

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
BIRMINGHAM DISTRICT REGISTRY

BETWEEN:

(1) HIGH SPEED TWO (HS2) LIMITED  
(2) THE SECRETARY OF STATE FOR TRANSPORT

Claimants

- and -

PERSONS UNKNOWN & OTHERS

Defendants

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**BUNDLE D**  
(Volume B)  
*for hearing on 26 and 27 May 2022*

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TAB	DOCUMENT	PAGE
36	D36 (Mark Keir) Witness Statement and exhibits, dated 4 April 2022	D179-D778

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**QB-2022-BHM-00044**  
**High Speed Two (HS2)Ltd & Secretary of State for Transport**  
**V**  
**Persons Unknown and Ors**

**Witness Statement of Mark Keir, Defendant 36**

1. I am Mark Keir, an Earth protector, a very concerned citizen, above all a human being.
2. I have lived in Jones' Hill Wood since April 2020, to protect the wood, to protest HS2, to witness the criminal and needlessly destructive nature of a project the people of this country do not want but over which we have been roundly ignored by Parliament.
3. I am a majority member of the public as regards HS2. I do not want it, nor do the majority of the country.
4. I believe this statement to be honest and true to the very best of my knowledge.

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5. I was served this application at 10pm Wednesday 30th March 2022 by email. On the afternoon of Thursday 31st, I got another email from HS2 recalling the first. I then got a third email with what appears to have been a missing document from the first. Then a fourth as the third without a huge email list attached. Then a fifth email trying to tell me what went wrong and demanding I put it right by double deleting the first email.
6. I have spent a weekend calling/emailing/texting trying to ascertain why dear friends were about to be injunctioned in their own homes, trying to gather evidence together, calming frayed nerves, trying to understand 282 maps none of which are titled and all of which have no place names.
7. I hope you understand if this statement appears incoherent in places, I nevertheless guarantee its veracity.
8. With an appropriate time to prepare I could I believe I demonstrate HS2Ltd to be little more than a shifty maladministered corporation with little grasp of their responsibility to Parliament, the public or our environment.
9. With an appropriate time to prepare I could demonstrate that to hand them a law to curtail protest will further injure democracy, the public and the environment.
10. I will demonstrate to the best of my ability that it is those few engaged in Non Violent Direct Action and site based protest who have done more to hold HS2, their Contractors, their personnel and Parliament and the system that begat this dreadful project to account, than police, courts, councillors, local authorities, MPs or Parliament have.
11. Only we have seen the scale and scope of the criminality, fraud and deception that is the very fabric of HS2Ltd.

12. I will thus demonstrate a desperate need for front line activists to carry on doing exactly as they have been doing in order to raise all the illegality, deceit, corruption and fraud to a still unsuspecting wider public.
13. I absolutely refute allegations of violence levelled against us. I believe others here today may furnish you with more evidence to that end. In brief I believe any violence shown in the video evidence is misleading by its editing, incomplete information of exact siting and roles of parties involved, and note that HS2's security videos are time stamped to 1970! Can't have been us guv, we weren't born (mostly)!

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## **Democracy**

14. I have faced HS2 Ltd in Court many times now. I have been arrested several times but have never been convicted. I believe all my protest to have been well within bounds of proportionality. Wouldn't life be wonderful if the same proportionality test were applied to HS2! I believe the arrest figures for the protest against HS2 stand at over 400, and yet only a handful of convictions (10?) stand, more of these are being appealed.
15. We have always stood with the firm conviction that HS2 bypassed democracy.
16. The only visible public consultation that asked the Nations opinion on HS2 was issued in 2013. The following is extracted from the published result:

### **Q1 Do you agree that there is a strong case for enhancing the capacity and performance of Britain's intercity rail network to support economic growth over the coming decades?**

In total, 21,630 respondents agree that there is a case for improving Britain's inter-city rail network while 2,857 agree with caveats and 23,462 disagree. Overall, 13,840 respondents agree that capacity and performance on the existing rail network need to be addressed, while a similar number (11,770) believe that creating new capacity will release pressure on existing lines.

### **Q2 Do you agree that a national high speed rail network from London to Birmingham, Leeds and Manchester (the Y network) would provide the best value for money solution (best balance of costs and benefits) for enhancing rail capacity and performance?**

Across responses to the consultation, 15,257 respondents agree that the proposed high speed rail network would provide the best value for money solution, while 1,108 agree with caveats and 31,789 respondents disagree.

Among respondents who do believe the proposed network would provide the best value for money solution, 12,768 respondents concentrate on the benefits of faster journeys. Pre covid!.

**Q3 Do you agree with the Government's proposals for the phased roll-out of a national high speed rail network, and for links to Heathrow Airport and the High Speed 1 line to the Channel Tunnel?**

Of respondents who do indicate a general preference, 2,215 agree with these proposals, 564 agree with caveats and 26,197 disagree.

Overall, 1,662 agree with the proposal for a phased roll-out and 533 agree with caveats; in contrast, 2,629 disagree

Respondents favouring a phased completion cite a series of potential benefits, for example that phasing could reduce the risk of spiralling costs.

A total of 13,961 respondents agree with the proposal for a link to Heathrow Airport and 323 agree with caveats, in contrast to 3,146 who disagree.

A total of 15,123 respondents agree with the proposal for a direct link to High Speed 1 and the Channel Tunnel, while 347 agree with caveats and 1,274 disagree.

**Q4. Do you agree with the principles and specification used by HS2 Ltd to underpin its proposals for new high speed rail lines and the route selection process HS2 Ltd undertook?**

There are 2,584 respondents who agree with the principles and specification as well as the route selection process, while 552 agree subject to caveats and 28,455 disagree.

The majority of respondents are opposed to the objective of high speed,

Respondents also make numerous comments about another key aspect, capacity. Most of these comments express opposition to the proposed combination of train length and frequency, often suggesting that demand will not be sufficient to require such a high level of provision.

The majority of these respondents claim that the route selection process has failed to comply with the objective of minimising impacts.

**Q5. Do you agree that the Government's proposed route including the approach proposed for mitigating its impacts is the best option for a new high speed rail line between London and the West Midlands?**

.....Of these, 2,178 agree, 604 agree with caveats and 28,163 disagree.

**Q6. Do you wish to comment on the Appraisal of Sustainability of the Government's proposed route between London and the West Midlands that has been published to inform this consultation?**

Of these respondents, 14,170 comment that it is in some way insufficient. A total of 614 respondents are satisfied with it and 158 endorse it with some sort of caveat.

The AoS indicates that one way in which high speed rail would reduce greenhouse gas emissions is by shifting a portion of domestic and short-haul flights onto rail. This assumption is endorsed in the comments of 134 respondents, while 1,895 think that the proposed high speed rail network will not reduce air travel.



**Q7 Do you agree with the options set out to assist those whose properties lose a significant amount of value as a result of any new high speed line?**

A total of 36,036 consultation responses include comments addressing issues related to Question 7..... 363 state that they find them acceptable.

17. That consultation was clearly shelved and ignored.
18. If Parliaments sovereignty is bestowed on it by the people at General Elections, something has gone awry. Every debate along the HS2 passage through Parliament was marked by empty chambers, every vote marked by chambers bursting, and every vote whipped to an agenda driven by a force that was *not* the people.
19. Never has HS2 entered into the fray of general elections through the manifesto of any major party until after Royal Assent.
20. Hybrid bills are designed to bypass many democratic hurdles put in place by Parliament over many years to protect us and our environment and to ensure financial probity is maintained. How many laws were derogated for the sake of HS2? What democratic process scrutinised even this little facet.
21. The deceit that drove the Bill through Parliament regarding costs is of course clear and is of course ongoing. How often were Parliament promised the cost of HS2 would be no more than £35bn, even though it can be demonstrated that it was known by George Osborne (then Chancellor of the Exchequer) and Chris Grayling (then Secretary of State for Transport) that costs were already spiralling over £50bn back in 2013? And what cost now
22. How are we to be heard. How are the public to voice their opinion such that it gets heard over the gluttonous cacophony of corporate lobbying?

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## **Colne Valley**

23. Is it surprising that a project born thus might show continued symptoms of dishonesty, deceit and criminality? Who else is holding them to account?
24. In May 2019 there were reports of a massive failing of HS2 planted saplings with claims of attrition reaching 95% in places. HS2 accepted these figures and said replanting would occur. There has been little evidence of that replanting. Plantings around Harefield look as dismal now as they did 3 years ago. **See Exhibit 3 and 3a**
25. An area of "woodland planting" at Tile House Lane of the usual 6 or 7 species replaced a cherished and cared for wildflower meadow of 25yrs standing and of 3/4acre, in a well wooded area. Most saplings died. Hardly "increasing biodiversity".
26. **Please see Exhibit 4 "Catalogue of errors"** This document now nearly 2 years old lists just some grievances which I and my colleagues, and Woodland Trust raised relating directly to ancient woodland. It makes for a sad and worrying read. In particular I draw your attention to bullet point 3 of para 1 "Broken Assurances". Despite assurances to Woodland Trust to leave a Root Protection Zone around New Year's Green Covert, we saw workers driving, digging, fencing right up to the trees

concerned, and lopping branches that over hung their fence. The reason given by HS2 for this encroachment was that to write such assurances in to the contract, would make that contract "too wordy"!

27. Please don't omit reading the other points raised here. I will raise repeats of these issues from elsewhere further on in my submission. These transgressions are habitual!

28. In 2017, the very first Section 17 application for an ecological mitigation site was submitted to London Borough of Hillingdon. **See Exhibit 5**

From page 17 thereof we see that woodland "mitigation" planned works would include two ponds, a hibernaculum suitable for Great Crested Newt, a basking bank for reptiles some trees and other planting (incidentally exactly as later submitted for a wetland mitigation site, and again for a grassland mitigation site, though happily the site in question is the only one not carved out of an ecology similar to that to be created i.e. grassland out of grassland, wetland out of wetland nature reserve).

Created in early 2018 the site does not live up to its declared aim of :

*"The mitigation scheme is required to be implemented early in the overall Phase 1 programme, in order to allow sufficient time for the replacement habitat to establish, prior to the translocation of great crested newts."*

(At no time have newt barriers been erected anywhere in the Colne Valley - were they surveyed for? Were they found? Were they just ignored? Or was this an off the shelf plan considered adequate for all occasions?. Can it even be considered compensation?

The trees have failed, other planting never materialised and the ponds remain dry.





29. The site is now isolated, surrounded as it is by a deathtrap building site extending up to 2km and more in any direction. And worse. Some of this site was removed to make way for a temporary road diversion last year. And worse. As of March 2022, the site is subjected to heavy plant and excavations!



Given a reported 37000 trees being felled in the Colne Valley alone, such a mean and meagre compensatory response does not validate claims of building “a Green Corridor”.

30. The second S17 application in this series for Wetland “Mitigation” was for a nearby site and subject to a public inquiry and subsequent trail through the Court system which try as they might HS2 were not going to win. **See Exhibit 5a.** Work on the site has yet to start.

I believe the third in the series of S17 applications for Grassland “Mitigation” is yet to be lodged.



An assurance was made that these sites would be operational before construction started!

31. The Colne Valley is resplendent in biodiversity exemplified by being home to 17 of the UK's 18 bat species **See Exhibit 6: Colne Valley Regional Park document para 2**. Yet no bat licence applied for in the Valley by HS2 referred to any more than 8 species. **See Exhibit 6a: (BAT MITIGATION CLASS LICENCE WML-CL40) p12**. Does this sound like proper regulation is in place?

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### **Jones' Hill Wood**

32. Jones' Hill Wood, a jewel of ancient woodland in the Chilterns, was made a battlefield between HS2 and environmental protesters. **Please see Exhibit 8: Jones' Hill Timeline and associated Judgements at 8a and 8b.**
33. Please understand from this time line that at time of publishing the Environmental Statement (ES), there had been no surveys of Jones' Hill. Even so somebody knew it had to be surveyed and applied to the landowner for access and HS2 were duly granted access in 2014, and again 2016 through to 2018, *after* the ES is written as a major and defining plank of the Act of Parliament.
34. But no attempts to survey for bats, badgers or dormice, however feeble, were made right up to 2020.
35. In the summer of 2020 HS2 made public their intention to fell Jones' Hill in October. Still no surveys.
36. One feeble attempt to survey badgers which dismissed Ancient Woodland Strategy best practice was left incomplete. The ecology team involved refused to engage with an enquiring member of the public who wanted reassurance that the chemical being poured down the setts was not toxic.
37. HS2 have admitted that had they felled the Wood in October 2020 as originally planned, they would have been committing a wildlife offence. They had done no surveys, and had no valid licence. That they hurriedly applied for a bat licence from Natural England after the eviction of our camp, serves to highlight the original intentions to be illegal. It didn't get any better.
38. As time progressed it seemed Natural England were listening and engaging with us..... until they suddenly accepted HS2's application for an amended licence.
39. Then came a legal battle which cost the litigants (Myself as lead, but with a superb and immensely hard working team behind me) £85000. This is not money likely readily available to any member of the public, let alone to a gardener who has had to "give up everything" to fight a monster of HS2 proportions. We applied for Judicial Review of the decision to issue that licence. Initial success (**See Exhibit 8a**) was soon turned over (**See Exhibit 8b**) The prime reason for refusing judicial review discussed in Court were substantial losses that would be inflicted on HS2. (Remember the outlay required of a lay member of the public?) Those losses (£20m - £60m) were to be incurred due to not being able to build a haul road through the Wood by Summer 2021. That haul road is *still not built*. The reason given to the Court to allow catastrophic unmitigated uncompensated destruction was clearly false. A whole season was available to do all the surveys, mitigation and compensation in a

timely manner that could have minimised damage. (Further, have HS2 thus inflicted £60m losses on taxpayers through tardy mismanagement?).

40. As Jones' is felled a further catalogue of errors and negligence comes to light.

- A small woodland is isolated by dismantling all connectivity, all adjoining hedges and tree lines are gone or rendered useless.
- A third of the woodland is felled, "translocated", and salvaged at an inappropriate time of year that maximises impact on wildlife.
- A second third of the woodland, supposedly a buffer zone to be untouched save for attaching some bat boxes to trees, is instead trashed, undergrowth destroyed, soil compacted, littered, floodlit every night, subjected to constant noise with generators running 24/7, has several camp fires (fuelled by felling trees!), dogs barking incessantly all night, tents erected on badger sett entrances, security cameras attached to trees using steel jubilee clips....and trees and standing deadwood that were the prime potential bat roosting features that were once in the placid calm at the heart of the Wood are now bared to all the elements at the new woodland edge.
- A final third of the wood supposedly to be untouched is instead laid open to the elements with a gaping wound from end to end with wind, rain, cold and is now isolated, making it quite inhospitable as habitat.
- Owing to the diagonal slicing of the Wood, a fifth of what is left is very narrow and sparsely populated to the point of no longer being woodland, it is a line of trees which owing to height and lack of girth are vulnerable and offer only limited potential for connectivity.
- All unconsidered by Parliament, Courts, Legal Profession, Natural England, Environment Agency, Environment Statement, Environmental Minimum Requirements, HS2 or their contractors.
- Mitigation is absent. Damage is considerably worse than allowed for in the Environmental Statement.
- Compensation is woeful. It is minimal, poorly planned, mis-timed and poorly executed. **Please see Exhibit 9, 9a and 9b, Bowood Lane Mitigation Report**
- The above report lies at the heart of reasoning for my EIR. It displays fully a *systemic* lack of candour, poor reasoning, poor execution, negligence, lack of comprehension and contempt for nature.....and the public. Please read it carefully, please read HS2's response and my response to theirs (which they have seen but refuse to engage further on).
- Having confirmed the presence of Barbastelle in the wood, and having confirmed a roost, Jones' Hill should have been accorded SSSI or even SAC status.
- That Barbastelle were confirmed seems to have been considered an aberration by Natural England and hence Justice Holgate. Nor was attention paid to the habits and life cycle of an elusive as well as very rare bat (UK estimated population c.5000). That my colleagues and I have progressed to confirm Barbastelle flights (**See Exhibit 10 p....**) and foraging corridors close by confirms what should have been clear with the finding of one roost - There is a previously unknown colony of Barbastelle in South Buckinghamshire situated close to and utilising Jones' Hill (Barbastelle colonies are generally small and nebulous making them hard, but not impossible to pinpoint). A

colony that HS2 surveys should have found and confirmed before 2017! Felling of Jones' Hill, and of all the connectivity in this area can only massively impact Favourable Conservation Status. Natural England have utterly failed in the role of regulator.

- To add further to the injustice, HS2 surveys actually recognised at least two instances of Barbastelle (**See Exhibit 11....**) within 2 ½ miles (easily in range of a colony local to Jones') back in surveys prior to 2017, but the information was ignored both by them, and Natural England.
- A whole habitat is being dismantled. A rare and protected species is being locally extinguished and regionally, if not nationally affected. Not just roosts, but a colony and all its foraging and breeding needs will no longer be sustainable.
- This does not look like mitigation....it does not look like compensation... but the System insultingly says *that* bat box atop a pole is just that:



Bat box placement, Bowood Lane "Mitigation" Site -  
"Mitigation" for ancient woodland and Barbastelle habitat.

41. The compensation measures that are being put in place, even if they were well executed on the ground, are hopelessly mis-timed. 30 spindly trees of barely 3m in height and perhaps 60cm crown diameter cannot provide a corridor for bats for probably in excess of 30 years yet are systemically accepted as compensation for terminal losses in ecology *now*. That these compensations are poorly executed adds immensely to the injury. That the damage they are designed to compensate does not extend to a few metres in any given direction, but to **350 miles**, indicates that what is going wrong, does not lie solely at the feet of laughing idiots with chainsaws in hand, or illegitimate ECOWs, but reaches all the way through company and corporate

structures, policing, government regulatory structures, Courts, Government and Parliament.

42. That such insulting, neglectful and criminal work should be carried out by/on behalf HS2 on behalf of Government and Parliament and then monitored and marked for viability going forward by/on behalf of HS2 is not a credible option. Please see **Exhibit 12: p16 “Post-development monitoring”**

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### **Leather Lane**

43. For fuller analysis **please see Exhibit 13 (highlighted passages of particular note)**. Less than a mile from Jones’ Hill Wood and the “mitigation” site at Bowood Lane lies Leather Lane. Leather Lane is an ancient holloway running East to West down the East side of the Misbourne Valley. It lies across the route of HS2, and the intention is to divert the Lane to a new overbridge to carry it over the proposed railway.
44. Along the south side of the lane is a majestic line of over a hundred oaks.
45. Again we meet HS2’s lack of forethought and lack of surveys. Indeed, an FOI to HS2 to find what surveys had been carried out there returned our very own survey!
46. Again, our surveys are informing HS2, Parliament and Local Authority what HS2 felt was not important. We have ascertained that the line of oaks are a major foraging corridor for bats, with 7 species using the corridor on a regular basis, including our dear friend the Barbastelle.
47. The presence of Barbastelle here absolutely confirms our claims of a nearby colony and utterly denounces HS2’s and NE’s stance in the Jones’ Hill JR case.
48. Over a thousand bat calls have been recorded of a night at given points along that corridor.
49. We have been campaigning very hard since March last year to get HS2 and their main contractor here, EKFB, to follow the requirements laid down in the Act of Parliament to follow the Mitigation Hierarchy. **See Exhibit 1 page 5.**
50. So far 11 Oaks have succumbed to HS2 works, without bat surveys and without bird nesting surveys.
51. Our surveys since quite clearly show the corridor is being severely disrupted.
52. HS2/EKFB have so far introduced the first real attempt at mitigation I have seen them employ anywhere on the route. Sadly it is as woefully inadequate as we might expect. 9 trees felled in one section broke the corridor and, to mitigate, all the brash generated from felling was lined up along the line of the felling. For a day or so the bats crossed the felling site but the brash slowly settled below a usable height. There is now a clear and permanent break in this vital connectivity which it HS2/EKFB have no intention of reducing, repairing nor even compensating. For a distance of 6 miles every woodland, tree line or hedgerow providing such connectivity across the route of HS2 has gone, in an AONB. Leather Lane is the last one still more or less standing.
53. HS2/EKFB intend felling a further 40+ trees from the line.

54. Our campaign has been to ask HS2/EKFB to *consider* an alternative to their Lane diversion which allows all remaining trees to stand, and would give some hope of genuine mitigation and repair to happen to join the now two ends of the line of oaks.
55. We have had to provide the surveys, we have had to provide the survey equipment, we have had to provide the ecologists and we have had to provide the civil engineer to design a viable alternative route.
56. HS2/EKFB have provided the obstacles, the disinformation and the control freakery to avoid their legal responsibility at all costs.
57. Our campaign also demands *valid* and timely *repair* to the lost connectivity. We believe this can only be done by means of a green bridge, not a gantry as proposed at Sheephouse. **See Exhibit 17 and 17a.**

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### Calvert

58. In January 2020 we had confirmed reports of HS2 felling a nature reserve without permission or licence. **See Exhibit 15.**
59. No surveys were done.
60. No licence applied, because every licence requires the consent of the land owner.
61. Every move throughout the reserve committed a wildlife crime.
62. Every move throughout the reserve was aggravated trespass.
63. As the report says, every person who entered the reserve that day did so knowingly. Whoever took that decision, did so knowingly.
64. Such brutal, vindictive, violent, dishonest entitlement seems endemic.
65. Where was the Mitigation Hierarchy? Where is the mitigation? Planting a few species of common plants cannot be adequate compensation.
66. Are those planted trees alive? Are there 75000?
67. None of the multiple wildlife crimes committed that day could be investigated by us owing to a massive aggressive security operation.
68. Nor did the police investigate. Indeed the police backed the security operation.
69. Nor did the police arrest anyone for aggravated trespass.

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### Badgers

70. Natural England issued badger licences to HS2 that reduced restrictions and conditions. Why?
71. HS2 works are allowed to be within 10m of active setts instead of the usual 30.
72. Where artificial setts are required, under normal licence conditions badgers from the main sett being compensated for have to show an interest and actually enter the artificial sett before any attempt at gating the original. With licences issued to HS2 it seems any passing badger throwing a careless glance at the artificial sett will do.
73. Common sense would surely suggest, with works on such a massive scale stretching for 350miles more care, and greater commitment, *not less*, should be required.



74. HS2 surveys showed 60 setts within a ¼ mile of Jones' Hill Wood. Their ecologists deemed only one to be a main sett. **See Exhibit 16: ESMP page 66.** Hardly credible. Our own surveys showed lots of badger activity in the area and lots of active setts.
75. But with only one deemed a main sett only one artificial sett was constructed. It was sited at least 200m from the original to keep clear of works, but was within 20m of an active sett we believe to be large enough to be a main sett. So any badger from the HS2 labelled main sett, would have to cross another clans territory to find their new home? Why would any badger from the venture there?
76. Within 3 months of construction the cardboard tubes used to create the tunnels were collapsing under the weight of wet soil above.
77. On Rose Hill Farm near Steeple Claydon an artificial sett was constructed on the lowest part of a field prone to flooding. I hope the des res was not occupied.
78. A second artificial sett was constructed with security fencing wrapped around three sides within 50cm of the entrances, had floodlights trained on it and security robots sited around to ensure any inquisitiveness would be aborted.
79. The third and I believe last artificial sett constructed in all 150 miles of HS2 Phase 1 was placed in a field of mud outside Sheephouse Wood, again near Steeple Claydon, with one end of the construction prone to flooding and all cardboard tubes collapsing under wet soil.
80. 140 miles of HS2 Phase 1 produced three artificial setts. 140 miles of HS2 Phase 1 thundering across thousands of acres of prime badger territory and only 3 main setts encountered? Just how credible is this?

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## Water

81. The disregard shown by HS2 for law, the public, to any sort of moral compass is rarely likely to be more blatant than in the case of their utter ignorance of honesty and transparency regarding the damage now being done to the Mid Chiltern Aquifer, the Water Source Protection Zone and the public water supply in the Colne Valley. I refer you to evidence given by Sarah Green in the 2019 iteration of the Harvil Rd injunction. **Please see Exhibit 18 (15 and 16 First and Second Witness Statement Sarah Green) 18a (37 38 and 40, Exhibits to 1st 2nd and 3rd Witness Statements Sarah Green) and 18b Sarah's vindication.**

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82. From all the above, all provided by our campaigning and our oversight, it must be clear that HS2 have little regard to the EMRs on which their deemed planning permission rests. I believe the disrespect shown by HS2 Ltd to Parliament, to law, to the public must dissuade this Court from allowing this application to pass.
83. I would so like to submit much, much more but have no time.
84. I believe all the above to be a true and factual account to the very best of my knowledge

Mark Keir

MALE

4th April 2022

# Ecology and Biodiversity - Overview

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June 2016

# Legal requirements for ecology and biodiversity

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## Sites

- Sites of international importance for nature conservation are protected under the Habitats Regulations 2010 – Special Protection Areas and Special Areas of Conservation
- Sites of national importance are protected under the Wildlife and Countryside Act 1981 – Sites of Special Scientific Interest and Local Nature Reserves
- County wildlife sites are non-statutory. They are protected through the planning process. Most ancient woodlands are county wildlife sites

## Species

- A number of species including bats, great crested newts and badgers enjoy statutory protection.

# HS2 Ltd policy to ecology and biodiversity

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## Policy

- Although there is no legal requirement to do so, HS2 Phase One has the objective of seeking to achieve no net loss to biodiversity for the project as a whole (4.8.7, Annex 4, draft Environmental Minimum Requirements)
- HS2 Ltd has sought to realise that objective through the design of the Bill scheme.
- HS2 Ltd has developed a metric to measure losses and gains to biodiversity in consultation with Defra and Natural England. The metric was published in the main Phase One Environmental Statement.
- The interim results of the loss and gain calculation were published in January 2016.

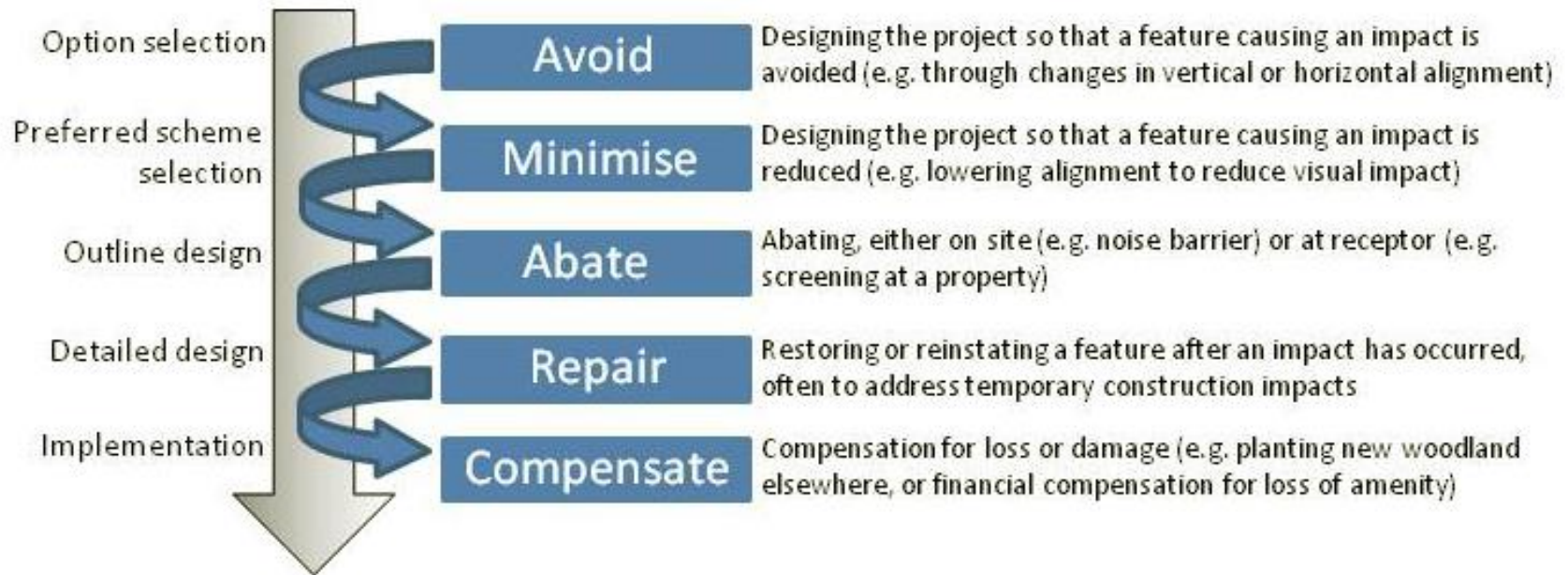
# Surveys and the precautionary approach

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- Surveys of habitats and species have been undertaken on all lands within Bill limits where access has been obtained. These surveys are reported in the main ES and updated in the SES documents that accompany the Additional Provisions.
- Best practice methods have been used for ecological surveys. Methods have been agreed with Natural England. They are set out in the Field Survey Methods and Standards document which forms part of Volume 5 of the main ES.
- Assessment of effects on designated sites, habitats and species is based on survey results together with baseline data obtained from local record centres and other sources.
- HS2 Ltd has no statutory right of access for surveys. In the absence of survey data, a precautionary approach has been adopted.

# Applying the Mitigation Hierarchy to ecology and biodiversity

- Development of the project has been undertaken in accordance with the mitigation hierarchy:



# Internationally and nationally protected sites (1)

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- The route has been designed to avoid all internationally protected sites.
- Four nationally protected sites are directly affected by the proposed scheme (three Sites of Special Scientific Interest (SSSI) and one Local Nature Reserve).
- Measures to mitigate or provide appropriate compensatory measures have been developed in consultation with Natural England.



# Internationally and nationally protected sites (2)

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## Examples:

- Long Itchington Wood SSSI. The scheme is in bored tunnel to avoid direct loss of this ancient woodland site.
- Mid-Colne Valley SSSI. An additional provision was brought forward to reduce the loss of ancient woodland within the SSSI to less than 0.1 ha
- The Bill includes powers to provide compensatory habitats where SSSIs are affected. Measures have been agreed with Natural England.
- At Helmdon Disused Railway SSSI a green bridge was added through an additional provision. This will increase connectivity between the two sections of SSSI.

# Examples of Ecological mitigation

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- A bespoke 850m bat mitigation structure alongside Sheephouse Wood SSSI in Buckinghamshire to protect Bechstein's bats from being struck by passing trains.
- Provision of new nest boxes for barn owls at a safe distance from the railway to augment the population of this protected species. This will be informed by a research project on barn owl dispersion.

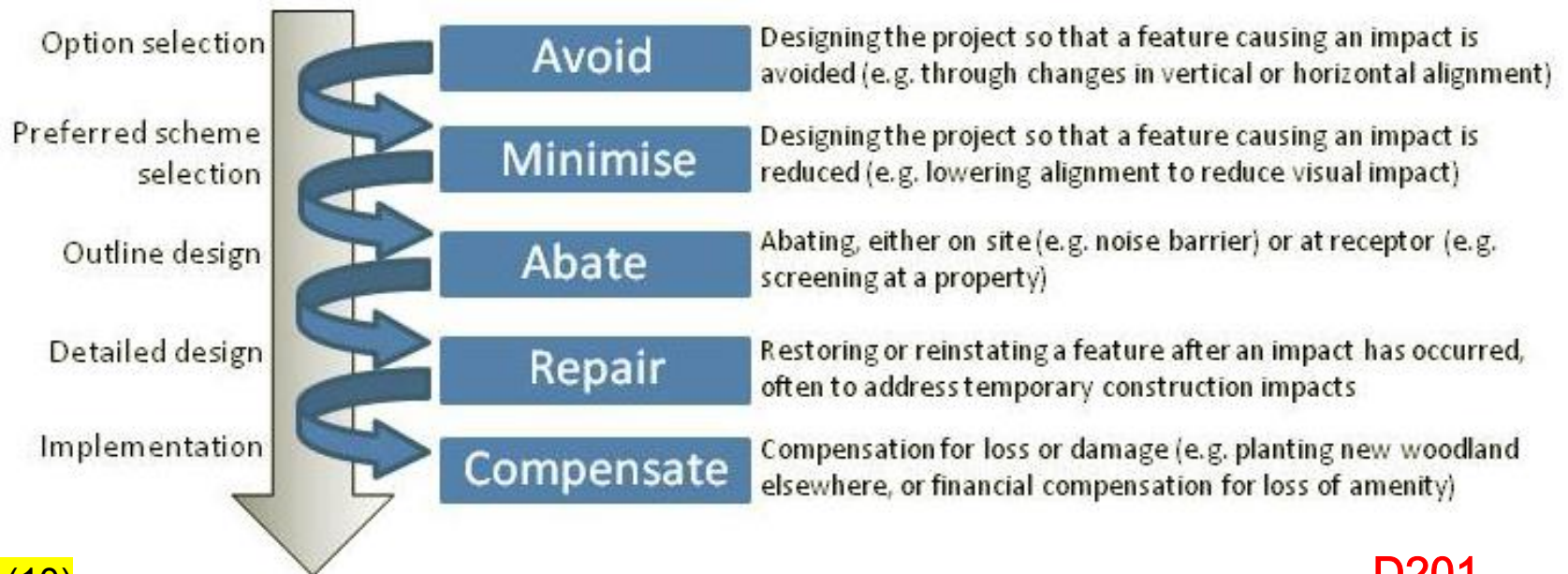
# Maintaining connectivity

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- Wildlife connectivity is provided along the route by means of bored tunnels, cut and cover tunnels, viaducts, bridges and underpasses.
- There will be 16 green bridges, many of which are provided specifically to create connectivity for wildlife. The Promoter has taken an evidence based approach to the provision of green bridges.
- In the Bernwood Forest area, surveys confirm the requirement for five green bridges with a minimum green width of 30m for protection of Bechstein's bats.
- The creation of green corridors alongside the railway will facilitate the north-south movement of wildlife.

# Applying the Mitigation Hierarchy

- The mitigation hierarchy has been applied to avoid ancient woodlands wherever possible, to reduce the effects where avoidance has not been possible, and to provide compensatory measures where there is unavoidable loss.
- The approach that has been adopted is set out below:



# Ancient Woodland losses

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- There are unavoidable losses at 34 ancient woodlands. The total area of ancient woodland lost is 30.4 ha.
- The ancient woodlands affected include 25 that were originally on Natural England's Ancient Woodland Inventory, together with a further 9 that were added to the inventory as a result of heritage studies undertaken by HS2 Ltd.
- In consultation with the Woodland Trust, measures have been taken that reduce the loss of ancient woodland by 10.7 ha.
- The Proposed Scheme has been designed to avoid any loss of ancient woodland within SSSIs along the route at Sheephouse Wood and Long Itchington Wood.

# HS2' approach to ancient woodlands

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- HS2 Ltd recognises that ancient woodlands are irreplaceable.
- HS2 Ltd is committed to best practice measures to compensate for ancient woodland unavoidably lost to the Proposed Scheme.
- Measures adopted by HS2 are consistent with Natural England's standing advice on ancient woodland and have been discussed in detail with both Natural England's woodland specialists and The Woodland Trust.
- Translocation of ancient woodland soils will be undertaken where appropriate.
- Planting will be undertaken to create new woodlands. These are adjacent to existing woodland and to create new linkages between woodlands where possible.

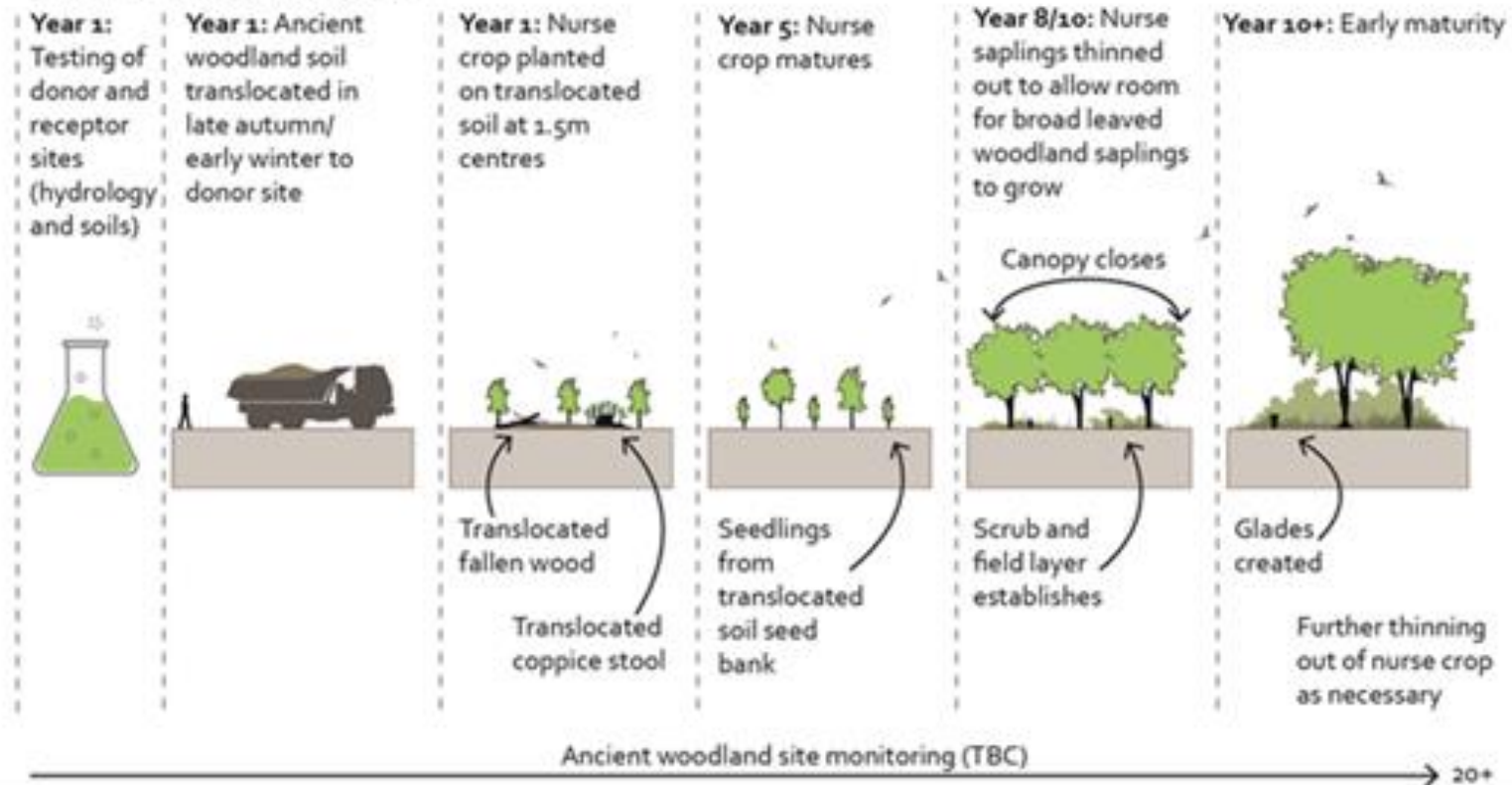
# Ancient Woodland – soil translocation

- Ancient woodland soils have distinct chemical and physical properties because they have never been ploughed or fertilised. They contain seeds, spores, bulbs and other material from woodland plants.
- Although translocation of ancient woodland soils cannot re-create an ancient woodland, research to date shows that it can be a valuable starting point for creating woodland of higher ecological value than can be achieved otherwise.
- Wood plants including primrose and early purple orchid growing under regenerating woodland at a soil translocation site created about 15 years ago in north Kent. These species are characteristic of ancient woodland.





## Ancient woodland planting





# Development of compensatory measures – policy and guidance

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- There is no policy or guidance in respect of the appropriate amount of compensation that is appropriate where ancient woodland is lost.
- The inspectors report for the A21 Trunk Road (Tonbridge to Pembury Dualling, December 2013) concluded that a ratio of 2:1 including ancient woodland soil translocation was appropriate.
- The report noted that although the Woodland Trust had requested a ratio of 30:1, the developer needed to take account of not only loss of ancient woodland but also other environmental effects, and that a balanced approach to woodland compensation was required.

# Development of HS2 compensatory measures

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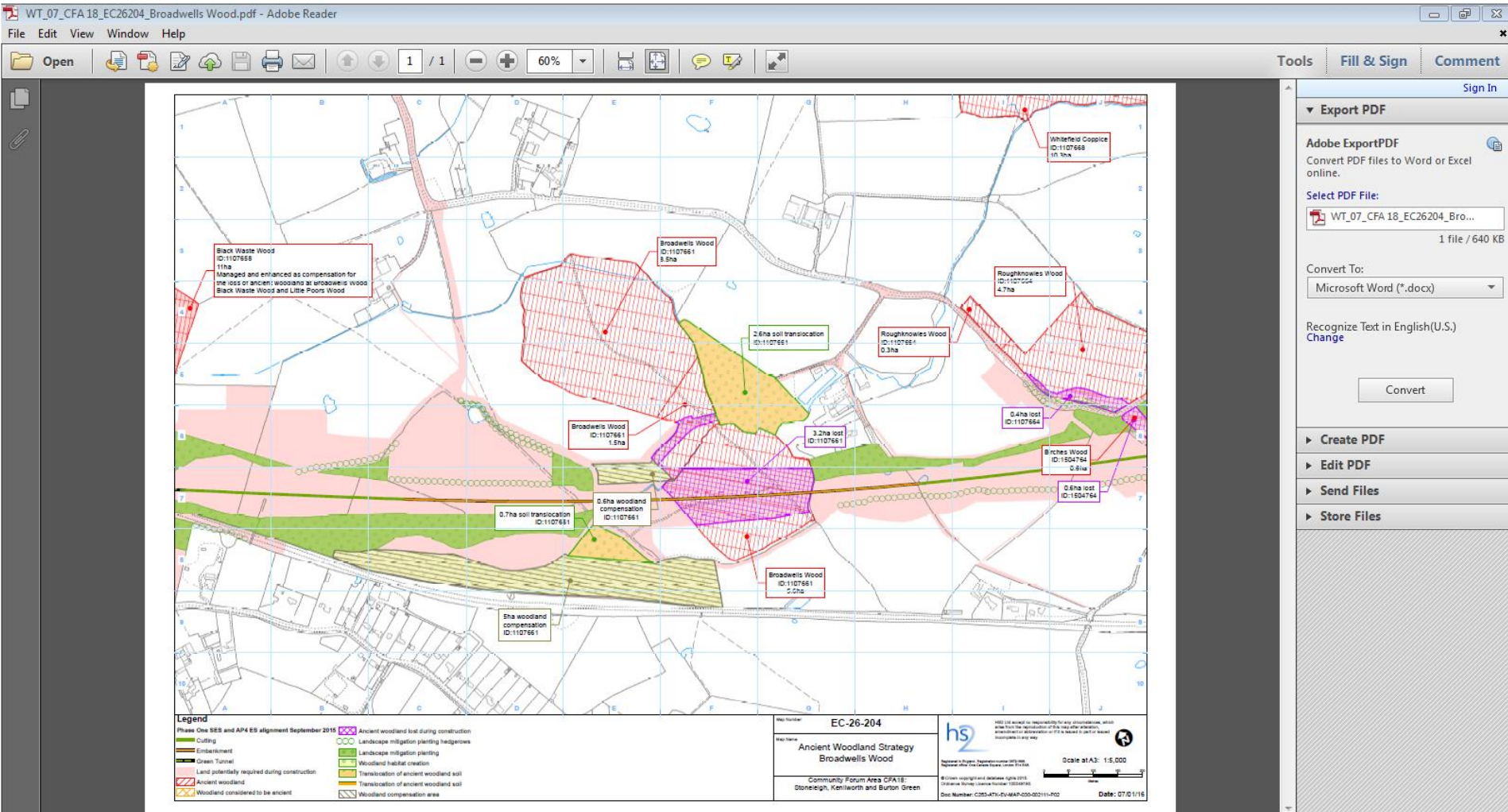
- Measures have been developed on a site by site basis taking account of the site's specific characteristics and requirements. No ratios have been adopted.
- HS2's approach is set out in Ecological Principles of Mitigation that was developed in consultation with Natural England and is published as an appendix to the Environmental Statement. It embraces the importance of connectivity of habitats.
- The areas of new woodland to be created are larger than the areas of ancient woodland lost, but no ratios have been used. Route-wide, an area of woodland creation in excess of 150 ha is proposed.
- A balanced approach has been taken to the development of habitat creation measures, taking account of the ecological requirements as well as the effects on loss of high quality agricultural land and agricultural businesses.
- HS2's biodiversity metric has not been used to develop compensatory measures, it is being used to compare losses and gains route wide.

# The ancient woodland strategy

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- Ancient woodland strategy documents have been prepared to identify the effects for each ancient woodland as well as the compensatory measures to be used. These documents include maps to show where losses occur and where new woodlands would be created.
- The following slide provides an example of a map for the Broadwells Wood area taken from the strategy documents.

# Ancient Woodland Strategy – Broadwells Wood area



# Delivery of compensatory measures

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- Planting of new woodlands identified in the ancient woodland strategy documents will be undertaken as part of the advanced works, generally within the first year or two of the project so that they are established as soon as is reasonably possible.
- 1.5 million trees will be planted in the advanced works.
- A further 5.5 million trees will be planted at later stages in the project..

# Development of compensatory measures and habitat creation

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- Measures to compensate for loss of protected sites and other areas of high nature conservation value have been developed on a site by site basis taking account of the site's specific characteristics and requirements.
- HS2's approach is set out in Ecological Principles of Mitigation that was developed in consultation with Natural England and is published as an appendix to the Environmental Statement. It embraces the importance of connectivity of habitats.
- All habitats required to compensate for losses are identified in the hybrid Bill to ensure deliverability. The project recognises that off-site measures may also be of benefit and it is considering a number of such options as an alternative way of providing the required habitats.
- HS2's biodiversity metric has not been used to develop compensatory measures, it is being used to compare losses and gains route wide.

# Progress towards no net loss to biodiversity

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- The interim calculation for the route-wide balance indicated a deficit of 3%. The project is taking steps to address this in accordance with the route-wide no net loss objective.
- The House of Commons Select Committee directed HS2 Ltd to consult with Defra to identify a suitable body to undertake an independent review of the approach. Natural England has agreed to undertake this review.
- HS2 Ltd has committed to updating the biodiversity loss and gain calculation prior to Royal Assent. The findings of Natural England's independent review will be taken into account prior to undertaking the re-calculation.

# HS2 approach to ecology and biodiversity

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- The House of Commons Select Committee concluded that the particular value of green space within the Colne Valley justified an aspiration to no net biodiversity loss in that area.
- The Promoter recognises the importance of biodiversity in the Colne Valley and the major impact of the scheme on the Mid Colne Valley SSSI and the important green spaces in this area.
- The Promoter will work with the other members of the Colne Valley Panel to address these impacts.



# Timeline

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- The Early Works contracts will involve creation of new habitats and translocation of protected species from the trace to enable main construction to begin.
- Habitat creation areas that will act as receptor sites for species such as great crested newts will be started as soon as possible after Royal Assent.

# HS2 Ecology Review Group

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- HS2 Ltd has given assurances that it will establish an independent Ecology Review Group (ERG).
- The role of the ERG will be to consider monitoring outputs and advise the nominated undertaker if these appear to show that ecological habitat creation measures are not likely to achieve their objectives.
- The ERG will include representation from local authorities, Natural England, local wildlife trusts and other relevant nature conservation NGOs.
- The ERG will receive monitoring outputs on an annual basis.
- Prospective members will be asked to comment on the draft Terms of Reference prior to them being finalised
- In view of its role in advising the project on monitoring outputs, it is proposed to establish the ERG after Royal Assent.

# Thousands of HS2 newly planted trees died in drought

Published

21 May 2019



Image caption,

Thousands of saplings planted around HS2 have died after they were not watered

**Thousands of trees planted along the High Speed Rail 2 (HS2) route will have to be replaced after saplings were not watered in last summer's drought.**

Up to 350,000 saplings have so far been planted near the £56bn train line, but two Warwickshire farmers think up to 80% on their land have died.

HS2 said replacing the dead trees was more "cost effective" than watering them.

Campaign groups branded it an "environmental disaster."

HS2 said the trees died because of last year's hottest summer on record, and it planned to replant them later this year.

A total of seven million new trees - a mix of oak, hazel, dogwood and holly - are being planted to compensate for the loss of woodland as part of the HS2 programme.



IMAGE SOURCE,

GETTY IMAGES

Image caption,

Figures from HS2 show that over 900 properties and pieces of land have been bought since 2011 to make way for the new route

One farmer from Southam estimated about 6,500 of the 8,000 trees on his land had died.

Another local farmer Derek Hyatt added: "I think there are around 800 trees planted on my land - and if 5% of those trees are alive I'd be quite surprised."

"This is an environmental disaster," said Joe Rukin from Stop HS2.

"Planting hundreds of thousands of trees up and down the line and allowing them to die because you can't be bothered to water them is almost as big a disaster as causing havoc and destruction over a hundred ancient woodlands to build this project."



**IMAGE SOURCE,**

**HS2**

Image caption,

HS2 bosses say the project will transform the UK economy

The BBC has asked HS2 for the exact figure of trees that have died in Warwickshire and throughout the line to date.

A spokesman said HS2 was "committed to planting seven million trees along the route of HS2 to create a green corridor for wildlife and nature".

"Replacing these plants is more cost effective than transporting significant water quantities in the area, as well as a more ethical use of resources during unseasonable hot weather."

Phase one of HS2 is set to open in 2026.







27th July 2020

## HS2's catalogue of errors like a runaway train

Dee Smith  
Senior PR officer

HS2 Ltd. is continuing to fail the environment with a catalogue of errors growing longer all the time says the Woodland Trust.

As the Court of Appeal deliberates on Chris Packham's request for a judicial review of the Government's decision to green light the project, the Trust has issued a list of some of HS2 Ltd's biggest failings around ancient woodland so far. It says there needs to be a real step change, not just on the current Phase 1 from London to Birmingham where ancient woodland has already been chopped down during the lockdown, but also on Phases 2a and 2b to Crewe, Manchester and Leeds where there is still time to do the right thing.

Luci Ryan, lead policy adviser for infrastructure at the charity said:

"HS2's catalogue of errors is growing ever bigger. It's like a runaway train, gathering momentum and leaving a trail of destruction in its wake. One mistake invariably leads to another and one of the biggest losers is ancient woodland and the wildlife that relies on it for survival."

Crackley Wood in Warwickshire was one of the first ancient woods to suffer at the hands of HS2 Ltd.

Among failings relating to ancient woodland, wildlife and its own processes, HS2 Ltd has:

1. Broken four assurances - commitments made between the Secretary of State, HS2 and the Woodland Trust under the Hybrid Bill Process. These include:

- failing to engage with the Trust in reasonable time ahead of any work adjacent to or within 100m of ancient woodland;
- failing to have regard to the guidance in Natural England's advice on avoiding damage to, or loss of, ancient woodland or ancient and veteran trees and for compensation for any unavoidable loss;
- *failing to ensure that there are no construction works within a certain part of Newyear's Green Covert in Hillingdon;*
- failing to consult with the Trust in respect of any construction activities undertaken within, or within 100m of, an area of Ancient Woodland.

2. Erroneously claimed Phase 1 would impact 18 ancient woodlands when it turned out to be 34.

3. Begun to submit planning applications for additional works outside the works boundary on Phase 1 which will have a detrimental effect on a further two ancient woodlands not currently on the list.

4. Removed ancient and veteran trees and some ancient woodland for temporary works meaning they have been lost forever unnecessarily.
5. Ignored industry best practice and a commitment made in its own strategy and standards by attempting to translocate ancient woodland at the wrong time of year. Four woods in Warwickshire were destroyed this spring as they were bursting into life instead of when it was dormant in the autumn. It has also planted new trees on the receptor site for the translocated ancient woodland soils at the wrong time of year, further increasing the chance of failure.
6. Failed to complete translocation of Broadwells Wood in Warwickshire before its bat licence from Natural England ran out, despite being given an extension period more generous than the Woodland Trust and other environmental groups have ever heard of. This means the final 20% of the woodland being translocated from Broadwells will now be removed in September and the work that the removal of the wood was facilitating will now be further behind schedule. Translocation is an inherently risky process – HS2 has massively increased the risks of this failing by doing it at the wrong time of year and then spreading it out over 6 months.
7. Breached its bat licence during the translocation work in Broadwells wood by de-limbing a tree without checking it for roosting bats first. The Woodland Trust has since become aware Natural England is investigating a second possible breach.
8. Failed to give clarity on which ancient woodlands will be destroyed next, this autumn, despite repeated requests being made.
9. Repeatedly said – and is still claiming - there will be “no net loss to biodiversity” on the scheme. No net loss is impossible to achieve where ancient woodland is destroyed because it is irreplaceable. No amount of new planting can compensate for that loss even at the recommended ratio of planting 30 new trees for every one lost.
10. Refused to only plant trees sourced and grown in the UK and Ireland, which would reduce the risk of importing pests and disease and make the newly planted landscape more resilient and less of a biosecurity risk. All three million trees the Trust planted last year met UKISG standards – if we can do it then so can HS2 Ltd.



**Item No.** **Report of the Head of Planning and Enforcement**

**Address:** ECOLOGICAL MITIGATION SITE HARVIL ROAD HAREFIELD

**Development:** Plans and Specifications submission under Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017 for an ecological mitigation scheme comprising earthworks, including two mitigation ponds, one hibernaculum and one reptile bank, together with permanent fencing erected along the northern, eastern and southern boundaries of the site.

**LBH Ref Nos:** 73195/APP/2017/3486

<b>Drawing Nos:</b>	<b>Date of Plans:</b>
Harvil Road Proforma	25-09-2017
Harvil Road Mitigation Planting Consultation Lette	25-09-2017
Harvil Road Written Statement	25-09-2017
1EW03-AEC-PL-DGA-CS01_CL01-013200-P05	25-09-2017
Harvil Road Cover Letter	25-09-2017
Colne Valley Regional Park Key Environmentally Sensitive Worksite Management Plan	25-09-2017
1EW03-AEC-PL-DGA-CS01_CL01-013100-P04	25-09-2017
1EW03-AEC-PL-DGA-CS01_CL01-013050	25-09-2017

<b>Drawing Nos:</b>	<b>Date of Amended Plans:</b>
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**Date Application Valid:** 25th September 2017

## 1. SUMMARY

This application comprises a Plans and Specifications submission under Schedule 17 of the High Speed Rail (London-West Midlands) Act 2017 (The Act), in relation to earthworks on an agricultural field immediately west of Harvil Road and south of Dews Lane, to create two mitigation ponds, one hibernaculum and one reptile bank, together with fencing erected along the northern, eastern and southern boundaries of the site.

The application is the second HS2 Schedule 17 planning submission that has been deposited with the Council. These Schedule 17 planning submissions can best be likened to the submission of reserved matters, where outline planning consent has already been granted. However, the role of the Planning Authority is heavily restricted as to what can and cannot form the basis of a decision.

The details relate purely to the earthworks to construct the ponds and do not consider the final landscaping. The ponds will be left to establish for approximately 1 year and will then be used for the translocation of great crested newts. The creation of ecological habitats is part of the mitigation and compensation measures identified during the development of the Act, to minimise the impact of the new railway on the environment.

There is no statutory obligation to consult with neighbours. However, Natural England is a statutory consultee for this proposal and has raised no objection.

No objections are raised by statutory consultees to the proposed earthworks. However, objections have been raised through the public consultation. The Council recognises the concerns and objections raised through the public consultation. These comments though, must be put into the context of the restrictions placed on the Authority through the Act. These objections are addressed in more detail in Section 6 of the report.

An informative is recommended seeking a site specific traffic management plan detailing the safe operation of the access off Harvil Road.

The ponds will ultimately form part of a separate Schedule 17 consent submission for bringing the land into use. The Council's opinion is therefore being sought on the restoration of the land around the earthworks ahead of a formal submission. An informative has been added that sets out the Council's formal position which is expected to be taken into account ahead of the formal submission.

## **2. RECOMMENDATION**

APPROVAL subject to conditions:

### **RECOMMENDATION NOTES**

That an informative be attached, seeking a site specific traffic management plan detailing the safe operation of the access off Harvil Road.

That comments on further details of the mitigation planting be provided by way of informatives attached to the decision notice, in accordance with the requirements of the HS2 Planning Memorandum.

That an informative be attached requesting an archaeological field evaluation, a location-specific investigation and recording and an archaeological and built heritage post excavation (assessment, analysis, reporting and archiving).

## **INFORMATIVES**

## 1. IHS2 Informative HS2

### Local Traffic Management Plan

The Council has concerns about the proposed access for construction traffic to the development site. The works will be undertaken from an existing access of Harvil Road.

The earthworks are required to be constructed in accordance with the approved Environmental Minimum Requirements (EMR) as defined by the HS2 Act. The EMRs are made up of a suite of documents including the Code of Construction Practice (COCPP) which are binding on HS2 Ltd and its contractors. The COCP states: 'Prior to the commencement of the works, the nominated undertaker will require that local traffic management plans (LTMPs) will be produced in consultation with the highway and traffic authorities, the emergency services and other relevant key stakeholders.'

No earthworks are to commence until an appropriate LTMP is produced by HS2 Ltd. The Council requires HS2 Ltd to set out suitable proposals and arrangements as part of the LTMP process to satisfy it that safe access and egress from the works site can be maintained at all times by construction vehicles.

## 2. IHS2 Informative HS2

### Site Specific Planting

The Council does not consider the details relating to landscaping, ecological planting and site restoration are adequate as presented. The information submitted is not adequate to fully understand what HS2 Ltd is trying to deliver by way of landscaping or restoration. The restoration package needs to be far more detailed prior to the Council confirming the approach is adequate. The details should include but not be limited to:

- Pond lining (puddled clay preferred)
- Soft landscape proposals include schedules, specifications and appropriate planting plans
- Management and Maintenance plans and schedules
- Hard Landscape details (fences, gates, tracks and ancillary works)
- Long term access arrangements for maintenance
- Site security measures
- Ecological enhancement plan showing the interaction of the site with the surrounding area
- Detailed proposals for land ownership and responsibilities
- Detailed information on how the pond will be filled and levels maintained

## 3. IHS2 Informative HS2

### Site Wider Restoration and Mitigation

The Council is concerned and disappointed at the lack of vision for the wider area in which these proposals sit. HS2 will have a significant impact with construction activities of various scales and durations over a vast area, all of which will need to be restored. The proposals presented as part of this Schedule 17 submission are isolated to one element of the wider mitigation of HS2. The Council understands this approach is being adopted for at least two other similar proposals soon to be submitted.

Designing each proposal in isolation removes the prospect of a greater vision and will only deliver pockets of ecological mitigation, many of which may end up being fenced and gated with no public access. In turn, it is not clear that HS2 Ltd can deliver a comprehensive package, particularly since the details emerging are greatly different from those presented in the environmental statement.

The Council requires a far greater vision and this needs to be set out through a restoration masterplan that delivers the necessary ecological mitigation, but also integrates community and public benefits in a comprehensive and aligned manner. The Council expects a marked change in approach to restoration.

#### **4. IHS2 Informative HS2**

##### **Archaeology**

The site is identified as being in the Colne Valley Archaeological Priority Area. Under the Environmental Minimum Requirements (in this case the Heritage Memorandum) the Council expects the following to be completed prior to the commencement of development:

- An archaeological field evaluation (to inform location-specific investigation and recording) with a statement provided to the Local Planning Authority
- Location-specific investigation and recording with the appropriate reporting as necessary
- Archaeological and built heritage post excavation (assessment, analysis, reporting and archiving).

This will ensure that the archaeological importance of the site is recorded and informs further investigations in the area.

### **3. CONSIDERATIONS**

#### **3.1 Site and Locality**

The Harvil Road habitat creation site is located within the northwest corner of an agricultural field immediately west of Harvil Road and immediately south of Dews Lane. The site is approximately 910m to the south of South Harefield. Hillingdon Outdoor Activities Centre is located approximately 350m west of the site.

The site is approximately 1.6ha in extent and lies approximately 110m to the north-east of the proposed HS2 railway line. The site is roughly 'J' shaped, with a wider element at the south of the site, extending towards the west, following the boundary of the southern portion of Dews Dell Site of Borough Importance (SBI) (Grade I). The site lies within the Green Belt.

The arable agricultural field in which the site is located is bound to the south by an intact, species rich hedgerow, which also contains a drainage ditch. The site is bound to the west and north (beyond Dews Lane) by an area of broadleaved woodland (Dews Dell SBI (Grade I) and to the east by an intact, species poor hedge, separating the site from Harvill Road.

A lake, used by Hillingdon Outdoor Activities Centre, is located approximately 350m west of the

site. This area is classified as a Site of Metropolitan Importance for Nature Conservation (SMI)

To the south of the site is further arable field, which is bounded by the Chiltern Main Line, approximately 290m to the south of the site. The Frays Valley Local Nature Reserve (LNR) is located approximately 580m south-west of the site. A Public Right of Way (PRoW) (U34) runs along the southern boundary of the field in which the site located.

### 3.2 Proposed Scheme

This application relates to the request for approval of plans and specifications relating to earthworks for the creation of 2 no. ponds, one hibernaculum and a reptile bank, to provide compensatory habitat to address potential adverse effects on great crested newts and reptiles as a result of the HS2 proposals.

The application is submitted pursuant to Schedule 17 to the Act and comprises a written statement and plans, which includes an explanation of how the matters to which the request relates fit into the overall scheme of the works authorised by the Act. The creation of ecological habitats is part of the mitigation and compensation measures identified during the development of the Act, to minimise the impact of the new railway on the environment. Therefore, the measures proposed are intended to not only mitigate the loss of great crested newt habitat in the locality of the HS2 works in Harefield, but help to mitigate the loss and impact on habitats across other sites.

