MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Tuesday 14 May 2019 (Morning)

In Committee Room 5

PRESENT:

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

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IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport

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WITNESSES:

Rachel Giles
Charles Streeten and Maggie Simpson
Peter Miller, HS2

IN PUBLIC SESSION
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1. THE CHAIR: Good morning everyone, welcome. We can start straight away
   with the first petitioner, which is Cheshire Wildlife Trust. Rachel Giles, thank you for
   coming and petitioning. Over to you.

2. DR GILES: Thank you. So, my name is Rachel Giles, Cheshire Wildlife Trust,
   evidence and planning manager. I’m here today on behalf of our 13,000 supporters
   whose views I seek to represent. So, they’ve raised over £22,000 because they want us
   to hold you to account. My exhibit is in the form of PowerPoint presentation setting out
   the reasons why the Cheshire Wildlife Trust is petitioning and, secondly, what we would
   like to see done about it. Can I have my first slide?

3. THE CHAIR: If you just call out the slides, the team over there will put them up.

4. DR GILES: Okay. So, that was my introductory slide, so miss that one. So, the
   second slide, please. So, the AP2 changes will result in further unmitigated losses of
   wildlife habitat with two and a half hectares of broadleaf woodland, 9.6 hectares of
   wildflower grassland, 2.7 hectares of local wildlife site which is designated primarily for
   farmland birds and also the potential loss of a water vole population. The last two of
   those impacts are considered significant impacts.

5. However, I want to point out that the impacts on breeding birds such as yellow
   wagtails, skylark and grey partridge are still missing from the list of effects arising
   during construction, presented in the environmental statement. They are also missing
   from the list of local effects and the AP2 changes and this means that there are no
   documented measures to directly address their specialised feeding and nesting
   requirements. In fact, effects on breeding birds have been completely overlooked,
   despite the extremely important bird assemblage identified by HS2 and other surveys
   and the issue being flagged by the Cheshire Wildlife Trust in our response to the draft
   environmental statement in November 2016 and then the site qualifying for local
   wildlife site status in 2017, mainly for its farmland birds.
6. The bird assemblage at this site is of county importance and is the best assemblage recorded along the entire route of HS2 Phase 2A. It is shocking that HS2 can’t even acknowledge this in any of their list of effects and I suggest to you that the reason may be because it is difficult to secure measures to mitigate the impacts on species such as yellow wagtails, skylark and grey partridge, for example measures such as skylark plots in arable land, large open sward habitats for nesting, wide margins for cultivated fields, these are all features currently supported by a high-level stewardship scheme on the local wildlife site.

7. Next slide please. We are pleased that HS2 recognised the amount of replacement habitat provided at the AP1 stage was inadequate and that a fund was set up to go some way to address this and, for this reason, the Cheshire Wildlife Trust withdrew the response in July last year. The fund will be controlled by Cheshire East Council and will be used to mainly plant trees and hedgerows to help address both environmental and landscape issues. However, as you can see from the table, there are extensive losses of habitat identified in AP2 and the SES2.

8. THE CHAIR: Can I just stop you for a quick question from Sandy?

9. MR MARTIN: Yes, sorry, you’ve added the area lost in AP1 to the additional losses in AP2 but you haven’t subtracted the replacement area put forward, is that right? So, the net loss in the first one will actually be 2.1 hectares.

10. DR GILES: I haven’t done the net loss because you can’t do it like that, basically, if you’re talking about biodiversity because it’s about quality rather than quantity.

11. MR MARTIN: Yes, I just wanted to identify what the actual situation was.

12. DR GILES: That’s a total loss so, no, I haven’t –

13. MR MARTIN: So, the total loss of existing wildlife area is that and then the replacement area will be –

14. DR GILES: The loss, yes, the total loss.

15. MR MARTIN: Yes, yes.

16. MR WIGGIN: When you say wildlife area, you don’t mean exclusively like a
wildlife habitat. You mean ordinary farmland that would normally be used.

17. DR GILES: No, no, I’m talking about priority habitats so habitats such as broadleaf woodland, native broadleaf woodland, wildlife grassland, so it’s not just –

18. MR WIGGIN: You’ve labelled those, but the only one that’s extraordinary is the farmland birds and that’s not in those habitats, is it? Those are in the farmland.

19. DR GILES: So, the farmland birds that I referred to in my slide 1, so things like the yellow wagtail, the skylark, the grey partridge, they’re specifically on the local wildlife site because of measures under the high-level stewardship scheme that had been done to attract those kinds of birds. So, they’re not in the broader, wider landscape, or if they are, they’re at very low numbers. They’re in particularly high numbers on the local wildlife site.

20. THE CHAIR: Sheryll, and then we’ll make some progress.

21. MRS MURRAY: Yes, I’m just following on from Sandy’s question really because, where it says ‘total loss of 12 hectares’, 9.9 hectares are being replaced. It’s quite misleading.

22. DR GILES: It’s not misleading at all because when you replace a wildlife habitat like native woodland with something like plantation, the quality, you cannot replace a complex ecosystem like mature native woodland with everything in the soil. It’s mainly about the soil as woodland, so all the fungi, the bryophytes underneath, a replacement –

23. MRS MURRAY: And following on from that Chairman, are we not dealing with AP2 now so we should disregard AP1?

24. THE CHAIR: I think we’re setting a context. You’re right to pull me up. So, let’s move on but it provides a context but I suspect you’re looking at the slides. That’s not going to be your focus. So, let’s move on to the next slide.

25. DR GILES: Yes, the second to the end is specifically about AP2 so the –

26. MRS MURRAY: So that’s what we’re focusing on.

27. DR GILES: I’m putting it in context, yes.

29. DR GILES: Right, so as I was saying, you can see that there are extensive losses of habitat, no new mitigation is being proposed. The additional losses of woodland and wildflower grassland lie outside the borrow pit area and won’t be affected by a reduction in size of the borrow pit. So, this means there is now considerably more woodland and wildflower grassland being lost than being created. Both these habitats are difficult to recreate and require specialised ongoing management. Mitigation habitat for newts or for landscaping purposes are not appropriate substitutes. This seems to be suggested by HS2’s response to my petition.

30. Can I have the next slide please? So, this clearly goes against HS2 policy as they are committed to developing an exemplar project and to achieving no net loss in biodiversity. No net loss in biodiversity would require approximately five times more woodland creation and double the amount of grassland using HS2’s own metrics to calculate that.

31. MR WIGGIN: So, where do you think this will come from?

32. DR GILES: HS2 said in their policy that they are committed to achieving no net loss in biodiversity. They will need to find the locations to do that. I understand that much of this will be off the routes and third-party landholdings.

33. MR WIGGIN: So, just take other people’s land?

34. DR GILES: But if they have no intention of achieving no net loss in biodiversity, why is it in their policy?

35. MR WIGGIN: It says ‘no net loss in biodiversity’. It doesn’t say five times more land take than original.

36. DR GILES: That’s what will be required. I’m not talking about just general farmland, I’m talking about the high-quality habitats, like ancient woodland or like, even if it’s not ancient –

37. MR WIGGIN: Well, we visited the ancient woodland and found that people had planted larch quite a lot of the way through.
38. DR GILES: All right, not ancient woodland.

39. MR WIGGIN: So, actually, quite a lot of the so-called ancient woodland was bogus, to put it gently.

40. DR GILES: So, if you put it in the metrics, you put your losses that go in on one side of the equation and what comes out on the other, you need five times more out because of the loss in quality.

41. MR WIGGIN: But you just told Sandy that you couldn’t do that.

42. DR GILES: Sorry?

43. MR WIGGIN: Okay, thank you.

44. THE CHAIR: Well when we get to HS2, perhaps they’ll cover this issue of no net loss in biodiversity, whether it’s by geographic area, which is one thing, or whether it’s the amount of biodiversity.

45. DR GILES: It’s the biodiversity value.

46. THE CHAIR: In which case, how do you measure that and is there a factor in terms of numbers? Sorry, I’m closing you down on the issue and saying that we’ll listen to HS2 later on. Let’s move on to water voles, something I thought I’d never say.

47. DR GILES: Okay. So, the next slide please. So, the water vole arrived in Cheshire after the last ice age. The watery landscape provided the perfect opportunity for it to flourish. They acted as landscape engineers creating wildlife rich habitats along the riverbanks and river bodies, altering soil structure and increasing species diversity. They are what’s known as a keystone species providing prey for other species and maintaining wetland ecosystems. They were once the commonest mammal in Britain with a population of around 6.8 billion. In Cheshire, with its post-glacial meres, mosses, ponds and streams, they would have thrived and it’s almost certain that the water vole population which lies within the footprint of HS2 has been present in that location for many thousands of years. May I have the next slide, please?

48. This map is taken from a recent study of water voles in Cheshire by the Cheshire Wildlife Trust. It shows the distribution of water voles in the period from 1998 to 2002
and what it shows is that 20 years ago, water voles were present on many of the
wetlands and water courses in Cheshire although they had certainly declined from their
historical distribution. May I have the next slide, please?

49. Twenty years later the picture is quite shocking. During this period, they have
declined by approximately 81%. This picture is not unique to Cheshire. Water voles
are now considered the UK’s fasting disappearing mammal. In 2002, they had become
extinct in both Devon and Cornwall. Despite thriving in Cheshire’s wetlands for around
10,000 years, water voles are now in deep trouble. Although they are a protected
species, they are suffering from habitat fragmentation and destruction and the
introduction of the American mink. What we are now witnessing is the extinction of the
water vole in Cheshire. Can I have the next slide, please?

50. Most of the previous mammalian extinctions have been due to hunting but the
dormouse disappeared due to habitat fragmentation and the red squirrel was pushed out
by the invading grey squirrel in the 1950s. The reasons for the decline of the water vole
are very similar to those that saw off the dormouse and the red squirrel but the
difference today is that we know this is happening and we know what needs to be done
to stop it and, importantly, we know we still have a very short window to do something
about it. May I have the next slide, please?

51. So, the Cheshire Wildlife Trust is trying to do something about the situation and
we are in the process of developing a new water vole recovery strategy. This map gives
a clearer picture of what we are up against, showing actual records from 2014-2018. As
you can probably see, one of the last areas where water voles are clinging on is around
Crewe in the south of Cheshire. May I have the next slide, please?

52. So, this zoomed in image shows how the water voles on Swill Brook, which is an
area impacted by HS2, are key to this population. So, Swill Brook is right in the very
centre, the centre to the south of that Crewe population. I haven’t got a pointer so I’m
afraid I can’t – yes, a bit further south. No, a bit further north. That’s Swill Brook
there. That’s the population at the top of Swill Brook and Swill Brook flows
northwards. We simply can’t afford to lose any more water voles from Cheshire. We
don’t know the size of the population on Swill Brook but we do know that at least a
kilometre of habitat may be occupied. We think this could be a really significant
population and we think it could be key to the survival of the species in Cheshire. We also know that, unfortunately, this population is currently cut off from colonies further downstream due to 800 metres of unsuitable habitat in the Hough area. We think that the only possible remaining connection to the wider population is across 200 metres of open farmland to habitat along the Mere Gutter and the Basford Brook in the east. May I have the next slide, please?

