MINUTES OF ORAL EVIDENCE
taken before the
HIGH SPEED RAIL BILL COMMITTEE
on the
HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Monday 30 April 2018 (Evening)
In Committee Room 5

PRESENT:

James Duddridge (Chair)
Sandy Martin
Mrs Sheryll Murray
Martin Whitfield
Bill Wiggin

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IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport
James Findlay QC, Counsel, National Farmers’ Union

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WITNESSES:

Louise Staples, Michael Parker and Tim Troman (NFU)
Colin Smith, Property Consultant (HS2 Ltd)
Peter Miller, Head of Environment and Planning, HS2 Ltd

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1. **MR FINDLAY QC:** Can I introduce Michael Parker, whose CV – if we can briefly up – it is one of the last three CVs – sorry, I should have warned you. Thank you very much. NFU’s Head of Taxation with considerable experience. I’m not going to ask any further than that. Mr Parker will conduct this the same way I’ve been dealing with Ms Staples. Capital gains tax first, A60(1) please. Just an introduction by way of summary. Receipts of compensation will be subject to capital gains tax if they cannot be re-invested and so take advantage of rollover relief – because of the shortage of farm land, that makes rollover relief within the relevant time periods more difficult. Under the second bullet point the time periods are given there. There is a statutory time limit of one year before and three years after. If after three years after the disposal, there’s a discretion which can be exercised. But the exercise of that discretion is the focus of NFU’s concern because, as Mr Parker will explain by reference to bullet point 3, HMRC will only exercise their discretion once the farmer has re-invested. So, Mr Parker, can I ask you to explain that more fully?

2. **MR PARKER:** Yes. And we’ve touched on the amount of land that’s being taken and the linear nature and the scale and that is difficult to replace land in the ordinary course of events. This phase will take a thousand hectares out of 17,000 owned by farmers. So, that is around 6%. Sold on the open market, there’s only about 0.3% sold on the open market each year across the whole of England and Wales. So, you’re already looking at a one in 20 chance of replacing that land in any given year. So, only having three years to replace is going to be certainly to be difficult for farmers. As Mr Findlay’s touched on, HMRC have discretionary power to extend that re-investment period providing they are satisfied the farmer has acted reasonably and sought to replace the land taken. However, that can’t be done until the re-investment has been made.

3. So, to illustrate that perhaps, if a farmer loses 20 hectares, receives say £500,000 worth of compensation, they have to re-invest the whole of that in order to fully rollover the capital gain. Farmers tend to own the land for some considerable time and the capital gain can be quite considerable. So, they may have an £80,000 capital gains tax
cost that could arise on that disposal. And not knowing whether they are going to have the rollover relief at the point of re-investment leaves them with some uncertainty because if they pay out £500,000 for replacement assets and then find they have to find an additional £80,000 for tax, that could be perhaps two years’ worth of annual profits.

4. And in addition, they have to demonstrate to HMRC how they have taken reasonable steps. And I think there one of the concerns – I may be racing ahead on the slides actually – that one of the concerns there really is HMRC’s understanding of the farm business and whether what comes up on the market would actually be a suitable replacement for that particular farm business.

5. MR FINDLAY QC: Thank you, Mr Parker.

6. THE CHAIR: Pause there. I’m going to take over for a second –

7. MR MARTIN: Could I just ask Mr Parker? If the farmer in question had a £500,000 receipt and found a parcel of land which made sense for him to purchase at £250,000 and then spent the other £250,000 on another parcel of land somewhere else four years later, would that make it difficult for him to claim back capital gains?

8. MR PARKER: Well, he would be able to rollover half of the gain and then he would be subject to the discretion on the other half.

9. MR MARTIN: He’d still be able to claim or attempt to claim the discretionary rebate the second time around?

10. MR PARKER: That’s right – but, yes.

11. MR FINDLAY QC: Thank you. If one turns to the next slide, A60(2)? And this, chair, prepares answers the question you raised at the outset on tax. This is an extract from the special report. And we’ve highlighted two parts – the end of paragraph 363, where the Committee said, ‘We don’t want farmers spending money on detailed individual tax advice when a general position or set of starting assumptions could be usefully set out’. Looking forward to the ask in a moment, we’re asking that the Farmers and Growers Guide gives some advice on this. And from indications given to me by Mr Mould, it may be something that will be forthcoming. But it’s going to be our submission that it is not just enough to say to farmers, ‘You can see your own advice
and the cost might be a head of claim and compensation’. It is far better to tell farmers in advance, alert them to the issue, and give them some indications of the problems.

12. 364 is the perhaps more important point. ‘HM Treasury said it would write to farmers, advise them of existing rollover reliefs. The Committee wished for greater certainty and clarity. There is precedent for extended discretion in cases from other business sectors.’ And then this, ‘The Treasury should make it clear that the enhanced rollover relief periods will apply to all those whose land is acquired for the project.’ And then they suggest that might be for 10 years. So, what the last Committee – your predecessor Committee on Phase One was – it wasn’t suggesting legislation itself but was suggesting to the Treasury that they use enhanced discretion. Now, can I just take that forward?

13. In the next slide, A60(3), there’s some extract from some of the discussion on this before the previous Committee, particular engaged Sir Peter Bottomley and Sir Henry Bellingham. This is Sir Peter Bottomley voicing concern about the Treasury ministers – again our highlighting – but making a point further down the page that it also dealt with inheritance tax and capital gains tax.

14. Then over to the next slide, A60(4), taking this as quickly as possible, picking up the right hand column, Sir Peter Bottomley saying, ‘If I’m allowed only one pair of sentences, where discretion will be used, not might, but will’. And so, it is the will exercise their discretion’. And I point that because that was the wording used in the Committee report. If we roll that forward to the report from the other place, which is in the next slide? In paragraph 379 there’s a reference there to the NFU raising tax issues, the most important being capital gains tax. There’s a reference in that paragraph to a 15% figure being a lower figure. And I think, Mr Parker, that’s as far as you’re concerned an error. It should be 5%.

15. MR PARKER: It should be 5%.

16. MR FINDLAY QC: Just leave that to one side. So, the business part of their review was that they recognised in 380 what the House of Commons Select Committee had said. There was then a meeting that had taken place before the report. The outcome was not yet known to that Committee. And then you have Mr Mould being recorded as saying that CGT payable under circumstances would be allowed as an element of
compensation payable. And that really is why we say that there is still work to be done. Mr Parker, in terms of that meeting or any progress since, has the Treasury gone further than saying they will exercise their discretion on a case by case basis?

17. MR PARKER: No. The meeting we had with Treasury officials, they listened and put that back to the Minister, we understand. But we haven’t had any further engagement or response. We have written again recently to the new financial secretary to the Treasury – I should point out. But we have not really made any further progress other than a letter which we’ll come on to – but nothing on not using discretionary powers.

18. MR FINDLAY QC: The letter you have referred to is on the A60(6). I don’t think we need to go to the detail of that because it does not take matters any further.


20. MR FINDLAY QC: And then if we go to the solution at A60(7)? We’ve set out that there that – effectively asking the Committee tries again, so to speak, writing to the Treasury to either suggest that they extend their statutory time limits to 10 years or confirm that it will exercise their discretion in the same circumstances.

21. MR WIGGIN: Don’t you think it would be difficult for a farmer? It isn’t an exemption from capital gains tax, it’s merely a delay. You are going to pay capital gains tax on the sale of the land one day. This just means you roll it from the current field that HS2 has possessed to the future field that you or your grandchildren will one day sell. So, you don’t escape it. And therefore having a huge gap actually with the volatility of land prices may not it be in the farmer’s best interest?

22. MR FINDLAY QC: Mr Parker?

23. MR PARKER: Yes. But though I suppose the only point I would say is that most farms are family farms. They are passed on from one generation to generation. There is an uplift in the capital gains tax base of course on death so if it’s passed on in a will does wipe out that capital gain actually being –

24. MR WIGGIN: Which is one of the reasons why we haven’t got enough farm land in your earlier charts because it’s so tax efficient?
25. MR PARKER: Well, I think it would probably apply to other family businesses too but I take the point.

26. MR FINDLAY QC: So, it is the extended discretion given the financial pressure that a farmer who’s losing part of his land will have been under that we’re after. And then the second part of the ask is to ask HS2 to confirm in the words from the House of Lords Special Report that, ‘CGT will be payable and will be allowed as an element of a compensation payable if CGT ends up being payable’ –

27. MR WIGGIN: I thought Mr Mould said almost exactly that. Was that right?

28. MR MOULD QC (DfT): I think that’s been taken from that quote, yes. It’s commonly the case, I’m on record as saying something and people come along and say, well, Mr Mould did say it. And I have said it.

29. MR WIGGIN: And it is an element of the compensation?

30. MR MOULD QC (DfT): Well, in the event that – any liability to tax that can’t be escaped notwithstanding the taxpayer has taken reasonable steps to seek to limit or to avoid – not in a pejorative sense – but to avoid that liability and that liability results from and only results from the fact that they have been compulsory acquired then that sounds as an element of land compensation, yes. I think I made that clear when I addressed this point on a number of occasions doing the proceedings in the Phase One Bill and this is an example of it.

31. MR FINDLAY QC: Can I just summarise our point on this? It’s the lack of certainty that Mr Parker alluded to when a farmer re-invests. And what we are asking for would remove that lack of certainty and enable to re-invest the full amount and not be concerned about the tax bill.

32. MR WIGGIN: There’s no lack of certainty about tax.

33. MR PARKER: I suppose I should just add that there is no right of appeal if HMRC don’t exercise their discretion and don’t believe it should be exercised.

34. MR FINDLAY QC: Thank you. And then, I think that is all about capital gains tax. We can then turn to inheritance tax and start on slide A59(1).
35. THE CHAIR: On both – not going to tax them on inheritance tax. Have you got any statistics as to how people were adversely affected on HS1 or are currently being affected? I know it is very early doors on Phase One of HS2. I’m trying to get a feel for how big a problem is this because statistically so many people are going to die and so many people won’t fit within this problem and whether we’re actually talking about one or two people –

36. MR PARKER: I think we could follow up with some statistics in terms of how many farms are inherited – so how many aren’t sold. And so how many are on a second generation or more. I think we haven’t got anything in terms of – HS1 was probably a lot smaller than the scale of this, I think. And I think we’re too early for HS2 in terms of being outside of the statutory rollover relief.

37. THE CHAIR: I think the number of farms inherited is the wrong number. It’s the number of farms in totality. And then statistically, how many of those may suffer a bereavement and then of those how many would incur an adverse relationship with the current tax laws.

