MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Monday 4 June 2018 (Evening)

In Committee Room 5

PRESENT:

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

IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport

WITNESSES:

Antoinette Sandbach MP
Janet Clowes (Wybunbury Combined Parishes Neighbourhood Plan Steering Group)
David and Hazel Cliffe

IN PUBLIC SESSION
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At 7.00 p.m.

Antoinette Sandbach MP

Response by Mr Mould (cont’d)

1. THE CHAIR: Thank you very much. Mr Mould, I think there was a question from Sheryll Murray. Sheryll?

2. MRS MURRAY: Yes. Mr Mould, we know from previous sessions that owners of properties have some flexibility. They can claim exceptional circumstances – that sort of thing. Do tenants have the same protection? For example, the 85-year-old gentleman we heard about, would he be able to make a special case because he’d been resident in that property for a certain length of time?

3. MR MOULD QC (DFT): In principle, anybody who says that they would like some special remedy from the Government as a result of the impact of HS2 is able to bring their case forward. And the Government – because it is required to act reasonably, otherwise find itself being held to account in court – has got to give some consideration to it. But I wasn’t entirely clear as to what remedy Mr Simpson might seek. Mr Simpson, as I understood it, is a long standing tenant of the property that is or is likely to fall within the safeguarded for Phase 2B of HS2.

4. Now, as I understood it, Mr Simpson has no desire to move. He wishes to remain in his property. He’s lived there for many years. He’s elderly and therefore, he would prefer to avoid the disruption of moving. Therefore he would not himself have any interest whatsoever in applying to the Secretary of State to be accommodated in relation to an alternative premises. Whether he has an asset that would have any value if he were to seek to sell it to the Secretary of State, I rather doubt. But that’s not an issue which I need to consider today. If his landlord decided that his property – that is to say the house or the flat or whatever it may be – that Mr Simpson occupies as a tenant – that its value as an asset has reduced as a result of the shadow, blight from HS2 Phase 2B then the landlord may say, ‘Is there any means whereby I can sell my property – my tenanted property – sell it and realise its value without the blight in effect of HS2?’. And I think that was the concern that was being raised.

5. MRS MURRAY: Mr Mould, could I just ask you to expand on that a bit? We’ve
heard in the past that some people have the opportunity to sell a home and then rent it back from HS2; some people – if you were the owner of a property – have the option to make a decision – I think it was a year after the completion of HS2. What other options are open to the gentleman concerned? Would HS2 perhaps purchase the property because it’s in the safeguarded area and then let it to the tenant who didn’t want to move?


7. MRS MURRAY: Would it be open to him to persuade his landlord to retain that property? Would he still be entitled to the moving costs and the compensation up to a year after, if he found he couldn’t live there? I just need to be clear in my head exactly what protections there are for tenants, or if they have no protections on any decisions themselves, it’s all over to the landlord.

8. MR MOULD QC (DFT): As I said before you adjourned from the afternoon session, someone who has a tenancy and who has to give up that tenancy as a result of compulsory purchase of the property within which they live, pursuant to that tenancy, they are entitled to receive compensation. I said to you that in practice, the shorter the tenancy or the shorter the remaining term of that tenancy, the more likely it is that that compensation would consist of the costs they incur in moving elsewhere. But they would also receive at least the minimum of the statutory home loss payments, which is currently set at £6,100 and which is periodically reviewed in accordance with the provisions of the Land Compensation Act 1973.

9. The case that’s been posited is of a long-standing tenant who occupies a house, as I understand it, which is itself within the safeguarded area for Phase 2B. There will be a person who will own the freehold of that house, who will be the landlord of that tenant. The question is whether that person could take up the opportunity presented by the fact that the property is within the safeguarded area for Phase 2B to secure the eviction of this tenant – whether that would provide an opportunity that would not otherwise be available to that person, because for example the tenant was protected under the Rent Act or under the Housing Act.

10. But that opportunity does not exist precisely because the landlord of a property that is let out to another person on a tenancy, as that other person’s home, is not able to
qualify to serve a blight notice. You have to be an owner-occupier either of a freehold house or of a leasehold house or flat which has more than three years to run at the date of service of your blight notice in order to qualify to serve a blight notice. If you don’t occupy, you can’t serve a blight notice. And the same principle applies to all of the Secretary of State’s non-statutory schemes – whether it be the voluntary purchase scheme or the need-to-sell scheme. If the property which is within the rural support zone or which is a home for which the landlord – the freehold owner of that property – seeks to persuade the Secretary of State to buy under the need-to-sell scheme – unless that person is also the occupier of that home, they cannot qualify to make application under any of those non-statutory schemes. Occupation is the absolute necessary minimum requirement.

11. The only exception to that – in relation to the non-statutory schemes – is where the person seeking to sell the property to the Secretary of State is what is known as a ‘reluctant landlord’. And that is a person who was occupying the property in question as their home, had sought to sell it, didn’t have the time to wait to pursue the application under the need-to-sell scheme because they had to relocate urgently – for example, to take up a new employment position elsewhere – and so they were driven in the circumstances to letting out that property that had previously been their home, whilst they pursued an application to the Secretary of State to buy it. In those very limited circumstances, then that person – notwithstanding that they wouldn’t be in occupation at the date of the application – would be able to apply under the need-to-sell scheme.

12. And the tenant in those circumstances would have known full well when they went into occupation of the property under the tenancy that the circumstances in which that property was being let to them were that the owner had previously lived there and had moved only because of the difficulties presented by HS2.

13. So subject to that very limited exception, there is no question of somebody in this gentleman’s position being at risk of being evicted from his property because it falls within the safeguarded area of HS2. Of course, his landlord may seek to evict him for any other reason. But that is not something which the Government would expect reasonably to have to make compensation for because anybody who is occupation as a tenant of any property is always – has to face the fact that their tenancy might be brought to an end for a range of reasons which are available under the law of landlord
and tenant.

14. MRS MURRAY: And so, if his landlord wouldn’t be forced to sell or he couldn’t sell to HS2 because he’s not an owner-occupier –


16. MRS MURRAY: – what about the mitigation of noise, for instance? We’ve heard examples where HS2 will fund double glazing for instance. Would he be entitled to apply for that to protect the well-being of his tenant?

17. MR MOULD QC (DFT): The provision of secondary glazing is entirely tenure blind. In other words, it is focused on whether that is necessary in order to provide acceptable living conditions in the property in question. It does not matter whether the property is tenanted or whether it is occupied by the freeholder or by the leaseholder. If the prediction is that that property requires secondary glazing in order to achieve an acceptable environment once HS2 comes into operation, then it qualifies on that basis.

18. MRS MURRAY: Thank you very much, Mr Mould. That’s very helpful. Thank you.

19. MR WHITFIELD: Just to pursue this a little. There isn’t really an equitable payment for tenants, is there?

20. MR MOULD QC (DFT): It depends what you mean by ‘an equitable payment’.

21. MR WHITFIELD: A figure plucked out of the air to compensate them for losing their tenancy, which is very hard to define because some tenants – from one extreme, a licence holder would have no value in their ability to occupy. And I think one of the difficulties here is – if I am right – and this is my question – one of the difficulties is that when we’re dealing with tenants the compensation is based from an ownership of an asset. And as such a tenant, depending on the type of tenancy they have, may have an asset of very, very small value.

22. MR MOULD QC (DFT): Yes.

23. MR WHITFIELD: There is a homeless payment of just over £6,000 –

25. MR WHITFIELD: – for their loss of their home because that’s that esoteric concept of what home is –

26. MR MOULD QC (DFT): That’s the equitable payment, you’re talking about.

27. MR WHITFIELD: Yes, absolutely. However, it is the case that some people who may come before us, it may be viewed that that payment is very small given their emotional attachment to the concept of home and the length of time that they’ve been there. But there is no real statutory provision to compensate them for that at the moment?

28. MR MOULD QC (DFT): There is. It is the £6,100.

29. MR WHITFIELD: Yes. It’s defined in that sum irrespective of the value an individual who might come before us has of their occupancy of a property.

30. MR MOULD QC (DFT): That’s just an accident of the fact that in this case the powers of compulsory purchase have been sought from the Committee of Parliament. Ordinarily in relation to public works schemes the powers of compulsory purchase are sought under an existing statute. And the Secretary of State appoints an inspector to consider objections to the compulsory purchase. And there’s no question of any debate about whether the home loss payment, which is provided for under the general law, is properly geared towards the circumstances.

31. MR WHITFIELD: It’s a statutory payment, yes.

32. MR MOULD QC (DFT): In a sense, you might say that well, ‘Secretary of State, if you want to promote a scheme through a hybrid Bill process, you’ve got to take the risk that the Committee might take pity on somebody and say that they should have more money’. But I mean, if you’re going to approach this in a principled way, which accords with the rule of law as it’s been set by this very House under general legislation, then you have to accept that the £6,100 is the current sum of money that is judged to be acceptable as the minimum. It’s not the maximum.

33. MR WHITFIELD: No.
34. THE CHAIR: There is an argument that we’re here to look at broad principle. If it was as simple as applying the current law and current rules, there would be no point having us here. I think explicitly – I disagree with you – I think we can and should look at these issues. Whether we come to the same conclusions as the Secretary of State would do, that’s another question.

