the promoter has offered the sum of £250,000 towards further mitigation in the church building, despite expert evidence, which we accept, that the mitigation already provided for will be adequate. The £250,000 on offer is not merely adequate but is, in our view, generous.
126. Wendover has a flourishing cricket club. Its main ground, of which it is the freeholder, will be taken for the cut-and-cover tunnel and is to be relocated to land north of the town, on the Tring Road. The club also has a second ground which the club rents, with a pavilion, from the Town Council. It is used mainly for the club’s youth teams. It is not far from St Mary’s Church, in a position conveniently close to the main ground in its present position, but much less convenient for the relocated ground. The promoter has offered to pay for the purchase and preparation of one cricket field, and to provide £200,000 for a new pavilion, at the Tring Road location. It is willing for more land to be purchased at the same location for a second cricket field, but its position is that that cost would have to come out of the £200,000, so that there would probably have to be some fund-raising by the club. In our view that is a fair offer.

### **Dunsmore, The Lee, Ballinger Common**

127. Dunsmore is a very pleasant hilltop village to the south of Wendover, some way to the west of the line of route. The Lee, Ballinger Common and other scattered hamlets are on rising ground to the south-east of Wendover, and to the east of the line of route. Many residents in these places will see high-speed trains passing over the Small Dean viaduct or the Wendover viaduct, or both, and some will hear the trains, although at a level well below LOAEL in most cases. The strong feelings of many of these residents about the new viaducts underline the importance of their being designed in an aesthetically pleasing fashion and constructed to the highest possible standards.
128. The hamlets to the east of the line may also find that their lanes (all of them narrow, and some ancient and sunken) will be used by drivers trying to avoid traffic congestion on the A413. This is something which the promoter should monitor closely, in conjunction with the County Council as highway authority.

### **South Heath**

129. This is where the north portal of the Chilterns tunnel will be located, following the changes which were recommended by the House of Commons Select Committee and given effect by AP4. We use this general description to include not only the main village of South Heath but also some smaller

settlements closer to the portal and the line: Potter Row, which extends along the east side of the line as it emerges from the tunnel, and which had 78 residents, though some have already moved; Bayley's Hatch, with 16 houses, between the portal and the main village of South Heath; and Sibley's Row, with 44 houses, some of which are social housing; and a few houses, including Frith Hill Farm, on the west side of the portal. There is some ancient woodland known as Jenkin's Wood on the east edge of the portal, between Potter Row and Bayley's Hatch.

130. Two residents' associations and some other petitioners joined in a single presentation led by Ms Hilary Wharf, whose clear and well-informed advocacy we heard more than once. She sought to persuade us that there should be an independent assessment of the feasibility and cost of an extension of the bored tunnel from South Heath to Leather Lane, one km closer to Wendover. She called two experts, Mr Malcolm Griffiths and Mr David Hindle, on these issues. We heard contrary evidence from Mr Tim Smart for the promoter. There is a remarkable difference between the estimates of cost put forward by two credible witnesses. Part of the difference seems to arise from the promoter's cautious approach to speed of tunnelling, and generally to the possible problems of driving an exceptionally long tunnel through chalk. The other main difference was as to possible savings in the cost of moving excavated spoil, a matter that depends on many unpredictable factors. We have concluded, however, that it would be a waste of time and money to direct an independent inquiry on these points. The Transport and Works Act 1992 offers a theoretical, but not a practical, alternative to an Additional Provision. This Committee could not direct the Secretary of State as to the exercise of powers conferred by that Act.
131. There remains the issue of mitigation for the residents of this community, who will be severely affected by noise from high-speed trains entering and leaving the portal (even though the risk of "sonic boom" is eliminated by its porous design). The non-statutory compensation for those in the Rural Support Zone (RSZ—see Chapter 8) will not be available to most of these residents, as most of the houses in Potter Row are outside it, and the RSZ stops abruptly at the portal, rather than curving in an arc round the edge of the portal. With regret, we cannot recommend any further mitigation without significant revision of the RSZ, which we do not think appropriate.

### **Great Missenden and Little Missenden**

132. Great Missenden is an attractive, busy village whose eastern edge is about 700m from the South Heath portal, with the A413 running between them. There is a minor road through the village itself, roughly parallel to the main road, and other road links to Prestwood and Little Kingshill. There is also a railway station on the Marylebone to Aylesbury line. Most of the residents, many of whom are commuters, rely heavily on the A413, to which they gain access by a short road to the Links roundabout. Some then turn left towards Wendover; others go right towards Amersham, or turn off left (at another roundabout shortly after the Links roundabout) on to the B485 towards Chesham.
133. Although the parish council of Great Missenden raised issues about the noise to be expected both during the construction phase and when the railway is in operation, these were raised mainly on behalf of residents in South Heath, Ballinger and other settlements already mentioned. The most pressing

concern for residents of Great Missenden itself is expected to be (and indeed already is) traffic congestion. We heard that traffic on the Links road is regularly at a standstill. Residents fear that construction traffic coming down the proposed haul road from the portal to the Links roundabout will greatly exacerbate the problem. They are aggrieved that what they understood to be an undertaking to move the haul road further north is not to be met.

134. There was a plan, agreed between the promoter and the County Council as highway authority, for the haul road to be moved. That plan was, however, (whether or not the residents knew it) subject to a number of conditions, which have unfortunately not been satisfied. The cost of moving the haul road would be of the order of £3m and the promoter is unwilling to meet it without a contribution from the highway authority. In our view the resulting reduction in traffic congestion would not justify such expenditure of public funds.
135. Great Missenden is rightly proud of its attractiveness to visitors (about 600,000 a year, with 80,000 of them visiting the Roald Dahl museum in the centre of the village). But the plain fact is that the village has not yet provided enough off-street parking. Even the very busy Links road is, we were told, regularly lined with parked cars. The estimates of the effect of construction traffic are striking in terms of HGVs, but quite low as a proportion of all motor vehicles. The figures that follow are taken from exhibit P3772(1), an “alphabet chart” of the estimated effect of construction traffic on an average weekday.<sup>20</sup>
136. In the chart, O and P refer to northwards and southwards flows on the A413 at a point north of the village; E and F to northwards and southwards flows at a point south of the village beyond the junction with the B485; and G and H to southwards and northwards flows on the B485 (on which the Chesham Road vent shaft is to be constructed). The figures are as follows:

**Table 1: Traffic flows: A413 and B485**

	O	P	E	F	G	H
Baseline	8323	8582	8553	9816	4714	4756
With HS2	8653	8912	8861	10124	4913	4955
Increase (%)	4.0	3.9	3.5	3.4	4.2	4.1

Source: Exhibit P3772(1)

137. These are relatively small increases. The promoter will undertake works to widen and improve the Links roundabout and the carriageway of the A413 immediately to the south. The promoter will also provide £0.5m (channelled through the County Council) for the construction of a safe off-road drop-off point for pupils at the Church of England Combined School (about which we heard impressive evidence from the head teacher, Ms Rozalyn Thomson, and one of the governors, Ms Agnes Fletcher).
138. Little Missenden is about 4km further down the A413, towards Amersham. It will be much further from the portal, and from any exposure to the high-

<sup>20</sup> Little Missenden Parish Council evidence slides presented on 7 November: <http://www.parliament.uk/documents/lords-committees/High-Speed-Rail/HOL-00028-Little-MissendenPC-Promoter.pdf> [accessed 1 December 2016]

speed line. The main concern expressed by residents of the village was about traffic congestion, which has already been addressed.

### **Amersham and the Chalfonts**

139. There were relatively few petitions relating to this area in which the high-speed railway will be in a continuous bored tunnel. One petition relating to the Amersham vent shaft appeared to be based on a misreading of the plan. A resident of Bottom Farm House Lane objected that construction traffic for the Chalfont St Giles vent shaft will travel down the lane, which is now quiet and narrow but is to be widened, with the loss of an established hedgerow. The proposal for an alternative haul route was problematic, expensive and destructive of attractive countryside to the west. The lane and hedgerow will be reinstated after completion of the construction work.
140. The River Misbourne flows through Chalfont St Giles, and its Parish Council, along with the Save St Giles Group, raised an issue about the effect of the tunnel on this much cherished chalk stream. Other petitioners also raised this issue, which is considered in Chapter 9 on environmental issues.

## CHAPTER 6: COLNE VALLEY, HILLINGDON AND OLD OAK COMMON

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141. This chapter follows the line of route from West Hyde, where the track will emerge from the Chilterns tunnel just within the M25, cross the Colne Valley and pass through rural land between Denham and Harefield. It will then enter a tunnel at the West Ruislip portal in the north part of Ickenham, a densely populated and congested district. The line will continue in the tunnel to the new station which is to be constructed at Old Oak Common. Old Oak Common is an area which already contains a great deal of railway infrastructure, some of which will be demolished. In short, this part of the route starts in the country and continues through a very urban environment. The chapter also includes (and starts with) the relocation to Langley (near Slough in Berkshire) of the Heathrow Express depot now situated at Old Oak Common.

### Relocation of the Heathrow Express depot

142. The depot must be relocated to make room for the new station at Old Oak Common. Initially it was to be moved to North Kensington, but this was changed to Langley by AP2, issued on 13 July 2015 (the works involved are set out at the very end of the list in the First Schedule to the amended bill as works 4/1 to 4/9). The relocation involves heavy engineering works which will add to the traffic congestion problems already being experienced by residents of Iver and Iver Heath (villages a few km to the north, within the county of Buckinghamshire). We heard petitions from the Iver Parish Council, the Ivers Community Centre and the Richings Park Residents' Association (Richings Park is a densely populated district close to the access to the relocation site). Their evidence (supported by the Rt Hon. Dominic Grieve QC MP) was that the area is already under great pressure of increased road traffic from various sources, including the expansion of Pinewood Studios, the growth of five different industrial estates, and renewed activity in gravel extraction.
143. Mr Mould QC, for the promoter, accepted the seriousness of these problems, while pointing out that they cannot all be laid at the promoter's door. There are plans for a relief road, for which Buckinghamshire County Council is the highway authority, and if it goes ahead the promoter will make a substantial contribution to its cost. He explained that a substantial payment to Slough Borough Council is compensation for their loss of land ripe for housing development. Nevertheless we see Iver as something of a special case (see paragraphs 89–92 above).
144. Mr Mould also explained that most of the construction traffic for the relocation will come from the M4 (to the south) and that none will pass through the village of Iver. Only about ten per cent of the traffic will pass through Richings Park. He also confirmed that those affected by the relocation will be eligible to participate in the Community and Environment Fund, the Business and Local Economy Fund and the newly-announced Road Safety Fund.

### Colne Valley

145. The Colne Valley has three notable water features which combine to make it a pleasant place to live and a popular destination for visitors. These are the River Colne itself, which flows southwards from the Rickmansworth

district, fed by chalk streams from the Chilterns in the west, and eventually joining the Thames at Staines; the Grand Union Canal, which in the north part of this area runs parallel to the Colne, a short way to the east, and then passes through the lakes; and a group of lakes which have formed in worked-out gravel pits, the most important being Broadwater Lake, Harefield Moor Lake, Korda Lake, Harefield No. 2 and Savay Lake.

146. These amenities, especially the lakes, are enjoyed by a variety of people, including anglers, sailors of small boats, water-skiers, ornithologists and hikers, who manage to co-exist by respecting each other's boundaries and concerns. The attractiveness of the lakes is enhanced by mature woods and trees on their shores. The Mid Colne Valley Site of Special Scientific Interest (SSSI) includes Korda Lake, Long Pond, Harefield Moor Lake and part of Broadwater Lake, which are managed as a nature reserve by the Herts and Middlesex Wildlife Trust, from which we heard a petition. It is an important habitat and breeding ground for many species of birds, including pochard ducks.
147. The Hillingdon Outdoor Adventure Centre ("HOAC") is based on the east side of Harefield No. 2 Lake (which is separated from Savay Lake by the Grand Union Canal, running in a separate channel). The HOAC is sponsored by the London Borough of Hillingdon and is highly valued as a resource providing instruction, adventure and recreation for young men and women. We visited the Centre and were impressed by it. It is on a site which contains several buildings, a climbing tower and ropes and other equipment. Much of the activity takes place on the lake, and there is a wooded area on the bank that is used for land-based activity. The lake is also much used by anglers, who sometimes catch large carp.
148. Under the HS2 project, parts of several lakes, and in particular Harefield No. 2, are to be crossed by a viaduct, 3.4 km long, which will carry trains at a height of about 15m above the surface of the lake. It will pass very close to the HOAC site. Its final design lies in the future, but it will certainly be supported by a considerable number of pillars, including pillars constructed in the lake by the use of coffer dams. The construction phase will affect all users of Harefield No. 2. The viaduct will have an effect on water-sports by causing air turbulence on windy days (even power lines, we were told, have that effect) and the high-speed trains may hit large birds (small birds are not often hit by trains, but geese and cormorants would be at risk). The proposal for three ha of wetlands at the north and south of Harefield No. 2 will reduce its surface area and impede access by anglers. For most residents and visitors, however, the biggest impact will be the noise and visual impact of the viaduct and the high-speed trains crossing it.
149. The viaduct is now part of the principle of the bill and we cannot amend the bill to provide for, as a great number of petitioners asked, a bored tunnel which (instead of ending at West Ruislip) would continue through Hillingdon and pass under the Colne Valley. Since we made our ruling in July, after hearing argument from leading counsel for Buckinghamshire County Council, for Hillingdon Borough Council and for the promoter, the independent review of the case for the Colne Valley tunnel has reported against it, primarily on grounds of cost. We are now concerned only with mitigation and compensation.



150. We heard several petitions from those affected by the viaduct, including Miss Sally Cakebread, who lives with her widowed mother at Savay Farm, and Mr Thomas Bankes, the owner of Savay Lake. Savay Farm is an old and beautiful manor house of great historical and architectural interest, listed Grade I. It is the principal building in a small group of buildings in an attractive park-like setting at the edge of Savay Lake, about 350m from where the viaduct will be closest. Miss Cakebread and her mother believe that their home will be irreparably affected. No mitigation is possible other than sound barriers on the viaduct, which will be considered at the design stage. We hope that the Cakebreads will find that their worst fears are unfounded. We expect that Mr Bankes will find a satisfactory new parking space for anglers fishing in Savay Lake. There is an agreed plan, subject to planning permission. We agree that Mr Bankes, as owner, is the appropriate person to apply for permission, but with the promoter bearing the reasonable costs of the application.
151. The future of the HOAC is still not clear, but there is general agreement that it is a matter of high importance. Initially it was proposed to relocate the Centre to the nearby Denham Quarry (just outside the Hillingdon area) at a cost (to be borne by the promoter) of more than £20m. Then the estimated cost increased very sharply, for reasons that we have not investigated, and the Secretary of State wrote a letter indicating that the cost of relocation was unacceptable. On 17 November 2016 we were due to hear the petition of the London Borough of Hillingdon, but we were glad to hear that the Borough had on the previous day been able to reach agreement in principle with the promoter on all outstanding issues. Other aspects of this important agreement are considered later, but in relation to the HOAC the agreement fixed the promoter's maximum contribution as £26.5m, to be used (as the preferred option) for relocation to Denham Quarry; if that proves impossible the next option is expenditure on mitigation and improvement of the existing site; if that too proves impossible, some other relocation must be sought. The continuing uncertainty is unfortunate, but all parties are committed to work together to the best possible solution.
152. The Harrow Angling Society was concerned about the proposed wetlands and suggested that access should be improved by extrusions of made ground between gaps in the reed beds, a suggestion which we support. There were some petitions from the owners of boats moored in the Harefield Marina or on the Grand Union Canal, and from the owners of boating businesses in this area. They described the marina as an idyllic spot, and showed us photographs and videos (with a soundtrack of birdsong) in support of their case. They seem to take a rather apocalyptic view of HS2 as the end of the idyll. That is, we think, far too pessimistic. There will be noise and disruption, intermittently, during the construction phase of about three years. The towpath will be closed, but only for a short time. The canal itself will be closed only very briefly. For those boat owners whose licences permit them to sleep on board regularly (a limited number) the construction noise will entitle them to temporary rehousing, since effective noise insulation of small boats is almost impossible.
153. The residents on the south edge of Harefield will be pleased to hear that the National Grid feeder station is most probably to be moved further south, away from their homes. The move is not certain because the new site may be liable to flooding, and further tests have to be made. This move will bring it

closer to the Ryall family at Dews Farm and 2 Dews Cottages. They are very hard hit by the project and they should be shown every consideration.

### **Ickenham**

154. In Ickenham (which has a population of about 11,500) the environment changes suddenly from being moderately rural to being intensely urban. The park-like atmosphere of the Colne Valley is continued to some extent by the Uxbridge golf course, the triangle of farmland between Harvil Road, Breakspear Road South and the existing railway (“the Cophall Farm triangle”), and the open land to the north of the railway, as far as the Ruislip golf course. But east of the line of Swakeleys Road and Breakspear Road there are densely-built residential areas and congested roads and streets (including the two roads just mentioned). The transition from country to town is marked by the termination of the Rural Support Zone (RSZ) at the point where the existing railway passes under High Road, Ickenham. The houses in Hoylake Crescent (the home of Mrs Beryl Upton, who joined with some neighbours in a petition) and The Greenway are therefore, as matters now stand, on the very edge of the area in which owner-occupiers may obtain some benefit from being in or near the border of the RSZ.
155. We heard some powerful and entirely credible evidence about traffic congestion in Ickenham. Not all of this is down to motorists who are resident in the district. Commuters heading to central London from more distant places drive to Ickenham, park their cars in side streets and catch the London underground. Commuters living further north drive to work through Ickenham in the morning (Heathrow has provided thousands of jobs, directly or indirectly) and drive home through Ickenham in the evening. Traffic accidents (for which the vicinity of Swakeleys Roundabout is a black spot) cause traffic to come to a halt, not just on one road but often over a large area. Sometimes the emergency services are delayed, and often children and teachers are late for school through no fault of their own (particular mention was made of Vyners School, a well-regarded academy with a special section for hearing-impaired children). One local bus has a schedule with an off-peak target of eight minutes, and a peak target of 22 minutes, for a relatively short journey, and even these targets are often not met.
156. That is the background against which, as we are satisfied, the promoter has made determined and realistic efforts to reduce the numbers of HGV movements on the roads of Ickenham. The promoter’s original estimate was of 1,860 two-way HGV movements a day. That has been progressively improved, first to 1,460, then to 1,060, and finally to 550 two-way HGV movements a day. That last figure appears in the assurance (in terms of “reasonable endeavours”) embodied in clause 7 of the draft contract giving effect to the agreement mentioned in paragraph 150 above. It is expressed as a limit of 550 HGV movements a day at Swakeleys Roundabout and, as a separate undertaking, a reduction (“so far as reasonably practicable”) in the number of HGVs using the roundabout at peak morning and evening hours on weekdays.
157. This remarkable improvement in the target, although obviously welcome, has been criticised by some petitioners as having emerged only at a late stage, after much uncertainty, and as still having an element of contingency. That is so, but it does represent a lot of hard work by the promoter in trying to balance the traffic problem against the disfigurement of green spaces by

spoil heaps, and in our view the promoter has made a lot of progress towards striking the right balance.

158. The engineering works to be carried out in or near Ickenham are extensive, although not quite as daunting as those at Old Oak Common. To the north-west there is to be a National Grid feeder station supplying power to an autotransformer station to be constructed between Harvil Road, the existing Chiltern Line railway and the high-speed line of route. There is to be a large cutting, the Cophall Cutting, on the north side of the Cophall Farm triangle. It will contain a maintenance siding as well as the high-speed tracks. There will be bridges over or under Harvil Road, Breakspear Road South and the River Pinn, the latter close to the West Ruislip portal. Twin tunnels will be bored for the Northolt tunnel as far as the Greenpark Way vent shaft. In the north-west part of the Cophall Farm triangle there will be a factory for the manufacture of concrete tunnel lining segments.
159. The promoter has several initiatives for disposing of spoil without having to move it far, or store it in unsightly heaps on the southern part of the Cophall Farm triangle. Soil excavated from the Cophall cutting will be used on various embankments and on the Ruislip golf course and, possibly, the Uxbridge golf course also. Golf is a topic of interest to many residents. Both courses are public courses owned by Hillingdon Borough Council, although there is a private club with its own clubhouse at Uxbridge. The council has decided, after consultation, that the Uxbridge course should be reinstated with 18 holes, and the Ruislip course reconfigured as a nine hole course and a six hole academy course. The promoter will assist in the work at the Uxbridge course if it makes use of a safeguarded haul road at the west edge of the course.
160. The draft agreement between the Secretary of State and Hillingdon covers many topics apart from the HOAC, the reduced number of HGV movements and the golf courses. These include public footpaths, traffic controls and improvements at the Swakeleys roundabout, a local amenity fund of not more than £2m, and monitoring of air quality. Not all the petitioners were wholly content with the agreement, but in our view it goes a long way to meet most of their concerns.
161. Mr and Mrs Gustavson own and reside at Brackenbury House, a fifteenth century Grade II listed manor house on the west side of Harvil Road. Their home will be directly exposed to noise, and their lives would be disrupted, by the construction and operation of the high-speed line, and by the construction of a National Grid feeder station and autotransformer on the other side of the line. We suggested, and the promoter has accepted, that they should be regarded as a special case and have their house purchased on the same terms as on compulsory purchase (see paragraph 46 above).
162. Few other residents raised noise as a particular concern (the recurrent concerns were traffic congestion and air quality). We have not been told that any of them will be eligible for noise insulation. But if any are outside the endpoint of the RSZ and are entitled to noise insulation, they should in our view receive the same treatment as comparable residents in Old Oak Common (paragraph 170 below) and Camden (paragraphs 210–221 below).

### Old Oak Common

163. The general location of Old Oak Common is in the London Borough of Ealing, south of Willesden Junction and north of Wormwood Scrubs. It is crossed by the Grand Union Canal. It has for many years been associated with railways; the area sometimes called the “island triangle” (Stephenson Street and its adjoining streets) contains about 200 terraced cottages originally erected for railway employees. It now contains (together with other infrastructure) carriage sheds for the West Coast Main Line and for Crossrail. Although many petitioners referred to the area as tranquil, others acknowledged that there is already quite a lot of railway noise; one petitioner living in Wells House Road referred to her house shaking as a result of train movements.
164. Nevertheless the disruption of the district by the works authorised by the bill will on any view be very severe in its intensity and its duration. In some ways it will rival the disruption at Euston. At Old Oak Common there will be not only the construction of a new HS2 station with an interchange with Crossrail, and an adjacent station on the Great Western Mainline, with many consequential changes of infrastructure. There will also be four tunnel boring machines to be brought on site and assembled. Between them they will bore twin tunnels in two directions—westwards towards West Ruislip as far as the Greenpark Way vent shaft and eastwards to Euston, a combined total of about 30km of bored tunnel producing millions of tons of spoil. The spoil will all be transported back along the tunnels at Old Oak Common and will all be removed by rail. For that purpose there will be a railhead at what is now the Willesden Euroterminal depot, on the north edge of the Grand Union Canal to the west of Old Oak Common Lane. The railhead will also receive spoil from other worksites by means of a system of conveyor belts converging on the railhead and crossing the canal.
165. During the first phase of the works (lasting about 16 months) numerous buildings will be demolished, and their sites cleared. These will include the First Great Western depot (which is close to Wells House Road, a triangular enclave at the south end of Old Oak Common Lane), numerous buildings on either side of Victoria Road (the A4000) and other buildings, including a supermarket, between Atlas Road and the existing railway parallel to Atlas Road. Work will start on the conversion of the railhead. The buildings to be demolished include Plantagenet House on Victoria Road. It is a handsome warehouse but it is not listed. We were asked to direct that its facade alone should be preserved, but we do not accept that the expense, and loss of space for the contractors, would be justified. During the second phase (about ten months) the railhead conversion will be completed, piling and D-walling will be carried out at the HS2 station box, and D-walling and excavation will be carried out at the Victoria Road crossover box (this will allow trains to change tracks and reverse in and out of the station). There will be main compounds at each of these localities. A factory for precast tunnel lining segments will be established at the Atlas Road compound.
166. During the third phase (about 17 months) the high-speed station box will be excavated and linked by twin tunnels to the crossover box. A logistics tunnel will be constructed between the HS2 station box and the Atlas Road compound. The Heathrow Express depot (which is also close to Wells House Road) will be demolished. During the fourth phase (about 14 months) the station box will be constructed and the tunnel boring machines will start

work on the twin tunnels leading westwards (the Northolt tunnel) and eastwards (the Euston tunnel), with all the spoil being removed by rail from the railhead.

167. During the fifth phase (about 26 months) excavation of the twin tunnels will continue, with spoil removed by rail from the railhead. The Crossrail turnback will be constructed to the south of Wells House Road, and work will start on the Great Western Mainline part of the new station, to the east of Wells House Road. During the sixth phase (three years) the south end of Old Oak Common Lane will be closed to vehicular traffic and its level will be altered to accommodate the new works. Pedestrian and cycle access will be maintained. Fitting-out of the major new works will proceed: the HS2 station, the Great Western Mainline Station and all the tunnels.
168. The promoter has given to the local authority, the London Borough of Ealing, a comprehensive set of assurances in a 12-page letter dated 8 January 2016. These cover numerous topics including access, mitigation funds, the Crossrail turnback, the construction and use of conveyors to move spoil from the station box to the Victoria Road worksite, community engagement, and the reduction of construction traffic on the roads. One aim is to reduce the number of daily HGV movements by 150 during the third and fourth phases, mainly by the use of conveyors.
169. Despite these assurances, ten years of major works will cause real hardship to many residents, who will suffer from noise, air pollution, traffic congestion, and general disruption of their lives. Those most affected will be the residents of Wells House Road, Midland Terrace, Shaftesbury Gardens, and Stephenson Street. The residents of the most easterly part of Wells House Road (that is, those whose houses also have a frontage onto Old Oak Common Lane) are subject to safeguarding, because the work on the Lane may encroach on their gardens. They will therefore be eligible for the Express Purchase Scheme, whether or not they are owner-occupiers (this appeared to come as a surprise to Ms Amanda Jesson, even though she has for a long time devoted much of her time and energy to representing the interests of the residents in Wells House Road).
170. In our view all the owner-occupiers in the streets mentioned above should, if they are not eligible for the Express Purchase Scheme, and whether or not they will be eligible for noise insulation, be treated as if eligible for the Voluntary Purchase Scheme, including the Cash Option. It would be disproportionate as between rural residents and urban residents, in our view, for these owner-occupiers not to participate in a scheme available to many owner-occupiers in the RSZ who will not be as severely affected, either during construction or when the high-speed railway is in service. We would not extend this scheme to owner-occupiers in Goodhall Street, or to residents of the new residential block known as the Collective, since they will not be as severely affected.
171. We heard a petition and evidence presented by Double 4 Ltd, a company which occupies part of the Euroterminal site on terms which (as the company acknowledges) give it no security of tenure. The company runs a successful and socially useful business which includes the recovery and repair of vehicles of all sorts that break down, or are involved in traffic accidents, in the London area. We heard evidence from Mr Dale Wilkes, its managing director, and from Mr Ralph Goldney, a consultant on rail freight. Mr Goldney had prepared an alternative layout for the railhead site

which would, he said, enable Double 4 to continue to occupy part of the site. We do not direct the promoter to adopt that plan. Even if the plan were more convincing, the promoter has the sole responsibility for the operation of the railhead, which is absolutely essential to the removal of millions of tons of spoil by rail, and the promoter must arrange the operation of the railhead as advised by its own engineers and experts. We do, however, encourage the promoter to assist Double 4 so far as it can (see paragraphs 93–94 above).

## CHAPTER 7: CAMDEN

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### Introduction

172. The London Borough of Camden is a large and densely-populated area extending from Holborn and Covent Garden in the south to Hampstead in the north-west and King's Cross in the east. It has about 300,000 residents, and many thousands more travel to, or through, the borough to work. It has eighteen wards, each electing three councillors. The wards most closely affected by the HS2 project are Regents Park and St Pancras & Somers Town, although other parts to the north and west will be affected by construction traffic on the roads, by the need to relocate utilities to the north of the tunnel portal, and by the vent shafts to be constructed at Adelaide Road, NW3, Alexandra Place, NW8, and Salusbury Road, NW6.
173. The part of Camden with which we have been most concerned is marked by a high degree of social and ethnic diversity. It is only a few minutes' walk from the sought-after Nash villas of Park Village East to the social housing of the Regent's Park Estate, built in the 1950s and 1960s and still appreciated by its residents for its mixture of high-rise and lower development, and for its generous green spaces and play areas. The area's diversity seems to be generally welcomed by its residents. Petitioners and their witnesses often spoke of it as a vibrant place and a good place to live, with a strong sense of community. Understandably, petitioners expressed a very wide range of concerns. It is important to note, however, that many of them were covered by the extensive negotiations undertaken between Camden Council and the promoter, which have resulted in the promoter offering over 100 assurances to Camden in the House of Commons and a further 76 in the Lords.
174. The area most affected can be roughly described as bordered on the south by the Euston Road (though a few petitioners were south of that thoroughfare), on the west by Albany Street on the east edge of Regent's Park, to the north-west by Parkway, and to the east by Camden Street, Charrington Street and Ossulston Street (which meets the Euston Road at the British Library). The following sections give a brief description of these districts and the problems which they face, starting with Euston Station itself and then proceeding clockwise through its surroundings.

