MINUTES OF ORAL EVIDENCE
taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Monday 30 April 2018 (Afternoon)

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
James Findlay QC, Counsel, National Farmers’ Union

WITNESS:

Louise Staples (NFU)

IN PUBLIC SESSION
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1. THE CHAIR: Welcome to another week of HS2. Welcome to the National Farmers’ Union, who we’ll be hearing from for the duration of today. We’re meeting between 4.00 and 5.55 and then meeting again later on this evening, 7.00 to 8.55. I appreciate we’ve got quite a lot to do today. I would like to leave the last 55 minutes to an hour for Mr Mould to come back so perhaps you could cut your cloth accordingly and work through the material in the most effective way as possible. I believe we have three witnesses today. Mr Findlay, over to you.

**National Farmers’ Union**

**Submissions by Mr Findlay**

2. MR FINDLAY QC: Sir, thank you and thank you to your Committee for hearing us. The NFU represents 47,000 farm businesses in England and Wales. It represents farmers. Farmers are both those that own land but also those that tenant land. If I was to turn very briefly to slide A45(4), perhaps slightly surprisingly this gives a breakdown of the mixture of land in England and Wales. No reason to suppose it’s different along the line of HS2 2A. The vast majority of land is owned by way of mixed tenure. So that’s a farmer who owns part of the land and tenants part of the land. I don’t want to spend any further time on that slide but if I can take you back to slide A45(2). Some of this background will be familiar to you in any event but if I can just highlight that out of the 188 petitions, 69 concern specific agricultural businesses of whom 44 are represented or are members of the NFU. But can I also make it clear to the Committee the NFU sees its role as representing all farmers. You’ve got a number of petitions coming from farmers and we see our role today as not only representing those petitioners and helping perhaps lay the background and therefore shorten their presentations before the Committee but representing all farmers along the land.

3. The second and last point I want to make on this slide, we’ve given you the figures of high quality agricultural land taken. Our primary concern before this Committee is not as to the overall extent of farmland taken because clearly and obviously a significant amount of farmland will need to be taken. It’s a small percentage of farmland in the counties as a whole. Our main concern is the impact that
has on the farming businesses that remain. That’s a theme that we’ll develop throughout our presentation. So it’s the impact on the remaining farms that we are primarily here to deal with.

4. Can I then ask for the exhibit list at the start of the exhibits? Thank you. This gives you some idea, as you’ve already referred to, Chair, of the number of issues we wish to raise. It’s not a single issue matter such as the matters you’ve heard hitherto. These are a number of broadly related issues but relate to the nuts and bolts of what happens to a farmer when part of his land is taken away. There are not many, if any, real matters of principle on this list. There were previously but those matters have been dealt with. So that any decisions on this aren’t going to substantively affect the major outcomes of this procedure but they may have a substantial, and we submit, and will submit in due course, they will have a substantial impact and could ameliorate the impact on farmers. That’s why we’re here to make this petition.

5. It would not be correct for me to start without mentioning the fact that there’s been considerable discussion with HS2 as there had been on the previous Act and there’s been considerable progress made with them. You will have heard already, and we’ll return to it, of the Farmers and Growers Guide, but that is an example of a cooperation there has been between the parties and there has been continuing discussions between the parties including further assurances coming last week, a meeting last Thursday and discussions today. So from that list we’re not, as a result of amended assurances given, which I won’t spend time on with the Committee, we’re no longer going to have to deal with items 5 or 13. So that immediately reduces the task to that extent. There are other items which are going to be significantly reduced in time, item 6 being an example, which was split into four requests. We’re now down to one.

6. That leads me to say how we intend to present our evidence. Subject to your approval it will be unlike those who appeared before you before. What we seek to do through the slides is present the issue. Then have a slide or two or perhaps more on the evidence and examples and then a slide of our ask. I will share the task of introducing that to you with whichever witness is relevant to that task, again if that’s appropriate to you, in the aid of presenting our submissions to you as efficiently as possible. Some of these items can be dealt with within three slides and should take no longer than five minutes. Some may; we may have to chew the cud a little bit longer on others to make
sure we’ve got our point over. But we’re well aware that we need to focus on short submissions and hopefully effective ones.

7. THE CHAIR: I think there was an underlying question. That seems very sensible as long as we protect from eight o’clock Mr Mould for cross-examination if that makes sense, if you need to do that. One small thing I would say which I should have said earlier on, I was just a little concerned under inheritance tax and capital gains tax that you might be asking us to make legislative changes beyond our remit. I would ask you to focus particularly on what we can do for you rather than looking at issues where we can’t have any impact.

8. MR FINDLAY QC: Absolutely. I’ll deal with that now. I don’t think we do, I hope we don’t trespass that line. I’ll take you to the capital gains tax issues first. We’re asking you to continue effectively the good work that the previous Committees did but haven’t quite achieved fruition.

9. THE CHAIR: Well, we’ll look forward to that whenever you want to do it in your presentation.

10. MR FINDLAY QC: Can I also say in respect, our presentation follows a similar format that we dealt with under the previous Bill in both locations. I’ve raised the matter with Mr Mould already about how he wishes to respond, whether he wishes to respond issue-by-issue or in one lump at the end. Again, I think subject to your approval his current proposal is to respond in one lump at the end. But again if he wishes to change I am quite happy.

11. THE CHAIR: No, that is most satisfactory.

12. MR FINDLAY QC: Help the assist at any point, which he has done in the past. I’m quite happy to assist in that regard. We have, as I said, made headway today. We’ve produced in very short order just on one single sheet of paper double sided, a list of our current requests which we thought the Committee might find useful to have at this stage. If so, I can pass that up.

13. THE CHAIR: Is that orderly?

14. MR WIGGIN: Is it in the file?
15. THE CHAIR: Is it in the file?

16. MR FINDLAY QC: No, it’s not. It’s been produced about half an hour ago because we were on the telephone with each other throughout the course.

17. THE CHAIR: Perhaps if you could distribute it to us?

18. MR FINDLAY QC: It may, if nothing else, provide you with a checklist to score off as we attempt to make progress during the course of the day. I’ve given a copy to my learned friend Mr Mould already. Do you want some more?

19. I’m not going to spend time on that. It’s something that hopefully will become clearer as we run through. What I would say is that come the end, and there may be some further developments because there have been discussions until right outside the door, that if the NFU could reserve our position to make any final closing points in writing if anything new arises that isn’t covered on this list. I will deal with that in due course. I would hope not to. We very much hope to finish.

20. THE CHAIR: As long as it was timely but feel free, if you want to have a break at any point to discuss anything with HS2. We’re more than happy to do that. We’d go along with that if that makes us more effective overall.

21. MR FINDLAY QC: Thank you very much, sir. So that’s all I wish to say by way of setting the scene or introduction. By way of general background I have two points to make or NFU have two points to make that really underline the raison d’être of our whole case. Those two points are the shortage of replacement farmland and the consequences of that. A farm business is unlike any other. It can’t be simply replaced. If half a factory is lost you might be able to build the other half of the factory elsewhere. With a farm, the farmer will know his land well, want to continue farming it, will want to use the compensation to replace the farmland. But the shortage of supply of farmland, which will be exacerbated along the route of HS2 2A, as along the route of HS1, leads to real difficulties in that regard. That’s what, if I can jump ahead, underlies the issue on capital gains tax, the difficulty of rolling over your assets. But it also means that the farmers are keen to make as efficient and effective use of the land that remains and lose no more land than absolutely necessary so they can carry on their business.
22. The other main point we wish to make is by reference to the compulsory purchase regime is that avoidance is better than cure. It is the second main factor that underlies our approach to these disparate subjects which we’re going to ask you to deal with is very much that. Compensation is the last resort. We very much hope to avoid battles and issues that give rise to compensation and then simplify the compensation process itself. With that in mind, I’m going to deal with the second of those points and then I’m going to call Ms Staples to deal with the first. Then between the two of us we’re going to take all the other points, save for borrow pits and the tax points in respect of which I’ll call a separate witness.

23. So compulsory purchase, if I could ask for 45(11) please? Now you had a very useful presentation from Mr Smith on compulsory purchase on 28 March. I don’t take issue with anything he said but the first three quotes on this page are taken from the first two paragraphs of a recent Supreme Court judgment on compulsory purchase. The first, and I will spend a little bit of time on this, is fairly obvious, ‘Hand in hand with the power to acquire land without the owner’s consent is the obligation to pay full and fair compensation. That is axiomatic.’ That’s what we take to be the starting point for our discussions today. Full and fair compensation but perhaps put more broadly than that, farmers should be dealt with fairly given that they are having this route, as with others, imposed on them. They, unlike others, can’t sell their businesses so easily and move elsewhere, a point I just made. They have to put up with it and work with it in situ.

24. The second and third quotations are perhaps not contentious but may not have been highlighted by Mr Smith in his presentation that the law of compulsory purchase in this country of this important subject is fraught with complexity and obscurity. Difficulties and uncertainties abound. That is why, we say, that avoidance is better than cure, which is why you may think some of the points we’re raising before you are of minor importance but they aren’t. Delay, worry and expense is a nickname of a recently demised Scottish firm of solicitors but it neatly typifies the problems faced by farmers when dealing with compulsory purchase. It’s not, as Ms Staples will tell you in a moment, some farmers on the A14 works still haven’t been paid or dealing with their compensation on the first scheme whilst their land is being acquired for the second scheme. If you get into a battle over compensation, with all the good will in the world and the sweet thoughts that will come from HS2 towards the NFU today, you will get
into a long, drawn out and expensive dispute. Whereas the farmer is keen to have certainty as to whether he can roll over his assets, make use of the land and get on and try and ensure that his business continues to be profitable and successful. That’s all I wanted to say by setting that strand. I’ll call Ms Staples for the next strand.

