MINUTES OF ORAL EVIDENCE
taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Tuesday 1 May 2018 (Morning)

In Committee Room 5

PRESENT:

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

IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport

IN PUBLIC SESSION
## INDEX

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country Land and Business Association</strong></td>
<td>3</td>
</tr>
<tr>
<td>Statement by Mr Mould</td>
<td>3</td>
</tr>
</tbody>
</table>
(At 9.35 a.m.)

1. THE CHAIR: Mr Mould?

Country Land and Business Association

Statement by Mr Mould

2. MR MOULD QC (DfT): Thank you, good morning. We have agreed a statement which I shall read out; that is to say we have agreed a statement with the Country Landowners’ Association, and this is it.

3. ‘In response to the petition submitted by the Country Landowners’ Association, there has been constructive dialogue between the promoter and the Country Landowners’ Association with regard to the issues raised in that body’s petition. The promoter has taken significant steps towards addressing the concerns raised by the association. In addition to extending those assurances provided to the association for Phase One to Phase 2A, further assurances to landowners affected by the Phase 2A scheme have been provided, covering four matters: firstly, estimated claims for compensation and interim payments for temporary occupation of land; secondly, notice of entry for temporary occupation of land; thirdly, consideration of requests to exercise powers of compulsory acquisition; and finally, acquisition of land that is temporarily occupied but where permanent ownership is required.

4. ‘The Promoter has also agreed to include in the Phase 2A Farmers and Growers Guide, and engage with the association in the preparation of, an explanation of the safeguards for landowners affected by the Phase 2A scheme. These include three matters: firstly, the assurances provided to the association and landowners, including the commitment not to acquire more land than is required for the scheme; and secondly, the commitment to consult with a landowner regarding the detailed design of the works; also to be included is information about the provisions of the compensation code and the statutory duty of care set out in the note provided by the promoter.

5. ‘Given the steps taken by the promoter to address the concerns raised, the association has agreed to withdraw their petition. The promoter will shortly publish the assurances provided to the Country Landowners’ Association for the benefit of landowners affected by the Phase 2A scheme’.
6. For the benefit of those who will read the transcript in relation to those matters, the further assurances to which I referred during the course of that statement are assurances number 3, assurance number 7, assurance number 11(4) to 11(11), and in relation to these statutory duty of care, that is dealt with in assurance number 5.

7. So when those are published, as they will be, if people wish to focus on those as the matters that have been changed or added to as a result of the discussions that I’ve mentioned, they will find the product of that further discussion set out in terms of those assurances.

8. I also should say that I intend to have the note to which I referred in the joint statement on the statutory duty of care, to have that note also made public, so those who are interested in that are able to read that note from the website.

9. THE CHAIR: Very helpful. Bill Wiggin?

10. MR WIGGIN: Yes. Why didn’t this satisfy the NFU as well? Because there’s quite a lot of crossover.

11. MR MOULD QC (DfT): Yes. In very large part, I think it did, and as you heard yesterday, we’d made a good deal of progress with the NFU as is evident, I think, from the course of the meeting you had. The NFU did raise some other matters that were not raised in the Country Landowners’ Association’s petition and yesterday, the focus I think was more on those other matters than it was on these issues that are common to both organisations.

12. MR WIGGIN: Land use of access was one of the major concerns.

13. MR MOULD QC (DfT): Yes, the one point where I think it’s fair to say the Country Landowners’ Association have been satisfied, where the NFU have an outstanding concern, is the point raised in relation to assurance 9.2. And just for the benefit of the transcript, if I – I’m so sorry, it’s a different numbering here, of course. It’s assurance 7.2. Assurance 7 on the sheet in front of us, and for those who are looking at this later, on the assurances given to the Country Landowners’ Association, corresponds to assurance 9 on the list of assurances given to the NFU. And it’s headed, ‘Notice of entry and taking possession’. The Committee will recall yesterday that there
was some debate as to whether the statutory minimum period of notice required prior to exercise of the power of entry under Schedule 15 to the Bill, whether that period of 28 days should be extended in the Bill to a minimum period of three months, and you heard some debate about that.