### Euston Station

175. Euston Station was opened in 1837, the first London railway station to be built and operated as a mainline terminus. The operating company was the London and Birmingham Railway Company, and the Birmingham terminus was Curzon Street Station, which is to be rebuilt as part of the HS2 project. The multiplicity of tracks immediately to the north of Euston Station (often referred to at our hearings as "the throat") was a feature from the beginning. But as the volume of railway traffic increased, it was decided, at the beginning of the twentieth century, to widen the throat. This resulted in the demolition of all of the Nash villas on the east side of Park Village East (leaving only the Old Riding School at 1 Park Village East), and the construction of a retaining wall which is now to be replaced by a massive new barrette structure (massive steel and concrete pillars to be driven 40m below the surface of the roadway).

176. The station was rebuilt in the 1960s to designs by Seifert and Partners. This was the occasion on which the Euston Arch was demolished. The rebuilding did not alter the footprint of the station itself and it remains what Professor McNaughton, one of the promoter's expert witnesses, described as a "wide, stubby station." The new station (or perhaps it is better to say stations, as they are to be developed separately, to different timetables, and for different operating companies) will have a different footprint in all three dimensions. Between them they will have more and longer platforms, and more ancillary functions will be carried out at different levels. One of the two main construction compounds for the work is to be the Podium at 1 Eversholt Street at the south-east corner of the existing station. It will be the strategic hub of the work.
177. The station is at present managed by Network Rail, which will continue to manage the eastern part of the station after its proposed redevelopment. Many petitioners, led by Camden Council, argued that the deferment (by the AP3 changes) of the reconstruction of the eastern part of the station would be a lost opportunity for integrated and comprehensive redevelopment of the whole site as a world-class railway station. Mr Cameron QC, for Camden Council, submitted that this could be secured by an amendment to Schedule 17 of the bill which would enable Camden, as planning authority, to defer approval of plans for the HS2 side until plans for the other side had been developed. He referred to this as a "*Grampian*" condition (see *Grampian Regional Council v Aberdeen DC* (1983) 47 P & CR 633).
178. We agree with these petitioners as to their main aspiration. The new station, which will eventually emerge after so much expenditure of public funds and so much misery endured by Camden residents, ought to be a world-class railway station, and the splitting of its design into two different operations seems unlikely to assist in the achievement of that objective. We earnestly urge the Secretary of State to ensure that funding is provided for the second planning stage to proceed as soon as possible. But although HS2 Ltd and Network Rail are both in the public sector, they have different managements, different business plans, and different budgetary restraints. We do not feel able to direct, rather than to exhort. In particular, we think that the suggested amendment imposing a *Grampian* condition would be quite likely to cause further delay without achieving any positive result.
179. We were also asked to consider a different plan under which the station would be rebuilt substantially within its present footprint, so avoiding the acquisition of land immediately to the west of the existing station. This plan was, as we understand it, a feature of a larger plan which would almost certainly have had to be rejected as requiring a direction (which has not been given) for a new Additional Provision. We have looked at it separately from its original context but conclude that it is not feasible. Professor McNaughton gave evidence, which we accept, that it would not be possible to fit all the platforms necessary for the successful operation of the new stations, together with all necessary escalators and other plant, within the 200m width of the existing station.
180. Professor McNaughton explained the plans for Euston as they have been since the adoption of AP3 in autumn 2015. There are at present 18 platforms, none of which is of any great length. During the first phase of the reconstruction (labelled as Phase A) the site immediately to the west of the station will be redeveloped so as to provide the first six HS2 platforms,



long enough to take trains of up to 400m. This will involve the demolition of some substantial commercial buildings close to the south east corner of Hampstead Road bridge, and also of redundant carriage sheds further up the west side of the throat.

181. During the second phase (Phase B1) the five most westerly of the existing platforms (numbered 14 to 18) will be redeveloped so as to provide a further five long HS2 platforms. During the third phase (Phase B2) the rest of the station, including the existing platforms 1 to 13, will be redeveloped as a new terminus for the West Coast Main Line (WCML). The numbers of travellers using the station (or combined stations) have been estimated as follows:

**Table 2: Rail passengers arriving at Euston in the AM peak period**

	2012	2026	2033
WCML	25,000	30,000	35,000
HS2		12,000	26,000
Total	25,000	42,000	61,000

*Source: Information provided by the promoter. WCML includes inter-city and suburban services.*

The station will be designed to provide for these numbers, with a central space between the two parts providing free access on a north-south axis as well as access between east and west.

### **Land to the west of Euston Station**

182. The area most affected by Phase A will be the triangle of land between the station, the Euston Road and the most southerly stretch of Hampstead Road (the A400). Melton Street and Cardington Street, together with most of St James' Gardens, will disappear. This will involve the demolition of numerous buildings, including three hotels. None of the hotel owners has petitioned in this House. Several learned institutions (such as the Royal College of General Practitioners and the Royal Asiatic Society) with premises in Stephenson Way did present petitions but we did not need to hear them as all these petitioners were able to come to terms with the promoter.
183. Cobourg Street will be closed and boarded off, leaving tenants of the social housing in that street with only a thin strip of pavement on their side of the boarded enclosure. Eight units of social housing in Cobourg Street will be lost. The junior part of the Maria Fidelis School will be closed and moved to join the rest of the school on a new site already under development in the Phoenix Road area to the east of the station. Several streets, including Stephenson Way, Drummond Street (where there are numerous ethnic restaurants and food shops) and Robert Street, will be affected by increased traffic flows, which may sometimes impede access by business owners to their own premises. Traders in Drummond Street are also concerned about the prospect of reduced business turnover, especially during the Phase A of the station redevelopment.
184. The National Temperance Hospital site is in this area. It is already in the promoter's ownership and demolition has begun. It is to be the other main construction compound and (like the Podium) it will be in use until 2033.

185. This area also contains (close to, but not bordering, the west side of Hampstead Road) Netley Primary School. Closely adjacent to it are a number of smaller units meeting other social needs. The primary school itself is housed in the old Victorian schoolhouse and has about 450 pupils. The site also houses a centre for 25 autistic children, another centre (Rosslyn House) for other children with special educational needs, an early years nursery and reception class, and an adult learning centre. Rosslyn House takes only the children with the most severe special educational needs; about 100 children at the primary school are on the special needs register. Ninety per cent of the children have English as their second language, and between them they speak 29 different languages as their first language. Thirty-eight per cent have free school meals. Some are on the child protection register, or in care. We heard evidence from the head teacher, Ms Bavaani Nanthabalan, who brought some of her students to the hearing. She is an inspiring leader facing what must sometimes appear to be an impossible task.
186. The Governors of the Netley Primary School agreed to act as lead petitioner on the topic of air quality. We heard from their expert, from other Camden petitioners who chose to call expert evidence about air quality, and also from the promoter's expert, Mr Miller. This evidence, and our conclusions, are summarised in the section headed "Air quality and monitoring air pollution" (paragraphs 294–303 below).

### **The Regent's Park Estate**

187. The Regent's Park Estate is a substantial area of social housing lying between Robert Street to the south, Albany Street and the barracks to the west, Granby Terrace to the north and Hampstead Road to the east. It has over 7,000 residents (Ms Dorothea Hackman, appearing for the Regent's Park Estate Residents, gave us the precise 2011 census figures of 2,709 households and 7,228 habitual residents). Built in the 1950s and 1960s, it is a mixture of high-rise blocks and other buildings of medium height, some on an L-shaped or T-shaped footprint. Only about 60 per cent of the householders are council tenants. The rest are former tenants, or assignees or sub-tenants of former tenants, who have exercised their right to buy under the leasehold enfranchisement legislation.
188. Several petitioners spoke warmly of the sense of community on the estate and the amenity of its open spaces, trees and play areas for children. The evidence of Mr Brian Battershill, who has lived there for over 40 years, was particularly memorable. Asked about access to Regent's Park, petitioners tended to acknowledge that it is a wonderful facility, but regard visiting it as quite an expedition, involving getting children across busy streets. On the Estate, on the other hand, children can simply go out and play on their own, sometimes in view of the windows of the family's flat.
189. The Estate will be substantially affected by the redevelopment of the station and the associated works in the throat. At the north-east corner three of the tower blocks of flats (Eskdale, Ainsdale and Silverdale), together with a small community centre, will be compulsorily purchased and demolished. Another block, Cartmel, which has ground-floor flats adapted for disabled tenants, will be extremely close to the south-west end of the reconstructed (and lengthened) Hampstead Road Bridge. Just how close it will be depends on final decisions about the reconstruction of the bridge, which has been (and still is) one of the most difficult and controversial issues relating to

the works in Camden (see paragraph 205 below). There will be a satellite compound in Granby Terrace and a ramp leading down to the throat.

190. Residents on other parts of the Estate will suffer substantial noise, by day and at night, from work on Phase A of the station redevelopment, and from work on both sides of the throat immediately outside the station. The redundant carriage sheds on the west side will be demolished and will become (in the words of Mr Smart, one of the promoter's leading engineers) the epicentre of the works in the throat. The reconstruction of two bridges, the Hampstead Road Bridge and the Granby Terrace Bridge, will require barrette construction work, and the insertion of ground anchors, on both sides of the throat.

### **Park Village East**

191. Park Village East, so far as it has survived wartime bombs and earlier demolition, is of considerable architectural and historical interest. It is the north-east extremity of the ambitious plan for the layout of central London which John Nash prepared for the Prince Regent, and carried into effect between 1812 and 1827. Nash was as much a town planner as an architect, and his design produced an impressive unity (much of which has since disappeared) from Buckingham Palace and St James' Park in the south, by way of Trafalgar Square, the two stretches of Regent's Street, and Portland Place, to Regent's Park with its two grand terraces, Chester Terrace and Cumberland Terrace. Nash's plan was facilitated by the expiry in 1811 of a lease of the area of open land which became Regent's Park. At the park's north-east corner is the "rus in urbe" of Park Village East (Nash's phrase which several petitioners quoted). Its surviving Nash villas on the west side of the roadway are listed Grade II\*. They are attractive white stucco houses with large rear gardens. Nash Court is a small block of eight flats built to replace two villas that were destroyed by wartime bombing. Silsoe House, at the south end of the road, contains 40 flats.
192. The villas on the other side of the roadway were all demolished long ago, before the days of planning controls, to make room for an earlier widening of the Euston throat. The only surviving building on that side is the most northerly, 1 Park Village East, also known as the Old Riding School. It is owned and occupied by Park Village Studios. It has been converted so as to form two film and recording studios, with ancillary facilities. The business has been very successful and Mr Tom Webb (the managing director, who gave evidence to us) attributes its success, in large part, to its unique location.
193. The Nash villas are held by owner-occupiers on Crown leases. These owners face the prospect of very heavy and noisy engineering works, including barrette construction, being carried out on the roadway of Park Village East. Their houses will be shut off by hoardings erected only a few feet from the frontages, and some houses will have ground anchors inserted (at an angle of 30 degrees from the horizontal) a long way into the subsoil below their basements. For considerable periods of time residents will have no vehicular access, either in their own cars or in taxis. This will create real difficulties for many of them, including the elderly and those with young children.
194. The barrette work in Park Village East will be the most intrusive, but not the only source of noise. There will be a crane platform just to the south of the Old Riding School and an autotransformer station, a head house and a

satellite compound at the north end of Mornington Terrace. There will also be the demolition of the Mornington Street Bridge and the construction (a short way to the south) of a temporary replacement bridge for use by pedestrians and cyclists. This will require further piling at the south end of Mornington Terrace, on the other side of the throat. In due course the Mornington Street bridge will be reconstructed, together with a ventilation building close by. The temporary bridge will be demolished. Further south there will be the demolition of the old carriage sheds, and very intensive work on the Granby Terrace and Hampstead Road bridges. There will be three satellite compounds in the area for these works.

195. If noise insulation proves ineffective (and we heard a lot of evidence about the difficulties of insulating large and unusually shaped windows in listed buildings), residents will be offered rehousing during the period of the worst noise. Even if suitable accommodation is available, this will be unsatisfactory for many residents, including those who work at home, the elderly and those with young children. There will also be difficulties about the upkeep and security of belongings left behind during temporary rehousing.
196. For all these reasons the owner-occupiers of Park Village East are among those who will be most severely affected by the works, and to whom we recommend that the Secretary of State should provide further compensation going beyond what is at present proposed.
197. The proprietor of Park Village Studios has a different problem, as its successful business is likely to be significantly affected by traffic disruption at street level and by noise from work in the throat below. Mr Webb does not see relocation as a viable option. We believe that the best course is for him to work with the promoter to find ways of continuing to carry on the business where it is. Only if this proves unworkable should relocation, at least on a temporary basis, be considered. We are sympathetic to Mr Webb, but the promoter reasonably takes the view that no business should be regarded as totally incapable of relocation; and it also reasonably declines to take the unusual step of paying the petitioner's legal costs of petitioning, while willing to meet other reasonable professional fees.

#### **Parkway, Delancey Street, Albert Street, Arlington Road**

198. These streets are to the north, north-west or west of the top of the throat, where the portals of the new HS2 tunnels will be. Parkway and Delancey Street are busy streets with a mixture of shops, pubs and houses. Albert Street and Arlington Road are quieter and mainly residential. Most of the housing is early Victorian terracing, built on shallow foundations, with some modern infilling of gaps, some caused by war-time bombing.
199. There were numerous petitions from residents and traders in this area. They included Mrs Catherine Colley on behalf of the Delancey Street Residents, Mr Terence Conlon, the licensee of the historic Dublin Castle pubic house, and Sir Tim Lankester, Mr Messecar and Mrs Pahl from Albert Street. The main complaints were of the prospect of noise from the engineering works in the throat; traffic congestion from construction traffic or displaced traffic and from utility works in the street; and increased air pollution.
200. Some of the houses in Delancey Street are likely to be significantly affected by noise from the various works in the throat. Apart from them few houses in this area are likely to qualify for noise insulation, since much of the

construction noise will be absorbed or reduced by other buildings (notably those of Mornington Terrace) closer to the works. There will be an unusual volume of utility works as a result of the disruption of existing services caused by the construction of the new tunnels as they descend to their full depth. But these works will be controlled, being carried out on small sections of the highway at a time, with at least one-way traffic maintained. Air quality will be monitored by Camden Council. On the whole, and apart from some houses in Delancey Street, we regard the mitigation being offered to the residents and business-owners in this area as adequate.

### **Mornington Terrace, Mornington Place, Mornington Crescent**

201. These streets, mostly late Georgian or early Victorian terraced housing, are the areas to the east of the throat which, together with the Ampthill Square Estate, will be the parts of Camden most affected by the HS2 project. Some of the houses are still in the occupation of a single family, but many have been divided into self-contained flats.
202. Mornington Terrace faces across the throat towards Park Village East on the other side. It is bisected by Mornington Street and the Mornington Street Bridge, which is to be demolished and rebuilt, while a temporary bridge for pedestrians and cyclists is to be built and then demolished. Mornington Terrace will be subject, without any intervening natural or built protection, to all the noisy and intrusive works mentioned (in relation to Park Village East) in paragraphs 191–97 above. There will be an autotransformer station, a head house and a satellite compound in the Mornington Terrace sidings and another satellite compound in the Terrace itself for the work on the Mornington Street bridge and its temporary replacement.
203. We heard a large number of petitions from residents, with Mr David Auger taking the lead on behalf of the Camden Cutting Group, supported by many other smaller groups and by individual petitioners. There was some useful evidence about sound insulation (see paragraph 371 below). Almost all the houses in Mornington Terrace, and several in Mornington Street, Mornington Place and the exposed south-west part of Mornington Crescent, will suffer as much disturbance by noise as residents in Park Village East, although without the prolonged deprivation of vehicular access that will occur there. On the other hand, for some the noise may be even worse, as they will be closer to the demolition of the carriage sheds and the reconstruction of the two southern bridges. We consider that this group of residents should also receive further compensation commensurate with that recommended for Park Village East.

### **The Ampthill Square Estate**

204. This is the other large area of social housing affected by the HS2 project. We heard from Ms Fran Heron on behalf of the Tenants and Residents Association and from several other residents. The Estate had, at the 2011 census, 366 households and 1,067 habitual residents. It was built in the 1960s. It has had a more chequered past than the Regent's Park Estate. By the end of the last century it was seriously run down, with a bad reputation for drugs and crime. In 2005, the Council invested some £20m in refurbishing the estate, improving security and communal facilities. About 20 per cent of the tenants have exercised their right to buy under the leasehold enfranchisement legislation. The present residents seem to be reasonably contented with their homes, but apprehensive about the effect of the impending works, and in

particular the reconstruction of the Granby Terrace and Hampstead Road bridges, and the very complex diversion of utilities which will have to precede those works.

205. The Estate consists of three high-rise blocks (from the north: Oxenholme, Dalehead and Gillfoot) and six lower-rise buildings (Calgarth, Glenridding, Mickeldore, Beckfoot, Brathay and Stockbeck). The high-rise blocks are in close proximity to the Hampstead Road, and in the case of Dalehead and Gillfoot, very close to the bridge which carries that road over the railway tracks. The six lower blocks are in a more sheltered position to the east, at the edge of an open space which includes an enclosed area for team games. This open area will be affected by the utility diversions, and the low-rise blocks may suffer some noise from the demolition, and use as a satellite compound, of a Royal Mail depot at the south-east extremity of the throat (it is possible that that demolition will not now proceed).
206. Ms Heron emphasised the very disruptive nature of the bridge works and the unsatisfactory end result if, as was originally proposed, the Hampstead Road Bridge is raised by some four metres, so that members of the public travelling on buses will be able to look down into residents' living rooms. We heard from Mr Smart, one of the promoter's leading engineers, that changes to the bridge works are still being considered, several years after the bill was first introduced in Parliament. Any marginal improvement for residents of Gillfoot is liable to produce a corresponding detriment for residents of Cartmel in the Regent's Park Estate on the other side of the throat. Whatever its exact alignment, the plan is that the new Hampstead Road Bridge will be constructed and put in place in very large pieces, with one-way vehicular traffic being maintained as far as possible; and that whatever stage the work has reached, it will always be open for pedestrians and cyclists.
207. We consider that the tenants and leaseholders in the two high-rise blocks known as Dalehead and Gillfoot are likely to suffer exceptional disruption over a long period, whatever fine-tuning there may yet be in relation to the alignment and height of the Hampstead Road bridge. We consider that they, and the tenants and leaseholders in Cartmel on the other side, should receive some significant monetary compensation for disruption which cannot, as we see it, be adequately mitigated. It is most unsatisfactory that the exact configuration of these important works is still uncertain at this very late stage.

### Somers Town

208. This area is bounded on the west by Eversholt Street and on the south by the Euston Road. It has about 10,000 residents, and has several schools, which will soon include the new Maria Fidelis School, now in course of construction. It has a lively market in Chalcot Street, the main shopping centre. We heard petitions from the Somers Town Neighbourhood Forum and the Somers Town Community Association, both presented by Mr Slaney Devlin. We also heard from Mr Paul Tomlinson, Ms Semata Khatoon and Mr Roger Robinson, the three councillors for the Somers Town & St Pancras ward.
209. This district is likely to be less affected by extreme disruption by the HS2 project, though the postponement of Phase B2 of the station redevelopment means that it will be affected for longer than other parts of Camden. Unfortunately there are various other building projects taking place in

Somers Town, including developments by Camden Council and by the British Library. The district is also threatened by the possibility of further disruption by the Crossrail 2 project. We very much hope that that project's visible presence in this part of Camden can be limited to the redeveloped station, but that is at present uncertain.

### **Recommendations on improved compensation**

210. For reasons explained in more detail in Chapter 8 on compensation we consider that the Secretary of State's non-statutory scheme does not at present strike a fair balance between town and country residents, mainly because it is based on the incorrect assumption that it is inconvenience and disruption during the operational phase that is the sole or main grievance for those who live close to the line of route, but not so close as to have their homes compulsorily acquired, or eligible for acquisition under the Express Purchase Scheme.
211. That assumption seems to be based on the traditional view (see paragraphs 261–65 below) that the public (and especially those who live in urban areas) must expect to put up with construction noise from time to time, and that compensation should be solely or primarily for permanent detriment once the construction phase is over, and the project is in operation. After careful reflection we have come to the conclusion that that approach is no longer acceptable, for two main reasons.
212. The first reason is the unprecedented scale, both in intensity and in duration, of the construction works to be authorised by the bill. Some of the piling noise will exceed 85 or even 90 dB. In Camden the works will continue until 2033, as more than one elderly petitioner said, for a period exceeding his or her life expectancy, and as some parents said, throughout the whole of their children's childhoods.
213. The other reason is the impact of the Human Rights Act 1998 (paragraphs 272–80 below). Both article 8 of the Convention (respect for private life and home) and article 1 of the First Protocol (peaceful enjoyment of possessions) are in point, as is article 14 of the Convention (no discrimination in enjoyment of Convention rights). The terms of the Secretary of State's non-statutory scheme are not a matter within his wide discretion, still less a matter of bounty. In the absence of a non-statutory scheme, the statutory compensation code might, on its own, fail to comply with Convention rights. The human rights of thousands of residents of parts of Camden require that they should be properly compensated, and that a fair balance is struck between the rights of owner-occupiers and residential tenants, and between rural and urban residents.
214. This section is concerned with Camden, and we agree with the House of Commons Select Committee (*Second Special Report*, paragraph 237) that "Camden is exceptional, and needs special treatment" in the sense that its residents are facing unprecedented disruption. But the same principles must apply to parts of Hillingdon and Birmingham if and wherever there is to be comparable disruption.
215. We make a strong recommendation, therefore, that those households in Camden, and any in Hillingdon and Birmingham, that are so threatened by construction noise as to be entitled to noise insulation, should be treated in the same way as if they were within 120m of the line of route in an area

where the Rural Support Zone (RSZ) applies. Eligibility to noise insulation is an objective test, involving independent experts. That would in our view be a suitable equivalent to the 240m “ribbon” of the RSZ, which would not be appropriate in a densely developed urban area with very different degrees of exposure to noise and general disruption during the construction phase. At Old Oak Common we have specified streets, in view of the wholly exceptional disruption in that area.

216. The consequence would be that owner-occupiers in these areas would be entitled to participate in the Voluntary Purchase Scheme, including its Cash Option (which would, we think, for most owner-occupiers be the preferred option). We do not suggest that the cash limits should be raised because of high unblighted market values in parts of Camden. The same option would be open to the owners of sought-after villas in Park Village East and to right-to-buy owners on the Regent’s Park Estate and the Amptill Square Estate. For residential tenants who do not qualify as owner-occupiers we suggest the right to payment of a lump sum well in excess of the £5,800 payable to council tenants who have to be rehoused because their flats are to be demolished. Those tenants will have to move, but they will be moving away from at least the worst of the noise and disruption. £10,000 would in our view be an appropriate sum for the most threatened council and private residential tenants who remain behind.
217. We cannot make anything like an accurate estimate of the cost of this proposal, but we thought it right to make a rough calculation of its likely order of magnitude. Four areas need to be considered: Camden, Old Oak Common, Ickenham and Birmingham.
- (1) At Camden about 1,300 dwellings will be eligible for noise insulation. Some of these are social housing, but some former social housing is owner-occupied after exercise of the right to buy. Some houses, or parts of houses, are privately rented. We have assumed 1,000 owner-occupiers and 300 council or private tenants.
  - (2) At Old Oak Common we estimate that there are about 20 dwellings in Stephenson Street, about 60 in Shaftesbury Gardens and Midland Terrace, and about 110 in Wells House Road (of which about 20 are already within the Express Purchase Scheme). We have assumed 150 owner-occupiers and 20 tenants.
  - (3) We are not aware that there will be any noise insulation at Ickenham but we have assumed 10 owner-occupiers.
  - (4) Similarly we are not aware that there will be any noise insulation at Birmingham but we have assumed 40 owner-occupiers and 30 tenants.
218. The assumed totals are therefore 1,200 owner-occupiers and 350 tenants of dwellings of varying size, quality and market value.
219. The Voluntary Purchase Scheme is significantly less attractive than the Express Purchase Scheme and we would expect that as many as 90 per cent of eligible owner-occupiers would opt for the cash option, which is capped at £100,000. If the unblighted value of the average house or flat is assumed to be (A) £1m (B) £1.5m (C) £2m the immediate cost to the promoter (balanced by the acquisition of a bank of residential property which could be expected to increase in value over the long term) would be as follows (the figures at (2)



are likely to be rather lower since even in London not every dwelling has a market value of £1m or more).

**Table 3: Cost to the promoter**

		(A)£m	(B)£m	(C)£m
(1)	120 dwellings purchased	120.0	180.0	240.0
(2)	1080 cash option payouts	108.0	108.0	108.0
(3)	350 payments to tenants	3.5	3.5	3.5
Total		231.5	291.5	351.5

220. These are substantial amounts but the extended compensation would be bringing much needed relief to over 1,500 householders and their families. The figures have to be considered in the light of other known payments made or to be made by the promoter, for instance £26.5m for the Hillingdon Outdoor Activities Centre and £3.4m for a single house in Potter Row near Great Missenden. If the cost is regarded as prohibitive, a cash option only, capped at £50,000 for owner-occupiers, would cost (on the above assumptions) £63.5m.
221. Since the Voluntary Purchase Scheme is a non-statutory scheme, there is no mention of it in the bill. In theory the principal purpose of our hearing petitions is to consider amendments to the bill, although in practice much is achieved, by assurances and concessions, without the need for any formal amendment. We are in doubt as to whether we have power to direct the Secretary of State to make this major change to the Voluntary Payment Scheme, and even if we clearly had the power we would not exercise it. There is too much uncertainty about the likely cost to the public funds, and there may be adjustments and refinements that can usefully be made to our proposal. But we do make a strong recommendation that a substantial concession on these lines should be made to those urban householders who will be most severely affected, and who feel, with some justification, that they are not receiving fair treatment.

## CHAPTER 8: COMPENSATION

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### Introduction

222. Compensation is one of our principal concerns. The bill will give authority for extensive and invasive works which will seriously affect many private interests both during the construction phase and when phase one of the high-speed railway is operational. So far as detriment to private interests cannot be avoided, reduced or mitigated, fair compensation must be provided.
223. There are several different schemes for providing monetary compensation to landowners and tenants whose property rights are adversely affected by the bill. These schemes differ in their legal basis; in their geographical limits; in the timing of payment under them; and in whether or not the claimant must make out a special case in order to qualify for them. These schemes, which many petitioners have understandably found complicated, are identified in these introductory paragraphs.
224. As to the legal basis for compensation, the main division is between schemes which depend on the general statutory law relating to the compulsory purchase of land (“the statutory compensation code”), on the one hand, and special schemes established for the purposes of the HS2 project (“non-statutory schemes”), on the other hand. The principal clauses of and schedules to the bill effecting the incorporation of the statutory compensation code, with some modifications, are Clauses 4–11 and Schedules 5–14 (Clause 11 and Schedule 14 being made necessary by the enactment of the Housing and Planning Act 2016).
225. Some amendments to the statutory compensation code are proposed by the Neighbourhood Planning Bill which has recently been introduced in the House of Commons. Regrettably the proposed amendments do not address the obscurity and (as we are inclined to think) inadequacy of the statutory compensation code. The proposed changes are relatively minor and unlikely to benefit any of those who have petitioned against the bill.
226. The main non-statutory schemes are as follows.
- (1) The Express Purchase Scheme: this is a procedurally simplified, and slightly extended, version of the statutory machinery under which the owners of land subject to planning blight in the form of surface safeguarding can require it to be acquired by some authority with powers of compulsory purchase. It extends to all property subject to surface safeguarding, whether or not within the Rural Support Zone (“RSZ” - see the next paragraph; subsurface safeguarding applies to land on the line of route where the tracks will pass through a deep-bored tunnel). Those who sell under this scheme receive unblighted market value together with removal costs and legal fees, as on actual compulsory purchase.
  - (2) The Voluntary Purchase Scheme and alternative Cash Offer: this is available to eligible owner-occupiers within the RSZ. These owners have an option (“the Cash Option”) to take a cash sum of 10 per cent of the unblighted value of the house, with a minimum of £30,000 and a maximum of £100,000. Those who sell under this scheme receive unblighted market value but no removal costs or legal fees. They may

have to pay £1,000 towards the cost of a revaluation if they make an application but then decide to delay their purchase.

- (3) The Need to Sell Scheme is not limited to the RSZ but has fairly strict conditions, which have been criticised by many petitioners, as described below (paragraphs 237–38 below).
- (4) Homeowner payments: these are payments of a cash sum to eligible owner-occupiers of rural houses which are close to, but not within, the RSZ - that is more than 120m but within 300m on either side of the line of route. The amount of the payment is determined by distance (in three bands) from the line of route.
- (5) Where a house is acquired by the promoter under (1), (2) or (3) above, it may be feasible for the former owner to rent back the property on terms to be negotiated (“rent back”).