**Evidence of Ms Staples**

25. MR FINDLAY QC: Just to introduce her, could we have her CV please which I think is in a couple of places but it’s 45(12) you’ll find it. Ms Staples, firstly, is that your CV?

26. MS STAPLES: Yes, it is.

27. MR FINDLAY QC: I’m not going to ask you to read through it or spend time on it. I’m only going to ask you one further question: what’s the extent of your actual involvement with farmers and agents in terms of both HS1 and HS2?

28. MS STAPLES: Yes I’m involved on a regular basis with our farmers that are affected by both Phase One, Phase 2A and 2B and the agents acting and actually also have regular meetings with HS2 here in London as well as Birmingham.

29. MR FINDLAY QC: Thank you. Again if there is any further elaboration wanted then no doubt Ms Staples can supply it. So the issue at this stage is availability of farmland in the UK. If I can ask you to look at slide A45(3) and then pass the baton over to you for the moment.

30. MS STAPLES: So just in regard to availability all that I really wanted to show here was as you can see by the graph availability over the last year in 2017 is down. Actually that trend is still being followed now for spring 2018 and demand is still high. The RICS data itself in the survey just states availability of farmland in the market is continuing to decline. Then two of the large agents that deal with a lot of farm sales, Knight Frank also in their rural report have stated the current trend is a shortage of stock. Savills have said again that 16% of farm sales were down in 2017 compared to 2016.

31. Then if I could just take you to some prices, which is on slide A45(6). Some prices have just slightly fallen in the last year. They’re now around, just so you have an
idea, arable land is about £9,000 an acre. In some locations in the West Midlands and in the Cheshire area it can be up to £12,000 an acre and that’s all on location. I think that’s quite important that obviously now with Phase 2A there’s going to be a lot of farmers in the same area requiring to purchase land.

32. MR FINDLAY QC: Just before we leave that slide, you on the Committee may like to notice the amount of land traded in England and Wales in 2016-2017 and compare that with the land that’s to be compulsory acquired, permanently acquired which is 1,000 hectares and temporary acquired which is another 1,000 hectares. You will see that it forms a significant proportion of the land traded throughout England and Wales just by Phase 2A.

33. MS STAPLES: If we could then go to slide 45(7), this actually just shows availability just for the West Midlands. My only point here actually that availability is even less in the West Midlands than it is as the average for across Wales and England. Then if we go to slide A45(9) this is slightly different. Demand has dropped but it’s still way above availability there but you can see that the availability line is slightly stable compared to the West Midlands.

34. MR FINDLAY QC: Just lastly, A45(13) please. You will have heard something about best and most versatile land. These are the land classifications if that’s of assistance to you. You will recall there’s very little grade one land being taken but quite a lot of grade two and 3A, which is the BMV land classification. The percentages are in the papers. If you’ve got any further questions on that. Ms Staples, do you have anything further to add?

35. MS STAPLES: No, just that the Phase 2A stretch does cross a lot of grade 2 and grade 3A land. Thank you.

36. MR FINDLAY QC: So that was all by way of the underlying points and the two points which hopefully we’ve made clearly. If there are no further questions on that we can turn then to our first main issue which is compliance with the Farmers and Growers Guide so A46(1) and hopefully this will then give you how we intend to deal with the remainder of the matters. As you’ve heard, and we will only read out what’s on the slide if there’s a particular reason to do so but we’ll take it as read. We’ll try and summarise. You will have heard of, and you have indeed because Mr Mould and I think
Mr Smith have both referred to it as we’ll come along to and illustrate in a moment, the importance of the Farmers and Growers Guide. It contains very useful information. The guide itself is at P73. If you get up P73(3) just to briefly remind you of the contents of the guide of the type of issues it covers. It again speaks for itself but there are a large number of issues under that guide. If I can say two things at this stage, a number of the contents of the guide are reflected in assurances of which there have been further amendments recently today. Perhaps I can just, I was just asking Mr Mould whether the newest version of the assurance were available for the Committee and they are. Secondly, they may also be reflected in other documents, which are covered by undertakings or assurances by HS2. But there are elements of the guide, and this is our main concern, which aren’t covered in either of those places.

37. If we turn to A46(3) it’s just an indication from my learned friend’s opening note where he in paragraph 40, this is from the transcript, where he put emphasis on the importance of the guide. Mr Smith did likewise. If we then turn on to A46(4) the guide, and this is a quote from paragraph 1.1.8 of the guide says, ‘The principles set out in this guide will be adhered to throughout the design of construction.’ Simply, we’re seeking an assurance in those terms. Put briefly, if HS2 are prepared to say that in a document they should put their money where their mouth is, if I could use that colloquialism. It’s a living document. It will change. But that shouldn’t give rise to an issue about adhering to it.

38. MR WIGGIN: Have they said they would adhere to it?

39. MR FINDLAY QC: No.

40. MR WIGGIN: They didn’t in the last phase either?

41. MR FINDLAY QC: No. And now I will ask Ms Staples to say why we’re reiterating this request before you today.

42. MS STAPLES: Just as an example in the explanatory note of the Land Owners and Growers Guide to temporary possession there are some places in there, in particular paragraph 9 that says about before a temporary notice is served, that they would give the farmer an idea of how long the temporary notice would be in place for and then on occasions give an update. There are farmers on Phase One that have had their
temporary notices. They’ve been served but they have absolutely no idea because
they’ve had nothing from HS2 to explain the time period that that’s been served on them
for.

43. MR FINDLAY QC: In terms of the solution if we turn to the solution slide which
is A46(8), sorry, 46(5) my apologies, I jumped ahead of myself, 46(5). Ms Staples?

44. MS STAPLES: Yes sorry, so on 46(5) the assurance that we…

45. MR WIGGIN: Just before you move on, Mr Mould, it does seem very unfair that
if you serve someone with a temporary notice they don’t have any idea how long that’s
going to be and that’s already in the Phase One. Is it your intention to change that or is
that something you’re going to continue with do you think?

46. MR MOULD QC (DfT): First of all, I wasn’t aware until Ms Staples just told you
that, that that had happened. Secondly, it very much is intended that what is said in
paragraph 9 of the appendix to the Farmers and Growers Guide, to which reference was
just made, that that should be adhered to. And indeed I believe I’m right in saying that
one of the changes that’s been agreed today is that the relevant assurance in the general
assurances pack should be amended so as to bring those sentences into the form of a
formal assurance. So that particular principle, as indeed are all the other principles in
the Farmers and Growers Guide are themselves the subject of separate specific
assurances which are entered on the register.

47. MR WIGGIN: That sounded quite good. Is it good?

48. MR MOULD QC (DfT): Yes.

49. MR WIGGIN: So they will then find out how long their temporary notices are
for? Thank you.

50. MR FINDLAY QC: Can I say that that is indeed good in respect of temporary
notices and you will note the timeline which Mr Mould very fairly gave, which was why
we’ve prepared for this point with that as an example. The assurance only came today.
And in terms of your reference back to Phase One, this is a point I omitted to mention at
the outset, obviously the Farmers and Growers Guide and the assurances that have been
given to the NFU and others will be of importance not only for Phase 2A but any
subsequent phases. Indeed, Mr Mould has indicated outside that they will give consideration to building them into the existing phase. Although he’s given no commitment to that end and I don’t want to bind HS2 to that. But our point is there are a number of other –


52. MR FINDLAY QC: We want to bind HS2.

53. MR WIGGIN: I thought so.

54. MR FINDLAY QC: We can’t bind them for HS2 Phase One formally through these proceedings because that would be beyond your remit I fear.

55. MR WIGGIN: Okay.

56. MR FINDLAY QC: But I may be giving something away but I don’t think so. We certainly want to bind them for Phase 2A.

57. THE CHAIR: We’re not without influence even beyond our remit.

58. MR WIGGIN: Yes.

59. MR FINDLAY QC: We definitely want to bind them. The point is the example Ms Staples gave you was just an example. I’ll ask Ms Staples to see if Mr Mould’s answer satisfies her generally.

60. MR WIGGIN: I’m sure it will.

61. MS STAPLES: Well it satisfies me on the point of that but that’s only because we’ve obviously discussed literally today about temporary possession. I have been through the new Farmers and Growers Guide for Phase 2A in detail. Nearly on every other page there is somewhere in here that says HS2 will provide something or will do something. They are not, at all at the moment, covered by assurances. That is why we have asked for the assurance of the whole of the Farmers and Growers Guide, which we’ve said on slide A46(5). Because also in a lot of the meetings we have when we’re referring to land owners and farmers, HS2 are relying on everything in the Farmers and Growers Guide for them. That’s why.
62. MR WHITFIELD: Sorry, can I just clarify something? The copy of the guide I’ve got is July 2017. Is that the most recent one?

63. MR MOULD QC (DfT): Yes.

64. MR WHITFIELD: That is the most recent one?

65. MR MOULD QC (DfT): That was published at the time of the deposit of the Bill.

66. MR WHITFIELD: The deposit of the Bill. Fine. Mr Mould, do HS2 have concerns about being able to give, in essence, undertakings to what’s contained in this document?