14. MR WIGGIN: I think there was a difficulty in understanding yesterday because notice of entry is different from notice of taking possession, and that’s where I think the argument broke down. So, notice of entry, 28 days, seemed quite reasonable, but notice of possession was an entirely different matter and whether three months was reasonable or not, actually, if you’re growing a crop, it should have been longer. That’s where there was two different arguments running in the same vein.

15. MR MOULD QC (DfT): Yes. I might, if I may just try and clarify that a little.

16. MR WIGGIN: Please.

17. MR MOULD QC (DfT): Do you mind if I do that before –?

18. MR MARTIN: No not at all, I was just going to comment on Mr Wiggin’s point, which is that there are actually three separate things here. There is entry in order to check on something or do something which might take a couple of days. There is temporary possession which might be for up to three years, and then there is permanent acquisition. And you’ve only got two bullet points here; you actually need three bullet points. You need one for temporary entry for a short period of time in order to check on something.

19. MR WIGGIN: Twenty eight days.

20. MR MARTIN: You also need one for the temporary possession for anything up to whatever years, in order to, for instance, dig a pit or some other activity like that.

21. MR MOULD QC (DfT): The Bill grants, as you say, three distinct rights to the Secretary of State and/or the nominated undertaker. The first is, the Secretary of State is given power compulsory to acquire any land within Bill limits. That is to say, any land that has been identified as being required for the construction and also for the operation of the railway. And in that respect, the exercise of that power requires a minimum of three months’ notice to be given before entry can be taken following the exercise of the
power of compulsory purchase, compulsory acquisition. That’s dealt with in 7.1 on the slide in front of you.

22. Then there is the quite distinct power which is granted to the nominated undertaker under Schedule 15 to the Bill which is a power to enter and take temporary possession of any land within Bill limits. And as the way in which it’s described indicates, at the end of that period of temporary possession, which in normal language means occupation, the nominated undertaker must leave the land and must restore it, in accordance with the scheme which has been agreed with the local authority and the landowner. In that case, the Bill presently requires a minimum of 28 days’ notice to be given and that is the subject matter of paragraph 7.2 on the screen in front of you.

23. MR MARTIN: Yes, that’s where the problem –

24. MR MOULD QC (DfT): There’s a third power which is a power of entry which is given under another schedule to the Bill for purposes such as survey. So for relatively short term purposes. That is not the subject of any further assurance because, as I understand it, neither the National Farmers’ Union nor the Country Landowners’ Association had any particular concern about the adequacy of the notice.

25. The focus of concern is on 7.2, that is to say the focus of concern is on whether, in the case where the nominated undertaker is seeking to exercise his powers to enter and take temporary possession of land, of course, always on the understanding that, without more, he would have to leave the land at a later date, whether in any such case, the minimum period of notice, prior to taking entry, should be extended from the 28 days which is currently specified in the schedule, to the three months that the NFU argued for yesterday.

26. And our response to that in the assurance that has been offered is to maintain the statutory minimum of 28 days but to seek to give comfort in the exercise of that power of entry in any given case, in the terms in which that paragraph sets out. That is to say to seek to use reasonable endeavours in advance of any formal notification, that is to say any formal notice of entry, to notify the petitioner of the expected quarter of the calendar year in which the land is planned to be occupied temporarily under the Bill.

27. So the formal notice may ultimately be given no more than 28 days before entry,
in accordance with the statutory requirement, but prior to that, there will have been communication with the affected landowner, and/or occupier, because there may be more than one person concerned, communication with them, in advance of that date, notifying them of what is proposed.

28. Our position is that that is both reasonable and also reflects the fact that there is a balance to be struck between the needs to get on with the project in an efficient and cost effective way, but also providing the necessary safeguards to the affected landowner and occupier so that they can plan the hit that is coming to them, if you like, and take the necessary steps to adjust their position.

29. That’s the issue that is before you from yesterday evening. As I say, the CLA, as I understand it, are content with the arrangements that are set out.