227. The RSZ can be described as a ribbon of land 240m wide, with 120m on each side of the central line of route, in the districts bordering the line of route from the Ickenham High Road in the London Borough of Hillingdon as far as Handsacre in Staffordshire, and extending into Birmingham to points on the two spur lines into that city. Originally the whole of Greater London was to have been excluded from the RSZ, but it was extended to include parts of Hillingdon. RSZ benefits are not accorded to those rural areas (notably in the Chilterns AONB) in which the railway will be in a deep-bored tunnel.

228. The result of these rather complex provisions is that the interaction and effect of the statutory compensation code and the bill’s non-statutory schemes depend primarily on geographical location, by reference to safeguarding limits and the line of route (the central part of the RSZ is always safeguarded, but so are areas required for construction compounds and spoil heaps, sometimes at some distance from the line of route). They produce a sort of hierarchy of entitlement to compensation, which in the simple case of a dwelling house has the following effect.

- (1) The most amply compensated, who can expect to receive the full unblighted value of their houses, together with removal costs and legal fees (including stamp duty on the purchase of a new house) and a home loss payment are -
  - (a) anyone whose house is compulsorily acquired; and
  - (b) (under the Express Purchase Scheme) anyone whose house is blighted by safeguarding, or was once blighted even though it is, as plans have developed, no longer to be acquired.

The home loss payment is calculated as 10 per cent of the unblighted value of the house, but capped at £58,000 as of 1 October 2016.

- (2) Next in the hierarchy are eligible owner-occupiers whose houses are not in a safeguarded area but are in the RSZ (and so within 120m of the line of route); they have a choice between
  - (a) the Voluntary Purchase Scheme under which they will receive unblighted value but no removal or legal costs, and no home loss payment;

- (b) the Cash Option of 10 per cent of the unblighted value of their houses (capped at £100,000).
- (3) In districts where there is a RSZ, owner-occupiers who are not within category (1) or (2) above, but whose houses are within 300m of the line of route, are entitled to a homeowner payment on a sliding scale-

**Table 4: Homeowner payment**

(a)	120m–180m	£22,500
(b)	180m–240m	£15,000
(c)	240m–300m	£7,000

*Source: Information provided by the promoter*

- (4) The Need to Sell Scheme has no geographical limits but in practice has no attraction for any owner in category (1) or (2) above. It is possible for an owner who has received a homeowner payment under (3) above to apply under the Need to Sell Scheme; if the application is successful the past payment will be deducted from the purchase money.
229. As to the time for payment, on compulsory purchase 90 per cent of the estimated compensation is paid on delivery of possession. On sale under the Express Purchase Scheme, the Voluntary Purchase Scheme or the Need to Sell Scheme, the agreed price will be paid on completion. Homeowner payments may not be claimed until after the bill has received Royal Assent. Compensation under Part I of the Land Compensation Act 1973 (part of the statutory compensation code) may not be claimed until after the railway has been in public use for one year (on present predictions, 2027).

### **Residential tenants and business property**

230. Residential tenants who are leaseholders with an unexpired term of three years or more are eligible for the Express Purchase Scheme, the Voluntary Purchase Scheme, and the Need to Sell Scheme, or to receive a homeowner payment. Other residential tenants whose sole or main residence is compulsorily acquired will be entitled to a home loss payment (not to be confused with a homeowner payment) of £5,800.
231. Residential tenants will also have a statutory right, under section 39 of the Land Compensation Act 1973, to be rehoused. This is particularly important in Camden, which is to lose about 190 units of social housing as a result of the demolition of four blocks of flats on the north-east corner of its Regent's Park Estate. Camden Council already has plans in place, with funding from the promoter, to construct 66 new units on that estate (but with the consequent loss of cherished open space) and another 70 on the site of a school which is to be relocated from the west to the east of Euston station.
232. The owners of business premises who are displaced will be entitled to "basic loss payments" amounting to 7.5 per cent of the open market value of the premises or £75,000, whichever is the smaller. Business tenants who are displaced will be entitled to "occupier's loss payments" of 2.5 per cent of the open market value of the premises or £25,000, whichever is the smaller. It has been suggested in a recent official consultation that the proportions of these two types of payments should be transposed. We are sympathetic to

that suggestion but think that it must be left to be considered in due course as part of the general legislative process.

233. Business owners whose property is safeguarded can take advantage of the statutory blight regime only if the rateable value of their property does not exceed a limit set by statutory instrument made under the Land Compensation Act 1973. The current limit is £34,800, but it is due to be revised in April 2017. The same limit is applied to small business premises under the non-statutory Need to Sell Scheme.
234. Rateable values of business premises in central London are significantly higher than in other urban districts in England. Ms Nyear Yaseen MRICS, who was called as an expert witness by Camden Council, produced figures based on a sample of business premises in cities and towns on or near the line of route (Aylesbury, Birmingham, Brackley, Chalfont St Giles, Kenilworth, Southam and Wendover) indicating that a multiplier of the order of 3.8 would be needed in order to achieve a fair comparison in respect of business premises within 200m of Euston station and the line of route immediately to the north. Figures for the rateable values of some restaurants and shops in Drummond Street tended to confirm this. Mr Mould QC did not challenge these figures but told us that the new limits to be set next April will be adopted by the promoter, and moreover that the new figures will themselves differentiate between business property in London and elsewhere. On the strength of that assurance we think it better to leave this anomaly to be dealt with by the general legislative process.
235. The special provisions applicable to agricultural land and buildings are considered separately in paragraphs 377–78 below.

### **The Need to Sell Scheme**

236. The Need to Sell Scheme was introduced in January 2015 to replace the Exceptional Hardship Scheme, which had proved unsatisfactory (only about 30 per cent of applications were successful). The new scheme required the applicant to meet five tests:
- (1) that the house was owner-occupied, or belonged to a “reluctant landlord”, with a freehold or an unexpired leasehold interest of at least three years;
  - (2) that the house was likely to be substantially affected by HS2 construction or operation;
  - (3) that the house had been marketed without success for at least three months, without attracting any offer within 15 per cent of its realistic unblighted value;
  - (4) that the applicant bought without knowledge of the proposed line of route; and
  - (5) that the applicant had a compelling reason to sell. If the application succeeds the seller receives unblighted market value but not removal costs or legal fees.
237. The third and fifth of these conditions were regarded by many as unreasonable and unacceptable. The House of Commons Select Committee in their *First Special Report* for the session 2014–15 (published in March

2015) expressed serious concern and dissatisfaction with the scheme. Their *First Special Report* for the session 2015–16 (published in December 2015) was entirely devoted to the Need to Sell Scheme. It reported an improved success rate (about 60 per cent) for applicants. It expressed surprise that at that time there were only 29 pending applications, despite the fact that there are over 43,000 properties within 500m of the line of route. While recognising that some progress had been made, the Committee, after canvassing the views of Members of Parliament with constituencies on the line, concluded that the scheme was still “far too arduous, exacting and off-putting.”<sup>21</sup>

238. What this Committee has heard about the scheme from individual petitioners or witnesses has been largely negative. Many of those who were asked about it tended to express doubts about their eligibility, or about the fairness of the scheme, but few of them had actually made an application to find out whether they would be accepted. We conjecture that some of these individuals may have had other reasons (such as reluctance to leave the district, or general indecision) for not making an application. But several petitioners had applied, some more than once, and they tended to describe the scheme as over-complicated, bureaucratic and intrusive.
239. In order to obtain more information we asked counsel for the promoter for information covering the first two quarters of 2016, and for a further update on the third quarter, stating for each quarter the number of pending applications at the start, and the numbers received, allowed or rejected during the quarter. These figures were provided promptly and in a form that distinguishes between rural and urban areas. Both sets of figures are lower than might have been expected, and are astonishingly low for urban areas. In the table the first figures are for all areas, and the figures in brackets those for urban areas (Birmingham Hodge Hill, Ealing North, Hampstead and Kilburn, Holborn and St Pancras, and Uxbridge and South Ruislip).

**Table 5: Need to Sell Scheme applications**

	By end 2015	2016 Q1	2016 Q2	2016 Q3
Received	139	26 (2)	29 (1)	25 (1)
Withdrawn	13	3	4	1
Accepted	53	20 (0)	11 (0)	16 (0)
Rejected	37	10 (2)	10 (2)	12 (0)
C/f	36	23 (3)	30 (3)	27 (4)

Source: Information provided by the promoter

240. Early in November, Mr Mould QC provided us with an update in a slightly different format, which does not distinguish between rural and urban areas but does show the total sum so far paid out, as follows.

21 House of Commons Select Committee on the High Speed Rail (London - West Midlands) Bill, *First Special Report of Session 2015–16*, HC 698, 17 December 2015, para. 5. Available online: <http://www.publications.parliament.uk/pa/cmhs2/698/698.pdf>

**Table 6: Need to Sell Scheme applications: Update (November 2016)**

Applications received	231
Reapplications included above	45
Applications withdrawn	21
Average time for decision (excl waits for more information)	6.88 weeks
Successful applications	106
Unsuccessful applications	76
Applications pending	28
Offers formally accepted	81
Purchases completed	42
Total paid on completions	£42,515,500

Source: Information provided by the promoter

241. Thus, the rate of applications continues to be very low, and the overall success rate during 2016 has so far been about 60 per cent, but almost vanishingly low in urban areas (we were told that two London properties have been accepted since the first set of figures were prepared). One cause of the low take-up rate seems to be the feeling that the scheme still suffers from the defects mentioned above. But it may also reflect house owners' reluctance to commit themselves to such an important decision, while the bill is still not enacted and while the values of unblighted property, especially in London, have continued to rise (a trend that may have faltered in last few months).
242. The most trenchant and well-documented criticism of the scheme was made by Ms Hilary Wharf in her evidence on behalf of the HS2 Action Alliance, which was granted *locus* on the issues of noise and compensation. She acknowledged that the Need to Sell Scheme is an improvement on the old Exceptional Hardship Scheme, welcoming the Secretary of State's acceptance that applicants would not be required to furnish financial evidence unless they were relying on financial hardship as their "compelling reason" for sale. She also welcomed applicants being allowed to instruct any RICS valuer, and the more sympathetic treatment of applicants with health or mobility problems, overtaking, she said, insensitive suggestions that such applicants should "sleep downstairs" or "employ a gardener".
243. Ms Wharf submitted, however, that these improvements to the scheme have not been sufficiently publicised, and that the criteria applied in adjudication are actually less clear than before. In the guidelines issued in January 2015 examples of compelling reasons for sale were given as (i) unemployment; (ii) relocation for a new job; (iii) financial provision on divorce; (iv) ill health; and (v) release of capital on retirement.
244. In responding to the House of Commons Select Committee's *Second Special Report* (see especially paragraphs 277–279) the Department for Transport omitted any reference to retirement from its examples of compelling reasons. It also omitted relocation for a new job, but included the winding-up of a deceased person's estate. Later in 2016 the promoter's website referred only to unemployment, job relocation and ill health. Ms Wharf asked for more detail, not less, in the guidance notes. She also asked for (i) an independent

appeal process, rather than reapplication; (ii) independent scrutiny (as we understand this, scrutiny of the whole process rather than particular cases); (iii) the publication of redacted summaries; (iv) publication of precedents; (v) fuller reasons for unsuccessful applicants; and (vi) monthly statistics.

245. Mr Mould QC resisted these arguments. He emphasised that each application is considered by three individuals, sitting on a rotational basis, drawn from an independent panel with 17 members; they make a recommendation to a senior civil servant for final decision either by that civil servant or by a minister. An unsuccessful applicant may reapply. There had been a full response to the observations made by the House of Commons Select Committee. Additional guidance on issues of health and mobility had been given in May 2016.

246. Nevertheless the Secretary of State has recently announced a further consultation and review of the scheme, in which Ms Wharf is to participate. That is good news. Subject to what may come out of the review, we accept that some of the grievances which petitioners have in the past expressed about the Need to Sell Scheme were well-founded. We would certainly not go as far as many petitioners asked, that is to recast it as a “wish to sell” scheme. That would be disproportionate. But we do consider that the “compelling reason to sell” condition should be clarified, and that the clarification should be given wide publicity (and firmly impressed on the promoter’s own staff who may be asked about it). It should be made clear that for the applicant to be financially embarrassed may be a sufficient, but is definitely not a necessary, condition for a successful application. It should be made clear that a compelling reason may be a combination of factors which are together compelling (such as age, moderate disability, impending retirement, and adult children leaving home). It should also be made clear that prolonged noise and disruption from construction work, which the applicant finds intolerable, may itself be a compelling reason for sale. We understood Mr Mould QC to accept that.

247. As to the grievance expressed by many petitioners, that these applications are usually decided by a civil servant acting with the authority of the Secretary of State, and that there is no right of appeal, we think that the existence of the independent panel which makes a recommendation does provide a genuinely independent element. We are reluctant to introduce more complication into what is already a fairly complicated scheme. But the publication of decisions (with appropriate redactions) would, together with a fuller (though not exhaustive) list of matters that may amount to a “compelling reason” for sale, would increase transparency and increase confidence in the scheme. We urge the Secretary of State to adopt this approach.

### **Statutory compensation (and what it is paid for)**

248. If a house on or near the line of route is compulsorily acquired or purchased by the promoter before the start of the construction phase, the compensation or purchase price is paid simply for the loss of the owner’s house and home. There is no question of compensation for the disruption and inconvenience caused by construction work and traffic, as the former owner will no longer be on the scene. That is so whether the acquisition occurs by compulsory purchase (part of the statutory compensation code) or under the Express Purchase Scheme (based on the provisions of the statutory compensation



code relating to planning blight) or under the Voluntary Purchase Scheme or the Need to Sell Scheme (both of which are non-statutory schemes).

249. For those in the vicinity of the line of route who do not have their houses acquired at the outset, it is appropriate to consider whether any rights to compensation they do have are in respect of what occurs during the construction phase, or are in respect of what may be expected to occur during the operational phase (starting, probably, in 2026 and continuing for the foreseeable future). This topic calls for discussion because it involves the application of some obscure provisions of the statutory compensation code. It also raises an issue as to the rationality and fairness of the Secretary of State's decision, in establishing the non-statutory schemes, to favour owners of rural property in or close to the RSZ as against those in Camden and other urban areas. Only owners of property within or close to the RSZ can take advantage of the Voluntary Purchase Scheme, or apply for a homeowner payment if within a band more than 120m, but less than 300m, from the line of route.
250. For many people owning houses or business premises close to the line of route, their most urgent concerns and grievances are about the disruption to the daily lives of themselves and their families, tenants or customers, and the depreciation of their homes or business premises, that will occur during the construction phase. That phase is likely to last for up to eight years for many Camden residents, and up to 15 years for some because of the deferment of reconstruction of the eastern part of Euston station. Disruption during the operational phase of HS2 (probably from 2026) is a more distant prospect and is likely, for Camden residents, to be much less severe in its impact.
251. The most striking example of this is the prospect facing the residents of the Nash villas at Park Village East. During part of the construction phase they will have to endure the installation, almost literally on their front doorsteps, of barrettes (massive steel and concrete pillars to be driven 40m below the surface of the roadway) and vehicular access to their houses will be impossible for considerable periods of time. During the operational phase, by contrast, they will never see the high-speed trains, and they will barely hear them over the noise of the conventional railway traffic which has been coming and going at Euston since the nineteenth century.
252. The law has traditionally been reluctant to grant relief in respect of disruption and inconvenience caused by construction work. Where a landowner undertakes construction work on his own land, without the need for any special statutory powers, it is difficult, though not impossible in a strong case, to obtain a restraining injunction or damages on the ground of common law nuisance. Neighbours, especially in a crowded urban environment, have traditionally been expected to put up with a moderate amount of noise and inconvenience without having a remedy: see *Andreae v Selfridge & Co Ltd* [1938] Ch 1.
253. Parliament, and the courts in working out the implications of the grant of special statutory powers, have on the whole tended to follow the approach of the common law. Where construction work is carried out by a statutory undertaker in exercise of such powers, the undertaker is under an implied obligation to "carry out the work and conduct the operation with all reasonable regard and care for the interests of other persons" (Lord Wilberforce in *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, 1011). If that obligation is complied

with, the statute provides a defence to a common law claim: see the speech of Lord Hoffmann in *Wildtree Hotels Ltd v Harrow LBC* [2001 2 AC 1]. The payment of compensation for disruption and pecuniary loss has been regarded as a matter to be dealt with, if at all, under the statutory compensation code as it has been gradually developed by Parliament.

254. However, the statutory provisions as to compensation for this type of loss are notoriously difficult and obscure. They persist in the use of the obscure expression “injurious affection,” which was a key concept in the Lands Clauses Consolidation Act 1845. Over forty years ago Lord Wilberforce said in *Argyle Motors (Birkenhead) Ltd v Birkenhead Corporation* [1975] AC 99, 128:

“The relevant section of the Act of 1845 (section 68) has, over a hundred years, received through a number of decisions, some in this House, and by no means easy to reconcile, an interpretation which fixes upon it a meaning having little perceptible relation to the words used. This represents a century of judicial effort to keep the primitive wording—which itself has an earlier history—in some sort of accord with the realities of the industrial age.”

Despite at least two opportunities for reform (Law Commission reports in 2003 and 2004, and the Localism Act 2011), section 10 of the Compulsory Purchase Act 1965 remains in force without significant amendment. The Neighbourhood Planning Bill, now before the House of Commons, may prove to be another lost opportunity.

255. The text of section 10 of the Compulsory Purchase Act 1965 is as follows:

“(1) If any person claims compensation in respect of any land, or interest in land, which has been taken for or injuriously affected by the execution of the works, and for which the acquiring authority has not made satisfaction under the provisions of this Act, or of the special Act, any dispute arising in relation to the compensation shall be referred to and determined by the Upper Tribunal.

(2) This section shall be construed as affording in all cases a right to compensation for injurious affection which is the same as the right which section 68 of the Lands Clauses Consolidation Act 1845 has been construed as affording in cases where the amount claimed exceeds £50.

(3) [Extended meaning of “acquiring authority” in some cases]”

256. In his book *The Law of Compulsory Purchase and Compensation* (2014), to which we acknowledge our debt, Mr Michael Barnes QC has commented (paragraph 10.5), with a degree of understatement:

“It is perhaps unfortunate that when section 68 of the Lands Clauses Consolidation Act 1845 was re-enacted as section 10 of the Compulsory Purchase Act 1965 the opportunity was not taken to state in explicit modern form the exact circumstances in which a claim could be made for injurious affection to land caused by the execution of works under statutory powers where no land was acquired from the claimant.”

257. Mr Barnes goes on (paragraph 10.6) to summarise three categories of statutory compensation.

(1) When part only of an owner's land is acquired, the owner may be entitled to compensation under section 7 of the Compulsory Purchase Act 1965 for detriment to the land retained by him (so far as caused by the works as a whole, and not merely the works on the part of his land that is acquired).

(2) When no part of an owner's land is acquired, the owner may be entitled to compensation for a reduction in its value caused by the *use* of works carried out in the vicinity, even though no land is acquired. This right was introduced by Part I of the Land Compensation Act 1973, and reflects the growing activity at that time in the construction of motorways and airports. The detriment must be caused by some "physical factor", defined in section 1(2) as "noise, vibration, smell, fumes, smoke and artificial lighting, and the discharge on to the land of any solid or liquid substance."

(3) An owner from whom no land is acquired may also be entitled to compensation under section 10 of the Compulsory Purchase Act 1965 for detriment caused by "the execution of the works"- that is, during the construction phase. This right is (in Barnes' words) "hedged with substantial conditions and limitations".

258. The general effect, in short, is that where land is detrimentally affected by the HS2 project, but none of the land is compulsorily acquired, the owner may possibly have two different claims to statutory compensation, neither of which is likely to be simple or straightforward: a claim under section 10 of the 1965 Act in respect of detriment during the construction phase, and a claim under Part I of the 1973 Act in respect of continuing detriment after the high-speed line comes into operation. An owner whose land is acquired in part may have a single claim under section 7, which covers both phases but is concerned mainly with any long-term reduction in the value of the retained land. Loss of business profits is taken into account, if at all, only as evidence of a reduction in the land's capital value.

### **Modifications to the statutory compensation code**

259. Clauses 4 to 9 of the bill make large parts of the statutory compensation code applicable to the HS2 project, subject to modifications set out in Schedules 6, 9, 10 and 11. Schedules 5, 7 and 8 are concerned with specifying purposes and geographical areas for which the modified provisions are applied. Clause 4 and Schedule 6 are the principal measures, being concerned with the straightforward compulsory purchase of land. The other clauses and schedules deal with special cases; Clause 5 and Schedule 9 are concerned with the acquisition of rights over land (as opposed to ownership of the land).
260. Some provisions in Schedule 9 call for mention, as they were the subject of some inconclusive debate between leading counsel with expert knowledge of this field. The debate related to the right to fix subterranean ground anchors (inserted at an angle of about 30 degrees from the horizontal plane) which are to be used in the works on both sides of the Camden Cutting. Schedule 9, paragraph 2 (3) and (9) apply a substituted section 7 of the Compulsory Purchase Act 1965, and a substituted section 44 of the Land Compensation Act 1973, to the assessment of compensation in that unusual engineering situation. It is common ground that these provisions have an enlarging effect,

but the precise effect is not clear. We cannot suggest any amendment which would make for more certainty.

### Balance between town and country in non-statutory schemes

261. The Secretary of State's non-statutory schemes treat rural districts differently from, and more favourably than, urban districts. Only house owners in or close to the RSZ get the benefit of the Voluntary Purchase Scheme (with its alternative Cash Option) and of homeowner payments. In the *Decision Document on the Property Compensation Consultation* (Cm 8833, April 2014) the Secretary of State acknowledged this differential treatment but sought to justify it by reference to the general tranquillity that residents in rural areas expect to enjoy:

“Rural areas suffer more significant generalised blight due to a combination of factors. By their nature, rural areas are comparatively tranquil and contain less infrastructure, therefore it is natural to expect that perceptions of the impact of HS2 will be greater in these areas. Moreover, fears and uncertainties are exacerbated in rural areas owing to a perceived threat to the nature of the community. It is also the case that HS2 stations will generally be further away from rural areas, limiting the direct community benefits of the railway and leading to the impression that the costs of the benefits outweigh the benefits. For all these reasons, we remain convinced that additional measures ought to be introduced for rural areas.”<sup>22</sup>

262. It is, however, only after the end of the construction phase that some residents in rural districts will be significantly more disadvantaged than residents in Camden (and then only if they have been unable or unwilling to take advantage of selling under one of the schemes available to rural house owners). When the high-speed railway comes into service many residents in rural districts will be exposed to the noise of trains travelling close to the maximum speed of 360kph, and that noise will not (except at a few places such as Wendover) be by way of an addition to the noise of an existing railway. Between the HS2 platforms at Euston and the Euston portal, by contrast, the trains will be in a sunken box structure, they will not be travelling at or close to maximum speed, and they will add little to the noise of the existing busy railway. The Secretary of State's apparent reliance on the operational phase as justifying the differential treatment is confirmed by the fact that the RSZ has not been extended to cover houses close to (but not safeguarded for) construction compounds, HGV parking lots and spoil heaps.
263. Many petitioners from the Camden area drew attention to this differential treatment. Some asked for the Express Purchase Scheme to be applied to Camden in an extended form. Others asked for the Voluntary Purchase Scheme (with its alternative Cash Option) to be applied. Mr Mould QC indicated that the Secretary of State would be unwilling to extend the Express Purchase Scheme, on the ground that to do so would amount to an unprincipled precedent going beyond the proper scope of what is a procedurally simplified version of part of the statutory compensation code relating to planning blight.

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<sup>22</sup> Department for Transport: *Decision Document on the Property Compensation Consultation* 2013 for the London – West Midlands HS2 route, paragraph 7.3.7, Cm 8833, April 2014: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301522/cm\\_8833.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301522/cm_8833.pdf)

264. We recognize the force of that objection. But it cannot be relied on in relation to the Voluntary Purchase Scheme and its alternative Cash Option, which have been designed as a bespoke form of compensation for the purposes of this bill. The petitioners who asked for an extension of that scheme included Camden Council itself. Mr Cameron QC (appearing for Camden) did not make detailed submissions as to how the scheme could be adapted for the Camden area. Plainly, some adaptation would be needed, if it is recognized that the justification for the extension is, not nuisance during the operational phase, but the extremely invasive noise and disruption that particular parts of Camden will have to endure during the construction phase. A band of land 300m wide, or even 120m wide, on each side of the line of route from the platforms at Euston to the Euston portal would be indiscriminate, and no doubt disproportionately expensive.
265. Instead, we recommend that the Voluntary Purchase Scheme, with its alternative Cash Option, should be extended to include houses and flats identified as likely to suffer such severe detriment in terms of noise as to be entitled to noise insulation. In Camden the number of households in that category is about 1,300 in number, not all of which are owner-occupied. We expect that these homes would include all or most of the houses and flats in Cobourg Street, Park Village East and Mornington Terrace, and some in Delancey Street, Mornington Street, Mornington Place and the exposed southern end of Mornington Crescent. Some of these properties are identified in the environmental statements as particularly affected (Non-technical summary, page 57). There are some further observations on this point in Chapter 7.

### Uncompensated blight

266. A much larger number of petitioners and witnesses spoke with strong feeling of their finding themselves with the prospect of wholly inadequate compensation for a substantial fall in the market value of their houses, caused by the depressing effect of the HS2 project on the local property market. They were mostly individuals who were entitled, under the non-statutory schemes, to no more than a homeowner payment (or if their houses are more than 300m from the line of route, to no immediate payment).
267. These persons were understandably upset to hear it said that the steep fall in the market caused by the bill did not, in the traditional language of parliamentary practice as to *locus standi*, “directly and specially” affect their property rights, when they not unreasonably supposed that, as a matter of ordinary language, it plainly did. The need for much more clarity in the rules as to *locus standi* is addressed in our written decisions on *locus standi* issues. But it is appropriate, in the context of compensation, to consider the effect of Part I of the Land Compensation Act 1973, about which we heard little during the briefing on compensation.
268. The reason why we heard little about compensation under Part I of the 1973 Act may be because it is unlikely that any of the owners who receive little or nothing under the non-statutory schemes will receive any significant compensation under the statutory compensation code. Where a claimant has not had any land compulsorily acquired, compensation is payable only for depreciation caused by one or more of the “physical factors” listed in section 1(2) of the Act (paragraph 257(2) above)—that is, matters which would, if not authorised by Parliament, amount to an actionable nuisance at common law.

This mirrors the difficulty that many would-be petitioners encountered in claiming *locus standi*. We regard this as a serious defect in the statutory code, and regret that no alleviation is offered by the Neighbourhood Planning Bill.

### Uniformity and special cases

269. Like the House of Commons Select Committee, we recognize that over-generous compensation for those who wish to move from settlements affected by the project might actually encourage the break-up of communities which are placed under strain during the construction phase. We also favour uniformity and objective criteria in the assessment of non-statutory compensation, even if the banding of the 300m strip on either side of the line of route, and the vagaries of the safeguarding history of some areas, may on occasion produce apparent anomalies.
270. There will, however, always be some special cases which call for exceptional treatment. The promoter has recognised this (House of Commons Select Committee, *Second Special Report* for the session 2015–16, paragraph 270), but does not refer to it in the pamphlet “Guide to HS2 Property Schemes” (January 2015). In particular, in both rural and urban districts there are areas some distance away from the line of route which will be put to use as construction compounds, HGV parking lots, spoil heaps and so on. These areas will no doubt have been safeguarded, but property in the immediate vicinity will not automatically attract compensation, although the residents may suffer serious detriment. The construction railhead at Kingsbury has been recognised as calling for a special management zone, but there are other areas, such as the Calvert Infrastructure Maintenance Depot, which may call for similar treatment.
271. There are two ways in which this problem might be addressed. Where a house is in close proximity to a construction compound or spoil heap (some of which are to be as much as 5m high) the owner should have the same option as we recommend for the vulnerable properties in Camden which do not at present have the benefit of the Voluntary Purchase Scheme (paragraphs 210–21 above). But there will be a few cases in which more generous treatment would be appropriate. One example is a married couple, Mr and Mrs Raitt, who live with their children at Lower Thorpe, near Thorpe Mandeville. Lower Thorpe is a tiny hamlet and two of its houses are to be demolished to make way for a viaduct. Every other house in the hamlet is already empty. In our view this total destruction of a small community calls for payment of unblighted market value, removal costs and legal fees, including stamp duty on the new home (see paragraphs 75–76 above).