67. MR MOULD QC (DfT): No. As you raising this with me now?

68. MR WHITFIELD: Yes.

69. MR MOULD QC (DfT): Perhaps?

70. MR FINDLAY QC: Absolutely.

71. MR MOULD QC (DfT): The way in which the guide came into being perhaps is helpful. Back in November 2014, the NFU appeared and made their case to the then current Phase One Bill Select Committee in this House. The outcome, the product of that appearance was that the promoter and the NFU, the National Farmers’ Union, agreed an extensive list of assurances covering a range of matters, which were then entered as a single series of assurances on the register of undertakings and assurances for the Phase One Bill. It was also suggested that the preparation of a guide, in the form that you now see, would be very helpful to set out in more accessible language to individual farmers and their advisors, the substance of the range of assurances that had been agreed and further assurances that might be agreed later on. That is what has happened. Then that guide has been used as the template, if you will, for the Phase Two guide. The assurances that were given in Phase One, which were themselves restated in accessible language, those also have been reoffered for the Phase 2A Bill. They either have or will shortly find their way onto the register for Phase Two. The concern that I have with acceding to the approach that Ms Staples puts forward is that you have the individual assurances themselves, which have been drafted carefully with the oversight
of lawyers who are skilled in this to ensure that they are precise and clear. Then they’re translated into necessarily less precise legal language into the guide. If you have the same substantial commitment being given in the form of a formal assurance which has been carefully drafted and then you also have in a guide which is intended to be for laypeople to read, if you say that the guide itself will operate as an assurance effectively you run the risk of duplication and confusion between the two.

72. MR WHITFIELD: Sorry, isn’t it also the case though that the higher level undertaking must encompass everything that’s contained within the guide, not the other way around?

73. MR MOULD QC (DfT): Everything that is in the guide that is itself the subject of an assurance which is entered on the register; plainly the assurance on the register is the legally effective commitment. I don’t want to get involved in an unseemly debate before you about matters of detail. It may be that the sensible way of trying to resolve this is to see if we can during the course of the sittings of your Committee, if we can identify whether there are things said in the guide, as Ms Staples says there are, which are actually in the form of free-standing commitments and which are really susceptible and ought to be entered on the register of assurances in the form of a separate assurance. If there are then I see no difficulty in principle with that course being taken but what I am resistant to is the guide itself being entered as an assurance if you like because it’s not its purpose. It’s intended to be a guide rather than to be a legally binding document.

74. MR WIGGIN: Can I ask a point? If each element of the guide has a legal background why don’t you publish that?

75. MR MOULD QC (DfT): We have.

76. MR WIGGIN: You have. So you’re dancing on the definition of which version of the guide you prefer. They want the layman’s terms you want the legal terms. Is that fair?

77. MR MOULD QC (DfT): I think we both want both but if I put up P79 you’ll see. This is, these are the carefully drafted assurances covering a range of matters that have been banked, if you like, by the NFU, which are then explained in non-technical language in the Farmers and Growers Guide. So the question is: is there anything in the
Farmers and Growers Guide which hasn’t found its way into this legal document and which ought to because it ought to be expressed in the form of an assurance.

78. THE CHAIR: Sandy?

79. MR MARTIN: Yes, Mr Mould, I may be mistaken that Mr Findlay would be satisfied with an overarching assurance that every commitment that might be read in the guide will be matched by an actual assurance in the list of assurances. Maybe that would do the job?

80. MR MOULD QC (DfT): Essentially, I would prefer, rather than giving something in that level of generality, which gives rise to difficulties if I may say so, I would prefer to take the course that I just advanced to you. Which is that I’m happy to go through as Ms Staples has I think suggested, to go through and see whether there are particular points that ought perhaps to be expressed in this document in front of you now. And then to discuss that and see whether we can reach agreement on that point.

81. THE CHAIR: Sheryll Murray?

82. MRS MURRAY: Just really to ask Ms Staples and Mr Findlay, would that be acceptable?

83. MR FINDLAY QC: Can I say, yes. Can we reserve our position? Obviously we want to see the process that’s gone through but we would need to come back before the Committee for that.

84. THE CHAIR: We’ve got an hour break between sessions.

85. MR FINDLAY QC: I think in fairness –

86. MRS MURRAY: Could you outline for me what isn’t in this document that you would like to see in it?

87. MR FINDLAY QC: That would be quite a time-consuming job. Therein lies the problem and I think with the limited time we have I prefer not to answer that question in detail.

88. MRS MURRAY: Okay.
89. **MR FINDLAY QC:** Either the overarching – yes, of course.

90. **MS STAPLES:** I was just going to say it’s actually not what’s in it because actually there’s really good information in here that we really do –

91. **MR FINDLAY QC:** Sorry, I think the document you’re referring to is the assurances.

92. **THE CHAIR:** Is the Committee happy to press on and then maybe reflect and come back later on after the natural break.

93. **MRS MURRAY:** Absolutely. That’s fine.

94. **MR FINDLAY QC:** On the understanding that it’s not a formal assurance that HS2 will go through the guide and assist us in translating anything that can be translated into an assurance into an assurance, we will take part in that process and stay our request of the general resolution at this stage. I want to ask Ms Staples to deal with one point and that is this, why Ms Staples, is it important that they are assurances rather than general statements of intent, which is what they are at the moment?

95. **MS STAPLES:** They need to be assurances because what we’re finding on the process so far with Phase One that unless our farmers do have whatever they’ve asked for as an assurance HS2 aren’t always abiding to what they’ve said. If there’s an assurance there and it’s in the register then yes, they are. But we’ve had, we’ve definitely got one case where something was just in a letter and it wasn’t an assurance in the register and they’re now not keeping to what was in that letter.

96. **THE CHAIR:** What’s the standing of Mr Mould’s point of having a look at the document? There’s only 10 pages of substance within it anyway. I would hope that something, a compromise can be found.

97. **MR FINDLAY QC:** Well Mr Mould has offered a way forward and we’re happy to engage with him in that process. I wouldn’t wish to spend further time on that point.

98. **THE CHAIR:** Okay, press ahead.

99. **MR FINDLAY QC:** There are three issues under compliance in the Farmers and Growers Guide. The second is issue two, which if we can have slide A46(6) which I’ll
deal with. This is about relating to how breaches of assurances, both prospective and past are to be dealt with in practice. You may recall I think it was Mr Hutton raised this, the issue of compliance with undertakings. My learned friend Mr Mould explained to you why undertakings are not given because that would give rise to myriad number of individual contracts with persons. We accept his point on that. But what that does mean is that the assurances are assurances to this House. Ensuring compliance with such an assurance, this House is not going to be interested in policing the detail. We would like just in the Farmers and Growers Guide an explanation and if one turns onto the next slide, which is A46(7), an explanation how a farmer would go around complaining about a prospective breach of an assurance or a past breach of an assurance. Ms Staples?

100. **MS STAPLES:** Just to explain there’s two elements to this. One is our farmers really want to know how to enforce an assurance if they think something isn’t going to be kept to. The second element is if there’s a breach on the ground. There has already been a breach on the ground, not with farmers but with the Woodland Trust. That’s only now, during pre-construction works so we haven’t even gotten into the main, I suppose, construction when everything gets into full swing. We’ve already asked, yes, for a sort of practical guide of on the ground, what do farmers follow if they can see that there’s a breach happening how to go about and report that and stop it happening. We’ve asked for that twice now in environmental NGO meetings. So far it’s still not forthcoming.

101. **MR FINDLAY QC:** Can I just say, we understand the point that the assurances are made contractual terms with the nominated undertaker so there is the HS2 can enforce the assurance. But it’s the practical process that farmers have to go through that we would like some assistance with.

102. **MS STAPLES:** Yes.

103. **MR FINDLAY QC:** That’s our point. It doesn’t need expanding. The third issue under the Farmers and Growers Guide relates to the agricultural liaison officer. If we have slide A46(8) or I should probably now say the agricultural liaison service. I’ll ask Ms Staples to deal with this point and the solution.

104. **MS STAPLES:** So this is an assurance to us that we do have an agricultural
liaison service. That’s fine. It has already been set up on Phase One and is working really well. The problem we think we are now facing is though that those liaison officers have only been instructed by the contractors for the preconstruction work. Once the main construction works start they might not be employed further and two further or however many agricultural liaison officers could be set up. So there’s no continuity there of the relationship farmers have already built now with those agricultural liaison officers going forward. That’s all we want to see really.

105. MR WIGGIN: And that will help possibly negotiation of the assurances we just dealt with.

106. MS STAPLES: Massively.

107. MR FINDLAY QC: And that I think brings us to the end of our first matter. If you were to look at the list of requests in summary form hopefully what we set out there in one, two and three are exactly what we’ve asked for.

108. MR WIGGIN: Okay.

109. MR FINDLAY QC: So if we can then move onto interest on late payments on slide A47(1). Two points to bear in mind by way of introduction of the issue. This concern relates to both advance and final payments. Secondly, that given the current low rates of interest the statutory rate of interest is effectively zero at present. So there is no financial incentive for anyone who owes compensation to pay it. That’s not just HS2. As we say in the last bullet point, there’s simply no incentive for payments to be made quickly. Again I’ll ask Ms Staples to indicate whether that has proved to be an issue.

110. MS STAPLES: I’ve got two examples here. One, you’ve partly heard about which has happened on the A14 with Highways England. So there when Highways England were approaching our members on that national infrastructure scheme, yes, some of them that within the same year were just receiving their final payments from the previous scheme which was a good 10 years before. Then they were being asked about entering into negotiations for the new scheme. Then just in regard to HS2, why we’re concerned about this and wanting to see interest applied to advance and final payments, is because so far under HS2 where surveys have been carried out the payments have
already been agreed up front for the different types of surveys. Those survey payments were supposed to be made within 30 days to the claimants and to the agents for their fees. So far, they’re running about 45 months behind. That’s on payments which were agreed up front.

111. MR FINDLAY QC: So if you turn to further examples you’ve got of interest on late payments, so 47 (3) please?

112. THE CHAIR: Before you go on, presumably in 1995 the average interest rate was between 5-10% so 5% below wasn’t too unreasonable but no one would have predicted the low levels of interest.