35. MR MOULD QC (DFT): I’m not judging –

36. THE CHAIR: I think we should look at these issues. If we think it’s unfair and unequitable – the current law – if when the current law is applied exactly to this situation, yet we find the current law not equitable, we should state that. I think that’s what you’re saying, is it not?

37. MR WHITFIELD: I just wonder whether or not the position is actually slightly different in a sense that if the current law as devised was applied for the planning situations where an inspector would deal with it, the very nature of a hybrid Bill is something slightly different to that. In that we open up to allow petitioners to come towards us and say, ‘This is the effect on me’. So, we actually have more scope than an inspector. However, you would of course urge that the calculation be the statutory calculation that’s been devised to apply to a planning situation where a property needs to be vacated.

38. MR MOULD QC (DFT): Indeed. I am not for a minute suggesting that you’re disempowered from considering the merits of each case that comes before you. The case that’s been put before today isn’t one that arises under Phase 2A.

39. MR WHITFIELD: No.

40. MR MOULD QC (DFT): But let’s suppose that somebody comes for hereafter who’s made a petition and says, ‘I want you to direct that there should be a home loss payment in my case of three times the number’ – obviously, you would have to consider whether you think that was justified.

41. MR WHITFIELD: Reasonable, yes.

42. MR MOULD QC (DFT): But I would simply urge you in considering that question to remind yourself – I’m sure you would do – that the more you, in response to
a particular case, urge the Secretary of State to adopt a position that is out of kilter with the general position for compulsory purchase for public works schemes, the more you create the risk that HS2 would be seen to be being unfair in the sense that it provides those affected by it with a better remedy than people would generally be able to obtain in relation to a housing scheme or a road scheme or something like that.

43. MR WHITFIELD: If I was to progress that, one of the differences that might countenance in this is if we take the examples that we’ve heard today. Accommodation is very difficult in this area, unlike some other areas, so that if someone was to leave their short tenancy, their licensed premises, they may have to move a considerable distance to find another accommodation and then have to travel back for work or whatever. There is no element other than the £6,000 that would reflect that, is there, because that wouldn’t be meaningful?

44. MR MOULD QC (DFT): Yes, the disturbance payment. The disturbance payment. If someone showed that as a result of being displaced by HS2 – this of course is very, very far into the future – for the very reason I gave in answer to Mrs Murray –

45. MR WHITFIELD: No, I appreciate that.

46. MR MOULD QC (DFT): It’s very unlikely you’ll be faced with a situation where someone on a short tenancy can say they’ve actually been displaced already as a result of HS2 Phase 2A. But let’s suppose that in three or four years’ time when the works begin and when compulsory purchase begins to take its course in earnest and somebody loses their tenancy because the property within they live or work is taken for the railway, if their case is that they’ve been put to extra expense because they’ve had to move much further from their work and therefore the costs of getting to and from their work – or they’ve had to lose their job – whatever it might be – they may very well have a claim for disturbance, because they would say that there was a basis there for seeking to compensate them for losses that they would not have sustained but for being displaced by HS2. I’m not saying that would definitely be the case.

47. MR WHITFIELD: No.

48. MR MOULD QC (DFT): But the thing I’ve been trying to impress on you during this debate is that the home loss payment is just what the name implies. It is a sum of
money that Parliament has seen fit to make available precisely because those who are displaced – not by their landlord’s whim or because their circumstances change and they can no longer accommodate themselves in a two bedroom flat – but because a scheme of public works requires them to move from the property in which they live – whether they be a freeholder, a leaseholder, or a tenant, a licensee – and have to take their possessions and their family and so forth and move elsewhere, they lose their home on those circumstances and that sum of money is deemed appropriate – the minimum of £6,100 – a maximum of £61,000 – and the range in between which is based on a percentage of value of the property in question. That is the sum that Parliament has seen fit generally to make available as things stand at the moment to reflect that loss. Other losses that result from the compulsory purchase are recoverable in principle as disturbance compensation. And a tenant of a dwelling house is in no different position in principle to the freehold owner of a mansion in that respect.

49. MR WHITFIELD: We can assess that, as a Committee.

50. MR MOULD QC (DFT): Well, you wouldn’t expect to assess the amount – because that’s not your role. That is most definitely not the function of the Committee to start awarding sums of money. That is something that’s dealt with under the compensation code. But exceptionally you can say, for example, as was occasionally done on Phase One, ‘This is a case where there is such an exceptional merit’ – if you like – ‘that some special provision should be made’. But I don’t think they ever suggested that a sum of money – they never directed a sum of money to be awarded. And that would be most unusual.

51. MR WHITFIELD: Chairman, my very last question is, simply being a tenant, is that enough to be atypical for the purposes of the compensation?

52. MR MOULD QC (DFT): Being?

53. MR WHITFIELD: Atypical.

54. MR MOULD QC (DFT): Sorry?

55. MR WHITFIELD: If you were a tenant, is that sufficient to be able to put an atypical claim?
56. MR MOULD QC (DFT): No, because there are vast numbers of people who occupy their homes or occupy their place of work as tenants.

57. MR WHITFIELD: That’s what I thought.

58. MR MOULD QC (DFT): And as I say, the law regards them as just as entitled to receive land compensation for compulsory purchase as a freeholder or a long leaseholder.

59. THE CHAIR: Sheryll Murray?

60. MRS MURRAY: I just want to ask you to clarify, if you wouldn’t mind, Mr Mould. You said it’s not up to this Committee to decide how much money. I appreciate that. But if we were to make a decision because somebody came to us – and this is hypothetical – saying that their life is going to be turned upside down because they have to move and we decide that they have an exceptional case, who decides how much money they are compensated with and on what criteria would that assessment be made?

61. MR MOULD QC (DFT): The answer is it would be – in a wholly exceptional case where there’s no provision under the existing law of compensation – it would be for the Secretary of State to decide. He is the person who is responsible for compulsory purchase under this Bill. And he therefore is responsible for deciding what the sum of money should be. You would say – this would be your function, applying the usual approach that I am used to, from my experience of these things – you would say, ‘This is a person who has impressed us with the argument that unless we step in, they will not have access to a remedy that we think they ought to have’ – whether that should be in kind, they should be provided with alternative premises – or whether it be in terms of a right to claim money. Most of the cases that you’ve heard about are cases where people say, ‘I have a particularly strong reason to sell my property. My property is currently blighted by the shadow of HS2. I am not therefore able to sell it other than at an undervalue which has arisen wholly because of this project. And unless I get some assistance in that, I will find myself forced to accept a much lower price than I ought to receive. And it’s not right to see that just as a risk of property ownership. That’s been caused by the Government promoting a railway scheme. Why should I bear that loss when in order to achieve the public interest of securing HS2?’
62. The Secretary of State has said, ‘I recognise the principle of that complaint. That is why I have introduced the non-statutory schemes in the form of the rural support zone, the need-to-sell scheme and also I have made clear that I will consider on a case by case basis cases which display special or atypical circumstances that don’t fall easily into those more defined schemes.’ And where you can step in, as was occasionally done with Phase One, is to say, ‘We think’ – often you give a very clear steer – ‘this is a property where we think perhaps the Secretary of State ought to think again’. As I understand it, you’ve taken the view that’s how you should proceed because for example a week or two ago when Mr Strachan was sitting here you heard there was a property which had some unusual characteristics – it was a largish property where the petitioners lived in it, but they also had a cottage that they let out – and you were told that they were making an application for it to be dealt with as a special case because they didn’t fall easily within the blight regime –

63. MRS MURRAY: Yes.

64. MR MOULD QC (DFT): – and you were told that the Secretary of State was going to reach a decision on that application. And you were content for that process to take its course but you asked for a report back in case they didn’t receive the remedy they thought they should have so that you could then consider whether you felt the decision that had been reached was acceptable or whether you thought in the light of the decision that the Government had reached you ought to recommend something more should be done. That I would suggest to you is exactly how it should work.

65. THE CHAIR: I think we’ll continue to do that –

66. MRS MURRAY: Yes.

67. THE CHAIR: That will be our default position. However, we will also, if we think that a system is inadequate we will state that through the Committee’s report and send a very direct message to the Secretary of State that we think he’s got it wrong, if we do, or if he should reconsider a whole swathe of compensations in principle.

68. MR MOULD QC (DFT): Indeed so.

69. THE CHAIR: But we’ll try to do that at a high level or do it on a very case by
case level and give the Secretary of State through yourselves and your good offices the opportunity to come back and tell us the broader implications, why we might be wrong and how this is going to ride a coach and horses through everything. But I think we’re finding our way. Sherryl Murray?

70. MRS MURRAY: I just wanted to make sure that what Mr Mould has outlined is applicable to tenants as well as property owners.

71. MR MOULD QC (DFT): Ms Sandbach is setting her net. All I do is make submissions to you on the basis of my understanding of the law. And I happen to practice in the field of law and I’ve done quite a lot of work in it. But I mean that doesn’t mean I’m always right. I’m often wrong.