38. MR PARKER: Okay. I’ll check on the inheritance tax –

39. THE CHAIR: I’m just wondering whether actually we’re talking about very, very few cases. In which case, one can be a bit more pragmatic than something that affects all.

40. MR FINDLAY QC: There is a slide which may help, A59(7). The last bullet point tells you that 32% of farmers are over 65 compared to 16% of the general public. And there are two points with inheritance tax that give rise to the problem. One is someone who dies during the time that their land is temporarily occupied, which could be a significant period. And if that land is not in use for agriculture, then the relief doesn’t apply. And that’s our first issue. The second issue, which we accept is much less likely to happen, is if someone dies whilst having received compensation, hasn’t yet rolled it over into a new asset. And I’ll ask Mr Parker to explain both of those. But it’s the first of those issues given the amount of land that is being taken temporarily that causes the NFU greatest concern.

41. THE CHAIR: Wouldn’t it be sensible for the Committee to say that people who
have their land purchased compulsorily should be in no worse tax position than if that hasn’t happened to them? And then ask HMRC to go away and look at what the consequential changes were across the board? And just take these two examples of that?

42. MR FINDLAY QC: That would be beneficial.

43. THE CHAIR: You wouldn’t be disappointed if we said that?

44. MR FINDLAY QC: We certainly wouldn’t be disappointed if you said that.

45. THE CHAIR: I’ve no idea whether that suits – it’s just as an idea.

46. MR FINDLAY QC: Well, absolutely, but to give you an example of that, if I could take Mr Parker to the inheritance tax background and A59(2)? In fact, if I can – you see that agricultural relief is available on the agricultural value of agricultural property that is owned and occupied for the purposes of agriculture for the required period. And it is ‘for the purposes of agriculture’ – that is the important point. And if we turn to the next slide, A59(3)? Mr Parker, can you explain what happens when HS2 take the land for periods of five years or more, how that might affect?

47. MR PARKER: Yes, it is the risk that the farmer, the owner dies during the period. Then that land is no longer in agricultural use. And as a result it would no longer qualify for agricultural property relief or business property relief for inheritance tax purposes. There’s a further small risk perhaps if a substantial amount of land is being taken in that way because that could have a wider impact on other assets such as the farmhouse, which has to be in character to the amount of land being farmed.

48. MR FINDLAY QC: If we turn to the next slide, A59(4), we can see that agricultural purposes there is set out? So, it is an agricultural purpose obviously if it’s growing crops. But the one we’ve highlighted is akin to HS2. It would be treated as an agricultural purpose if it is not being farmed because it’s under the Habitat Scheme.

49. MR PARKER: Exactly. I think that is presumably seen as a public good – land being under the Habitat Scheme. And I think we are just suggesting that this is very similar and could be seen by some as a public good and could be added as one of those items on that list.
50. MR FINDLAY QC: So, if you turn to the next slide A59(5)? You set out there in bold the wording that we’d effectively like to be added to that list.

51. MR PARKER: Yes.

52. MR FINDLAY QC: Is there anything further you’d like to say about the issue and the importance of this issue?

53. MR PARKER: I think you, Mr Findlay, touched on it. It’s the scale of the land that may be taken temporarily. We probably are happy that isn’t all going to be taken permanently. But that creates this issue to, I think.

54. MR FINDLAY QC: And the second issue under inheritance tax is what happens when – and if we turn to slide A59(6) – when compensation for the value of land remains uninvested. And again, perhaps if you would like to talk the Committee through this issue and your suggested solution?

55. MR PARKER: Yes. Effectively, in a similar way, if you are holding the compensation, trying to replace the land taken with it, and you unfortunately you die before you have found suitable replacements for that land, you will have cash and not a business asset. Therefore, will that cash element qualify for business property relief or agricultural property relief? There is a possibility it will providing that HMRC are satisfied that you had a very clear intention to re-invest that in your business. I think we would suggest that were the land is taken from the farmer that they will almost certainly be trying to re-invest because of the impact on their profitability.

56. But that’s the position you’re potentially left in. I think the following slide perhaps goes into that a little more. Yes. We’ve touched on that it may form a head of claim – but obviously we’re trying to prevent the need for that and the uncertainty of having to claim that. I think the following slide – now, though it states ‘progress’ this date back to 2015 and when we made our petition in Phase One. It was a letter from Treasury to the Committee setting out some of the possibilities. So that, for this case here, of Browns Executors, where business property relief was given even though the money was held – the owner was seeking to replace the asset. I think it was nightclubs actually. But the point there is that asset had only been sold 21 months before they died. And we’re here talking about land that may be taken for five or 10 years. And if it takes
five or 10 years to replace the land, how will HMRC view that? I’ve held that cash for five or six years at the point at which I’ve died, will they accept that I’m genuinely trying to replace that? Or will they seek to tax that?

57. MR FINDLAY QC: So, coming to the solution – sorry?

58. MR WHITFIELD: Sorry. On A59(7) you talk about however the claim may have been settled and moreover case history suggests that some acquiring authorities would contest claims for taxation incurred’. Which acquiring authorities? Are you talking HS2 in the first instance?

59. MR PARKER: I’m not. I think in our previous appearances, we talked about a particular case, Bishopsgate Parking. I can’t remember the authority there.

60. MR WHITFIELD: No, that’s alright. But you do agree that the taxation potential is part of the claim that can be put for each individual case?

61. MR PARKER: We do. And I think that has been acknowledged that potentially that could form a head of claim. I think we would like a bit more clarity in the Farmers and Growers Guide confirming that. That’s one of our asks.

62. MR WHITFIELD: And is it not the case that the individual petitioner could be asked what their intentions are about whether they’re seeking to re-invest or not? And do you think that could help guide HMRC’s decision as evidence of their intention?

63. MR PARKER: Asked by? I’m sorry?

64. MR WHITFIELD: This Committee. Me.

65. MR PARKER: Yes. I think that’s potentially evidence to support the case with HMRC.

66. MR WHITFIELD: So, there are a number of different ways to which – what the NFU are moving towards but you would like clarity in the?

67. MR PARKER: We would like more certainty and clarity, yes. On here, we’re simply asking – shall we move to the solution?

68. MR FINDLAY QC: Yes. And can I just say in answer to that? The problem is
that your claim for compensation may have been settled after five years. Hopefully it’s speedily done. But you might not be able to re-invest your land for up to 10 years so that the time for adding your claim for tax to your claim for compensation may have passed. That’s one of the points we wish to make.

69. MR WHITFIELD: The inability to be retrospective once you find out what –

70. MR FINDLAY QC: The solution is – Mr Parker, if you talk through the solution?

71. MR PARKER: Yes. On this particular inheritance tax, our ask, it’s simply that HMRC expands on their guidance and perhaps gives an example of a farmer affected by a HS2 compulsory purchase who is unable to replace the land. Perhaps after five years they’ve died. What sort of things would they look for? Would they look for you to have registered with different land agents; to have made bids on suitable land? You know, just some sort of assurance. Ideally, we would like them to make a positive presumption that the farmer will be replacing unless there’s evidence to the contrary because I think we believe that most farmers will seek to replace business assets.

72. MR FINDLAY QC: And then lastly, we’d just like something in the Farmers and Growers Guide to alert farmers to the IHT and indeed the capital gains tax problems. And there’s nothing there at the moment.

73. MR PARKER: No.

74. MR FINDLAY QC: So, that’s all on tax. That’s all from Mr Parker. I’ll move back to Ms Staples. Whilst Mr Parker is making way, our next witness will get set up to deal with borrow pits.

Evidence of Ms Staples

75. MR FINDLAY QC: So, back to Ms Staples. The next issue to deal with her is planning consent for replacement buildings and associated dwellings. And that slide is A52(1). The issues of getting planning consent for replacement buildings or dwellings is both the certainty and the timeline in securing that to occur. There are permitted development rights for agricultural buildings but they’re not considered to be of significant assistance when you’re replacing agricultural dwellings and farm buildings. And I don’t know whether Mr Wiggin –
76. MR WIGGIN: Are they considered in the valuation of the buildings in the first place? The Government’s just increased the number of conversions possible from three to five for each agricultural building.

77. MS STAPLES: Yes, but that’s just in regard to conversions of an agricultural building say to residential use.

78. MR WIGGIN: But it makes a pre-2013 building significantly more valuable than a new one.

79. MS STAPLES: Okay, yes, I completely agree with that. That’s not actually the point of the assurance we’re looking for her.

80. MR WIGGIN: But it does matter when you are swapping an old building for a new building because the housing potential of the new building is non-existent, whereas the housing potential of the old building is fantastic.

81. MS STAPLES: Yes, absolutely. But, okay –

82. MR WIGGIN: That should be in the valuation of the building in the first place presumably.

83. MS STAPLES: Yes.

84. MR FINDLAY QC: Do you want to give an example? First of all 53(2) –

85. MS STAPLES: I’ve just got two farms to mention just in examples. There is Upper Hanyards Farm here, where I’ve shown, as you can see, the red line shows the outline of the farmstead. It’s been completely wiped out by the railway line itself. This farm is large enough for the buildings and house to be relocated on the farm and that is what this farm business would like to do. I’ve got the same also with Tithe Barn Farm. I haven’t shown a clip of that because it would exactly the same – again with a farmstead with the railway line going straight through it. But in both cases, there is a house and there are farm buildings and they would like to relocate a house and buildings on their land. Of course, one of the issues is that they are then looking at relocating buildings on a greenfield site. And if it is buildings that might be a grain store or a potato store or a livestock building, they do not come under permitted development
rights. You are having to look at achieving full planning. And obviously, yes, if you’re trying to re-build a house, you have to get full planning for that as well.

86. MR FINDLAY QC: So, in terms of certainty, if we turn to the next slide, there are two main issues that the farmer is faced with. And if we deal with those Ms Staples?

87. MS STAPLES: So, in the first instance, with HS2, what they’re trying to do, especially in these two cases, is trying to reach an agreement in regard to equivalent reinstatement. Obviously, yes, if they’re losing a grain store, they would like to be building a new grain store, exactly the same size – we’re not saying anything bigger or anything like that. Or yes, and if they’ve got a house, they want to re-build a house of the same size again. So, that’s the first thing which is causing delays at the moment, is reaching agreement with HS2 on those proposals in regard to equivalent reinstatement. And then, secondly, to move things on, once you’ve got that in place, they’re then having to go forward and try and get planning approval from whichever local authority where they’re situated and obviously in most cases you need to actually have the new building up so that they can move straight from the old building into the new building before the old one is demolished.