### Human Rights

272. Many petitioners referred to the importance of the Human Rights Act 1998, which transposes into domestic law the United Kingdom’s long-standing international obligations under the European Convention on Human Rights and Freedoms. We mention this topic last, but it has greatly influenced the whole of our consideration of the issues of compensation and mitigation. Compliance with the norms of the Act is an obligation, not a discretionary policy choice.
273. Petitioners made particular reference to two provisions, article 8 (right to respect for private and family life, and for the home) and article 1 of the First Protocol (“A1FP”) (right of natural and legal persons—that is,

individuals and corporations—to peaceful enjoyment of their possessions). Both provisions have been the subject of disputes about United Kingdom legislation which have been referred to the European Court of Human Rights in Strasbourg. Before the enactment of the Human Rights Act that Court considered whether legislation nationalising the shipbuilding industry, and leasehold enfranchisement legislation challenged by the trustees of the Duke of Westminster’s settled estates, should be regarded as compliant with A1FP. Both statutes were upheld as having been in the public interest and as proportionate (in terms of compensation and otherwise): as to leasehold enfranchisement, see *James v United Kingdom* (1986) 8 EHRR 123.

274. The promoter has, in a useful note from Mr Mould QC and Ms Lean, sought to distinguish the situation of petitioners and others whose homes will not be compulsorily acquired, but who will suffer economic loss from generalised blight (as opposed to statutory blight affecting safeguarded properties, for which there is a statutory remedy). Generalised blight is depression in the market value of homes which are close enough to the line of route (or to other land safeguarded for construction compounds or similar purposes) as to make them unattractive to a purchaser, except perhaps at a significantly discounted price.
275. Counsel’s note submits that there is no authority for the proposition that the absence of a domestic remedy for generalised blight “resulting from the execution of public works” can be a breach of A1FP (the words just quoted do not clearly distinguish between the construction phase, which will in this case have the most severe impact on urban homeowners, and the operational phase, which will have the most severe impact on rural homeowners). The note refers to the Strasbourg Court’s decision in *Allen v United Kingdom* (2009) appln. no. 5591/07, in which an application by three homeowners living near Stansted Airport was rejected as manifestly ill-founded.
276. *Allen* is a case of some interest and calls for detailed treatment. It was an application based on Article 8 and A1FP (the latter being relied on in its own right and in conjunction with Article 14, which prohibits discrimination in the enjoyment of Convention rights). BAA Stansted (a subsidiary of BAA, but acting with active Government support after a Green Paper in 2003) wished to build a second runway, and proposed two special schemes for relief to some local homeowners, a Home Owner Support Scheme (“HOSS”) and a Special Cases Scheme intended for homeowners with special health problems. These bore some similarities to the Voluntary Purchase Scheme and the Exceptional Hardship Scheme (an early predecessor of the Need to Sell Scheme), but eligibility for the HOSS was determined by a mapped contour of expected noise, 66 dB AL eq 16 hour. At that stage planning permission had not yet been granted, and no one had yet suffered from construction noise, aircraft noise, or any other pollution or disturbance (nor was it suffered later, since the project was abandoned). The only immediate complaint was the economic detriment of generalised blight.
277. In these circumstances the application failed, as it was bound to fail, being hopelessly premature. The article 14 claim would have failed at any stage, since the use of the noise contour was not an irrational form of discrimination, but a rational (if rough and ready) means of identifying those likely to be most badly affected. We feel real doubt, as already mentioned, whether the Secretary of State’s demarcation of the RSZ is not vulnerable to attack under

Article 14, once it is accepted that severe hardship during the construction phase ought to be taken into account.

278. Had a second runway been built at Stansted, and had nearby homeowners suffered severe hardship from night flights, their case would not have been manifestly ill-founded. Such a claim, brought by seven homeowners living near Heathrow, succeeded in the Strasbourg Court at first instance, *Hatton v United Kingdom* (2002) 34 EHRR 1, but the decision was reversed (by a 12–5 majority) on appeal to the Grand Chamber (2003) 37 EHRR 611. The Grand Chamber placed great weight on the United Kingdom’s “margin of appreciation” in matters of this sort, that is, the margin by which a member state may, in order to take account of its special domestic circumstances, deviate from some supposed best-practice norm without breaching its obligations under the Convention.
279. This country’s margin of appreciation would be important, and perhaps decisive, if the bill, when enacted, were ever to be challenged, either in our own courts or eventually at Strasbourg, as not complying with the Convention. But as part of the legislative process for enacting the bill we see it as our duty not to sail too close to the edge of the margin. In particular, Article 14 requires compensation to be fair not only as between public and private interests, but also as between different categories of private interests.
280. We can deal more briefly with a point covered by another useful note from Mr Mould QC and Ms Lean, on the 1998 Aarhus Convention (which was relied on by some petitioners). It is not an EU instrument. It was sponsored by the United Nations Economic Commission for Europe (UNECE), and both the EU and the United Kingdom are signatories. It takes effect as part of EU law through the medium of the Environmental Impact Assessment Directive (EU) 2011/92, supplementing the Strategic Environmental Assessment Directive (EC) 2001/42. The effect of those directives was comprehensively considered, and the true legislative character of hybrid bill scrutiny upheld, by the Supreme Court in *R (HS2 Action Alliance) v Secretary of State for Transport* [2014] 2 All E R 109. Although the appeal from the judicial review proceedings is reported under that title, the appeal covered three separate judicial reviews, one brought by the London Borough of Hillingdon and nine other local authorities. The Supreme Court considered the two directives (rather than the Aarhus Convention) and dismissed the appeal for the reasons stated by Lord Reed at paragraphs 52 and 82–89.



## CHAPTER 9: ENVIRONMENTAL ISSUES

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### Introduction

281. When private bills were before Parliament in the first great age of railway building, almost no consideration was given to environmental matters, unless they involved an obvious and serious danger to public health. William Wordsworth and John Ruskin were rather lone voices in protesting at railways invading the beauty and tranquillity of the countryside.<sup>23</sup> The attitudes of Parliament, and of the general public, have since changed fundamentally. Environmental impact assessments of major projects are mandatory under EU law.
282. The Environmental Impact Assessment Directive (“EIAD”) makes an express exception for projects specially authorised by the legislation of a member state, but only if the objectives of the EIAD—assessment and scrutiny of the environmental impact of the project—are achieved by the legislative process. The work of the House of Commons Select Committee, and the work of this Committee, can therefore be seen as part of the compliance with the EIAD.
283. The promoter and its experts produced an Environmental Statement (“ES”) in five volumes, together with a glossary and non-technical summary, as follows.
- (1) Introduction to the ES and the project, including the proposed consultation;
  - (2) Community Forum Reports (with maps) covering 26 localities;
  - (3) Route-wide effects, assessing these for larger geographical units;
  - (4) Off-route effects; and
  - (5) Appendices and map books.
- Even the non-technical summary runs to 165 pages of text, maps, photos and CGIs.
284. Despite the preparation of the ES, and the process of consultation on it, the Secretary of State was challenged in judicial review proceedings seeking to restrain him from introducing the bill to Parliament until alleged defects in the ES and the consultation process had been rectified. The challenge was unsuccessful but in view of its constitutional importance the proceedings went on appeal to the Court of Appeal and then to the Supreme Court (paragraph 280 above).
285. Most of the railway will run through the countryside, including the Colne Valley, the Chilterns AONB, and much of the green heart of England in North Buckinghamshire, South Northamptonshire, Warwickshire and Staffordshire. It will inevitably have a serious effect on community life in

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23 Ruskin’s diatribe against the building of the railway and Headstone Viaduct at Mondal Vale in Derbyshire is too long to be set out in full. It begins: “There was a rocky valley between Buxton and Bakewell, once upon a time, divine as the Vale of Tempe ...” and ends: “The valley is gone, and the Gods with it; and now every fool in Buxton can be in Bakewell in half an hour, and every fool in Bakewell in Buxton; which you think a lucrative process of exchange, you Fools everywhere.” Ironically the disused railway is now a popular hiking trail, and Lord Hattersley, a Sheffield man, is on record as saying that the viaduct improves the view.

some small and medium-sized settlements where the line passes close to, or even through, the settlement. It will cross about 300 farms, severing many of them in two and making some barely viable. It will affect some areas of ancient woodland and many species of wildlife including birds, reptiles, bats and other small mammals.

286. Environmental concerns are not, however, confined to rural areas. Camden, Hillingdon and parts of the outskirts of Birmingham (such as Water Orton and Chelmsley Wood) are densely populated and already have problems with congestion and pollution from traffic density. They can ill afford to lose such green spaces as they have.
287. We begin by considering the promoter's stated aim of carrying out the HS2 project with "no net loss of biodiversity". We then consider the general issues of air pollution and climate change. We then address a number of particular issues. Design (although addressed by the representative of the Campaign to Protect Rural England as an environmental issue) and noise are considered in Chapter 10.

### Measuring loss of biodiversity

288. The House of Commons Select Committee, in their *Second Special Report*, noted (paragraph 302) that the promoter had only recently published its analysis of how it would achieve the objective of "no net loss of biodiversity", and that its methodology had attracted criticism. The committee directed the promoter to identify an independent arbiter to review the metric adopted by the promoter, which was different from the biodiversity-offsetting metric developed by DEFRA as described in paragraphs 2.3 to 2.8 of the Natural England report mentioned below. The Committee suggested Natural England as an arbiter, and it undertook the task.
289. Natural England's report was unfortunately delayed, but it was published almost a fortnight before 23 November, when we spent a day hearing evidence from the Royal Society of Wildlife Trusts, the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust, the Woodland Trust, the Inland Waterways Association and the CPRE. Mr Matthew Jackson (appearing for the first two of those petitioners) took the lead on this issue.
290. The Natural England report is long and goes beyond the main issue on which it was asked to comment. It noted that the DEFRA metric was developed for the use of local planning authorities, and was not designed for a linear infrastructure on the scale of the HS2 project. The principal point of difference (which was emphasised by the report, and on which Mr Jackson concentrated in his submissions) was that the DEFRA metric excludes, and the HS2 metric includes, irreplaceable habitats (there is an unfortunate misprint in table 2.1 of the report which suggests that replaceable habitats are excluded). The most important irreplaceable sites are SSSIs (sites of special scientific interest) and ancient woodland. Ancient woodland is taken to mean woodland that has been continuously in existence since at least 1600. That date is taken mainly as approximating to the time at which reasonably reliable and detailed maps of England were produced (the first edition of Speed's Atlas, with maps of all the English counties, was published in 1610). Many of the great English forests are thousands of years old.
291. The rationale for excluding SSSIs and ancient woodland is that they are irreplaceable, and therefore, it is said, incapable of having a value set on them

for the purposes of any offsetting metric. That may be a sensible general rule for local planning authorities concerned with relatively small developments. But we are not convinced, at this very early stage in working out a metric for much larger, linear projects, that the same general rule should be applied indiscriminately, especially to ancient woodlands.

292. Not all ancient woodlands are of the same quality, as the report recognises. The glossary at pages 54–55 distinguishes between ASNW (ancient semi-natural woodland) and PAWS (plantation on ancient woodland sites, which “were planted with (often non-native) broadleaved trees and conifers after the First and Second World Wars”). We can see no reason why offsetting biodiversity work in a very large project such as HS2 should not include the improvement of PAWS areas by the replacement of conifers by more appropriate native broadleaved species. Similarly, although SSSIs are not graded in the same way as listed buildings, some are of greater scientific interest than others, and many could be enhanced by improvements in access or surroundings, or by controlling invasion by extraneous species.
293. We do therefore respectfully differ from some of the report’s conclusions. In particular, we are not persuaded by Natural England’s opinion (paragraph 23) that where ancient woodland is lost, the aim should be to create new woodland on the scale of 30:1. Having emphasised (paragraph 4) that changes should be evidence-based, the report seems to have plucked this figure out of the air. This is a new area of environmental science. There is no doubt a lot to be learned from experience on this project that can be used to improve the metric, and perhaps have the more ambitious aim of some net gain on future phases of HS2.

### **Air quality and monitoring air pollution**

#### *Introduction*

294. A large number of petitioners raised the issues of air quality and monitoring air pollution. Several groups of petitioners called witnesses with expert knowledge of this field. Apart from one limited issue as to pollution being intensified by a “canyon” effect, there was little difference between the experts.
295. Petitioners were right to be concerned about these issues. Two generations after the first modern clean air legislation, air pollution remains a very serious threat to public health, especially to children and to the elderly, although the sources of pollution have changed. The contribution to pollution made by road traffic is much greater, and that of coal-burning fires and furnaces is much less, than it was two generations ago, when in the space of four days during the winter of 1952 London’s “Great Smog” is estimated to have killed thousands of people. Air pollution is associated with respiratory diseases, cardiovascular diseases, and lung cancer; nitrogen dioxide (NO<sub>2</sub>) is also associated with reduced fertility, impaired infant growth and (as some studies suggest) autism and short-term memory loss.

#### *Environmental regulation*

296. Air quality is now covered by a large volume of EU legislation, which either has direct effect or has been transposed into English law. This EU legislation includes:
- (1) the Air Quality Directive 2008/50/EC (“the Air Quality Directive”);

- (2) the EC Council Regulation 715/2007 (“the Vehicles Regulation”); and
- (3) the Environmental Information Directive 2003/4/EC (“the Information Directive”).

297. The Air Quality Directive is mainly a consolidation of the Air Quality Framework Directive 1996/62/EC and its four “daughter” directives, including the first daughter directive which covers sulphur dioxide (SO<sub>2</sub>), NO<sub>2</sub> and particulate matter. But the Air Quality Directive also made some amendments to take account of developments in scientific knowledge. It sets what are termed “target values” (long-term aims), “limits values” (maximum exposure limits) and “alert thresholds” (concentrations above which there is a risk to human health from brief exposure) in respect of a variety of noxious gases and substances including NO<sub>2</sub> and the types of particulate matter referred to as PM10 and PM2.5.

298. By way of example, the limit value for NO<sub>2</sub> is 40 micrograms per cubic metre. The alert threshold is 200 micrograms per cubic metre. Short-term exposure to pollution at that peak of intensity must be limited to 18 hours in any period of twelve months.

299. The Vehicles Regulation set a long lead-in time, being effective from January 2013. It sets standards for emissions from road vehicles, and in particular HGVs with diesel engines. Those which are fully compliant are often referred to as “Euro 6”, or Euro VI. One expert witness suggested that Euro 6 HGVs do not always meet the required standard in actual driving conditions, but did not refer to any documentary evidence on that point. The Vehicles Regulation is given effect in national law by the Road Vehicles (Approval) Regulations 2009.

300. The Information Directive is concerned with giving effect to the first “pillar” of the Aarhus Convention (its full title, reflecting all three pillars, is the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters). This convention, given effect by the Environmental Information Regulations 2004, ensures public access, subject to some safeguards, to environmental information held by public authorities. In the present context, it ensures that residents of Camden, Hillingdon and other vulnerable areas can obtain air quality information which their local authorities are required to hold.

*Monitoring in Camden and elsewhere*

301. Camden London Borough Council monitors NO<sub>2</sub> and PM10 and PM2.5 particulates by means of more than 40 diffusion tubes fixed at selected sites, most on or near busy roads and streets. Some petitioners criticised the number and location of the diffusion tubes. Others questioned their reliability (although some residents have, we were told, fixed their own private diffusion tubes in other locations in Camden). The tubes are no doubt not as accurate as more sophisticated and expensive scientific apparatus, but their use is approved by DEFRA and is the method adopted by Camden. Moreover the tubes, although apparently fairly simple, are quite expensive, and the cost of fixing them, maintaining them and collating information from them falls on Camden ratepayers. We are satisfied that Camden is carrying out its monitoring duty in a responsible way.

302. In Camden, and in some other parts of London and other urban areas, levels of air pollution are in serious breach of EU limits. In parts of the borough NO<sub>2</sub> is regularly in excess of 60 micrograms per cubic metre; at two points in Camden Town (the junction of Camden Road and Camden Street, and in Camden High Street) the level was recorded in July 2016 as 81. These are most regrettable facts which must be faced, and they underline the importance of moving materials by rail to the greatest possible extent. But we see no reason to assume that further decline is inevitable, even with the prospect of the HS2 project leading to significantly increased HGV traffic for several years. The EU limits are legally binding, and the Supreme Court has recently shown itself ready to enforce them: see *R (Client Earth) v Secretary of State for the Environment, Food and Rural Affairs* [2013] 2 AER 928 (making a declaration and a reference to the Court of Justice) and [2015] 4 AER 724 (making a mandatory order).
303. The Secretary of State for the Environment, Food and Rural Affairs, the Mayor of London and local authorities throughout the country are all now under statutory duties which together provide an overall strategy, detailed local monitoring and planning and delivery of measures to reduce air pollution. The Vehicles Regulation imposes more demanding standards for diesel engines (all the HS2 contractors' vehicles will have to comply with the Euro 6 standard), and the Mayor of London's current initiative may carry this further. A variety of financial sticks and carrots (some linked to vehicle licensing and some to the congestion charge, or similar charges) are likely to increase the number of electric and hybrid vehicles as a proportion of all road traffic. In the meantime, regular monitoring of air quality will be essential. The Information Directive ensures that the public can obtain up to date information about this.

### Climate change

304. Global warming is causally linked to the emission of carbon and other noxious substances. The CPRE representative proposed that the high-speed trains should run at a slower speed, at least for the first few years, in order to make a contribution to meeting the country's commitment under the Paris agreement to reducing carbon emissions. We regard that proposal as unrealistic. It would defeat one of the main purposes of this very expensive project, and it discounts the project's important aim of a shift to rail passengers who would otherwise travel by road or by air. The urgent need to reduce carbon emissions underlines the importance of maximising the movement of material by rail during the construction phase.

### Ancient woodlands

305. We have already said something about ancient woodlands. This was the lead topic on which we heard evidence from the Woodland Trust. It is a large and well-respected body, but we were surprised and disappointed by the negativity of its evidence. It was very critical of the promoter, twice using the word "woeful". That seems unduly harsh in view of the promoter's achievement, by the extension of the Chilterns tunnel, in limiting the loss of ancient woodland in the AONB to less than one hectare (see the next section).
306. The Trust's criticism seems to have been based mainly on the promoter's failure to identify a small number of small plots of ancient woodland which, being less than two ha in size, are not listed in the inventory of ancient

woodland. There was also disparagement of the efficacy of translocating to new plantations topsoil, which can act as a seedbank, from areas of ancient woodland which have to be destroyed. But the witness, when asked whether the Trust regarded translocation as an unnecessary expense, was in no doubt but that it should continue.

### **Chilterns Area of Outstanding Natural Beauty**

307. The Chilterns Area of Outstanding Natural Beauty (“the AONB”) is an area of about 833 square kilometres extending from the Thames at Goring and Reading in the south-west to beyond Dunstable and Luton (which are themselves excluded from it) to the north-east. Its northern boundary follows the fairly regular line of the steep escarpment leading down from the Chiltern Hills to the Vale of Aylesbury, with small indentations to exclude the towns of Princes Risborough, Wendover and Tring. The southern boundary is more irregular, being more deeply indented so as to exclude the towns of Henley-on-Thames, Marlow, High Wycombe, Amersham, Chesham and Berkhamsted.
308. The AONB extends to about 83,000 ha. About 21 per cent of it is woodland, with beech trees predominating. These are the finest beechwoods in England and once supported a flourishing furniture-making industry (as they still do, on a smaller scale). About 11,000 ha are classified as ancient woodland. About 48,000 ha are agricultural land in enclosed fields and pastures. The AONB was designated as such in 1965, its outstanding characteristics being its steep chalk escarpment slopes and clay valleys, its chalk streams, its mixture of woodland, farmland and flower-rich downland, its scattered villages, hamlets and farms, and its general tranquillity. It has some important ancient monuments and many well-used public rights of way, including part of the Ridgeway long-distance path and the Icknield Way path. Its well-known hills include Coombe Hill (a National Trust property) and Ivinghoe Beacon.
309. The AONB has since 2004 been regulated by the Chilterns Conservation Board. Established under section 86 of the Countryside and Rights of way Act 2000, it has 27 members appointed from local authorities and local communities. Under section 85 of the 2000 Act all public bodies must have regard to the need to preserve and enhance the natural beauty of AONBs, and the Conservation Board is concerned to monitor that duty. National planning policy is to restrict any major development in AONBs unless there are exceptional circumstances, and a demonstrable need for the development in the public interest.
310. There is an existing transport corridor leading north-west through the AONB to the vicinity of Wendover. This carries the Marylebone to Aylesbury railway line, the A413 road and National Grid power lines from a distribution centre near Little Missenden. This is the general line taken by the HS2 line of route, through a part of the AONB which is already less tranquil than districts outside the transport corridor.
311. Following important changes made while the bill was before the House of Commons, the HS2 line of route will be in fully-bored tunnels from just outside the AONB boundary (on the M25 near Chalfont Common) to South Heath, near Great Missenden. There will be a short stretch of “green” (cut and cover) tunnel south of Wendover. There will be vent shafts at Chalfont St Peter, Chalfont St Giles, Amersham, Little Missenden and South Heath.

The effect of the 2.6km extension to South Heath is that within the AONB 65 per cent of the railway will be in a tunnel. A further 26 per cent will be in a cutting (if that term is used to include protection provided by earthworks). The remaining nine per cent will be on the level or on an embankment or viaduct (in particular the Wendover Dean and Small Dean viaducts to which very many petitioners have objected).

312. The only loss of ancient woodland will be the loss of 0.7 ha at Jones' Hill Wood near Wendover Dean. All ancient woodland is irreplaceable, but the loss of less than one ha out of about 11,000 in the AONB is, we consider, a remarkable achievement. Ancient woodland soil, with its inherent seed bank, will be translocated to a new site of 5 ha to be planted with broad-leaved trees. The loss is much smaller than under the original scheme, as the tunnel extension has avoided serious losses at Mantle's Wood and Sibley's Coppice.
313. Out of the total of about 48,000 ha of farmland, about 315 ha will be taken during the construction phase, of which about 170 ha will be restored and returned to agricultural use once construction is complete. Nevertheless there will be a significant permanent effect on several agricultural holdings. We have well in mind that the whole AONB is a large area, many parts of which are totally unaffected by the HS2 project, and that its impact will be largely concentrated, in the AONB, to the area between South Heath and the boundary at Wendover.
314. Many petitioners raised hydrological concerns about the effect of the proposed works, and in particular the tunnelling, on the important chalk stream known as the Misbourne, and on other bodies of water including the SSSI known as Shardeloes and the Wendover Arm of the Grand Union Canal. The promoter's engineers acknowledged that it is impossible to be certain that problems will not arise, but indicated that their surveys and boreholes have so far produced satisfactory results. They will continue to monitor the position at sensitive locations, including the area of the Little Missenden vent shaft where there may be some disturbance during the construction phase.
315. Some of the well-used footpaths and bridlepaths in the area of the route will be diverted, but they will all be reinstated, either on their original line or with short diversions. There will be a serious loss in the destruction of over 100m of the ancient earthwork known as Grim's Ditch. There will also be damage to some ancient sunken lanes at Leather Lane and Bowood Lane.
316. At the request of local authorities the promoter has established the Chilterns AONB Review Group, which includes representatives of the Chilterns Conservation Board, Buckinghamshire County Council and the three closest district councils, Natural England, and the promoter. The promoter is providing funding of up to £3m for its purposes, which are to identify and promote measures for environmental enhancement in the area, in addition to those already proposed in the Environmental Statement. It meets regularly at intervals of five or six weeks.
317. On considering the matter as a whole, we take the view that the existing plans for the project, including the extended tunnel and the saving of Mantle's Wood, show that the promoter has carried out its statutory duty under section 85 of the 2000 Act, and has done so by a generous margin. It

is however most important that the execution of the project should also be carried out in compliance with that duty.

318. We place particular emphasis on the design of the Wendover Dean and Small Dean viaducts. The prospect of HS2 trains running at speed over these viaducts is most unwelcome to numerous petitioners, including many of the residents of Dunsmore, The Lee, and other settlements from which one or both of the viaducts will be clearly visible. Their design must be regarded as a matter of high importance. A well-designed viaduct (such as the famous viaduct in the Ribble valley) can, at least with the passage of the years, come to be regarded as an enhancement to the view. That should be the promoter's aim for these viaducts.

#### **Public rights of way (including equestrian concerns)**

319. People greatly value public rights of way (PRoWs). Footpaths and bridlepaths are used (and as more than one witness told us, monitored, mapped, repaired and defended) by large numbers of people of all ages who care about them. That is true of PRoWs not only in beauty spots like rural Warwickshire, the Chilterns and the Colne Valley, but also in densely populated areas such as Ickenham, where there is a lengthy and much-cherished riverside walk.
320. The promoter and its surveyors have in our view been diligent in identifying and proposing suitable routes for all necessary PRoW diversions. Sometimes these involve walking or riding on a road, or by the side of the new line, but these have been kept to a minimum (especially bridleways by the side of the line). Relatively few PRoWs are to be stopped up permanently without replacement (the list in Schedule 4, Part 4, Table 1 of the bill is quite short, when compared with Tables 2 and 3).
321. Horses, even horses which are normally calm and dependable, are easily startled. There are obvious difficulties about their having to co-exist with HS2. The problem is particularly acute when bridleways run close to, or have to cross, the new line. The promoter has undertaken to follow British Horse Society guidelines for the height and strength of side barriers, whether the crossing is by a "green bridge" or a more conventional, narrower structure. We urge a precautionary approach to minimise the risk of accidents causing fatalities or serious injuries.

#### **Bird strike and bat strike**

322. The speed at which HS2 trains will travel means that it will from time to time hit and kill birds and bats flying low over the line. This is inevitable, but every reasonable care must be taken to keep strikes to a minimum. Large birds are more at risk than small ones. In the Colne Valley geese and cormorants will be particularly at risk, and barn owls will be particularly at risk in rural areas further north.
323. The prospective loss of barn owls is particularly serious because this cherished bird is now quite rare, despite recent efforts to improve habitats. It has been suggested that building nesting boxes at a relatively short distance from the line will not do much to solve the problem, since at some times of the year barn owls travel considerable distances, and the rough grass of railway land close to the line may become a habitat for small mammals. The promoter will continue to take advice from the British Trust for Ornithology.



324. Similar problems will arise with bats. There are many species of bats, some rare, at different places along the line of route. The design of green bridges takes account of this risk. The promoter will continue to take advice from appropriate experts, including the Ecology Review Group.
325. The House of Commons Select Committee (*Second Special Report*, paragraph 304) referred to the proposed establishment of the Ecology Review Group, whose members will include Natural England, local authorities, conservation NGOs and other experts. Now that Royal Assent is approaching, and contractors are about to be appointed, it should in our view be set up in the near future. It will inevitably take some time for the members to be appointed and its first meeting arranged.

#### **Urban environments: green spaces**

326. The loss of trees and green spaces in St James Gardens, on the Regent's Park Estate and elsewhere in Camden will be a serious loss to the residents of this densely populated district. For many of them, Regent's Park, although an outstanding resource, is not easily accessible. This was made clear to us by many petitioners and witnesses, including the Reverend Anne Stevens, the rector of St Pancras Parish Church. It is most important that the promoter ensures that its contractors plant the greatest possible number of trees and shrubs, of suitable species and at suitable locations. It is also most important to plant them as soon as possible, and for them to be watered and protected as they grow, perhaps with the co-operation of local residents.
327. The same considerations apply to Birmingham and its environs, Ickenham, Old Oak Common and the urban locations where vent shafts will be constructed.

#### **Urban environments: hedgehogs in Regent's Park**

328. We heard a petition from the Zoological Society of London, presented by Professor Field, who called three expert witnesses. The Society's concern was not for the animals in its own care, but for the native hedgehogs that are at large in Regent's Park. There are about a hundred of these and they are the only breeding population in any of London's Royal Parks. In Regent's Park they live in four main areas, one of which is in the vicinity of the Society's parking area for visitors' cars and coaches in the north-east corner of Regent's Park. This area is surrounded by fairly dense vegetation, whose growth is encouraged in order to provide a sheltered habitat. It is estimated that about one-quarter of the park's population of hedgehogs live in this vicinity. They are nocturnal animals and the car park is empty and quiet at night.
329. About one-third of the car park is to be taken for use as a lorry holding area in connection with the redevelopment of Euston station and the area to the north of the station. This use will be temporary, but will continue until 2033. There is a further complication, which has only recently emerged, in that the same area is to be used in the very near future by Thames Water, which has to divert a 42 inch water main to prepare for the Euston redevelopment.
330. The Society is concerned that the hedgehogs' habitat will be adversely affected by the secure compound that will be constructed for the lorry holding area. They do not nest in the car park itself, but they use it for access to their sheltered habitat. The experts' evidence was that it has not

been demonstrated that hedgehogs can learn to use a small tunnel (which the promoter will construct under the access way), although other small mammals and reptiles do make use of such facilities.

331. We understand the Society's concern but we are not convinced that it justifies what would be a major disruption to the promoter's plans. Seven other sites have been assessed as possible locations for the lorry holding park, and none is as satisfactory. The Society and the Royal Parks authorities will continue to monitor the hedgehog population in all four areas where they are concentrated. If the hedgehogs near the car park do not learn to use the tunnel, and seem to be in distress, thought can be given to other measures to assist them. We were told that the lorry holding area will continue to be largely empty and quiet at night, and although it must be secure, that requirement need not preclude other means of allowing these small animals to traverse it.

