

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 D)

*for hearing on 26 and 27 May 2022*

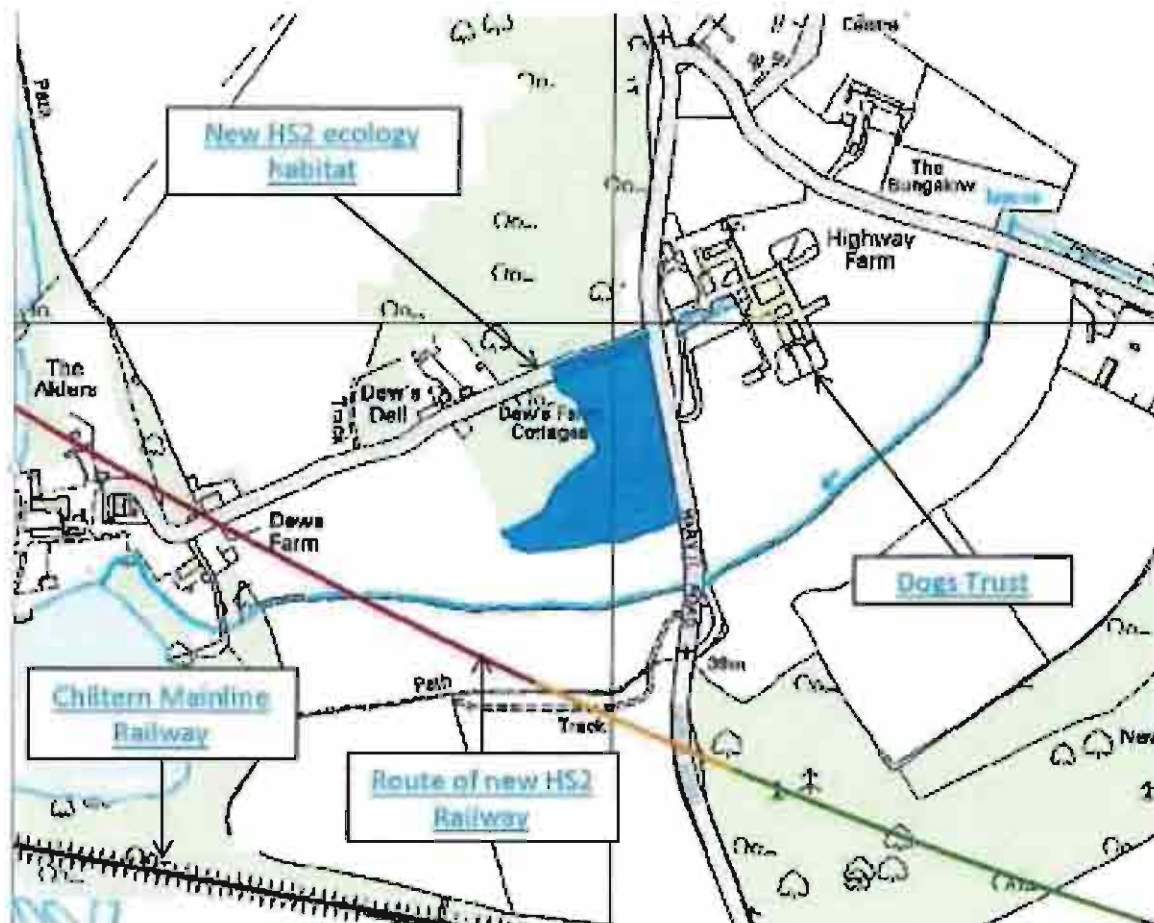
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TAB	DOCUMENT	PAGE
36	D36 (Mark Keir) Witness Statement and exhibits, dated 4 April 2022	D1381- D1465

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# HIGH SPEED TWO PHASE ONE INFORMATION PAPER

## B1: THE MAIN PROVISIONS OF THE PLANNING REGIME

This paper outlines the main provisions of the planning regime proposed for Phase One of the HS2 project.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

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or by phone: 0800 1 434 434 (lines are open 24 hours)

Version 1.6

Last updated 23rd February 2017

# B1: THE MAIN PROVISIONS OF THE PLANNING REGIME

## 1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In November 2013, HS2 Ltd deposited a hybrid Bill<sup>1</sup> with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the project have been reached.

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<sup>1</sup> The High Speed Rail (London – West Midlands) Bill, hereafter 'the Bill'.



## 2. Overview

- 2.1. This information paper outlines the main provisions of the planning regime proposed for Phase One of HS2. The provisions vary depending on whether the local planning authority has opted to become a qualifying authority or a non-qualifying authority.
- 2.2. The design of the Proposed Scheme to date provides the level of detail necessary for the purposes of the Bill and the requirements of the Environmental Impact Assessment Regulations. The level of detailed design necessary to enable the Proposed Scheme to be constructed has yet to be carried out, and will not be completed until after the Bill has secured Royal Assent. Once complete the nominated undertaker will need to apply for approval of the detailed design of a range of parts of the Proposed Scheme from local planning authorities along the route. This will ensure that although planning permission for the Proposed Scheme is granted by Parliament, local planning authorities will be able to ensure that the design of permanent structures fits into the local environment. Local planning authorities will also be able to input into the approval of certain construction matters and have a level of control over their enforcement.

## 3. Qualifying and non-qualifying authorities

- 3.1. The Bill gives each local planning authority a choice between having a wide or narrow range of controls over details. Local planning authorities opting for a wide range of controls are referred to as qualifying authorities. They will be required to sign the Planning Memorandum, which is currently in draft form. This sets out rules of conduct and administrative arrangements for them and the nominated undertaker. Qualifying authorities will be specified by the Secretary of State in accordance with part 2 of Schedule 17. Qualifying authorities will be able to approve the detailed design of permanent structures such as stations and viaducts, and also have an enforcement and approval role in relation to certain construction matters.
- 3.2. Those choosing to not sign the Planning Memorandum are referred to in the Bill as non-qualifying authorities and will be able to approve the detailed design of permanent structures, and have a more restricted role in the approval of construction matters.

## 4. Approval of detail design

- 4.1. A local planning authority that becomes a qualifying authority under Part 2 of Schedule 17 will be required to approve plans and specifications for matters such as buildings and road vehicle parks, terracing, cuttings, embankments and other earthworks, fences, walls or other barriers, transformers, telecommunication masts, pedestrian access to the railway line, artificial lighting, waste and spoil disposal and borrow pits. These provisions do not apply to works of a temporary

nature, to anything underground except any part of a station available for use without a ticket, nor to any tunnel or railway track bed.

- 4.2. The planning authority can only refuse to approve (or impose conditions in respect of) the plans and specifications on the grounds specified in Schedule 17. There are, in broad terms, two main sets of grounds on which the work may be refused or conditioned by a qualifying authority:

a) The design or external appearance of the 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;
- III. to preserve a site of archaeological or historic interest or nature conservation value; and
- IV. is reasonably capable of being so modified; or

b) The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

- 4.3. In determining whether or not to grant approval to a request or to impose conditions upon an approval, a local planning authority should consider, amongst other things, whether the proposals are consistent with the EMRs, including the draft Environmental Memorandum. These set out principles that the nominated undertaker should follow in developing the detailed design and that may be taken into account by planning authorities when considering requests for approvals of the plans and specifications. They will also need to consider the statutory guidance produced by the Secretary of State for Transport under paragraph 26 of Schedule 17.

- 4.4. A non-qualifying local planning authority will be required to approve plans and specifications for buildings. Non-qualifying authorities will only be able to refuse approval if the design or external appearance of the works ought to be modified to preserve the local environment or local amenity, and is reasonably capable of being so modified, or the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

## 5. Construction controls

- 5.1. The nominated undertaker will be bound, through the EMRs, to adopt and implement the HS2 Code of Construction Practice (CoCP). Several drafts of the CoCP have already been consulted on with the relevant local planning authorities and statutory bodies. Other commitments in the EMRs will govern construction, including a commitment that the nominated undertaker's contractors will obtain consents under section 61 of the Control of Pollution Act 1974 in relation to noise generating activities and hours of working.



- 5.2. In addition qualifying authorities will be able to enforce construction arrangements relating to:
- handling of re-useable spoil or topsoil;
  - road transport;
  - storage sites for construction materials, spoil or topsoil;
  - construction camps;
  - works screening;
  - artificial lighting;
  - dust suppression; and
  - road mud control measures.
- 5.3. Construction arrangements relating to handling of re-useable spoil or topsoil; storage sites for construction materials, spoil or topsoil; works screening; artificial lighting; dust suppression; and road mud control measures are likely to be generic. These may be subject to a class approval by the Secretary of State without the need for approval by the relevant qualifying authority.
- 5.4. The Secretary of State when making a class approval may attach conditions to it and, must consult the local planning authorities before making the class approval. Should the Secretary of State not make a class approval, these arrangements are subject to approval by the relevant qualifying authority.
- 5.5. Construction arrangements relating to construction camps, which provide temporary residential accommodation for construction staff, and road transport (i.e. lorry routes with more than 24 lorry movements per day on roads other than trunk roads and motorways) are site specific and so require individual approval from the relevant qualifying planning authority.
- 5.6. Qualifying authorities may refuse approval if the arrangements ought to be modified to preserve the local environment or local amenity, or to prevent or reduce the prejudicial effects on road safety, or on the free flow of traffic in the local area, and are reasonably capable of being so modified.
- 5.7. Other parts of the Bill also offer control over related construction arrangements. Paragraph 1 of Schedule 4 requires highway authority approval of plans and specifications of any design of a new access onto, or the alteration of, a highway used by vehicular traffic as a result of the construction or operation of the Proposed Scheme, if the location is shown on the deposited plans. If the location is not shown on the deposited plan consent for this access or alteration is required from the highway authority.
- 5.8. Under the provisions of the CoCP, the nominated undertaker will have to prepare a Traffic Management Plan which will outline the traffic control measures and routes on public highways that will be used during construction.

These plans will take account of the requirements and advice of the highway authority and other authorities, and will provide a framework for the preparation of submissions under Schedule 17.

## 6. Restoration of construction sites

- 6.1. Where a site is used for construction purposes, the site must be restored in accordance with a scheme submitted to the local planning authority within four months of the discontinuation of works at the site. Where no such scheme is agreed, the site must be restored in accordance with a scheme determined by the appropriate Ministers.

## 7. Bringing works into use

- 7.1. The bringing into use of any scheduled work or depot, except to the extent that the work is underground, is subject to prior approval by the qualifying local planning authority. The qualifying local planning authority must grant prior approval if it considers that there are no reasonably practicable measures which need to be taken for the purposes of mitigating the impacts of the work, or its operation, or if it has approved a mitigation scheme for that purpose submitted by the nominated undertaker. The qualifying local planning authority can only refuse or impose conditions upon such a scheme if it is satisfied that it is expedient to do so on the grounds that the scheme ought to be modified, and is reasonably capable of being so modified, in order to preserve the local environment, local amenity, a site of archaeological or historic interest, or in the interests of nature conservation.

## 8. Context Report

- 8.1. Paragraph 16 of Schedule 17 to the Bill requires the nominated undertaker to deposit with a relevant local planning authority a document setting out its proposed programme of requests for approval. It also requires that the requests themselves be accompanied by a document which explains how the matters to which the request relates fit into the overall scheme of the works. It is intended that these requirements will be met by the nominated undertaker producing a document which contains this information for each local planning authority, and these documents will be referred to as context reports. These documents should be submitted to the local planning authority prior to any request for approval being made to that authority.

## 9. Consultation

- 9.1. The nominated undertaker will be required under the Planning Memorandum to engage in forward discussions with local planning authorities about prospective requests for approval. This facilitates effective consultation and helps to ensure that requests for approval of the plans and specifications and construction arrangements are determined within the timetables referred to in Schedule 17.



## **10. Determining planning authority**

**10.1.** In unitary authority areas the determining for all submissions under Schedule 17 is the unitary council. In area with two tiers of local government (ie district and county councils) the district planning authority is the determining authority for all approval except for any required approvals relating to the following are determined by the county planning authority:

- approvals in relation to development consisting of the disposal of waste or spoil and the excavation of bulk materials for borrow pits; and
- approvals of the routing of large goods vehicles.

## **11. Non-material changes to approvals**

**11.1.** Schedule 17 enables local planning authorities to make, at the request of the nominated undertaker, non-material changes to approvals that they have already made under the Schedule without the need for the nominated undertaker to submit a whole new approval request. These would be amendments of a minor kind, which would not affect the substance or impact of the approvals subject to the changes.

## **12. Appeals**

**12.1.** Under part 3 of Schedule 17, the nominated undertaker has the right of appeal to the appropriate Ministers against any local planning authority decision to refuse a request for relevant approval or against the conditions which an authority has imposed in granting approval. For this purpose, references to the appropriate Ministers are to the Secretary of State for Communities and Local Government and the Secretary of State for Transport, acting jointly. The nominated undertaker can also appeal if no decision has been made within eight weeks of the receipt of the request by the authority or such extended period as may be agreed between the parties. Under the Bill non-determination is treated as refusal. Notice of the appeal must be given within 42 days of the decision or of the last day of the appropriate period. Part 3 of Schedule 17 provides for the handling and determination of such an appeal. The appropriate Ministers may allow or dismiss the appeal or vary the decision of the local planning authority, but may only make a determination involving the refusal of or imposition of conditions on an approval on grounds which were open to the authority itself under Schedule 17.

## **13. Compliance and enforcement**

**13.1.** Overseeing compliance with approvals and planning conditions falls to the local planning authority as an integral part of its planning responsibilities. Approvals under the planning regime in the Bill will be enforceable under the Town and Country Planning Act 1990. It will be for the local planning authorities to decide whether and to what extent it is expedient to take action to enforce planning

control in relation to a breach of condition or approval which they consider has taken place within their area.

- 13.2. Compliance with the planning regime will be achieved through supervision by the nominated undertaker, monitoring by the local planning authority and observation by the public.

#### **14. More information**

- 14.1. More detail on the Bill and related documents can be found at: [www.gov.uk/HS2](http://www.gov.uk/HS2)

# HIGH SPEED TWO PHASE ONE INFORMATION PAPER

## B<sub>3</sub>: DISAPPLICATION OF LEGISLATION

This paper outlines various parts of existing legislation that the High Speed Rail (London – West Midlands) Bill seeks to disapply or modify.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

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or by phone: 08081 434 434 (lines are open 24 hours)

Version 1.6

Last updated 23rd February 2017



## B3: DISAPPLICATION OF EXISTING LEGISLATION

### 1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In November 2013, HS2 Ltd deposited a hybrid Bill<sup>1</sup> with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the project have been reached.

### 2. Purpose of this paper

- 2.1. Phase One of HS2 is a project of national importance which the Promoter, Parliament and many of those affected wish to see completed as soon as possible. There is a danger however that the many consents required under existing legislation before the project can be built could lead to extensive delays. The Bill therefore seeks to disapply

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<sup>1</sup> The High Speed Rail (London – West Midlands) Bill, hereafter 'the Bill'.



some of these requirements and to create a tailor-made regime, based on that successfully applied to HS1 and Crossrail.

- 2.2. This tailor-made regime creates controls appropriate for a project that has been specifically approved in Parliament replacing those consents that the Bill disapplies. This regime is made up of a range of elements including the environmental commitments that the Secretary of State is making in the Environmental Minimum Requirements (EMRs), as well as the protective provisions and planning regime set out in the Bill. Together these ensure that there is a proper measure of scrutiny and control over the details of HS2's design and construction. The controls applied by the Bill (both within the Bill itself and the EMRs) are described in Information Paper E1: Control of Environmental Impacts.
- 2.3. This paper explains the main disaplications of legislation proposed in the Bill.

### 3. Legislation not disapplied

- 3.1. While the Bill does amend some legislation, it is important to note that no disaplication or modification is made to national health and safety legislation, either at a general level or its particular application to railways. Accordingly, the Health and Safety Executive and the Railways Safety Directorate in the Office of Rail Regulation will retain all their usual powers in respect of the construction and operation of HS2.
- 3.2. Similarly, environmental protection legislation continues to apply (for example, the Control of Pollution Act 1974 and the Environmental Protection Act 1990<sup>1</sup>), including controls on the treatment and deposit of waste. The requirement for consents where appropriate under the Planning (Hazardous Substances) Act 1990 also continues to apply.