88. MR FINDLAY QC: And then, just to see how this was dealt with previously, in the next slide, the previous Select Committee raised concerns about that and the Minister of Planning wrote to the relevant local planning authorities along the route of HS2 Phase One, a letter which is set out – if we turn on two slides to A53(6) – effectively asking them to take into account HS2 when they were asked to deal with replacement planning permissions and encouraging them to –

89. MS STAPLES: Yes.

90. MR FINDLAY QC: And one of our asks, sir, is that you encourage the Minister of Planning to do the same for the new set of authorities along this line. If we then turn to the solutions page, A53(7)?

91. MR WIGGIN: Can we see that last paragraph?

92. MR MARTIN: Go back.

93. MR WIGGIN: Yes, look at the last paragraph. He didn’t really, did he? Actually
it’s the last sentence.

94. MR MARTIN: Yes.

95. MR FINDLAY QC: He has to say that because if he – he can’t be seen to predetermine. If one goes to the paragraph before? The paragraph before gives a much clearer indication of where the sympathy should lie. And it’s that paragraph. And our understanding is that that letter has been helpful and we’d simply like it to be replicated for the next phase along the line.

96. MR WIGGIN: There seems to be lots of nods at the table.

97. MR FINDLAY QC: I’m grateful. If we go to the solution then.

98. MR WIGGIN: Letters are cheap.

99. MR FINDLAY QC: That’s the cheap bit, yes. If we go to the next slide? It’s really the – take these in reverse order, ‘The nominated undertaker being required to respond promptly to a reasonable request’. And that is to being able to get the ball rolling, is that?

100. MS STAPLES: Yes, so we need HS2 to respond promptly and agree what the compensation is going to be in regards to buildings and the house before things can then move forward with regard to a planning application.

101. MR FINDLAY QC: Request 1 – I can take you to the assurance – there is an assurance in this regard as well, ‘That the nominated undertaker will write to the planning authorities setting out the background and circumstances’.


103. MR FINDLAY QC: My apologies.

104. MRS MURRAY: Yes, I’m just a bit confused with that. On paragraph 1 it says in the bold text, it says, ‘The nominated undertaker would give reasonable consideration to providing a statement in support of a planning application’. Now, I think that’s a big ask to actually say, ‘We support a planning application’. Obviously, setting out the
situation is a bit different to writing to a planning application support an application when you don’t really know what’s being submitted.

105. MR FINDLAY QC: I completely understand that and that’s why it’s phrased in the way it is, that we simply ask them to give consideration to supporting it. We haven’t asked them to support it come what may. But if they see that it is a replacement, it is needed, or we are simply saying – because it will carry weight with the planning authority – ‘they should give consideration to doing that’. And Ms Staples, is there anything you’d like to add to that?

106. MS STAPLES: I think that HS2 will understand what the planning application is for because they will know exactly what buildings they are taking, that are standing there at the moment.

107. THE CHAIR: They have refused to do this so far, have they?

108. MS STAPLES: We haven’t got an absolute full – they haven’t got them to say they will give us a full statement in support of a planning application yet.

109. THE CHAIR: I’m sure they will.

110. MR MOULD QC (DfT): This is really dancing on the head of a pin at this point.

111. MS STAPLES: Absolutely.

112. MR MOULD QC (DfT): I will tell you about it later.

113. THE CHAIR: Excellent, let’s move on then.

114. MR FINDLAY QC: And the last slide is one we’ve effectively covered but just to draw it to your attention, A53(8), that’s to ask that you ask the Minister to remind local authorities of the petition. So, if we move on from that –

115. MS STAPLES: Can I just say somewhere there?

116. MR FINDLAY QC: Yes.

117. MS STAPLES: Sorry. There’s just one thing I want to highlight there. It is about guidance on local planning authorities, especially in regards to a farmhouse because if
you’re asking for a replacement farmhouse and there’s no agricultural tie on it at the moment, quite a few of our members have raised issues that there should not be an agricultural tie put on the replacement farmhouse. Sorry, it’s being a little bit technical but it makes a big difference.

118. MR WIGGIN: Yes, it does. No, you’re quite right. But I’m not sure it’s within the remit of this Committee. That’s the trouble.

119. MR FINDLAY QC: I think it’s simply to ask the Minister of Housing –

120. THE CHAIR: We’ve got the point. We’ve got the request. Let’s move on.

121. MR FINDLAY QC: Earthworks. A nice short point. It’s slide 55(1). And I can deal with this, I think. It’s similar to the point about drainage. If there’s significant lengths of bund, made up ground, re-profiled alongside the railway, it’s acquired temporarily. The land comes back into the farm’s ownership. What happens if the design is defective and the land slumps? Now, there’s already an assurance in place from the nominated undertaker that if their acts and omissions of the contractors cause damage to the farmer they will be compensated for. We simply want that to be extended to the design of the earthworks so that the farmer when he takes back the temporary occupied works, there should be no doubt, he shouldn’t have to rely on establishing at common law there’s a duty of care owed to him by the nominated undertaker’s designer who designed the final design of the earthworks or put them in place. He should be able to have recourse directly to the nominated undertaker himself. And that’s in the solution slide on the next slide. And that’s the position on earthworks.

122. THE CHAIR: Okay.

123. MR FINDLAY QC: There is an assurance already about the acts and omissions of contractors and this is simply extending it to design. That’s all. Then, utilities and conduits. It’s A56(1). This is about future proofing and problems of severed land. And if I can ask Ms Staples to explain further?

124. MS STAPLES: This is really just in regard to requesting that a culvert could be put in at regular intervals along the line now so that if there’s any need to connect up with utilities or telecommunications, fibre broadband etc. that that can be done easily
because that culvert is there in place. Once HS2 and the railway line is built, there is no way that anybody’s going to be able to really go forward and put a culvert underneath the line. And also what we want is to be able to put utilities – so if there are any bridges or underpasses that are created, that in the future, if somebody would like to run say a telecommunications line in that that can be taken forward and that HS2 don’t go and ransom any farmer to be able to do that.

125. MR FINDLAY QC: So, if you go on to the next slide, A56(2)? It’s the consent to be able to do that without payment of ransom. And then a final solution slide which sets out more fully what’s in our list of requests. Summary list of requests is on the next slide A56(3). And particularly the last point, it’s being able to make use of existing culverts, conduits or bridges. Unless we can help further with that, then on to Ms Staples’ last point which is accommodation crossings, which is again about future proofing and it’s slide A58(1). And again I’ll leave that to Ms Staples to deal with.

126. MS STAPLES: This is in regard to accommodation crossings meaning as in again bridges or underpasses to get to severed land. This is obviously really important to all our farmers that are affected. And most of those slides or farm examples I gave you earlier have this problem. They are all wanting to make sure that in the future they can obviously get access to their severed land. What our farmers would like is some guarantee that the specification of those underpasses or overbridges is going to meet the requirement of their farm business, not just now but in the future. I have an example at the moment where one of the farms – yes, it is only just realised that they might now be given an underpass. That’s only because some bats have been found and it’s on a bat flight path. There was a massive block of severed land and up until just a few months ago they thought they weren’t going to be given this underpass. They still have absolutely no detail of whether that underpass will be of the right size for them to use farm equipment through to get to severed land. And that is happening across the length of Phase 2A.

127. MR FINDLAY QC: And if we move on to the promoter’s response slide, which I think is 58(1). Sorry, my apologies, it’s not.

128. MR WIGGIN: Can I just ask why you want 20 metres long?

129. MS STAPLES: So, that’s if there’s an area where their new access is going to be
off a major road, you have to be able to get the length – you’re supposed to be able to pull off a major road before you have to stop your tractor, trailer, whatever it is to go through the gateway. So, you have to have enough room to pull fully off the road.

130. MR WIGGIN: I see.

131. MS STAPLES: Yes.

132. MR FINDLAY QC: If you go to P58(1) please? This is, if you like, the response slide. But I want to concentrate on the third paragraph, ‘The response will consider reasonable requests for accommodation where it is in relation to the current use of the land’. And Ms Staples, I want to ask you about whether that’s satisfactory in terms of future proofing?

133. MS STAPLES: That’s exactly my point that going forward the land use could change and we all know how the size of machinery, tractors has changed in the last 40 years. There does need to be some future proofing, especially on a scheme of this size.

134. THE CHAIR: How many crossings are there at the moment on that stretch that we’re talking about, the proposal?

135. MS STAPLES: Oh, I’m sorry, I haven’t actually counted. There’s a lot. I can come back to you with that. HS2 might even know.

136. THE CHAIR: Do you want to come back later or now, Mr Mould?

137. MR MOULD QC (DfT): I can’t give you a precise figure but if you look on – virtually every sheet in these maps books has at least one accommodation bridge route underpass.

138. THE CHAIR: Can we perhaps maybe have a rough – whether it be 20% at some point or an exact number at another point?

139. MR MOULD QC (DfT): I’ll ask someone to count them up.

140. THE CHAIR: That would be beneficial, thank you.

141. MR MOULD QC (DfT): Yes. I can’t give you a figure, I’m afraid, for culverts and things because they will be developed as part of the detailed plan.
142. THE CHAIR: I’m just trying to get a size of the problem – any information on that.

143. MR WIGGIN: I think the point about how big they are is one of those things where you will probably have considered this anyway and it’s just a question of making sure that we know what that is.

144. MR MOULD QC (DfT): Yes, there’s a slide which gives you the working dimensions we have –

145. MR WIGGIN: That will be dimensions.

146. MR MOULD QC (DfT): – but as it also makes clear, there’s an element of case by case on this. We want to try and ensure that we, within reason, we provide accommodation facilities which enable the existing use to continue on either side of the line. What we don’t do is to provide would be developers with tax free, readymade bridges over the railway so that they can steal a march on other developers, who have to provide these sort of things out of the cost of their development.

147. MR WIGGIN: Yes, but I think the issue that’s really very fair is that there is a legal width for a tractor on the road, and I think your request is that simply it’s slightly future proofed so instead of three metres, you’ve asked for five, which is fine. But you might be providing five metres anyway in which case that would be helpful to know.

148. MR FINDLAY QC: Perhaps we can move on to the solutions slide? It’s A58(2) first, from which Ms Staples has one point to make and then we’ll come to the dimensions.

149. MS STAPLES: Just the one point is that we completely understand that HS2 have said they will go and consult with each business on a case by case basis. But it is concerning when in their slide they have only said ‘on the current farming business’. My point is we’re all very well aware of how things have changed in farming practices.

150. MR FINDLAY QC: And if we go to the next slide, A58(3)? This is five metres and capable of loading 60 tonnes if requested. So, we’re not asking for it in every case.