## CHAPTER 10: OTHER ROUTE WIDE ISSUES

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### Public engagement

332. When parties have conflicting interests on a matter which is important to both sides, the best way to resolve their differences is for each side to explain its own position as clearly and openly as possible, and to understand and take seriously the other side's position. Engagement is a two-way process. The promoter has attracted a good deal of criticism from some petitioners for lack of engagement. In our view some, but not all of the criticism is justified.
333. We are satisfied that the promoter has recognised that engagement is important, indeed essential, and that it has committed substantial resources to the demanding task of informing the public about different aspects of the HS2 project, listening to their concerns and trying to find common ground with those who are particularly affected. By way of example, the promoter's programme of engagement with residents and businesses in the Euston area has included the following:
- (1) consultation on numerous topics with the elected members and officers of the London Borough of Camden;
  - (2) the establishment of the Community Representation Group, which has since May 2015 held regular meetings, sometimes in sub-groups;
  - (3) the setting up in February 2016 of a drop-in information centre in part of the old National Temperance Hospital (see also (7) below);
  - (4) a programme of engagement on the topic of noise insulation, under which information packs and an application form were sent to about 1,300 homes at the end of April 2016, with a follow-up letter at the end of April to those who had not sent in the application form; there was then a door-knocking exercise in mid-May to invite residents to consultation meetings (but direct contact with only 23 per cent of those visited, cards being left for the others); the two meetings, one on a Thursday evening and one on a Saturday afternoon, were attended by a total of 54 persons;
  - (5) one-to-one 30 minute interviews on property and construction issues were available on a Thursday between 2pm and 8pm;
  - (6) open evenings were advertised and held on the topics of moving materials by rail, and air quality and monitoring; and
  - (7) distribution of 19,000 leaflets explaining the impending two-stage demolition of the National Temperance Hospital (which began at the weekend because the nearby schools were closed); this did not prevent a large number of complaints about its supposedly unannounced demolition.
334. Plainly, the promoter's considerable efforts to engage with residents near Euston were not wholly successful, to say the least. The pattern in rural districts was similar. There were repeated complaints from petitioners and their witnesses about lack of engagement on the part of the promoter, sometimes accompanied by colourful comments suggesting that the promoter

could and would disregard the concerns of ordinary people who could not afford expensive legal representation.

335. Some of this huge divide in perceptions of the promoter's commitment to real engagement can no doubt be explained by the fact that many of the petitioners are understandably very upset about what the promoter and its contractors are going to do to their cherished homes and communities, and find it difficult to take a balanced view of the promoter's attempts at engagement. But it would, we think, be facile to leave it at that. We think it is possible to discern a number of different factors that are in play. In discussing them we start with those on which we consider that the promoter is most open to criticism, and proceed to others which seem to arise more from the inherent difficulty of the situation than from the fault of the promoter.
336. Our most serious concern is at the promoter's practice of sending lengthy letters to petitioners at the last moment before the hearing of their petitions, sometimes after weeks or even months of silence, suggesting that the petitioner's concerns had been, or could be, met and that there was no need to proceed with the petition. Such a letter, if sent about a fortnight before the hearing, would be an acceptable and indeed helpful way of proceeding. But it is unhelpful and unfair to send a letter at such a short interval before the hearing that the petitioner may have no time to take advice before the hearing (or, in the case of a parish council, to consider it collectively). Many petitioners find the hearing process stressful enough without this sort of last-minute pressure.
337. In one case we were credibly informed that a petitioner was told by telephone, shortly before the hearing of his petition, that an offer which the promoter had made to him would be withdrawn if he proceeded with his petition. This information reached us only after the hearing. It was, we hope, an isolated case of an over-zealous junior employee acting without instructions, since a threat of that sort may amount to a breach of parliamentary privilege. With most of the promoter's letters sent shortly before petition hearings it was not the tone, but the timing, of the letters that was unacceptable.
338. Under the present arrangements for hybrid bills, the programme for the hearing of petitions is fixed only a short time in advance, and even then is liable to be changed at the last minute. This is inconvenient for everyone: for petitioners and their advisers, for the promoter and its advisers, and for the members of the committee and our clerk. Some radical changes may result from the current review of hybrid bill procedure. But apart from more radical changes, there is a clear need for the programme for the hearing of petitions to be fixed with reasonable certainty, and for papers to be lodged for the hearings, much earlier than happens at present. The present arrangements explain, but do not excuse, the promoter's practice of last-minute letters.
339. Initial engagement was not always followed up. Often petitioners had to be persistent in explaining their concerns and working towards a satisfactory solution. Petitioners who were not persistent about making progress towards a solution may have been storing up trouble for themselves, and they were not always petitioners who lacked resources. It is a feature of hybrid bill procedure that the committee often heard, without objection from either side, detailed evidence of negotiations which would in court be inadmissible under the "without prejudice" rule. On the petition presented by Aston Villa football club, whose state-of-the-art training grounds are affected by the

HS2 project, leading counsel on both sides took us through lengthy and unproductive evidence (in examination in chief, cross-examination and re-examination) as to lengthy and unproductive negotiations between the parties. Meanwhile the season for sowing grass was coming to an end, and the time for relocation to another fully-prepared site (if such relocation were to be necessary) was liable to be extended by another complete year.

340. Many petitioners who were offered assurances objected to the assurances being qualified, as they very often were, by the words “so far as reasonably practicable”. It is the word “reasonably” that causes the difficulty. Plainly the promoter cannot be expected to undertake to do the impossible. But the word “reasonably” brings in the notion of whether the cost of some particular mitigation is justifiable as an expenditure of public funds, and what sort of cost-benefit analysis should be employed for that purpose. Ms Hilary Wharf, appearing as a witness for the HS2 Action Alliance, made some well-informed submissions about the WebTAG approach to cost/benefit analysis. On the whole we consider that the qualification of assurances by “so far as reasonably practicable” is often justifiable, since detailed costing in advance is often impossible. But the qualifying words should not be used indiscriminately, since some assurances can and should be given without qualification.
341. The account of the promoter’s efforts at engagement in the Euston area, summarised in paragraph 333 above, shows that getting information across to the public, and getting them to react to it, can be very difficult. People may feel swamped with what they regard as too much information, especially if it is on an unfamiliar and unwelcome topic. One example of that, on which we think that the promoter did fall short of its usual high standards, was the information pack on *locus standi* sent to those petitioners whose *locus* was challenged.
342. Moreover, many people fail to ask for simple information, or prefer to believe what they have been told by friends or neighbours. We saw many examples of this, of which we give two. One petitioner from the Ampthill Square Estate in Camden complained that she would be unable to visit her elderly mother, who lived in the Regent’s Park Estate on the other side of the throat, because of the rebuilding of the Hampstead Road Bridge. She was not aware that the work is to be carried out in stages, so that pedestrian and cycle access over the bridge will be maintained throughout the work. This information could easily have been obtained by a visit or phone call to the drop-in centre.
343. Early in November, the promoter obtained permission from the owner of land on the south-west edge of Aylesbury, bordering a housing estate, to carry out a survey on the land, and for that purpose to lay a temporary roadway in prefabricated sections. The local authorities were informed, and leaflets were distributed to all houses in the vicinity. But when the contractors’ vehicles arrived to start the work their passage was blocked by cars belonging to residents who supposed that they were preventing an act of trespass. Incidents of that sort illustrate the problems of ensuring effective communication.
344. Some petitioners also found it hard to accept that there are some matters of fine detail which cannot sensibly be arranged, and made the subject of assurances from the promoter, in advance. Until the bill receives Royal Assent the promoter will not be in a position to put the main construction

contracts out to tender, and until contractors are appointed it is premature to attempt to settle fine details. There are also some matters of detail which are not really the concern of the promoter at all, beyond an assurance to be responsible for all reasonable costs, and should be left for decision by the petitioners and their advisers.

345. An example of the first type of what Mr Mould QC referred to as “micromanagement” was the covered walkway which the promoter has agreed to provide, at the request of the Drummond Street traders, so as to maintain a direct link between the functioning part of Euston station and the shops and restaurants in the Drummond Street area. It was not reasonable, months before the appointment of contractors, for their spokesman to seek to prescribe a detailed specification of the design, construction and lighting of the walkway (which may have to be moved from time to time as work progresses), and still less to prescribe the advertisements to be displayed in connection with it.
346. An example of the other type of micromanagement was the village hall at Burton Green, mentioned in paragraph 66 above.
347. We have also seen some examples of very good engagement between petitioners and the promoter. Paradoxically, some are in areas which are very severely affected by the HS2 project, such as the residents of the small village of Chetwode, and also a group of residents with houses on the London Road south of Wendover, some of these houses being sandwiched between the main road and the existing railway. Groups such as these have developed an admirable spirit of cohesion which makes for effective communication with the promoter’s staff, who appreciate being able to respond to a united group. That is in contrast to the attitude of some petitioners, including some parish councillors, who seem to have shunned roadshows organised by the promoter in case they were regarded as “fraternising with the enemy”.
348. Engagement is, as already noted, a two-way process. It is not in the interests of those affected by the project to ignore lines of communication and means of redress provided by the promoter, and to expect their concerns to be met by others (particularly local authorities, many of which referred to the heavy extra burden of work put on them by complaints and inquiries). As the project moves forward it is essential that those affected should know of, and make use of, the 24-hour hotline and the service offered by the Construction Commissioner. The Commissioner is an independent and expert resource for the quick and easy resolution of complaints and small claims.

### **Design of viaducts, bridges and other structures**

349. Clause 20 of the bill grants a general “deemed planning permission” for the HS2 project, but this takes effect subject to some fairly complex provisions set out in Schedule 17 (which was Schedule 16 when the bill was before the House of Commons Select Committee).
350. Schedule 17 (Conditions of Deemed Planning Permission) contains in paragraph 2 a general requirement for any building works forming part of the project to be carried out in accordance with plans and specifications approved by the relevant planning authority. The term “building works” is widely defined in paragraph 2(8), read with paragraph 30, so as to include a variety of structures, including not only buildings but also viaducts, bridges and ventilator shafts, so far as above ground. Auto-transformers seem to be

excluded as “in the nature of plant or machinery”; so are gantries carrying power lines, as a note from the promoter has clarified. The relevant planning authority is defined by paragraph 2(2) as the unitary authority or (in a non-unitary area) the district council (this is subject to paragraph 27, relating to mayoral development corporations).

351. There is a further complication in that the powers of the relevant planning authority to refuse approval are restricted by either paragraph 2(5) or 2(6), depending on whether that authority is or is not a “qualifying authority” within paragraph 13 (in short, is approved by the Secretary of State). Under paragraph 2(5) the permitted grounds for refusal are (i) preservation of the local environment or local amenity; (ii) road traffic concerns; and (iii) archaeological, historical or ecological concerns. Under paragraph 2(6) only the first ground for refusal is available.
352. The promoter proposes to engage in widespread consultation as the design process goes forward. It has, at the suggestion of the House of Commons Select Committee (*Second Special Report* for the session 2015–16, paragraph 343), prepared a flowchart setting out the programme for consultation at the different stages of the design process.
353. Some parish councils expressed the view that they should not only be consulted, but should be able to ensure that their views prevail. We have no hesitation in rejecting that proposal. Parish councils have traditionally had no more than a consultative role in planning decisions, and a major infrastructure project such as HS2 would be a most inappropriate occasion on which to change that approach. It would produce confusion and delay if a parish council had power to veto the design of a structure such as a viaduct which was visible from several different parishes.

## Operational noise

### *Introduction*

354. Noise is unwanted sound, as it was put by the promoter’s expert, Mr Rupert Thornley-Taylor. He is a highly-qualified and very experienced witness whose evidence has greatly assisted the Select Committee. His evidence was clear and definite, but never understated any difficulties or uncertainties. What the human ear and brain perceives as sound is caused by the pressure of air-borne oscillations in the frequency range of between about 20Hz and 20kHz (the Hertz unit, Hz, is one cycle per second, and kHz is 1,000 Hz). Within that wide range human hearing is generally most efficient in the range of 1 kHz to 4 kHz.
355. Sound is measured in decibels (dB). For the layman it is essential to grasp firmly that dB (like the units on the Richter scale for earthquakes) are expressed in a logarithmic (base 10) scale, so that an increase of 10 dB over some previous sound level always doubles the intensity of that previous level. That is as true for an increase from (say) 70 dB to 80 dB as for an increase from 10 dB to 20 dB. Conversely, as Mr Thornley-Taylor put it, “doublings [on a conventional linear scale] give three on the decibel scale, the logarithmic scale” (this is a rough estimate, the closely approximate figure being 3.162, which is the square root of 10 to three decimal places).
356. The decibel scale starts with the smallest sound that is just perceptible to a human being with good hearing, and even at 20 dB most people would not

really notice any significant level of sound. Mr Thornley-Taylor said, “In real life, we very seldom hear less than 20 dB. It is what you would get in a lot of concert halls with everything switched off and no people in there. A remote, rural area at night, with no local traffic, would give you that.”<sup>24</sup>

357. He gave examples of more or less familiar indoor and outdoor noises of increasing intensity:

**Table 7: Examples of noise intensity**

Refrigerator at 1m	40dB	Suburban area at night, no traffic
Open plan office	50dB	Lorry at 100m
Normal voice at 1m	60dB	Petrol lawnmower at 30m
Loud voice at 1m	70dB	Aircraft at height of 200m
Vacuum cleaner at 1m	80dB	Pavement of busy city street
Food blender at 1m	90dB	Petrol lawnmower at 1m
Night club	100dB	Road drill at 1m

Source: Promoter’s noise presentation

358. Meters for measuring sound levels are designed to produce readings appropriate to the range of frequencies of human hearing. This is termed A-weighting. The symbol LA max is used to indicate the sound level (L), A-weighted (A), at its maximum intensity (max). For most but not all purposes, measurements and predictions of sound levels use what is termed “equivalent continuous sound level”, denoted by LA eq. That is not the same as average sound level as an arithmetical mean. Mr Thornley-Taylor explained that objectors who say that it is wrong to measure and rely on the average sound level are correct, but are aiming at the wrong target, since LA eq is the average of the *energy content* of the sound levels during a given period. It is therefore strongly biased towards peaks of noise levels during a given period. The example was given of five incidents of 50 dB sound, and one of 70 dB sound, during the period under review. The arithmetic average of these peaks is 53, but the LA eq is 62. On an arithmetical scale the 70 dB incident would have to be given a much larger value. In the symbol LA eqT, T denotes the period of time for which the equivalent continuous sound level is being measured or predicted.

*Intolerable and tolerable noise*

359. There are sound levels (of the order of 120 dB) at which permanent damage to hearing is likely after even relatively brief exposure. Regular exposure to lower levels (about 100 dB and above) will also cause permanent damage, as was shown by experience in the shipbuilding industry before these risks were properly understood and reduced by health and safety legislation. But there is no single, objectively verifiable standard for determining the intensity and duration of noise which the general public can reasonably be expected to tolerate. There is a wide variation in the public’s willingness to accept, or at least tolerate, types and levels of noise.
360. That has been established by a large number of scientifically conducted surveys. Indeed there have been so many surveys that, as Mr Thornley-

<sup>24</sup> Promoter’s noise presentation.



Taylor told us, many experts now rely on meta-analysis of data - that is, analysing the net results of numerous past surveys. A standard procedure is to measure the percentage of respondents who are highly annoyed by different levels of noise. This varies with noise of a particular type (taking account not only of intensity, duration and pitch, but also of the shock of an unexpected loud noise). Railway trains have in the past tended to score better in surveys than aircraft or road traffic, because of the predictability, familiarity and regularity of train noise. But this “train bonus” has not been assumed for the HS2 project, since trains travelling at such high speed are a novelty in this country.

361. The opinions of respondents to such surveys, plotted on a graph, are found to form the sort of bell-shaped (or Gaussian) curve familiar to statisticians. It is largely a matter of expert judgement to decide how many of the outliers at the two extremes should be disregarded in arriving at the two sound levels that are used, both nationally and internationally, that is the significant observed adverse effect level (“SOAEL”) and the lowest observed adverse effect level (“LOAEL”). The National Policy Statement for England aims to avoid significant adverse effects on health and quality of life and to mitigate and minimize any such adverse effects. In practice this amounts to avoiding levels in excess of SOAEL, and mitigating and minimizing levels between LOAEL and SOAEL.

*Sources of operational noise*

362. It is proposed that the high-speed passenger service will operate daily between 0500 hours (0800 hours on Sunday) and 2400 hours. When the railway is fully operational, and at peak times, trains up to 400m long will run in each direction about every five minutes. The maximum speed will be 360kph, but it is estimated that 90 per cent of the trains will run at about 330kph. The maximum speed will be attained only by trains which are for any reason making up for lost time. Between midnight and 0500 hours the line will be used only for the purposes of track maintenance and engineering, with trains running at much lower speeds.
363. The main sources of sound from high-speed travel will be the rails, the power units, the pantographs (the apparatus conducting electrical current from the overhead cables) and aerodynamic effects (the last two of these being increasingly significant as the train’s speed increases). All these relevant components will be designed and constructed so as to reduce noise as far as possible. The rails will be continuously welded and highly finished. A new type of pantograph is under development.

*The promoter’s proposed limits, and mapping of noise contours*

364. For daytime operational noise, the promoter proposes to set limits by reference to the equivalent continuous sound level, that is LA eqT, where T is the period of 16 hours from 0700 hours to 2300 hours. For night-time reference will be made both to LA eqT (with T as 8 hours) and to LA max. That is because occasions of maximum noise level are particularly important during the hours when most people are asleep.
365. The proposed limits are as follows (night time noise having to meet two separate tests):

**Table 8: Noise limits**

	<b>LOAEL</b>	<b>SOAEL</b>
Day (0700–2300)	50 LA eq 16 hours	65 LA eq 16 hours
Night (2300–0700)	40 LA eq 8 hours	55 LA eq 8 hours
<i>and</i>	60 LA max	80 or 85 LA max

*Source: Information provided by the promoter*

The LA max values are for measurements at the façade of a dwelling house, which are usually rather higher than when measured in a free field. The alternative values for SOAEL depend on the frequency of night-time train movements.

366. We regard these limits as reasonable. The 60 LA max (measured at facade) figure is broadly comparable to the WHO figure of 45 for night-time noise when measured inside a dwelling house, with the bedroom window partly open. Mr Thornley-Taylor explained that the WHO approach uses average values arrived at by a different technique, a matter that must be borne in mind in making comparisons.
367. The promoter has, with its sound experts, prepared detailed plans of the whole line of route with the 40 dB LA eq contour indicated by grey shading. It is not possible to plot a similar contour for LA max values, because these are more variable. Measurements at the facade depend on the alignment of the house, and the position of its windows, in relation to the source of noise. Some houses outside the contour are expected to exceed 60 LA max by a small margin. These are identified with a small square on the contour plans.
368. Some of this evidence was challenged by Mr Kieran Gayler who was called as an expert witness by the HS2 Action Alliance. He drew attention to the promoter's assumption that facade measurements were 2.5 dB in excess of free field measurements. We accept, however, Mr Thornley-Taylor's explanation that that figure was a worst-case, general assumption made for limited purposes, and was certainly not a reliable guide to particular cases, for the reason already mentioned. We were also told, and we accept and give considerable weight to, the fact that all the promoter's work on operational noise has been peer-reviewed and approved by an independent body of high standing, the Acoustic Review Group.
369. As already noted at various points in this report, the noise insulation of dwellings of different types often creates practical problems. The problems are as various as the types of dwelling, from the listed Nash villas of Park Village East, with their large windows and ornate shutters, to the canal boats moored in the Harefield marina. Moreover, effective noise insulation often creates new problems with the need for artificial ventilation.
370. At our hearings the promoter was disinclined to become involved in detailed discussion of these issues. Its attitude was that it would be a matter for the contractors when appointed. They would take a practical approach, taking account of the needs of particular households (for instance, those who work from home) rather than adopting a strict policy of insulating only living rooms and bedrooms. Ventilation would be included where necessary. If the problem of insulation proves insoluble, temporary rehousing would

be offered. We have already commented (at paragraph 195 above) on the difficulties that temporary rehousing involves for some families.

371. When we heard the petition of Mr Auger on 18 October there was some interesting evidence from Mr Chandler, a specialist conservation architect, who has devised a form of external double glazing that can be fitted temporarily during the construction phase, and removed when it is no longer needed. We were shown slides of a demonstration of this type of double glazing. Fitting is apparently simple and inexpensive, and the London Borough of Camden has informally expressed approval. The petitioner also spoke about blackout blinds and ventilation systems. These are initiatives that should be taken forward.

#### *Further points on noise*

372. Questions were raised about sonic booms. Mr Thornley-Taylor explained that in the early days of high-speed railways there had been a problem with trains emerging from tunnels. But that problem has been overcome by the design and construction of so-called “porous portals” which are engineered so as to make the release of pressure more gradual. The new railway will make use of porous portals (which is one of the reasons why a relatively large land-take is needed at the site of portals).
373. Another theoretical problem is a sort of bow wave of air travelling in front of a high-speed train. Sound is slowed down by travelling over saturated ground, and if the train in effect overtakes its own bow wave that can cause some turbulence. But it cannot occur with a properly maintained track.
374. It should also be noted briefly that on 20 July 2016 the Committee was addressed by Dr Thomas on infrasound and low frequency noise (“ILFN”), which would, he said, cause serious health problems. He had made a similar presentation to the House of Commons Select Committee. Mr Thornley-Taylor explained (as he had explained to the earlier Select Committee) that ILFN had been a problem in Japan, but in the context of trains operating at 500kph ILFN is not A-weighted but G-weighted, and it would have no material effect on HS2. Wind turbines, to which Dr Thomas referred, raise quite different problems.

### **Farmers**

#### *Introduction*

375. About 300 agricultural holdings are affected to some extent by the bill, amounting to about one-third of the total land-take. Roughly 5,000 ha will be acquired, half permanently and half temporarily. Land temporarily acquired in order to be reshaped as noise barriers, or for environmental planting, will be returned to its original owners, provided that its future maintenance is satisfactorily secured.
376. When farmers have part of their land acquired, but wish to continue farming, many will wish to acquire replacement land, both in order to maintain their profits and for tax reasons (as explained below). If, as is likely, numerous farmers are seeking to find new land in the same district, there may be a serious shortage of land available. Ms Louise Staples MRICS, who gave evidence for the National Farmers’ Union (“NFU”), considered that the position would be very difficult, even if farmers were prepared to travel ten

or 15 miles to newly-acquired land - a distance which would inevitably add to their costs. Many of the issues raised by the NFU were also raised by the Country Land and Business Association (“CLA”), but the CLA had studied the transcript of the NFU’s petition and helpfully concentrated on other issues, including acquisition for temporary use (dealt with separately at paragraphs 411–420 below.)

### *Compulsory purchase and compensation*

377. The statutory compensation code and the non-statutory schemes, as they apply to agricultural land and buildings under the bill, are not greatly different from their application to dwelling houses and business premises. There are, however, some variations to take account of special characteristics of agricultural property. These include the damaging effect of the severance of parts of farms by the line of route; that much of the land taken is to be returned to the owners, but usually in a different condition; that many farmhouses have a dual role as homes and places of business; and that most agricultural tenants have only an annual tenancy, with their security of tenure secured by the Agricultural holdings Act 1986 or the Agricultural Tenancies Act 1995.
378. If part of a farm is compulsorily acquired, and as a result the farm is no longer viable, the owner will usually have the right to require the whole of his land to be taken. The Express Purchase Scheme and the Voluntary Purchase Scheme apply if the farmhouse, or 25 per cent of the land, is safeguarded or is in the RSZ, provided that the owner qualifies as an owner-occupier. Displaced tenants are also eligible for agricultural occupier’s payments, which are calculated on the basis prescribed by section 33B of the Land Compensation Act 1973.

### *Tax issues*

379. The NFU raised a number of tax issues. The most important of these is capital gains tax (“CGT”). CGT is payable on chargeable gains from the sale or other disposal of chargeable assets, gains being computed without any allowance for inflation. If the land acquired from a farmer is less than 15 per cent (by value) of his holding, the sum received may be accounted for by deduction from the base value of the land on any future disposal. But if the 15 per cent limit is exceeded, CGT will be payable on the gain unless the farmer can obtain rollover relief by reinvesting the proceeds in agricultural assets, or other business assets, within three years, or such longer period as HMRC may, as a matter of administrative concession, allow.
380. The House of Commons Select Committee expressed the view (*Second Special Report* for the session 2015–16, paragraph 364) that in view of the likely intense competition for replacement land, there should be greater certainty and clarity about the extension of the rollover period. We were told at the NFU hearing on 5 July 2016 that there had recently been a meeting with officials of HM Treasury and HMRC, but that the outcome was not yet known. However, Mr Mould QC, for the promoter, told us that any CGT payable in these circumstances would be allowed as an element of the compensation payable.
381. A similar point can arise with inheritance tax (“IHT”). Most farming assets qualify for either business relief or agricultural relief, which often produces complete exemption from IHT. But on a farmer’s death the proceeds of

land that had been compulsorily acquired would, unless already invested in replacement assets, be subject to IHT. Mr Mould told us that the IHT payable in those circumstances would also be allowed as an element of the compensation.

382. The NFU also raised issues on the 3 per cent “second home” surcharge for stamp duty land tax, and on the “option to tax” available to landowners under the VAT legislation. The promoter was less responsive to these supposed difficulties, and (so far as it is appropriate for this Select Committee to express any view on matters of taxation) we too are less sympathetic. In order to increase their incomes farmers often diversify into enterprises that are not strictly agricultural, such as holiday lettings of converted buildings, farm shops, livery stables and so on. Diversification of this sort reflects the energy and resilience of the farming community, but it may complicate their tax affairs. These are matters on which farmers who engage in extensive diversification may need to take advice for themselves.

*Other farming issues*

383. The NFU objected to the powers contained in Clauses 10 and 21 of the bill for the Secretary of State to extend the duration of the powers of compulsory purchase in Clauses 4 to 11 and of the deemed planning permission conferred by Clause 20. It was suggested that these clauses should be amended so that the powers of extension were exercisable only in exceptional circumstances. But that is, we consider, already implicit in the powers, especially as the power in Clause 10 requires special parliamentary procedure for its exercise.
384. The NFU was concerned that the nominated undertaker should be liable for any negligence or other breach of duty on the part of its contractors. Mr Mould confirmed that the nominated undertaker’s duties of care are non-delegable, and referred to the small claims procedure set out in paragraph 15 of the *Guide for Farmers and Growers*. Ms Staples pressed for a general duty for contractors to carry out remedial works, and no doubt in the case of a major incident that would be appropriate. But with minor accidents it will often be more economical in time and money for farmers to carry out repairs themselves, and claim for the cost.
385. The NFU welcomed the government’s stated intention to alter the balance of entitlement to compensation, as between landlords and tenants, by decreasing basic loss payments and correspondingly increasing occupier’s loss payments. This change was, we understood, to be included in the Neighbourhood Planning Bill, but it does not appear in the Bill as ordered to be printed on 7 September 2016. As regards interest on late payments, another concern raised by the NFU, this has already been met by section 196 of the Housing and Planning Act 2016, which inserts a new section 52B into the Land Compensation Act 1973. The rate of interest fixed by HM Treasury is likely to be 8 per cent.
386. As regards accommodation works for farms that are severed by the railway, the promoter’s position is that it will do its best to meet the reasonable requirements for the accommodation works of all sorts - bridges, drains, water pipes, cables and so on - that will be needed. But it emphasised the importance of farmers’ requirements being clearly identified and agreed in advance of the construction phase.

387. Two planning matters were raised, that is permission for buildings to replace those that are to be demolished or rendered unusable, and hedgerows where the line of the railway drastically interferes with the existing field pattern. We would urge local planning authorities to deal with these matters promptly and sympathetically, but we do not feel able to recommend any changes to the planning legislation. We were also asked to direct that farmers should be given longer periods of notice as to the use of farm roads, or the exercise of powers of entry. These are matters that often have to be arranged, or rearranged, at short notice, and we think it better not to impose notice periods which may be unrealistically long, but instead to rely on the generally good relations that seem to exist between the promoter and the farming community.
388. The NFU and the CLA also raised an important point on Clause 48 of the bill, to which they took strong exception. The importance of this point is not limited to farmers, and it is considered below in the next section.