### 4. Planning and Heritage Provisions

#### Planning permission

- 4.1. Clause 20 of the Bill deems planning permission to be granted under Part 3 of the Town and Country Planning Act 1990 for development authorised by the Bill, subject to the other provisions of the Bill and the conditions set out in Schedule 17. Under these conditions, various details have to be approved by the local planning authority. The planning permission conferred by the Bill is therefore analogous to an outline planning permission, which settles the principle of the development, while leaving certain details to be approved at a later stage. However, the amount of detail a planning authority is able to approve under Schedule 17 depends on whether it is a 'qualifying' authority: that is, whether it has subscribed to the Planning Memorandum<sup>2</sup>. If it has not subscribed the range of matters subject to its approval are more limited.
- 4.2. The conditions in Schedule 17 are enforceable by the relevant planning authority.

<sup>1</sup> There are some modifications to this Act in Schedule 27 (Noise) of the HS2 Bill (see paragraphs 15.2-15.3 below)

<sup>2</sup> The Planning Memorandum is the document containing the undertakings by qualifying authorities referred to in paragraph 13(1) of Schedule 17 to the Bill, and which also includes requirements of the nominated undertaker.

- 4.3. Information Paper B1: The Main Provisions of the Planning Regime explains the main provisions of the planning regime more fully.
- 4.4. Clause 24 removes the requirement for development consent under the Planning Act 2008 for the works authorised by the Bill. The construction of a railway is, with exceptions, one of the categories of nationally significant infrastructure project which requires consent from the Secretary of State under that Act. However, a requirement for development consent under the 2008 Act would be inappropriate for works which already have the specific authorisation of Parliament.

### Heritage consents

- 4.5. In 1991 the Government reviewed the relationship between statutory controls over the demolition and alteration of listed buildings and proposals for strategically important developments promoted via specific legislation in pursuance of Government policy objectives. The review arose from the fact that a requirement to seek listed building consents separately could result in decisions at variance with the decision of Parliament on the proposal as a whole, causing unreasonable delay or even putting the development at risk. As regards such strategically important developments, the Government therefore stated that it would expect:
- the Bill to contain details of the buildings which would be affected by disapplying listed building controls;
  - the ES deposited with the Bill to contain an account of the effect of the scheme on the built heritage;
  - the Promoter to consult Historic England during the preparation of the Bill; and
  - Historic England to have the right to appear before the select committee on the Bill on matters within its competence.
- 4.6. The Acts for HS1 and Crossrail followed this approach. This Bill for Phase One of HS2 does the same. Clause 25 and Schedule 18 disapply the requirement for listed building consent with respect to Phase One works affecting the listed buildings specified in Table 1 of Schedule 18. This is extended to any building that is listed after 30 September 2013, in order to cover any building affected by Phase One which may become listed before construction begins. In addition, there is a longer table of listed buildings set out in Table 2 of the Schedule. For these buildings, works to maintain or restore a listed building's character, or to fix monitoring equipment onto it, are permitted.
- 4.7. In the light of the removal of the requirement for listed building consent, it is proposed that heritage agreements will be entered into between the nominated undertaker, Historic England and relevant local authorities requiring approvals of certain method statements and other details.
- 4.8. Clause 26 and Schedule 19 of the Bill disapply provisions in the Ancient Monuments and Archaeological Areas Act 1979, including the requirement to obtain consent for



works affecting a scheduled monument, powers of entry and provisions relating to public access, the use of metal detectors and the removal of objects.

- 4.9. Schedule 19 also modifies the powers of entry (to obtain information about ancient monuments and historic buildings for inclusion in records kept by Historic England) under section 36 of the National Heritage Act 1983. In its place, new rights of entry specifically tailored to the circumstances of HS2 are conferred by paragraph 4 of the Schedule.

## 5. Burial Grounds and Consecrated Land

- 5.1. For Phase One construction works, Clauses 27 and 28 disapply enactments relating to burial grounds and restrictions applying to consecrated ground under ecclesiastical law.
- 5.2. In their place, where the use of land for those works involves disturbing human remains, specific provision is made by Schedule 20, which sets out requirements as to how the remains and any monument to the deceased are to be dealt with. Schedule 20 is based on the regime applied to Crossrail and HS1.

## 6. Commons and other open spaces

- 6.1. Clause 29 provides that no restriction set out in enactments which regulate the use of commons, town or village greens, open spaces or allotments can prevent or restrict actions authorised under the Bill for Phase One purposes or on Phase One land. The term 'enactment' includes subordinate legislation such as regulations or byelaws (see clause 68(1) of the Bill). Clause 29 ensures that the specific powers to carry out works under the Bill override any restrictions in general legislation which could otherwise prevent the construction of Phase One.

## 7. Trees

- 7.1. Clause 30 and paragraph 7 of Schedule 2 make special provision in relation to trees. It is necessary that a nominated undertaker should have power to remove or carry out other works on trees growing on, or overhanging, land used for building or operating the railway.
- 7.2. Regulation 13 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('the 2012 Regulations') prohibits certain works to trees protected by a tree preservation order or in a conservation area. This is subject to exemptions (see paragraph 7.6 below).
- 7.3. Clause 30 applies where tree works need to be carried out in relation to trees growing on land either within the Bill limits or to be used for Phase One purposes. The restrictions in the 2012 Regulations on the carrying out of tree works to a tree protected by a tree preservation order or in a conservation area are disapplied in relation to tree works required to enable Phase One to be constructed, maintained or operated.
- 7.4. Paragraph 7 of Schedule 2 provides for cases where trees overhang or otherwise encroach on land used for Phase One purposes. The nominated undertaker may serve

a tree works notice on the occupier of the neighbouring land, requiring the occupier to remove the tree or to carry out tree works. Unless the notice is successfully challenged by the occupier, the tree works must be carried out by the occupier or, in default, may be carried out by the nominated undertaker. The power to require tree works can only be used where the works are necessary to enable Phase One to be constructed or maintained, or are required for reasons of safety in connection with the construction or operation. The power is not unique. For example, telecommunications operators have similar powers to require the lopping of trees to prevent interference with their apparatus.

- 7.5. Restrictions relating to trees which are subject to a tree preservation order or in a conservation area are disapplied as regards works required by a tree works notice.
- 7.6. Regulation 14(1)(a) of the 2012 Regulations provides exemptions for tree works carried out by a statutory undertaker or tree works to implement a specific planning permission. However, because it is uncertain whether this exemption applies to all the circumstances catered for by clause 30 and paragraph 7 of Schedule 2, it is desirable that the position is clarified by making specific provision in the Bill.

## 8. Overhead lines

- 8.1. Clause 31 relates to the installation and diversion of overhead lines. Some overhead lines will need to be diverted for Phase One as specified in Schedule 3 to the Bill. Subsection (1) of the clause removes the need for the Secretary of State's consent under the Electricity Act 1989 where the overhead line work is within the Act limits, is a work authorised by the Bill and has deemed planning permission under the Bill.
- 8.2. This rule also applies where the work is done by an electricity undertaker. For cases where this exclusion does not apply to overhead line works arising for or as a consequence of Phase One (say, because an overhead line diversion goes outside the Act limits), the duty of the Secretary of State to hold a public inquiry in every case where the planning authority has objected is also removed. The decision on whether or not to hold a public inquiry is at the Secretary of State's discretion, having considered the number and substance of any objections.

## 9. Water

- 9.1. HS2 has been designed to avoid or reduce impacts on rivers, streams, canals and groundwater. The project has also been designed to avoid an increase in the risk of flooding, taking in to account the projected impact of climate change. It is against this background that schedule 21 contains provisions relating to the treatment of water sources and features. These generally disapply a restriction or requirement to obtain a further consent or a power for a regulatory authority to make directions in relation to works authorised by the Bill. Instead, the Bill introduces in Part 5 of Schedule 33 a tailor-made regime for the approval of plans by the relevant regulatory authority (the Environment Agency or the local drainage authority) for works affecting water resources:
  - paragraphs 1 and 2 disapply sections 24 and 25 of the Water Resources Act 1991 requiring consent for Phase One works relating to the abstraction or



impoundment of water;

- section 48A(1) of the Water Resources Act 1991 (containing a duty not to cause loss or damage caused by the abstraction of water) is disapplied. However, under paragraph 3(2) of the Bill, if the nominated undertaker does cause loss or damage that would have breached the duty in section 48A(1), then it must compensate the affected party. Paragraph 3(3) states how such compensation should be determined;
- paragraph 3(4) disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be made under this paragraph of the Bill and those others listed;
- paragraph 4 removes the requirement to obtain consent for Phase One construction works affecting main rivers;
- paragraph 5 removes the restrictions on removing designated features (which are structures or natural or man-made features of the environment designated as a feature by a 'responsible authority' such as the Environment Agency) under the Flood and Water Management Act 2010;
- paragraph 6 disapplies the requirement to obtain approval of works for the drainage systems of Phase One if the works are constructed under the powers of this Bill; and
- paragraph 8 disapplies Part 4 of the Eels (England and Wales) Regulations 2009, which relate to protecting, in the process of construction works, the passage of eels in waterways and allow the Environment Agency to impose requirements on persons carrying out works that would affect this.

## 10. Connections with sewers

- 10.1. Under section 106 of the Water Industry Act 1991, an owner or occupier of premises has a right to connect private drains and sewers serving the premises to the public sewer belonging to the sewerage undertaker so as to discharge foul water and surface water from the premises.
- 10.2. Outside Greater London, the sewerage undertaker may only refuse to permit the connection if it appears to the undertaker that the drain or sewer does not satisfy standards reasonably required by the undertaker, or that the making of the connection would be prejudicial to the undertaker's sewerage system. By virtue of subsection (8) of section 106 of the Water Industry Act 1991, within Greater London the sewerage undertaker may refuse to permit a connection on any grounds it wishes and there is no right of appeal.
- 10.3. Paragraph 7 of Schedule 21 to the Bill applies the national rule to all of the Phase One works, not just those falling outside Greater London. The right of the sewerage undertaker to refuse a connection, on the grounds that standards are not satisfied or that it would prejudice the undertaker's sewerage system, remains.

## 11. Buildings

- 11.1. Schedule 22 to the Bill disapplies various provisions of the Building Act 1984 in relation to buildings held by the Secretary of State or the nominated undertaker and used for Phase One purposes.
- 11.2. The Building Act 1984 provides for railway undertakers to have an exemption from Part 1 of that Act. It also exempts them from Building Regulations made under that Part in relation to any building belonging to them and held or used by them for the purposes of their undertaking, unless it is a building used as offices or showrooms and does not form part of a railway station or a house. That exemption would not apply to buildings held by the Secretary of State and used by the nominated undertaker for Phase One purposes, so Paragraph 1 of Schedule 22 provides a similar exemption in relation to Phase One, but one that has been extended to offices or showrooms that do form part of railway facilities, with the exception of stations such as maintenance depots. In order to secure compliance with EU requirements, the exemption does not apply to certain building regulations relating to energy efficiency.
- 11.3. Section 61 of the 1984 Act imposes requirements relating to the carrying out of works to underground drains communicating with sewers. There is an exception for drains or sewers constructed by railway companies for their railway. Since this exception would not apply to works carried out to enable Phase One to be constructed, paragraph 2 of Schedule 22 provides an exemption for Phase One works. Paragraph 3 modifies section 62 of the 1984 Act so as to remove the power of a local authority to impose requirements as regards works to drains which are carried out for Phase One purposes and substitutes a requirement to give advance notice to the local authority.
- 11.4. Where a new building is constructed, section 73 of the 1984 Act enables the relevant local authority to require chimneys on adjoining buildings to be raised so that they are higher than the new building. Normally, such works would be carried out by the owner of the new building, but the adjoining owner can instead choose to carry out the works at the expense of the building owner and is entitled to enter the building owner's land for that purpose. For safety reasons, paragraph 4 of Schedule 22 provides that the adjoining owner cannot insist on carrying out the works if to do so would require entry onto Phase One land. In those circumstances the works are to be carried out by the nominated undertaker unless consent is given to the adjoining owner to enter the Phase One land.
- 11.5. Section 74 of the 1984 Act requires local authority consent for the construction of underground cellars. This does not apply to a cellar in connection with a shop, inn, hotel or office that forms part of a railway station. Paragraph 5 extends that exemption for Phase One so that it also applies to a cellar or room in connection with a shop, inn, hotel or office which forms part of a railway facility other than a station, such as a maintenance depot which is used or intended for use for Phase One purposes.

## 12. Party Walls

- 12.1. The Party Wall etc Act 1996 ("the 1996 Act") makes provision to regulate the relationship between the building owner and the adjoining landowner where building operations are carried out at or near the junction of adjoining land. Schedule 23 to the



Bill disappplies or modifies various provisions of the 1996 Act in respect of Phase One works, in the interests of safety or where the provisions of the Act would inappropriately impede the construction or operation of Phase One.

- 11.2. Paragraphs 1 and 2 of Schedule 23 disapply parts of sections 2 and 3 of the 1996 Act. These provisions relate to party walls and, among other things, enable an owner to place footings and foundations on neighbouring land and to carry out strengthening and repair work, as well as certain other work to party or boundary structures. Adjoining owners would therefore not have the right to carry out such work to Phase One boundary structures or to enter onto Phase One land for that purpose. This disapplication is also necessary from a safety perspective.
- 11.3. Where it is proposed to carry out works to certain walls or other structures at the boundary of adjoining land, sections 2 and 3 of the 1996 Act enable the adjoining owner to object to the works and to refer the matter to the dispute procedure under the Act. Paragraph 4 of Schedule 23 disappplies this in the case of works carried out in connection with the construction of Phase One works or their initial maintenance. It would be inappropriate for adjoining owners along the route to be in a position to delay the construction of Phase One, which will have been approved by Parliament, by invoking this procedure.
- 12.4. Paragraph 5 of Schedule 23 disappplies section 6 of the 1996 Act in relation to Phase One works. Section 6 applies where a person is proposing to excavate and erect a building, or otherwise make an excavation. In such cases the building owner may enter adjoining land for that purpose. The consent of the adjoining owner is required to the works or, if that consent is not given, the matter is referred to the dispute resolution procedure under the 1996 Act. If the works are to be carried out, the building owner may enter the adjoining land to carry out the works and underpin adjacent buildings. The provisions of section 6 are unnecessary as regards Phase One because they are replaced by the provisions in the Bill dealing with the underpinning of buildings (paragraphs 2 to 6 of Schedule 2). The interests of persons affected by settlement from underground works and similar matters are intended to be dealt with by specific proposals made by the nominated undertaker (for further information see Information Paper C3: Ground Settlement).
- 12.5. A person who undertakes excavation or erection near a building or structure has a right to do so under section 6 of the 1996 Act, but is also required to undertake works to safeguard the foundations of the adjoining building or structure. For safety reasons it would be inappropriate for a building owner to have a right to enter Phase One land to carry out safeguarding works. Paragraph 6 of Schedule 23 therefore provides that where safeguarding works are required for a building or structure erected, or on land held, for Phase One purposes, the Secretary of State or the nominated undertaker can carry out the works instead of the building owner.
- 12.6. The 1996 Act provides that disputes are to be settled by a surveyor appointed by the parties or, failing agreement, by three surveyors (one surveyor appointed by each party, plus a third surveyor appointed by those two surveyors). This process is not suited to Phase One since surveyors appointed as provided under the 1996 Act will not necessarily have the specialist expertise required to make determinations concerning

railway infrastructure. Paragraph 7 of Schedule 23 provides that disputes under the 1996 Act which relate to a work required, or to a building or structure on land held, for Phase One purposes are instead to be determined by a single arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers.