151. MS STAPLES: No.
MR FINDLAY QC: And that in terms of justifying future proofing –

MS STAPLES: And that’s future proofing.

MR WIGGIN: Good luck.

THE CHAIR: It’s also good to hear about costings as well, whether this is a cheap thing in the great scheme of things or a horrendously expensive thing when factored in X number of times. Sandy?

MR MARTIN: If I had a farm in Staffordshire, how often do you think I would need to take any of my farm vehicles on to the public roads? Can you imagine a situation –

MS STAPLES: Oh, a lot.

MR MARTIN: – where I would have a –

MS STAPLES: Oh, all the time.

MR MARTIN: – major piece of farm machinery which I didn’t need to take on to the public roads? How many of the public roads in and around the farms of Staffordshire have lanes that are five metres wide?

MS STAPLES: Yes. What I’m saying – they would definitely take machinery a lot on to the roads at the moment.

MR MARTIN: Yes. How many of the country lanes in Staffordshire have a lane which is five metres wide in each direction?

MR WIGGIN: It doesn’t need to be in each direction.

MR MARTIN: Well, okay.

MR WIGGIN: They take to the hedge quite frequently.

MS STAPLES: Yes.

MR MARTIN: If would be pretty difficult getting a five metre wide vehicle –
168. MS STAPLES: But that’s not the – okay – so, that’s why I’m saying – the overbridge or the underpass is so important to get to their severed land because they probably can’t get down that narrow country lane that you’re just referring to. So, then they really are cut off from their land.

169. MR WHITFIELD: And I guess what you’re highlighting is once this railway is built there is no chance to – it would be a formidable task to widen a tunnel by another couple of metres once it’s built?

170. MS STAPLES: Yes, absolutely.

171. MR WHITFIELD: It would be easier to do it now.

172. MS STAPLES: Yes.

173. MR WHITFIELD: Your suggestion is that five metres is reasonable to envisage for farm land both now and in the near future –

174. MS STAPLES: Yes.

175. MR WHITFIELD: – rather than perhaps a housing developer who wants his tunnel for 20 new buildings –

176. MS STAPLES: This is not to do with housing development. This is pure farming operations – daily access.

177. MR WHITFIELD: I’m grateful.

178. THE CHAIR: There’s been quite a bit of backwards and forwards. Before I come to you, Mr Mould, any more questions from the Committee? Did you want to come back now, Mr Mould or are you going to cover this later?

179. MR MOULD QC (DfT): Well, let me show you P58(2), as you’ve offered me the opportunity, which gives you – I really don’t want to turn this into a debate of competing dimensions case. But as a matter of general guidance, you’ll see the figures that we have there. But what we make clear is that this is part of the detail design and we will be consulting with individual farmers when the detailed design is being prepared to ensure that proper arrangements are made to accommodate. There is an incentive to
us not to produce a situation in which the farmer is unable to continue to get across the railway line. And that’s likely hugely to bump up the farmer’s compensation claim.

180. MR WIGGIN: Yes.

181. MR MOULD QC (DfT): So, that’s where the real balance lies here, is between accommodating rather than compensating. Mr Findlay told you at the beginning, ‘Shall we try to prevent rather than cure?’ This is what we intend to do on that.

182. THE CHAIR: Sheryll?

183. MRS MURRAY: Just to be clear, Mr Mould, are you saying that you will be negotiating these individual crossings with individual farmers? I notice very clearly it mentions cattle crossings and then it mentions for large vehicles in this. So, it will be individually negotiated with each individual farm?

184. MR MOULD QC (DfT): Indeed. And may I just put up P67(7)? I’m sorry. I don’t want to steal Mr Findlay’s thunder. But as you asked me the question, this is our published information paper on C2 on rural landowners and occupiers. And you will see, paragraph 8.1, ‘The provision of permanent accommodation rights will depend on the individual circumstances of the holding, usually developed as the detailed design for the proposed scheme is undertaken’. And then, at 8.2, I think the direct answer to your question, ‘The nominated undertaker will discuss with each landowner the provision and timing of accommodation works as part of the compensation package’.

185. MRS MURRAY: Thank you.

186. THE CHAIR: Shall we do –

187. MR WIGGIN: Can I just check with Ms Staples that she’s happy with those dimensions?

188. MS STAPLES: No, they’re not future proofed at all. And actually, we’ve got one example there of the livestock. If HS2 are going to put an underpass in, make it big enough for a vehicle to go through. There is no point just doing it for cattle. It is limiting a farm business straight away.

189. MR FINDLAY QC: Can I say? To sum up about this, it is about future proofing.
There will be negotiation. We accept that. Not every farmer will want the largest size possible. But unless there’s an undertaking or an acceptance that is a reasonable approach in a proper case then that –

190. MR MOULD QC (DfT): There isn’t an issue about this. Of course, reasonable future proofing for future farming needs is a perfectly reasonable point to take. But what I object to is the attempt to impose of one size fits all dimensions, which are naturally sized at the highest conceivable level because otherwise they’re not going to work as a set of one size fits all dimensions. What we’re saying is, where there is a case for a large future allowance because the farmer can show that is what’s likely to be needed, then bring that case to us and it will be received reasonably.

191. THE CHAIR: I think we’ve heard both sides of the argument. I’m quite keen to move on too.

192. MR FINDLAY QC: Can I say we’re very close to agreement then on that?

193. MR MOULD QC (DfT): Yes.

194. MR FINDLAY QC: But if there’s future proofing is to be considered as a factor, then we’re close to achieving what we –

195. THE CHAIR: We all love one another again. This is wonderful. Just as I thought we were all disagreeing on everything. To continue this further loving, can we make some more progress?

196. MR FINDLAY QC: Yes. Last point – borrow pits –

197. THE CHAIR: You make me a happy man.

198. MR FINDLAY QC: First of all, if we have Mr Troman’s CV just peruse that and he is appropriately qualified to give evidence on minerals matters. Can I introduce this by way of background? Mr Troman’s produced a report. HS2 have produced a counter report. Late last week we’ve had a further lengthy document from HS2. I’m not saying this to score points. I’m saying that by way of background – instead of going through all those reports, I’m going to try and pick with Mr Troman what we say are the important points out – both of agreement and disagreement. And then hopefully present
the Committee with why we say borrow pits are needed. And there are two issues that we started off with on borrow pits. One was an in principle issue – we should be considering other commercial quarries. The second was to supply the aggregate that the borrow pits would be supplying. And we’ll develop that in due course. The second was that the borrow pits as currently identified appear to be too large in size for what’s needed. Now, we’ve had an assurance on that this morning and it may be helpful if that’s put out. It’s probably P79 –

199. MR MOULD QC (DfT): P79(2).

200. MR FINDLAY QC: – (2), which goes some way to dealing with that. There’s been a lack of investigation so far and this is effectively HS2 saying that they will investigate further, publish a review, and allow the NFU and landowners concern to have an input into that review before it’s finalised on the extent of borrow pits. So, for instance, if one could dig deeper than is currently envisaged and that’s reasonable to do so, that’s what will happen. So, that narrows the point between us down to an in principle point.

201. If I can start to introduce this issue very briefly and take you to A54(1)? As you know, the promoter’s identified a shortage of high quality aggregates. It’s identified six borrow pits set out there. And it’s the total amount of land being taken – 154 hectares – which is significant. If we go over to the time they’ll be worked as well before being reinstated? If we go over to the next page, what is set out there in acres – apologies for those looking for hectares? Just to take the first example, Wood End Farm, total size 240 acres. Total area acquired for HS2 is nearly 82 acres, which is 34% if the farm. Total area acquired for the borrow pit is 25.45 acres, which is 31% of the total area being taken by HS2. So, it is important to note the last percentage is of the total area required rather than the total farming area. And you can see the percentages are large in every case. And that is why that in so far as one can reduce the size of the borrow pits, we say that will have a significant impact. The point at the bottom is that HS2 propose to restore the borrow pits. And in terms of the restored land, Ms Staples, rather than Mr Troman, what’s NFU’s experience of the ability to successfully restore land? Effectively what’s being done is you’re taking gravel away – which is drainage – and replacing it with silent and mud.
202. MS STAPLES: Yes. On this scheme we understand there will be some clays going back on. The land in this area is quite free draining. So, they will not be able to be reinstated and then work the way that the land is operating at the moment, even with restoration taking place.

203. MR FINDLAY QC: And drainage –

204. MR WIGGIN: Sorry?

205. THE CHAIR: Sorry. Sheryll, then Bill.


207. MRS MURRAY: Can I just ask Mr Mould if you’ve actually done some geological surveys on where the borrow pits are and what you intend to replace them with? And do you have any idea what you’re going to replace them with?

208. MR MOULD QC (DfT): The geological surveys have not yet been undertaken. They’re programmed to take place during the remainder of this year. And it is in the light of that programme that we have offered the assurance that Mr Findlay showed you a moment ago. Armed with the information that those geological surveys will provide to us, we expect to develop a much more informed view of the extent to which we may need to work these quarries in order to win the material that we need to build the railway. At the moment, the areas identified on the plans have been identified on a precautionary basis. We have to allow for sufficient material in the reasonable worst case. But we expect that it will be possible to reduce the scale of quarrying in the light of the geological investigations that are planned for the remainder of the year. And to be able to publish a report before this Committee has completed its public sittings. Yes.

209. THE CHAIR: Bill, then Sandy.

210. MR WIGGIN: The first thing is that these won’t all be done at the same time. So, presumably they dig the gravel out of the first pit and the fifth one and then fill them in and move on to the second and sixth, or whatever it may be. Why is it that you said that the soil that goes back in, given the size of that which we’re discussing makes it impossible to farm it again?
211. MS STAPLES: No, no, I’m not saying it will be impossible to farm it again.

212. MR WIGGIN: Good.

213. MS STAPLES: You will definitely be able to farm it again, but it will take a very long time to get – wherever this borrow pit created – even after restoration – to get it back to how it was yielding – to before it was a borrow pit – takes a very long time. That’s what I’m saying.

214. MR TROMAN: It’s just the nature of restoring former mineral workings. It’s very difficult to get it back to the same productivity as it was as virgin land. Obviously, it’s going to affect the water table, drainage may or may not be perfect –

215. MRS MURRAY: Precisely. I was confused how you could make statements like that.

216. THE CHAIR: Sorry, Sheryll. Bill, then Sandy, then back to Sheryll. Sandy?

217. MR MARTIN: Well, I was just going to say that presumably in some cases, Mr Mould, where the ground is suitable, where cuttings have been dug and the ground is good draining gravel or whatever, you can use that rather than having to use material from a borrow pit. So, in general terms, material that’s been dug from cuttings or tunnels which is not suitable is going to be the stuff that goes into the borrow pits. I mean it will be more likely to be clay than it will to be gravel that’s going in.