### **Compulsory acquisition for regeneration or relocation**

389. Clause 48 of the bill would confer on the Secretary of State (in subsections (1) to (3)) power to acquire land by compulsory purchase if he or she considers “that the construction or operation of Phase One of High Speed 2 gives rise to the opportunity for regeneration or development of any land”. Subsection (4) and (5) would confer on the Secretary of State power to acquire land by compulsory purchase for the relocation of an undertaking displaced by the construction of HS2 Phase One. Several petitioners, including Camden Council (the lead local authority on this issue) and the National Farmers’ Union, objected to the wide powers in subsections (1) to (3) as unnecessary and undesirable.
390. These powers are indeed very wide. Although the heading to the clause refers to regeneration or relocation, the language of subsection (1) covers not only “regeneration” but also “development”, a much more general term. The requirement for there to be “the opportunity for regeneration or development” occasioned by “the construction or operation of Phase One of High Speed 2” indicates that there must be some sort of geographical link with the route, but it is not defined with any more clarity. Moreover, there is no temporal limit in the form of a cut-off date for the exercise of the power.
391. Mr Cameron QC (for Camden) and others submitted that powers of compulsory purchase should be granted only when they are clearly needed. This power was, he said, unnecessary because a similar power has already been conferred by Parliament in section 9 of the Housing and Regeneration Act 2008. That power is not exercisable by the Secretary of State for Transport but there is no reason why that department of state should have such wide powers indefinitely simply because of some degree of proximity to the railway.
392. Mr Mould QC (for the promoter) invited us to follow the House of Commons Select Committee (*Second Special Report* for the 2015–16 session, paragraph 365) in retaining the power (then in Clause 47), subject only to the need for consultation which they inserted as subsection (2). They accepted the submission that the power “is a backstop power designed to prevent ‘ransom strips’ obstructing regeneration.” With respect, we do not understand how the House of Commons Select Committee reached that very restrictive view about the scope of the power.

393. The Secretary of State has indicated that the power would be regarded as a power to be used only as a last resort, if commercial negotiations failed to reach a satisfactory conclusion. But in our opinion it is not sound law-making to create wide powers permitting the expropriation of private property on the strength of ministerial statements, not embodied in statute, that the powers would be used only as a last resort. We have amended Clause 48 by deleting subsections (1) to (3), renumbering subsections (4) to (11).
394. On the hearing of the petition of the National Farmers' Union, its counsel argued that the powers in question were doubly objectionable because farmers whose land was acquired would not receive any part of the development value of the land. We are doubtful about that submission, in view of the amendment of sections 14 to 16 of the Land Compensation Act 1961 by section 232 of the Localism Act 2011, and the alteration of the "No-scheme principle" proposed in the Neighbourhood Planning Bill. Mr Cameron QC did not put forward the same submission. But since the powers are in our view unnecessary and undesirable we need not investigate the point.

### **Subventions for business rates**

395. The House of Commons Select Committee, in their *Second Special Report* for the 2015–16 session, remarked (paragraph 352), "Our colleagues in the Lords may wish to consider the question of the effect of HS2 construction on business rates." That Committee observed that the project might reduce business rates income, but did not themselves make any further recommendation or comment.
396. This issue was raised with us by North Warwickshire Borough Council, acting as lead authority on behalf of other local authorities. The Council was represented by Miss Natalie Lieven QC, who called as a witness Mr Chris Brewer, the Council's deputy chief executive and statutory accounting officer. Mr Brewer explained that before April 2013 business rates, although collected by local authorities, were paid over to central government funds. The system has now been changed so that local authorities participate to some extent in the risk of detriment or reward inherent in fluctuations in the business rates collected, though with the benefit of a "safety net" in the event of a severe fall in receipts.
397. Mr Brewer referred to a potential loss of up to £950,000 a year, which would be over 10 per cent of the Council's current annual budget of £8.9m. He rightly emphasised that this was a maximum figure. It is not a prediction, but simply the difference between the Council's current margin of £820,000 over its "business rates baseline funding level" fixed by central government, and the amount 7.5 per cent below the baseline figure (that is, £130,000) at which the safety net would come into operation. Under targets set by central government the Council is expected to make further cuts in its budget of £2.2m by 2019/20.
398. He also gave evidence that the total of the business rates collected by the Council is likely to be adversely affected by HS2 construction. Some businesses will close and will not reopen in the district; many others will see a reduction in their turnover and profits. The Council is likely to face these uncertainties for a long time, as its district will be affected by Phase 2 as well as Phase 1 of HS2. The new development to be expected in the area of the new Birmingham interchange station (not far to the north of the Council's

district) is, Mr Brewer said, unlikely to do much for his district, because of the green belt restrictions on development. In addition, he told us that over 40 per cent of the business rate valuations in the district are currently under appeal.

399. These are all worrying matters for the Council (and no doubt for other local authorities for whom the Council was speaking) but they are at present wholly unquantified. An additional uncertainty is whether the need for further spending cuts will be alleviated, now that austerity seems less of a priority for the Government. We sympathize with hard-pressed local authorities faced with further problems as a result of the HS2 project. But on the information at present available, we do not feel able to make any positive recommendation.

### **Movement of materials by rail**

400. Along most of the line of route, whether it is passing through urban or rural districts, one of the gravest problems of the HS2 project will be the quantities of materials that have to be transported by road to and from the construction sites. Road traffic for construction purposes, mostly HGVs, will carry spoil from excavation and demolition along designated routes, and some of the normal local traffic will be diverted, putting further pressure on other routes. Roads and streets that are already congested will become more congested, and levels of air pollution, some of which are already dangerously high, will become worse. Where the railway is to be in a deep-bored tunnel between Euston and West Ruislip, and between the M25 and South Heath portals, the excavated spoil will be carried back along the tunnel by a conveyor, and will then have to be moved off site.
401. The materials to be brought in will include very large quantities of cement and aggregates for concrete, and structural steel of many shapes and sizes, for building tunnels, retaining walls, bridges, viaducts and other infrastructure; for building the new high-speed stations at Euston, Old Oak Common, the Birmingham interchange and Curzon Street, Birmingham; and the permanent way, gantries, autotransformer units, and signalling and maintenance facilities needed for the operation of the railway.
402. Both HS2 and a very large number of petitioners are unanimous in the view that as large a proportion as possible of the materials should be moved by rail rather than by road, both outwards and inwards. There was however criticism of HS2 for having initially made plans on the basis that all material would be moved by road, and further criticism that HS2 was still disinclined to set out any specific targets for outward and inward transport by rail.
403. This is, as already noted, a route-wide problem, but it is particularly acute in Camden. Very extensive demolition and reconstruction is to take place in this area, including the demolition of a large modern office block at the south-west corner of Euston station. This is all to take place while (as an essential feature of the project) the station continues to operate as the terminus of one of the busiest network of railway lines in Great Britain. The movement of materials into and out of Euston was discussed at the hearings (on 6 September and 12 September 2016) of the petitions of the London Borough of Camden (appearing by Mr Cameron QC) and the Regent's Park Estate Tenants and Residents Association (appearing by Mr Steven Christofi).



404. Mr Cameron called as an expert witness Mr Rupert Dyer, who is now a consultant after spending 40 years working for British Rail. Mr Christofi called Lord Berkeley, a civil engineer who worked on the Channel Tunnel for 15 years, and is now chairman of the Rail Freight Group. Mr Mould QC, for the promoter, called Professor McNaughton, HS2's chief engineer, and Mr Tim Smart, who addressed further engineering issues. There was insufficient time to call Mr Smart on 6 September, so it was agreed that Mr Cameron should be able to put questions to him when he was called on 12 September.
405. Professor McNaughton explained the plans for Euston as they have been since AP3 (approved in autumn 2015) split the redevelopment of the station into three consecutive phases. There are at present 18 platforms, none of them of any great length. The witness described Euston as "a wide, stubby station". In due course it is to be even wider but much less stubby. During the first phase the site immediately to the west will be developed so as to provide the first six HS2 platforms, long enough to take trains up to 400m in length. This will involve demolition of some large carriage sheds, now redundant, to the north-west of the existing station. During the second phase the five most westerly of the existing platforms (platforms 14 to 18) will be redeveloped to provide a further five long HS2 platforms. During the third phase the rest of the station (including the existing platforms 1 to 13) will be redeveloped as a new terminus for the West Coast Main Line. The numbers of travellers using the station (or combined stations) have been estimated as follows.

**Table 9: Rail passengers arriving at Euston in the AM peak period**

	2012	2026	2033
WCML	25,000	30,000	35,000
HS2		12,000	26,000
Total	25,000	42,000	61,000

*Source: Information provided by the promoter. WCML includes inter-city and suburban services*

The station will be designed to cater for these numbers, with a central spine between the two parts providing free access on a north-south axis as well as ready access between east and west.

406. At the hearing on 6 September, Mr Dyer described the environmental cost of traffic congestion as huge, and told us that the shortest journey, for an HGV carrying spoil from Camden to the nearest landfill, would be a journey of 26 miles (each way) to and from a site near Watford. He said that one train of 15 railway wagons could move as much spoil as 124 HGVs. In his opinion four or five such trains could be loaded and run in a period of 24 hours without interfering with passenger services. There was some rather inconclusive discussion about types of railway wagons. Mr Dyer said that it might be possible to use wagons 14m long with a payload of about 70 tonnes. He referred to the Thames Tideway, Crossrail, the Northern Line extension and the 2012 Olympic site as major projects for which targets had been set and achieved for movement of materials by rail. He described HS2's forecasts as generally pessimistic.
407. At the hearing on 12 September, Lord Berkeley said that HS2 had "lost massive opportunities" in looking at the options for movement by rail (HS2

did not accept this). He described moving spoil by rail as a specialist skill. He added Terminal Five at Heathrow and Birmingham New Street station to the list of major projects for which a great deal of material was moved by rail. He supported the use for loading of platforms 13 and 18, as proposed by HS2, together with the track known as BOR2 (backing-out road 2), which HS2 hopes it will be able to use also. He described HS2's proposed times for loading as very conservative. He proposed targets for rail movement of 50 per cent for spoil and 50 per cent for construction materials, rising to 75 per cent for concrete, making use of on-site silos. It was, he said, possible to batch concrete in a very confined site.

408. At the hearing on 12 September, Mr Smart said that HS2 now had a guaranteed baseline for moving materials by rail: 28 per cent of excavated spoil and 17 per cent of imported construction materials. It was work in progress, he said, to improve on those figures. He told us that almost all the projects cited as comparators had been carried out in much less crowded surroundings, except for much of Crossrail, and that almost all of the Crossrail spoil (except at Canary Wharf) had initially been moved by road, although it ended up being shipped out along the Thames estuary in barges; and all materials had to be brought in by road. All spoil from bored tunnels (estimated as of the order of 4m tonnes) would be moved by rail, and HS2 would undertake as much on-site concrete batching as possible. Any ready-mixed concrete transported by road would be in lorries with a minimum capacity of 8 cubic metres, to reduce the number of journeys as much as possible. HS2 had engaged, and was actively engaging, with the rail freight industry.
409. In answer to a question from Lord Brabazon of Tara, Mr Smart explained that it would not be feasible to remove spoil northwards through the deep-bored tunnel before it went into regular use. Such an operation could not begin until late 2022 at the earliest, which would be too late to be a practicable solution.
410. Mr Mould's closing submission was that HS2's basic undertaking was to maximise movement of materials by rail, and that it was not sensible, at this stage, to set any specific target. The initial calculations based on movement by road had been a cautious, worst-case approach for the purposes of the environmental assessment. Contrary to what Lord Berkeley had said, HS2 Ltd had engaged with the rail freight industry "as a collective whole".
411. We are very strongly of the opinion that as much material as possible should be moved by rail, so as to reduce road traffic congestion and air pollution. However, we are convinced by the evidence that this aim will be significantly more difficult to achieve at Euston, as compared with most of the other projects referred to by Mr Dyer and Lord Berkeley. We are satisfied that HS2 is taking this responsibility seriously, and we are hopeful that significant progress will be made as the time comes for contractors to be appointed and become involved in the detailed planning. In the meantime we see no useful purpose to be served by attempting to set fixed targets. It would be little more than plucking aspirational figures out of the air.

## Permanent or temporary land take?

### *Introduction*

412. The House of Commons Select Committee made only a brief reference to this topic (*Second Special Report*, paragraph 355). They observed:
- “As we conclude our work, we remain concerned that the permanent occupation powers are used too extensively. We do not intervene to direct that the Secretary of State should not consider the economics of particular cases, but we do believe that the Government should be circumspect in considering economics of land occupation given the railway’s objective of developing the economy, helping to change the economic geography of the country for the better.”
413. In this quotation the phrase “economics of land occupation” refers, as we understand it, to the anomaly that compensation for the temporary occupation or use of land under compulsory powers may, if the land already has development potential, prove more expensive than outright compulsory purchase. In such a case it would be unlikely that the original owner would qualify for a right of pre-emption under the Crichton Down rules. Those rules are named after a case of maladministration which led to a (very honourable) ministerial resignation in 1954 (see Report of the Inquiry by Sir Andrew Clarke QC, Cmnd 9176) and have since been formulated and refined as a guide to government policy. The current version can be found in an annex to Guidance on Compulsory Purchase Process published in 2015 by the Department for Communities and Local Government.
414. Legislative practice on this point has changed. Initially, statutory powers of compulsory acquisition gave the acquiring authority full unencumbered freehold ownership in every case. If the land was required for no more than a temporary purpose, its disposal was a matter for the authority, although subject (especially after the Crichton Down case, which concerned land taken as an airfield under emergency legislation) to an obligation to consider the claims of the former owner. That obligation was not a statutory obligation but arose as a matter of good administration. In practice, however, permanent acquisition of land required for temporary use was often avoided by an agreement negotiated, as Mr Mould put it, under the shadow of the power of compulsory acquisition.
415. Major modern infrastructure projects, starting with the Channel tunnel, call for large areas of land to be acquired for temporary purposes such as construction compounds, lorry parks, haul roads and spoil heaps. Modern legislative practice has recognized this, but so far, as we see it, only in a rather half-hearted way. The Crossrail Act 2008, for instance, contains in section 5 and Schedule 5 provisions for acquiring land for temporary use, the land affected being precisely identified.
416. The legislative technique in the HS2 bill is similar to that in the Crossrail Act, but with one important variation to which Mr Mould drew our attention. He described it as unprecedented (though there was a precedent of a sort, he added, in the model clauses provided under the Transport and Works Act 1992). In the bill, Clause 15 and Schedule 16 (“Temporary possession and use of land”) are superficially in identical form to the corresponding provisions of the Crossrail Act, and the land identified in Part 4 of Schedule 16 is limited to relocation of electricity pylons and other small-scale utility

works. But there is one important difference which is, at first glance, easily missed. Paragraph 1(2) of Schedule 16 provides: “The nominated undertaker may (subject to paragraph 2(1)) enter upon and take possession of any other land within the Act limits for Phase One purposes.” The meaning of this (after a paper chase through the convoluted definitions in Clauses 66, 67(1) and 67(2)) is that any land which is required for a temporary use may be acquired by the nominated undertaker under the powers in Clause 15 and Schedule 16, even though it is not listed in that schedule but is subject to compulsory acquisition by the Secretary of State under the powers relating to permanent acquisition in Clause 4 of the bill.

*The Secretary of State’s policy*

417. In short, the Secretary of State has a choice. This point arose only at a very late stage in our hearings, during the resumed hearing on 29 November of the petition of the CLA, and there was little time for in-depth discussion. Mr Mould did, however, refer us to HS2’s information paper C4, setting out the policy that the Secretary of State intends to follow. The intention is to take account of several factors, of which the most important is the length of time for which occupation or use of the land is expected to last. But other factors will also be relevant, including any development potential of the land, its extent, and whether it is part only of an assembly of parcels in different ownership.
418. We do not criticise this general policy, which may be refined as the time approaches for it to be implemented. But we do urge that three points should be taken into account in the process of refinement.
419. The first point is that the nervous stress felt by many people whose land is to be taken is increased by uncertainty. That is particularly true for farmers, who need (at a time when agriculture is facing difficult conditions) to do their best to see some way into the future in planning for a viable business. Now that Royal Assent is likely to end part of the uncertainty, and more detailed design work commences, the promoter should do all it can to engage with those who are still in a state of uncertainty about how their land is to be taken.
420. Second, there will be land taken for temporary use (especially in the vicinity of the Birmingham interchange station) for which the HS2 project will itself create development opportunities. This will be the land which (if taken permanently under the ordinary compulsory purchase regime) is least likely to be offered back to the original owners. Both the promoter and organisations such as the NFU and the CLA should do what they can to bring this home to those who may be affected. It will provide an incentive, in some cases, for negotiating an agreement operating outside the statutory powers. But because of the economic anomaly mentioned above, the negotiation may involve some hard bargaining. The acquiring authority may be expected to press for terms which restrict the effect of the anomaly.
421. Third (and as wider expression of the second point), where land is acquired for temporary use but under the normal compulsory purchase regime, its eventual disposal by the nominated undertaker will be under the Crichton Down rules. We strongly urge the Secretary of State not to add further exceptions to what is already quite a long list of cases (in paragraph 15 of the annex to the 2015 Guidance) in which the original owner will not be given

first refusal to reacquire the land at its then market value. Apart from other more principled reasons, which we need not repeat, it would be odd if one Department of State had its own version of the rules.

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Brabazon of Tara  
Lord Elder\*  
Lord Freeman  
Lord Jones of Cheltenham  
Baroness O’Cathain  
Lord Plant of Highfield\*  
Lord Walker of Gestingthorpe  
Lord Young of Norwood Green

### Declarations of interest

Lord Brabazon of Tara  
*No relevant interests declared*  
Lord Elder\*  
*No relevant interests declared*  
Lord Freeman  
*No relevant interests declared*  
Lord Jones of Cheltenham  
*Shareholder, Gloucestershire Warwickshire Steam Railway.*  
Baroness O’Cathain  
*No relevant interests declared*  
Lord Plant of Highfield  
*No relevant interests declared*  
Lord Walker of Gestingthorpe  
*No relevant interests declared*  
Lord Young of Norwood Green  
*No relevant interests declared*

\*Lord Elder was appointed in place of Lord Plant of Highfield on Wednesday 25 May 2016.

A full list of members’ interests can be found in the Register of Lords’ Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

**APPENDIX 2: LOCUS STANDI RULINGS**

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**Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Monday 13 June 2016 (PM), paras 2–17**

2. THE CHAIRMAN: Before we begin with this afternoon's applications, I have to announce the Committee's decision on the first group of applications, which were heard last week. This ruling relates to all the promoter's challenges to petitions heard on 7, 8 and 9 of this month, apart from one petition, that of Mr Richard Boulton, number 756, which we've already ruled out as premature, since it relates to a farm likely to be affected by Phase Two of the HS2 scheme.
3. In order to avoid misunderstanding of our ruling, it is necessary to say something about the background. The High Speed Rail (London to West Midlands) Bill is a hybrid Bill, which was formally introduced into the House of Commons on 25 November 2013. It received its second reading on 28 April 2014. It was then committed to a Select Committee, which was faced with a total of over 2,500 petitions against the Bill, and five sets of additional provisions.
4. The promoter objected to the rights to be heard of only a handful of the petitioners. The right to be heard on a petition against a hybrid bill depends partly on the longstanding practice of Parliament, and partly on the Standing Orders of the two Houses, in particular, in the House of Lords, Standing Orders 117 and 118. In consequence of the promoter's cautious approach to challenges, the proceedings before the Commons Select Committee continued for the best part of two years, even though the Committee sat for many very long working days, which imposed unreasonable pressure both on petitioners and on the Committee.
5. The Bill was introduced to the House of Lords on 23 March 2016, had its second reading on 14 April of this year, and has been committed to this Select Committee. Before this Committee, in striking contrast to its attitude in the other House, the promoter has challenged over half the petitions which have been presented, including many presented by petitioners who were heard without challenge in the Commons. In acceding, as we do, to many of these challenges, we are not differing from the Commons Select Committee. In the absence of any challenge by the promoter that Committee had no option other than to hear all the petitions brought before it, but it did complain in strong terms about the constant repetition by numerous petitioners of essentially the same points. Such repetition is unhelpful. It wastes time and resources. It can be significantly reduced by observing the correct practices to the rights to be heard, together with sensible case management. There are valuable observations on programming and hearing in the special reports of the Commons Select Committee on this Bill.
6. Some petitioners feel strongly and have submitted to this Committee that the promoter should not be permitted to change its position in this way. We understand the petitioners' strong feelings, but the proceedings before this Committee are separate parliamentary proceedings. The promoter has had second thoughts, and, for the reasons already stated, we consider that the promoter is right to have had second thoughts. Petitioners whose individual petitions are disallowed can still contribute to our work, either as witnesses

on others' petitions or as collaborators on petitions presented by parish councils or other representative bodies.

7. It is important to note that under Standing Orders 117 and 118, this Committee has a wide discretion whether or not to hear a petition which is challenged, even if the petitioner falls within the terms of those provisions. The general practice has been not to hear petitions presented by an ad hoc group, mainly because the public interest in full examination of environmental and ecological issues, including traffic management and the control of pollution of all sorts, is better achieved by petitions presented by local authorities large and small, and by established bodies with expertise in those areas.
8. As already mentioned, petitioners whose own petitions are disallowed may still have an important part to play as expert advisors or witnesses, or other representative petitioners. That may apply, simply to give a few instances, to Mr Guy of the Wendover Chamber of Trade and Commerce, petition number 459, to Professor Payne of Little Missenden, petition 155, to Dr Mitchell of SAAG, petition number 39, and to Mr Holland of Lower Boddington, petition number 25. It is also important to note that an individual petitioner's right to be heard as a right, and not under the discretionary powers in Standing Orders 117 and 118, depends on that petitioner establishing the prospect of direct and material detriment to his or her property interests, either by compulsory acquisition or by interference with his or her property rights which amounts to a common law nuisance, or some other interference which would be actionable if not authorised by Parliament.
9. Mr Mould appeared to be submitting at the hearing of petition number 24 on 9 June that the noise of construction work on its own without physical damage to property by vibration could not amount to a statutory nuisance. He referred to but did not cite the speech of Lord Hoffmann, with whom the other members of the Judicial Committee of the House of Lords agreed, in a case called *Wildtree Hotels Ltd v Harrow London Borough Council*. This is not an appropriate occasion for a technical discussion about the common law of nuisance, but the Committee find Mr Mould's submission surprising, if they have understood it correctly. There is ample authority for the proposition that noise alone can amount to a nuisance, actionable at the suit of a landowner, if it amounts to a real interference with his use and enjoyment of his land. See, for instance, Professor Richard Buckley, *The Law of Negligence and Nuisance*, fifth edition, 2011, paragraphs 1201 to 1213.
10. When the House of Lords reviewed the whole law of nuisance in *Hunter v Canary Wharf* in 1997, Lord Hoffmann accepted that nuisances, in his words, 'productive of sensible personal discomfort to a landowner' are part of the same tort of nuisance as physical damage to the land itself.
11. The *Wildtree* case was a claim for statutory compensation made by the owners of a hotel in respect of loss of custom during a road improvement scheme carried out by the highway authority and involving the use of powers of compulsory purchase. The House of Lords decided two points. The first was that compensation could be claimed for temporary interference with the enjoyment of land. So far as that is relevant to petitions against the Bill, it is not unhelpful to petitioners complaining of the threat of intolerable noise from works during the construction phase. The other point involved the



discussion of some confusing nineteenth century decisions about injurious affection by construction works.

12. Lord Hoffmann quoted Lord Greene, Master of the Rolls, in another case of a nuisance claim by the owner of a hotel, *Andrae v Selfridge Ltd*, and this is the quotation: ‘When one is dealing with temporary operations, such as demolition and rebuilding, everybody has to put up with a certain amount of discomfort, because operations of that kind cannot be carried on at all without a certain amount of noise and a certain amount of dust.’ Lord Greene was here summarising the appellant’s argument rather than expressing his own view. The appeal was allowed only to the extent of reducing the damages.
13. But the important point is that the principle that statutory powers are a defence, if exercised reasonably, can hardly assist the promoter when what this Committee has to consider is the logically prior issues of the extent of and possible restrictions on the statutory powers which Parliament should grant to the promoter, especially in the context of what is not an ordinary construction project but the largest in size, duration and cost of any civil engineering project ever undertaken in the United Kingdom. It may be necessary to revisit this point, on which we have not heard full argument, but that is our present view.
14. We must now make our rulings. We have decided not to exercise our discretion in favour of any of the action groups or the Wendover Chamber of Trade and Commerce, with two exceptions. The HS2 Action Alliance, petition number 766, has built up a great deal of expertise on some topics of general, route wide significance, including operational noise and statutory and non-statutory compensation. We accord HS2 Action Alliance the right to be heard on these two generic issues. We also accept that the HS2 Euston Action Group, petition number 472, is a special case. The Euston area poses some very difficult problems, and the HS2 Euston Action Group can speak for a large number of established residents associations which are affiliated to it. It can also address issues on which the London Borough of Camden may feel a degree of inhibition, as explained in the witness statement of the leader of Camden Council. We do not limit the extent of its participation, but it must not, of course, seek to challenge the principle of the Bill. We consider that these two action groups, with their accumulated knowledge and expertise, come within the terms of Standing Order 117.
15. As to the individual petitioners, in which we include Wendover Financial Ltd, we conclude that most of them have not established the prospect of direct and special detriment to their property interest in the sense explained above. We consider that that test has been met by Mr and Mrs Price, petition number 590, by Professor Geddes and Madeleine Wahlberg, petition number 380, and by Mr and Mrs Herring, petition number 197. We urge Mr and Mrs Herring to cooperate with the Radstone Residents Group, petition number 669, which is unchallenged, since Radstone has no parish council, in avoiding duplication of their submissions. We uphold the challenge to the other individual petitioners, except for Mr Chris Williams.
16. Mr Williams, petition 814, of Chelmsley Wood on the east of Birmingham is, in our view, also a special case. He is on the local council, which has not presented a petition, but has made clear he does not claim to speak with its authority. The promoter accepts that Chelmsley Wood is a socially and economically deprived district. Some of its residents, especially in

Yorkminster Drive, Lycroft Avenue and Chiswick Walk, might, with ampler resources, have been in a position to present petitions based on direct and special detriment, and several of them have been relying on Mr Williams, who is an articulate and dedicated councillor, to speak for them. We allow his petition as an exceptional exercise of our discretion under Standing Order 118, on condition that he does not address the issue of realignment of the route.

17. Our conclusions are therefore, in summary, as follows. Allowance in whole or in part does not imply any decision on the issue of additional provisions, which remains to be argued. Allowed: petitions number 197, 814, 380 and 590. Allowed in part: 766, 472. The other petitions are disallowed.

**Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 21 June 2016 (AM), paras 1–38**

1. THE CHAIRMAN: Ladies and gentlemen, before we hear today's petitions, I am going to read out the ruling of the Committee on the second batch of petitions, which we heard on four days last week.
2. This ruling sets out our decisions on the promoter's challenges to *locus standi*, which the Committee heard on 13, 14, 15 and 16 June. We heard a total of 189 applications, three of which were withdrawn in the course of being heard. There was six other petitions to which the promoter withdrew objections shortly before they were to be heard so that *locus standi* was conceded without argument.
3. Most of the petitioners owned property in or close to the north part of the Chilterns Area of Outstanding Natural Beauty. From south to north, on the east side of the route: Hyde Heath, South Heath, Ballinger, Lee Common, The Lee, Kings Ash and Wendover, together with a few petitions from Stoke Mandeville and Aylesbury. And, on the west side of the route: Little Missenden, Great Missenden and Dunsmore, with Little London and Wendover Dean lower down the slope of the hills. The exceptions from outside this general area—all important exceptions—were petitioners from the villages of Chetwode and Twyford, both situated between Bicester and Buckingham, and petitioners with a single joint petition from residents in Three Oaks Close, Ickenham in the London Borough of Hillingdon.
4. Two general issues arose frequently in the course of the hearings. They are both matters on which many petitioners have strong views. The first is the type or character of apprehended adverse effect which a petitioner must allege in order to be heard as of right and not merely as a matter of discretion so as to establish that the petitioner is, in the traditional words, directly and specially affected by the Bill.
5. In this Committee's first decision ruling, we answered that question in these terms: the prospect of direct and material detriment to his or her property interests either by compulsory acquisition or by interference with his or her property rights, which amounts to a common law nuisance or some other interference which would be actionable if not authorised by Parliament.
6. We have not been persuaded in the course of a further week's hearings that that answer is too narrow. There is a more detailed discussion of this issue later in the ruling.