Details of the proposed works are provided below:

> Earthworks totalling 680m<sup>2</sup>, including:

- Creation of two mitigation ponds with a total surface area of 500m<sup>2</sup> and have a maximum depth of 1.5m. The ponds will be located within an area of neutral grassland in the southern portion of the site;
- One hibernaculum suitable for great crested newts, with a surface area of 30m<sup>2</sup> (6m long x 5m wide). The hibernaculum will be created using the spoil from the pond excavation mixed with hardcore, brick, rubble, logs etc. to create mounds. The hibernaculum will be located to the north-east of the ponds and located towards the south-east corner of the site, north-west of an area of woodland and woodland edge planting; and
- One reptile bank suitable for basking reptiles, with a surface area of 150m<sup>2</sup> (20m long x 7.5m wide) will be created within the southwest corner of the site, to the west of the proposed mitigation ponds. The reptile basking bank has been orientated to provide a southern face;
- A swale adjacent to the larger pond

> Permanent fencing erected along the northern, eastern and southern boundaries of the site (location only for approval). This will be timber post and rail adjacent to the highway and timber post and wire elsewhere.

The mitigation scheme is required to be implemented early in the overall Phase 1 programme, in order to allow sufficient time for the replacement habitat to establish, prior to the translocation of great crested newts. An indicative construction programme is set out below:

Site access, surveys and mobilisation - April to December 2017  
Construction of ecological habitat creation works - January to February 2018

### 3.3 Relevant Planning History

The High Speed Rail (London-West Midlands) Act 2017 (The Act) provides powers for the construction and operation of Phase 1 of High Speed 2. HS2 Ltd is the Nominated Undertaker for the works which are the subject of this Plans and Specification application.

Phase One of HS2 will provide dedicated high speed rail services between London, Birmingham and the West Midlands. It will extend for approximately 230km (143 miles). Just north of Lichfield, high speed trains will join the West Coast Main Line for journeys to and from Manchester, the North West and Scotland. Section 20 of the Act deems planning permission to be granted for the development authorised by it, subject to the provisions of section 20 and conditions set out in Schedule 17. Schedule 17 includes conditions requiring various matters be approved by the relevant local planning authority. This is therefore a different planning regime to that which usually applies in England and is different in terms of the nature of submissions and the issues that the local planning authorities (LPAs) can have regard to in determining requests for approval. These Schedule 17 planning submissions can best be likened to the submission of reserved matters, where outline planning consent has already been granted. However, the role of the Planning Authority is heavily restricted as to what can and cannot form the basis of a decision.

The planning conditions set out in Schedule 17 of the Act require the Nominated Undertaker (HS2 Ltd) to submit requests for approval to qualifying authorities for the following:

- Plans and Specifications;
- Matters ancillary to development (referred to as construction arrangements);
- Bringing Into Use; and
- Site Restoration Schemes (including waste and soil disposal and excavation).

Schedule 17 of the Act sets out the grounds on which the qualifying authority may apply conditions on approvals, or refuse to approve the requests for approval.

## 4. ADVERTISEMENT AND SITE NOTICE

4.1 Advertisement Expiry Date: Not Applicable

4.2 Site Notice Expiry Date: Not Applicable

## 5.0 PLANNING POLICES AND STANDARDS

The following UDP Policies are considered relevant to the application. In so far as this application is concerned the most pertinent policy applicable to the proposals is policy AM7 of the Hillingdon

Local Plan: Part 2 saved UPD Policies (November 2012).

Part 1 Policies:

1. **PT1.EM2 (2012) Green Belt, Metropolitan Open Land and Green Chains**

(2012) Green Belt, Metropolitan Open Land and Green Chains

2. **PT1.EM6 (2012) Flood Risk Management**

(2012) Flood Risk Management

3. **PT1.EM7 (2012) Biodiversity and Geological Conservation**

(2012) Biodiversity and Geological Conservation

4. **PT1.EM8 (2012) Land, Water, Air and Noise**

(2012) Land, Water, Air and Noise

Part 2 Policies:

1. **AM7 Consideration of traffic generated by proposed developments.**

Consideration of traffic generated by proposed developments.

2. **BE38 Landscaping**

Retention of topographical and landscape features and provision of new planting and landscaping in development proposals.

3. **OL1 OPEN LAND AND COUNTRYSIDE**

Green Belt - acceptable open land uses and restrictions on new development

4. **OL2 OPEN LAND AND COUNTRYSIDE**

Green Belt -landscaping improvements

5. **OL5 OPEN LAND AND COUNTRYSIDE**

Development proposals adjacent to the Green Belt

6. **OL26 OPEN LAND AND COUNTRYSIDE**

Protection and enhancement of trees, woodland and landscape features

7. **EC1 Replaced by PT1.EM7 (2012)**



Protection of sites of special scientific interest, nature conservation importance and nature reserves  
Replaced by PT1.EM7 (2012)

8. **EC2 ECOLOGY AND NATURE CONSERVATION**

Nature conservation considerations and ecological assessments

9. **EC3 ECOLOGY AND NATURE CONSERVATION**

Potential effects of development on sites of nature conservation importance

10. **EC4 ECOLOGY AND NATURE CONSERVATION**

Monitoring of existing sites of nature conservation importance and identification of new sites

11. **EC5 ECOLOGY AND NATURE CONSERVATION**

Retention of ecological features and creation of new habitats

12. **LPP 5.12 (2016) Flood risk management**

(2016) Flood risk management

13. **LPP 7.16 (2016) Green Belt**

(2016) Green Belt

14. **LPP 7.19 (2016) Biodiversity and access to nature**

(2016) Biodiversity and access to nature

15. **LPP 7.21 (2016) Trees and woodlands**

(2016) Trees and woodlands

16. **NPPF National Planning Policy Framework**

National Planning Policy Framework

## 6.0 COMMENTS ON PUBLIC CONSULTATION

- 6.1 There is no statutory requirement to undertake a public consultation, but given the nature of the project, all planning submissions under Schedule 17 of the Act are open for comments to inform the Council's decision making.

10 internet / e-mail responses and one letter have been received making representations which are summarised below:

- The beautiful village we live in is being destroyed by this monstrosity that is HS2.

- This will not mitigate the damage that is being done by the scheme.
- Our nature needs to be conserved not destroyed.
- I object on the grounds of nature conservation.
- I would like to prevent heavy works taking place at the field south of Dews Lane, except for wildlife-sensitive minor works which could be done by wildlife experts and volunteers manually in the interests of nature and wildlife which has already suffered massive disruption by heavy machinery.
- Objection to the fence. The land should not be fenced; wildlife and humans on foot should be free to roam and gain access as hitherto.
- The existing hedge in situ has ecological value and should not be replaced with a fence.
- The existing grassland soil in situ has ecological value and should not be significantly dug up without a thorough survey of all the plants, invertebrates, insects, amphibians, reptiles, mammals and birds or any other lifeforms already present on the site.
- A wood is different to an open field.
- Objection to access by heavy lorries and machinery and mechanical diggers.
- Any movement of soil or materials should be done manually.
- Objection to 2 ponds, with or without additional pipework to bring water across the field.
- The amount of material to be excavated from the ponds needs to be clarified.
- Objection to the reptile basking site. Wildlife already there should be considered and given priority.
- Objection that this site is insufficient mitigation for all the Harvil Road works already done across the road.
- No details of how the wildlife can get from the destroyed habitat to the mitigation ponds.
- There has been no attempt to understand the impacts on other species, or the water table, or air quality, or the human cost.
- Objection to the woodland planting as insufficient detail provided.
- HS2 vehicles along Harvil Road would be impeded if vehicles were trying to turn into this site.
- The siting of HS2 will be an overbearing structure cutting across the landscape, destroying both the tranquility and local amenity that provides a plethora of diverse wildlife.
- The site is home to many species and the pristine environment should be retained to allow them to survive.
- The mitigation site does not mitigate for the vast ecological damage that the future developments will cause.
- Encourage HS2 to resubmit mitigation plans that are far more robust and efficacious
- No consideration of the food chain and ecosystem.
- HS2 are required to have an aspiration of no net loss of biodiversity within Colne Valley.
- The plans for the ecological mitigation site do not consider mitigate for the existing species and biodiversity within the site.
- The plans do not address the wider ecological losses to the immediate adjoining areas and the mitigation for these species.
- The plans along with other ecological mitigation sites planned in the Colne Valley Regional Park Key Environmentally Sensitive Worksite Management Plan Document no.: 1EW03-FUS-EV-PLN-C001-001021 do not address net loss assessment within the Mid-Colne Valley.

(Officer note: The Council notes the objections and the general opposition to impact HS2 is having, and will have in the Borough. However, the application before the Council is for the relatively minor earthworks to create two ponds and ecological enhancement/offsetting hibernacula. The Council's remit is extremely restricted to the factors set out in the Act:

1. That the design or external appearance of the works ought to, and could reasonably, be modified

- (a) to preserve the local environment or local amenity,
  - (b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
  - (c) to preserve a site of archaeological or historic interest or nature conservation value.
2. If the development does not form part of a scheduled work, that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

The objections would best sit within category 1(c) above. However, to refuse the application, the development site would need to be a site of of nature conservation value and the works would be detrimental to the site.

The site is not designated a site of importance for nature conservation, at a national or local level. The site has had active agricultural management. Conversely, the adjoining woodland site is a site of importance of nature conservation.

The objections refer to the site being 1.6 hectares, however, it is purely the earthworks that the Council can comment on. The two ponds total 500m<sup>2</sup> and are accompanied by a hibernacula at 6x5m and a reptile basking area at 20x7.5m. The physical works are therefore relatively small. In addition, there will be no trees cleared as a consequence of the proposals.

The proposals themselves will provide a more diverse range of wildlife habitat, including standing water and newly created specific habitat. The proposals therefore cannot be said to have an adverse impact on a site of nature conservation value.)

## NATURAL ENGLAND

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. Natural England's advice on other natural environment issues is set out below.

### Schedule 17 for HS2

This planning proposal is for a development scheme or works scheduled under the provisions of the High Speed Rail (London-West Midlands) Act (2017) which form part of the High Speed Two scheme within your area. It should therefore be determined using the planning regime established by that legislation. The Act grants the work deemed planning permission, subject to certain matters and details of the deemed consent being reserved for subsequent local planning authority approval under Schedule 17. We advise that, in determining the consultation, the planning authority should have regard to the permissions already granted under The Act, and to any relevant supporting documents to The Act.

Natural England has issued a route-wide organisational licence for Great Crested Newt (*Triturus cristatus*), a European Protected Species (EPS) to HS2 Ltd. The licence permits suitably experienced employees and staff of contractors to undertake certain activities affecting great crested newts that would otherwise be unlawful. The licence facilitates the enabling and construction works for the high speed rail line between London and Birmingham (Phase 1). We advise that the proposals should comply with the conditions set out within the licence. Natural England will carry out licence compliance monitoring in due course to ensure HS2 are meeting the provisions of the licence overall.

Further general advice on the consideration of protected species and other natural environment issues is provided below.

Natural England offers the following additional advice:

#### Landscape

Paragraph 109 of the National Planning Policy Framework (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland or, dry stone walls) could be incorporated into the development in order to respect and enhance local landscape character and distinctiveness, in line with any local landscape character assessments.

Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the. Landscape Institute Guidelines for Landscape and Visual Impact Assessment for further guidance.

#### Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply the requirements of the NPPF. This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in Natural England's Technical Information Note 049. Agricultural Land Classification information is available on the Magic website on the Data.Gov.uk website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

#### Protected Species

Natural England has produced standing advice to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

#### Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraph 113 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in

the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites.

Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

#### Ancient woodland and veteran trees

You should consider any impacts on ancient woodland and veteran trees in line with paragraph 118 of the NPPF. Natural England maintains the Ancient Woodland Inventory which can help identify ancient woodland. Natural England and the Forest Commission have produced standing advice for planning authorities in relation to ancient woodland and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland/veteran trees where they form part of a SSSI or in exceptional circumstances.

#### Environmental enhancement

Development provides opportunities to secure a net gain for nature and local communities, as outlined in paragraphs 9, 109 and 152 of the NPPF. We advise you to follow the mitigation hierarchy as set out in paragraph 118 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you may wish to consider off site measures, including sites for biodiversity offsetting. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

### Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

### Rights of Way, Access land, Coastal access and National Trails

Paragraph 75 of the NPPF highlights the importance of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website [www.nationaltrail.co.uk](http://www.nationaltrail.co.uk) provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

### Biodiversity duty

Your authority has a duty to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat.

### HERTS AND MIDDLESEX WILDLIFE TRUST

The supporting information references a planting schedule that has been supplied with this application. This does not appear on the website. Please can this be made available so that HMWT and other responders can make comment on the suitability of species and meadow mixes selected.

(Officer Note: The proposed planting schedule is provided on Drawing No.1EW03-AEC-PL-DGA-CS01\_013200 Rev P05. It should be noted however that the mitigation planting does not require approval under this application and does not therefore form part of this request for approval).

## 6.2 HIGHWAY ENGINEER

No information has been provided to confirm whether any excavated material is to be carted off site and/or any material is to be imported into the site. The plans indicate an improved access off Harvil Road to accommodate lorries. If this is so, a detailed design of the access should be submitted as the indicative plan shows new kerbed radius ending up in the existing carriageway rather than merging into the existing kerb line of Harvil Road.

Any new access impacting Harvil Road would be subject Local Authority consent under Schedule 4 of the HS2 Act. Detailed matters relating to traffic management will be discussed and agreed through the Local Traffic Management Plan and will need to be in place prior to the commencement of works.

(Officer Note: No excavated material is to be removed from the site. An informative is recommended requesting a site specific traffic management plan detailing the safe operation of the access off Harvil Road.)

### FLOOD AND DRAINAGE OFFICER



The proposed mitigation ponds appear to be located in Flood Zone 1 and do appear to be created by excavation rather than the creation of embankments, therefore limiting the risk they could pose. However the fence line appears to be along the extent of flood zone 3 and 2 and there is no detail of the fencing to be implemented. This should not be a problem as long as it is permeable to water. Therefore there are no objections. The detail of the composition of these ponds is unclear and whether they are designed to retain water or will be seasonal. This depends on the underlying geology of the area.

(Officer Note: The proposed fencing will be timber post and rail or timber post and wire, which will be permeable to water.)

## TREE AND LANDSCAPE OFFICER

This site is located within the north-west corner of an arable field opposite the Dogs Trust Centre, to the west of Harvil Road and south of Dews Lane. The site is an irregular boot-shape and follows the boundary of the southern portion of Dews Dell Site of Borough Importance (Grade 1). Nearby ecological features include a drainage ditch, broad-leaved woodland (Dews Dell), a hedge, a lake used by HOAC and Frays Valley LNR. Once the construction of HS2 is completed, the site will lie to the north of the Harvil Road Overbridge.

COMMENT: No trees or landscape features of merit will be affected by the proposal. The design objective is to contribute to the wider package of habitat creation to ensure that there is no net loss of biodiversity, caused by HS2. HS2's dwg No. 1EW03-AEC-PL-DGA-CS01\_01300 Rev P04 and 013200 Rev P05 indicate the construction of two ponds with a total surface area of 500m<sup>2</sup>, a hibernacula (suitable for greater crested newts), a reptile basking bank, a swale, a new fence on the north, south and east boundaries and a new hedgerow along the southern boundary.

The ponds will have shelving profiles with a range of different gradients and a depth of 1.5 metres (at the deepest point). The profiles will accommodate four planting zones for terrestrial plants, emergent aquatic species (two extremes) and submerged /floating plants. According to the Written Statement, ref. LBH.C111.PS.50, the design and construction of the ponds will be based on the guidance set out in Section 8.3.1 of the Greater Crested Newt Mitigation Guidelines (by English Nature, 2001).

The construction of the ecological habitat creation works is due to take place in January / February 2018. No excavated material is due to be removed from site with the cut and fill requirements balanced within the site. Any surplus subsoil will be re-used across the site to reduce the nutrient levels and help the establishment of neutral grassland (4.2).

RECOMMENDATION: There is no objection to the proposed works which seek to secure habitat creation.

Notes:

1. This is the second submission regarding pond creation following the previous submission for the MSD site in Breakspear Road (2017/1861). It is not known how these two sites relate to the project wide masterplan
2. Final details of the pond liner / construction are required - with puddled clay the preferred option if this is feasible.



3. It is not known who will be responsible for the future monitoring, management and maintenance of the site.

## **7.0 MAIN PLANNING ISSUES - High Speed Rail(London - West Midlands) Act**

### **7.1 THE PRINCIPLE OF THE DEVELOPMENT**

The principle of the development has been established by virtue of The High Speed Rail (LondonWest Midlands) Act 2017, which provides powers for the construction and operation of Phase 1 of High Speed 2.

This application provides information to assist with the determination of the Plans and Specifications submission (Schedule 17) in relation to earthworks to create 2 no. ponds, a swale, a reptile bank and hibernacula and associated earthworks on land west of Harvil Road and immediately south of Dews Lane, Harefield.

Section 20 of the Act deems planning permission to be granted for the development authorised by it, subject to the provisions of section 20 and conditions set out in Schedule 17. This schedule includes conditions requiring various matters be approved by the relevant local planning authority.

However, the role of the Planning Authority is heavily restricted as to what can and cannot form the basis of a decision. In this case, the Council can only refuse, or impose conditions in relation to an earthworks application on the following grounds:

1. (a) to preserve the local environment or local amenity,
- (b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
- (c) to preserve a site of archaeological or historic interest or nature conservation value.
2. If the development does not form part of a scheduled work, that the development ought to, and could reasonably be carried out elsewhere within the development permitted limits.

### **EARTHWORKS**

The group of two ponds has been designed to permanently hold water and to specific criteria, with the objective of providing wetland habitat for the majority of the year. Careful consideration has been given to the arrangement of the ponds, the depth of water, a range of slope profiles and the balance of cut and fill, to enable excavated material to be retained within the site.

The topsoil from the mitigation pond will be used to create the reptile basking banks and hibernaculum for which approval under Schedule 17 is sought. The subsoil will be reused across the area identified for the creation of neutral grassland, to reduce the nutrient levels from those associated with the current agricultural use, to help the establishment of the neutral grassland. It is not anticipated that there will be any residual spoil, which would need to be transported away from the site.

In terms of the visual impact of the proposed earthworks, the whole site falls within the Green Belt. The most important attribute of Green Belts is their openness and the aim of preserving the openness of Green Belt land is reiterated in Local Plan Part 1 Policy EM2, Local Plan Part 2 Policy OL1, the London Plan and the NPPF. Saved Policy OL2 of the Hillingdon Local Plan: Part 2 -

Saved UDP Policies (November 2012) seeks landscape improvements within the Green Belt. Saved Policy OL5 will only permit proposals for development adjacent to or conspicuous from the Green Belt if it would not harm the character and appearance of the Green Belt. Saved Policy BE26 seeks to protect trees and woodland.

In order to create an effective neutral grassland, the excavated material will create an uneven and rough surface. The change in levels will be slight and are considered to have a negligible effect on levels across the site. It is considered that the visual impacts of the proposal are unlikely to be of significant detriment to the character of the area, or the perception of openness of the Green Belt, in accordance with Saved Policies OL1, OL2, OL5 and OL26 of the Hillingdon Local Plan: Part 2 - Saved UDP Policies (November 2012), London Plan Policy 7.16 and the provisions of the NPPF.

Given the above mentioned considerations, no objections are raised to the proposed earthworks.

## ECOLOGY

Nearby ecological features include a drainage ditch, broad-leaved woodland (Dews Dell), a hedge, a lake used by Hillingdon Outdoor Activity Centre and Frays Valley Local Nature Reserve.

The creation of ecological habitats is part of the mitigation and compensation measures identified during the development of the Act to minimise the impact of the new railway on the environment. Therefore, the measures proposed do not only mitigate the loss of great crested newt habitat in the locality of the HS2 works in West Ruislip, but help to mitigate the loss and impact on habitats across other sites. The mitigation scheme is required to be implemented early in the overall Phase 1 programme, in order to allow sufficient time for the replacement habitat to establish, prior to the translocation of great crested newts. There are no existing water bodies at the site.

### Ponds

The two new ponds will total a maximum of 500m<sup>2</sup> in surface area and have a maximum depth of 1.5m. The ponds will be located within an area of neutral grassland in the southern portion of the site.

### Reptile Basking Bank

A reptile bank suitable for basking reptiles will be created within the southwest corner of the site, to the west of the proposed mitigation ponds. The reptile basking bank has been orientated to provide a southern face.

### Hibernacula

A hibernaculum will be created using the spoil from the pond excavation mixed with hardcore, brick, rubble, logs etc. to create mounds. The hibernaculum will be located to the north-east of the ponds and located towards the south-east corner of the site, north-west of an area of woodland and woodland edge planting.

The new ponds and hibernaculum will be situated within the terrestrial range of existing assumed great crested newt breeding ponds, which will allow linkages to other populations. The applicant also advises that the location of the ponds also reflects the existing and proposed utility corridors in the vicinity, with the location for the ponds being identified in consultation with the HS2 Limited utilities team and the relevant utility providers.

Maintenance of this site will be in accordance with the measures provided in the following HS2 Information Papers:

- IP E16 (Maintenance of Landscaped Areas); and
- IP E26 (Indicative Periods for the Management and Monitoring of Habitats).

Natural England, a statutory consultee, has responded that the proposed development will not have significant adverse impacts on designated sites and has no objection.

The proposal therefore considered to be in accord with Policy 7.19 of the London Plan which requires that development protects and enhances biodiversity, Local Plan Part 1 Policy EM7 and relevant Local Plan Part 2 policies.

## LANDSCAPING

The Tree and Landscape officer notes that no trees or landscape features of merit will be affected by the proposal and that the design objective is to contribute to the wider package of habitat creation, to ensure that there is no net loss of biodiversity, caused by HS2.

### Boundary Treatment

New fencing is proposed along the northern, eastern and southern boundaries of the site. Limited details of the fencing type have been provided. However, only its location requires approval under Schedule 17. A new hedgerow will be planted along the southern boundary and the existing hedgerow along the northern and eastern boundary will be retained, although these elements do not require approval under Schedule 17.

### Habitat creation planting

In addition to the earth works for which approval to plans and specifications is required, the overall mitigation scheme in this location also includes habitat creation planting. The proposed planting comprises mainly woodland planting and grassland. Planting associated with the ponds will be in 4 zones:

Plant Zone 1: Terrestrial plants not associated with water inundation.

Plant Zone 2: Emergent aquatic plants that tolerate periods of summer exposure

Plant Zone 3: Emergent aquatic plants with a lower tolerance to exposure and plants associated with seasonal inundation

Plant Zone 4: Submerged and floating plants which require permanent standing water all the year round.

The mitigation planting does not require approval under this application and does not therefore form part of this request for approval. However, the mitigation planting will comprise part of the overall mitigation schemes which will be submitted as part of the requests to bring into use scheduled works. Further details of the mitigation planting have therefore been provided, requesting the Council's views on the planting, in accordance with the requirements of the HS2 Planning Memorandum.

By way of clarification, the Council is only being asked for its opinion on the planting information submitted with this formal Schedule 17 submission relating to the earthworks. The Local Authority through which the scheme runs must first be content with the restoration of the land prior to bringing

into use the railway. Some of the details relevant to bring the railway into use will be determined and implemented long before the use of the railway commences. For example, the landscaping around the earthworks for this application will form part of the overall scheme, which will only be considered for approval once the railway is about to be used, in approximately 10 years time.

HS2 Ltd is therefore seeking the Council's opinion now, on the landscaping of the ponds, ahead of the formal submission for approval to bring the railway into use in approximately 10 years time. This provides the Council with the opportunity to set out its formal position and actively input into the final restoration of land.

The attached informatives therefore present the Council's opinion on the landscape details, provided for information only. In summary, the Council does not consider the details relating to landscaping, ecological planting and site restoration are adequate as presented. In terms of the site wider restoration and mitigation, it is considered that the Council requires a far greater vision which needs to be set out through a restoration masterplan, that delivers the necessary ecological mitigation, but also integrates community and public benefits in a comprehensive and aligned manner.

## HIGHWAY IMPLICATIONS

Access to the site will be through the existing agricultural access located along the northern boundary, leading onto Dews Lane. The applicants submit that traffic movements to and from the site during the construction period will be relatively infrequent, as there will be no residual spoil, which would need to be transported away from the site.

In addition, the applicant submits that the traffic impacts of the work have been assessed to be in keeping with the HS2 Environmental Minimum Requirements (EMRs), set out in the Planning Memorandum and the works are thus considered to be in an acceptable location. In addition, pond construction will achieve a cut/fill balance, with material excavated from the ponds spread across the site and used for the construction of hibernacula and reptile basking bank, thus eliminating the need for excessive lorry movements arising from the removal excess spoil.

The applicant also points out that the HS2 Act seeks to streamline the planning process by utilising an overarching construction methodology and environmental assessment for all HS2 works, via the Environmental Minimum Requirements and Environment Statement. In this case, the proposed vehicle numbers/types do not trigger the need for approval of a lorry route. Therefore traffic movements fall within the deemed permission of the Act subject to HS2 controls.

It is acknowledged that access arrangements are not considered significant in the Environmental Statement (ES). However, there may be safety implications at a local level. It is noted that at no point has HS2 Ltd specifically assessed the safety implications for accessing lorries for this proposal in this area off Harvil Road. The increase in vehicles on this sensitive road is considered to be of concern, although no excess soil is to be removed from the site. Nonetheless, there are concerns about the robustness of existing traffic management plans.

Consequently, an informative is recommended seeking a site specific traffic management plan, detailing the safe operation of the access off Harvil Road, including but not limited to ensuring suitable site lines are available to vehicles turning right on to Harvil Road and safety measures are taken to ensuring vehicles turning on to and off Harvil Road from the site access are managed in a

manner that minimises risk to other vehicles on Harvil Road, in compliance with Policy AM7 of the Hillingdon Local Plan: Part Two Saved UDP Policies and Chapter 6 of the London Plan.

## 8.0 BOROUGH SOLICITOR COMMENTS

The High Speed Rail Act 2017 received Royal Assent on 23 February 2017. Section 20 of the Act provides that planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for development authorised by the Act subject to the other provisions of the Act and the conditions set out in Schedule 17. It is a condition of the deemed planning permission that the development must be begun no later than the end of 10 years beginning with the date on which the Act is passed. The planning permission conferred by the Act is therefore analogous to an outline planning permission, which settles the principle of the overall development of Phase One of the HS2 scheme, whilst leaving certain details to be approved at a later stage.

The Council, in its capacity as a local planning authority, was given a choice between having a wide or narrow range of planning controls in place in relation to the development required in respect of Phase One of the HS2 scheme. The Council elected to become a qualifying authority which means that in practice, it has a wide range of controls at its disposal which for example, include the ability to approve the detailed design of permanent structures such as the Colne Valley Viaduct and also to have an enforcement and approval role in relation to certain construction matters.

This is the second application submitted by the Nominated Undertaker, HS2 Ltd, pursuant to Schedule 17 of the Act, which falls to be considered by the Sub-Committee. It comprises a plans and specifications submission in relation to earthworks to create 2 no. ponds, a reptile bank, hibernacula and permanent fencing on agricultural field land immediately west of Harvil Road and south of Dews Lane.

Earthworks are defined in the Act as "terracing, cuttings, embankments or other earth works".

The task of Members, in determining this application, represents a significant departure from the way in which the Council is used to determining planning applications. The reason for this is that Schedule 17 is very prescriptive about the manner in which qualifying authorities should determine applications submitted by HS2 Ltd. For example, such authorities may only refuse to approve plans or specifications, or impose conditions on approvals, on one or more of the statutory grounds set out in Schedule 17. If the application relates to earthworks, as is the case here, the following grounds apply:

1. That the design or external appearance of the works ought to, and could reasonably, be modified to preserve the local environment or local amenity, to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or to preserve a site of archaeological or historic interest or nature conservation value.

2. If the development does not form part of a scheduled work, that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

If the application relates to fences, as is the case here, the following ground applies:

1. That the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

Members will note that the recommendation in the report is for approval subject to an informative that, prior to the commencement of development, HS2 Ltd submits a site specific traffic management plan to the Council which is to be agreed in writing by the Council. The reason for the inclusion of the informative is to prevent or reduce prejudicial effects on road safety on Harvil Road, in compliance with Policy AM7 of the Hillingdon Local Plan: Part Two Saved UDP Policies and Chapter 6 of the London Plan.

Informative 1 is based upon the requirements set out in the Code of Construction Practice, as set out above, and therefore is entirely consistent with extant statutory requirements. Members will also note that the informative is predicated upon compliance with relevant existing Plans and Policies which they will be familiar with and this is a relevant consideration as they should not simply be ignored just because a new statutory planning regime is in place and they should continue to play an important part of the Members' decision making process.

Informatives 2 and 3 are based upon the landscaping, ecological planting and site restoration/mitigation which cannot be conditioned in the application before Members. The Nominated Undertaker will need to submit a Schedule 17 application for bringing into use a scheduled work, at which point, the Nominated Undertaker must comply with any condition subject to which the scheme is. The purpose of the informative is to put the Nominated Undertaker on notice as to the Local Planning Authority's position on the proposed restoration/mitigation package.

Finally, it should be noted that there is provision, within Schedule 17 of the Act, for HS2 Ltd to appeal to the Secretaries of State for Communities and Local Government and Transport respectively against any Council decision to refuse a request for relevant approval or against any conditions which the Council has imposed in granting approval. The Secretaries of State have the power to dismiss the appeal or vary the Council's decision. HS2 Ltd will also be able to appeal if no decision has been made within 8 weeks of the receipt of their application by the Council or such extended period as may have been agreed between the Council and HS2 Ltd.

## 9.0 OTHER ISSUES

### FLOODING AND DRAINAGE

The proposed development will not impact on the existing drainage arrangements on the site and is located in Flood Zone 1. The new ponds will be situated within an arable agricultural field surrounded by farmland, existing and proposed woodland planting, existing adjacent grassland and scrub habitat.

The two new ponds will total a maximum of 500m<sup>2</sup> in surface area and have a minimum depth of 1.5m. The ponds will be designed to permanently hold some water to provide a wetland habitat all year round, although there will be 'drawdown' of water in the summer months. The use of a geosynthetic liner may be required if determined to be necessary for the ponds, to provide standing water for the entire year. This will be confirmed following further survey of ground conditions, which will include a trial pit or auger survey to determine the drainage characteristics of the soil.

The Flood and Drainage Officer notes that the proposed fence line appears to be along the extent of flood zone 3 and 2. However, the proposed fencing will be timber post and rail adjacent to the highway and timber post and wire elsewhere. Although there is no elevational detail of the fencing

to be implemented, the post and rail and post and wire fencing should not create a flood risk problem, as these are permeable to water. Therefore there are no objections on flood and drainage grounds.

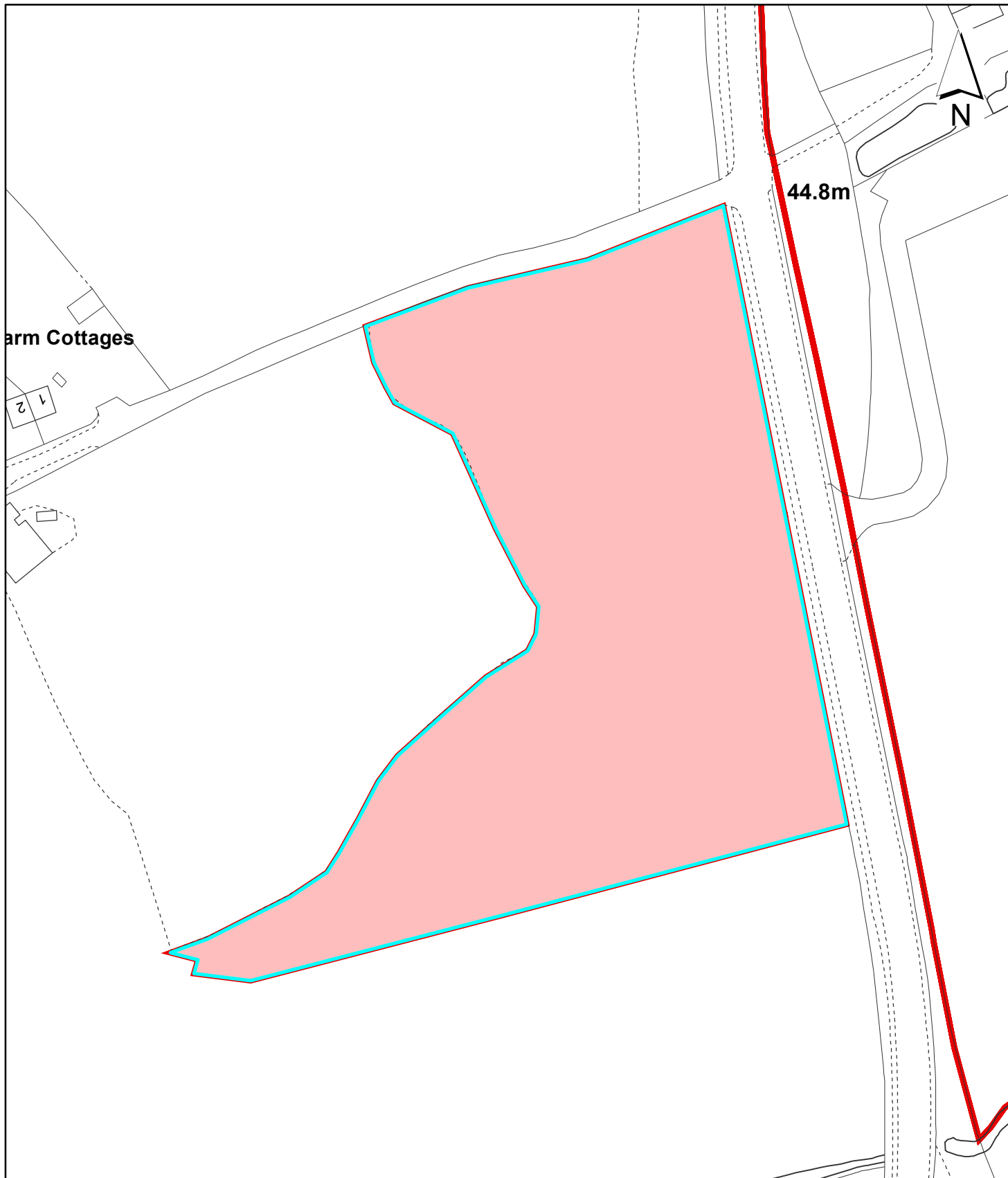
It is considered that the scheme will have satisfactorily addressed drainage and flood related issues, in compliance with The Hillingdon Local Plan: Part 2 Policies OE7 and OE8, Policies 5.13 and 5.15 of the London Plan and the aspirations of the NPPF.

## 10.0 REFERENCE DOCUMENTS

The High Speed Rail (London-West Midlands) Act 2017.

<b>Contact Officer:</b>	Karl Dafe	<b>Telephone No:</b>	01895 250230
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# Notes



Site boundary

For identification purposes only.

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Site Address

**Ecological Mitigation Site  
Harvil Road**

Planning Application Ref:

**73195/APP/2017/3486**

Planning Committee

**HS2 Application**

Scale

**1:1,250**

Date

**November  
2017**

**LONDON BOROUGH  
OF HILLINGDON**

**Residents Services**

Civic Centre, Uxbridge, Middx. UB8 1UW  
Telephone No.: Uxbridge 250111



**HILLINGDON**

**D243**

# Hillingdon Council wins HS2 planning case in Court of Appeal

Friday 31 July: Hillingdon Council has successfully persuaded the Court of Appeal to overturn a High Court decision concerning the submission of planning applications by HS2 Ltd under the HS2 Act.



The council had refused to approve an application for HS2 works to be undertaken on a site in the borough of archaeological importance on the basis that HS2 Ltd had submitted insufficient information in support of it.

HS2 Ltd disagreed with the council's refusal decision and challenged it, by appealing to the government, on the basis that it was not required to provide the information which the council required as it could instead rely upon a suite of non-statutory documents, known as Environmental Minimum Requirements, which would provide the council with the necessary assurances that the archaeological integrity of the site would be

maintained and that HS2 Ltd would, if necessary, carry out its own future investigations as a means of safeguarding it.

The council sought a judicial review of the government's decision to allow HS2 Ltd's appeal but in December 2019, the High Court found in the government's favour.

The Court of Appeal handed down its judgment today. It ruled that HS2 Ltd cannot rely upon the Environmental Requirements and that it has to provide sufficient information to the council in support of its planning applications. The council is under no obligation to determine the applications unless and until it receives such information. The Court of Appeal also frowned upon HS2 Ltd's contention that it is permissible for it to carry out its own investigations, as part of the application process, saying that it would not have been the intention of Parliament to 'set up a scheme which gave the appearance that HS2 Ltd was a judge in its own cause'. The government has also been ordered to pay the council's legal costs of both the High Court and Court of Appeal cases.

Councillor Ray Puddifoot, Leader of Hillingdon Council, said: "HS2 Ltd thought that they could act with total impunity and just expect the council to approve its planning applications without question. As the Court of Appeal has said, it cannot have been the intention of Parliament to allow HS2 Ltd to be a judge in its own cause. For the avoidance of doubt, this council will continue to challenge decisions that may harm our environment or the health and wellbeing of our people."

*Soprano Pipistrelle Bats - photos taken under strict licence*

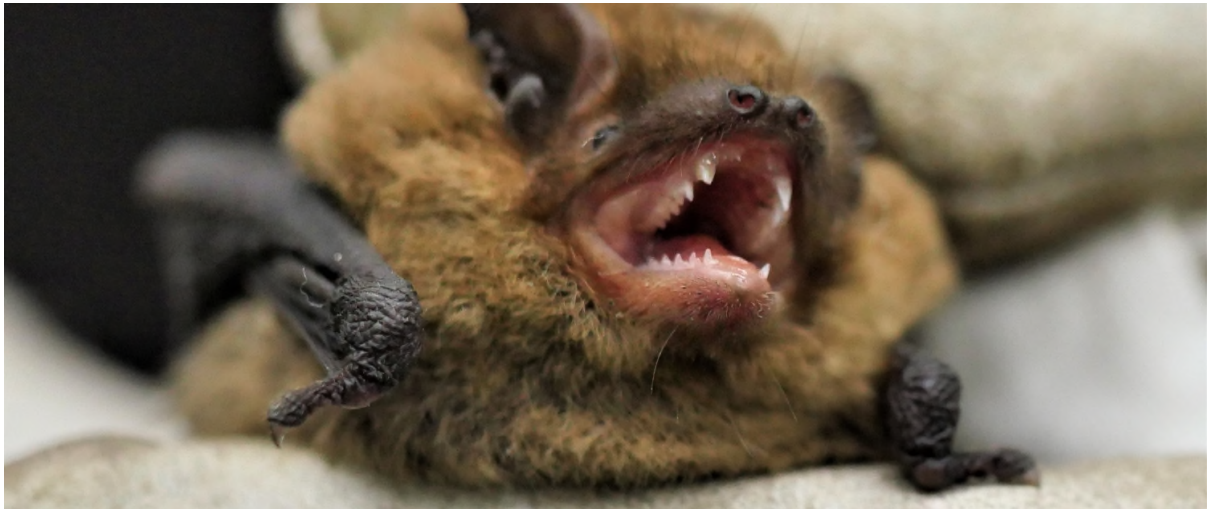
## Watching bats in the Colne Valley

As the weather warms up, bats are starting to become more active. We wanted to tell you more about this fascinating group of mammals and how you can watch them from the comfort of your own home.



The UK has 18 species of bat, of which 17 are known to breed here. This accounts for almost a quarter of all UK's mammal species! They are all nocturnal and feed on insects. The culture of fear associated with bats is mainly thanks to the vampire bat, a species only found in central and south America, that sucks blood from large mammals like cows and horses. We don't have vampire bats in the UK, so there is absolutely nothing to fear when it comes to our bat species. In fact bats are very

important and should be cherished. They keep on top of insect numbers and help keep the ecosystem nice and well balanced.



**Please note**, all photos were taken under a strict Bat Licence. Disturbing Bats without licence is against the law. Find out more on the Governments website:

<https://www.gov.uk/guidance/bats-protection-surveys-and-licences>

## Where and when can you expect to see bats in this country?

As outlined above, bats are nocturnal, so the best time to see them is just as darkness falls in the evening. Certain species of bats have evolved to cope quite well in brightly lit urban environments, so it is often possible to watch them from your very own back garden (see the below home video from one of our staff team). Bats like the common and soprano Pipistrelle, are often seen hunting the insects that are attracted by street lights. Keep your eyes peeled around sources of light in your garden as night falls and you might just find a bat or two. If you want to try and attract bats to your garden, why not put out some bug hotels to attract insects? The more food you provide for the bats, the more likely they are to pay you a visit. If you have a large pond or live close to a river or stream, you may see other species like the Daubenton bats hunting low over the water. You can, if you're interested, purchase a bat detector from online stores like amazon and listen to these fascinating creatures hunt using a technique called echolocation. This is where the

bat produces sonar that bounces back off objects and allows the bat to produce an image of it's surroundings.

So this evening, why not sit outside for half an hour as the sun goes down and see if any bats are using your garden to hunt? And if you want to learn more about bats, the Bat Conservation Trust website has loads of information to keep you busy <https://www.bats.org.uk/>.

## What has Colne Valley been doing for the Bats?

'We've been doing our bit to help the bats of the Colne Valley. As part of our [Landscape Partnership Scheme](#), with funding from [Herts and Middlesex Wildlife Trust](#) (via the HS2 Colne Valley Regional Park Additional Mitigation Panel 'Wetland Vision for Bats' project), we have created [13 new ponds at Maple Lodge Marsh near Rickmansworth](#). These ponds will create excellent feeding location for bats, particularly the rare Nathusius Pipistrelle that is known to live in the area. On top of this we are also putting up bat boxes at a number of our sites. Another important improvement that will provide new h



## HS2 Phase 1 (London to West Midlands) – Bats in tree roosts

### OVERVIEW

This licence applies in a certain, limited, range of circumstances where works necessary for management or development will impact on trees that are used by bats for roosting. It permits the disturbance and capture of bats and/or damage/destruction of listed roost types affecting no more than eight listed species of bats, which are present in small numbers in the affected roosts. The cumulative impacts of the proposed works must not exceed a threshold which would be seen by other professional ecologists as being low or low-moderate.

Due to the nature of bat species using tree roosts, the number of roosts is not defined, nor limited. However the overall cumulative impact of the works must not exceed the low to moderate threshold. Normally this will be expected to be small numbers of the roost types listed and for small numbers of bats occupying those roosts.

The range of circumstances that this licence is intended to cover typically includes individual trees, trees in small groups or low density (e.g. roadside trees or parkland), orchards, and small amounts of woodland.

Where the overall impact of the works is in line with those covered by this licence, the extent of the site registration may cover the extent of contiguous or functionally linked woodland or trees that are subject to the same works. A site registered under this licence will comprise of a geographically distinct or defined area that includes single, small numbers or small groups of tree.

Where works are to be undertaken in a small woodland block (<5Ha), the area impacted will not normally exceed (2Ha). Where works are undertaken in medium/large blocks of woodland it is expected that the area impacted will not normally exceed 0.5Ha.

This licence excludes the removal of large blocks or large areas of woodland or tree cover as this would remove significant amounts of an important resource for bats and likely result in a significant impact on the local bat population. Such circumstances and others not covered by this licence should continue to be covered by applications for individual licences.

This licence may only be used by ecologists who satisfy the criteria for registration and are working for a contractor undertaking works directly related to HS2 Phase 1. It is expected that for each registration the works contractor will be the Licensee.

Only persons previously registered to do so may use this licence and in order to register a site under this licence the following must apply:

- That the site has been subject to a suitable level of survey effort (see Conditions 14 to 17 of this licence) to enable an accurate assessment of the level of impacts caused by the proposed activities;
- That impacts arising from the works cannot be avoided; and, That the overall, cumulative effect of the proposed works can be accurately determined, to both ensure that the impacts fit the criteria for using this licence and that suitable mitigation and if necessary, compensation are provided (see Annex A and B of this licence).

Users of this licence will employ suitable mitigation and/or compensation for impacts on bat roosts, and as a minimum replace any roosts lost with roosts of ecological equivalence. Users must also follow the relevant sections of the HS2 Ecology Technical Standard when designing and implementing works affecting bats.

In determining suitable mitigation, users must consider the level of impact in comparison to the overall woodland resource available within the core sustenance zone<sup>1</sup> for the species involved. The favourable conservation status of bats within the area covered by the licence must remain favourable post works and the mitigation and compensation measures must ensure that the habitat retains, or

<sup>1</sup> Collins, J. (ed)(2016). Bat Surveys for Professional Ecologists: Good Practice Guidelines (3<sup>rd</sup> edn). The Bat Conservation Trust, London.



improves, its ecological functionality.

Wherever possible, mature or veteran trees should be retained (roosts within such trees are likely to be higher conservation status and therefore unlikely to fall within scope of this licence) along with buffer trees.

Where it is considered that there is sufficient alternative roosting potential in the remaining or adjacent woodland, normally 7 to 10 roosting trees per hectare (and this adjacent resource is not known to have recently been, or likely to be, subject to impacts in the foreseeable future), mitigation may not be required and other measures to improve overall habitat for bats (commuting/foraging routes) in the area should be implemented

Other impacts arising from the works, such as fragmentation and loss of connectivity must also be mitigated or compensated.

Registration	Any person using this licence must fulfil the criteria and conditions to become a Registered Consultant and have confirmed registration with Natural England before undertaking any work under this licence. The Primary Registered Consultant for this licence must apply to register individual sites with Natural England prior to each use of this licence
Recording & reporting	There is a data recording and annual reporting requirement.
Reference	WML-CL40

## LEGISLATION

Statute(s)	Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations') and Wildlife and Countryside Act 1981 (as amended)
Section(s)	('the 1981 Act') This licence is issued under Regulation 55(2)(e) of the Habitats Regulations and section 16(3)(f) of the 1981 Act

## LICENCE TERMS AND CONDITIONS

Valid for the period:	1 January 2020 to 31 December 2020 (inclusive)
Area valid in	Within the consolidated construction boundary of the proposed rail route and land upon which the Licensee has the permission of the owner to operate, within the counties and unitary authorities of: Greater London, Hertfordshire, Buckinghamshire, Oxfordshire, Northamptonshire, Warwickshire, Staffordshire, Solihull and Birmingham.  It may also be used on land in the aforementioned counties and unitary authorities where a third party or contractor of a third party owns or has permission to operate, to undertake works which are directly related to the construction of the rail route, and the Registered Consultant has registered the site with Natural England.
Purpose(s) for which this licence is issued	<ul style="list-style-type: none"><li>• Imperative reasons of overriding public interest, or</li><li>• Preserving public health and public safety</li></ul>
What this licence permits	Subject to all the terms and conditions of this licence, solely for the purpose(s) stated above, and for works directly related to or necessary for the construction of HS2 Phase 1, this licence permits Registered Ecological Consultants, and their Assistants to: (i) Deliberately disturb; (ii) Deliberately capture/take (ie handle); (iii) Transport; <b>Bat species and roost types specified in Annex A of this licence</b> , and to: (iv) Damage or destroy resting or breeding places of the species and roost types specified in Annex A, using only the methods listed below.

By means of	<ul style="list-style-type: none"> <li>• By hand;</li> <li>• Artificial light (e.g. torches);</li> <li>• Endoscopes;</li> <li>• Hand-held static nets;</li> <li>• Exclusion;</li> <li>• Temporary or permanent exclusion by techniques specified in the Bat Workers' Manual;</li> <li>• Disturbance by illumination and / or noise;</li> <li>• Temporary obstruction of roost access;</li> <li>• Destructive search prior to felling;</li> <li>• Destruction by soft (section) felling; and,</li> <li>• Destruction by felling (trees with low roosting potential only)</li> </ul>
Who can use this licence	<p>This licence can only be relied upon by Registered Consultants, and their Assistants, except those convicted on or after 1 January 2010 of a <b>wildlife crime*</b> (unless, in respect of that offence, either:</p> <ul style="list-style-type: none"> <li>• they are a rehabilitated person for the purposes of the Rehabilitation of Offenders Act 1974 and their conviction is treated as spent; or</li> <li>• a court has made an order discharging them absolutely.)</li> </ul> <p>Any application by a person to whom this exclusion applies for an individual licence will be considered on its merits.</p> <p style="text-align: right;">* see Definitions</p>
<b>DEFINITIONS USED IN THIS LICENCE</b>	
Licensee	A contractor of HS2 Ltd, or a company which is required to undertake works to facilitate the construction of HS2 Phase 1, who has instructed the Primary Registered Consultant to carry out the licensed activities. Both parties must apply to register sites with Natural England.
Registered Consultant	A professional ecological consultant who has been successfully registered with Natural England to use this licence in accordance with standards set by Natural England.
Primary Registered Consultant	A Registered Consultant who has successfully registered a site or sites where the licence may be used. There can only be one Primary Registered Consultant per registered site
Secondary registered consultant	A Registered Consultant who is registered to use WML-CL40 and who the Primary Registered Consultant has authorised, by name in writing, to undertake licensed activities specifically associated with WML-CL40 on a registered site. There can only be one Secondary Registered Consultant per registered site and they may only be appointed at Registered Sites where the Primary Registered Consultant is registered to use WML-CL40. The Secondary Registered Consultant shall carry a copy of the authorisation letter while on the registered site and shall produce it to any police or Natural England officer on request.
Assistant	A person assisting a Registered Consultant. There are two levels of Assistants covered under this licence. Their details must be listed in the site registration form (WML-CL40-SiteReg):
Level 1 Assistant	An ecological consultant, who is skilled and experienced in bat mitigation work. A Level 1 Assistant is able to undertake licensed activities, appropriate to their level of experience (as determined by the Registered Consultant) on a registered site whilst the Consultant is not present, and they do not have to be under their direct supervision. Level 1 Assistants may directly supervise "Level 2 Assistants". A maximum of three Level 1 Assistants can be authorised in writing by the Primary Registered Consultant to undertake licensed activities on a site registered under this licence.
Level 2 Assistant	A person authorised to act under this licence whilst they are under the direct

	supervision of a Registered Consultant or a Level 1 Assistant. A maximum of six Level 2 Assistants can be authorised in writing by the Primary Registered Consultant to undertake licensed activities on a site registered under this licence.
Registered Site	Is a site that has been registered with Natural England for the purposes of this licence?
Small numbers	For the purposes of this licence, the term 'small numbers of bats' is <u>not</u> defined. Registered consultants are expected to use their experience and professional judgement in deciding what reasonably can be considered to be small numbers of the species of bat involved. These judgements are expected to be in line with established best practice and likely to be determined in the same way by other professional consultants who are experienced in bat ecology and mitigation.
Low to low-moderate impacts	For the purposes of this licence, the terms low and low-moderate impact is that which the unmitigated impact of the proposed actions would likely be judged, by other professional ecologists, to not be likely to cause harm that could be considered to be moderate-high or high. This decision will take into account the numbers of roosts, roost types and numbers of bats involved. Generally these are impacts which can be easily mitigated or compensated by applying standard measures.
Destructive search by soft (section) felling	Is the taking apart of a bat structure in a controlled and careful manner by hand, or in some instances with the assistance of hand-held tools and machinery, under direct ecological supervision? Only the Registered Consultant or Level 1 Assistant may take any bats found. Under this licence only the Registered Consultant or a Level 1 Assistant must undertake or directly supervise any destructive searching.
Destruction by felling	Is the destruction of a structure that previously supported a bat roost using mechanical means after the structure, or relevant part of the structure, has been declared free of bats by the Registered Consultant. Destruction by felling is usually preceded by a soft (section) felling or completion of an exclusion process.
Wildlife Crime	Any offence under the Conservation of Habitats and Species Regulations 2017('the Habitats Regulations'), the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Deer Act 1991, the Hunting Act 2004, the Wild Mammals (Protection) Act 1996, the Animal Welfare Act 2006 or the Protection of Animals Act 1911 (all as amended).
<b>'Lower conservation significance/importance' roosts'</b> are for the purposes of this licence defined below:	
A <b>'feeding roost'</b> is a place where individual bats or a few individuals rest or feed during the night but are rarely present during the day. They are often distinguishable by evidence of insect remains.	
A <b>'day roost'</b> is a place where individual bats, or small groups of males, rest or shelter in the day but are rarely found by night in the summer.	
A <b>'night roost'</b> is a place where bats rest or shelter in the night but are rarely found by day. These roosts vary in their conservation significance and may be used by a single individual on occasion or it could be used regularly by the whole colony. This licence only covers night roosts of low conservation significance.	
A <b>'transitional / occasional roost'</b> is a place used by a few individuals or occasionally small groups for generally short periods of time on waking from hibernation or in the period prior to hibernation.	
A <b>'satellite roost'</b> is an alternative roost that is in close proximity to a main maternity roost which is used by a small number of breeding females throughout the breeding season.	
A <b>'lower conservation significance maternity roost'</b> is a place used as breeding site by small numbers of breeding females.	
A <b>'lower importance hibernation roost'</b> is a location with constant cool temperatures and high humidity, where small numbers of bats are found during the winter months	
<b>Other roosts definitions used in this licence:</b>	

A '**roost**' is defined as a single structure or part of a structure, used by a single species for a single purpose. For example where a wall cavity forms a roost for pipistrelle bats and the roof void a roost for brown long eared bats, this, for the purposes of a licence, would be two roosts.

A '**multi-functional roost**' is considered to be a roost that is used by bats of the same, or different species of bats, for different functions. For example, a structure which is used as a maternity roost or a hibernation roost and also by individual bats as a day or a night roost would be considered to be a multi-functional roost. In the context of this licence such a roost would be used by small numbers of a few species of bats.

A '**multi-species roost**' is considered to be a roost that is used by more than three bat species. Different bat species may be using it at the same or different times or for the same or different purposes. In the context of this licence a multi-species roost would be a roost used by few species of bats.

An '**alternative roost**' shall include: a purposely installed bat box or suitably designed and located feature or structure provided for the purposes of providing bat roosts; an existing roost which will not be impacted by the works; or other new/enhanced roosting opportunities. Any alternative roost must be suitable for the species, within or close to the existing roost and free from additional disturbance or development pressure.

## LICENCE CONDITIONS

1. This licence includes Annexes A, B and C which contain additional terms and conditions of use.
2. The confirmation of registration to work as Registered Consultant under this licence forms part of this licence and must be kept with this licence and produced along with the licence and confirmation of site registration, when required.
3. To use this licence you must be:
  - a) A primary or secondary Registered Ecological Consultant (see Definitions);
  - b) A Level 1 or Level 2 Assistant (see Definitions) who has been given written permission by the Licensee to act on their behalf on a specific site registered under this licence.
4. The Licensee is required to obtain all necessary permissions and consents and arrange access to the site for the Registered Consultant for the duration of the licenced activities and monitoring period, prior to registering the site. These records must be kept for at least 24 months following completion of the licenced works and monitoring period and must be made available on request to any Natural England officer at any reasonable time, within five working days.
5. Any Assistant must be named on the site registration document and be authorised in writing by the Licensee to act on their behalf under this licence. Any such person must carry this written authorisation with them at all times when conducting activities under this licence.
6. It is the responsibility of the Primary Registered Consultant to ensure Assistants are sufficiently trained and experienced to act under this licence and that they use appropriate equipment so as to avoid unnecessary suffering of any animal in the course of licensed operations.
7. The Registered Ecological Consultant and their Assistants must have prior experience of using the methods proposed in the site registration document (WML-CL40 Site Reg). This can be evidenced by previous experience with mitigation licences, Science and Conservation licences held or by being registered for the relevant level of [Class Licence](#) for the methods being proposed.
8. This licence may only be used at a site that has been successfully registered with Natural England and where the information in the authorised site registration form 'WML-CL40 Site Reg' remains accurate for the duration of the licensed activities.
9. Site registration involves submission of a site registration document 'WML-CL40-SiteReg' and a site registration spreadsheet 'WML-CL40-SiteRegSpreadsheet'. The site registration

documentation must be submitted to Natural England for assessment at least six weeks in advance of the intended start date.

10. Proposed activities under this licence, as described in the site registration document and site registration spreadsheet, may only take place with the agreement of the Licensee who must also have agreed to comply with the terms and conditions of this licence, and any mitigation and / or compensation requirements detailed in 'WML-CL40-SiteReg' and WML-CL40-SiteRegSpreadsheet'.
11. Sites must be registered using site registration form 'WML-CL40-SiteReg' and WML-CL40-SiteRegSpreadsheet'. This must be submitted at least four weeks in advance of the intended start date, but not more than 12 weeks in advance and:
  - a) All consents necessary for the proposed activity must have been granted (planning or other) before applying to register the site. For all consents that have been granted, all conditions or Reserved Matters relating to wildlife species and habitat issues (which are intended to be and are capable of being discharged) must be discharged and in place.
  - b) A walk over survey/check must have been undertaken within three months prior to submission of the site registration form to ensure that conditions have not changed since the most recent survey was undertaken.
  - c) Works may only take place in agreement with the landowner, who must also have agreed to comply with the terms and conditions of this licence, including any compensation requirements to be provided (Relevant Annex(s)). Confirmation of this agreement must be declared in the site registration form WML-CL40 Site Reg.
12. Works are only permitted to commence following receipt of an email from Natural England confirming that the site is registered and works can proceed as described in the site registration document. Natural England reserves the right to request further information before a site is registered.
13. If details within an authorised site registration form change, the Licensee and Primary Registered Consultant must apply to Natural England with an amended site registration form and, where relevant, amended maps to allow reassessment. Responsibility remains with the original person(s) on the authorised site registration form until written confirmation authorising the change has been received from Natural England. Details include:
  - a) Change of Licensee;
  - b) Change of Primary Registered Consultant;
  - c) Change to work schedule: an amended site registration form must be submitted prior to the expiry of the licence period within the authorised site registration form. An explanation for this request must be provided. Licensed activities must stop if they go beyond the licence period in the authorised site registration form except where written confirmation authorising the change has been received from Natural England; and
  - d) Significant changes to licensed activities: should circumstances change so that activities and/or impacts falling outside the scope of this licence are required then works may no longer proceed. Natural England must be notified in writing within two working days, the site will then be de-registered and an individual licence will be required to proceed.

### **Survey and Assessment Requirements**

14. Before registering a site, it must have been subject to a suitable level of survey to identify trees with potential roost features and the species of bats and type of roosts likely to be present.
15. All surveys (pre and post site registration) must be undertaken in accordance with the Bat Conservation Trust (BCT) Bat Surveys for Professional Ecologists – Good Practice Guidelines and the Bat Mitigation Guidelines (see Information and Advice note f). Surveys must be up-to-date and tailored to each site, taking into account complexity of the trees involved and potential usage by bats throughout the year.



16. All reasonable effort to identify the bats present to species level and the roost type(s) must be undertaken.
17. The survey records must be kept for at least 24 months following completion of the monitoring period and must be made available on request to any Natural England officer or any police officer at any reasonable time, within five working days.

### **Working under the licence**

18. This licence is only to be used for species and numbers of bats and roost types included on Annex A, and where the cumulative impacts resulting from the use of this licence are in the range of low to low-moderate.
19. The Licensee and Registered Consultant are responsible for **all** activities carried out under this licence, including activities carried out by any Assistants.
20. It is the duty of any person authorised to use this licence to ensure that they can adhere to the activities permitted as detailed on the authorised site registration form and conditions of this licence before accepting this responsibility. While engaged in the activities to which this licence applies the Registered Consultant shall make a copy of the licence (including the Annexes) available for inspection on each registered site where the activities are taking place and shall make it available for inspection to Natural England or any police officer on request within five working days.
21. The Registered Consultant must ensure that all those involved in the proposed works at the registered site understand by way of a “tool box talk”:
  - that bats are present;
  - the legislation relating to bats;
  - the measures that will be used to protect bats;
  - good working practices;
  - licensable activities; and
  - what to do should bats be found.

This information must be provided before any works commence in the registered site. A written record that this has been undertaken must be kept by the Licensee and made available to Natural England or any police officer on request within five working days.
22. The Registered Consultant may permit a Level 1 Assistant to supervise works at sites where the Registered Consultant is not present. The Level 1 Assistant must be suitably experienced in the work and methods being employed at that site and also be suitably experienced at supervising works.

### **Dealing with bats discovered during pre-work assessments or unexpectedly**

23. Where bats are unexpectedly discovered of a species not included on this licence or in numbers or roost type exceeding what could be considered low to low-medium conservation significance, all works must stop. The Registered Consultant must make an appraisal and re-evaluation of the situation in accordance with Annex C. Work may only restart when written confirmation is received from Natural England.
24. Where a bat is unexpectedly discovered in adverse weather conditions, the guidance in Annex C must be followed.
25. Provision must be made for prompt assistance to deal with any injured bat. Any injured or dead bats must be reported to Natural England on licence return form ‘WML-CL40LicRtn’.

### **Use with other Licences**

26. This licence may be used in conjunction with the following types of licence:

- Any bat survey Class Licence, and
- WML-CL39 Bat Mitigation Class Licence – HS2 Phase 1, Bats in Buildings, only where the combined impact of the use of both licences does not exceed the low to low-moderate threshold.

It may **not** be used in conjunction with:

- WML- CL21 Bat Mitigation Class licence
- Any individual licence

### **Mitigation and Compensation (also see relevant Annexes)**

27. The Licensees must ensure that any mitigation and compensation measures specified in the authorised site registration form are completed within the appropriate timeframe and in accordance with this licence unless otherwise agreed in advance and in writing with Natural England.

28. Destruction by felling (see Definitions) must only take place once the Registered Consultant has confirmed a tree to be free of bats.

29. Where bats are discovered and taken under this licence they must either be relocated to an alternative roost (see definitions) or released on site at dusk in, or adjacent to, suitable foraging / commuting habitat in safe areas within or directly adjacent to the pre-works habitat.

30. Where capture and/or handling of bats is necessary, only the Registered Consultant, or an Assistant directly supervised by the Registered Consultant may do so. Any capture, handling or exclusion of bats must only be undertaken in conditions suitable for bats to be active.

31. All works must be undertaken using best practice methodology to ensure minimal risks to bats.

32. Persons acting under this licence must abide by the advice on excluding bats, handling bats and working in bat roosts in the most up to date edition of the 'Bat Mitigation Guidelines' and 'Bat Workers Manual'.

33. All impacts on bats or their roosts must be mitigated or compensated.

34. Impacts to roosts must be mitigated or compensated in accordance with the requirements set out in Annex B.

35. Any mitigation and compensation measures proposed in the site registration document must be implemented as described. Any changes must have been agreed in writing by Natural England (see Condition 13 above).