218. MR MOULD QC (DfT): The basic theory is this. The project does not consider that it has sufficient material of the sufficient quality which will be excavated from cuttings in order to provide the fill that is needed to construct the railway. It is therefore necessary to win that material from elsewhere. There are two choices. Either you can take it from existing quarries. And as the witness is going to tell you – we don’t dispute it – there are at least three quarries up the A34 and reasonably close to the trace which would provide at least a very substantial quantity of that material. Or you take it from quarries that you dig yourself, close enough to the line that you can haul the materials through haul roads straight on to the trace. The choice that we have made is the latter rather than the former. Why have we made that choice? The additional traffic on local roads –
219. MR FINDLAY QC: Mr Mould should allow me to make my case first.

220. MR MOULD QC (DfT): – would be significant. That’s the lot of it.

221. THE CHAIR: Sheryll’s got a question before Mr Findlay, you make the case. Point taken though.

222. MRS MURRAY: Yes. Just a very quick question, you said that drainage would be worse once they infilled it because they were in filling it with silent. What evidence do you have to back up that statement, please?

223. MS STAPLES: I don’t have any off the top of my head. But if you really want, we could give you some –

224. MRS MURRAY: Yes.

225. MS STAPLES: – from where borrow pits have been restored on other sites.

226. MRS MURRAY: So, you don’t have any specific evidence here? So, it’s an assumption that you’ve made based on what’s happened in other places. Am I correct?

227. MS STAPLES: Yes.

228. MR FINDLAY QC: Can I answer that? We know that it’s going to be filled with silts or clays or mud soils. It’s not going to be the same standard of soil, otherwise they wouldn’t be putting it in. In terms of restoration of mineral workings too, using such type of materials to fill the void, Mr Troman can perhaps assist with that. How much experience do you of that in other locations, Mr Troman?

229. MR TROMAN: It’s more sort of anecdotal evidence of that. As a mineral agent, I’m here for the landowners.

230. MRS MURRAY: So, it’s anecdotal? It’s not definite evidence?

231. MR TROMAN: Well, I don’t design these things but I have had numerous landowners to come back to me and say, ‘It’s not as good as it was before’. It can be done but it’s difficult and it’s expensive.

232. MR FINDLAY QC: Can we move on from that? Which is perhaps a slight red
herring I’m responsible for. Some examples of the scale of the borrow pits. If you go on to A54(4)?

233. MS STAPLES: Yes, sorry, can we just go back one slide?

234. MR FINDLAY QC: Sorry. That’s my mistake.

235. MS STAPLES: What I really wanted to do here was show the impact of the borrow pits, but on a few of the farms that have been highlighted. The first two farms within the CA1 region, which is Wood End farm, which is here. This is quite a small, arable farm. It’s about 220 acres. Yes, and 25 acres of that is going to be borrow pit. And there’s 82 acres there in total being taken though by HS2 during construction. And then if we go to the next slide please?

236. Common Farm, again this is a reasonably small arable farm again, about 212 acres, and the one borrow pit. And there’s also a further borrow pit on the next slide I think. Can we show it? Oh, no, sorry, just go back a slide. My point here is that because they are both quite small, arable farms, in regard to the total land area that’s to be taken here, it’s a fine line at the moment as to whether these two arable businesses will be able to continue if those borrow pits are taken. Then if we go to the next slide, please?

237. This is Eccles Farm. As you can see here the borrow pit is very close to where the farmsteading is. As I’ve highlighted in the bright blue in the middle there. This farm is bigger. It’s about 395 acres. 48 acres is being taken to create that borrow pit. And again, this farm in total has 122 acres being taken. In regard to where the farm is, both drives up to that farmsteading are affected because of the borrow pit and where the railway line is itself. Though also on this farm is an equestrian unit and a farm shop that are going to be quite drastically affected there. And one of them main points here – as we have been talking about drainage is that this – the arable side of this farm business – again here, there are potatoes and parsnips with cereals being grown. But actually here, this has already been affected in the past by the Coal Board. There is a pumping station there which is controlled by the farmer. He is seriously worried that taking that borrow pit is going to affect what happens. There’s a big drainage ditch there, which is controlled, so that farmer can let out water or shut down the pumps to keep water in. And that is used for irrigation of those particular – of the potatoes and parsnips. It will
have a big effect on whether those crops can be irrigated going forwards. And then just another slide, next slide please?

238. Again, this is a dairy farm and arable farm. The dairy at the moment, yes, lots of the cows are taken out for grazing. Where the borrow pit is sited is exactly where some of the grazing land is. When I’ve been speaking to the owner of this farm, they are saying that if they carry on the dairy unit they would have to house the dairy cows permanently. They wouldn’t be able to be grazed. And again, there are concerns there in regard to the arable cropping. And again, there are contracts there with McCain’s and KP.

239. THE CHAIR: How are we doing on time, Mr Findlay?

240. MR FINDLAY QC: We’re making progress.

241. THE CHAIR: We’re beyond time. I’m also conscious just for the Committee’s information. We haven’t had divisions during our proceedings so far. There may very well be a division, the sounding of a bell. If there is a division, we will take a 15 minute break. If there’s a subsequent division, another 10 minute break. And we will try not to disadvantage you because of that loss of time.

242. MR FINDLAY QC: But I would hope to finish within 10 minutes, 10 to 15 minutes from now on borrow pits.

243. THE CHAIR: We had said you were going to finish at eight. I know we’ve been relatively lenient, Mr Mould, with you coming in. Are you happy if we take to 10.13 to avoid conflicting divisions if they come at 8.15?

244. MR MOULD QC (DfT): I’m happy for Mr Findlay to carry on and finish his presentation and I will try and –

245. THE CHAIR: Brilliant. We’ll press ahead. Thank you, that’s brilliant.

Evidence of Mr Troman

246. MR FINDLAY QC: Thank you, Ms Staples, Mr Chairman. With the Committee’s permission and Mr Mould’s, I will lead you on a bit of this to try and save time? In terms of the principle, one firstly has to establish the need for high grade
aggregate. And I think the figure now put forward by HS2 is 5.42 million tonnes.

247. MR TROMAN: That’s the figure.

248. MR FINDLAY QC: And is that a figure that you’re content that the Committee base its consideration?

249. MR TROMAN: I have no reason why that figure is not the right figure.

250. MR FINDLAY QC: Right. So, 5.42 million tonnes of high grade aggregate is needed. On the current information – I stress current information – there is somewhere between 10.48 million tonnes, which is your figure, and 7.65 million tonnes, which is HS2’s figure, in the identified borrow pits?

251. MR TROMAN: That’s correct.

252. MR FINDLAY QC: The difference between those two figures depends upon the discount you give for the amount of unusable materials within them. HS2 have assumed it to be 35%.

253. MR TROMAN: Correct.

254. MR FINDLAY QC: So, 35% of 10.48 million tonnes is 7.65 million tonnes?

255. MR TROMAN: Near enough. There other slight differences but that’s the majority.

256. MR FINDLAY QC: The main difference.

257. MR TROMAN: That’s the main difference.

258. MR FINDLAY QC: Again, just trying to establish the main differences. So, firstly, on any figure, there is about 2 million more tonnes, if you take HS2’s figures, and in yours, about 5 million more tonnes of aggregate than may be needed?

259. MR TROMAN: Yes.

260. MR FINDLAY QC: In part that’s dealt with by Mr Mould’s assurance, or HS2’s assurance, that I’ve already drawn the Committee’s attention to. One of the issues about
impurities within soils, that if that soil is used for concrete, if the aggregate is to be used for concrete, can you just dig that aggregate out of the ground and use it for concrete?

261. MR TROMAN: No, no, you can’t.

262. MR FINDLAY QC: What do you need to do to it?

263. MR TROMAN: My understanding is that at least 720,000 tonnes of aggregate is for concreting purposes out of the 5 million. That material would have to be processed, which basically means washing it and grading it. If you wash and grade, obviously there’s going to be water issues on site – maybe settlement begins. There’s no indication in any of the reports produced which borrow pits may be facilitating that material. It all refers to embankments, which suggests as dug.

264. MR FINDLAY QC: If you were to take such material from an existing quarry, in terms of washing and getting the aggregate to a standard to which you can use it for concrete, is that an issue?

265. MR TROMAN: No. You buy it from the quarry washed and graded.

266. MR FINDLAY QC: We have the requirement for HS2 route as a whole of 5.42 million tonnes. I think as Mr Mould has already indicated, there are three commercial quarries near the southern end with – I think in your case – at least the capacity to supply that full extent?

267. MR TROMAN: Mm-mmm. Could we possibly bring up the –

268. MR FINDLAY QC: Yes. If we could go to – I’ll just find the plan – it’s A54(11)? If you can zoom in? Yes. You’ve got the three borrow pits in purple on the left –

269. MR TROMAN: Shall I talk the Committee through it?

270. MR FINDLAY QC: Yes, if you could.

271. MR TROMAN: I’ve got paper copies if anyone wants one or we can zoom in. Alright. The borrow pit’s on the left. And the diameter of the borrow pit is based on the same calculations as the diameter of the consented reserves over on the right. So, you’ll
see that the three quarries off the A38 – you’ve got substantial consented reserves that these have planning permission to extract. I think it’s accepted now that there is sufficient material there. Although again, you won’t find in any of the reports produced by HS2 reference to these quarries. There is a side line reference in one of the reports to sites within the local plan, but these quarries are not named. The reason there is two colourations on those existing quarries is there is allocations within the local plan for additional consents. But we are basing our calculations on what is consented at the moment. There is sufficient material.

272. The other issue that arises out of that is whether or not there’s sufficient capacity to supply. I think we are talking about the southern end of the line here. This plan does not deal with the northern end where you’ve got two more borrow pits. The total capacity of those three quarries, if you add them together, is about 2 million tonnes per annum, which again, HS2 have said, ‘Okay, that’s about what we need in any particular given year although that would mean taking pretty much all of the supply from those quarries to meet our needs’. That was raised an issue about, ‘Well, that simply couldn’t happen’.

273. The point I was trying to raise here is that those three quarries are operated by the first, second and fourth largest quarrying companies, aggregate suppliers, in the UK. They have dozens of other quarries that they could switch supply to if they needed to.

274. THE CHAIR: A question from Sheryll Murray. Sorry to interrupt.

275. MRS MURRAY: How many lorries would it take and what are the roads like leading from those quarries to the site, please?