7. The other general issue was a series of challenges to the settled practice of Select Committees of this House and the Court of Referees in the House of Commons of not granting *locus standi* to action groups. Instead, their practice has been to grant it to local authorities at different levels of local government and well established national organisations such as the Ramblers' Association, the Campaign for the Protection of Rural England, the National Farmers' Union and the Woodland Trust. A point that was often made was that a parish council in a rural area may have a rate precept which brings in little more than £10,000 per year to meet all the calls on its resources, whereas some action groups have access to ampler funds and have been actively involved in consultations with the promoter.
8. Another important point was raised by Mr Anthony Chapman, who spoke for himself and eight other residents of Wendover, most in Hale Road or Hale Lane. He launched a counterchallenge against the promoter's notice of objection, arguing that the notice contained three component parts. The first, he said, was untrue; the second and third were true, but irrelevant. The notice as a whole was defective.
9. In order to understand this argument, it is necessary to set out to the operative part of the notice, and I do. '1(1) The petitioners do not allege that the interests of the petitioners are directly or specially affected by the provisions of the Bill or are affected in any manner different from that which the said provisions may affect other inhabitants of the districts affected by the Bill'; '1(2) Nor is it the fact that the petitioners' petition as representatives of any district affected by the Bill.'
10. Mr Chapman put forward a powerful argument, though it is regrettable that he later made some offensive remarks about Mr Mould for which the Committee can see no justification. The Committee have already criticised the promoter's notices of objection as formulaic and illadapted for their purpose, which is to let the petitioner know the case that he or she has to meet. That should be done by the notice itself, not by a link to a website, which the petitioner may or may not pursue. But the link does give an explanation of the need to show invasion of a proprietary interest in order to petition as of right.
11. In view of the importance of a proprietary interest, Mr Chapman was wrong to describe the first part of the notice as untrue. Both his petition and those of the others for whom he spoke are in a form, with immaterial embellishment in one case, which clearly alleges that the petitioner or each petitioner is directly and especially adversely affected. It says nothing about proprietary interests being affected. Indeed, some of the petitions describe the presenter merely as a resident, without referring to ownership.
12. This is a narrow point, but in the context an important one. It does nothing to reduce our criticism of the notices as formulaic and unhelpful, but we do not hold that they were ineffective, and Mr Chapman's preliminary point fails.
13. Hyde Heath is a location that was one of the principal beneficiaries of the extension of the bored tunnel provided for by AP4. We are not persuaded by its individual petitioners that any of them is threatened by noise nuisance from the porous portal of the extended tunnel. At South Heath and Potter

Row, where the portal will be constructed, some houses have already been acquired by the promoter at unblighted value.

14. The most vulnerable houses are at Bayleys Hatch and we consider that their owners, Mr and Mrs Binns and the group represented by Dr Hook and Mrs Williamson, at a real risk of being subjected to noise nuisance, and we allow their applications but not the others in this area.
15. We consider that none of the petitioners from or near Little Missenden or Great Missenden has shown the likelihood of disturbance amounting to noise nuisance. We also disallow all the individual applications from the area of Ballinger, Lee Common, The Lee and Kings Ash. Their houses are mostly a good way from the route, and their main complaints—except in the case of Mr BarrettMold, who will experience more noise but obtain some protection from the contours—were not of noise but depreciated property values, that is socalled nonstatutory blight, the prospect of diverted traffic or ratrunning on their narrow lanes; and damage to their views across a valley of great natural beauty.
16. It is clear that nonstatutory blight has never been treated as a ground for petition, though it may in some cases be relieved under the promoter's needtosell scheme. Rights to drive on highways, to ride on bridleways and to walk on footpaths are public rights. They do not depend on ownership of land in the district, and their protection is the concern of local authorities at different levels of local government.
17. As regards visual amenity, Mr Mould's general submission was that there is no proprietary right to enjoy a view. The Committee accept that submission as correct, subject to two qualifications which are not now material: serious interference with established enjoyment of natural light—socalled ancient lights—is an actionable nuisance; and restrictive covenants can give a landowner the right to control development on other land in the vicinity. Neither of those is relevant here.
18. Apart from interference with their public rights the petitioners living in Dunsmore or Little London complained mainly of the prospect of intrusion into their beautiful landscape of two viaducts and an embankment. That is not a sufficient ground for a petition as of right. Mr and Mrs Sykes run a B&B and hometeaching business at Wendover Dean and are closer to the route, but their house faces onto the main road away from the route, from which it is partly protected by mature trees. We do not allow any of these petitions.
19. A large number of petitioners are freehold or leasehold owners of houses or shops in Wendover. It is to have a cutandcover tunnel, which will take seven years to complete, though with different intensities of work during that period, along the west edge of the town, with exceptionally high 6metre noise barriers further south. There is little doubt that there will be great inconvenience from construction work, including pressure on streets and roads. Construction traffic will not go through the town, but it may increase the pressure of other traffic in the town. Those issues are primary for the local authorities at different levels.
20. The main admissible ground from an individual petition is noise nuisance. The common law as to private nuisance is based on the ancient principle

that one landowner must not use his own land so as to damage the land of his neighbour. Some give and take is expected. Some account is taken of the nature of the district. Those who live in busy towns must expect to put up with rather more noise than country dwellers, but their only special vulnerability to noise may be taken into account, so long as they have not chosen to move to a noisy place.

21. In Wendover, the cutandcover tunnel will be constructed on the west side of two existing travel routes: the Chiltern Railway and the A413, designated in Wendover as Nash Lee Road. These two routes separate the HS2 route from the petitioners. They also generate a good deal of noise, which is accepted as part of urban life. The Committee has considered all the petitions of house owners and owners of commercial premises in Wendover, and we have concluded that, with one exception, they have not made out a reasonable prospect of success in a nuisance claim.
22. The exception is the Lionel Abel-Smith Trust, which owns 14 tenanted properties in or near Pound Street, about 200250 metres from the proposed tunnel, occupied by a mixture of residential and commercial tenants. These are all ancient grade II listed buildings and are built on chalk with little or nothing in the way of foundations. We admit this petition, but strongly urge the charity to cooperate with Wendover Parish Council to avoid duplication in the preparation and presentation of evidence.
23. St Mary's Church in Wendover is quite close to the route, and its petition has not been challenged. It is used not only for divine services but also for concerts, choir rehearsals and the monthly meetings of the Wendover group of the University of the Third Age.
24. In view of the church's petition and in advance of our general observations about petitions from interest groups, we do not exercise our discretion in favour of the petitions of Wendover Choral Society and Wendover Music or that of Mr Avery himself, which hovers between the personal and the representative.
25. Nor do we exercise discretion in favour of the Wendover group of the University of the Third Age. They can all cooperate with the church, perhaps as witnesses, and the church should cooperate with the parish council in presenting its petition.
26. We do not find that any of the petitioners from Stoke Mandeville or Aylesbury has shown that he or she can petition as of right. Nor do we exercise discretion in their favour, and there is no good reason to do so. But Margaret Rand of Stoke Mandeville is a lady who has previous suffered some grievous misfortunes, and she sets great store on being able to bicycle along Marsh Lane to get from her house to the stables, where her ponies are kept.
27. To build a tunnel would no doubt be disproportionately expensive, but we ask the promoter to consider what might be done to help her, possibly by a relatively small change, enabling her to wheel her bicycle across the pedestrian bridge which is to be constructed a little way north of the present route of Marsh Lane.
28. Chetwode and Twyford are villages that will, as the promoter accepts, be significantly affected by noise from construction and operation of the railway. The case for the Chetwode petitioners was put by Mr Clare, who with great

objectivity accepted that his own petition and that of other members of his family was one of the weakest claims. These petitions were withdrawn. We allow the other Chetwode petitions, except for those of Mr and Mrs Thornhill, whose house is much further from the route.

29. Twyford is a similar case. There, one petitioner's right to be heard has already been conceded and we allow the petition of Mr and Mrs Searle but not that of Ms Sloan, whose house is much better protected.
30. The petition of 14 house owners in Three Oaks Close makes a strong case for prospective nuisance from noise and possible flooding from the sitting of a spoil heap 3 metres high on open ground in the near vicinity, together with noise and air pollution from increased traffic on roads that are already very congested.
31. We allow this petition but strongly urge the petitioners to cooperate with the local authorities and any other petitioners whose petitions are to be heard in avoiding repetition in the cases they present. This is a case for which positive case management may be needed.
32. We have already referred to the settled practice of regarding local authorities as the most appropriate petitioners on matters of public interest such as public health and safety, public highways including bridle paths and footpaths, and environmental and ecological issues. The practice has been to supplement the contributions of local authorities, where appropriate, by petitions and evidence from established bodies with specialised interests such as those mentioned in paragraph 7 above.
33. The settled practice is not, excepting various special circumstances, to hear ad hoc action groups. This Committee is bound to follow that practice. We do not, therefore, exercise our discretion in favour of the Heart of England High Speed Railway Action Group, the Balsall and Berkswell Residents Against Inappropriate Development, Wendover HS2, Wendover Community Petition, signed by a large number of people without any indication that they had read it, Stoke Mandeville Action Group or South Northamptonshire Action Group.
34. The Dunsmore Society, Hyde Heath Village Society and the Northampton Rail Users' Group are not ad hoc action groups, but the Dunsmore and Hyde Heath societies add little to what is in individual petitions, and the rail users' group appears, by questioning the whole design of Euston Station, to be challenging the principle of the Bill.
35. We hope that this disappointment will not discourage active members of these bodies from continuing their work in support of the very many local authorities at different levels which have presented petitions.
36. Mr Mould has shown us many of these petitions, the *locus standi* of which is not challenged. Those that he showed us appeared to be carefully prepared, well set out and comprehensive in their coverage of the issues. The fact that parish councils, with very limited resources, can produce work of that quality is an indication of how much voluntary assistance of all sorts they receive from their electors.
37. Some of them have worked closely with action groups and relied on actions groups to conduct detailed discussions with the promoter. There is no reason

why that should not continue, and many members of the action groups may be called as witnesses, especially if they have special expertise. But, in the formal business of petitioning, it is the local authority itself, acting with due formality, which should be the petitioner.

38. In summary, the petitions which we have allowed (there are others that have been conceded) are: 30, Dr Hook and others, but only in respect of Mr and Mrs Binns at Bayleys Hatch; 368, Mrs Williamson at Bayleys Hatch; 10, Mr and Mrs Graham; 113, Mr and Mrs Martin; 201 and 205, Mr and Mrs Paxton; 104 and 105, Mr and Mrs Cooper; 122, Mr and Mrs Harrison; 131, Mr and Mrs Searle; 207, Mr Semple and 14 neighbours at Three Oaks Close, Ickenham; and 464, the Lionel AbelSmith Trust.

**Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 28 June 2016 (AM), paras 1–10**

1. THE CHAIRMAN: Good morning. Before we start today's list I shall read out our third ruling dealing with the *locus standi* challenges that we heard on 20th, 21st and 22 June.
2. During the third week of our sittings, which were limited to three days because of the referendum, we heard 21 petitions. It is clear to us that there are many petitioners who find it difficult to accept the limited scope which parliamentary practice allows to the expression, 'their property or interests are directly and specially affected by a hybrid Bill'. Other petitioners understand its limited scope but find it unacceptable and have said so in forthright terms. The point was made eloquently by Mrs Emma Davies of Coombe Avenue, Wendover, one of the youngest petitioners from whom we have heard. She said that the HS2 railway is a new world and that it calls for a new approach to parliamentary practice on Hybrid Bills. We agree with that view.
3. The present system began to evolve in a piecemeal way in the Victorian age when there were many more Private Bills, but far fewer petitioners, no motor vehicles and very much less regard for environmental and ecological concerns. A start has been made towards a new approach. Following the unprecedented period of two years for which this Bill occupied the House of Commons Select Committee, the Chairman of Committees of the two Houses has established a review of Hybrid Bill procedure. We hope that it will be radical and extend not only to the form in which the principles of *locus standi* are expressed but also to the substantive content of those principles.
4. This Select Committee may be the last to operate under the present system but this Committee has no power to change that system. That is a matter for Parliament as a whole after the review has been completed and its recommendations considered. We must, in the meantime, apply the existing rules.
5. Five of the petitions were from unincorporated bodies of different types. Two were from action groups, HS2 Amersham Action Group and Chiltern Ridges HS2 Action Group. We uphold the promoter's challenges to these goods but notice that CRAG's petition was well researched and presented and Mr Morris, chairman of the Lee Parish Council, Mr Sully and other supporters of CRAG have much to contribute to the petitions of their parish councils.

6. The Chesham Society is an established body but we uphold the challenge to its petition since Chesham is a considerable way away from the directly affected area. It is not clear whether the other two bodies, the Forest Close Residents Association and the Ballinger Road Residents Association, should be viewed as bodies falling within the discretion conferred by Standing Order 117 or as a number of individuals claiming to be heard as of right. Some of the residents in Forest Close, Wendover, do live quite close to the site on which the green tunnel will be constructed but Dr Cooke who appeared for them did not press the claims of any particular residents on the ground of their proximity to the site. She concentrated on recreational activities. The Ballinger Road petition revisited ground we have already covered in considering Lappetts Lane and Kings Lane, South Heath. We uphold these challenges but note that Dr Cooke and Peter Jones may make a useful contribution to the presentation of their respective parish councils' petitions. So may Mrs Davies and Dr Savin, a resident of Wendover with considerable scientific expertise.
7. Vyners School, Ickenham is something of a special case. We were addressed by Mr Henry Gardner, the chairman of the Governors. The school is a large secondary school with about 1200 pupils and 250 full-time or part-time staff. It is situated just north of Western Avenue, the A40, with its playing field to the south of that road accessed by a footbridge. It is some way from any proposed works or spoil heaps. It is a successful academy and is not, therefore, under the supervision of the London Borough of Hillingdon as the local education authority. The governor's main concerns are focused on traffic congestion and air pollution, both already bad, as a threat to the safety, health and punctuality of both pupils and staff. These are very proper concerns but they will be addressed by various local authorities, including Hillingdon, acting not as local education authority but in performance of other statutory functions. We do not exercise our discretion in favour of the school but encourage the governors to provide evidence to their local authorities.
8. As to the individual petitions, six were from residents of settlements of Amersham, Chesham, Holmer Green, Langley and Little Hampden, which are geographically remote. These petitioners raised generic issues, which are better addressed by local authorities and established environmental bodies. We uphold these challenges by the promoter.
9. Three of the petitions were from residents of Great and Little Missenden. Mrs Garrett from Little Missenden and Mrs Denson from Great Missenden spoke eloquently of their fears that traffic will be driven off the A413 and on to narrow lanes through their villages bringing danger to their families and disruption to village life. These and other environmental issues are essentially generic, that is community interests. Everyone in Little Missenden walks along the narrow lanes through the village, whether their houses front on to it or not. We reluctantly uphold these challenges following the established practice. We encourage Mrs Garrett and Mrs Denson to collaborate in the preparation and presentation of evidence in support of their respective parish councils' petitions.
10. We also uphold for the same reasons the promoter's challenges to the petitions from residents and traders in Wendover, with one exception. Mr Andrews of Chiltern Road, Wendover, presented a well-researched and well-presented petition, number 106, which raises one point of duration of maximum noise



which does not seem to have been raised in any other petition we have seen. This merits further consideration and we exercise our discretion under Standing Order 118 in favour of Mr Andrews and dismiss the challenge, but limit Mr Andrews to this point. Mr Andrews also had a preliminary point, a complaint that the promoter's notice of objection was inappropriate and ineffective. This point was raised by Mr Anthony Chapman on an earlier occasion. We did not uphold his complaint—see our second ruling, paragraphs 5 and 6. It is unnecessary to decide whether or not Mr Andrews' case is distinguishable on that point.

**Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 5 July 2016 (AM), paras 1–10**

1. THE CHAIRMAN: Good morning. Before we hear the petition of the National Farmers' Union I am going to read out our fourth ruling on the last group of *locus standi* challenges that we heard. During the fourth week of our sittings we heard 37 objections made by the promoter to the *locus standi* of petitioners, eight on 27 June, 16 on the 28th, and 13 on the 29th. These figures exclude one listed petition, Mr Eastman, 310, to which the promoter withdrew its objection at a late stage, and three, Ms Kaneko, 693, Mr and Mrs Lowe, 660 and Mr and Mrs Brown, 696, which were withdrawn in favour of support for the group petitions put forward by Councillor Berry.
2. We do not repeat the general points made in our previous rulings as to our obligation to follow established parliamentary practice on two points of central importance. The first is the severe degree of invasion of property rights needed in order for an individual property owner to establish *locus standi* as a right. The other is the special position of local authorities at different levels as representative petitioners, under standing order 118, in order to cover generic issues, including environmental issues of all sorts. A further point arose about the position of small groups of councillors acting without the authority of the body to which they have been elected, and we address this below.
3. Many would be representative petitioners submitted that they were in a particularly good position to deal with some aspect of a generic issue, but in every case Mr Mould, for the promoter, was able to show us at least one petition, and sometimes several petitions, in which the point was raised by a local authority or residents' association whose petition was not objected to. The generic issues most often raised were traffic congestion and resulting air pollution, both in the Hillingdon area and the Chilterns, but with amenity also raised in the Chilterns and Denham area.
4. Traffic management is essentially a community concern calling for a balanced approach. Limiting the pressure of traffic in one place is likely to increase pressure in another place. We uphold the challenges to all those petitions, whether from individuals or groups, where the main complaint is about traffic on public highways. We also uphold the challenge to the petition of West London Line Group, 449, which was seeking to challenge the Bill on some points of principle and would have required an additional provision.
5. Relatively few of the petitioners claimed to be heard as a right on the ground that the increase in noise during the construction phase or when the railway is operational would amount to an actionable nuisance. Some were as much as 1.5 kilometres away from the route, far outside the area surveyed by the

Arup sound engineers. The only petition that we allow on that ground is that of the Sibleys Rise Residents' Group, 655, whose case was very well presented by Ms Hilary Wharf. Their position in relation to the South Heath portal is very similar to that of the residents of Bayleys Hatch, whose petitions we've already allowed. We cannot allow the petitions of Ms Marjorie Fox and her neighbours, 251 and 252, but we encourage Ms Fox, who is a dedicated voluntary warden at the Colne Valley site of special scientific interest, to come forward as a witness for the Wildlife Trust.

6. We heard three petitions, 279, 552 and 584, from small groups of councillors elected to represent different wards, the Camden Town with Primrose Hill ward, the Regent's Park ward, and the Kilburn ward, respectively, within the London Borough of Camden. Camden is itself an unchallenged petitioner, but has, as noted in our first ruling, a degree of inhibition because of its different statutory functions and responsibilities. The councillors who addressed us on 28 June spoke eloquently about the social and economic deprivation of parts of their wards, and the linguistic and cultural difficulties that many of their residents encounter in trying to respond effectively to the Bill.
7. We have no doubt that these councillors are conscientiously working as hard as they can in the interests of their residents, but there is an important point of principle that arises here. Their status as councillors is as elected members of a local government corporation, which, whether or not it has a cabinet system, can act only by properly passed resolutions and properly delegated authority. Individual councillors or groups of councillors acting without the authority of the council cannot claim the special preference accorded to local authorities. Mr Mould referred us to several petitions which raised the same concerns, including one, Connor and others, 391, which is focused on the Alexandra Road vent shaft. We uphold the challenge to these petitions. This does not of course prevent these dedicated councillors from continuing to assist their residents by advising them, by cooperating with other petitioners, and perhaps by giving evidence in support of other petitions. For similar reasons we also uphold the challenge to the petition of Mr Andrew Dismore, assembly member for Barnet and Camden.
8. We heard from a number of other petitioners from the Camden area, and we uphold the challenge to these petitions, with one exception. Ms Jo Hurford, representing herself and others living in 30 to 40 Grafton Way, spoke clearly about concerns relating to traffic flows and the prospect of increased noise and pollution during the construction period. We are persuaded of the case for granting a discretionary *locus*. We therefore allow her petition and the other two petitions of those whom she represents.
9. It would be remiss of us not to mention the petition of Mr Peter Bassano, 725. This represents a personal tragedy, but we must conclude that this Committee is not the appropriate forum for addressing the historical grievances he outlined to us.
10. In summary, we allowed the Sibleys Rise petition, 655, Ms Jo Hurford, 354, 30-40 Grafton Way and their Supporters, 733, and Amita and Kiran Shrestha, 783. That is the end of the ruling.

**Corrected transcript of the High Speed Rail (London - West Midlands) Bill  
Select Committee meeting on Monday 18 July 2016 (PM), paras 2–17**

2. I am going to begin by reading the fifth of our rulings on *locus standi* challenges. This ruling begins with the most important and difficult of *locus standi* challenges that we heard at different times between 4 and 13 July of this year: ‘On 11 July we heard evidence and submissions from and on behalf of the Rt Hon Cheryl Gillan MP and seven other Members of Parliament whose constituents are affected by the HS2 project. Mrs Gillan is the Member for Chesham and Amersham, and the others, from north to south along the route, are: Craig Tracey MP (North Warwickshire); the Rt Hon Caroline Spelman MP (Meriden); Jeremy Wright MP (Kenilworth and Southam); Andrea Leadsom MP (South Northamptonshire); the Rt Hon John Bercow MP (Buckingham); David Lidington MP (Aylesbury); and Nick Hurd MP (Ruislip, Northwood and Pinner).
3. These eight Members of Parliament presented petitions to the House of Lords in opposition to the Bill, but the promoters have objected to all of them as lacking *locus standi*. The principal objection is that the interests of the petitioners are not directly and specially affected by the Bill. A subsidiary and technical objection that the Members of Parliament were acting as agents for their constituents was rightly abandoned by Mr Timothy Mould QC, leading counsel for the promoters.
4. At the hearing Mrs Gillan spoke for herself and her seven colleagues, supported by Sir Keir Starmer QC MP, whom she called as a witness. Sir Keir provided us with a written note of his submissions. He began by referring to Standing Order 114 of the Standing Orders of the House of Lords relating to private business, and submitted that it confers a discretion on the Select Committee. With respect, it does no such thing. It simply identifies the body which is to take any decision on *locus standi*. In the case of a hybrid Bill, that is the Select Committee of one or other House, though these issues are decided, in the case of a private Bill in the House of Commons, by the Court of Referees in order to reduce the pressure of work on Members of Parliament.
5. Standing Order 114 says nothing about whether the decision is at the Committee’s discretion. By contrast, Standing Orders 117 and 118 do confer discretions, as is made plain by the words ‘if they think fit’, but such discretions may not be exercised arbitrarily or without due process, or in a manner outside the scope of the power. There were obvious difficulties about treating an individual Member of Parliament acting not for any personal interest but in the best interests of his or her constituents as ‘a society, association or other body’ (Standing Order 117) or ‘a local authority or other inhabitants of a district’ (Standing Order 118).
6. Only one of the eight Members of Parliament who have petitioned refers to having residents within the constituency, but several others referred to a constituency office, and we would assume that all do have such an office and visit their constituencies very frequently.
7. Sir Keir Starmer’s note goes on to submit that this appears to be the first attempt to block MPs en masse. That may well be so, since the HS2 infrastructure project almost certainly affects more parliamentary constituencies than any previous hybrid Bill, and there is no record of more than two Members of

Parliament having petitioned against a hybrid Bill, apart from this Bill when before the House of Commons.

8. Mr Mould very properly told us since the hearing that further research showed that before that Commons Select Committee there were two unchallenged petitions against the Crossrail Bill, one presented by the Rt Hon Theresa May, who wished the line to be extended westwards to Reading near her constituency of Maidenhead, and the other by George Galloway MP, who had concerns for his Whitechapel constituency.
9. On the other side of limited stock of precedents, Mr Mould referred us to the *Hansard* report of the proceedings before the House of Commons Select Committee on the Channel Tunnel Rail Link Bill in which the Member for Dover presented a petition based on his ownership of a house in the vicinity. The Chair required him to limit his submissions to his personal interest as a house owner and not address the wider concerns of his constituents.
10. Our researches for earlier precedents from the Victorian age of railway building have produced nothing. There is no mention of a Member of Parliament petitioning either House of Parliament in Smethurst's *Treatise on the Locus Standi of Petitioners Against Private Bills in Parliament*, 1st edition 1866 and 3rd edition 1876, or in the early volumes of *locus standi* reports.
11. Members of the House of Lords were often petitioners in both Houses, but in respect of their own interests in their landed estates. In short, no instance has been found, ancient or modern, of a Member of Parliament appearing either in person or by counsel as a petitioner to a Select Committee of the House of Lords.
12. We conclude that neither parliamentary practice nor Standing Orders confers *locus standi* as of right on a Member of Parliament petitioning on behalf of his or her constituents, and we do not feel able to stretch the language of Standing Order 118 so as to confer a discretionary *locus standi*.
13. As we made clear at the hearing on 11 July, any Member of Parliament is at liberty to appear as a witness on one or more petitions. Mrs Gillan has already done so, and Mr Tracey put in a witness statement and would, we understand, have spoken in person had he not been called away on a petition heard on 13 July.
14. Our conclusion will be considered by the review of procedure on hybrid Bills now being undertaken by officials of both Houses at the joint request of the two Chairmen of Committees. It is most desirable that this should be clarified so that in future there will be no doubt as to the position.
15. Our conclusion does not in any way diminish the reciprocal relations of courtesy and respect that prevail between Members of the two Houses. Mrs Gillan has been outstandingly energetic and committed for many years in her advice and assistance to opponents of the HS2 Bill and its effect on residents in and near the Chilterns Area of Outstanding Natural Beauty. As a further mark of our respect, we are prepared to hear her again, not as a petitioner but to give us her reflections on the Bill and generally on hybrid Bill procedure towards the end of our sittings.
16. During the period since 4 July we have heard 17 other *locus standi* challenges. Most of the petitioners were unable to establish the prospect of direct

and special effects on their property interests and had to rely on generic interests which were sufficiently addressed in other petitions which were not challenged.

17. We uphold these challenges, except for those of Dr Cassandra Hong and others, number 50, and Richard Janko and Michele Hannoosh, number 339. They live in a part of Fellows Road, London NW3, which is so close to major works as to be threatened with some degree of physical damage. That is the end of that ruling.

### APPENDIX 3: ADDITIONAL PROVISIONS

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#### Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Thursday 7 July 2016 (AM), paras 1–17

1. THE CHAIRMAN: Good morning everyone. Before we take the first petition, I am going to read out a ruling of the Committee on an issue on which we heard argument last Thursday. On 30 June 2016 we heard argument about additional provisions. We were addressed by Mr George Laurence QC, leading Ms Claire Staddon, for the London Borough of Hillingdon, by Mr Martin Kingston QC for Buckinghamshire County Council, Chiltern District Council and Aylesbury Vale District Council, and by Mr Timothy Mould QC for the promoter. This is our ruling on the issues raised at that hearing.
2. The expression ‘additional provision’ has a technical meaning in relation to Private Bills. It refers to an amendment granting to the Bill’s promoter, ‘powers which go beyond the scope of the original proposals, and which may potentially have adverse direct and special effects on particular individuals or bodies, over and above any effects on the general public.’ That is a quotation from the second special report of the House of Commons Select Committee on this Bill, paragraph 8. This wording echoes the test for *locus standi*, which we have considered in previous rulings. The two topics are closely connected, in that the right to petition against a Bill depends on an adverse direct and special effect on the petitioners’ property interests, whether the provision in question was in the Bill in its original form or is to be added as an additional provision.
3. The main issue debated in the course of the hearing was whether this Committee has power to consider, and should in this case consider, matters which have not at that time been made the subject of an instruction from the House of Lords, but might, at least in theory, be made the subject of an instruction at some future time. This involves a number of subsidiary issues, some of them rather technical. The best starting point is standing order 73 of the House of Lords Standing Orders relating to Private Business. SO 73, paragraph 1 sets out the procedure for a petition for additional provision in a Private Bill. SO 73, paragraph 2 provides that no such provision should be received in the case of a Bill brought from the House of Commons. Counsel for the local authorities submitted that this prohibition applies only to Private Bills, and not to a Hybrid Bill. Standing Orders do not contain the same prohibition in relation to Hybrid Bills.
4. Those submissions are correct so far as they go, but they are far from conclusive. The fact is that Standing Orders say nothing whatever about Hybrid Bills, so far as counsel’s researches and our own have discovered. The practice as to Hybrid Bills is set out in Erskine May, 24th edition, 2011, page 657: ‘If the house passes a suitable instruction, amendments may be made in Committee which, if the Bill were a Private Bill, would require a petition for additional provision.’ Footnote 246 refers to certain precedents, to which we will return. Later passages in Erskine May at pages 947 and 985 make clear that the practice in relation to Hybrid Bills is stricter than that in relation to Private Bills so far as concerns additional provision in the House of Lords, as the second house. Hybrid bills are invariably first introduced in the House of Commons.