72. MRS MURRAY: Mr Mould, if you could just say yes or no, that would be acceptable?

73. MR MOULD QC (DFT): Yes. That’s a way of saying yes. It’s a lawyer’s way of saying yes.

74. MRS MURRAY: Thank you very much.

75. THE CHAIR: Thank you. Could I confirm, Mr Mould, you’ve finished your remarks before I give the petitioner a couple of minute right to reply? I don’t want to cut you off.

76. MR MOULD QC (DFT): No, no.

77. THE CHAIR: I think you have finished?

78. MR MOULD QC (DFT): I’ve probably said enough.

79. THE CHAIR: I don’t think there’s any questions from the Committee? Your opportunity just to come back. I was lenient with the previous petitioner, but if we can keep it to two or three or minutes, that would be the traditional way of doing things?

80. MS SANDBACH: I appreciate that. But there have been a number of assertions made by Mr Mould which I really must address. So, Mr Ewen Simpson’s property is owned by a charity. The trustees have a duty to preserve the assets of the charity. They
are therefore required to serve him a notice to quit and to get into occupation before serving a blight notice. In those circumstances, as was rightly outlined by Mr Whitfield, the difficulty is finding equivalent property in the area at the equivalent rent that he was paying. And that is where the problem lies. So, I would just highlight that there are circumstances where both the tenant and the landlord, or owner, are not covered by the existing legislation. The same applies to farm business tenancies where for a long period of time people will have been in occupation. They are like hen’s teeth in my part of Cheshire – a farm business tenancy – to be able to get hold of that. Where a tenant may have made improvements – buildings, agriculture buildings for example – on the land, which have been written down over a period of time and they notionally, in the tax brackets, have a low value. But to try and get the equivalent property in the area, where their children go to the schools, is incredibly difficult. I would refer you back to what I said about broadening the atypical properties to cover tenants not covered by existing compensation scheme.

81. And I would argue that in effect HS2 or the Secretary of State should be paying compensation where there is clear evidence that somebody cannot secure a similar property of a similar type at a similar rent. And whilst there may be a notional legal remedy, none of these people have the means to employ Mr Mould as their QC to argue the case on their behalf. And that is why I would argue that this Committee should look very carefully at how – access to justice should be as easy and as simple and as straightforward as possible. And should not be through complicated applications to the court, which are expensive and where there’s a massive inequality of arms in terms of the availability of resources.

82. Can I just point out a second case? I know that Mr Mould talked about a reluctant landlord. I’ve had a constituent on a need-to-sell scheme – they were a young family, they’ve had more children. They couldn’t fit in their property. They’ve had to move and rent another property and they are trying to sell, or have tried to sell, their property to HS2 on the basis of reluctant landlord under need-to-sell and it was refused. The need-to-sell applications in Eddisbury are only running at a success rate at 17%. And HS2 is taking an extremely strict interpretation to the criteria. So, I would argue that anything this Committee can do to broaden out the definitions and make sure that there is a sympathetic ear from HS2 rather than a very delineated and – I try not to say
‘blinker – approach would be very well received. I know that what this Committee
decides in relation to Phase 2A is likely to be the standard that will apply in Phase 2B.
And that’s why I’m here on behalf my constituents.

83. THE CHAIR: Thank you very much for your evidence. And thank you Mr Mould as well. Just in terms of the order, I’m going to call Janet Clowes next. Apologies if I’ve mispronounced your name. I’m then going to come to you, Mr Mould, for a potential statement on the NFU – if that’s?

84. MR MOULD QC (DFT): Yes. I don’t think there’s any particular need to do that today.

85. THE CHAIR: Alright. I’ll cross that off.

86. MR MOULD QC (DFT): Yes.

87. THE CHAIR: And then we’ll move to David and Hazel Cliffe. Thank you very much. Thank you for your time, for petitioning. The floor is yours.

The Wybunbury Combined Parishes Neighbourhood Plan Steering Group

Submissions by Ms Janet Clowes

88. MS CLOWES: Thank you very much. And it’s been fascinating listening to proceedings so far. I did come prepared to give a presentation of our evidence. However, due to meetings that took place earlier today over in the Department of Education with the promoter, the letter of assurance that we received last week in relation to two of the areas of concern, they have been met. And at the time that we accepted that letter of assurance there was still one or two issues that hadn’t been covered. We were able to cover those this morning and consequently we are satisfied that in terms of forward progress this letter of assurance will go forward to additional provision. And obviously at that point if the chairs of the parish councils that I represent feel that not enough has been done, they have the opportunity again to go to consultation and possibly petition again. I think what has been really helpful in this is the dialogue that has taken place. But then that hasn’t actually come as much of a surprise because we’ve been in really quite positive dialogue with HS2 for the last four years.
89. But importantly, I would ask – and it’s not in this letter – but as an additional request that we continue to have not just liaison between HS2 and residents and local authorities but that it is made explicit that engagement with parish councils such as the accumulation of parish councils across the ward, is made, if you like, the rule rather than the exception? There is no doubt that the local knowledge of our parish council chairs had been invaluable in this process. With that, I would like to make sure if it’s possible that the exhibit is logged in the normal way; the result – as a result the letter of assurance – is logged; and that the promoter themselves would confirm that is the situation before I leave today.

Response by Mr Mould

90. THE CHAIR: Mr Mould, can you confirm that is the situation?

91. MR MOULD QC (DFT): Yes, I can.

92. THE CHAIR: Thank you.

93. MR MOULD QC (DFT): If you just go on to the next page, I’ll just show you the assurance. You’ll see at the top of the page that the substantive assurance is the third indented paragraph relating to the promotion of an additional provision to upgrade the proposed site haul route. I won’t read the entire assurance out. But what I can confirm is that will be entered on the register of undertakings and assurances and it will therefore form part of the binding commitments with which the nominated undertaker must comply upon enactment of this Bill.

94. THE CHAIR: And the petitioner is nodding. The petitioner is happy?

95. MS CLOWES: I am very happy. The only thing I would say is that I know you’re very, very busy but if you ever do have the opportunity to look at the evidence, there are some really wonderful photographs of the whole of the Wybunbury Parish Council area and you will understand why we are so passionate about preserving it.

96. THE CHAIR: Thank you.

97. MS CLOWES: Thank you.

98. MR WHITFIELD: Can I just clarify, Mr Mould, including the parish councils, as
people who will be consulted? That’s also –

99. MR MOULD QC (DFT): Yes. I think I’ve already drawn your attention in the past to the code of construction practice and what is said there about consulting with representatives of the local community in relation to local environmental management and traffic planning.

100. MR WHITFIELD: Yes.

101. MR MOULD QC (DFT): And certainly in the present case I haven’t the slightest doubt that the very good work that you just heard about will continue to flow from that relationship.

102. MR WHITFIELD: I’m grateful.

103. THE CHAIR: That’s great. Thank you very much. No further questions? Thank you for petitioning. We will now call David and Hazel Cliffe.

David and Hazel Cliffe

104. THE CHAIR: Welcome to the Committee. Sorry, in normal life, 7.30 seems quite an odd and anti-social time. We’ve become far too accustomed to it in the House of Commons, working at strange hours. So, thank you for fitting us in at odd hours. I don’t know whether to call yourself, David, or Hazel first but –

105. MR CLIFFE: Hazel.

106. THE CHAIR: We’ll give you a few minutes to sort yourselves out and then we’ll call Hazel Cliffe. Don’t worry about the Committee. We’re here to hear the best evidence, to make the best decisions. So, we may look scary, but we’re normal people.

Submissions by Mrs Cliffe

107. MRS CLIFFE: I don’t think this will be as complex as some of the issues you’ve been hearing so far.

108. THE CHAIR: Okay. If you tell us what you want and give us some evidence, we can do the rest on your behalf? And this is your property. We’ve got a nice picture.
109. MRS CLIFFE: First of all, can everybody hear me because my husband always says I speak softly?

110. THE CHAIR: One shouldn’t always listen to one’s husband. Perfect.

111. MRS CLIFFE: Good evening now, Mr Chairman and fellow members of the Select Committee. My name is Hazel Cliffe. I’m presenting this petition on behalf of my husband, David Cliffe, and myself. Our petition number, if you need it, is HS2-P2A-082. We have a farming business near Lichfield. We are the freeholders of the farm. In addition we have a bed and breakfast business in the farmhouse. Can I have exhibit 003, please? Branding for our bed and breakfast. Thank you. In a former brick barn which we have converted to commercial use, there is a design business and a bridal business. Could I have exhibit 004, please? Those are the people working in the design business. I do think that motto at the back is rather pertinent at the moment. Could I also have exhibit 005, please? That shows you the very nice bridal salon in the brick building. It was a pig sty, I’m told.

112. Also, can I have exhibit 006? In a former corn store, we have a car sales business. They specialise in selling high-end, pre-owned cars. We’ve seen Maseratis, Bentleys, Porsches, Jaguars, Range Rovers and so on. The better ones are stored under cover. All of these businesses have come here because it’s quiet, peaceful and a very pleasant environment to work with clients, where attractive surroundings are important to them. They are all in presentational businesses. Bed and breakfast guests particularly make two comments. First of all, ‘Isn’t it quiet here?’ and secondly, ‘Aren’t Staffordshire and Lichfield nice?’ I think they think or did think Staffordshire was nothing but the M6 joining the Black Country to the potteries.