276. MR TROMAN: Well, this is again a very key issue. Do you want me to move on to that now?

277. MR FINDLAY QC: Can I come to that? In terms of HS2 have helpfully provided an indication. If you were to – to raise one issue, HS2 in their report have raised that between the Blithbury borrow pit and the other three southern borrow pits there’s what’s called a blocker. A viaduct needs to be built. So, that you couldn’t just take aggregate from the commercial quarries, take it to the nearest part of the HS2 line and put it on a haul road because you’d meet a blocker, which is an area of line that they just couldn’t
go through until you’ve built the viaduct. If you leave the Blithbury borrow pit out and look at the three southern borrow pits, in terms of the highways implications of those, there’s a page in the environmental statement where HS2 have given calculations. It’s in volume 5. Yes. If we look at the bottom of page 615, we’ll see in answer to the question, ‘The total HGV movement saving from using the borrow pits in CA1’ – that’s three borrow pits, not Blithbury – ‘is 85,000 vehicle movements’. In answer to your – now, I want Mr Troman to explain. Keeping that 85,000 figure in our mind, if we can go back to the plan? How would you envisage a –

278. MR TROMAN: How would it get to where it’s needed?

279. MR FINDLAY QC: To get from the commercial quarries to the effectively the same locations and the three southern borrow pits?

280. MR TROMAN: All of those commercial quarries have accesses on to the A38 major trunk road, as you’ll see running down the plan there. We did suggest the possibility of a haul road directly of the A38. But we accept that is probably not possible because of the distance between the junctions. However, if you came off at the junction at Wood End Lane, that’s a relatively short distance to HS2 Phase 2A.

281. MR FINDLAY QC: Can you see where the arrow is at the moment? Is that?

282. MR TROMAN: It is a little bit further down.

283. MR FINDLAY QC: Is it where there’s that –

284. MR TROMAN: That’s correct, zoom in there.

285. MR FINDLAY QC: Now, in terms of the comparison with vehicle numbers, if those quarries are not used for HS2 but are used normally, commercially, there will be vehicles using the A38 in any event?

286. MR TROMAN: Absolutely, yes. They currently –

287. MRS MURRAY: I did mean more in terms of lanes to get from the A38 to the line.

288. MR FINDLAY QC: Absolutely. Again before responding to that, can I put up
the flow diagram from the –

289. THE CHAIR: It may be convenient to wrap up within two minutes just in terms of the Minister being on their feet and we’ve all have various messages about our requirements?

290. MR FINDLAY QC: Yes. P80. If one sees the colour coding, this is CA1, construction area 1. This is traffic movements in and out of borrow pits in construction area A1. As we understand it, the three borrow pits at the southern end of the line are to the right of the drawing. And the Committee will see at the top there are four colour codings. It’s excavation using site haul; excavation using road haul. So, that is material programmed to come from the borrow pits and go to other parts of the HS2 line by road. Backfill by site haul; and backfill – that is waste coming in to refill the borrow pits by road. One can see from the three borrow pits – I’m pretending this is scientific – but there is a significant number of yellow and blue arrows to and from those borrow pits. So, those borrow pits are intended to take some material out by road and refill back by road. Coming back to the 85,000 figure that we had to start with, is that, Mr Troman, 85,000 additional journeys on the road or not?

291. MR TROMAN: It depends on whether or not there’s substitution, which I think is highly likely. And what I mean by that is the current capacity of those three quarries is 2 million tonnes per annum. Aggregate wagons are about 20 tonnes. So, we’re talking 100,000 loads or 200,000 vehicles each way. But they are servicing existing contracts so what we’re suggesting is that those quarries, if they’re servicing HS2, part of that 85,000 – quite a large proportion, we think – will be displaced out of the 200,000 vehicle movements, which will be already plying their traffic up and down the A38 at the moment.

292. MR FINDLAY QC: So, the three reasons given for HS2 for these quarries, one was the vehicle movements. We’ve dealt with that. The other was whether the material would be commercially available. And you’ve dealt with that. The third reason was the cost. And there were two elements in particular in that. One is, if you’re going to take waste to refill in these quarries, is it likely you will pay landfill tax?

293. MR TROMAN: If you’re taking the material to a landfill site, you would pay a landfill tax. If you’re taking the material to a quarry to aid restoration, you don’t pay
landfill tax. I spoke to one of those major quarry operators on Friday and they said they had a million tonnes worth of void space already sitting in their quarry waiting to be filled. They wouldn’t pay landfill tax on that.

294. MR FINDLAY QC: In terms of the other costs, it’s accepted that eight to nine miles from transport from a quarry is a reasonable distance.

295. MR TROMAN: It is.

296. MR FINDLAY QC: In terms of cost to the aggregate, there will be a cost obviously if you’re buying it from a commercial quarry. Is there a cost in compensation terms if you’re acquiring it from a farmer?

297. MR TROMAN: Well, there will be yes. It would be a quite complicated calculation but I would – well, the actual transportation costs, I’ve got quotes from those quarrying companies and they’re talking about £2.50 to £2.75 to haul a tonne of aggregate up to sort of 10 miles from their quarry, which would be sufficient to get to the southern part of the route. If you add anywhere between £1.00 to £2.00 to that figure, that would give the total additional cost. No one’s saying it’s going to be a cheaper option. That’s accepted. But the point we’re making is that it’s very much a commercial option, a market option, because there’s three quarrying companies that can compete with each other. There’s no reason why HS2 can’t buy that material on the open market.

298. MR FINDLAY QC: Yes. Mr Troman, my last question, in any document you’ve seen from HS2 – save perhaps for the most recent one – have they given any serious consideration to using those commercial quarries even for the southern end of the route?

299. MR TROMAN: No.

300. MR FINDLAY QC: Thank you. That’s our position on borrow pits – slightly truncated.

301. THE CHAIR: Thank you very much. I’m conscious we are expecting votes and the could go off as we’re talking. There’s the other option that they don’t come. Are you comfortable, Mr Mould, starting and being interrupted?
302. MR MOULD QC (DfT): Yes, absolutely.

303. THE CHAIR: Thank you very much.

**Response by Mr Mould**

304. MR MOULD QC (DfT): I’ll deal with the borrow pits first if I may? I don’t want to ask the witness any questions.

305. THE CHAIR: Shall we stand the witnesses down then?

306. MR MOULD QC (DfT): Yes, that would be helpful because I’ve got a question each for Mr Miller and Mr Smith, so perhaps they could –

307. THE CHAIR: Let’s do a switch as you’re talking. Thank you very much to the three of you.

308. MR MOULD QC (DfT): Can we put up R60(23) please? The basic case for including within the Bill the power to excavate borrow pits is set out in this information paper, D12 in our series, which is headed ‘Borrow pits’. Three points on the screen in front of you. ‘Excavating borrow pits will enable high quality aggregate to be extracted and processed locally and transported largely on site haul routes. There will be some road based traffic, but largely on site haul routes with the construction area of the proposed scheme. This will generate lower HGV movements than importing the material from commercial quarries, reducing impacts on the local road network and communities.’ Amongst the local quarries that would otherwise be considered, if it wasn’t for that problem, would be the three quarries that you’ve been shown along the A38. If we then turn to the next page please, to R60?

309. MR WHITFIELD: Sorry, Mr Mould, can I just ask? The offsite HGV, of transporting from the borrow pits as part of the calculation that you’ve done for the heavy goods vehicle usage on the road?

310. MR MOULD QC (DfT): Yes.

311. MR WHITFIELD: Yes. That’s in your existing calculations?

312. MR MOULD QC (DfT): Yes, yes, that’s exactly right. If one then turns to the
next –

313. THE CHAIR: Just a quick question from Sheryll.

314. MRS MURRAY: Just very quickly, Mr Mould, as we finished with the last presentation about costs, has there been a calculation of the amount of cost to the public purse for using the quarries versus using the borrow pits?

315. MR MOULD QC (DfT): I’m not aware that there has for each of those three quarries that have been shown to you. But I’ll find out the answer to that question and answer it as soon as I can.

316. MRS MURRAY: Thank you very much.

317. MR MOULD QC (DfT): The issue here though is not primarily about cost, it’s about environmental impact.

318. MRS MURRAY: I absolutely appreciate that.

319. MR MOULD QC (DfT): You’ll see at the top of the page, ‘The six sites in close proximity to the route of the proposed scheme are predicted to contain granular material of appropriate quality and have therefore been proposed for use as borrow pits. The land required for the proposed borrow pits is for the most part currently in agricultural use.’ Hence the concern of the NFU. ‘The land has also been identified by the local authorities as part of their forward planning for mineral extractions.’ So, these are sites that have some prospect in future of being worked for mineral extraction in the absence of HS2. Can I then please turn to P55(10)? We have done some work to examine the likely traffic increases on local roads –

320. THE CHAIR: Order, order. We’ll return in 15 minutes.

Sitting suspended

On resuming –

321. THE CHAIR: Mould?

322. MR MOULD QC (DfT): Thank you. I was showing you slide 55(10). And in order to illustrate the problem that the availability of borrow pits is seeking to resolve,
we’ve provided you with some figures for what is described as the ‘no borrow pit’ scenario in the King’s Bromley and Hill Ridware area, which is the area that the NFU’s witness focussed on. Mr Findlay asks me to say that he thinks this includes Blithbury, but I’ll accept that for the purposes of the point. Peak monthly daily weekday traffic flows first only the A515 Lichfield Road, you see increased traffic movement from 636 two way with borrow pits to 2,366 two way without borrow pits. On the A515 Tewnals Lane to the west of the HS2 route, the peak monthly daily weekday traffic flows between Stafford Road and Wood End Lane would increase HGV traffic movements from 1,678 two way with borrow pits to 2,972 two way without borrow pits. If we go on to slide 55(11), we’ve got a histogram in the form that I hope is becoming familiar to you, just to show the first of those roads. You can see there the green represents the increase in HGV traffic and the duration of that increase if we do not have access to borrow pits on that road. That is one of the ways in to the HS2 works from the strategic highway network at the southern end of the route. And if we turn to the next slide, P55(12), we’ve given you the figures for the A515 Tewnals Lane. Again, that’s one of the ways in to the HS2 works at the southern end of the route. And you can see the increase there, represented by the green.

323. So, what was perceived during the development of the Bill as a major problem – that is to say, very large quantities of HGV traffic on local roads for a fairly lengthy period – if we were to have sourced the materials from existing sources of supply. And the view taken, that in order to limit the extent of that traffic down to the red effectively on those two slides, that provision should be made to win minerals from sites that were certainly in the long term at least in planning to be worked for minerals in any event and in that way.