30. MR WIGGIN: That was very helpful, and I appreciate what you’ve explained. The question I wanted to ask was that, yesterday, I think they also complained that the way HS2 behaved was to take temporary possession of the land and then turn that temporary possession into permanent possession. Is that really the best way to behave?

31. MR MOULD QC (DfT): First of all –

32. MR WIGGIN: Is it true first of all?

33. MR MOULD QC (DfT): First of all, as I understand it, that has been the practice that has been followed in a number of cases on Phase One. Now, I say in a number of cases because I’m not sure it is right to say that it has been the universal practice.

34. MR WIGGIN: Fair enough.

35. MR MOULD QC (DfT): Of course, we are at a very early stage in the process of land entry and acquisition on Phase One because that project is at the preliminary work stage. But let us assume that the nominated undertaker, who is undertaking the Phase One project, proceeds in the way that you have put forward, there are a couple of points on that.

36. First of all, it is a proper exercise of the powers which are granted under the Phase One Act, but that begs the question as to whether it is an appropriate way to proceed in
all cases.

37. MR WIGGIN: Because it’s also not within the spirit of the Bill, either.

38. MR MOULD QC (DfT): Precisely. That is the question that is a relevant factor to be considered. And I accept that, where a landowner has a holding, a very substantial part of which is required in order to lay down the permanent way so there can be no question at all that that land must be compulsorily acquired in order to enable the railway to be constructed and operated for possibly 150 years, that the landowner in that case may have an understandable expectation that, when the nominated undertaker gives notice of entry onto that land, they do it on the back of a notice of compulsory purchase, because that is the inescapable result of the need to use that land for the construction and operation of the railway.

39. I can’t take it any further than that but – in other words, I acknowledge the points you make and if you would – what I can do, in the spirit of trying to assist, is, I can ask for a note which summarises the land acquisition strategy that is currently being proposed on Phase One so that you can see how far that approach that you have just –

40. MR WIGGIN: No need for a note, sorry, forgive me for interrupting. This is actually slightly more serious than that because, as this Committee progresses, the clarity of the route will become easier for HS2 to see. Therefore, this technique, which I’m not questioning the legality of, but I can questioning the morality of, to temporarily purchase before compulsorily completing that temporary purchase to a permanent purchase, is a technique to avoid a three-month notice period, and actually, isn’t necessary once the route is known.

41. At this stage, you could argue you aren’t crystal clear, and, therefore, you should only temporarily purchase, but later on, it will be crystal clear where this railway line is going to go and which land you need for it and which land you need to build it. As that changes, I hope your behaviour will change.

42. MR MOULD QC (DfT): The degree of –

43. MR WIGGIN: Not yours personally, of course.

44. MR MOULD QC (DfT): No, of course. The degree of precision that you had in
mind is unlikely to be known until the detailed design of the railway and its attendant structures has been approved, or prepared for approval under the provisions of the planning schedule. But I make that point simply to show that it may not be quite as quick, but I take your point –

45. MR WIGGIN: If it’s not quick then you can take three months to give people notice.

46. MR MOULD QC (DfT): Well, what I do accept is that, as we move towards the latter stage of the parliamentary process, plainly there is work being done behind the scenes in anticipation of Parliament giving its assent to this Bill, subject to Her Majesty’s seal and so there will be progress in terms of a greater sense of knowledge, at least of the broad parameters of the permanent way of the fence line, if you –

47. MR WIGGIN: Well, how would you feel then if we took this further and said, 28 days’ notice is perfectly all right, in September, but it really isn’t in March, because when it comes to agricultural land, your crop’s either growing or it hasn’t been planted. When it hasn’t been planted, you can have 28 days’ notice; when the crop’s growing you destroy different things. Therefore your notice period is different for that particular individual. My sense of fairness is that, actually, it matters more what is going on in the time of year in which that takes place, than the notice period you give.