113. MR FINDLAY QC: Yes, Mr Mould may tell you that certain instruments have been updating those matters ever since but it’s still at that level.

114. THE CHAIR: But why is it below rather than above? I thought it was a typo when I first saw it.

115. MR FINDLAY QC: No, it’s below the standard rate but there is a provision, which says that it should never be less than zero.

116. MR WIGGIN: Have we got a counter offer? Because 8% is equally barmy.

117. THE CHAIR: No, no, no. Yes, go on.

118. MR MOULD QC (DfT): Again, I can help if you like now just to move things on. The position on this is not that the promoter of this Bill is necessarily resistant to a competitive interest rate being payable on late payments of compensation. But rather that that is a matter which is with Her Majesty’s Treasury, which has been given the responsibility of promoting regulations that would deal with this as a matter of the general law. So that there would be a level playing field not only for those affected by HS2 but also for those up and down the country who are affected by any compulsory purchase scheme that might take place. The concern is that if this Committee intervened for HS2 alone and said there should be a clause in this Bill requiring a payment at say 8% and that is not available to anybody else who is affected by a road scheme or by the A14 or something like that then the upshot is that those affected by HS2 enjoy a better position, a more advantageous position under the law than does everybody else.
119. MR WIGGIN: I’m not desperately worried by that.

120. MR MOULD QC (DfT): Well that’s our answer to it.

121. MR WHITFIELD: But the interest, the purpose of the interest is to force the payment. The challenge here seems to be that the payment is not being made.

122. MR MOULD QC (DfT): Well, that’s the effect, yes.

123. MR WHITFIELD: On agreed amounts. There was an indication that people have three months was the payment period that you mentioned, Ms Staples?

124. MS STAPLES: Well just on the surveys, so this is just when access has been taken to carry out the surveys like boreholes or whatever it might be. On that, when we pre-agreed the licence there it was that yes, payments would be made within 30 days.

125. MR WHITFIELD: Would it not be possible for HS2 to give that assurance that that payment would be made?

126. MR MOULD QC (DfT): As you know I represent in loco the Secretary of State rather than HS2.

127. MR WHITFIELD: Certainly, yes.

128. MR MOULD QC (DfT): The Secretary of State’s position on this is that as a Member of the Government he considers this is a matter that should be dealt with under the auspices of the Treasury as I say, through the power that they have and as I understand it considering exercising to specify a more commercial rate of interest on late payments.

129. MR WHITFIELD: I mean the actual payments of the principal sum rather than the interest.

130. MR MOULD QC (DfT): That they’d be paid promptly?

131. MR WHITFIELD: That they be paid within an agreed period of time.

132. MR MOULD QC (DfT): Oh, indeed. Where the company has said, has either agreed as a matter of contract or has said that it will make payments within a particular
time then plainly the company should do so. If there is evidence, I wasn’t aware of this again, I’m afraid.

133. MR WHITFIELD: This is new.

134. MR MOULD QC (DfT): This is in relation to Phase One and I am now focusing on Phase 2A. But if there is evidence that the company has not been making payments within the time that it should then obviously that should be followed up and the company should put its house in order.

135. MR WIGGIN: Mr Mould, the danger with your argument is that the only people that charge 8% interest are HMRC, which is why, I suspect, they’ve chosen this figure. Sorry?

136. MR WHITFIELD: That’s the interest rate on a government debt.

137. MR WIGGIN: Well, yes, but nobody else is suggesting that we should use the Government’s rates except HS2. So 8% sounds like a good rate now.

138. MR FINDLAY QC: Could I just add something?

139. MR MOULD QC (DfT): Sorry, I’m not.

140. THE CHAIR: Mr Findlay has something to say.

141. MR FINDLAY QC: We’ve given an example. I’m grateful the Committee has picked up Ms Staples’s example but it’s an example and it’s the concern for payments for entry for survey. They are small sums. But it’s when one gets to the bigger sums later on that that will become of a real concern to farmers. Whilst an assurance has been given as to prompt payment of compensation both on Phase One and on Phase 2A, our concern is that there are no teeth in that assurance. Whilst I heard my learned friend Mr Mould’s argument, it is that HS2 will be better off than other people subject to this scheme. The reality is that HS2, if they were given a specific clause entitlement to interest, would not be in the same poor position that the other people are who have to wait for compensation without getting interest.

142. MR WIGGIN: So is my understanding right that you advise these farmers and then you don’t remember to advise them to insist on a punitive interest rate if they don’t
receive payment?

143. MR FINDLAY QC: There’s no legal entitlement to interest on these payments.

144. MR WIGGIN: On late payments.

145. MR FINDLAY QC: Just to pick up that point, I think if you have A47(2), just to give an example, if you were advising a farmer on a commercial scheme, this is what, Ms Staples, you can –

146. MS STAPLES: Yes so on a commercial scheme like a farm business tenancy, you would just go and agree that you would put there, as I’ve said on the second bullet point, 4% above the base rate so that there is some interest there.

147. MR WIGGIN: Absolutely.

148. MS STAPLES: That’s payable if a payment is late.

149. MR FINDLAY QC: Mr Mould?

150. THE CHAIR: Sandy and then we’ll come to Mr Mould if you want to or you can deal with it later because I think there seems to be consistent feeling on the Committee on this one. Sandy?

151. MR MARTIN: Chair, I mean it does seem to me that there is a difference between paying interest on money that both parties have agreed one should lend to the other and paying interest on something which ought to have been paid. I mean the object of the interest here surely is to force, or at least encourage, prompt payment. Given the examples that Ms Staples has given of previous late payments and in the case of the A14 case, 10 years after money was promised, there clearly is an incentive or the need for an incentive to prompt payment and 0% is not an incentive.

152. THE CHAIR: Mr Mould, if you want to.

153. MR MOULD QC (DfT): I entirely accept that point that the purpose of the statutory interest regime under the Land Compensation Act is to encourage compensating authorities to make payments of compensation, whether they be interim or final payments, to make them promptly within the time that’s allowed. I accept that
nil per cent is hardly a strong incentive. My point is simply that there is a recognition that this is an unsatisfactory state of affairs within Government as I understand it. And this Committee may feel therefore that the right course, if it’s motivated to try and take some action here for the benefit of those affected by compulsory purchase under HS2, the right course initially at least would be to write a letter to the Treasury, to the Chief Secretary, and to say, ‘We’ve heard evidence to suggest that the interest arrangements which are designed to discipline those paying compensation are not working effectively. It appears to relate to the nominal rate of interest it applies under the law at the present time. We understand that the Treasury is contemplating producing regulations to provide a more effective rate of interest. We lend our support to that approach.’

154. THE CHAIR: That’s an option. The other option is for us to unilaterally decide a figure HS2 should pay and recommend the Government should be doing that for everyone.

155. MRS MURRAY: Yes.

156. THE CHAIR: But that’s for us to decide. Mr Findlay, back to you.

157. MR FINDLAY QC: I think we’ve probably reached the end of what we want to say on this point. There are other slides on this point giving other examples but I don’t think we need to take you through them.

158. THE CHAIR: Yes, great.

159. MR FINDLAY QC: We will go on to issue four, which is something completely different, land drainage. So slide A48(1) please. I’ll ask Ms Staples to deal with this. There are only two slides.

160. MS STAPLES: Really I’m not going to read through the slide at all of this first slide. I just want to make the point that on big infrastructure schemes like HS2 everyone knows that land drainage is one of the biggest problems that farmers face after an infrastructure scheme has gone through land. That is why we’re being really fussy on the wording that we want to see in our assurance that we’ve been given so far on land drainage. There are still a few things that we would like to see on the assurance that we’ve been given and haven’t been granted yet by HS2. If we could just go to the next
slide which is our solution for HS2. What we really want to see worded in our assurance as well is to remove the onus on farmers to maintain drainage systems that have been imposed on them. Secondly, to ensure that any new land drainage systems are put back in a condition that is at least as effective as the condition of those which they replace. Thirdly, we actually there needs on field drainage to be a specific dispute resolution mechanism. Actually, then, if you need to appoint an expert you go to the Institute of Civil Engineers.

161. THE CHAIR: We’ve got a question from Sheryll before you go on.

162. MRS MURRAY: Yes, just you’ve obviously said remove the onus on farmers to maintain drainage systems. Who do you think should then?

163. MS STAPLES: Well if it’s a drainage scheme that’s been put in once because of HS2, what happens like on National Grid if they’ve put a gas pipe in they will come back years after if that drainage defect is because of say that gas pipe. It would be the same as what we’re requesting HS2 to do the same.

164. MRS MURRAY: Okay. And obviously you would expect for the farmer to grant indefinite right of way for them to be able to do that?

165. MS STAPLES: Oh yes, we absolutely expect the landowner’s got to grant permission for HS2 to go back on to carry that out.

166. MRS MURRAY: Thank you.

167. MS STAPLES: And then fourthly, provide that where is appropriate and reasonable to do so consent from the landowners being obtained that the nominated undertaker will carry out works involving reinstatement of drainage outside of the Bill limits. So sometimes on big schemes like this to actually remedy what’s happened you need to go outside the land that they’ve taken which is within the Bill limits at the moment. I just further wanted to say as examples we have achieved these points on other big national infrastructure schemes. One of them was the Triton Knoll scheme through Lincolnshire which was some big underground cables. We also had this effectively agreed with Highways England on the A14. We’ve also had National Grid agree to it in the Richborough scheme just down in Kent which was some big overhead...
electric cables and pylons there.