### **Monitoring and reporting requirements**

36. Monitoring must be undertaken in accordance with the requirements set out in Annex B.

37. The Primary Registered Consultant must comply with the reporting requirements below:

- a) A report of licensed activities and the associated monitoring must be submitted annually for each site registered under this licence. This must be submitted using form WLM-CL40 LicRtn.
- b) The Primary Registered Consultant shall maintain a record of all licensable activities, monitoring and Authorised Persons used. This must be kept for at least 24 months after the completion of licensable works and the monitoring period at each registered site, in accordance with the requirements of Annex B.

Records are to be made available for inspection by Natural England or a police officer at any reasonable time, within five working days.



38. Monitoring must be underpinned by surveys, in accordance with the requirements of Annex B, and reported to Natural England in annual report 'WML-CL40-LicRtn' to evaluate against the baseline information and data provided in the site registration document.

39. Monitoring data will be used to assess any impact of the licensed activities over the course of the monitoring period and to ensure any overall impact of these activities is not detrimental to the Favourable Conservation Status of the bat populations.

#### **Licence compliance**

40. The Licensee, and any person authorised by, or working under this licence must comply with the terms and conditions of this licence, including the site registration, recording and reporting requirements. Failure to do so will render registration null and void. For the purposes of Regulation 58, the Licensee, Consultants and Assistants are regarded as 'the holder of a licence'. Natural England will advise a Registered Ecological Consultant of any change in registered status and explain the reasons for this.

41. Natural England must be informed of any breach to this licence. The Registered Consultant, Licensee, or Authorised Person, must report to Natural England in writing any problems with compliance with the licence within three working days and take necessary action, within the terms and conditions of this licence, should they discover poor practice and/or activities beyond the scope of the licence.

42. Registered Consultants must inform Natural England:

- a) If they are subject to disciplinary action with their professional membership body, within five working days of being informed, setting out the circumstances. They must also inform Natural England of the outcome of the action within five working days of the conclusion of this action.
- b) If they are subject to any criminal investigation by the police or other statutory body for any wildlife-related offence(s), setting out what these are, when the outcome is likely to be known, and what the outcome is following completion of the investigation.

This will enable Natural England to assess whether their registration for use of this licence needs to be reviewed.

#### **IMPORTANT**

This licence authorises acts that would otherwise be offences under the legislation referred to above. Failure to comply with its terms and conditions:

- i. may be an offence against the Habitats Regulations or mean that the licence cannot be relied upon and an offence could therefore be committed. The maximum penalty available for an offence under the Habitats Regulations and 1981 Act is, at the time of the issue of this licence, an unlimited fine and/or a six month custodial sentence;
- ii. may result in your permission to use this licence being withdrawn. Natural England will inform any person or organisation whose permission to use this licence is withdrawn in writing. This sanction may be applied to other similar licences, and
- iii. may not be able to rely on this licence as a defence in respect to the prohibitions within the Animal Welfare Act 2006 or the Wild Mammals (Protection) Act 1996.

If the activity that you wish to undertake is not covered by this licence, or if you are unable to comply with any of the terms and conditions which apply to the use of this licence, then you will need to apply to Natural England for an individual licence.

This licence is not a consent or assent for the purposes of Part II of the Wildlife and Countryside Act 1981 (as amended) in respect to Sites of Special Scientific Interest. It is your responsibility to get consent or assent if required (see Information and Advice notes o-q).

This licence does not derogate against offences for other species.

## **INFORMATION AND ADVICE specific to this licence**

- a. Any site registration is the equivalent of a licence being issued for that site and this licence remains valid for the duration of the registration.
- b. The confirmation of site registration will be made by Natural England in writing via email, and this email will state how long the registration is valid for.
- c. Any person authorised by this licence are advised to carry a copy of this licence at all times when acting under this licence.

### **Training and experience requirements**

- d. Training must be relevant to the conditions and the activities permitted by the licence and should be undertaken at regular intervals. It is the responsibility of each person authorised by this licence to maintain their expertise at an appropriate level to act under this licence. It is also the responsibility of each person authorised by this licence to ensure that any Assistants under their direct supervision have appropriate training, experience and instruction to undertake the activity they are being asked to do act under this licence.
- e. As a minimum, this must include: identification of European and other Protected Species relevant to the species and activities authorised by this licence and signs indicating they may be present; undertaking records searches; the ability to identify a rare species, non-native species and populations of significant importance; surveying techniques; best practice guidance and reasonable avoidance measures; mitigation techniques and methods, and compensation requirements and measures; a working knowledge of the Regulations and the Act together with an understanding of offences that may be committed.

### **Guidance on surveying and best practice**

- f. Advice on surveying, mitigation and compensation are provided in the latest edition of the [Bat Mitigation Guidelines](#) and [The BCT Bat Surveys for Professional Ecologists: Good Practice Guidelines \(3rd edition\)](#). The Licensee and any Authorised Person are expected to check whether this guidance has been updated and if so, to ensure that they act in accordance with the most up to date version.

### **General Welfare Considerations**

- g. Persons acting under this licence may photograph any protected species named in this licence in connection with licensed work provided that this causes no additional disturbance or any other harm.
- h. Under the Animal Welfare Act 2006 it is an offence to cause any unnecessary suffering to an animal under the control of man (section 4). This applies to the treatment of animals (including non-target species) held in nets etc.

## **INFORMATION AND ADVICE for all Class and General Licences**

### **General Information**

- i. Natural England checks compliance with licences and the attached conditions. Where breaches are identified, these may be subject to enforcement action.
- j. Ordinarily, licences will be reissued on 1 January each year (*NB: you do not need to re-register for those with registration requirements*). Please note, however, that they can be modified or revoked at any time by Natural England or the Secretary of State, but this will not be done unless there are good reasons for doing so. You are advised to check the terms and conditions of a licence prior to your first use of it each year in case of amendments.
- k. The common name or names of species given in the licence and any annexes are included by way of guidance only. In the event of any dispute or proceedings, it is the scientific name of a species only that will be taken into account.

### **The limits of licences**

- l. Licences permit action only for the purposes specified on that licence.
- m. Licences do not permit actions prohibited under any other legislation, nor do they confer any right of entry upon land.
- n. Unless otherwise stated the provisions of Natural England licences only apply landward of the mean low water mark in England. The Marine Management Organisation is responsible for all licensing seaward of the mean low water mark.

### **Protected sites**

- o. You can search for and view details about all SSSIs by using Natural England's [Designated Sites system](#). The notification documents for each SSSI contain a list of operations that require Natural England's prior consent. Owners and occupiers of land notified as SSSIs are required to give written notice to Natural England before either beginning any of these operations, or allowing someone else to carry out those operations. SSSI consent can only be given to a SSSI owner or occupier. It may be given with or without conditions, or in some cases, consent may not be granted. A similar process applies to public bodies and statutory undertakers (as defined under Section 28G of the Wildlife and Countryside Act 1981 (as amended)) and this obligation applies even where the operations are carried out on land outside of the SSSI.

- p. Please note that as the licensee you will not be able to undertake the licensed activity on a SSSI until the owner or occupier of the SSSI has applied for, and received, Natural England's written SSSI consent. If you do so, you may be at risk of committing an offence. As the licensee, if you wish to exercise this licence on a SSSI you must contact the relevant owners or occupiers of the SSSI and ensure they give written notice to Natural England of their proposal to permit you to carry out licensed activity on their SSSI. You should wait until a SSSI consent decision has been received by the SSSI owner/occupier before you begin to exercise this licence on a SSSI. See [Gov.uk](https://www.gov.uk) for further information on how to get SSSI consent from Natural England.
- q. In considering whether to issue consent or assent for activities likely to affect a SSSI that is a European Site, in other words a Special Protection Area (SPA) or Special Area of Conservation (SAC), Natural England will carry out a Habitats Regulations Assessment, as required by the Conservation of Habitats and Species Regulations 2017 (as amended) to ensure there will be no adverse effects on the European Site.

#### **Using and Sharing Your Information**

- r. There is significant public interest in wildlife licensing and in those who benefit from receiving a wildlife licence. We may make information publicly available, for more information, please see our [Privacy Notice](#).

#### **Contact Details for Natural England**

*For licensing enquiries*

**Telephone** 0208 026 1089

**Email** [HS2wildlifelicensing@naturalengland.org.uk](mailto:HS2wildlifelicensing@naturalengland.org.uk)

**Postal address:** Natural England Wildlife Licensing Services,  
Horizon House, Deanery Road, Bristol BS1 5AH

**Web** <https://www.gov.uk/government/organisations/natural-england>

*For other enquiries use the Enquiry Service:*

**Telephone** 0300 060 3900

**Email** [enquiries@naturalengland.org.uk](mailto:enquiries@naturalengland.org.uk)

## ANNEX A - WML-CL40(A): Species and roost types covered by this licence

<p><b>Deciding if the use of this licence is appropriate</b></p>	<p>The Registered Consultant is expected to exercise their professional judgment to determine if the use of this licence is suitable. In doing so, the Registered Consultant is expected to use their knowledge and experience of bat species and their ecology along with information on the local abundance and distribution of those species. This will be combined with the assessment of likely impacts of the works to determine what mitigation and/or compensation measures are suitable and required.</p> <p>This includes determining the level of impact upon individual roosts and also the cumulative effects of activities carried out using this licence on multiple roosts. The term 'small numbers of bats' has not been defined by Natural England and it is for the Registered Consultant to decide what constitutes small numbers and low to low-moderate levels of impacts on the local population. These judgments should be consistent with published evidence and best practice and broadly consistent with the judgments of other professional ecologists dealing with a similar situation.</p> <p>For multi-functional, multi species, maternity and hibernation roosts, the Registered Consultant must especially consider the potential for cumulative impacts e.g. where a number of low impact effects may combine to increase the overall impact (see Bat Mitigation Guidelines).</p> <p>Where the impact of the work on the bats species – at individual sites or cumulatively in a local area - exceeds that which could reasonably be considered to be low or low-moderate then this licence should not be used and an individual licence sought.</p> <p>Natural England will review site registrations and may, where required, seek further information and clarity for site registrations, and in some cases suggest or require plans to be modified.</p> <p>Where it is intended to cover a multi-functional roost or a tree containing more than one or two roost types, each roost per species constitutes a single roost.</p>
<p><b>Species covered by this licence</b></p>	<p>Common pipistrelle (<i>Pipistrellus pipistrellus</i>)  Soprano pipistrelle (<i>Pipistrellus pygmaeus</i>)  Whiskered bat (<i>Myotis mystacinus</i>)  Brandt's bat (<i>Myotis brandtii</i>)  Daubenton's bat (<i>Myotis daubentonii</i>)  Natterer's bat (<i>Myotis nattereri</i>)  Brown long-eared bat (<i>Plecotus auritus</i>)  Noctule bat (<i>Nyctalus noctula</i>)</p>
<p><b>Assemblage of species covered by this licence</b></p>	<p>Where the conservation significance of the assemblage of species present within the trees or woodland covered by the registration is judged not to have local importance or significance. This would normally be small numbers of up to five (5) species, all of which commonly occur in the local area.</p>
<p><b>Roost types covered by this licence</b></p>	<ul style="list-style-type: none"> <li>• Roosts contained within trees only;</li> <li>• Feeding roosts;</li> <li>• Day roosts;</li> <li>• Night roosts;</li> <li>• Transitional/occasional roosts;</li> <li>• Satellite roosts;</li> <li>• Lower conservation significance maternity roosts where licensable activities are completed outside the maternity season and the modified or replacement roost is available to bats in advance of the next maternity season;</li> <li>• Lower importance hibernation roosts where licensable activities are completed outside the hibernation period, and the modified or</li> </ul>

	<p>replacement roost is available to bats in advance of the next hibernation period, and</p> <ul style="list-style-type: none"> <li>• Low - medium conservation status multi species and multi-purpose roosts.</li> </ul>
<b>Numbers of bats covered by this licence</b>	<ul style="list-style-type: none"> <li>• Individuals or small total numbers of any species listed. If more than one species will be affected, it is the total number of all bat species which must be considered.</li> </ul>
<b>Numbers of roosts covered by this licence</b>	<ul style="list-style-type: none"> <li>• The number of actual roosts that may be affected by this licence is not given as a definitive figure, but is defined by what can reasonably be considered to be resulting in a low or low-moderate level of unmitigated cumulative impacts</li> </ul>
<b>Unexpected finds</b>	See Annex C.

**Annex B - WML-CL40(B): Expected mitigation, compensation, monitoring and management/maintenance requirements**

<p><b>Deciding the level of mitigation or compensation required</b></p>	<p>The Registered Consultant is expected to exercise their professional judgment to determine the level of mitigation or compensation required to maintain the favourable conservation status of bats affected by works taken under this licence. In doing so, the Registered Consultant is expected to use their knowledge and experience of bat species and their ecology along with information on the local abundance and distribution of those species. This will be combined with the assessment of likely impacts of the works to determine what mitigation and/or compensation measures are suitable and required.</p> <p>In each case replacement or compensation roosts must be located as near as possible to the site of loss. Under this licence, replacement roosts must not be located outside the core sustenance zone for the local population of the species' affected. The locating of replacement roosts outwith the original woodland or immediate vicinity of the tree impacted should also consider the continuing ecological functionality of the roosts within the local habitat and will, as a minimum standard, maintain this. As well as roost replacement, other habitat improvements, such as improving foraging and commuting opportunities, should be implemented.</p> <p>When considering the necessity of providing compensatory roost provisions within woodland it is recommended that an assessment of the pre-construction roosting resource is undertaken including both artificial (eg, bat boxes) and natural (trees) resource. The assessment should include an estimate (if the resource is large) or count (if small) of the number of trees that contain potential roosting features (PRF) and the overall suitability of the woodland to support roosting bats. As a guide, if this resource exceeds a minimum density of 7-10 trees (with PRF) per ha in woodland close to or adjacent to the impact, then replacement roosts may not be required. Trees providing such compensatory resource should be protected from direct and indirect impacts for the duration of the compensatory provision including any management and maintenance measures to ensure this.</p> <p>For confirmed roosts within individual trees, or those within a landscape with scattered trees, then the compensatory resource provision should be equal to, or exceeding that available prior to the licensable works.</p> <p>Introducing bat boxes as compensation for the loss of tree roosts is appropriate in woodland where there are few existing PRF. However, introducing large numbers of bat boxes to a wood is not appropriate where such features already exist, as this can have a negative effect on bat communities. If tree roosts are to be lost, in this situation woodland creation may be a more appropriate than providing compensatory roost habitat, unless hibernation or maternity roosts are expected to be lost.</p> <p>Replacement roosts provided as mitigation or compensation must be monitored under this licence.</p> <p>Planting provided under this licence must be monitored, managed and maintained for the duration of the compensatory provision.</p> <p>Natural England will review site registrations and may, where required, seek further information and clarity for site registrations, and in some case suggest or require plans to be modified.</p>
<p><b>Expected ways of working under this licence</b></p>	<p>Before this licence is relied upon all reasonable ways of avoiding or limiting roost disturbance or loss must have been considered.</p> <p>Any person working under this licence is expected to comply with standards set out in the following documents:</p> <ul style="list-style-type: none"> <li>• HS2 Ltd Ecology Technical Standard (HS2-HS2-EV-STD-000-000017) (version that is in place at that time) and, where directed, to the source and reference documents stated within that</li> </ul>



	<p>Standard.</p> <p>Where no specific guidance is offered or signposted by the HS2 Ecology Technical Standard the user should follow the best practice set out within the following three documents when working with bats:</p> <ul style="list-style-type: none"> <li>• <a href="#">Bat Workers Manual (JNCC)</a></li> <li>• <a href="#">Bat Mitigation Guidelines (Natural England)</a></li> <li>• <a href="#">Bat Surveys for Professional Ecologists – Good Practice Guidelines (Bat Conservation Trust)</a></li> </ul> <p><b>Tree Felling</b></p> <p>Any tree identified as having confirmed bat roosts must be excluded or surveyed to confirm bats are absent or removed before felling. If this isn't possible or doubt remains, the tree must be section ('soft') felled. Any tree that is section ('soft') felled must be done so by removing branches or tree sections and where bat roost potential is within that section, gently lowering to the ground for detailed visual inspection. Any cut into timber must not be across any crack, fissure or void that may hold bats, in so far as is reasonably possible, for safety of the operator. Felling of trees adjacent to trees with higher significance roosts and forming an important buffer for those trees must avoid the peak maternity and hibernation periods for that area and likely species.</p>
<b>Timings of works</b>	<p>Activities involving the exclusion, capture and/or handling of bats must only be undertaken in weather conditions suitable for bats to be active and must follow best practice methodology in line with licence condition 32.</p> <p>Licensable activities impacting satellite, maternity and hibernation roosts must not be undertaken while the roost is in use for these purposes and seasonal avoidance would be the preferred approach. Where the roosts are excluded ahead of seasonal use, appropriate compensation (if required) must be in place and available for use prior to exclusions taking place.</p> <p>Any exceptions to the above are likely to carry greater risk to bats and so prior discussion with Natural England is required ahead of a Site Registration Request, as it may preclude the use of this Class Licence.</p>



**Annex C - WML-CL40(C): Acting under licences WML-CL39 and WML-CL40 when bats are found unexpectedly or during in cold and/or in adverse weather conditions (see main Licence, Conditions 23 and 4)**

**Important:**

To minimise the risks of disturbing bats:

- Surveys at a site must take into consideration the potential of any trees to be used throughout the year. Neither of the Class Licences to which this licence applies, permit the damage or destruction of maternity or hibernation roosts (or other important roosts) when they are in use by bats for this purpose.
- Should unexpected species or numbers of bats or roosts be found whilst working under the authority of this licence, the Registered Consultant should assess if works can continue under either Class Licence to which this Annex applies, whether the authorised site registration form needs to be updated and sent to Natural England, or whether an individual licence will need to be applied for (see licence condition 23 and Annex B).
- Should any bats of a species or roost type not covered by either Class Licence to which this Annex applies be found, works must stop and Natural England informed immediately. An individual licence may be required.
- Activities affecting trees which are likely to support hibernating or torpid bats must be timed to take place when bats are active and when there is a decreased risk of direct or indirect harm to bats because:
  - Torpid and hibernating bats are unable to rouse quickly and can easily be injured or killed through careless working practices, and
  - Causing bats to wake and use energy at a time of year when they cannot replace their energy reserves may reduce their chances of surviving, particularly in the winter.

It is however recognised that, despite thorough assessment, there are occasions where individual torpid or hibernating bats might be discovered unexpectedly.

**If individual bats are discovered unexpectedly, or during periods of cold or adverse weather then the following steps must be taken:**

**A - Dealing with the bat or bats found**

1. Stop works to that tree.
2. If the Registered Consultant is not in attendance at that site, he/she must be contacted immediately to attend the site.
3. Do not expose the bat to the elements or cause it to fly out of the roost on its own accord.
4. The bat must only be handled by a person authorised by the registration and where that person has sufficient experience in handling bats, unless it is in immediate danger. Special care must be taken if the bat is torpid.
5. The bat should be carefully placed in a lidded ventilated box with a piece of clean cloth and a small shallow container with some water. The box must be kept in a safe, quiet location.
6. Where the bat is torpid, care should be taken to avoid rousing the bat during transfer to a suitable location – which may be a suitable hibernation box or other alternative roost, providing a safe, quiet environment with stable, cool temperature and relatively high humidity, safe from further disturbance.

7. Any underweight or injured bats must be taken into temporary care by an experienced bat carer and looked after until such time that the bat can be transferred to a suitable replacement roost at the same site, or weather conditions are suitable for release at the same site.

## **B – Reviewing the work impact, mitigation and/or compensation required**

8. The Registered Consultant should re-assess the situation and consider whether works can proceed under the existing site registration.
9. In doing so they should consider the implications of the unexpected find of the bat or bats, and if the current planned way of working, mitigation and/or compensation is appropriate. Where it is felt that changes are required a revised Site Registration form should be sent to Natural England prior to works continuing.
10. Where bats of a species not covered by the licence are discovered, or larger numbers, or different roost types are found, then the Registered Consultant should contact the Natural England licensing team as soon as is practicable. After an initial discussion, the Registered Consultant should confirm the find (species, circumstances, revised plans for mitigation/compensation etc) to the licensing adviser via email. This email should confirm the species found, the number of bats found, details of previous surveys and or additional pre-works inspections and what is proposed as additional or revised mitigation/compensation.
11. Natural England will respond and confirm in writing whether the unexpected find can be authorised under this licence, or whether an individual licence is required.

## Jones' Hill Timeline

<b>2014</b>	Access granted to Jones' Hill applied for and granted to HS2. Again in 2016. Expired 2018. No surveys.
<b>2017</b>	HS2 surveys should have been completed by now to inform the Environmental Statement.
<b>April 2020</b>	Camp set up. Always careful to avoid irreparable harm. No licence applied to Jones' Hill, so no surveys.
<b>May 2020</b>	We start our first surveys.
<b>26 07 2020</b>	Our first record of Barbastelle in flight.
<b>Summer 2020</b>	HS2 make clear their aim to fell Jones' Hill in October along with 19 others.
<b>May-June 2020</b>	Training as ecologist agents. Non intrusive survey techniques. 40 or more trees in Jones with PRF, at least 10 high potential in the area to be felled.
<b>01 10 2020</b>	Eviction starts - assaults (even 78yr olds!), arrests, Human Rights violations (for instance, a young woman in her tree home has her home kicked to pieces around her leaving only a platform, all her food, water, clothing and bedding kicked off, had her rope access tampered with, and left stranded over a bitter cold wet October night at a height of some 50ft) threats from police, trashing habitat, heavy machinery, lighting, noise, felling.....
<b>05 10 2020</b>	Barbastelle confirmed roost - immediately floodlit by HS2.
<b>08 10 2020</b>	Our last person out.
<b>08 10 2020</b>	Our work leads to legal challenge that stops work.
<b>13 10 2020</b>	First attempts HS2 surveys "No felling" Statement from HS2. We carry on our surveys Jones', Rocky Lane, Bridleway, Durham Farm, Bowood Lane, King's La, Grimsditch....and of course we find barbastelle though no further roosts.
<b>16 10 202</b>	Leigh Deigh warning to HS2 of criminal activity.

.....  
*A long winter of floodlights throughout the wood, soil receptor site water logged, churned and compacted, litter, laying track, fires, generators, tents on sett entrances, aggression and intimidation from security....*

But we continue peacefully to engage with NE. Growing proof of barbastelle in area.

.....

<b>03 03 2021</b>	Licence granted, ORM 58. Change tack. Regulator needs regulating.
<b>16 04 2021</b>	On our application Justice Lang injuncts and brings work to a stop.
<b>27 04 2021</b>	Justice Holgate overturns.
<b>30 04 2021</b>	Work has recommenced, our appeal is lodged but disallowed as "academic".



**In the High Court of Justice  
Queen's Bench Division  
Planning Court**

**CO/1327/2021**

In the matter of an application for Judicial Review

**THE QUEEN**

**on the application of**

**MARK KEIR**

**Claimant**

**versus**

**NATURAL ENGLAND**

**Defendant**

**(1) FUSION AND MURPHY JOINT VENTURE**

**(2) HIGH SPEED TWO (HS2) LIMITED**

**Interested Parties**

**Application for permission to apply for Judicial Review and interim relief**

**NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant, and the representations made by the Defendant and the ~~First~~ Second Interested Party;

**Order by the Honourable Mrs Justice Lang DBE**

1. The Interested Parties are forthwith restrained from carrying out works or other activities at Jones' Hill Wood, Buckinghamshire, in the Licensed Area, as defined in License WML-OR58, issued by Natural England on 30 March 2021, until the determination of this claim or further order.
2. The application for permission is adjourned to be listed in court as a "rolled up hearing", on notice to the Defendant and Interested Parties, on a date in the week commencing 24 May 2021 or as soon as possible from 8 June 2021 onwards, having regard to the availability of counsel already instructed at the date of this order. If permission to apply for judicial review is granted at that hearing, the Court will proceed immediately to determine the substantive claim.
3. The claim is to be expedited.
4. The Claimant do have permission to rely upon the expert reports of Dominic Woodfield and Robert Milieto.
5. This is an Aarhus Convention claim within the meaning of CPR 45.41. The Claimant's liability for the costs incurred by the Defendant and Interested Parties is limited to £5,000, and the Defendant's liability for the costs incurred by the Claimant is limited to £35,000.
6. Costs reserved.

7. Liberty to apply to vary or discharge this order on 2 days notice to all other parties.

### **Case management directions**

8. The Claimant must lodge, within 7 days of service of this order, an undertaking to pay the appropriate fee if permission to apply for Judicial Review is granted (or complete an Application for Remission of a Fee, if appropriate).
9. The Defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, no later than 4.30 pm on 30 April 2021.
10. The Defendant and the Interested Parties must comply with the duty of candour by disclosing all relevant documents, including internal and external correspondence and emails and notes and minutes of meetings, no later than 4.30 pm on 30 April 2021.
11. The Defendant do file and serve a 'Defendant's hearing bundle' comprising its Detailed Grounds, representations to the Court and evidence, in compliance with Administrative Court Office guidance on electronic filing, no later than 4.30 pm on 30 April 2021.
12. The Interested Parties do file and serve an "Interested Parties' hearing bundle" comprising their Detailed Grounds, representations to the Court and evidence, in compliance with Administrative Court Office guidance on electronic filing, no later than 4.30 pm on 30 April 2021.
13. The Claimant is to file and serve a Reply (incorporating but not limited to, the points in response made in the email of Hannah Brown of Richard Buxton Solicitors, sent at 12.33 on 15 April 2021) and any further evidence, no later than 10.00 am on 10 May 2021.
14. The two hearing bundles already filed and served by the Claimant are to stand as the Claimant's hearing bundles, together with a third bundle for the Reply and further evidence, if any.
15. The Claimant must file and serve a skeleton argument no later than 4.30 pm on 14 May 2021.
16. The Defendant and any Interested Party intending to participate in the proceedings must file and serve a skeleton argument no later than 21 May 2021.
17. The Claimant must file an agreed bundle of authorities, not less than 3 days before the date of the hearing.

### **Listing Directions**

18. The application is to be listed for 2 days; the parties to provide a written estimate within 7 days of service of this order if they disagree with that estimate.

**Case NOT suitable for hearing by a Deputy High Court Judge**

☐

### **Observations**

In determining the application for interim relief, I have applied the principles in *American Cyanamid Company v Ethicon Ltd* [1975] AC 396, modified as appropriate to public law cases. First, the Claimant must demonstrate that there is a serious question to be tried. In judicial review claims, this includes considering whether there is a real prospect of the claim succeeding at the

substantive hearing: see *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin), per Cranston J at [6] and *The Administrative Court Judicial Review Guide 2020*, paragraph 15.10. In my judgment, on the information before me now, the Claimant's grounds meet this threshold.

Second, the Court should consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought. In my judgment, the *status quo* should be maintained, so that the rare species of bats protected by the Conservation of Habitats and Species Regulations 2017 are not disturbed until the determination of the claim, to safeguard against the risk of significant environmental damage, which cannot be compensated for by a monetary remedy if the Claimant succeeds in the claim. In reaching this conclusion, I have taken into account the inconvenience and irrecoverable expense of delay to the works. I have sought to mitigate this by granting a rolled-up hearing with an expedited timetable and hearing date. Counsel's availability is the usual reason for delay in listing, and so I have limited consideration of this factor to those counsel already involved in the case at the date of this order. If the Defendant and Interested Parties have not yet instructed counsel, they will be able to choose counsel who can attend on the dates offered.

Both the Claimant and the Second Interested Party have requested an expedited rolled-up hearing, for speed. The Defendant asked that the claim proceed by way of a permission decision on the papers. However, in my experience, a rolled-up hearing is a much speedier route to a final determination. Even if permission were refused on the papers (which I consider unlikely), the Claimant would probably renew his application at an oral hearing, and if permission were then granted, a substantive hearing would not be ready to be listed for months. Although the rolled-up procedure does require the Defendant to respond fully to the claim at an earlier stage, I note that the Defendant has already provided a detailed response to the grounds, and many of the relevant documents are already available to the Claimant. Therefore I do not consider that is unduly onerous for the Defendant to respond fully, and it is likely to assist the Court in reaching a just decision.

The order has been amended under the slip rule to refer to representations from the Second Interested Party, not the First Interested Party. At the time of drafting this order, I had received a letter on behalf of the Second Interested Party but nothing from the First Interested Party.

After service of this order, I was sent a copy of representations from counsel for the Second Interested Party, which had been inadvertently been omitted from the papers sent to me. I have now considered these representations. The points made in respect of the merits of the claim adopt a similar stance to the Defendant's representations, which I did have the benefit of considering before making my order. I am still not persuaded that the claim is unarguable or has no real prospect of success. On the facts, I do not accept the submission that the application for permission and/or interim relief ought to be refused on the grounds of delay. However, I have adjourned the permission application, and so the Defendant and Interested Parties will have another opportunity to persuade the permission judge otherwise.

In granting interim relief, I expressly weighed in the balance the inconvenience and irrecoverable expense caused by delay to the works, which has been further confirmed by the Second Interested Party's more detailed representations. However, in my judgment, the balance of convenience lies in favour of maintaining the *status quo*, bearing in mind the legal obligation to protect rare species and the fact that harm to rare species may well be irreversible.

In my judgment, the Claimant's expert evidence is reasonably required to resolve the claim which he is presenting. I anticipate that Natural England will rely upon its in-house experts in defence of its decisions, as it typically does. An application by



the Second Interested Party to adduce expert evidence should be considered on its merits, if and when it is made.

As to the costs cap, the Claimant falls within CPR 45.43(2) as he is claiming as an individual, not on behalf of a business or other legal person. Financial support from others is a factor which can justify an increase in the cap under CPR 45.44(4). I accept the Claimant's evidence as to his own means - he is clearly impecunious, and a costs cap in excess of £5,000 would make the proceedings prohibitively expensive for him. The only issue is whether the crowd funding justifies an increase in the cap. I accept his evidence that, although he has been able to fund raise a sum in the region of £35,000 for this claim, these funds have been, and will be, required to meet his own legal costs, and so are not potentially available to meet any adverse costs order. Therefore the costs limit should not be increased.

The costs caps have been imposed in respect of the Claimant and Defendant only, as the usual practice is that costs orders are not made in respect of interested parties.

Signed:



Dated: 16.4.21

Amended on 16.4.21



**The date of service of this order is calculated from the date in the section below**

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**For completion by the Planning Court**

Sent / Handed to the Claimant, Defendant and any Interested Party / the Claimant's, Defendant's, and any Interested Party's solicitors on (date): 16/04/2021

Solicitors: Richard Buxton Solicitors  
Ref No. KEI1/1



Neutral Citation Number: [2021] EWHC 1059 (Admin)

Case No: CO/1327/2021

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/04/2021

**Before :**

**THE HON. MR JUSTICE HOLGATE**

**Between :**

**The Queen on the application of MARK KEIR**

**Claimant**

**- and -**

**NATURAL ENGLAND**

**Defendant**

**-and-**

**(1) MORGAN SINDALL CONSTRUCTION &  
INFRASTRUCTURE LIMITED, BAM NUTTALL  
LIMITED, and FERROVIAL AGROMAN (UK)  
LIMITED**

**Interested  
Parties**

**(2) HIGH SPEED TWO (HS2) LTD**

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**Charles Streeten** (instructed by **Richard Buxton Solicitors** ) for the **Claimant**  
**Leon Glenister** (instructed by **Browne Jacobson LLP**) for the **Defendant**  
**James Strachan QC and Victoria Hutton** (instructed by **Government Legal**) for the 2nd  
**Interested Party**  
**The 1<sup>st</sup> Interested Party** was not represented and did not appear

Hearing date: 23<sup>rd</sup> April 2021  
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**Approved Judgment**

## Mr Justice Holgate :

### Introduction

1. The High Speed Rail (London - West-Midlands) Act 2017 (“the 2017 Act”) authorises the construction of the HS2 high speed railway. High Speed Two (HS2) Limited, the second interested party (“IP2”) is the “nominated undertaker” under the 2017 Act. The first interested party, previously described as Fusion and Murphy Joint Venture, is the contractor for the enabling works for the central section of the phase 1 route.<sup>1</sup>
2. This case concerns a small section of the route which crosses an area of ancient woodland forming part of Jones Hill Wood, near Wendover, Buckinghamshire. The project requires 0.7ha of land used for this purpose.
3. The Wood contains a number of different species of bat which are “European protected species” under regulation 42 of and Schedule 2 to the Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012) (“the 2017 Regulations”). Under regulation 43 it is an offence *inter alia* to deliberately capture, injure or kill any wild animal of such a species, or to deliberately disturb, or damage or destroy a breeding site or resting place of such an animal.
4. By regulation 55 a licence may be granted for any of the purposes set out in subparagraph (2), including “imperative reasons of overriding public-interest, including those of a social or economic nature.” Anything done in accordance with such a licence is not an offence under *inter alia* regulation 43 (see regulation 55(3)). Such a licence is often referred to as a derogation licence.
5. The construction of the railway through the Wood requires a number of trees to be felled. Some 19 of those trees have “potential roosting features” with varying degrees of suitability for bats.
6. The 2017 Act does not disapply the licensing regime under the 2017 Regulations or grant any licence for the purposes of regulation 55 in relation to the works authorised to be constructed. Accordingly, IP1 had to make an application for a regulation 55 licence in relation to certain works in the Wood, including the felling of the 19 trees. It did so on 18 December 2020.
7. The relevant licensing body for the purposes of regulation 55 is the defendant, Natural England (“NE”) (pursuant to s. 78 of the Natural Environment and Rural Communities Act 2006).
8. On 3 February 2021 NE notified IP1 that it would not grant a licence at that stage because it was not satisfied that the information provided met the third of three statutory tests, namely that the actions to be authorised would not be detrimental to maintaining certain bat species at a “favourable conservation status” (“FCS”). They indicated the nature of the further information that should be considered.

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<sup>1</sup> On 21 April the Court was informed that this joint venture does not exist as a legal entity. The first interested party is collectively (1) Morgan Sindall Construction & Infrastructure Limited, (2) BAM Nuttall Limited and (3) Ferrovial Agroman (UK) Limited. An appropriate order substituting the correct parties has been made.

9. On 5 March 2021 IP1 submitted to NE a revised application with additional information. On 25 March 2021 NE issued a further decision to the effect that it was satisfied that the FCS test had been met.
10. On 30 March 2021 NE granted the licence to IP1 which is the subject of this proposed claim for judicial review. It is a detailed document which incorporates a number of other documents approved by NE. The licence authorises the works and activities described in the Annex WML-OR58(B). They include inspection of the 19 trees before any works are carried out and the loss of any bat roosts actually present in those trees. The licensee must comply with *inter alia* the Jones Hill Wood Method Statement and the work schedule (see condition 7). Condition B2 in Annex B also requires adherence to the approved work schedule. The schedule requires felling to be carried out in April. Pre-felling surveys must be carried out under condition 12.
11. Condition B5 requires that before any destructive works may be undertaken inspections must be carried out to search for any bats that may be present. All searches and felling must be carried out, or directly supervised by, a named ecologist or accredited agent. Any bat discovered must be relocated to a suitable roost or to a suitable foraging/commuting habitat.
12. Condition B13 prohibits licensed activities which affect *inter alia* maternity and habitation roosts while any such roosts are in use for those purposes. A “maternity roost” is defined in condition B27 as one where female bats give birth and rear their pups to independence. Condition B2 prohibits felling until “after temperatures have not dropped below 8°C for 4 days.” The object of that condition is to prohibit felling until the point is reached when bats emerge from hibernation.
13. Condition B19 requires the provision of a number of defined compensation features under the direct supervision of the named ecologist or accredited agent. They include 24 replacement roost features (specific designs of “bat boxes”) and the planting of 3.2ha of woodland habitat and fruit trees on an adjacent site. Condition B24 requires maintenance and monitoring of the mitigation and compensation measures until 2031 together with annual reports to NE (see condition B25).

### **The proceedings in the High Court**

14. The claimant, Mark Keir, is a member of a group of ecologists and citizens opposed to the HS2 project, known as “Earth Protectors”. Some of the group were camping in that part of the wood which is planned to be felled until IP2 regained possession in October 2020.
15. On 16 February 2021 the claimant’s solicitors wrote to NE to ask that copies of the licence application and documentation be provided to them before the grant of any licence so that the group’s ecologists could review the material and raise any concerns they might have before any final decision was made. NE replied on 19 February 2021 stating that they do not follow that practice in other cases and would not do so here. I note that Parliament has not imposed any requirement for public consultation in relation to applications for licences under regulation 55 and that the claimant raises no complaint about the procedure followed.

16. Once the licence was granted on 30 March 2021, the claimant's solicitors requested the relevant papers from NE. NE provided them by late morning on the following day. The claimant's legal team and experts studied the papers over the Easter weekend.
17. On Tuesday 6 April the claimant's solicitors wrote to NE to set out their concerns at that stage. They noted that the assessment accepted by NE had proceeded on the basis of a worse case assumption that the area to be felled included one maternity roost for the barbastelle bat. The claimant's group had serious concerns about the efficacy of the mitigation to be provided and its adequacy to achieve compliance with the FCS test. The letter referred to the loss of that assumed roost and indicated that a challenge might be made to the lawfulness of the licensing decision on that basis. However, the authors accepted that "NE may have been provided with confidence in its decision by proven success of these techniques elsewhere." They asked to see evidence that bat boxes can be used to provide compensation for the loss of a barbastelle breeding site. The letter did not indicate any of the other grounds of challenge now pursued. No pre-action protocol letter was sent.
18. NE responded on Friday 9 April expressing confidence in the adequacy of the mitigation and compensation measures which would be provided to maintain the conservation status of any species of bat affected by the works at the Wood. The response also pointed out that barbastelle bats may use several maternity roosts, each for a few days at a time, and that the loss of one roost feature within a network of woodlands had been considered in that context. However, the response did not refer to any evidence of the kind requested on behalf of Mr Keir.
19. Over the following weekend, the claimant obtained advice and grounds of challenge were drafted. The claim was served on NE on 12 April. The grounds range much more widely than the points raised in the letter of 6 April. The claim was accompanied by expert reports from two ecologists, Mr. Dominic Woodfield and Mr. Rob Mileto.
20. The claim was also accompanied by an urgent application in form N463. The interim relief sought included an order for a rolled up hearing, an injunction prohibiting the carrying out of any works or activities under the licence, and an order suspending the licence. The claimant's solicitors accepted that it would be appropriate for a hearing to be held to deal with these matters. NE and IP2 opposed the application. IP2 also requested a hearing. NE submitted that the issue of whether permission be granted should be dealt with initially on paper.
21. It is to be noted that paragraph 3(b) of the Statement of Facts and Grounds accepted, rightly in my judgment, that a key issue in determining whether the interim injunction should be granted is whether the licensed works would result in environmental damage undermining the "favourable conservation status of a rare species protected by the Habitats Regulations", namely the barbastelle bat. That is relevant to any attempt to justify the injunction on the grounds of the preservation of the *status quo*.
22. The applications came before Lang J. on 16 April 2021. After considering the matters on the papers, she ordered that permission be dealt with at a rolled up hearing to be listed in the week commencing 24 May 2021 or as soon as possible after 8 June 2021, with a time estimate of 2 days. The judge also granted an injunction restraining the carrying out of "works or other activities" within the licensed area until the

determination of the claim or future order. It became common ground between the parties at the hearing that (a) this went beyond the scope of the order that had been sought and (b) that there was no legal justification for any interim order in the present claim to go beyond restraining works or activities pursuant to the licence which the claimant seeks to impugn.

23. It appears that the judge made her order initially without having received written submissions by counsel for IP2. She subsequently had the opportunity to consider that document and issued a further order in the same terms, but with additional reasoning which addressed the submissions for IP2. The order is said to have been issued at 5:18pm on 16 April, just before the weekend.
24. The judge also gave liberty to apply on 2 days' notice for the variation or discharge of the order. On Monday 19 April IP2 made an urgent application for the order of Lang J to be varied on the grounds that (a) the felling of trees pursuant to the licence needed to take place before the end of April 2021 and would take 3-4 days and (b) if the works were not carried out until October, after the maternity season is over, there would be serious and costly delay to this part of the HS2 project.
25. The application came before me on the papers on 19 April, at which stage I indicated provisionally the directions I was minded to make so that the parties could respond. In the light of their representations I made an order on 20 April which provided for a 1 day hearing to take place on 23 April to deal with the issues of whether the injunction should be continued or discharged and whether permission should be granted to apply for judicial review.
26. The claimant's Solicitors suggested in correspondence that IP2's application had failed to give 2 days' notice and/or that I was prevented by the terms of the order made by Lang J from making the order I did go on to make on 20 April. A request for the solicitors to explain and justify their stance did not cast any real light on the matter. In my view the standard language of paragraph 7 of the order of Lang J simply required 2 days' notice to be given before the court could consider and determine an application to vary or discharge that order. It did not mean that either IP2 had to give notice by letter or email 2 days before filing its application, or that a judge could not make any order on the application, such as the giving of directions for a hearing, until 2 days had elapsed from the filing of the application. The building in of either of these delays into the procedural timetable would have served no real purpose. They would also frustrate the court's ability to respond urgently to an application to vary an order, which itself had been made in response to an urgent application and without the hearing which the claimant had acknowledged to be appropriate. The stance adopted on behalf of the claimant appeared to be purely tactical, just as the initial reluctance that the injunction, if continued, should be restricted in scope to that originally sought by the claimant. It is difficult to see how such conduct could comply with CPR 1.3.
27. I acknowledge that the claimant's solicitors did also raise a concern as to whether the hearing I proposed to order for 23 April would allow sufficient time for preparation. However, the claimant was able to file a detailed skeleton argument and three further witness statements all within the timetable set. Fortunately, Mr. Charles Streeten, who appeared on behalf of the claimant, confirmed at the hearing on 23 April that there was

no objection to the matter going ahead that day and that his clients had not been prejudiced by the timescale.

28. I also recognise that the timetable indicated by me on 19 April, and ordered on 20 April, was challenging for the parties. But it turns out that the parties did co-operate successfully with each other so as to comply with the order. I appreciate that substantial efforts had to be made by each of the legal teams and those providing evidence or instructions during the week commencing 19 April. I am grateful for this and for all the help received by the court by way of both written material and oral submissions.
29. The help I received contrasts with what was put before Lang J. The claimant's main bundle contained 472 pages and a supplementary bundle contained a further 514 pages. Much of the documentation was of a highly technical nature and in sequence which was difficult to follow. A good deal of time and assistance was needed to navigate this material during the hearing. I had the benefit of very focused and carefully cross-referenced skeletons. The same cannot be said of the Statement of Facts and Grounds put before Lang J, which did not identify the key passages in the application and decision-making documents upon which the legal submissions depended. For example, the list of essential reading referred to 120 pages of such material *en bloc*, without identifying any specific passages and so was of no assistance. This was a serious problem in the present case. A key document for the submissions of all parties at the hearing, the "Method Statement Assessment: Additional Notes", which contained a good deal of the explanation for NE's final decision, and is over 40 pages long, was not mentioned at all in either the Statement of Facts and Grounds or the list of essential reading. It was simply buried within the Supplementary Bundle. NE and IP2 have expressed their concern that these factors might have affected Lang J's consideration of the applications before her.

### **Statutory framework and legal principles**

30. Regulation 43 of the 2017 Regulations provides (so far as is material) :-

“(1) A person who—

(a) deliberately captures, injures or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—



- (i) to survive, to breed or reproduce, or to rear or nurture their young; or
- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- (b) to affect significantly the local distribution or abundance of the species to which they belong.”

31. Regulation 55 provides (so far as is material): -

“(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

(a) ....; (b) ....; (c) ....; (d) ....

(e) preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(f) ....; (g) ....

(3) Regulations 43 (protection of certain wild animals: offences), 45 (prohibition of certain methods of capturing or killing wild animals) and 47 (protection of certain wild plants: offences) do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

.....

(9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied—

(a) that there is no satisfactory alternative; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

32. Accordingly, three tests had to be met to NE’s satisfaction before it could grant the licence dated 30 March 2021:-

- (1) the demonstration of one of the purposes in regulation 55(2), in this case “imperative reasons of overriding public importance, including those of a social or economic nature and beneficial consequences of primary importance for the environment”;
- (2) the absence of a “satisfactory alternative” to the proposal (regulation 55(9)(a));

- (3) the actions authorised will not be detrimental to the maintenance of the population of the relevant species at a “favourable conservation status in their natural range” (regulation 55(9)(b)).
33. NE was satisfied in relation to tests (1) and (2) by the time of their decision on 3 February 2021. The claimant raises no legal challenge in relation to either of those two aspects. NE was not satisfied with the information provided initially to address test (3).
34. It is solely the decision of NE on 30 March 2021 that it was satisfied on test (3), after taking into account further information, which has given rise to this legal challenge. Even then, the claimant’s complaint is concerned with what Mr Streeten described in paragraph 2 of his skeleton as a narrow issue: the licence involves the destruction of maternity roosts of a rare European protected species, the barbastelle bat, “*without certainty* that this will not be detrimental to the maintenance of the population of the species at a favourable conservation status.” Mr Streeten confirmed that the claimant raises no challenge in relation to the way in which the decision-making by NE or the licence deals with other bats as European protected species.
35. It is agreed that the barbastelle bat is a rare species included on the IUCN Red List for British terrestrial mammals. In his first report at paragraph 31 Mr. Woodfield says that the barbastelle is one of the rarest mammals in the UK. The population has been estimated to be as low as 5,000. Few maternity roosts are known in the UK, none in Buckinghamshire and only one in Berkshire.
36. The precautionary principle enshrined in Article 191(2) of the Treaty on the Functioning of the European Union is relevant to the application of regulation 55(9)(b). Thus, where, in the light of the best scientific knowledge in the field, there is a reasonable doubt that a human activity will not have adverse effects on the conservation of habitats and protected species, that activity cannot be authorised (see para. 63 of the Opinion of Advocate General Oe in *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo - Kainbury* [2020] CMLR 1 otherwise referred to as the *Tapiola* case). This principle is implicit in the requirement that it be demonstrated that a derogation will not be “detrimental” to the FCS of a species (*ibid*). It explains what was meant by the CJEU in the passage at [66] cited by Mr Streeten:-
- “In that context, it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation.”
37. Mr Streeten agreed that “certainty” in that passage cannot mean “absolute certainty” for obvious reasons. Instead, as the Advocate General explained, it refers to the absence of reasonable doubt. Indeed, Mr Streeten agreed that the court should proceed on the basis that where the precautionary principle is engaged, the test requires that there be no “reasonable scientific doubt” about the relevant detrimental effect (see Jay J in

*Wealden District Council v Secretary of State for Communities and Local Government* [2017] EWHC 351 (Admin) at [44]).

38. Reg 3(1) of the 2017 Regulations relies on the definitions of “conservation status” and “favourable conservation status” contained in Article 1(i) of Council Directive 92/43/EEC:-

“(i) *conservation status* of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The *conservation status* will be taken as ‘favourable’ when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.”

39. It is important to note that regulation 55(9)(b) focuses on the conservation of the *species*, not individual members of that species. That has to be so because in an appropriate case a licence may authorise even the killing of a wild animal belonging to a protected species (see regulation 43(1) (a)).
40. It is also plain that the identification of the “conservation status” of a species is itself a multi-factoral judgment about the sum of the influences acting on the species in question, affecting its distribution and populations in what is judged to be a long-term period. Whether that status is favourable is another multi-factoral judgment to do with whether the species is maintaining itself as a viable component of its habitat in the long term, whether the natural range of the species is being or likely to be reduced in the foreseeable future, and whether there is and will continue to be a sufficiently large habitat to maintain populations in the long term. Similarly, regulation 55(9)(b) refers to the maintenance of the population of the species at a favourable conservation status *in their natural range*. These tests or considerations are concerned with a much broader perspective than the effects of the development or an activity on the individual specimen or specimens of a protected species on a particular site.
41. Given that it is agreed that none of these considerations have to be established in any given case with absolute certainty, Mr. Streeten accepted, rightly in my judgment, that it is relevant for a decision-maker to consider degrees of likelihood or confidence when evaluating these matters. However, I agree with Mr. Streeten that that approach must accord with the precautionary principle. In other words, levels of confidence, or likelihood, or risk, may be judged to be acceptable if the decision-maker does not consider that there is a reasonable scientific doubt about whether an action authorised by a licence would be detrimental to the maintenance of the population of a species at a “favourable conservation status in their natural range.” On the other hand, as Mr.

Streeten put it crisply, an expression of likelihood, such as the balance of probabilities, should not be *substituted* as a decision-making test for the “absence of reasonable scientific doubt” required by the precautionary principle.

42. As the Advocate General in the *Tapiola* case indicated, the word “detrimental” in Article 16(1) of the Directive (or regulation 55(9)(b) of the 2017 Regulations) is all of a piece with the precautionary principle, and thus with the analysis set out above. The term has to be read together with all the remaining language of the provision. Regulation 55(9)(b) requires an overall judgment to be made comprised of a number of elements, or, as Mr. Glenister put it on behalf of NE, building blocks. I also accept Mr. Glenister’s submission, which Mr. Streeten did not dispute, that the judgment required by regulation 55(9)(b) involves consideration not just of the impact of the activities to be authorised, but also the mitigation and compensation measures to be secured by the licence.
43. It is well-established that the court affords an enhanced margin of appreciation to judgments of a scientific expert deciding issues of the kind raised by regulation 55(9)(b). Furthermore, a challenge to the rationality of a judgment on the application of planning or environmental controls faces a high hurdle (see e.g. *Newsmith Stainless Limited v Secretary of State for the Environment, Transport and Regions* [2017] PTSR 1126; *R (Mott) v Environment Agency* [2016] 1 WLR 4338; *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240 at [170] to [179]; *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at [177]; *R (BACI Bedfordshire Limited) v Environment Agency* [2020] Env L.R. 16 at [98]-[99]). In the present case, the reasoning of NE challenged by the claimant involved evaluative judgment and matters of degree, dependent upon expert technical opinion.
44. The principles determining when fresh evidence and expert evidence may be received in proceedings for judicial review are also well-established (see e.g. *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649). Although the Statement of Facts and Grounds proffered expert evidence in this case in order to help the court understand technical matters (see para. 49), in fact those documents were largely directed at challenging the merits of the judgments reached by NE and advancing alternative expert opinions. Mr. Streeten said that they would be admissible to support the attack on the rationality of certain of NE’s judgments. But where there is room for reasonable differences of opinion, including those of the decision-maker, a rationality challenge cannot succeed (*Law Society* case at [41]). As Lindblom LJ stated in *Plan B Earth* at [180] “the court’s reviewing role does not stretch to determining disputed issues of technical, expert evidence.”
45. There is also common ground on the approach which should be taken by the court to the grant of any injunction (*R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin) at [6] to [7] and [12]; *Packham v Secretary of State for Transport* [2020] EWHC 829 (Admin) at [116] to [117]). First, it is necessary for the claimant to show a real prospect of success on one or more of his legal grounds of challenge. It is accepted by the claimant that if that test is not satisfied that the injunction must be discharged. Second, if that test is met then the court should go on to consider the balance of convenience which includes the public interest issues raised by the effect of the licence on the conservation status of the barbastelle bat and the effect of continuing the injunction on the HS2 project.

46. It is firmly established that decision letters of Planning Inspectors are to be read fairly and with an appropriate degree of benevolence when seeking to understand how a decision was reached. They must be read as a whole and in the context of the material and issues with which the parties to an appeal are taken to be familiar. They must not be read in an overly forensic or legalistic way (see e.g. *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2017] PTSR 1283 at [19]; *St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2018] PTSR 746 at [6] referring to *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 at [41] and [62]-[64]). In that context the Inspector is under a statutory obligation to give reasons for his decision.
47. Here it is common ground that NE was under no general duty to give reasons. The legislation for the grant of derogation licences does not include any requirements for public involvement. There is no opportunity for representations to be made. NE is not deciding issues as between several parties. Instead, it is reaching its own independent determination as to whether to grant a licence. There is no reason why any more rigorous approach should be taken than that summarised in [46] above.
48. There was no dispute about the relevance of the principles in [46]. Indeed, Mr. Streeten went a little further. He submitted that the line of cases which includes *Jones v Mordue* [2016] 1 WLR 2682 should be applied by analogy. The decision-maker in NE should be treated as being familiar with the statutory framework, the precautionary principle and the legal and policy principles applicable to FCS (including NE's policy guidance) and to have taken them into account and applied the relevant tests, unless there is a sufficient, positive contra-indication. I agree.
49. It became clear during the hearing that there is no real disagreement about the principles to be applied to the issues now before the court as summarised above. The dispute between the parties concerns the application of these principles. But the principles are so important to the determination of those issues that it has been necessary for them to be set out.

### **The context for the decision being challenged**

50. The barbastelle is said to have a wide distribution and is thinly spread across southern and central England. Mr. Woodfield states that the species requires a complex mosaic of habitats, in particular large areas of mature woodland or well-connected smaller woodland patches and riparian habitat. Mature trees with cracks and loose bark provide important roosting opportunities. These particular bats prefer pastoral landscapes with deciduous woodland, wet meadows and water bodies, such as woodland streams and rivers. They prefer dead trees with holly understorey. In summer, breeding females move regularly between a large number of tree roosts (see paras. 35 to 37).
51. The court was informed that the site in question does not presently contain water bodies, but the compensation required by the licence includes the creation of such features.
52. Following NE's decision on 3 February 2021 IP1 submitted a revised Application Method Statement and Mitigation Strategy ("AMSMS"). Appendix 10, "Response to NE's Further Information Request", records that barbastelle breeding sites are often associated with transient features such as lightning strikes and tear outs. Such features

are “infrequently present” in the wood in question, given the dominance of beech trees in good condition. Appendix 2 referred to the suboptimal quality of the wood for barbastelle, noting a lack of thick understorey and few dead trees.

53. The home range for a barbastelle colony, or the colony sustenance zone, is given as 6km. IP1 obtained records of any sightings within 6km. There was one 2km away from the Wood in 2016. The Environmental Statement for the project prepared in 2013 noted there were no records within 5km of the HS2 line and none in the Wendover area during surveys in 2013. No barbastelles were found within 3km of the Wood according to the 2020 surveys carried out by SES. Another ecologist (Ecotech) found a Barbastelle “day roost” in September 2020 in an old oak outside the statutory limits for the HS2 scheme on the eastern edge of the woodland. This was the outcome of surveys carried out in “late summer 2020” and on 29 September 2020. One barbastelle was seen.
54. Within the relevant part of the HS2 limits there are a few hundred trees. An initial ground assessment of all those specimens was made to identify those trees, 37 in number, which merited further survey. The remainder had only negligible potential for bat roosts. According to Appendix 1 to the AMSMS, of the 37 trees within HS2 limits, 19 are to be felled and 18 are to be retained in an ecological management zone. Overall, 2 out of the 37 trees were assessed as having features with high suitability for roosts for bats generally, 12 moderate, 16 low and 7 negligible. Of the 19 trees to be felled with suitability for bat roosts, only 1 tree was assessed as having high suitability, and 11 were assessed as moderate and 7 as low. According to guidelines issued by the Bat Conservation Trust, even trees with moderate suitability are unlikely to support a roost of high conservation interest.
55. Only one of the trees to be felled was considered to have the potential to support a barbastelle breeding site. However, appendix 10 to the AMSMS notes that the feature in question “is not a typically favoured roost site.” But because it had not been possible to inspect the feature fully, and given the limitations on the data collected for the licence application, it was *assumed* that a barbastelle breeding site is present as a worse case scenario. Plainly, it is impossible to divorce the making of this assumption from all the scientific evidence and opinion gathered in the application documents on the degree of likelihood that the tree would be used as a breeding site if it were not to be felled. The worse case assumption also assumed that there is one barbastelle resting place potentially present in the Wood. It is then a matter of judgment for the decision-maker as to what are the implications of a worse case assumption. At times the claimant’s evidence and submissions appeared to be turning this assumption into an artificial construct far removed from the reality of the circumstances of the Wood and the local area. That is not what the precautionary principle requires.
56. The material submitted by IP1 in Appendix 10 also gave detailed consideration to the habitat available for barbastelle which would remain and not be affected by the HS2 project. This is plainly of relevance to the application of the FCS test. There are 2,670.4 ha of deciduous woodland within 6km, of which Jones Hill Wood represents 0.07% as a resource for barbastelle. Within HS2 limits and within 6km of the Jones Hill Wood, 140 trees out of 487 trees suitable for bat roosting would remain. By extrapolation it was estimated that over 88,000 trees would be suitable for bat roosting within 6km but outside HS2 limits. It was explained why that extrapolation was likely to provide an under-estimate. “Given the expanse of the habitat available, it can be assumed that the



surrounding landscape is not at carrying capacity for [Natterer's bat or barbastelle] and that if bats from JHW were displaced, their colonies would continue to persist within the local area." On this basis, the loss of 0.7ha of woodland at Jones Hill Wood would amount to no more than 0.02% of the overall estimated tree roosting resource for barbastelle within 6km. Accordingly, the removal of that woodland would have an impact no higher than the "local level", based on the worse case scenario that a maternity colony is assumed to be present. The analysis also considered "core foraging areas" less than 6km. The retained woodland within a minimum range of 3km did not alter that conclusion. "Given the roost-switching nature of the barbastelle.... it is likely that bats would switch to another suitable tree within the local landscape and continue to forage across the 273.3ha of retained woodland within their minimum 3km core foraging range"

57. I acknowledge that some of the material to which I have referred above is disputed by the experts instructed by the claimant. But as I have already explained, the judicial review procedure does not enable such disputes to be resolved by the court. For example, Mr. Woodfield expresses the view that there may be a greater number of barbastelle roosts in the Wood. However, Mr. Streeten rightly accepted that there is no legal basis for the claimant to challenge the worst case assumptions which have been accepted by NE.
58. The matters to which I have referred inevitably represent only a selection of the highly detailed analysis carried out in a suite of documents for IP1. NE concluded *inter alia* that:-

"At JHW, due to the large areas over which bats forage, the wider available foraging resource (adjacent woodlands in the vicinity) and the extensive habitat creation measures to be delivered, it can be concluded that the activities authorised under the licence will not be detrimental to the maintenance of the population of the bat species concerned at a favourable conservation status in their natural range."

### **A summary of the grounds of challenge**

59. Mr. Streeten summarised the grounds of challenge in paragraph 5 of his skeleton. NE erred in law in that:-

#### **Ground 1**

It failed to apply the correct approach under regulation 55(9)(b) of the 2017 Regulations. Specifically, it did not ask itself whether the proposed works would not be detrimental to the maintenance of the FCS of population of the barbastelle on the basis of the best available scientific information, giving the benefit of the doubt to conservation. It did not require "certainty", as it should have.

#### **Ground 2**



It failed to give reasons justifying a departure from its own policy/guidance documents and/or failed to have regard to obviously material considerations;

**Ground 3**

It erred in fact regarding the whether HS2 had consent to erect the mitigation proposed;

**Ground 4**

It failed to give reasons justifying the inconsistency of its decision with its previous decision refusing the IP's application for a derogation licence;

**Ground 5**

It acted irrationally in that it failed to acquaint itself with sufficient information reasonably to be able to take a decision, relied on documents which are internally inconsistent and contradictory resulting in a decision which simply does not add up, and reached a conclusion which no rational decision maker, properly directed, could have reached.

60. Ground 3 was simply concerned with whether IP2 had control of an area of land in which it was proposed to locate certain of the compensatory bat boxes. On 14 April 2021 NE told IP1 that no work authorised by the licence should proceed until it was established that it could be carried out in accordance with the conditions of the licence. On 18 April 2021 IP1 prepared a modified location plan under the conditions of the licence relocating certain of the bat boxes. On 20 April NE gave their “formal agreement” to the amendment. At the hearing it was suggested that IP1 might lack the necessary legal control for the revised locations. Mr. James Strachan QC for HP2 disputed that assertion. I asked counsel to discuss the issue over the luncheon adjournment to see whether this could be resolved. When the hearing was resumed, Mr. Streeten told the court that the claimant was not pursuing ground 3. I will refer to the remaining grounds by their original numbering.
61. In this judgment I will address the grounds pleaded in the light of the written and oral submissions. Attempts were made to raise further issues in the expert evidence and also in oral submissions. I indicated that I would not deal with these points in the light of *R (Dolan) v Secretary of State for Health and Social Care* [2021] 1 All ER 780. Subject to that, I have considered all of the submissions made, and the documents to which I was referred.

**Ground 1**

62. Mr. Streeten submits that the NE's approach to the FCS test failed to apply the precautionary principle required for regulation 55(9)(b) which requires reasonable scientific doubt to be removed. With respect, that submission lacked necessary precision. Instead, the law required NE to be satisfied that it had no reasonable scientific doubt that the licensed actions would not be detrimental to maintaining the barbastelle population at a favourable conservation status in their natural range. That is a judgment which is applied to the overall effect of the licence, not simply for example, the tree-felling authorised, but also all the mitigation and compensation measures required by

the licence. That judgment is made in the context of those matters considered by NE to affect the conservation status of the barbastelle at the local level and more widely.