48. MR MOULD QC (DfT): What I would invite the Committee to do is take this course, which is designed to meet your question. Hold onto the concern that you raise, let us see how far that is a point that is raised by farm petitioners, for individual holdings – we were told yesterday there are 44 of them who are –

49. MR WIGGIN: Planting potatoes quickly in order to maximise the compensation, yes, I know.

50. MR MOULD QC (DfT): Well, nothing will happen until this Bill receives Royal Assent anyway, because nothing can happen. We await the powers before we can start serving notices, so let us – what I suggest is you wait over the course of the coming weeks to see how far this is a point that is of concern, and also whether we are able, in individual cases, to give more focused assurances, which respond to the particular needs of the particular farmer, and then perhaps we can take stock at a later stage and see
whether in fact, this problem which is being presented at a level of generality to, today –

51. MR WIGGIN: Agreed.

52. MR MOULD QC (DfT): Whether in fact, we have been able to give some more focused reassurance.

53. THE CHAIR: Sheryll Murray.

54. MRS MURRAY: Just quickly for clarification, Mr Mould; clearly the fact that you have undertaken here to notify the petitioner of the expected quarter of the calendar year was included to try to mitigate that with regard to the planting.

55. MR MOULD QC (DfT): Yes, exactly so.

56. MRS MURRAY: And how soon will you be able to notify the petitioner of that?

57. MR MOULD QC (DfT): Well, once we have a better understanding, I say, once those responsible for the delivery of the scheme have a better understanding of the programme which they wish to follow in terms of the early works, and for the main contracts, and aligned to that, a better understanding of the particular needs of the farm holding in question, through the processes that are set out in the Farmers and Growers Guide. Both, in each case, we are at a relatively early stage of understanding on both of those.

58. One the curiosities of the hybrid Bill process is that the developer, if you like, who is seeking powers to construct and operate the railway, and development consent for that purpose, has themselves developed the scheme that they wish to build, at a relatively high level. An awful lot of the detail is yet to be resolved through Schedule 17, through the planning regime. Obviously, that regime itself doesn’t come into operation until this Bill receives Royal Assent.

59. And then the persons who will be responsible for the detailed delivery of the scheme, i.e. the main contractors and the early works contractors in relation to utilities works and so forth, their work has yet to be procured. It’s in the process of being procured for Phase One now. So we are at quite an early stage. That doesn’t mean that we can’t, and indeed, you might say that it reinforces the need to give some level of
comfort, an appropriate level of comfort to those who are directly affected by the construction and operation of this railway, namely those who have lands that are required in order to do it. And these assurances are intended to be part of that process of giving comfort, as you say, to seek to mitigate, provide the means – a structure whereby the hard-edged statutory regime can be landed in a way that softens the blow.

60. MS MURRAY: Thank you.

61. THE CHAIR: Thank you, Mr Mould. Thank you to the Country Land and Business Association. Martin?

62. MR WHITFIELD: Yes, thank you. Firstly, my apologies for being late today. I’m going to make this observation just from what we heard yesterday and also today. There seems to be a breakdown in communication and understanding as a result of some of the experiences, particularly, the NFU had, with regard to the first stage and the current stage, and that I sensed evidence of a lack of faith that some of the, not assurances, but some of the statements that were being made hadn’t been honoured in the first section and I just merely put that out there.

63. Secondly, with regard to 7.2, I think there’s been a misunderstanding between the concept of a notice of entry and a notice of access, and I wonder whether that was some of the confusion yesterday, when the NFU were talking about the bat boxes, access to land and temporary acquisition.

64. My question that sits under this is does the promoter view the length of time they intend to take temporary possession, is there any difference if it is a short period of time that they intend to take possession or a reasonable length of period, or is the approach to temporary possession, or temporary occupation, sorry, always the same?

65. MR MOULD QC (DfT): The answer is no, it isn’t always the same, and it’s absolutely right, there is inescapably – it is important to take account of the duration of the intended occupation, because that plainly may affect the degree of disturbance and disruption that is experienced by the person whose land is occupied, and the promoter therefore has no choice, acting reasonably, but to have that in mind.

66. Can I just deal with your two preparatory –?
67. MR WHITFIELD: Yes.

68. MR MOULD QC (DfT): First of all, a notice of entry is no more than a notice saying we shall, in the exercise of our statutory powers, enter onto your land on the date specified in the notice, and thereafter, remain in possession for a month, for six months, for two years, whatever it maybe, depending on whether the works are works to carry out a simple restringing of an electricity pylon, or there to lay down a material stockpile, or to carry out some works to create a new piece of grassland habitat. It covers a whole range, but that is what a notice of entry is.

