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# **Report to the Secretaries of State for Transport and for Housing, Communities and Local Government**

**by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA**

**an Inspector appointed by the Secretaries of State for Transport and for Housing Communities and  
Local Government**

**Date: 25 July 2018**

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HIGH SPEED RAIL (LONDON – WEST MIDLANDS) ACT 2017

LONDON BOROUGH OF HILLINGDON COUNCIL

APPEAL AGAINST REFUSAL OF SCHEDULE 17 SUBMISSION

Hearing Held on 3 July 2018

Colne Valley Viaduct Wetlands Ecological Mitigation Site, Land to the West of Harvil Road, Harefield

File Ref: APP/HS2/1

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**Colne Valley Viaduct Wetlands Ecological Mitigation Site, Land to the West of Harvil Road, Harefield**

- The appeal is made under Paragraph 22(1) of Schedule 17 of the High Speed Rail (London – West Midlands) Act 2017 (the Act) against a refusal to approve plans and specifications.
- The appeal is made by High Speed Two (HS2) Limited against the decision of the London Borough of Hillingdon Council.
- The application reference number 73263/APP/2017/3838, dated 20 October 2017, was refused by notice dated 20 March 2018.
- The development proposed is works associated with the creation of the Colne Valley Viaduct South Embankment wetland habitat ecological mitigation comprising earthworks (1 no. mitigation pond; 1 no. reptile basking bank; and 2 no. hibernacula); and fencing.

**Summary of Recommendation:** That the appeal be dismissed with regard to matters of archaeological interest, but allowed with regard to matters of ecological value.

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**Procedural Matters**

1. The Secretaries of State have directed that they will determine the appeal under the terms of paragraph 23(1) of Schedule 17 of the Act, because it concerns proposals for development of major importance having more than local planning significance.
2. The Council's grounds for refusal of the application, in accordance with paragraph 3(6) of Schedule 17, are:
  - That the design or external appearance of the works ought to, and could reasonably, be modified to preserve a site of archaeological or historic interest or nature conservation value.
  - That the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.
3. The hearing and site visit were held on 3 July 2018.

**The Site and Surroundings**

4. The site, some 0.85 hectares, is located immediately north of the Chiltern main line railway and east of the Colne Valley wetlands, with the Hillingdon Outdoor Activity Centre bordering Harefield No. 2 Lake, approximately 280 metres to the north-west. The Colne Valley Viaduct, intended to carry the HS2 line across the lakes and wetlands, will lie some 90 metres to the north. Harvil Road, which leads to the settlement of South Harefield some one kilometre to the north, is approximately 350 metres to the east.
5. The site is bordered by woodland to the west, separating it from the Lake, and the railway embankment to the south is also wooded. A public footpath, with a hedgerow, passes the site to the north, and the site is currently open to the east, where a hedgerow is proposed. It was in agricultural use as the western section of a field under arable cultivation until 2016, before being acquired by HS2 Ltd.

6. The Mid Colne Valley Site of Importance for Nature Conservation (Metropolitan Grade) (SMI) extends onto the western third of the site from the wetlands. The site also lies within the Colne Valley Archaeological Priority Zone (APZ).<sup>1</sup>

### **The Proposal**

7. The works are required as a nature conservation mitigation measure arising from the proposed viaduct and associated works. Besides the pond, hibernacula suitable for great crested newts, and reptile bank, the application seeks approval for the erection of permanent wire and post fencing around the boundary of the site and one field gate for access in the north eastern corner.