63. It is common ground that both NE's licensing decision on the FCS test and the licence itself expressly referred to the test which regulation 55(9)(b) required to be satisfied. NE concluded that in the absence of mitigation, there would be an adverse effect on the conservation status of the assemblage of bats within the licence area. For the more common bats it was judged that the impacts could be significant at the site level and for the rarer species up to the local level. NE then addressed the mitigation and compensation measures and monitoring that would be secured by conditions of the licence. Taking into account also the wider area over which bats may forage and roost, NE reached the conclusion that the activities to be licensed would not be detrimental to the maintenance of each species at a favourable conservation status within their natural range.
64. Accordingly, Mr. Streeten accepted that ground 1 depends upon the claimant being able to identify sufficient, positive contra-indications which show that NE's decision did not comply with the precautionary principle.
65. He relied upon two statements in the Method Statement Assessment: Additional Notes document which summarised further information supplied by IP1 after the decision dated 3 February 2021 and NE's reaction thereto. First, taking into account the extensive amount of woodland available for barbastelles within either 3km or 6km of Jones Hill Wood, it was said by IP1 that the loss of 0.7ha was "unlikely to have a significant impact at any higher than the local level on the breeding colony (if present)." Second, NE concluded that "there is reasonable likelihood that the loss of roosting, foraging and commuting resource will impact the species at the site level only ...". Mr. Streeten submits that these references to likelihood are inconsistent with the need to exclude reasonable scientific doubt.
66. This contention is unarguable. As I have previously explained, and is not in dispute, expressions of likelihood may be taken into account as factors in a FCS assessment. But NE did not commit the error of substituting "likelihood" as a test for absence of *reasonable* scientific doubt. The precautionary principle does not require the exclusion of *any* scientific doubt. NE explained in several places where they considered the information provided to be satisfactory.
67. I also note NE's reasoning in the following passage:-

"It has been identified that a barbastelle maternity roost could be present in the assessment of the possible worst-case scenario. This is considered to be unlikely. Even if a barbastelle maternity roost is present it is likely to be occasionally used, with small numbers of bats present and part of a much wider roosting resource for the colony. The works will be compensated and mitigated for in accordance with the predicted worst-case scenario assessment.

GfA single tree (1EW03-SOE-BF005627) has been identified with the potential to support a barbastelle maternity roost and

this tree cannot be fully inspected; however, the potential roost feature comprising a trunk cavity (1m above ground level) does not appear to be particularly suitable and not characteristic of barbastelle. Roost cavity preference is mainly beneath loose bark and at a greater height above ground, usually above the understorey and facing south more frequently than in random cavities.

The further clarification regarding roosting and foraging resource and the importance of JHW to the bat assemblage predicted is provided with clear justification and referencing of data sources and peer reviewed papers throughout. The further information provides context regarding the importance of the site relative to the wider landscape. The loss of 19 trees comprising 0.7ha of the woodland will be a minor impact at the site level only to the bat assemblage considered in the worst-case scenario assessment. The justification provided regarding barbastelle roosting preferences, the potential roosting resource at JHW and the constrained survey of tree reference number BF005627 is fully justified and the supporting information provided in Row F of the table in Appendix 10 is satisfactory.”

68. Taking into account the limitation of the survey data, a worse case scenario has been assumed that a barbastelle breeding roost is present in one tree. That has resulted in a mitigation and compensation package being approved by NE. That approach does not preclude regard also being had to factors making it unlikely that the barbastelle is present in the Wood. These are all legitimate matters of evaluative judgment for the decision-maker.
69. I reach the same conclusion in relation to Mr. Streeten’s third example taken from the “Licensing Decision” document. The first three pages of the document record that NE was satisfied with the material put forward by IP1 under 5 headings in a checklist leading to the conclusion that the test in regulation 55 (9)(b) had been satisfied. The document does not repeat NE’s underlying reasoning. That had been set out elsewhere. Mr. Streeten relies on one sentence on the fourth page of this document: “Medium risk due to the extreme use of LP4 and the potential presence of the barbastelle.” The impact was also described as “medium” but that simply reflects the loss of an *assumed* maternity roost (p. 37 of the Bat Mitigation Guidelines) and not all the other considerations taken into account in NE’s more detailed reasoning. The heading to the fourth page explains that it is dealing with the adviser’s “licence recommendations” to the technical services licensing team “*following* a satisfied decision being reached on the FCS test.” This text should not be wrenched out of context and treated as explaining NE’s FCS decision. For that it is necessary to look at the detailed documentation dealing with that aspect, to which I have already referred. Much of the focus of the remaining parts of this document is on provisions for inspection and compliance under the licence.
70. Next Mr. Streeten referred to one line in table 3 of schedule 2 to the AMSMS, where the entry against “conclusions on worse case local population conservation status” is “unknown.” He suggested that this involved a failure to assess the impact of the proposed licence on the conservation status of the barbastelle population at the local

level, contrary to [61] of *Tapiola*. There is an air of unreality about this submission. The straightforward point has been made in table 3, and in much more detail elsewhere, that what is being referred to is a lack of observations of the barbastelle recorded in the local area. Similarly in relation to the Wood, table 3 assessed that if the barbastelle is present in that location at all, it would be in “very low numbers”. None of this reveals any arguable legal error or failure to apply the precautionary principle. Instead, table 3 went on to explain the worse case assumption that was being adopted for the purposes of assessment.

71. The criticisms made of NE fail to read the documentation as a whole. The claimant’s case involved highly selective filleting of the material and an excessively legalistic or forensic approach.
72. Finally, Mr Streeten relied upon the criticisms of NE made under ground 4, namely that NE had failed to address points of dissatisfaction they had raised in their decision dated 3 February 2021. For reasons set out below, I do not consider ground 4 to be arguable. It does not assist the claimant under ground 1.
73. For all these reasons, I consider ground 1 to be unarguable.

## **Ground 2**

74. Mr. Streeten submitted that the defendant had departed from policies in two of its documents without dealing with the matter in its reasoning (see *R (UTAG) v TFL and Mayor of London* [2021] EWHC 72 (Admin) at [106]-[107]).

### *Bat Mitigation Guidelines*

75. This document was published in January 2004. Mr. Streeten relied upon Figure 4 at p.39 which ranks requirements for mitigation and compensation according to the “status” of the roost. At the “high significance” end of the scale the guidance given for maternity sites of the rarest species is that, “depending on the impact”, there should be no “destruction of former roost until replacement completed and significant usage demonstrated.” Mr. Streeten criticises the licence because it does not require any significant usage of the bat boxes by barbastelle bats to be demonstrated before any tree containing a roost may be felled.
76. Mr. Glenister replied that the Method Statement Assessment: Additional Notes does expressly refer to the Guidelines although not to the particular passage relied upon by the claimant.
77. Figure 4 needs to be seen in context. The Guidelines explain that the level of mitigation required depends on the size and type of impact and the “importance of the population affected.” This is a complex site-specific and species-specific issue. Figure 4 only purports to give “general guidance” as to what would be an “appropriate starting point” for preparing a mitigation scheme.
78. When this issue is considered properly and in context, the claimant’s criticism, once again, has a complete air of unreality about it. NE’s judgment is that barbastelle are unlikely to be present in the Wood. But the Guidance proceeds on the basis that a maternity site is *in fact* present (i.e. no destruction of “former roosts”). Then the

claimant's argument fails to address the conditions of the licence. As we have seen, they prevent felling during both the hibernation season and the maternity season. Condition 13 prohibits the licensed activities from taking place while any *actual* maternity roost found to be on site is being used for that purpose. In reality, the bat boxes provide compensation for the loss of what is no more than a single "potential roosting feature" in one tree, which would not be "typically favoured" by the species. NE's decision also had regard to the substantial availability of habitat within 3 or 6 km, in addition to the compensation and mitigation measures.

79. The licence and the reasoning in the documentation make it perfectly obvious why there was no need to require the bat boxes to be significantly used by a breeding barbastelle before a maternity roost is destroyed. Read sensibly and fairly, and avoiding a legalistic approach, there was simply no need for NE to refer expressly to the "starting point" in Figure 4. NE's consideration of this issue had gone far beyond that starting point. The claimant's criticism is unarguable.

*Policy LP4*

80. Surveys were carried out for IP1 in October 2020 after the maternity season for that year had ended. NE referred to this point in its decision dated 3 February 2021. It said that "further hibernation surveys" were required to be carried out before the application for a licence could be resubmitted. However, I note that NE did not consider that any resubmission would have to await the carrying out of a survey for any maternity roosts between May and August 2021. The extent to which further surveying was required so that NE could make a decision under regulation 55(9)(b) was a matter for their judgment.

81. Because IP1 was aware that a less than full suite of surveys had been carried out, its licence application was made relying upon NE's policy LP4 which states:-

"Natural England will be expected to ensure that licensing decisions are properly supported by survey information, taking into account industry standards and guidelines. It may however accept a lower than standard survey effort where: the costs or delays associated with carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring; the ecological impacts of development can be predicted with sufficient certainty; and mitigation or compensation will ensure that the licensed activity does not detrimentally affect the conservation status of the local population of any EPS."

82. Paragraph 2.1 of the policy document explains that LP4 is expected to apply predominantly to bats and great crested newts. The policy provides the opportunity to reduce survey requirements where the impacts of development on a species can be predicted confidently (para. 3.1). The policy arose from concerns that there had been insufficient flexibility in requirements for surveys and the suggestion that greater reliance be placed on expert judgment (para. 3.2). There were also concerns about high survey costs and delay, whereas the costs of precautionary mitigation are relatively moderate in many cases (para. 3.5).

83. Against that background paragraphs 4.1 to 4.3 states:-

“4.1. Good survey information must remain the cornerstone of our decision making. We do not wish to see survey standards diluted, and we must not accept poor quality surveys that pose unacceptable risks to EPS.

4.2. As such this policy must only be used if the following circumstances apply:

- the costs or delays associated with carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring
- the ecological impacts of development can be predicted with sufficient certainty
- mitigation or compensation will ensure that the licensed activity does not detrimentally affect the conservation status of the local population of any EPS

4.3. We feel that this proposed policy offers further scope to increase flexibility and pragmatism to survey standards, in circumstances where a reduced surveying effort can be clearly justified, and where safeguards can be provided in the form of mitigation or compensation measures. We recognise the risks of relying on expert judgement but if we use this policy in a way which will reward expertise and good judgement this could help to drive up standards.”

84. Paragraph 5.1 states:-

“This assessment requires us to find the right balance between obtaining information through surveying, and relying on expert judgement. A number of factors will be relevant including:

- The amount of money a full survey programme would cost, relative to the scale of the project and the scale of potential impact
- The delays that would be incurred if it was necessary to stop work and wait for a full survey programme to be undertaken
- The level of surveying that it is possible to undertake. For example:



- if bats are discovered towards the end of the survey season there may still be time to undertake a proportion of the standard survey requirements;
  - If health and safety concerns prevent access to a building, it should still be possible to perform”
- 85. Paragraph 6.2 indicates that whether ecological impacts can be predicted with “sufficient certainty” will depend on “whether the situation is routine or whether it is novel or complex.”
- 86. Paragraph 7.1 states:-

“There needs to be the same level of confidence that the 3 licensing tests are met as there would be if standard surveys were carried out. This policy is about using alternative information to survey data, not about lowering the level of confidence required to make decisions.”
- 87. In its decision letter dated 3 February 2021 NE stated:-

“Due to the proposed use of LP4 and your predicted worst-case scenario assuming the presence of barbastelle maternity roost, additional clarity will be required before the Favourable Conservation Status test for barbastelle can be met. For a rare species of bat such as barbastelle, the use of further advanced level bat survey techniques would normally be required in addition to the standard baseline surveys. This would inform how the colony utilises the development site and wider landscape, in order to assess the importance of the site for the continued viability of the colony and to fully assess the impacts of the works on future breeding success.”
- 88. Mr. Streeten emphasises that NE asked for further information on how the woods are being used to establish how important the application site might be within a bat population’s home range. But I note that they also asked for more information on other related aspects, such as the likelihood of breeding roosts being present, the likelihood of the single tree identified being used by barbastelle, whether it is “typically favoured by the species”, the wider impact of the roost and habitat loss, and how the foraging resource on the site functions in the wider landscape. Just as when we come to deal with the answers given, it is important not to look at particular questions in isolation when it is obvious that the subject-matter is inter-related.
- 89. As I have mentioned, IP1 provided a substantial amount of material in reply, some of which the court has been taken to. It included additional hibernation surveys and a walk-over survey, the use of bat detectors and the availability and extent of potential roosts and habitat in the wider area.
- 90. Mr. Streeten submits that in its decision reached on 30 March 2021, NE failed to apply the requirement in paragraph 7.1 that “the same level of confidence” as would have been achieved if “standard surveys” or indeed those indicated in February 2021 had



been carried out. He submits that no information was given about “the importance of the site for the continued viability of the [barbastelle] colony.” Instead, it was simply said that the local conservation status was “unknown”. No justification was given for not requiring the “normal” level of certainty required.

91. I have already rejected several of these criticisms. In my judgment, it is fanciful to suggest that adequate information was not given about the importance of the site for barbastelle. Mr. Streeten speaks of the “continued viability of the colony” as if it actually exists. But the worse case scenario is simply an assumption which enabled the effects of, for example, the loss of one potential maternity roost to be assessed in the broader context explained by IP1 and also precautionary mitigation to be identified, both as inputs to the application of the statutory test laid down by regulation 55(9)(b).
92. It is particularly important that the Method Statement Assessment: Additional Notes is read as a whole. Towards the beginning of this assessment the author expressly set out key paragraphs from the LP4 policy document, including those upon which the claimant relies.
93. Mr. Streeten says that NE’s document does not set out a response by IP1 or by NE to the point made in the February 2021 decision that advanced level techniques would normally be required. But this part of the March 2021 document must be read in the context of NE’s assessment of the additional information supplied by IP1 in other parts of that document, both before and after the short section referred to by Mr Streeten. I have already referred to some of this material (see e.g. [67] above). In addition, NE expressed its satisfaction with the adequacy of the information it had received. NE also had regard to the low number of the trees to be felled, habitat quality, size and connectivity of the woodland. It regarded the further tree inspections carried out as “very thorough.” “The professional opinion of the ecologist regarding roosting potential for hibernating and breeding bats is satisfactory”.
94. It is therefore impossible to argue that NE failed to have regard to any aspect of policy LP4. In effect the claimant is really seeking to argue that NE has failed to *apply* the policy in paragraph 7.1 that the same level of confidence be achieved as if “surveys had been carried out” (claimant’s skeleton at para. 53(b)). But having clearly referred to the relevant policy requirements, the question is whether there is any positive indication in NE’s document that it has departed from its policy. In my judgment there is none. This has simply been an attempt to argue that NE has departed from its policy from the way in which it has handled the technical information supplied by IP1. But this complaint is simply unarguable. NE has expressed its satisfaction with the overall information supplied to it in the context of applying the guidance on policy LP4. It has not sought to lower the level of confidence which it judges to be appropriate in the circumstances of this case when applying regulation 55(9)(b).
95. Equally, the suggestion that LP4 is inapplicable to situations which are “novel or complex” is unarguable. This is not what the policy document states and no question of law arises. Instead, this is a matter of expert judgment for NE.
96. There is also nothing in the complaint that there is no adequate scientific evidence to support the use of bat boxes as mitigation for the loss of maternity roosts for barbastelle bats, particularly where there is disruption caused by the felling works (paragraph 53(c))

of the claimant's skeleton). NE has relied upon scientific papers published in 2004 and 2018 to support the use of bat boxes for this species in woodland. It is NE's judgment that this mitigation is also appropriate in this case where felling is to take place. Mr Woodfield's report states that other experts disagree. That is a legitimate dispute between experts, but it is not a legitimate ground for judicial review. Furthermore, as Mr. Strachan QC, points out, additional mitigation will be provided, including avoidance of the felling works during the breeding season. There is also the availability of extensive areas of other woodland.

97. For all these reasons, ground 2 is unarguable.

#### **Ground 4**

98. Mr. Streeten relies upon the principle established in planning law that where a decision is taken which is materially inconsistent with a previous decision, it must ordinarily give reasons for disagreeing with that decision (*North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137). NE submitted that this principle does not apply to decision-making under regulation 55. I will assume that it does.
99. The alleged inconsistencies relied upon are set out in paragraph 57 of the claimant's skeleton, comparing the Method Statement Assessment: Additional Notes with the decision letter dated 3 February 2021. In summary the points are:-
- (i) NE no longer maintained that for a rare species of bat, such as the barbastelle, advanced level survey techniques would be required, in addition to standard surveys, to inform how the colony used the license site and the wider landscape and to assess the importance of the site for the continued viability of the colony and the impact of the works on future breeding success;
  - (ii) In relation to the predicted scale of impact of the felling, NE changed its position from treating the conservation status of a barbastelle maternity roost from regional to local;
  - (iii) NE ceased to be concerned about the adequacy of the proposed arrangements for monitoring the success of the compensation measures given the lack of sufficient baseline data.
100. It should be remembered that the decision dated 3 February 2021 was not a final decision, as, for example, where planning permission has previously been granted or refused for a particular type of development on a site. Here, NE's earlier decision did not rule out in principle the grant of the licence sought. Instead, it indicated a number of areas where further information, explanation, clarification or proposals were judged to be necessary.
101. Dealing with the claimant's point (i), it is to be noted that the decision letter of 3 February 2021 stated that advanced level surveys would *normally* be required. The letter did not in fact lay down any such requirement in this case. The immediately preceding sentence sought clarification. In fact the interaction between NE and IP1 is

easier to follow in row E of IP1's document dated 5 March 2021 responding to NE's requests for further information, where there is less disaggregation of the material. IP1 also relied upon the information in row F dealing with impacts. Following the decision in February 2021, IP1 carried out further surveys and provided further information to support the case that there was only one tree of potential interest for the barbastelle and that that species was unlikely to be present. NE made it plain that they were satisfied with the information provided. NE was not obliged to go further and spell out that analysis to show how "the colony utilises the development site and the wider landscape" was unnecessary, given that it was unlikely that the barbastelle was present and, even if it was, its presence would be only occasional and in small numbers, taking into account the much wider roosting resource available.

102. There is nothing in the complaint under (ii). NE had merely said that a paper published by Wray in 2010 had considered a maternity roost to have regional importance. The defendant did not go as far as to say that it adopted that assessment for this particular location. Instead, it asked IP1 to justify its assessment. It is apparent from the papers that IP1 provided that justification and NE accepted it. NE's position in deciding to grant a licence did not involve any disagreement with its earlier position so as to require any further reasoning, according to the law.
103. There is also nothing in point (iii). NE asked for further information. IP1 referred to the further material they had submitted on monitoring. It is plain from the decision document that NE was satisfied with the information ultimately provided. Mr. Glenister also drew attention to regulation 47 of the 2017 Regulations which will enable NE to amend the licence in response to the monitoring reports it receives during the 10 year duration of the licence. Once again there is no change of position on the part of the decision-maker requiring the provision of any additional reasoning.
104. Mr. Streeten advanced a new point in his oral submissions that NE had failed to address its earlier criticism that the 2020 surveys should be re-assessed so as to disregard any discouragement of bats resulting from the presence of a protestor's camp in the vicinity. IP1 explained that its surveys on potential roost features aligned with results obtained in 2016, in relation to which there is no suggestion that protestors were present. Reference was also made to the surveys in the 2013 Environmental Statement. NE stated that it was satisfied with the material provided. No error of law arises.
105. Ground 4 is unarguable.

## **Ground 5**

106. Under this ground the claimant alleges irrationality. The claimant does not arguably surmount the high hurdle which applies to challenges of this nature, particularly in the field of specialist scientific expertise.
107. Mr. Streeten began by relying upon submissions which he had made under other grounds and which I have already rejected as unarguable.
108. He also submitted that NE had failed to take reasonable steps to obtain information to enable it to make its decision lawfully. However, the "Tameside principle" has been qualified by the decision in *R (Khatun) v Newham London Borough Council* [2005] QB

37 at [34] – [36]. The decision-maker’s judgment on how much information to obtain can only be challenged on the grounds of irrationality. No arguable basis has been shown for a challenge of that kind in this highly specialist field.

109. Finally, Mr. Streeten relied upon *R (Balchin) v Parliamentary Commissioner for Administration* [1996] EWHC 152 (Admin) at [27] for the proposition that a decision “which does not add up” because “there is an error of reasoning which robs the decision of logic” is flawed for irrationality. The four steps in his argument were set out in paragraph 61 of the claimant’s skeleton. Some of the points involve a misreading of material accepted by NE, or are simply an inappropriate challenge to their judgment, for reasons I have already given. But, in any event the claimant has inappropriately filleted four points from the overall material accepted by NE. The argument suffers from the elementary flaw of failing to read both that material and the decision as a whole. It wrongly assumes that there was no other material going to the rationality of this decision when there plainly was.
110. Ground 5 is unarguable.

### **Interim injunction**

111. Because the proposed grounds of challenge are wholly unarguable, and certainly do not satisfy the “real prospect of success” test, the injunction granted by Lang J on 16 April 2021 must be discharged.
112. However, I have gone on to consider the balance of convenience on the assumption, contrary to my judgment, that one or more of the proposed grounds of challenge has a real prospect of success. I will set out my conclusions on this aspect briefly.
113. The first issue is whether to continue the injunction would effectively dispose of the claim, because in practical terms IP2 would cease to be able to rely upon the licence by the time a rolled-up hearing might take place towards the end of May. Although condition 7 of the licence prohibits felling during the maternity season assumed to begin on 1 May, condition B12 also prohibits felling until the hibernation season ends, as expressed by the temperature criterion. It was suggested that there might be some leeway for the licence to be modified, so as to reflect a recent spell of cold weather, and that a super-expedited rolled-up hearing could take place before an assumed delay to the start of the breeding season. Unfortunately, this is subject to the vagaries of the weather. Mr Glenister said that he had been told that NE might be prepared to treat the start of the breeding system as delayed, but only by a week or so. In any event, up to 2 weeks would be necessary for evidence to be filed in response to the claim, final submissions would have to be prepared, time allocated for a 2 day hearing with pre-reading, time would be needed for the preparation of a judgment and then 3-4 days for the felling to take place. Realistically I can have no real confidence that felling could take place before the time limit in a revised condition 7 would apply to protect any delayed start to the breeding season. Accordingly, a continuation of the injunction would effectively preclude reliance by IP2 on the licence granted on 30 March 2021.
114. I accept the evidence in Mr. Dineen’s witness statement as to the impact which delay in felling the trees would have on this part of the HS2 project. If the felling could not take place until October 2021, earthworks could not begin until March or April 2022.

Currently those works are scheduled to begin in June 2021. In paragraph 5 of IP2's submission to the court dated 14 April 2021, a conservative estimate of the costs of the delay was given in the broad order of £25 to £50m. Mr. Dineen now says that those figures have been re-assessed as being in the range of £60.7-£88.8m. His statement dated 19 April 2021 was accompanied by a schedule. Plainly there has not been time for the claimant to consider this in any detail or to raise any questions. The claimant simply says that these costs will not be incurred because the claim could be dealt with at a super-expedited hearing, a point which I have already rejected. I proceed on the basis that the continuation of the injunction would cause additional costs in the region of at least £25m to £50m, and probably substantially more. I attach very considerable weight to this factor.

115. I also attach considerable weight to the public interest in the continuation of work on the HS2 project without substantial interruption. Parliament has decided that it is in the public interest for the project to be undertaken and the Government has subsequently confirmed that it continues to agree with that decision (see e.g. *Packham*). There is no challenge to NE's decision in this case applying regulation 55(2)(e) to the works which are the subject of this dispute.
116. Mr. Streeten submits that the injunction should be continued in order to preserve the current *status quo*. It is necessary to be clear as to what is meant by this. It cannot mean merely the retention of the 19 trees within the licence site. The relevant *status quo* must have a more limited ambit. The object of the injunction sought is to prevent reliance upon the licence where, it is said, legal errors have been made in the application of the FCS test. So, the question is whether the injunction is necessary in order to avoid a significant risk to the maintenance of the favourable conservation status of the barbastelle. Mr Streeten accepted that that is the correct approach.
117. Even if it were to be arguable that NE has made an error of law in one or more of the respects alleged, I am not persuaded that the injunction is necessary to avoid that risk, or, alternatively, that any significant weight should be attached to that factor. I reach that conclusion after having considered all the ecological material before the court as a whole. I do not propose to analyse the varying conflicting points of view. I mention, by way of example, certain factors which have been accepted by NE the independent statutory authority responsible for applying regulation 55. There is only one tree in the licence area of relevance. It is not particularly attractive for breeding by the barbastelle. The habitat of the site itself is sub-optimal. On the other hand, there are many potential opportunities within 3 or 6 km for roosting by the barbastelle, including maternity roosting, in so far as the species may be present in the area. In my judgment, the evidence does not persuade me that the maintenance of the FCS of the barbastelle depends upon, or is affected by, the retention of the 19 trees.
118. Mr Strachan QC rightly did not pursue the issue of delay in relation to the continuation of the injunction.
119. A few other peripheral matters were raised (e.g. conduct), but I attach no significant weight to any of them.
120. I have no hesitation in concluding that the balance of convenience comes down firmly in favour of the injunction being discharged.

## **Conclusion**

121. The application for permission to apply for judicial review is refused and the injunction on 16 April 2021, as varied on 23 April 2021, is discharged. I reiterate my gratitude for all the help I have received from the parties and legal teams in this case.

# **Report on HS2 Ltd's Bowood Lane Mitigation site**

**29th August 2021**

This report is written by Mark Keir, of Jones' Hill Wood.

I have no formal qualifications in ecology, but I do have RHS Advanced Certificate and 25 years or more experience as a gardener/horticulturalist.

Having been central to much of HS2 Ltd's recent angst in Court, I have also spent many, many hours studying HS2's Environmental Statement, Ecology Site Management Plan, Natural England Licences and other documentation relating to HS2 works around Jones' Hill Wood and the Bowood Lane mitigation site.

## **Overview**

HS2's proposed route cuts through the SW corner of Jones' Hill Wood, an ancient woodland in the heart of the Chilterns AONB. The Act of Parliament specified extensive mitigation adjacent to the Wood to in some degree, ameliorate the destructiveness of the construction and to adhere to the often repeated aspiration to no net loss to biodiversity.

Further to the originally planned mitigation, Fusion JV (main HS2 contractor at this point) had been forced in October 2020 through Court action to survey Jones' Hill Wood for a first time, apply for appropriate licence from Natural England (WML OR 58) and draw up considerable extra mitigation works to comply with that licence.

The issue of the Licence was called to question through the Courts and was the cause of some considerable concern to HS2 Ltd and Fusion JV, highlighting as it did HS2's much vaunted environmental ethics and their ability/inability to demonstrate their adherence to same. It might be assumed therefore that holding rigidly to the licence conditions would be a priority, and that the very best mitigation work would be put in place.

This report looks at that mitigation, it's present standard and likely success going forward, and how it measures up to compliance with that licence.

The map in Fig 1 shows the parcels of land involved.



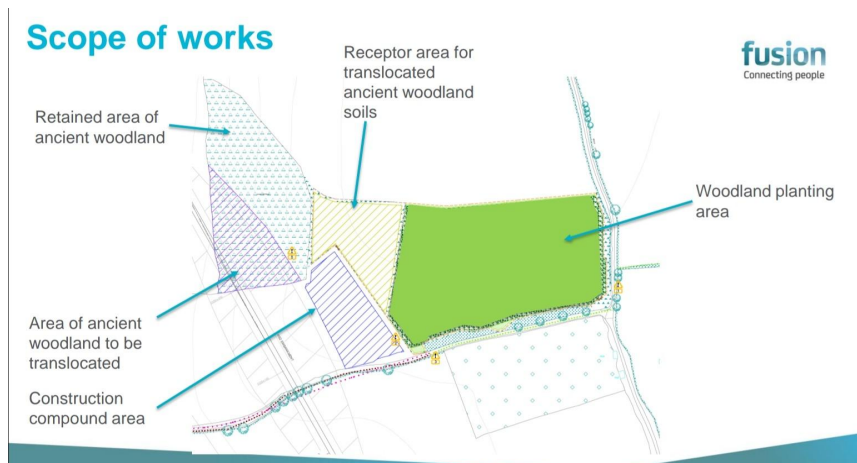


Fig 1

The areas of importance to this report are: "Receptor area for translocated ancient woodland soils", "Woodland planting area" and Jones' Hill Wood ("Area of ancient woodland to be translocated" and "Retained area of ancient woodland") itself.

What I have observed does not put HS2 Ltd in a good light. My observations have been made from the perimeter fence, with no access to the sites given to "protesters" or anyone else for that matter, but even from that sometimes distant vantage, there seems little to celebrate.

## Receptor Site

The receptor site host soil was compacted (Fig 2) pretty much daily with heavy machinery over the whole of winter '20/21 and was waterlogged much of that time. This was never ameliorated.



Fig 2

Translocated soil was placed well out of acceptable season in April/May '21. The translocated ancient hedge (possibly 1500yrs old) was moved in April in dry desiccating winds. The translocated trees including those for live specimens were moved as late as late May, even into June 2021. Other whips and pot grown stock were planted May/June '21. None of these movements come even close to standards laid out in the Environmental Statement.

Of the translocated ancient hedge, it appears one plant is surviving, six barely surviving and unlikely to succeed. The other seventeen are quite dead including yews and hollies (Fig 3).



Fig 3

Few if any of the translocated trees taken for live specimens in the site have survived (Fig 4). In the receptor site there is a large empty space possibly equivalent to over a third the total area suggesting the area of mitigation falls well short of area of woodland destroyed (Fig 5). In addition to this the long new front to the ancient woodland, composed of newly exposed etiolated weak trees suggests that there will be much secondary damage unaccounted for in ecologists assessments.





Fig 4



Fig 5



Fig 6

The supposed bat flightline trees within the receptor site are, as far as bats are likely concerned, lost amid a jumble of erratically placed considerably larger trees and monoliths (Fig 7).



Fig 7

Bat boxes placed within the receptor site are unlikely to see any shelter from weather or light for at least 30 years. Presumably the fragmentation of habitat so ruthlessly executed will likely not be repaired any time before that.

A 2m wide strip of heavy weed infestation along the hedge line appears to have had an application of herbicide in August '21

There are many smaller whips and pot grown plants added to the hedge and throughout the translocated site. These tend to be deep in weeds so only a rough estimate of around 25 - 30% attrition can be given (Fig 8)





Fig 8

The immediate impression of the site is of something reminiscent to a WW1 battlefield. The Jones' Hill community long ago referred to this area as "The Graveyard".

### **Bat Flight Lines**

There are two main lines of nursery grown semi-mature trees planted as flight corridors for bats, planted across the receptor site and the woodland planting site. Within the receptor site, as mentioned above, it is unlikely that these trees form any legible guide to bats (Fig 7).

The majority of these trees appear heading toward untimely death. (Fig 9, Fig 10)



Fig 9



Fig 10



Along the contiguous northern perimeter of the receptor site and woodland planting site there are 37 of these trees, all with watering bags, but 24 are stressed to very stressed with a 10 probably dead. Many of these despite being given quite substantial supports (some months after planting) are leaning at precarious angles (Fig 11) and, furthermore, the ties to those supports are poorly executed (Fig 12) with only a small handful of trees actually benefitting from that support. Most will soon be seriously damaged by chafing at a critical height as wind rocks the trees on the hard supports. The water bags have only been seen being filled twice since planting in April.



Fig 11





Fig 12

The second line of trees runs diagonally from Jones' Hill Wood to the unnamed wood at top of Bowood La. From a standpoint behind the northern fence, only 14 are assessable. 8 of those are clearly stressed, some possibly dead. 7 are close enough for the base of the tree to be discernable, and there are no water bags to be seen (Fig 13). Supports and tying follows the same pattern as above.



Fig 13

I believe these trees were originally considered supplemental, it seems odd they have taken on role of compulsory compliance requirement.

I have never seen any watering beyond the two bag fillings noted above. No bowser has been seen on the site or adjacent compound.

### **Woodland planting site**

This area was mostly decompacted February/March '21. There was no other preparation.

Planting of whips took place March through April '21.

Overall the whips seemed well placed and in May '21 or later, sometime after planting, were provided with canes and paper rabbit guards (first time I've seen HS2 use these rather than plastic, good to see!).

According to HS2's documentation there was a proposed 22000 plants across this site, but pacing out, and looking at planting density I see scope for little more than 8 or 9000 plants here.

Given ponds have been added to the original plans for unexpected licence compliance requirements, and that there are large unplanted areas in the centre of the area, I suspect plant numbers are markedly below original quotes, to an extent that needs to be questioned. Is this a policy followed elsewhere? How is this to be reflected in the proclaimed 7 million trees to be planted?

Plans I have seen show hedging along a serpentine edge to the fence line, but what has appeared is a straight line (Fig 14).



Fig 14



The majority of whips seem to be progressing, though an attrition of about 25-30% looks likely.

Most of the area is under a major infestation of weeds with the majority of whips quite invisible (Fig 15).



Fig 15

That same weed infestation and associated seed fall will have major implications for any seeding of open "glade" at centre of this area.

There appears to have been an application of herbicide along the north and east hedge boundaries (Fig 13), possibly to reduce wind blown seed contaminating adjacent agricultural land. If this is the case it looks to be a futile underperformance. There is a very considerable seed bank here which the local farmer must wince painfully when he sees.

### **Jones' Hill Wood**

Over a third of the Wood was actually felled. The expressed need for speed in Court was to facilitate constructing the urgently required haul road. As of September '21, there is little sign of any road building. Does this mean better mitigation could have been in place before felling? Does this mean more appropriate seasons for translocating and planting might have been found? Does this mean asking to waive the regulators rules for the sake of costs incurred was misleading?

Even now, the Woodland Management Zone is full of various detritus of the massive security presence posted there since October '20.

Still this beleaguered strip that is now a wide open front to the Wood is floodlit every night (Fig 16), though lamp numbers have been reduced. The noisy generators now only run at night, coming on after sun down.



Fig16

The flood lights still lie under some of the bat boxes sited here in April.

As mentioned above, the Wood now has a very wide open front allowing light and weather penetrate right through the heart of the Wood and already some weaker specimens on the supposedly safe side have sadly succumbed (Fig 17).





Fig 17

It is worth noting too, that the three prime potential roost site standing deadwoods are now frontline to the weather (By experience I can attest to the windiness of this Woodland!) and have been seen rocking significantly in fairly gentle winds.

<https://photos.app.goo.gl/4knGxzkp8jLTGoZT7>

Numbers of glis glis in the Wood seem much reduced, possibly many of them burrowed in the soil extraction area over winter. There may be a corresponding increase in grey squirrel numbers.

Tawny owls have recently started moving back in.

The bat population seems considerably less than prior to HS2 Ltd's engagement with this iconic Chiltern wood.

Over all, Jones' Hill Wood now looks set for further serious deterioration.

## Summary

The work done on behalf of HS2 Ltd in and around Jones' Hill Wood has appeared shambolic, hurried, mis-timed and mismanaged. What has resulted is far from adequate. Although some of the work has been executed with seeming care, it is unlikely that given lacklustre and/or dismal work surrounding, that this was any more than box ticking. If this is the standard that Fusion/HS2 Ltd attain in full public glare and whilst a very public legal case on this very topic was ongoing or just recently finished, it does not bode well for HS2's work elsewhere. HS2 Ltd seem a very long way off claims of no net loss to biodiversity and of a green corridor of rich nature-scapes. The failure on so many counts suggests little faith can be put in HS2 Ltd or their contractors to adhere to the Environmental Statement.

# Report on HS2 Ltd's Bowood Lane Mitigation site

## *HS2 Responses shown in Green*

### *Please note*

*A non-response in relation to any particular statement or allegation in this document does not mean that we agree with such statement/allegation. We have confined our responses to the specific questions raised in this document.*

### 1.1

This report is written by Mark Keir, of Jones' Hill Wood.

I have no formal qualifications in ecology, but I do have RHS Advanced Certificate and 25 years or more experience as a gardener/horticulturalist.

Having been central to much of HS2 Ltd's recent angst in Court, I have also spent many, many hours studying HS2's Environmental Statement, Ecology Site Management Plan, Natural England Licences and other documentation relating to HS2 works around Jones' Hill Wood and the Bowood Lane mitigation site.

## 2.0 Overview

### 2.1

HS2's proposed route cuts through the SW corner of Jones' Hill Wood, an ancient woodland in the heart of the Chilterns AONB. The Act of Parliament specified extensive mitigation adjacent to the Wood to in some degree, ameliorate the destructiveness of the construction and to adhere to the often repeated aspiration to no net loss to biodiversity.

Further to the originally planned mitigation, Fusion JV (main HS2 contractor at this point) had been forced in October 2020 through Court action to survey Jones' Hill Wood for a first time, apply for appropriate licence from Natural England (WML OR 58) and draw up considerable extra mitigation works to comply with that licence.

The issue of the Licence was called to question through the Courts and was the cause of some considerable concern to HS2 Ltd and Fusion JV, highlighting as it did HS2's much vaunted environmental ethics and their ability/inability to demonstrate their adherence to same. It might be assumed therefore that holding rigidly to the licence conditions would be a priority, and that the very best mitigation work would be put in place.

This report looks at that mitigation, it's present standard and likely success going forward, and how it measures up to compliance with that licence.

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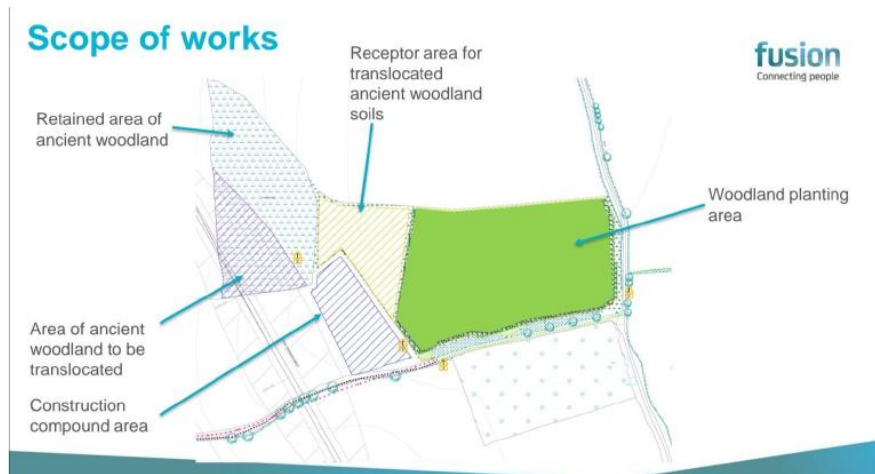


Fig 1

## 2.2

The areas of importance to this report are: "Receptor area for translocated ancient woodland soils", "Woodland planting area" and Jones' Hill Wood ("Area of ancient woodland to be translocated" and "Retained area of ancient woodland") itself.

What I have observed does not put HS2 Ltd in a good light. My observations have been made from the perimeter fence, with no access to the sites given to "protesters" or anyone else for that matter, but even from that sometimes distant vantage, there seems little to celebrate.

## 3.0 Receptor Site

### 3.1

The receptor site host soil was compacted (Fig 2) pretty much daily with heavy machinery over the whole of winter '20/21 and was waterlogged much of that time. This was never ameliorated.



Fig 2

Trial holes of the subsoil at the receptor site were undertaken under the supervision of a qualified soil scientist. This identified some damage to the topsoil in the receptor site location. The surveys identified no damage to the subsoils at the receptor site. All receptor site topsoil was progressively removed prior to the ancient woodland soil transfer taking place with regular inspection of soils undertaken.

### 3.2

Translocated soil was placed well out of acceptable season in April/May '21. The translocated ancient hedge (possibly 1500yrs old) was moved in April in dry desiccating winds. The translocated trees including those for live specimens were moved as late as late May, even into June 2021. Other whips and pot grown stock were planted May/June '21. None of these movements come even close to standards laid out in the Environmental Statement.

As works were undertaken outside the “translocation window” this was deemed a soil salvage. Aside from the seasonal window all other works were undertaken following translocation best practice. In addition to this HS2 will install additional compensation planting.

Containerised planting (pot grown stock hedgerow) can be planted all year around and were watered to aid growth following planting. This is in line with Nursery stock - British Standard BS3936-1/4

Losses of stock planting is assessed and managed in the maintenance period.

### 3.3

Of the translocated ancient hedge, it appears one plant is surviving, six barely surviving and unlikely to succeed. The other seventeen are quite dead including yews and hollies (Fig 3).

Existing Hedgerow was moved from the woodland edge to provide height and connectivity from the retained hedgerow and to retain soils within the root structure of existing hedgerow.





Fig 3

### 3.4

Few if any of the translocated trees taken for live specimens in the site have survived (Fig 4). In the receptor site there is a large empty space possibly equivalent to over a third the total area suggesting the area of mitigation falls well short of area of woodland destroyed (Fig 5) In addition to this the long new front to the ancient woodland, composed of newly exposed etiolated weak trees suggests that there will be much secondary damage unaccounted for in ecologists assessments.

All monolith and existing trees are relocated to provide vertical diversity within the site. Existing trees are translocated with the intention of survival. Should trees not survive they along with monoliths provide important standing deadwood features with ecological value.

9% (600m<sup>2</sup>) of the woodland soils were not translocated as the woodland soils were found to be substandard following previous protestor habitation, the required security operation or due to increased nutrient and intensity of weeds within the donor site. For clarity the woodland salvaged soils were placed at the same thickness and layer composition as per the donor site.

The retained woodland facing the removed woodland forms the Woodland Edge Management Zone and falls within Act limits. This zone will continue to be monitored and managed. An arboricultural survey was carried out and trees within this zone assessed to be wind firm and will continued to be monitored. Fallen trees outside of Act limits are the responsibility of the Landowner.



Fig 4



Fig 5





Fig 6

### 3.5

The supposed bat flightline trees within the receptor site are, as far as bats are likely concerned, lost amid a jumble of erratically placed considerably larger trees and monoliths (Fig 7).



Fig 7

The bat flight line was installed as per License conditions and provides a continuous line. Monoliths and larger relocated trees provide further ecological benefits in a random layout reflecting their position in the former woodland.

### 3.6

Bat boxes placed within the receptor site are unlikely to see any shelter from weather or light for at least 30 years. Presumably the fragmentation of habitat so ruthlessly executed will likely not be repaired any time before that.

A 2m wide strip of heavy weed infestation along the hedge line appears to have had an application of herbicide in August '21

There are many smaller whips and pot grown plants added to the hedge and throughout the translocated site. These tend to be deep in weeds so only a rough estimate of around 25 - 30% attrition can be given (Fig 8)

Bat boxes were installed as part of the Licence and are supplementary to boxes placed within the Woodland Edge Management Zone and a mature tree group along Bowood Lane that falls within Act Limits.

Herbicides have been used to control weeds to avoid impact to new planting within the planting site. The planting site is managed in line with the ecological site maintenance plan and performing in line with expectations

Trees transplanted into the ancient woodland soils are expected to supplement natural regeneration and weed growth is part of the regeneration phase and not artificially managed with herbicide.



Fig 8

### 3.7

The immediate impression of the site is of something reminiscent to a WW1 battlefield. The Jones' Hill community long ago referred to this area as "The Graveyard".

## 4.0 Bat Flight Lines

### 4.1

There are two main lines of nursery grown semi-mature trees planted as flight corridors for bats, planted across the receptor site and the woodland planting site. Within the receptor site, as mentioned above, it is unlikely that these trees form any legible guide to bats (Fig 7). The majority of these trees appear heading toward untimely death. (Fig 9, Fig 10)

The Bat Licence holder has continued to attend the site during construction and following completion. They are satisfied works are within the licence conditions.

Responded in Paragraph 3.5 and 4.2 (Below)





Fig 9



Fig 10

#### 4.2

Along the contiguous northern perimeter of the receptor site and woodland planting site there are 37 of these trees, all with watering bags, but 24 are stressed to very stressed with a 10 probably dead. Many of these despite being given quite substantial supports (some months after planting) are leaning at precarious angles (Fig 11) and, furthermore, the ties to those supports are poorly executed (Fig 12) with only a small handful of trees actually benefitting from that support. Most will soon be seriously damaged by chafing at a critical height as wind rocks the trees on the hard supports. The water bags have only been seen being filled twice since planting in April.



Fig 11



Fig 12

Any failure of planted trees will be replaced in the Optimum Winter 2021/2022 planting season. Ongoing upkeep of the Bat flight line is stated as a Licence condition.

Substandard tree ties were identified and will be rectified this planting season (2021/2022).

A watering regime was established for the trees during the works. Upon demobilisation from the site watering ended.

#### 4.3

The second line of trees runs diagonally from Jones' Hill Wood to the unnamed wood at top of Bowood La. From a standpoint behind the northern fence, only 14 are assessable. 8 of those are clearly stressed, some possibly dead. 7 are close enough for the base of the tree to be discernable, and there are no water bags to be seen (Fig 13). Supports and tying follows the same pattern as above.

Please refer to answer for 4.2.



Fig 13

#### 4.4

I believe these trees were originally considered supplemental, it seems odd they have taken on role of compulsory compliance requirement.

I have never seen any watering beyond the two bag fillings noted above. No bowser has been seen on the site or adjacent compound.

Bat flight lines were required as part of the Bat Licensing condition. Regarding watering please refer to 4.2 above.

### 5.0 Woodland planting site

#### 5.1

This area was mostly decompacted February/March '21. There was no other preparation.

Planting of whips took place March through April '21.

Overall the whips seemed well placed and in May '21 or later, sometime after planting, were provided with canes and paper rabbit guards (first time I've seen HS2 use these rather than plastic, good to see!).

According to HS2's documentation there was a proposed 22000 plants across this site, but pacing out, and looking at planting density I see scope for little more than 8 or 9000 plants



here.

Following feedback from the local authority the original planned 22,000 trees communicated during the stakeholder engagement period were reduced to 13,445 trees as it was felt the tree density at the woodland edge was too high. Subsequently 10,722 trees were planted on this site in the 2020-21 planting season, and 2,723 trees are planned to be planted in the 2021-22 planting season as well as any replanting requirement for failed trees.

## 5.2

Given ponds have been added to the original plans for unexpected licence compliance requirements, and that there are large unplanted areas in the centre of the area, I suspect plant numbers are markedly below original quotes, to an extent that needs to be questioned. Is this a policy followed elsewhere? How is this to be reflected in the proclaimed 7 million trees to be planted?

Plans I have seen show hedging along a serpentine edge to the fence line, but what has appeared is a straight line (Fig 14).



Fig 14

The requirement for the 3 no. waterbodies were identified through the approval of the bat licence, in discussion with Natural England. This required adaption of the planting design. Previously planted whips were removed for access and replanted within the site. Where possible waterbodies were located within maintenance areas of the planting area to reduce removal of whips.

Hedgerow planting is in accordance with the construction issued drawing and superseded by Bat Licence conditions.

HS2 commitment is to create an unprecedented 'green corridor' of new wildlife habitats and woodlands which will include planting up to 7 million new trees and shrubs between London and the West Midlands which will support delicately balanced local ecosystems running through the spine of the country.

## 5.3

The majority of whips seem to be progressing, though an attrition of about 25-30% looks likely.

Most of the area is under a major infestation of weeds with the majority of whips quite invisible (Fig 15).





Fig 15

HS2 have committed to replace the majority of failed trees over a five-year period during the establishment of the woodland. A natural thinning out is planned as the woodland matures so a low level of attrition is accepted. Current assessments reflect a 25% failure rate, this is as expected for an exposed hillside site.

Understory woodland Management is being carried out as per Maintenance schedule. Weeds competing with planting are treated with herbicide. Weed treatment was undertaken in the Autumn and will continue to be managed. Assessment of wildflower mix indicates performance meeting expectation.

#### 5.4

That same weed infestation and associated seed fall will have major implications for any seeding of open "glade" at centre of this area.

There appears to have been an application of herbicide along the north and east hedge boundaries (Fig 13), possibly to reduce wind blown seed contaminating adjacent agricultural land. If this is the case it looks to be a futile underperformance. There is a very considerable seed bank here which the local farmer must wince painfully when he sees.

The grassland glades alongside controlled herbicide use and maintenance has established well and there is a diverse range of wildflowers which will colonise and in time thwart any weak annual weed growth. The threat to further grassland establishment by weed seed will be treated following the maintenance plan. The grassland rides will be cut in March and April 2022 to get rid of any prolific annual agricultural weed seed germination and arisings removed from site.

### 6.0 Jones' Hill Wood

#### 6.1

Over a third of the Wood was actually felled. The expressed need for speed in Court was to facilitate constructing the urgently required haul road. As of September '21, there is little sign of any road building. Does this mean better mitigation could have been in place before felling? Does this mean more appropriate seasons for translocating and planting might have been found? Does this mean asking to waive the regulators rules for the sake of costs incurred was misleading?

Even now, the Woodland Management Zone is full of various detritus of the massive security presence posted there since October '20.

Construction of the internal haul route has progressed north from the access point off the A413 at Great Missenden compound, up to and past the Jones Hill Wood area.

If the Fusion clearance works at Jones Hill Wood were not completed until Autumn 2021, EKFB's access past Jones Hill Wood would have been severely impeded and this would have delayed internal haul route construction and Earthwork activities until Spring 2022.

## 6.2

Still this beleaguered strip that is now a wide open front to the Wood is floodlit every night (Fig 16), though lamp numbers have been reduced. The noisy generators now only run at night, coming on after sun down.

Due to presence of personnel onsite during hours of darkness, lighting is required to ensure their safety and wellbeing.



Fig16

## 6.3

The flood lights still lie under some of the bat boxes sited here in April.

As mentioned above, the Wood now has a very wide open front allowing light and weather penetrate right through the heart of the Wood and already some weaker specimens on the supposedly safe side have sadly succumbed (Fig 17).

Answered in 6.2

Answered in 3.4



Fig 17

#### 6.4

It is worth noting too, that the three prime potential roost site standing deadwoods are now frontline to the weather (By experience I can attest to the windiness of this Woodland!) and have been seen rocking significantly in fairly gentle winds.

<https://photos.app.goo.gl/4knGxzkp8jLTGoZT7>

Additional Bat roosts, both new boxes and potential roost features have been placed within the Woodland Edge Management Zone in favourable locations as per the bat licence. Suitable roost features were identified prior to felling for reuse in this zone and have been attached to existing trees.

#### 6.5

Numbers of glis glis in the Wood seem much reduced, possibly many of them burrowed in the soil extraction area over winter. There may be a corresponding increase in grey squirrel numbers.

Tawny owls have recently started moving back in.

The bat population seems considerably less than prior to HS2 Ltd's engagement with this iconic Chiltern wood.

Over all, Jones' Hill Wood now looks set for further serious deterioration.

### 7.0 Summary

#### 7.1

The work done on behalf of HS2 Ltd in and around Jones' Hill Wood has appeared shambolic, hurried, mis-timed and mismanaged. What has resulted is far from adequate. Although some of the work has been executed with seeming care, it is unlikely that given lacklustre and/or dismal work surrounding, that this was any more than box ticking. If this is the standard that Fusion/HS2 Ltd attain in full public glare and whilst a very public legal case on this very topic was ongoing or just recently finished, it does not bode well for HS2's work elsewhere. HS2 Ltd seem a very long way off claims of no net loss to biodiversity and of a green corridor of rich nature-scapes. The failure on so many counts suggests little faith can be put in HS2 Ltd or their contractors to adhere to the Environmental Statement.

I respond to each of your comments in turn.

"Trial holes of the subsoil at the receptor site were undertaken under the supervision of a qualified soil scientist. This identified some damage to the topsoil in the receptor site location. The surveys identified no damage to the subsoils at the receptor site. All receptor site topsoil was progressively removed prior to the ancient woodland soil transfer taking place with regular inspection of soils undertaken."

*Please show me the NPK levels you found on site. High residual NK from agriculture, even in subsoil, would result in an unwanted weed flush, which presumably does not equate to best practice?*

\*\*\*\*\*

"As works were undertaken outside the "translocation window" this was deemed a soil salvage. *So you accept you are no longer going for translocation as specified in the Environmental Statement? This is the same practice seen at Cubbington, Crackley and Broadwells? Is this now standard practice? Has this lowering of standards been made public? Has Parliament been informed?* Aside from the seasonal window all other works were undertaken following translocation best practice. In addition to this HS2 will install additional compensation planting. *In what way does this compensate for the poor practice above? Timing is a critical issue for translocation and without adherence all those puffed up ideals are worthless.* Containerised planting (pot grown stock hedgerow) can be planted all year around *And can be weed choked half the year to.* and were watered to aid growth following planting. *But this stopped when you weren't paid to do it anymore?* This is in line with Nursery stock - British Standard BS3936-1/4 Losses of stock planting is assessed and managed in the maintenance period."

\*\*\*\*\*

Existing Hedgerow was moved from the woodland edge to provide height and connectivity from the retained hedgerow and to retain soils within the root structure of existing hedgerow. *You killed it. All of it. Any response?*









\*\*\*\*\*

All monolith and existing trees are relocated to provide vertical diversity within the site. Existing trees are translocated with the intention of survival. Should trees not survive they along with monoliths provide important standing deadwood features with ecological value. *So you are content to provide nothing but standing deadwood resource?* 9% (600m<sup>2</sup>) of the woodland soils were not translocated as the woodland soils were found to be substandard following previous protestor habitation, *Please justify.* the required security operation *You mean the required security operation to secure the work you knew to be illegal? But thank you for accepting this responsibility!* or due to increased nutrient and intensity of weeds within the donor site. *Surely this should have been thought of first? How can you possibly adhere to best practice with such evident lack of forethought?* For clarity the woodland salvaged soils were placed at the same thickness and layer composition as per the donor site. The retained woodland facing the removed woodland forms the Woodland Edge Management Zone *(How many name changes? Is this Windsca...Seascale, sorry, Sellafeld?)* and falls within Act limits. *And is still trampled bare, full of your detritus and litter, and as per photographic evidence shown, full of highly etiolated weak trees, some of which have already succumbed. And no response to eliminating the weather and light protection and immediate feeding habitat around the known bat roosts?* This zone will continue to be monitored and managed. An arboricultural survey was carried out and trees within this zone assessed to be wind firm and will continued to be monitored. *I want to see this report please. It seems Jones' Hill and Leather Lane might be getting special treatment with these surveys. Is it worth noting these are two sites of protestor activity (non-violent, of course)* Fallen trees

outside of Act limits are the responsibility of the Landowner. *They fell as a result of your work which will still very likely be proven illegal. Whose responsibility? Have you asked the landowner of their thoughts? And they're still falling:*

\*\*\*\*\*

The bat flight line was installed as per License conditions and provides a continuous line. *A rather discontinuous line! They are dying! Monoliths and larger relocated trees provide further ecological benefits When? Now? Are you serious? Have you ever been here and seen this? What benefits a bat a box 40ft up a telegraph pole in the middle of a field on top of a hill?*



*Bat des res aloft, and bat corridor at the base - I think?*

in a random layout reflecting their position in the former woodland. *All through you seem to be saying nothing more than "we ticked the boxes". Is this best practice? Is this the level of workmanship that the Environmental Statement promised to Parliament?*

\*\*\*\*\*

Bat boxes were installed as part of the Licence and are supplementary to boxes placed within the *Hand on heart, tell me this is more than box ticking. Bat boxes 40 feet up an utterly isolated telegraph pole? Bat boxes within metres of 200mph trains? Bat boxes that had to replace illegally placed boxes? Does this work normally entail assault and theft?* Woodland Edge Management Zone and a mature tree group along Bowood Lane that falls within Act Limits.

\*\*\*\*\*

Herbicides have been used to control weeds to avoid impact to new planting within the planting site. The planting site is managed in line with the ecological site maintenance plan and performing in line with expectations

*Please show me what those expectations are. Are they written down? Do they comply with the Environmental Statement?*

Trees transplanted into the ancient woodland soils are expected to supplement natural regeneration *The only arborocultural regeneration* and weed growth is part of the regeneration phase and not artificially managed with herbicide.

\*\*\*\*\*

Responded in Paragraph 3.5 and 4.2 (Below)

*Then I guess my response of minimum standards and box ticking holds true too. Have you compiled any reports of your mitigation works here or elsewhere? Do you monitor as you claim?*

\*\*\*\*\*

Any failure of planted trees will be replaced in the Optimum Winter 2021/2022 planting season. *Bit late to the party? Shouldn't this have been your primary working practice? Your lack of planning, your lack of engagement with legal requirements laid out in law and Environmental Statement, your lack of candour in Court, all led to the whole translocation process being un-timely, as was the case at Crackley, Cubbington and Broadwells. And here we are in December and no replacements yet forthcoming. Not being a magician myself, and not being able to watch your hurried panicking work practices unfold over 140 miles, perhaps you might provide documentary evidence of everywhere you have and everywhere you haven't attained those much vaunted and legally binding values laid out in the Environmental Statement.* Ongoing upkeep of the Bat flight line is stated as a Licence condition. *On going upkeep of dead trees. Fine profession.* Substandard tree ties were identified and will be rectified this planting season (2021/2022). *But why? Tying trees is not a seasonally dependent operation, why should such shoddy workmanship (first omitted, then done woefully badly, then re-done equally badly and then again equally badly - yes, THREE times and still desperately poor!) not be rectified immediately to save a few trees and add one more year to effective mitigation? Perhaps I've already answered that. Maybe this demonstrates an acceptance of minimum box ticking standards?* A watering regime was established for the trees during the works. *Through our intervention I believe?* Upon demobilisation from the site watering ended. *Well that's useful!!! That really does demonstrate box ticking!!! Does demob exonerate you from all responsibilities? Or did you expect the trees to follow you to your next post?*

\*\*\*\*\*

Bat flight lines were required as part of the Bat Licensing condition. *Yes I remember. Wasn't there mention of some degree of maturity? Is that really exemplified with 2, 3 maybe 4yr (at most) old trees?* Regarding watering please refer to 4.2 above. *See above also!*

\*\*\*\*\*



Following feedback from the local authority the original planned 22,000 trees communicated during the stakeholder engagement period were reduced to 13,445 trees as it was felt the tree density at the woodland edge was too high. Subsequently 10,722 trees were planted on this site in the 2020-21 planting season, and 2,723 trees are planned *Can you prove categorically that this isn't simply a response to my observations, which I have been making public since December 2020? Or, indeed have local authorities been invited to advise at other sites?* to be planted in the 2021-22 planting season *(And again, we're in December and nothing new has appeared.* as well as any replanting requirement for failed trees.

\*\*\*\*\*

The requirement for the 3 no. waterbodies were identified through the approval of the bat licence, in discussion with Natural England. This required adaption of the planting design. Previously planted whips were removed for access and replanted within the site. Where possible waterbodies were located within maintenance areas of the planting area to reduce removal of whips. Hedgerow planting is in accordance with the construction issued drawing and superseded by Bat Licence conditions. *Please clarify.....planting according to construction drawing, not the bat licence conditions? Did you really mean that?* HS2 commitment is to create an unprecedented 'green corridor' *full of now isolated habitats owing to ripping out upwards of 500 hedges?* of new wildlife habitats *which will be divided by an equally unprecedented 140 mile long untransgressable barrier to natural connectivity, barring feeding and breeding patterns. No wildlife bridges in the Chilterns, are there any further up the line?* and woodlands which will include planting up to 7 million new trees *You see? There's that 7 million figure again. You've just shown that planting in this area is all but halved after Local Authority intervention (and I suspect that of those wonderful peaceful protesters). How can you justify this claim without expanding beyond Act limits?* and shrubs between London and the West Midlands which will support delicately *You're not kidding! Every ecosystem you come within a mile of will be quivering. "Delicately" is putting it very mildly. Deserts are balanced. local ecosystems running through the spine What happens if you're spine is broken?* of the country.

\*\*\*\*\*

HS2 have committed to replace the majority *Define majority?* of failed trees over a five-year period during the establishment of the woodland. A natural thinning out is planned as the woodland matures so a low level of attrition is accepted. Current assessments reflect a 25% failure rate, this is as expected for an exposed hillside site. *When you started this was a relatively sheltered site, there being an ancient woodland nicely placed in the prevailing wind. Somebody felled that after lying in Court.* Understory woodland Management is being carried out as per Maintenance schedule. *Please send me a copy.* Weeds competing with planting are treated with herbicide. Weed treatment was undertaken in the Autumn and will continue to be managed. Assessment of wildflower mix indicates performance meeting expectation. *(Which you then sprayed?) Please show documentary evidence. All I saw was the expected massive flush of agricultural weed which of course I am happy to concede is wild flower, but existed through lack of, or poor and unplanned intervention on your part, and cannot be claimed as your mitigation.*

\*\*\*\*\*

The grassland *Grassland? The only grasses here are wheat left over from previous agriculture.* glades alongside controlled herbicide use and maintenance has established well *Of course, what you really mean is the massive flush of weeds you didnt plan for has established well. Odd that. It was there latent in the soil all the time and it established as if by magic.*



and there is a diverse range of wildflowers *As much as oft repeated agricultural practices will allow. There's a huge diversity absent here.* which will colonise and in time thwart any weak annual weed *Do you so misunderstand weeds?* growth. The threat to further grassland establishment by weed seed will be treated following the maintenance plan *How? Herbicide? Grazing sheep? Please let me see this schedule. Does it really exist?.* The grassland rides will be cut in March and April 2022 to get rid of any prolific annual agricultural weed seed germination and arisings removed from site. *But you've already had people in there spraying the "grassland"!*

\*\*\*\*\*

Construction of the internal haul route has progressed north from the access point off the A413 at Great Missenden compound, up to and past the Jones Hill Wood area. If the Fusion clearance works at Jones Hill Wood were not completed until Autumn 2021, EKFB's access past Jones Hill Wood would have been severely impeded and this would have delayed internal haul route construction and Earthwork activities until Spring 2022.