### 13. Highways and street works

- 13.1. Schedule 24 disapplies various provisions of highways legislation relating to works affecting highways and streets. These are, generally, provisions that require consent be obtained from a highway or street authority, or provisions giving highway authorities power to make directions as to the use of particular streets, which could impede the implementation of the project. They are replaced by requirements for detailed approval by or consultation with the highway authority under protective provisions in Part 1 of Schedule 33 and the provisions relating to highways in Schedule 4 to the Bill.
- 13.2. Under paragraph 1 of Schedule 24, various provisions of the Greater London Council (General Powers) Act 1970, the Highways Act 1980 and the Greater London Council (General Powers) Act 1986 are disapplied or modified. These provisions would require a licence or approval to be obtained from the relevant highway authority before certain works (such as the erection of scaffolding, the planting of trees or shrubs in or near a highway or the placing of a retaining wall near a highway) can be carried out.
- 13.3. Under paragraph 2 of Schedule 24, the following provisions of the New Roads and Street Works Act 1991 are also disapplied in relation to street works authorised by the Bill:
  - the power to direct when works that could affect traffic can take place;
  - the power to direct an undertaker doing street works to place apparatus in one street rather than another;
  - where street authorities propose substantial works, the power to restrict work on that highway for a period of 12 months after completion of the works;
  - the requirement for consent of the street authority before apparatus is put in protected streets, and the power to ask for apparatus placed in a street to be moved if it is later designated a protected street;
  - the power to require that a street with special engineering difficulties cannot be worked on until plans and sections of works are agreed between the nominated undertaker and street authority;
  - the power of street authorities to make requirements as to the nature and timing of street resurfacing after carrying out street works;
  - regulations allowing a highway authority to make charges for occupying highways to carry out street works; and
  - the right of the street authority to require notification of other street works in a highway and to give directions as to when street works may commence and also remove restrictions on the construction of further street works during or



after the completion of street works.

- 13.4. In addition, the Bill disapplies the requirement to obtain a permit from the highway authority for carrying out street works in a highway subject to a permit scheme made under Part 3 of the Traffic Management Act 2004.

## 14. Lorries

- 14.1. The Greater London (Restriction of Goods Vehicles) Traffic Order ("the London Lorry Ban Order") made under section 6 of the Road Traffic Regulation Act 1984 restricts the movement of heavy goods vehicles within a defined area of Greater London during restricted hours. A permit granted by the relevant London borough council is required for a heavy goods vehicle to use restricted roads during restricted hours and these are granted subject to conditions.
- 14.2. The Promoter seeks a consistent and realistic regime for lorry movements and one which recognises the need for – particularly where tunnelling works are concerned – night-time movements in some cases. Without modification, the operation of the restrictions under the London Lorry Ban Order or any other similar lorry ban order might cause unnecessary delay to vehicles supplying material to, or removing material from, the Phase One construction sites. It is therefore proposed that lorry movements will instead be controlled by planning conditions imposed under Schedule 17 to the Bill and by the special regime for the granting of permits under Schedule 26.
- 14.3. Under the planning regime in Schedule 17 to the Bill, qualifying local planning authorities will be required to approve the routes by which material is to be transported on a highway by a large goods vehicle to a work or storage site, a site where it would be reused or a waste disposal site. Such approval will not be needed for transportation on a motorway or a trunk road, or transportation to a site where the number of large goods vehicle movements does not exceed 24 in a day.
- 14.4. Schedule 25 provides a special regime for permits under lorry ban orders to be issued to persons proposing to use a heavy commercial vehicle in connection with Phase One works. The regime applies to the London Lorry Ban Order or any other order which may be made under section 1 or 6 of the Road Traffic Regulation Act 1984.
- 14.5. Paragraph 5 of Schedule 26 provides that a permit is to be granted if reasonably required for the purpose of enabling the Phase One works to be carried out in accordance with lorry routing arrangements approved under Schedule 17, or for the purpose of enabling the Phase One works to be carried out in a timely and efficient manner. There is also a provision for appeals to the Secretary of State if the application is refused. Paragraphs 3 and 4 make provision for dealing with applications for emergency permits in a way that does not unnecessarily hinder the Phase One works. These provisions are modelled on those successfully operated on HS1 and Crossrail.

## 15. Noise

- 15.1. Paragraph 1 of Schedule 27 to the Bill modifies subsection (7) of sections 60 and 61 of the Control of Pollution Act 1974 ("the 1974 Act") so that the Secretary of State<sup>4</sup>, rather than a magistrates' court, determines the results of appeals against a construction noise notice under section 60, or a refusal or conditioning of a consent to construction arrangements under section 61. Phase One will be a significant linear work, passing through the areas of many courts. While magistrates' courts comprise an appropriate forum for the resolution of disputes in relation to schemes and activities with discrete local effects, the use of such courts and appellate bodies is not likely to secure the kind of co-ordinated and unified approach to construction activities that would be desirable for the effective management of a project the size of Phase One.
- 15.2. The Environmental Protection Act 1990 ("the 1990 Act") provides that where construction activities take place in accordance with a notice issued by a local authority under section 60 (or a consent under section 61 or 65) of the 1974 Act, the notice or consent has effect as a defence in any proceedings for failure to comply with a noise abatement notice issued by a local authority under section 80(1)(a) of the Environmental Protection Act 1990. However, it does not constitute a defence against proceedings by individuals under section 82 of that Act.
- 15.3. Schedule 27 to the Bill follows the Crossrail Act by providing that such a notice or consent is also a defence against proceedings brought by an individual. This will enable the nominated undertaker to carry out its works, as approved by the local authority, with greater certainty. In addition, the Bill provides a defence against proceedings under section 80 of the 1990 Act for failure to comply with a noise abatement notice, and against proceedings by an individual under section 82, where the nuisance is a consequence of the construction or maintenance of works authorised by the Bill or the operation of Phase One and cannot reasonably be avoided.

## 16. Local Acts

- 16.1. Schedule 28 makes provision for the disapplication or modification of various provisions in Local Acts which could inappropriately inhibit the implementation of Phase One or which require adjustment as a result of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

### London Squares Preservation Act 1931

- 16.2. The construction of Phase One requires the surface-level use of parts of Euston Square, Amptill Square, Harrington Square and Camden Gardens, which are protected under the London Squares Preservation Act 1931. Section 3 restricts the things which may be done in the London squares specified in the Act and section 9 provides for agreements between the square owner and the local authority to regulate the use of squares. As these restrictions could prevent the construction of Phase One,

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<sup>4</sup> In practice this will be the Secretary of State with policy responsibility for noise, so currently the Secretary of State for the Environment, Food and Rural Affairs, rather than the Secretary of State for Transport.



paragraph 1 of Schedule 28 disapplies them with respect to carrying out the Phase One works. This exclusion does not affect the requirement for local planning authorities to approve detailed plans and specification of works or site reinstatement applying to the operation of planning conditions under Schedule 17 to the Bill.

### **The London Overground Wires &c Act 1933**

- 16.3. The 1933 Act requires the prior consent of London borough councils for placing or maintaining wires on or over streets in the councils' area and enables them to regulate the use of wires (including making byelaws). There are a number of exceptions under section 17 of the 1933 Act for railway companies, but as these are dependent on the railway company owning or holding land for railway purposes they would not apply to Phase One, where the land is to be acquired by the Secretary of State and the works are to be carried out by the nominated undertaker. Paragraph 2 of Schedule 28 therefore exempts the nominated undertaker from the requirements of the 1933 Act.

### **London Building Acts (Amendment) Act 1939**

- 16.4. Parts 3 to 5 of the 1939 Act include provisions regulating certain categories of buildings within Greater London. The Act contains exemptions from these requirements for certain buildings or structures belonging to a railway company and situated within a railway or station premises. As land acquisition powers under the Bill are to be vested in the Secretary of State, these exemptions would not apply to Phase One. Paragraph 3 of Schedule 28 therefore provides a similar exemption for Phase One buildings or structures. As in the case of Part 1 of the 1984 Act (see paragraph 10.2 above), the exemption has been extended to cover offices or showrooms that form part of a railway facility (including a maintenance depot), as well as those that form part of a railway station.

### **West Midlands County Council Act 1980**

- 16.5. The 1980 Act applies to various local authority areas in the West Midlands. Paragraph 4 of Schedule 28 to the Bill disapplies the provisions of the 1980 Act mentioned below in relation to Phase One works:
- section 11 enables the local highway authority to regulate the use of exterior floodlighting which may constitute a danger to the traffic on the street. This provision is not necessary in the case of Phase One since it is intended that restrictions on the use of site lighting are to be included in the Code of Construction Practice ("CoCP") and the Environmental Minimum Requirements ("EMRs"). For more information, please see Information Papers D2 (Code of Construction Practice) and E1 (Control of Environmental Impacts);
  - section 15 enables a relevant local authority to require persons carrying out building operations to take steps to minimise dust emissions. These powers are unnecessary since measures to reduce dust emissions caused by Phase One works will be part of the CoCP and the EMRs;
  - section 16 prohibits the use of air-powered tools or mobile air compressors without effective noise minimisation. Again these controls are unnecessary since measures to reduce noise from tools will be set out in the CoCP and the



EMRs;

- section 21 enables a relevant local authority to enforce their right of entry to carry out inspections under the Prevention of Damage by Pests Act 1949 by obtaining a warrant authorising entry onto the land by force if necessary. For safety and other reasons this would not be appropriate in the case of Phase One land;
- section 46 requires a local authority to reject plans deposited under building regulations unless it is satisfied that there is adequate access for the fire brigade. Subject to limited exceptions relating to energy efficiency, building regulations will not apply as regards Phase One works (see paragraph 10.2 above). The provision made by section 46 is also unnecessary since Phase One fire safety will be dealt with in accordance with the applicable rail industry standards;
- part 7 enables a relevant local authority to impose requirements as regards the storage on sites of stacks of certain flammable materials. There is an exemption for stacks stored in connection with the maintenance of Network Rail's undertaking. Since this exemption would not apply in relation to Phase One works a specific exemption is needed. It is intended that fire prevention at Phase One work sites will be dealt with by the CoCP and EMRs; and
- section 84 enables the local authority to require works erected in, under or over watercourses to be securely maintained. There are exceptions for Network Rail works and the Bill provides a similar exemption for Phase One works.

### **Staffordshire Act 1983**

16.6. Paragraph 5 of Schedule 28 to the Bill disappplies the provisions of the 1983 Act mentioned below in relation to Phase One which would otherwise apply in certain areas of Staffordshire:

- section 7 requires local authority approval of the layout and construction of new streets. There is an exemption for new streets constructed by Network Rail pursuant to their statutory functions and the Bill provides a similar exemption for Phase One;
- section 10(1)(b) enables a relevant local authority to prohibit specified activities including driving or riding a vehicle over certain land. There are limited exceptions for vehicles which are used in the course of building operations or by Network Rail and other statutory undertakers which would not cover the use of vehicles for HS2. The Bill therefore provides an exemption for Phase One; and
- sections 12, 16, 26 and Part 7 are in similar terms to sections 15, 21, 46 and Part 7 of the West Midlands County Council Act 1980 and are disapplied for the same reasons.

### **Oxfordshire Act 1985**

16.7. Paragraph 6 of Schedule 28 to the Bill disapplies the provisions of the 1985 Act mentioned below in relation to Phase One which would otherwise apply in certain areas of Oxfordshire:

- section 5(2)(a) is similar to Section 10(1)(b) of the Staffordshire Act 1983 (see 16.6.2) and is disapplied for the same reasons; and
- section 10 enables the highway authority to impose and enforce conditions relating to the culverting of roadside ditches. It is intended that in relation to Phase One, these functions of the highway authorities will be regulated under Part 1 of Schedule 33 of the Bill.

### **Greater London Council (General Powers) Act 1986**

16.8. Sections 5, 6 and 7 of the 1986 Act require the consent of the relevant London borough council to certain works under streets. These are: the demolition of a building or other structure under a street and other associated works; the erection of any structure which would prevent access to a vault, arch or cellar or other part of a building; and the filling in of a vault, cellar or underground room under a street. It would be inappropriate for such consent to be required in the case of the Phase One works.

## **17. Modification of section 8 of the Compulsory Purchase Act 1965**

- 17.1. By virtue of section 8 of the Compulsory Purchase Act 1965, in certain circumstances an owner of land can call for the whole of his land to be taken even though the acquiring authority only wants part of it. For example, if the acquisition of only a garden of a house is proposed, the landowner can require the house be acquired as well if taking only a part of the land would be seriously detrimental to the remainder of the holding.
- 17.2. For the deep tunnelled sections of Phase One, the Bill only enables the Secretary of State to acquire an interest in the subsoil of the land at a depth of more than nine metres (see paragraph 1 of Schedule 11 to the Bill). The Secretary of State also has a general power under clause 8(1) to acquire only the subsoil of other land, but he would not expect to use that power for underground works if substantial physical effects were expected to be caused by the works concerned to the property above.
- 17.3. If the operation of section 8 to the Compulsory Purchase Act 1965 were not modified, the owners of land above the tunnels could seek to invoke section 8 to contend that the Secretary of State was obliged to acquire the whole of this land (that is, the subsoil occupied by the tunnel and the land and buildings above the subsoil). Accordingly, clause 8(2) of the Bill disapplies section 8 except in cases where a construction forming part of a building such as a cellar is being acquired.
- 17.4. A similar provision has been included in all recent Acts and transport and works orders that authorise underground railways and in the model clauses contained in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006.



## **18. Transport and Works Act 1992**

- 18.1. Clause 53 of the Bill makes provision for the authorisation of further adjustments or minor extension of Phase One by means of an Order under the Transport and Works Act 1992. In relation to such an Order, subsection (4) of Clause 53 disapplies section 13(2) of that Act which gives the Secretary of State discretion not to make an Order if the objects of the Order sought could be achieved by other means. For example, the Secretary of State could refuse an application for the diversion of utility apparatus on the grounds that this could be authorised under the utilities' own legislation.
- 18.2. Disapplying this provision gives certainty that – in appropriate cases – powers can be sought for the diversion of utilities by an Order under the Transport and Works Act, notwithstanding that other statutory means may be available under the legislation applying to utilities through which the powers could also be sought. This allows the nominated undertaker to promote the powers to complete Phase One itself, rather than having to rely on the promotion of powers by individual utilities.

## **19. Crown land and Royal Parks**

- 19.1. Certain restrictions under existing legislation apply to the disposal of Crown land by the Crown Estate Commissioners and within Royal Parks. Under section 3 of the Crown Estate Act 1961, the Crown Estate Commissioners cannot grant a lease for more than 150 years and there are restrictions that apply to the value that must be obtained. Land within the Royal Parks managed by the Department of Culture, Media and Sport under the Crown Lands Act 1851 is inalienable. In order to allow sufficient flexibility in the agreements about land acquisition and use (to be entered into with the Commissioners and the Royal Parks Agency) these restrictions are disapplied. This follows a similar approach to that adopted in the Crossrail Act.

## **20. Railway Regulatory Provisions**

- 20.1. This Information Paper does not deal with the railway regulatory regime provided in the Bill with respect to Phase One. For further information on those provisions, please see Information Paper B6: Railway Powers in the HS2 Bill.

## **21. More information**

- 21.1. More detail on the Bill and related documents can be found at: [www.gov.uk/HS2](http://www.gov.uk/HS2)



For: Claimants  
R.W McCRAE  
Statement No. 1  
Exhibit: "RWM1" to "RWM8"  
Date: 30 January 2018

**Claim No:**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

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

**Claimants**

**-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 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 HIGHWAYS 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 MORDECHAI**

**Defendants**

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**EXHIBIT "RM5"  
TO THE WITNESS STATEMENT OF ROBERT WILLIAM McCRAE**

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3RD FEBRUARY 2018

# STOP HS2

**No business case.  
No environmental case.  
No money to pay for it.**

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## About Us

Stop HS2 is the national grassroots campaign against HS2, the proposed new High Speed Two railway. We formed after several months of studying the HS2 proposals in depth.

Our mission is

- To Stop High Speed Two by persuading the Government to scrap the HS2 proposal.
- To facilitate local and national campaigning against High Speed Two.

Our supporters come from a wide range of backgrounds and from across the political spectrum. Over 108,000 people signed our original petition, which we took to Downing Street in October 2011, on the day of a House of Commons debate on HS2.

Stop HS2 supporters work with a variety of international, national and local groups and individuals, with the intention of getting HS2 canceled.