113. THE CHAIR: How many rooms have you in the bed and breakfast?

114. MRS CLIFFE: I just do two rooms.

115. THE CHAIR: Two rooms?

116. MRS CLIFFE: Yes. Now, in this petition I’m going to talk about our location, a description of the farm, how we’re affected, borrow pits, Common Lane, access, inappropriate mitigation, the farm drive, the code of construction practice and finally
make a conclusion, draw some conclusions.

117. MR WIGGIN: In that lot, will there be what you would like us to do, please?

118. MRS CLIFFE: Absolutely.

119. MR WIGGIN: Brilliant. Thank you.

120. MRS CLIFFE: First of all, I’d like to show you briefly where we are located. So, exhibit 007? You can see Lichfield, which is a lovely small city with a medieval cathedral. Right above it, halfway up the page, is A – at Riley Hill, which is where we are, just off the A515 to the left. Just north of that, just a smidgen, is that yellow small road, which is Common Farm, which will also feature in our petition. The next map is produced by HS2, 008. This shows you a map of the track of HS2. Once again, Lichfield is at the bottom right hand corner. And from there, there’s two lines going up more or less through Trent Valley. One is a grey line, which veers off to the left there. That’s the route of Phase One. And just before that is where Phase 2A begins. And A there is where we are. I’ve shown that map because we were affected by Phase One for quite some period of time and now we’re affected by Phase Two.

121. THE CHAIR: Can we get up P345 as well? That seems to be clearest in my mind – one of the HS2 exhibits. You’re right in the middle of things, aren’t you? Is there anything left of your property?

122. MRS CLIFFE: A bit.

123. THE CHAIR: Sorry, I don’t mean to be glib. I’m just trying to understand.

124. MRS CLIFFE: No, no. I’m coming to it. Now, we have an arable farm of 86 hectares. We grow winter wheat, oilseed rape and potatoes principally. We have woodlands, some of which we have planted ourselves. There is an additional 9.6 hectares owned by David and his sister, Mrs Joy Fielding. But that doesn’t feature today. We organise pheasant shoots over the farm and the adjacent one, owned by David’s sister, which are valuable to the environment. This may not be possible during the construction period for safety reasons and due to the extent of land take. The Cliffe family moved to Kings Bromley over 100 years ago and have farmed the land where we are now continuously since then. That’s three generations to the present. As well as the
woodlands we have planted, we’ve also put in a considerable length of hedgerows over the time. Exhibit 009? That shows you some of the woodland that we’ve put in. And you can see the blue pheasant feeder in the middle of the picture there. Thank you.

125. Now, I’m going to go on how we are affected by HS2. Exhibit 010 please? This is an HS2 map of the farm but I have taken three pages of the map book and stuck and pasted so that I can show everything on one diagram.

126. THE CHAIR: Thank you for that.

127. MRS CLIFFE: Sorry?

128. THE CHAIR: Thank you. That’s helpful.

129. MRS CLIFFE: I mean to cut and stick.

130. THE CHAIR: Quite.

131. MRS CLIFFE: There are two parcels of land outlined in black. If you look at the larger parcel of land, the farmhouse and the surrounding buildings are also outlined in black. Thank you.

132. THE CHAIR: That’s the farmhouse that you –

133. MRS CLIFFE: That’s the farmhouse. And it’s also the outbuildings where we’ve got the bridal business, the graphic designer and the car sales –

134. THE CHAIR: Is that where you live?

135. MRS CLIFFE: That’s where we live. Yes.

136. THE CHAIR: And who else? There’s the two bed and breakfast, does anyone else live there?

137. MRS CLIFFE: No, no other residents, no. It’s us and the businesses. Now, you can see our land is being used for both permanent and temporary land take. In particular, we have two borrow pits. I know they’re under review at the moment – but there’s one at A, up there, on a separate part of land, and there’s one at B, which is part of a much bigger one. Running between the two borrow pits is the railway track. Thank
you. We have a viaduct at C, an embankment at D – which would be up to nine metres high, even before the track and the gantries are added on. A Routemaster bus, I looked up, is 4.4 metres high. Stack them one on top of the other and it’s going to be even higher than that. We have a temporary materials stockpile at E – soil dump. At F, we have use of the farm drive for various things. We have road widening of Common Lane at G. At H, we have road widening of the A515, with all the resulting traffic restrictions. We have an issue with access to our farm drive at J. We have a temporary roundabout up in the top left hand corner at K, where the A513 and the A515 will meet. We’ve had an additional provision served upon us and we expect perhaps one or two more.

138. Now, we’ve got post-construction, which is A011. Here we go. We have at A and B mitigation along the farm track. We have other areas for mitigation around what might be the former borrow pit – E, F and G. We have concerns about that black stripy area there, which will be very awkward to get to and to farm. And along the Ashby Sitch, which is a brook, along there, we have extensive mitigation planting. It goes from H up to J and right up to the canal. I haven’t quite got the canal on the map, but it’s not really terribly important.

139. THE CHAIR: Can you just highlight your property on that map? I’m struggling a little. Oh, right, back around there. Sorry. Got it. Thank you.

140. MRS CLIFFE: Is there any other clarification you need?

141. THE CHAIR: I’m grateful. Thank you.

142. MRS CLIFFE: Now, we’re going to look at particularly issues. Borrow pits. We are aware that there has been an assurance given to the NFU when they appeared on 30 April in which HS2 admitted they’d overestimated their requirements and their ground surveys had not been carried out. We welcome the assurance, given that, following their review, they will consult with the NFU and the affected landowners where borrow pits are proposed and they will report back before the proceedings in the House of Commons Select Committee are concluded. We welcome this and make the following requests.

143. And I do like yes/no answers, not paragraphs, please. First of all, when consulting with the affected landowners it is done face to face on an individual basis. That’s one
request.

144. THE CHAIR: We’re not going to give you running decisions as you go along. Make your case. Sorry, are you waiting for me to answer your question?

145. MRS CLIFFE: Well, I’ve said the request that when consulting with the affected landowners on the borrow pits it’s done face to face and on an individual basis. That’s the first request.

146. THE CHAIR: Okay.

147. MRS CLIFFE: The second one is if we are still affected that we will have the right and opportunity to object before the House of Commons Select Committee.

148. MR WIGGIN: Which is now.

149. MRS CLIFFE: Well, no, it’s not now.

150. MR WIGGIN: We are the House of Commons Select Committee.

151. MRS MURRAY: That is what we are.

152. MRS CLIFFE: Yes, I know, but the borrow pits have been referred back to review.

153. THE CHAIR: Sorry, just to be clear to petitioners, it’s your opportunity to petition us, not to ask a series of questions. So, make your point. Say you want HS2 to answer these questions. You want us to consider. But we won’t throughout the process keep coming back to you. Our job is to listen to you and eventually we’ll produce a report. We may ask you questions but we won’t answer your questions today. Sorry, that’s just not our role and the way it works.

154. MRS CLIFFE: No. Okay. I would just like to make some comments about these borrow pits because they are so important to us.

155. THE CHAIR: Absolutely.

156. MRS CLIFFE: Alright. I shan’t ask for any requests after this but I do want to make some statements. That’s okay?
157. **THE CHAIR**: Absolutely.

158. **MR WIGGIN**: To be fair – sorry – to Hazel, you can ask the questions but we can’t necessarily answer.

159. **MRS CLIFFE**: Oh, okay.

160. **MR WIGGIN**: That’s what the Chairman was saying.

161. **MRS CLIFFE**: At present, as things stand at the moment, 26 hectares of our land is affected, which is over a third of the farm. Now, just to gain an idea of what this looks like, because I can’t visualise 26 hectares, I’d like you to bring up slide 013.

162. **THE CHAIR**: Very good.

163. **MRS CLIFFE**: I like that one. Yes. An area familiar to you, River Thames on the right, Westminster Bridge at the top, Horseferry Road in the bottom and Lambeth Bridge, and I think it’s Marsham Street on the left hand side. And the Houses of Parliament, or Palace of Westminster, there. The larger black rectangle shows you how much of our land is affected roughly. The smaller, slashed area shows how much of it would be borrow pit. These are approximately. I was trying to think of some way of showing you, in a way you could appreciate what’s involved. That will be huge and it’s going to be repeated all over where we are.

164. Here is a photo of what a borrow pit could look like. That was 012. That – well, that is one of them, yes. And they’re absolutely hideous. I took a photograph of that very close to be where we are, in Alrewas. I couldn’t go any closer to find one where people were working. We’re not allowed to. I know Tim Troman presented a report to the NFU and I’m going to poach from it. First of all, HS2 have overestimated their requirements by 30%. There’s no need for the majority of borrow pits along the route of HS2, particularly in the Kings Bromley area. There’s 40 million tonnes of sand and gravel reserves in the Kings Bromley area. HS2 only need 8 million, which is about a fifth. So, why are they creating more quarries? Most importantly, the sand and gravel requirements could be met from existing local quarries without significant impact on local communities.

165. If we look at the environmental issues – could we just look at A015? The farm on
the left is not mine. It’s Woodend Farm. Half of that big yellow field at the front will be for a borrow pit. The brown field behind has not got potatoes in it. And the railway will go from the bottom right, diagonally across to the top left of that brown field. And – if you move the cursor to the left there, into that yellow field – that at the moment is one of the borrow pits, which is ours. You can see it’s an agricultural area, which is a joy to look at. If we now go on to slide 016? In that field we’ve superimposed a picture of a borrow pit. What an ugly thing it is in the middle of that landscape.

166. One or two other issues, the borrow pits are not included in the Staffordshire local minerals plan. Their use conflicts with the adopted local plan policy. Already existing sites and additional reserves allocated under Staffordshire’s plan have already undergone rigorous environmental assessment. The proposed borrow pits have not. The proposed borrow pits will use greenfield sites rather than existing ones, removing valuable agricultural land. Replacing the sand and gravel with Mercia mudstone, which is what HS2 propose, and other materials imprecisely described is totally inappropriate and alien for the local environment. It will be completely at odds with the local soil. Mudstone, I understand, is some kind of clay and we’re in a very sandy, free draining area.

167. Another issue is that borrow pits, even when restored by HS2, would not return to the same level of agricultural productivity for a very long time. The NFU said ‘a very long time’. I’ve heard 10 years. I’ve heard 20 years. So, it’s not just going to be affected in the short term but for many years to come.

168. Another issue, finally, that we wish to bring up to your attention is the guidelines setting out the issues surrounding extraction and compensation for it. I don’t want to get heavily into compensation. But we do know that we own the mineral rights and I know other farmers around us do not. And we wish and expect to be paid a fair value for the amount of gravel extracted. So, that brings us to the issue of how is the amount taken monitored? How is it quantified? And how are we paid for it? It is an asset of ours. We’ve had borings done on one of the fields and we have the records of that, don’t we?

169. MS CLIFFE: Yes.

170. MRS CLIFFE: Yes. I don’t wish to say any more than that because it’s under review. But I did want to bring all those matters to your attention.
171. MR WIGGIN: When you said, ‘It’s under review,’ have they made you an offer?

172. MRS CLIFFE: No.

173. MR WIGGIN: No, they haven’t.

174. MRS CLIFFE: No, no, no. It’s just that I know that the whole issue surrounding borrow pits and HS2 having them has been referred.

175. MR WIGGIN: To some extent, yes, that’s right.

176. MRS CLIFFE: Yes. Common Lane. Exhibit 018, please? Now, we are aware that following the appearance of Wayne Bull and Julia Allsopp on May 9, HS2 have undertaken to restrict the use of large goods vehicles using Common Lane from the A515 right down to where they live, which is about where D is. Yes. And beyond – yes. We welcome that. We understand that utilities and mitigation traffic, for example, will however still use that. What we are concerned about is that we shall have unfettered access for our farm traffic from C. Our farm traffic goes along the main road, along Common Lane, and then goes right down that drive there, which is the farm drive. Okay? And it turns in at A. We want to make sure that even though HS2’s got this other traffic still that we shall be able to access the farm.

177. We’re also concerned about the Pyford north embankment satellite compound, there. We have five or four requests. The first request is that satellite compound is moved closer to the A515, where the access to it is going to be. I wasn’t quite sure if that had been agreed or not.

178. THE CHAIR: I think so, but let’s let Mr Mould clarify rather than go on –

179. MRS CLIFFE: Yes.


181. MRS CLIFFE: It’s obviously really, it seems to us, to move it nearer to where the access is from the main road. We ask that the access to this compound is always from the old A515; workers going to the compound always use the A515; and workers for the other compound, which is the Pyford Brook Viaduct satellite compound – slide A022 – yes, it’s that one over there – yes, it’s quite a long way over to what I call ‘the east’ – we
request that they too do not go down Common Lane. I’ve forgotten – is it 50 or 90 of them working there? By the time they’ve gone there and gone back, that’s another 80 traffic movements on that road. And it is only single lane. So, those are my requests: access to the compound is always via the old A515. Is that a yes or a no?

182. THE CHAIR: Sorry, that’s not the way it works. You’ve made your requests. We come back in a report.

183. MRS CLIFFE: Okay. Right. The second one is the compound is moved closer to the old A515. That’s right.

184. THE CHAIR: We’ve got those five –

185. MRS CLIFFE: You’ve got all that down?

186. THE CHAIR: We’ve got those five requests.

187. MRS CLIFFE: So, I can move on?

188. THE CHAIR: That’s register and there’s a transcript so we can go back over as can HS2. So, yes, press on.

189. MRS CLIFFE: Okey-doke.

190. MR WHITFIELD: Can I just ask actually while we’re on this, chair? Where your residence is – obviously you’ve got that road connecting you to Common Lane, and you’ve got the road that runs in front. That junctions on to the main road, doesn’t it?

191. MRS CLIFFE: Yes.

192. MR WHITFIELD: What sort of junction is that? It’s obviously a T-junction.

193. MRS CLIFFE: That drive running between the main road and our farmhouse is a tarmacked drive. When we converted the buildings, we did have to improve the splay – I think they call it.

194. MR WHITFIELD: That’s presumably the one the businesses use, is it, rather than up through Common Lane?
195. MRS CLIFFE: Yes. Yes, perhaps I haven’t explained it properly. That drive is purely for us and for people going to – visitors – by the farmhouse to use.

196. MR WHITFIELD: Yes. It’s your private road, effectively.

197. MRS CLIFFE: It’s a private drive. There’s absolutely no farm traffic uses it. The farm traffic has to go along the 515, along Common Lane, and down across that track there, and then on. There is a gate by our house which stops people going any further, from the road, past the house. Okay?

198. MR WHITFIELD: Thank you.

199. THE CHAIR: Yes. Carry on.

200. MRS CLIFFE: Okay. Right. This brings me to the closure of Common Lane and access from the north side of the Common Lane on to the A515. I think you’ve probably heard about this already, have you?

201. THE CHAIR: Yes.

202. MRS CLIFFE: To some extent. Yes. It’s been the subject of many meetings with affected parties and landowners, local residents of Crawley Lane and Common Lane – parish council, local council, county councils – for quite some foreseeable period of time. Could I have exhibit 023 please? I think last autumn there were various proposals put forward to solve the problem. And it’s got the Staffordshire County Council logo on it. All those five proposals – there are five, not four – were variations of the same theme really. Traffic came off the Common Lane, went north along the embankment, went around the end of the embankment, just where the embankment and viaduct meet, and then came down and joined on to the A515. We supported those proposals and I’ve said that in my petition. HS2 immediately rejected it.

203. I understand the reason they reject it is because they said there wasn’t adequate height under the viaduct. But I find that a rather strange comment because it doesn’t quite tie up with what we’ve been told in the promoter’s response to one of our points. And they have said that underneath the viaduct we will have access to – can I just show you with the pointer where I mean? This little bit of area here is ours. That bit there. It’s a very small area now. But the promoter did say we would have access. There was
sufficient height under the viaduct there. So, I don’t quite understand how farm vehicles could get under there but it wasn’t acceptable there. That’s just a comment. Now, if you go back to exhibit 018?

204. There is the original proposals. The black line going along the top of the soil dump and then around the side there. Now, very regrettably when I was doing some work on this, I misunderstood the map. And where you see the bottom orange triangular point for the borrow pit, I thought that was the end of our field. So, I suggested as a second suggestion in the petition – it wasn’t the first one – it was the second one – that the access on to the A515 went along there and joined up with some kind of road that HS2 have put there. Well, I’ve realised that I made a mistake as it would cut right across our field. Obviously, I don’t want the proposal to stand.

205. THE CHAIR: Okay.

206. MRS CLIFFE: Can I have that minuted?

207. THE CHAIR: Everything is taken down.

208. MRS CLIFFE: Okey-doke. So, I request the proposal be removed. Sorry about the paper shuffling; I prepared all this before some of these assurances were given and changes were made.

209. THE CHAIR: That’s okay.

210. MRS CLIFFE: The next issue I want to discuss is access. Could I have exhibit 024, please? Under the current proposals we may have difficulty accessing our property or our farm at A because of all the roadworks there. And that’s the access that we use to get to the farmhouse and our visitors use to get to their businesses. Now, we shall no doubt be plagued by traffic lights, resultant queueing, lane switchings, single lane and so on whilst this is being done. We need to guarantee that visitors near the farmhouse and our bed and breakfast clients have access both weekends and weekdays for themselves and their clients. The car sales people and the bridal people particularly work at weekends. Undue delays and access difficulties will have an adverse effect on all their concerns. We don’t want to lose our tenants as it would be very difficult to re-let the premises with all the protracted disruptions. The income for us from these enterprises is
very significant. Not only that, but if the tenants vacate the premises and we are unable to re-let them, we are liable to the full rates on the empty properties for an indefinite period of time, which would be very costly. Our request is we have full unrestricted access during the construction phase. Secondly, we should have a nominated person or telephone line available 24 hours, seven days a week for ongoing communication. It’s sod’s law that any problems which will arise will occur outside the nine to five working hours with a project of this size and complexity. We’re just being realistic about things.

211. THE CHAIR: Sheryll Murray’s got a question.

212. MRS MURRAY: Do you mean a 24 hour accessible telephone number rather than telephone line?

213. MRS CLIFFE: Number. Thank you. Yes. And you want to have a voice at the end of the line, not an answering machine, because the problem won’t get solved and then tempers get frayed, things get delayed and so on.