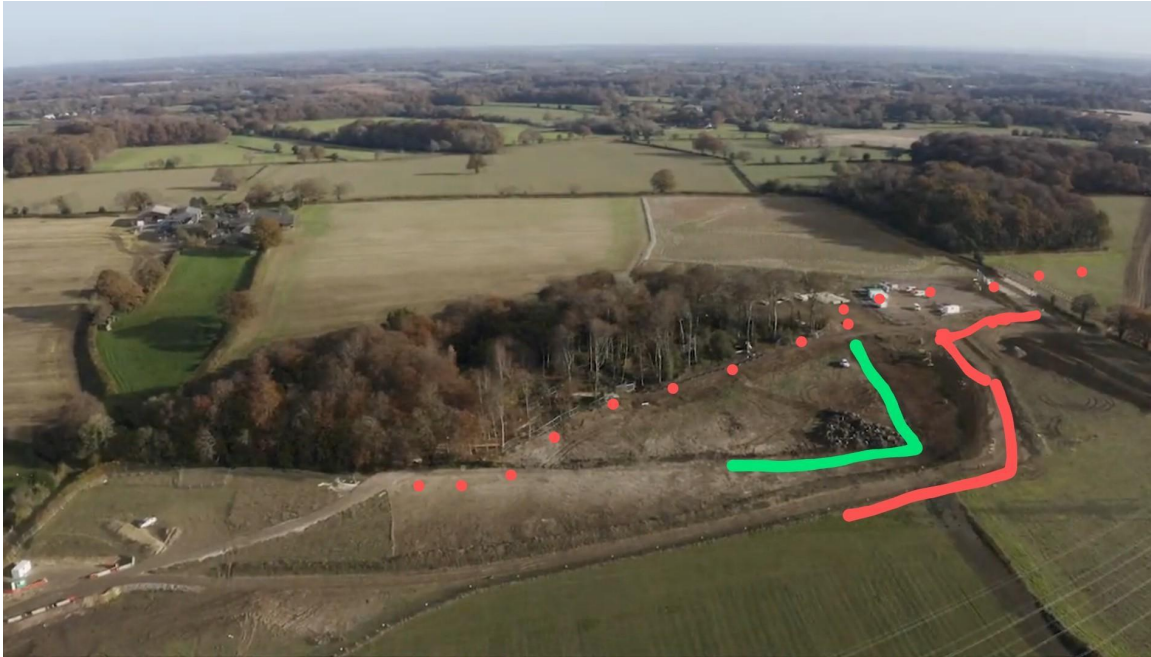
*This is an out and out lie. Currently you have off road vehicles using a dirt track along 90% of the route as shown quite graphically here:*

<https://twitter.com/ilonatheoak/status/1465106321271922690?t=DSC6fEtIiaBS1kWXOys6gA&s=19>



Traffic past Jones' Hill has been absolutely minimal with the only plant/HGV traffic directly attributable to the felling of the wood.

It is very notable that what you claim to be a haul road in use (mudtrack) avoids the original footprint of Jones' Hill having been established prior to felling. Was it really necessary to fell the Wood and avoid due diligence? Did you lie in Court too?



Green shows corner of Jones' Hill, orange the present "haul road", dotted orange the proposed route for which JonLes' Hill was so urgently felled.



This is your "haul road" at Bowood Lane

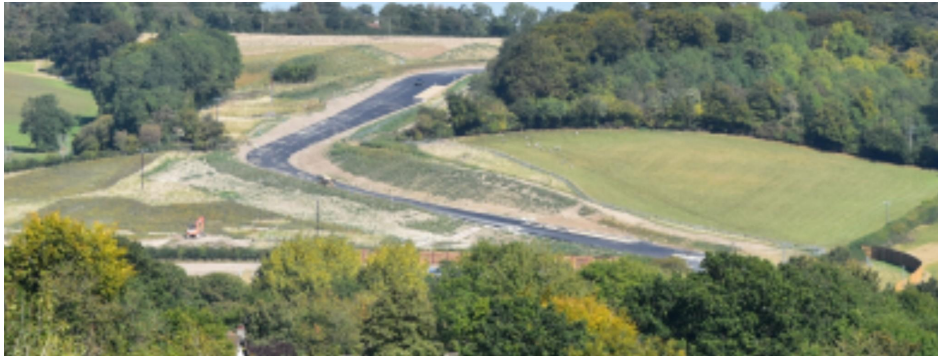


*This is where it's supposed to cross Bowood Lane with Jones' Hill in background*



*And this where current traffic does cross Bowood La.*





*And this is the only section yet constructed, 2miles away, 2yrs ago, all tarmac'd and ready to go, except you built it too steep to get your trucks up!*

\*\*\*\*\*

Due to presence of personnel onsite during hours of darkness, lighting is required to ensure their safety and wellbeing. *But this lighting is all in the WMZ where you have no personnel. This lighting is directed upward into the canopy, not down to ground. Personnel are all equipped with headlamps and very powerful strong torches (some even have lasers!) which they have demonstrated frequently and Illegally. This lighting all depends on the constant noise and pollution of diesel generators. Has this been factored in to mitigation plans? If you had followed procedures as laid out in the Environmental Statement none of this would be necessary.*



*Lighting in the WMZ*

*Lighting at Bowood La icomound s also directed at the monoliths and bat boxes.*

\*\*\*\*\*

Additional Bat roosts, both new boxes and potential roost features have been placed within the Woodland Edge Management Zone in favourable locations *Favourable? Are you now estate agents for bats? Are you really saying a woodland bared to cold north winds, denuded of undergrowth, shade removed and within a couple metres of the massive construction work and then to trains hurtling by 14 times an hour is favourable?*



*Is this a favourable bat des res?*

as per the bat licence. Suitable roost features were identified prior to felling for reuse in this zone and have been attached to existing trees

*Possibly one of the most important paragraphs in the report has had no response from you....as yet. Perhaps you might do so now:*

6.5 Numbers of glis glis in the Wood seem much reduced, possibly many of them burrowed in the soil extraction area over winter. There may be a corresponding increase in grey

squirrel numbers. Tawny owls have recently started moving back in. The bat population seems considerably less than prior to HS2 Ltd's engagement with this iconic Chiltern wood. Over all, Jones' Hill Wood now looks set for further serious deterioration.

*Can you supply any survey data to demonstrate the veracity or otherwise of above, or to demonstrate your ongoing concern?*

*There is little or nothing in your response that diminishes the concerns raised in the report. Indeed, quite the opposite. The falsehoods and evasion just keep tumbling forth, and add concern upon concern. Is there nothing we can trust HS2 Ltd on? Can Parliament trust what you say? Can the Courts? Can the Press? Can Natural England? Jones' Hill Wood should have been a call to arms of all the brilliance that HS2 could muster, instead we see shoddiness, evasiveness and dishonesty, some might even say criminality.*

*The level of concerns raised by protesters, locals, councillors and MPs just in the few miles that HS2 crosses the Chilterns urges a a major reassessment. Is there anything here that is fit for purpose?*



## Issued to Fusion Joint Venture

### OVERVIEW

This organisational licence is issued to Fusion Joint Venture and permits suitably experienced employees and staff of contractors to undertake certain activities affecting barbastelle bat *Barbastella barbastellus*, common pipistrelle bat *Pipistrellus pipistrellus*, soprano pipistrelle bat *Pipistrellus pygmaeus*, noctule bat *Nyctalus noctula*, brown long-eared bat *Plecotus auritus*, and Natterer's bat *Myotis nattereri* (all of which are European Protected Species (EPS)) which would otherwise be unlawful. The licence facilitates the enabling and construction works for a high speed rail line between London and Birmingham (Phase 1).

**Fusion Joint Venture** is responsible for the conduct of all activities performed under the authority of this licence.

Natural England Ref: WML-OR58

Organisational Licence

The following annexes form part of this licence:

- WML – OR58(A) (Map of area covered by this licence)
- WML – OR58(B) (permitted activities and licensed methods for bats)

The following documents are also integral to this licence:

- Jones' Hill Wood Work Schedule
- Jones' Hill Wood Method Statement
- Jones' Hill Wood Bat Impacts Maps
- Jones' Hill Wood Bat Mitigation Licence Location Map
- Jones' Hill Wood Bat Habitat Creation Map
- Jones' Hill Wood Bat Habitat Management and Monitoring Plan
- HS2 Environmental Minimum Requirements
- Ecological Site Management Plans

Issued under

Conservation of Habitats and Species Regulations 2017 (as amended) ("the 2017 Regulations")

### IMPORTANT

This licence authorises acts that would otherwise be offences under the legislation referred to above. Failure to comply with its terms and conditions:

- may be an offence under the 2017 Regulations or mean that the licence cannot be relied upon. The maximum penalty available for failing to comply with a condition of a licence under the 2017 Regulations is, at the time of the issue of this licence, an unlimited fine and/or a six month custodial sentence; and
- may result in this licence being revoked and/or the refusal to grant future licences.

If the activity that you wish to undertake is not covered by this licence, or if you are unable to comply with any of the terms and conditions which apply to the use of this licence, then the Licensee will need to apply to Natural England for an amendment to this licence or you need to apply for a separate licence.

This licence is not a consent or assent for the purposes of Part II of the Wildlife and Countryside Act 1981 (as amended) ("the 1981 Act") in respect to Sites of Special Scientific Interest. It is your responsibility to get consent if required (see Information & Advice note c).



Under the Conservation of Habitats and Species Regulations 2017 Natural England has granted this licence to affect barbastelle bat *Barbastella barbastellus*, common pipistrelle bat *Pipistrellus pipistrellus*, soprano pipistrelle bat *Pipistrellus pygmaeus*, noctule bat *Nyctalus noctula*, brown long-eared bat *Plecotus auritus*, and Natterer's bat *Myotis nattereri*, for the purpose of:

**Imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment, under regulation 55(2)(e) of the 2017 Regulations, being satisfied that as regards the purpose specified in this licence that there is no satisfactory alternative and that the actions authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.**

to: **Fusion and Murphy Joint Venture** (hereafter referred to as the “**Licensee**”) of The Gate House, Gatehouse Way, Aylesbury, Buckinghamshire, HP19 8DB.

**To:** Carry out the activities detailed in

- Annex WML – OR58(B)

**Between the dates of:** 01 April 2021 and 31st December 2031

**Project Description:** Licensed activities associated with enabling and construction works for a high speed rail line between London and Birmingham (Phase 1).

**At:** The Licensed Area shown as Area of JHW inside LLAU hatched in light blue on the map in Annex WML-OR58(A).

This licence is granted subject to the Licensee, including its servants and named agents, adhering to:

- the licence terms and conditions specified below and in the Annexes to this licence:  
and
- the Jones' Hill Wood Method Statement, the Jones' Hill Wood Work Schedule, the Jones' Hill Wood Bats Impacts Map, the Jones' Hill Wood Bat Compensation Maps, and the HS2 Environmental Minimum Requirements.

Terms and requirements that express conditionality are conditions of this licence whether so called or not.

The headings used in this licence and its Annexes are for convenience only and shall have no effect upon the interpretation of this licence or its conditions.

#### **DEFINITIONS used in this licence**

Accredited Agent(s)	A suitably trained and experienced person who has been appointed by the Named Ecologist (in accordance with Condition 3) and who is able to carry out work under this licence without the personal supervision of the Named Ecologist.
Appointed Person	An employee of the Licensee who is nominated to act as a single point of contact for Natural England with regard to this licence and is responsible for overseeing use of the licence, including record keeping, reporting and compliance.
Assistant(s)	A person assisting a Named Ecologist or Accredited Agent who has been appointed by the Named Ecologist (in accordance with Condition 3) and who is only authorised to act under this licence whilst they are under the direct supervision of the Named Ecologist or an Accredited Agent.
HS2 Environmental	The environmental minimum requirements set out the government's high

Minimum Requirements	level environmental and sustainability commitments that accompany the High Speed Rail (London - West Midlands) Act 2017.
Ecological Site Management Plans (ESMPs)	HS2 Ltd Contractors are required to produce ESMPs for habitat creation areas, designated sites and ancient woodlands, as prescribed by paragraph 4.8.3 of the Environmental Minimum Requirements (EMRs). These plans set out the site-specific control measures for HS2 contractors working within local authorities along the Phase One route.
Licensed Area	The area covered by this licence including Jones' Hill Wood and surrounding area at SP 88724 04372 shown as Area of JHW inside LLAU hatched in light blue on the map in Annex WML-OR58(A).
Named Ecologist	<span style="background-color: black; color: black;">[REDACTED]</span> (NE Customer Number <span style="background-color: black; color: black;">[REDACTED]</span> ), being a professional ecological consultant who has satisfied Natural England that he has the relevant skills, knowledge and experience of the species concerned (or such other person as approved in writing by Natural England) and who is authorised by the Licensee to act on its behalf for the purposes of this licence.
Jones' Hill Wood Bat Impacts Maps	The two impact maps, given reference numbers Figure D(i) Impact Plan dated 05 March 2021 and Figure D(ii) Fragmentation of foraging / commuting habitat dated 05 March 2021, of the Licenced Area submitted to Natural England on 05 March 2021, or the latest revised version that has been submitted by the Licensee and approved in writing by Natural England.
Bat Mitigation Licence Location Map	The map, given reference number C5a(ii) Location map (detail) dated 05 March 2021, of the Licenced Area submitted to Natural England on 05 March 2021, or the latest revised version that has been submitted by the Licensee and approved in writing by Natural England.
Jones' Hill Wood Bat Habitat Creation Maps	The map, given reference number Figure E3 Specification for mitigation / compensation dated 17 March 2021, of the Licenced Area submitted to Natural England on 05 March 2021, or the latest revised version that has been submitted by the Licensee and approved in writing by Natural England.
Jones' Hill Wood Method Statement	The method statement for bats at the Licensed Area, submitted to Natural England using template WML-A13.3 (01/19), on 05 March 2021 with amendments provided in the response to the e-mail signature sent by NE to Fusion on 18/03/2021 received on 22/03/2021, or the latest revised version that has been submitted by the Licensee and approved in writing by Natural England. Further information included the Jones' Hill Wood Bat Habitat Management and Monitoring Plan (see definition below) should take priority where discrepancies are noted.
Jones' Hill Wood Bat Habitat Management and Monitoring Plan	The Jones' Hill Wood Bat Habitat Management and Monitoring Plan Rev A (dated 18/03/2021) and Figure E4 Monitoring, management and maintenance plan (dated 05 March 2021) provided in response to an email signature submitted to Natural England on 22/03/2021, or the latest revised version that has been submitted by the Licensee and approved in writing by Natural England.
Jones' Hill Wood Work Schedule	The schedule of works at the Licensed Area, submitted to Natural England dated 18/03/2021 using template WML-A13a-E5a&b, or the latest revised version that has been submitted by the Licensee and approved in writing

by Natural England.

References to specific sections, figures or other parts of a document apply to the relevant section, figure or part in the revised and approved version unless otherwise stated.

## **LICENCE CONDITIONS**

1. This licence includes Annex WML-OR58(A) and Annex WML-OR58(B), which contain additional terms and conditions of use.

### **People authorised to use this licence**

2. Licensed activities may only be carried out under this licence by:
  - a) the Named Ecologist;
  - b) Accredited Agents; and
  - c) Assistants.
3. An Accredited Agent or Assistant must carry a signed copy of the authorisation letter from the Named Ecologist, appointing them by name for the purpose of this licence, while carrying out licensed activities in the Licensed Area and must produce this authorisation letter to any police or Natural England officer on request.

### **Working under this licence**

4. The Licensee has primary responsibility for ensuring that all activities carried out in the Licensed Area comply with the terms and conditions of the licence.
5. Before commencing activities under this licence, the Licensee shall nominate an Appointed Person whose details will be provided to Natural England in writing to oversee use of this licence. The Licensee shall promptly update Natural England in writing of a replacement Appointed Person if that person changes.
6. The Named Ecologist is responsible for undertaking and/or overseeing the work undertaken in respect of the licensed species. The Named Ecologist is responsible for checking the suitability and competence of any Accredited Agents or Assistants employed in the Licensed Area to undertake the required duties.
7. The Licensee and all persons acting under this licence must comply with:
  - a) the terms and conditions of this licence and its Annexes WML – OR58(A) and WML – OR58(B); and
  - b) the Jones' Hill Wood Method Statement, Bat Mitigation Licence, Jones' Hill Wood Location Map, the Jones' Hill Wood Work Schedule, the Jones' Hill Wood Bat Impacts Map and the Jones' Hill Wood Work Bat Compensation Maps; and
  - c) HS2 Environmental Minimum Requirements.
8. If there are conflicts or inconsistencies between commitments in the documents in condition 7(b) and the terms and conditions of this licence and its annexes, the licence and annexes will prevail. Any other conflicts or inconsistencies between the documents in condition 7(b) will be interpreted on a precautionary basis to ensure the protection of bats.
9. While engaged in licensed activities, the Licensee shall make a copy of the licence and its Annexes available for inspection on each site in the Licensed Area where the activities are taking place and shall produce it on demand to any constable or an officer of Natural England.
10. All reasonable precautions must be taken to ensure that unnecessary suffering and harm to the species covered by this licence is avoided.

### **Where the licence may be used**

11. This licence may only be used within the Licensed Area and for the activities specified in Annex WML-OR58(B).

### **Surveying and Monitoring**

12. Pre felling surveys must be appropriately resourced and undertaken at suitable times and in accordance with Annex WML-OR58(B).
13. Monitoring must be undertaken in accordance with section E4.2b of the Jones' Hill Wood Method Statement and The Jones' Hill Wood Bat Habitat Management and Monitoring Plan (see definition above). Any relevant amendments to monitoring will be agreed with Natural England through a licence modification request and the Strategy will be reviewed before the end of the licence.

### **Recording and reporting requirements**

14. The Licensee must maintain a record of all bat-related activities carried out under the authority of this licence necessary for reporting to Natural England, including (as a minimum):
  - a) a list of all persons authorised to act under the licence and in what capacity (i.e. Accredited Agent or Assistant);
  - b) any action undertaken under this licence;
  - c) any mitigation or compensation provision;
  - d) any surveying and monitoring conducted;
  - e) any dead or injured bat found in the Licensed Area; and
  - f) any incidents or reports of activities in breach of this licence, including details of steps taken, and any disciplinary, remedial or corrective action.

These records are to be kept until two years after the final licensed action is undertaken and are to be made available for inspection by Natural England at any reasonable time.

15. Survey and monitoring records for bats must be submitted to the Local Biological Record Centre and to the relevant national recording scheme (or National Biodiversity Network (NBN) Atlas if there is no appropriate scheme) every other year.
16. An annual report of activities conducted under this licence must be sent by the Licensee to Natural England (at the address given below) for the first reporting year of 01 April 2021 – 31 December 2021 and submitted by 14 January 2022, and thereafter by 14 January for each subsequent reporting year of 01 January – 31 December, even if the licence is not used.
17. The long-term Mitigation, Monitoring and Management of the site will be reviewed after 8 years.

### **Future management**

18. All ESMPs applicable to the Licensed Area, or any part of it, must be updated to include the bat specific habitat management, maintenance and monitoring by or on behalf of the Licensee before the 31<sup>st</sup> July 2021, or prior to required actions and in line with the licensing requirements of the Jones' Hill Wood Method Statement and Jones' Hill Wood Bat Habitat Management and Monitoring Plan (see definition above). The Licensee shall ensure compliance with the requirements of all ESMPs applicable to the Licensed Area, or any part of it, for the full period of the licence and will consult with Natural England in relation to any amendment or proposed amendment to any such ESMP.



## Licence compliance

19. For the purpose of ascertaining whether the conditions of this licence are being, or have been, complied with, the Licensee, the Named Ecologist and each Accredited Agent, Appointed Person and Assistant shall permit an officer of Natural England reasonable access to land where operations are being undertaken under this licence. Officers of Natural England shall also be permitted to be present during any operations carried out under the authority of this licence. Any such officer of Natural England may be required to produce his/her identification on demand and will be permitted to be accompanied by such persons as he/she considers necessary for the purpose of the visit. The Named Ecologist and each Accredited Agent, Appointed Person and Assistant shall give all reasonable assistance to an officer of Natural England and any persons accompanying him/her.
20. Failure to comply with the terms and conditions of this licence (including the recording and reporting requirements) will, by default, render this licence null and void and it may not be relied upon until such time that Natural England confirms in writing that its use may resume.
21. Natural England must be informed of all breaches to this licence within 48 hours of the Licensee becoming aware of a breach occurring. Unless advised otherwise by Natural England, the Licensee must take the necessary steps to address any breaches or poor practice identified as soon as practicable.

Issued by and on behalf of Natural England on:

30 March 2021

## INFORMATION and ADVICE

- a. Any requests for information in a licence will be considered under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 as appropriate.
- b. The licence may be modified, extended, terminated or revoked at any time by Natural England or the Secretary of State, but this will not be done unless there are good reasons for doing so.
- c. This licence conveys no authority for actions prohibited by any other legislation. For example, anyone acting under this licence is not exempt from the provisions of Section 28E of the 1981 Act. This means that owners/occupiers are obliged to give notice to Natural England if they propose to carry out an operation likely to damage a Site of Special Scientific Interest (SSSI). To identify SSSIs and the features for which they are designated, refer to [www.magic.gov.uk](http://www.magic.gov.uk). For further advice or to request consent for an activity please contact the Natural England 'Responsible Officer' for the relevant site(s). Contact details are available from the Natural England Enquiry Service (see below).
- d. No person convicted on or after 1 January 2010 of an offence under the Conservation of Habitats and Species Regulations 2017, the 1981 Act, the Protection of Badgers Act 1992, the Deer Act 1991, the Hunting Act 2004, the Wild Mammals (Protection) Act 1996, the Animal Welfare Act 2006 or the Protection of Animals Act 1911 (all as amended) may use this licence without the permission of Natural England unless, in respect of that offence, either:
  - i. they are a rehabilitated person for the purposes of the Rehabilitation of Offenders Act 1974 and their conviction is treated as spent; or
  - ii. a court has made an order discharging them absolutely.Any request to use the licence by a person to whom this note applies will be considered on its merits.
- e. The common name or names of species given in the Licence, Annexes, and associated documents are included by way of guidance only; in the event of any dispute or proceedings, it is the scientific name of a species that will be taken into account.

## Training requirements

- f. Training must be relevant to the conditions and the activities permitted by the licence and should be undertaken at regular intervals. This should include: identification of European and other protected species, and non-native species relevant to the activities authorised by this licence and signs indicating they may be present; surveying techniques; best practice guidance and reasonable avoidance measures; mitigation techniques and methods, and a working knowledge of the relevant law.

## General Welfare Considerations

- g. Persons acting under this licence may photograph any protected species named in this licence in connection with licensed work provided that this causes no additional disturbance or any other harm.
- h. Under the Animal Welfare Act 2006 it is an offence to cause any unnecessary suffering to an animal under the control of man (section 4). This applies to the treatment of animals (including non-target species) held in nets, traps, etc.

## The limits of licences

- i. Licences permit action only for the purposes specified on that licence.
- j. Licences do not permit actions prohibited under any other legislation (unless it is clearly stated that the licence does), nor do they confer any right of entry upon land.
- k. Unless otherwise stated the provisions of Natural England licences only apply landward of the mean low water mark in England. The Marine Management Organisation is responsible for all licensing seaward of the mean low water mark.
- l. No work shall be carried out under this licence on a National Nature Reserve except with the prior written permission of Natural England's 'SSSI Adviser' for the relevant site(s) (contact details available from Enquiry Service – see below).

## Compliance and enforcement

- m. The Licensee is expected to monitor compliance with the licence and to take action in the event that poor practice and/or non-compliance are identified. A person may be barred from using this licence by Natural England, for example, if that person breaches the conditions of this licence. In these circumstances Natural England will notify the Licensee.
- n. Natural England checks compliance with licences and the attached conditions. Where breaches are identified, these may be subject to enforcement action.

## Contact details for Natural England

*For licensing enquiries (& Reporting):*

**Telephone** 020 802 61089

**Email** [HS2wildlifelicencing@naturalengland.org.uk](mailto:HS2wildlifelicencing@naturalengland.org.uk)

### Postal address

Wildlife Licensing, Natural England, Horizon House,  
Deanery Road, Bristol BS1 5AH

*For other enquiries use the Enquiry Service:*

**Telephone** 0300 060 3900

**Email** [enquiries@naturalengland.org.uk](mailto:enquiries@naturalengland.org.uk)

**Web** [Natural England - GOV.UK](http://NaturalEngland.gov.uk)

## Other useful contacts

**Local Record Centres:** to find out where your nearest Local Record Centre is visit the Association of Local Environmental Record Centres website at: <http://www.alerc.org.uk/find-an-lrc.html>

**Legislation:** to view the full text of the legislation referred to in this licence visit <http://www.legislation.gov.uk>

**Feedback and Complaints:** we welcome and value your compliments, complaints, suggestions and comments about our services. Please see our 'Contact us' section for more details. <https://www.gov.uk/government/organisations/natural-england#org-contacts>

## Using and Sharing Your Information



### Who is collecting my data?

The data controller is Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX. You can contact the Natural England Data Protection Manager at: Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP; [foi@naturalengland.org.uk](mailto:foi@naturalengland.org.uk).

Any questions about how we are using your personal data and your associated rights should be sent to the above contact. The Data Protection Officer responsible for monitoring that Natural England is meeting the requirements of the legislation is: Defra group Data Protection Officer, Department for Environment, Food and Rural Affairs, SW Quarter, 2nd floor, Seacole Block, 2 Marsham Street, London SW1P 4DF.

[DefraGroupDataProtectionOfficer@defra.gsi.gov.uk](mailto:DefraGroupDataProtectionOfficer@defra.gsi.gov.uk).

### What of my data is being collected and how is it used? What is the legal basis for the processing?

The information on the licence application form and any supporting material will be used by Natural England to undertake our licensing functions. This will include, but is not limited to assessing your application, issuing a licence if applicable, monitoring compliance with licence conditions and collating licence returns and reports. The personal information we will process will include, but is not limited to your name and contact details, customer type and reasons for wanting a licence.

Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. That task is to conduct the licensing functions as delegated by Defra to Natural England under Part 8 Agreement under section 78 of the Natural Environment and Rural Communities Act 2006

### Who will my data be shared with?

Your personal data may be shared by us with the Department for Food, Environment and Rural Affairs and its executive agencies including the Rural Payments Agency and the Environment Agency. This will be used to monitor and evaluate the effectiveness of our work.

It may also be shared with:

- Police.
- HS2 LTD.

We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.

### If you are relying on my consent to process my data, can I withdraw my consent?

No, because the processing is not based on consent.

### How long will my data be held for?

Your personal data will be kept by us for 7 years after the expiry of your licence or longer if stated in the licence conditions.

### What will happen if I don't provide the data?

Failure to provide this information will mean that Natural England will not be able process your licence application.

### Will my data be used for automated decision-making or profiling?

The information you provide is not connected with individual decision making (making a decision solely by automated means without any human involvement) or profiling (automated processing of personal data to evaluate certain things about an individual).

### Will my data be transferred outside of the EEA?

The data you provide will not be transferred outside the European Economic Area.

### What are my rights?

A list of your rights under the General Data Protection Regulation, the Data Protection Act 2018, is accessible at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

### How do I complain?

You have the right to lodge a complaint with the ICO (supervisory authority) at any time. Should you wish to exercise that right full details are available at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

### Natural England's Information Charter can be found here:

<https://www.gov.uk/government/organisations/natural-england/about/personal-information-charter>

## ANNEX WML – OR58(A)

This Annex defines the boundaries and areas of the Licensed Area –  
As shown on Figure C5a(ii)





# ANNEX WML – OR58(B)

## Permitted activities and licensed methods for bats within the Licensed Area



### OVERVIEW

This Annex specifies the activities and operations affecting bats that are permitted within the Licensed Area and includes relevant conditions.

Surveys and inspections for bats in trees identified as having bat roost potential must be undertaken to establish whether bats are present prior to undertaking tree works. This Annex does not permit works to trees where a species of bat or roost types not covered by this licence is present.

#### Activities permitted

- I. Capture
- II. Transport
- III. Disturb
- IV. Damage or destroy the resting places
- V. Damage or destroy breeding places of specified bat species (See Table 1 and Table 2 below).

This licence permits activities affecting the following roost types only: Day roosts; Transitional/occasional roosts; and Maternity roosts (see Definitions at Condition B27).

#### Purpose(s) for which these activities may be conducted

Imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.

### IMPORTANT

These activities are subject to the terms and conditions set out in the main licence in addition to those in this Annex. All terms and conditions in this Annex must be fully adhered to whether or not they are identified in Table 1. Terms and conditions that have a particular relevance to an activity are identified in Table 1 for ease of reference only.

Definitions in the main licence also apply to this Annex and further definitions specific to this Annex are set out at Conditions B27 and B28.

#### Interpreting the table of permitted activities and operations

- *Permitted activities and operations*: a brief description of each activity or operation permitted under the licence.
- *Actions made lawful by this licence*: for each activity or operation listed the presence of a corresponding 'X' indicates which acts are made lawful if conducted in accordance with the terms and conditions of this licence.

**Table 1: Permitted activities and operations**

Permitted activities and operations	Actions made lawful by this licence							Additional condition No. especially relevant to the action	Permitted methods	Species permitted
	Capture	Transport	Disturb	Damage resting place	Damage breeding sites	Destroy resting place	Destroy breeding sites			
Noise, lighting and vibration caused by construction related activities			X	X	X			B1, B2, B3, B4, B10	Disturbance by noise, lighting and vibration	Barbastelle bat, common pipistrelle bat, soprano pipistrelle bat, noctule bat, brown long-eared bat, and Natterer's bat.
Pre-works inspection of trees	X	X	X	X	X			B1, B2, B3, B4, B5	By hand; Endoscope; Torch illumination; Static hand-held net;	
Roost loss through tree felling	X	X	X	X	X	X	X	B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12, B13, B14, B15, B16, 17, B18	Exclusion by one way door or valve; Permanent exclusion; Destructive Search by Soft Demolition; Destructive Search by Soft Felling; Mechanical Demolition	

**Table 2: Licensable activities and maximum numbers:**

Species	Licensable activities and maximum numbers:						
	Capture	Transport	Disturb	Damage resting place	Damage breeding sites	Destroy resting place	Destroy breeding sites
Common pipistrelle bat	5	5	Not Specified	0	0	4	1
Soprano pipistrelle bat	2	2	Not Specified			1	0
Barbastelle bat	1	1	Not Specified			1	1
Noctule bat	1	1	Not Specified			1	0
Brown long-eared bat	2	2	Not Specified			2	1
Natterer's bat	1	1	Not Specified			1	0
<b>Maximum total</b>				<b>0</b>	<b>0</b>	<b>10</b>	<b>3</b>

The maximum number(s) stated in the above table refers to the maximum number of individuals of the stated species that can be captured or transported under the terms of this licence and the maximum number/s of resting places (see definition B27) or breeding sites that can be damaged or destroyed under this licence (if applicable).

## ANNEX B LICENCE CONDITIONS

### Working under this licence:

- B1. This licence is only to be used in connection with the Project Description and only when alternatives recognised by the Named Ecologist or an Accredited Agent are not appropriate to the conservation of bats.
- B2. The Licensee, the Named Ecologist, Accredited Agents, the Appointed Person and Assistants must adhere to the activities and timescales agreed in the Jones' Hill Wood Work Schedule.
- B3. The Named Ecologist or an Accredited Agent must ensure that all those involved with the licensed works understand by way of a 'tool box talk' that bats are present; the legislation relating to bats; measures that will be used to protect them; good working practices; licensed activities and what to do should bats be found. This information must be provided before any licensed works commence on site. A written record that this has been undertaken, and that it covers the above points, must be kept by the Named Ecologist or Accredited Agent and made available to Natural England or any police officer on request.

## Methodology:

- B4. All relevant animal welfare legislation must be complied with at all times.
- B5. All works must be undertaken using best practice methodology to ensure minimal risk to bats. Persons acting under this licence must abide by the advice on excluding bats, handling bats and working in bat roosts in the most up to date edition of the ["Bat Mitigation Guidelines"](#) and the ["Bat Workers Manual"](#). ["The Bat Survey - Good Practice Guidelines"](#) are available from the BCT website. You are expected to check whether this guidance has been updated and if so, to ensure that you act in accordance with the most up to date version. In addition to this:
- a) The use of endoscopes, artificial light from torches, Destructive Search by Soft Demolition (see Definition in Annex Condition B27) temporary obstruction of roost access, temporary or permanent exclusion methods (including installation) and use of static hand held nets must only be undertaken or directly supervised by the Named Ecologist, or an Accredited Agent.
  - b) Where capture and/or handling of bats are necessary, only the Named Ecologist, Accredited Agent, or an Assistant may do so. Capture/handling/exclusion of bats must only be undertaken in conditions suitable for bats to be active.
  - c) Where bats are discovered and taken under this licence they must either be relocated to a suitable roost for the species, or where bats are held this must be done safely and bats released on site at dusk in, or adjacent to, suitable foraging/ commuting habitat in safe areas within or directly adjacent to the pre-works habitat. Where a bat is unexpectedly discovered in adverse weather conditions, condition B14 must be followed.
  - d) Endoscopes and handheld nets are only to be used to assist with the locating and capture of bats.
  - e) Temporary and permanent exclusion must be carried out using techniques specified in the most up to date edition of the *'Bat Workers Manual'*. If one-way exclusion devices are to be used, each device must remain in position for a period of at least 5 consecutive days/ nights throughout a spell of suitable weather conditions, or longer until these conditions prevail.
  - f) Prior to destructive works, an inspection using torches and/or an endoscope must be performed internally to search for the presence of bats. If any bat species covered by this licence is found and is accessible, each will be captured by gloved hand or hand-held net, given a health check and then each placed carefully inside a drawstring, calico cloth holding bag or similar for transport.
  - g) Following inspection and exclusion operations, the removal of any feature with bat roost potential, will be only performed by hand and under direct ecological supervision. Where applicable, materials will be removed carefully away and not rolled or sprung to avoid potential harm to bats. The undersides of materials will be checked by the Named Ecologist or Accredited Agent for bats that may be clung to them before removal.
- B6. For trees that are safe to climb and that possess Potential Roosts Features (PRFs) that can be accessed, pre-felling climbing inspections will be undertaken no more than three days prior to tree felling. For known roosts and PRFs consisting of cavities (or similar), Destructive Search by Soft Felling (see Definition in Annex Condition B28) will take place on the same day as the pre-felling inspection.
- B7. For PRFs confirmed as containing no bats, the PRF will be immediately felled or made unsuitable for bats. Materials used for soft blocking must be appropriate for intended purposed and not risk entrapping or capturing bats or other wildlife.
- B8. For PRFs that contain bats, bats will be removed in line with the procedures specified in Condition B5 above.
- B9. Should bats be discovered inside a tree and cannot be successfully captured due to the nature of the roost feature, climbers will withdraw.



In this circumstance, during the active bat season (April-October), an emergence survey followed by dawn re-entry survey in suitable weather conditions will be undertaken in relation to the confirmed roost (using infrared (IR) cameras) to identify when bats have left the roost and not re-entered. This will be followed by tree climbing and soft blocking of the roost prior to felling. If tree climbing is not possible the tree must undergo a Destructive Search by Soft Felling (see Definition in Annex Condition B28).

**Impacts:**

- B10. Disturbance of bats and damage and/or destruction of bat roosts will be limited to those trees shown on the Jones' Hill Wood Bat Impacts Maps.

**Undertaking works on roosts under this licence:**

- B11. A written record must be kept of capture and exclusion efforts undertaken, including weather conditions (including over-night minimum temperature and rainfall), numbers and species of bats captured/taken and duration of exclusion process.
- B12. Destructive Searches by soft felling (See Definition in Annex Condition B28) may only be carried out when it is dry and mild and after temperatures have not dropped below 8°C for 4 days.
- B13. Licensable activities impacting satellite, maternity and hibernation roosts (see Definition in Annex Condition B27) must not be undertaken while the roost is in use for these purposes. Where the roosts are excluded ahead of seasonal use, appropriate compensation (if required) must be in place and available for use prior to exclusions taking place.
- B14. If individual bats are discovered unexpectedly, including during periods of adverse weather, then the following steps must be taken:
- a) Works to that building/structure must stop immediately. If the Named Ecologist or an Accredited Agent is not on site, he/she must be contacted immediately to attend the site.
  - b) Do not expose the bat or cause it to fly out of the roost on its own accord.
  - c) The bat must only be handled by the Named Ecologist or an Accredited Agent unless it is in immediate danger. The bat must be carefully placed in a lidded ventilated box with a piece of clean cloth and a small shallow container with some water. The box must be kept in a safe, quiet location.
  - d) Care must be taken to avoid rousing the bat during transfer to a suitable location – which may be a suitable hibernation box or other alternative roost constructed, providing a safe, quiet environment with stable, suitable temperature and relatively high humidity, safe from further disturbance.
  - e) The Named Ecologist must re-assess the structure and determine whether works can continue under this licence, or whether a modification to the licence is required before works re-commence. A written record must be kept of this decision and made available to Natural England or any police officer on request. This incident must also be reported on the licence return form.
  - f) Any underweight or injured bats must be taken into temporary care by an experienced bat carer and looked after until such time that the bat can be transferred to a suitable replacement roost at the same site, or weather conditions are suitable for release at the same site.
- B15. Natural England must be notified in writing, to [HS2wildlifelicensing@naturalengland.org.uk](mailto:HS2wildlifelicensing@naturalengland.org.uk), within 48hrs of encountering 1 or more bat

of any species.

- B16. Provision must be made for prompt assistance to deal with any injured bat. Any injured or dead bats must be reported to Natural England on the licence return form.
- B17. Mechanical Demolition (see Definition in Annex Condition B28) of a structure must only take place after the structure been declared free of bats by the Named Ecologist or Accredited Agent.
- B18. If individual bats are discovered unexpectedly, including during periods of adverse weather, then the following steps must be taken:
- a) Works to that building/structure must stop immediately. If the Named Ecologist or an Accredited Agent is not on site, he/she must be contacted immediately to attend the site.
  - b) Do not expose the bat or cause it to fly out of the roost on its own accord.
  - c) The bat must only be handled by the Named Ecologist or an Accredited Agent unless it is in immediate danger. The bat must be carefully placed in a lidded ventilated box with a piece of clean cloth and a small shallow container with some water. The box must be kept in a safe, quiet location.
  - d) Care must be taken to avoid rousing the bat during transfer to a suitable location – which may be a suitable hibernation box or other alternative roost constructed, providing a safe, quiet environment with stable, suitable temperature and relatively high humidity, safe from further disturbance.
  - e) The Named Ecologist or an Accredited Agent must re-assess the structure and determine whether works can continue under this licence, or whether a modification to the licence is required before works re-commence. A written record must be kept of this decision and made available to Natural England or any police officer on request. This incident must also be reported on the licence return form.
  - f) Any underweight or injured bats must be taken into temporary care by an experienced bat carer and looked after until such time that the bat can be transferred to a suitable replacement roost at the same site, or weather conditions are suitable for release at the same site.

**Compensation and mitigation:**

- B19. All compensation features as shown on Figure E3 must be erected or created adjacent to the impacted areas under the direct supervision of the Named Ecologist or Accredited Agent.

B20. Bat roost mitigation features must be provided in accordance with the ratios set out in Table 4 below.

**Table 4. Provision of bat roost mitigation features as specified on Figure E3.**

<b>Roost feature type</b> (Existing confirmed roost or Potential Roost Feature (PRF))	<b>Minimum replacement ratio</b> (roost mitigation feature: roost or tree lost)
Used by barbastelle bat (any roost other than maternity roost or hibernation roost)	6 bat boxes
Used by brown long-eared bat (any roost other than maternity roost or hibernation roost)	4 bat boxes
Used by Natterer's bat (any roost other than maternity roost or hibernation roost)	2 bat boxes
Used by noctule bat and Natterer's bat (any roost other than maternity roost or hibernation roost)	2 bat boxes
Used by common pipistrelle bat and soprano pipistrelle bat (any roost other than maternity roost or hibernation roost)	5 for each species (10 in total)
The creation of monoliths within the ancient woodland receptor site shown on Figure E3.	At least x3 monoliths to be installed
The creation/translocation of Potential Roost Features (PRFs) to be created within the WEMZ shown on Figure E3.	At least x6 PRFs to be created/translocated

B21. A roost mitigation feature may comprise either a suitable bat box, an existing PRF on a felled tree which has been relocated to an adjacent enhancement area (i.e. a 'monolith' if laid on the ground) or a new 'veteranised' feature created within either a retained tree or on a felled and relocated monolith.

**Post-development site maintenance and habitat management requirements:**

B22. Maintenance of bat boxes must comply with the HS2 Technical Standard - Ecological Monitoring Strategy (ECMS) (ref: HS2-HS2-EV-STR-000-000029 C01 dated October 2018).

B23. In accordance with the Environmental Minimum Requirements (see Definitions) for HS2 Phase One, the licensee must submit to Natural England the Ecology Site Management Plan (ESMP) for Jones' Hill Wood (ref: 1EW04-LMJ-EV-PLN-NS06\_NL17-054002, for review and approval, at draft stage and any future versions.

**Post-development monitoring and reporting requirements:**

B24. Post-impact bat population monitoring must be implemented, in accordance with section E4.2b of the Jones' Hill Wood Method Statement, Jones' Hill Wood Bat Habitat Management and Monitoring Plan and E5b of the Jones' Hill Wood Work Schedule (see

definitions above).

- B25. An annual monitoring report outlining the results of monitoring and an assessment of any significant impacts must be submitted annually to Natural England following the completion of all specified methods in each calendar year for the duration of monitoring works (see Condition 16 of the licence).
- B26. It is a condition of this licence that the following reports are completed and returned to Natural England as specified:
- I. Report of action within 14 days (two weeks) after the expiry of the licence;
  - II. Interim annual reports.
  - III. Report on the Conservation Status of the bat species present within Jones' Hill Wood during the operational phase to be submitted to Natural England for review. This should be after the monitoring in year 8 has been completed.

**Definitions used in this annex:**

B27. For the purpose of this licence the following roost types are defined as:

- a. **Day roost:** a place where individual bats, or small groups of males, rest or shelter in the day but are rarely found by night in the summer.
- b. **Night roost:** a place where bats rest or shelter in the night but are rarely found in the day. May be used by a single individual on occasion or it could be used regularly by the whole colony.
- c. **Feeding roost:** a place where individual bats or a few individuals feed during the night but are rarely present by day.
- d. **Transitional / occasional roost:** used by a few individuals or occasionally small groups for generally short periods of time on waking from hibernation or in the period prior to hibernation.
- e. **Maternity roost:** where female bats give birth and raise their young to independence.
- f. **Satellite roost:** an alternative roost found in close proximity to the main nursery colony used by a few individual breeding females or small groups of breeding females throughout the breeding season.
- g. **Hibernation roost:** where bats may be found individually or together during winter. They have a constant cool temperature and high humidity.
- h. **Potential Roost Feature (PRF):** features that bats could use for roosting. PRFs that may be used by bats are listed in [The BCT Bat Surveys for Professional Ecologists: Good Practice Guidelines \(3rd edition\)](#)
- i. **Resting Place:** A tree in which bats rest is defined as a resting place.



B28. For the purpose of this licence the following licensed methods are defined as:

- a. **Destructive Search by Soft Demolition:** the taking apart of a bat structure in a controlled and careful manner by hand, or in some instances with the assistance of hand-held tools and machinery, under direct ecological supervision. Only the Named Ecologist, Accredited Agent or Assistant may take any bats found.
- b. **Destructive Search by Soft Felling:** the felling of a tree in a controlled and careful manner, with the assistance of hand-held tools and machinery, under direct ecological supervision. Only the Named Ecologist, Accredited Agent or Assistant may take any bats found.
- c. **Mechanical Demolition:** destruction of a structure that previously supported a bat roost using mechanical means after the structure has been declared free of bats by the Named Ecologist or Accredited Agent. Mechanical demolition usually is preceded by Destructive Search by Soft Demolition or other soft demolition exercise or completion of an exclusion process.

# **Failures to protect vital ecology and biodiversity at Leather Lane and other sites along HS2 line**



**By Lindsey Spinks, Sophie Dewsnap, Sarah White and**

**Carol-Anne O'Callaghan**

**from the Campaign to Save Leather Lane**

## 1. Background

The Holloway of Leather Lane has formed over centuries of use and forms an irreplaceable part of the Chilterns landscape. The sunken lane, lined with Oaks to the South has created an important foraging route for bats that soar down the lane, using the trees and hedgerows as a source for food and vital connectivity and habitat. A bat survey carried out on 9<sup>th</sup> May 2021 registered 6 species of bat<sup>1</sup> including the endangered Barbastelle bat. We followed this up with a series of readings using an Anabat reader throughout June 2021, and the continuous presence of at least 7 species of bats including barbastelle bats continuously using this corridor has been confirmed by Ecologist Sam Watson.<sup>2</sup>

It is very clear from walking Leather Lane that there is far more Ecology on the Southern side and therefore foreseeable harm to biodiversity. The use of the term “vegetation” by HS2 and EKFB in fact refers to an entire Ecosystem including ancient oaks, hedgerows and other bushes and abundant Flora, including ancient woodland indicator species such as Dogs Mercury providing habitats and food for numerous species including the bats and tawny owls that nest here.

The Bat Conservation Trust cites habitat loss and severing of routes as one of the main causes of decline in bat populations.<sup>3</sup> Their main recommendations are that an independent third party with the appropriate expertise in this area should be recruited to carry out monitoring of the bat population and provisions to protect, manage and monitor mitigation and compensation measures in the long-term should be outlined clearly and well-designed prior to the commencement of work.

In March this year, over 40,000 members of the public signed a petition to stop the felling and save the trees, and Richard Buxtons’ solicitors intervened with the threat of court action to protect the bats believed to be roosting there. This is not only a local issue, it is one of national importance. As we lose biodiversity in one area, it will impact on others: decline in local populations of endangered bats such as the barbastelle will affect their favourable conservation status and HS2’s commitment to Net Loss is undermined wherever ecosystems are destroyed without proper mitigation.

This vital corridor should be protected in order to conserve key connectivity and the conservation status of all species depending on Leather Lane for foraging and connectivity to habitats. Indeed a European report from 2011 that was submitted to HS2 at consultation stage states *“One of the most important issues is fragmentation of landscapes by human activities and infrastructure — a major cause of the alarming decrease in many European wildlife populations...Fragmentation analysis must*

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<sup>1</sup> [Leather Lane Bat Survey 9 May 2021 Metatable](#)

<sup>2</sup> [Watson, S. \(2021\). Anabat Express Detector Report - Leather Lane](#)

<sup>3</sup> <https://www.bats.org.uk/about-bats/threats-to-bats>

(a) the design or external appearance of the building works ought to be modified—

(i) to preserve the local environment or local amenity,

(ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or

(iii) to preserve a site of archeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or 2

be integrated into transport and regional planning so that cumulative effects are considered more effectively in the future.”<sup>4</sup>

Independent ecologist Sam Watson has attended Leather Lane on several occasions and analysed data from an Anabat detector that was placed there in June.<sup>5</sup> He notes:

*“To date, the data collected from Leather Lane has confirmed the presence of at least seven species of bat: common and soprano pipistrelle *Pipistrellus pipistrellus* and *P. pygmaeus*, noctule *Nyctalus noctula*, serotine *Eptesicus serotinus* and barbastelle *Barbastella barbastellus* and at least one species from each of the *Plecotus* and *Myotis* genera. **Of these, soprano pipistrelle, noctule and barbastelle are identified as Species of Principal Importance further to the Government’s duties under Section 41 of the Natural Environment and Rural Communities Act 2006. Barbastelle is also considered very rare in Britain.**”*

*“Of significance in the data is the regularity with which bats are recorded by the detector, with typically only a few minutes between each registration.... Furthermore, this high level of activity is maintained throughout the night, indicating that bats utilise the lane more-or-less continually.*

*A likely reason for this is the context of the lane when seen at a landscape scale. Leather Lane is broadly aligned west-east perpendicular to the A413, making it one of only three single carriageway roads across a stretch of land over 7km long between Frith Hill at Great Missenden to the south and Hale Road at Wendover to the north. Particular to Leather Lane though is the fact that it is also below the level of the adjacent land for much of its length; a ‘holloway’, and there is a continuous hedgerow along the southern side for the entire length of the lane. **These two characteristics create a sheltered corridor and optimal conditions for bat activity and it is not unreasonable to suggest that the lane is unique when compared to the other lanes. Landscape scale features that provide high quality commuting routes are a key factor in the maintenance of local bat populations, providing sheltered corridors between roosts and feeding areas.***

*This is particularly important for the barbastelle bat which is known to forage as much as 20km from roost sites. Removal or significant alteration to the lane and its particular characteristic therefore poses a significant risk of, at best, disrupting or hindering bat movement, or, at worst, removing an important bat corridor entirely.”*

*In his letter to the **Leather Lane campaign this Tuesday, 13th July**, renowned Bat Expert John Altringham stated:*

*“Having looked at the bat report and the maps of nearby ancient woodland, it is self-evident that as*

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<sup>4</sup> European Environment Agency. (2011). Landscape Fragmentation in Europe. *Joint EEA-FOEN report*. No 2/2011 pp 6

<sup>5</sup> Watson, S. (2021). Anabat Express Detector Report - Leather Lane

**(a) the design or external appearance of the building works ought to be modified—**

**(i) to preserve the local environment or local amenity,**

**(ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or**

**(iii) to preserve a site of archeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or** **3**



*few trees as possible should be removed, to retain foraging habitat, roost potential and connectivity across this fragmented landscape. All species are under considerable pressure and their small populations reflect the already degraded nature of the landscape. **Further stress on species through habitat degradation, loss and fragmentation will inevitably lead to further decline and possibly local extinction.** The Annex II barbastelle already has a thin and patchy distribution in the UK, so local loss of this species is of national importance, in part because it leads to ever more isolated local populations which become increasingly vulnerable to the effects of climate change and other pressures.”*

The barbastelle (*Barbastella Barbastellus*) is a UK Biodiversity Action Plan species (see details of the NERC Act 2006<sup>6</sup>), which means that it is a conservation priority on both a local and national scale. It is included in Annex II (and IV) of EU Habitats and Species Directive, and requires special measures for conservation including designation of Special Areas for Conservation. It is listed as Near Threatened on the global IUCN Red List of Threatened Species, and it is highly recommended old trees are maintained in sufficient numbers to preserve these rapidly dwindling species.<sup>7</sup>

As local woodlands, trees and hedgerows are felled, we believe that the biodiversity of Leather Lane is more crucial than ever and provides natural mitigation for the loss of biodiversity nearby. The “mitigation” for Jones’ Hill Wood at Bowood is poorly executed compensation and a travesty for anyone who cares about nature or re-wilding. If you compare the photo of Leather Lane with Bowood you can see the difference – rich ecology and biodiversity and a natural, well established feeding route versus mitigation for loss in the area - a barren wasteland.

Our own investigations, along with several independent reports<sup>8,9</sup> show that HS2 have failed in their Environmental obligations, in particular:

1. They have not carried out adequate Environmental Impact Assessments and baseline surveys;
2. The Precautionary Principle, as required by international law, was adopted in the Environmental Statement but has not been applied;
3. They have failed in their commitment to biodiversity and net loss;
4. They have not applied the Mitigation Hierarchy;
5. They have breached their own EMRs;
6. Key aspects of Design Principles have not been incorporated into the project design.
7. HS2 has not engaged with the community and has not carried out the Consultation process in a transparent and meaningful manner.

HS2 did not put adequate measures in place following the Environmental Statement in 2013, the

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<sup>6</sup> S. 40 NERC Act 2006

<sup>7</sup> Piraccini, R. 2016. *Barbastella barbastellus*. The IUCN Red List of Threatened Species 2016: e.T2553A22029285. <http://dx.doi.org/10.2305/IUCN.UK.2016-2.RLTS.T2553A22029285.en>

<sup>8</sup> Microsoft Word - HS2 Review of EclA-3.docx (hs2 action alliance.org)

<sup>9</sup> [ecology-technical-group-assessment-and-review-of-the-hs2-ltd-approach-to-the-natural-environment-including-recommendations-for-phase-2.pdf](#)

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House of Commons Select Committee in 2015 and the House of Lords Select Committee in 2016. In fact, groups and members of the public involved in the consultation process were told that the ES set out the “Worst case scenario” – in fact the reality is much worse and the real threat to biodiversity and the species depending on sites such as Leather Lane for survival have not been considered, let alone mitigated for.

The “consultation” process produced 2 reports on what was expected and ancillary legislation that was specific to certain areas. It was expected that HS2 would carry out surveys and meet at least the “Environmental Minimal Requirements”. This never happened. We understand that HS2 only carried out bat surveys on 42% of the route which has led to mass failings and criminal offences under Wildlife protection laws. Had HS2 taken its environmental commitments seriously, they would have acted on findings of Barbastelle Bats in nearby Little Missenden and Ellesborough in 2016.

In the case of Leather Lane, HS2 has failed to carry out appropriate assessments as required under the Environmental Impact Assessment regulations. As a result, key issues, such as the bat corridor, were not properly identified.

Even though HS2 have adopted the Precautionary Principle, as required by law and the Design Principles they have committed to, they have failed to implement this and have pressed on with felling without full surveys and adequate mitigation. They have also failed in their commitment to ‘no net loss’ by failing to identify, protect and mitigate for the biodiversity on Leather Lane - this not only includes the irreplaceable oak trees, but the rich ecology on the Southern Side and the essential bat corridor this creates for foraging and commuting bats. They have a duty of care and, as with all development projects, should apply the Mitigation Hierarchy to AVOID harm to biodiversity, which would be achieved by aligning the over-road either parallel to the existing Lane or building an over-bridge to the North of Leather Lane.

## 2. Fragmentation of Habitats and Landscapes

Several reports on the risk of fragmentation to the landscape and habitats were put forward to HS2 and Parliament at the consultation stage. One included the European Environment Agency report into Landscape Fragmentation, which states:<sup>10</sup>

Landscape fragmentation increases the risk of populations becoming extinct, as isolated populations are more vulnerable to natural stress factors such as natural disturbances (e.g. weather conditions, fires, diseases), i.e. lower resilience. Landscape fragmentation is a major cause of the rapid decline of many wildlife populations. As landscape fragmentation contributes to the destruction of established ecological connections between adjoining areas of the landscape (Haber, between adjoining areas of the landscape (Haber, 1993; Jaeger et al., 2005a), it also affects entire communities and ecosystems. The possibility for two animals of the same species to find each other in the landscape is a

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<sup>10</sup> European Environment Agency. (2011). Landscape Fragmentation in Europe. *Joint EEA-FOEN report*. No 2/2011

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prerequisite for the persistence of animal populations (e.g. because of the need for genetic exchange between populations and for the recolonisation of empty habitats includes only effects that are known. There may be various additional effects about which our knowledge is still very limited, such as cumulative effects (combination with other human impacts), response times of wildlife populations and effects on ecological communities (e.g. cascading effects).

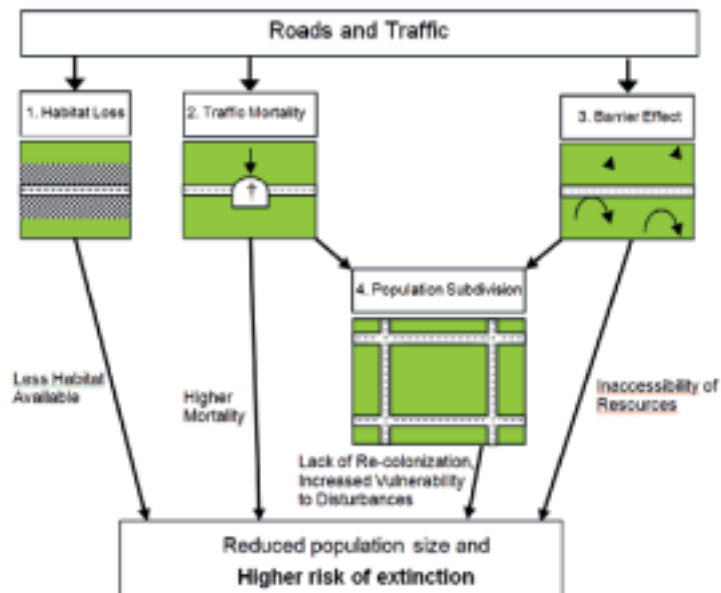


Figure 1.3 The four main effects of transportation infrastructure on wildlife populations (e.g. because of the need for genetic exchange between populations and for the recolonisation of empty habitats includes only effects that are known. There may be various additional effects about which our knowledge is still very limited, such as cumulative effects (combination with other human impacts), response times of wildlife populations and effects on ecological communities (e.g. cascading effects).

***“Therefore, the precautionary principle should be employed.”***

#### Page 53: 4.2 Implications for nature conservation, traffic and urban planning

##### ***Application as a tool for performance review***

Measures for controlling landscape fragmentation can only be implemented effectively if there is an awareness of the problem and feasible solutions are proposed. Decision-makers and the general public should therefore be made more aware of the problems of landscape fragmentation and habitat loss and need to be informed about suitable measures.

##### **Relevance to biodiversity**

The long response times of many species to changes in landscape structure present a particular challenge. The current population densities may not be the response to the current landscape

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pattern but to earlier landscape patterns decades ago, and wildlife populations may continue to decline for many years even if the degree of landscape fragmentation does not increase in the future. Given that the negative effects of habitat fragmentation and isolation often only become apparent after several decades, it is likely that further population losses will be incurred in the coming decades as a result of the landscape changes

***“This makes it all the more essential that a precautionary approach is adopted that guides landscape fragmentation in the desired direction in the coming decades, while future research projects should fill the remaining gaps in knowledge.”***

The exact thresholds for a population or a species are largely unknown, and it is unlikely that they will be known any time soon. Therefore, any hopes for a general hard number for the maximum acceptable level of fragmentation will be disappointed. **Rather, the precautionary principle should be applied in the assessment of landscape fragmentation, and the implementation of limits requires a consultation process.**

As stated previously, this has not been the case for Leather Lane or other corridors in the Chilterns, inadequate surveys were carried out and no precautionary principle has been applied, resulting in actions that are fragmenting vital habitats and connectivity across the landscape with inadequate mitigation. This will have a huge impact on biodiversity and populations of species both locally and nationally.

This situation flies in the face of the principles of sustainability and is contrary to the precautionary principle.

#### **HS2 need to:**

(1) Apply the Mitigation Hierarchy in order to AVOID impacts where possible - only once this process has been complete should they consider mitigation and then compensation;

(2) For the above reason, HS2/EKFB must fully consider the option we are presenting (now known as Option 7) as it will direct the over bridge to the North of Leather Lane and preserve the remaining 87 veteran oak trees and bat corridor;

(2) to restore connectivity across existing transportation infrastructure with most effective design based on evidence<sup>11</sup>.

The European report puts forward several mitigation measures under 4.3.1 Measures in traffic planning and regional planning, including tunnels and wildlife passages. We are sure that HS2 and EKFB are aware of this report, along with several other reports that were submitted to them at the Parliamentary Consultation stage.

### **3. Commitment to Biodiversity/No Net Loss**

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<sup>11</sup> [Conservation Evidence: Evidence Data](#)

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**HS2 are bound to apply the Mitigation Hierarchy** - an established practice in the construction industry and reinforced in HS2's own Ecology document which provides the basis for HS2's approach to assessing, mitigating and compensating any ecological impacts caused by the scheme.

### 3.1.1 states:

**“ The design of the Proposed Scheme will reflect the ‘mitigation hierarchy’ consistent with the current National Planning Policy Framework<sup>1</sup> and guidance on Environmental Impact Assessment as may be applicable to the Proposed Scheme.”**

The Hierarchy requires any construction project to AVOID harm to biodiversity as a first step. The design option presented by HS2/EKFB does not even address this - had they done so, we would expect to see an over bridge design that avoids the lane of trees altogether by either running alongside Leather Lane, straight down to the A413, or an overbridge on the Northern Side which is an arable field.

HS2 keep making claims about their planting of saplings - not only are the figures not resaluty on the ground - tree planting is NOT Mitigation, which is Tier 2 of the Hierarchy. Instead, they are leapfrogging to Tier 3 - bypassing point 1 and 2 and only dealing with Compensation.

1. **Avoidance:** the first step of the mitigation hierarchy comprises measures taken to avoid creating impacts from the outset. Avoidance is often the easiest, cheapest and most effective way of reducing potential negative impacts, but it requires biodiversity to be considered in the early stages of a project.
2. **Minimisation:** these are measures taken to reduce the duration, intensity and/or extent of impacts that cannot be completely avoided.
3. **Rehabilitation/restoration:** The aim of this step is to improve degraded or removed ecosystems following exposure to impacts that cannot be completely avoided or minimised.

Typically, however, even after their effective application, additional steps will be required to achieve no overall negative impact or a net gain for biodiversity.

4. **Offset:** offsetting aims to compensate for any residual, adverse impacts after full implementation of the previous three steps of the mitigation hierarchy. Biodiversity offsets are of two main types: ‘restoration offsets’ which aim to rehabilitate or restore degraded habitat, and ‘averted loss offsets’ which aim to reduce or stop biodiversity loss in areas where this is predicted. Offsets are often complex and expensive, so attention to earlier steps in the

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mitigation hierarchy is usually preferable.<sup>12</sup>

It goes without saying that if damage can be AVOIDED in the first place, the following steps do not even need to be considered - this is a win-win situation that preserves biodiversity and saves costs.

**Section 40(1) of NERC states:**

*‘Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity’.* This is known as the Biodiversity Duty and ‘is a factor that they must consider [along with other factors which are not necessarily of an ecological nature] when deciding whether to, and how to, exercise their functions’.

In terms of species, biodiversity is considered by the act to be principally those listed in s.74 of the CROW Act (i.e. UK Biodiversity Action Plan (BAP) Priority species; the Secretary of State has a duty under s.41 of NERC to review and revise this list), which includes the four Annex II species discussed earlier and also the common pipistrelle bat which includes two species *Pipistrellus pipistrellus* and *Pipistrellus pygmaeus*.

In accordance with PPS9, developers must be able to demonstrate that they have considered alternative options to prevent ‘significant harm’ to ‘biodiversity interests’. In terms of PPS9 ‘biodiversity interests’ refers not only to UK Biodiversity Action Plan Species, such as the bat species as listed in s.74 of the CROW Act, but also to local Biodiversity Action Plan species and all other species protected under the WCA and the Habitats Regulations.

**As public authorities, this provision also applies to HS2 and the Department for Transport as well as Buckinghamshire Council.**

The public authorities to whom this duty applies are listed in s.40(4) of the NERC and notably includes local planning authorities (previously under CROW this duty only applied to Ministers of the Crown, Government departments and the Welsh Assembly Government), as well as public bodies, such as HS2. (See: Recital (D) of the Development Agreement.)

If local planning authorities must exercise the Biodiversity Duty when assessing planning applications, then by implication so must developers if their proposals are to be viewed favourably. If a development would result in significant harm to important foraging/commuting habitat of a s.74 bat species, then the local planning authority must take this into consideration (‘have regard’) when assessing the planning application. The Guidance for Local Authorities on Implementing the Biodiversity Duty (Defra, undateda) supports this view stating that local planning authorities ‘should give proper consideration to biodiversity outside of designated areas’, which includes ‘habitats of principal importance’.