Our aim is to be inclusive and empowering. We actively encourage individuals and groups to campaign against HS2 in a variety of ways. These have included staging alternative consultation events, releasing a music single, delivering an advent calendar to Chequers, information stalls, setting up action groups, participation in academic and other conferences, discussing common features and strategies with relevant trans-European groups, baking cakes, walks, including the entire route, quiz nights and making films about HS2.

## How you can help

Simple ways to help

([/news/7221-ways-stop-hs2/](http://news/7221-ways-stop-hs2/))

Consultation information

([/consultation/](http://consultation/))

Visit the Stop HS2 shop

(<http://www.stophs2-officialmerchandise.co.uk/>)

Donate while you shop

(<http://www.easyfundraising.org.uk/causes/stophs2/>)

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Join our mailing

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On a national level Stop HS2 has attended Party Conferences, organised lobby Days and demonstrations outside Parliament, a National Convention, the national 'Beacon' lighting event, submitting to reviews and consultations, appearing in front of the Transport Select Committee, as well as getting significant levels of press coverage...

## Organisation

Stop HS2 is a campaigning organisation. As such, we are not eligible for charitable status. We have a board of directors, which provides guidance and agrees strategy and an Annual General Meeting.

We also have regular meetings with other campaigners against HS2, including with [Against \(Action Groups Against High Speed Two\)](http://www.betterthanhs2.org/who-we-are/) (<http://www.betterthanhs2.org/who-we-are/>). Many of our supporters are active in their local Action Group (<http://stophs2.org/contacts>).

Stop HS2's Chair and Social Media Director is Penny Gaines. Our Campaign Manager is Joe Rukin. Our Treasurer is Roger Waller.

We rely on donations from our supporters to fund our work. Maintaining the level of profile Stop HS2 has achieved costs money so, if you agree with our aim and are thankful for what we are doing, please consider [donating direct to Stop HS2](http://stophs2.org/donate). (<http://stophs2.org/donate>)

Please keep up with the national campaign on this website, [Twitter](http://twitter.com/stophs2) (<http://twitter.com/stophs2>), [Facebook](http://facebook.com/STOP.HS2) (<http://facebook.com/STOP.HS2>) and [Youtube](http://www.youtube.com/user/StopHS2?gl=GB) (<http://www.youtube.com/user/StopHS2?gl=GB>), and through our mailing list (<http://stophs2.org/mailling-list/216-join-out-e-mail-list>).

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For: Claimants  
R.W McCRAE  
Statement No. 1  
Exhibit: "RWM1" to "RWM8"  
Date: 30 January 2018

**Claim No:**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
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(2) HIGH SPEED TWO (HS2) LTD**

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**(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 HIGHWAYS 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 MORDECHAI**

**Defendants**

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**EXHIBIT "RM6"  
TO THE WITNESS STATEMENT OF ROBERT WILLIAM McCRAE**

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From BBC News on 20 November 2017:



Screenshots from video taken by Fifth Defendant on 11 November 2017 and uploaded to Facebook (URL: <https://www.facebook.com/graham.marsh.313/videos/1811069528906725/>)



D1411

E1550





Video taken by Fourth Defendant on 11 January 2018 and uploaded to Facebook (URL: <https://www.facebook.com/markkelt77/videos/1778365175529102/>)



For: Claimants  
R.W McCRAE  
Statement No. 1  
Exhibit: "RWM1" to "RWM8"  
Date: 30 January 2018

**Claim No:**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

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

**Claimants**

**-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 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 HIGHWAYS 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 MORDECHAI**

**Defendants**

---

**EXHIBIT "RM7"  
TO THE WITNESS STATEMENT OF ROBERT WILLIAM McCRAE**

---

## SCHEDULE OF INCIDENTS

### Abbreviations:

D3	=	Third Defendant – Sarah Green
D4	=	Fourth Defendant – Mark Keir
D5	=	Fifth Defendant – Graham Marsh
D6	=	Sixth Defendant – Sofia Kazi
D7	=	Seventh Defendant – Thom Ramsay
D8	=	Eighth Defendant – Vajda Robert Mordechaj
PU	=	Person Unknown
PsU	=	Persons Unknown

DATE	DESCRIPTION	SOURCE
02/10/2017	c. 10:50 - D3 entered Land and crawled under excavator. D4, D8, one female and one male PU also entered the Land and made their way to the excavator. Police called. male PU eventually left the Land voluntarily. Other trespassers refused to leave and spent the night under the excavator. There were further attempts by PsU to enter the Land throughout the day and entry was prevented by security officers. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJV Specialist security team Social media Internet
03/10/2017	D4, D8 and one female PU remained under the excavator and refused to leave voluntarily. Trespassers were removed from the Land by a specialist team. Removal was complete by 5pm. Two female PsU were also removed by police from the road side during the course of the day. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJV Specialist security team Social media Internet
07/10/2017	c. 13:45 - D3, one male PU and one female PU entered the Land. They were challenged by security officers and asked to leave. They informed security that they were doing a badger survey in order to challenge H-S2 and then left the Land.	CSJV Social media Internet
10/10/2017	C. 15:35 - c. 20 PsU entered the Land. Security confronted them and asked them to leave, which they did. In the meantime D3, D9 and one male PU entered the Land from a different direction. D3 chained himself to a tree and D8 attached himself to another tree by looping a D-lock around his neck and the tree. The male PU was filming the incident. Security asked the trespassers to leave and they refused. Police called. Male PU eventually left Land voluntarily. D3 and D9 were removed that night by specialist team. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJV Specialist security team Social media Internet
16/10/2017	Encampment established by D3, D5 and PsU on the highway verge on the opposite side of the road to the North Compound Entrance.	CSJV Cadent Social media Internet
21/10/2017	c.22:00 - c.15 PsU (believed to include D4 and D5) shook the fencing at the North Compound Entrance and trespassed on the Land. One male PU climbed on and bent fencing. Police called and arrested male PU for criminal damage. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJV Cadent Social media Internet
24/10/2017	c. 15:10 - D3 and D5 separately and simultaneously entered the Land at different locations. Both lay down. Both were asked to leave voluntarily and refused and thereafter were remove by security.	CSJV Social Media



DATE	DESCRIPTION	Source
26/10/2017	Between 12:15 and 13:45 - D3 and one female PU and 3 male PsU entered the Land. D3 entered alone first and the others entered in pairs at around 13:45. Points of entry could not be confirmed, but suspected to be via railway embankment. Trespassers were challenged by security when they approached the works area and asked to leave, which they then did.	CSJV Internet
29/10/2017	c.15:40 - four male PsU entered the Land from the northern boundary and were making their way towards the tree felling works. They were challenged by security and removed from the Land.	CSJV Social Media Internet
30/10/2017	c.15:15 - D3 and a male PU entered the land (entry believed to be via railway embankment, but not confirmed). They ran towards operational heavy excavating machine and the male PU fell. They were challenged by security and asked to leave, which they did. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJV Internet
01/11/2017	c. 14:30 - D3 and a female PU entered the Land and began to make their way towards the works area. They were challenged by security and escorted off the Land.	CSJV Social Media Internet
02/11/2017	c.10:00 - D3 and a male PU entered the Land and approached an area in which works were taking place. They were challenged by security and asked to leave. D3 walked off the Land. The male PU refused to leave and was removed by security.  c.11:00 - D3 and a female PU entered the Land and approached an area in which works were taking place. They were challenged by security and asked to leave, which they did.  c.12:30 - D3 and a female PU entered the Land and approached a plant compound and took photographs. They left the Land voluntarily.	CSJV Social Media
03/11/2017	c.10:00 - D3 entered the Land (approaching from railway embankment area). She approached a work area and was challenged by security and asked to leave, which she did.	CSJV Social Media
04/11/2017	Planned "Everyday Superheroes Against HS2" event. c.15:00 c.15 PsU (many aggressive) rushed the North Compound Entrance. c.7 PsUs gained access and progressed c.5m into the site before they were repelled by security. The police attended and warned the PsUs to keep on the other side of the road. They remained for around a further two hours chanting and shouting verbal abuse in the direction of the site.	CSJV Cadent Social Media
06/11/2017	c.7:30 - D5 entered the Land (approaching from railway embankment area). He approached a work area and was challenged by security and asked to leave, which he did.  c.11:40 - D3 entered the Land (approaching from railway embankment area). She approached a work area and was challenged by security and asked to leave, which she did.  c.15:00 - D3 and D5 entered the Land (approaching from woodland). They approached a work area and were challenged by security and asked to leave, which they did.	CSJV
11/11/2017	c. 10:45, 10 trespassers comprising 6 female PsU, 3 male PsU and D4 entered the Land. They were asked to leave by security and refused and sat in a circle with linked arms. Specialist removal team attended and effected	CSJV Social Media

DATE	DESCRIPTION	Source
	removal. Removal complete by c.13:30. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	
12/11/2017	<p>c.13:15 – D4 and one male PU and one female PU entered the Land via the railway embankment. They were challenged by security and left after taking a "selfie" with an old oak tree.</p> <p>c.14:15 – 2 PsU entered the Land via the area adjacent to the North Compound and were challenged by security and escorted off the Land.</p> <p>c.15:00 – 3PsU entered the Land via the railway embankment. They were challenged by security and left.</p> <p>c.15:30 – D3 and 1 PU entered the Land via the railway embankment. They were challenged by security and left.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	CSJiv Social Media Internet
17/11/2017	c.11:00 – D3 climbed onto an excavator machine being delivered on a low loader whilst it was stationary in the TMZ at the North Compound Entrance. She remained there until c.15:40 when she climbed down. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJiv Cadent Social Media Internet
20/11/2017	<p>c.9:00 – 2 PsU entered the Land (approaching from railway embankment area). They approached a work area and were challenged by security and asked to leave, which they did.</p> <p>c. 15:30 - 3 PsU entered the Land (approaching from railway embankment area). They approached a work area and were challenged by security and asked to leave, which they did.</p>	CSJiv Social Media Internet
28/11/2017	c. 8:20 – D3 lay down in the bell mouth of the North Compound Entrance, obstructing access to and egress from the site. She was later joined by another female person unknown. D5 and D6 also joined her at various times. Police were called. Trespassers left at c.15:50 and returned to the Encampment. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	CSJiv Cadent Social Media Internet
30/11/2017	c.00:30 – D7 entered the Land and climbed onto a contractor's welfare cabin near the North Compound Entrance. (Detailed account given in the Second Witness Statement of Julie Amber Dilcock).	Social Media
02/12/2017	c.01:15 – D7 entered the Land and attempted to climb onto the welfare cabin using the lighting tower as a climbing aid. He was challenged by security and escorted off the Land.	CSJiv Cadent
04/12/2017	<p>c.10:00 – planned protest c.11 trespassers, including the D3, D4, D5, D6 and D7, entered the bell mouth area of the North Compound Entrance to the Land and posed for photographs with large banners. This activity, obstructing the entrance to the Land, continued for around an hour.</p> <p>c.12:15 – D7 climbed into a truck making a delivery to the North Compound Entrance, which was then driven away. D7 jumped out of the truck when it returned to the North Compound Entrance. D7 then lay down in the bell mouth at the North Compound Entrance.</p>	CSJiv Cadent Social Media Internet



DATE	DESCRIPTION	Source
	<p>c. 12:25 – D3 joined D7 in the bell mouth, followed by D5, D6 and 2 PsU.</p> <p>c. 13:00 – Police attended and D7 was arrested.</p> <p>c. 14:50 – trespassers prevented a lorry from entering the site. Police attended and arrested D6.</p> <p>c. 16:00 – trespassers left and returned to the Encampment.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	
07/12/2017	c. 7:15 – D3, D5 and 1 PU sat in the bell mouth at the North Compound Entrance and prevented access to the site. The police were called. Trespassers eventually left and returned to Encampment c. 14:45	CSJV Cadent Social Media
08/12/2017	c. 7:00 – D3, D5 and D6 sat in the bell mouth at the North Compound Entrance and prevented access to the site. The police were called and D5 was arrested.	CSJV Cadent Social Media
14/12/2017	c. 14:15 – D3 and 3 PsUs sat in the bell mouth at the North Compound Entrance and prevented access to the site. The police were called. Trespassers eventually left and returned to Encampment c. 14:40.	CSJV Cadent Social Media
08/01/2018	<p>c. 8:30 – D3, D5, D8 and female PU entered the bell mouth entrance to the South Compound.</p> <p>c. 9:25 – D3, D6, D8 and female PU blocked access to the Land to a delivery truck. Security requested that they move to allow the truck to enter the Land otherwise the police would be called. The trespassers eventually agreed and the delivery truck was able to enter the Land.</p> <p>c. 10:40 – D3, D6, D8 and female PU blocked access to the Land to a low loader. Security requested that they move and they refused. Police called. Further vehicles arrived and were unable to gain access.</p> <p>c. 12:00 – D3, D8 and female PU arrested.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	CSJV Cadent Social Media
09/01/2018	<p>c. 9:20 – D4, D6 and 1 female PU entered the bell mouth entrance to the South Compound.</p> <p>c. 12:10 – D4, D6 and 1 female PU prevented a low loader exiting the site. Police attended and warned trespassers about obstruction. Trespassers left the area at c. 13:20.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	CSJV Cadent Social Media
10/01/2018	<p>c. 10:00 – D4, D6 and 1 female PU entered the bell mouth entrance to the South Compound.</p> <p>c. 11:30 – D4, D6 and 1 female PU pushed past contractors through the gates at the South Compound Entrance and sat down. They were asked to leave by contractors and refused. Police were called.</p>	CSJV Cadent Specialist security team Social Media



DATE	DESCRIPTION	Source
	<p>c. 19:20 – Specialist removal team attended and informed trespassers that they would be removed if they did not leave voluntarily, which they then did.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	
11/01/2018	<p>c. 10:10 – D3, D4, D6 and D8 present in the bell mouth at North Compound Entrance.</p> <p>c. 10:25 – D3 and D6 got behind a line of temporary safety heras fencing and refused to leave when asked. Further temporary fencing was placed around them to protect them from vehicle movements. Temporary was fencing then removed and further fencing placed behind D3 and D6 to try to secure site.</p> <p>c. 13:15 – further vehicles were prevented from accessing the site and the police were called.</p> <p>c.13:50 – D3, D6 and 1 female PU entered the Land. D6 was challenged by security and escorted off. D3 and female PU refused to leave and sat on access road. Police attended and D3 and female PU left the Land.</p> <p>(Detailed account given in the Second Witness Statement of Julie Amber Dilcock).</p>	CSJV Cadent Social Media
15/01/2018	<p>c. 11:30 – D3 entered the Land. She was challenged by security and asked to leave, which she did under escort. D6 entered the Land on a number of occasions and was removed by security. Later, she sat in the bell mouth at the North Compound Entrance and refused to move, blocking traffic for several hours before being removed by security.</p>	CSJV Social Media

For: Claimants  
R.W McCRAE  
Statement No. 1  
Exhibit: "RWM1" to "RWM8"  
Date: 30 January 2018

**Claim No:**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

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

**Claimants**

**-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 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 HIGHWAYS 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 MORDECHAI**

**Defendants**

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**EXHIBIT "RM8"  
TO THE WITNESS STATEMENT OF ROBERT WILLIAM McCRAE**

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Sarah Green  
73 Iwer Lane  
Cowley  
Uxbridge  
U88 2JE

Date: 16 January 2018  
Your ref:  
Our ref: DILCO\293109-000765  
Direct: +44 20 2047 7223  
Email: [juliedilco@eversheds-sutherland.com](mailto:juliedilco@eversheds-sutherland.com)

**BY RECORDED DELIVERY AND FIRST CLASS POST  
AND BY HAND TO HARVIL ROAD**

Dear Madam

**Trespass, obstruction of the highway, obstruction of access and property damage  
at Land at Harvil Road, Harefield, London Borough of Hillingdon ("the Land")**

We act on behalf of the Secretary of State for Transport and High Speed Two (HS2) Ltd ("HS2"). The Secretary of State is the owner of part of the Land, which has been acquired in connection with the construction of Phase 1 of the High Speed Rail line, construction of which is authorised by the High Speed Rail (London - West Midlands) Act 2017 ("the Act"). HS2 is the nominated undertaker pursuant to the Act. In addition to responsibility for carrying out surveys ahead of construction and construction of the project, HS2 has right to take temporary possession of certain lands pursuant to Schedule 16 of the Act and has exercised that right in relation to part of the Land.