168. MR FINDLAY QC: Two matters by way of adding to that. One is, one can understand if you’re digging a line down in a cutting or excavating a borrow pit you could have significant impact on existing drainage. That’s what lies at the heart of the concern. The second point is, and I think it’s slide number 79, that I’m looking for assurance 15. There is an assurance on drainage, which Ms Staples has referred to. The solution that she’s requested here is for amendment to an existing assurance. It’s now assurance 15 on drainage.

169. MR MOULD QC (DfT): 79(6).

170. MR FINDLAY QC: 79(6), I’m very grateful to my learned friend. So that’s the assurance on drainage that’s in place. I won’t read it out, give you a few minutes to look at the detail and if I could then ask you to go back to 48(2) then Ms Staples’s request will be seen in context. So if we could go back to 48(2)? That’s our ask on drainage. Ms Staples can explain anything further to the Committee but that’s the basis on which we seek.

171. We’re now on to temporary possession. The slide here is A50.

172. MR WIGGIN: Sorry, just before we leave that can I just check with Mr Mould that he’s allowed to act outside the Bill limits?

173. MR MOULD QC (DfT): No. Only with the agreement of the person who owns the land or people who own the land and therein lies the problem that we then find ourselves at the mercy of third parties in relation to a multi-billion pound public works project.

174. MR WIGGIN: And do you have any expectation that you will create a drainage issue generally speaking, railways don’t.

175. MR MOULD QC (DfT): No. As I understand it the concern here is that the nominated undertaker, the builder of the railway, should remain responsible for drains that are installed for their purposes. That is to say drains to drain the railway. That’s entirely understood. Our position is that where drains are installed on the holding to accommodate the severance of existing drainage which results from building the railway
across the land, those drains are obviously intended to be for the benefit of the farmer. We expect that the he will wish to recover ownership of those drains and that is what the assurance that was flashed up a few minutes ago is concerned with. It’s concerned with drains on the holding rather than drains that are draining the railway.

176. MR WIGGIN: Some of the drainage issues in my constituencies are when the railway cuts off the river from the flood plain.

177. MR FINDLAY QC: Yes.

178. MR WIGGIN: And if you don’t put the pipes underneath it when you build it, it’s extremely difficult to put it right later. I would expect that when you’re building a railway that doesn’t happen.

179. MR FINDLAY QC: No.

180. MR WIGGIN: The land drains on the farmer’s field way back that may also be affected are outside your remit. So that is something that should be negotiated on a case-by-case basis, shouldn’t it?

181. MR MOULD QC (DfT): That’s our position, yes.

182. MS STAPLES: Okay, completely and in the request for four, it is actually, we have said there that it is with landowners’ consent. Completely understand that and that’s been agreed on all the other schemes as well. But I wanted to say was we’re not expecting – this is specifically for field drainage that is affected. It is not to do with the main drainage of how the railway line once its built is going to be drained. It is so that the agricultural land that is left is not impacted when going forward.

183. MR WHITFIELD: So can I ask why one is there about removing the onus on the farmer to maintain the drainage system?

184. MS STAPLES: Because if it’s not repaired correctly at the time sometimes until things settle down, you think the drainage is working perfectly all right and then five, 10 years later you suddenly realise that wet patch in the field is because, I don’t know, a drain wasn’t intercepted correctly, wasn’t repaired correctly from when the construction works carried out and cut through however many drains.
185. MR WHITFIELD: That would be the design rather than the maintenance, would it not?

186. MR FINDLAY QC: Well it’s quite a difficult ask.

187. MS STAPLES: Well I’m saying it happens with other schemes and National Grid do go back because they know they have cut through. There’s no difference there.

188. MR FINDLAY QC: Can we take that away to consider the word maintenance? We may be able to replace that to more specifically identify –

189. MR WHITFIELD: In 5.3 if you look at the drainage stuff it talks about it, and I can understand, should a landowner decide at some stage in the future to alter the land drainage arrangements they become responsible for the damage that flows on.

190. MS STAPLES: Absolutely.

191. MR WHITFIELD: You’re presumably in agreement with that. It is that concept of whether it’s maintenance or the initial design that you’re worried about. I would assume that a farmer wants to maintain the drainage on his or her land because they want to use the land. If 10 years down the line it turns out the entire planning idea before the drainage went in is in error, it’s that thing isn’t it? If the roof is wrong by design, that’s the architect’s fault. If the roof is wrong by failure to maintain is that not the household that’s…?

192. MS STAPLES: Yes but then surely the landowner should be able to bring that up with HS2. They then go back to their drainage contractor who they used and they would then sue their drainage contractor for not doing the correct design.

193. MR WHITFIELD: That’s what I’m saying but your thing talks about maintenance rather than design.

194. MS STAPLES: Well I’m not sure we should have said maintenance.

195. MR WHITFIELD: Sorry.

196. MS STAPLES: It should have been repair I suppose.

197. MR FINDLAY QC: Can we come back after?
198. THE CHAIR: Reflect and move on. That makes more sense.

199. MR FINDLAY QC: Can I just raise one point there? In terms of land outside the Bill limits that would only be, firstly there would be no ransom element to that in the proposal we’re putting forward. Secondly, it would only be with the farmer’s approval. So that if it makes sense on that farmer’s farm, if he had land within the Bill limits and outside, for works to be undertaken outside the Bill limits and he approved that then that might be the cheapest option for all concerned. That’s the only point that is being made. We will move on to temporary possession. That is A50(1). We’ll come back with the wording for that in due course.

200. By way of introduction to temporary possession there are two conflicting aims or desires in terms of the split between taking permanently and taking land temporarily. The focus of the NFU on Phase One was to ensure that no more land than as necessary was taken permanently so that temporary land that was taken could be returned to them. The wheel seems to have turned too far in that direction and our concern now is that all land, and Ms Staples will deal with this under Phase One, is being taken temporarily to begin with and then only subsequently being taken permanently or that seems to be the position. Again, so we have four asks on this but we only have one remaining. Others having been dealt with by assurances today but can I ask Ms Staples just to speak to the third bullet point on the slide?

201. MS STAPLES: It was just to highlight so far on Phase One, yes, it’s only been preconstruction works but all the land that has been taken so far is on a temporary notice basis. Also to state that a while ago we did have a meeting here in London with HS2 and they did state to us that all land going forward would be taken on a temporary notice whatever the land was being taken for. So just to set that out.

202. MR FINDLAY QC: Then if one looks at the amount, we have an example of the number of temporary possession, the extent of it on the next slide A50(2), please.

203. MS STAPLES: This is just to give you an example on Phase One. This is Brook Farm. The area there has been taken to recreate some new ponds and also the grassland wetland area there. There’s about eight acres that have been taken. That ground was originally in potatoes and rape so as you can see quite good land.
204. MR FINDLAY QC: Then the concern on taking the temporary possession, the remaining concern if one goes to slide A50(3) please? We have a scenario that gives rise to the concern. It’s the amount of notice that a farmer is given.

205. MS STAPLES: So at the minute under the temporary notices a farmer is only given 28 days’ notice. We are saying that obviously at the moment because of the impact, farmers need to know in advance of 28 days to be able to really organise what their farming operations are going to be for that year. What you have to do as well under compulsory purchase is you have to farm exactly as you are until the notice is served, so just to give you the example for Brook Farm again, first of all, he was approached actually in February 2017, told he might be given the notice in April, the beginning of April. That didn’t actually happen, so he had to make the decision, well I’ve got to plant the potatoes, so which he had to go forward with. He then ended up getting the notice actually served on him in August ’17 and what I’ve been finding out is that the issue with potatoes, especially in that area, is that a lot of them are on contract with McCain’s, some of them have got contracts with KP.

206. Once you’re on a contract, you have to guarantee a certain tonnage. If you can’t guarantee that tonnage, or if you know then you can’t supply it, McCain’s expect you to go out and buy those potatoes for them, to keep your tonnage, so it’s really important, and it’s not just potatoes, there are other farms there growing, that have big vegetable contracts, where they must be able to supply their contracts.

207. MR WIGGIN: The point is fair though, that it doesn’t seem right that you can buy it temporarily and yet we all know where the route is.

208. MS STAPLES: Yes, that’s another, so just what we’re saying as well is that yes, at the moment they can serve a temporary notice on any part, whether it’s land to be taken from mitigation, whether it might be a compound site, which they know they might be getting back, or whether it’s the land itself has been taken for the railway line, or the embankment, and so that’s what – yes, and they don’t – so at the minute, that’s all done on 28 days’ notice.

209. MR WHITFIELD: Your answer to three months – in essence, is that because of the commercial contract, or is that because of the parallel with other legislation?
210. MS STAPLES: Well we know that, we first, in Phase One, we asked for three months’ notice, when the permanent notice is served and we would just like that to be the same for temporary notices, but just more guarantees in the 28 days.

211. MR FINDLAY: If one turns to slide A50(5), there is an example in other legislation, in Neighbourhood Planning Act, for temporary possession of land gives three months. Can I say, in fairness, it may be because of the late negotiation, but if I could have the assurance number nine, which is on P79.3. HS2 have gone some way this morning towards dealing with that. If you focus on 9.2, they say notwithstanding the requirements to give 28 days’ notice, they will use their reasonable endeavours to give more notice than that. That’s the difference between us at the moment. 28 days is a minimum with reasonable endeavours for three months as a requirement. That’s the stark difference, for the reasons Ms Staples has said, notwithstanding the assurance from HS2, and apologies to Mr Mould if he was misled into thinking that was our only concern. That is our remaining concern on temporary possession. All our other concerns have been dealt with.

212. MS STAPLES: Could I just say while I think, the only other reason why it’s also important on this stretch, is there are a lot of daily farmers on Phase 2A and obviously there’s a lot of them with grazing systems, so every area of land is really important, so they need to know well up in front, what’s going to be taken when.