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<sup>12</sup> [Mitigation hierarchy - The Biodiversity Consultancy](#)

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Had they carried out an EIA, HS2 would have adequate survey data to show that Leather Lane is a bat corridor and they would have put measures in place at the outset to avoid destroying the corridor.

HS2 has adopted the **Precautionary Principle** in its ES but this has not been applied. If it had been, sustainability would have been inherent to all further decisions and a commitment to the protection of Ecology and Biodiversity would have been at the core of all planning and decision making.

**The EU communication on the Precautionary Principle (EU, 2000) states**

*‘The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU’.*

Any reasonable person would see that there was a huge risk to Ecology on the Southern Side and, as such, HS2 should have taken measures to avoid dangerous effects. Surely a reasonable person, or let’s say, an Ecologist would see the potential for harm to the Environment, Animal, Human and plant healthy by felling a row of 99 mature oak trees in an AONB that is known to be, and identified by HS2, as being a habitat to numerous species, including bats? The local residents can see this so we presume an HS2 Ecologist would.

The absence of Baseline Surveys and subsequent prevention and mitigation measures means that HS2 are unable to achieve zero net loss for Leather Lane and therefore for the entire project.

Section 85 of the Countryside and Rights of Way Act 2000, and Section 40(1) of NERC states that ‘every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity’.

If HS2/EKFB design an over-lane rather than a road, they would not only be creating a solution for the bat corridor but also incorporating the Design Principles prepared by the AONB group that requires HS2 to maintain the integrity of the Holloway.

The survey data provided is patchy and lacks information regarding location, but we did find grid references for three records of Barbastelle bats commuting in Little Missenden and Ellesborough area in 2016 and 2017 respectively. This should have prompted a more thorough survey - Barbastelles are European Protected Species under the Habitats Directive and their commuting corridors and resting places must be protected. I have seen references to Pipistrelles and other species but not Barbastelles in HS2's Ecology documents.

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## 5. Surveys

We believe that HS2 are in breach of the EIA Directive (“the Directive”) and have not carried out adequate baseline surveys. There have been references to Leather Lane as a corridor that connects bats to habitats in various documents, but there is no in-depth data to provide more information and mitigation for this. Had HS2 carried out an EIA as required by law, they would have identified Leather Lane as a crucial bat corridor and put more effective mitigation measures in place, which would include routing the over road elsewhere to avoid destruction of this vital corridor for Ecology and bats.

Article 2(1) of the Directive requires all measures necessary are taken to ensure that, prior to consent, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.

The Directive requires that projects likely to have significant environmental effects are assessed before development consent is given. As a result, the competent authority is obliged to carry out an environmental impact assessment in respect of a project even after the grant of outline planning permission, when the reserved matters are subsequently to be approved, if it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location. This assessment must be of a comprehensive nature, so as to relate to all the aspects of the project which have not yet been assessed or which require a fresh assessment.

We assert that this is the case for Leather and insist that HS2/EKFB carry out a full EIA on the bat corridor and adopt appropriate mitigation methods including a narrower, one way bridge and bat corridor to guide the bats over the track.

HS2 has failed to put adequate mitigation measures in place following the Environmental Statement in 2013, the House of Commons Select Committee in 2015 and the House of Lords Select Committee in 2016.

The process produced 2 reports on what was expected and ancillary legislation that was specific to certain areas. It was expected that HS2 would carry out surveys and meet at least the “Environmental Minimal Requirements”. This never happened. We understand that HS2 only carried out bat surveys on 42% of the route which has led to mass failings and criminal offences under wildlife protection laws.

We believe that, had HS2 carried out adequate EIA’s for Leather Lane, they would have recognised that it is an essential ecological corridor and could therefore have put appropriate measures in

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place to prevent and mitigate loss.

HS2's Environmental Statement ("ES") recognises the importance of Leather Lane for key connectivity at Para 7.3.20, yet it has done nothing to mitigate for this loss. It refers to "Occasional passes" of species and has not included barbastelle bats and has not looked in to which type of Myotis bats are using Leather Lane, such as the endangered Beichstein bat.-

Our ongoing surveys show constantly high levels of bat activities including the endangered barbastelle bat. Lack of adequate surveys has resulted in a breach of HS2's duty of care to protect the bat corridor and conservation status of the barbastelle bat:

*"Bat assemblage using mature hedges, trees and tree-lined lanes for foraging and commuting at Rocky lane, Bowood lane, Kings lane and Leather Lane; Baseline and rationale for valuation: Driven and walked activity transects in the southern and central part of this area recorded five species; common pipistrelle and soprano pipistrelle (in low to moderate numbers) with **occasional passes of Myotis species, noctules and serotine bats**. The activity indicates that this habitat is likely to be used for foraging and commuting between roosts and other foraging sites. In addition to the species listed above, the desk study indicates the presence of four brown long-eared roosts and a common pipistrelle roost within 1km of the land required for the proposed scheme. **The hedgerows are the only connectivity between the large areas of woodland to the east and west of the land required. Noctule bats and soprano pipistrelle bats are species of principal importance.**"<sup>13</sup>*

Key organisations and stakeholders who were involved at the consultation stage were told that the information put forward in the ES was the worst case scenario. The fact is, that the actual situation for Leather Lane and many other areas is far more complex than what was put forward and decisions have been based on inadequate information. The ES acknowledges the presence of 5 species of bat - in fact **there are at least 7 species including the Barbastelle Bat<sup>14</sup>**, a European Protected Species that has been frequently recorded.

If its importance as a supportive habitat was recognised back in 2013, the following questions need to be asked:

1. Why were no further surveys undertaken, despite the duty imposed on HS2 Ltd to accurately assess the Environmental Impact on bats and other Ecology?
2. Why was no mitigation put in place? Mitigation measures have been set out in the LEMP but nothing specifically for Leather Lane - this should have been set out from the outset and certainly

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397883/volume2\\_CFA10\\_Dunsmore\\_Wendover\\_and\\_Halton.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397883/volume2_CFA10_Dunsmore_Wendover_and_Halton.pdf) pp 106

<sup>14</sup> Watson, S. (2021). Anabat Express Detector Report - Leather Lane

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before the consultation process began.

3. Why were alternative options to the over road not considered? We know that local interest groups petitioned the Government to pursue alternatives, in particular the Tunnel. The tunnel option would prevent habitat fragmentation as “if a road or railway goes through a tunnel that is longer than 1 km, the landscape in this area is considered as connected.”<sup>15</sup> Lord Berkley has stated that HS2 and EKFB misled Parliament in this regard.<sup>16</sup>

4. We conclude that had HS2 and its subcontractors carried out adequate EIA as required by law, more protection and mitigation would have been put in place for Leather Lane and we would not be in a position where we are still petitioning HS2 and its subcontractors to adhere to its binding commitments.

**In her independent review of the HS2’s process for Phase 1, Jo Treweek concluded<sup>17</sup>:**

*“The ES fails to provide adequate ecological information for reliable assessment of impacts, does not place sufficient emphasis on avoidance of impacts at source and does not provide sufficient detail about measures to reduce or compensate for residual impacts”*

*“The level of assessment given for species of conservation importance is more akin to a scoping study than full impact assessment. The concluding statement that “there are no likely significant residual ecological effects during operation” seems unlikely”*

The Environmental Statement and CFA refer to Leather Lane and acknowledge its importance as a bat corridor for commuting between habitats and foraging.

#### **Environmental Statement - Community Forum Area 9<sup>18</sup>**

##### **2.2.16**

*The Proposed Scheme will continue north-west in the South Heath cutting past Leather Lane overbridge where it will leave this area. Key features of this section will include Leather Lane overbridge, which will be approximately 4m above existing ground level, providing an offline replacement of Leather Lane (see Map CT-06-034a, Volume 2, CFA9 Map Book). **The approaches to the bridge will be planted to integrate the structure into the landscape and maintain and enhance existing habitat links across the route for bats and other wildlife.***

##### **7.4.19 states**

<sup>15</sup> European Environment Agency. (2011). Landscape Fragmentation in Europe. *Joint EEA-FOEN report*. No 2/2011 pp 27-28

<sup>16</sup> Lord Berkeley letter 22 3 21 to Andrew Stephenson and Bns Vere ref. Wendover tunnel

<sup>17</sup> Microsoft Word - HS2 Review of EcIA-3.docx (hs2actionalliance.org)

<sup>18</sup> Volume2\_CFA9\_Central\_Chilterns.pdf (publishing.service.gov.uk)

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*“No significant effects are expected on the bat assemblage associated with mature hedges, trees and tree-lined lanes at the southern end of the area. The construction of the South Heath cutting, the Rocky Lane south cutting and the Small Dean viaduct southern approach embankment will remove mature hedges, trees and tree-lined lanes, particularly from Rocky Lane, Bowood Lane, King’s Lane and Leather Lane. These features are used by common and soprano pipistrelles, a Myotis species, noctules and serotines. The width of the land required for the construction of the Proposed Scheme (that ranges between 60m and 550m) is therefore likely to reduce CFA Report – Dunsmore, Wendover and Halton/No 10 | Ecology 114 the frequency with which this assemblage crosses the land required for the construction of the Proposed Scheme. **However, no known roosts will be removed and extensive foraging sites (predominantly woodland) will be retained on either side of the route, as such loss of habitat is unlikely to result in an adverse effect on the assemblages' conservation status.**”*

The Assessment and Review of the HS2 Ltd approach to the Natural Environment<sup>19</sup> concludes that HS2 did not carry out adequate connectivity mapping and habitat monitoring:

*“HS2 Ltd only surveyed and acquired habitat and species data adjacent to the line of the route; therefore, it could not conduct connectivity mapping to evaluate nationally or regionally important ecological corridors. If HS2 had, it could have put the appropriate underpasses or green structures (bridges and cut-and-cover) for a range of species at their critical crossing points with the line.”*

*“Given that HS2 will constitute a complete barrier to movement of animals through the landscape it is essential that the need for crossings is researched thoroughly and that suitable designs are developed. The information presented in the EIS is not sufficient to support a reliable determination of the number and type of crossings needed nor to design them to suit different species’ requirements.”*

The LEMPs build upon but do not repeat, the HS2 general environmental requirements set out in the Control of Construction Practice (CoCP):

*“Increasing the connectivity of the existing woodland and hedgerow features will enhance existing linear vegetative features used by bats for foraging routes and flight lines. This will enable bat flight routes to be manipulated, encouraging the bats to be directed away from the HS2 route whilst main works activities are taking place. These planting sites will be a key factor in ensuring that the green bridges to be constructed by the MWC will become part of the surrounding landscape and are integrated into the mosaic of existing woodlands and hedgerows of the area. It is expected that the green bridges will be positioned so the existing flight lines across the HS2 route are maintained.”*

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<sup>19</sup> HS2 Ecology Technical Group | National Trust

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**Renowned UK bat expert John Altringham has confirmed to us directly on 13th July 2021:<sup>20</sup>**

*“I have been involved in discussions with HS2 in which they have acknowledged the need to protect foraging sites and flight corridors. At a parliamentary select committee meeting on HS2, at which I gave evidence, HS2 agreed to the provision of substantial green bridges to mitigate disrupted flight corridors for Bechstein's bats in the Bernwood Forest area.”*

*“I have been involved in discussions with HS2 in which they have acknowledged the need to protect foraging sites and flight corridors. At a parliamentary select committee meeting on HS2, at which I gave evidence, HS2 agreed to the provision of substantial green bridges to mitigate disrupted flight corridors for Bechstein's bats in the Bernwood Forest area.”*

We believe that, had HS2 carried out adequate surveys for the Chilterns as they did in Bernwood Forest, then adequate mitigation would have been put in place, particularly as the bat corridor is used by the endangered Barbastelle bat.

The survey data provided by HS2 after persistent requests for information from Richard Buxtons' solicitors (where HS2 failed to meet deadlines) is haphazard, with all sorts of data on the same sheet from various UK locations that fails to provide the reader with any consistent or usable information. The two relevant points that we could track from its grid reference showed a commuting Barbastelle Bat in nearby Little Missenden and Ellesborough in 2016. It is well known that Barbastelle bats travel up to 20km and use corridors such as Leather Lane, so why do we not see reference to Barbastelle bats in HS2's endless Ecology documentation and why was no real effort made to survey this essential bat corridor and put effective design plans and mitigation in place?

The AVDC area LEMP for the Chilterns and provisions for bats is scarce compared to the section on Bernwood Forest – one can guess that this is because a survey was undertaken to monitor roosts and flight paths in the Bernwood forest. Such a survey was not undertaken in the Chilterns, which is why, we believe, we are dealing with such poor survey data and lack of mitigation measures.

If the bat corridor has not been covered in the screening process, that would not remove the need for an appropriate assessment if the application of the Habitats Directive required it. In the legal case of Buckinghamshire County Council and HS2, the courts accepted the submission about the need for, and absence at the moment of, credible evidence of a risk which should have been considered in relation to cumulative impact.<sup>21</sup>

The need for “appropriate assessment” arose by virtue both because of the significant impacts on the

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<sup>20</sup> [John Altringham HS2 Leather Lane](#)

<sup>21</sup> *Buckinghamshire County Council & Ors, R (on the application of) v Secretary of State for Transport* [2013] EWHC 481 (Admin) (15 March 2013) (“BCC”), at [231].

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environment that were bound to occur because of the size, nature and location of the development, and by virtue of r.12(1) of the Habitats Directive because of the high risk of the disturbance to various legally protected bat species such that the development activity during construction and operation would be in breach of the Directive.

## 6. Habitats Directive

Under the r.39(1)(d) of the Habitats Regulations (“Regulations”) it is an offence ‘to damage or destroy a breeding site or resting place of such an animal’, referring to Annex IV species. This is a transposition of Article 12(1)d of the Habitats Directive (“HD”), which states:

*‘the deterioration or destruction of breeding sites or resting places’ of an Annex IV species is prohibited. As the HD does not provide a specific definition of a breeding site or resting place, the European Directive EDGEC (2007) states ‘there is room for different interpretations’, due to the wide range of species listed in Annex IV. The EDGEC goes on to advise that Article 12.1(d) should be understood as ‘aiming to safeguard the ecological functionality of breeding sites and resting places’.*

On 26 April 2021, Natural England confirmed that ‘at the time of writing, Natural England have not granted any site registrations under the class licence to HS2 or contractors for works affecting bats at Leather Lane. ‘

Therefore, any felling now would ultimately result in a breach of r.12(1)(b) of the Habitats Directive (to prevent the disturbance of Annex II listed species), the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; (r.12(3)(a)), as well as a breach of Art. 6(3) for the failure to carry out an ‘appropriate assessment’ of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects, before felling begins.

On 13th July 2021, respected UK bat expert John Altringham confirmed to us:<sup>22</sup>

*“Having looked at the bat report and the maps of nearby ancient woodland, it is self-evident that as few trees as possible should be removed, to retain foraging habitat, roost potential and connectivity across this fragmented landscape. All species are under considerable pressure and their small populations reflect the already degraded nature of the landscape. Further stress on species through habitat degradation, loss and fragmentation will inevitably lead to further decline and possibly local extinction. The Annex II barbastelle already has a thin and patchy distribution in the UK, so local loss of this species is of national importance”*

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<sup>22</sup> John Altringham HS2 Leather Lane

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## 7. Chilterns AONB

Furthermore, HS2 has a duty of care to protect the AONB<sup>23</sup>. A dedicated ecology group was set up for this purpose and put forward design principles. An Assurance was provided by HS2 during the passage of the High Speed Rail (London - West Midlands) Act 2017 through Parliament that the guidance would be used by HS2 and their contractors to inform their design throughout the Chilterns AONB.

Instead of taking the plans onboard, EKFB have recently told us they intend to use a standard 2 road on the overbridge, thereby not maintaining the Holloway and the proposals put forward in the

Design Principles.<sup>24</sup> Apart from not maintaining the landscape and its character, it will require more Earthworks and destruction of Ecology including the Oak trees.

At the time plans were put forward for the routes for the over bridge, stakeholders and members of the community were unaware of the importance of the bat corridor and the impact its fragmentation would have on their conservation status.

If EKFB proceed with the over bridge on the Southern side, they will destroy more trees and fragment the bat corridor further. If they incorporate the designs put forward and keep to a minimum 4.5 metre lane, we believe that the over road, or over land, can be redirected to the Northern side within the Act limits.

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<sup>23</sup> Part IV of the Countryside and Rights of Way Act 2000 (CRoW Act) provides the main legislative framework for AONBs. The main relevant sections are: **Section 82** – specifies that the primary purpose of designation of an AONB is to conserve and enhance natural beauty.

<sup>24</sup> [6974-Chilterns AONB\\_HS2 CEIP\\_Part 1\\_Detailed Design Principles\\_low res.pdf](#)

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With regards to planning permission in the AONB, the competent national authorities may grant authorisation to a plan or project only if they are convinced that it will not adversely affect the integrity of the site concerned. If doubt remains as to the absence of adverse effects, they must refuse authorisation.

## 8. Mitigation

It appears that HS2 have not conducted adequate surveys and have therefore not put mitigation in place or even considered appropriate mitigation techniques – the term “vegetation” is wholly inadequate for a series of Oaks and the Eco systems present along the entire Corridor.

**HS2's Ecology Document States:**<sup>25</sup>

3.1.1 The design of the Proposed Scheme will reflect the ‘mitigation hierarchy’ consistent with

<sup>25</sup> [Microsoft Word - Ecology final \(hs2.org.uk\)](#)

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the current National Planning Policy Framework<sup>1</sup> and guidance on Environmental Impact Assessment as may be applicable to the Proposed Scheme.

**3.1.2 *Using the hierarchy, priority is given to avoiding or preventing effects where reasonably practicable; if not, to reducing or abating those effects; and then, if necessary, to offsetting them through repair (restoration or reinstatement) or compensation.***

3.1.3 The approach to be used by HS2 Ltd for ecological mitigation and compensation is proposed to be set out in the Scope and Methodology Report (SMR)<sup>26</sup> addendum which will be contained in the ES and will explain the factors determining the cases in which these should be applied.

3.1.4 The ecological impact assessment will take account of current guidance published by the Chartered Institute of Ecology and Environmental Management (CIEEM). It considers all ecological receptors which have the potential to be affected by the construction and/or operation of the Proposed Scheme.

**This begs the question, Why has this not happened, despite petitions from local interest groups and experts?**

**In his report, Sam Watson states:**

*“In accordance with the mitigation hierarchy of the NPPF the first option should be to avoid any impact to Leather Lane that could compromise its bat corridor function. Whilst it may not be possible or indeed in the best interest of bats to re-route the track to entirely avoid Leather Lane, the first consideration should be to avoid a direct impact. One option for this would be to put the track through a tunnel and thereby maintain the integrity of the lane intact. I am not aware that this has been given full consideration [and] therefore ruled out as an option.*

*Where avoidance has been shown not to be possible, design changes should be made to maintain the characteristics of the lane, in particular its location below the level of the surrounding land, together with the mature trees and a hedgerow along the southern side. **Minimising the width of the track and area either side would ensure that at this location only the very narrowest cut was needed. A green bridge along the alignment of the existing road to ensure there is no break in the corridor should also be considered.** As stated in the NPPF, only once such options have been fully considered and ruled out, should the last resort of compensating for the impact be considered.”*

#### **The Campaign to save Leather Lane Oaks demands:**

- 1. Stop felling until over bridge design is agreed and bats and other animals go into hibernation;**
- 2. Apply the Mitigation Hierarchy as required by HS2’s own legal commitments and seriously**

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<sup>26</sup> HS2 Phase One environmental statement: scope and methodology - GOV.UK ([www.gov.uk](http://www.gov.uk))

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consider the design to route the overbridge to the Northern side which would AVOID harm to the corridor on the Southern side;

3. Adopt the design principles submitted by the Chilterns AONB group and fulfil assurances to parliament by allowing a lane instead of a 2 way road;

4. Create a corridor over the track for the bats to prevent unnecessary deaths and protect their conservation status;

We have located numerous reports concerned with landscape fragmentation and its impact on habitats and survival of species, including bats.

Some of these reports were submitted to HS2 at Consultation stage and we initially saw a lot of PR and commitments to the precautionary principle and biodiversity through schemes such as the green bridge<sup>27 28</sup> but nothing has, in fact, come of it.

**In its report NECR181 on Green Bridges<sup>29</sup>(the Report”) , Natural England states:**

*“It is well documented that transport infrastructure can have a negative impact on the environment. Road and rail schemes can fragment habitats, create barriers to species movement and can sever and fragment areas of valued landscape affecting both visual enjoyment and our ability to access greenspace. However, research has shown that when managed appropriately existing road and rail corridors have the potential to be enhanced to provide connecting corridors through otherwise biodiversity poor landscapes such as intensively farmed landscapes and urban areas, providing important habitats for some species such as pollinators.”*

*It goes on to say:*

*“Literature review forms part of Natural England’s commitment to deliver the Natural Environment White Paper’s (NEWP) commitment 32 which states, “the Government will work with its transport agencies and key delivery partners to contribute to the creation of coherent and resilient ecological networks, supported, where appropriate, by organisation-specific Biodiversity Action Plans.”*

**We would expect to see this followed through in HS2’s environmental commitments and at planning stage:**

*“Transport infrastructure and its operations can have significant adverse effects on biodiversity and landscape, including fragmentation and wildlife-vehicle collisions (Bennett et al., 2011). The overall*

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<sup>27</sup> HS2 launches plans for unprecedented ‘green corridor’ stretching alongside the railway - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>28</sup> Green’ bridges will guide bats across HS2

<sup>29</sup> Natural England. (2015). Green Bridges - A Literature Review. Natural England Commissioned Report NECR181

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*impact of infrastructure on natural environments is termed 'fragmentation'; being the separation of ecosystems and/or habitats of plant and animal populations into smaller, more isolated units."*

**The Report refers to mitigation and requirements at planning stage:**

*"Looking at existing road networks in a region, Clevenger and Ford (2010) discuss taking a landscape based approach, key habitat linkages or zones of important connectivity for wildlife should be identified, then potential crossing locations should be prioritised based on future planned projects, scheduling and ecological criteria. This approach helps to strategically plan mitigation schemes at a regional or ecosystem level. The paper identifies the key benefits of this approach to be an ability to prioritise objectives, incorporate landscape patterns and processes into planning and to address stakeholder concerns. By taking a regional level approach, project specific work will consider the larger ecological network"*

The Report, which we are sure was presented to HS2 at consultation stage suggests the following surveys:

*"in terms of planning specifics, the paper identifies that the following resources should be used to identify wildlife habitat linkages and movement corridors; aerial photographs, land cover vegetation maps, topographic maps, land ownership maps, wildlife habitat maps and wildlife movement data, field research, road kill data and road network data."*

**We, as local residents and lay men, have taken the initiative to record bat activity on Leather Lane, and, as a result, have identified it as an active corridor. Why then, did HS2 not take such steps and put effective mitigation in place?**

If you have not read or considered the Report previously, we recommend you do so now - it supports our claims and also makes suggestions on how bridges can be designed in order to consider and protect the species that are affected by fragmentation, including a paragraph specifically relating to bats.

The authors of a 2011 Joint EEA-FOEN report on landscape fragmentation<sup>30</sup> recommend putting into practice the following three measures with highest priority. This report was submitted to HS2 at the consultation stage. Commitments to green bridges were made at the beginning with widespread PR but nothing has been followed through and we were told by Kimberly Birtwhistle in our recent meeting that EKFB would not be putting any green corridors in. We understand that EKFB and HS2 will be cutting costs and wanting to save money but this is not acceptable and flies in the face of all HS2's commitments and legal obligations.

**1. Application of fragmentation analysis as a tool in transportation planning and regional**

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<sup>30</sup> [European Environment Agency. \(2011\). Landscape Fragmentation in Europe. Joint EEA-FOEN report. No 2/2011](#)

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## **planning:**

The cumulative effects of new transportation infrastructure on the degree of landscape fragmentation should be analysed quantitatively and in more detail in the planning process. The effective mesh density method should be included in the planning process as an instrument for this task, in combination with other relevant criteria (such as habitat amount and quality), e.g. to compare alternative transportation corridors for new roads and railway lines. This task is particularly important because these roads and railroads have strong disturbance effects. In addition, the uncertain effects of landscape fragmentation need to be considered more seriously and studied more systematically, e.g. through the use of the before-after-control- impact (BACI) study design (see above).

## **2. Immediate protection of large unfragmented areas, ecologically significant areas, and wildlife corridors:**

The remaining large unfragmented areas, ecologically significant areas, and functional wildlife corridors should be protected immediately from further fragmentation by adding appropriate criteria and rules to the existing networks of protected areas, such as Natura 2000 and Emerald networks, national parks, and green infrastructure corridors. Critical areas should be identified where further fragmentation is an imminent threat and their rapid preservation is crucial before they would be lost to fragmentation by roads and railroad.

## **3. Monitoring of landscape fragmentation:**

Landscape fragmentation is an essential indicator of threats to biodiversity, to the sustainability of human land-use, and to landscape quality. It should be implemented in monitoring systems of biodiversity, sustainable development, and landscape quality.

These requirements underpin our demands to HS2 and EKFB to mitigate for the loss of connectivity on Leather Lane and support our request to have a one way over bridge in addition to the bat corridor.

We defer to the respected Authority for Bats in Britain and hope that EKFB will do the same:

### **The BCT published guidelines in 2012: “Overpasses: hop-overs and bridges”<sup>31</sup>**

Measures to create passing-over opportunities for bats include hop-overs (using crowns of trees) as well as green bridges and viaducts.

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<sup>31</sup> [Gunnell, K., Grant, G., Williams, C. 2012. Landscape and urban design for bats and biodiversity. Bat Conservation Trust. Pp. 27, 29.](#)

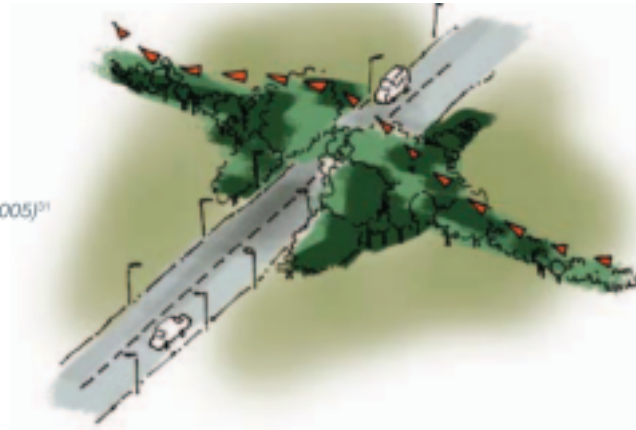
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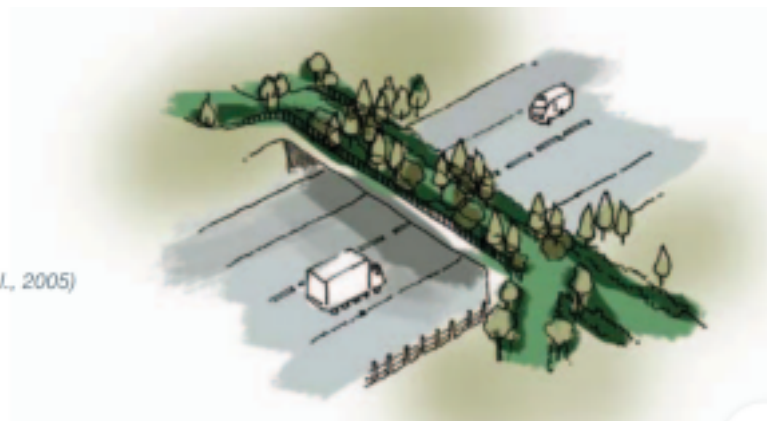
Hop-overs  
(adapted from Limpens et al., 2005)<sup>21</sup>



Partially or completely vegetated bridges, called green bridges or habitat bridges, can be built to assist animals with dispersal across roads. These can range from pedestrian bridges with one side adapted to provide a grass verge, to substantial bridges with mature trees and grassland. The provision of green bridges allows bat movement from a nearby roost to feeding areas and alternative roosts.

The most critical element to encourage use of a green bridge by bats is the absence of lighting both from the bridge itself and from the traffic below. Bridge walls must be solid to prevent light penetration. Green bridges with linear trees and shrub features tend to be used more frequently than those with scattered tree and shrub features.

Green bridge  
(adapted from Limpens et al., 2005)



Wire or mesh structures, known as bat gantries or bat bridges, have been proposed as artificial road crossing structures for bats. However, evidence from research does not support bat gantries as effective mitigation for the impact of roads. The Bat Conservation Trust advises caution in the use and siting of bat gantries. Further robust and comparable pre- and post-construction monitoring of

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the use of bat gantries needs to be carried out to objectively assess their effectiveness as mitigation. Prior to specifying such structures, all other options should be examined and advice sought from the Highways Agency. We encourage more investigation of natural crossing points such as hop-overs, elevated verges and green bridges that could deliver a benefit for the bat species involved, and also for other wildlife impacted by such developments.”

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Table 4. Summary of suitable features to facilitate the movement of bats (adapted from Limpens et al., 2005)

Bat species	Passing over					Passing under				
	High over landscape	Hop over at crown height	Hop over vegetation	Hop over vegetation + wall	Over or along viaduct/bridge	Culverts (h x w = 1 x 2m)	Bridge over water (h < 1m)	Tunnels (h x w = 4 x 4 m)	Bridge over water (h > 2m)	Tunnels (h x w = 6 x 6 m)
Lesser horseshoe bat				*	*	*	*	*	*	*
Natterer's bat				*	*	*	*	*	*	*
Bechstein's bat				*	*		*	*	*	*
Brown long-eared bat				*	*		*	*	*	*
Grey long-eared bat				*	*		*	*	*	*
Greater horseshoe bat				*	*		*	*	*	*
Whiskered bat			*	*	*		*	*	*	*
Brandt's bat			*	*	*		*	*	*	*
Barbastelle bat			*	*	*		*	*	*	*
Daubenton's bat		*	*			*	*	*	*	*
Soprano pipistrelle	*	*	*	*		*	*	*	*	*
Common pipistrelle	*	*	*	*		*	*	*	*	*
Nathusius' pipistrelle	*	*	*	*		*	*	*	*	*
Serotine bat	*	*	*	*	*				*	*
Noctule bat	*	*	*	*	*				*	*
Leisler's bat	*	*	*	*	*				*	*

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**From: Bats, roads and railways John Altringham and Anna Berthinussen School of Biology, University of Leeds<sup>32</sup>**

*“The effects of roads on bats – habitat destruction, fragmentation, degradation and collision mortality Loss of habitat Road development frequently involves the removal of trees and buildings that hold potential or actual bat roosts.*

*The removal of trees, hedges, scrub, water bodies and unimproved (‘natural’) grassland also reduces available foraging habitat. The road surface alone removes significant areas of habitat: 7 ha for every 10 km of 7 m wide, two-lane, single carriageway road. Roadside hard shoulders, verges, junctions, service areas and other structures remove additional potential habitat, of variable biodiversity value and therefore impact. The Barrier Effect Roads are potential barriers to flight between roosts and foraging sites and between summer, mating and winter roosts. They could therefore reduce home range size and quality and restrict migration, which could increase mortality and reduce reproductive potential.*

*Roads may act as barriers because they interrupt existing linear flight lines, because some species are reluctant to cross open ground, because some species avoid lit areas (road and vehicle lights) and, at least initially, because they represent sudden changes in the bats’ familiar landscape. Roads may therefore fragment habitat, decreasing its area and quality. Since habitat area and quality are major determinants of population size, then habitat fragmentation will lower the sustainable population size.”*

Considering that the HS2 track will run for 140 miles in phase 1, it is absolutely imperative that the bats of Leather Lane have a crossing point at Leather Lane itself.

Fig. 2. Flight style and habitat use by insectivorous bats. Drawing by Tom McOwat

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<sup>32</sup> [12676\\_WC1060AppendixA](#)

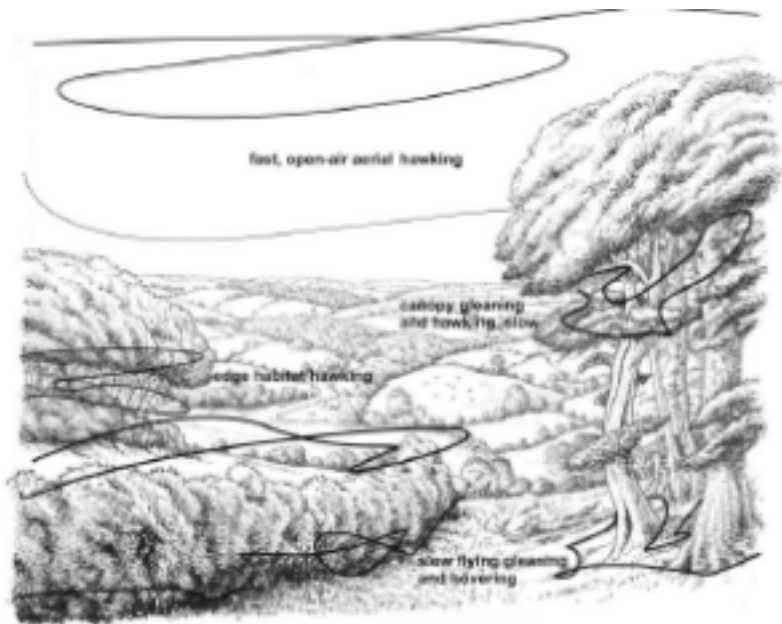
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### Cumulative effects, extinction debt and the importance of scale

Most of the factors discussed will be cumulative. The effects of each individually need not therefore be great for the combination to have a profound effect on a bat population. Furthermore, there will be a lag, known as the extinction debt, between cause and effect (e.g. Tilman et al. 1994, Loehle & Li 1996). This is illustrated in Fig. 3. Fig. 3. The multiple causes of bat population reduction by roads and the delayed response (extinction debt). Adapted from Forman et al. (2003).

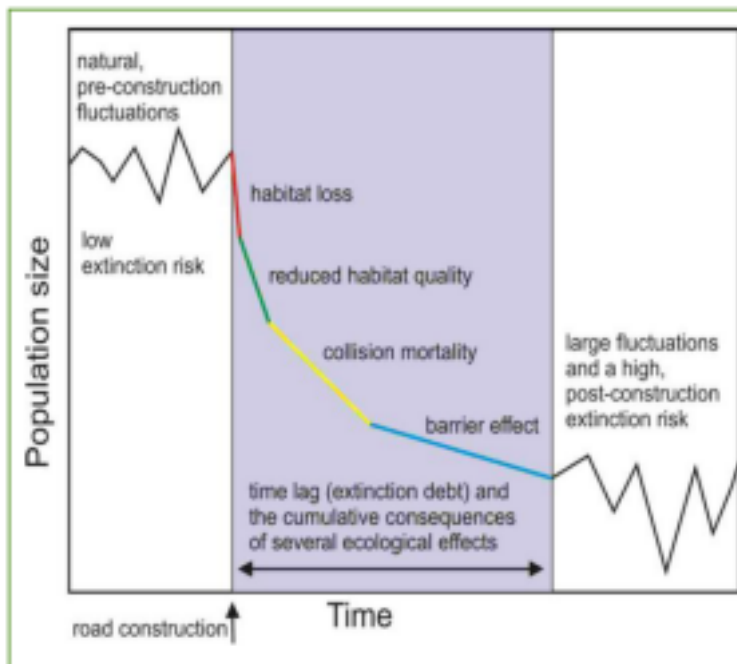
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**Fig. 3. The multiple causes of bat population reduction by roads and the delayed response (extinction debt).** Adapted from Forman et al. (2003).

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The first step in a conservation strategy to minimise the impact of a new road should be to select a route that avoids disturbance to important bat habitat. To be effective this requires an understanding of the behaviour and ecology of the affected species and detailed knowledge of their distribution. Our knowledge in both areas is growing but far from complete. One approach that can deliver detailed, site-specific information relatively quickly is GIS-based habitat suitability modelling, which can be based on existing data sets, such as those held by museums and record centres (e.g. Jaberg & Guisan 2001) or data collected specifically for the purpose, for example by acoustic survey (e.g. Bellamy et al. 2013). No such surveys have been carried out by HS2.

**We understand that EKFB/HS2 will prioritise costs and time frames over Ecology, but we remind you of your duty of care to protect these species and provide the mitigation that we are requesting which is both reasonable and possible.**

### **The importance of connectivity and the maintenance of existing flightlines**

It is common practice to maintain and enhance a 'connected' landscape, i.e. a landscape with a broad range and high density of interconnecting linear features such as hedgerows and treelines. This not only increases the value of the landscape for foraging and commuting, but may give bats more flexibility in how they adapt to a changing landscape and in particular the appearance of barriers in the form of roads. We are not talking about a one off case here, but where destruction of habitat and landscape across the HS2 route, creating a cumulative effect as bats lose habitats and corridors, the imperative is even greater.

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We remind HS2 and EKFB of their obligations under the Environmental Minimum Requirements: General Principles, Code of Construction Practice, Environmental Memorandum, Heritage Memorandum:

## Environmental Minimum Requirements: General Principles

### 1.1.5

*The nominated undertaker will in any event, and apart from the controls and obligations referred to in paragraph 1.1.3, use **reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts caused by Phase One of HS2, insofar as these mitigation measures do not add unreasonable costs to the project or unreasonable delays to the construction programme.***

In turn, Part 9.1.2 of the Code of Construction Practice provides:<sup>33</sup>

*'The contractors will, where it is reasonably practicable, **reduce any habitat loss within the land required for Phase One of HS2 by keeping the working area to the minimum required for construction of Phase One of HS2.***

Moreover, 1.1.10 provides:

*'The Nominated Undertaker will prepare site-specific management plans for these identified environmentally sensitive worksites, focusing on mitigation, compensation and monitoring requirements, with opportunities for enhancement in relation to the identified environmental topics as outlined within the Environmental Memorandum.'*

Again, the LEMP states:

*'1.2.5 It is anticipated that the following general descriptions of work activities will take place prior to and during the construction period within this local authority boundary:*

*advance works, including: site investigations and surveys further to those already undertaken;*

*'enabling works, including: utilities works in the wider area including an overhead line diversion at Chesham Road Vent Shaft; highway and public right of way (PRoW) diversions; building demolitions; site clearance, habitat removal, creation and(sic) environmental mitigation measures.'*

Further, in the Table at 9.3.1:

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593592/Code\\_of\\_Construction\\_Practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593592/Code_of_Construction_Practice.pdf)

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*“The Scheme will result in the loss of confirmed bat roosts in trees and buildings.*

*The Scheme will result in the loss of trees and buildings identified as having moderate or high potential to support roosting bats, but no evidence of their use has been recorded to date through survey work.*

*The Scheme will result in the loss of and disruption to bat foraging areas and commuting routes. **The control measures are, respectively:***

***“Adopt a precautionary approach. Follow appropriate Working Method Statement for demolition of buildings and felling of trees.***

***Where practicable, undertake activities causing loss or disruption during seasonal periods when bats are likely to be less active.***

***Retain as much of the key habitat for as long as possible and establish new areas as quickly as possible to reduce the effects.***

***Ensure lighting is directed away from foraging areas and commuting routes. Reduce night time working in close proximity to foraging areas and commuting routes.”***

So, why are EKFB intending to fell 12-15 oak trees on Leather Lane in the height of summer when bats and other wildlife are most active and when bridge designs have not even been agreed?

Lighting has been an ongoing issue at Leather Lane and has surely caused disturbance. They have also breached the EMRs by consistently directing lighting at the trees, see image overleaf.

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The description of the proposed development must include appropriate mitigation measures, the purpose of which, in turn, is to enable public discussion to take place about whether the measures will be successful or whether more effective measures can be taken to ameliorate the anticipated harm. Public participation has effectively been denied at this late stage in the process.

By preserving the Oak trees and Ecology on the South side, you are keeping an important green space intact. The mitigation site at Jones' Hill Wood is more like Hiroshima than an ancient woodland and will never be replaced, not even in 100-200 years. The saplings next door have not been watered or cared for and will never replace ancient sites such as Jones' Hill Wood and Leather Lane.

The attached ESMP<sup>34</sup> shows the high volume of bat roosts nearby, many of which have been destroyed by HS2 – the 2km radius encompasses Leather Lane and we have good reason to believe that displaced bats are using Leather Lane as a vital corridor for foraging and possibly habitat.

The mitigation provided by Leather Lane is far more established and superior to anything HS2 could attempt to re-create, so why destroy it? You would only be able to do so with good reason.

This is an opportunity for HS2 and EKFB to turn this around and put the measures in place to preserve an ancient Holloway, a vital and iconic part of the AONB and honour and preserve the natural world for all bats, biodiversity and for generations to come.

<sup>34</sup> HS2. (2020). AWE2b-4 - Ecology Site Management Plan - Jones' Hill Wood Ancient Woodland. 1EW03-FUS\_THE-EV-PLN-CS03-000001 pp 64, 66

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Leather Lane *left*



Jones' Hill Wood receptor site and new hedgerow *above*

## 9. Community Engagement

### 5.2 Community relations LEMP

(a) the design or external appearance of the building works ought to be modified—

(i) to preserve the local environment or local amenity,

(ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or

(iii) to preserve a site of archeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or

5.1.1 The nominated undertaker and its contractors will produce and implement a community engagement framework and provide appropriately experienced community relations personnel to implement the framework, to provide appropriate information and to be the first point of contact to resolve community issues. The nominated undertaker will take reasonable steps to engage with the community, particularly focusing on those who may be affected by construction impacts, including local residents, businesses, landowners and community resources, and the specific needs of protected groups (as defined in the Equality Act 2010).

5.1.2 Regular meetings will be held at community forum locations between the lead contractor, the nominated undertaker, the local authority and representatives of the local community or other stakeholders to discuss construction issues and the forthcoming programme of works. Experienced support for local businesses, landowners, and voluntary and community organisations that may be affected by the works will be provided by the nominated undertaker.

Therefore, this makes clear that you have a duty to engage with the community, including the local authority, to discuss issues that affect them. These issues include designs and if the designs are not to conserve or enhance the amenity of the AONB, then this forum would be the correct place for residents to notify the local authority and then under the Schedule 17 of the Act para 2(5)(a)(i) the local authority has the right to refuse the application.

In practice there needs to be a specific meeting with the local authority and local people where the designs are discussed with the contractor and all interested parties.

5.2.1 As detailed within Section 5 of the CoCP, the Nominated Undertaker and Contractors will implement the Community Engagement Framework. The framework will focus on engagement during construction with the local communities and on the specific needs of protected groups (as defined in the Equality Act 2010) especially those who may be affected by construction impacts in the immediate vicinity of the works. A range of tools will be used to achieve this that will tailor engagement to local needs.

5.2.2 Successful management of the project will involve understanding communities and their needs, actively engaging, listening and responding. The arrangements for this are set out in the HS2 Community Engagement Framework.

## 10. Schedule 17

EKFB will shortly be applying for a Schedule 17 licence. As noted in the recent Hillingdon case ([2020] EWCA Civ 1005), this is another opportunity for scrutiny and for the Local Authority to ensure that all conditions have been met.

It is common ground that HS2 Ltd has failed to provide sufficient evidence and information to enable

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local authorities to perform their statutory duty to evaluate requests for approval from HS2 Ltd against ecological and archaeological considerations: *London Borough of Hillingdon Council, R (on the application of) v High Speed Two (Hs2) Ltd [2020] EWCA Civ 1005, at [45]*.

For the [decision-maker] to perform the evaluation of environmental information, an exercise of planning judgment is required whereby the design is measured against the risk to [the environment] and this, in turn, informs an assessment of the need for reasonable mitigation or modification measures: *Hillingdon, EWCA Civ 1005, at [27]*.

The environmental information must include in the environmental statement the views of statutory consultees, such as those of the community, Conservation Board, Natural England and the Highways Authority, and any representations made by other persons about the environmental effects of the development (reg. 2(1)). Any grant of planning permission that does not take this environmental information into consideration is invalid.

This is because the purpose of the environmental information is not just to mitigate or prevent harm occurring, but also to enable public discussion to take place about whether the measures will be successful, or [whether] more effective measures can be taken than those proposed to ameliorate the anticipated harm. The procedural requirement of the EIA that the decision on the project take 'environmental information' into account (reg.3(4)) has therefore not been complied with.

The Environmental Statement should launch the Environmental Impact Assessment, which should, if conducted appropriately, have referred to key parts of legislation put in place to protect wildlife and biodiversity including the Mitigation Hierarchy.

We are in contact with Buckinghamshire Council in this regard and hope that statutory duty will be discharged by all parties to protect the integrity of the Act and the Ecology it purports to protect.

5) If the relevant planning authority is a qualifying authority, it may only refuse to approve plans or specifications for the purposes of this paragraph on the ground that—

(b) the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

We are in touch with Buckinghamshire Council ("BC") on this matter and believe that there are strong grounds for refusal for all the reasons set out above. The *Hillingdon* case has confirmed that HS2 has a duty to provide BC with adequate information and that the authority is entitled to decline to process, or to refuse, the application during 8 week consultation period until HS2 furnishes them with that information, and we believe that there is a strong possibility of refusal at this stage.

**Schedule 17 of the Act states with regards to 'Earthworks':**

(a) the design or external appearance of the building works ought to be modified—

(i) to preserve the local environment or local amenity,

(ii) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or

(iii) to preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or

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That the design or external appearance of the works ought to, and could reasonably, be modified—

- (a) to preserve the local environment or local amenity,
- (b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or
- (c) to preserve a site of archaeological or historic interest or nature conservation value.

If the development does not form part of a scheduled work, that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.

It is in the best interests of all concerned to iron this issue out now so that we can avoid lengthy legal action and adopt the alternatives proposed. As Buckinghamshire Council is a qualifying Authority, it can refuse the designs. From our perspective, the designs do not preserve the local environment or local amenity and they do not preserve nature conservation value.

[1] [Leather Lane Bat Survey 9 May 2021 Metatable](#)

[2] [Watson, S. \(2021\). Anabat Express Detector Report - Leather Lane.](#)

[3] [Threats to bats - About Bats - Bat Conservation Trust](#)

[4] [European Environment Agency. \(2011\). Landscape Fragmentation in Europe. \*Joint EEA-FOEN report\*. No 2/2011](#)

[5] *Buckinghamshire County Council & Ors, R (on the application of) v Secretary of State for Transport* [2013] EWHC 481 (Admin) (15 March 2013) ("BCC"), at [231]

[6] [Ashton, J., Lukasiewicz, A. \(2021\) Bat Survey Report Leather Lane, Great Missenden, Buckinghamshire. Wild Horizons Ltd](#)

[7] [Watson, S. \(2021\). Anabat Express Detector Report - Leather Lane](#)

[8] S. 40 NERC Act 2006

[9] Piraccini, R. 2016. *Barbastella barbastellus*. The IUCN Red List of Threatened Species 2016: e.T2553A22029285. <http://dx.doi.org/10.2305/IUCN.UK.2016-2.RLTS.T2553A22029285.en>

[10] [Microsoft Word - HS2 Review of EclA-3.docx \(hs2actionalliance.org\)](#)

[11] [ecology-technical-group-assessment-and-review-of-the-hs2-ltd-approach-to-the-natural-environment-including-recommendations-for-phase-2.pdf](#)

[12] [European Environment Agency. \(2011\). Landscape Fragmentation in Europe. \*Joint EEA-FOEN report\*. No 2/2011](#)

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(iii) to preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or

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- [13] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397883/Volume2\\_CFA10\\_Dunsmore\\_Wendover\\_and\\_Halton.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397883/Volume2_CFA10_Dunsmore_Wendover_and_Halton.pdf) pp 106
- [14] Watson, S. (2021). Anabat Express Detector Report - Leather Lane.
- [15] European Environment Agency. (2011). Landscape Fragmentation in Europe. *Joint EEA-FOEN report*. No 2/2011 pp 27-28
- [16] Lord Berkeley letter 22 3 21 to Andrew Stephenson and Bns Vere ref. Wendover tunnel
- [17] Microsoft Word - HS2 Review of EclA-3.docx (hs2actionalliance.org)
- [18] Volume2\_CFA9\_Central\_Chilterns.pdf (publishing.service.gov.uk)
- [19] HS2 Ecology Technical Group | National Trust
- [20] John Altringham HS2 Leather Lane
- [21] John Altringham HS2 Leather Lane
- [22] Part IV of the Countryside and Rights of Way **Act** 2000 (**CRoW Act**) provides the main legislative framework for AONBs. The main relevant sections are: **Section 82** – specifies that the primary purpose of designation of an AONB is to conserve and enhance natural beauty.
- [23] 6974-Chilterns AONB\_HS2 CEIP\_Part 1\_Detailed Design Principles\_low res.pdf
- [24] Microsoft Word - Ecology final (hs2.org.uk)
- [25] HS2 Phase One environmental statement: scope and methodology - GOV.UK (www.gov.uk)
- [26] HS2 launches plans for unprecedented 'green corridor' stretching alongside the railway - GOV.UK (www.gov.uk)
- [27] 'Green' bridges will guide bats across HS2
- [28] Natural England. (2015). Green Bridges - A Literature Review. Natural England Commissioned Report NECR181
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- [30] Gunnell, K., Grant, G., Williams, C. 2012. Landscape and urban design for bats and biodiversity. Bat Conservation Trust. Pp. 27, 29
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(iii) to preserve a site of archeological or historic interest or nature conservation value, and is reasonably capable of being so modified, or

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593592/C ode\\_of\\_Construction\\_Practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593592/C ode_of_Construction_Practice.pdf)

[33] HS2. (2020). AWE2b-4 - Ecology Site Management Plan - Jones' Hill Wood Ancient Woodland. 1EW03-FUS\_THE-EV-PLN-CS03-000001 pp 64, 66

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[Microsoft Word - Bat flight path legal protection article - draft 18 with photos amended Dec 2007.doc \(biodiversitybydesign.co.uk\)](#)

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# HS2 destroyed trees in way of train line without permission

This article is more than 2 years old

**Contractors removed potential habitats for bats and butterflies in Buckingham nature reserve to prepare for rail line**



Tree damage at the Calvert Jubilee nature reserve in Buckinghamshire. Photograph: BBO Wildlife Trust

**Patrick Barkham**

@patrick\_barkham

Fri 10 Jan 2020 07.00 GMT

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Trees were felled and the potential habitats of rare bats and butterflies were destroyed on a nature reserve without permission to make way for **HS2**, the high-speed rail scheme has admitted.

Contractors sealed off public footpaths and removed trees inside Calvert Jubilee nature reserve, in Buckinghamshire, without notifying the landowner, the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT). Work which eradicated habitat where bats could roost was carried out in December, despite the government having ordered

that “irreversible” destruction of ancient woodland **should be halted unless deemed absolutely necessary** while HS2 is under review.

When the trust raised the alarm after volunteers working at the nature reserve spotted the work being done, an HS2 spokesperson initially insisted it had acted with “**the full permission of the landowner**”. But in a letter to the wildlife trust seen by the Guardian, HS2 subsequently admitted it did not have permission to undertake the work.



HS2 begins evicting activists from protest site after two years

It claimed it had mistakenly believed the site belonged to another landowner from whom it had permission, despite contractors entering the site past signs clearly identifying it as a BBOWT nature reserve.

Mark Vallance, reserves manager for BBOWT, said he was “livid”, and it was alarming that wildlife habitat could be destroyed by accident.

“It terrifies me that this sort of thing can happen so easily,” he said. “We’ve talked to HS2 numerous times about the impact on our nature reserves.

“If HS2 doesn’t go ahead – and we accept that’s a slim possibility – then there’s been a loss of really good bat habitat here.”

Dozens of limbs from old ash and willow were removed and several whole trees chopped down. Vallance said the destruction appeared to have deliberately targeted the best bat



habitats. The presence of live bats – which are protected by law – has the potential to stop HS2 construction work, set to begin later this year.

Following widespread local protests against the destruction of ancient woodland while the high-speed line is under review, the transport secretary, Grant Shapps, **ordered HS2 in September to “consider what works affecting ancient woodland clearances can be delayed** for the duration of the review”.

But “enabling works” to remove ancient hedgerows and trees before the main contracting works are continuing apace, with miles of hedges grubbed up in recent weeks close to the proposed line through Buckinghamshire, Northamptonshire and Warwickshire.

A leaked copy of the review into HS2’s spiralling costs by Douglas Oakervee revealed he is set to **endorse the project** but his **deputy, Lord Berkeley, this week** issued a “**minority report**” castigating the project for “seriously misleading” parliament, with the estimated final cost rising to £107bn.

Boris Johnson admitted costs were likely to rise above £100bn during the election campaign.



Activists demonstrating against the HS2 railway line in Denham, Buckinghamshire.

Photograph: Stephen Bell/Alamy Stock Photo

Of the environmental damage, Lord Berkeley – a rail expert who has worked for Eurotunnel, the Rail Freight Group and as a transport minister – said: “Compared to improving existing lines, HS2 is not good for the environment, and HS2 Ltd has exacerbated the situation by its

appalling treatment of stakeholders, residents, businesses and councils in the areas over which it plans to construct the lines.”

#### Advertisement

At Calvert Jubilee nature reserve, the high-speed line requires the removal of the eastern edge of the reserve, including orchid-rich grassland and scrub which until recently contained Buckinghamshire’s last remaining populations of nightingales and turtle doves, as well as all five species of hairstreak butterfly.

In a letter to BBOWT, David Bennett, the delivery director of HS2, apologised for undertaking work without permission and said it had incorporated feedback from the charity on the 75,000 trees it will plant this winter close to the nature reserve as compensation for the destruction.

Bennett said: “Over time these trees will connect areas of existing woodland ... and form new bat flight lines away from the HS2 route.”

According to BBOWT, HS2 has repeatedly refused to provide it with precise information about how much of the nature reserve will be removed. Other landowners along the line have reported a similar lack of clarity.

“Every metre counts,” said Vallance. “Even if the land taken was reduced by a couple of metres, it saves a chunk of nature reserve because the track goes through so much of the reserve. Once it’s gone, it’s gone. You can recreate habitat but it takes an awfully long time.”

Like other landowners, BBOWT has not yet been paid compensation for land already taken by HS2. Another landowner, who asked not to be named, said compensation was being withheld to minimise local dissent. “Some landowners feel bullied by HS2,” they said.

Another landowner close to Calvert Jubilee, Christopher Prideaux, whose farm is bisected by the line, described being surrounded by “all manner of chaos” with expensive and ill-planned “enabling works” including the construction of “newt ponds without any newts” on productive farmland.

“This a national crisis,” he said. “I don’t think Westminster will care about the environment. Westminster will care about billions of expenditure.

“HS2 are hoping to get so far down the track that it is too difficult to cancel. This is not true. In financial terms, the first loss is the cheapest loss. What has been spent so far is a fraction

of the overall sum. No government has got any right to be blundering ahead with this without a national transport policy.”

In his independent report, Lord Berkeley said HS2 was an “expensive” and “wrong” solution to improving the rail network and recommended spending half HS2’s budget on upgrading existing commuter lines, particularly in northern England and the Midlands.

Hibit 3

## 1EW03 - Enabling Works Contract

# AWE2b-4 - Ecology Site Management Plan - Jones' Hill Wood Ancient Woodland

Document no.: 1EW03-FUS\_THE-EV-PLN-CS03-000001

Revision	Author	Checked by	Approved by	Date approved	Reason for revision
C01				12/11/2020	First Submission



## Internal review and approval record

Revision	Author	Checked by	Approved by	Date approved	Reason for revision
C01				26/08/2020	First Submission
C01.1				03/11/2020	Updating document

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# Project Terminology

The project terminology used within this document can be found in the 'LWM Project Dictionary' (HS2-  
HS2-PM-GDE-000-000002). In addition, the following terminology is used:

- An **'Ecological & Arboricultural Permit' (EAP)** must be issued by Fusion prior to any works being undertaken. An EAP will be given out once an ecologist has checked the site and is able to confirm that appropriate mitigation is in place for all ecological impacts on Donor and Receptor Sites. The EAP will be produced by the Fusion personnel organising works, checked and signed by Fusion ecologist and arboriculture team and Fusion Ecological Clerk of Works and issued to the contractors and Ecological Clerk of Works. Translocation works can commence only after an EAP has been issued in order to prevent harm to protected species.
- The **'Suitably Experienced Ecologist'** operates at a strategic design level rather than on-site. The individual is expected to have significant experience of making ecological decisions on a variety of complex projects. They should also have a full working knowledge of wildlife legislation, policy and licensing procedures (where necessary), as well as detailed knowledge of relevant HS2 produced technical documents and appropriate ecological mitigation measures.
- The **'Ecological Clerk of Works' (ECOW)** should work on-site alongside contractors, providing an inspection, monitoring and advisory role in line with the strategic / design level guidance provided by the 'Suitably Experienced Ecologist'. They should be able to make clear ecological decisions on species and habitat issues, seeking best possible ecological outcomes, often on an ad hoc basis, drawing upon appropriate knowledge. Where required, they will need to hold the relevant protected species survey licences.
- **Invasive Non-Native Species (INNS)** are broadly defined as species whose introduction and/or spread threaten biological diversity or have other unforeseen impacts.
- **Dormant season** refers to the period between October and February (weather dependant), when many plant are species are dormant and do not grow or propagate.
- **Growing season** refers to the period between March and September (weather dependant) when the majority of plant species grow and propagate.
- **Donor Site** The ancient woodland site from where soil and woodland material will be taken during the translocation exercise.
- **Receptor Site** The site which will receive the ancient woodland soil and material during the translocation exercise.

## Links to other Scheme Documents

Table 1 and Table 2 below shows the other key scheme documents to which this Ecology Site Management Plan (ESMP) is linked and which should be read in conjunction with this ESMP to develop consistent and efficient management and monitoring programmes.