Since October 2017 there have been in excess of 45 incidents of trespass on the Land and vehicles belonging to suppliers and contractors working on the Land, obstruction of the highway and of access to the Land and property damage. The incidents have involved individuals climbing onto moving vehicles; standing / sitting / lying down in the path of vehicles; and climbing underneath vehicles, all of which have the potential to cause serious injury to the individuals concerned. The police have been involved on numerous occasions and have made arrests for criminal damage and obstruction of the highway. Trespassers have been removed from the Land by exercise of common law rights to abate trespass. We are instructed that you have been involved in these incidents.

These incidents are a breach of both civil and criminal law, infringe our clients' property rights and rights to use the public highway and impede exercise of our clients' statutory rights and performance of our clients' statutory obligations. They also present a significant and unacceptable risk to the health and safety both of those individuals participating in them and of our clients' employees, contractors and suppliers.

Our clients have made numerous attempts to engage with those involved in orchestrating and participating in the illegal activities in an attempt to dissuade further incidents without the need to take legal action. Unfortunately, this has not proved successful and incidents are continuing to occur, leaving our clients with no option other than to seek the assistance of the Courts.

Accordingly, it is our clients' intention to apply to the High Court for an injunction restraining further trespass, obstruction and damage at the Land. Our client has specific evidence that you have participated in the incidents that have taken place and our client therefore intends to name you as a Defendant in that action unless we receive satisfactory assurances from you that you will not participate in any further unlawful activity at the Land or on the

[car\\_jlr1\24308798\1\dilco](mailto:car_jlr1\24308798\1\dilco)

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Date: 16 January 2018  
Your ref:  
Our ref: D1LCQCI\293109-000765  
Page: 2

highway in the vicinity of the Land. If you wish to give an undertaking to that effect please contact us immediately. You should be aware that it is also our clients' intention to seek an order from the Court that those named as Defendants in the action pay our clients' costs.

We recommend that you seek independent legal advice. If you wish to nominate solicitors to accept service of proceedings on your behalf, please let us know by return.

Yours faithfully

  
Eversheds Sutherland (International) LLP

## **WARNING OF LEGAL ACTION**

### **Trespass, obstruction of the highway, obstruction of access and property damage at Land at Harvil Road, Harefield, London Borough of Hillingdon ("the Land")**

The Secretary of State is the owner of part of the Land, which has been acquired in connection with the construction of Phase 1 of the High Speed Rail line, construction of which is authorised by the High Speed Rail (London – West Midlands) Act 2017 ("the Act"). HS2 is the nominated undertaker pursuant to the Act. In addition to responsibility for carrying out surveys ahead of construction and construction of the project, HS2 has right to take temporary possession of certain lands pursuant to Schedule 16 of the Act and has exercised that right in relation to part of the Land.

Since October 2017 there have been in excess of 45 incidents of trespass on the Land and vehicles belonging to suppliers and contractors working on the Land, obstruction of the highway and of access to the Land and property damage. The incidents have involved individuals climbing onto moving vehicles; standing / sitting / lying down in the path of vehicles; and climbing underneath vehicles, all of which have the potential to cause serious injury to the individuals concerned. The police have been involved on numerous occasions and have made arrests for criminal damage and obstruction of the highway. Trespassers have been removed from the Land by exercise of common law rights to abate trespass.

These incidents are a breach of both civil and criminal law, infringe our clients' property rights and rights to use the public highway and impede exercise of our clients' statutory rights and performance of our clients' statutory obligations. They also present a significant and unacceptable risk to the health and safety both of those individuals participating in them and of our clients' employees, contractors and suppliers.

Our clients have made numerous attempts to engage with those involved in orchestrating and participating in the illegal activities in an attempt to dissuade further incidents without the need to take legal action. Unfortunately, this has not proved successful and incidents are continuing to occur, leaving our clients with no option other than to seek the assistance of the Courts.

We require that you **Immediately cease** the acts of trespass, obstruction and property damage and we hereby give you notice that it is our clients' intention to apply to the High Court for an injunction restraining further trespass, obstruction and damage at the Land.

**Eversheds Sutherland (International) LLP**  
**Solicitors for the Secretary of State and High Speed Two (HS2) Limited**

**16 January 2018**

**Claim No:**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**  
**BETWEEN**

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

**Claimants**

**-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 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 MORDECHAI

**Defendants**

**WITNESS STATEMENT OF ROBERT WILLIAM**  
**McCRAE**

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Ref: DILCOCJ/293109-  
000765

**Solicitors for the Claimants**



1.	Claimants
2.	Richard Joseph Jordan
3.	First
4.	RJ1 to RJ8
5.	Date: 25 April 2019

Claim No. PT-2018-000098

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (CH. D)

**B E T W E E N:**

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

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

Claimants

**- 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 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 HIGHWAYS 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

**(9) LAURA (A.K.A. LORA) HUGHES**

Proposed 9<sup>th</sup> Defendant

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**WITNESS STATEMENT OF  
RICHARD JOSEPH JORDAN**

---

I, Richard Joseph Jordan, of High Speed Two (HS2) Ltd, 2 Snowhill, Queensway, Birmingham, B4 6GA WILL SAY as follows:

1. I am the Second Claimant's Chief Security and Resilience Officer. I am accountable for the delivery of corporate security support to the Second Claimant in line with its Security Strategy, and the provision of advice on all security related matters. This includes incident response, business continuity, cyber security, information assurance, physical security, personal security, personnel security and security of the future railway. I am the senior representative on behalf of the Second Claimant dealing with external security partners, such as the police, Department for Transport, Centre for Protection of National Infrastructure and relevant security authorities and agencies.
2. I am authorised to make this statement in support of the Claimants' application to extend the injunction imposed by the Court on 19 February 2018 ("the Current Order") from matters that are within my own knowledge and/or (unless other sources of information are stated) knowledge gained from my review of the Claimants' documents in relation to this matter, incident reports logged on the Second Claimant's HORACE system, reports by the Second Claimant's security team and that of the Second Claimant's contractors and material obtained and reviewed from open source internet and social media platforms, in which case I believe them to be true. There is now shown and produced to me marked **RJ1 to RJ8** true copies of documents to which I shall refer in this witness statement.
3. The HORACE system, in particular, is an important source of the information I set out below. HORACE is the online incident reporting system used by the Second Claimant to record details of health, safety, security environmental and reputational incidents which occur as a result of, or in connection with the work of the Second Claimant. However, because it is both an online system which contains information filled in by specialist security professionals, it is not a resource which can easily be printed out or otherwise presented in a way that it is easily understandable by a lay person. The accounts of the incidents set out below is therefore derived from that system (and the other sources set out above), but explained in ordinary English.

4. The abbreviations and defined terms used in this statement (unless defined in this statement) are the same as those used in the Claim Form, the First and Second Witness Statements of Robert William McCrae (“McCrae 1” and “McCrae 2” respectively) and the Current Order. I have referred to the terms of and plan attached to the Current Order, which is exhibited to McCrae 2 at RWM9, and to the plan showing the Additional Land, which is exhibited to McCrae 2 at RWM10. I have not reproduced those documents as exhibits to this statement in order to avoid unnecessary duplication.

#### **Introduction**

5. In this statement I will:
  - 5.1 Describe protestor activity in general in the vicinity of the Land and the Additional Land since the Current Order was imposed;
  - 5.2 Set out the details of specific incidents of trespass and obstruction that have occurred since the Current Order was imposed; and
  - 5.3 Explain the continued risk of trespass to and obstruction of the Land.

#### **Opposition to the Scheme works on the Land**

6. Since the imposition of the Current Order on 19 February 2018, protestor activity in opposition to the Scheme works on the Land and the Additional Land has continued. Happily, most of that activity has not been in breach of the Current Order. There are protestors present in the vicinity of the Land and the Additional Land on a daily basis making their views on the Scheme known. On average, the number of protesters range between 2 and 5 individuals on any one day. The location of HS2 sites and the proximity of a very busy road make peaceful protest an ongoing safety concern, despite this HS2 community engagement have engaged and continually addressed the concerns of protestors. We have actively tried to address the concerns that protestors have voiced or raised.
7. As part of the Second Claimant’s security protocols, significant incidents in the vicinity of the works are routinely logged on a system known as HORACE – which I have described above. In addition to the incidents of trespass and



obstruction which are set out in detail below, there have been incidents of persons unknown attempting to gain entry to the Land by false pretences; verbal harassment and physical intimidation of contractors and disruption of works from public rights of way; removal and burning of the Court-mandated notices warning of the injunction; and trespass on third party land in order to disrupt survey work being carried out by the Second Claimant's contractors under Schedule 2 of the Act.

8. The Encampment remains at the location marked on the plan to the Current Order however the Encampment has expanded into the field at the rear of the protesters tented area. Photographs illustrating the expansion into the field are attached at **RJ1**.
9. Prior to the making of the Current Order and as described in detail in McCrae 1 and the Second Witness Statement of Julie Amber Dilcock, the Claimants and their contractors had been subject to a near constant level of disruption by way of trespass and obstruction of access to the Land. Since the making of the Order there have been at least 5 incidents of trespass and obstruction in breach of the terms of the Current Order and at least 6 incidents of trespass and obstruction in relation to the Additional Land and these are described in detail below.

#### **Incidents of trespass and obstruction since the Current Order**

10. On 16 May 2018 at c. 07:30hrs a male person unknown entered onto plot S232\_064 (being part of the Additional Land) from the Encampment. He was challenged by a security patrol and informed that he was trespassing, to which he responded that he did not care, but then left the Additional Land and headed back towards the Encampment.
11. On 21 May 2018 a person unknown broke through the perimeter fence adjacent to the South Compound Entrance and entered onto the Land in breach of the Current Order. The trespass was picked up on an infrared camera which issued an audio warning saying that the trespasser had entered a restricted area. On hearing the audio warning, the trespasser appeared to realise that they were being monitored and left the Land.

12. On 13 November 2018, the Second Claimant's contractors were approached by two persons unknown who trespassed over a bund of soil (mound of earth) located on land at the West side of Harvil Road and in place to block access to the Land from this area ("the Access/Egress Bund"). The Access/Egress Bund is located partly on C111\_002 (part of the Land) and partly on plot S232\_064 (being part of the Additional Land). The location of these plots are shown on the plan to the Current Order at RWM9 and the plan at RWM10. The protesters travelled over the Access/Egress Bund travelling over plot C111\_002 towards the Second Claimant's contractors in breach of the terms of the Current Order. The protesters asked questions about who the contractors were and what they were doing on the Land. The contractors handed to the protesters the Second Claimant's 'Helpline Card' and the individuals thereafter returned over the Access/Egress Bund back towards the Encampment.
13. On 22 November 2018, the Second Claimant's contractors were carrying out ecological surveys on plot S232\_064 (being part of the Additional Land). The location of this plot is shown on the plan at RWM10. The surveys in question involved climbing trees and ropes had been set up by the contractors for that purpose. The contractors had completed work on the first tree by 11:05hrs, when the Third Defendant entered onto the land. The contractors informed the Third Defendant that she was trespassing, but she did not leave and continued to film her encounter with the contractors on her mobile phone, during which she lectured the contractors on various ecological issues. The Third Defendant lay down under the tree in question and when the contractors tried to move the tree-climbing equipment, she began to wrap herself around the suspended safety rope such that it was unsafe to continue the work. The contractors attempted to explain to the Third Defendant that she should move for her own safety, but she refused to do so. Eventually the contractors managed to remove the equipment notwithstanding the continued presence of the Third Defendant, but were forced to abandon their work in the area. The contractors left the land at c. 11:35hrs, at which point, the Third Defendant also left the land. The incident was reported to the police. Photographs taken by the contractors of the Third Defendant on the land during the incident at attached at **RJ2**.

14. On 23 November 2018, the Second Claimant's Senior Property Acquisition Manager, David Clarke, was attending a pre-possession meeting for plot C111\_112 (being part of the Additional Land) and has reported to me that they observed the Third Defendant and another person unknown walking on plot S232\_064 (being part of the Additional Land). The location of these plots is shown on the plan at RWM10. Neither of these persons has the permission or consent of the Second Claimant to be on plot S232\_064 and were therefore trespassing. A photograph taken during the incident and which shows the persons trespassing on plot S232\_064 is attached at **RJ3**.
15. A further incident took place between 27-29 November 2018. This protest activity interfered with planned night works due to being at 21:00hrs on 28 November 2018 which involved a traffic management single lane block on Harvil Road, covering the entrance to plot S232\_064.
16. On 27 November 2018, one of the Second Claimant's Security Analysts, Pete Robbins, became aware and subsequently informed me that footage of a potential "lock on" situation had been recorded and posted on social media by the Third Defendant at c.22:00hrs. The footage suggested that the Third Defendant and others were in a field where they believed the Second Claimant was due to undertake works of removing a soil bank the same evening. In the video footage, the Third Defendant explained that she was locked to a gate which was buried into the soil bank (the footage appears to show the Third Defendant with a D lock around her neck). Three other persons unknown were also believed to be locked on to the gate. Whilst the Second Claimant's contractors conducted an area search that night, the protesters were not located. The Second Claimant however fully expected further protest to take place given the social media footage and also further social media activity by a protest group named XR calling for additional support and solidarity in relation to the protest activity.
17. Subsequently, at c.20:55hrs on 28 November 2018, in addition to the Third Defendant, there were approximately ten other persons unknown being a mix of male and female adults sitting and / or lying on top of the Access/Egress Bund referred to above at paragraph 12 above, with at least two of the individuals in sleeping bags.



18. At c. 21:30hrs, the Second Claimant's security contractors informed the protesters that they were trespassing and in breach of the Current Order and that the police had been notified. The protesters however disputed that they were in breach of the Current Order because they considered that the signage displaying the injunction plan was small and not easy to see that the Access/Egress Bund fell on the Land. The Access/Egress Bund however does fall on part of the Land but straddles onto plot S232\_064 (being part of the Additional Land).
19. At c.22:30hrs, 3 more protesters arrived and joined the other protesters on the Access/Egress Bund. Whilst the number of protesters on the Access/Egress Bund was c. 10 to 15, this number fluctuated during the evening as 2-3 protesters occasionally fell back to the Encampment returning at a later point in the evening. At c. 00:40hrs police arrived on site and after being shown the injunction paperwork explained to the protesters that they were in breach of the Current Order. Despite the police asking the protesters to leave, the protesters continued to dispute that they were breaching the Current Order and refused to remove themselves from the Bund. At c. 01:00hrs, the police informed the Second Claimant's contractors that they would be unable to do anything further until the following morning due to a lack of police resources. The police left the area at c. 01:10hrs. The contractors left the area shortly afterwards at c. 01:30hrs and received a report later that morning confirming that the protesters had removed themselves from the Bund at approximately 06:00hrs. Social media posts about the incident and newspaper articles about the "lock on" are at **RJ4**.
20. On 29 November 2018 at c. 19:30hrs, two male persons unknown entered the bell-mouth area at the North Compound Entrance and stood in front of the gates, both trespassing on the Land and obstructing vehicular access to the Land in breach of the terms of the Current Order. At the time, one vehicle was attempting to exit the Land and one vehicle was attempting to enter the Land. Both vehicles were prevented from proceeding by the presence of the persons unknown. The persons unknown remained trespassing and causing an obstruction until c. 20:20hrs when they left and went into the Encampment.
21. On 11 December 2018 works were being carried out using a JCB digger on plot C111\_002 (being part of the Land) and plot S232\_064 (being part of the

Additional Land). The location of these plots is shown on the plans at RWM9 and RWM10. Copies of the warning notices required by paragraph 5.2 of the Current Order were displayed along the boundary between Harvil Rd and the said plots and Heras fencing was in place to prevent access. Around 10:30hrs three protestors arrived at the Heras fencing and began taking photographs and protesting against the works. At this stage, the protestors were situated on the Harvil Road public pavement, directly outside of the Access/Egress Bund. At around 11:20hrs, the Third Defendant and two other protestors arrived and by 11:50hrs there are eight protestors present, including the Third and Fourth Defendants. The protestors intermittently crossed onto and off the land covered by the injunction in which appeared to be deliberate breaches, albeit fleeting, of the Current Order. By 12:40hrs there were 10 protestors present and the police were called. A group of the protestors huddled together with the Third Defendant located somewhere in the middle of the group. The Third Defendant dropped down to the pavement and pushed the Heras fencing upwards whilst some of the group lifted the fencing to allow the Third Defendant to roll underneath onto plot C111\_002. The Third Defendant ran to the JCB digger situated on C111\_002 which overlaps with and leads onto plot S232\_064 and climbed onto the roof. She was informed that she had breached the injunction, but did not come down. At c.13:00hrs, Craig Leach of the Second Claimant's security team and who has dealt with the Third Defendant in relation to previous incidents, arrived on site and persuaded the Third Defendant to climb down.