213. MR WIGGIN: Presumably in your negotiations, it strikes me that different farmers in different situations, it may be more or less unreasonable for 28 days or three months. You could presumably negotiate something that was differential.

214. MS STAPLES: I mean obviously they’d all like something much more in advance, even of three months, but what we’d like is a guarantee of three months, rather than just the guarantee of 28 days.

215. MR WIGGIN: I’m not quite sure why dairy farmers require more notice than people who plant potatoes?

216. MS STAPLES: I was just trying to give it – what I wanted to make sure was that you didn’t think it was just an arable farmer who was growing potatoes, when I’ve got a lot of dairy farms that are having – they’ve got, under New Zealand systems, where the
grazing is really important, so we had one member last year, on Phase One, that was at
an HS2 meeting and he said ‘I need as much notice as you can give me, because
depending on the amount of area of land you’re going to take, and how long it takes you
to serve those notices, I know I can either keep the business going, or I can’t’.

217. MRS MURRAY: Could you just confirm to me that when you set out the route,
farmers can see what land you may need, right at the beginning of the plan?

218. MR MOULD QC (DfT): If, as I think certainly 44 of them have, because that was
the number of petitioners that you’ve been told have put petitions before you, and I
daresay others have chosen not to petition, but if you take each and every one of the
parliamentary plans, or you take one of these books which you are familiar with, which
you’ve got both the construction and the phase of the railway set out on facing pages,
you can tell at a glance where, and you’re the landowner or the farmer of land which is
affected by those areas, you can tell at a glance by looking at those books, the land that
the Secretary of State is presently saying he requires to have powers to compulsory
purchase, or to use, for the construction and operation of his proposed railway, and as I
understand it, there are many people, many farmers amongst the 44, who say that the
proposed land take seems what is required for the railway, or there are countervailing
reasons why the impact of them should override it. The concern about the period of
notice for temporary occupation, I’ll ask Mr Smith to deal with later, because you need
to understand the practical consequences of that for the timing and economic
construction of this project.

219. MS STAPLES: Thank you.

220. MR WIGGIN: There is one thing that you haven’t mentioned, and I think you
should have done, for dairy farmers. Actually, I don’t accept what you said about
growing grass needing more notice than anybody else, but if those people are shut down
with TB, then they cannot move their animals off their holding and they can be shut
down for long periods of time and that means, Mr Mould, if you don’t give them
sufficient notice, those cows have to be put down, because there will be insufficient
fodder, not because people don’t like cows, but because it is illegal to move them, and
that is a unique difficulty for dairy farmers, particularly at this moment, so if you could
make sure HS2 are aware, when people are shut down, then I think there’s a better
argument for more notice than there is at the moment, which is that they are growing grass.

221. MR MOULD QC (DfT): You will appreciate, of course, that what the statute says is that there’s a minimum period, but what the assurance does is to reveal that that’s not the maximum period.

222. MR WIGGIN: It would be horrendous as well, so if you could consider that, I would be grateful.

223. MR MOULD QC (DfT): Sorry, what is horrendous?

224. MR WIGGIN: Being closed down, if you’re a dairy farmer, is almost certain an extremely emotionally difficult as well as financially.

225. MRS MURRAY: Absolutely.

226. MR MOULD QC (DfT): I don’t doubt that for a moment.

227. MR WIGGIN: And slightly different to potato farming, which is also expensive.

228. MR MOULD QC (DfT): Yes, but I accept, of course, that the prospect of closure, or temporary dispossession for anybody who is farming land affected by this railway, has the potential to create some –

229. MR WIGGIN: But you’re not going to put the potato farmer in prison, because if you break TB regulations

230. MR MOULD QC (DfT): We are ferociously agreeing with each other on this point.

MR WIGGIN: Splendid, thank you so much. On we go.

231. THE CHAIR: How many cattle farmers are we talking about here as a number? Is it 10, 100, three?

232. MS STAPLES: Oh definitely more than 10. I’m sorry, I haven’t actually counted specifically dairy to arable, but –
MR WIGGIN: It’s quite different.

THE CHAIR: Of the total, I’m more interested in the totality, rather than just the petitioners, so it’s into double figures, the number of dairy farmers.

MS STAPLES: What, on the stretch of Phase 2A?

THE CHAIR: Yes.

MS STAPLES: Oh yes, easily.

THE CHAIR: Thank you.

MS STAPLES: I just wanted to say that we have been in contact with HS2 on TB and we are in discussions with them, specifically on the processes they are going to follow, especially in certain areas.

MR FINDLAY QC: Can I say that the – and we’ll hear what is said on HS2’s behalf about why a big scheme needs a short period of notice, but in our submission, we’ll reserve the right to ask questions on that, or comment on – a minimum period, yes. Can I, before we move off temporary possession, I am reminded that there is one element that we are going to need to come back to, and just bring up A50(8) just to help explain it, that a management agreement for temporary possession, a draft of a management agreement is going to be provided by HS2 before the close of proceedings.

We will then obviously wish to comment on it and we simply reserve the right to do so. That hasn’t happened yet and I just formally bring that to the attention of the Committee at this stage. We thought it does say we have been provided with a draft. That was a mistake in drafting. We haven’t had the draft yet, we are not complaining about it. HS2 have said that they are going to provide it and we will look at that in due course.

MS STAPLES: Can I just explain that that’s, of course, where land is taken for permanent mitigation to be created at the moment, no farmer knows at the moment really what management he would have to carry out, if he wanted to stay as the owner of that land, so at the moment, he can’t make a decision whether he would like HS2 to take
that land permanently or not, because they haven’t produced the management agreement.

243. MR FINDLAY QC: That’s all we had to say on temporary possession. If we could then move to land take for mitigation, slide A51(1). Land take for mitigation is rather an issue of some significant importance to the NFU and it’s because of the large areas of land being acquired and as we, the NFU, understand HS2’s position, it is that the justification for the extent and location of any land required by way of mitigation is down to professional judgment.

244. There is an overall balancing of no net loss and there’s a metric for that, where HS2 are capable of proving no net loss, but that metric, as we understand it, is very clearly stated by HS2, not to be part of the decision-making process, in identifying the location or the extent of the land taken from mitigation, so understanding that metric doesn’t assist the farmer in knowing why large areas of their land are being taken for habitat creation.

245. Secondly, there’s no indication that, as far as we can see, that the impact on farms has been taken into account as a significant material consideration, when identifying their location, or extent of land, or exercising that professional judgment, and the professional judgment expressed in one term sounds wonderful. It’s not HS2, it’s the professionals doing it, but unless the farmer – there’s some set of criteria that the farmer can identify, the farmer is left unknown about how that land is being taken and there is an undertaking, at present, which we’ll come to in due course, that HS2 will consult with the farmer at detailed design stage, but the issue is of such importance that in our view, by detailed design stage, the principles of location and quantity are, to a large extent, already been set. That’s, in summary, our case, and I’m going to ask Ms Staples to consider the evidence first, first by reference to the next slide, A51(2).

246. MS STAPLES: On this slide, I just really wanted to bring to your attention the amount of habitat that is to be created, so in the non-technical summary of the environmental statement, it’s been stated that 107 hectares are being lost of principal importance and then they’re going to create 394 hectares, so that’s 973 acres of principal importance and then further, through a freedom of information request by one of our agents, acting for a lot of our farmers, and just in regard to trees, we’ve been told that
46 hectares are being lost of trees, but they’re actually going to create 238 hectares and, as you can see, as I’ve said there, so in regard to the principal importance, that’s three and a half times the amount that’s been created and then, in regard to the trees, that’s 5.2 times the area that’s being taken to recreate trees and I was just going to say, so obviously, those are quite large areas that are being taken, alongside the area of land that’s being taken to create the railway line in the embankment.

247. MR FINDLAY QC: So if we go to the next slide please, we’ve got a number of examples of large extent of habitat creation. We’ve got four I think.

248. MS STAPLES: So I just wanted to give you a few examples, so that you can understand. This is at Netherset Hey Farm. They’ve got, as you can see here, some habitat creation there of trees. There’s two areas alongside the line and then they’ve got a large area in that north west corner, where I’ve said 27 acres is to be created. At the moment, this is also a dairy farm. They have not really been told why the area in the north corner has to be 27 acres. They completely understand it is providing for an activity, because it is between two areas of woodland there, but I think the importance there for this farmer, is why does it have to be 27 acres and actually, they would like it to be located in a slightly different place and then it would still be located as a Hey spring woodland, and so far they’ve had nothing back from HS2 on that request.

249. THE CHAIR: Sheryl?

250. MRS MURRAY: Mr Mould, have you consulted, not you personally, but have HS2 consulted personally with the farmers, when they’ve drawn up these areas of mitigation?

251. MR MOULD QC (DfT): Yes. There have been – there is a firm of specialist agricultural consultants who conducted a programme of farm surveys, which was supported by visits, where visits could be – where it was possible to visit the farms in question, to understand the way in which the farm works, to understand the fields that were used, the most productive for arable farming, for example, and those that were most productive for dairy farming, and that information was then collated, it was fed into the process of developing the design of the railway.
252. At the same time, those whose responsibility it is to assess the environmental impact of the railway on ecological interests, in terms of landscaping, visual impact of the railway. They were also considering where the railway would directly affect, for example, on this plan, areas of existing wetland habitat, areas of woodland habitat, and were considering where those impacts ought best, or most appropriately to be mitigated, through new planting and new habitat creation and so forth.