324. MR WIGGIN: But you might need this – I mean you haven’t done the mineral surveys yet – so you don’t know that the percentage of good gravel that you will dig out will be as high as you hope it will be or indeed it may be even better. In which case, you’ll need less pits.

325. MR MOULD QC (DfT): Absolutely right.

326. MR WIGGIN: This is a spirited defence of something that in the future you might actually need.
327. MR MOULD QC (DfT): Yes. And if you turn back to P79(2) –

328. MR WIGGIN: The traffic’s going to happen anyway. Those quarries are going to be driving all over the Midlands whether we like it or not.

329. MR MOULD QC (DfT): Well, as far as I know, they won’t be driving along those links that I’ve just shown you. Those are the local – unless there’s some other –

330. MR WIGGIN: We just don’t know.

331. MR MOULD QC (DfT): There’s no evidence – well, there’s no destination other than HS2 along those links that would require that level of material to be brought in. But to answer your point, that is precisely – the point you put to me – we don’t know as yet – is precisely why we have indicated to the NFU that we will be carrying out a review of those needs following the receipt of the ground investigation report. And we will involve them and landowners affected by our proposals in the process of carrying out the review. And that to be done before your Committee has finished its work, we expect to be able to give you a more evidence based review of the need that you’ve just identified, Mr Wiggin, before you write your special report.

332. THE CHAIR: Thank you. Sheryll?

333. MRS MURRAY: I notice you haven’t said the local highways authority there but presumably you are consulting with them on traffic movements as well?

334. MR MOULD QC (DfT): That of course would go without saying. Yes. We would expect to involve them in the process yes. So, that’s all I wanted to –

335. THE CHAIR: Martin wants to come in.

336. MR WHITFIELD: If we can see A54(19)? In the NFU’s suggested solutions, the middle one is presumably as agreeable once you find out what’s in there? You’re going to minimise the thing. The bottom one, presumably again is not a significant problem to HS2 to have the actual operations in the site. So, really, all we’re actually being asked about is the first one?

337. MR MOULD QC (DfT): You’re being asked to pre-judge the outcome of the exercise.
338. MR WHITFIELD: Of that geological –

339. MR MOULD QC (DfT): We don’t think that it makes sense from an environmental perspective to take that course. And we’ve given the assurance that we’ve given in order to enable points 2 and 3 to be undertaken with some involvement on the part of the NFU. Yes. So, that’s that point. Can I go back and see if I can deal swiftly with the other points that have been outstanding?

340. MR FINDLAY QC: Can I just respond to those figures?

341. THE CHAIR: You’re going to have a final word. I’m going to give Mr Mould – unless he wants to relinquish the time – this is his space and time at the moment. Mr Mould?

342. MR MOULD QC (DfT): Well –

343. MR FINDLAY QC: It’s a short point.

344. THE CHAIR: Mr Findlay?

345. MR FINDLAY QC: I just say those figures are grossly exaggerated, the traffic figures. And the Blithbury bit is important. Could I have the ES extract which had the 85,000 figure on it, just to make that clear to you? If one goes down and looks at the – one can see 85,000 for borrow pits 1 and 3. The next borrow pit down, which is the Blithbury borrow pit itself, contributes 390,000 extra vehicle movements. If I’m right on those histogram drawings, the vast proportion of the excessive vehicle movements that Mr Mould is referring to would come from the Blithbury pit. Our case is focussed on the three other pits. 85,000 if the equivalent, if one divides that over two years and 300 days in the year to about 141 additional vehicle movements a day. And we say – that’s our position. That’s why we say it’s exaggerated.

346. MR MOULD QC (DfT): Well, there we are. It’s still a very significant additional amount of traffic even if – I’m not going to argue about it. This is intended to be an order of presentation. Let me go to question of the – I’ve dealt with the – going back to the list – I think I’ve responded to one in a way that was broadly speaking acceptable to the NFU.
347. Number 2, HS2 to provide a guide to the enforcement of assurances. You were
told it would be useful to have something added into the Farmers and Growers Guide on
that. I agree. We’ve already said this morning that we would look to do that.

348. Thirdly, the Agricultural Liaison Service – can I just show you please P79(1)?
You’ll see one of the assurances that’s been given to the NFU relates to the Agricultural
Liaison Service. Under the terms of that assurance it would be the nominated
undertaker who will remain responsible for the delivery of that Agricultural Liaison
Service during the course of the Phase 2A project. I understood that it was that the
nominated undertaker should retain ultimate control over the delivery of that service.
That is achieved under that assurance. Interest on loan payments –

349. MS STAPLES: Sorry, wasn’t the question there. This was in regards to –

350. MR WIGGIN: No, it just says, ‘On at least every three months to discuss the
activities of the Agricultural Liaison’. Is that enough?

351. THE CHAIR: Are you asking a question of Mr Mould?

352. MR WIGGIN: No. I’m just checking, because it’s no good having that as a
promise, if that’s not enough.

353. MS STAPLES: For the NFU, that’s fine.

354. MR WIGGIN: That’s really helpful. Thank you. Right, on we go.

355. MR MOULD QC (DfT): Interest on loan payments, you have my response on
that. I’m not going to say any more about that. I’m going to come back to land
drainage in a minute with Mr Miller. I’m going to come back with temporary
possession with Mr Smith. Land take for mitigation, I’ve dealt with that. I told you that
we would take steps to provide information on that in relation to farm petitioners. Right
of entry for surveys. This related to the provision of information when the powers under
section 54. 1 of the High Speed Rail Phase One Act were exercised. I’m told by those
instructing me that when notices are sent out under that section, a covering letter is sent
which explains that the contractors will contact the landowner and provide details of the
investigations to be carried out in advance of the works. That is what I’ve been told. I
will ask that we confirm that to the NFU and if they quarrel with that then no doubt
they’ll let you know in due course. But that’s the position that we have been given.

356. MR WIGGIN: It’s a good position. Is that an assurance?

357. MR MOULD QC (DfT): I’m told it is happening.

358. MR WIGGIN: Excellent.

359. MR MOULD QC (DfT): I’m not going to give an assurance about how powers in an existing Act of Parliament are exercised. I’m saying that is what I understand to be done. If that’s said to be factually incorrect, then obviously that can be raised with us initially and we’ll see if we can resolve that.

360. MR WIGGIN: Thank you.

361. MR MOULD QC (DfT): Replacement buildings. Can we just put up please P79(3)? This is a very nice dispute. You’ll see that in relation to this an assurance has been given, 10.1, to provide appropriate assistance in relation to somebody who’s faced with the prospect of seeking planning permission to relocate a building. And that assistance at 10.2 is said to include, if the petitioner requests it, provision of a statement of impact and timing for the petitioner in respect of the need to relocate that building. And if we look at 10.6 over the page, what does that mean? It means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural buildings in question and the timescales in which those impacts are intended to be implemented. It’s what planners, using more simple language, would call ‘a description of the need to find a replacement for that building’. Now, that being something that we are committing to, I do not accept that it would be appropriate for the promoter of this Bill to seek to enter into the arena in the local planning authorities’ consideration of the merits of meeting that need as against the impact of doing so. That’s our response on that point.


363. MRS MURRAY: Just to take that a little bit further. I may be wrong. It was a long time before I was the vice chairman of my local planning authority but if the Secretary of State or if government were to intervene and an appeal may come before the Secretary of State with regard to planning, wouldn’t that just be plain wrong?
364. MR MOULD QC (DfT): Well, if a planning authority had – faced with a statement of the need for a replacement building – and had declined to grant planning permission, then obviously, as you say, the landowner would then have an appeal –

365. MRS MURRAY: An appeal would be made –

366. MR MOULD QC (DfT): – that would go to the Secretary of State for Communities and Local Government or his appointed inspector and they would clearly review carefully whether the planning authority had got that decision right.

367. MRS MURRAY: Yes. So, if support were given by another government department, it just wouldn’t seem to be correct?

368. MR MOULD QC (DfT): I take your point. Forgive me. I entirely agree with you in fact, may I say so?

369. MRS MURRAY: Thank you.

370. MR MOULD QC (DfT): And it’s far better that support should come from the Minister of Planning, as you saw has already been done. We have no difficulty at all with that being reiterated in relation to Phase 2A. If we just go back to assurance 3 on P79(1)? I’m afraid, I’m cantering through this very quickly. There was a point taken about the need for the nominated undertaker, the promoter, to be clear on the nature of the compensation claim in relation to these buildings. We’ve given an assurance in 3.2 that where an affected agricultural owner or occupier submits a particularised claim for compensation that we will attempt to deal with that as promptly as we can. That’s the gist of that assurance. So, that covers that particular issue.

371. Can I turn please then to the issue of earthworks? If we put up A55(1)? Again, we had some discussion about this this morning when we were talking to the NFU. The issue effectively is, ‘Our members are concerned what would their redress be if earthworks or other, which had been provided as part of the works collapse’ – if you like on to their land or if they fail, that sort of thing? If we go to assurance 5 on P79(2), you’ll see that we have confirmed that the nominated undertaker would be responsible for any failure of proper care in relation to the construction of the works. I am taking instructions at the moment as to whether it would be possible to include in that a
reference to the design and the construction of the works. And I will report back to Mr Findlay and his clients on that, as he knows. And if we haven’t been able to find a resolution to that, well, obviously, we’ll report back to you on that point. But there are of course remedies at common law to those whose land is undermined by a works being carried on on neighbouring land, which don’t need to be restated in an assurance to Parliament. But we’ll report back on that if we need to.

372. I think we’ve dealt with utilities and conduits – we’ve dealt with accommodation of crossings – in relation to tax, there is in the papers before you a note which was provided to the second house on the Phase One Bill. It’s P63. It responds on behalf the promoter both on capital gains tax and inheritance tax. The suggestion that Mr Findlay and I discussed outside was that it might be possible to adapt that note so that it could be appended to the Farmers and Growers Guide with perhaps a couple of introductory paragraphs in the guide itself. That seems to me to be a perfectly sensible idea and we will see if we can achieve that and reach agreement with the NFU on that point.

Evidence of Mr Smith

373. And so, I come to temporary possession. Can we put up please P79(3)? Mr Smith, this is your chance to shine. 9.2 is the issue. The Bill provides that there should be a minimum period of 28 days of notice prior to the nominated undertaker taking entry for temporary use and possession of land under schedule 15. The argument is that figure should be increased to a minimum period of three months. What is wrong with that?

374. MR SMITH: When we receive Royal Assent to the Bill, then that would be subject to a detailed design. Before we start detailed design, we have to survey the property. That comes under schedule 2. Arising from those surveys, we then have to undertake a number of advance works before the main contractor can come on board. And they are very varied. I’m going to give you some examples: utility diversions; ground investigations; and habitat creation – just some of the things. Now, in respect of a number of these advance works, we just have to come on. We’re not necessarily there for a long time. For example, we have to remove species such as newts. We have to form new receptors to put them into. We then have to do some planting. Also, it’s usually in the advance works. We have to put new bat boxes up – things of this nature.
These are not major works. I would strongly advise that these are proportionately – these do not really require a three months’ notice.

375. There are other things that can happen that again would affect our programming. For example, from the surveys we may find a rare species on land we didn’t expect from the available information. There may be archaeological finds that we have to deal with. And it could be that weather or the unwillingness of an owner to let us on to do the survey in the first place pushes us back when we come to do that work.

376. Now, the point I want to make is, if we have to move habitat, we have to broadly do it in the summer. That’s the time. I’m not an environmental expert but that’s what I’m informed. If we miss that, then we have another six months lost to the programme. And what concerns us greatly in HS2 is that we don’t want to be hamstrung by a rigid three months’ notice. What we have agreed is to provide – it’s in 9.3 – is that we will attempt to – and we thought this was agreed – we will provide the owners with advance notice of the quarter in which we intend to come. And then we’ll come along and serve the notice later on. So, that they’ll know whether it’s the summer or the autumn or the winter.

377. MR MOULD QC (DfT): So, our response to the request – this is 9.2 I think, rather than 9.3 –


379. MR MOULD QC (DfT): Yes. That’s our response.

380. MR SMITH: Yes.

381. MR WIGGIN: That’s absolutely super for bat boxes but it’s not alright if you’re planting potatoes where you’ve got at least six months and £1,000 an acre planting costs.

382. MR SMITH: Yes.

383. MR WIGGIN: So, I’m a little confused as to what we’re trying to deal with here because on the one hand, you can scamper around looking at bat boxes without doing any harm at all.
384. MR SMITH: Yes.

385. MR WIGGIN: But the minute you’re starting to interfere with earthworks or something slightly more significant, then you will destroy crops, which need at least six months to grow. I thought the NFU were being a bit generous with only asking for three months when the impact may be on the crop. But of course, 28 days is fine if you’re looking for newts. It does rather depend on what you’re up to here, doesn’t it?

386. MR SMITH: What I’m trying to advise is that it’s the early works where they’re so varied. Once we come to the main works, when we serve notice to acquire the land, we give three months’ notice. But again we would try to give more advanced notice than that. So, we’ll give estimates in advance of when we’re likely to come in and then we would serve the formal notice. But on these early works, the small works, three months’ notice will – if we employ it everywhere has the –

387. MR WIGGIN: Yes, you’re quite right. The small works – no one’s that bothered by. It’s the big stuff. And it’s the fact that you can’t not crop because otherwise you’ve broken the rules.

388. MR SMITH: On the big works we give three months’ notice – that’s the point I’m making, sir. Three months we will give on the big works.

389. MR WIGGIN: On the larger scale works.

390. MR SMITH: They would be the main railway works.

391. THE CHAIR: Can we ask you to go away and look at this because there’s clearly lack of understanding? There’s lots of shaking of heads. We’re not convinced by the arguments. Go away. Sort it out. Come back to us.

392. MR WIGGIN: Yes, fine.

393. THE CHAIR: Next, Mr Mould?

**Evidence of Mr Miller**

394. MR MOULD QC (DfT): Drainage, Mr Miller? Can we put up please P79(6)? We now from Mr Findlay’s helpful clarification that the particular point that the
petitioners are seeking is in relation to the design of the drainage system. This assurance is our response to the concerns that the drainage systems which are designed and provided in order to accommodate impacts on existing agricultural drainage systems affected by the route, that those designs are fit for purpose and they are subject to an appropriate defects regime so that the farmer who receives them doesn’t have to carry a defective drainage system for ever more. That I think is the point. Can you just respond on that?

395. MR MILLER: Yes, that’s right. Assurance 15 sets out the actions that we’re going to take and how we’re going to engage with the farming community, those that are affected by – these land drainages affected by the railway works. And the aim of that is to ensure that the drainage is effective. Otherwise that would end up going to a compensation claim if the drainage then leads on to a crop for example that isn’t as perhaps as big as is currently grown from the ground on any one farm holding. So, the aim of this is to make sure that we get the design right. The contractors will carry out the design works, informed in the right way with the right people. It is set out in 15.3 there. Get the designs right. And then ultimately, the contractors will have to hand that drainage back to us. So, that’s an asset just as much as any other assets that we’d have within the railway. And we’ll be looking to make sure that drainage has come across correctly to us, and that the farmer can take that up effectively. The aim of this is to get this right from the outset.

396. There is a question about whether, even when you’ve done all of those works, you’ve got through that defects liability period – that’s a bit like any building works that happen, that you might have extension or something like that – and then you find that, some time after that, something’s gone wrong, and then, ultimately, if the farmer finds themselves in that situation, then ultimately they may have a claim against the nominated undertaker and there may be a further negotiation that will have to take place to put things right, but the whole aim of this is to get it right in the first instance.

397. MR MOULD QC (DfT): Thank you.

398. MR WHITFIELD: Just on 15.3, it talks about the nominated undertaker using appropriate drainage consultants to advise and engage with the farm in respect of the pre and post-drainage schemes. Where’s the provision if the farmer disagrees with the
appropriate drainage consultant’s proposal? Is there any vehicle for it being looked at again? Because I imagine there aren’t that many appropriate drainage consultants in the world that know this land well.

399. MR MILLER: No, there aren’t. And I would expect, and as we’ve indicated there, that we think that the drainage consultants will come with local knowledge.

400. MR WHITFIELD: Knowledge.

401. MR MILLER: And land drainage can be simple or it can be very, very complicated.

402. MR WHITFIELD: Yes.

403. MR MILLER: And so, getting it right, we’ll have to take account of the farmers’ views. It’s one of the reasons why having the Farmers and Growers Guide is so important because that gives us a vehicle for understanding the drainage. And certainly on Phase One, I’ve spoken to farmers who’ve got lots of drawings, these sort of herringbone kind of drawings and things like that which actually show the land drainage. We’ve asked them to retain all that information so that we can see that so that when our consultants do come on board, they can see how the railway works. And if you cut into the ground, you affect the drainage –

404. MR WHITFIELD: Yes.

405. MR MILLER: – in a different way to an embankment, which might sort of cause a bit more of a dam, which is your point.

406. MR WHITFIELD: So if I can narrow it down, what happens when there’s a conflict between the land owner and your nominated consultant?

407. MR MILLER: Well, I would –

408. MR WHITFIELD: You hope there won’t be one.

409. MR MILLER: I can’t see that there will – I can’t see that situation arising, but I would – I don’t know where that would go –

410. MR MOULD QC (DfT): The answer is that the – as things stand at the moment,
the design is a matter for the nominated undertaker –

411. MR WHITFIELD: Yes.

412. MR MOULD QC (DfT): – and we don’t allow, ultimately, other parties to –

413. MR WHITFIELD: Final decision.

414. MR MOULD QC (DfT): – to make the final decision. So there’s no provision for any sort of arbitration in the circumstances.

415. MR WHITFIELD: No.

416. MR MOULD QC (DfT): I mean, it would bring us back only to that passage in information paper C2 that I put up earlier in response to Mrs Murray’s question about the nominated undertaker discussing with each landowner the provision and timing of accommodation works. But if there is a sharp point arising on this, we have always been clear that we would not arbitrate the design of our scheme with affected parties. We were supported on that by the Committee in – both Committees in relation to the Phase One Bill. The point has been raised again by this petitioner. It’s a question for you whether you think that’s the right course or not.

417. MR WIGGIN: So actually, just to deal with floods, you then –

418. MR MOULD QC (DfT): Pay compensation.

419. MR WHITFIELD: So actually, the only problem with the disagreed proposal in 5 is (c) provide for expert adjudication.

420. MR MOULD QC (DfT): Exactly. And if – just to pick up Mr Wiggin’s point, if there is – if the system fails and the farmer’s land is rendered useless, we have a large compensation claim on our hands. But Mr Miller says – tells you the expectation is that it won’t.

421. MR MILLER: It is in our interests to get it right from the outset.

422. MR MOULD QC (DfT): And my final point is 29 farm-type accommodation or farm crossings on Phase 2A. 17 are overbridges, 12 are underbridges. I think I’ve covered all the points.
423. MR WIGGIN: Sorry, I didn’t hear that.

424. THE CHAIR: Yes, could you say it again as well because I was going to – I’m going to have to read about that later?

425. MR MOULD QC (DfT): It was in response to your question. 29 farm-type accommodation or farm crossings on Phase 2A, I am told. 17 are overbridges, 12 are underbridges.

426. MR WIGGIN: That’s on how many miles?

427. MR MOULD QC (DfT): 35 – 36 miles, I think. We’re not – I’m not supposed to talk of miles, but – yes, yes.

428. MR WHITFIELD: Sorry, can I just ask Mr Miller then about conduit thing? There was a suggestion of one every 500 metres. Is that going to be a significant problem to acquiesce to?

429. MR WIGGIN: Sorry, it says, ‘Conduits to be provided at regular intervals and then there’s a suggestion of every 500 metres.’ This is for the utilities and conduits where farms are –

430. MR MILLER: Sorry, is it a problem? Sorry, are we talking about land drainage here?

431. MR WIGGIN: No, we’re not necessarily. My apologies.

432. MRS MURRAY: This is 17 on the –

433. MR MILLER: Oh, broadband. My understanding was we sort of had an agreement.

434. MR MOULD QC (DfT): I pointed out the – that was where I pointed out the arrangements for accommodation works. We could include this. My understanding of the position is that we would certainly not accept any mechanical distance of that kind. The question ultimately is one of need. It may be that one has a stretch of two kilometres where there’s no obvious need for a conduit to be provided at all.

435. MR WHITFIELD: Right.
436. MR MOULD QC (DfT): In which case, it would be crazy to go to the cost of installing a conduit. So, it should be a need-based approach.

437. MR MILLER: And quite often those conduits are going to go across roads which go over the railway, and so we’ve heard about all sorts of utilities that follow along the roads, or they will pass underneath viaducts and underpasses and that sort of thing. So, that’s generally how the utilities work in this country: they go via existing infrastructure.

438. THE CHAIR: I’m acutely aware we’re running 10 minutes over. It strikes me that a lot of work has been done before this meeting. There’s a lot of shared understanding during this meeting and a few things to tidy up, but I think it’s been a good session. Thank you very much and I think we’ll call it to a close.