22. As the Third Defendant was leaving the land, the Proposed Ninth Defendant ran across plot S232\_064 to the JCB digger and used a bicycle D-lock to attach herself around the neck to the front bar of the JCB bucket. The police arrived and spoke to the Proposed Ninth Defendant. Meanwhile, an inspection of the JCB digger revealed that the Third Defendant had damaged the air conditioning unit on the roof of the machine. The Third Defendant was arrested. A specialist police team were called and eventually cut the Ninth Defendant free at c.15:47hrs. The Ninth Defendant was arrested after being cut free.
23. The actions of the Defendants disrupted the works on the Land and the Additional Land for most of the day and caused damage to the JCB digger. The Third and

Ninth Defendants have been charged with aggravated trespass and a trial has been listed for July 2019. Social media posts about the incident and newspaper articles about the criminal prosecution are at **RJ5**.

24. On 18 February 2019, the Second Claimant's contractors were undertaking fencing works on the Land at plot C111\_002. The location of this plot is shown on the plan attached to the Current Order. At c. 16:00hrs, the contractors were approached by the Third Defendant and a male person unknown both of which stated that the contractors were live on social media and started asking questions about what works were currently taking place. Whilst the contractors were polite, the questions were ignored and the works continued. However, the Third Defendant and the male person unknown continued asking questions and disrupting the contractors. Photographs taken by the contractors of the Third Defendant and the male person unknown on the Land during the incident at attached at **RJ6**.

#### **Ongoing threat of trespass and obstruction**


25. The Defendants have made a number of recorded statements signalling their intention to continue to seek to slow or stop the work of the Claimants and their contractors on the Land and the Additional Land. Examples of the statements made by the Defendants have been collated at **RJ7** and include the proposed Ninth Defendant, Laura Hughes advocating further "lock-on" protests (which are a form of direct action protest where a person or persons attach themselves to an object and / or to each other).
26. The immediate purpose and effect of such protests is invariably to obstruct the movement of vehicles, plant or equipment with the protestors' bodies and to delay their removal via the use of lock-on devices.
27. Lock-on protests are commonly used to prevent access to or work on sites or prevent the use of machinery (as was the case with the incident on 11 December 2018 described above and a number of incidents described in the Second Witness Statement of Julie Amber Dilcock).



28. The proposed Ninth Defendant also makes reference to action by "XR", which I understand to be a reference to "Extinction Rebellion", which is a hard-core environmental protest movement with a commitment to direct action (they are, for example, responsible for the recent 'London Climate Protest' protests involving blocking roads in Marble Arch, Piccadilly Circus and roads around Parliament Square and Canary Wharf, resulting in (according to media reports) in excess of 1000 arrests. They were also responsible for blocking five major London bridges in November 2018 and also an incident in which a protestor super-glued herself to the gates of Buckingham Palace). A print-out of part of the group's website and newspaper articles about the ongoing 'London Climate Protest' and the November 2018 incidents are at RJ8. It appears that that this group were involved in the incident on 28 November 2018 described above (see exhibit RJ4).

#### STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed:   
.....

Richard Joseph Jordan

Date: 25 April 2019

1.	Claimants
2.	R.W.McCrae
3.	Second
4.	RWM9 to RM12
5.	Date: 25 April 2019

Claim No. PT-2018-000098

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (CH. D)

B E T W E E N:

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) HIGH SPEED TWO (HS2) LTD

Claimants

- 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 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 HIGHWAYS 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

(9) LAURA (A.K.A. LORA) HUGHES

Proposed 9<sup>th</sup> Defendant

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**SECOND WITNESS STATEMENT OF  
ROBERT WILLIAM MCCRAE**

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I, **ROBERT WILLIAM McCRAE**, of High Speed Two (HS2) Ltd, 2 Snowhill, Queensway, Birmingham, B4 6GA WILL SAY as follows:

1. I am the Second Claimant's Project Director for Sector S2 (Northolt Tunnels) of Phase One of the Scheme.
2. I am authorised to make this statement in support of the Claimants' application to amend their claim to include additional parcels of land which are at the risk of unlawful direct action protest activity and to extend and vary the injunction imposed by the Court on 19 February 2018 ("the Current Order") to cover that land.
3. The contents of this statement are from matters that are within my own knowledge, knowledge gained from my review of the Claimants' documents in relation to this matter and various other sources of information which are stated. Where I state matters within my own knowledge, they are true to the best of my knowledge and belief. Where I state matters from other sources, I believe them to be true. There is now shown and produced to me marked **RWM9 to RWM12** true copies of documents to which I shall refer in this witness statement.
4. The abbreviations and defined terms used in this statement (unless defined in this statement) are the same as those used in the Claim Form, my First Witness Statement ("McCrae 1") and the Current Order. A copy of the Current Order and the Plan thereto are at **RWM9**.

**Introduction**

5. In this statement I will:
  - 5.1 Explain the current position in relation to the Scheme programme for the Land;



5.2 Describe additional land in the area that has been brought into the Scheme since the Current Order was made; and

5.3 Outline the continued risk of trespass to and obstruction of the Land.

#### **Additional Land**

6. The Current Order was made in order to prevent trespass to and the obstruction of access to the Land which was then owned by the Claimants or to which the Claimant had a statutory right of possession at the Harvil Road Site in Hillingdon, West London, and being developed in connection with the Scheme. The works being carried out were the subject of ‘direct action’ protests being carried on by persons who objected to the Scheme on environmental and other grounds.

7. Since the Current Order was made, further land has been brought into the Scheme in this area as shown coloured blue and green on the plan at **RWM10** (“the Additional Land”):

7.1 The First Claimant has acquired the freehold title to and has an immediate right of possession of that part to the Additional Land coloured blue on the plan at **RWM10**. Official copies of the title to that land are at **RWM11** and **RWM1** of McCrae 1.

7.2 The Second Claimant has taken temporary possession of that part of the Additional Land coloured green on the plan at **RWM10** pursuant to section 15 and Schedule 16 of the Act which gives it an immediate right of possession to the same. A schedule setting out the details of the notices served pursuant to paragraph 4(1) of Schedule 16 of the Act and the dates on which possession was taken by the Second Claimant pursuant to those notices is at **RWM12**. In respect of the plot marked S232\_064 on that plan, notice has been served and the Second Claimant is entitled to take possession and will be taking possession in the very near future.

#### **The Scheme programme for the Land**

8. The site off Harvil Road and the Additional Land, is accessed via the new bell-mouth entrance and is currently occupied by the Second Claimant’s Early Works Contractor (Fusion on behalf of the Second Claimant), non-contestable utility

works (Babcock on behalf of National Grid, JMS on behalf of Cadent Gas and Barhale on behalf of Thames Water) and MWCC Early Works (Align on behalf of HS2). The current works that are being undertaken are to enable the Main Works access to commence construction in late 2019.

9. Since the Current Order was made the Claimant has continued to carry out Enabling Works along the HS2 Route Corridor. These, enabling works, are presently scheduled to continue to early summer 2020. Works on or adjacent to the Land and Additional Land are being carried out by a number of Contractors on behalf of the Second Claimant including Costain Skanska Joint Venture, Fusion Joint Venture, J Murphy, Barhale and Fugro. The work scheduled includes:
  - 9.1.1 Topographic, Archaeological, Ecology, Geotechnical surveys and investigation; including trenches, pits and bores.
  - 9.1.2 Landscaping, habitat creation and ecology exclusion works
  - 9.1.3 Security fencing, access roads, demolition, vegetation clearance and associated site preparation works.
  - 9.1.4 Gas, water and sewerage pipeline surveys and diversions
10. The Main Works for the construction of the railway are scheduled to start in December 2019 with completion of the Civils aspects, for handover to Rail Systems installation, in 2024. These works consist of viaduct and associated works to the west of Harvil Road and various excavation and structural works to the east in order to create the railway corridor. The work will occur at a number of locations in and adjacent to the Land and Additional Land at various times over the four year construction period. A detailed programme for these Works is presently being developed by HS2 and their Contractors.
11. The Additional Land is contiguous to and forms part of the same development site as the Land. As a result, and as set out in McCrae 1, it remains the case that there are two main entrances to the Land and the Additional Land in use for the purposes of the works, known as the “North Compound Entrance” and the “South Compound Entrance”. The position of these entrances are marked on the plan to the Current Order. Both entrances consist of a hard tarmac surfaced widened

entrance to allow vehicles to turn into and to exit the site. Each entrance has a “bell-mouth” area (i.e. access splay connecting the site to the public highway) that will allow a vehicle to pull in safely off the main road before being allowed to enter the site through a manned entry gate, to which all vehicles have to report before entering the Harvil Road Site. In addition we are in the process of creating an additional site entrance off Dews Lane being which will be used by Central Main works Civils Contractor (Align) for viaduct and associated construction activities.

12. The North Compound Entrance and the South Compound Entrance abut the Harvil Road public highway, but have not been adopted or dedicated as highway themselves. However, I understand that the Claimants have a right to access the Land from the public highway. Whilst ultimately a matter for legal argument, I understand that obstruction of these areas as part of direct action protests will amount to trespass on to the Land, and – to the extent it interferes with access - will amount to nuisance.
13. The Defendants have previously sought to exploit the position, preferring to have their activities classified as trespass rather than obstruction of the highway in order to avoid arrest whilst maintaining their disruption to the works on the Land (see, for example, the incidents on 9 and 10 January 2018 described in the Second Witness Statement of Julie Amber Dilcock).
14. In fact, obstruction of these areas can also have the effect of causing a “knock-on” obstruction to the highway itself where large vehicles are prevented from fully exiting the highway and therefore remain partly or wholly on the highway.
15. It was for those reasons that the Claimants sought – and continue to seek - to restrain those unlawful activities.
16. The land coloured orange (“Orange Highway”) on the plan to the Current Order is designated public highway. Two public rights of way cross the Land: U34 and U42, the locations of which are shown on the plan to the Current Order. Section 3 and paragraph 2(2) of Schedule 4 of the Act provide for U42 to be partially stopped up and diverted onto a new permanent alignment as part of the works taking place on the Land. As was the case when the Current Order was originally



sought, the Claimants are not seeking to prevent lawful use of these public rights of way. The Claimants are also not seeking to prevent lawful use of the lane known as Dews Lane (the location of which is shown on the plan to the Current Order).

#### **Opposition to the Scheme works on the Land**

17. There continues to be opposition to the Scheme and the works on the Land and the Additional Land. There are protestors present in the vicinity of the Land and the Additional Land on a daily basis making their views on the Scheme known. The Encampment (a semi-permanent protest camp) remains at the location marked on the plan to the Current Order, which is a safety concern due to proximity to a very busy road. They have expanded into the fields at the back of the current Encampment. The access routes they have taken to protest is on land that we intend to take possession of in the coming months. The protestors have continued to verbally harass the Second Claimant's construction operatives with a total of 24 incidents recorded on the Second Claimant's HORACE system since 2018. In addition to these recordable incidents there has also been continued low level engagement between the protestors and HS2 contractors.
18. Whilst the constant presence of protestors makes for an unpleasant and far from ideal working environment for the Claimants and their contractors, the Current Order has been effective in restraining interference with the Claimants' rights whilst preserving the Defendants' rights to peaceful protest. The Claimants do not seek unduly to interfere with that right. Prior to the making of the Current Order and as described in McCrae 1, the Claimants and their contractors had been subject to a near constant level of disruption by way of trespass and obstruction of access to the Land.
19. Since the making of the Current Order there have been at least 5 incidents of trespass and obstruction that the Claimants consider amount to a breach of the terms of the Current Order. Whilst the Current Order has not wholly prevented unlawful disruption, it has been broadly successful and of great assistance to the Claimants' activities.

20. Also since the Current Order was made, and as the Additional Land has been acquired, there have been at least 6 incidents of trespass and obstruction in relation to the Additional Land and these are described in detail in the witness statement of Richard Jordan.
21. Clearly, the Claimants would rather that the former type of incident did not occur at all and would seek to pursue contempt proceedings in appropriate circumstances. The latter incidents demonstrate the need for the Claimants to make this application to include the Additional Land in the injunction.
22. Since the making of the Current Order, the police resources required in attending incidents at the Land have been reduced, as has disruption to the flow of traffic along Harvil Road as a result of protest activity. By way of example, during the between September 2017 to February 2018 prior to the making of the Current Order, the Second Claimant by way of its contractors requested police assistance approximately 33 times. Since the making of the Current Order (a period of over 14 months) police assistance has been requested on 18 occasions.
23. The police have been very supportive and been called out on at least five occasions to provide standby on call assistance following contractors being concerned about Health and Safety issues, triggered by protestors actions. We are still concerned that we are placing a burden on precious police resources. The location of the HS2 sites and the proximity of a very busy road make peaceful protest an ongoing safety concern. Despite this, HS2 Community Engagement has engaged and continually addressed the concerns of the protestors. We understand that people feel strongly about the impact the project will have on their community and that they want us to hear their views. That is why we offer numerous channels through which they can make their feelings understood. There are community engagement opportunities where protestors can and have voiced their concerns. The protestors have attended a number of local drop-ins and engagement events where we have actively addressed the concerns that protestors have voiced or raised. The Claimants will continue to organise engagement forums, in safe environments, where protestors can voice their concerns.

24. As I said above, the Claimants do not wish to prevent – and have the utmost respect for the Defendants’ rights – for peaceful protest. Their view, however, is that it is not necessary for the Defendants to trespass on the Land or the Additional Land or to interfere with the rights of the Claimants to access to the Land and the Additional Land in order to express their views. The Defendants have other means of expression and lawful protest as has been clearly demonstrated since the Current Order was made. Unlawful activities by the protestors put themselves, the Police and the Claimants’ contractors and employees at serious risk of physical harm as explained in McCrae 1.
25. The Claimants reasonably fear that the Land and the Additional Land remain at risk of trespass and obstruction of access should the Current Order be allowed to lapse without a further injunction being imposed, given the large number of incidents of trespass and obstruction that were experienced by the Claimants prior to the making of the Current Order, the stated commitment of the Defendants to continue with protest activity at the Land and the targeting of the Additional Land not currently covered by the Current Order. It remains the case that the Defendants do not have the consent or permission of the Claimants to enter onto the Land or the Additional Land and the Claimants do not want the Claimants on the Land or the Additional Land.

#### STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: .....

**ROBERT WILLIAM McCRAE**

Date: 25 April 2019.





**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2020/0088V**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FER0848129**

**Dated: 6 January 2020**

**Appellant:** Sarah Green

**First Respondent:** The Information Commissioner

**Second Respondent:** High Speed Two (HS2) Ltd

**Before**  
**HH Judge Shanks**  
**and**  
**Suzanne Cosgrave and Paul Taylor**

**Hearing by CVP on 4 March 2021**

**Representation:**

**Appellant:** in person

**Commissioner:** did not appear

**HS2:** Carl Bird (Briefings, Correspondence and FOI Manager)

**D1442**

**Subject matter:**

Environmental Information Regulations 2004 (EIR)

Regulation 12(4)(d) (incomplete data)

Regulation 12(5)(a) (public safety)

**DECISION**

**For the reasons set out below, the appeal is allowed and the Tribunal issues the following substitute decision notice.**

**Substitute Decision Notice**

**Public authority:** High Speed Two (HS2) Limited

**Complainant:** Sarah Green

**Decision**

The Complainant's request for environmental information dated 21 January 2019 was not dealt with in accordance with the EIR in that the Public Authority was not entitled to rely on the exceptions provided by regulations 12(4)(d) and 12(5)(a) to withhold any part of the three reports identified by the Public authority as answering the request and they ought to have been made available to the Complainant subject only to the redaction of personal data in accordance with regulation 13.

**Steps to be taken**

The Public Authority must by 1600 on 21 May 2021 make available to the Complainant copies of the three reports in full unredacted form save for the redaction of personal data in accordance with regulation 13.

## **REASONS FOR DECISION**

### **Factual background**

1. As it heads north-west out of London the HS2 rail line will cross the Colne valley in Hertfordshire on a 3.4 km long viaduct before entering a 15.75 km tunnel through the Chiltern Hills. HS2's contractors on this section of the line are a joint venture called Align.
2. The Colne valley area is underlain by a chalk aquifer which is used extensively for groundwater abstraction to supply water to the public. Affinity Water Ltd, the local water supply company which has a total of about 3.2 million customers, has six groups of abstraction boreholes in the area which take water from the aquifer. In its Petition to Parliament relating to the High Speed Rail (London-West Midlands) Bill which made provision for the HS2 line in May 2014 Affinity stated:

**[23] ... Your Petitioner has significant concerns that the proposed railway passes close to six of its groundwater sources which will give rise to operational issues relating to water quality, quantity and ground water levels. Your Petitioner and its customers could be severely affected as the proposed works have the potential to reduce the quality and/or quantity of water abstracted to the extent that supply could be entirely jeopardised. Due to the nature of the chalk and fissures within it, it cannot be known prior to construction and operation what the effects on the sources will be; as such substantial and careful monitoring will be imperative.**

**...**

**[26] Pollution of the groundwater (temporary or permanent) during or following construction may reduce your Petitioner's ability to abstract from these sources [ie the chalk aquifer]. There is also the risk that pollution will occur as a result of the existence of the railway as the capability of the chalk to filter the water may be reduced by the railway's positioning. In addition, pollutants from further afield may be able to transit more easily to the sources as a result of piling/tunnelling processes ...**



3. Much of the floor of the Colne valley has been subject to sand and gravel extraction and comprises a series of lakes. There is thought to be some continuity between the water in these lakes and that in the chalk aquifer. To the north-east of the valley there is a landfill site at Newyears Green which has been formally designated as contaminated land. A stream called Newyears Green Bourne (which runs under the landfill site and then south to a point where it will be crossed by the Colne valley viaduct at its south-eastern end) has been identified by the London Borough of Hillingdon as a significant pollution pathway.
4. The viaduct across the Colne valley will be supported by 58 piers. The piers will be supported by concrete pile caps constructed on groups of piles (numbering between four and nine) made of reinforced concrete with a diameter of about 1.8 metres which will be sunk to a depth of 50 to 80 metres into the ground.
5. This appeal is particularly concerned with a load test pile site to the south-east of the Colne valley adjacent to Harvil Rd UB9 6JW which is 500m to the south-west of the Newyears Green landfill site; this load test pile site is referred to throughout the papers as “location 2”. There is no dispute that it was planned that the load test pile works at location 2 would be completed in the course of 2019; Ms Green states that it was originally to take place in the Spring (see: A59 in original open bundle) and as far as we are aware this has not been challenged. In the event, the load testing at location 2 was delayed for over a year. HS2 applied to the Environment Agency for permission to carry out the test piling on 2 July 2019 and consent was granted on 11 October 2019 (see EA letter to Ms Green dated 1 June 2020). An application for a variation “... to increase the groundwater monitoring ...” was received on 11 March 2020 and varied consent issued on 2 April 2020. The load test piling was actually done between June and September 2020, with the load test piles being installed between 13 July and 6 August 2020 and tests being carried out between 17 August and 18 September 2020.

6. We understand from press reports that work on constructing the viaduct itself has recently begun during March 2021.

### **Request and Commissioner's decision**

7. The Appellant, Ms Green, is a local resident and a customer of Affinity Water. She greatly appreciates the fresh drinking water drawn from the chalk aquifer and is very concerned about the effects of HS2's work in the Colne Valley on the water supply and more generally. On 21 January 2019 Ms Green made a request to HS2 under the Environmental Information Regulations (EIR) in the following terms:

**What risk assessments have taken place, of the potential increased risk to controlled waters as a result of imminent works by HS2 contractors along the Newyears Green bourne and surrounding wetland?**

**Are any of the risk assessments independent from the developers (HS2) and where are the risk assessment (sic) accessible to the public?**

It is common ground that the "imminent works" referred to by her were the load test piling works planned at location 2.

8. HS2 responded to Ms Green's request on 22 March 2019 stating that they held some information relevant to the request but were not required to release it by virtue of EIR regulation 12(4)(d) (incomplete data). The refusal was upheld on a review requested by Ms Green in a letter dated 28 May 2019. That letter stated towards the end:

**Please note that the risk assessments themselves are only a part of the process, and that oversight for this work is with the Environment Agency. Only when they are satisfied with the mitigation measures proposed, will they grant consent for the works to take place ...**

9. On 4 June 2019 Ms Green complained to the Information Commissioner that her request had not been dealt with in accordance with the EIR. On 6 December 2019 HS2 wrote to the Commissioner providing substantive responses to the

Commissioner's enquiries and setting out their case in relation to Ms Green's request. They sent the Commissioner what were described as "three relevant risk assessments" stating that none of them was directly related to the geographical area indicated in the request but that they had been identified as the most relevant data held in respect of the request. The title pages of these reports each bore the name "ALIGN working on behalf of HS2" and recorded the following:

**[1] Options for mitigation of the effects of piling on groundwater**

Revision	Date	Revision details
C01	30/04/18	First Draft
C02	08/05/19	Affinity Water and EA comments

SECURITY CLASSIFICATION: OFFICIAL

Handling instructions: None

**[2] Groundwater Assessment for Construction Tasks – Piling at the Colne Valley Viaduct**

Revision	Date	Revision details
P01	10/05/2018	First issue
C01	26/07/18	Second issue
C02	23/04/19	EA comments addressed

SECURITY CLASSIFICATION: OFFICIAL

Handling Instructions: None

**[3] Groundwater Assessment for Construction Tasks – Tunnel and Cross Passages**

Revision	Date approved	Reason for revision
C01	12 September 2018	First issue

C02	14 December 2018	Addressed HS2 comments
C03	4 June 2019	Addressed EA/Affinity comments

Security classification: OFFICIAL

Handling instructions: None

HS2's email of 6 December 2019 also stated that they relied on EIR regulations 12(5)(a) (public safety) and 13 (personal data) to withhold parts of the documents and set out HS2's position on the public interest balance in relation to regulations 12(4)(d) and 12(5)(a).

10. In a Decision Notice dated 6 January 2020, the Commissioner decided that regulation 12(4)(d) applied to the information in the reports and that the public interest in maintaining the exception provided by that regulation outweighed the public interest in disclosure and that HS2 had therefore complied with their obligations under EIR. She recorded that she did not therefore need to consider the applicability of regulations 12(5)(a) and 13.
11. Ms Green appealed to this Tribunal against the Decision Notice on 22 February 2020. On such an appeal it is open to the Tribunal to carry out a full review of the facts and of the Commissioner's conclusions and, as often happens, we have been supplied in the course of the appeal with far more evidence and argument than was before the Commissioner.
12. Before turning to the procedural history of the appeal, it is also relevant to record that on 12 March 2020 Ms Green made an EIR request to the Environment Agency in similar terms to the one made over a year before to HS2 with which we are concerned. On 1 June 2020 she was provided with a redacted version of a report and appendix prepared by Align in similar form to those referred to above which was entitled "Hydrogeological and Surface Water Risk Assessment for Load Test Piling Location 2". The first issue date for this



report was shown as 25 October 2019. The second revision date was shown as 22 January 2019 but it is clear that this was an error and it should have said 22 January 2020. The Environment Agency's letter of 1 June 2020 recorded that the original application for test piling at location 2 had been made on 2 July 2019 (as we record above at para 5) and that "a risk assessment" had been provided "with the applications (sic)". In making the redactions to the report supplied the Environment Agency stated that they were relying on EIR regulations 12(5)(a) and 13.

### **The procedural history**

13. No application was made to join HS2 as a party to the appeal and the original parties, Ms Green and the Commissioner, agreed that it could be determined on the papers. The appeal came before us in that way on 14 October 2020 and we were provided with copies of the three reports referred to above in the form in which they had been provided by HS2 to the Commissioner. On reviewing the material supplied we did not feel that we had a full or clear enough picture to decide the appeal and in particular we were not clear whether the closed material supplied to us in fact included the requested information or, if so, all of it. Given the case's clear importance and sensitivity, we considered that we should seek further information and, notwithstanding that the parties had consented to the matter being determined without one, hold a hearing to properly determine the appeal.

14. We issued directions on 16 October 2020 joining HS2 as Second Respondent to the appeal and requiring them to answer various questions in writing. We also made provision for HS2 to serve a Response and required them to do so if they intended to rely in the appeal on regulations 12(5)(a) and/or 13 in addition to regulation 12(4)(d). We required HS2 to attend the proposed hearing "by a representative and ... to organise a witness with suitable knowledge of the issues who is able to provide oral evidence to the Tribunal in response to questions".

15. HS2 served a full Response signed by their solicitors dated 27 November 2020.

At para 4 they described the three reports as "... the three documents that fell within the scope of the Request". At paras 10 to 20 they answered the questions the Tribunal had asked. At paras 21 to 24 it was stated that HS2 had now disclosed the three reports to Ms Green (redacted only to the limited extent that they sought to rely on regulations 12(5)(a) and 13) because they considered that the material no longer comprised "incomplete information" under regulation 12(4)(d) and they wished to save costs and narrow the issues; the reports which had been disclosed to Ms Green were the same versions as those which had been disclosed to the Commissioner in December 2019 which we refer to above. At paras 28 to 35 of the Response HS2 made clear that they still considered that they had been entitled to withhold the reports in their entirety on the basis of regulation 12(4)(d) as at the date of Ms Green's request and set out their case in relation to the applicability of the exception and the public interest balance. At paras 36 to 54 HS2 set out their case on the applicability of regulation 12(5)(a) in detail and at paras 55 to 71 they dealt with the public interest balance in relation to it including, at paras 57 and 58, the public interest in disclosure of the reports (in their entirety). At para 86 HS2 stated that they considered that the Response and the documents referred to therein "... are sufficient for the Tribunal to reach its decision in this Appeal".

16. In her Reply to that document dated 9 December 2020 Ms Green stated at para 3:

**The Appellant recognises the recent efforts made by [HS2] in providing the Updated information. This has informed the Appellant in this reply to state the reasons why the non-disclosure of some of the Updated Information at the time of the [request] was not in the public interest.**

17. In due course the hearing of the appeal was fixed for 4 and 5 March 2021. In an email to the Tribunal sent on 8 February 2021 HS2 sought directions as to whether they needed to file a witness statement or skeleton argument, whether

they would need to deal with opening and closing submissions at the hearing and whether the time estimate could be reduced from two days to one.

18. In response to that email and others from Ms Green and the Commissioner the Tribunal emailed the parties with further directions made by Judge Shanks on 16 February 2021. Ms Green was directed to clarify whether she was seeking disclosure of the redacted parts of the reports disclosed to her and whether she sought disclosure of any further material coming within the terms of her request and to identify it if possible. HS2 was directed to clarify which exemptions they were relying on in relation to the redactions and to respond in writing to various questions which had been raised by the Commissioner in an email of 12 February 2021. It was indicated that HS2 did not need to file a witness statement or skeleton argument and that the format of the hearing would be informal, but that they would need to be represented by someone (preferably a lawyer) who could make submissions of their behalf and that a witness should attend who could answer factual questions. The email ended by saying that although the hearing may well be finished within a day HS2 should remain prepared for the hearing to occupy a second day. In the context of dealing with Ms Green's position the email stated:

**The only real issue for the Tribunal will be to identify whether there is any material held by HS2 which should have been disclosed under FOIA [it should have referred to EIR] at the time of her initial request which has not yet been disclosed.**

19. Ms Green responded on 17 February 2021 stating that she was continuing to seek disclosure of the redacted material, in particular in the first ("Options") report. She also stated that she was not seeking any further undisclosed material regarding the water risk assessments for the load test piling at Harvil Rd but (she said) if HS2 were relying on other undisclosed assessments they ought to disclose them.

20. HS2 responded on 26 February 2021. They indicated that they were relying only on regulations 12(5)(a) and 13 in relation to the material redacted from the

three reports; they confirmed that there were no other relevant risk assessments in existence at the date of Ms Green's request in January 2019; and they answered some detailed questions raised by the Commissioner. At the end of the email HS2 referred to the Tribunal's statement about "the only real issue" for the hearing and stated that their responses above had therefore focussed on "... records held by [HS2] ... as at the date [of the request] ... and ... whether or not it had disclosed all the requested environmental information held by it except where that environmental information falls under one or more exceptions under EIR (and where this is the case, whether or not those exceptions were validly applied)".

21. The hearing was held remotely by CVP on 4 March 2021 and in the event only lasted that morning. The Commissioner did not attend as she had indicated she would not. Ms Green spoke on her own behalf. Mr Bird, HS2's Briefings, Correspondence and FOI Manager, who has experience of freedom of information but no legal qualifications, spoke on behalf of HS2.
22. At the outset of the hearing Ms Green made clear that she continued to seek a decision on whether HS2 had been entitled to rely on regulation 12(4)(d) to withhold the reports at the time of her request although it was now accepted by HS2 that that exception would no longer apply and the reports had (subject to the regulation 12(5)(a) and 13 redactions) been disclosed to her. Mr Bird said that he was taken by surprise by this and had not anticipated that the hearing would cover this issue. We decided to continue with the hearing and heard what the parties had to say on regulation 12(4)(d) but we consider further below whether it is appropriate to decide the regulation 12(4)(d) issue now.
23. The only oral evidence given at the hearing, other than from Ms Green and Mr Bird, was from Dr James Talbot, an expert in water quality, who had prepared a report dated July 2020 commissioned by Ms Green which was included in our



papers and which related to the risk assessment report we refer to above at para 12. Dr Talbot told us that in his view the conclusion at para 7.2.13 of the first (or “Options”) report that the decay of the steel piles to be used below the water table in connection with a temporary jetty may take 1,000 years or more was based on a false assumption which had fed through into the risk assessment report referred to at para 12. This false assumption was that the water causing decay would be clean water; in Dr Talbot’s view, the water coming into contact with the steel piles would potentially be contaminated by vertical leak of polluted water. Clearly we are in no position to form any view on the merits of Dr Talbot’s evidence but, having heard him, we have no reason to doubt his expertise or good faith in raising issues about the contents of the reports we are concerned with.

24. In the aftermath of the hearing, the Tribunal received a number of emails from Ms Green and Mr Bird on 4 and 5 March 2021. Both sides included material which went beyond that which the Tribunal had strictly contemplated but we have taken it all into account so far as relevant. In his email of 4 March 2021 Mr Bird specifically drew our attention to the parts of HS2’s submission to the Commissioner, her decision notice and their Response document which related to regulation 12(4)(d).

### **The legal framework and the issues in the appeal**

25. The relevant parts of the EIR are as follows:

#### **Duty to make available environmental information on request**

5.—(1) Subject to ... Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

...

### **PART 3**

#### **Exceptions to the duty to disclose environmental information**

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—
  - (a) it does not hold that information when the applicant's request is received;
  - ...
  - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data;
  - ...
- (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
  - (a) ... public safety;
  - ...

26. The following issues remain for our determination on the appeal:

- (1) whether HS2 correctly identified the three reports as being the environmental information which Ms Green requested and whether there was further material held which came within the request;
- (2) whether at the time of Ms Green's request the three reports were "still in the course of completion" or comprised "unfinished documents" and, if so, whether the public interest in maintaining the regulation 12(4)(d) exception outweighed that in disclosure;
- (3) whether disclosure of those parts of the three reports which have been redacted in reliance on regulation 12(5)(a) would have adversely affected "public safety" and, if so, whether the public interest in maintaining the regulation 12(5)(a) exception outweighed the public interest in their disclosure.