69. And your first point about the breakdown of trust. I heard what was said yesterday in evidence about a mismatch between what had been said and what had actually been experienced. Save for one, none of the examples given yesterday were known to me. That’s not to say that I’m saying that they were not true, but all I am saying is that I had had no prior notice of what you were told.

70. The one that I am aware of is that there was an example in, I think, the Hillingdon area, of some trees being lopped and I think in one or two instances, felled, where the promoter of the Phase One Bill had told the Woodland Trust that they would notify the Woodland Trust in advance and no notification, in that case as I understand it, was given. That matter has been the subject, already, of very detailed investigation to ensure that a proper explanation is given for that and to ensure that it does not happen again.

71. But if there are other instances that the National Farmers’ Union wishes to bring forward to HS2 Ltd for investigation, then they should communicate the details of that to the company so that the company is able to take action in order to investigate it and to take the necessary remedial steps.

72. MR MARTIN: Am I right in thinking, Mr Mould, that if the purpose for the land is the acquisition of – sorry, is for environmental mitigation –

73. MR MOULD QC (DfT): Yes.

74. MR MARTIN: That there are two alternative outcomes from that: one is purchase of that land and then management of that land by the Woodland Trust or some other organisation, or alternatively not the purchase but the management of that land by the
original landowner. In which case, there might be some sort of grey area about whether it’s sensible to acquire the land temporarily for the creation of the mitigation, or to require the land permanently through compulsory purchase.

75. However, if the landowner is not happy about continuing with the ownership of the land, then presumably, you would need three months anyway, wouldn’t you, in order to be able to compulsorily purchase the land. So, in that case, it would make sense for the promoter to ensure that there was at least three months given anyway, whether you were going to compulsorily purchase it or not, because if you don’t know whether you’re going to have to compulsorily purchase it, you want, in your timetable, to ensure there’s enough time to do so if you need to. Sorry, bit of a complicated argument.

76. MR MOULD QC (DfT): What you have said, if I may say so, is essentially correct. The first point is that, where the Bill identifies that land is required in order to provide environmental mitigation, that is necessarily a permanent requirement. And so the starting point is that the Secretary of State will exercise his powers of compulsory purchase to acquire that land, and as you say, in those circumstances, he must give a minimum of three months’ notice of entry.

77. The assurance that you have in front of you, assurance 11.4 following, which is headed, ‘Where land is materially changed and there is a need for an obligation to maintain’, is designed to accommodate a situation where the landowner says, ‘Please will you not acquire my land permanently. I recognise that you need to construct and to maintain and to monitor the ecological mitigation that is proposed for that land, but I am willing to take on the responsibility of carrying out that maintenance and monitoring, subject to an agreement with you’. And the Secretary of State, having satisfied himself that that is an appropriate way forward, agrees not to acquire the land but, instead, simply to go onto the land to carry out the work and the land remains in the ownership of the landowner. So, this assurance is designed to provide for the landowner to be able to make that choice, subject to appropriate safeguards in the public interest.

78. I think that in practice, the question of whether 28 days or three months’ notice should be given – because obviously, if the second alternative is followed, under the terms of the Act, only a minimum of 28 days’ notice would be required because this would be a temporary possession case, the landowner having given assurances that he
would retain the land and would maintain the mitigation in question.

79. But in reality, the discussion and the negotiations for the appropriate management and maintenance agreement on the part of the landowner would subsume any question of notice. The parties would reach agreement on how the mitigation should be constructed on the land.

80. It’s a good example I think of how, when one thinks through the practical reality of how this work will be done, one can see that actually, these assurances provide a sensible framework in which that will happen. I hope that addresses your point.

81. THE CHAIR: Any further questions? No further questions. Thank you very much for working together with Country Land and Business Association, and coming to these agreements, so I think that is a good example and a good way forward and a good way of working. Thank you very much.

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

83. THE CHAIR: Meeting closed.