5. The official 'Companion to the Standing Orders and Guide to the Proceedings of the House of Lords', 24th edition, 2015, is to the same effect. Paragraph 8.212 states, 'Hybrid Bills are Public Bills which are considered to affect private or local interests in a manner different from the private or local interests of other persons or bodies in the same class, thus attracting the provisions of the standing orders applicable to private business. See paragraph 9.07.' This reference should be to paragraph 9.04, which states, 'The Government cannot promote a Private Bill. When a Government department wants to promote a Bill which would, if promoted by another person or body, be a Private Bill, the Bill is introduced as a Public Bill and is subsequently treated as a Hybrid Bill. See paragraph 8.212', which I have already read.
6. The last relevant passage in the official companion is at paragraph 9.24, headed 'Petitions for additional provision'. It states: 'After the introduction of a Bill, the promoters may wish to make additional provision in the Bill in respect of matters which require the service of new notices and advertisements.' It then describes the procedure and concludes, 'A petition for additional provision may not be presented in the case of a Bill brought from the Commons.' The footnote should refer to Standing Order 73, paragraph 2, not Standing Order 74.
7. Mr Laurence submitted, and Mr Mould did not dispute, that simply as a matter of timing an instruction may be given by the House of Lords not only immediately after the second reading debate but also on a later occasion. When this Bill was in the House of Commons, instructions for additional provisions were given on five separate occasions, as appears from annex 2 to the second special report. But for the House of Lords to give an instruction for an additional provision to be included in this Bill would be contrary to wellsettled practice. That practice is based on principles of fairness. Although a Hybrid Bill is a Public Bill, it resembles a Private Bill in that it adversely affects many private interests, and fairness requires that those affected should have the opportunity of presenting petitions against the Bill in both Houses of Parliament. Those adversely affected by an additional provision ordered in the House of Lords, as second House, would be denied that opportunity in the Commons, as first House, unless the Bill were to be returned to a Select Committee of the Commons.
8. That is the point made in the Minister's letter to Lord Stevenson of Balmacara, to which Mr Laurence referred in his speaking note. Mr Laurence was bold enough to describe this as 'A breach of every tenet of the *audi alteram partem* rule', that is the principle that each side should have a fair hearing. We do not accept that. The potential for unfairness can be seen, if we look at the realities, to lie in the course that he advocates. It is time to look at the realities.
9. In the House of Commons Select Committee, Hillingdon and others presented a case for a 6.6 kilometre tunnel under the Colne Valley instead of a 3.4 kilometre viaduct. The Select Committee did not accept that case, for the reasons set out in paragraphs 169 to 181 of their second special report. Hillingdon continues to press for a tunnel, and there is a tunnel working group, in which the promoter participates, considering a version of what is referred to as option C.
10. In the House of Commons, the Bill as introduced proposed a 13.4 kilometre bored tunnel under the southern part of the Chilterns, to be bored in a

northwesterly direction from the M25. Numerous petitions argued for an extension of this proposed tunnel, as set out in paragraphs 113 to 130 of the second special report. There were two longer tunnel options, which would have added 15.6 kilometres or 10.5 kilometres to the length of the tunnel originally proposed. Two shorter tunnel options would have added 4.1 kilometres, ending at Leather Lane, or 2.6 kilometres, ending at South Heath. A 2.6 kilometre extension was agreed and proposed by the promoter, and it was adopted by the Select Committee, following instructions to consider given by the House of Commons on 12 October 2015. This, and other less important changes, all covered by supplemental environmental statement 3, constituted what was called AP4.

11. As the second special report records, paragraph 129, the adoption of AP4 was very unwelcome to residents of South Heath and Potter Row, who found themselves suddenly faced with the prospect of the construction and then the operational use of a porous portal in close proximity to their homes. It was also unwelcome to many others, including residents of Great Missenden, because of the need for a haul road, which would make it even more difficult to cope with traffic congestion as well as spoiling their amenity in an area of outstanding natural beauty. Almost every additional provision which solves or mitigates difficulties for one group of residents raises new difficulties for another group. That is why petitions against additional provisions are permitted and why parliamentary practice regards it as unfair for additional provisions to be introduced in the House of Lords as second House.
12. In disputing the practice as to Hybrid Bills, counsel for the local authorities referred to a number of earlier Bills as precedents. These are, in chronological order, the Channel Tunnel Bill 1987, the Cardiff Bay Barrage Bill 1993—a Private Bill rather than a Hybrid Bill—the Channel Tunnel Rail Link Bill 1996—this Bill provided for what is now often referred to as HS1—and the Crossrail Bill 2008. The Channel Tunnel Bill was referred to in the Minister’s letter to Lord Stevenson of Balmacara as ‘The only known precedent for the House of Lords, as second House, giving an instruction empowering its Select Committee to consider an additional provision.’ It was a special case because substantially the same additional provision had been put forward before the House of Commons Select Committee, but had been rejected. Objectors had had the right to petition both Select Committees. As the Minister’s letter put it, ‘This therefore allowed the Lords to conclude that this was compatible with the role of the second House, as petitioners affected by this additional provision did have the opportunity to petition and be heard in both Houses.’
13. The Cardiff Bay Barrage Bill was also a special case because the alteration to the Bill made in the Lords, although technically amounting to an additional provision, did not adversely affect any private interest. The Bill was carried over to the new Parliament after being passed by the Commons before the general election in 1992. The relevant amendment, enlarged the application to the land affected of the Land Drainage Act 1991, by extending the meaning of flooding to include ‘any other adverse consequence of an alteration of ground levels’, that is saturation. The very experienced clerk of Private Bills, Mr R J Willoughby, correctly predicted that no petition would be presented against this amendment. He wrote a note dated 24 June 1993 explaining the unusual circumstances but concluded ‘The Standing Orders Committee accepted that, in the circumstances, both the advice we had given and the application by the promoters were reasonable’, but added a rider that, in



general, amendments in a Hybrid Bill which required new notices ought to be made in the first House.

14. During the passage of the Channel Tunnel Rail Link Bill one of the most important environmental issues was the route through the Boxley Valley. The House of Commons Select Committee rejected the argument put forward by Kent County Council and others for a mid-Kent long tunnel. So did the House of Lords Select Committee. Kent County Council was no longer supporting the tunnel, although others supported it. The House of Lords Select Committee gave, as one of three reasons for deciding against the tunnel, the delay involved in seeking an additional provision. See their special report, paragraph 14. That carries very little weight as a precedent, since there is no indication of how deeply the issue of parliamentary practice had been investigated. Had the Committee been inclined to favour a tunnel, the procedural difficulties would, no doubt, have emerged.
15. The House of Lords Select Committee on the Crossrail Bill took an entirely orthodox approach to the extent of their powers. See their report, paragraph 26. Counsel for the local authorities relied instead on some passages in the transcript of the hearing of the petition of the Spitalfields Society, which argued for a change in the route between Liverpool Street station and Whitechapel station, relying on an alleged non-compliance with the EU directive on environmental assessment. The passages are an interesting vignette of exchanges between a Chairman keen to make progress and a respectful but persistent spokesman for an environmental body, but they have no value as a precedent. The Chairman's remarks were directed to the principle of the Bill, rather than to additional provision.
16. We return to the realities of the situation. The changes sought by Hillingdon and the Chiltern councils could hardly be more momentous, in terms of their implications for cost, redesign work and delay. There are no economies of scale in long bored tunnels. On the contrary, the unit cost per kilometre of tunnel increases with the length, because of the need for extra vent shafts and intervention gaps, and above all because of the ever increasing cost of moving excavated spoil over longer and longer distances. In view of recent warnings from the National Audit Office and the financial fallout at the recent referendum, it seems in the highest degree unlikely that the House of Lords will see fit to give an instruction contrary to the settled practice for additional provision for either of these new tunnels. The degree of improbability would be reduced in the case of Colne Valley if the working group were to recommend a course which the promoter was willing to accept, although there would still be many difficulties. Additional provision for either tunnel would produce a blizzard of new petitions, as AP4 did before the House of Commons.
17. We are likely to hear petitions from the Chilterns area during October, with petitions from the Colne Valley, Ickenham and Ruislip areas following probably in November. In the event, as we see it the very unlikely event, of our receiving an appropriate instruction, we will of course hear all relevant evidence and submissions and also, no doubt, petitions against the additional provision. But if there has been no relevant instruction by then it would be fanciful to suppose that such an instruction might be given at a later date, and it would be a waste of time and resources for us to hear evidence and submissions that would be relevant only in a fanciful contingency. That is the end of the ruling.

**APPENDIX 4: AMENDMENTS MADE BY THE SELECT COMMITTEE**

Note: Page and line references are to the Bill as introduced on 23 March 2016 [HL Bill 111]

**Clause 4**

Page 2, line 38, at beginning insert “Subject to subsection (6),”

Page 3, line 9, at end insert —

“(6) This section does not apply to Plot 91 or Plot 91a in the Parish of Bickenhill in the Metropolitan Borough of Solihull, as shown on the deposited plans and in the deposited book of reference.”

**Clause 48**

Page 18, leave out subsections (1) to (3)

**Clause 60**

Page 28, line 21, after “2-23,” insert “ 2-62,”

Page 28, line 21, leave out “, 4-43, 4-51 and 4-53” and insert “ to 4-49, 4-51 to 4-53, 6-62, 6-63 and 7-101”

**Schedule 1**

Page 84, line 19, leave out “Road” and insert “Drive”

**Schedule 4**

Page 134, line 46, in column (1), after “Iver” insert “ and Borough of Slough”

Page 147, leave out lines 26 and 27 and insert —

“Parish of Thorpe Mandeville	Banbury Road between points P4 and P5	Work No. 2/123
	Footpath BB3 between points P1 and P3	Footpath between points P1 and P2”

Page 147, in columns (2) and (3), leave out lines 28 and 29

Page 156, leave out lines 32 to 34

Page 156, after line 45 insert —

“Parishes of Hints with Canwell and Weeford	A5 Trunk Road (Fazeley to Weeford New Road) within Act limits	Work No. 3/72”
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Page 156, line 46, in column (2), leave out “and Jerrys Lane”

Page 157, after line 12 insert —

“Jerrys Lane within the limits of deviation of Work No. 3/74	Work No. 3/74”
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Page 162, line 34, leave out from beginning to end of line 4 on page 163

Page 169, after line 35, insert —

“Hollow Hill Lane/ Market Lane	Within Act limits”
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Page 182, in columns (2) and (3), leave out line 29

Page 182, after line 34, insert —

“Banbury Road	Between points T1 and T2”
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Page 185, after line 25, insert —

“Footpath W158 Crew Lane	Within Act limits Within Act limits”
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Page 185, leave out lines 27 and 28

Page 186, in columns (2) and (3), leave out line 7

#### Schedule 12

Page 312, line 35, in the first column, leave out “Barton”

#### Schedule 16

Page 334, line 43, in column (1), leave out “Manderville” and insert “Mandeville”

#### Schedule 18

Page 370, leave out line 24 and 25

Page 371, leave out lines 41 to 43

Page 372, leave out lines 33 to 35 and insert —

“London Borough of Hammersmith & Fulham	Monument to Maria Tusten, Kensal Green Cemetery Grade II Tomb of Marigold Churchill, Kensal Green Cemetery Grade II Parish boundary markers, Kensal Green Cemetery Grade II”
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## APPENDIX 5: MR CLIVE HIGGINS AND MRS MARGARET HIGGINS (PETITION NO. 180)

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### Ruling by the Select Committee

1. Mr Clive Higgins and Mrs Margaret Higgins own a farmhouse, outbuildings and land known as Rosehill Farm, a short way south of Steeple Claydon. Their land is on the south side of, and (since a purchase of further land in 2009) immediately adjacent to, the existing railway from Bletchley to Bicester. The main drive gives access to Addison Road, which crosses the railway almost at a right angle, by a road bridge, and goes on to Steeple Claydon.
2. Mr and Mrs Higgins have lived at Rosehill Farm for over 30 years, and have spent time and money in restoring the farmhouse and buildings. They have also made a big investment in a state-of -the-art building for housing dogs and cats, an activity which is a successful business for them. They have frequent visits from clients travelling by car.
3. On the other side of the railway, and extending a long way to the west, is the area which is to be developed as the Calvert maintenance depot. For the purposes of this development the promoter wishes to raise the height of the road bridge. In order not to have to close Addison Road for a long period, the proposal is to build a new, higher road bridge to the east of the existing bridge, with a realignment of the road, followed by demolition of the original bridge. Mr and Mrs Higgins consider that this will cause a serious traffic hazard by concealing their entrance drive from south-bound vehicles. Addison Road, although a fairly narrow road, carries fast-moving traffic. The traffic leaving the drive includes slow agricultural vehicles.
4. Unfortunately Mr Higgins has contracted a serious medical condition and could not present his petition in person, as he would have wished. We have agreed to determine it on the basis of written submissions. That we are compelled to do so is doubly unfortunate, since there are differences between the parties as to what was said when Mr Higgins presented an earlier petition to the Select Committee of the House of Commons. Those differences can be partly resolved by reference to the transcript, but it does not of course record what was said in discussions which took place in the corridor.
5. The transcript shows that at the hearing on 19 January 2016 several members of the Select Committee recognised that there was a problem and took a sympathetic interest in Mr Higgins' preferred solution, which was for the new bridge to be constructed immediately to the east, rather than to the west, of the original bridge. But it also shows that Mr Smart (a senior engineer appearing for the promoter) explained the assessment that had so far been made, and agreed to see whether the access could be "tweaked" through the detailed design process. There were then discussions outside the committee room. The transcript also shows that the matter was briefly referred to again the next day, when the County Council of Buckinghamshire (the highway authority) happened to be appearing, and the Chairman made a reference to accommodating "the changes of yesterday's petitioner, Mr Higgins".
6. We accept that Mr Higgins believes, in good faith, that the promoter agreed to the adoption of his plan for building the new bridge on the east of the existing bridge. But it is clear that there are serious engineering objections

to that plan, including the resiting of an electricity substation. Moreover, the fact is that the Select Committee's *Second Special Report* referred to the matter in less mandatory terms (paragraph 94):

“Clive Higgins has a business in Steeple Claydon. His concern was about potential effects on access of a new overbridge crossing the East-West rail link. The Promoter said that its design choices were constrained by engineering requirements on the north side of the railway. We would like the Promoter to revisit this to see whether there are ways to secure better access for Mr Higgins.”

7. Since the presentation of the petition in this House, the promoter has revisited the problem of safe access, which it acknowledges to exist. It has commissioned further study and produced a revised plan for 160m of verge widening, based on an assumed design speed of 85 kph (50 mph). It has considered but cannot accept a revised road layout proposed by Mr Higgins, which would carry an additional cost of over £1m.
8. Mr Higgins' comment on the promoter's revised plan is that speed limits are regularly disregarded, and that if he is killed by someone driving at an illegal speed he will be no less dead. We understand his strong feelings, but we do not think it right to direct the promoter to adopt Mr Higgins' latest scheme. The most we feel able to do is to direct, and we do direct, the promoter to consider with the highway authority (which will ultimately have the last word) whether there should be a speed limit, what it should be, and whether it can be reinforced by a pinchpoint, speed bumps, or other means.

**APPENDIX 6: FCC WASTE SERVICES (UK) LIMITED (PETITION NO. 780)**

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At our final hearing on 1 December, the promoter read a joint statement announcing that agreement had been reached between the promoter and FCC Waste Services (UK) Ltd on matters raised in FCC's petition against the bill. This was welcome news and we are pleased to record our satisfaction that agreement has been reached on the promotion of an order under the Transport and Works Act 1992 to secure the required consents to construct a southern solution to the displacement of the petitioner's existing sidings at Calvert Green. We note the importance of close collaboration between the parties and the decision of the promoter to take the lead in delivery of the required consents under the Transport and Works Act 1992, with the active support of FCC.

## APPENDIX 7: PETITIONS HEARD DURING THE FINAL DAYS OF HEARINGS

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### Friends Life Limited (petition no. 406)

1. Friends Life Ltd and AXA Real Estate Investment Managers Ltd (referred to together as “FL-AXA”) are the owner and manager respectively of about 25 ha of development land (“the FL-AXA land”) at Washbrook Heath, about 3 km east of the proposed site of the new terminus station at Curzon Street, Birmingham. This land was formerly the LDV factory producing commercial vehicles. FL-AXA purchased the freehold in 2003 and obtained vacant possession after LDV went into liquidation in 2009. FL-AXA had cleared the site and carried out some preliminary works when safeguarding for HS2 halted further development.
2. The FL-AXA land is part of a larger development site of about 64 ha (“the development site”). The bill will authorise the compulsory acquisition of the whole of the development site for the construction of (as well as part of the spur line into Curzon Street) the rolling stock maintenance depot (“RSMD”) for the entire HS2(1) fleet of rolling stock, and for some ancillary purposes such as construction compounds for the RSMD and the adjacent Bromford tunnel.
3. It has been clear for some time that although a large part of the development site will be held permanently by the promoter as railway line and RSMD, other land will be required only temporarily, or (as the detailed design process goes forward) may not even be required at all. It is the identification and early release of this land which is at the heart of the controversy, which involves other interests (in particular, Birmingham City Council as planning authority) as well as those of the promoter and FL-AXA.
4. This is one of the most important petitions that has come before the committee for decision. It is regrettable that we have had to determine it without the benefit of oral submissions from counsel. The hearing was repeatedly postponed in the hope that the parties would be able to agree on the terms of assurances to be given by the promoter. Eventually time ran out. But it is clear from the papers put before us that real efforts have been made to arrive at acceptable terms, and the differences between the parties have narrowed.
5. One minor point can be disposed of at once. FL-AXA rely on assurances given to another petitioner, Curzon Park Ltd, as creating a precedent which ought to be followed in this case. We accept the promoter’s submission that that case cannot be regarded as a precedent. The assurances related to a much smaller, discrete area of land which is not comparable to the much more complicated circumstances of this petition.
6. The importance of this petition derives from the high rate of unemployment in Birmingham, and especially in the Washwood Heath district. We were told that the district has the sixth highest number of persons claiming jobseekers allowance of any ward in the United Kingdom. The construction of the RSMD will create many jobs, but further jobs can and should be created by the regeneration and development of any surplus land. FL-AXA was in negotiations for a development contract with Kuehne and Nagel, one of the world’s largest logistics businesses. There is a strong public

interest, emphasised to us by the Rt Hon Liam Byrne MP, the member for Birmingham Hodge Hill, in the position being clarified, and any available land released for further development, at the earliest possible date.

7. This controversy has a long history. It was considered at length by the House of Commons Select Committee on a petition presented by FL-AXA (*Second Special Report* of Session 2015–16, paragraphs 46 to 50). Having in an interim report declined to move the entire RSMD to the interchange station, the committee heard further evidence and submissions and concluded with a direction in terms agreed by the parties. The operative part was in these terms:

“We reiterate our general view that both the permanent and temporary land take should be the minimum as far as possible and for the shortest time, with a hand-back configuration that after construction will attract maximum business use of the residual site. As such, the Promoter should, using its reasonable endeavours, continue to seek to reduce further the extent of land (whether for permanent or temporary use) including land required for construction and associated works and/or the duration for which the land is required in order to maximise the prospect of early development and job creation.”

8. The promoter had on 4 February 2016, shortly before FL-AXA’s final appearance before the House of Commons Select Committee, offered it a qualified assurance that “a delineated protected area of roughly 19 hectares” (the wording is that of FL-AXA’s petition to this House) would not be permanently required, but FL-AXA regarded that assurance as insufficient (see paragraphs 3.9 and 3.19 of the petition). Negotiations continued.
9. Some correspondence placed before us shows where negotiations had got to by 24 November, when the petition was listed for hearing (but adjourned). A letter dated 23 November from Mr Bailey of HS2 to Mr Dransfield of Birmingham City Council shows that the promoter was committed to returning about 24 ha not permanently required, and would continue to seek ways of minimising the land take; and that a 4 ha area at the south of the site would not be used for the construction or operation of the RSMD. The letter also stated, “Should [FL-AXA] not play a part in the development of the residual land, the assurances issued on the 4th February that relate [to] the ‘Protected Area’ should then fall away.” A later passage stated, “If however, agreement on temporary occupation is not achieved with [FL-AXA], I propose that an MoU [memorandum of understanding] between HS2 Ltd and BCC is progressed ...”
10. Also on 23 November the Secretary of State wrote a letter, personally signed, to Mr Liam Byrne. In it he referred to the possibility of an agreement with FL-AXA before the end of 2016, if the previous deadline were extended. He continued:

“In the event that we do take the land permanently, I share the aim to ensure that surplus land not needed for the construction of HS2 is released as soon as possible in order to realise the full development potential at the site without any unnecessary delay. In doing so we will need to build on the best practice examples of maximising development opportunities, such as the developments at Stratford and Kings Cross and learn the lesson of hindered opportunities, such as Ebbsfleet [on the



HS1 line]. I am sure you will agree that bringing forward development of the whole site in a coordinated manner will be an essential factor in ensuring we achieve maximum value from this site.”

The Secretary of State did, however, go on to say that he was open to considering other possibilities suggested by FL-AXA, which might include a pre-emption agreement, subject to “essential conditions” of which four were specified: in brief summary, comprehensive redevelopment supported by Birmingham City Council; phased development within set timeframes; compliance with all legal obligations; and not affecting delivery of HS2, or increasing compensation.

11. In the light of what we say in Chapter Ten (paragraph 421) about the Crichel Down rules, we read the Secretary of State’s letter as a fairly blunt hint that he will, in the absence of an early agreement with FL-AXA on the terms of a pre-emption agreement, be minded to acquire all the FL-AXA land under his power of permanent acquisition, and not feel bound to offer any of it back if and when it is no longer needed. The letter to Birmingham City Council is consistent with this. FL-AXA may feel that, well-resourced though they are, the promoter and the City Council are in a stronger position.
12. The written submissions of Mr David Elvin QC, for FL-AXA, do not ask us to consider expert evidence about the design of the RSMD. That would be unrealistic at this stage. Instead his submissions refer to the most recent exchange that we have seen, that is a draft assurance dated 25 November submitted by HS2, and an amended draft of the assurance dated 30 November. The assurance in question is essentially no more than an elaborate series of conditional promises to try to reach an agreement, and it is very doubtful whether it could ever be enforced. We think it perfectly obvious that the Secretary of State’s first condition, construed in a business-like way, must be referring to a commercially viable development. Other supposed problems, such as access, disappear if the first condition means that. We doubt whether we have power to direct the Secretary of State to enter into any assurance about the exercise of his discretions in unforeseeable future circumstances. We are even more doubtful about our power, and in any case would think it inappropriate, to direct him as to how he should proceed in negotiating for a pre-emption agreement which might, on well-calibrated terms as to compensation, meet the best interests of all concerned.
13. We are not unsympathetic to FL-AXA. Its position is very different from that of Quintain Limited, which has no more than a leasehold interest in a small part of what ought to be an iconic, unified redevelopment. But the best way forward for FL-AXA must be to continue negotiations for a pre-emption agreement that will forestall the need for application of the Crichel Down rules.

### **Aston Villa Football Club (petition no. 533)**

1. On 26 October and 30 November, we heard a petition presented by three group companies which own and run Aston Villa Football Club. The petitioners have a large training ground at Bodmore Heath, near Tamworth, a small part of which will be taken for the high-speed railway. The principal issue has been the effect on use of the training ground of noise from passing trains once the railway is in operation. This issue was not raised in the House of Commons Select Committee as the petitioners did not present a petition.

2. The training ground has an irregular shape, consisting of two roughly rectangular blocks of land to the north and east of the line of route, joined by a strip of land at the ends furthest from the route. The block to the south contains what are called academy pitches, some less than full size, used mainly by youth teams. The block to the north contains four full-size first team pitches (FTPs). Between the FTPs and the strip that joins them are various indoor facilities including an indoor training pitch, a medical unit and a swimming pool.
3. The land inside the gap between the two main blocks was in use for quarrying and is now in course of being in-filled. There is also active quarry land to the north of the first team pitches. The land to be taken is at the south corner of the academy pitches. The cost of relocating the entire training ground, if that were to be undertaken, has been estimated to be in excess of £20m.
4. On 26 October we heard evidence about the ground, and training methods, from Mr Brian Little, an adviser to the board who has been with the club for 46 years, and Mr Steve Round, the technical director. The facilities at Bodmore Heath meet, and indeed surpass, the requisite standard for the top Premier League rating. The club has a thriving youth section in which boys (and some girls) can start as young as five and progress to more serious training at eleven. There is also a Social Enterprise Academy at which 14–to 16-year-olds can learn basic business skills. We are satisfied that the youth activities are socially valuable.
5. We also heard evidence about first-team training. It is taken very seriously by a team of coaches who work in close collaboration. There is a lot of spoken communication, sometimes to all the players at close quarters (especially on the day before a match), sometimes to individuals playing in training matches. The first hearing was then adjourned at the request of Mr Martin Kingston QC for further consideration of acoustical evidence.
6. On 30 November, the second last day of our sittings, the hearing of the petition was resumed. Time was extremely short, and most of it was taken up by a lengthy examination in chief of Mr Kingston's expert. At the end of the hearing the Chairman asked counsel to agree a list of issues to be determined. Mr Strachan QC put forward four issues, and Mr Kingston QC put forward a much larger number. We consider only the three closely related issues on which counsel agreed: the appropriate basis for assessing the noise affecting the training ground, and especially the FTPs; whether any assessment other than of speech interference levels ("SILs") is necessary; and the levels of noise to be expected, assuming a three-metre noise barrier along the track adjacent to the ground (including the gap in course of in-filling).
7. Mr Kingston called Mr Simon Stephenson, the technical director (acoustics) of RPS, as an expert witness. He gave evidence on topics which he introduced as SILs, absolute noise levels and noise change. This would, he said, give a more holistic overview of the effect of a train passing for 10 to 15 seconds every two minutes.
8. As regards speech interference levels he had considered the effect of operational noise on a coach addressing players at a distance of 10 metres (during warm-up skills) and 10 and 25 metres (during training matches), assuming the coach was delivering a one-second speech (such as "Left" or "Up") during a training match, a four-second speech or a 15 second speech.

On absolute noise levels he referred to a publication entitled Acoustics for Schools: a Design Guide, published by the Institute of Environmental Management. which was said to advise that for outdoor teaching in schools the noise level should be below 50 dB L eq 30 min.

9. The evidence about outdoor teaching was far from satisfactory. Referring to the publication mentioned above, the witness said (at para 261) that the guidelines for “outdoor learning areas” at schools should not exceed 55dB Leq 30 mins, and that they should include “at least one” below 50dB. Counsel then put to him (at para 264) a leading question to the effect that the level of 50dB was supported by authority, to which the witness agreed. He asked another leading question (at para 273) referring to 50dB as the criterion “for outdoor teaching and learning areas.”
10. As regards noise change (that is, the difference in the level of noise at a particular place before and after some significant event, in this case the operation of the new railway) he said that the Bodymore Heath site had been chosen for its tranquillity, and that a prospective change of 5 dB, and even 10 dB for some pitches, made it necessary to undertake relocation of the whole ground. He also gave evidence about noise levels at the practice grounds of some other well known clubs (Arsenal, Chelsea, Fulham and Watford). He was critical of a report on these grounds prepared by Arup.
11. In cross-examination Mr Stephenson agreed (at paras 564–567) that there is, and has been since the club moved in, an active quarry near the first-team pitches, He agreed that he had removed quarry vehicles from his baseline figures. He agreed that in referring to the ground’s tranquillity he had stripped out activity at the quarry, although it is a feature of the environment. He left it out, he said, because it was not going to last indefinitely.
12. Mr Stephenson agreed that there are no standard acoustic guidelines for sound levels at a football training ground. He had taken 50dB, not 55dB, as the advised level for outdoor teaching of schoolchildren and had applied it to this case. He agreed that a 3m noise barrier at the side of the track would do better than 55 dB for all except the nearest academy pitches, and that the level would be below 55 dB, though not below 50 dB, for the FTPs. He said (at para 642) that he had tried to reflect the “layman’s anecdotal concerns” of the coaches, and did not agree that their concerns might be exaggerated or misplaced.
13. Mr Thornley-Taylor, the promoter’s expert, gave evidence that HS2’s baseline figures did take account of quarry activity, and of the busy A4091 on the other side of the line of route. In his view the school guideline of 50 dB relied on by Mr Stephenson was appropriate for the teaching of a small group having a lesson out of doors; apart from that special case the normal school guideline for outdoor activity was 55 dB. In his opinion noise change was of much less importance than the absolute noise level. He referred to the “Lombard effect” when everyone finds that they have to talk more loudly in order to be heard, and said that some coaches spoke or shouted above 62dB (and so got omitted from the RPS baseline).
14. He also said that Mr Stephenson must have been misinformed about the proposed passage of trains. On this stretch of line there would be 24 trains an hour, 14 of 200m in length, which would be at maximum noise level for two seconds, and the other ten of 400m which would be at that level for four

seconds. Moreover most of the trains would be travelling at 330kph, not 360 as Mr Stephenson had assumed. In answer to a question from Lord Elder he thought that if the players were called together in a group for a talk they would probably be closer to the coach than ten metres.

15. In cross-examination Mr Thornley-Taylor said that in his view a constant hum was more, not less distracting than regular intermittent noise, to which people become habituated. He did not agree that the use of the practice ground would be similar to a school; he would describe the training ground as a group of sports grounds where spoken communication is important, referring to riding schools as a possible parallel. He agreed that if 50 dB were the right level, not all the first team pitches would be acceptable. He said that he had walked round the quarry land and seen some item of equipment on each part of it. There had not been an increase in quarry activity as a result of the plans for HS2; the infilling had been taking place for years.
16. Where they differ, we prefer the evidence of Mr Thornley-Taylor. Mr Stephenson's omission of any reference to the quarrying activity was unfortunate in an expert witness, and his stated reasons for the omission were unconvincing. He was led into a summary of the published guidance which was at best incomplete. We think that Mr Thornley-Taylor was probably right in his view that the 50dB guideline (in the context of "school or college, hospital, hotel and library" is appropriate for a class of schoolchildren which happens to be held outdoors. Noise during the construction phase will be restricted under assurances that have been offered. The assurances also cover the academy pitches.
17. Mr Thornley-Taylor disavowed any football expertise but expressed his opinion that with a three-metre noise barrier the FTPs do not require relocation. We agree. That is all we can sensibly decide on this complicated matter in which the oral evidence was limited, and there was no time at all for oral argument.