214. Our third request is that HS2 have meetings with us very early on and before they start doing any construction or roadworks so we agree a practical way forward to ensure we have access at all times.

215. Post-construction, exhibit 025. Now at A, which will be the restored borrow pit, it’s completely hedged in, no gateways left anywhere. At B, we have that very awkward area there and I don’t know quite how we’re going to get into that. At C, that field is hedged in as well. It’s got trees all down one side and the hedge running along the bottom. Where I’ve drawn that black line is fencing going around it. So, we need access to that field. Just on the other side of the brook, the ditch, the field below that has also got a hedge all the way along it, helpfully, so our request is that we have access to –

216. THE CHAIR: Yes, Sheryll Murray’s got a question.

217. MRS MURRAY: Yes. All the other fields seem to have hedges going all the way along them at the moment. Do you not think it’s perhaps just the way the diagrams being put? I can’t see any gates shown on a lot of these.

218. MRS CLIFFE: No, but you can’t see any hedgerows on them either, can you? Sorry, I’m not actually addressing your remark.
219. MRS MURRAY: I’m thinking, up in that corner, that looks like a hedgerow?

220. THE CHAIR: The point you’re making is that you want access to all your areas?

221. MRS CLIFFE: We do.

222. THE CHAIR: You don’t want compensation for them, you just want access to them, an assurance.

223. MRS CLIFFE: Yes.

224. THE CHAIR: I think HS2 will get that message and will respond accordingly.

225. MRS CLIFFE: It’s a very simple request.

226. THE CHAIR: Yes, absolutely. Where the hedgerows are and where the gates are currently – there’s a level of detail we don’t need – you just want access and assurance of access.

227. MRS CLIFFE: Okay.

228. THE CHAIR: Good.

229. MRS CLIFFE: Now we get onto inappropriate mitigation measures on the farmland – exhibit 026. Four separate areas we’ve got here. Firstly, along the Ashby Sitch – a sitch is a brook. HS2 say they wish to create woodland habitat along the Ashby Sitch to enhance local ecological activity and in particular to compensate for losses at Shaw Lane, Gap Wood. The area required is 2.9 hectares. Shaw Lane, Gap Wood, according to the local ecology manager, is only losing 0.4 hectares. HS2 say it’s 0.3 hectares. Shaw Lane, Gap Wood is over half a mile away and it’s on the other side of a main road from the Ashby Sitch. 2.9 hectares is 4% of our land holding. We’ve lost other areas for track, road widening and so on and all of these just continually eat away at the land area and the viability of the farm.

230. What HS2 have done is taken some of our land for the track, destroying some woodland as they do so – so they’ve taken some land for that; then they want to take some more land to replace the trees they’ve taken down; then they’ve taken more land to compensate for the woodland destroyed at Shaw Lane, Gap Wood, which is nothing to
do with us and a long way off; and then to add insult to injury, they add on a bit more land for good measure. I call that ‘a quadruple whammy’. They have stated that they are destroying over 100 hectares of habitat but creating over 300. Some of it is here. We request that they remove it. We’re not against trees and hedges; we’ve planted considerable woodlands ourselves.

231. We did receive a U&A letter at the end of the last week in connection with this. It was on the blue and grey plans. I don’t know if you’ve seen it. I haven’t had time to put it on as an exhibit. But it’s in various shades of grey. It’s got numbers written on it in the minutest writing. And it’s inexplicable. There’s no key with it really to explain what’s going on. So, I’ll make that point. It’s not related – when we’re doing all our work, all our discussion and arguments have been based on the map books that we’ve got there. That’s a completely different –

232. THE CHAIR: Perhaps later on when HS2 make their reply we’ll ask if possible that is put up and we’ll get an explanation of what it is. I don’t really want to discuss it when I can’t see it.


234. THE CHAIR: But I think your point is made. Pass it down and they’ll try to find it for later on.

235. MRS CLIFFE: I think Mr Mould may have something to say about it.

236. THE CHAIR: Thank you, Mr Mould. Back to you, Mrs Cliffe.

237. MRS CLIFFE: In connection with that, this letter of undertaking and assurance referred I think to an area of land which they suggested be removed for mitigation. It’s not clear where it is and wasn’t even an area we discussed at our meeting with HS2 last week. It is actually an area we think we would like to – there at the moment – we would like to keep.

238. The next thing is on that same diagram, 026 – yes – I’d like to now look at the area along the Pyford Brook, to the right of the picture there. Very extensive area there. That’s not on our land holding. HS2 wish to create a 600-metre length of woodland, wetland and grassland habitat. And that would be between the brook, the Trent and
Mersey Canal, running along south, and the railway. We wholeheartedly support Mrs Fielding’s request to relocate that. It’s a huge chunk of land to take from her and we thought it would be a good idea if it went on the other side of the brook at G, because it’s going to be a very similar habitat. The area is bounded by the Pyford Brook, the canal and the railway. It seems to be a standalone area. And actually, going along there, people using the canal and the towpath get a better chance of enjoying it than they would where it is at the moment. And the people in the railway would be able to see it as well.

239. Our third area is roughly where F is. HS2 have proposed a hedge from here, running along there. I can see why they’ve done it. It’s on the edge of where they think a borrow pit’s going to go. So, it makes sense from their point of view. However, we would like it to go where this black line is – for various reasons. One is – that’s where the edge of the field used to be, so you’re marking out the field again. Secondly, that black line shows where our farm ends and the next door farm begins. That’s important to show ownership in a physical way. And also we would remove that rather pathetic, little triangular area F, where a little bit would be in our land and very awkward to farm – something which is triangular in shape, especially that size. So, our request is that that hedge, as HS2 have put it, is re-positioned where I’ve marked it with a black line.

240. THE CHAIR: Okay.

241. MRS CLIFFE: Lastly, can I have exhibit 011? E, F and G in that big field in the top there – right – at F in the top there, a strip of trees has been proposed, 20 metres wide, yet again taking out production of farmland. It measures I think about 0.2 hectares. The way it is put in makes that end of the field a more awkward shape, which directly contradicts HS2 policy of when using mitigation tree planting to limit disturbance to holdings and farm management; to use severed land where possible – and that was in the response from the promoter to our petition. We request that they remove it. There were trees there. We’ve planted a very substantial hedge along there. I don’t think they need trees. It’s taking more money. It’s taking more land from us all the while.

242. THE CHAIR: Before I go to Mr Mould, can I just ask you one question? There are an awful lot of detailed amendments and requests – some of which HS2 may be able
to handle, some not. At what point does the farm and the property not become viable and you’re looking for compensation? For the whole thing. Are you not asking for that because you don’t think it’s likely that it will be granted or it’s because it’s something you’re desperately trying to avoid? Is it an option on the table in your mind, notwithstanding the view of the Government, the Secretary of State and HS2?

243. MRS CLIFFE: Well, everything’s so much up in the air, because we haven’t received a definitive proposals on the borrow pits.

244. THE CHAIR: It is a possibility that you would consider having your property purchased?

245. MRS CLIFFE: I think it’s one of the things we might consider. We’re trying to consider –

246. THE CHAIR: Martin, a question?

247. MR WHITFIELD: Sorry, I was just going to ask if the borrow pits go along as the propose – and I know undertakings have been given to the NFU saying that they might be larger on the map than they actually need – but if they go ahead as proposed, would that make your farm viable during that period of time?

248. MRS CLIFFE: I don’t think so, no.

249. MR WHITFIELD: So, the only return you would then get is because you own the mineral rights – the compensation or the payment for your assets, but that would probably not offset the financial farm loss, would it?

250. MRS CLIFFE: Is that true?

251. MR CLIFFE: Yes, I think that’s right. Mm-mmm.

252. MR WHITFIELD: Yes.

253. THE CHAIR: Sheryll, have you got any questions?

254. MRS MURRAY: No.

255. THE CHAIR: Bill?
256. MR WIGGIN: I’m saving mine up for Mr Mould.

257. THE CHAIR: Right. We’re going to come to Mr Mould and let him have a crack at it. I will come back for one or two minutes at the end for you to come back.

258. MRS CLIFFE: Okay. Right. I’m getting towards the end –

259. THE CHAIR: Mr Mould?

**Response by Mr Mould**

260. MR MOULD QC (DFT): I’ll try and work to the petitioner’s own exhibits. So, if we go back to A138(10)? Let’s look at the issue of the borrow pits first of all. I’m not going to rehearse with you the reason for identifying these areas for mineral extraction.

261. THE CHAIR: Thank you.

262. MR MOULD QC (DFT): You’re aware that the principal driver for this is seeking to put a limit on the amount of construction traffic on local roads. You’ve got the review very much in mind. I should say the position of the promoter in relation to the review is firstly that the commitment is given to the NFU that it is intended to be for the benefit of all landowners whose land is subject to powers of extraction. That clearly includes the Cliffes on this plan. And the idea is that the review should be carried out with an opportunity for those landowners to have their say on the initial findings of the review before the final document is published. And that the timing of the publication should be such that it is published before this Committee completes its work, in the early new year. You know that there are likely to be additional provisions coming forward. And the idea is that either if you wish to consider it yourselves, you will have the opportunity to do so. But in any event, the opportunity will be there in the second House to petition the second House on the basis of the findings of that review. So, that’s the thinking behind that.

263. MR WHITFIELD: And there’s no difference whether or not you are a mineral right owner or just the landowner?

264. MR MOULD QC (DFT): There’s no difference. The focus on the landowner was plainly, from the perspective of the NFU, those who farm the land, the surface of the
land. And that is plainly the case.

265. Now, can I just be clear on the compensation issue? Please don’t misunderstand me. I don’t say this because I ask you to accept that it is inevitable that the Clifffes would no longer be able to farm, because very much the purpose of the review was to seek to ensure that the strategy for borrow pits is refined so as to take careful account of the areas of greatest effect – not the only consideration, but an important consideration. In the event that these farmers took the view at the appropriate time that the effect of the loss of use of these areas of their land to mineral extraction for the period during which that process would take place was that they were unable in reality to continue to farm the holding, then the basis for their claim for compensation would be the total extinguishment of their business. And in those circumstances, their compensation would proceed on that basis. If accepted on that basis, their compensation would be based on the valuation of the farm business as a going concern, including all the other businesses, assuming that they were also unable to operate. All of these things would need to be considered in the circumstances. But the principle in those cases is that compensation is payable on the basis of the value of the business as a going concern.

266. MR WIGGIN: If you looked at the photographs, the bridal business, the car business are not directly connected to the agricultural business, how do you look at that?

267. MR MOULD QC (DFT): You take it as it comes. And you say, ‘Are there elements of the overall business activities that are going on within this land which can be maintained, notwithstanding the loss of the farmland that is required for the more traditional farming business? And if it is the farming business that has to stop, whereas the other businesses could continue, then you strip out that element of the overall –

268. MR WIGGIN: You just value the farming business?


270. MR WIGGIN: I think that’s helpful for the Clifffes to know, that some businesses would be more directly affected than others –

271. MR MOULD QC (DFT): Yes.

272. MR WIGGIN: – if the plans were as you expect them to be. Thank you.

35
273. MR MOULD QC (DFT): The idea is that people in this position should as far as possible be able to resume farming activities on the land. And for example if the position was in the early 2020s that in order to maintain the farm as a long term proposition, whilst they lost an area of land to mineral extraction, they had to incur significant losses over the period of three or four years, or that they had to diversify into other activities for that period that would entail an overall loss of income, then again those would be in losses that in principle would be the result of compulsory purchase or use of their land and they would be able to bring those into account.

274. This is a point I’ve been seeking to impress upon the Committee. I’m sure the Committee understands it. But that the compensation code is very flexible to these manifold situations. Its purpose is to put the affected landowner who uses the land as their business resource, to put them as far as money can do it, back into the position that they would have been were it not for the disturbance that comes with compulsory purchase. But as I say, prevention is better than cure. And so, certainly during the detailed design of the scheme, both before and after the Bill becomes law, the intention is so to organise these activities to seek to, as far we reasonable can, to avoid putting the Cliffes in the position where they feel they have no option but to close down the farm.

275. MR WHITFIELD: Sorry, Mr Mould. The mineral rights extraction exists only if the minerals are extracted. So, as a going concern, the farm does not benefit from the value of the minerals beneath it.


277. MR WHITFIELD: Would that be part of the compensation if the farm had to foreclose as a going concern?

278. MR MOULD QC (DFT): There may be an element of choice there because plainly – the public purse can’t compensate twice over. But it doesn’t follow that it’s a straight choice at this stage between on the one hand taking the value of the mineral, on the other hand the value of the farm. There’s a critical timing question. It may be, for example, that a landowner would say, ‘I would have continued to farm for six years. Then I would have retired from farming. I would have taken the value – I would then have sought to sell the mineral on the market and taken the value in that way.’ There are a whole host of ways in which you can see. What the compensation code seeks to
do is to understand how the affected landowner/occupier would reasonably have behaved in circumstances where they were not forced into a particular set of –

279. MR WHITFIELD: Because of HS2 –

280. MR MOULD QC (DFT): – and then – but these are matters which require very careful consideration, I daresay with the benefit of specialist advice, for which they would be able to recover the reasonable costs from the promoter as part of their compensation claim as well.

281. And it brings me to the next point, which is Mrs Cliffe said, ‘We would like the promoter of this Bill, the nominated undertaker, to continue to engage with us on a regular basis whilst the details of this scheme are put forward’. That is a request that she is entitled to have. And indeed it is no more than we have committed to with her trade body, the National Farmers’ Union. And I’ll just remind you, at R175, page 7, the first of the generic assurances to be offered to farmers, or rural businesses, owners, petitioners, on a case by case basis, is an assurance about the provision of information. If the Cliffes would like that assurance now to be translated into something that is specifically offered to them, then that is something that will readily be done? It is and indeed there are elements of the farmer and growers guide that also touch on that that they may wish to have some confirmation on as well.

282. Now, I’m not sure that I can say more to you now on the issue of the borrow pits. I mean clearly that’s by far the most, potentially the most invasive aspects of the scheme.

283. Can I turn then to Common Lane? A138(18). Mrs Cliffe very kindly reminded you of the assurance that was offered to Ms Allsopp and Mr Bull after their appearance before you some weeks ago. She asked whether the restriction on HS2 construction traffic could extend also to private vehicles, employees and workers and so forth. My understanding is that the expectation is that the majority of the workforce serving this working area on the screen in front of you, including the area where the compound is, is likely to be brought in under a travel plan, in a minibus. And plainly, to the degree to which that is the case, then it would be an easy thing for that to be subject to a routing plan that brought the bus in via the main site entrance on the A515. Whether we’re able to give you a commitment that no worker will drive their car down what will remain a
public road is I think more difficult to see. But you can see that the direction of travel, if you’ll excuse the pun, is to restricting the use of that road.

284. I don’t believe that we are able safely to offer an unqualified commitment to unfettered access along Common Lane. I only say that for this reason. You know that there may be a need to do some utilities works on that road, as part of the preparation for HS2. And it may be necessary to have some sort of traffic management along the road in the form of traffic signals or fencing. So, if that’s seen as a fetter, then that needs to be allowed for. But I know of no reason why Common Lane should not remain passable as a highway throughout the whole of the construction of HS2. There’s nothing that is proposed –

285. MR WHITFIELD: But it is right that there’s a telephone number available, 24 hours a day –

286. MR MOULD QC (DFT): There is a telephone number available, 24 hours a day –

287. MR WHITFIELD: – that will be answered rather than answer machine, which may resolve the problems such as –

288. MR MOULD QC (DFT): That is my understanding of the position.

289. MR WHITFIELD: Yes.

290. MR MOULD QC (DFT): Yes.

291. MR WHITFIELD: Just on that, could you remind me about the satellite compound? It wasn’t definitely going there. It could potentially be moved?

292. MR MOULD QC (DFT): Certainly during the detailed planning of that area. The intention now is to seek to move it further to the north, for the reason that has been given. But you will recall that when this was debated before you, it was pointed out that would lead to the re-organisation of other elements and that obviously it wouldn’t necessarily lead to a net reduction in activity. It would simply mean that different things would be done. But certainly, the message that there’s a local preference for that compound to be taken closer to the road is one that has been very much logged.

293. THE CHAIR: Thank you.
294. MR MOULD QC (DFT): And then just passing very swiftly over the A138(22), the southerly of the two compounds – which as you know is also accessed via that access that’s to be created on the 515 – again, the same point applies. It’s certainly the expectation is that as much of the traffic as possible, that needs to access that, would access directly via the A515. And that is the thrust of the assurance that has been given to Mr Bull and Ms Allsopp. So, that is Common Lane. Can I just turn to P350(8)?

295. Again, this is very familiar territory to you and I don’t want trouble you over long. Just two or three headline points to remind you on the diversion of Common Lane. Firstly, as you know, the Bill scheme requires Common Lane to remain open on realigned route which you see on the screen in front of you for agricultural vehicles. The change that’s been made under an additional provision is to allow for that as a bridleway. The reason why that cannot be provided to a full highway standard is because there isn’t sufficient clearance with the lowered viaduct, as is set out on the plan. And if we were to create that clearance, we would have to go down into the floodplain and that would create a serious –

296. THE CHAIR: We covered that in quite some length previously.

297. MR MOULD QC (DFT): Yes, we did.

298. THE CHAIR: Thank you.

299. MR MOULD QC (DFT): In terms of access generally, if we can go to A138(25), I think it is? No, sorry, 24. There were a number of points shown on the plan – I think this is the right slide – to say, ‘We’re very concerned that we should retain access to our property along the two approach roads to the farmhouse and to the bed and breakfast accommodation and also on to fields’ and so forth. The short answer to that is, ‘Yes, access will be maintained’. If Mr and Mrs Cliffe would like to discuss the provision of an appropriately worded assurance to that effect, I see no reason why we shouldn’t be able to achieve that –

300. THE CHAIR: I notice they’re nodding assent. That’s very helpful. Thank you.

301. MR MOULD QC (DFT): And then I think the next and final topic – although one that I don’t seek to diminish by characterising it in that way – is the question of
mitigation. Can I remind you – if we look at 138(26)? I’ll deal with it in slightly different order. First of all, there was a hedgerow shown on the –

302. MRS CLIFFE: Yes.

303. MR MOULD QC (DFT): Although it hasn’t yet been provided in the form of the letter, the project is going to provide an assurance to Mrs Fielding, who’s the owner of Woodend Farm, and it will also go to Mr and Mrs Cliffe in relation to this shorter area here, not to provide that area of hedgerow because we’ve reviewed it and we think that we can get by without providing that. That’s right. And the idea is that it will be replaced by this line here –


305. MR MOULD QC (DFT): Exactly. So, that hopefully will provide an answer to that. And then, in so far as this planting strip here along Ashby Sitch, here the plan that Mrs Cliffe was having difficulty following, that was a plan that was attached to a letter which I acknowledge was sent out very recently. It’s P407. This letter, as you can see towards the bottom the page, provided an assurance in relation to reducing the woodland planting along that line. That was the intention of it. And if we go over the page, I’m afraid the way in which these things are done – the area of land to which that assurance applies is defined as the ‘blue land’ in the middle of the page here. And it’s defined, as these assurances always are, by reference to the parliamentary plans rather than the environmental statement plans. And the assurance is, ‘To require the nominated undertaker to use reasonable endeavours to reduce the extent of woodland habitat creation to no more than 1.7 hectares in the blue land as shown indicatively in appendix 1’. And then one goes to the plan, which was the plan – if we go to the next page but one – this is the plan that Mrs Cliffe was showing you. And the blue land, as you can see, includes two areas which are part of – not the whole of – that area of proposed planting along the Ashby sitch.

306. The reason why planting has been included in the Bill scheme is explained in the other letter she referred to, which is P360, the letter of 30 May. And there’s a particular explanation for this at P360, page 2, under the heading, ‘Woodland habitat creation’ – I’m not going to read this into the transcript, I just draw it to your attention. It is provided to make up for areas of woodland lost to the scheme in this local area. And
then if we go to the bottom of the page, you can see the explanation given for that being a rather larger area than the area lost is in the paragraph that begins, ‘Due to the challenges’. This is, I’m afraid, a feature of modern environmental planning that it is an article of – this is the principle of good environmental and ecological design, that one needs to provide rather more than one loses in order to ensure that which is provided in mitigation is as effective over time as that which is lost. Man is much worse at providing effective woodlands planting than nature itself.

307. THE CHAIR: Bill?

308. MR WIGGIN: One of the things that hasn’t been discussed is that if the borrow pits are returned and as you will have heard the Clifes were concerned that the quality of the land will be less good than it is currently, that would be a better place to plant your mitigation.

309. MR MOULD QC (DFT): And that takes me on to the next page –

310. MR WIGGIN: Good.

311. MR MOULD QC (DFT): – which is another of the assurances that has been offered to the NFU, but for the benefit of individual farmers, is a continuing dialogue with the owners and occupiers of farm holdings affected by HS2 to review the detail of provision of environmental mitigation within their holding to see whether there are ways of reducing the impact on the productive land, as they would see it, and relocating. As long as it’s within their holding, it doesn’t mean that one has the problem of trying to persuade another farmer to accept it. So, I think that was what I understood Mrs Cliffe to be talking about. So, that will provide the opportunity. Today is not the end of it, as you know. There is no reason why we cannot continue to build on the discussions that we’ve been having in recent days and to see whether there are ways in which we can – even at this stage – fine tune the areas of planting.

312. And in so far as the borrow pits are concerned, I’ll just say this to you, Mr Wiggin, as you know, the design objective with borrow pits is that they should be re-instated to their current use. And that entails trying to ensure that field patterns and so forth are re-instated. But where there’s a choice between a further land take on a land that is not affected by the scheme and, as you imply, firming up on planting on land that will be
restored, then obviously that’s something that is well within the scope of this assurance.

313. MR WIGGIN: I imagine that if you were in the Cliffes’ position, you would want some sort of timescale outline from a meeting like this because there are so many variables.

314. MR MOULD QC (DFT): Yes.

315. MR WIGGIN: But none of them are particularly distant, what sort of advice or guidance can we get from you on what they can look forward to in the coming months?

316. MR MOULD QC (DFT): One of the key principles of the farmer and growers guide is the development of a farm plan which allows the farmer to understand when things are likely to start to happen to them. Whether that is something that I can say to you will be very far advanced in the coming months is not so easy because we’re still at a relatively early stage in the development of the plan. But certainly well before the scheme begins to bite, if you like, then that is a cardinal principle of the farmers guide. So – a due by date – we very much appreciate that when the land is your business, you need to know, ‘Am I going to be able to take that crop? Is that field going to be available to me next year when I need to pasture my cattle?’, whatever it may be. And the farmers guide is designed to ensure that kind of –

317. MR WIGGIN: But also, if you’re reducing the size of the farm – particularly if you grow potatoes, the capital cost of the equipment is extremely high and therefore there is a size below which it’s not possible to do some of these things.

318. MR MOULD QC (DFT): Yes.

319. MR WIGGIN: And that is obviously a major concern, if that’s one of your sources of income.

320. MR MOULD QC (DFT): The kinds of consideration that are likely to be at the forefront of any particular farmer or grower’s mind are of course, in principle, endless because they depend entirely on the nature of the holding. It just reminds me, you will recall there is a detailed assurance on soil restoration. And Mrs Cliffe raised an understandable concern about whether the quality of the soil following restoration of the borrow pit will be – we’ve made it clear that is something that will be subject to a
detailed soil restoration plan. And there was a debate about who would pay for the after-care arrangements. We made it clear that would be a matter for the promoter.

321. MR WIGGIN: Yes.

322. MR MOULD QC (DFT): And at the end of it all if the soil isn’t as productive as it was before, and if there’s no other obvious explanation for that, in other words – if it results from the disturbance caused by the project, then again in principle that stands in compensation as another disturbance element.

323. MR WIGGIN: Thank you.

324. MR MOULD QC (DFT): I don’t want to say anymore now, not least because the Cliffes would like to come back, I’m sure, but there are a number of points I’ve made that are work in progress and I would hope that we can continue to discuss both with the Cliffes, and indeed with Mrs Fielding, who will be coming to see you next week, to seek to keep them informed of the developments whilst this Committee continues to sit and indeed looking forward in the way that I’ve explained.

325. THE CHAIR: Thank you, Mr Mould. There seemed to be satisfactory nods from the petitioner on many points, not all. But if you wish to take a few final minutes for some points, feel free to do so. But what I will say, because we are closing in a few minutes, if when you’ve gone through communication with HS2 you want to write to us with any outstanding points or issues that you’re still concerned about, having reviewed the material today, feel free to do so. But if you want to take two minutes of our time – I’m conscious you’ve got a train to catch as well – feel free to do that now?

326. MRS CLIFFE: I just want people to be aware of the impact overall of this project on us. I’ll just go through it. We shall have continuous 24/7, 365 days – I haven’t been able to mention this because we’re running out of time – working – because we have earthworks, concrete pouring, gravel extraction, track laying and so on. We have noise and dust from nearby operations, and sand will travel across the flat fields. We shall have traffic disruption both to our home and businesses; access problems already mentioned; significant temporary and permanent land take, also mentioned; we may have borrow pits.
327. We were involved with Phase One until the line moved in its final refinements to be south of the Trent and Mersey Canal. So, we’ve been affected by Phase One and Phase 2A. So, the spectre of HS2 has been hanging over us since 2010. It’s not due for completion in this area until 2027, if it’s completed on time. That’s 17 years. If our life expectancy is 80 years, this represents 21% or a fifth of our lives.

328. We have a huge pile of documents to read and respond to – map books; code of construction practice; guide to environmental statement; glossary of terms; property consultation; environmental statement introduction and methodology; community air report; guide for farmers and growers; design refinement consultation; and so the list goes on. Could I have exhibit 28 please? I piled those up on the floor by the filing cabinet. That’s about a half or a third of them. If I’d stacked them any higher they would have fallen over. And that would be mayhem. It gives you an idea of what we have to deal with.

329. We have responded to environmental statements and prepared a petition for Phase One. We have responded to draft environmental statements, environmental statements, submitted a petition and appeared before the Select Committee for Phase Two. We have been served an AP and are expecting possibly another one. It takes ages to complete these processes. It’s done in our own time, at our own expense, at the kitchen table without secretarial facilities, with low broadband speed of 1.8. This is at the expense of seeing family and friends. We’ve attended many meetings with the county council; Lichfield District Council; the parish council; bilateral meetings with HS2; HS2 roadshows; with our agent. We have private meetings with various members of HS2 and so on. At meetings with HS2, they always assure us they will get back to us. That doesn’t always happen.

330. THE CHAIR: I’m conscious we’re running out of time. Are there any additional points rather than summarising that you want to cover?

331. MRS CLIFFE: Okay. Just quickly, they treat us with contempt. They call us ‘receptors’ in documents. We have endless changes in personnel. They cancel meetings at short notice when people have taken time off to attend. Advertised personnel don’t turn up and stand-ins have not –

THE CHAIR: Thank you. Thank you very much. Thank you for your petition.