### **The Case for HS2 Ltd**

8. The Applicant is required to submit a certain level of information when making a Schedule 17 submission to a qualifying authority such as the Council.<sup>2</sup> HS2 Ltd has supplied this information. However, it appears from the Officer's report that the Council expect an enhanced level of information,<sup>3</sup> more suited to applications under the Town and Country Planning Act 1990.
9. The Environmental Minimum Requirements (EMRs)<sup>4</sup> ensure that the HS2 development is delivered appropriately, with due regard to planning, heritage, and environmental matters, in accordance with a code of construction practice. The EMRs and associated documents ensure that the Council receives the necessary information and documentation at appropriate stages in the process. They also provide for a collaborative approach between HS2 Ltd, local planning authorities, and other relevant expert bodies. The EMRs contractually bind HS2 Ltd to deliver the works in the appropriate manner.<sup>5</sup>
10. The additional controls and information sought by the Council are already present in the EMRs. The Council should not attempt to replicate these controls, nor should they refuse an application on a perceived lack of information when the Applicant is contractually obliged to follow the EMRs.
11. The Council's reasons for refusal are indefensible. They have not demonstrated:
- how or why the design or external appearance of the works ought to, and could reasonably, be modified to preserve a site of archaeological or historic interest or nature conservation value; or
  - that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.<sup>6</sup>
12. In addition, in signing the Planning Memorandum, the Council accepted that they must take all of the Planning Forum conclusions and the EMRs into consideration when determining applications for approval. They have failed to do this.

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<sup>1</sup> Defined in LB Hillingdon Local Plan Policy DMHB 7

<sup>2</sup> HS2's Statement of Case, Appendices 23, 24, and 25, containing Planning Forum Notes 1, 2, and 3

<sup>3</sup> Council's Statement of Case, Appendix 2 and HS2's Statement of Case, Appendix 38

<sup>4</sup> HS2's Statement of Case, Appendix 18 para 3.1.1 et seq

<sup>5</sup> HS2 Development Agreement, Clause 10.1(N), HS2 Statement of Case, Appendix 17

<sup>6</sup> HS2 Act, Schedule 17, para 3(6)

13. The Council are acting inconsistently in relation to other Schedule 17 applications, having approved a submission at a neighbouring site, which has the same ecological and archaeological vulnerabilities. Despite receiving the same level of information, the Council was satisfied with that application.

#### *Archaeology*

14. HS2 Ltd is required to adhere to the EMRs and Generic Written Scheme of Investigation: Historic Environment Research and Delivery Strategy (GWSI:HERDS)<sup>7</sup> processes, ensuring that archaeological finds are investigated, recorded, analysed, reported, and archived. Further, works to lay substantial diversionary gas mains through the site (the Gas Works) will be undertaken prior to HS2's development of the site for mitigation purposes.
15. Investigations, including the excavation of trial trenches, will have taken place and any archaeological concerns will already have been identified and dealt with through the EMR process. Consequently, the site is an ideal location for the works. The Gas Works are subject to EMR safeguards but not to Schedule 17 approvals.
16. Geophysical surveying within the site, beyond the area occupied by the Gas Works, was planned for August 2017, but frustrated by access and land ownership difficulties. It is this delay which has resulted in the apparent lack of archaeological evidence to support the Schedule 17 submission.
17. The survey, with trial trench evaluations, will be completed before construction of the mitigation site begins in 2019, and the results fed into the EMR process.<sup>8</sup> Were archaeological remains to be found meriting preservation in-situ and therefore requiring repositioning of elements of the works, in particular the pond, a further Schedule 17 application would be made.<sup>9</sup>

#### *Ecology*

18. The section of the site located within the Mid Colne Valley SMI amounts to less than 0.01% of the overall area of the SMI. An AECOM Memorandum of 31 January 2018 provides further background and analysis, concluding that no overall ecological harm would arise.<sup>10</sup> It notes that the only elements of the works to be carried out within this part of the site are the two hibernacula, which would be entirely appropriate within the SMI. Further, that the ES identified the loss of approximately 25 hectares of terrestrial habitat within the wider SMI because of the development of the viaduct and associated aspects of the HS2 scheme. This proposal contributes to the mitigation of the loss.
19. Whilst the proposed works would mean the clearance of the existing developing ruderal vegetation, it would be replaced by a more species diverse wet grassland community, which would be subject to management and monitoring by HS2 Ltd. The proposed works would, therefore, increase the permanent ecological value of the site well beyond that based on the limited, temporary ruderal growth which

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<sup>7</sup> HS2's Statement of Case, Appendix 41

<sup>8</sup> Email dated 29 January 2018 from Iain Williamson of Fusion to Sandy Kidd of Historic England, in the Council's Statement of Case, Appendix 9

<sup>9</sup> Email dated 31 January 2018 from Thomas D Smith of AECOM to Ian Thynne of LB Hillingdon, confirmed at the hearing.

<sup>10</sup> HS2's Statement of Case, Appendix 9

has arisen by accident at the site since last in arable use, and better mitigate the general loss of terrestrial habitat from the SMI.

20. Were the site deemed inappropriate for mitigation use, in the protection of endangered species, and were the Appellant unable to use it for any other form of mitigation measure, the land would be offered back to the landowner, pursuant to the Crichel Down Rules. Whether accepted or not, the site would then return to agricultural use, and any ecological value accumulated whilst fallow, would be lost.<sup>11</sup>

### *Conclusion*

21. By virtue of paragraph 9.1.1 of the Planning Memorandum,<sup>12</sup> the Council are required to take into account the assessments in the 2013 Environmental Statement (ES). The Council have not shown that they have met this requirement, nor provided evidence to suggest the impacts assessed in the ES would be exceeded because of the development. However, the AECOM Memo clearly shows that the impacts arising from the works do not fall outside the scope of those assessed in the ES.
22. The Council are required by both the Act and the Planning Memorandum to provide justification for their reasons for refusal. They have failed to do this. In refusing an application, the burden is on the Council to demonstrate how the works ought to be, and could reasonably be modified, and to show where the works ought to, and could reasonably, be carried out elsewhere.<sup>13</sup> They have not done this.
23. Regarding those third party representations of relevance to the appeal, HS2 Ltd notes that the fencing is intended to protect the habitat, rather than to contain the creatures within the site. It will be designed in such a way as to allow newts and other species to migrate freely. The site lies within a wider wetland habitat and will not be isolated. Furthermore, the hibernacula, design of the pond, and planting will provide an ideal habitat for newts, offering maximum protection against aerial predators. Public access to the mitigation site is not intended.

### **The Case for the Council**

24. The focus of the appeal concerns the information that should be available when making a decision on an application under Schedule 17 of the Act. The Council say there ought to be sufficient information for the decision maker to understand the impact of the proposal otherwise Schedule 17 would be purposeless, robbing the Council of the control provided by the Act.
25. The Appellant takes the position that there is no need to provide information on the impact of the proposal on the archaeological interest or ecological value of the site. This is because the mechanisms within the EMRs provide for the production of such information before construction begins, together with appropriate methods of analysing it, consulting on it, and dealing appropriately with the outcome.

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<sup>11</sup> Environmental Memorandum, paragraph 4.11.1, in HS2's Statement of Case, Appendix 22

<sup>12</sup> HS2's Statement of Case, Appendix 20

<sup>13</sup> Planning Memorandum, in HS2's Statement of Case, Appendix 20, para 7.7.2

26. This betrays a lack of understanding of important public law principles underpinning decision making.<sup>14</sup> Moreover, the Appellant's approach is likely to lead to delay and the duplication of resources should a further Schedule 17 application be found necessary when the information regarding impact eventually becomes available.

#### *Archaeology*

27. The Greater London Archaeological Advisory Council (GLAAS), part of Historic England, advise that the site, which lies within the APZ, carries potential for Upper Palaeolithic and Mesolithic as well as later prehistoric, Roman and other remains.<sup>15</sup> Both local policy<sup>16</sup> and the National Planning Policy Framework (NPPF) require sufficient information to be provided to allow the potential impact on archaeological interests to be understood.<sup>17</sup>
28. The information supplied by HS2 Ltd explains that trial trench investigations are needed to identify the location, extent, survival and significance of any heritage assets.<sup>18</sup> It shows a trench (Tr084) within the footprint of the proposed 1.5 metre deep pond, the element of the works with the greatest potential to disturb any archaeological remains. Whilst trenches have been excavated in conjunction with the Gas Works, this particular trench is not one of them.

#### *Ecology*

29. The western third of the site is located within the Mid Colne Valley SMI. For reasons which are not clear, the ES did not recognise that the SMI extends onto the site. Development plan policy seeks to guard against adverse impact on and loss to the SMI,<sup>19</sup> and the NPPF requires that impacts are understood at the application stage.<sup>20</sup> Moreover, it is agreed that the site has changed in value through naturalisation since it was identified in the ES.
30. HS2 Ltd regards the AECOM Memorandum as an appropriate ecology survey and analysis which takes into account the status of the site in relation to both the SMI and its current state. However, the site visit on which the analysis is based was restricted to the footpath and provides insufficient information to justify its conclusions. Moreover, HS2's internal correspondence casts doubt on the adequacy of the survey information and on whether the EMRs have been met.<sup>21</sup>

#### *Conclusion*

31. The policy and objects of section 20 of the Act and the relevant parts of Schedule 17 give qualifying authorities control over the approval of plans and specifications

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<sup>14</sup> Document 1 paras 11 – 16, re: Documents 1a and 1b

<sup>15</sup> HS2 Colne Valley East Detailed Desk Based Assessment, in Appendix 3 of GLAAS's Statement of Case

<sup>16</sup> Definition of APZs in the Local Plan, quoted in the Council's Statement of Case, para 2.5.2

<sup>17</sup> NPPF para 189

<sup>18</sup> Project Plan for Test Pit and Trial Trench Investigation, December 2017, para 1.1.14, in Appendix 5 of HS2's Statement of Case.

<sup>19</sup> Policy EM8 of the LB Hillingdon Local Plan Part 1, quoted in The Council's Statement of Case, para 2.6.2

<sup>20</sup> NPPF, para 175

<sup>21</sup> Email from Matt Dormer, dated 29 January 2018, in the Council's Statement of Case, Appendix 9

for earthworks and fencing, allowing for refusal on specified grounds. For earthworks, these grounds include the preservation of archaeological interest or nature conservation value.

32. In the absence of sufficient information regarding the impact of the proposal, authorities must be entitled to refuse approval otherwise the purpose of the statutory scheme, to provide a measure of local control, would be frustrated. There are no controls within the EMRs which the Council are seeking to modify or replicate in their insistence on being provided with sufficient information to allow them to make a decision.
33. The Council's role within the EMR processes is limited to one of engagement and consultation. It does not have a further opportunity to exercise the control over approval set out in the Act as being properly available through Schedule 17 applications. It is not clear to the Council why HS2 Ltd thinks that the present submission could carry incomplete information and still be acceptable, unless it is to side step the control made available to qualifying authorities under the Act.
34. The Appellant takes the stance that it is the Council's burden to demonstrate how the works ought to be, and could reasonably be modified, and to show where the works ought to, and could reasonably, be carried out elsewhere. However, if HS2 fail to supply appropriate information, it cannot be reasonable to expect the Council to make such judgments.
35. The Appellant refers to Schedule 17 approval given to a neighbouring site. However, this site does not lie in a designated nature conservation area and GLAAS did not comment on it. The circumstances are, therefore, materially different.

### **The Case for GLAAS**

36. The Heritage Memorandum requires HS2 Ltd to have proper regard to the policies set out in the NPPF, notably Section 12: Conserving and enhancing the historic environment.<sup>22</sup> Likewise, the Code of Construction Practice notes that work will follow accepted archaeological and built heritage practice and guidance, taking account of the relevant sections of the NPPF.<sup>23</sup>
37. The NPPF Glossary tells us that there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.<sup>24</sup> The site therefore qualifies as one of archaeological interest for the purposes of Schedule 17. It lies within the Lower Colne Valley area, perhaps best known for its unusual concentration of Palaeolithic and Mesolithic hunting and foraging sites.
38. Geophysical surveys have been carried out in the vicinity of the site, but not within it, as far as GLAAS is aware. In any event, surveys which do not involve trenching are unlikely to detect hunter gatherer camp sites consisting primarily of artefact scatters.

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<sup>22</sup> Para 2.1.1 in Appendix 21 of HS2's Statement of Case

<sup>23</sup> Para 8.1.2 in Appendix 19 of HS2's Statement of Case

<sup>24</sup> NPPF Annex 2: Glossary



39. The extent of trial trenching executed as part of the Gas Works is shown in the over-marked HS2 drawings submitted by GLAAS at the hearing.<sup>25</sup> The most critical trench (Tr084) has not been dug, nor will it be as part of the Gas Works. The information from those trenches excavated is of interest, some carrying flints, charcoal and potential stake holes, others being archaeologically sterile. However, the distribution of artefacts in the ground is likely to be so sporadic that no general indications can be relied upon prior to completion of all trenching.
40. Artefact scatters may be considered of equivalent significance to that carried by a scheduled monument. If associated with animal bone, carbonised or waterlogged plant materials or pollen, or structures, they would very likely be considered of national importance. Harm to a contained asset, such as a Mesolithic hunting camp, where artefact scatters can be as small as 5 to 10 metres in diameter, could be substantial. This is why further information from field evaluation is needed to make an informed decision of the potential for harm caused by the pond.
41. HS2 Ltd relies on the EMRs and GWSI:HERDS processes to investigate, report on, and take measures to suitably protect archaeological heritage. This should involve engagement with the Council and other parties. However, GLAAS's experience so far, with regard to the Gas Works and the neighbouring site, has not been encouraging. GLAAS would expect a representative sample of open trenches to be offered for viewing, but this has not been the case so far.
42. The Appellant also notes that, were assets identified meriting in-situ preservation which clash with the proposed pond location, the mitigation site would need to be redesigned and a new Schedule 17 submission made. Such a submission would carry full and adequate information at that stage. However, the absence of archaeological evaluation information at the time of the present application effectively precludes the Council from making an informed decision and exercising its right under Schedule 17 to refuse the scheme as submitted and require its modification to preserve a site of archaeological interest.

### **The Cases for Interested Persons made at the Hearing and by Written Representations**

*Sarah Green – Local Businesswoman and member of Hillingdon Green Party*

43. The wetlands of the Mid Colne Valley provide recreational settings for leisure and pleasure businesses including Sarah Green's passenger boat business, Arthur Daily Trips (ADT). The size, location and nature of the impacts of the HS2 scheme on the natural and semi-natural environment will have a direct bearing on whether nature related businesses and organisations can continue to operate.
44. Two kilometres of the canal environment and surrounding riparian zones and wet woodland are within the area directly affected. A very large area of species rich habitat within the construction boundaries is at risk. Species lists<sup>26</sup> held by greenspace information for Greater London (giGL) show the extent of the biodiversity.

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<sup>25</sup> Document 4

<sup>26</sup> Submitted as an appendix to Sarah Green's written representations.



45. Enabling works in connection with utilities diversions, taking place to the west of Harvil Road, have resulted in the clearance of large areas of priority habitats. Approximately 700 trees have been felled, including half of the old woodland on the hill and much of the plantation wood, and an access road for construction traffic has been built. This compares with the minimal clearance which took place with the installation of 12 inch and 48 inch gas pipes some ten years ago. Moreover, alternative schemes could allow the diversion of overhead power lines without taking away the priority habitats.
46. Aerial photographs of existing woodland<sup>27</sup> show the wider ecosystem of connected wetlands which are to be removed. The result will be the isolation of the wetland mitigation site within construction land with no connection to a wider ecosystem and its inability to compensate for the habitat loss within the local area, let alone the wider SMI.
47. A comprehensive, transparent mitigation process is not being followed, and no apparent mitigation exists for many species. The spirit of international agreements is being challenged. For the select committee's aspiration of no net biodiversity loss to be achieved, it is essential that the hierarchy of mitigation processes is engaged effectively. There is no evidence that HS2 Ltd is doing this.
48. The Council have a duty, which is not removed by the HS2 Act, to conserve biodiversity. Surveys and plans are required ahead of planning consent where projects affect protected habitats. Mitigation plans must be assembled. None of this is happening. It would be unlawful to start development without proper assessments.
49. In addition, the experiences of ADT passengers and those of other canal boat businesses are not being considered. Only those of rail passengers are acknowledged, even though their speed removes them from prolonged or immediate engagement with their surroundings.

*Councillor Jane Palmer – Representing Harefield*

50. Councillor Palmer reiterated concern over the loss of woodland and habitat.

*Jess Lee – Local Resident*

51. In her written representations Jess Lee put forward extensive notes on discrepancies she perceived within the appendices to HS2's statement of case. She also objects to HS2 Ltd invoking the de minimus rule for some of the earthworks, including the hibernacula, pointing out that no case law to justify this approach exists in relation to the Act.

*Mark Keir – Local Resident*

52. Mark Keir is concerned about the welfare of the site's species. He attached to his representation a recording of the dawn chorus taken from the footpath as it passes the north west corner of the field. He asks, without a survey for baseline information how can any claim of net loss to biodiversity be taken seriously?

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<sup>27</sup> Submitted as an appendix to Sarah Green's written representations.

*Niki Samuel – Local Resident*

53. Niki Samuel uses the site for dog walking and nature watching. She finds it reprehensible that HS2 Ltd could even consider tampering with the ecosystem of this fragile wet woodland. HS2 plan to destroy it to make way for a wetland, despite there already being several wetland areas around the lake. The hedgerows to be destroyed are made up of several varieties including ancient oaks.
54. She notes that she has seen many voles on her walks around the lake, or near the established woodlands. The area is perfectly balanced and any interference would be a disaster, the viaduct being enough of an intrusion. Ramblers and cyclists use, respect, and love it.

*Cathy Cooper – Local Canal Boat Resident*

55. Cathy Cooper support's the Council's brave decision to refuse approval. It will give hope and sustenance to the few people actively fighting this pointless, destructive scheme on behalf of members of the silent majority. Progress is not about building things, it is about learning to quiet the ego and live in harmony with nature.

*Doreen McIntyre – Chair of Harefield Tenants and Residents Association*

56. The Association fully supports the arguments put forward by the Council and is concerned over the piecemeal approach taken by HS2 Ltd to ecological mitigation. The Association meets regularly with HS2 Ltd to raise concerns and make constructive suggestions and is disappointed to see that these inputs are not taken into account.
57. The Association would like to see a coherent approach to environmental mitigation taken across this sensitive part of the area. It is currently part of a green corridor, offering valued recreational opportunities to local residents as well as being a an important environmental resource in its own right. Simply dotting newly designated patches of habitat here and there does nothing to achieve this.
58. Without a coherent approach to managing and sustaining the intended habitat of the site in harmony with local uses in the area, the mitigation effort is unlikely to succeed and will result in net harm to the local environment.

*Christine West – Local Resident*

59. Christine West regularly visits the SMI. She benefits on a personal level from the SMI and recognises its importance to the whole of London in terms of mitigating air pollution, as a major source of water supply, and as a health enhancing natural space for people to enjoy. The HS2 project threatens to decimate it.
60. The basis of HS2's argument against the refusal to approve the mitigation works is framed in an inappropriate and reductionist way. The documents in support are presented in a misleading and confusing manner. There is no evidence of an ecological survey of the area affected and no consideration of the wider context. Nor is there any information on how translocation of species, such as the great crested newt, will be achieved and how their presence will be maintained.
61. The mitigation site is adjacent to both the feeder station and the viaduct and is therefore unlikely to be able to support the ecology intended. The proposal is

analogous to attending to an ingrowing toenail and ignoring a stab wound to the heart.

### **Conditions**

62. The Schedule 17 Statutory Guidance notes that conditions should not be imposed which reserve for future approval matters which are integral to the approval being sought.<sup>28</sup> Having regard to this advice, it was agreed by the main parties that approval with conditions involving the receipt of further information at a later date would be inappropriate in this case.

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<sup>28</sup> Para 10.2 in Appendix 16 of HS2's Statement of Case.

## **Inspector's Conclusions**

*[Numbers in square brackets refer to previous paragraphs]*

63. The main issue is whether the information available to the Council for the Schedule 17 application was adequate.

### *Grounds for Refusal*

64. The Council's grounds for refusal fall within those possible set out within the table at paragraph 3(6) of Schedule 17. The first ground is predicated on the site having archaeological (or historic) interest and nature conservation value.

65. In my view, the site has archaeological interest. It satisfies the NPPF Glossary definition since it holds, or potentially may hold, evidence of past human activity worthy of expert investigation. The potential derives from its APZ designation, HS2's Detailed Desk Based Assessment (DDBA), and evidence of material discovered so far, including that from trenches excavated as part of the Gas Works [27, 28, 39]. Whether that potential materialises can only be discovered through investigation and archaeological evaluation.

66. The site may also have nature conservation value which has not previously been recognised. This is because of its location, partly within the SMI, which was not recognised at the time of the ES [29], and because of the value which may have been acquired since it was last cultivated. Again, whether the value is substantive can only be discerned through investigation and analysis.

### *Information Provided with the Application*

67. The application satisfies Planning Forum Notes 1, 2, and 3 with regard to the form of the items submitted for a plans and specification approval such as this [8, 24]. The depth of information to be carried by each item is not made explicit in the Notes. However, within the supporting material, in this case the Written Statement, scope exists for the supply of information reasonably necessary to allow an informed decision to be made.

68. In this case, however, the written statement largely describes actions which are expected to be taken in the future to assemble this information, rather than conveying the substantive information itself. It is important to note that, contrary to HS2 Ltd's assertion, the necessary archaeological evidence will not arise from the trenching involved in the Gas Works, because the location of the proposed pond is not covered [14].

### *Archaeology*

69. The Appellant tells us that geophysical surveying of the site was planned for August 2017, but frustrated by access and land ownership difficulties, and notes that this delay has resulted in the apparent lack of archaeological evidence to support the Schedule 17 submission [16]. We are assured that the survey, with trial trench evaluation, will be completed before the mitigation site works begin, and the results fed into the EMR process. Should redesign be necessary, a further Schedule 17 application would be made [17].

70. The statement goes some way to conceding shortcomings in the archaeological evidence accompanying this application. It also raises the question of why, if a further Schedule 17 application may be contemplated, the present application

was not postponed until full archaeological evidence became available, allowing the Council to exercise the control provided in the Act.

71. The Planning Memorandum, at paragraph 1.1.2, seeks to ensure that the process of obtaining approvals does not unduly hinder construction. Programme concerns may have prompted the Appellant to submit the Schedule 17 application prematurely, relying on the EMRs and GWSI:HERDS processes to achieve an appropriate outcome. However, in these processes, although the Council should be engaged and consulted, the control available to the Council in relation to a Schedule 17 application no longer applies.
72. Moreover, should a further Schedule 17 application prove necessary immediately before the works begin, the duplication of resources and the programme disruption involved in redesigning the site and delaying the works may well be significant.

### *Ecology*

73. The ES was conducted in 2013 without recognition that part of the site falls within the SMI [29]. However, the whole of the site was under uniform arable cultivation at the time and for several years after, without distinction between the main part, lying outside the SMI, and the smaller part within the SMI.
74. The section of the SMI overlooked in the ES is not critical to maintaining the integrity of the SMI, because it is such a tiny portion of the overall area [18] and because of its character of established agricultural use. It is, therefore, unlikely that there would have been a material difference in the outcome of the environmental assessment had the true boundary been recognised.
75. Turning to the value of the recent ruderal growth on the site, the AECOM Memorandum goes some way to establishing a baseline for the current ecology of the site and I see no reason to believe that critical aspects have been overlooked. As the Memorandum notes, the ES identified the loss of approximately 25 hectares of terrestrial habitat within the wider SMI resulting from the development of the viaduct and associated aspects of the HS2 scheme [18].
76. I agree with the Appellant that the proposed works would give rise to valuable wetland which would help towards mitigation of this loss and that the site is likely to be more species diverse than exists at present. Essentially, the wetland proposed is needed more than the ruderal growth which has developed on the site which, in any event, could arise spontaneously on many areas of land which fall into disuse.

### *The Cases for Interested Persons*

77. I have carefully considered the points made by interested persons, both at the hearing and through written representations. Many relate to matters beyond the scope of this appeal, such as the principle of the HS2 project, its route, and the overall approach to mitigation. As to the remaining points, I am content with the responses provided by the Appellant [23].

### *OVERALL CONCLUSIONS*

78. With regard to archaeology, I find that the information available to the Council was not adequate. The design of the works ought to, and could reasonably, be

modified to preserve a site of archaeological interest, if found necessary once adequate information becomes available.

79. Moreover, if found necessary once adequate information becomes available, the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits. I find it unreasonable to expect the Council to approve an application, or to show how the works ought to be, and could reasonably, be modified or carried out elsewhere, on the basis of inadequate information.
80. Turning to ecology, I find that, although there were shortcomings in the assembly of the ES, adequate information was available to allow the Council to make a pragmatic but responsible judgment on the effect of the proposals on the ecological value of the site.

### **Recommendations**

81. With regard to archaeological interest, I recommend that the appeal be dismissed and approval refused.
82. With regard to ecological value, I recommend that the appeal be allowed and the plans and specification Schedule 17 application be approved.

**Alan Novitzky**

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Trevor Ivory	Solicitor, DLA Piper (UK) LLP, instructed by Martin Jeffrey, HS2 Ltd
Paul Gilfedder	Head of Planning at HS2 Ltd
Thomas Smith	Chartered Town Planner, AECOM
Caroline Hutson	Fusion, early works contractor, Design Mitigation
Steve Austin	Town Planning Manager, HS2 Ltd
Helen Wass	Head of Archaeology, HS2 Ltd
John Simmons	Head of Ecology for HS2 Ltd., AECOM

### FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy	Barrister, Francis Taylor Building, instructed by Raj Alagh, Borough Solicitor
Ian Thynne	Planning Specialists Team Leader
Raj Alagh	Borough Solicitor
Wahab Mohammad	Trainee Solicitor

### FOR GLAAS (HISTORIC ENGLAND):

Michael Guy	Solicitor, Historic England
Alexander Kidd	Principal Advisor, Historic England

### INTERESTED PERSONS:

Jess Lee	Local Resident
Mark Keir	Local Resident
Sarah Green	Local Businesswoman and Green Party Member
Frank Wood	Herts and Middlesex Badger Group
Councillor Jane Palmer	Representing Harefield
Joan Waters	Local Resident



## **DOCUMENTS submitted at the Hearing**

- 1 Council's opening submissions, with the following reports:
  - 1a Padfield and Others v Minister of Agriculture, Fisheries and Food and Others, House of Lords [1968] 2 W.L.R 924 [1968] A.C. 997
  - 1b Regina (Gallastegui) v Westminster City Council, Court of Appeal [2013] EWCA Civ 28 [2013] 1 W.L.R 2377
- 2 HS2 - LB Hillingdon, forward programme of planning approvals not covered by the HS2 Act, April 2018 – October 2018
- 3 HS2 - LB Hillingdon, forward plan of Schedule 17 applications, April 2018 – October 2018
- 4 Various HS2 plans showing original and actual trench locations, put in by GLAAS