Table 1 Key Scheme Documents

Title	Purpose	Reference
The Environmental Memorandum	The Memorandum relates to the environmental aspects of the design and construction of Phase 1 of HS2. It builds upon discussions which have taken place between HS2 Ltd and representatives of the National Environmental Forum comprising the Agencies (Historic England, Environment Agency and Natural England) and representatives from relevant Government departments, including the Forestry Commission.	HS2-HS2-EVSTD- 000-000004
Code of Construction Practice	The document contains control measures and the standards to be implemented throughout Phase 1 of HS2. At a local level, site-specific control measures will be included within Local Environmental Management Plans, to be developed following consultation with the relevant stakeholders. It also provides a consistent approach to the management of construction activities across local authority boundaries, and with a wide range of key stakeholders.	LWM-HS2-EVSTA-000-000107
HS2 (London-West Midlands) Environmental Minimum Requirements General Principles	This document defines and explains the relevant minimum requirements, which are referred to as the 'Environmental Minimum Requirements'. It also contains as annexes a series of papers which support the EMRs, including the Code of Construction Practice, the Planning Memorandum, the Heritage Memorandum and the Environmental Memorandum.	LWM-HS2-EV-STA-000-000107
HS2's Phase One: London-West Midlands Ancient Woodland Strategy	This document (the Ancient Woodland Strategy for HS2 Phase One) provides an area based comparison of the losses of ancient woodland habitat that will occur as a consequence of the scheme and the associated package of compensation measures to be provided in response to those losses that cannot be reasonably avoided.	PH1-HS2-EVSTR-000-000003
Ecological Monitoring Strategy	This document provides an overview of the route-wide approach that will be adopted for the ecological monitoring of mitigation features (for habitats and species), along with guidance on appropriate monitoring methods and when these should be utilised.	-HS2-EVSTR-000-000029
HS2 Technical Standard – Landscape Maintenance, Management and Monitoring Plan	This document has been prepared to demonstrate the strategy, protocols and responsibilities behind the management and maintenance of the scheme's landscape elements, and how this will be monitored.	HS2-HS2-EV-STD-000-000023
HS2 Ecology Technical Standards	The document is used to inform detailed design and delivery of ecological works for HS2 and to provide a basis for the procurement of design and construction contracts. It defines the requirements for both habitats and species and contains details of mitigation methods, where these are required to address impacts and effects that cannot be avoided.	HS2-HS2-EV-STD-000-000017
HS2 Technical Standard –	The purpose of the document is to guide and direct the landscape design	HS2-HS2-EVSTR-000-000010

Landscape Design Approach Requirements	approach for HS2. The approach is based on principles set out within the HS2 Design Vision and reflects the project’s commitment to good design. It presents the design aspirations for HS2, to ensure that the project can achieve its full potential through design and construction stages to postconstruction management.	
Technical Standard – Soil Handling for Land Restoration	This Technical Standard sets out the generally applicable route-wide principles for soil handling, together with the maintenance of access to land for management and infrastructure services. It relates primarily to agricultural and forestry soils as opposed to engineering soils.	HS2-HS2-EVSTD-000-000008
HS2 Technical Standard – Plant Procurement Strategy	This document sets out the technical specification for the supply of plant material. It sets out the key standards to be adopted, specification (including quality, provenance and size), standards for supply, handling storage and delivery, guarantee requirements and additional requirements, including quality assurance.	HS2-HS2-ENV-STD-000-000018
Technical Standard – Woodland, Scrub and Hedgerow Management Plan	This document brings together commitments, targets, objectives and information from existing HS2 documentation to provide guidance on the maintenance (establishment phase) and long-term management for woodland (translocated ancient woodland soils and woodland planting), scrub planting and hedgerows (translocated hedgerows and planted hedgerows). This document is designed to inform detailed prescriptions and programmes to be provided within each Ecology Site Management Plan (ESMP), for woodland, scrub and hedgerow habitats.	HS2-HS2-EVPLN-000-000012
Technical Standard – Fencing	This technical standard provides the technical requirements and associated guidance for the design of any fencing (including gates, hedges, free-standing walls, hoardings, barriers and other boundary treatments) required by the HS2 project.	HS2-HS2-CVSTD-000-000002
AWE2– Advanced Planting, Seeding and Landscape Mitigation Sites and Habitat Translocation Area Central Work Package Environmental Management Plan	The Environmental Management Plan outlines the environmental impacts and constraints associated with the design of the works to be undertaken within the Fusion Enabling Works Area Central Works Package Brief AWE2 Work Package Landscape Habitat Translocation Package and the environmental controls to be implemented during design (the scope of work of the package is outlined in Section 2 of the document).	1EW03-FUS-EV-PLN-C000-005442
Organisational License –Badgers – HS2, Phase 1 London to West Midlands	This organisational licence is issued to HS2 Ltd to permit disturbance, interference with and closure of badger setts along the Phase 1 route: between London and the West Midlands.	WML-OR24
Organisational License – Bats – HS2, Phase 1 London to West Midlands	This organisational licence is issued to HS2 Ltd, it permits suitably experienced employees and staff of contractors to undertake certain activities affecting Bechstein’s bat, Brandt’s bat, Daubenton’s bat, Whiskered bat, Natterer’s bat, Common pipistrelle bat, Soprano pipistrelle bat, Brown long-eared bat and Noctule bat which are European Protected Species, that would otherwise be unlawful. The	WML-OR32

	licence facilitates the enabling and construction works of HS2 Phase 1.	
Organisational License – Great crested newt – HS2, Phase 1 London to West Midlands	This organisational licence is issued to HS2 Ltd, it permits suitably experienced employees and staff of contractors to undertake certain activities affecting great crested newts that would otherwise be unlawful. The licence facilitates Phase 1 enabling and construction works of HS2 Phase 1.	WML-OR25
Pre-Construction Nesting Bird Survey Methodology/ Breeding Bird Methodology	The document entails guidance on the survey methods which should be applied during all vegetation clearance works and other works which may impact nesting birds and methods to be employed in finding nests and the steps to be taken to ensure that no nests are destroyed during the works.	1EW03-FUS-EV-MST-C000-008590
HS2 Phase One: Great Crested Newt: Populations and Habitats Assessment, Phase 1 Route Wide	Identifies the number of water bodies and areas of terrestrial habitat to be created for great crested newts known at the time of writing. The number of ponds and areas of habitat created may change subject to additional/ updated survey results.	1EW03-FUS-EV-MST-C000-000014
1EW03 HS2 Phase One: Great Crested Newt Unexpected Finds	This document provides the scope of works to be carried out as well as an outline of how the risk levels will be determined. It also explains the Reasonable Avoidance Measures along with the reporting required by the contractors and accredited agents should great crested newts be found or suspected.	
Enabling Works Contract Subcontractor Works Information SW10200 General Constraints	This Works Information describes the constraints which the Subcontractor complies with in Providing the Works.	1EW03-FUS-CM-XXZ-C000-000986

Table 2 Project Specific Documents

Title	Purpose	Reference
AWE2b-4 Ancient Woodland Translocation Feasibility Study - Jones' Hill Wood	The aim of the feasibility study is to assess whether ancient and seminatural woodland soils, deadwood, coppiced trees and where necessary whole trees and shrubs can be translocated efficiently from Donor Sites to the Receptor Sites. This is to allow for the construction of the HS2 railway line.	1EW03-FUS-EV-REP-CS03-002578
AWE2b-4 Ancient Woodland Translocation Technical Method Statements - Jones' Hill Wood	This Technical Method Statement (TMS) outlines the methodologies which will be used to carry out the Ancient Woodland translocation works.	1EW03-FUS-EV-MST-CS03-000001
AWE2b-4 - Ancient Woodland Translocation Soil Survey Analysis Jones' Hill Wood (Glyn Davies Wood) Report	Provides details on the soil's physical properties and nutrient content on both donor and Receptor Sites, to inform suitable soil management procedures for the affected sites. The soil management procedures will form part of the overall methodology which is detailed in the AEW2b Ancient Woodland Translocation Technical Method Statement.	1EW03-FUS-EV-MST-CS03-



AWE2b-4 - Ancient Woodland Translocation National Vegetation Classification Survey Jones’ Hill Wood Report	Provides details on the NVC communities identified within the Jones’ Hill Wood Donor Site.	1EW03-FUS-EV-MST-CS03-002579
AWE2b-4 - Ancient Woodland Translocation Arboriculture Jones’ Hill Wood Report	Identifies trees, coppice stools, saplings, seedlings and deadwood suitable for translocation. Provides details of pest and disease management.	1EW03-FUS-EV-MST-CS03-002580
AWE2b-4 - Ancient Woodland Translocation Timber Valuation Scoping Jones’ Hill Wood Report	Provides a timber valuation scoping report.	1EW03-FUS-EV-MST-CS03-002581
AWE2b-4 - Ancient Woodland Translocation Topographical Survey Jones’ Hill Wood Report	Provides methodology and results of the topographical surveys undertaken at the Jones’ Hill Wood donor and Receptor Sites.	1EW03-FUS-EV-MST-CS03-002584

## Abbreviations and Descriptions

The abbreviations, descriptions and project terminology used within HS2 are documented in the LWM Project Dictionary [HS2-HS2-PM-GDE-000-000002] key abbreviations are detailed in Table 3 below.

Table 3 Abbreviations and Descriptions

Word/Abbreviation	Description
Agreement	A collective term for a Subcontract, Purchase Order or similar document between Fusion and another party that specifies the scope of work and plant, equipment, materials or services.
Authorised Person	A member of the Fusion Project Team who has been formally appointed to take responsibility for a task or function.
AWS	Area Wide Surveys
BAP	Biodiversity Action Plan
Checklist	A proforma schedule of required inspections of a particular item that is normally signed to confirm completion of the required inspection
CoCP	Code of Construction Practice
EAP	Ecological and Arboricultural Permit
ECoW	Ecological Clerk of Works
EMS	Ecological Mitigation Strategy
EPS	European Protected Species
EPSL	European Protected Species Licence
ERG	Ecological Review Group
EMP	Environmental Management Plan
EMRs	Environmental Minimum Requirements

ESMP	Ecology Site Management Plan
ESW	Environmentally Sensitive Worksite
ETS	Ecological Technical Standards
EWC	Enabling Works Contract
Examination	A formal report of an observation of work completed, or in progress
EWC	Enabling Works Contract
GCN	Great Crested Newt
GCN LICL	GCN Low Impact Class Licence
HPI	Habitat of Principal Importance
HS2	High Speed 2
H&S	Health and Safety
Independent Inspector	A person deemed competent to carry out inspection and who is not a member of the team responsible for the manufacture, installation or construction of the item.
Inspection	Examination (e.g. visual assessment, measuring,) of an item to determine whether or not characteristics/attributes comply with the Agreement
INNS	Invasive Non Native Species
Material(s)	Supplied products that form the works and include fabricated items and plant.
MWC	Main Works Contract
MWCC	Main Works Civils Contracts
NERC	Natural Environment and Rural Communities
Non-Conformance	Non-fulfilment of a requirement.
NGOs	Non-Governmental Organisations
NPPF	National Planning Policy Framework
NVC	National Vegetation Classification
PRoW	Public Rights of Way
RAMs	Risk Assessment and Method Statements
Record	Supplied components or inspection and testing carried out.
SNCO	Statutory Nature Conservation Organisation
SSSI	Site of Special Scientific Interest
Supplier	An individual or organisation that is party to an Agreement with Fusion to supply material.
TPO	Tree Preservation Order

LEMPs	Local Environmental Management Plans
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# 1 Introduction

## 1.1 Key Details

- 1.1.1 This ESMP relates to two sites within Jones' Hill Wood, Northamptonshire, the Jones' Hill Wood ancient woodland Donor Site (hereafter referred to as the 'Donor Site') and the Jones' Hill Wood Receptor Site (hereafter referred to as the 'Receptor Site'). The locations of the Donor Site and Receptor Site are shown on Figure 1.
- 1.1.2 Jones' Hill Wood is a 1.8ha area of lowland mixed deciduous woodland that is recognised as Ancient and Semi-Natural Woodland. It is located 5 miles east of Princes Risborough and 6 miles south east of Aylesbury, Oxfordshire, at Grid Reference: SP 88724 04422 (See Figure 1). The Donor site scheduled for translocation is 0.7ha.
- 1.1.3 The Receptor Site has been designed to provide compensation for the loss and severance of ancient woodland within Jones' Hill Wood. The Receptor Site will also provide habitat connectivity and habitat enhancements for foraging and commuting bats and breeding birds.
- 1.1.4 The Receptor Site is approximately a 0.7 ha arable field and is located to the east of the Donor Site. The Receptor Site and Donor Site are less than 25m apart.
- 1.1.5 Figure 1 shows the Receptor and Donor Site boundaries in relation to other areas of ancient woodland, relevant to the ESMP's objectives.
- 1.1.6 The Receptor Site is excluded from the net gain habitat calculations for the HS2 project because it includes removing material from existing irreplaceable habitat and consequently cannot be considered as a habitat gain, as detailed in HS2 Phase One: London-West Midlands Ancient Woodland Strategy (PH1-HS2-EV-STR-000-000003).

## 1.2 Purpose of the Ecological Site Management Plan (ESMP)

- 1.2.1 The project is required to produce an ESMP prior to any work commencing, for habitat creation areas, designated sites, and ancient woodlands, as described in Paragraph 4.8.3 of the Environmental Minimum Requirements (EMRs) Annex 4: Environmental Memorandum (document reference: HS2-HS2-EV-STD-000-000004). Key documents that were consulted in developing the ESMP are included in Table 1 and Table 2 above.
- 1.2.2 The purpose of this ESMP is to:
- Describe the current condition and status of the Donor and Receptor Sites prior to habitat creation measures being implemented (Section 2 – Baseline Conditions).
  - Identify site objectives and targets for the Receptor and Donor Sites relating to both establishment and end condition, including timescales (Section 3 – ESMP Site Objectives).



- List in detail the specific management actions and prescriptions to be followed to ensure successful habitat establishment, development and achievement of the desired end condition (Section 4, 5 and 6).
- Detail the monitoring and reporting requirements of the ESMP and the mechanisms by which review and adaptive change to the ESMP will take place (Section 7 – Monitoring).
- Assign responsibilities for these actions and prescriptions and roles in implementing these (Section 8 – Responsibilities).
- Set out a programme of works for all actions and associated requirements of the ESMP for the specified 50-year period (Section 9 – Programme of Works).

- 1.2.3 This ESMP will be updated at the detailed design and as built staged. This initial draft has been produced in parallel with the development of the detailed design. Prior to commencement of monitoring, reviews will be undertaken both on completion of detailed design and on production of 'as built' drawings. During monitoring, the ESMP will be updated to reflect changing conditions and changes in best practice for example changes in biosecurity or response to climate change.
- 1.2.4 The ESMP objectives will be reviewed every five years or as required. The aim of this document is to aid the management of the Receptor Site for biodiversity. A record of all amendments should be kept in Appendix 1 of the revised ESMP and include all the reasons and types of changes to the document. All operators who routinely use the ESMP should be made aware of any updates to the document and have access to the updated version.
- 1.2.5 This plan has been produced in accordance with the Ecology Technical Standards (HS2-HS2-EV-STD-000-000017) and using the HS2 template (HS2-HS2-PM-TEM-000-00004).

### **1.3 Aims and Objectives**

- 1.3.1 The ESMP objectives are to provide a plan to ensure that translocated and planted habitats at the Receptor Site are managed and monitored to ensure their long-term survival and provide suitable mitigation for the loss of ancient woodland.
- 1.3.2 The aim of the Donor Site is to retain as much of the ancient woodland as possible that is not needed for translocation.
- 1.3.3 The Receptor Sites aim is to create an area of the same size and variety as the woodland removed, that can eventually develop into ancient woodland and contribute to benefit the areas biodiversity.
- 1.3.4 The Jones' Hill Wood Receptor Site shall include:
- Translocated ancient woodland soils.

- Translocated coppice stools.
- Translocated deadwood.
- Translocated monoliths (trees with minimum height of 12m containing suitable roosting features for bats and birds).
- Creation of W14 (NVC classification) woodland *Fagus sylvatica* - *Rubus fruticosus* woodland and;
- Protection of newly exposed ancient woodland edges.

1.3.5 The Receptor Site is excluded from the net gain habitat calculations due to removing material from irreplaceable habitat as detailed in HS2 Phase One: London-West Midlands Ancient Woodland Strategy (PH1-HS2-EV-STR-000-000003).

1.3.6 This ESMP should be considered an active document and will be updated as required. A record of any changes and updates can be found in Appendix 1.

## 1.4 Consultations

1.4.1 Key documents that were consulted in developing the ESMP include:

- HS2 Information Paper E26: Indicative Periods for the Management and Monitoring of Habitats Created for HS2 Phase One;
- HS2 No Net Loss in Biodiversity Calculation: Methodology and Results;
- HS2 Phase 1 Ecological Monitoring Strategy;
- HS2 Approach Document – Ecological Resilience to Climate Change; and
- Other scheme documents as listed in Tables 1 and 2 above.

1.4.2 HS2 and Fusion are responsible for the facilitation of stakeholder liaison including the landowners through appointed community engagement personnel (where appropriate), the relevant Wildlife Trust and other nature conservation Non-Governmental Organisations (NGOs) as required by the Register of Undertakings and Assurances and in accordance with the requirements in section 4.8.3 of the Environmental Memorandum and Code of Construction Practice (CoCP) (document references HS2-HS2-EV-STD-000-000004 and LWM-HS2-EV-STA-000-000107 respectively), which form part of the EMRs.

1.4.3 The ESMP contents should be shared with the following organisations;

- The Environment Agency;
- Natural England;
- The Forestry Commission;

- The Woodland Trust;
- Buckinghamshire County Council;
- Chiltern District Council;
- The Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust;
- EffiageKier (main works contractor); and
- Local residents and other Landowners.

1.4.4 Consultation with stakeholders will be undertaken as required by the Register of Undertakings and Assurances and in accordance with the requirements in section 4.8.3 of the Environmental Memorandum and Code of Construction Practice, which forms part of the Environmental Minimum Requirements (HS2, 2017). Stakeholders include the landowners and Natural England (where appropriate), the relevant local planning authority, wildlife trust and other nature conservation Non-Governmental Organisations (NGO’s). Previous consultations have resulted in the following Undertakings and Assurances for Jones’ Hill Wood outlined in Table 4.

1.4.5 All consultation with the relevant parties and consequential responses will be recorded in Appendix 2.

Table 4 Undertakings and assurances relating to the ESMP site

U&A reference	Description	Consideration within this feasibility study
U&A_1643  Buckinghamshire County Council	The Secretary of State will require the nominated undertaker to: a) Not use sustainable placement at Calvert to dispose of material other than inert surplus excavated material;  b) Examine all other options for the management of surplus excavated material currently planned for sustainable placement at Calvert; and  c) Only place such material at that location if no other option is considered to be reasonably achievable when all aspects including environmental impacts (including traffic and transport) are assessed.	Surplus soil use discussed in Section 4.10
U&A_1646  Buckinghamshire County Council	The Secretary of State will require the nominated undertaker to consider incorporating stretch targets for excavated material diverted from landfill so that contractor incentives (relating to individual contracts and areas in HS2 Phase 1) are introduced to encourage delivery of those targets.	Surplus soil use discussed in Section 4.10 and timber reused or sold as in 2.6

U&A reference	Description	Consideration within this feasibility study
U&A_6238  Aylesbury Vale District Council	The Secretary of State will require the nominated undertaker to, as the detailed design stage approaches, establish a regular meeting with Aylesbury Vale District Council and Buckinghamshire County Council, to discuss issues of detailed design in the Calvert and Steeple Claydon area (including at and around the Infrastructure Maintenance Depot), consistent with the General Principles of the Environmental Minimum Requirements, and HS2 Information Paper G6, Design Development - Detailed Design and the Role of Planning Authorities.	Responsibility of the appointed subcontractor
U&A_6239  Aylesbury Vale District Council	The Secretary of State will require the nominated undertaker to invite East West Rail representatives, Network Rail and any other relevant major project or statutory body representatives to the regular meeting where appropriate to secure effective coordination of works.	Responsibility of the appointed subcontractor
U&A_6240  Aylesbury Vale District Council	The Secretary of State will require the nominated undertaker to participate in any future discussions or governance arrangements which may be established by Buckinghamshire County Council or Aylesbury Vale District Council to manage shared objectives for the local area, particularly in relation to the integration of HS2 plans with those of other committed or proposed projects for the area.	Responsibility of the appointed subcontractor
U&A_6241  Aylesbury Vale District Council	In line with the requirements specified in the General Principles of the Environmental Minimum Requirements, the Secretary of State will require the nominated undertaker to seek to use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts around the Calvert area, in so far as these mitigation measures do not add unreasonable costs to the project or unreasonable delays to the construction programme. Any proposals for further mitigation which may be incorporated into the detailed design of the Proposed Scheme in the Calvert area will be discussed at the regular liaison meeting with the relevant local authorities.	Ecology is discussed in Section 2 and environmental responsibility will be the duty of the appointed subcontractor
U&A_6242  Aylesbury Vale District Council	By prior agreement between the nominated undertaker and Aylesbury Vale District Council, relevant third parties may be invited to the regular meeting, including where appropriate Buckinghamshire County Council and the Promoter of the East West Rail scheme, in order that a holistic approach to environmental mitigation may be maintained.	Responsibility of the appointed subcontractor
U&A_6257  Aylesbury Vale District Council	By prior agreement between the nominated undertaker and Aylesbury Vale District Council, relevant third parties may be invited to the regular meeting, in order that a holistic approach to environmental mitigation may be maintained.	Responsibility of the appointed subcontractor



U&A reference	Description	Consideration within this feasibility study
U&A_11660  Buckinghamshire County Council	The Promoter will seek approval of the relevant highway authority to implement appropriate monitoring across a screenline (at a point on each road intersecting an imaginary line, so that total flows on all roads along the imaginary line can be assessed and changes in flow between each road evaluated)of local roads in the areas of Dunsmore, the Lee and Ballinger Common from the A413, to determine any unintended diversion of traffic due the impacts of HS2 construction traffic using the A413. Monitoring will be reported and regularly reviewed at the relevant Local Traffic Liaison Group Meeting, established in accordance with the Code of Construction Practice and the Route-Wide Traffic Management Plan.	Responsibility of the appointed subcontractor
U&A_11000  Buckinghamshire County Council	The Promoter will require the nominated undertaker, at the detailed design stage, to make provision, where it is prudent and reasonably practicable to do so, for the early planting of trees associated with the Proposed Scheme, provided that these trees are not required to be removed on completion of the Proposed Scheme	Supplementary planting and management is discussed in Section 4.9.
U&A_11692  The London Road (HP22 6PN) Residents Group	The Secretary of State for Transport will require the Nominated Undertaker, as far as reasonably practicable, to meet the nominated representatives of the London Road (HP22 6PN) Residents Group on a regular basis, and at intervals of no longer than 6 months, to discuss planned works in the area of Wendover.	Responsibility of the appointed subcontractor
U&A_11407	To compensate for the loss of ancient woodland the nominated undertaker will use best practice measures such as re-using the ancient woodland soils and creating new mixed deciduous woodland.	This is set out in in this report and detailed within the Technical method Statement
U&A_46	In addition, the nominated undertaker will ensure compliance, where appropriate, with other relevant nature conservation policy.	This is set out in in this report and detailed within the Technical method Statement
U&A_11490	Land which will not be disturbed by the Proposed Scheme during construction (e.g. around features like retained trees) will be fenced off, clearly marked and not traversed by machinery.	A RPA and CEZ will be set up and fenced off from the works surrounding the retained ancient woodland.
U&A_11491	Large construction vehicles will not be driven or hauled within the land required for the project from which topsoil/ subsoil has not been stripped (except for the purposes of stripping) unless protective temporary surfaces are used. Wheeled machinery will not go over soil stockpiles, unless necessary for seeding, sward maintenance or weed control.	Detailed in the technical method statement is the order in which the works will be carried out to avoid driving over soil for translocation.

U&A reference	Description	Consideration within this feasibility study
U&A_11492	All soil materials will be handled under suitable weather and soil conditions using appropriate machinery. The stripping, storage and reinstatement of soils will be carried out with reference to the LSSRPs and will be accompanied by a soil audit report produced by the contractor.	Detailed in section 6.6 of this report.
U&A_11493	The sources, locations, contents and approximate volumes of soil stockpiles will be available from soil survey records compiled prior to the stripping and storage of soils. These records will form part of the baseline information and will be made available. In defining target restored profiles the volumes of available soils in storage will be related to the areas of each parcel of land to be restored.	Estimations of volume of soil for translocation are detailed in section 5.10 of this report
U&A_11494	Soils will be handled when least susceptible to damage, and in accordance with Defra's CCoP. The MAFF Good Practice Guide, 2000 (Sheets 1 to 4) describes the typical machinery that will be used in most cases to strip and transport soil materials into and out of store, and to reinstate topsoils and subsoils. For example, alternative specialised machinery will be used for landscape planting on areas with steeper slopes see section 4 below). Soil handling machinery will be restricted to marked haul routes and will not traverse undisturbed or replaced soils, except where such trafficking is essential for the permitted operations agreed with the nominated undertaker.	Soil handling procedures are set out in the technical method statement to ensure good practice.
U&A_11495	3.7 Defra's CCoP describes methods for the construction of soil stockpiles and the DMRB provides guidance on the storage of topsoils for engineering purposes. These documents set out a range of heights for topsoil and subsoil storage. For the translocation of soils from sensitive Donor Sites the soils will generally be removed, transported and reinstated at the Receptor Site without a period of storage.  3.8 Areas to be used for storing topsoil will first be cleared of vegetation. Areas to be used for storing subsoils will be stripped of topsoil (and this material will be temporarily stockpiled). Once the soil stockpile has been completed the area will be fenced-off to prevent any disturbance or contamination by other construction activities.	Soil handling procedures are set out in the technical method statement and no topsoil or subsoil should be removed and installed on the same day, so storage of soil is not required.
U&A_11497	Following the placement of excavated materials, the surface will be graded to create the required contours and landform, minus the specified thickness of subsoil and topsoil cover. Excavated material may be overfilled to allow for a period of settlement to the design profile or required landform.	A topographical survey of Jones' Hill Wood donor and Receptor Site has been carried out (see appendix 6) the topography will be re-created as best possible on the Receptor Site.

U&A reference	Description	Consideration within this feasibility study
U&A_11499	Reinstatement will involve topsoil being placed above subsoil. Where upper subsoil is to be replaced, it will be placed above lower subsoil. The methodology used will be based on Defra's CCoP to minimise damage to soils. Approaches may be modified to suit particular soil types or local circumstances. The completed restoration will be cultivated to a seed bed appropriate to the first crop or vegetation, as agreed with landowners, farmers or tenants. Aftercare and subsequent monitoring will then be carried out.	Depths of soil layers for both sites are detailed in appendix 4 and amounts of soil for translocation to ensure top sub soil is layered upon lower subsoil.
U&A_11500	Similar soil reinstatement methods will be applied to land reinstated for landscape planting on land with shallow to moderate gradients, and where access permits. Alternative methods using specialised machinery will be applicable for landscape planting on areas with steeper slopes, particularly for cuttings and embankments. Soil placement on inward-facing railway slopes will be in accordance with the DMRB. Soil depths and fertility requirements will be specified for different planting or habitats. For the translocation of soils from sensitive Donor Sites efforts will be made to match the soils in donor and Receptor Sites.	The topographical survey recorded only very mild gradient across both the receptor and Donor Site.
U&A_9581 To the Woodland Trust	Prior to commencement of construction, surveys of the ancient woodlands identified within Bill limits and publish the results as soon as is reasonably practicable	The appendices detail surveys undertaken on the ancient woodland. Further surveys are still required.
U&A_9590 To the Woodland Trust	Prior to commencement of construction, the Promoter will: engage with the Petitioner on any proposed compensation identified by the Promoter [nominated undertaker] in light of the published surveys in the form of the Site Management Plan, and have regard to any reasonable representations about any proposed compensation that the Petitioner may make.	The ESMP details the site management plan for Jones' Hill Wood
U&A_9588 To the Woodland Trust	The Promoter will require the nominated undertaker to have regard to the guidance in Natural England's Standing Advice on avoiding damage to or loss of ancient woodland or ancient and veteran trees and for compensation for any unavoidable loss.	This report details the feasibility of the compensation measures set out by Fusion and includes measures to avoid damage on retained ancient woodland
U&A_9586 To the Woodland Trust	The Promoter will require the nominated undertaker to seek to use planting stock for ancient woodland compensation measures that is sourced and grown within the UK.	Stock will be sourced from the UK.
U&A_9585 To the Woodland Trust	The Promoter will require the nominated undertaker to establish appropriate objectives in site management plans for each area of ancient woodland habitat compensation against which to monitor progress.	These are detailed in the ESMP which sets out the site objectives and monitoring periods in conjunction with the ancient woodland translocation

U&A reference	Description	Consideration within this feasibility study
U&A_9584 To the Woodland Trust	The Promoter will ensure that a management regime is in place to ensure, as far as reasonably practicable, that the ecological objectives of ancient woodland compensation set out in the site management plan are achieved within an appropriate timescale. The appropriate period of monitoring and management of new habitats is set out in Information Paper E26 (Indicative Periods for the Management and Monitoring of Habitats Created for HS2 Phase One) ('IP E26'). The Environmental Memorandum will be revised to reflect the information in IP E26.	The ESMP report sets out the advised site management post translocation
U&A_10723 To the Woodland Trust	Requiring the nominated undertaker to provide a clear plan and methodology for each area of Ancient Woodland soil to be translocated as a result of the Proposed Scheme within the relevant Ecology Site Management Plan for the local area and to engage with the Woodland Trust in the development of those arrangements.	A plan for the translocation of ancient woodland are detailed within the technical method statement based upon the surveys detailed in this report.
U&A_10724 To the Woodland Trust	The Secretary of State will require the Nominated Undertaker to consult with the Woodland Trust in respect of any construction activities undertaken within, or within 100m of, an area of Ancient Woodland which have been assessed as likely to have an adverse effect on the woodland, as reported in the Environmental Statement deposited with the Bill.	This report along with the ESMP and technical method statement when finalised should be submitted to the Woodland Trust.
U&A_10725 To the Woodland Trust	The Secretary of State will require the Nominated Undertaker to:  (i) grow all trees for the Proposed Scheme in the United Kingdom;  (ii) when sourcing tree seed stock for the purposes of the Proposed Scheme, to use reasonable endeavours to source such seed stock from the United Kingdom whilst recognising that, in line with the Secretary of State's commitment to planning for future resilience to climate change, some seed stock is to have an origin and provenance from 0° - 5° latitude south of the planting location;  (iii) to put in place a system of plant passports for all seed and plant material to reduce risks to biosecurity.	Climate change has been considered in the ESMP and stock will be sourced from the UK.

## 1.5 Legislation

1.5.1 The following key legislation is relevant to this ESMP at the time of writing:

- Agreement on the Conservation of Populations of Bats in Europe 1991;
- Animal Welfare Act 2006;
- Conservation of Habitats and Species Regulations 2017 (as amended);



- Conservation of Wild Birds (2009/147/EC) (also known as EC Birds Directive);
- Environment Act 1995;
- Forestry Act 1967 – relating to felling licences;
- Natural Environment and Rural Communities Act 2006: biodiversity duty (Section 40) and species and habitats of principal importance (Section 41);
- Natural Environment and Rural Communities (NERC) Act 2006;
- Protection of Badgers Act 1992;
- Town and Country Planning (Trees) Regulations 1999 amended by Town and Country Planning (Tree Preservation) (England) Regulations 2012 – relating to Tree Protection Order’s (TPO’s);
- Weeds Act 1959;
- Wild Mammals (Protection) Act 1996; and
- Wildlife and Countryside Act 1981 (as amended).

## 1.6 Site Ownership

- 1.6.1 It is understood that HS2 own and possess the Donor and Receptor Sites. The undertakings and assurances (U&As) considered in Table 4 are relevant to the ecological and landscape management and monitoring of the site.

## 2 Baseline Conditions

### 2.1 Background

- 2.1.1 The surveys planned to be undertaken in spring 2020 to inform this Feasibility Study, could not be completed due to protestor action within Jones’ Hill Wood. This has been authored based on desk-based information and follow-up surveys conducted in October 2020.

### 2.2 Site Context

- 2.2.1 The Donor Site is part of a larger area of semi-natural ancient woodland parcel called Jones’ Hill Wood, which is isolated from other semi-natural broadleaf woodland that is present in the wider landscape as shown in Figure 1. Arable land, including the Receptor Site borders the Donor Site and Jones’ Hill Wood, with two roads to the south / east and Strawberry Hill farm to the north east.
- 2.2.2 Based on desk information, Jones’ Hill Wood Donor Site is a broadleaf woodland dominated by beech (*Fagus sylvatica*). The understorey consists of saplings of the canopy species and dense thickets of holly (*Ilex aquifolium*). The ground flora comprises patches of bluebells (*Hyacinthoides non-scripta*), dog’s mercury (*Mercurialis perennis*) with patches of nettle (*Urtica dioica*), bramble (*Rubus fruticosus*) with primrose (*Primula vulgaris*) and early-dog violet (*Viola reichenbachiana*) recorded as present from desk study records.
- 2.2.3 During the NVC survey conducted in October, little to no ground flora was present. The holly was consistent with the desk-based information, as well as the constant, tall canopy dominated by beech. The woodland to most closely match W14 *Fagus sylvatica*- *Rubus fruticosus* woodland. A more detailed description of the woodland can be found within the NVC report (1EW03-FUS-EV-MST-CS03-00259).
- 2.2.4 The Receptor Site is bordered by a road to the east and south, a farm to the north east, with an unnamed broadleaved woodland and ancient woodland to the south east. It comprises an arable field which is currently of low ecological value.
- 2.2.5 There are no designated sites within 2km of the site, however there are 20 parcels of ancient woodland within 2km (see Figure 1) and it lies within National Character Area 110 Chilterns.
- 2.2.6 A full description of the baseline conditions of the Donor and Receptor Sites can be found in the Jones’ Hill Wood Ancient Woodland Translocation Feasibility Study (1EW03-FUS-EV-REP-CS03-002578). Photographs of the Donor Site and Receptor Site can be found on Figure 2.
- ### 2.3 Summary of Key Existing Ecological Features
- 2.3.1 The key features of ecological value are presented below in Table 5 for which management will be required due to their nature conservation importance.

Table 5 Identification of important current features at the ESMP site.

Existing ESMP Feature	Nature Conservation Importance (CIEEM, 2018)	Feature with legal/policy protection/covered by licence
<b>Key Habitats</b>  Ancient Woodland	Metropolitan/County	Ancient woodland is an irreplaceable habitat with flora not seen anywhere else. Ancient woodland is protected under National Planning Policy Framework (NPPF) and needs to be considered under the Warwickshire Local Plan
<b>Key Species</b>  Bats	Local/Parish	Bats and their roosts are legally protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended).
<b>Key Species</b>  Badger	Local/Parish	Badger setts are legally protected from disturbance, damage or destruction under The Badger Act 1992.
<b>Key Species</b>  Birds	Local/Parish	Lapwing, grey partridge and marsh tit are red listed species under the Birds of Conservation Concern (British Trust for Ornithology, 2015) due to their rapid decline. All birds are protected under the Wildlife and Countryside Act (as amended).
<b>Key Species</b>  Reptiles	Local/Parish	Reptiles are protected from injury and killing under the Wildlife and Countryside Act 1981.

## 3 ESMP Site Objectives

### 3.1 Vision and Principles

- 3.1.1 HS2 have stated their commitment to design the HS2 scheme to, where reasonably practicable, avoid impacts on sensitive ecological receptors. However, given the scale of the scheme, and where conflicting environmental constraints exist, there are locations where impacts on ecological features cannot be reasonably avoided. The **HS2 Phase One Environmental Statement (ES)** was therefore produced to accompany the High Speed Rail (London-West Midlands) Bill <https://www.gov.uk/government/collections/high-speed-rail-london-west-midlands-bill>. The ES identifies (i) likely significant environmental and ecological impacts along the route and (ii) compensation measures to manage and reduce these impacts. Part of these measures include a commitment to achieve no net loss in biodiversity.
- 3.1.2 Natural England and the Forestry Commission's standing advice in relation to ancient woodland is that these are considered to be areas that have been continuously wooded since at least 1600 AD. Ancient woodlands are complex ecosystems and, as they take hundreds of years to establish, they are considered to be irreplaceable. In accordance with the recommendations of Natural England, ancient woodland loss and compensation to be provided in response to this loss has been removed from the HS2 'no net loss in biodiversity' calculation tool.
- 3.1.3 Despite this, the stated aim of the proposed woodland translocation is to create a woodland that replicates as many as possible of the characteristics of ancient woodland present at the Donor Sites, while acknowledging that it will never be possible to directly mitigate for ancient woodland. The HS2 Ecology Technical Standard, Ref. No. HS2-HS2-EV-STD-000-000017 P15 Technical Standard - Ecology provides a framework for achieving this aim, along with application of habitat management best practice, tree veteranisation techniques and innovative approaches to translocation.

### 3.2 General Objectives

- 3.2.1 As stated in the HS2 Technical Standard – LMMMP, the overall translocation objectives for Ancient woodlands are to:
- Create an area of trees with complete canopy cover.
  - Ensure native species are dominant and non-native and invasive species account for less than 10% of the vegetation cover.
  - Create sinuous, irregular boundaries (that may be along parish boundaries if appropriate).
  - Maximise the biodiversity value of the created woodland by promoting long term



management through use of traditional methods (e.g. via coppice or coppice and standards management).

- Incorporate any retained mature trees at, or adjacent to, the proposed new planting into the management regime.
- Develop and retain some of the Ancient Woodland Indicator species (see Error! Reference source not found. below) in the ground flora through the translocation of ancient woodland soils.

3.2.2 In addition, Section 1.8.3 of the EMS states that for woodland soils, the translocation objectives are related to progress;

- Toward relevant NVC communities and/or to the relevant criteria for Habitats of Principal Importance (HoPI), which are based on the habitat descriptions within United Kingdom (UK) Biodiversity Action Plan (BAP) (JNCC, 2011).
- Against the woodland condition assessment criteria of the Forestry Commission.
- A list of species to identify Ancient Woodland can be found within Francis Rose, The Wildflower Key ‘Table of Ancient Woodland Indicator Plants (AWIs)’ (K. Kirkby, 2004). The appropriate region for Jones’ Hill Wood site is ‘South’.

### 3.3 Specific Objectives

3.3.1 The points detailed in Table 6 indicate the targets and parameters that will be measured to monitor progress.

Table 6 Specific Objectives for the Receptor Site

ESMP Site Feature	Objective	Rationale
<b>Habitats</b>		
Broadleaved Woodland	<p>Create an area of ‘natural’ woodland managed, primarily for wildlife, which is classified under National Vegetation Classification (NVC) as classification W14 <i>Fagus sylvatica</i> - <i>Rubus fruticosus</i> woodland.</p> <ul style="list-style-type: none"> <li>• Translocate Ancient Woodland topsoil, including the seedbank present, to replicate soil conditions at the Donor Site.</li> <li>• Maximise the use of woodland material from Donor Sites, including coppice stools, deadwood, standing, fallen, aerial, leaning / failed and felled trees to create new woodland habitat trees.</li> <li>• Both standing and dead wood will be present in sufficient quantities.</li> </ul>	<ul style="list-style-type: none"> <li>• To compensate for the loss of ancient woodland at Jones’ Hill Wood.</li> </ul>

ESMP Site Feature	Objective	Rationale
	<ul style="list-style-type: none"> <li>The woodland will accommodate a diverse range of typical woodland species, including ancient woodland indicators.</li> <li>Ensure native species are dominant and that non-native and invasive species account for less than 10% of the vegetation cover;</li> <li>Complete canopy cover (excluding thinning or coppice area);</li> <li>80% of ground flora resembling W14 NVC community;</li> <li>At least three age classes present (canopy, understorey and ground cover).</li> </ul>	
	<p>The woodland will have variations in the structure with rides and glades present.</p> <ul style="list-style-type: none"> <li>Create glades at key junctions to provide open areas within the woodland to encourage wildlife into the woodland;</li> <li>Woodland rides (required for maintenance) with scalloped edges to provide soft, naturalistic rides and woodland extent.</li> </ul>	<ul style="list-style-type: none"> <li>Glades provide an alternative habitat to a heavily shaded woodland and encourage a more diverse ground flora and ecological benefit for fauna present within the vicinity of the site;</li> <li>Rides create lighter areas and more diverse ground flora at the ride edges.</li> </ul>
<b>Species</b>		
Woodland Bat Species	Objective within broadleaved woodland habitat - presence of standing trees and deadwood for use as habitat 'poles'. Additionally, maintenance and management of bat boxes installed for mitigation and enhancement.	To ensure the continued presence of suitable roosting features for bats and to maintain connectivity of bat habitat to the areas of retained woodland.
Breeding Birds	Objective within broadleaved woodland habitat - presence of standing trees and deadwood for use as habitat 'poles'. Additionally, maintenance and management of bird boxes installed for mitigation and enhancement.	To create connectivity between the existing wood and the newly planted habitat to support breeding birds, specifically marsh and willow tits.
Reptiles	<p>Objective within broadleaved woodland habitat – maintenance of fallen deadwood on the woodland floor, including newly felled green logs, to provide a next generation of fallen deadwood.</p> <p>In addition to this, the objective applies to bunds created for south facing reptile basking banks: long term maintenance to prevent deterioration of the features from the design.</p>	To ensure the Receptor Site offers suitable habitat for reptiles and provides hibernation, shelter, basking and foraging opportunities.
Great Crested Newt	Objective within broadleaved woodland habitat – maintenance of fallen deadwood on the woodland floor, including newly felled green logs, to provide a next generation of fallen deadwood.	To ensure the Receptor Site offers suitable habitat for GCN and provides hibernation, shelter and foraging opportunities.
Badger	Objectives within broadleaved woodland habitat. Additionally, maintenance of badger setts providing compensatory shelter.	To ensure the Receptor Site offers suitable habitat for badger and provides shelter, foraging and breeding opportunities.

## 3.4 Monitoring Targets

- 3.4.1 Targets have been identified based upon the Donor community and in accordance with the target performance identified for woodland planting. The success of the translocation can be determined by comparing results with the objectives set at the beginning of the project.
- 3.4.2 Table 7 sets out the performance indicators, the parameters that will be measured to identify progress, and the interim and end point target. These targets and performance indicators will be discussed by Fusion and LMJV to find common approaches.

Table 7 Key Performance Indicators for the Receptor Site

Performance Indicator	End Target Year 5 (Y5), Year 20 (Y20) & Year 50 (Y50)
<b>Extent</b>	
Y5	Entire site comprises native tree or shrub seedlings, saplings, and translocated trees and coppice stools, interspersed with areas of scrub and grassland.
Y20	Entire site is developing semi-natural woodland
Y50	Entire site is semi-natural woodland
<b>Natural Processes and Structural Development</b>	
Y5	<ul style="list-style-type: none"> <li>At least 80% of translocated trees are living</li> <li>At least 80% of translocated coppice stools are living</li> <li>Saplings and scrub cover at least 50%</li> <li>Translocated standing deadwood remains standing</li> </ul>
Y20	<ul style="list-style-type: none"> <li>20 year old trees comprise at least 50% cover</li> <li>Understorey at least 20%</li> <li>Rides and Glades 10-30% cover</li> <li>Dead wood lying (3-5 trees per hectare equivalent)</li> <li>Dead wood standing 2-3 trees per hectare – this can include large dead limbs on living trees</li> </ul>
Y50	<ul style="list-style-type: none"> <li>Canopy cover of at least 50%</li> <li>Understorey at least 20%</li> <li>Mature (in this context 50 year old) trees/scrub at least 50% cover</li> <li>Rides and Glades 10-30% cover</li> <li>Dead wood lying (3-5 trees per hectare equivalent)</li> <li>Dead wood standing 2-3 trees per hectare – this can include large dead limbs on living trees</li> </ul>
<b>Composition</b>	
All years (but higher layers not considered in earlier year surveys)	<ul style="list-style-type: none"> <li>Over 95% native species in all layers (sycamore should be considered as a non-native, however the presence of sycamore in the field (seedling) layer at &gt; 5% is acceptable providing that these do not translate into higher layers.</li> <li>Beech and holly should be abundant throughout the woodland.</li> <li>Rowan, wild cherry and pedunculate oak should all be occasional.</li> <li>At least two of yew, hazel and wild privet should be present.</li> <li>At least 5 Ancient Woodland Indicator species (AWI) should be present.</li> <li>At least 2 AWI should be Frequent.</li> <li>Bramble cover maximum 30%.</li> </ul>

Y50	<ul style="list-style-type: none"><li>• The Canopy layer comprises at least 50% beech</li></ul>
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### 3.5 Management Considerations

- 3.5.1 Access for maintenance must accommodate any machinery required for managing the woodland habitats.
- 3.5.2 Badger setts will have a buffer zone of 30m in which no vehicle movements will be allowed and in which the use of machinery for groundwork will be restricted, as indicated on the general arrangement plans listed in Appendix 6.
- 3.5.3 Tracking over arable land will be required in order to access the sites, however this will be temporary in nature.
- 3.5.4 Breeding birds may be utilising vegetation with the ESMP sites that are subject to maintenance, and so activities must avoid effects on active nests.
- 3.5.5 Should any areas of the Donor or Receptor Sites be damaged during construction under the MWC, reinstatement works will be undertaken in line with the Code of Construction Practice.

### 3.6 Ecological Resilience to Climate Change

- 3.6.1 The planting procurement will incorporate plants sourced from lower latitudes to account for predicted rising temperatures in the area.

## 4 Management Measures - Translocation

### 4.1 Applicable Licences

- 4.1.1 The licences listed in Table 8 below have been issued by Natural England and are relevant to the works within the Jones’ Hill Wood area. Translocation works must be carried out in accordance with the conditions of the licences and the various method statements attached to them. The licence requirements will not affect the method of translocation, but may affect the timing of works/preparatory works/ areas available if protected species are discovered.

Table 8 Licences Issued by Natural England

Licence Type	Licence Number
HS2 – Organisational Badger Licence	WML-OR24
HS2 – Organisational Bat Licence	WML-OR32

- 4.1.2 Reference to any licences, method statements and consents that the translocation, management or monitoring uses will be recorded in Appendix 5.

### 4.2 Emergency Procedure for Unexpected Discoveries and Issues

- 4.2.1 Table 9 contains information on the:

- Unexpected discovery of protected species during live work; and
- Signs of a species presence.

- 4.2.2 Fusion has issued method statements for emergency procedures and any unexpected finds in relation to the following species.

- Pre-Construction Nesting Bird Survey Methodology, Ref. No. EW03-FUS-EV-MST-C000-008590; and
- 1EW03 HS2 Phase One: Great Crested Newt Unexpected Finds, Ref. No. 1EW03-FUS-EVMST-C000-000014).

- 4.2.3 Should further surveys be required following any unexpected finds, these must be carried out at specific times on years depending on species discovered.



Table 9 Protection of features and procedures to deal with the unexpected discovery of a protected or invasive species

Feature	Legal Protection	Basic Signs of Presence	What to do in the Event of Discovery
Badger	Badgers Act 1992  To work under Licence issued by Natural England to Fusion, with associated method statements (not yet received from Fusion)	<ul style="list-style-type: none"> <li>• Sett entrances are at least 25 cm wide, broader than they are high and may have large soil heaps immediately outside.</li> <li>• Badger hairs, bedding and footprints.</li> <li>• Well-worn paths, dung pits and scratching posts.</li> </ul>	<p>Badgers may still try to use established paths despite obstacles that may be in place as mitigation. They may also attempt to excavate new setts.</p> <ul style="list-style-type: none"> <li>• If evidence of badgers are found or suspected works must be halted immediately.</li> <li>• Advice must be obtained from the Sub-contractor ECoW and the Fusion ECoW immediately.</li> <li>• If a sett is discovered during badger breeding season, works may have to be suspended until July, when a sett excavation plan can be conducted under license.</li> </ul>
Bats	Conservation of Habitats and Species Regulations 2017 (as amended) Wildlife and Countryside Act 1981 (as amended) Some species are listed as species of principle importance under the NERC Act 2006  To work under Licence issued by Natural England to Fusion, with associated method statements (not yet received from Fusion)	<ul style="list-style-type: none"> <li>• Bat droppings may be seen on the ground/surfaces around roosting sites/access points (droppings are black or brown and around 10 mm in length). Droppings are softer and drier than mouse droppings and when crushed droppings crumble into a fine shiny powder.</li> <li>• Feeding remains (such as moth wings) may be present.</li> <li>• Scratch marks and staining from urine or fur oils may be found on the surface around access points/roosts.</li> <li>• The sound of bats chattering or noises from roosts may be heard.</li> </ul>	<ul style="list-style-type: none"> <li>• Work must be halted immediately as it is illegal to capture or disturb a bat/roost without the appropriate license.</li> <li>• Advice must be obtained from the Sub-contractor ECoW and the Fusion ECoW immediately.</li> <li>• Works may need to be stopped until surveys and design mitigation measure shave been undertaken.</li> <li>• Only licensed bat workers are able to enter a known roost/capture/handle bats unless except if a bat accidentally flies into a dwelling and needs releasing or is injured.</li> </ul>
Dormouse	Conservation of Habitats and Species Regulations 2017 (as amended) Wildlife and Countryside Act 1981 (as amended) Species of principle importance under the NERC Act 2006  A licence from Natural England must be obtained before any works can take place.	<ul style="list-style-type: none"> <li>• Characteristically gnawed hazelnuts.</li> <li>• Nests woven out of stripped bark, leaves and occasional grasses.</li> <li>• Nests tend to be 90 mm to 150 mm in diameter, typically have a roof and tend to include fresh green leaves which fade to a grey brown colour, distinct from the brown dead leaves collected from other species.</li> </ul>	<ul style="list-style-type: none"> <li>• All works affecting potential dormouse habitat must be halted immediately.</li> <li>• Advice must be obtained from the Sub-contractor ECoW and the Fusion ECoW immediately.</li> <li>• Work may need to be delayed until a EPSM license has been obtained and/or until mitigation can be carried out at the appropriate time.</li> </ul>

Feature	Legal Protection	Basic Signs of Presence	What to do in the Event of Discovery
Reptiles	Wildlife and Countryside Act 1981 (as amended) Species of principle importance under the NERC Act 2006  Method Statements to be provided by Fusion and clearance of habitat required prior to translocation.	<ul style="list-style-type: none"> <li>Be aware of the four common reptile species found in the UK (common lizard, grass snake, slow worm and adder).</li> </ul>	<ul style="list-style-type: none"> <li>All works affecting potential habitat must be halted immediately.</li> <li>It is acceptable to move a reptile if they are at imminent risk of being injured or killed but then advice must be obtained on how to proceed.</li> <li>Advice must be obtained from the Sub-contractor ECoW and the Fusion ECoW immediately.</li> </ul>
Breeding Birds	Wildlife and Countryside Act 1981 (as amended)	<ul style="list-style-type: none"> <li>Active nests with either chicks or eggs present and the parent bird sitting on or regularly visiting the nest.</li> </ul>	<ul style="list-style-type: none"> <li>If nesting birds are found on site, works in that area will have to stop until the young have fledged.</li> <li>During the nesting season any suspected nests should be inspected by an experienced ecologist.</li> <li>See guidance in document reference: 1EW03-FUS-EV-MST-C000-008590, if nesting birds are found or suspected.</li> <li>Advice must be obtained from the sub-contractor and Fusion ECoW.</li> </ul>
GCN	Conservation of Habitats and Species Regulations 2017 (as amended) Wildlife and Countryside Act 1981 (as amended) Species of principle importance under the NERC Act 2006	<ul style="list-style-type: none"> <li>May be found on land or in water bodies outside of their hibernation season (October to February).</li> <li>Adult GCNs are 110-170 mm long and are dark brown or black.</li> <li>During spring and summer males have a jagged crest across their back and the tail has a silver stripe along it. Females have neither the crest nor silver stripe but do have a bright orange stripe along the bottom of their tail.</li> <li>Males and females have bright orange bellies and black spots.</li> </ul>	<ul style="list-style-type: none"> <li>If GCN are found once works have started they must be halted immediately.</li> <li>Advice must be obtained from the Sub-contractor ECoW and the Fusion ECoW immediately.</li> <li>Works may need to be delayed until the appropriate licence has been obtained/until mitigation can be conducted at the appropriate time of year.</li> </ul>
INNS	Legislation relating the control of INNS includes: Wildlife and Countryside Act 1981 Countryside and Rights of Way Act 2000 Weeds Act 1959 Environmental Protection Act 1990 Environmental Protection (Duty of Care)	Become familiar with the following INNS: <ul style="list-style-type: none"> <li>Japanese knotweed</li> <li>Himalayan balsam</li> <li>Giant hogweed</li> <li>Australian swamp stonecrop</li> <li>Parrot's feather</li> </ul>	<ul style="list-style-type: none"> <li>If found advice must be obtained from the Sub-contractor</li> <li>ECoW and the Fusion ECoW immediately.</li> <li>Obtain approval from the Environment Agency if planning to use herbicides.</li> </ul>

Feature	Legal Protection	Basic Signs of Presence	What to do in the Event of Discovery
	Regulations 1991 Town and Country Planning Act 1990 Highways Act 1980 Water Resources Act 1991 The Environmental Permitting (England and Wales) Regulations 2007 The Landfill (England and Wales) Regulations 2002	<ul style="list-style-type: none"> <li>Floating pennywort</li> <li>Creeping water primrose</li> </ul> Use Environment Agency "Managing invasive non-native plants" document (Environment Agency, 2010).	<ul style="list-style-type: none"> <li>Remove all plant debris from any waterbodies after cutting operations;</li> <li>Seek advice from the Environment Agency on the disposal of plant material.</li> <li>Alert any neighbours to the problem, via the Fusion representative.</li> <li>Disruptive works (those that will break ground or involve heavy machinery) shall not take place in areas with confirmed Schedule 9 invasive plant species presence without a site-specific Biosecurity Management Plan being in place (see section 22.2.4 of Ecological Technical Standards (ETS) (document reference: HS2-HS2-EV-STD- 000-000017).</li> </ul>

## **4.3 Health and Safety**

- 4.3.1 All machinery and equipment will be transferred via the agreed access routes only. All contractors working on the ESMP Site must be compliant with HS2 Health and Safety Personal Protective Equipment Policy as well as the Fusion Health, Safety and Wellbeing Principles and inducted accordingly.
- 4.3.2 General construction activities (including during management, maintenance and monitoring), or 'aspects', that may 'impact' on the environment will include use of the public road network by construction traffic; closure of PRow's; noise & vibration; dust/mud on roads; use of temporary site lighting; emissions to air from construction traffic and non-road mobile machinery (NRMM); use of water for site operations; impacts to controlled waters/ land drains; storage of fuel, oil and hazardous materials (including chemicals); storage of waste; unexpected discoveries after commencement of operations - these may include protected species, contaminated land and archaeological features.

## **4.4 Amendments to the Scope/Change Log**

- 4.4.1 The current design/layout of the Receptor Site is provided in Appendix 6 and shown on Figure 4. During design stage there may be the requirement for amendments or deviations from the original design of the ecological mitigation and compensation, which would be determined or agreed with Fusion the Enabling Works Contract (EWC).
- 4.4.2 Any changes in the methodology for the maintenance, management and monitoring of the ESMP site will be recorded. All decisions and their rationale must be recorded in a log provided in Appendix 7. These shall include a concise summary of the on-site changes made, when they were made and the justification.

## 5 Management Measures - Initial Maintenance Tasks

- 5.1.1 A habitat creation specification has been produced for the ESMP sites (referenced in Appendix 6). This management plan details how the specification will be followed on both sites. The period for initial maintenance is five years after completion of the establishment stage and the tasks are compiled in Table 10. Diagram 1 gives an overview of the Ancient Woodland translocation process.
- 5.1.2 During the establishment phase, habitat protection measures will be required for both the retained woodland edge in the Donor Site and in the Receptor Site to prevent damage from construction activities.
- 5.1.3 To protect the translocated woodland from browsing by animals such as deer and rabbits during its establishment. The Receptor Site will be fenced with deer/rabbit proof fencing as detailed in Appendix 8.

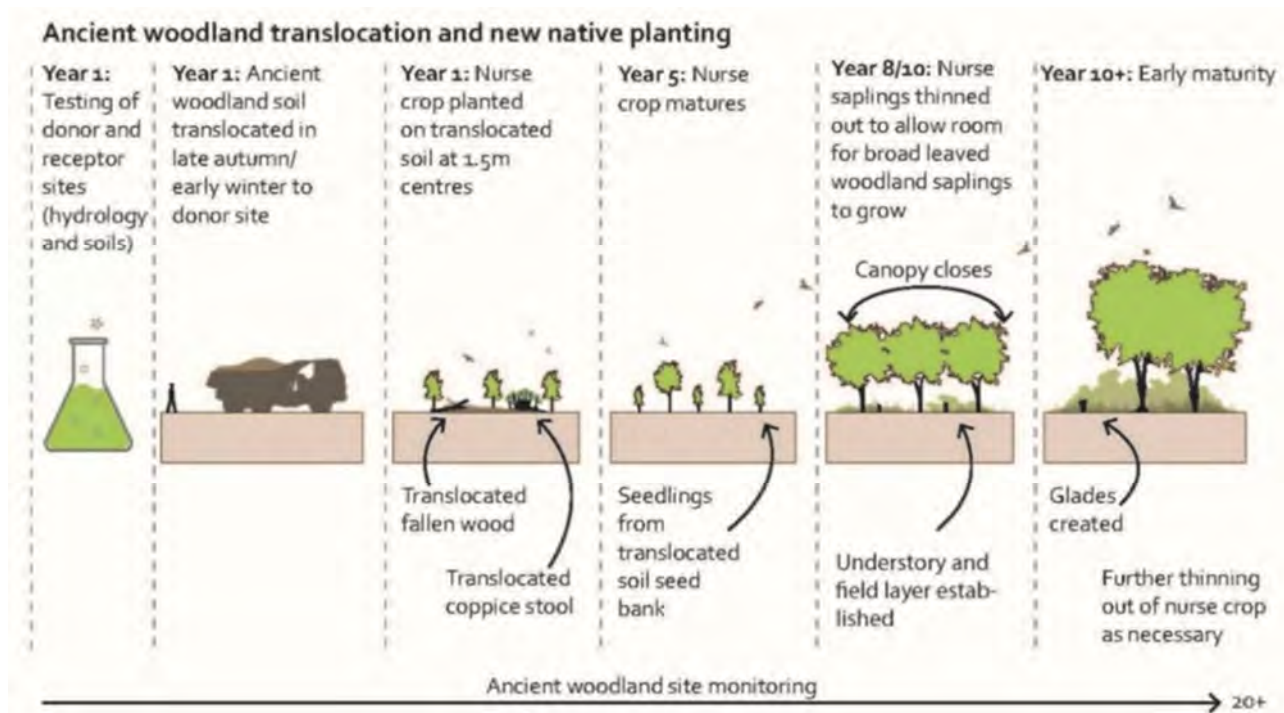


Diagram 1 Ancient woodland translocation and new native planting (source: HS2-HS2-EV-STR-000-000005 – Plant procurement strategy).



Table 10 Initial Protection, Management and Maintenance Tasks

Task	Description	Rationale
Nesting birds	Tree/ vegetation management has been specified outside the breeding bird season where possible. If an active birds nest is suspected in an area to be affected by the works an ecologist should be contacted to advise on whether the vegetation may be removed or to establish an appropriate buffer.	It is illegal to damage or destroy an active birds nest.
Woodland edge of newly exposed woodland in Donor Site	<p>The retained trees should be protected by fencing to the specification laid out in BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'</p> <p>The following principles must be kept to a minimum to minimise the already large impact on the retained ancient woodland:</p> <ul style="list-style-type: none"> <li>- No plant or vehicles shall enter the CEZ;</li> <li>- Impermeable surfacing shall not be laid down over soil ('capping');</li> <li>- No materials, fuels or chemicals shall be stored within any of these areas;</li> <li>- No fires to be lit where flames may reach within 5m of the CEZ;</li> <li>- No structures or fixtures of any kind shall be fastened in any way to the trunks of the retained trees;</li> <li>- No drainage or irrigation pipes shall be installed within the area that would be RPAs of the retained trees; and</li> <li>- Any unwanted vegetation shall be removed by hand.</li> <li>- Plant replacement inspections shall be undertaken annually in August/September for the first 5 years after planting to identify dead, diseased or dying stock</li> <li>- Plant replacements should be carried out annually between the start of November and the end of December.</li> <li>- Re-firming trees, guards and stakes shall take place three times a year for the first 2-4 years in January, April and October and after a storm to ensure support and protection for the woodland.</li> </ul>	Deviation from Natural England Standing Advice for Ancient woodland
Receptor Site woodland	<p>Plant replacement inspections shall be undertaken annually in August/September for the first 5 years after planting to identify dead, diseased or dying stock</p> <p>Plant replacements should be carried out annually between the start of November and the end of December.</p> <p>Re-firming trees, guards and stakes shall take place three times a year for the first 2-4 years in January, April and October and after a storm to ensure support and protection for the woodland.</p> <p>434.6m of permanent deer and rabbit proof fencing and 601.3m of temporary deer and rabbit proof fencing is to be installed around the ESMP and mitigation site. One temporary and one permanent access gate are to be installed, as shown on Figure 4.</p>	

## 6 Long Term Management, Maintenance and Monitoring

### 6.1 Overview

6.1.1 Following translocation of above ground woodland material and soils to the Receptor Site, supplemented by new planting, it will be managed, maintained and monitored as an Ancient Woodland habitat creation site.

6.1.2 The ongoing responsibility for management, maintenance and monitoring will need to be determined by HS2 Ltd. Responsibilities are dealt with in Section 8.

### 6.2 Long-term Management Tasks

6.2.1 After the end of the initial maintenance stage, this long-term management plan will be followed from year 6 to year 50, following translocation. Diagram 1 and Table 11 highlight the main long-term management tasks.

6.2.2 Woodland management regimes shall be put in place to ensure that multi-functionality and maximum benefit is obtained from all areas of woodland planting. Woodland habitats will be maintained so that they;

- Become structurally diverse as well as diverse in species, which enables the preservation of any surrounding semi-natural habitats;
- Develop open, semi-open and edge habitats;
- Do not become damaged due to animals;
- Demonstrate evidence of regeneration (seedlings, saplings, young trees);
- Protected and notable species are suitably supported (when appropriate);
- Can be an accessible amenity and educational resource for the local community (when appropriate) and;
- Can become an economic asset where possible.

6.2.3 Management shall be undertaken in accordance within the ancient woodland section of the Technical Standard – Landscape Maintenance, Management and Monitoring Plan (LMMMP)(HS2-HS2-EV-STD-000-000023), unless there is a requirement for specific management practices in connection with the presence of a protected species.

Table 11 Long-term Management Tasks

Task	Description	Rationale
Nesting birds	Habitat management including coppicing has been specified outside the breeding bird season where possible. If an active bird nest is found, even outside of the breeding bird season, an ecologist should be contacted to advise on a buffer zone for the nest.	It is illegal to damage or destroy an active bird nest
Newly exposed woodland edge	<p>Within 15m of the newly exposed woodland edge:</p> <ul style="list-style-type: none"> <li>- Machinery shall be minimised;</li> <li>- Impermeable surfacing shall not be laid down over soil ('capping');</li> <li>- No materials, fuels or chemicals shall be stored within any of these areas;</li> <li>- No fires to be lit where flames may reach within 5m of the CEZ;</li> <li>- No structures or fixtures of any kind shall be fastened in any way to the trunks of the retained trees;</li> <li>- No drainage or irrigation pipes shall be installed within the area that would be RPAs of the retained trees; and</li> <li>- Any unwanted vegetation or invasive species shall be removed by hand.</li> <li>- Any windthrown trees shall be replaced and felled trees due to health and safety shall be laid within the woodland.</li> </ul>	The aim is to retain as much of the newly exposed woodland edges as possible, throughout the HS2 construction boundary land take.
General Receptor Site management	<p>Removal of nurse species, where planted to shade seedling canopy trees, will be needed when they have out-grown their use and the trees beneath them are self-sustaining. This is likely to be 7-10 years after planting. To avoid sudden changes in the light, this should be carried out in a phased approach, where no more than a third of the total nurse species is removed in any one year.</p> <p>Tree thinning and felling should be aimed at those trees deemed less healthy or desirable and free up some growth space for remaining trees. Early colonisers shall be removed in order for desired species to get the opportunity to grow. The aim is for a mixed age class across different species, with enough light in order to allow ancient woodland ground flora to develop.</p> <p>Coppicing of suitable species should be carried out on rotation every 7-10 years.</p>	To maintain a woodland that replicates an ancient woodland, acknowledging that it will never be possible to directly compensate for the loss.