There was no issue that the parts of the reports which were redacted on the basis that they comprised personal data were properly withheld under regulation 13.

**(1) Has the “environmental information” requested been properly identified?**

27. It seems likely that much of the material HS2 supplied to the Commissioner and, in due course, to the Tribunal and (in redacted form) to Ms Green, was not, strictly speaking, within the terms of her request. None of the reports related specifically to the imminent test piling work at location 2. As HS2 themselves told the Commissioner, none of them was directly relevant to the geographical area referred to in the request; indeed the third report was concerned with the effect on ground water of the Chiltern tunnel, several kilometres away from location 2. Further, the three documents supplied were all versions of the reports which came into existence several months after the request, following input from Affinity and/or the Environment Agency. (In this connection it is notable that at no stage has HS2 sought to supply the versions of the three reports which would have been current at the time of the request and, when this issue was raised at the hearing, Mr Bird explained that at the relevant time HS2 did not have a system whereby earlier versions of a document were “locked” before a new version came into existence, so that it would be difficult if not impossible to find the versions current in January 2019).

28. On the other hand, we are still not entirely satisfied that there was no other material held by HS2 which did come within the terms of the request. In particular, as we note above, the Environment Agency appear to be saying in their letter of 1 June 2020 that a water risk assessment relating specifically to test piling at location 2 was provided with the application made on 2 July 2019; we have not seen this risk assessment (although what looks as if it must be a later version of it was supplied to Ms Green by the EA on 1 June 2020) and, given that we understand that it had been contemplated that the test piling was going to take place much earlier than it in fact did, we still wonder whether there might have been an earlier version of such a risk assessment in existence in January 2019.

29. In spite of our doubts, HS2 resolutely maintained through Mr Bird at the hearing that there was no other material to disclose, pointing out that the location 2 risk assessment (as well as various other documents referred to in the papers which gave rise to questions) was dated after Ms Green's request. For her part, Ms Green had indicated in her email of 17 February 2021 to the Tribunal that she was not seeking any further material " ... regarding the water risk assessments for the load test piling at Harvil Rd [as she] believed that this [had] now been released ..." and she did not really press the point at the hearing.
30. Given the stance taken by the parties, we have come to the view that the Tribunal cannot really take this matter any further. We will therefore proceed on the basis that the three reports in their entirety comprise the relevant material for our consideration, notwithstanding that they cover wider issues than those raised by the original request and technically they did not come into existence in their current form until after the request. There has been, and could be, no issue that they comprise "environmental information" for the purposes of the EIR.

**(2) Regulation 12(4)(d) (incomplete data)**

***Should we decide the issue now?***

31. As we describe above, Mr Bird expressed surprise at the hearing when Ms Green made clear that she was still seeking a determination from the Tribunal in relation to regulation 12(4)(d). In his email dated 4 March 2021 sent after the hearing he stated that HS2 had not instructed counsel, lodged a skeleton argument, or made opening and closing statements in the light of their understanding that regulation 12(4)(d) would not be in issue at the hearing and (in effect) he invited the Tribunal not to consider the issues arising without giving HS2 the opportunity to seek further input from their legal team.
32. We consider that Ms Green is entitled to seek a determination of this issue notwithstanding that by the time of the hearing she had received substantially all



the material. It is very well established that the relevant date for deciding whether information ought to be disclosed and the applicability of any exemptions under EIR (and indeed FOIA) is the date of the original request so that, even if there is a subsequent disclosure, there remains a potential issue. Given the importance that we attach to this request and the fact that HS2 may face similar requests under EIR over the coming years we consider that there is good reason to resolve the issue in this case. Furthermore, technically, in order to resolve the issue whether the redacted material should be disclosed we need to consider not only regulation 12(5)(a) but also regulation 12(4)(d) which, if it entitled HS2 to withhold the reports in their entirety as at January 2019, would have prevented her obtaining the redacted material even if regulation 12(5)(a) did not apply; we note that HS2 appear to accept this analysis at paras 35 (last sentence) and 71 of their Response.

33. So, the question arises whether in fairness to HS2 we ought to allow them a further opportunity to make representations on the issue to the Tribunal through lawyers before we decide it.
34. It is fair to say that in the Tribunal's email of 16 February 2021 Judge Shanks characterised the "only real issue" as being whether there was any material held by HS2 which should have been disclosed at the time of the original request "... which has not yet been disclosed" and that he did not require HS2 to provide a witness statement or skeleton argument in response to their solicitor's request for guidance in the email of 8 February 2021.
35. However, it is clear that HS2 had understood the scope and potential importance of the appeal in relation to regulation 12(4)(d) even after they had supplied the redacted reports to Ms Green and continued to maintain that they had been entitled to withhold the entirety of the reports at the time of the request on the basis of that regulation (see: their Response at paras 28 to 35). Ms Green's Reply made clear that she was continuing to maintain her original stance and at no stage did she indicate that she had in some way abandoned the issue. Judge Shanks's characterisation of the "real issue" was made in the context of a consideration of points being made by Ms Green about the quality of HS2's risk

assessments. It was made clear in the Tribunal's email of 16 February 2021 that the Tribunal's preference was that HS2 should be legally represented and that the hearing might still last two full days. HS2 could easily have sought an express indication from Ms Green and/or the Tribunal as to whether regulation 12(4)(d) remained a live issue and prepared for the hearing accordingly: plainly they are a large, well-resourced organisation undertaking a major infrastructure project and they have the benefit of advice from a highly reputable firm of solicitors.

36. Looking at the overall picture, we consider that if HS2 had really wanted to say more about the regulation 12(4)(d) issue and to say it through lawyers they could and should have made sure they did so before and/or during the hearing. We also consider that it would be disproportionate for there to be further delay and expense incurred before a decision is made on regulation 12(4)(d). We have therefore gone ahead and decided the issues in relation to regulation 12(4)(d) taking into account, of course, what was said at the hearing and in the subsequent emails as well as all the material placed before us earlier in the process.

***Did regulation 12(4)(d) apply?***

37. HS2 say in their Response at paras 29 and 30 that at the time of the request the information in the reports was incomplete and the documents were unfinished. In their response to the Commissioner dated 6 December 2019 they also stated that Align were still undertaking ground investigations and that the relevant works had not started and the information formed part of wider considerations as to how to undertake them and therefore related to continuing decision-making process (see: D269 of the original open bundle prepared for the Tribunal's paper consideration).

38. It is plain from the documents themselves that as at January 2019 when Ms Green made her request for information none of the reports was in its final form since, as we know from the subsequent history, they were to be subject to revision following input from Affinity and the Environment Agency. On this

basis alone it seems to us that we can be satisfied that the regulation 12(4)(d) exception applied to the reports in January 2019, notwithstanding that we have not been supplied with the versions which were current at that time. Having said that, however, we consider it is likely that the versions which were current in January 2019 would have been reasonably self-contained as documents (ie they would not have been half-finished first drafts) and, based on HS2's response at D269, it appears that the versions of the reports which were produced for the Commissioner in December 2019 were indeed the final versions of the reports.

***Public interest balance***

39. Since we are satisfied that the regulation 12(4)(d) exception applied to the three reports in January 2019 it is necessary for us to consider the balance of the public interest in their disclosure as against that in maintaining the exception. The relevant date for our consideration is January 2019 but, since we have not been told what the state of the reports was in January 2019, we can only consider them in the form supplied to us. Further, we are bound to consider the public interest in disclosure of the reports in their entirety; the fact that Ms Green's request was focussed on risks arising from the proposed test piling at location 2 does not limit our considerations; and on any view the fact that the load test piling was carried out successfully between June and September 2020 is irrelevant.

40. The general public interest served by disclosure of environmental information is summarised in recital (1) of Directive 2003/4/EC which is the origin of the EIRs:

**Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.**

It is clear from this statement that the purpose of making environmental information public is not only to give the public greater awareness and reassurance but also so that they can take part in decision-making about environmental matters.

41. The reports in question in this case concern a major infrastructure project which gives rise to substantial and legitimate environmental concerns. They specifically relate to the risks of contamination to the drinking water supplied to up to 3.2 million people resulting from the construction of the HS2 line. This is clearly environmental information of a fundamental nature of great public interest, as amply demonstrated by Affinity's Petition and the letter from HS2 to the local MP, Nick Hurd, dated 10 July 2019 which Ms Green produced for the Tribunal.
42. At the time of the request the test piling at location 2 was "imminent" (as HS2 accept at para 12 of the Response document) and work on the viaduct itself was presumably intended to start within a few months thereafter. Disclosure of the reports would clearly have contributed to the transparency of the process and would possibly have alleviated concerns on the part of the public at that stage. Furthermore, if the public were to have an opportunity for any meaningful participation in decision-making relating to the risks associated with the work and the way it was to be done, it seems to us that such disclosure needed to take place well before that work began, and on any view January 2019 was getting close to the start of the work. We therefore consider that the public interest in disclosure of the reports as at January 2019 was very substantial.
43. HS2's case on the public interest in maintaining the exception as at January 2019 is set out in their response to the Commissioner at pages D270-272 and their formal Response document at paras 33 to 35. In short, HS2 appear to rely on three points: first, the need for a "safe space" in which to undertake further investigations and discussions with relevant third parties (in particular the Environment Agency) in a highly technical area; second, that any proposals for



works were to be submitted to and approved by the Environment Agency and would be subject to on-going monitoring; and third, that if “inchoate information” was released to the public it could be misleading and would involve HS2 in expending public money to correct false impressions.

44. As far as we can see the main reason for HS2 maintaining that there was a need for a “safe space” appears to be a concern that if the versions of the reports current in January 2019 were made public they “... could have been used to try and impact work undertaken in finalising the information” (see: Response at para 33). This theme is reflected in a statement at D271 where HS2 said to the Commissioner:

**In this case a final decision on the measures for this area have not been taken. Once final decisions have been made the information will be made public and the public will be afforded the opportunity to review and comment on the proposed measures.**

It seems to us that such an approach almost entirely negates the possibility of the public having any input on the decision-making process in this kind of case, which goes against a large part of the reason for allowing public access to environmental information.

45. The suggestion that public officials concerned in making enquiries and freely discussing options to mitigate environmental problems might be discouraged or undermined by early disclosure of their work seems to us rather fanciful and was not supported by any kind of evidence; the case is not comparable in our view to that of senior officials indulging in “blue sky” thinking about policy options. We accept that the material is “highly technical” but we cannot see why a lack of understanding on the part of the public would have any negative impact on HS2’s work; if a member of the public or a pressure group wanted to contribute to the debate in a way that was likely to have any effect on the decision-making process they would no doubt have to engage the services of someone like Dr Talbot, who would be able to enter the debate in a well-informed and helpful way.

46. HS2's second main point, that the Environment Agency will be approving and supervising everything, does not seem to us of great weight. Of course the Environment Agency is there to act in the public interest in relation to the environment but its involvement cannot be any kind of answer to the need for public knowledge of and involvement in environmental decisions. The EA is itself fallible and should be open to scrutiny. If the public could simply entrust everything to it there would be no need for the EIR.

47. HS2's third main point is that if inchoate information is released it could be misleading and they would incur unnecessary expense correcting false impressions. We were not presented with any specific evidence or examples to illustrate how this problem might have been encountered in practice. It does not seem to us a very compelling point.

48. Taking account of all the relevant circumstances, and bearing in mind the statutory presumption at regulation 12(2), we are of the clear view that, as at January 2019, the public interest in disclosure of the three reports identified by HS2 substantially outweighed that in maintaining the regulation 12(4)(d) exception. It was not therefore open to HS2 to rely on the exception to withhold the reports.

**(3) Regulation 12(5)(a) (public safety)**

49. The regulation 12(5)(a) exception was not relied on by HS2 in refusing the original request or at the review stage and it was not considered by the Commissioner but it is nevertheless open to HS2 to rely on it on appeal. HS2's case on its applicability is set out at paras 36 to 53 of their Response document. They say that they are entitled to withhold the redacted parts of the three reports on the basis that their disclosure would adversely affect "public safety". They say at para 40 that the redacted information is information which "... identifies the specific location of [their] sites in the Colne Valley area ... and, more specifically, the detailed information of ground water access points"; if such information was disclosed, they say, it could be misused by protestors or

terrorists to trespass on HS2 sites and cause damage and danger to HS2 workers and to themselves and enable them to infect the groundwater and thus the local water supply by introducing chemicals and other poisonous substances.

50. We accept that, if indeed disclosure of the redacted information would reveal sensitive locations and if those locations were likely be used in the way suggested, “public safety” would be adversely affected and the exception would apply. However, we have looked at the reports and the proposed redactions and have some difficulty in seeing how disclosure of the redacted material would have these effects.

51. We have not been able to find anything in the reports which specifically identifies the position of any of the HS2 worksites. But even if the positions of the worksites are identified somewhere in the reports, we consider that they are likely to be of considerable size and very obvious on the ground and that if anyone was determined to trespass on them and cause damage they would not need any of the information in the reports in order to do so. We note that at paras 44 and 45 of the Reply HS2 refer to the numerous instances of protestors already causing trouble at their worksites. We also note that a map showing the position of Load Test Piling location 2 formed part of the open evidence presented to us.

52. As to the site of ground water access points, the evidence was very unsatisfactory. Most of the redactions sought are instances where one or other Affinity ground access point is simply named in the text in a way that did not seem to us to raise any particular danger to public safety. We were not specifically directed to anything that could be described as a “detailed diagram or location information” (see para 46 of Reply) although we did ourselves note the maps at Figures 1, 2 and 3 in the second (“Groundwater Assessment”) report produced by HSL: the only redactions that appeared to be sought in these maps were on Figure 3 which shows the position of some private abstraction points which are apparently “... pre-dominantly used for non-potable activities” (see

para 4.3.10 of the report). We noted that the Environment Agency stated in their letter to Ms Green of 1 June 2020 that they had withheld data relating to the location of Affinity pumping stations and supply abstraction points on grounds of public safety; but Ms Green also drew our attention to a newspaper advertisement published by the EA which gave detailed national grid references for one of the relevant abstraction points.

53. Further, our confidence in the reliability of the case being advanced by HS2 in this connection was substantially undermined by their redaction of a reference at footnote 4 on page 16 of the first (“Options”) report. We could not see any basis for withholding this reference; at best the redaction may have been the result of a rather rushed approach to the redaction exercise and the fact that it appears to relate to some abstraction boreholes; at worst it arose from a desire not to publicise the existence of the subject matter of the reference for some reason.
54. In the course of the hearing we specifically sought Mr Bird’s assistance as to how disclosure of the redacted material would cause the problems HS2 rely on but he was not able to assist in any substantial way. We offered him the opportunity to address us in closed session so that he could explain in detail what exactly would be revealed by the redacted information and how it might be misused but he declined that offer.
55. We are therefore not satisfied that the regulation 12(5)(a) exception applied to the relevant redacted material. In case we are wrong about that we have considered the public interest balance in any event. We have considered the general public interest in disclosure of the reports at paras 40 to 42 above. The redacted sections of the reports are of course only a part of the material in them but they seem to us of some importance to an overall understanding of what the reports are saying. On the other hand, we consider that if regulation 12(5)(a) did apply to the redacted material it certainly only applied to some of the redactions and that the net effect of disclosure in terms of public safety would



have been minimal. Overall, we are quite satisfied that the public interest in disclosure of this material would have outweighed that in maintaining the exception provided by regulation 12(5)(a).

56. One way or another, we do not consider that HS2 has established that they were entitled to rely on regulation 12(5)(a) to withhold the redacted material and we will accordingly allow this part of the appeal and direct HS2 to disclose the reports in their full unredacted form.

### **Conclusions and disposal**

57. For all those reasons, notwithstanding the less than ideal procedure, we have decided to allow Ms Green's appeal both in relation to regulations 12(4)(d) and 12(5)(a) and to issue the substitute decision notice set out above.

58. This is a unanimous decision.

**HH Judge Shanks**

**(First Tier Tribunal Judge)**

**Date of Decision: 19 April 2021**

**Date Promulgated: 20 April 2021**