53. So, either side of the HS2 footprint there are two parallel courses: Swill Brook which runs approximately here; and Basford Brook and Mere Gutter which runs approximately here. Between them is the Half Moon Drain. All three water courses support water voles. The 200-metre gap, which is approximately here, means that the two watercourses aren’t directly linked but it’s possible that water voles may occasionally move between the two watercourses. Unfortunately, not only will HS2 destroy over a kilometre of water vole habitat on both Swill Brook and Half Moon Drain, but it will also permanently sever the one remaining link between the two brooks as an inverted siphon is planned for the Half Moon Drain. It will be impossible for water voles to pass through this area.

54. THE CHAIR: A quick question from Sandy.

55. MR MARTIN: Yes, I can see the point that you’re making about the Half Moon Drain. Can you show us where the kilometre of Swill Brook that’s going to be destroyed by HS2 is?

56. DR GILES: So, the kilometre includes Half Moon Drain and then there’s about 650 metres of Swill Brook that is within the footprint of HS2.

57. MR MARTIN: But because it’s within the footprint, doesn’t necessarily mean it’s going to be destroyed, does it?

58. DR GILES: Yes, but you can’t rely, on the facts, that the water vole population will remain if there’s earthworks going on or if there’s changes to the banks of the river. The water voles will need to be moved out so, effectively, that stretch of habitat is taken out of use by water voles during the construction period. It’s not suitable. It won’t be suitable. So, this action would permanently split the populations of Swill Brook and Basford Brook/Mere Gutter creating two smaller genetically and physically isolated
populations. There are no other remaining links due to a stretch of 800 metres of unsuitable habitats down here close to the village of Hough. If water voles are lost from this location, they can’t re-colonise from outside the area due to the 800 metres of unsuitable habitat and no linkages to any other nearby populations. The rapid recent population declines also suggest that re-colonisation would not happen because populations are contracting, not expanding. Can we have the next slide, please?

59. So, please ignore the figures in this slide as HS2 have confirmed the losses are greater than this and, in actual fact, 1,345 metres of habitat would disappear for the use of water voles leaving nowhere for them to go due to unsuitable habitat in the surrounding area. So, HS2 are not planning to provide a protected refuge area so that we think that under a mitigation licence, the population will have to be relocated to a completely different area, possibly some distance from the Crewe area. This will probably result in the permanent loss of the Swill Brook population as there are simply no nearby populations to re-colonise.

60. Knowing what we do about current population trends, removing the local stronghold could put the long-term survival of the Crewe water vole population at risk. HS2 have proposed six new ponds to mitigate the impacts but, unfortunately, three are on the wrong side of the line to be any use to the Swill Brook population. They also won’t be created in advance of the habitat destruction meaning they are completely pointless if the population has long since gone. In any case, according to the current guidance, three ponds are only around a tenth of the bankside habitat creation needed if over a kilometre of habitat is impacted and that’s assuming that each pond gives approximately 50 metres of new bank side habitat.

61. The other proposal set out in AP2 involves swapping the locations of a parcel of woodland with a parcel of grassland and excavating a drain that may already support water voles. This is clearly highly unsatisfactory and is not going to secure the Swill Brook population. To save this population and secure favourable conservation status for water voles, which I believe is needed under EMR requirements, an equivalent length of bank-side vegetation should be re-created as a local refuge. This could be done in a relatively small area by digging parallel channels. As a guide, approximately two hectares of land on the west of Swill Brook would easily incorporate enough channels to fully mitigate the impacts. Once the scheme is complete, water voles will be able to
move between the refuge area and the newly restored habitat on Swill Brook and this should result in a net gain for water voles and help reverse local trends and it’s a great opportunity to do something to save the water vole population from extinction in Cheshire.

62. THE CHAIR: Thank you. Sandy?

63. MR MARTIN: Can I just ask you, you say, ‘Remove area of tree planting from edge of brook’, would the tree planting actually be detrimental to the water vole restoration there?

64. DR GILES: Yes.

65. MR MARTIN: Do you want to expand on that slightly?

66. DR GILES: Because water voles require open habitats. They like wetlands with good wetland vegetation. If you have trees that over-shade the bank-side vegetation, plants that water voles feed on do not grow successfully. So, yes, we’d suggest that either that tree planting should be removed or certainly pulled back from the edge of the water course anyway.

67. MR MARTIN: Yes, right, okay.

68. THE CHAIR: Martin?

69. MR WHITFIELD: Thank you, Chair. If we were to accept your ask, do you have confidence that the genetic pool of water voles in that area would be sufficiently large to sustain it? Because you still have the problem, on my understanding of your evidence, that Swill Brook will still, in essence, be an isolated water vole colony.

70. DR GILES: Yes. The minimum viable population, so that’s to support enough genetic diversity for the water vole population to expand into habitats and to be secure in the long term, is around 14 breeding individuals. So, yes, we have every confidence and certainly, in other parts of the country where this has been done, I think Yorkshire Wildlife Trust have done something very similar and that has been very successful.

71. MR WHITFIELD: And that is sufficient –
72. DR GILES: Yes, that would be sufficient.

73. MR WHITFIELD: Thank you.

74. THE CHAIR: Forgive me if I’ve missed out: how many water voles are likely to be affected if HS2 progress as they’re intending to with no additional mitigation?

75. DR GILES: We’re not sure exactly of the size of the water vole population in South Crewe, because clearly HS2 haven’t done all the water vole surveys.

76. THE CHAIR: I’ve got no idea whether it’s 100 or 1,000.

77. DR GILES: I think there’s about 1,000 in Cheshire. So, if we say, I don’t know, one hundred possibly in Crewe, in the Crewe area. Certainly, there’s a population that is viable in the Crewe area.

78. THE CHAIR: That gives us an indicative estimate.

79. DR GILES: Yes, we don’t know how many are on the brook but it’s been viable for probably 10,000 years but it is reducing so we think there is still a viable population there at the moment.

80. THE CHAIR: Any other questions? In which case, let’s here from Mr Mould.

81. DR GILES: I’ve got one final slide. Am I allowed to present that?

82. THE CHAIR: I think we’ve got the sense of it so let’s hear from Mr Mould.

Response by Mr Mould

83. MR MOULD QC (DfT): Thank you. Let me deal with water voles first and then I’ll quickly deal with the more general points. So, if we go to P1540(15), I’ll use this rather than the petitioner’s slide because it just shows you what HS2 is proposing. So, the Swill Brook is this water course that you have the arrow on now.

84. DR GILES: No, it’s not.

85. THE CHAIR: Shall we just confirm? Let’s just take a pause and confirm.

86. MR MOULD QC (DfT): There is a chain of watercourses that runs along these
directions here and the key point is that, let me call it the water course that is affected by HS2, is presently running along this orientation here. It flows west east. Sorry, it flows east west. It presently goes underneath the West Coast Main Line, so it’s a culvert, and there are undoubtedly populations of water vole living on the east and the west side of the West Coast Main Line and there’s every reason to think that they do pass through the culvert between both sides of the railway.

87. As you can see, HS2 requires a very substantial amount of new railway construction to the west of the West Coast Main Line. Now, under the Bill, the working assumption was that it would be possible to maintain a mammal passage alongside the Half Moon siphon, as it’s called, that’s going to maintain passage of the brook underneath the HS2 lines. Following a review of the position, the ecologists advised HS2 that, actually, it wasn’t safe to assume that a mammal passage of the length and depth that is shown there would actually suffice and so one had to assume that the population of water vole that live on this section here, that is to say to the west of the West Coast Main Line and to the east of the area where the new railway is going to go, that population would be severed from the populations which are presently living in areas to the west of the area where HS2 will be constructed.

88. So, the thing to do in terms of the permanent solution is to discourage water voles in those two areas from trying to get across the new railway line and, instead, to provide inducements, enhancements to habitat and so forth to enable them to continue to live, those that live on the east side to continue to live on the east side, those that live on the west side to continue to live on the west side and the way that’s been done has been to provide a series of ponds in the area between the West Coast Main Line and the new HS2 line so I’m pointing those out to you now. There are three of them with the arrow ’1’ and water voles using that habitat will still be able to get, as they do now, underneath the West Coast Main Line to get to areas to the east of the West Coast Main Line. You see the point. Those that are effectively forced to live to the west of the new HS2 lines, they are provided with a series of ponds in the vicinity of this balancing pond. You can see the number ‘1’ is pointing to three ponds on the eastern side of that balancing pond and you can see there is quite a significant area of habitat creation going on in there as well with the notation.

89. DR GILES: Can I just say you’re –
90. THE CHAIR: No, no, no. Sorry, you can’t say anything. It’s not an opportunity for you to cross-examine Mr Mould at this stage. It’s just not orderly; it’s not the way we do things.

91. DR GILES: Okay, sorry.

92. THE CHAIR: You will have an opportunity to come back in a second. Can I ask a question, Mr Mould?

93. MR MOULD QC (DfT): Yes.

94. THE CHAIR: What scientific evidence is there that water voles will respond to this inducement as you call it?

95. MR MOULD QC (DfT): As I understand, the evidence is well-established that water voles will habituate to improvements to and extensions to their existing habitats if that habitat is provided in the way that we are proposing under the detailed design.

96. THE CHAIR: I, for one, would like something a little firmer.

97. MR MOULD QC (DfT): Sorry?

98. THE CHAIR: I, for one, would like something a little firmer than that.

99. MR MOULD QC (DfT): Well, shall I ask Mr Miller to come in because he’s the expert?

100. THE CHAIR: I think that’s a very good idea.

101. MR WIGGIN: Can I just ask: you are sure you’re talking about the right bit?

102. MR MOULD QC (DfT): Yes.

103. MR WIGGIN: Well, Dr Giles wasn’t so sure.

104. MR MOULD QC (DfT): Well, she’s very keen to point out that I’m telling you untruths throughout this process but I’m really not, I don’t think.

105. MR WIGGIN: Well, she’ll get the chance to tell us that.
106. THE CHAIR: Okay. Mr Mould, while Mr Miller is getting settled, it is slightly disorderly but, Bill, have you got a question for Dr Giles?

107. MR WIGGIN: Well, I just wanted to make sure that we were in agreement, we’re all talking about the right bit of the map.

108. DR GILES: There’s two bits that are directly impacted. So, Swill Brook population is along this section here. That’s the brook, that’s Swill Brook. That’s approximately 750 metres of impacted habitat. This is the Half Moon Drain. The water voles will have to be trapped and taken away from here and put somewhere else in Cheshire. You can’t get a licence to displace them from this site. They will be gone.

109. THE CHAIR: Let’s go back to Mr Miller. That’s helpful. Mr Mould, you’re back in the seat. Let’s bring forward your witness.

Evidence of Mr Miller

110. MR MOULD QC (DfT): Thank you very much. Mr Miller, can you please answer the question that the Chair has just put to me? What confidence do you have that if the mitigation that is shown on this plan is constructed as its shown that the water voles which currently live along the Swill Brook as described by the petitioner will habituate to the newly created permanent mitigation?

111. MR MILLER: We draw our guidance from Natural England. Natural England have a lot of guidance about dealing with water voles and there are a number of measures that you can take: partly exclusion, partly habitat enhancement in this sort of way. I think it’s worth saying that although there is an inverted siphon, this is like a u-bend underneath the railway, the water will still flow and so it’s not true that we’re damming anything off or anything like that. What will happen is that this water course will continue to exist and we can enhance that water course in the way that we’ve suggested on these plans. So, that water course, as I understand it, is partly providing really good habitat for water voles. We’ve confirmed that water voles are in the vicinity but we also know that there are some other parts of the water course which are not suitable for water voles and that, indeed, can be enhanced as well. So, there is a package of measures which can come forward. First of all, we’ve got a package of measures of the enhancements we have on this plan and then, later on, when we get to
the detailed design, we will have to get a licence from Natural England, following their guidance, and if they require us to do any further enhancements to that water course, the opportunity exists on that water course for that enhancement to take place.

112. MR MOULD QC (DfT): Can I just be clear on this point? We’re looking at the permanent design here?

113. MR MILLER: That’s right.

114. MR MOULD QC (DfT): Now, as the Committee know, generally speaking HS2’s strategy is to get ecological mitigation in first so that you’re able to provide the alternative habitat, for example for newts and so forth. You can get the necessary licence translocation of the species affected by the railway carried out before the main construction works begin, all right? Now, in this case, the position is this, isn’t it? Because of the complexity of the engineering works that are going on here, we can see on the plan what’s happening, you’re not able to get that permanent ecological mitigation in before you begin the main construction works?

115. MR MILLER: That’s right. You would have to rely on either excluding the water voles by trapping them and moving them or you would have to enhance some other aspects of the water course which I’ve indicated.

116. MR MOULD QC (DfT): Now, these are protected species, aren’t they?

117. MR MILLER: Yes.

118. MR MOULD QC (DfT): Which means that the law requires that HS2 cannot lawfully do any translocation of affected species, affected water voles, without the licence of Natural England under the habitats regulations?

119. MR MILLER: Yes, that’s correct.

120. MR MOULD QC (DfT): And in order to obtain that licence, what will you need to demonstrate to Natural England for them to be confident that you have a licensable construction activity?

121. MR MILLER: Well, basically, we will have to have a plan which indicates how we will ensure the favourable conservation status of the species. So, that will be partly
what you see in the long term on this plan and in the short term it will either be dealing with exclusion to other areas, so actually trapping and moving the species, or further enhancements within our construction boundary, possible enhancements within the estate that we’re currently acquiring or possibly even enhancements elsewhere on that particular plan.

122. THE CHAIR: Can I just take a pause and can we have some questions from the Committee at this stage? Bill, Sandy then Martin.

123. MR WIGGIN: Mr Miller, you’ve been attacked probably throughout the process of this Committee for habitat relocation.

124. MR MILLER: Yes.

125. MR WIGGIN: And on the one side the complaints from the farmers that you’re taking more of their farmland than they would like and there’s more tree planting than they would like and, indeed, there needs to be a comprehensive rethink as the plan develops, which is your intention anyway. Have you consulted with Cheshire Wildlife Trust? Because if you take the voles away from here, which you may have to do, which is standard practice, this may not be the best place to put them back. There may be better places in Cheshire where mink are less likely to eat them, or whatever the various challenges are, that might actually make your habitat redesign easier over the whole project.

126. MR MILLER: Yes, we certainly have, or the team has spoken to Cheshire Wildlife Trust about this sort of thing and we have indicated that a package of enhancements could come forward in the way that I’ve described in addition to this plan and possibly on lands which they’re interested in themselves or they’ve got interests in and there may be other sites which we could rely upon to do the species translocation. So, in the event that we find ourselves in those circumstances, we would exhaust those opportunities before we would seek an agreement on any additional land.

127. MR WIGGIN: Because it does seem as though, with the best will in the world, you’ve got, I can see, at least four major railway lines all in the same place.

128. MR MILLER: Yes.
129. MR WIGGIN: It is a very bad place for even a water vole to live.

130. MR MILLER: Yes, it’s a great place for railways. It’s not necessarily a great place for water voles. So, I agree with you and you do need to do something a little bit different for the water voles. There’s no question about that. But we’re showing a plan here – I’ve said this to the Committee before – we’re seeking essentially an outline planning approval at this stage and there’s lot more detail to come. We haven’t done the detailed design of the route in this location and we haven’t finalised all the plans. We’ve indicated that plan for enhancements, for mitigation and so forth, but that plan will be adapted in time and necessarily so in this instance because of the licence arrangements we have to satisfy with Natural England.

131. THE CHAIR: Sandy?

132. MR MARTIN: Yes, thank you. I mean, Mr Miller, your ‘ensuring acceptable enhancements and mitigation’ sounds very lovely but it doesn’t actually tell us anything very much other than you’re saying that you want to do the right thing. So, if I were a water vole, and I was living currently in the Half Moon Drain, I would want to know where I was going to be translocated to. Can you show me where you are intending to translocate the water voles to because surely you must have thought about that?

133. MR MILLER: Well, there is the possibility of doing some enhancements further along the Swill Brook in this area and off of this plan.

134. MR MARTIN: That’s all?

135. MR MILLER: There are certainly locations which currently aren’t good habitat for water voles which could be enhanced to assist water voles and then they could be translocated in that sort of area there.

136. MR MARTIN: That’s already a water vole location there, isn’t it?

137. MR MILLER: No.

138. MR MARTIN: Isn’t it?

139. MR MILLER: It is in part water vole and it is in part available for further enhancements.
140. MR MARTIN: I mean given that you have quite a large number of enhancement areas along the course of the line, don’t you think finding a specific location which you could enhance in order to make it viable for water voles, which is not currently viable for water voles, would be the way of ensuring that you didn’t have a net loss of biodiversity?

141. MR MILLER: And that’s quite possible as well, yes.

142. MR MARTIN: But you haven’t actually found a place yet or designed a place yet?

143. MR MILLER: Well, there are certainly locations along the railway that we’ve already seen through this Committee where we could place water voles, I believe.

144. MR MARTIN: Can you show me one?

145. MR MILLER: Not on this plan, no.

146. DR GILES: I can.

147. THE CHAIR: Well, let’s come back to that. Sorry, you will have a chance to come back. Martin then Sheryll.

148. MR WHITFIELD: This is the final look of the plan so that the water course still needs to exist under the railway to keep the brooks flowing together but it’s not intended now, in any way, shape or form, for voles to cross the hundreds of metres under the HS2. Are you satisfied with the idea that there are effectively going to be two separate colonies in your result?

149. MR MILLER: Yes, we’re satisfied that that’s fine. There’s no indication from the licensing authority that that’s unacceptable.

150. MR WHITFIELD: And flowing on from that, how confident are you about your census figures for the number of voles in this area?

151. MR MILLER: Well, we did go and do a survey following the original Bill submission and the environmental statement and we’ve estimated from that, we’ve identified that there are water voles there.

152. MR WHITFIELD: So, how many voles do you think?
153. MR MILLER: We’ve estimated that there are about 30 in this location.

154. MR WHITFIELD: So, is that 30 breeding pairs or 30 individuals?

155. MR MILLER: I’m not sure.

156. MR WHITFIELD: Well, just because we had – Dr Giles pointed out that, in essence, a genetic pool needs at least 40.

157. THE CHAIR: Forty or fourteen?

158. MR WHITFIELD: Forty.

159. DR GILES: Thirty to forty.

160. MR WHITFIELD: Thirty to forty. So, it seems to me that on your statistics, the genetic pool to the top of the line won’t be sufficient and there doesn’t seem to be really an answer to below the railway, about what’s going to happen, but you are agreed that you’re going to separate this genetic pool between two?

161. MR MILLER: Yes.

162. MR WHITFIELD: I’m concerned, I think, to get to the bottom and I’m picking on a tiny little bit, I’m concerned that there isn’t sufficient evidence for us to make a decision on voles because it hasn’t been done because the detailed work hasn’t been done.

163. MR MILLER: Well, I certainly believe that there are areas on this plan for further enhancement from what we’re already showing. I’ve indicated that. And further downstream with Swill Brook, there are areas where there is an opportunity for further enhancement. All of that is within our construction boundary. Now, we’re not going to go into that brook with machinery, that sort of thing.

164. MR WHITFIELD: No.

165. MR MILLER: We will find space to exclude the machinery and the construction activity from taking place. But that also gives us the opportunity to go there and actually provide that enhancement. We’ve not shown that in our plans. We’ve not indicated that in the assessment to date.
166. MR WHITFIELD: I think in Dr Giles’s evidence, she was talking about six metres to each side of the brook. Is that possible?

167. MR MILLER: Well, I think you’ve heard from me before how, during construction, we would exclude machinery from around trees, for example. So, we would do exactly the same thing for the brook. And these sorts of features, they tend to have embankments which are quite soft in nature because there’s a lot of water flowing round and we simply won’t be putting heavy machinery in that area. So, we’ll be putting a fence line further away from those brooks to provide the protection.

168. MR WHITFIELD: Okay.

169. THE CHAIR: Sheryll?

170. MRS MURRAY: Yes, you said this is basically outline planning. Will there be another opportunity when you come to detailed planning for consultation to be undertaken and people to make representations?

171. MR MILLER: Yes, under the Bill, there is a planning regime, and it’s schedule 17 in the Bill, and there are arrangements where we put forward the detailed plans to the local planning authorities, if the planning authority believes that the amenity or the ecology is still affected, they can make their comments and we would have to address those comments at that point. The reason why I’m majoring on the licence arrangements for Natural England is that I think that’s the main factor in relation to water voles that we would have to satisfy.

172. THE CHAIR: I think the Committee do have some concerns which we might want to document following a private discussion. However, equally, I think we’ll be reassured that Natural England are already within the process. So, we can lay down some markers knowing that they’ll pick them up. Can we move on from water voles?

173. MR MOULD QC (DfT): Might I just raise one point?

174. THE CHAIR: Certainly, if necessary.

175. MR MOULD QC (DfT): A particular point which Mr Miller, and I’ll ask you to confirm, within the Natural England process, the focus is on comparing alternatives,
isn’t it?

176. MR MILLER: It is, yes.

177. MR MOULD QC (DfT): Because you have to show that your selected option, which you’re seeking a licence for, is not one that is sub-optimal compared to the alternatives that you considered. So, within that range, you might include a question as to whether retaining these voles in this location is actually the optimum solution anyway. You might also include consideration of some of the points, or all of the points, that the petitioner put forward as being her solution. In other words, in this situation, it’s perhaps sub-optimal to seek to move to a selected conclusive option now rather than to move to saying that there’s a range of potential alternatives that will need to be considered and addressed and licensed by Natural England if lawful construction activities are going to be allowed to take place here. So, I’m just trying to chime in with what you’ve just said about this. Yes.

178. THE CHAIR: That is helpful. Let’s move on from water voles now/

179. MR MOULD QC (DfT): Right, Mr Miller, let’s just turn to P480(3) please and just pick up on the other points. Do you just want to say: are these figures the whole story or only part of the story?

180. MR MILLER: No, we don’t recognise these figures and we’ve been looking at these overnight to try and see what’s going on with the scheme. They only tell part of the story because this is an estimate of the effects in area quantification for ecology and what I’ve indicated previously in the committee is that there are other aspects to planting so, broadly, woodland for example, plus this is dealing with, well these numbers I think are dealing with the ecological losses. What this doesn’t show is that we have a comprehensive landscape plan as well for dealing with visual matters and screening of the railway and I think you heard previously that you have shown or demonstrated that we will be planting generally native broadleaf woodland and we’ve indicated where the seed stock is coming from. So, there’s a lot more in the landscape plan which is not being shown here. So, there is, I think, close on to 48 additional hectares of broadleaf woodland for landscaping purposes that are being planted. Now, whilst that’s not going in particularly for an ecological purpose, there is no doubt that that planting will have a biodiversity outcome and that’s not been counted in as I’ve
indicated on the slides.

181. THE CHAIR: Sandy?

182. MR MARTIN: Mr Miller, originally, according to this chart here, originally the area lost in broadleaf woodland at AP1 was 9.5 hectares and there was a 9.9-hectare replacement area provided. Are those correct figures?

183. MR MILLER: Well, we think the replacement area is 10.8 hectares.

184. MR MARTIN: So, you believe it was actually 10.8, not 9.9?

185. MR MILLER: Yes.

186. MR MARTIN: Okay, and then it says that there were additional losses identified in AP2 of 2.5 hectares, is that correct?

187. MR MILLER: We think that’s 2.2 so it’s not far off.

188. MR MARTIN: That should be 2.2. And what additional replacement area was identified? Did you try to identify any additional replacement area?

189. MR MILLER: Sorry, the replacement area in AP2 is 10.8 hectares?

190. MR MARTIN: Yes. No, did you try to find any additional replacement area for the additional losses in AP2? Because there were areas, there have been places where we have had an area of woodland which was clearly unsuitable in AP1 where we’ve actually moved it to additional, a different place in AP2. So, how much additional –

191. MR MILLER: I don’t have that figure, I’m afraid.

192. MR MARTIN: Right, okay, so I mean the additional losses are net additional losses, they’re not –?

193. MR MILLER: Yes, I think so. I’m sorry, I don’t have that figure but we have shown you elsewhere in the evidence that where we’ve altered the mitigation, we’ve replaced the mitigation in another area and what we’ve been doing is try to address the farmers’ concerns, for example.
194. MR MARTIN: Yes.

195. MR MILLER: So that we have accommodated their field with replacement woodland. And you saw an example just yesterday, at Netherset Hey, where we’ve adjusted the woodlands to try and keep the field structure.

196. MR MARTIN: My point exactly but that’s not counted in these figures because what you’re saying is that the 2.2 hectares is actually net additional loss?

197. MR MILLER: Yes, yes, that’s right.

198. MR MARTIN: So, right, even after we’ve put in the additional new places for woodland growth in AP2, there’s still a net additional loss of 2.2 hectares?

199. MR MILLER: So, that’s based on a reasonable worst case as set out in the environmental statement and I’ve indicated previously that as we head into the detailed design, and indeed the environmental minimum requirements that are associated with this Bill require us to look further to try and reduce the effects of the scheme. Through the detailed design we will be gradually shrinking the footprint of the effect of the scheme and if we can avoid taking woodland, we can then avoid the additional mitigation and then avoid the overall land-take that occurs with the scheme.

200. MR MOULD QC (DfT): Shall I move to the next point?

201. THE CHAIR: Yes.

202. MR MOULD QC (DfT): We see, Mr Miller, on that chart a reference to a loss of habitat for farmland birds in the LWS and it said, ‘Replacement area: none’. A couple of questions on that. Firstly, the local wildlife site was designated as such in the period between the promotion of the main Bill in July 2017 and the promotion of additional provision 2, wasn’t it?

203. MR MILLER: It was, yes.

204. MR MOULD QC (DfT): Just to be clear, does the environmental statement for AP2 and the supplementary environmental statement, does it recognise and take account of and assess the impact of that upgrade in designation, if you like?
MR MILLER: It does. The original environmental statement for the original Bill submission assessed the species diversity which was subsequently recognised for the designation of that particular area of land.

MR MOULD QC (DfT): So, it anticipates it?

MR MILLER: So, we were ahead of the game, basically.

MR MOULD QC (DfT): Yes, and if we turn please to P154 –

MR WHITFIELD: Sorry, Mr Miller. You were ahead of the game from the original but there was a criticism about the extent of the survey with the range of birds and, in particular, their habitat needs for feeding. Do you agree that the environmental impact assessment doesn’t take account of that broad range but just the narrower range of birds that were identified at the start?

MR MILLER: Well, the purpose of the environmental statement is to bring forward those species which are significantly affected by the scheme. It’s not that we’re not taking account of all of the other species which exist. What we’re saying is that there are certain aspects of the environment which are significantly affected and that, through planning, as is this process, we have to bring that forward to inform decision makers, yourselves, so that you properly understand what really is at stake. So, it’s not that we’re ignoring anything; it’s just that we’re bringing forward that which is important.

MR WHITFIELD: And are you satisfied then that the species that you – or is your submission that the species you have chosen are the significant species that need to be taken an account of, or are you concerned, having heard the evidence earlier today, that there are other species that have been ignored which will have an impact?

MR MILLER: No, I’m satisfied that we’ve brought forward the right species. Early on in the process of developing an environmental statement, we go to the local planning authorities and the statutory bodies, we agree the methodology for the assessment and we work very closely with Natural England about these sorts of matters. We bring forward all of that in the environmental statement itself. We accept that people have a different view which helps the planning process but we assess those
species which are significantly affected and that hasn’t been challenged, except for today. So, I’m happy that the statutory authority has not challenged us on that point and so I have to assume that we’ve done the right job.

213. MR WHITFIELD: You’ve done what you were asked to.

214. MR MARTIN: Sorry.

215. MR WHITFIELD: Sorry, I was going to say, so you have conducted the survey on what you were asked to do by the statutory authority so that the evidence that you’ve heard today, as far as HS2’s concerned, is new and not from a statutory but from an interested party?

216. MR MILLER: Well, my evidence is that the assessment has dealt with those species which we believe are significantly affected and that is what is required.

217. MR WHITFIELD: Right.

218. MR MILLER: It’s not ignoring everything else.

219. MR WHITFIELD: No, okay.

220. THE CHAIR: Mr Mould?

221. MR MOULD QC (DfT): Yes, just so we’re clear, is the ecological impact assessment for this project entirely governed by the advice you have from Natural England?

222. MR MILLER: No, it’s informed by our specialists. It’s informed by people at the various institutes who deal with ecological matters, the whole range of matters that we assess and those processes are tried and tested through planning and it’s been tried and tested on this project in Phase One and is being tested in this phase as well.

223. MR MOULD QC (DfT): And is it also informed by consultation with local wildlife trusts?

224. MR MILLER: Sorry, yes, it is, yes.

225. MR MOULD QC (DfT): Thank you.
226. MR MILLER: The whole process is consultative. We’ve consulted on the environmental statement twice. We went out with a draft environmental statement and we went out with a full environmental statement in consultation.

227. MR MOULD QC (DfT): I’m conscious that we’re taking a bit of time but I just want to cover the last couple of points. I’ve put a slide which just summarises the assessed position in terms of impact on farmland birds generally. There’s a key point in here which I want you to bring out that a good deal of the impact that was assessed as being assessed before relates to the area of the borrow pit in this area which was shown as subject to excavation under the Bill. Now, if we go to the next slide, P1540(9), Mr Miller, what’s the position? As a result of the review of borrow pits and, in particular, the quantity and quality of material that is now, in the light of preliminary ground investigation, expected to be available from this most northerly borrow pit, is there a change in the surface impact of the construction of the railway?

228. MR MILLER: Yes. I think just a little over half of the borrow pit is disappearing so that which is currently on the surface will remain. I think it’s area 1 and 3 on that plan. So, that will now no longer be disturbed so those bird species which are of concern, will not be concerned in those areas.

229. MR MOULD QC (DfT): Two more small points. Firstly, the fund that was mentioned, the £850,000 which I think the Committee is aware of, was that a fund in recognition of a failure to provide proper mitigation or was it a fund for some other purpose?

230. MR MILLER: That’s for another purpose. It’s for enhancements in this area that we recognise.

231. MR MOULD QC (DfT): And this area’s designated as a general improvement area, isn’t it?

232. MR MILLER: It has been for some while, yes.

233. MR MOULD QC (DfT): Yes, so the fund goes towards that purpose. And the final point is no net loss. What is the purpose of the no net loss audit in relation to the HS2 Phase 2A railway, please?
234. MR MILLER: We’re trying to ensure that the footprint that the railway takes ultimately is not going to affect the natural environment overall. So, the mitigation compensation that we’ve put in the environmental statement is to deal with species matters, it’s to deal with landscape and that sort of thing and, overall, on a route wide basis, we’re looking to ensure that this railway at least puts back what is being lost to the natural environment.

235. MR MOULD QC (DfT): And just to be clear, the particular question which the Chairman asked me, his question was, do you do a no net loss audit of this particular brook or any particular area? You said a route wide assessment, is that the point?

236. MR MILLER: Yes, we’re trying to strike a balance across the whole of the route because there is no doubt that in certain locations, we will have an effect on certain species or certain habitats and woodland is a really good example where we’ve heard from a number of farmers concerned that they’re getting woodland mitigation on their land. It’s as a consequence of lots of different woodlands being affected along the route and then we’ve taken a decision to locate woodland on a particular piece of land. So, we’re trying to strike a balance over the whole piece, rather than trying to deal with everything in each locality, because it’s simply not possible to do it in each locality.

237. MR MOULD QC (DfT): Thank you very much.

238. THE CHAIR: Sandy?

239. MR MARTIN: One last question, Mr Miller, sorry to go back to the water voles. It does though occur to me that although it’s probably unlikely that the water voles will use a 150-metre underground culvert, because that’s quite a long way –

240. MR MILLER: They won’t.

241. MR MARTIN: You think there’s no chance they’ll use it.

242. MR MILLER: They will not, no.

243. MR MARTIN: Right.

244. MR MILLER: No, you have to do something different which is the enhancement. As I understand it, they probably wouldn’t go underwater for any more than about 10 or
15 metres at best.

245. MR MARTIN: Right. And it’s actually going to be underwater a lot of the time, will it? There won’t be any air?

246. MR MILLER: Yes, basically the inverted siphon, it is a bit like a u-bend. There’s always water in it.

247. MR MARTIN: Right, so there’s always water in it?

248. MR MILLER: So, the water comes in. It’s the pressure which pushes the water out and maintains the flow.

249. MR MARTIN: You don’t think there’s any danger that they’ll try, and drown?

250. MR MILLER: I don’t know what goes through water voles’ minds to be honest. They may well try; I really don’t know. I don’t know.

251. MR MARTIN: I mean it would be a tragedy if there’s only 30 of them and they all try and get through and drown.

252. MR MILLER: Yes, I mean it may well be that you have to put some sort of exclusion over the point of the siphon. I don’t know whether a mesh could be put over so that the size of the water vole, they couldn’t actually get in to the siphon. I think these things are covered up, generally. I’m sorry, I’m not an expert in siphons but I daresay that that is a possibility and it may well be something that Natural England will require us to do.

253. THE CHAIR: So, I think we’ve come to the conclusion for HS2. Dr Giles, any comeback, final few points that you want to make?

254. DR GILES: Just a final point really, the bird population is significant. We designed it because there is a population of county significance. There’s still approximately 30-40 hectares of that site disappearing and, secondly, no net loss of biodiversity is different to no net loss of physical area when we’re talking about priority habitats.

255. THE CHAIR: Mr Wiggin?
256. MR WIGGIN: So, can I just ask you, in your opinion, because of the complexity of the railway with potentially two of the country’s busiest railways in the same place, this is not a suitable place for water voles anymore, is it?

257. DR GILES: Water voles can actually survive very close to areas that have been disturbed. So, if the Swill Brook was improved and the improvements were made downstream, as HS2 consider that they might do, then yes, water voles could thrive in the future on Swill Brook.

258. THE CHAIR: Thank you very much. Thanks, Dr Giles.

259. We now move to our next petitioner, the Rail Freight Group. Mr Streeten?

The Rail Freight Group

Submissions by Mr Streeten

260. MR STREETEN: Yes. Good morning, sir. I will dive straight in with what we want and why we want it.

261. THE CHAIR: Brilliant.

262. MR STREETEN: In terms of what we want, if we could have up slide A481(12), both the Rail Freight Group and Freightliner want two assurances from the promoter.

263. Firstly, they want the promoter to require the West Coast Partnership or any other body that performs its role to maintain as a minimum part of the freight operator services as they appear in the May 2018 timetable in the train service classification. What that means in the real world is that they want to be safe in the knowledge the freight trains that presently operate on the rail network will continue to be able to operate after 2026.

264. And the second thing that they want is the promoter to require the West Coast Partnership or any other equivalent body to collaborate and engage with freight operators in developing timetables to deliver improved strategic planning at industry level between passenger and freight services. Again, in the real world what that means is they want to give the rail freight industry a seat at the table when developing how the West Coast Main Line will be used in the future after HS2.
265. THE CHAIR: That’s a fabulous summary. If only we could have more petitioners like you. Where else do you want to go?

266. MR STREETEN: We could then go for why we want it. There are three broad reasons for why we want that. The first is because moving freight by rail is inherently a good thing and sets benefit for everyone. The second is because the nature of our industry, the rail freight industry, means that certainty is extremely important for continuing the investment that you require to sustain the industry. And the third reason is because we say the future of the freight industry after HS2 is presently insufficiently certain.

267. So if we take each of those in turn, the benefits of the assurances we require, if we have up slide A481(2), and you’ll see we say it’s a once-in-a-lifetime opportunity and we say that’s what HS2 says where you can see the bullet point what Chris Grayling said in the House of Commons about the importance of using HS2 as an opportunity to promote rail freight.

268. If we go to the next slide, A481(3), this gives you some indication of benefits of rail freight generally and the West Coast Main Line in particular. It’s critical for the economic vitality of British business across the United Kingdom, including cross-border transport between Scotland and England and international export through our ports, and I’ll ask my witness to explain that in a little more detail. And then, just as a general point, moving freight by rail has substantial environment benefits. There’s a 76% reduction in CO2 emissions per tonne of goods as compared with road haulage of the same goods.

269. Move from why it’s good to why we need certainty, certainty of capacity is extremely important for the rail freight industry because it’s driven by private investment and its rolling stock and terminals are very long-term assets; they’re 30-year assets. So private investment won’t take place; you won’t spend a lot of money on a 30-year asset unless you’re certain you’re able to use it for a particular level. And if you go slide A481(8) you’ll see some of the figures set out there. Yes, there’s an explanation there.

270. Now I turn to the big problem, which is the absence of certainty at the moment, and there is a real concern from my clients that the freight industry will be the
Cinderella story of the HS2 project and that’s, again, for three reasons.

271. Firstly, because there’s been no engagement regarding timetabling. If we have up slide A481(9) you’ll see the only report on timetabling that’s actually shared with freight operators was back in 2014, the Parsons Brinckerhoff report, and that raised serious concerns regarding the impact of HS2 on freight services. That was before a redesign, which we say has made matters worse, and despite requests and despite offering to have meetings and conduct workshops since December 2017 none of that’s happened. We simply haven’t had the engagement we say we need to be sure of what’s going to happen in the future.

272. The second reason why we say matters are uncertain, and it’s just a note to give you an example, we certainly don’t want to get too bogged down in it today, but there’s a junction at Handsacre, which is been redesigned, and we say, and I’ll ask my witness to explain why later, that that’s made matters worse not better for freight and it’s indicative or illustrative of our concern that decisions are being taken without properly thinking about how they would impact upon the rail freight industry.

273. And then finally our third point on why there’s uncertainty is that it’s simply not possible to rely on current industry process. And if we have up slide A481(11) you’ll see firstly the timetable option for a future West Coast Main Line design will not be by Network Rail, which presently designs the timetable; it will be by the West Coast Partnership. So that’s the franchisee and that’s essentially a passenger franchise which also has an operational role in designing things. So we have considerable concerns about the potential impartiality of a business one part of which is dealing as a passenger franchise.

274. Secondly, the Office of Rail and Road made a statement that there’s a presumption in favour of the extension of current access rights and that’s something we obviously welcome. If we could have up slide P1538(3). And so here we are. This is where it says, if you look at the last three lines, the last three lines of the first paragraph, whilst we obviously welcome the presumption it’s subject to a caveat, which is that the presumption won’t apply where there’s uncertainty about capacity or performance impacts. And if we go back to slide A481(11) you’ll see that in terms of freight there certainly is uncertainty about capacity and performance impact, if you look at the
second bullet point. So we say that there’s a tension there and that the presumption isn’t going to satisfy us.

275. The third point is that the rail freight industry is in something of a state of regulatory uncertainty at the moment generally because there’s the Williams review, as a result of which there’ll be a White Paper in the autumn and potentially primary legislation following that. And I hesitate to mention the word in this building but that investment –

276. THE CHAIR: Okay. Let’s move to your witness.

277. MR STREETEN: That, in combination with the potential loss of certainty from EU regulation, which presently requires for there to be an independent regulator, means that we don’t know what the appeal mechanism is going to be in the future. We’ll lose the certainty that we have as a result of EU law and there’s a White Paper so we don’t know what the legislative scheme’s going to do. And, in those circumstances, the two running in parallel, what we say is we need certainty to know after 2026 if we’re going to continue as we can now.

278. THE CHAIR: Let’s hear from your witness.

279. MR STREETEN: Yes. So if I could call my witness and if we could perhaps start with you explaining to the Committee why it is that we want those two assurances specifically and why the wording of the assurances that you’ve asked for are as they are. So we might want slide A481(12) as you do that.

Evidence of Ms Simpson

280. MS SIMPSON: Okay. So the West Coast Main Line is a hugely important corridor for rail freight; you’ve seen the pictures on the slides. Businesses who use the railway rely on it as a fundamental part of their supply chains. We are instrumental to the Scottish export economy; that’s moving Scottish products out, whether they’re going to deep-sea ports, for example Southampton or Felixstowe. That includes products that you’ve seen in the slides. This includes a lot of whisky that goes out to Asia and a whole host of products. And it also includes goods that travel from England up to Scotland. If you buy your baked beans at Tesco Aberdeen it will have come on the train
from the Midlands, doing probably only two or three miles on the road from the railhead to the store, and a whole host of other commodity products that move on the West Coast Main Line.

281. We’ve characterised that in our slides as products which move to and from Scotland between Crewe and Scotland, where we know there are acknowledged concerns around the capacity of that section of the route beyond the opening of High Speed Two in 2026, and also between Crewe and Birmingham. The good work of this Committee to get Phase 2A constructed in a timely fashion will help to resolve some of the concerns in that area but there are, nonetheless, concerns if Phase One and 2A are not contiguous around the services which run to Manchester and to Liverpool serving those conurbations as well. Again, a mixture of imported goods, exported goods, building materials, automotive products and so on.

282. My members understand that HS2 is a hugely important project for the UK. They just want to know that the trains that they are running today they’ll be able to run in the future and that they can rely on that in their forward planning in what is a relatively short timeframe: seven years from now.

283. So we understand that the promoter cannot guarantee capacity on the rail network. What we’ve asked is that the process that they have in place for securing capacity or for looking and assessing options for capacity through the West Coast Partnership includes in its core existing freight trains. We’re not asking for any commitment on growth, on more services, although heaven knows my members would like more services. We’re simply asking that in assessing the timetable options that the promoter asks the West Coast Partnership to include in the base case those services which run today.

284. MR MARTIN: Sorry. Is that really a function for HS2? Or is that something that the Government should be doing?

285. MS SIMPSON: So the Department for Transport new franchisee the West Coast Partnership has been asked to set up timetable options and they will be reported to the Secretary of State.

286. MR MARTIN: Right.
287. MR STREETEN: And it might just be helpful at this point if we have R556(10). Can you just explain, it’s a promoter’s response document, what it is in paragraph 9 that is said there by HS2 itself?

288. MS SIMPSON: Okay. So, forgive me if you already understand this, the West Coast Partnership, the new franchise, is a franchise in three parts, as we understand it. It has been bid by the industry to the Department and they are shortly to aware that. The first part of that franchise is plain vanilla. It is to run the existing West Coast trains, Virgin trains as you’d know them, between now and 2026. And paragraph 9 of their response document there tells us that bidders for that partnership in respect of that plain vanilla running the franchise until 2026 were required to take freight services into account. So if the bidder decided that in that part of the franchise they wished to make additional stops at Preston or change the service pattern in some way, shape or form, of course they could bid to do that but they had to take freight into account. What we’re asking for is that same principle be carried forward into the second part of their franchise, which is the development of timetable options and, indeed, service patterns in a sort of shadow operator role in the period up to 2026 prior to the service starting.

289. THE CHAIR: Shall we hear from HS2?

290. MR WIGGIN: Sorry –

291. THE CHAIR: Bill then Mr Mould.

292. MR WIGGIN: Very, very briefly. I’m just concerned about the Handsacre junction because my understanding of freight trains is that the profitability margin is dependent on having enough carriages because if you don’t have enough carriages you can’t run the freight service at all and then we will see all of that coming back on to the roads. So there’s a critical point at which the freight train must be long enough for you to make a profit –

293. MR STREETEN: That’s absolutely right. It’s not viable if it’s too short.

294. MR WIGGIN: So the Handsacre junction change, does that put you out of business completely?

295. MR STREETEN: I think I’ll let my witness deal with it. Could we have
P1534(2) up, which is the plan of the junctions?

296. MS SIMPSON: So I think there are two points here.

297. MR STREETEN: You can explain how that works.

298. MS SIMPSON: I mean you’re absolutely right that a short freight train won’t be a profitable freight train and, therefore, it will become unviable and that was one of the principal concerns not particularly about Handsacre but generally with the Parsons Brinkerhoff report in 2014, which said that a loaded train, even with the best available traction on the northern part of the West Coast Main Line, couldn’t exceed more than 1,000 tonnes and today we would expect around 1,400, 1,600 tonnes on a container train. So you’re taking one-third to one-half of its product half; it won’t be viable. And that’s particularly the case on that section between Crewe and Scotland.

299. MR MARTIN: Sorry, Ms Simpson. Can you explain the relevance of that because – on the weight, not – I mean I understand what you’re saying but I can’t understand why does it have to be reduced? Are you saying it has to be reduced? Why does it have to be reduced? What is it that is making you reduce it?

300. MS SIMPSON: Okay. If you put trains – I’m not a timetable planner so forgive me but when you timetable trains on the network you want to get them as close as you reasonably can to get as many through as you can.

301. MR MARTIN: Yes.

302. MS SIMPSON: That means that you are looking for them to be able to accelerate in a similar fashion and attain speed in a similar fashion on the network.

303. MR MARTIN: Right.

304. MS SIMPSON: If you have a heavier train then you will either need to have more powerful traction, which might mean two locomotives instead of one, which comes with a cost implication, or you’d need to have less weight on the back.

305. MR MARTIN: Right. So the problem is not the engineering of the junction. The problem is the acceleration time needed and the length of the slots needed to get that train on to the West Coast Main Line and up to speed and you haven’t got a long enough
slot to be able to do it.

306. MS SIMPSON: So in the Parsons Brinckerhoff timetabling study, which was generally about the West Coast Main Line and not about Handsacre, they concluded that you could only run intermodal freight at all post-2026 if you downgraded its weight considerably. Now that timetabling work, which is on slide – I’ve not got –

307. MR WIGGIN: But when I look at the slide it suggests that the problem is that HS2 trains will be using the slow lands in the new phase rather than the fast lanes.

308. MS SIMPSON: Right. So there’s a general concern about length. In terms of Handsacre junction the analogy I would use is it’s like trying to join the motorway in a sports car. If you can join in the fast lane you won’t have to decelerate. If you’re trying to pull on in between HGVs you’ll be slowing right down.

309. MR WIGGIN: Yes, but that’s a problem for the sports car, not for the HGV. And you’re talking from the HGV point of view.

310. MS SIMPSON: Right. So it’s a net taker of capacity on the network. So when it is timetabled on the network then if those HS2 trains are put on the plan first then there won’t be space for freight.

311. MR WIGGIN: Crystal clear.

312. MS SIMPSON: Of course if our trains are put on the network first there won’t be space for High Speed Two.

313. THE CHAIR: Right. Let’s move to Mr Mould. Thank you very much; really clear, useful intervention. Mr Mould?

Response by Mr Mould

314. MR MOULD QC (DfT): I’m going to put up P1536(2). I’ll deal with Handsacre after I’ve just dealt with the general point, if I may, and there’s not a great deal between us, I think. This is the second part of a letter of assurance that went from the Secretary of State to the petitioner on 7 May. You have the full text in your files. Now the focus of Ms Simpson’s principal request, I think, is the subject matter of item 2 on that page and you can see, unless you’d like me to I’m not going to read it out but I’ll just leave it
to you to glance through, essentially the Secretary of State is saying that in developing TSS option reports the West Coast Partnership will, to use the words, will be required to set out the impacts on freight services in reasonable detail, to consult the freight service operators and then to, in carrying out a public consultation, address the issue of the interests of the rail freight industry alongside the franchise operators of passenger services.

315. Now, what the petitioner said is, ‘We’d like confirmation that freight will be included in the base case’. My understanding is that there’s a slight nuance there, misunderstanding there, if you will, of the role of the West Coast Partnership. The role of the West Coast Partnership, in this context, is to provide the Secretary of State as his advisor with a series of options on how the available train service operational capacity in a world where HS2 is bolted into the range of services available, passenger and freight, to advise on the various options that are available.

316. So, as I understand it, there isn’t a base case. What there is is a series of options that the Secretary of State will then look at in order to make his judgment about what, on balance, the right solution might be to put forward to the industry.

317. But this doesn’t take place in isolation because there’s another key player in this and that is the Office of Rail Regulation, as you will appreciate, and it’s that body, which is an independent body of Government, which makes decisions upon the allocation of train paths at any given stage in the operation of the railway. And for their position you go to other letters that we have in this pack. Firstly, P153(8), which is taking us back to about a year ago, 9 April 2018, when the regulator, the Office of Rail and Road, went out to the rail industry, including the rail freight industry, and said, ‘We’ve got to think about how we’re going to share out, allocate the paths in a world where HS2 comes into operation from 2026 onwards. The first thing we’re going to do is to ask you if you’ve got any particular points that you want to raise as part of our approach’. And the point that was raised – the particular point raised by the rail freight industry at paragraph 6 on the next page was – do you see that? ‘DB Cargo and the Rail Freight Group both commented’, they noted our list of factors that we should take into account in fulfilling our job as the regulator, ‘is to include within that duty the consideration of enabling persons providing railway services to plan the future of their businesses with a reasonable degree of assurance’. Now that’s precisely the point that is
being urged upon you today and the response of the regulator was to say, ‘Yes, we will include that in our list’.

318. And so then you come to the next – to the letter where they –

319. THE CHAIR: Sorry, Mr Mould. Sorry to ask such a fundamental question but will freight be travelling on HS2 or is this the interaction –?

320. MR MOULD QC (DfT): No. This is about using the released capacity. Sorry, I should have made that clear. The HS2 railway will be a dedicated high-speed long-distance passenger transport network but, of course, at the heart of HS2, the whole basis for spending the money, is that you release capacity on the West Coast Main Line, which can then be devoted to suburban services, to shorter distance services, to slower passenger services but, in particular, provides for increased capacity to serve the rail freight industry. That’s the transport planning logic at its fundamental heart, which was the point that Mr Grayling was making in the clip that you had shown to you a little earlier.

321. So the question is, how is the Office of Rail and Road going to approach the allocation of that released capacity when it comes on stream? And you get their approach in the letter of 9 April 2018, which is at P153(9). And if you’ll just bear with me I’ll just take you to the relevant paragraphs; there are about five or six of them. You can see paragraph 2, this is what the letter is about, this statement focuses on one issue: track access and how we will take into account the future operation of HS2 when making decisions about access to the existing network. Then 3, although trains aren’t going to start running in 2026 we’ve got to start dealing with this now. If you come down to the bottom of this page you can see that there’s reference to the role of the West Coast Partnership, which you’ve been told about, in paragraph 6. And then if you go over to the next page, the key paragraph 12: our general approach to access regulation. And they say, picking up the position about six lines in, ‘Until a new framework is agreed we expect to take the same approach to access issues involving HS2 as we do for the existing network today’. In other words, applications for access involving HS2 will be treated in the same way as others under the current regulatory framework.

322. So that’s the position. No special treatment for HS2. And then the other side of the coin, at 13 we have the factors that they will take into account in making their
decisions. If we can scroll down to the next page, please, you’ll see two particularly relevant today at 14(1): protecting the use of a network for passengers and freight. And then that fifth bullet in is the one that they said they’d add into the list: enabling persons providing railway services to plan the future of their businesses with a reasonable belief of assurance. And then at 17, what is their approach to protecting the interests of existing users? ‘There’s a strong presumption in our approach in favour of the extension of current access rights except where we have said otherwise’. And then it goes on to qualify that in those words. Well, if I understand it, they haven’t said otherwise in relation to rail freight so that strong presumption applies in relation to the rail freight users of the network. And that’s reflected at the final reference I give you, which is at page 6 of this letter, the final page, paragraph 35, under the heading ‘Non-franchised operators’, 35 is to deal with ‘freight, freight access issues likely to arise on the West Coast Main Line as a result of HS2 services, freight users to be looking for the potential of freight users for any freed-up capacity on the southern WCML interaction with HS2 trains with joining in the north where capacity is constrained’. Our strong presumption in favour of the extension of current access right applies equally to them.

323. So this Bill, Mr Wiggin says, neither in engineering terms nor in legislative or regulatory terms, does not seek to affect or to modify the existing arrangements for the allocation of train paths across all users; that is to say passenger and freight services. The process of divvying up the available capacity from 2026 onwards is a matter for two persons: firstly the Secretary of State in considering access options and the Office of Rail and Road in allocating those paths that are available. This tells you what the position of the allocator of the paths is in relation to protecting existing users, I don’t need to read it out again, and the assurance, which I showed you, from the Secretary of State to this petitioner, needs to be seen in the context of that stated position. And my instructions and my understanding of the position of the Department and of the Secretary of State, the promoter of this Bill, is that this Bill is not the time to give guarantees or to give enhanced position to any particular user of the railway, whether it be freight operators, passenger operators, whatever it might be.

324. THE CHAIR: Bill?

325. MR WIGGIN: This is very, very helpful, right up until we look at the Handsacre junction, which flies in the face of everything you’ve just said –
326. MR MOULD QC (DfT): Which I am just about to turn to because I said I’d deal with that last. And so if you put up –

327. THE CHAIR: Sorry, Martin wants to come in notwithstanding what you’ve just said, Mr Mould.

328. MR WHITFIELD: Notwithstanding just that, if we look at paragraph 38 of the displayed sheet there, doesn’t that actually encapsulate the problem that we have? Freight needs certainty beyond 2026 when HS2’s coming on line. You can’t give the certainty at the moment. You can’t actually even give a point where they can have the certainty before 2026. And the assurances that are given of access specifically relate to contracts that run up until 2026. So –

329. MR MOULD QC (DfT): You’re absolutely right; I can’t give certainty. And my suggestion to you on behalf of the Secretary of State is that it would not be proper for this Committee to require the Secretary of State to give certainty because he shouldn’t be skewing the rail access market, if you like, which is subject to the independent regulation of this body, shouldn’t be skewing it in favour of any particular special pleader. No one’s doubting the importance of rail freight but, equally, if you had a franchise operator in front of you making the same point I’d be making the same response. No one should get a special position in this market. It should be dealt with in the way –

330. THE CHAIR: Okay, you’ve made your point. Now –

331. MR WHITFIELD: Sorry, just one – in the previous document the respondents stressed the importance of future industry discussion and consultation. Then they said, ‘At an appropriate time’. So what is the Secretary of State’s, through you, view of when that appropriate time will be?

332. MR MOULD QC (DfT): When the Secretary of State has had completed for him the ongoing work in testing the options for the allocation of access capacity and that that process is still ongoing. I cannot give you today a date on which that process will be completed. What I can tell you is that the rail freight industry will be involved as an important consultee in that process just as much as train operating companies who are in the franchising system.
333. THE CHAIR: Sheryll?

334. MRS MURRAY: Yes. It’s not just a case of consultee, though, is it, Mr Mould? Because from my understanding, and I stand to be corrected if I’m wrong, freight trains have to be engaged in the timetabling because very often a heavy goods train has to pull in to allow faster trains to overtake them and it’s quite important that they’re involved and engaged.

335. MR MOULD QC (DfT): Absolutely. And that’s exactly what – the need to account for the timetabling implications of the interaction between scheduled passenger services and freight journeys, the need to account for the differences in train speeds that we’ve touched upon earlier, those and all the other manifold considerations. That is why they are a vital consultee: engagement with them as consultee on those matters. So when they come to see the consultation on the appropriate time, to use the phrase that Mr Whitfield put to me, when they come to see and they’re asked, ‘What do you want to say about this?’ we would expect that they would focus their attention of precisely those questions. And –

336. THE CHAIR: What’s the difference between an entire industry, the freight industry, and a train operating company which runs one line?

337. MR MOULD QC (DfT): The freight operating companies for whom Ms Simpson is the trade representative, as I understand it, and the passenger service, the train operating companies, the TOCs and the FOCs as they’re called, they are all existing and/or intending users of capacity on the network. And each of them – there are differences in terms of the commercial arrangements under which they gain access and the way they run their services but, in terms of the basic principle of allocating the available train paths on any given railway line, they come to the table and they make their case to the Secretary of State, they make their case to the Office of Rail and Road and they say, ‘For the following reasons we have both the commercial, the passenger or the freight transport credentials and the business case that ought to lead you to allocate the following paths to us to enable us to benefit the nation through our services’. It’s no different in principle between freight and passengers.

338. THE CHAIR: Any –
MR MOULD QC (DfT): You asked me about Handsacre.

THE CHAIR: Sorry?

MR MOULD QC (DfT): You asked me about Handsacre and I just need to show you P1534(4) and the position is, as you know, that under AP2 we substitute running the HS2 railway on to the fast lines, which was the position under the Phase One Act, with running on to the slow lines, which you had explained to you. The effect of that is that building in the HS2 services during the period before Phase 2A comes into full operation will mean that existing services, both passenger and freight, will make use of a mixture of the fast and the slow lines as they pass through Handsacre from the south and up towards Colwich junction where the issue effectively becomes resolved and then you move further north.

So the result of the ongoing opti-neering work that is currently taking place with a view to publication at the appropriate time is the confidence that’s set out in the final bullet on the page in front of you; that the full number of freight trains, that is to say those that are running on the West Coast Main Line and those that have access rights, can be accommodated after 2026 under the planning powers of the Network Rail’s system operator. What has been done in particular, as I understand it, is that an exercise has been done to test the ability to run two fast-running passenger trains and freight trains running at a slower speed, as you would imagine, during the course of a given hour of timetable. And that has shown that, in principle, it’s possible, with the necessary headroom and so forth which is required by Network Rail, to accommodate those services. I can’t give you the details of that because it’s part of the ongoing work but I give you a flavour of the reasoning why there is confidence about this.

THE CHAIR: Sandy I think wants to come in.

MR MARTIN: Yes. Clearly, given that the – would I be allowed to ask Ms Simpson what sort of speed the freight train –

THE CHAIR: Yes.

MR MARTIN: What sort of speed would you think a full-length freight train, the sort of ideal length freight train, would be travelling?
347. MS SIMPSON: If at full speed an aggregate sort of construction train would be able to get to 60 miles an hour and an intermodal train 75.

348. MR MARTIN: Right. And would they be at full speed at Handsacre junction?

349. MS SIMPSON: That would depend on how they had been regulated prior to it.

350. MR MARTIN: Okay, but there’s no –

351. MS SIMPSON: If they had switched from the slow lines to the fast line at the last available crossover before Handsacre then no, they wouldn’t.

352. MR MARTIN: Yes but I mean we’re talking about the slow lines at Handsacre, aren’t we?

353. MS SIMPSON: So if we were running up the West Coast Main Line from some other point we would be on the slow lines.

354. MR MARTIN: Yes.

355. MS SIMPSON: In order to meet this slide we would have to switch on to the fast lines. That would mean us going over some kind of crossover somewhere prior to Handsacre.

356. MR MARTIN: Ah, no –

357. MS SIMPSON: The speed of that crossover will be slower than line speed because you’re making a turn.

358. MR MARTIN: Yes. Thank you, Ms Simpson. I’m not certain that that’s what Mr Mould was suggesting. I think what Mr Mould was suggesting is some of the faster passenger trains that currently run on the slow lines would be transferred to the fast line and that there would be more space for the freight train on the slow line. I’m not sure if that’s the case, we’ll come to Mr Mould in a moment, but intrinsically there is no reason why the freight trains should not be travelling at 60 miles an hour on the slow line – okay. I’m just trying to get clear in my head what is possible and what might be done to improve the situation because I’m also worried about the distance from Handsacre junction to the next junction at which the HS2 trains would be able to transfer to the
faster lines. But as clearly the shorter the distance – you said Colwich. I don’t know how far that is, but the shorter the distance from Handsacre to Colwich the less problem that this is going to cause because the less space you will need on the line between the HS2 train and the freight train.

359. THE CHAIR: Before I call in anyone else, I sense some dissatisfaction in the Committee with some of the information we’re hearing. Mr Mould, did you want to call a witness at any point?

360. MR MOULD QC (DfT): I don’t want to call a witness but what I – because I also sense that dissatisfaction. I think the focus is on the operation of Handsacre rather than the broader question, as I understand it.

361. THE CHAIR: No, no, sorry, Mr Mould. Just a second. Just a second. I think the Committee will find it convenient to take a five or ten-minute break. We’ll then come back to continue this petitioner. If, Mr Mould, you can give an indication to the Clerk of what else we’ve got on today that would also be helpful separate to this issue.

_Sitting suspended_

_On resuming –_

362. THE CHAIR: Mr Mould?

363. MR MOULD QC (DfT): First of all, there is – my understanding is that after this petition the only further business for the Committee is that I should read out a short statement in relation to the petitioner Severn Trent Water. I know there are three other petitioners on the timetable but unless someone puts their hand up and says, ‘I am here’, as far as I’m aware they are not represented before you in the Committee room today and my understanding is that HS2 has essentially reached agreement with those petitioners and the agreements either are being or have been reduced to a formal written form. So that may explain why –

364. THE CHAIR: Thank you for that information. That’s useful for our planning.

365. MR MOULD QC (DfT): Coming back to the issue, my sense, and again I’m only able to speak to what I sense to be the Committee’s mood, my sense is that the
Committee requires a greater measure of reassurance on the ability of the railway between Handsacre junction and Colwich junction, which is about five miles to the north, to accommodate the seven HS2 services that will run on to the West Coast Main Line slows after 2026 under the now revised Handsacre junction arrangement, whilst also accommodating the residual passenger services that will continue to run through the junction, some, of course, of the passenger services will have been replaced by HS2 services, but the residual passenger services and also critically from the perspective of this petitioner accommodate at least the existing level of freight paths through and that we should demonstrate that that is achievable in principle, allowing for the factors such as the variable speed of the trains because passenger trains –

366. THE CHAIR: Can I just pause you there because you reflected back to us on what you think we’re concerned about?

367. MR MOULD QC (DfT): Yes.

368. THE CHAIR: Let’s just confirm that. Bill, then Sheryll, then Sandy, then Martin, then me.

369. MR WIGGIN: On the slide in front of you it says that the promoter is confident that the full number of freight trains, and I’m glad you used a different term because the complaint is that the number isn’t the issue; it’s the size of the freight trains. And that’s the bit that makes a difference to the P&L of the freight operating companies.

370. MR MOULD QC (DfT): Yes.

371. MR WIGGIN: So it is, as I think you said, secondly capacity that matters not number.

372. MR MOULD QC (DfT): Yes. If you take an hour at sort of the business time when you might have a quantity of passenger trains, a quantity of HS2 trains and a quantity of freight trains, making sensible assumptions about not only the number of trains but also, as you say, the size or the length of train in each case and the speed at which they will be moving as they pass through that critical section, can we give the Committee reassurance on an illustrative timetable, if you like, allowing for the requisite degree of headway between trains that Network Rail require and all the other relevant
factors, can we give you a chart or a graph or a narrative which shows you that, in principle, that can be accommodated?

373. MR WIGGIN: Well, the problem is that, and you put this very neatly yourself, the whole point of HS2 is to increase capacity. The minute you diminish freight capacity you don’t just reduce the size of the train. The train no longer makes any money and all the freight goes back on the road. So it is totally counter to the whole point of HS2 and that’s why this is so important. And so demonstrating that it can work is not the same as really making sure that the freight that does exist that is appropriate stays on the railway, because if you stop them being profitable there is no freight and they’ll be all back on the roads. I’ve made my point.

374. THE CHAIR: At the moment I’m wanting just to make sure because, reflecting back, because I think there’s some more nuance than your summation, so Sheryll next.

375. MRS MURRAY: Yes. My concern is that, even if you accommodate the existing capacity, there isn’t any leeway to increase capacity. And, in my view, the whole purpose of HS2 is so that we can increase capacity for freight on the existing rail network.

376. MR MOULD QC (DfT): Yes.

377. THE CHAIR: Okay. I’m not going to allow you to come back. I just want to get the sense of the Committee.

378. MRS MURRAY: And I really want some reassurance that we’re going to have some free capacity if it’s needed in the future. 2026 isn’t that far away, Mr Mould. What about 2036? Are we going to get to a situation where we’re saying the railway can’t take any more?

379. MR MOULD QC (DfT): Well, you’ll appreciate that there’s a –

380. THE CHAIR: Sorry, I’m just getting the feedback from the Committee to try to assist you because if you just try to deal with points bit by bit I think we might miss the satisfaction as a whole.

381. MR MOULD QC (DfT): No, no. Very helpful. Thank you.
382. THE CHAIR: Sandy?

383. MR MARTIN: I’m a simple soul and I’m probably not a particularly good politician because I don’t particularly like warm words. What I would like is a reassurance or just to run past you an idea which I am absolutely gobsmacked we have not been told about and if it hasn’t been planned then why on earth not? Let me give you an analogy, which I ran past my colleagues just now. If you were pulling on to a motorway in a sports car, the reason that you can do it with a large number of HGVs in the slow lane is because you can transfer from the slow lane to the fast lane very swiftly.

384. MR MOULD QC (DfT): Yes.

385. MR MARTIN: Why on earth are HS2 trains not going to be able to get on to the fast lanes between Handsacre junction and the next one, Colwich?

386. MR MOULD QC (DfT): Five miles up the road, yes.

387. MR MARTIN: It’s quite a long distance. Why can’t you just put in additional transfer tracks to get from the slow lane to the fast lane as quickly as possible? That would give far more capacity for the slower freight trains to travel on slow lanes.

388. THE CHAIR: And Martin, do you want to come in and then I –?

389. MR WHITFIELD: No, no, my points have been covered.

390. THE CHAIR: Just my concern with your initial comments was you were seeming to be restricting down to Handsacre and AP2, which, whilst it’s quite orderly, this has raised greater concerns along a whole line and I was unconvinced by treating train operating companies and freight operating companies in exactly the same way and this seemed to be the whole freight industry saying there was an issue. So I wasn’t convinced at the points you’ve made and wouldn’t want you to limit yourself just to Handsacre in pushing back to the Committee.

391. MR MOULD QC (DfT): Are you suggesting, then, that you want the Secretary of State to consider giving preferential treatment to the freight industry?

392. THE CHAIR: No. I’m just suggesting that your summation of our concerns were not full.
393. MR MOULD QC (DfT): I know.

394. THE CHAIR: And that concerns extended – that’s simply the point where I’m at the moment. I’m still in listen mode. I wouldn’t want to summarise. I think that would be to your dissatisfaction if you wished me to do so.

395. MR MOULD QC (DfT): I mean I do want to be clear. I mean just again, unless there is any, because obviously we’re talking about big stakes here and we’re talking about, as you can see, there are a lot of people who are not in this room who would be very interested in any intervention that this Committee is minded to make in the way in which the current market for the allocation of freight paths take place under general legislation. And so I mean that’s an important factor to consider. And so my position on that is, on instructions from the Secretary of State, is I want to be absolutely clear, the Secretary of State recognises the importance and endorses what Ms Simpson says about the importance of the rail freight sector in the national economy for a whole range of reasons. The Secretary of State recognises the opportunity that is presented by HS2 not only from the date of operation of Phase One in 2026 but with, on current programme, the coming in to operation of the full network between London, Birmingham, Manchester and Leeds from 2033/2034 onwards, recognises the opportunities that that presents not only to maintain existing freight use of the classic railway network but also to improve the opportunities and to improve the use of the classic network by freight that that is vital to the overarching philosophy and the objectives of HS2. He said that at the despatch box and I’m sure he wishes me to emphasise that point to you today.

396. But, in terms of the pace at which those opportunities arise and, therefore, looking forward over the longer term that you mentioned to me, Mrs Murray, it’s important, I suggest, to bear in mind that the focus on Handsacre is on a pinch point, effectively, from 2026 to 2027, which is the period between the coming into operation of Phase One, which needs to get trains north of Birmingham back on to the West Coast Main Line so they continue northwards as classic compatible locomotives, and 2027 what Phase 2A is due to come into operation when all I think but one of those trains will cease to go through Handsacre and will continue north on the railway that you’re being asked to consider to Crewe. So, in terms of the concern about the pinch on capacity at Handsacre, that’s a good way of setting the extent of that risk, if you like, into context.
It’s at its sharpest between 2026 and 2027.

397. Now that doesn’t mean that we shouldn’t take very great care to address it, and I’ve indicated what I understand the Secretary of State will look to do to reassure you on that, and we’ll take account of the points that you make in responding, but it is important to bear that in mind.

398. So what I will do, and, sorry, I didn’t pick up on Mr Martin’s point, your analogy with the sports car going on to the busy motorway is, I would suggest, is essentially an apt one and it’s answered by this: that the distance between Handsacre and Colwich, as I understand it, is entirely unremarkable in terms of enabling the HS2 trains to get off the slows and on to the fasts. The reason why it’s unremarkable is this: that because there’s already a four-track railway line running from the south through the Handsacre area into which the HS2 lines are going to bolt, it would be possible, because of the reduction in the number of passenger trains that will be passing through that junction once the HS2 services have been introduced, because they’ll be soaking up a lot of the long-distance traffic and thus enabling capacity on the existing West Coast Main Line to be allocated in a more flexible way across the remaining passenger and freight services, but, because of that, it’s possible to run those services that are on the existing line on not just the slows or the fasts but on the slows and the fasts. So you’ve got that choice of those four lines into which you can weave the HS2 trains both at Handsacre and further north.

But I’m not a railway engineer and I’m not a railway planner. I’m reporting to you as an advocate what I understand to be the position. What I’m going to do is to ask that the Department prepares a note along the lines that I have indicated, I hope picking up on the nuances that you have shared with me during the course of the debate over the past five or ten minutes or so, and that we seek to illustrate, if you like, if that’s the right word, or to give you a clear indication as to the ability of the physical infrastructure from 2026 onwards to be able to accommodate at least the existing level of freight journeys, taking account that it’s not just numbers but also the length of trains and the speed at which they travel and, picking up Mr Martin’s point, how that works where the next point at which the trains can, if you like, change their lines is five miles up the route at Colwich. I will do that and I will ask that that is done as soon as possible, conscious as I am of the fact that you are currently programmed to finish your public sittings, I think, tomorrow.
399. **THE CHAIR:** I think I’m going to give you an unreasonable deadline. Only because the unreasonable deadline is the only one that helps us in our timeline and helps us to consider. So I’d like that before the start of the public session tomorrow.

400. **MR MOULD QC (DFT):** Okay.

401. **THE CHAIR:** I realise that’s incredibly tight and slightly unreasonable but that is the timeline we’re operating on.

402. **MR MOULD QC (DFT):** Can I mention one point, which I know Mr Streeten was concerned about? I don’t want him to go away feeling that you haven’t had the full story. If you remember I drew your attention to the letter of the Office of Rail and Road in which the ORR set out their approach to the allocation of train paths after 2026. Can we just go back to P1539(3), which is where you’ll see page 17 of that. There you see it, page 17, do you remember I drew attention to the strong presumption in their approach in favouring the extension of current access rights except where we have said otherwise.

403. For example, where there was uncertainty about capacity or performance impacts or if we anticipated significant change in infrastructure configuration capacity. Now, Mr Streeten has pointed out to me that in previous correspondence, which sits behind this letter, there was a reference to there being capacity constraints. I think on the northern part of the West Coast Main Line.

404. **MR STREETEN:** P1558.

405. **MR MOULD QC (DFT):** I’m sorry? Could you just give that reference?

406. **MR STREETEN:** P1558.

407. **MR MOULD QC (DFT):** P1558. Which paragraph?

408. **MR STREETEN:** 29.

409. **MR MOULD QC (DFT):** Paragraph 29. Mr Streeten drew my attention to this letter and this paragraph. ‘There are particular capacity constraints between Crewe and Manchester, Crewe and Weaver junction, north of Preston. The department is working with HS2 and Network Rail to understand these and their implications for future
passenger and freight services.’ So the point that I think is being made is that, yes, there is a strong presumption but yes, that is qualified, perhaps as you think it would need to be, in order to reflect the fact that it may be easier to deliver on that presumption in some instances than it is in others. He says, ‘Here’s an example of a recognition that there is pressure on this part.’

410. I acknowledge that pressure and therefore I acknowledge that that is an area where the parties concerned, all the stakeholders if you like to use the jargon, will need to focus their minds in order to ensure as best they can that those constraints are addressed without diminishing the quality of service and the ability of any existing user of that part of the network to continue to enjoy the access that they have at the present time. In other words, to enable the presumption as best as it’s humanly possible to achieve it, to be realised in the light of that constraint. I’m happy to make that point clear to you now in deference to Mr Streeten.

411. THE CHAIR: Shall we hear from Mr Streeten?

412. MR STREETEN: Sir, if I may, my witness wanted to come back on something technical that she would say better than me.

413. THE CHAIR: We will allow that.

414. MR STREETEN: Is that something I can ask her to do?

415. MS SIMPSON: So I think Mr Mould makes the point very clearly about the Secretary of State not wishing to give any preferential treatment to any party. In my opinion, we have not asked for preferential treatment. We have simply asked that the existing trains be able to continue. We are not asking here today about growth, although we would love to have growth. In terms of those timetable options then that we have asked for an assurance around, if we cannot put the existing level of service into those options because that would be preferential treatment, what level of service might we put into those? Because the assurance offered to us by the Department simply says, ‘There will be some options and those options must assess the impact on freight.’ If there were five options, all of which were detrimental to freight, we would meet the terms of that assurance. But we wouldn’t have a good outcome for those businesses that are relying on continuing with their existing levels of trains.
416. I understand that Secretary of State is not the rail regulator. He is not the person who ultimately awards access. My members, if necessary, will employ expensive lawyers, such as Mr Mould, to defend their access rights when those applications go in. I think we’d all like to be in a position where that was not a necessary outcome of what should be Britain’s premiere railway project. That is why we would like those existing trains to form a base of what is assessed in those options.

417. THE CHAIR: Thank you for that. Martin?

418. MR WHITFIELD: Can I just ask a very short question? You’ve obviously heard the range of discussions about number, capacity and volume. What words should be used to describe the freight trains on that current West Coast Main Line as a baseline? Should we talk about numbers? Should we talk about tonnage? Should we talk about volume? What’s the word? What’s the magic word?

419. MS SIMPSON: If we describe it as the existing trains then I would include in that ‘at their length and capability today’.

420. MR WHITFIELD: Right, so when we use existing trains we’re using it to mean the existing number of trains with the numbers of trailers and tonnage – the whole thing.

421. MS SIMPSON: Yes. There are a number of features of capabilities. For example, if you have a container on that train, you can’t be diverted onto routes that aren’t capable of a container.

422. MR WHITFIELD: Perfect. Thank you.

423. THE CHAIR: Mr Streeten, Mr Mould is going to come back to us in writing. Do not feel compelled but if you want to take the opportunity to also come back with any final points on the same timescale feel free to do so.

424. MR STREETEN: As it happens I will be here tomorrow, at least on current timetables so I might be able to also.

425. THE CHAIR: There won’t be an opportunity for anyone to speak tomorrow but there is an opportunity for your client to write to us through the clerk so we can consider that for our final report. I think that concludes this petitioner. Just so we’re orderly, if
there’s anyone from Cadent Gas, National Grid Electricity Transmission and National Grid Gas, it’s their opportunity to now petition. No one is indicating so we now move to the next petition, Severn Trent Water. Mr Mould?

**Severn Trent Water**

**Statement by Mr Mould**

426. MR MOULD QC (DFT): Yes, thank you, P1556. I’ve been asked to read this statement. ‘The terms of a draft protected provisions agreement between the promoter and Severn Trent Water to address Severn Trent Water’s petition issues have been agreed. However, the protected provisions agreement is drafted in terms which require a further agreement, a design works agreement, to be appended to it. That agreement is still being negotiated. The promoter will seek final ministerial approval so that the protected provisions agreement can be offered once the design works agreement has been agreed. In the light of that, Severn Trent Water does not consider it necessary to appear on either of its petitions before the Select Committee in the House of Commons.’

427. THE CHAIR: Thank you very much, Mr Mould. The Committee will now sit in private.