253. Then, as the process of developing the Bill scheme continued, those strands and other relevant strands were taken into account, through multi-disciplinary discussions and meetings, which then fed into the design of the railway, that is included in the Bill before Parliament, and which is extensively reported, both in terms of the main volumes of the environmental statement, and also supported by comprehensive technical work, in terms of agricultural impact, in terms of ecological impact, in terms of environmental impact, which you will find spread out through the very many pages of volume four of the environmental statement. So this is the product of that process and those –

254. MRS MURRAY: The individual landowner would be involved in those discussions and dialogue throughout the course of the planning? Am I correct?

255. MR MOULD QC (DfT): As I have said, a survey – there was a survey commissioned and carried out by specialist agricultural consultants, in order to understand the way in which the farms worked.

256. MRS MURRAY: The farmer would have been involved with these experts?

257. MR MOULD QC (DfT): If the farmer was available to speak to the consultancy I’ve mentioned, then they would have spoken directly to the farmer. The reason I am putting it in that way is because I cannot say, I cannot guarantee that the consultants concerned were able to speak personally to every single farmer who was affected by the route, but

258. MRS MURRAY: But if they were going to take the farmer’s land, surely you would expect them to speak to the farmer?

259. MR MOULD QC (DfT): I would and that was one of the tasks that was placed with those consultants, but there have been occasions in which it has not been possible
to speak to the farmer, for a variety of reasons, not through a lack of effort to try and speak to them, but just because it hasn’t been possible to do so, but each and every farmer, whose land is subject to compulsory purchase for this railway, in order to provide ecological and other environmental mitigation, have had the opportunity to make representations on that, through the consultation which this house requires, understanding orders on the environmental statement, and specifically and crucially, they have had the opportunity to petition this Committee and to say that is not what should happen, and 44 farmers, we are told, have petitioned, you are going to hear their petitions I assume throughout, and unless we can satisfy them with our answer as to why their land is required for the purposes set out in the Bill plans, I’ve no doubt this Committee will say you should amend the Bill, in order to exclude their land from –

260. THE CHAIR: I just want to come back on one point. On the point we will be hearing from 44, I think I would say to you both generously that the point of hearing the NFU at such length now is to not hear from all 44, and for some of these issues in principle to be settled. Bill Wiggin?

261. MR WIGGIN: Yes. One of the arguments that we have already heard, is that if you buy a large percentage of somebody’s farm, you make their business unviable and then HS2 will step in and buy the whole farm.

262. MR MOULD QC (DfT): Yes.

263. MR WIGGIN: The debate here is the amount of land –

264. MR MOULD QC (DfT): Yes.

265. MR WIGGIN: – that the farmer is losing, because it’s part of his business. Is there a way in which the land that you acquire, that you didn’t necessarily want, but that you’ve been forced to acquire, because of the damage to the business, can be offered on a not necessarily financially preferential, but at least an opportunistically preferential way to the neighbours, who may also be affected? It won’t work in every case, but it is a step that would help farmers who were suffering from just no land to buy with the money you give them.
266. MR MOULD QC (DfT): Certainly land that is surplus to the scheme’s requirements will – the way in which that’s dealt with is fairly straightforward, as you know, the Crichel Down rules require us firstly to offer it back to the previous owner, solely in certain circumstances, but where the previous owner says they don’t wish to buy it back, it’s offered on the market and clearly, if it’s particularly attractive to a neighbouring farmer who has suffered some reduction in land taken, as a result of the scheme as well, then they would clearly be foremost in the market to acquire it, but –

267. MR WIGGIN: Well that’s not necessarily true, because if you are taking a strip of land, like a railway, you are financially enhancing every farmer who’s affected, so if you take it from them at £10,000 an acre and put it up for sale to their two neighbours, then the price will go up, because there are two neighbours, but only one compulsory purchaser, so it’s not as clear as you made out there? Well, do you take what I’m trying to say? I’m not necessarily putting it as clearly as I’d like?

268. MR MOULD QC (DfT): I do. I think the point I was going to put to you is this, that the rules which govern the sale by the Government, of land that is surplus to its requirements, which is effectively what we’re dealing with here, require that that land is sold at open market value, otherwise the public purse loses out, that’s the thinking. Here, in a situation in which land, a farm, Farm A has effectively ceased to be a viable – a going concern, we hope that will be something that won’t happen, but it may, and there is a residue of land which is not required for the railway, but which has been bought by the Secretary of State on that basis, then plainly that is a residue of land that may be available for a number of purposes. It may be available to offer to the market, it may be available, depending on when the Secretary of State acquires it, it may be available at a much earlier stage for consideration for relocating mitigation planting that is proposed for the neighbouring farmer’s land, to relocate that onto the farm that the Secretary of State has now acquired, on the basis that you put to me, and thus reduce the impact on the neighbouring farmer in that way.

269. We have examples of that from Phase One, a number of examples, where the Secretary of State has, at a fairly early stage in the process, acquired a farm because he accepted that the effect of the scheme was to render it useless as a holding, and he then took the opportunity to relocate mitigation, which was affecting and objectionable to the
neighbouring farmer, relocate that mitigation onto the farm that he now owned, so you resolve the matter in that way.

270. MR WIGGIN: That’s one solution. I am quite taken by that, but I do remember that this was part of a finely crafted, ecologically-based scheme, designed to join up woodland.

271. MR MOULD QC (DfT): Yes.

272. MR WIGGIN: And therefore you can’t necessarily get the same success, so you might have to offer him bare land elsewhere and that –

273. MR MOULD QC (DfT): One size most definitely doesn’t fit all and that’s really the theme of our response today. Let’s look recognise that we need to deal with this ultimately, on a case by case basis.

274. MR WIGGIN: Thank you.

275. MR FINDLAY QC: So we think you’ve had a rather rose-coloured picture of the extent of consultation. I’ll ask Ms Staples to give you the huge slant on the extent of consultation so far.

276. MS STAPLES: Actually, first of all, I can say that I completely agree with Mr Mould in that yes, agricultural consultants did go out at the beginning of the scheme and their job is to go and learn as much as they can about the farm business, which is what they do and how it will be impacted, but it’s the consultation that’s been happening after that, is where there’s been a complete breakdown on Phase 2A. There was some consultation early on. There was then like six months of absolutely no contact at all from HS2 and the final time they saw these plans was actually when the hybrid Bill was deposited and these plans are in the final environmental statement and what’s been happening at meetings as well is, yes, HS2 have been going, having a meeting, take away lots of information and then those landowners are hearing absolutely nothing. There is no follow up at all, and they will all tell you, and all the ones that are coming to see you and petition, that specifically in regard to habitat creation, the answer every time is just it’s professional judgment. There is absolutely no negotiation so far on, could the areas be smaller and so far not very much in regard to relocating and also, on Phase
One, what’s been happening is those areas that have been taken are exactly what was in the hybrid Bill so far. No temporary notices have been served.

277. I just really wanted to give you two further examples, so that it’s not just about trees, but on the next slide, which is A51(4), this is Grange Farm. On this slide, you can see two small area of habitat creation there and then I’d just like to take you to the next slide as well, which is A51(5), and so this is to the west side of the farm boundary. There is a large area there, 16 acres to be created, of a wetland and grassland area. The important point here is this farm is a poultry farm and has 625,000. We all know now about avian flu. There should just not be a wetland and grassland area being created on a poultry farm, due to what can happen with avian flu. He has asked about this. He was asked why is this area to be created on his farm. Still been given no answer and again, no answer into why it has to be 16 acres.

278. THE CHAIR: A question from Sheryll.

279. MRS MURRAY: Ms Staples, would you have expected experts to be aware of that problem, when they committed the original survey?

280. MS STAPLES: Absolutely. Definitely.

281. MRS MURRAY: Thank you.

282. MS STAPLES: I mean he’s already in a high-risk area for avian flu anyway, so then to go and create that type of habitat creation and just thirdly, I just want to bring your attention to Manor Farm, so this is slide A51(6). Again, this is another dairy farm, so just dairy, but as you can see, what I really wanted to point out here was, there’s an area to be created, which is for flood plain storage. That area that is shaded light blue on the east side of the farm there. So, so far, it just says, and that’s about I think 10 acres, there’s no information again given to this farmer, as to why that flood plain storage needs to be on his farm and what is it replacing, and he has not been told that either, and that’s really important. That’s all I really wanted to give as an example. They are all petitioners.

283. THE CHAIR: They are?

284. MR MOULD QC (DfT): They’re all the petitioners.

286. MR MOULD QC (DfT): Well I’m going to follow up on all those points, because you know.

287. THE CHAIR: Do you want to do it now, or at the end?

288. MR MOULD QC (DfT): No, no, do it so that we can seek to resolve these points, well before the date when they are due to come before you.

289. THE CHAIR: Excellent. Thank you

290. MR WHITFIELD: Sorry, can I just clarify something with the NFU You talk, on the one hand, about the discussion, and then on the other about the metric, and then on the other about the disproportionate replacement land for the taken land, is your concern about the metric that was used, given that these petitioners are coming to us with their cases, for the purposes of HS2, or does it have a wider application?

291. MR FINDLAY QC: The metric is, to some extent, a red herring and I apologise for introducing it. There is no metric. There is no mechanism for identifying what line is taken and where it’s taken, that is professional judgment. The metric exists as HS2 being able to show an overall route-wide basis that they have caused no detriment and Mr Mould will correct me if I’m wrong, but that, as I understand it, the metric is there to establish the ecological baseline that HS2 is not leaving things worse than when they started, but the metric itself does not form part of the decision-making process and indeed that, the absence of a metric, or equivalent, is one of the NFU’s concerns, because the NFU, if I can put it this way, understands that you don’t just have like-for-like replacement.

292. You don’t necessarily lose one acre of woodland, so you have to replace it with one acre, but its farmers, for the reason I require something more by way of explanation, so that they can challenge and take part in a process to understand slightly more than their professional judgment. They can explain – they can understand what the result has been, from all the paperwork Mr Mould has referred to, but their processes and what weight has been given to what factors, in reaching those processes, are unknown to them, so if I can come to our solution, which is on A51(8), our main concern, and
perhaps it’s not put as neatly as it might be, but our main concern is to have some form of metric, or equivalent, which enables us – NFU and its members – to understand how the mitigation decisions have been made rather than simply relying on general professional judgment. And in so far as there is a metric, if we turn to the next slide which is A51(9) we ask that the mitigation should be justified, expressly taking into account impact on farm businesses.

293. Now, you’ve heard from Mr Mould that it has been, but certainly as far as we can see, and Mr Mould may be able to point us to something today to show how that has been taken into account to intelligently locate mitigation on land at production these are principles that should be embodied in an assurance and locating mitigation on severed fields where appropriate which speaks for itself. And that we’ve asked for a number of other requests there about entering into discussions with the landowner and owner or tenant for the farming business in respect of mitigation.

294. As I say, there is undertaking by HS2 to consult before detailed design is finalised, but we say and our concern from our experience on HS1 is that that’s too late in the process, so that’s why we’re raising it at this stage.

295. MR WHITFIELD: Can I clarify: if you were to be given a metric, given that assessment criteria, would you envisage requesting an opening of a further petition period for other farmers to come to us? I don’t see what the use of it here is with the petitioners who’ve already petitioned that we’re going to see.

296. MS STAPLES: Because those petitioners need to know – those three examples I’ve just given you haven’t been given the reasons why 27 acres has to be taken for woodland tree planting or why the 10 or 16 acres has to be taken for flood. And they’ve got nothing to go on at the minute as to should it be 16 acres, or actually that’s HS2 asking for too much, and actually they could just put five acres down to flood alleviation and that would be perfectly acceptable?

297. MR WHITFIELD: So is your request really in order to assist with the petitions that are going to come before us?

298. MR FINDLAY QC: It’s two-fold. Yes, and also to assist in establishing principles when there is detailed design that these matters are acknowledged to be
relevant considerations.

299. MR MARTIN: So given that the mitigation take and the types of mitigation are different in every case whether or not there was a metric we would still need to go through all those arguments with each of the individual cases. I still fail to understand how helpful a metric would be, either to the farmers and landowners, or indeed to this Committee.

300. MS STAPLES: Because at the moment they’ve got – if it was your farm and they were coming to you they’re just stating that, so they’ve got nothing to absolutely question as to whether that’s right. One, in the first place it should be 27 acres or why even the 27 acres is on their farm and not on their neighbour’s farm.

301. MR MARTIN: But it would be a different explanation in each case. It would be very difficult to develop a metric which actually did that.

302. MS STAPLES: Well, I think they need some explanation other than just being told professionals’ judgment. If you look at the amount of land they’re taking on each farm and you try to split it down between railway line and embankments and mitigation area it’s nearly half and half. So if you took away the land they weren’t taking that land for mitigation, some of the impacts on their farm businesses will be far, far less.

303. MR MOULD QC (DfT): I’m sorry, I know I said I’d respond in a job lot at the end, but as you have these things in your mind, Mr Findlay very kindly has offered me an opening if you’re happy to have it. The way to test this I would suggest is this: let us assume that each and every one of the four farms that you have been shown that the farmer comes before you as they currently intend to do and they say, ‘X hectares of my land is subject to compulsory purchase; it appears to be required for habitat creation or for tree-planting or whatever it may be. I’m not at all persuaded that that is justified, I know that the legal proposition is that where a public body seeks to obtain powers of compulsory purchase over private land the onus is on that public body fair and square to justify taking those powers.’

304. That applies as much to the promoter of this Bill as it does to any compulsory purchase order up and down the country for a road scheme or new hospital or whatever it might be. And so I know that I have to produce evidence to you in due course to say
this is why we need to take this land for woodland planting or for ecological mitigation.

305. The answer is actually set out in the environmental statement if you read the document, but on Ms Staples’ approach to this rather than, as she puts it, keep the petitioner in the dark until the day when they come before you I am going to take away the message from her. I’m not saying I accept what she says, but I’m going to take it away the message from her that those who are assisting me with the preparation of our case in relation to those positions should take steps to inform the farmers concerned what is the justification in our published material and what further justification we will seek to bring to bear for seeking powers of compulsory purchase over their land for a number of purposes and relay that information to them so that they are able to consider it.

306. THE CHAIR: That is extremely helpful. If at some point you could clarify what you’ll do with farmers that haven’t petitioned; you don’t need to now, but just to see how they’ll be treated and at what juncture. I can see why you might treat them differently and I think that’s fair, but equally I can see some potential benefits to learning from the petitioners.

307. MR MOULD QC (DfT): Yes. I certainly will see what we can do about that. I’m sure you will appreciate that it is reasonable to infer from the fact that they haven’t petitioned that they perhaps are less concerned than those who have. There may be reasons why they’ve not petitioned, but equally it is part of our public relations strategy that we should keep those whose land is subject to compulsory purchase – keep them informed of the progress of the Bill and it may well be that we can provide some further information through that route.

308. THE CHAIR: Very helpful.

309. MR WHITFIELD: I wonder whether while we push it, perhaps a slightly open door – there’s discussion about management agreement and the same for these, presumably the draft management plan that you’re proposing for the land afterwards would cover, or could.

310. MR MOULD QC (DfT): That will, if you will, have a broad relevance. The principle purpose of the management agreement is to ensure that the promoter on the
one hand and the effective landowner or landowners on the other hand have reached a
meeting of minds over how ecological mitigation, landscape planting, what you will –
how that will be carried on through that management period I showed you – well, I
displayed the Committee last week under information paper E2. As you rightly say, if I
may say so, it does have a broad correlation.

311. MR FINDLAY QC: Can I summarise that? Mr Mould’s suggestion is extremely
helpful and if we’ve succeeded in that regard then it’s been worth raising this point
before you. But can we say in terms of the principles and the slide in front of you in
terms of the detailed design we would still be seeking assurance that the basis of
mitigation include those principles, and can we leave Mr Mould to think about that, too?
The impact on farm businesses.

312. THE CHAIR: I would suggest banking the gain and moving on – you’re doing
well.

313. MR FINDLAY QC: Right. A right of entry for further high speed railway works,
so that’s A52(1). This is a – if I don’t damn it by calling it a technical point about rights
of entry, but it’s a matter of some significant importance to the farmers and I’ll leave Ms
Staples to explain this to you.

314. MS STAPLES: So this is just in regard to notices served to carry out surveys.
Most of the surveys have been done on licence I have to say, but actually what’s
happening now is where some temporary notices have already been served for the
possessions on Phase One but HS2 are still wanting to carry out surveys they’re just
serving the notice.

315. And if I could just take you to slide A52(2) what happens then – this actually one
of the schedules off the back of one of the notices that has been served by HS2 at the
beginning of this year. As you can see all it does is it just gives you – I’ve just given
you one page here – all the different types of non-intrusive surveys that might happen.
So it doesn’t actually tell that farmer which of those surveys are actually going to be
carried out under that notice.

316. I’m just going to make you jump ahead to slide A52(5). There is a different notice
here that has been served actually under the Housing and Planning Act; this was actually
by Highways England on a scheme that’s being looked at at the moment which is the A303 at Stonehenge. As you can see there the schedule to that notice says exactly which type of survey is going to be carried out, and then there’s a further column which gives a timeframe and it actually says how long they need to carry out that survey.

317. So that is our request – that going forward any notices that are served by HS2 just have that detail so each landowner/farmer knows the survey that is going to be done and when it’s likely to be carried out.

318. MR FINDLAY QC: Can we just say, if you go back to slide A52(3) that is what the Housing and Planning Act 2016 says at the moment. I understand HS2’s point is that an earlier Act, the Planning Act 2008, has a provision similar to that contained in the current Act and/or Bill, but it’s our case that there’s no reason why the Housing and Planning Act 2016 provisions should not be followed. If we turn to the next slide which is 174 you’ll see the – so that’s A52(4) – you’ll see really setting out in detail what Ms Staples has just explained. That’s our concern and that’s our ask.

319. We’ll move on unless my learned friend wishes to respond.

320. THE CHAIR: With four minutes to go, just some clarity. How far down the order is Ms Staples giving evidence and when is the next witness? I don’t know where the changeover point is – the changeover points.

321. MR FINDLAY QC: We’ve got one more issue with Ms Staples, then if we were to run to our intended order it would be borrow pits next – that’s a different witness – three more issues for Ms Staples, and then tax. And we will – we should finish that within the broad timescale given Mr Mould’s had some chance to respond already on some issues that you indicated.

322. THE CHAIR: I think in which case we’ll break now and we’ll come back at 7.00 p.m. I’ve been asked to say that the Jubilee Café which is off Westminster Hall is open tonight until 7.30 p.m. Sounds like I’m on commission, doesn’t it? Staff can help direct you if necessary; I didn’t realise we had staff. If I can be of any assistance to anyone I will so, more than happy to help.

323. MR FINDLAY QC: Sir, can I just raise one point? Because we’ve got a number
of witnesses, to expedite matters it may be if I was allowed to have our other two witnesses on the table to our right and keep Ms Staples here because there are sometimes when we need –

324. THE CHAIR: If Mr Mould doesn’t object that seems very sensible.

325. MR MOULD QC (DfT): No, no, I don’t object.

326. THE CHAIR: Indeed. Thank you.