Task	Description	Rationale
	Where a scrub edge to the woodland shall be implemented on a rotational cycle after the 5-year establishment period (starting year 5 with a rotation being completed every subsequent 5 years until year 50). A gradient of differential age structure and vegetation between the woodland and its surroundings shall be established and maintained (e.g. sections not larger than a fifth of the total cut in any one year).	
<b>Specific Receptor Site Management Measures</b>		
Decrease Weed Competition	<ul style="list-style-type: none"> <li>During establishment, lay 1m x 1m mulch mat or woodchip mulch around immediate area of new planting only.</li> <li>It is important to keep a circle of 1m<sup>2</sup> clear of vegetation around base of trees or maintain 1m vegetation-free strip along rows of trees; clearance should be carried out twice yearly (spring and late summer) for the first 5 years following planting.</li> </ul>	This will reduce competition from weed and grass growth and encourage establishment of tree species resulting in early canopy closure.
Plant and tree replacement	<ul style="list-style-type: none"> <li>Inspections shall be made on an annual basis for the first 5 years (in August/September) after planting to identify dead, diseased or dying tree stock.</li> <li>Replacement planting to be carried out annually between the start of November and end of December.</li> <li>Tree replacements should be assessed in years 2-3 to assess the scale of losses.</li> <li>Selective rather than standard 'like for like' replacement will be carried out.</li> <li>Replacement planting to be carried out between the start of November and end of December.</li> </ul>	To encourage successful woodland establishment.
Aftercare of newly planted trees: accessories and guards	<ul style="list-style-type: none"> <li>Re-firming trees and stakes, together with adjustments to tree-ties, tree tubes and spiral rabbit guards, shall take place 3 times per year for first 2 – 6 years in January, April and October and after a storm event to ensure support and protection of woodland tree planting.</li> <li>Although biodegradable, remove tree shelters with supporting stakes when trees and shrubs are well established.</li> </ul>	<p>To encourage successful woodland establishment, by protecting newly planted trees from weather and mammal damage.</p> <p>To prevent restriction to tree and shrub growth.</p>
Shrub edge management	<ul style="list-style-type: none"> <li>Where a shrub edge to the woodland has been planted, management of the shrub edge species shall be implemented on a 5 year rotational cycle.</li> <li>A gradient of differential age structure and vegetation between the woodland and its surroundings shall be established and maintained.</li> </ul>	Creates a structurally diverse woodland as well as improving the species diversity.
Scrub management	<ul style="list-style-type: none"> <li>Hawthorn/blackthorn scrub shall be cut on a 15 year rotation, as this is the age that it typically matures. Rotational coppicing of blocks of scrub and allowing regrowth allows the characteristic thicket structure of scrub to rejuvenate and be maintained.</li> <li>For scrub predominantly composed of bramble, the rotation cycle shall be 5-6 years. Thus for any given area of scrub about a fifth or sixth of it shall be cut each winter to provide a mosaic of bramble at different stages of growth. Overall, only approximately 30% of the woodland should be comprised of bramble; if too</li> </ul>	Scrub management

Task	Description	Rationale
	<p>dense the bramble will inhibit growth of other ground flora.</p> <ul style="list-style-type: none"> <li>Rough grassland and tall herb fringes shall have a 'cut and rake' rotation cycle of 2-3 years where a half or a third is cut in late summer/autumn.</li> </ul>	
Coppicing	<ul style="list-style-type: none"> <li>Coppicing of suitable species, once established, should be carried out in areas on a rotation of between 7 to 10 years for wildlife benefit and to produce a potential saleable crop of timber poles.</li> <li>Coppice stools should be monitored on a 7-10 year cycle to assess suitability and maturity for coppice management.</li> </ul>	<p>Coppicing produces a diverse woodland through creating periodic light which encourages growth ground flora and lower plants communities. It is also a natural habitat of the dormouse and ground nesting birds.</p>
Thinning and felling	<ul style="list-style-type: none"> <li>Thinning and felling of selected woodland trees shall remove the less healthy or less desirable trees and give the remaining trees more space to develop. Prolific colonisers shall be removed to favour desired species to establish or to maintain designated open areas.</li> <li>A mixed age class across the species with reduced canopy cover will create light for the field layer to develop, however, drastic interventions which cause abrupt changes in light regimes shall be avoided.</li> </ul>	<p>Trees will be removed for the benefit of others to encourage growth and development.</p>
<b>Species</b>		
Badger	<p>Undertake a badger walkover on every visit to ensure that trackways can still be used and that new badger setts have not been created. If new badger setts have been created that could impede maintenance or monitoring work, an ecologist should be consulted, and a precautionary method of works shall be drawn up to avoid any damage to the badger sett.</p>	<p>To ensure active badger setts are not damaged during maintenance and monitoring</p>
<b>Invasive and non-native species</b>		
Schedule 9 Invasive weeds	<p>Invasive weeds as identified under the Wildlife and Countryside Act (1981) as amended, are to be removed and controlled on site. For Himalayan balsam, this shall be controlled in accordance with Appendix 22 -F of the Ecology Technical Standard (HS2-HS2-EV-STD-000-000017). As these shall be on ancient woodland soils, they must be hand pulled rather than using herbicides to avoid damage to the soil.</p>	<p>It is illegal to grow or allow to grow these species in the wild. Control will allow native plants to establish and increase biodiversity.</p>
Injurious weeds	<p>Any injurious weeds as identified by the Weeds Act 1959 will be treated with herbicide spot treatment and removed into compost piles or moved off site to a recycling facility.</p>	<p>Any injurious weeds shall be removed</p>

## 6.3 General Management and Maintenance Tasks

6.3.1 The ongoing management and maintenance tasks for the Receptor Site are detailed in Table 12 below.



Table 12 General Site Management and Maintenance Tasks

Task	Description	Rationale
<b>General Management</b>		
Arrange permits as required	EAP and other permits.	To ensure appropriate ecological mitigation measures and safety critical measures are in place.
Removal of rubbish/litter	Unless specified otherwise, dispose of arisings from all operations by removing from site to the appropriate licenced waste centre. In addition to scheduled litter collections, rubbish detrimental to the appearance of the site, including paper, packaging materials, bottles, cans, and similar debris should be cleared as required. Further collections should be carried out immediately.	To prevent the site from becoming contaminated and risking the potential success of woodland establishment and species colonisation.
Ensuring health & safety responsibilities are met	The safety of the workforce and the public is paramount. Consultants undertaking field survey as part of monitoring activities will be required to ensure that an appropriate health and safety risk assessment is in place prior to commencement of each field survey visit and to satisfy themselves that all appropriate access provisions are made. All risk assessments should address key health and safety issues such as potential for slips, trips and falls; working in close proximity to water; working within fields occupied by livestock; working at height; potential exposure to asbestos; confined spaces and night time working. In particular, lone working is to be avoided at all times.	Ensure no harm should come to any individual whilst they are on site.
Checking/maintaining access for ongoing management and maintenance	Through U&A register and agreed requirements as well as the PRoW and Traffic Management Plan	To ensure that suitable access is maintained for any required management, maintenance or survey work.
Perimeter/animal fencing checks	Check fencing surrounding the perimeter of the woodland to ensure access has not been breached. Where rabbit and deer fencing has been installed, this is to be inspected and repaired as necessary 3 times per year for the first 4 years in January, April and October.	Fencing should be maintained in order to ensure that translocated and newly planted trees and vegetation are able to establish without interference.
Issues/ hazards arising from topography	Issues could still develop after five or more years particularly with uneven ground, ground slumping, incorrect drainage etc. Site walkovers should be undertaken to observe any potential hazardous topography that could be developing and/or has developed.	To ensure no harm should come to any individual whilst they are on site or have any impact upon the surrounding area and improve the chances of successful establishment of woodland.

## 6.4 Incidental Records Procedure

- 6.4.1 There is a potential for new badger setts to be created underneath the trackway used for maintenance and monitoring vehicles. If any new badger setts are located, works must be stopped and an ecologist must be contacted to advise further.
- 6.4.2 There is the potential for invasive non-native species and species covered by the weeds act 1959 to be spread onto the ESMP site by humans or natural processes. In the event of a

discovery of these species, an ecologist will advise as to best practice in line with Chapter 22 of the HS2 Ecology Technical Standard.

## 7 Monitoring

### 7.1 Requirements for Monitoring and Reporting

- 7.1.1 Monitoring provided within the ESMP must comply with specific ecological commitments made in the Phase 1 Environmental Statement (and planning consents), and also describe sampling approaches to look at the wider effectiveness of the mitigation provided.
- 7.1.2 The overarching requirement for monitoring on the Scheme is specified in the HS2 Environmental Minimum Requirements (CS755 02/17). Monitoring is necessary to measure the extent to which the ecological objectives of the proposals are being met and to allow remedial action to be taken if problems arise.
- 7.1.3 According to Sections 6.1.13 and 6.1.14 of the HS2 Phase One: London-West Midlands Ancient Woodland Strategy (AWS), HS2 Ltd has set out indicative commitments to the management and monitoring of ecology led habitat creation in support of HS2 Phase One, during the period of establishment, within Information Paper E26: Indicative Periods for the Management and Monitoring of Habitats Created for HS2 Phase One.
- 7.1.4 Section 11.4 of the HS2 Phase 2a Information Paper (E2: Ecology) states that HS2 Ltd is committed to monitoring the effectiveness of ecological mitigation and compensation measures for a sufficient period to ensure that the objectives of the proposals for nature conservation and protection of the historic environment are achieved (see EMR Annex 4 Section 4.8.5).
- 7.1.5 HS2 Ltd have deemed the sufficient period of managing and monitoring to be 50 years, following translocation of ancient woodland soils. For this location, where new areas of woodland habitat creation are also proposed as part of the ecology compensation response, management and monitoring will be also be provided for up to 50 years (as referenced in the AWS). This timescale is regarded as the 'establishment period'; timescales for on-going management, maintenance and monitoring beyond the establishment period is yet to be established.
- 7.1.6 The Nominated undertaker will be responsible for undertaking ecological monitoring as set out within the Ecological Monitoring Strategy (EMS). The EMS provides an overview of the route-wide approach that will be adopted for the ecological monitoring of mitigation features (for habitats and species), along with guidance on appropriate monitoring methods and when these should be utilised.
- 7.1.7 A suitably experienced ecologist will be engaged to advise further in relation to monitoring that will be required (see Sections 1.2.1 and 1.2.2 of EMS).
- 7.1.8 The programme for post-translocation monitoring is outlined in Section 10. Monitoring takes into account the requirements of HS2 Technical Standard –Landscape Maintenance, Management and Monitoring Plan (HS2-HS2-EV-STD-000-000023).

7.1.9 The timing for monitoring activities can be found in Section 9 and will include monitoring of:

- Coppice stools are to be monitored on a 7-10 year cycle to assess suitability and maturity for coppice management;
- Woodland inspections for structure and health, including checking the health of trees, identifying those needing replacement, felling or pruning once a year during the first five years of establishment;
- Re-firming of trees and their stakes and replacement of guards three times a year for the first 2-4 years in January, April and October until removal (4-6 years after planting);
- Checking of deer-proof fencing proposed in Figure 4 and identify any need to repair three times a year for the first four years in January, April and October;
- The presence of scrub to minimise encroachment into desired structure along woodland edge in accordance with HS2 GCN Management, Maintenance and Monitoring Plan and HS2 Landscape Maintenance, Management and Monitoring Plan; and
- Inspection for the presence of INNS and other weed species once a year during the first five years of establishment.

7.1.10 Progress against all the general and specific objectives detailed within Section 3 will be recorded.

7.1.11 The data collected during the monitoring visits will inform any amendments to this ESMP.

7.1.12 Where progress to objectives are not being made, the ESMP and Landscape Management, Maintenance and Monitoring Plan for the site shall be revised appropriately.

7.1.13 The nominated undertaker will maintain or make arrangements to maintain and monitor any new amendments to the plan.

## 7.2 Records

7.2.1 The following records will be documented and kept with this ESMP as a log of activities carried out on the ESMP site (Receptor and Donor). These will be added to Appendix 9 and documented here as they are added. These include:

- Records of any major habitat management including tree thinning, pollarding/coppicing and invasive plant control;
- Survey and monitoring results, including any monitoring undertaken as a requirement for a protected species licence;
- Up to date plans for pre- and post- works ESMP site conditions and landscaping

proposals; and

- Any progress reports in relation to the management of the site.



## 8 Responsibilities

- 8.1.1 The initial five-year maintenance period (currently anticipated to run until 2025) will be undertaken by HS2 Ltd or their appointed agent.
- 8.1.2 Long term management (5-50 years) is currently assumed to be undertaken by HS2 or their appointed agent.
- 8.1.3 In the event that the land is transferred back to the original landowner or a third party then the requirement to undertake these maintenance tasks may also be transferred, subject to legal agreement of all relevant parties.
- 8.1.4 Table 13 describes the role and responsibilities for individuals and organisations for these actions and prescriptions listed in this ESMP to meet to end site objectives.

Table 13 Role and Responsibilities

Title	Responsible	Start date	End date	Comments
<b>Detailed Design – Donor Site</b>				
INNS surveys	Thomson Ecology	October 2020	October 2020	INNs survey completed during unsuitable time of year. No invasive non-native species recorded
NVC surveys	Thomson Ecology	October 2020	October 2020	NVC survey completed during unsuitable time of year – reports to be issued
Topography surveys	Technics	October 2020	October 2020	Topography surveys completed
Arboricultural surveys	Thomson Ecology	October 2020	October 2020	Arboricultural survey completed – reports to be issued
Soil sampling	Reading agriculture	October 2020	October 2020	Soil sampling survey completed – reports to be issued
Preliminary ground level roost inspections	Appointed ecological consultancy (TBC)	Any time of year 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2
Bat emergence/return surveys	Appointed ecological consultancy (TBC)	March-October 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2
Badger Sett Closure Method Statement	Appointed ecological consultancy (TBC)	Any time of year 2020	TBC	To be produced to close the setts on site prior to any works. Responsible party to be confirmed by HS2

Hazel Dormouse Survey	Appointed ecological consultancy (TBC)	April-October 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2
Breeding bird survey	Appointed ecological consultancy (TBC)	March- June 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2
Great Crested Newt surveys	Appointed ecological consultancy (TBC)	April – June 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2

**Detailed Design – Receptor Site**

Badger survey	Appointed ecological consultancy (TBC)	Any time of year 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2
Reptile habitat suitability assessment	Appointed ecological consultancy (TBC)	Any time of year ideally spring 2020	TBC	To be completed prior to any works. Responsible party to be confirmed by HS2

**Initial Maintenance – Donor Site**

Replacement trees/shrubs	Appointed contractor	1 year post-construction	5 years post-construction	Responsible party to be confirmed by HS2
Maintenance of fencing	Appointed contractor	0.5 years post-construction	4 years post-construction	Responsible party to be confirmed by HS2

**Initial Maintenance – Receptor Site**

Maintenance of fencing	Appointed contractor	0.5 years post-construction	4 years post-construction	Responsible party to be confirmed by HS2
Re-firming of stakes, ties and guards.	Appointed contractor	0.5 years post-construction	4 years post-construction	Responsible party to be confirmed by HS2
Replacement trees	Appointed contractor	1 year post-construction	5 years post-construction	Responsible party to be confirmed by HS2

**Long Term Management – Donor Site**

Woodland edge management	Appointed contractor until year 50	5 years post-construction	50 years post-construction	Responsible party to be confirmed by HS2
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**Long-Term Management - Receptor Site**

Weed control	Appointed contractor	0.5 years post construction	50 years post construction	Responsible party to be confirmed by HS2
Nurse species removal and stump treatment	Appointed contractor	7 years post construction	10 years post construction	

Tree thinning and felling	Appointed contractor	7 years post construction	15 years post construction	Responsible party to be confirmed by HS2
Coppicing and rotation	Appointed contractor	7 years post construction	50 years post construction	Responsible party to be confirmed by HS2
Shrub edge management	Appointed contractor	5 years post construction	50 years post construction	Responsible party to be confirmed by HS2

**Monitoring – Donor Site**

Tree replacement inspections	Appointed contractor	1 year after construction	5 years post-construction	Responsible party to be confirmed by HS2
Condition of fencing	Appointed contractor	0.5 years post construction	4 years post-construction	Responsible party to be confirmed by HS2
Shrub edge management	Appointed contractor	5 years post-construction	50 years post construction	Responsible party to be confirmed by HS2

**Monitoring – Receptor Site**

INNS/weed monitoring	Appointed contractor	0.5 years post-construction onwards	50 years post-construction	Responsible party to be confirmed by HS2
Nurse species removal including stump treatment	Appointed contractor	1 year post-construction	10 years post construction	Responsible party to be confirmed by HS2
Tree thinning and felling	Appointed contractor	7 years post construction	10 years post construction	Responsible party to be confirmed by HS2
Coppice stools monitoring	Appointed contractor	5 years post construction	50 years post construction	Responsible party to be confirmed by HS2
Shrub edge management	Appointed contractor	5 years post-construction	50 years post construction	Responsible party to be confirmed by HS2
Tree replacement inspections	Appointed contractor	1 year post-construction	5 years post construction	Responsible party to be confirmed by HS2
The condition of tree guards and ESMP fencing	Appointed contractor	0.5 years post-construction onwards	4 years post-construction	Responsible party to be confirmed by HS2

## 9 Programme of Post Translocation Works

9.1.1 Table 14 sets out a programme of works for all post translocation actions and associated requirements of the ESMP for the duration of the ESMP's lifetime.

Table 14 Programme of Works (D=Donor, R=Receptor, AWC=Appointed Works Contractor, E=Ecologist, A=Autumn, S=Spring, W=Winter)

Action				Years																	
Site (D/R)	Task	Responsibility	Season	0.5	1	2	3	4	5	7	10	13	15	20	25	30	35	40	45	50	
R	Weed Control	AWC	S																		
	Monitoring	E	A																		
R	Nurse species removal including stump treatment	AWC	W																		
	Monitoring	E	A																		
R	Tree thinning and felling	AWC	W																		
	Monitoring (could be up to 50 years)	E	A																		
R	Coppicing/Rotation	AWC	W																		

Action				Years																	
Site (D/R)	Task	Responsibility	Season	0.5	1	2	3	4	5	7	10	13	15	20	25	30	35	40	45	50	
	Monitoring	E	A																		
R and D	Shrub edge management and rotation	AWC	W																		
	Monitoring	E	A																		
R	Tree replacements	AWC	A																		
	Monitoring	E	A																		
R	Re-firming trees/stakes		X3 annual – January, April and October (W, S, A)																		
	Monitoring																				
R and D	Rabbit/deer fencing		X3 annual – January, April,																		



Action				Years																	
Site (D/R)	Task	Responsibility	Season	0.5	1	2	3	4	5	7	10	13	15	20	25	30	35	40	45	50	
			October (W, S, A)																		
	Monitoring																				

## 10 References

Title	Reference
Birds of Conservation Concern 4: the Red List for Birds	British Trust for Ornithology, 2015
Trees in relation to construction	British Standard BS5837
Natural England Standing Advice on Ancient Woodland	Natural England Standing advice on Ancient Woodland <a href="https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences">https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences</a>
HS2 Habitat Translocation: Phase 1 Route Wide	1D008-EDP-EV-REP-000-000007 Revision P03
HS2 Technical Standard – Landscape Maintenance, Management and Monitoring Plan	HS2-HS2-EV-STD-000-00023
HS2 Ltd (2013) London West Midlands Environmental Statement Volume 2 Community Forum Area report CFA15 Greatworth to Lower Boddington	ES 3.2.1.15
HS2 Ecology Technical Standards	HS2-HS2-EV-STD-000-000017
HS2 Environmental Management Plan	1EW03-FUS-EV-PLN-C000-005442
HS2 (London to West Midlands) Environmental Minimal Requirements Annex 4: Environmental Memorandum	CS755 02/17
HS2 Information Paper E26 – Indicative Periods for the Management and Monitoring of Habitats Created for HS2 Phase One	E26 Information Paper
HS2 Technical Standard – Plant Procurement Strategy	HS2-HS2-EV-STR-000-000005
HS2 LWM Project Dictionary	HS2-HS2-PM-GDE-000-000002
Managing invasive non-native plants	Environment Agency. 2010. <i>Managing invasive non-native plants</i> . Environment Agency.
Reptile Management Handbook	Edgar, P., Foster, J. and Baker, J. 2010. <i>Reptile Habitat Management Handbook</i> . Bournemouth: Amphibian and Reptile Conservation.
Series 3000 – Landscape and Ecology Spec	HS2-HS2-CV-SPE-000-013000
WP 54 – Environmental Mitigation- Ancient Woodland Translocation Strategy	1EW04-LMJ-EV-REP-N0000054000.

## Appendix 1 – Changes to ESMP content

Date	Changes	Rationale	Organisation making the change

# Appendix 2 – Record of Discussion

Date	Organisation	Named Contact	Comment	Response

## Appendix 3 – Risk Assessments and other Health and Safety Documents

Title	Date	Reference
1EW03 Method Statement Jones’ Hill Wood Donor Site – Intrusive surveys	January 2020	1EW03-FUS_INT-HS-RIA-CS03-003161
1EW03 Method Statement Jones’ Hill Wood Receptor Site – Intrusive Surveys	January 2020	1EW03-FUS_INT- HS-RIA -CS03-003162
1EW03 Method Statement Jones’ Hill Wood Donor Site – Non-intrusive surveys	January 2020	1EW03-FUS_INT- HS-RIA -CS03-003163
1EW03 Method Statement Jones’ Hill Wood Receptor Site – Non-intrusive surveys	January 2020	1EW03-FUS_INT- HS-RIA -CS03-003164



## Appendix 4 – Current site reports and survey data\*

Title	Date	Reference
AWE2b-4 - Ancient Woodland Translocation Arboriculture Jones' Hill Wood Report	November 2020	1EW03-FUS-EV-REP-CS03-002580
AWE2b-4 - Ancient Woodland Translocation National Vegetation Classification Survey Jones' Hill Wood Report	November 2020	1EW03-FUS-EV-MST-CS03-002579
AWE2b-4 - Ancient Woodland Translocation Timber Valuation Scoping Jones' Hill Wood (Glyn Davies Wood) Report	November 2020	1EW03-FUS-EV-MST-CS03-002581
AWE2b-4 - Ancient Woodland Translocation Topographical Survey Jones' Hill Wood (Glyn Davies Wood) Report	November 2020	1EW03-FUS-EV-MST-CS03-002584

\*All survey data can be located on Fusion GIS Portal :

<https://fusionhs2.cloud.esriuk.com/portal/home/signin.html?returnUrl=https%3A%2F%2Ffusionhs2.cloud.esriuk.com%2Fportal%2Fhome%2Findex.html>

# Appendix 5 – Method Statements, Licences and Consents

Title	Date	Reference

## Appendix 6 – Detailed Landscape Design and Habitat Creation Specification

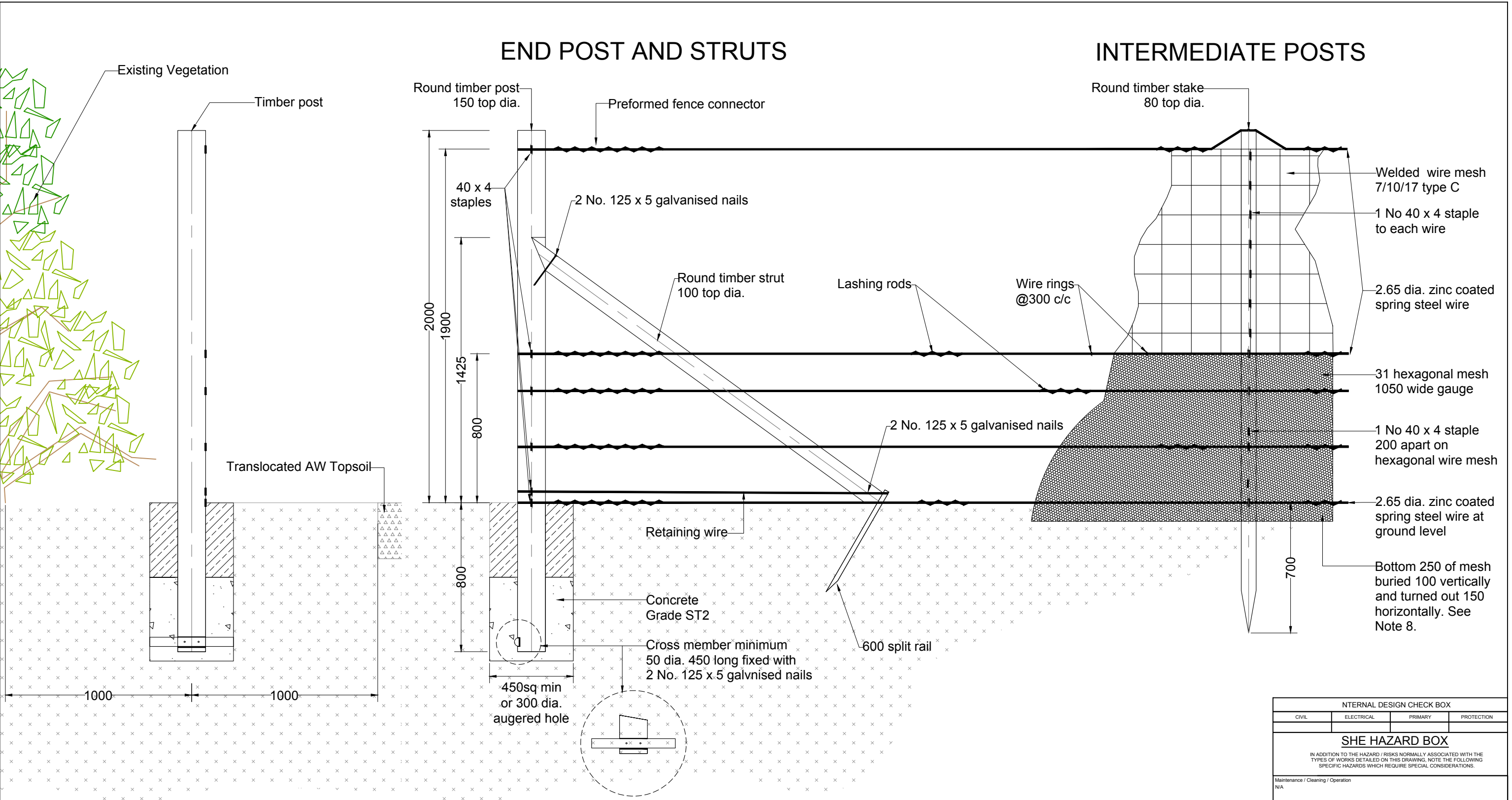
Title	Date	Reference
Jones’ Hill Wood General Arrangement	06/12/2018	1EW03-FUS-LS-DGA-CS03-000001
Jones’ Hill Wood Access Road Drawings	06/12/2018	1EW03-FUS-LS-DGA-CS03-000002
Jones’ Hill Wood Site and Key Plan	06/12/2018	1EW03-FUS-LS-DSP-CS03-000001
Jones’ Hill wood Site Clearance Plan	06/12/2017	1EW03-FUS-LS-DSP-CS03-000002
Jones’ Hill Wood Fencing Site and Key Plan	30/08/2018	1EW03-FUS-LS-DSP-CS03-000004

# Appendix 7 – Management Change Log

Title	Date	Reference

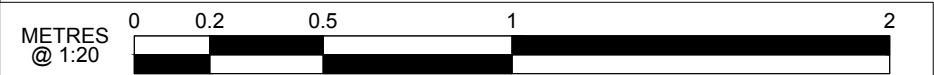
## Appendix 8 - Deer and Rabbit Proof Fencing





Deer and Rabbit Fencing Detail  
Section

Deer and Rabbit Fencing Detail  
Elevation



C01	F1 for Acceptance	AY 18/10/18	MM 18/10/18	BC 18/10/18	MO 19/10/18	HS2 accepts no responsibility for any circumstances which arise from the reproduction of this document after alteration, amendment or abbreviation or if it is issued in part or issued incompletely in any way.  © Crown Copyright and database right 2018. All rights reserved. Ordnance Survey Licence number 100049190  © Crown Copyright material is reproduced with the permission of Land Registry under delegated authority from the Controller of HMSO. This material was last updated on 2018 and may not be copied, distributed, sold or published without the formal permission of Land Registry. Only an official copy of a title plan or register obtained from the Land Registry may be used for legal or other official purposes.
Rev	Description	Drawn	Checked	Approved	FUS Acc	Scale with caution as distortion can occur.

- Legend/Notes:
- All strained line wire finishing at a post shall be terminated by looping back on itself and joined with a preformed fence connector.
  - All joints in the spring steel wire shall be made by either a preformed fence connector or wire connector.
  - Where the ground is undulating, ground anchors or extra intermediate posts shall be used to maintain the constant distance of the line wires from the ground.
  - BS 1722 Part 2 Sections 8, 10 & 11 shall apply unless otherwise stated.
  - Wire mesh detailed separately for clarity.
  - All timber shall comply with Specification Clause 304.
  - For details of foundations see Drawing No H13.
  - For alternative treatments to 'turned out' mesh see Clause 306.
  - Deer species are: Roe, Red, Fallow or Sika.
  - The distance between straining and intermediate posts not to exceed 10m. and the distance between straining posts should not exceed 200m.
  - ALL DIMENSIONS ARE IN MILLIMETRES UNLESS OTHERWISE STATED.

**HS2**

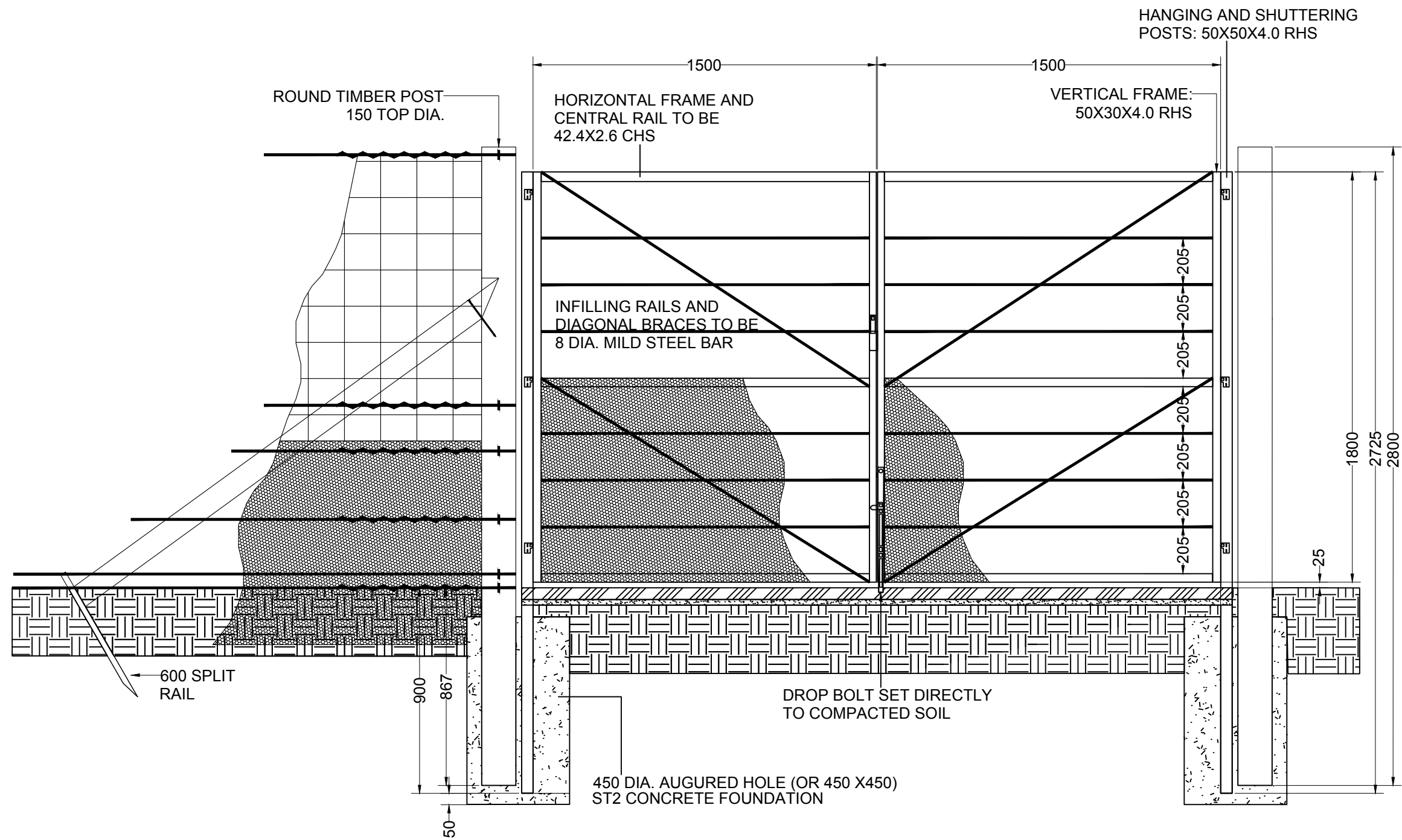
Registered in England  
Registration No. 06791686  
Registered office:  
2 Snow Hill,  
Queensway,  
Birmingham, B4 6GA

Zone		CENTRAL DELIVERY AREA W DE		Project/Contract		1EW03 EWC CONTRACT SCOPE - AREA CENTRAL	
Design Stage		STAGE4		Discipline/Function			
				LANDSCAPING			
Drawing Title		PERMANENT DEER AND RABBIT PROOF FENCING		Drawn	Checked	Approved	
				A.Yanez	M.Heald	B.Craig	
				Date	Scale	Size	
				18/10/18	AS SHOWN	A3	
Suitability Code	Suitability			Drawing No.		Rev.	
A4	App. & accepted as stage complete			1EW03-FUS-LS-DDE-C000-001005		C01	

INTERNAL DESIGN CHECK BOX			
CIVIL	ELECTRICAL	PRIMARY	PROTECTION
SHE HAZARD BOX			
IN ADDITION TO THE HAZARD / RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORKS DETAILED ON THIS DRAWING, NOTE THE FOLLOWING SPECIFIC HAZARDS WHICH REQUIRE SPECIAL CONSIDERATIONS.			
Maintenance / Cleaning / Operation N/A			
Construction N/A			
Decommissioning / Demolition N/A			
Subcontractor's Document Number N/A			

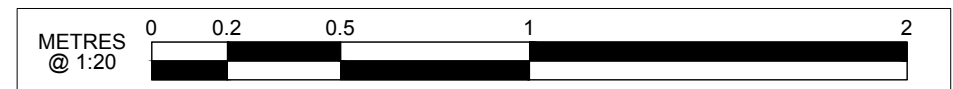
ACCEPTED CLIENT APPROVED


D457



PERMANENT DEER AND RABBIT  
PROOF MAINTENANCE ACCESS GATE  
Section 1:20

ACCEPTED FOR CONSTRUCTION




C01	F1 for Acceptance	CP 15/11/18	AY 26/11/18	BC 26/11/18	MO 26/11/18	HS2 accepts no responsibility for any circumstances which arise from the reproduction of this document after alteration, amendment or abbreviation or if it is issued in part or issued incompletely in any way.	<b>Legend/Notes:</b> 1. All dimensions are in millimeters unless otherwise stated. 2. Gates shall comply with the appropriate clauses in Series 300, any further amendments in appendix 3/1 and with BS 3470. 3. Gates shall be set in line of the fence as shown. 4. All gate fittings shall be galvanised steel. 5. Top capping and base plates shall be 4.0 thick continuously flush welded tube. 6. Diagonal braces shall be fillet welded to circular hollow section frame/ rail. 7. Mesh and netting shall be fixed in accordance with specification and fencing drawings. 8. The gate shall open into the owner's property.	<div><p>Registered in England Registration No. 06791686 Registered office: 2 Snow Hill, Queensway, Birmingham, B4 6GA</p></div>	Zone CENTRAL DELIVERY AREA WIDE		Project/Contract 1EW03 EWC CONTRACT SCOPE - AREA CENTRAL		
		--	--	--	--	© Crown Copyright and database right 2018. All rights reserved. Ordnance Survey Licence number 100049190			Design Stage STAGE4	Discipline/Function LANDSCAPING			
		--	--	--	--	© Crown Copyright material is reproduced with the permission of Land Registry under delegated authority from the Controller of HMSO. This material was last updated on 2018 and may not be copied, distributed, sold or published without the formal permission of Land Registry. Only an official copy of a title plan or register obtained from the Land Registry may be used for legal or other official purposes.			Drawing Title PERMANENT MAINTENANCE ACCESS GATE DEER AND RABBIT PROOF FENCING	Drawn C.Papachristou	Checked A.Yanez	Approved B.Craig	
		--	--	--	--					Date 15/11/18	Scale AS SHOWN	Size A3	
		--	--	--	--								
Rev	Description	Drawn	Checked	Approved	FUS Acc	Scale with caution as distortion can occur.	Creator/Originator FUSION JV		Suitability Code A3	Suitability App. & accepted as stage complete		Drawing No. 1EW03-FUS-LS-DDE-C001-00017	

# Appendix 9 – Management and Monitoring Records

Title	Date	Reference



Client	Fusion		Drawing Ref	OFJV128/30169/1	
Figure Number	1		Scale at A4	1:32,000	
Figure Title	Site Location and Ancient Woodland		Drawn	Checked	
			LF	EA	
			Date	Date	
			29/07/2020	29/07/2020	



www.thomsonec.com  
enquiries@thomsonec.com

**D100**



Photograph 1:  
Beech regen understory



Photograph 2:  
Dense holly understory



Photograph 3:  
Leaf litter ground cover

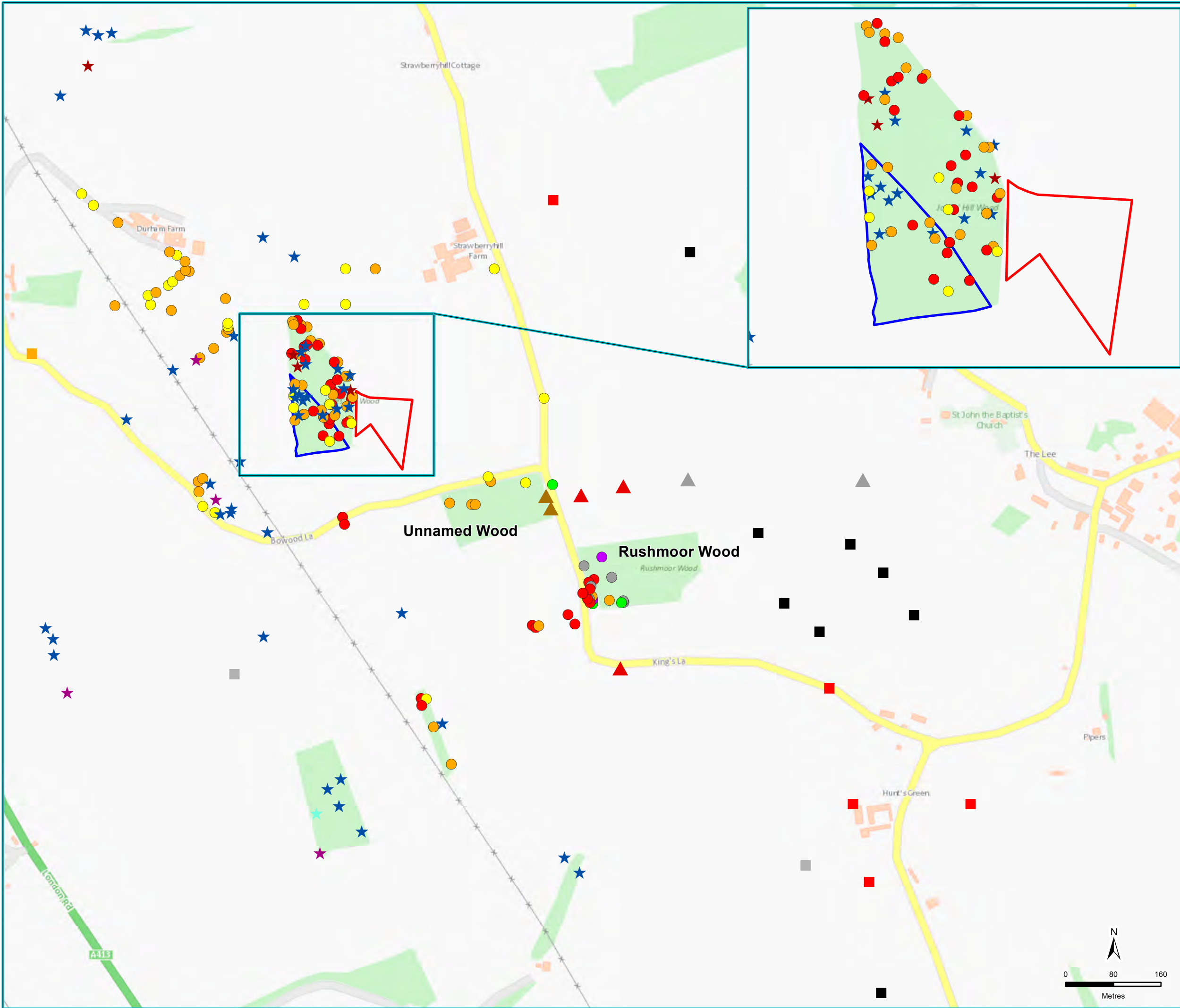


Photograph 4:  
The beech dominated canopy

Client	Fusion JV		Drawing Ref OFJV128/30941 /1		<b>Thomson</b> environmental consultants  www.thomsonec.com enquiries@thomsonec.com <b>D461</b>
Figure Number	2		Drawn	LM	
Figure Title	Photographs of the Site		Checked	PF	
			Date	28/10/2020	



Filepath: S:\Guildford\Projects\OFJV128 - 00027 AWE2b Habitat Translocation\Mapping\Working\Jones Hills Wood\Technical Method Statement\OFJV128\_Fig2\_JonesHillCoverData\_AS\_200820.mxd



- Legend
- GCN Survey Results**
- ▲ GCN Absent
  - ▲ Poor Habitat Suitability for GCN
  - ▲ Scoped Out
- Bat Tree Potential**
- Confirmed
  - High
  - Moderate
  - Low
  - Negligible
  - N/A
- Badger Sett Type**
- ★ Annexe
  - ★ Main
  - ★ Outlier
  - ★ Subsidiary
- Barn Owl Presence**
- None
  - N/A
  - Medium
  - High
- Donor Site Boundary
- Ancient Woodland Receptor Site

Site Grid Reference: 488,755 204,418

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Consultants.

Drawing Ref  
OFJV128/30392/1

Scale at A3  
1:6,000

Drawn AS	Checked EA
-------------	---------------

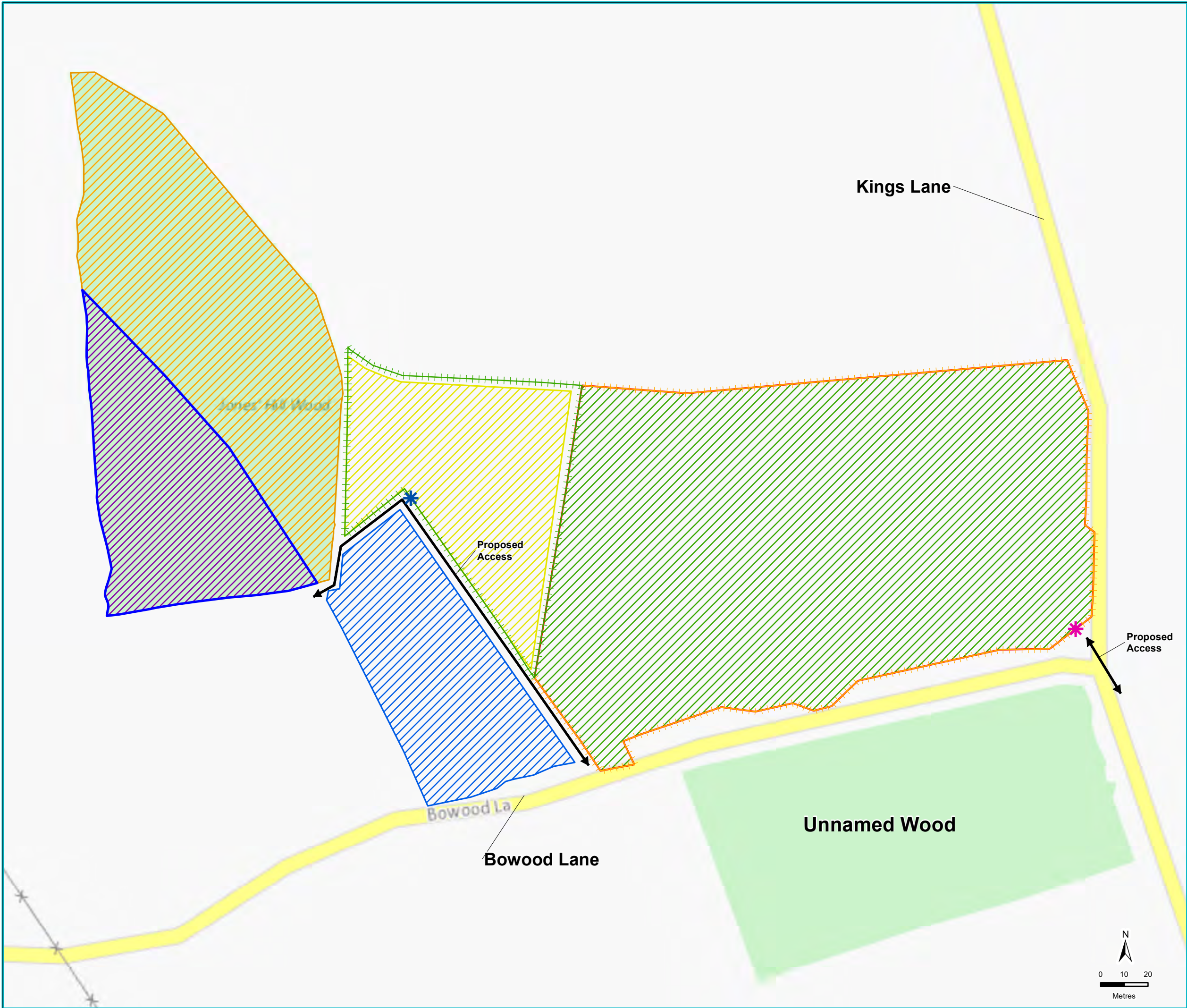
Date 20/08/2020	Date 20/08/2020
--------------------	--------------------

Client  
Fusion

Figure Number  
3

Figure Title  
Protected Species  
Survey Results

Filepath: S:\Guildford\Projects\OFJV128 - 00027 AWE2b Habitat Translocation\Mapping\Working\Jones Hill Wood\Technical Method Statement\OFJV128\_Fig1\_SiteLayout\_AS\_200820.mxd



Legend

- Permanent Gate
- Temporary Gate
- Permanent Deer and Rabbit Proof Fence
- Temporary Deer and Rabbit Proof Fence
- Proposed Access
- AW Donor Site
- AW Receptor Site
- AW Retained
- MWCC Site Compound
- Supplementary Planting
- Donor Site Boundary



Map Centre Grid Reference: 488,892 204,361

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Drawing Ref  
OFJV128/30391/1

Scale at A3  
1:1,500

Drawn AS	Checked EA
Date 20/08/2020	Date 20/08/2020

Client  
Fusion

Figure Number  
4

Figure Title  
Site Layout

SATURDAY 15 JANUARY 2022 4:08 PM

## Taxpayers to foot bill for £40m HS2 bat tunnel

BY:LILY RUSSELL-JONES

Public procurement records show that developers are planning to build a £40m bat tunnel. Taxpayers reportedly face a £40m bill for a mesh shield to prevent endangered bats from being hit by high speed HS2 trains.

HS2 has bowed to pressure from conservationists who argued HS2 should not be built to preserve the ancient woodlands which are home to rare Bechstein bats.

Public procurement records show that French engineering firm Eiffage is working with British firm Kier to build an 850 metre bat tunnel over the new track at a location in Buckinghamshire, the Telegraph first reported.

“Bechstein bats are one of Britain’s rarest species of bat and are protected by strict UK environmental legislation,” a spokesperson for HS2 told the Telegraph. “The protection structure at Sheephouse Wood, which was designed following extensive consultation with leading bat experts, will keep the bats away from passing trains and allow HS2 to meet our legal obligations to avoid harming them and other bat species.”

“In addition, this structure is designed for four tracks, making it possible for any future local services between Aylesbury and Milton Keynes to operate in the area,” the spokesperson added.

Lord Berkeley, the former deputy chairman of a review into the future of HS2, said that spending £40m on a bat tunnel seems “excessive.”

At the time of the 2010 election, the cost of HS2 was estimated to be upwards of £20bn. Lord Berkeley’s independent review into the project predicted it could climb to £107bn.

Read more: HS2 rushes to purchase land for phase one opening

SHARE THIS ARTICLE

From

## **Do Bat Gantries and Underpasses Help Bats Cross Roads Safely?**

**Anna Berthinussen, John Altringham**

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0038775>

### **Bat Gantries**

At all sites, few bats crossed using the gantry (Fig. 3). At the A590 gantry, four times as many (41%) crossed the road at unsafe heights as crossed within 2 m of the gantry (11%;  $Z=2.61$ ,  $P=0.008$ ), and 1.4 times as many as crossed within 5 m of the gantry (30%;  $Z=1.49$ ,  $P=0.15$ ). At the A595 gantry (Fig. 3B), far more bats (84%) crossed the road at unsafe heights than flew within 2 m ( $<1\%$ ;  $Z=2.81$ ,  $P=0.002$ ) or 5 m (6%;  $Z=2.81$ ,  $P=0.002$ ) of the gantry. At the A69 gantry (Fig. 3C), more bats crossed the road at unsafe heights (17%) than flew within 2 m of the gantry (8%;  $Z=1.17$ ,  $P=0.31$ ), but fewer bats crossed at unsafe heights compared to those flying within 5 m of the gantry (42%;  $Z=-2.14$ ,  $P=0.06$ ).



**IN THE HIGH COURT OF JUSTICE BUSINESS  
AND PROPERTY COURTS PROPERTY,  
TRUSTS AND PROBATE LIST (ChD)**

**B E T W E E N:**

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(2) PERSONS UNKNOWN SUBSTANTIALLY INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT TO AND FROM THE LAND AT HARVIL ROAD SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(3) to (35) THE NAMED DEFENDANTS LISTED IN THE SCHEDULE TO THE ORDER OF MR DAVID HOLLAND QC DATED 22 JUNE 2020

(36) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HARVIL ROAD SITE, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HARVIL ROAD SITE WITHOUT THE CONSENT OF THE CLAIMANTS

Defendants / Respondents

---

**INDEX TO HEARING BUNDLE FOR THE HEARING OF THE CLAIMANTS'  
SUBSTANTIVE AMENDMENT APPLICATION**

**VOLUME 1**

---

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<b>C: EVIDENCE OF SERVICE OF JUNE ORDER</b>		
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28.	Fourth Witness Statement of Shona Ruth Jenkins dated 17 August 2020	C375 – C380



Claim No: PT-2018-000098

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Before: Mr Justice Barling  
On: 19 February 2018

PT-2018-000098

**B E T W E E N:**

- (1) THE SECRETARY OF STATE FOR TRANSPORT  
(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

- (1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE CLAIM FORM
- (2) PERSONS UNKNOWN INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT TO, FROM, OVER AND ACROSS THE PUBLIC HIGHWAY AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED ORANGE AND PURPLE ON THE PLANS ANNEXED TO THE CLAIM FORM
- (3) SARAH GREEN  
(4) MARK KEIR  
(5) GRAHAM MARSH  
(6) SOFIA KAZI  
(7) THORN RAMSAY  
(8) VAJDA ROBERT MORDECHAJ

Defendants / Respondents

---

**ORDER**

---

**PENAL NOTICE**

IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

**IMPORTANT NOTICE TO THE DEFENDANTS**

This Order prohibits you from doing the acts set out in this Order. You should read it very carefully. You are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge this Order.

**UPON** the Claimants' application by Application Notice dated 5 February 2018 ("the **Application**")

**AND UPON** hearing Tom Roscoe of Counsel for the Claimants, Paul Powlesland of Counsel for the Third Defendant (instructed on a direct access basis) and Sophia Hurst for the Fourth, Fifth, Sixth and Eight Defendants (acting via the Chancery Bar Litigant in Person Support Scheme)

**AND UPON** hearing from the Third, Fourth, Fifth, Sixth and Eight Defendants personally, and those individuals being present upon the making of this order

**AND UPON** the Seventh Defendant not appearing or being represented

**AND UPON** the Court accepting the Claimants' undertaking that the Claimants will comply with any order for compensation which the Court might make in the event that the Court later finds that this Order has caused loss to a Defendant and the court finds that the Defendant ought to be compensated for that loss

**AND UPON** the Claimants confirming that this Order is not intended to prohibit continued occupation of the "Protestor Encampment" on Harvil Road, marked on the Plan annexed to this order ("the **Plan**") annexed to the Claim Form

**IT IS ORDERED THAT:**

**Service by Alternative Method**

1. Pursuant to CPR r.6.15 and 6.27:

- 1.1 the steps that the Claimant has taken to bring these proceedings to the attention of the Defendants, as outlined in the third and fourth witness statements of Julie Dilcock dated 13 February 2018 and 16 February 2018 respectively shall amount to good and proper service of the proceedings on the Defendants and each of them.
- 1.2 The Claim Form and the Application are deemed served on 9 February 2018.
- 1.3 Provision for the filing of acknowledgments of service to the Claim is set out at paragraph 10 below.

**Injunctions**

2. With immediate effect, and save in exercise of a right to pass and repass over public footpaths or bridleways crossing the land and save for passage over the lane known as and marked on the Plan annexed to this order (“the **Plan**”) as Dews Lane, the First Defendant and each of them are forbidden from entering or remaining upon “Land at Harvil Road”, being the land shaded green, blue and pink and outlined red on the Plan (“the **Harvil Road Site**”) without the consent of the First or Second Claimant.
3. In relation to areas coloured purple on the Plan, which consist of the entrance points to the Harvil Road Site known and marked on the Plan as the North and South Compound Entrances and 100 meters of the adjoining highway in each direction (“the **Site Access Areas**”), the Second Defendant and each of them are with immediate effect forbidden from:
  - 3.1 blocking the highway or adjoining bell-mouths, entrance splays, lay-bys, turning areas, drive ways or access points to the Harvil Road Site or any part of them with persons or things when done with a view to slowing down or stopping the traffic, and with the intention of causing inconvenience or delay to the Claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees;
  - 3.2 slow walking in front of vehicles with the object of slowing them down, and with the intention of causing inconvenience and delay to the Claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees;
  - 3.3 climbing onto vehicles;
  - 3.4 otherwise, unreasonably and/or without lawful authority or excuse, preventing the Claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees from access to or egress from the Harvil Road Site or any part thereof;
  - 3.5 otherwise, unreasonably and/or without lawful authority or excuse, obstructing the highway, or adjoining bell-mouths, entrance splays, lay-bys, turning areas, drive ways or access points to the Harvil Road Site or any part of them with the intention of causing inconvenience and delay to the Claimants and/or their agents, servants, contractors, sub-contractors, group companies, licensees, invitees or employees.
4. The orders at paragraphs 2 and 3 above shall:
  - 4.1 apply to the Third to Eighth Defendants if and to the extent that their actions bring them within the descriptions of the First and/or Second Defendants; and
  - 4.2 remain in effect until trial or further order or, if earlier, a long-stop date of 1 June 2019.



### Service of the Order

5. Pursuant to CPR r. 6.27 and r. 81.8 service of this Order on the First and Second Defendants shall be dealt with as follows:
  - 5.1 The Claimants shall affix sealed copies of this Order in transparent envelopes to posts, gates, fences and hedges at conspicuous locations around the Harvil Road Site, including:
    - (i) at the North Compound Entrance and the South Compound Entrance (as marked on the plan);  
and
    - (ii) at either side of the public highway at each end of the Site Access Areas.
  - 5.2 The Claimants shall position signs, no smaller than A3 in size, advertising the existence of this order and providing the Claimant's solicitors contact details in case of requests for a copy of the order or further information in relation to it.
  - 5.3 The Claimants shall also leave sealed copies of this Order at the protestor campsite marked on the Plan.
  - 5.4 The Claimants shall further advertise the existence of this order in a prominent location on the websites: (i) <https://hs2inhillington.commonplace.is/>; and (ii) <https://www.gov.uk/government/organisations/high-speed-two-limited>, together with a link to download an electronic copy of this Order.
6. The taking of such steps shall be good and sufficient service of this Order on the First and Second Defendants and each of them.
7. This Order shall be deemed served on those Defendants the date that the last of the above steps is taken, and shall be verified by a certificate of service.
8. The Claimants shall from-time-to-time (and no less frequently than every 28 days) confirm that copies of the orders and signs referred to at paragraphs 5.1 and 5.2 remain in place and legible, and, if not, shall replace them as soon as reasonably practical.
9. The Court will provide sealed copies of this Order to the Claimants' solicitors for service (whose details are set out below).

### **Further directions**

10. No Defendant shall be required to file an acknowledgment of service. Further:
  - 10.1 Any Defendant (or individual who does or may by their future acts or conduct fall within the definition of the First or Second Defendant) who wishes to contest the claim shall file and serve on the Claimant's solicitor an acknowledgement of service on the Claimant's solicitors (whose details are set out below) and a witness statement outlining their interest in this matter and the nature of or grounds for that contest by 4pm on 19 March 2018.
  - 10.2 In the case of an individual who is not already named as a Defendant, that person must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time.
11. The Defendants or any other person affected by this order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimants' solicitors immediately (and in any event not less than 48 hours before the hearing of any such application).
12. Any person applying to vary or discharge this order must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time.
13. In the event that any acknowledgments of service or applications are filed or served pursuant to paragraph 10 above, the Claimant shall notify the Court in writing and seek the listing of a directions hearing.
14. The Claimants have liberty to apply to extend or vary this Order or for further directions.
15. Save as provided for above, the Claim be stayed generally with liberty to restore.
16. The Third Defendant's "Application to discharge and vary" is dismissed with no order as to costs.

### **Costs**

17. The question of the costs of the Applications shall be adjourned to the next hearing in these proceedings, if any.

### **Communications with the Court**

18. All communications to the Court about this Order (which should quote the case number) should be sent to:

Court Manager  
High Court of Justice  
Chancery Division  
Rolls Building  
7 Rolls Building  
Fetter Lane  
London  
EC4A 1NL

The telephone number is 020 7947 7501. The officer are open weekdays 10.00am to 4.30pm.

The out of hours telephone number (for urgent business only) is 020 7947 6260.

19. The Claimant's solicitors and their contact details are:

Eversheds Sutherland (International) LLP of:

1 Callaghan Square  
Cardiff  
CF10 5BT

DX: 33016 Cardiff

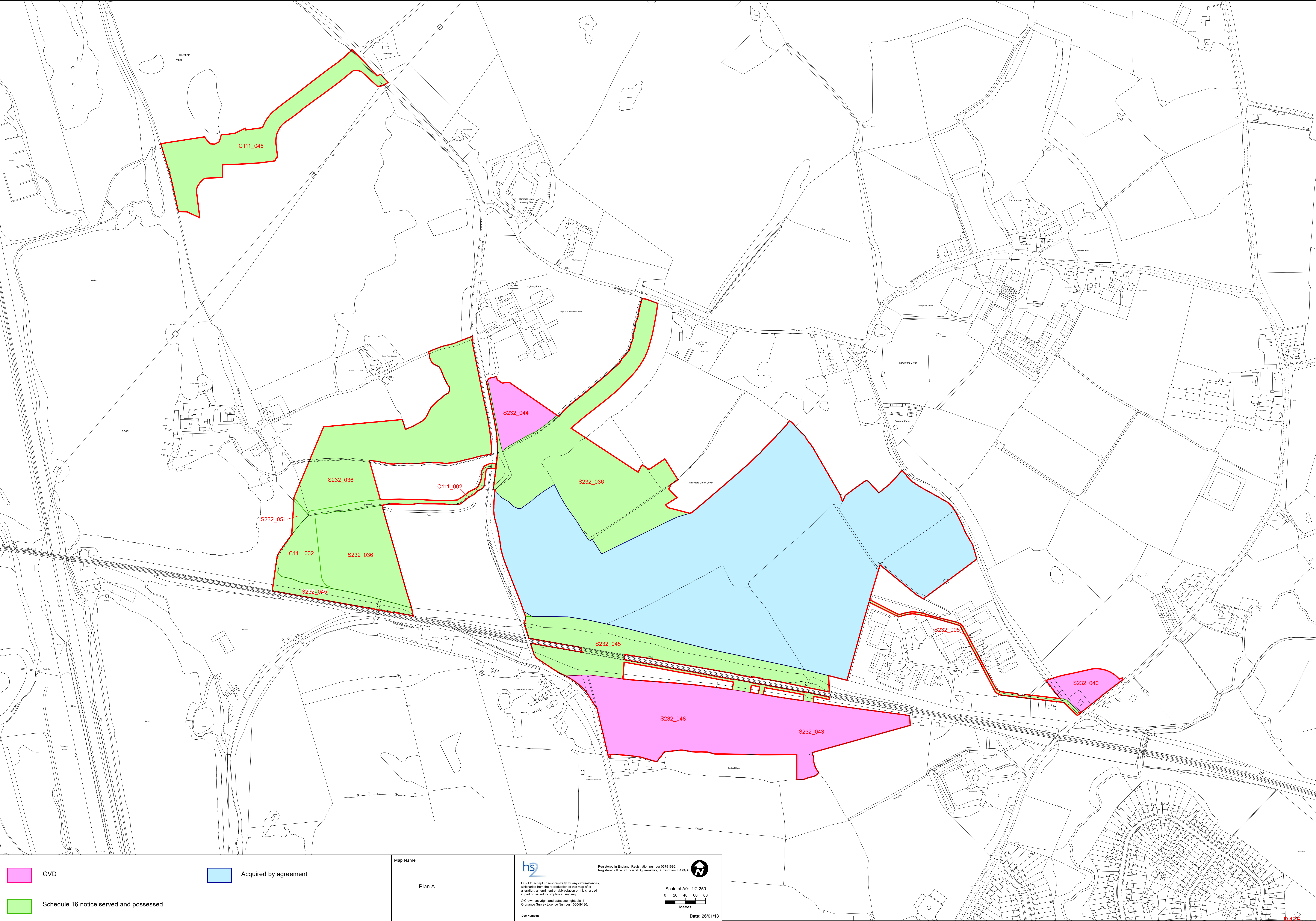
Tel: 020 7497 9797

Ref: DILCOCJ/293109-000765

### **Service of the Order**

The court has provided a sealed copy of this order on the serving party: Dilcock, Julie [JulieDilcock@eversheds-sutherland.com]





GVD

Acquired by agreement

Schedule 16 notice served and possessed

Map Name

Plan A

h2

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Registered office: 25 Snowhill, Queensway, Birmingham, B4 6GA

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Scale at A0: 1:2,250

0 20 40 60 80

Metres

Doc Number:

Date: 26/01/18

B476

A7





Claim No: PT-2018-000098

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

PT-2018-000098

**Before: David Holland QC (sitting as a deputy judge of the High Court)**

**On: 13<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> May 2019**

**B E T W E E N:**

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM

(2) PERSONS UNKNOWN SUBSTANTIALLY INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT BETWEEN THE PUBLIC HIGHWAY AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED ORANGE AND THE LAND AT HARVIL ROAD SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM

(3) SARAH GREEN

(4) MARK KEIR

(5) GRAHAM MARSH

(6) SOFIA KAZI

(7) THORN RAMSAY

(8) VAJDA ROBERT MORDECHAJ

Defendants / Respondents

---

**ORDER**

---

**PENAL NOTICE**

**IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED**