

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

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

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37	D36 (Mark Keir) Submissions dated 16 May 2022	D1467-D2066

DLA Piper UK LLP
1 St Paul's Place
Sheffield
S1 2IX

Telephone: 0114 283 3312
Email: HS2Injunction@governmentlegal.gov.uk
Reference: RXS/380900/378

Solicitors for the Claimants

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

Grounds for Defence
Of
Mark Keir Defendant No.36

1. I am Mark Keir, defendant no. 36, in the case of QB-2022-BHM-00044 High Speed Two (HS2)Ltd & Secretary of State for Transport V Ors
2. I believe all of my submission to this Court to be honest, sincere and truthful.
3. I am a member of the public.
4. Certainly, as far as HS2 is concerned, I speak for and with the majority. I have campaigned against HS2 for many years, for the last five, on the front line as an activist. HS2 pushed me to activism. Prior to 2017 my campaigning (not just HS2 but certainly closely related) consisted of letter writing to press, emailing my MP (so good I have one now who responds - no longer Mr Johnson), leafleting, marching and banner waving. I have also stood for Council and three times for Parliament as the Green Party candidate in Uxbridge and South Ruislip.
5. I am based in Jones' Hill Wood, off King's Lane, HP22 6PT since April 2020, to protect the wood, to protest HS2, to witness the criminal and needlessly destructive nature of a project the people of this country do not want but over which we have been roundly ignored by Parliament.
6. In passing, I wish to make clear my unease at these proceedings. I am not a criminal. I am not being accused of such. All previous attempts to accuse me as such have been appropriately dismissed. I believe all my co-defendants are in a similar position. But, we are all called to this Court as "defendants" to defend ourselves and the public against an assault on core human rights and core democratic values, and we face costs of these proceedings and face worse if we continue on our *honest* and *truthful* plight. I believe we are being victimised for having the courage to confront a massive dishonesty on behalf of a timid and silenced public. I believe injunctions in this guise are a thuggish weaponising of law, a bullying nuclear deterrent to make dissent timid and weak and ultimately unheard. It is notable that such a deterrent is taken up all too easily by powerful moneyed corporations, as in this case, and by powerful authorities, also as in this case, with no remit to ask the public of their validity, and in the case of the authority in this case, an authority who wields legislative power that should belie any requirement for such

thuggish behaviour. This process is devoid of justice and devoid of democracy. This is *not* acceptable.

7. However, as a representative of the public I believe our honest and truthful plight is best served by being heard here in this Court, even though it is so fraught with dangers, and I must therefore do what I can to persuade the Court of the injustice in this Claim. These are my grounds for "defence" in this case:

Ground One

I will argue that this Claim before us is unsafe, is based on false information and is mired in dishonesty or hopeless maladministration. I will demonstrate that that dishonesty/hopeless maladministration aims to mislead Parliament (again), this Court (again?) and the people (again).

Ground Two

I will argue that our protest is valid, proportionate and necessary, and works hand in glove with our oversight, and that we protest absolutely in the public interest and that the safety of the public is our prime concern. I will argue that this Claim before us aims to deflect interpretation of the true nature of our protest because our protest is indeed highly dangerous to HS2 Ltd, not because we cost them money, nor threaten them with violence, but because we are uncovering the habitual daily crime spree that is HS2, that we offer the only rigorous oversight of this crime spree, and that to stop us, would bring this Court into complicity with that criminality.

I will argue that the Parliamentary system has failed us all, that rigour is absent in the regulation offered by that system, and that now is the time we *must* stand up and have our unlistened-to voices raised. We are the public, we are the ignored, and our existence depends on ours and others' protest, as it has always been.

Ground Three

I will demonstrate that the allegations of violence and intimidation the Claimant raises against the Defendants are false and without base, and that indeed, the violence and intimidation always emanates from the anonymous uniformed ranks of thugs employed by HS2 Ltd, and their side-kicks in the Police. I will demonstrate there is no necessity to *emergency* injunctive relief.

Ground Four

I will demonstrate that it is I and my co-defendants who represent the British public, *not* HS2 Ltd, *not* SoS for Transport, *not* Parliament (not yet....it may get there soon!). I will demonstrate that democracy has not been served well by Parliament dumping the most egregious, politically inept, socially

inappropriate, ecologically and environmentally deceitful and disastrous, and most certainly one of the most corrupting and unwanted of projects on a people who did not ask for it, and were not listened to on the one occasion Parliament deigned to ask us. I will demonstrate that as an instrument first of democracy, this Court must do the right thing.

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1. Since the first dishevelled and still contested service of this Claim the Claimants have issued two sets of maps to illustrate and identify the Claim on the ground.
2. The first set of maps was served on or around 28th March 2021. Those maps show a truly dystopian attempt to silence dissent. But there are problems also indicated therein that may manifest in deep trouble for the Claimants.
3. The second set of maps were served to me, along with *service to the Directions Hearing*, the day after the Directions Hearing on the 29th April 2022. These maps when compared to the first set display one of two things;
 - a. A deeply dishonest approach to this Court and indeed to Parliament.
 - OR
 - b. A shocking level of maladministration, a desperate lack of candour and a disturbing apathy to truth and honesty.
4. In either case I believe such cavalier use and misuse of information and property makes the Claimants case unsafe and unready for Hearing, that the Hearing should at least be deferred, though dismissal of the Claim would seem a more appropriate outcome.
5. The two sets of maps seem to largely follow the same map numbering, but are collated differently and the revised maps do not follow a straight sequence. I apologise for the awkward navigation between the two sets, but I am not to blame!
6. I ask you to bring to your screen the current maps as shown in the Claimants online bundle at link
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071598/PH1-HS2-LP-MAP-000-000085_RWInjunction-Part1_compressed.pdf and please scroll to **page 2 Map 31**

7. So that you may compare directly, please open a second tab, and open the original maps at
<https://drive.google.com/drive/folders/1pymrTB6M9pqUycHdwuolxI8Hkgwks7aB> at
page 43, Map 31
8. Please compare those two pages. Please also see **G1 Exhibit 1**
9. Looking at Exhibit A1, from the top, the first encirclement shows an extensive office carpark that is daily fully occupied by HS2 Ltd vehicles and HS2 staff vehicles. Why is this not in the Claim? On what basis do HS2 or SoS forTransport possess this land?
10. Moving down, the second encirclement shows land temporarily in possession of, and used by HS2 Ltd. Why is this not in the Claim? On what basis do or did HS2 Ltd or SoS forTransport possess this land? Please see **G1 Exhibit 2**
11. The third encirclement is an area of wet woodland, which HS2 Ltd have entered, used, blocked up bat roosts, and felled trees, in a Site of Special Scientific Interest. Why is this not in the Claim? On what basis do or did HS2 Ltd or SoS forTransport possess this land? Please see **G1 Exhibit 3 and 3a**
12. Please scroll down to **page 3 and 44 respectively to see Map 31 R1**. The large area of pink (SoS permanent possession/HS2 acquired Land) is part of Park Lodge Farm. The full extent of this property stretches across several maps. Park Lodge Farm was leased by the Howies who ran a successful organic dairy herd. They leased the farm and lands from London Borough of Hillingdon. When HS2 compulsory purchased large tracts of their land, the farm could no longer sustain the herd, and the Howies had to leave. What is important to know here is that both London Borough of Hillingdon and the Land Registry disagree with SoS/HS2 ownership. Indeed it appears to be on an 11 year lease. Please see **G1 Exhibit 4 and 4a**. For such a large plot of land this appears to be a very serious and careless clerical error. To add to the Claimants' woes here their claimed ownership would put them in possession of the 13th most polluted site in the UK in an old landfill site which is leaching a nasty cocktail of toxins straight toward their works a few hundred metres away, which threaten to connect that toxic leachate with the Mid Chiltern Chalk Aquifer below.....the aquifer that supplies 3.2 million people with free, clean drinking water. This has been a bone of controversy for some time and has been through layers of tribunal until HS2 Ltd finally released the information that showed they had done *no* adequate risk assessment, and hence are working in this area quite illegally. So, are they hoping to hide behind an injunction on land they can't even determine their ownership of? See **G1 Exhibit**
13. Please scroll to **page 4 and 45 respectively to see Map 31 R2**. Again we see Park Lodge Far, but also to the right of the map is an area of green Temporary Possession Land. This land falls outside of the scope of the Harvil Road Injunction, yet as **Exhibit A5a, b & c** show, is fenced off and bedecked with signs proclaiming the opposite. This surely amounts to Contempt of Court and adds to the Claimants

reputation for bullying and thuggery. It also exemplifies their near continuous trouble reading maps, which further endangers the public with risks of life changing charges and law suits. These people, as I will demonstrate elsewhere are lawless indiscriminate thugs. Placing an injunction in their incapable hands is *not* a good idea.

14. Please scroll to **page 4/45 Map 31 R2** and please see **G1 Exhibit 6** where you see two encircled properties which apparently once were owned.....now they're not! Do the ex-owners/residents know? Did SoS/HS2 Ltd actually own them in the first place? Did they come to Court on the 5th of April with falsified evidence?
15. Please scroll to **page 4/46 Map 32 L1** and see **G1 Exhibit 7**. Area to the left has been planted by the Claimant. Why is it not in the injunction? Area to the right is woodland planting (but poorly unsuccessful). Why does the Claimant require permanent ownership? Are you sure this isn't held under Temporary Possession Order?
16. Please scroll to **page 7/48 Map 33** and see **G1 Exhibit 8** to see the property that was but isn't or never was in ownership of the Claimants. Were they willing to lie on the 5th of April?
17. ^{*88} See now **page 8/49 Map 34**, and **G1 Exhibit 9**. The topmost property - was the Claimant willing to lie in Court? The bottommost property - This is a temporary haul road in an AONB. The land was appropriately leased, but has now been purchased outright? Does this mean the road is now permanent? What a pretty addition to an AONB - see **G1 Exhibit 9a!** Does this represent a further breach of the Environmental Statement (ES) and the Act of parliament? Does this represent the Claimants community engagement? This land is outside the Limits of Land to be Acquired or Used (LLAU). Please define "limit". The middle property is essential to the function of the railway. Does this mean the Claimant built a ventshaft without ever purchasing the land first? Does this mean that given the Parliamentary decree that *all* land purchases required for the operation of HS2 must be *completed* by 23rd February 2022, that HS2 can no longer be built? See **G1 Exhibit 9c p6 Land and Property**. Wouldn't it be something if all the work done here had to be undone!? See **G1 Exhibit 9d**. Does this mean I can organise a search party now to find the 3200 tonnes of missing bentonite?
18. See **page 10/51 Map 36**. Again we see a "temporary" haul road now become permanent. Have you informed Parliament of this breach of the ES? The damage exceeds that stated in the ES. Do the residents know that you now own their road? Will you be charging them a toll to use it?
19. See **page 11/52 Map 36 R1** and **G1 Exhibit 10**. Did you forget you didn't own these properties. Were you happy to mislead the Court on April 5th?
20. See **page 12/53 Map 37** How very sinister. Why is this map here?

21. See **page 14/55 Map 39** and **G1 Exhibit 11**. Do you or do you not possess the land you have been trampling over?
22. See **page 15/56 Map 40** and **G1 Exhibit 12**. Did you forget again? Were you happy to mislead the Court on April 5th? But why does the Claimant need *any* of the property in this map. This section is now to be tunnelled and no works to occur here. For once the locals won. But still you think it appropriate to steal their land?
23. See **page 17/57 Map 40 R1** Did you forget again? Were you happy to mislead the Court on April 5th? But why does the Claimant need *any* of the property in this map. This section is now to be tunnelled and no works to occur here. For once the locals won. But still you steal their land?
24. See **page 18/59 Map 41** Did you forget you hadn't purchased? Have you been lying? Look at all those properties you lied about! Sibley's Coppice is ancient woodland - you told the locals you didn't need anymore as tunnel now extends beneath, Cudsden's Farm??? Why?
25. ***88** See **page 19/60 Map 42** Huge area you don't possess but are currently trashing. On the track trace. Have you been lying? No CPO no railway! You built a haul road here 4 years ago and still don't possess! This is currently one of your most destructive sites going beyond the scope of the ES and you do not possess!?
26. **Page 20/61 Map 42R1** Did you forget you hadn't purchased? Have you been lying?
27. **Page 21/62 Map 42 L1** Did you forget you hadn't purchased? Have you been lying? Why some properties and not others?
28. **Page 22/63 Map 43** You applied for Planning Permission at Woodlands! But you don't own it? Did you forget you hadn't purchased? Have you been lying? See **G1 Exhibit 13** and **A13a**
29. **Page 23/64 Map 43R1** Why Oakfields House taken off? Did you forget you hadn't purchased? Have you been lying?
30. ***88** **Page 25 Map 44** Durham farm have to take 2.5 mile detour to fields few metres away, have access agreements been breached? C212_025 kaleidoscope of colours - C212_023 likewise but no possession or ownership. No CPO, no railway! Did you forget you hadn't purchased? Have you been lying? Do you possess Jones' Hill Wood....did you notify the occupants?
31. **Page 26/67 Map 44R1** Did you forget you hadn't purchased? Have you been lying? Why have you damaged so much you don't own or possess?

32. ^{*88} **Page 27/68 Map 45** LL04 Purchase or lease? See **G1 Exhibit 14**
C212_093_R02/ C212_026. Different status? Why? C212_097, C212_101 Why?
Bacombe Lane properties removed - why? Ellesborough Rd no ownership!!! All those
people evicted! Is this being a good neighbour? Did you forget you hadn't
purchased? Have you been lying?
33. ^{*88} **Page 29/70 Map 46** No CPO, no railway! Did you forget you hadn't
purchased? Have you been lying?
34. **Page 30/71 Map 46 L1** Did you forget you hadn't purchased? Have you been lying?
35. **Page 31/72 Map 47** Did you forget you hadn't purchased? Have you been lying?
36. ^{*88} **Page 32/73 Map 48** On the track trace! Did you forget you hadn't purchased?
Have you been lying?
37. ^{*88} **Page 35/76 Map 50** C222_015 and C221_203 You cannot build the railway!
38. ^{*88} **Page 36/77 Map 51** C222_015 and C221_203 You cannot build the railway!
39. **Page 37/78 Map 51 L1** Did you forget you hadn't purchased? Have you been lying?
40. **Page 38/79 Map 52** Did you forget you hadn't purchased? Have you been lying?
41. **Page 39/80 Map 53** Did you forget you hadn't purchased? Have you been lying?
42. **Page 41/82 Map 55** Please consider the complexity of this map. How dangerous is
this application? HS2 Map reading skills? How many cases dropped because HS2
were not able to provide proof of ownership and they couldnt read a map? 5? 10?
20? Did you forget you hadn't purchased? Have you been lying?
43. ^{*88} **Page 42/83 Map 56** No CPO, no railway! Did you forget you hadn't purchased?
Have you been lying?
44. ^{*88} **Page 43/84 Map 57** No CPO, no railway! Did you forget you hadn't purchased?
Have you been lying? Do you know the difference between lease and ownership?
45. **Page 46/87 Map 57 R3** C231_071 Access? How do you police that!?
46. **Page 47/88 Map 57 L1** Did you forget you had purchased?

47. ^{*88} **Page 49/90 Map 58** C241_147 No CPO, no railway! Did you forget you hadn't purchased? Have you been lying? Do you know the difference between lease and ownership?
48. **Page 50/91 Map 58 R1** Did you forget you hadn't purchased? Have you been lying?
49. **Page 51/92 Map 58 L1** Did you forget you hadn't purchased? Have you been lying?
50. ^{*88} **Page 52/93 Map 59** C241_143, C241_142, C241_100, C231_187, C241_147
51. **Page 53/94 Map 59L1** Did you forget you hadn't purchased? Have you been lying?
52. ^{*88} **Page 54/95 Map 60** No notice to *owner* or occupiers How clear is possession of C241_143. See **G1 Exhibit 15**
53. **Page 55/96 Map 60 R1**, Have you taken into account the radicalised Mr Higgins? Is he a person unknown? See **G1 Exhibit 16**. Notice to occupiers? Possession is not complete.
54. **Page 56/97 Map 60 R2** 1535 Manor Farm. Why?
55. **Page 57/98 Map 60 L1** Did you forget you hadn't purchased? Have you been lying?
56. **Page 58/99 Map 61** 4419 Shared drive but only one property included. How do the neighbours stand? Please check site of Home Farm. How accurate are your maps? Did you forget you hadn't purchased? Have you been lying?
57. **Page 59/100 Map 61 L1** Did you forget you hadn't purchased? Have you been lying?
58. **Page 60/101 Map 62** Did you forget you hadn't purchased? Have you been lying?
59. **Page 63/104 Map 62 L1** Did you forget you hadn't purchased? Have you been lying?
60. **Page 64/105 Map 63** Did you forget you hadn't purchased? Have you been lying?
61. **Page 66/107 Map 64 L1** Did you forget you hadn't purchased? Have you been lying?
62. **Page 67/108 Map 65** Did you forget you hadn't purchased? Have you been lying?

63. **Page 68/109 Map 65 R1** Did you forget you hadn't purchased? Have you been lying?
64. **Page 69/110 Map 66** Did you forget you hadn't purchased? Have you been lying?
65. **Page 70/111 Map 66 R1** Did you forget you hadn't purchased? Have you been lying?
66. ***88 Page 71/112 map 67** Unlabelled unpurchased land Did you forget you hadn't Purchased? Have you been lying?
67. ***88 Page 73/104 Map 6** No TPOs no CPOs no railway!!!Did you forget you hadn't purchased? Have you been lying?
68. **Page 74/105 Map 68 R1** Did you forget you hadn't purchased? Have you been lying?
69. ***88 Page 75/106 Map 69** Illetts Farm!!! What have you done to them? No TPOs no CPOs no railway!!Did you forget you hadn't purchased? Have you been lying?
70. **Page 76/107 Map 69 R1** Did you forget you hadn't purchased? Have you been lying?
71. ***88 Page 77 Map 70** No TPO no CPO no railway! Did you forget you hadn't purchased? Have you been lying?
72. **Page 79/120 Map 71** Did you forget you hadn't purchased? Have you been lying?
73. **Page 81/122 Map 72** Did you forget you hadn't purchased? Have you been lying?
74. **Page 82/123 Map 72 L1** Did you forget you hadn't purchased? Have you been lying?
75. ***88 Page 84/125 Map 74** Lower Thorpe No TPO no CPO no railwayDid you forget you hadn't purchased? Have you been lying?
76. **Page 86/127 Map 76** Did you forget you hadn't purchased? Have you been lying?
77. **Page 87/128 Map 77** Did you forget you hadn't purchased? Have you been lying?
78. **Page 89/130 Map 77 L1** Did you forget you hadn't purchased? Have you been lying?
79. **Page 91/132 Map 78 L1** Did you forget you hadn't purchased? Have you been lying?

80. ^{*88} **Page 92/133 Map 79** Fir Tree House and Nursery No TPO no CPO no railway Did you forget you hadn't purchased? Have you been lying?
81. ^{*88} **Page 95/136 Map 82** Chapel Bank ever so close to Track Trace?
82. **Page 97/138 Map 83** Did you forget you hadn't purchased? Have you been lying?
83. ^{*88} **Page 100/141 Map 84** Windmill Hill Spinney. No TPO no CPO no railway. Did you forget you hadn't purchased? Have you been lying?
84. **Page 101/142 Map 84 R1** Did you forget you hadn't purchased? Have you been lying?
85. ^{*88} **Page 104/3 Map 87** Wood Hill farm Tunnel North Portal not purchased.
86. What has to be considered particularly despicable and must surely go a long way to uncover HS2 Ltd's claims of openness, good neighbourliness and community engagement, are those homes, such as at Ellesborough Rd in Wendover that were evicted by HS2 some time ago....and yet it appears they had no right, no powers to do so. People thrown out of their homes and even now still waiting for less than modest compensation for their losses and hardships. (**Page 27/48, Map 65**)
87. I have only interrogated 102 maps above, all those HS2 label **Phase One Area Central 1**. Of those 102 maps no fewer than 77 show multiple discrepancies and issues between the two sets of evidence that call to question the Claimants honesty and candour, and this Claims readiness for Hearing.
88. No less than *twenty two* of the entries above are marked with an ^{*}. Each of these entries share one thing. A plot of land, some small, some massive, across the track trace of HS2 that has not been bought. Without their purchase HS2 cannot exist. They cannot build on land they do not own.
89. In his official HS2 report to Parliament in March this year, The Minister for HS2, Andrew Stephenson MP said:
 "I am pleased to announce that the 5 years of compulsory purchase powers on Phase One provided by the Phase One Act ended on 23 February 2022 with the serving of all planned notices by the deadline set by Parliament. While work to complete the land acquisition and, crucially, settle compensation for affected property owners will continue, this is an important milestone for the programme."
 See **G1 Exhibit 9c**.
90. But as demonstrated above, using the evidence supplied by the Claimant, that Report was false and misleading. Many thousands of property purchases must be called to question. It is clear that the breadth and depth of the inexactitudes give reason to suspect many more might surface on further interrogation of that evidence.

But in particular Parliament will be very concerned to know about those *twenty two* plots or groups of plots.

91. Right now, HS2 looks like a dead duck. HS2 cannot exist. With the evidence supplied by the claimants themselves, there is a fat lady about to start singing.

92. The Claimant offers no proof of possession or ownership, for any of the land except Cash's Pit and previously injuncted lands in their evidence.

Conclusion To Ground One

93. This leads to one of three possible conclusions:

- a. The first Claimant directly misled Parliament, and must now ask permission from Parliament to extend the deadline on purchasing powers for Phase 1. As Claimant named in this hearing, and whose evidence is being tested and found wanting by this Court, I would hope the Court could not accept his pre-empting of Parliament if he alone were to extend that deadline. Only Parliament should have that power.
- b. The first Claimant was misled by the second Claimant. He did not check the facts. He accepted HS2 Ltd's evidence as his own, and must thus accept his evidence has fallen. Only Parliament should have the power to extend that deadline.
- c. All the above evidence displays nothing but colossal but honest ineptitude, and the evidence submitted by the Claimant is demonstrably hopelessly unsafe, and must therefore be checked in all its finest detail before being resubmitted for a new hearing at a later date, and presumably with such abundant ineptitude we will find that much required property has not been purchased, and Parliament must be asked to extend that deadline.

94. The Claimants case is dishonest and/or not ready for Hearing

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1. I will demonstrate below a shocking disregard for our environment on behalf of HS2. That disregard is however clearly evident throughout the construction industry, its policing and regulation (including by Natural England and EnvironmentAgency), and most sadly, it is evident as a systemic ignorance of nature, its machinations and its importance to us all, our wellbeing and sustainability that runs all the way through our institutions including Parliament.
2. I will demonstrate that HS2 are being allowed to "mark their own homework", and will demonstrate that they are in no position to do so honestly.
3. I will show that above all our protest is about uncovering and publicising a vast habitual criminal, illicit and dishonest practice and calling on authorities to see that and *act appropriately*.

Colne Valley

4. In May 2019 there were reports of a massive failing of HS2 planted saplings with claims of attrition reaching 95% in places. HS2 accepted these figures and said replanting would occur. There has been little evidence of that replanting. Plantings around Harefield look as dismal now as they did 3 years ago. See **G2 Exhibit 1 and 1a**
5. An area of "woodland planting" at Tile House Lane of the usual 6 or 7 species replaced a cherished and cared for wildflower meadow of 25yrs standing and of 3/4acre, in a well wooded area. Most saplings died. Hardly "increasing biodiversity" Was this damage mentioned in the Environmental Statement?.
6. Please see **G2 Exhibit 2 "Catalogue of errors"** This document now nearly 2 years old lists just some grievances which I and my colleagues, and Woodland Trust raised relating directly to ancient woodland. It makes for a sad and worrying read. In particular I draw your attention to bullet point 3 of para 1 "Broken Assurances" . Despite assurances to Woodland Trust to leave a Root Protection Zone around New Year's Green Covert, workers were seen driving, digging, fencing right up to the trees concerned, and lopping branches that over hung their fence. The reason given by HS2 for this encroachment was that to write such assurances in to the contract, would make that contract "too wordy"!
7. Please don't omit reading the other points raised in the report. I will raise repeats of these issues from elsewhere further on in my submission. These transgressions are habitual!

8. In 2017, the very first Section 17 application for an ecological mitigation site was submitted to London Borough of Hillingdon. See **G2 Exhibit 3**
From page 17 thereof we see that woodland "mitigation" planned works would include two ponds, a hibernaculum suitable for Great Crested Newt, a basking bank for reptiles some trees and other planting (incidentally exactly as later submitted for a wetland mitigation site, and again for a grassland mitigation site, though happily the site in question is the only one not carved out of an ecology similar to that to be created i.e. grassland out of grassland, wetland out of wetland *nature reserve*). Created in early 2018 the site does not live up to its declared aim of :
"The mitigation scheme is required to be implemented early in the overall Phase 1 programme, in order to allow sufficient time for the replacement habitat to establish, prior to the translocation of great crested newts."
 (At no time have newt barriers been erected anywhere in the Colne Valley - were they surveyed for? Were they found? Were they just ignored? Or was this an off the shelf plan considered adequate for all occasions?. Can it even be considered compensation?
 The trees have failed, other planting never materialised and the ponds remain dry.



Two "ponds" and associated planting at Harvil Rd

9. The site is now isolated, surrounded as it is by a deathtrap building site extending up to 2km and more in any direction. And worse. Some of this site was removed to make way for a temporary road diversion last year. And worse. As of March 2022, the site is subjected to heavy plant and excavation.
10. The Colne Valley is resplendent in biodiversity exemplified by being home to 17 of the UK's 18 bat species See **G2 Exhibit 4: Colne Valley Regional Park document para 2**. Yet no bat licence applied for in the Valley by HS2 referred to any more than 8 species. See **G2 Exhibit 4a: (BAT MITIGATION CLASS LICENCE WML-CL40) p12**. Does this sound like proper regulation is in place?

11. On 7th March '22 we had confirmed in High Wycombe magistrates court that an ECOW (Ecology Clerk of Works) assigned to the Colne Valley area by HS2 contractors had no more than 1yr experience as ECOW (all HS2 related) prior to his assignation here, *no appropriate qualifications* and was at the centre of clear wildlife crimes in Denham Country Park. Being cross examined in Court, he was unable to discuss bat roosting habits, unable to discuss water vole survey methods and unable to discuss bird-nesting-behaviour survey methods and had no idea of the importance of the ECOW Diary which in his case left no valid paper trail. His inexperience perhaps led him to claim his work was off licence and the legal protection that might have offered. Had he worked according to the licence as registered to that site however, he would have known to stop the intended work for two months. The ECOW was called as a prosecution witness to charges of aggravated trespass levelled against activists trying to prevent a wildlife crime in July 2020. Case notes from Simon Nathas, barrister to defendant Sam Smithson at **G2 Exhibit 5**

12. It is worthy of note that I have my eyes mostly on the southern-most section of Phase 1 outside London. In that section there are approximately 15 to 16 000 saplings planted (No planting Euston to Colne Valley, 5 sites in the Colne Valley, none from there to Jones' Hill, one there, and none beyond to Aylesbury) Should this density of planting be repeated along the whole of Phase 1,, we would count no more than 70 - 80 000 twigs in the ground. And yet, HS2 Ltd boasted *ten* times that in July '21. Please see **G2 Exhibit 6**. I get that planting regimes may well be irregular, but the section in question happens to contain the most amount of woodland being destroyed by HS2. One might assume a little extra vigour might have been applied here?
13. Well, perhaps not. Even areas set aside for planting *only*, remain devoid of new planting.



Empty verge at Denham Way/North Orbital.

14. Further more, the most recent planting in the Colne Valley looks none too healthy!



Right hand centre, in the grassy area, you may discern the latest offering of twigs supplied by HS2

Jones' Hill Wood

15. Jones' Hill Wood, a jewel of ancient woodland in the Chilterns, was made a battlefield between HS2 and environmental protesters. Please see **G2 Exhibit 7: Jones' Hill Timeline** and associated Judgements at **G2 7a** and **7b**.
16. Please understand from this time line that at time of publishing the Environmental Statement (ES), there had been no surveys of Jones' Hill. Even so somebody knew it had to be surveyed and applied to the landowner for access and HS2 were duly granted access in 2014, and again 2016 through to 2018, *after* the ES is written as a major and defining plank of the Act of Parliament.
17. But no attempts to survey for bats, badgers or dormice, however feeble, were made right up to 2020.
18. In the summer of 2020 HS2 made public their intention to fell Jones' Hill in October. Still no surveys.
19. One feeble attempt to survey badgers which dismissed Ancient Woodland Strategy best practice was left incomplete. The ecology team involved refused to engage with an enquiring member of the public who wanted reassurance that the chemical being poured down the setts was not toxic.
20. HS2 have admitted that had they felled the Wood in October 2020 as originally planned, they would have been committing a wildlife offence. They had done no surveys, and had no valid licence. That they hurriedly applied for a bat licence from

Natural England after the eviction of our camp, serves to highlight the original intentions to be illegal. It didn't get any better.

21. As time progressed it seemed Natural England were listening and engaging with us..... until they suddenly accepted HS2's application for an amended licence.
22. Then came a legal battle which cost the litigants (Myself as lead, but with a superb and immensely hard working team behind me) £85000. This is not money likely readily available to any member of the public, let alone to a gardener who has had to "give up everything" to fight a monster of HS2 proportions. We applied for Judicial Review of the decision to issue that licence. Initial success (See **G2 Exhibit 7a**) was soon turned over (See **G2 Exhibit 7b**) The prime reason for refusing judicial review discussed in Court were substantial losses that would be inflicted on HS2. (Remember the outlay required of a lay member of the public?) Those losses (£20m - £60m) were to be incurred due to not being able to build a haul road through the Wood by Summer 2021. That haul road is *still not built*. The reason given to the Court to allow catastrophic unmitigated uncompensated destruction was clearly false. A whole season was available to do all the surveys, mitigation and compensation in a timely manner that could have minimised damage. (Further, have HS2 thus inflicted £60m losses on taxpayers through tardy mismanagement?).
23. As Jones' is felled a further catalogue of errors and negligence comes to light.
 - A small woodland is isolated by dismantling all connectivity, all adjoining hedges and tree lines are gone or rendered useless.
 - A third of the woodland is felled, "translocated", and salvaged at an inappropriate time of year that maximises impact on wildlife.
 - A second third of the woodland, supposedly a buffer zone to be untouched save for attaching some bat boxes to trees, is instead trashed, undergrowth destroyed, soil compacted, littered, floodlit every night, subjected to constant noise with generators running 24/7, has several camp fires (fuelled by felling trees!), dogs barking incessantly all night, tents erected on badger sett entrances, security cameras attached to trees using steel jubilee clips....and trees and standing deadwood that were the prime potential bat roosting features that were once in the placid calm at the heart of the Wood are now bared to all the elements at the new woodland edge.
 - A final third of the wood supposedly to be untouched is instead laid open to the elements with a gaping wound from end to end with wind, rain, cold and is now isolated, making it quite inhospitable as habitat.
 - Owing to the diagonal slicing of the Wood, a fifth of what is left is very narrow and sparsely populated to the point of no longer being woodland, it is a line of trees which owing to height and lack of girth are vulnerable and offer only limited potential for connectivity. All unconsidered by Parliament, Courts, Legal Profession, Natural England, Environment Agency, Environment Statement, Environmental Minimum Requirements, HS2 or their contractors.
 - Mitigation is absent. Damage is considerably worse than allowed for in the Environmental Statement.

- Compensation is woeful. It is minimal, poorly planned, mis-timed and poorly executed. Please see **G2 Exhibit 8, 8a and 8b, Bowood Lane Mitigation Report**
- The above report displays fully a *systemic* lack of candour, poor reasoning, poor execution, negligence, lack of comprehension and contempt for nature.....and the public. Please read it carefully, please read HS2's response and my response to theirs (which they have seen but refuse to engage further on).
- Having confirmed the presence of Barbastelle in the wood, and having confirmed a roost, Jones' Hill should have been accorded SSSI or even SAC status.
- That Barbastelle were confirmed seems to have been considered an aberration by Natural England and hence Justice Holgate. Nor was attention paid to the habits and life cycle of an elusive as well as very rare bat (UK estimated population c.5000). Please now read **G2 Exhibit 9**. That my colleagues and I have progressed to confirm Barbastelle flights and foraging corridors close by confirms what should have been clear with the finding of one roost - There *is* a previously unknown colony of Barbastelle in South Buckinghamshire situated close to and utilising Jones' Hill (Barbastelle colonies are generally small and nebulous making them hard, but not impossible to pinpoint). A colony that HS2 surveys should have found and confirmed before 2017! Felling of Jones' Hill, and of all the connectivity in this area can only massively impact Favourable Conservation Status. Natural England have utterly failed in the role of regulator.
- To add further to the injustice, HS2 surveys actually recognised at least two instances of Barbastelle (See **G2 Exhibit 10**) within 2 ½ miles (easily in range of a colony local to Jones') back in surveys prior to 2017, but the information was ignored both by them, and Natural England.
- A whole habitat is being dismantled. A rare and protected species is being locally extinguished and regionally, if not nationally affected. Not just roosts, but a colony and all its foraging and breeding needs will no longer be sustainable.

- This does not look like mitigation....it does not look like compensation... but the "System" insultingly accepts *that* bat box atop a pole as just that:



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

24. The compensation measures that are being put in place, even if they were well executed on the ground, are hopelessly mis-timed. 30 spindly trees of barely 3m in height and perhaps 60cm crown diameter cannot provide a corridor for bats for probably in excess of 30 years yet are systemically accepted as compensation for terminal losses in ecology *now*. That these compensations are poorly executed adds immensely to the injury. That the damage they are designed to compensate does not extend to a few metres in any given direction, but to **350 miles**, indicates that what is going wrong, does not lie solely at the feet of laughing idiots with chainsaws in hand, or illegitimate ECOWs, but reaches all the way through company and corporate structures, policing, government regulatory structures, Courts, Government and Parliament.
25. That such insulting, neglectful and criminal work should be carried out by/on behalf of HS2 on behalf of Government and Parliament and then monitored and marked for viability going forward by HS2 is not a credible option. Please see **G2 Exhibit 10: p16 "Post-development monitoring"**
26. Please also see **Exhibit 11** for latest update monitoring of Bowood La planting.
27. It goes without saying, that a construction company happy to scatter litter through an ancient woodland are unlikely to be safe custodians of those woodlands - or a lot more besides. Please see **G2 Exhibit 11a: Littering at Jones' Hill.**

28. Furthermore, little trust of that company's understanding of plant growth and morphology is warranted when objets d'art are attached to trees in an ancient woodland by steel jubilee clips. Please see **G2 Exhibit 11c**
29. Please understand, ancient woodlands are important because they are ancient. Jones' Hill had bronze age tools scattered on the ground, ground all but untouched since the last ice-age. These are repositories of irreplaceable biodiversity that bring us *all* hope of resilience, it is the depth of nature in these woods that can never be recreated however careful we are. But a cavalier rush ahead with no democratic backing is much more than criminal. It is mad, insane, it is destroying our future by destroying our past.

Leather Lane

30. Less than a mile from Jones' Hill Wood and the "mitigation" site at Bowood Lane lies Leather Lane. Leather Lane is an ancient holloway running East to West down the East side of the Misbourne Valley. It lies across the route of HS2, and the intention is to divert the Lane to a new overbridge to carry it over the proposed railway.
31. Along the south side of the lane is a majestic line of over a hundred oaks.
32. Again we meet HS2's lack of forethought and lack of surveys. Indeed, an FOI to HS2 to find what surveys had been carried out there returned our very own survey!
33. Again, our surveys are informing HS2, Parliament and Local Authority what HS2 felt was not important. We have ascertained that the line of oaks are a major foraging corridor for bats, with 7 species using the corridor on a regular basis, including our dear friend the Barbastelle. See **G2 Exhibit 8**.
34. The presence of Barbastelle here absolutely confirms our claims of a nearby colony and utterly denounces HS2's and NE's stance in the Jones' Hill JR case.
35. Over a thousand bat calls have been recorded of a night at given points along that corridor.
36. We have been campaigning very hard since March last year to get HS2 and their main contractor here, EKFB, to follow the requirements laid down in the Act of Parliament to follow the Mitigation Hierarchy. See **G2 Exhibit 12 page 5**.
37. So far 11 Oaks have succumbed to HS2 works, without bat surveys and without bird nesting surveys. See **G2 Exhibit 8** The presence of Barbastelle here absolutely confirms our claims of a nearby colony and utterly denounces HS2's and NE's stance in the Jones' Hill JR case.

38. Over a thousand bat calls have been recorded of a night at given points along that corridor.
39. We have been campaigning very hard since March last year to get HS2 and their main contractor here, EKFB, to follow the requirements laid down in the Act of Parliament to follow the Mitigation Hierarchy. See **G2 Exhibit 12 page 5**.
40. So far 11 Oaks have succumbed to HS2 works, without bat surveys and without bird nesting surveys. See **G2 Exhibit 8**
41. Our surveys since quite clearly show the corridor is being severely disrupted. See **G2 Exhibit 8**
42. HS2/EKFB have so far introduced the first real attempt at mitigation I have seen them employ anywhere on the route. Sadly it is as woefully inadequate as we might expect. 9 trees felled in one section broke the corridor and, to mitigate, all the brash generated from felling was lined up along the line of the felling. For a day or so the bats crossed the felling site but the brash slowly settled below a usable height. There is now a clear and permanent break in this vital connectivity which it HS2/EKFB have no intention of reducing, repairing nor even compensating.



Brash of felled trees used as mitigation for.... felled trees.
Original tree line seen clearly at LHS U

43. For a distance of 6 miles every woodland, tree line or hedgerow providing such connectivity across the route of HS2 has gone, in an AONB. Leather Lane is the last still more-or-less standing.
44. HS2/EKFB intend felling a further 40+ trees from the line.
45. Our campaign has been to ask HS2/EKFB to *consider* an alternative to their Lane diversion which allows all remaining trees to stand, and would give some hope of genuine mitigation and repair to happen to join the now two ends of the line of oaks.

46. We have had to provide the surveys, we have had to provide the survey equipment, we have had to provide the ecologists and we have had to provide the civil engineer to design a viable alternative route.
47. HS2/EKFB have provided the obstacles, the disinformation and the control freakery to avoid their legal responsibility at all costs.
48. Our campaign also demands *valid* and timely *repair* to the lost connectivity. We believe this can only be done by means of a green bridge, not a gantry as proposed at Sheephouse. See **para 79e** below.

Calvert

49. In January 2020 we had confirmed reports of HS2 felling a nature reserve without permission or licence. See **G2 Exhibit 13**.
50. No surveys were done.
51. No licence applied, because every licence requires the consent of the land owner.
52. Every move throughout the reserve committed a wildlife crime.
53. Every move throughout the reserve was aggravated trespass.
54. As the report says, every person who entered the reserve that day did so knowingly. Whoever took that decision, did so knowingly.
55. Such brutal, vindictive, violent, dishonest entitlement seems endemic.
56. Where was the Mitigation Hierarchy? Where is the mitigation? Planting a few species of common plants cannot be adequate compensation.
57. Are those planted trees alive? Are there 75000?
58. None of the multiple wildlife crimes committed that day could be investigated by us owing to a massive aggressive security operation.
59. Nor did the police investigate. Indeed the police backed the security operation.
60. Nor did the police arrest anyone for aggravated trespass.

Badgers

61. Natural England issued badger licences to HS2 that reduced restrictions and conditions. Why?
62. HS2 works are allowed to be within 10m of active setts instead of the usual 30.
63. Where artificial setts are required, under normal licence conditions badgers from the main sett being compensated for have to show an interest and actually enter the artificial sett before any attempt at gating the original. With licences issued to HS2 it seems any passing badger throwing a careless glance at the artificial sett will do.
64. Common sense would surely suggest, with works on such a massive scale stretching for 350miles that *more* care, and *greater* commitment, *not less*, should be required.
65. HS2 surveys showed 60 setts within a ¼ mile of Jones' Hill Wood. Their ecologists deemed only one to be a main sett. See **G2 Exhibit 14: ESMP page 66**. Hardly credible. Our own surveys showed lots of badger activity in the area and lots of active setts.
66. But with only one deemed a main sett only one artificial sett was constructed. It was sited at least 200m from the original to keep clear of works, but was within 20m of an active sett we believe to be large enough to be a main sett. So any badger from the HS2 labelled main sett, would have to cross another clans territory to find their new home? Why would any badger venture there? What proof could there be of "interest"?
67. Within 3 months of construction the cardboard tubes used to create the tunnels were collapsing under the weight of wet soil above.
- 68.



A sadly ironic sculpture indeed - Artificial sett by Rocky La.

69. On Rose Hill Farm near Steeple Claydon an artificial sett was constructed on the lowest part of a field prone to flooding. I hope the "des res" was not occupied.

70. A second artificial sett was constructed with security fencing wrapped around three sides within 50cm of the entrances, had floodlights trained on it and security robots sited around to ensure any inquisitiveness would be aborted.
71. The third and I believe last artificial sett constructed in all 150 miles of HS2 Phase 1 was placed in a field of mud outside Sheephouse Wood, again near Steeple Claydon, with one end of the construction prone to flooding and narrow plastic tubes. (I believe min 10" required, these are clearly 8")



Once again the What3words Genie adds pertinent comment.
This is no home for a badger.

72. 140 miles of HS2 Phase 1 produced three artificial setts. 140 miles of HS2 Phase 1 thundering across thousands of acres of prime badger territory and only 3 main setts encountered? Just how credible is this?

73. Please consider a pertinent quote from one of HS2's victims:

"Lets talk about trees. HS2 claim to have planted "40,000 trees" in the Claydon area. Like all things HS2 this is of course PR bullshit. Using HS2's own figures. Over 60% 25,980 items are hedging plants, mostly replacing hedges that HS2 removed for access, so zero nett benefit to the environment. Of the remaining 14,000 items, 7,961 will not prosper on the local soil. Some like the crab apples will take a year or two to die, but die they will. At best the "40,000" is 6,000. A quick look at a typical site, while not scientific, shows that through lack of maintenance on that location 99% are already dead and I doubt the remainder will make it through 2020. So dear readers HS2's "40,000 trees" is in reality some where between just 60 and 100

In the area just south of Steeple Claydon alone they have just destroyed 2,459 trees and are still felling and shredding so the final number will be far higher. This is the

fastest and most extreme deforestation ever seen in the UK. In case you are tempted to dispute my claims be aware that I have been planting trees in 1,000s since 1983."

Clive Higgins.

74. All of the above could not have been witnessed or brought to light without the protest. The protest is the only obstruction to a habitually criminal outfit. Environment Agency have done nothing. Natural England have done nothing but be complicit. Metropolitan, Thames Valley and Warwickshire Police have been habitually complicit.
75. We are the only means of halting the criminality that endangers us and generations to come.
76. The afore mentioned are the issues I have personally been directly involved in, though normally as a very small bit part.
77. This evidence only covers a small section of the route and even now we are uncovering more.
78. From the outset, had the project and all involved acted with integrity, candour, honesty and legality.....there would be no protest.
79. The cost of protest is entirely a self-generated, self-imposed burden.
80. That burden still pales to insignificance compared to so many other unplanned and ill-considered additions to the HS2 budget.
81. Some of those additions are alluded to above.
 - a. How much did that cabling from Harrow to Ruislip cost? See **G2 Exhibit 15**
 - b. How much did that haul road across the Colne Valley cost? See **G2 Exhibit 16 & 16a**
 - c. How much extra for the Chiltern Tunnel North Portal. See **G2 Exhibit 17**
 - d. £60m lost through tardiness at Jones' Hill even with the wholly undeserved help of the High Court. See **G2 Exhibit 7b**
 - e. The £40m bat bridge. See **G2 Exhibit 18**
 - f. How much will the inevitable "green" bridge at Leather Lane cost?
82. But there are more extra costs too.
83. How much extra for the Leam Viaduct? See **G2 Exhibit 19**
84. How much for misplaced bridges? See **G2 Exhibit 20**
85. How much extra for misplaced roads and compounds? See **G2 Exhibit 21**

86. How much for that enormous orange clad army of digit twitchers staring at phones and falling asleep? See **G2 Exhibit 22 & 22a**
87. How much for all the extra land purchased? See **Ground One**
88. How much extra for all the mis-calculated and un-calculated land purchases? See https://www.tonyberkeley.co.uk/#xl_xr_page_hs2
89. How much extra for all the lawsuits coming rushing toward the Claimants?
90. From the outset, the HS2 project has been the author of its own demise.
91. The sites to which I bear witness above comprise a very small part of Phase 1. It cannot be denied that such recklessness, neglect and criminality as extended to the whole route

Conclusion To Ground Two

- 92. Our protest bears only one threat to the Claimants. Truth**
- 93. Hiding from Truth is no reason for emergency injunctive relief.**

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

Grounds for Defence
Of
Mark Keir Defendant No.36

Ground Three

I will demonstrate that the allegations of violence and intimidation the Claimant raises against the Defendants are false and without base, and that indeed, the violence and intimidation always emanates from the anonymous uniformed ranks of thugs employed by HS2 Ltd, and their side-kicks in the Police. I will demonstrate there is no necessity to *emergency* relief through injunction.

1. I am *angry*.
2. A nasty criminal organisation is telling gross lies about a campaign I am a small part of.
3. From the very outset of our protest, we have faced intimidation, threats of violence and actual violence from a barbaric thuggish uniformed mob.
4. I have been campaigning against HS2 for 8yrs or more. For three years everything I did uncovered a complete ignorance among an unsuspecting public, other than those who had to be notified because of their proximity to the planned route. Those who were aware, had no idea what to do. MPs, Councils, Politicians all seemed convinced that extreme harm to our environment had to happen, and turned deaf ears to the poor bleating lambs who paid their wages.
5. What was unfolding was an absolute denial of truth, a Three Wise Monkey act from the powers that govern. An absolute denial of the ocean of lies and falsehoods that HS2 swims in to this day. An absolute denial of the painful and irrevocable damage that such monstrous destructiveness would wreak. An absolute denial that EA and NE and other regulators haven't the slightest power or inclination to regulate or salve the damage, that the science they used was flaccid and false. An absolute denial that the construction industry had no history or inclination to be "green". An absolute denial that this is *not* the time to go crashing through vast swathes of remnant biodiversity, destabilising it and in so doing removing critical resilience from our children's future.

6. I have campaigned long and hard, as I'm sure the Claimant is aware, to put all this right. It has always been a desperate uphill struggle, emotionally painful and draining, sadly at times physically painful too (as I will demonstrate), but what all my fellow campaigners understand, is that physical violence from us does us no good.
7. A lack of physical violence from us is driving an ever more desperate and evermore unseemly and unbelievable PR campaign from HS2. HS2 have seemingly been fighting in Middle Earth against a hideously large and ungallant army of Orks. It was not us. It was not the public. Instead the ungallant army of Orks wear orange and/or black uniforms.
8. That army is ably aided and abetted by, in particular, Thames Valley Police who must be so proud of their arrests converted to conviction ratio. (Overall the campaign has accumulated some 400 arrests with no more than 10 standing convictions some of which are being appealed [oddly perhaps, these figures can only be approximate because TVP do not record where arrests are made, nor do they record arrests attributed to Operation Rocket {TVP's secret group of HS2 funded boys in blue} or to where Operation Rocket are active, so cannot release any information to clarify these figures])
9. As a member of the public I testify as a human being. As such I know that all humans carry frailties. I cannot guarantee and will not try to guarantee that all the anti HS2 campaigners have been blameless of violence. I will however very happily testify that the overwhelming majority (95+%?) are. It is not beholden for us to police our numbers in the same way HS2 ought to police their numbers, but we do. We try very hard to eliminate violent entities and we are overwhelmingly successful, and I believe on the whole, we have shown less malice and less violence among our ranks than might be seen in any more conventional walk of life - given the stress, intimidation and trauma that is so often our daily diet, that is quite some claim.
10. We have certainly shown an awful lot less malice, violence and aggression than thugs in the pay of HS2.
11. And I must make it clear, that the violence that might be seen from the campaign comes as retaliation. No, it's not excusable, but if you are thrown to the ground, or are dropped from height, have your very life threatened, or see your partner being thrown to the ground and twisted up, for no wrong doing, or similar acts of violence, then retaliation is understandable. The provocation *always* comes from HS2.
12. The following part of my submission will contain references to malice, violence and criminal assault that may shock. As best I can I will back everything with incontrovertible evidence, but the very nature of our group makes some of that evidence all but impossible to source. We do not walk around with bodycams strapped to our chests, we do not have security cameras guarding our camps, nor do we have HORACE (though as I shall discuss later that is not necessarily a handicap), and nor do we have a vast army of unidentifiable, uniformed, uninformed, often unlicensed and always unaccountable security.

13. But, let me give you an escape clause. Perhaps you won't need to wade through all the gore.
14. Throughout all the Claimants documentation I have seen thus far, there is a screaming narrative of ever growing numbers of violent nasties attacking HS2 staff. I suggest a very large piece of proof against these wild claims can be seen in the extraordinarily high security levels seen at HS2 Ltd sites.
15. Please see **G3 Exhibit 1: Security level**, a fantasy of security at gates around the Colne Valley, the Chilterns and Warwickshire, wherein you shall see empty spaces with no more than the occasional fag-puffing-car-washing-stone-kicking-sleepy-head security guard.
16. I see no emergency here.
17. The vast majority of the violence we have suffered has been through the evictions of our camps.
18. It should be noted that non-obstructive protest camps have a place in law and carry protection under Human Rights.
19. It should be noted that there is no law saying "no one to live in a protest camp, no one to consider a protest camp a home.
20. It should be noted that HS2 Ltd are not above the law.
21. It should be noted that the HS2 Act states at Paragraph 4(1) of Schedule 15 that:
Not less than 28 days before entering upon and taking possession of land under paragraph 1(1) or (2), the nominated undertaker must give notice to the owners and *occupiers* of the land of its intention to do so. (My italics)
22. It should be noted, as I have made clear in my **Ground Two** that our encampments have continuously and copiously called out HS2 Ltd on trespass (aggravated), breaches of environmental and wildlife law, on Environmental Statement and Environmental Minimum Requirement breaches, and breaches of the Act. All on a daily basis, all route wide. Nobody else seems willing to do so.
23. I now ask you to see **G3 Exhibit 2: Eviction History**
24. I ask you to consider carefully, *every* one of those evictions was illegal. *Every* camp had legitimacy, *every camp* evicted without notice and without clarity of possession, and mostly *no* possession to demonstrate.
In the eyes of the law these camps all had legitimacy. Please see **G3 Exhibit 3 page 9, para 54.**
- 25.

26. Strange how these evictions coincide with the peaks in "incidents" as shown in Mr Jordans evidence at **Page 2 RJ1**, see **G3 Exhibit 4** for ease. Presumably the losses incurred to the claimants at each and every illegal eviction are theirs, *and theirs alone*, look out.
27. Clearly our role is also to call out HS2 on thuggery, untold numbers of assault, untold numbers of breaches of Human Rights, mis-representation of High Court, cruelty, theft and criminal damage.
28. Please note, the vast majority of the combatants we have faced are uniformed, masked and carry no SIA (Security Industry Association) badge (obligatory). The National Eviction Team (NET) frequently work as security and yet have no SIA accreditation. NET do carry number badges but they change around daily.
29. Far and away the most brutality we have suffered, is at the hands of the NET. The National Eviction Team have no "National " accreditation, they are a private company mired in much shady goings on as any brief search on Company's House will show. They tout themselves as "Specialists in the Removal of Environmental Protesters" on their website. Clearly then, an instrument of democracy!? Clearly just an ever smoking gun from the arsenal of corporations with which to obscure all trace of environmental culpability.
30. The NET currently have three members, including their field manager Adrian Long facing very serious charges of GBH, ABH, False Imprisonment, and Assault and are currently suspended (some 18 months now).
31. I now look at one of the most compelling series of allegations made by the Claimants.

32. As you will see in **G3 Exhibit 2 para 21**, I make an allegation that Wendover Active Resistance was fraudulently acquired, and was acquired specifically for the purpose of evicting what was becoming an otherwise very difficult thorn in the side for HS2 Ltd.
33. The situation was that WAR had provided a home for very active but, I stress, *peaceful* protest. What made WAR a particularly difficult problem was that it stood on a little oasis of wooded "waste" ground owned by Buckinghamshire Council and outwith the Limit of Land to be Acquired or Used (LLAU) in the Act. It was however totally surrounded by land inside the Act. This meant all our attempts to oversee and disrupt what we can easily and rightly claim to be illegal work, were actually quartered in the heart of the works we protested.
34. The works here are particularly destructive. On the edge of the lovely small Chiltern (AONB) town of Wendover, the works here are ripping up beautiful woodlands that have long provided an emblematic gateway to the town, desecrating a unique archaeology site, desecrating a memorial garden (giving very poor notice to those whose children were remembered there), destroying the local aquifer to the extent

that a local SSSI is likely to disappear and the Grand Union Canal some 8 miles away may be irretrievably drained, dozens of locals in the area will lose their water supply, beautiful landscape features throughout Wendover may disappear, and the town faces being effectively cut off by closure of the PRow's that are its lifeblood, and frequent road and rail closures and years of dreadful congestion on all roads that connect Wendover to the outside world.

35. It was for the above reasons the camp was sited as it was. It was for those reasons that the camp had a large and positive following among Wendoverians. It was presumably for those reasons that after two years Buckinghamshire Council, far from asking us to leave, actively helped our residency with a waste collection contract. See **Exhibit**
36. It was presumably for those reasons that HS2 had to resort to fraud to have the camp removed.
37. HS2 have long depended on HORACE to record security incidents. HORACE "... is both an online system and contains information filled in by specialist security professionals, it is not a resource which can be easily printed out or otherwise presented in a way that is easily understandable by a lay person." according to Richard Jordan, HS2's ex head of security. But it was a printout from HORACE and screaming inaccuracies and lies that were forwarded to Buckinghamshire Council, to persuade the Council to take steps to lease the land indefinitely to HS2 for the sole purpose of evicting a non-obstructive peaceful protest camp that stood on land that HS2 had no right to acquire.
38. The Decision notice from Buckinghamshire Council can be seen at **G3 Exhibit 5a and 5b** (Please note also this notice was to a "Key Decision" that by law requires public consultation of which there was none.
39. That decision was informed by a "report" from HS2 security in the form of a print out from HORACE that appears perfectly legible to this layman. That report can be seen at **G3 Exhibit 6a**
40. A forensic dissection of that report is at **G3 Exhibit 6b** Few of the incidents record violence, those that do are often hideously erroneous, and those few beyond carry no evidence, for instance, no golf balls have been retrieved or shown.
41. The most important claim that HS2 Ltd accompanied by Thames Valley Police (TVP) was that of "a 30 strong, masked, stick wielding mob, pulling 8 HS2 security out of their compound into the public highway and beating them up and stamping on them" (not verbatim, but a close paraphrase, as the report went public in many outlets and each one was different but each refer to the 23rd March 2021) One public reporting of the incident can be seen at **G3 Exhibit 7**
42. I ask you to match this incident to the HORACE Report where we see the scantest of descriptions. "Female points camera at tree" - 5th Feb '21 great detail, "8 security

....." 23rd March '21 scantest of detail. 8 security officers and none of them could provide any more detail than that?

43. I now turn to the video of that incident. Please see video No. 25 [Exhibit RJ2](#). of the Claimants evidence.
44. Let me offer a clear and plausible narrative that explains in detail what that edited video clip shows.
- a. Prior to the clip: One of the protesters returning to camp late at night, is hailed by a security guard from behind the fence, a short abrasive chat ends with the guard issuing a challenge to a fight, "you guys against us!" The protester with mischief in his heart (he may have had alcohol in his belly?) goes to the camp arouses some interest and a small group go out to the road and some lob water balloons over the fence. One of them is a 17yr old.
 - b. The clip: 8 security rush out from the compound in a clearly aggressive mood, grab the nearest protester (the 17yr old), throw him to the ground and very forcefully detain him (It must be noted, this on a *public* highway from a *private* security company amounts to serious assault - under what powers do private security make an arrest of this nature. The remaining posse of protesters group together, manoeuvre toward the security and after a very brief and to my eyes not particularly brutal confrontation remove their comrade from security hands and withdraw. Minimal force employed, job done.
45. What I definitely do *not* see is a 30 strong masked and stick wielding mob beating up security kicking and stamping on them!
46. The only arrest/conviction to this incident was of a 17yr old who recieved a fine of £17 for throwing a water balloon.
47. This incident was wildly mis-reported, and in that mis-reported guise was used to fraudulently gain a piece of land outside LLAU, outside the scope of the Act, and owned by a public authority on behalf of the people who elect that authority.
- *****
48. It must be stressed that this happened as part of a long campaign of violence and intimidation from an out-of-control security detail and an equally sadistic Thames Valley Police. On an earlier night, one female protester had been on a public highway at the other side of the camp trying to find out about and video illegal felling. The felling was taking place at 2am! It was taking place on private land that HS2 had temporary possession of, not surveyed, was ancient woodland (not registered, but the name Spinney should always be considered indicative) and the owners had not been notified of the works about to take place on their own land (which may indicate incomplete possession). Security did everything they could to keep the protester away from the works, obstructing the highway (no application received by Bucks

Council) and was eventually violently set upon. By the time police arrived she was already restrained on the ground.....police arrested her despite clear evidence it was her being assaulted...handcuffed her whilst on her knees and pepper sprayed her in the face.

Please see **G3 Exhibit 8**. The spraying incident occurs at 19minutes.

49. I'd like to make two more points about this video. The officer engaging with the protesters is (as we normally see him) very nervous and seemingly likely to lose control, and unlikely to remain professional.
50. Despite the extreme provocation of the whole night, but in particular of that heinous police assault with pepper spray, the protesters remain peaceful. These are *definitely not* the villains that the Claimants paint us as.

51. Please see Video No. 28 [Exhibit RJ2](#). Please study this carefully. Who is the aggressor? HS2 security have without notice suddenly and very aggressively moved their fence 2m forward onto our camp. No notice. No Court bailiffs. Just Eddy (Brummy accent) who appears at pretty much every situation where agro occurs. His particular team of mobsters "First Response" are very much there to antagonise, and wear no ID or SIA badges. HS2 security destroyed our solar array that day without explanation and without need which created a flashpoint.

52. Let me now draw your attention to another incident recorded in that HORACE report, that of the 27th May 2021. A security vehicle on welfare duty? Stopped? Protester was "asked" to leave? Please see videos at **G3 EXHIBIT 10: NET slow walk**
53. The true narrative to this incident is 5 or 6 protesters are walking home at night. They have spent the evening with comrades at Jones' Hill, and are walking down Rocky La to WAR, the sister camp to Jones' Hill. They encounter a small team of NET (ie very definitely not on welfare duty) and improvise a cheeky little slow walk. The result is as you see in the video.

54. Let me return you to [Exhibit RJ2](#). At video No.26 what you see is not "Activist grappling with enforcement officer on cherry picker" but an officer using a cherry picker in a highly irresponsible way, a highly dangerous way, to grab a 16yr old activist doing his utmost to ensure he and his generation have a future. See **G3 Exhibit 11: IPAF Guidance**

55. Please look at video No. 9 [Exhibit RJ2](#) Please see another instance of immensely dangerous use of a cherry picker in another violent illegal eviction. Stay to the end, Listen to Clive Higgins whose land this is.

56. I now invite you to look through every other video in [Exhibit RJ2](#) I believe there are no more violent incidents. Disruption, yes, raised voices yes, anger yes, violence no. Indeed the vast majority of this evidence shows polite, engaging, eloquent, *peaceful*, effective protest. When all other democratic means have been dismantled or barred, there is no other option available. Overall It is clear that to paint our protest as violent is highly contentious at best. The evidence in those videos is certainly *not* cut and dried and I believe along with my other evidence displays a massively aggressive and egotistical project running wholly out of control.

57. After **five long years** this is the sum of evidence they have of our "violence" of videoing *every* incident. And this is the evidence they produce to apply for a **160 mile long injunction** to silence protest.

58. I'd like to add here another point about "Exhibit RJ12". I find it disturbing that evidence supplied to the High Court by HS2 Ltd, leads to advertising of HS2 Ltd at the end of each video play.

59. As an aside, I'd like to point out incidents recorded on 30th January '21, 4th May '21 the recorded entry mentions vegetation clearance taking place in the middle of the night. On both these occasions the work was taking place on land under Temporary Possession Order(TPO). The owner was not informed of the works about to happen and the land being under TPO could hardly be returned in its original state. Vegetation clearance here was not pre-surveyed, but we know there were bat roosts and there were also Hazel Dormice in the areas cleared, and one corner of the woodland should have been registered as ancient woodland.

ME

60. As a vocal and much publicised protester of HS2, I suspect I have some hidden protection and have suffered considerably less pain and anguish than many of my colleagues. However I have suffered several painful injustices.
61. On 19th November 2019 I was arrested for obstruction of the highway. I was later cleared of the offence, but until then I was bound by bail conditions to not be within 50m of any HS2 Ltd Gate. Three times however I was arrested falsely for breach of those conditions, each time having my democratic rights curtailed. I have had one further arrest, again for obstruction of the highway, again I was cleared, but not before again having my democratic rights curtailed through incarceration and bail conditions. As mentioned earlier there are approximately another 390 similar instances to this campaign.

62. I have also been assaulted many times.
63. In April '21, punched in the face by a security guard so hard I was "decked". A young woman protester was remonstrating at the conditions in which their guard dog was being kept, in a closed car in bright sunshine for several hours. One guard lunged at her, I tried to intervene and another guard punched me. Reported to the police - no action.
64. 18th April, fence dragged over me
65. 19th April phone grabbed and smashed, then pushed to ground. (lots of evidence gone)
66. 20th April pushed down steps to get me off land HS2 did not possess.
67. 23rd April pushed down a 8' embankment. Later had fence pushed into me, was sealed in by fencing, then grabbed and twisted up.
68. 16th Feb '21 Pulled over a fence, thrown to ground, twisted up. Arrested for aggravated trespass and assault! Released, no evidence! Please see **G3 Exhibit 12** for my version.

And Others

69. I have been eyewitness to countless other assaults, and countless colleagues have witnessed countless others. Some actually got to press!
70. <https://www.mirror.co.uk/news/uk-news/hs2-protester-filmed-blood-dripping-21971339>
71. <https://www.expressandstar.com/news/crime/2020/11/20/police-investigating-claims-hs2-staff-used-excessive-force-while-restraining-protester/>
72. <https://www.theguardian.com/uk-news/2017/nov/28/hs2-investigates-unacceptable-behaviour-by-guards> (Incidentally, HS2 Ltd say here they will investigate the incident fully. Over 4 years later they still have not done so.)
73. <https://www.bucksherald.co.uk/news/people/hs2-contractor-branded-disgusting-as-video-appears-to-show-worker-coughing-over-protester-in-aylesbury-vale-2516414>
74. <https://www.birminghammail.co.uk/news/midlands-news/hs2-has-stolen-land-health-16805377>
75. <https://metro.co.uk/2020/10/09/hs2-bailiffs-investigated-for-breaking-protesters-jaw-while-off-duty-13395738/>
76. <https://www.theguardian.com/uk-news/2020/oct/10/chilling-police-tactics-used-on-hs2-protesters-claims-report>

77. I beg you understand that in every instance I have shown in **Ground Three**, whether the Claimant libellously blaming us for violence, or us pointing at them, we, the public, are always engaged in calling out a crime and more often than not, even with our clearly amateur status, we can provide direct evidence to that effect.
78. I beg you to understand too, the complicity and ineptitude of the police, in particular Thames Valley Police, who have on so many occasions told us that "HS2 works here are perfectly legal, we've seen the licence, they've shown it to us...." and we have found later that no such licence existed. Denham, Leather Lane, Bowood lane, Grim's Ditch, Jones' Hill, Aylesbury!...all situations where this has happened.
79. I beg you to understand the number of times we have called the police to report a crime and they don't bother turning up, or if they do, they report immediately to HS2 and ignore us and turn away again, or if they don't they arrest one of us!
80. I urge you to understand that the violence and intimidation is not limited to those protesting. The public exercising their right of access (...even to their own land!) have been subject to violence.
81. There are few if any property owners who have dealt with the Claimants who have not been grievously upset and intimidated.
82. Even members of the public going about their daily business are not immune. Please see **G3 Exhibit 13**. This is one of the Claimants' security guards in the throes of assaulting the camera holder, smashing him between car and car door as he exercised his right to access to his own land.
83. Please see **G3 Exhibit 14** These security have just been on private land, assaulted three local workers legitimately removing the Claimants' property from that land, and then stand proud for a press release displaying the "weapons wot we were attacked wiv guv!". That press release hit a local paper, was published, and disappeared half an hour later.
- *****
84. Denham Country Park was given to the people of Hillingdon in 1935, is a Nature Reserve, a highly cherished oasis of life, and consists of a range of habitats not least of which is an area of demonstrably ancient but also wet woodland.
85. It was taken from the people of Hillingdon without notice and without any compensation by HS2 starting in 2019
86. Throughout their shabby history here the Claimants have engaged in a near constant stream of illegality. I ask you to look at **Statements, Talia's, Denham videos**
87. The videos seem of another place, another time. An utterly dystopian and frightening image. Orwell didn't see this coming. This is blind and evil malice in Government. This tells us all to stand up and shout louder.

88. The videos shown are from the peak of those excesses in the Summer of 2020. We see uniformed, masked and unidentifiable thugs violently and aggressively assaulting members of the public trying to stop a crime. The police were in attendance throughout but did nothing. The violence rose in a dreadful crescendo to climax in action around a veteran Alder which you can see in **G3 Exhibit 15**
89. The protection and safety of the ecology here was the responsibility of William Horlock, the Ecology Clerk of Works (ECoW). His role was to ensure completed surveys for protected species, to ensure that every morning, *all* workers on site knew of and knew how to avoid or minimise the threats their presence and work entailed to the ecology, to stop all works if he saw unwarranted damage to that ecology and to record all his work and sightings.
90. When six of those victims of violence you see in the videos were taken to High Wycombe Magistrates on 5th, 6th & 7th March 2022 nearly two years later, charges ranging from assault to aggravated trespass, that ECoW was cross-examined as witness to the prosecution.
91. It transpired that:
- He had no qualification as ECoW
 - He had only one year's experience, all with HS2
 - He was unable to discuss bat roosting habits.
 - He was unable to discuss water vole survey techniques.
 - He was unable to discuss surveying for bird nesting behaviour.
 - Turned up for work 4hrs after everyone else.
 - Failed to see that work had started, in particular on that Alder that contained potential bat roosts.
 - Arranged and gave no toolbox talks to staff.
 - Failed to understand procedures regarding "soft" felling.
 - Failed to understand the safety that registering the available bat licence would offer him.
 - Worked contrary to the licence conditions.
92. District Judge Pilling Obviously concluded that no convictions were tenable that day as it was likely HS2 Ltd were acting criminally. Please see Notes of Simon Nathas, one of 3 barristers representing the defendants that day at **G3 Exhibit 16**
93. That violence, as ever was, no more than violent criminal thuggery. That negligence and irresponsibility is what we see *all* the time.

Conclusion to Ground Three

94. HS2 have nothing to fear from us other than our intelligence and the damning information we find, hold and disseminate. There is something so very deeply disquieting in a "private company controlled at arm's length" by Government, congregating hundreds of the most environmentally destructive companies

from the UK and abroad, destroying so much, with so little regulation, that the only effective regulation comes from a dedicated band of politically and environmentally aware people, and then, that they should try and dismiss that regulation with brutal and illegal victimisation *and* ludicrous deflective libel. I fervently hope this belies a state of panic. But that panic is not our doing. It is self inflicted.

95. The current state of “high alert” is risible. There is no emergency.

96. There are no grounds for injunctive relief.



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

**Grounds for Defence
 Of
 Mark Keir Defendant No.36**

Ground Four

I will demonstrate that it is I and my co-defendants who represent the British public, *not* HS2 Ltd, *not* SoS for Transport, *not* Parliament (not yet....it may get there soon!). I will demonstrate that democracy has not been served well by Parliament dumping the most egregious, politically inept, socially inappropriate, ecologically and environmentally deceitful and disastrous, and most certainly one of the most corrupting and unwanted of projects on a people who did not ask for it, and were not listened to on the one occasion Parliament deigned to ask us. I will demonstrate that as an instrument first of democracy, this Court must do the right thing.

1. We have always stood with the firm conviction that HS2 bypassed democracy.
2. The only visible public consultation that asked the Nations opinion on HS2 was issued in 2011. Please see **G4 Exhibit 1**
3. Please also see **G4 Exhibit 1a** (Question 7 I find particularly reassuring - it would appear the British people are far more humane than the idiots cocooned in Parliament)
4. In simple summary approximately 80% of the public said "**NO!**" How often is Government blessed with such a mandate?
5. That consultation was clearly shelved and ignored.
6. Please now consider **G4 Exhibit 2**. At **page 4 chapter 1.2** we see there were 21833 respondents to Phase 1 ES. A very full report (though flawed!) examines those responses. I draw your attention to **page 13 figure 2.1**. At the 4th column we see easily 33% of respondents have said they were *not* happy with the consultation process, they think it is flawed and constricted. Meanwhile, at the 27th column we see approximately 10? 20? show a positive attitude to HS2 - as little as 0.04%!!!

7. Please now see **G4 Exhibit 2a**. This is the Phase 2 equivalent report to Phase 1's discussed above. Please note the brevity of the report, the lack of detail, and please note the report is handled *not* by an "independant" handler, but by HS2 themselves! I wonder how many northerners feel well served by this!?! Just to confirm the decreasing openness of the Claimants' approach at **page 5, para 1.1.7** we see only 10000 respondents have engaged! Why? Surely the din surrounding Phase 1 must have already alerted everyone up North? Or was this consultation not advertised, slipped through as quietly as possible?
8. If Parliaments sovereignty is bestowed on it by the people at General Elections, something has gone awry. Every *debate* along the HS2 passage through Parliament was marked by empty chambers, every vote marked by chambers bursting, and every vote was whipped to an agenda driven by a force that was *not* the people.
9. Quite apart from the farcical fraudulence of HS2's financial outlook bending Parliamentary will, I wonder how many in Parliament knew (or cared) that the cornerstone of the Bill, the Environmental Statement was far from complete, with some omissions probably amounting to fraud? This is the cornerstone of the Act! Through this Statement Parliament were assured that giving deemed planning permission to the Claimant was safe!
10. Never has HS2 entered into the fray of general elections through the manifesto of any major party until *after* Royal Assent.
11. Hybrid bills are designed to bypass many democratic hurdles put in place by Parliament over many years to protect us and our environment and to ensure financial probity is maintained. How many laws were derogated for the sake of HS2? What democratic process scrutinised even this little facet? Many of those laws were enacted precisely as a response to earlier protest movements!
12. The deceit that drove the Bill through Parliament regarding costs is of course clear and is of course ongoing. How often were Parliament promised the cost of HS2 would be no more than £35bn, even though it can be demonstrated that it was known by George Osborne (then Chancellor of the Exchequer) and Chris Grayling (then Secretary of State for Transport) that costs were already spiralling over £50bn back in 2013? And what cost now?
13. How are we to be heard. How are the public to voice their opinion such that it gets heard over the gluttonous cacophony of corporate lobbying? How are the public to be heard over the gluttonous cottonwoolling of Parliamentary lug holes?
14. Local authorities have been of little use, though at the more grass roots level I can highly commend Wendover Parish Council under the leadership of Tom Walsh who fought so hard, and continue to fight, for some simple common sense to prevail and for an ear to be lent to local knowledge and wisdom (something the Claimants dismiss time and time and time again, and in so doing add more and more and more

to their financial woes - in the order of thousands of times, even tens of thousands times the cost of protest!)

15. I ask the Court to look at **G4 Exhibit Supporting Statements**. Read these statements. Feel the hurt, the confusion, the anger, the desperation that the people feel. This does not display safe democracy. The only safety for democracy is in unfettering our dissent, our voices *must* be heard.
16. I draw the Courts attention to the three Anonymous Statements. The details of all three are freely available to the judge, but I have been specifically asked to withhold those details from the Claimants. This alone speaks volumes to me. Why does anyone hoping for justice request anonymity if not fear of unjust reprisal. The fear expressed, and the courage and irrepressibility of hope that has endured so long must not be dismissed.
17. I draw your attention to the Wall's statement. Who could believe this came from within a democracy? Who could believe that an injunction handed to the Claimants is a safe option?
18. I draw your attention to Val and Sally's and Kevin's statements. There is no denying the validity, appropriateness, and the proportionality of our protest in reading these statements.
19. I ask you to consider the statement of Dr Baker, and consider the intimidation shown to press. I ask you to consider that Democracy depends entirely on free dissemination of verifiable information, and that that is *clearly* not the intention of this Application.
20. I ask you to consider the statements of Mrs Bateman, Mr Browning, Mrs Tindall, Mr Welch's, Ms Thurgerland, Mr Chantler's, Ms Culver's and Dr Upton's statements. Is there any denial that this injunction would be any less than a nuclear deterrent held by a terrible tyrant for anything *but* public safety, health or well being?
21. I ask you to consider Lord Berkeley's Statement. Consider what he knows of HS2 operations and management, consider the blocking of his requests for inquiry into allegations he levels at HS2 Ltd and the office of SoS for Transport.....note - blocking of inquiry, rather than denial of allegations.
22. HS2 is at it's gravest peril in the stadium of democracy. Then let it be so!

Conclusion to Ground 4

23. Of course, I understand the difficulty this Court might find with regard to dealing with a Parliamentary Act, but I see no problem for the Court in assisting democracy by *not* allowing injunctive relief. For the sake of the people, Parliamentary credibility and democracy.

- 24. There is no escaping that thus far the HS2 project lacks credibility, clarity and popularity. This Court, with respect, is ultimately an instrument of democracy. Please let it be shown to be so.**

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

**Grounds for Defence
 Of
 Mark Keir Defendant No.36**

Extenuating Circumstances

1. Please see **ExC Exhibit 1, 2 & 3**

Very briefly summarised:

We are in the throes of a terminal terrifying cataclysm. We have brought it on ourselves. All life is suffering. Mass extinctions is now inevitable. Terrifying weather systems threaten everything we are and do. Our children will know raging thirst enfeebling famine and war because of our inaction. That is impossible to avoid. But only we can to some extent alleviate the very worst consequences of our dreadful treatment of Mother Earth. We have a terrifyingly small and fast reducing window of opportunity. The HS2 project is clearly borne of a systemic malaise that refuses to accept culpability. That refusal is the greatest sin of all. We have the wisdom, we have the knowledge, and we still have some of the capabilities we require for a sustainable but very different Human Presence on this planet. We are *all* responsible. We must *all* change and help *all* around us to change alongside us.

2. Please see **ExC Exhibit 4**

Very briefly summarised: ***Stop Lying!***

Over all Conclusion

1. The Application before this Court is dishonest, unjust, and unready.
2. This Application seeks to kill just, valid and proportionate protest.
3. This Application seeks to deflect the Court to considering our protest to be a violent danger to legitimate activity. Nothing could be more diagonally opposed to the truth.
4. This Application seeks to continue the Claimants' seedy and unseemly aversion to democracy, clarity and honesty.

5. Now is not the time.
6. I beg this Court to throw out this wholly erroneous impracticable and egregious Application.

I believe all the preceding submission and the evidence to back it up to be an honest, sincere and truthful account.

I rest my Case



16th May 2022



GROUND INVESTIGATION SURVEYS
BEING UNDERTAKEN ON BEHALF
OF HIGH SPEED TWO (HS2) LIMITED

HS2 HELP DESK
08081 434 434
hs2enquiries@hs2.org.uk





Dear Hillingdon Borough Council,

I was surprised to see HS2 Ltd had taken ownership of the whole of Park Lodge Farm in Harefield.

It strikes me this was a precious asset for the people of Hillingdon and of course the Howie family.

How much did you sell it for?

What will the money be used for?

Were the people of Hillingdon informed?

What safeguards are attached to the sale regarding the exlandfill site under the farm?

What safeguards are in place regarding the flow of toxic leachate, and how it affects HS2 work close by?

What safeguards are in place to uphold greenbelt status?

What consideration was given to this land being beyond the Limit of Land to be Acquired or Used by HS2 Ltd?

Yours faithfully,

Marrk Keir

FOI 9240493

Dear Marrk Keir,

I am writing in response to your request for information below.

The Council has not sold the entire Park Lodge Farm Estate. HS2 Ltd has vested only the land required to build, operate and mitigate for the impacts of the railway. The Council would advise you to contact HS2 Ltd to determine the exact extent of land they have acquired.

Green Belt Policies are secured through the Local Plan process and are not linked to land ownership.

Matters relating to the protection of groundwater from HS2 works should be directed towards HS2 Ltd and/or the Environment Agency.

If you have any queries regarding this matter, please do not hesitate to

D1516

contact me.

If you wish to request an internal review of our response you should write, within 2 months, to:

Office Managing Partner, Legal Services, Civic Centre, High St, Uxbridge, UB8 1UW (or via email to [1][Hillingdon Borough Council request email] marked for the attention of the Office Managing Partner).

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

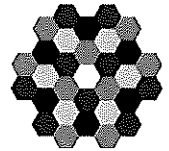
Kind regards,
Data Protection & Freedom of Information Officer | London Borough of Hillingdon | Legal Services 3E/04
Tel: 01895 55 8298 | FOI Email: [2][Hillingdon Borough Council request email] | SAR
Email: [3][email address]
Address: London Borough of Hillingdon Civic Centre, Uxbridge, UB8 1UW

From: Residents Services FOI <[email address]>
Sent: 12 April 2022 15:25

D1517

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number AGL382235

Edition date 10.03.2020

- This official copy shows the entries on the register of title on 22 APR 2022 at 11:38:53.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 22 Apr 2022.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Wales Office.

A: Property Register

This register describes the land and estate comprised in the title. Except as mentioned below, the title includes any legal easements granted by the registered lease but is subject to any rights that it reserves, so far as those easements and rights exist and benefit or affect the registered land.

HILLINGDON

- 1 (06.07.2016) The Leasehold land demised by the lease referred to below which lies within the area shown edged with red on the plan of the above Title filed at the Registry and being Park Lodge Farmhouse, Harvil Road, Harefield, Uxbridge (UB9 6JP).

NOTE: As to the part edged mauve on the title plan, only the mines and minerals are included in the title.
- 2 (06.07.2016) All timber and trees excepted by the lease are excluded from this registration.
- 3 (06.07.2016) The title includes any legal easements referred to in clause LR11.1 of the registered lease but is subject to any rights that are granted or reserved by the lease and affect the registered land.
- 4 (06.07.2016) The pumping main and the electricity line and apparatus in the positions approximately indicated on the title plan are excluded from the title and no right is included in the registration of the land tinted brown on the title plan which is inconsistent with the following clause in a Conveyance of this land dated the 4th of July 1939 by Leslie Stuart Rose and others (the personal representatives of George Rose who died on the 28th of February 1938 and therein called the Vendors) to the County Council of the Administrative County of Middlesex.

"IT IS HEREBY FURTHER DECLARED by the parties hereto that no right of light or air or other easement shall pass or be deemed to pass by virtue of this Conveyance which shall in any way prevent or interfere with the development of the adjoining land now held by the Vendors as such Personal Representatives as aforesaid for building purposes or prevent the Vendors their successors or assigns from erecting buildings thereon as they may think fit."
- 5 (06.07.2016) The land tinted blue on the title plan has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged and numbered 7 in blue on the title plan dated 16 November 2001 made between (1) The Mayor and Burgesses of the

Title number AGL382235

A: Property Register continued

London Borough of Hillingdon and (2) Marios Theocharis Kalavazides and Moira Kalavazides.

NOTE: Copy filed under AGL104347.

- 6 (06.07.2016) Short particulars of the lease(s) (or under-lease(s)) under which the land is held:
Date : 1 April 2011
Term : 24 years starting on 1 April 2011
Parties : (1) The Mayor and Burgesses of the London Borough of Hillingdon
(2) John Rodger Howie and Susan Margaret Howie

NOTE: The lease includes also other land

- 7 (06.07.2016) The Lease prohibits or restricts alienation.

- 8 (06.07.2016) The land tinted blue on the title plan has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged and numbered 8 and 9 in blue on the title plan dated 10 October 2013 made between (1) The Mayor and Burgesses of The London Borough of Hillingdon and (2) Heritage (Breakspear) Limited.

NOTE: Copy filed under AGL294878.

- 9 (06.07.2016) The landlord's title is registered as to part of the land comprised in the lease.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (10.03.2020) PROPRIETOR: THE SECRETARY OF STATE FOR TRANSPORT of The Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR.
2 (10.03.2020) A Transfer dated 3 March 2020 made between (1) Susan Margaret Howie and John Rodger Howie and (2) The Secretary of State for Transport contains purchaser's personal covenants.

NOTE: Copy filed.

- 3 (10.03.2020) The covenant implied under section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 in the disposition to the proprietor is modified.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (06.07.2016) The following Conveyances of the freehold estate in the land referred to below contain restrictive covenants affecting respectively the land tinted pink, tinted brown and edged and numbered 3 in blue on the title plan or the parts thereof referred to in such Conveyances:-

29.1.1930	Harefield Place and adjacent land containing 22a.2r.Op. or thereabouts.	1. George Rose (Vendor) 2. Barclays Bank Limited 3. Horatio Greenfield (Purchaser)
28.11.1935	Edged and numbered 6 in blue on the title plan.	1. George Rose (Vendor) 2. The North Central Wagon Company Limited 3. Harmans Uxbridge Brewery Limited (Purchasers)

C: Charges Register continued

Copies of the covenants above referred to are set out in the Schedule of Restrictive Covenants hereto.

- 2 (06.07.2016) The roadways or strips of land hatched brown on the title plan are subject to rights of way.
- 3 (06.07.2016) The land tinted yellow on the title plan is subject to rights of way.
- 4 (06.07.2016) The land edged and numbered 10 in blue on the title plan is subject to such restrictive covenants and easements as may have been imposed thereon before 1 December 2005 and are still subsisting and capable of being enforced.
- 5 (06.07.2016) The deeds and documents of title having been lost the land edged and numbered 12 in blue is subject to such restrictive covenants as may have been imposed thereon before 12 May 2010 and are still subsisting and capable of being enforced.
- 6 (06.07.2016) The deeds and documents of title having been lost the land edged and numbered 11 in blue on the title plan is subject to such restrictive covenants as may have been imposed thereon before 21 July 2010 and are still subsisting and capable of being enforced.
- 7 (06.07.2016) So far as affected thereby the land tinted pink, tinted blue, tinted yellow, edged and numbered 2 in blue, edged and numbered 3 in blue and edged and numbered 5 in blue on the title plan together with other land of greater value is subject to an annual payment of £24 to the Perpetual Curate of Harefield but with the benefit of a covenant contained in a Deed dated 17 October 1877 made between (1) Charles Newdigate Newdegate and (2) Henry Richard Cox whereby the said annual sum was made payable in respect of other land in exoneration of the land tinted pink, tinted blue, tinted yellow, edged and numbered 2 in blue, edged and numbered 3 in blue and edged and numbered 5 in blue on the title plan and other land.

NOTE: Abstract Deed dated 17 October 1877 filed under MX162381.

- 8 (06.07.2016) The land tinted brown and edged and numbered 4 in blue on the title plan is subject with other land to a perpetual annual rent-charge of £24 created by a Deed dated 17 October 1877 made between (1) Charles Newdigate Newdegate and (2) Henry Richard Cox in favour of the perpetual curate of Harefield.
- 9 (06.07.2016) The land tinted mauve on the title plan is subject to a yearly rent charge of £24. (so far as the same is subsisting) payable to the Perpetual Curate of Harefield but with the benefit of the indemnities conferred by a Conveyance of the freehold estate dated 11 October 1886 and made between (1) The Right Honourable Charles Newdigate Newdegate (2) John Magens Mello and others and (3) Henry Richard Cox.

Neither the original nor an examined abstract or copy of the Conveyance dated 11 October 1886 was produced on first registration.

- 10 (06.07.2016) A Conveyance of the freehold estate in the land edged and numbered 1 in blue on the title plan and other land dated 8 February 1923 made between (1) Walter John Barnard Byles and Others (Vendors) (2) Sir Francis Alexander Newdigate Newdegate (Purchaser) and (3) Walter Hugh Erskine and Charles Augustus Philimore (Trustees) contains the following covenants:-

THE Purchaser (Sir Francis Alexander Newdiage Newdegate) for himself his successors in title and his or their assigns hereby covenants with the Vendors (Walter John Barnard Byles, Harold Vernon Barnard Byles and Cecil Maurice Barnard Byles) and the persons deriving title under them and with each of them (and so that this covenant shall so far as possible bind all persons in whom the piece of land first hereinbefore described shall for the time being be vested and the Lessees Tenants and occupiers for the time being thereof) that the Purchaser or his successors in title and the persons deriving title under him or them

(a) Will not at any time hereafter erect or cause to be erected or placed any building or structure of any kind (save the fences

C: Charges Register continued

hereinafter mentioned) or any part or parts of the land first hereinbefore described and conveyed.

(b) Will forthwith erect and for ever after maintain a fence not less than four feet six inches high along the northern boundary of the last mentioned piece of land

PROVIDED ALWAYS that this covenant shall (as regards any restrictive provision) be binding only upon the Purchaser and his successors in title and the persons deriving title under him or them during the period of his or their respective ownership of any interest in the last mentioned piece of land the Lessees Tenants and occupiers for the time being thereof.

NOTE: The northern boundary affected is marked T on the title plan.

- 11 (06.07.2016) A Conveyance of the freehold estate in the land edged and numbered 2 in blue on the title plan dated 9 August 1927 made between (1) Florence Josephine Pelham Clinton and (2) Henrietta Charlotte Tarleton contains restrictive covenants.

NOTE: Copy filed under MX162381.

- 12 (06.07.2016) The part of the land affected thereby is subject to rights in connection with a pumping main in the position approximately indicated on the title plan by a broken brown line marked 12" Pumping Main granted by a Deed dated 15 March 1929 made between George Rose (therein called the Vendor) of the first part Barclays Bank Limited of the second part and the Rural District Council of Uxbridge (therein called the Council) of the third part and to the covenant on the part of the said George Rose therein contained.

NOTE: Copy Deed filed under MX119237

- 13 (06.07.2016) Wayleave Agreement affecting the land edged and numbered 13 in blue dated 9 May 1931 with the Central Electricity Board.

NOTE: Copy filed under MX164853.

- 14 (06.07.2016) The part of the land affected thereby is subject to the rights granted to the Central Electricity Board in connection with the electricity line and apparatus in the position approximately indicated on the title plan by a broken blue line marked line of Electric Cables by an Agreement dated the 21 of May 1931.

NOTE: Copy filed under MX119237.

- 15 (06.07.2016) Deed of Covenant as to user affecting the land tinted blue, tinted yellow and edged and numbered 2 in blue on the title plan and other land dated 15 October 1942 and made between (1) The County Council of the Administrative County of Middlesex (2) The Urban District Council of Uxbridge and (3) The London County Council.

NOTE: Copy filed under MX162381.

- 16 (06.07.2016) A Transfer of the freehold estate in the land edged and numbered 4 in blue on the title plan and other land dated 9 July 1951 made between (1) The County Council of the Administrative County of Middlesex and (2) The Urban District Council of Uxbridge in the County of Middlesex contains restrictive covenants.

NOTE: Copy filed under MX245989.

- 17 (06.07.2016) A Deed dated 22 October 1953 and made between (1) The County Council of The Administrative County of Middlesex (2) The Urban District Council of Uxbridge and (3) Rickmansworth and Uxbridge Valley Water Company of the grant of an easement to lay use maintain repair alter replace or remove a 21" trunk water main under the land hatched blue on the title plan and rights ancillary thereto upon the terms and conditions as therein mentioned.

NOTE: Copy filed under MX122765.

- 18 (06.07.2016) Such parts of the land as are affected thereby are subject

C: Charges Register continued

to the right to lay use, maintain, repair, alter, replace or remove a 21" Trunk Water Main under the land in the approximate position shown by a yellow broken line on the title plan and ancillary rights of entry in connection therewith upon the land hatched mauve on the title plan granted by a Deed dated 29 April 1954 made between (1) County Council of the Administrative County of Middlesex and (2) Rickmansworth and Uxbridge Valley Water Company.

NOTE: Copy filed under MX164853.

- 19 (06.07.2016) A Transfer of the freehold estate in the land in the land edged and numbered 14 in blue and other land dated 18 March 1960 made between (1) The County Council of The Administrative County of Middlesex and (2) The Mayor Aldermen and Burgesses of The Borough of Uxbridge contains restrictive covenants.

NOTE: No copy of the transfer is held in Land Registry.

- 20 (06.07.2016) The Transfer dated 18 March 1960 referred to above contains an option to re-purchase in favour of The County Council of the Administrative County of Middlesex in the event and on the conditions mentioned therein.

- 21 (06.07.2016) By a Deed dated 1 March 1962 and made between (1) The County Council of the Administrative County of Middlesex (2) The Mayor Aldermen and Burgesses of the Borough of Uxbridge and (3) The London County Council part of the land affected by the Deed dated 15 October 1942 referred to above was released from the provisions of that Deed. The said Deed dated 1 March 1962 also varies the conditions referred to in the Deed dated 15 October 1942 and contains restrictive covenants.

NOTE: Copy filed under MX162381.

- 22 (06.07.2016) A Conveyance of the freehold estate in the land edged and numbered 3 in blue on the title plan and other land dated 31 December 1963 made between (1) George Rose (Vendor) and (2) Walter Rendle Giles (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.

- 23 (06.07.2016) The land hatched yellow on the title plan together with other land is subject to the rights to lay construct erect use maintain and renew mains or pipes for the transmission or storage of gas or other materials and all necessary apparatus ancillary thereto granted by a Deed dated 23 February 1972 made between (1) The Mayor Aldermen and Burgesses of The London Borough of Hillingdon and (2) North Thames Gas Board. The said deed also contains restrictive covenants.

NOTE: Copy filed under MX123958 (NGL.)

- 24 (06.07.2016) Such part of the land as is affected thereby is subject to the rights granted by a Deed dated 20 April 1976 made between (1) The Mayor Aldermen and Burgesses of The London Borough of Hillingdon (Grantor) (2) Hoveringham Group Limited (Company) and (3) Central Electricity Generating Board (Board).

NOTE 1: The said Deed also contains covenants by the grantor

NOTE 2: Copy filed under MX257218.

- 25 (06.07.2016) A Transfer of the freehold estate in the land tinted pink on the title plan and other land dated 24 December 1980 made between (1) The Mayor and Burgesses of the London Borough of Hillingdon and (2) Greater London Council contains restrictive covenants and exceptions and reservations.

NOTE: Copy filed under MX257218.

- 26 (06.07.2016) The part of the land affected thereby are subject to the rights granted by a Deed dated 14 May 1984 made between (1) Greater London Council and (2) British Gas Corporation.

The said Deed also contains restrictive covenants.

NOTE: Copy filed under MX56068.

C: Charges Register continued

- 27 (06.07.2016) Such part of the land as is affected thereby is subject to the rights granted by a Deed dated 24 March 2006 made between (1) The Mayor and Burgesses of the London Borough of Hillingdon and (2) The Official Custodian for Charities (on behalf of the members of the Council of Dogs Trust).

The said Deed also contains restrictive covenants by the grantor.

NOTE: Copy filed under MX145065.

- 28 (06.07.2016) UNILATERAL NOTICE in respect of an easement for the transmission and storage of gas affecting the land coloured red on an attached plan pursuant to a consent form signed on behalf of the Mayor and Burgesses of the London Borough of Hillingdon on 22 March 2006.

NOTE: Copy filed under MX164853.

- 29 (06.07.2016) BENEFICIARY: National Grid Gas Plc of National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA and care of Turner & Debenhams of Ivy House, 107 St Peters Street, St Albans, Herts AL1 3EW (REF: CJD/NA/227-335).

Schedule of restrictive covenants

- 1 (06.07.2016) The following are details of the covenants contained in the Conveyance dated 29 January 1930 referred to in the Charges Register:-

"The Vendor hereby further covenants with the Purchaser not at any time hereafter to use or allow any part of the said Harefield Place Estate for the time being remaining vested in him to be used as a Hotel or Country Club but this shall not preclude the Vendor his heirs executors administrators or assigns the owner or owners for the time being of the residue of the said Harefield Place Estate from erecting or allowing to be erected on such site as he or they may desire in the neighbourhood of South Harefield Station an Inn or Tavern or Public House or other provisions for the ordinary accommodation of travellers (not to be used however for residential purposes) or from using or allowing to be used any part of the said Harefield Place Estate or any premises that are now or may hereafter be erected thereon for the purposes of Golf Tennis or other Sports or Games Clubs with club houses and the usual accommodation and further that on any sale or lease by the Vendor of all or any part of such part of the said Harefield Place Estate as is now vested in him the Vendor will impose such a restrictive covenant or covenants as will prohibit the lessee or Purchaser from committing any breach of the said covenant by the Vendor in this Clause contained and upon his so doing the Vendor shall be released from all personal liability under the covenants in this Clause contained."

- 2 (06.07.2016) The following are details of the covenants contained in the Conveyance dated 28 November 1935 referred to in the Charges Register:-

"For the benefit of the premises described in the said First Schedule and so as to bind the premises described in the said Second Schedule the Vendor with the Concurrence of the Mortgagees (so far as required in order to bind effectually the last mentioned premises into whosoever hands the same may come and to enable the Purchasers to effect the registration of this covenant as a Land Charge Class D II in the names of both the Vendor and the Mortgagees but not so as to impose on the Mortgagees any liability in damages) hereby covenants with the Purchasers to observe at all times hereafter the restriction contained in the Fifth Schedule hereto. Provided always that the Vendor or other the owners or occupiers for the time being of the premises described in the said Second Schedule shall not be personally liable in damages for any breach of the aforesaid covenant which may occur after he or they shall have parted with all interest in the land in respect of which such breach shall occur Provided also that if and when a building shall be erected on the land described in the said First Schedule and used for any purpose other than an Inn Tavern or Public House the covenant in this clause contained shall cease to have effect."

Schedule of restrictive covenants continued

THE FIFTH SCHEDULE

Not at any time hereafter to use or permit to be used such part of the Vendors Harefield Place Estate as is described in the said Second Schedule or any part thereof or any buildings now or hereafter to be erected thereon for the trade or business of a licensed Victualler or seller of beer and/or wines and spirits."

NOTE: The land described in the First Schedule is the land edged and lettered C in yellow on the title Plan and the land described in the Second Schedule includes the land in this title (except the land tinted blue thereon)

- 3 (06.07.2016) The following are details of the covenants contained in the Conveyance of the land edged and numbered 3 in blue on the title plan dated 31 December 1963 referred to in the Charges Register:-

"COVENANT by the Purchaser with the Vendor to the intent that the covenant should be binding so far as might be on the owner for the time being of the hereditaments thereby conveyed but upon the Purchaser only so long as he was the owner of the same hereditaments for the benefit of the remaining part of the Vendor's Harefield Place Estate that the Purchaser and his successors in title would at all times thereafter observe and perform the restrictions and conditions set out in the Second Schedule thereto

THE SECOND SCHEDULE therein above

referred to

1. NOT at any time hereafter to use or allow any part of the said property to be used as a Hotel or Country Club but this shall not preclude the Vendor his heirs executors administrators or assigns the owner or owners for the time being of the residue of the said Harefield Place Estate from erecting or allowing to be erected on such site as he or they may desire in the neighbourhood of South Harefield Station an Inn or Tavern or Public House or other provision for the ordinary accommodation of travellers (not to be used however for residential purposes) or from using or allowing to be used any part of the said Harefield Place Estate or any premises that are now or may hereafter be erected thereon for the purposes of Golf Tennis or other Sports or games Clubs with club houses and the usual accommodation

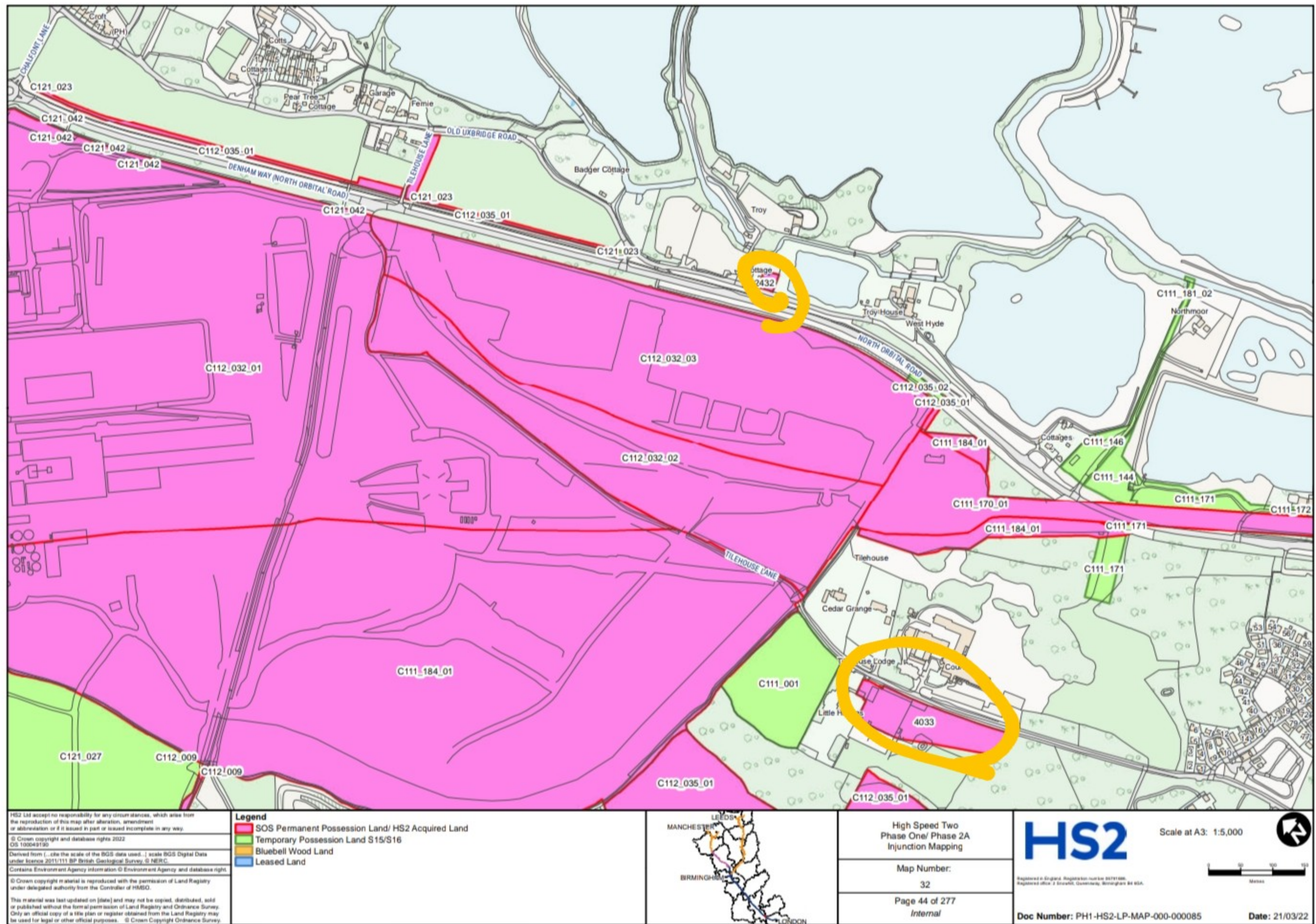
2. NOT at any time hereafter to use or permit to be used the said property or any part thereof or any buildings now or hereafter to be erected thereon for the trade or business of a licensed victualler or seller of beer and/or wines and spirits"

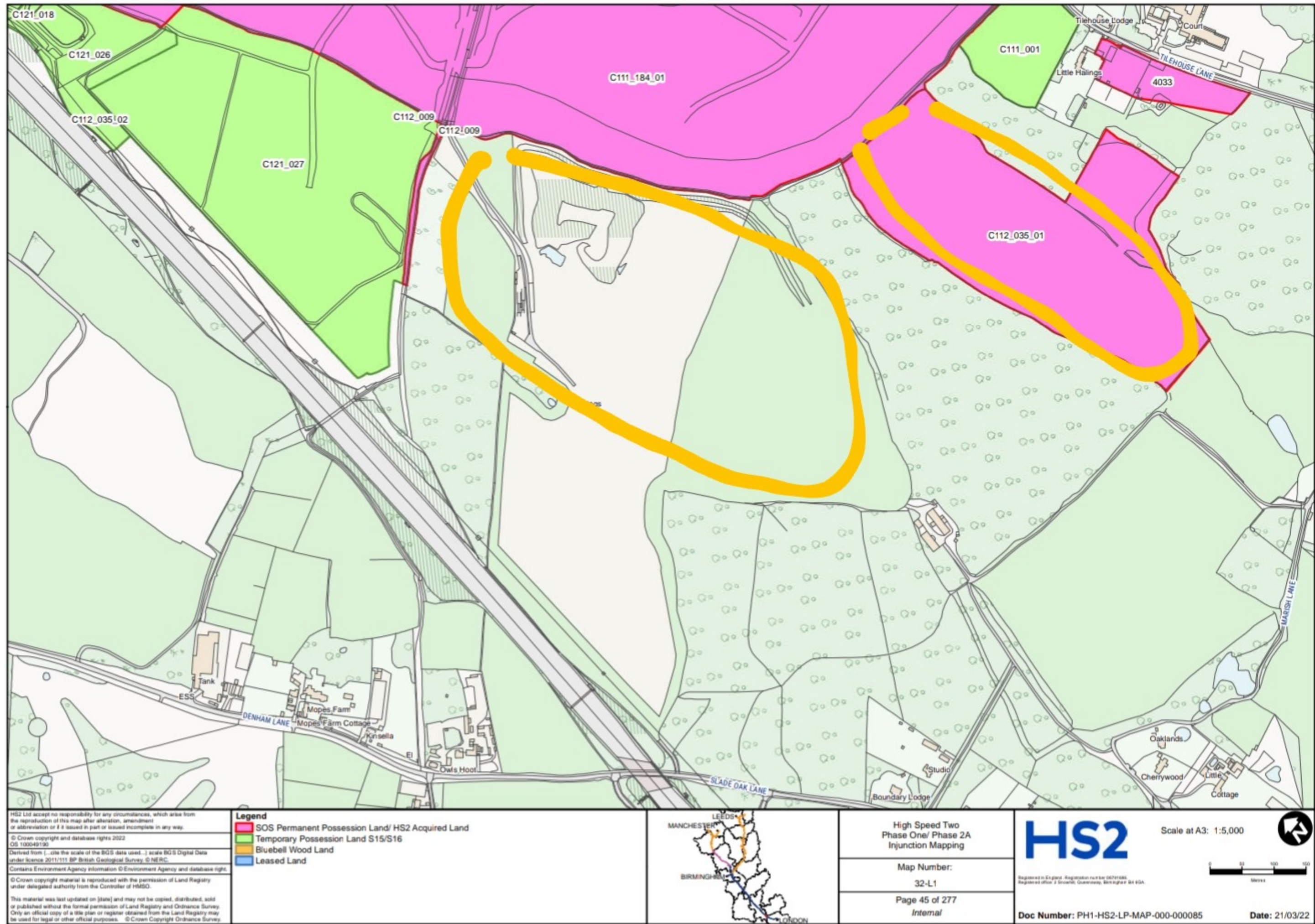
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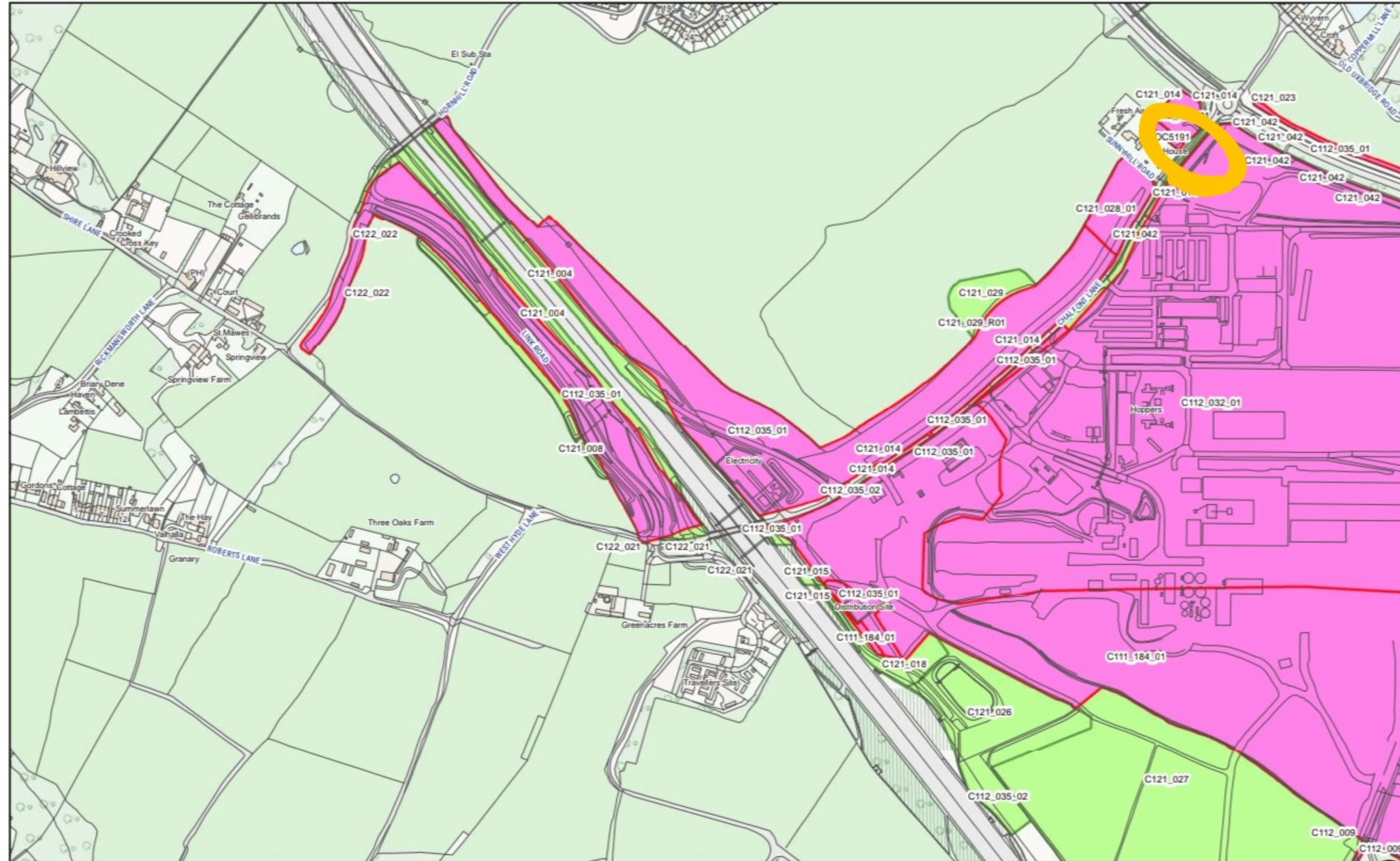

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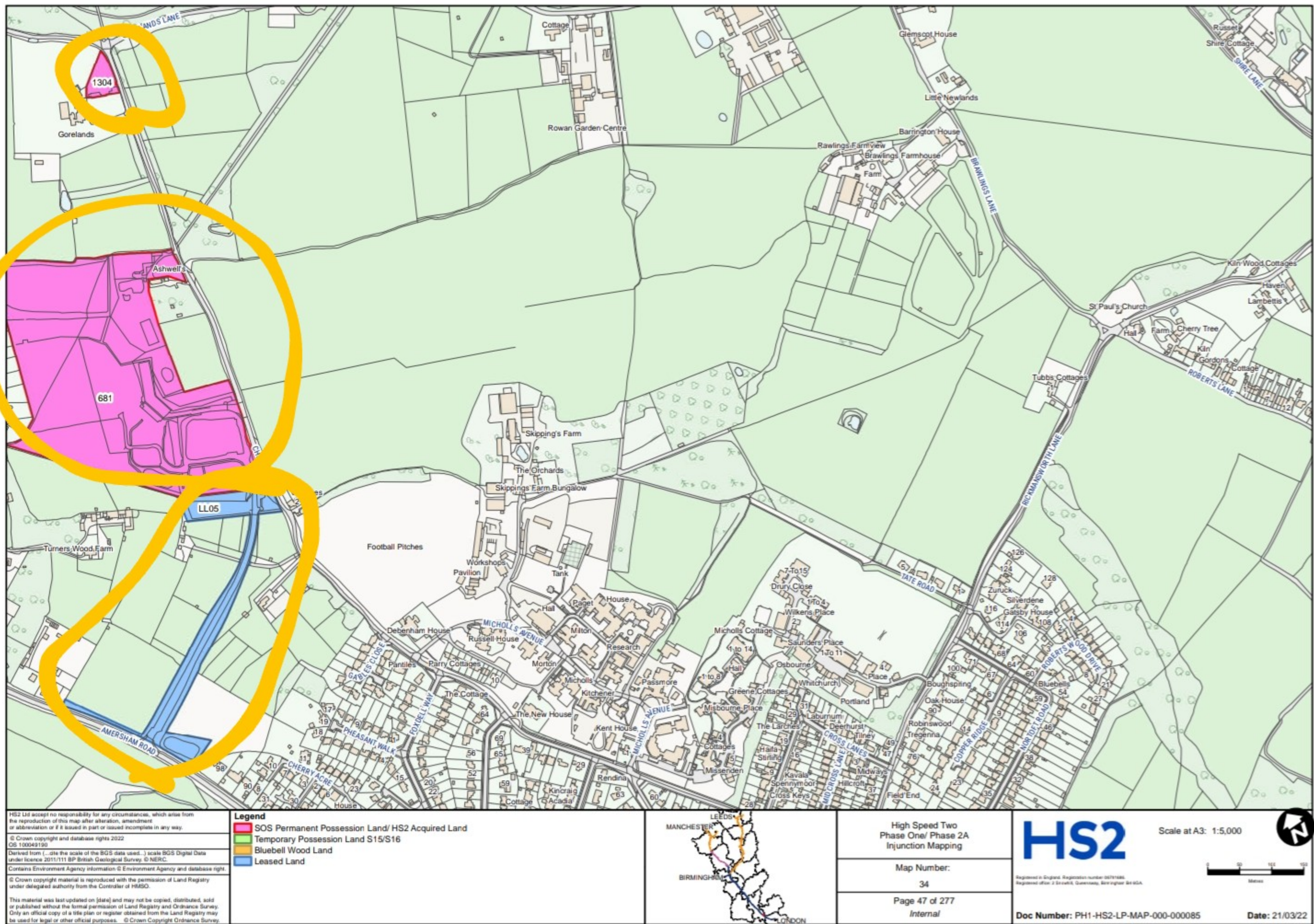



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HS2

Written statement to Parliament

HS2 6-monthly report to Parliament: March 2022

Review of High Speed Two (HS2) including programme update, local community impact and engagement, environment, benefits and programme governance.

From:

Department for Transport, High Speed Two (HS2) Limited, and Andrew Stephenson MP

Published

16 March 2022

Location:

House of Commons

Delivered on:

16 March 2022

Andrew Stephenson MP

Overview

This is my fourth update to Parliament on High Speed Two (HS2).

I can confirm that the project remains within budget and schedule in delivering Phase One (London – West Midlands) and Phase 2a (West Midlands – Crewe), we have hit major construction milestones, made substantial progress on key procurements and made significant progress to take HS2 further north. Work is also already underway to implement the proposals set out in the government's Integrated Rail Plan (IRP) for the North and Midlands, for example with the recent introduction of a Bill into Parliament to build HS2 between Crewe and Manchester.

Key achievements in this reporting period (September 2021 to January 2022) are:

HS2 is now supporting over 22,000 jobs.

Introduction of a bill into Parliament to secure the powers to construct and maintain HS2 between Crewe and Manchester. This will increase capacity, bolster connectivity and reduce travel times from the North West to London and Birmingham and will be critical to generating transformational economic change in the North West.

The government has published its Integrated Rail Plan (IRP) for the North and Midlands.

Award of the £2 billion contract (under budget) for the delivery and maintenance of HS2 trains for Phases One and 2a. The state-of-the-art train fleet, capable of speeds of up to 225 miles per hour, will be designed and built by a Hitachi/Alstom joint venture based in the North East and Midlands.

Launch of the first tunnel boring machine (TBM) in the Midlands, the third on the programme.

The 2 other TBMs in the Chilterns are making good progress and have now driven a combined distance of approximately 3.5 miles.

Public commitment to power HS2 trains with zero carbon energy from day one (supporting the goal of making HS2 net zero from 2035) and publication of HS2 Ltd's Environmental Sustainability Progress Report in January 2022.

The 5 years of compulsory purchase powers on Phase One provided by the Phase One Act ended on 23 February 2022 with all planned notices served by the deadline set by Parliament.

Release of the invitation to tender for the Phase 2a Design and Delivery Partner (DDP). The DDP will act as a strategic partner for HS2 Ltd to drive efficient design and construction in extending the railway to Crewe.

A decision has been taken to support greater integration between the HS2 and Network Rail stations at Euston. This has potential to deliver construction efficiencies, along with significant passenger and place-making benefits at Euston and the surrounding area.

I am delighted to confirm that we are expanding Sir Jon Thompson's role, an existing non-executive director on the HS2 Ltd Board, to become Deputy Chair. Sir Jon will chair meetings of the board until a permanent Chair is in post.

This report primarily uses data provided by HS2 Ltd to the HS2 Ministerial Task Force for Phases One and 2a and covers the period between September 2021 and January 2022 inclusive. Unless stated, all figures are presented in 2019 prices.

Programme update

Schedule

On Phase One (London – West Midlands), the forecast for initial services from Old Oak Common to Birmingham remains within the delivery into service (DiS) range of 2029 to 2033. The revised schedule agreed last year has held to date with local delays being largely mitigated.

Over the reporting period, good progress has been made on closing out the majority of enabling works, with the remaining work due to be completed by early next year. Good progress has also been made on tunnelling activities. Additionally, HS2 Ltd has advanced its earthworks. Maintaining construction progress depends on the detailed design and consents needed to support a further very significant increase in civil works on earthworks and structures in 2022.

The main areas of schedule focus remain in the southern section of the line-of-route and tunnels leading into Old Oak Common Station from outer London, which form the critical path for initial services. Any delays in these sectors could delay the whole project. Other key watch areas include Bromford Tunnel, Birmingham Curzon Street Station and the route into Birmingham where the urban environment generates significant logistical challenges.

Phase 2a remains on track to be delivered between 2030 and 2034. Land possessions have commenced and enabling works started in early 2022.

As confirmed in the update on the Phase 2b Western Leg (Crewe to Manchester) strategic outline business case (SOBC) in January 2022, the department has set a schedule range of 2035 to 2041 for the opening of the Phase 2b Western Leg.

Affordability

HS2 remains within budget. The overall budget for Phase One remains £44.6 billion. This is composed of the target cost of £40.3 billion and additional government-retained contingency of £4.3 billion. The target cost includes contingency delegated to HS2 Ltd of £5.6 billion for managing risk and uncertainties.

To date, out of the Phase One target cost of £40.3 billion, £14.9 billion has been spent, with an additional £0.8 billion for land and property provisions. £12.7 billion has been contracted and has not been spent, with the remaining amount not yet under contract.

HS2 Ltd has drawn £1.3 billion of its £5.6 billion delegated contingency, meaning £4.3 billion remains. Contingency drawn to date reflects an increase of £0.5 billion since my last update (from £0.8 billion to £1.3 billion).

HS2 Ltd's is reporting £1.7 billion of potential future cost pressures that are currently presenting across the programme. This reflects an increase in potential further cost pressures of £0.4 billion since my last update (from £1.3 billion to £1.7 billion).

Since my last report, the aggregate increase in actual and potential additional costs is therefore £0.9 billion (£0.5 billion from increase in contingency drawdown plus £0.4 billion from potential further cost pressures). Whilst these pressures are manageable within the target cost given the remaining contingency, I am nonetheless concerned at the rate of their increase. I expect HS2 Ltd to maintain its focus on delivery to the target cost.

Should these or other cost pressures materialise, HS2 Ltd will continue to draw from the contingency it holds, of which £4.3 billion remains (as outlined above). Out of the £1.7 billion of net potential pressures currently being reported by HS2 Ltd in its January 2022 data, over and above the contingency drawn down so far, the key pressures are:

An estimate of £0.8 billion (increase of £0.2 billion from my last update) for potential additional main works civils costs stemming from additional design costs and slower than expected progress in some areas.

A pressure of £0.4 billion on the cost estimate for the HS2 Euston station. The move to a smaller, less complex 10-platform single-stage delivery strategy at Euston, as confirmed in my previous report, is now the basis for ongoing design work and other activities. The department anticipates that this will assist in addressing the cost pressure at Euston, as the updated station design is developed over the coming months. This work will also consider and address the appropriate level of contingency that should be held to managing risks that are likely to arise during the construction of an asset of this complexity. The department will provide further updates as this work progresses over the course of the next 18 months.

A pressure of £0.2 billion against HS2 Ltd's budget for changes to Network Rail infrastructure at Euston and Old Oak Common that are required to facilitate the new HS2 stations.

There is a further £0.3 billion of net cost pressures presenting on other parts of the programme. This is the aggregate total of smaller potential cost pressures.

Over £0.8 billion in savings and efficiencies from across the programme (increase of £0.5 billion from my last update) have been identified against HS2 Ltd's budget, principally from awarding the rolling stock contract under budget, contracting a common supplier for lifts and escalators, and savings in the acquisition of land and property. These have partly offset gross cost pressures. HS2 Ltd continues to focus on realising further efficiencies and opportunities to reduce the costs of Phase One.

On COVID-19 costs, HS2 Ltd's assessment of the likely financial impact of the pandemic on delivering Phase One remains estimated within the range of £0.4 billion to £0.7 billion.

Formal claims will be subject to government scrutiny and will require formal approval from Her Majesty's Treasury before funds from government-retained contingency can be allocated.

For Phase 2a, the overall cost range is £5.2 billion to £7.2 billion. We intend to set a target cost alongside publication of the full business case next year.

As confirmed in the update on the update on the Phase 2b (Crewe to Manchester) SOBC, the estimated cost range for the Crewe to Manchester scheme is £15 billion to £22 billion. It is project delivery best practice to set a range and to narrow this down over time.

Lastly, the department and HS2 Ltd are currently working to assess and mitigate the impact of global inflationary pressure on materials and labour supply on the programme where short-term increases are being seen. This is likely caused in part by the recovery of global construction demand following the COVID-19 pandemic.

Delivery

On Phase One, delivery continues to build momentum at 340 sites. Tunnel drives are underway at 2 sites. In the Chilterns, tunnel boring machines (TBMs) 'Florence' and 'Cecilia' have been making good progress and have currently tunnelled a combined distance of approximately 3.5 miles. In December 2021, we saw the launch of 'Dorothy' (the first TBM in the Midlands) which will preserve the Long Itchington Wood in Warwickshire. The tunnelling team will operate the machine for around 5 months as it excavates the first bore of the one-mile tunnel. This will be the first HS2 tunnel to be completed on the project, with the machine set to break through its first bore at the south portal later this spring when it will return to the start to begin the second parallel tunnel.

At Old Oak Common Station, significant progress has been made in constructing the 750,000 metres-cubed box structure that will facilitate the 6 subterranean high-speed line platforms, as well as the works required to facilitate the start of tunnel boring to Euston in the east and Northolt in the west. Work is underway with the Old Oak Common and Park Royal Development Corporation, the London Mayor and the Department for Levelling Up, Homes and Communities to bring forward proposals for the regeneration of the area around the station.

In the West Midlands, stage one of the 2-stage design and build contract for Birmingham Curzon Street Station will conclude shortly subject to agreement of an affordable target price. A solution for co-construction of the West Midlands Metro tram extension whilst delivering the station has been agreed with Transport for the West Midlands so that benefits of both projects can be brought to Birmingham as soon as practicable.

In September 2021, HS2 Ltd launched the process to appoint a design and build contractor to complete Interchange Station in Solihull. Contract award remains on schedule for summer 2022. Central and local government are also working with the private sector to bring forward proposals to release land for development. This would enable approximately 350 acres of land to support the Arden Cross Masterplan, creating a space for innovation, business, learning and living, providing up to 27,000 new jobs and 3,000 new homes and is backed by conditional government funding of £50 million.

A decision has been taken to proceed with greater integration between the HS2 and Network Rail stations at Euston. The department and Network Rail are developing the business case for the redevelopment of the Network Rail station concourse at Euston in parallel with the HS2 build, which will support greater integration between the HS2 and Network Rail stations. HS2 Ltd and Network Rail, with support from The Euston Partnership, are working together to develop a cost-effective design that provides integration between the HS2 station and the redevelopment of the Network Rail station and delivers value for money for the taxpayer. This integrated approach has potential to deliver construction efficiencies, along with significant passenger and place-making benefits at Euston.

I am delighted to confirm that we reached a major milestone on the procurement of HS2 trains. In December, an Alstom/Hitachi joint venture was awarded the £2 billion HS2 rolling stock contract for Phases One and 2a and is expected to support around 2,500 jobs across the UK. This contract includes the design and build of 54 new high-speed trains and an initial 12-year maintenance period. The trains will be manufactured in Newton Aycliffe, Derby and Crewe and then maintained at the new depot in Washwood Heath, Birmingham. The second-placed bidder, Siemens, continues to challenge the procurement decision legally but has not sought to impede the award and delivery of the rolling stock contract.

HS2 Ltd continues tendering for Phase One and 2a rail systems packages (including track, catenary, mechanical and electrical fitout, power, control and communications). Over the coming months, HS2 Ltd will request bidders to submit their final price and I anticipate that we will begin awarding these packages in early 2023. In the next 6 months, HS2 Ltd will further develop their approach to integration of these rail systems packages. This will include testing operational processes and systems, development of its leadership capability and standing up of interim governance arrangements.

On Phase 2a (West Midlands – Crewe), HS2 Ltd has invited tenders for a design and delivery partner (DDP) in January 2022. Additionally, the start of procurement for the main works civils framework is expected to commence later this year which will provide the construction capacity to be managed by the DDP. Early environmental works and early civils works have also begun.

Integrated Rail Plan for the North and Midlands

The government has published its Integrated Rail Plan (IRP) for the North and Midlands. It sets a £96 billion strategy of rail construction and upgrades for the North and Midlands to be delivered over the next 30 years. Work is also already underway to implement the proposals set out in the IRP.

For example, £249 million was invested to further electrify the Midland Main Line between Kettering and Market Harborough with work started at Christmas 2021. The HS2 Phase 2b Crewe – Manchester scheme sits at the core of the IRP, bringing high-speed rail to Manchester and providing vital infrastructure necessary to deliver the Northern Powerhouse Rail (NPR) scheme. On 24 January 2022, the government introduced the High Speed Rail (Crewe – Manchester) Bill to secure the powers to construct and maintain the HS2 Phase 2b Western Leg. Once approved, the railway will be critical to generating transformational economic change in the North West of England. Once the Crewe to Manchester section of

HS2 opens, the railway will reduce travel times from 2 hours 5 minutes to around 1 hour 10 minutes from London to Manchester. The introduction of the bill into Parliament was accompanied by an Environmental Statement and an update on the 2017 SOBC.

The IRP also confirmed the government's intention to take forward HS2 East, a new high-speed line between West Midlands and to East Midlands Parkway, enabling HS2 to serve Nottingham and Derby city centres. In conjunction with plans for the electrification of the Midland Main Line, this will also allow HS2 trains to continue direct to Chesterfield and Sheffield. Following a pause to design work on the HS2 Eastern Leg as a result of the Oakervee Review, the department and HS2 Ltd are considering how best to take forward this new West to East Midlands high-speed line working closely with Network Rail. The IRP provides £100 million to look at the most effective way to run HS2 trains to Leeds, including understanding the most optimal solution for Leeds station capacity and starting work on the new West Yorkshire Mass Transit System.

Local community impact and engagement

As HS2 Minister, I expect affected communities to be at the heart of our plans for this project. I am therefore pleased that HS2 Ltd's refreshed community engagement strategy ('Respecting people, Respecting places') has this vision at its core and sets out HS2 Ltd's renewed commitments to the communities impacted by the programme.

One of the ways that the HS2 project counterbalances some of its negative impacts on places is through the Community and Environment Fund and the Business and Local Economy Fund. These funds have now supported 192 projects through £11.1 million of grant funding along the line-of-route and play a crucial role in ensuring a positive legacy for communities most affected by construction.

HS2 Ltd has also recently launched several initiatives to continue actively engaging communities affected by HS2. For example, 'In your area' is an interactive map which informs people of HS2 works in their area. Furthermore, independent construction inspectors continue to support the assurance of the delivery of works. Where problems do arise, the Construction Commissioner provides a means of escalation and independent consideration. I am pleased to report that the existing Construction Commissioner, Sir Mark Worthington OBE, has been reappointed for a further 3 years. Additionally, I am currently recruiting a replacement for the outgoing Residents' Commissioner, Deborah Fazan.

Targeted protester activity continues to have some impact on Phase One delivery. However, following successful removal of the unlawful protester site at Small Dean near Wendover in October and November 2021, protest impact on Phase One has now been reduced significantly. HS2 Ltd estimates that ongoing protester activity, including the removal of encampments and protest-related delays to the programme, has cost just under £122 million, an increase of £42 million since my last report. HS2 Ltd continues to work with its supply chain, local police forces and wider government to minimise the impact of unlawful protester activity.

Land and property

I am pleased to announce that the 5 years of compulsory purchase powers on Phase One provided by the Phase One Act ended on 23 February 2022 with the serving of all planned notices by the deadline set by Parliament. While work to complete the land acquisition and, crucially, settle compensation for affected property owners will continue, this is an important milestone for the programme.

Significant progress has also been made to implement the proposals set out in my 2020 Land and Property Review: three-quarters of the proposals have now been implemented. The response to our recent public Land and property consultation was also published in February 2022.

Environment

In January, HS2 Ltd published its 'Environmental Sustainability Vision' which reaffirmed its commitment to provide low carbon rail travel for a cleaner, greener future.

I was delighted to confirm, as part of that vision, that HS2 trains will use zero carbon energy from day one of operation. This will support HS2 Ltd's target to achieve net zero in construction and operation from 2035. The commitment is a key part of the new HS2 'Net Zero Carbon Plan' which sets out a suite of ambitious new targets to reduce the carbon footprint of the programme.

The vision confirmed that HS2 Ltd will seek to deliver a 10% net gain in biodiversity for replaceable habitats on the Phase 2b Crewe – Manchester scheme. I also intend to explore going beyond the existing no-net-loss of biodiversity target for Phase One and Phase 2a, to secure biodiversity gains where this is cost-effective and possible within existing funding limits.

Lastly, HS2 Ltd published its first 'Environmental Sustainability Progress Report' in January. This provides a clear and up-to-date account of HS2's environmental impacts and the progress being made to mitigate any adverse effects.

Benefits

I am delighted to announce that HS2 is supporting over 22,000 jobs and to date over 2,400 UK-registered companies have delivered work on HS2. To date, there have been 1,674 jobs starts by people who were previously workless. The programme will create 2,000 apprenticeships, with 825 having been started since 2017.

In November 2021, HS2 Ltd's construction partner Balfour Beatty VINCI opened a new 'Skills Academy' in the West Midlands in partnership with South and City College of Birmingham.

As stated in the government's 'Levelling Up' white paper, this year, the government will publish a HS2 Local Growth Action Plan, setting out how it will work with places hosting Phase One and 2a stations to realise their local growth ambitions. The new railway will stimulate growth around HS2 stations and further afield, helping to level up the economies of the Midlands and North.

Promoting active travel along the HS2 route and at stations is also a key priority for me. To ensure that opportunities for lasting legacy improvements are realised, I have asked HS2 Ltd

to explore the potential for the re-purposing of temporary construction routes, into new vehicle-free connections between rural communities that could connect other emerging local authority cycle proposals to provide a wider active travel network along the spine of HS2. This will not only benefit the environment, but also improve the health and wellbeing of residents and commuters. In addition, I have asked HS2 Ltd to upgrade active travel provisions at 12 locations across Phase One.

Programme governance

An updated HS2 Ltd framework document and HS2 development agreement will be concluded shortly to continue effective governance between the department and HS2 Ltd. Furthermore, we have relaunched the search for a new Chair with updated role criteria to appeal to a wider set of candidates. In parallel, we are expanding Sir Jon Thompson's role, an existing non-executive director on the HS2 Ltd Board, to become Deputy Chair. Sir Jon will chair meetings of the board until a permanent Chair is in post.

Lastly, as committed to in my previous update, all recommendations from the Public Accounts Committee (PAC) report of 22 September 2021 have now been implemented.

Forward look

On Phase One, over the next 6 months we will continue the ramp-up of construction work, launch the fourth TBM on the programme to start excavation of the London tunnels and we will see HS2 Ltd award a contract for the construction of Interchange Station.

On Phase 2a, focus will be on progressing environmental and enabling work, early land acquisitions plus the procurement for the DDP and progressing the procurement for the main works civils framework.

On Phase 2b, following the introduction of the High Speed Rail (Crewe – Manchester) Bill into Parliament, the Environmental Statement consultation is now underway, which will close on 31 March 2022. The priority for HS2 East is to develop the next stage of design work for the West to East Midlands high-speed line.

I will continue to engage closely with Parliament and will provide my next update in autumn 2022.

Financial annex [1]

Forecast costs by phase

Phase	Target cost	Total estimated costs range [2]
-------	-------------	---------------------------------

One	£40.3 billion	£35 billion to £45 billion
-----	---------------	----------------------------

2a	To be determined	£5 billion to £7 billion
----	------------------	--------------------------

2b Western Leg	To be determined	£15 billion to £22 billion [3]
----------------	------------------	--------------------------------

HS2 East (West to East Midlands) [4]	To be determined	To be determined
--------------------------------------	------------------	------------------

[1] All figures in this report are presented in 2019 prices unless otherwise stated.

[2] Rounded to nearest billion.

[3] As confirmed in the update on the Phase 2b (Crewe to Manchester) strategic outline business case, published in January 2022.

[4] The government confirmed in the IRP that a high-speed line between the West and East Midlands (known as HS2 East) will be taken forward, with HS2 trains continuing to Nottingham and to Chesterfield/Sheffield (via Derby) on the upgraded conventional rail network.

Historic and forecast expenditure (including land and property)

Phase	Overall spend to date (£billion)		2021 to 2022 budget (£billion)		2021 to 2022 forecast (£billion)		Variance (£billion)	
One [5]	15.7	5.0	5.0	0				
2a	0.6	0.2	0.2	0				
2b Western Leg	0.5	0.2	0.2	0				
HS2 East (West Midlands to East Midlands) and East Midlands to Leeds [6]	0.0	0			0.6 [6]	0.0		
Total	17.4	5.4	5.4	0				

[5] Spend to date stated above for Phase One includes a £0.8 billion liability (provision) representing the department's obligation to purchase land and property.

[6] The government is proceeding with HS2 East (the new high-speed line between the West and East Midlands) and is providing £100 million to look at the most effective way to run HS2 trains to Leeds, including understanding the most optimal solution for Leeds station capacity, and starting work on the new West Yorkshire Mass Transit System. As at the end of January 2022, £0.48 billion (rounded in actual prices) had been spent developing the HS2 Eastern Leg to Leeds, including workforce. A substantial proportion of this has been spent on HS2 East (the West to East Midlands section of the HS2 Eastern Leg), which is proceeding as confirmed in the IRP. A further £0.15 billion (rounded in actual prices) has been spent on land and property along the full HS2 Eastern Leg to Leeds, and again a substantial proportion of that land and property spend is along the section between the West and East Midlands. Any land or property not ultimately required for the railway will be resold, enabling us to recover costs.

Evolution of Phase One HS2 Ltd contingency drawdown over last 4 Parliamentary reports

	October 2020 Parliamentary report	March 2021 Parliamentary report	October 2021 Parliamentary report	March 2022 Parliamentary report
Total HS2 Ltd contingency drawdown and % used	£0.3 billion (5%)	£0.4 billion (7%)	£0.8 billion (14%)	£1.3 billion (23%)
Total HS2 Ltd contingency remaining	£5.3 billion (95%)	£5.2 billion (93%)	£4.8 billion (86%)	£4.3 billion (77%)

Evolution of Phase One government-retained contingency drawdown over last 4 Parliamentary reports

	October 2020 Parliamentary report	March 2021 Parliamentary report	October 2021 Parliamentary report	March 2022 Parliamentary report
Total government-retained contingency drawdown and % used	£0 billion (0%)	£0 billion (0%)	£0 billion (0%)	£4.3 billion (100%) [7]
Total government-retained contingency remaining	£4.3 billion (100%)	£4.3 billion (100%)	£4.3 billion (100%)	£4.3 billion (100%)

[7] As with my October 2021 report, £0.015 billion has been allocated to enable Old Oak Common to increase the number of trains it runs from 3 to 6 trains per hour but has not yet been drawn down from government-retained contingency.

Published 16 March 2022

Related content

High Speed Rail (Crewe – Manchester) Bill and associated documents

HS2 Ltd Residents' Commissioner

HS2 Crewe to Manchester: update on the strategic outline business case

HS2 Independent Construction Commissioner

HS2 Phase 2b plan and profile maps: Crewe to Manchester (2022)

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HS2

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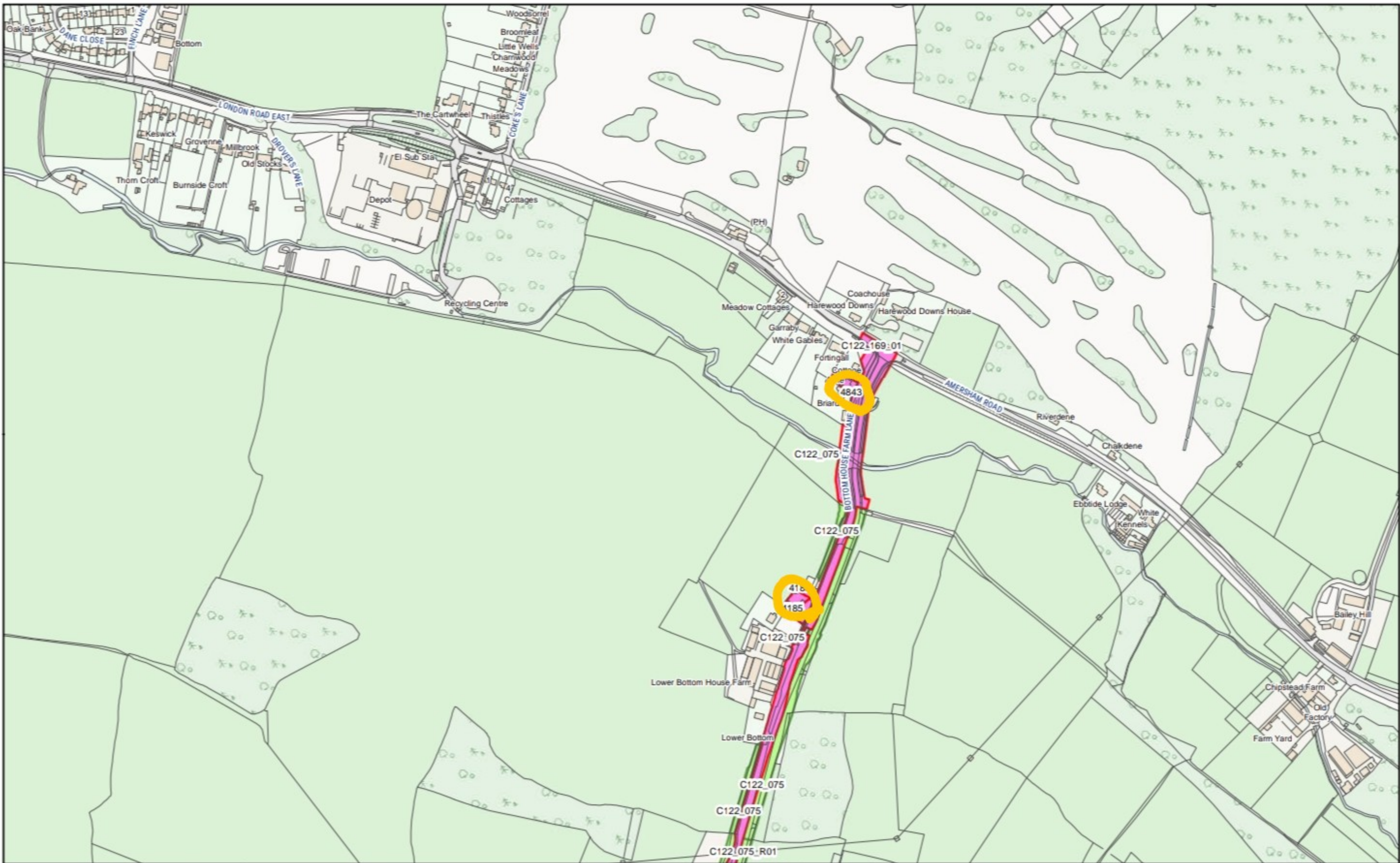
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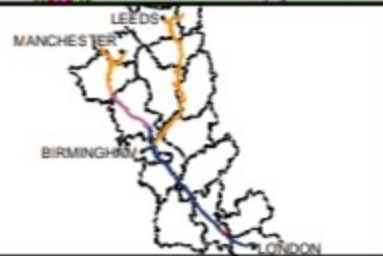
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- Legend**
- SOS Permanent Possession Land/ HS2 Acquired Land
 - Temporary Possession Land S15/S16
 - Bluebell Wood Land
 - Leased Land



High Speed Two
Phase One/ Phase 2A
Injunction Mapping

Map Number:

36-R1

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Internal

HS2

Registered in England. Registration number 04701686.
Registered office: 2 Broadwalk, Queensway, Birmingham B1 4SA.

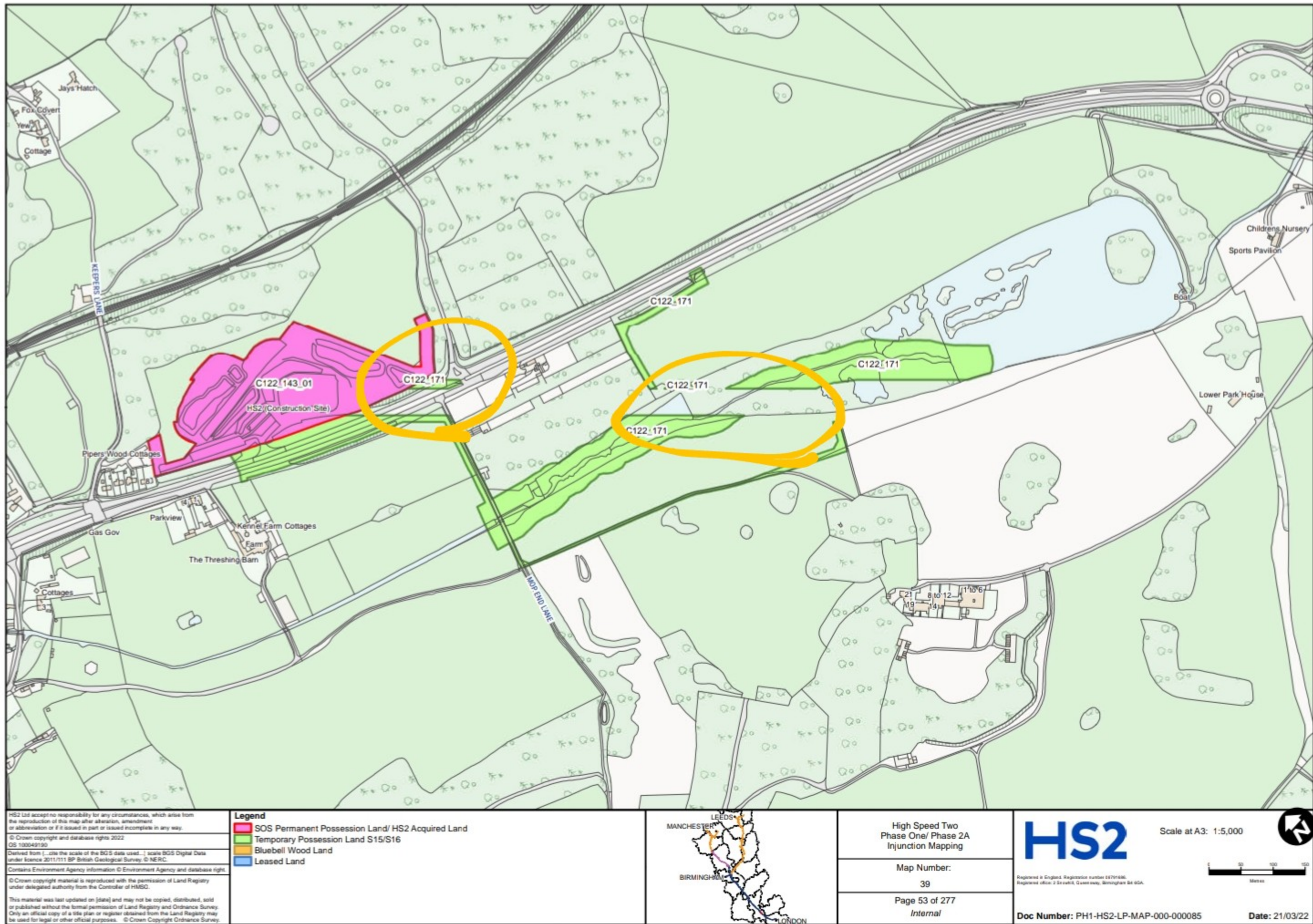
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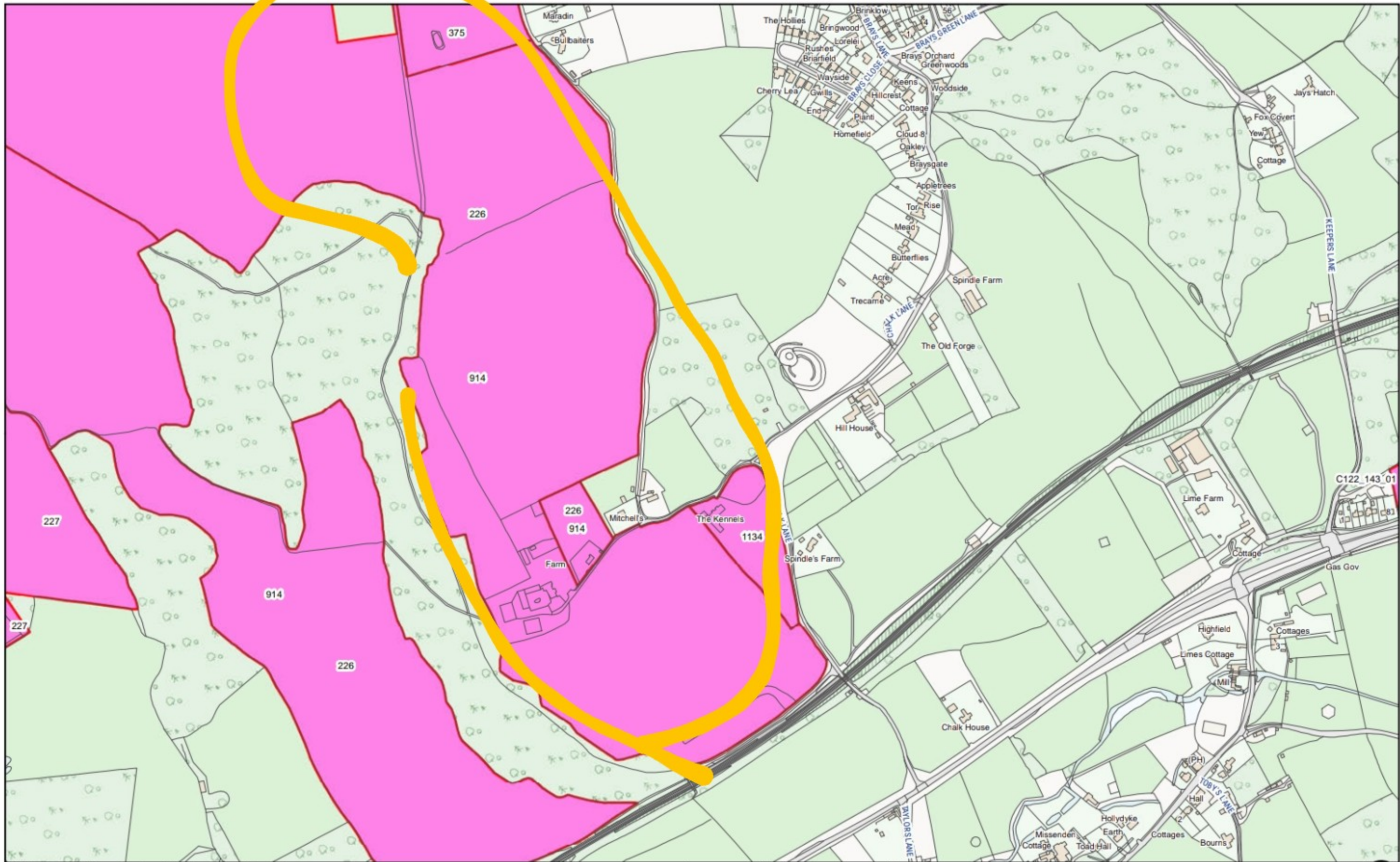


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D1545





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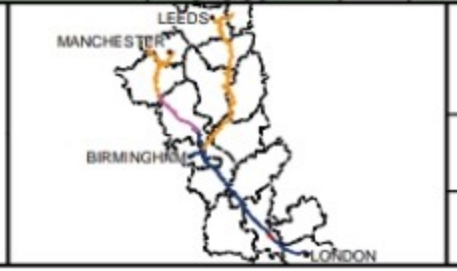
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Legend	
	SOS Permanent Possession Land/ HS2 Acquired Land
	Temporary Possession Land S15/S16
	Bluebell Wood Land
	Leased Land



High Speed Two
Phase One/ Phase 2A
Injunction Mapping

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D1547



Directorate for Planning, Growth & Sustainability

Buckinghamshire Council
The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

Heritage.av@buckinghamshire.gov.uk
www.buckinghamshire.gov.uk

Heritage Application consultation response

Date: 18th March 2022

From: Morwenna Breen-Haynes

Application reference:	PL/22/0445/HB
Site:	Cottage Farm, Aylesbury Road, Great Missenden, Buckinghamshire HP16 9LS
Proposal:	Listed Building Consent for maintenance and repairs to the stables
Action required prior to determination:	Yes (or via conditions)

Summary

Whilst the application is acceptable in principle the submitted information is lacking in regards to some elements. This has resulted in the recommendation for several conditions unless further information is provided prior to determination.

Heritage Assets

Listed Buildings (LB), which are designated heritage assets; the application building and nearby Woodlands Park are both Grade II

Relevant planning history

PL/21/4807/HS2 - Schedule 18 Heritage Agreement Method Statement for works to protect The Stables, Cottage Farm, Great Missenden (pending consideration)

Discussion

The heritage assessment is the impact on the special historic and architectural interest of the listed building the stable block at Cottage Farm, along with the setting of the nearby Woodlands Park.

Significance

The application building was constructed in 1872 for James Edward Connell, a railway locomotive designer, as part of his improvements to the estate at Woodlands Park.

Due to its highly decorative appearance it is thought to have been built to house riding and coach horses, rather than a farm building. Brick built with several elements of ornamental moulded work and herringbone brick detailing. The tiled roof includes a band of fish-scale tiles, along with a wooden louvre vent and a steep tiled turret element.

D1549

Proposal

Currently owned by HS2 due to its close proximity to proposed route and ancillary works. The current application is in respect to remedial works to the building, each element will be discussed in turn below.

- Repointing of brickwork in matching lime mortar

As proposed, repointing will be carried out on each of the four elevations where necessary and using a NHL 3.5 hydraulic lime mortar. The proposal states a test panel of repointing style will be photographed and supplied for approval prior to full works commencing.

Response: This approach appears reasonable, however the quality of craftsmanship and attention to detail is vital. Therefore, the test panel should be viewed on site prior to full works commencing. This could be agreed via a condition, unless prepared and made available prior to determination.

- Replacement of weathered, damaged, and missing decorative brick mouldings.

The Stables has a number of areas with highly decorative moulded brickwork, which regrettably have weathered and spalled away, or in some areas missing entirely. The proposal includes replacing these with handmade moulds made by a local brick manufacturer to match the profiles and appearance of the existing mouldings.

Response: It is noted similar remedial works were carried out around the pigeon tower, approximately 3 years ago. However, this scheme will require new mouldings to be produced and works likely to be carried out by a different craftsperson. It is unlikely these mouldings will be a stock product and therefore made bespoke for the scheme. As such, prior to installation the mouldings should be viewed on site.

- Isolated roof tile replacement

A small number of clay roof tiles have slipped close to the peak of the cylindrical roof. Reclaimed clay tiles will be used to replace the missing and damaged tiles.

Response: If the replacement tiles will match the existing, this is likely to be considered a repair and is therefore acceptable.

- Removal of high-level Lead cold water storage tank and associated timber bracing to central tower

Within the central tower (pigeon loft) is a redundant lead cold-water storage tank supported at high levels on timber joists which are fixed to the existing rafters and purlins of the cylindrical roof structure. The proposal states it appears the tank supporting joists are causing outward pressure on the existing roof and brick structure. The proposal includes the removal of the tanks, associated pipework and timber platform and supports.

Response: The application does not include any engineering validation of the structural concerns, merely states there is an appeared concern. However, whilst the lead tank may contribute to the historic interest of the building and its former function its significance is nominal compared to the structure itself. There is a reasonable perception that the additional weight within this apex would have some structural impact and therefore its removal acceptable.

- Removal of loose and damaged lath & plaster to the first floor storage areas.

The proposal states the left hand section of the barn at first floor level is primarily finished with lath and plaster to the underside of the rafter. It also states that much of the lath and plaster in this particular room is loose or missing entirely. As proposed the loose section of lath and plaster will be removed, leaving the secure sections in place. The works will not include any repairs or replacement of the lath and plaster.

Response: From the information submitted the significance of the existing lath and plaster is unknown. Considering the age of the building it is possibly original and may allude to the use of the room and its intention to be habitable when the building was constructed. The current proposal is essentially consolidate the existing poor condition of the lath and plaster, which under the current proposal is reasonable.

However, in moving forward there would be a preference that once the building is brought back into use appropriate repairs and works to reinstate lath and plaster are proposed.

- Stitch repairs to external wall cracks to the first floor hay storage area.

Internally, three cracks are visible on the first floor which are considered severe enough to require remedial works. The proposed method of repair is the use of stitch repairs with helical style steel bars. This requires carefully raking out the mortar joints in the areas effected to approximately 500mm either side of the cracks, installing the aluminium ties and repoint with the approved lime mortar mix.

Response: Whilst a modern approach of repair, it can be a sufficient method with the least impact to the historic fabric. What is essential that the works are carried out to a high standard and there is no scarring evident once the works are complete.

- Repairs refixing of 2 nr cast iron finials and weather vanes to the gables.

It is understood that the current tenant has a pair of cast iron weather vanes that were previously fixed to the finials. The proposal seeks to reinstate these, once further details have been obtained and approved.

Response: If there is sufficient evidence that the weather vanes do in fact belong atop the existing finials, then their reinstatement is considering acceptable. However, it is noted that the 1984 listed description only refers to finials and not weather vanes.

- Replace pvc-u rainwater goods with cast iron.

The existing rainwater goods are a combination of lead or uPVC. Where the lead has failed or cracked these will be repaired. All uPVC rainwater gutter and downpipes will be replaced with traditional cast iron rainwaters good including brackets.

Response: This approached seems reasonable, especially considering the remote location of the site and risk of lead theft.

- Replacement of first floor floorboard

As proposed, two planks of approximately three metres in length require replacement.

Response: This extent of replacement is considered reasonable, however the planks should be replaced with the same timber as the existing.

Heritage Policy Assessment

The Planning (Listed Building and Conservation Areas) Act 1990

The proposals would preserve the architectural and historic interest of the listed building and therefore complies with sections 16 of the Act.

NPPF

The proposal would cause no harm to the significance of the heritage asset.

Conclusion

For the reasons given above it is felt that in heritage terms:

The application would not raise any heritage objection subject to the following conditions:

- Sample panel of repointing to be completed to be viewed on site. This should include the proposed mortar and pointing technique to match existing.
- Sample of new bricks mouldings to be viewed on site prior to works to replace existing.
- Any new retilers will match the existing unless otherwise agreed in writing with the LPA
- The two planks to be replaced should be the same timber as existing. Any requirement to replace more than two plank as stated in the application should be submitted in writing to the LPA for approval.
- Evidence to be submitted concluding the weather vanes proposed to be added to the existing finials were previously in situ.

DATED

10th September 2021

LEASE

relating to

Land on the west side of London Road, Wendover, Aylesbury

between

High Speed Two (HS2) Limited

and

Buckinghamshire Council

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This lease is dated 10th September

2021

Parties

- (1) Buckinghamshire Council** of The Gateway, Gatehouse Road, Aylesbury HP19 8FF
(Landlord)
- (2) High Speed Two (HS2) Limited** incorporated and registered in England and Wales with company number 06791686 whose registered office is at Two Snow Hill Queensway, Birmingham B4 6GA **(Tenant)**

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this lease.

1.1 Definitions:

Act of Insolvency:

- a) the entering into any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or any guarantor;
- b) the making of an administration order in relation to the Tenant or any guarantor;
- c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant or any guarantor;
- d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or any guarantor;
- e) the commencement of a voluntary winding-up in respect of the Tenant or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- f) a winding-up order in respect of the Tenant or any guarantor;
- g) the striking-off of the Tenant or any guarantor from the Register of Companies;
- h) the Tenant or any guarantor otherwise ceasing to exist (but excluding where the Tenant or any guarantor dies);

- i) the making of a bankruptcy order against the Tenant or any guarantor; or

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction.

Annual Rent: rent at the rate of £10,000 per annum.

Contractual Term: a term of six years beginning on and including 10th September 2021 and ending on and including 9th September 2027.

Default Interest Rate: 2% per annum above the Interest Rate.

Interest Rate: the base rate from time to time of National Westminster Bank or if that base rate stops being used or published then a comparable commercial rate reasonably determined by the Landlord.

LTA 1954: Landlord and Tenant Act 1954.

Permitted Use: use of the Property:

- as amenity land and woodland;
- to undertake any steps on the Property as may be required to obtain vacant possession of the Property and keep it secure after vacant possession has been achieved; and/or
- to undertake activities in connection with the Security Matters.

Plan: the plan attached to this lease marked "Plan".

Property: land on the west side of London Road, Wendover, Aylesbury shown edged red on the Plan and shall include any trees and standing timber situated on the Property.

Security Matters: means the following:

- (a) Prevention of access to or occupation of the Property by trespassers where such incidents are related to the Tenant's activities or any other activity arising during the term of this Lease;
- (b) Recovery of possession of the Property from trespassers where such incidents are related to the Tenant's activities or any other activity arising during the term of this Lease; and
- (c) Dealing with ancillary issues arising from trespasser and/or protestor activity where such activity is related to the Tenant's activities or any other activity arising during the term of this Lease.

Schedule of Condition: the schedule of condition produced in accordance with clause 10.5 below.

Service Media: all media for the supply or removal of electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities, and all structures, machinery and equipment ancillary to those media.

Third Party Rights: all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this lease in the property register of title number BM374741 but not including the matters referred to in clause 5.3 below.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 A reference to this **lease**, except a reference to the date of this lease or to the grant of this lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease. A reference to the **Tenant** includes a reference to its successors in title.
- 1.4 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.5 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.6 A reference to the **term** is to the Contractual Term and statutory continuation of this lease.
- 1.7 A reference to the **end of the term** is to the end of the term however it ends.
- 1.8 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.9 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.10 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.11 Unless the context otherwise requires, any words following the term **including, include, in particular, for example**, or any similar expression shall be construed as illustrative

and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

- 1.12 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.13 A reference to **writing** and **written** excludes fax and email.
- 1.14 Unless the context requires, references to clauses and Schedules are to the clauses and Schedules of this lease and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Clause, Schedule and paragraph headings shall not affect the interpretation of this lease.
- 1.16 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.17 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.18 Unless expressly provided otherwise, the obligations and liabilities of the parties under this lease are joint and several.

2. Grant

- 2.1 The Landlord lets the Property to the Tenant for the Contractual Term.
- 2.2 The grant is made together with the ancillary rights set out in clause 3, excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights.

3. Ancillary rights

- 3.1 The Landlord grants the Tenant the following rights (the **Rights**):
 - (a) the right to use any Service Media that belong to the Landlord and serve the Property.
- 3.2 The Rights are granted in common with the Landlord and any other person authorised by the Landlord.
- 3.3 The Tenant shall exercise the Rights in accordance with this lease and only in connection with the Tenant's use of the Property for the Permitted Use but not for any other purpose.

- 3.4 The Tenant shall comply with all laws relating to the Rights and all reasonable regulations in connection with the exercise of the Rights that the Landlord may make from time to time and notify to the Tenant in writing.
- 3.5 Neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over any part of neighbouring property, and section 62 of the Law of Property Act 1925 does not apply to this lease.

4. Rights excepted and reserved

- 4.1 The following rights are excepted and reserved from this lease to the Landlord (the **Reservations**) notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property provided that they do not materially affect the use and enjoyment of the Property for the Permitted Use or the carrying out by the tenant of works related to the HS2 project on neighbouring land:
- (a) the right to enter the Property to inspect the condition of the Property and for any other purpose mentioned in or connected with the Reservations; and
 - (b) The right, after the Schedule of Condition has been prepared, to enter the Property to undertake maintenance to the buildings situated on the Property.
- 4.2 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.
- 4.3 The Tenant shall allow all those entitled to exercise any of the Reservations to enter the Property at any reasonable time and, except in the case of an emergency, after having given reasonable notice to the Tenant (which notice need not be in writing), and complying with any reasonable regulations made by the Tenant in connection with health and safety, with or without their workers, contractors, agents and professional advisors.
- 4.4 No party exercising any of the Reservations, nor its workers, contractors, agents or professional advisors, shall be liable to the Tenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of the exercise of any of the Reservations except for:
- (a) physical damage to the Property; or
 - (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

5. Third Party Rights

- 5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights insofar as those obligations relate to the Property and shall not do anything (even if otherwise permitted by this lease) that may interfere with any Third Party Rights.
- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of any of the Third Party Rights to enter the Property in accordance with its terms.
- 5.3 The Landlord and the Tenant acknowledge that the Property is subject to trespassers at the date of this Lease and the presence of trespassers on the Property will not constitute a Third Party Right.

6. Annual Rent and other payments

- 6.1 The Tenant shall pay the Annual Rent and any VAT due for the whole of the Contractual Term in two instalments:
 - (a) the first instalment shall be a total of £50,000 for the first five years of the term (at an annual rent of £10,000 p.a.) and shall be paid within 28 days from the date of this lease.
 - (b) the second instalment shall be £10,000 for the last year of the term and shall be due on the fifth anniversary of the term unless the Landlord has served a notice to terminate the lease pursuant to clause 15 below.
- 6.2 The Tenant shall pay all present and future rates, taxes and other impositions and outgoings payable at any time during the term in respect of the Property, its use and any works carried out there, except:
 - (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
 - (b) any taxes (other than VAT) payable by the Landlord by reason of the receipt of any of the rents due under this lease.
- 6.3 If any rates, taxes or other impositions and outgoings are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable.
- 6.4 The Tenant shall pay the costs and expenses of the Landlord, including any reasonable and proper solicitors' or other professionals' costs and expenses and whether incurred during or after the end of the term, in connection with or in contemplation of the enforcement of the tenant covenants of this lease and with any consent applied for in connection with this lease and the preparing and serving of any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any

proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court.

- 6.5 If any Annual Rent or any other money payable under this lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall pay the Landlord interest on that amount at the Default Interest Rate (both before and after any judgment).

7. Common items

- 7.1 The Tenant shall pay the Landlord a fair proportion of all costs payable by the Landlord for the maintenance, repair, cleaning and renewal of all Service Media, structures and other items used or capable of being used by the Property in common with other land.

8. Insurance

The Tenant shall not be required to insure the Property.

9. VAT

- 9.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 9.2 Every obligation on the Tenant, under or in connection with this lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994.

10. Use, repairs and alterations

- 10.1 The Tenant shall not use the Property for any purpose other than the Permitted Use **and shall not use the Property for any business purposes.**
- 10.2 The Tenant may bring machinery or equipment onto the Property to enable a safe and proportionate security operation to obtain and maintain vacant possession of the Property or under a direction from the High Court Enforcement Officer or the Police and such machinery or equipment will be removed from the Property as soon as reasonably practicable once it is no longer needed.
- 10.3 The Landlord and the Tenant acknowledge that the Property is subject to trespassers at the date of this Lease and that the Tenant will try to the remove trespassers in

accordance with the Permitted Use but that the Tenant makes no promise or guarantee as to the time taken to remove trespassers and secure possession or that it will be able to remove trespassers and secure possession.

10.4 The Tenant shall not:

- (a) use the Property for any purpose or in any manner that is illegal, hazardous or dangerous, or would cause loss, damage, injury, nuisance or inconvenience to the Landlord, any other tenants of the Landlord or any other owner or occupier of neighbouring property;
- (b) do anything to or on the Property that invalidates or may invalidate, in whole or in part, any insurance effected by the Landlord in respect of the Property
- (c) obstruct any public road, footpath, right of way or any means of access to the Property;

Save that neither the carrying out of the Security Matters nor undertaking activities on neighbouring land in connection with the construction of the HS2 project will ~~not~~ constitute a breach of this clause.

10.5 As soon as reasonably practicable after vacant possession of the Property has been secured by way of removal of the trespassers and the Property has been secured the Tenant will prepare and deliver to the Landlord a Schedule of Condition documenting the condition of the Property.

10.6 The Tenant shall keep the Property and, at the end of the term, leave the Property, clean, tidy and clear of rubbish with any remaining debris removed and shall keep and leave clean and in good repair, order and condition, Save That:

- (a) the Tenant is not obliged to put the Property in any better state of repair than it was at the date of the Schedule of Condition and as evidenced by the Schedule of Condition, save for as provided for in 10.6(d) below;
- (b) The Tenant will not be responsible for repairing any damage caused to the Property by any protestors and/or trespassers, save for as provided for in 10.6(d) below; and
- (c) The Tenant shall not be required to maintain the buildings on the Property but shall keep them secured for the duration of the Lease.

- (d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

10.7 The Landlord may enter the Property to inspect its condition and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition

of the Property. The Tenant shall carry out and complete any works needed to remedy that breach within the time reasonably required by the Landlord, in default of which the Landlord may enter the Property and carry out the works needed. The costs incurred by the Landlord in carrying out any works pursuant to this clause 10.7 (and any professional fees and any VAT in respect of those costs) shall be payable by the Tenant. Any action taken by the Landlord pursuant to this clause 10.7 shall be without prejudice to the Landlord's other rights, including those under clause 19.

- 10.8 Save as permitted in clause 10.9 below, the Tenant shall not make any alteration or addition to the Property or install or erect any equipment, buildings or other structures on the Property without the Landlord's prior written consent, such consent not to be unreasonably withheld.
- 10.9 The Tenant may install fences, gates and locks and other physical barriers and structures on the Property for the purposes of dealing with the Security Matters.
- 10.10 The Tenant shall, at the Landlord's request and at the Tenant's cost, remove the Tenant's installations and erections at the end of the term and make good any damage caused to the Property by that removal.

11. Compensation on vacating

- 11.1 Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the LTA 1954 is excluded, except to the extent that the legislation prevents that right being excluded.

12. Compliance with laws

- 12.1 The Tenant shall comply with all laws relating to:
 - (a) the Property and the occupation and use of the Property by the Tenant;
 - (b) the use of all Service Media at or serving the Property;
 - (c) any works carried out at the Property; and
 - (d) all materials kept at or disposed of from the Property.
- 12.2 As soon as reasonably possible after receipt of any notice, order, direction or other formal communication affecting the Property or the Landlord's interest in the Property (and whether or not served pursuant to any law), the Tenant shall:
 - (a) inform the Landlord and allow the Landlord to copy the relevant document; and
 - (b) take all steps necessary to comply with the communication and take any other action in connection with it as the Landlord may reasonably require.

- 12.3 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent, not to be unreasonably withheld.
- 12.4 This clause shall not oblige the Tenant to incur any capital expenditure or improve the Property.

13. Prohibition of dealings

- 13.1 The Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or hold the lease on trust for any person (except by reason only of joint legal ownership), or grant any right or licence over the Property in favour of any third party save as permitted in clause 13.2.
- 13.2 The Tenant may share occupation of the Property with its contractors and/or sub-contractors and security agents provide that no relationship of landlord and tenant is established by that arrangement.
- 13.3 The Tenant may afford the Police, process servers, solicitors, High Court Enforcement Officers and bailiffs access to the Property for the purposes of dealing with the Security Issues.

14. Returning the Property to the Landlord

- 14.1 At the end of the term, the Tenant shall return the Property to the Landlord in the repair and condition required by this lease and remove from the Property all chattels belonging to or used by the Tenant.
- 14.2 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels, fittings or items it has fixed to the Property and which have been left by the Tenant on the Property for more than four weeks after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

15. Break clause

- 15.1 In this clause the following definitions apply:

Break Date: the date stated in the Break Notice on which this lease shall terminate.

Break Notice: notice to terminate this lease

Fixed Break Date: 10th September 2026

- 15.2 Subject to clause 15.3, the Tenant may terminate this lease at any time by serving a Break Notice on the Landlord at least one month before the Break Date.
- 15.3 The Break Notice shall be of no effect if vacant possession of the whole of the Property is not given.
- 15.4 Subject to clause 15.3, following service of the Break Notice by the Tenant, this lease shall terminate on the Break Date specified in the Break Notice.
- 15.5 The Landlord may terminate this lease on the Fixed Break Date by serving a Break Notice on the Tenant at least one month before the Fixed Break Date, and following service of the Break Notice by the Landlord, this lease shall terminate on the Fixed Break Date

16. The Authority's Rights

- 16.1 For the avoidance of doubt whilst the body for the time being entitled to the reversion immediately expectant on the determination of the Term is an Authority:
- 16.2 nothing in the Lease contained or implied shall prejudice or abridge any of the Authority's rights powers duties and obligations in the exercise of its functions and the rights powers duties and obligations of the Authority under any public and private statutes byelaws orders and regulations may be as fully and effectually exercised in relation to the Property as if it was not the lessor thereof; and
- 16.3 action taken by the Landlord in its capacity as an Authority which directly or indirectly affects or relates to the Property shall not in any way imply or be deemed to constitute a consent for any matter, action or dealing for which the Tenant requires the consent of the Landlord under the terms of this Lease

17. Indemnity

- 17.1 The Tenant shall indemnify the Landlord and keep the Landlord indemnified against all liabilities, expenses, costs, claims, damages and losses ("Claims") suffered or incurred by the Landlord arising out of or in connection with any breach of any tenant covenants in this lease except such Claims which arise out of the negligence or wrongful act or omission of the Landlord its servants or agents.
- 17.2 The Landlord shall in relation to any Claims:
- (a) Give to the Tenant written notice as soon as practicable after the Landlord becomes aware of them;

- (b) Not admit liability to any third party or make any offer to settle any Claims without the consent of the Tenant (such consent not to be unreasonably withheld or delayed);
- (c) Allow the Tenant to conduct in the name of the Landlord any litigation or other dispute resolution process and give the Tenant such assistance and co-operation as the Tenant may reasonably request, the Tenant paying the fair and reasonable costs of the Landlord of doing this; and
- (d) Take all reasonable steps to mitigate any loss as directed by the Tenant.

18. Landlord's covenant for quiet enjoyment

The Landlord covenants with the Tenant, that, so long as the Tenant pays the rents reserved by and complies with its obligations in this lease, the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this lease.

19. Re-entry and forfeiture

- 19.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:
- (a) any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
 - (b) any breach of any condition or tenant covenant of this lease; or
 - (c) an Act of Insolvency.
- 19.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end. Any right or remedy of the Landlord in respect of any breach of the terms of this lease by the Tenant will remain in force.

20. Costs

- 20.1 On completion of this lease, the Tenant shall pay to the Landlord its reasonable costs, fees, charges, expenses and disbursements of the Landlord and their professional advisors incurred in relation to the negotiation and completion of this lease, plus an amount equivalent to VAT on them except to the extent that the Landlord is able to recover that VAT.

21. Entire agreement

This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

22. Notices, consents and approvals

22.1 Except where this lease specifically states that a notice need not be in writing, any notice given under or in connection with this lease shall be:

- (a) in writing and for the purposes of this clause an email is not in writing; and
- (b) given by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address (if the party is a company) or (in any other case) at the party's principal place of business or residence.

22.2 If a notice complies with the criteria in clause 22.1, whether or not this lease requires that notice to be in writing, it shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.

23. Rights of third parties

A person who is not a party to this lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease.

24. Governing law

This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The COMMON SEAL of
BUCKINGHAMSHIRE
COUNCIL

was hereunto affixed in
the
presence of:

Authorised Signatory

Executed as a **DEED** by
HIGH SPEED TWO
(HS2) LIMITED

by two of its attorneys
under a power of attorney
dated May 2018 (as
amended)

Signed



By executing this Deed the
attorney states that he/she has
received no notice that his/her
authority to do so has been
removed.

Print Name



Signed



By executing this Deed the attorney states that
he/she has received no notice that his/her
authority to do so has been removed.

Print Name



HS2 destroyed trees in way of train line without permission

This article is more than 2 years old

Contractors removed potential habitats for bats and butterflies in Buckingham nature reserve to prepare for rail line



Tree damage at the Calvert Jubilee nature reserve in Buckinghamshire. Photograph: BBO Wildlife Trust

Patrick Barkham

@patrick_barkham

Fri 10 Jan 2020 07.00 GMT

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Trees were felled and the potential habitats of rare bats and butterflies were destroyed on a nature reserve without permission to make way for **HS2**, the high-speed rail scheme has admitted.

Contractors sealed off public footpaths and removed trees inside Calvert Jubilee nature reserve, in Buckinghamshire, without notifying the landowner, the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT). Work which eradicated habitat where bats could roost was carried out in December, despite the government having ordered

that “irreversible” destruction of ancient woodland **should be halted unless deemed absolutely necessary** while HS2 is under review.

When the trust raised the alarm after volunteers working at the nature reserve spotted the work being done, an HS2 spokesperson initially insisted it had acted with “**the full permission of the landowner**”. But in a letter to the wildlife trust seen by the Guardian, HS2 subsequently admitted it did not have permission to undertake the work.



HS2 begins evicting activists from protest site after two years

It claimed it had mistakenly believed the site belonged to another landowner from whom it had permission, despite contractors entering the site past signs clearly identifying it as a BBOWT nature reserve.

Mark Vallance, reserves manager for BBOWT, said he was “livid”, and it was alarming that wildlife habitat could be destroyed by accident.

“It terrifies me that this sort of thing can happen so easily,” he said. “We’ve talked to HS2 numerous times about the impact on our nature reserves.

“If HS2 doesn’t go ahead – and we accept that’s a slim possibility – then there’s been a loss of really good bat habitat here.”

Dozens of limbs from old ash and willow were removed and several whole trees chopped down. Vallance said the destruction appeared to have deliberately targeted the best bat

habitats. The presence of live bats – which are protected by law – has the potential to stop HS2 construction work, set to begin later this year.

Following widespread local protests against the destruction of ancient woodland while the high-speed line is under review, the transport secretary, Grant Shapps, **ordered HS2 in September to “consider what works affecting ancient woodland clearances can be delayed** for the duration of the review”.

But “enabling works” to remove ancient hedgerows and trees before the main contracting works are continuing apace, with miles of hedges grubbed up in recent weeks close to the proposed line through Buckinghamshire, Northamptonshire and Warwickshire.

A leaked copy of the review into HS2’s spiralling costs by Douglas Oakervee revealed he is set to **endorse the project** but his **deputy, Lord Berkeley, this week** issued a “**minority report**” castigating the project for “seriously misleading” parliament, with the estimated final cost rising to £107bn.

Boris Johnson admitted costs were likely to rise above £100bn during the election campaign.



Activists demonstrating against the HS2 railway line in Denham, Buckinghamshire.

Photograph: Stephen Bell/Alamy Stock Photo

Of the environmental damage, Lord Berkeley – a rail expert who has worked for Eurotunnel, the Rail Freight Group and as a transport minister – said: “Compared to improving existing lines, HS2 is not good for the environment, and HS2 Ltd has exacerbated the situation by its

appalling treatment of stakeholders, residents, businesses and councils in the areas over which it plans to construct the lines.”

Advertisement

At Calvert Jubilee nature reserve, the high-speed line requires the removal of the eastern edge of the reserve, including orchid-rich grassland and scrub which until recently contained Buckinghamshire’s last remaining populations of nightingales and turtle doves, as well as all five species of hairstreak butterfly.

In a letter to BBOWT, David Bennett, the delivery director of HS2, apologised for undertaking work without permission and said it had incorporated feedback from the charity on the 75,000 trees it will plant this winter close to the nature reserve as compensation for the destruction.

Bennett said: “Over time these trees will connect areas of existing woodland ... and form new bat flight lines away from the HS2 route.”

According to BBOWT, HS2 has repeatedly refused to provide it with precise information about how much of the nature reserve will be removed. Other landowners along the line have reported a similar lack of clarity.

“Every metre counts,” said Vallance. “Even if the land taken was reduced by a couple of metres, it saves a chunk of nature reserve because the track goes through so much of the reserve. Once it’s gone, it’s gone. You can recreate habitat but it takes an awfully long time.”

Like other landowners, BBOWT has not yet been paid compensation for land already taken by HS2. Another landowner, who asked not to be named, said compensation was being withheld to minimise local dissent. “Some landowners feel bullied by HS2,” they said.

Another landowner close to Calvert Jubilee, Christopher Prideaux, whose farm is bisected by the line, described being surrounded by “all manner of chaos” with expensive and ill-planned “enabling works” including the construction of “newt ponds without any newts” on productive farmland.

“This a national crisis,” he said. “I don’t think Westminster will care about the environment. Westminster will care about billions of expenditure.

“HS2 are hoping to get so far down the track that it is too difficult to cancel. This is not true. In financial terms, the first loss is the cheapest loss. What has been spent so far is a fraction

of the overall sum. No government has got any right to be blundering ahead with this without a national transport policy.”

In his independent report, Lord Berkeley said HS2 was an “expensive” and “wrong” solution to improving the rail network and recommended spending half HS2’s budget on upgrading existing commuter lines, particularly in northern England and the Midlands.

Hibit 3

Thousands of HS2 newly planted trees died in drought

Published

21 May 2019



Image caption,

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

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

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

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

Campaign groups branded it an "environmental disaster."

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

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



IMAGE SOURCE,

GETTY IMAGES

Image caption,

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

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

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

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

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



IMAGE SOURCE,

HS2

Image caption,

HS2 bosses say the project will transform the UK economy

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

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

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

Phase one of HS2 is set to open in 2026.



27th July 2020

HS2's catalogue of errors like a runaway train

Dee Smith
Senior PR officer

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

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

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

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

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

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

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

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

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

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

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

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

Address: ECOLOGICAL MITIGATION SITE HARVIL ROAD HAREFIELD

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

LBH Ref Nos: 73195/APP/2017/3486

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

Drawing Nos:	Date of Amended Plans:
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Date Application Valid: 25th September 2017

1. SUMMARY

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

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

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

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

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

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

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

2. RECOMMENDATION

APPROVAL subject to conditions:

RECOMMENDATION NOTES

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

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

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

INFORMATIVES

1. IHS2 Informative HS2

Local Traffic Management Plan

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

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

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

2. IHS2 Informative HS2

Site Specific Planting

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

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

3. IHS2 Informative HS2

Site Wider Restoration and Mitigation

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

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

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

4. IHS2 Informative HS2

Archaeology

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

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

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

3. CONSIDERATIONS

3.1 Site and Locality

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

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

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

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

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

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

3.2 Proposed Scheme

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

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

Details of the proposed works are provided below:

> Earthworks totalling 680m², including:

- Creation of two mitigation ponds with a total surface area of 500m² and have a maximum depth of 1.5m. The ponds will be located within an area of neutral grassland in the southern portion of the site;
- One hibernaculum suitable for great crested newts, with a surface area of 30m² (6m long x 5m wide). The hibernaculum will be created using the spoil from the pond excavation mixed with hardcore, brick, rubble, logs etc. to create mounds. The hibernaculum will be located to the north-east of the ponds and located towards the south-east corner of the site, north-west of an area of woodland and woodland edge planting; and
- One reptile bank suitable for basking reptiles, with a surface area of 150m² (20m long x 7.5m wide) will be created within the southwest corner of the site, to the west of the proposed mitigation ponds. The reptile basking bank has been orientated to provide a southern face;
- A swale adjacent to the larger pond

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

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

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

3.3 Relevant Planning History

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

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

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

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

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

4. ADVERTISEMENT AND SITE NOTICE

4.1 Advertisement Expiry Date: Not Applicable

4.2 Site Notice Expiry Date: Not Applicable

5.0 PLANNING POLICES AND STANDARDS

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

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

Part 1 Policies:

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

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

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

(2012) Flood Risk Management

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

(2012) Biodiversity and Geological Conservation

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

(2012) Land, Water, Air and Noise

Part 2 Policies:

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

Consideration of traffic generated by proposed developments.

2. **BE38 Landscaping**

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

3. **OL1 OPEN LAND AND COUNTRYSIDE**

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

4. **OL2 OPEN LAND AND COUNTRYSIDE**

Green Belt -landscaping improvements

5. **OL5 OPEN LAND AND COUNTRYSIDE**

Development proposals adjacent to the Green Belt

6. **OL26 OPEN LAND AND COUNTRYSIDE**

Protection and enhancement of trees, woodland and landscape features

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

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

8. **EC2 ECOLOGY AND NATURE CONSERVATION**

Nature conservation considerations and ecological assessments

9. **EC3 ECOLOGY AND NATURE CONSERVATION**

Potential effects of development on sites of nature conservation importance

10. **EC4 ECOLOGY AND NATURE CONSERVATION**

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

11. **EC5 ECOLOGY AND NATURE CONSERVATION**

Retention of ecological features and creation of new habitats

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

(2016) Flood risk management

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

(2016) Green Belt

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

(2016) Biodiversity and access to nature

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

(2016) Trees and woodlands

16. **NPPF National Planning Policy Framework**

National Planning Policy Framework

6.0 COMMENTS ON PUBLIC CONSULTATION

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

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

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

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

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

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

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

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

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

The objections refer to the site being 1.6 hectares, however, it is purely the earthworks that the Council can comment on. The two ponds total 500m² and are accompanied by a hibernacula at 6x5m and a reptile basking area at 20x7.5m. The physical works are therefore relatively small. In addition, there will be no trees cleared as a consequence of the proposals.

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

NATURAL ENGLAND

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

Schedule 17 for HS2

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

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

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

Natural England offers the following additional advice:

Landscape

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

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

Best and most versatile agricultural land and soils

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

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

Protected Species

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

Local sites and priority habitats and species

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

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

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

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

Ancient woodland and veteran trees

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

Environmental enhancement

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

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

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

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

Access and Recreation

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

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

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

Biodiversity duty

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

HERTS AND MIDDLESEX WILDLIFE TRUST

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

(Officer Note: The proposed planting schedule is provided on Drawing No.1EW03-AEC-PL-DGA-CS01_013200 Rev P05. It should be noted however that the mitigation planting does not require approval under this application and does not therefore form part of this request for approval).

6.2 HIGHWAY ENGINEER

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

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

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

FLOOD AND DRAINAGE OFFICER

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

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

TREE AND LANDSCAPE OFFICER

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

COMMENT: No trees or landscape features of merit will be affected by the proposal. The design objective is to contribute to the wider package of habitat creation to ensure that there is no net loss of biodiversity, caused by HS2. HS2's dwg No. 1EW03-AEC-PL-DGA-CS01_01300 Rev P04 and 013200 Rev P05 indicate the construction of two ponds with a total surface area of 500m², a hibernacula (suitable for greater crested newts), a reptile basking bank, a swale, a new fence on the north, south and east boundaries and a new hedgerow along the southern boundary.

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

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

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

Notes:

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

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

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

7.1 THE PRINCIPLE OF THE DEVELOPMENT

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

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

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

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

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

EARTHWORKS

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

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

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

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

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

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

ECOLOGY

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

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

Ponds

The two new ponds will total a maximum of 500m² in surface area and have a maximum depth of 1.5m. The ponds will be located within an area of neutral grassland in the southern portion of the site.

Reptile Basking Bank

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

Hibernacula

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

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

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

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

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

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

LANDSCAPING

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

Boundary Treatment

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

Habitat creation planting

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

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

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

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

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

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

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

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

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

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

HIGHWAY IMPLICATIONS

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

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

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

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

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

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

8.0 BOROUGH SOLICITOR COMMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

9.0 OTHER ISSUES

FLOODING AND DRAINAGE

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

The two new ponds will total a maximum of 500m² in surface area and have a minimum depth of 1.5m. The ponds will be designed to permanently hold some water to provide a wetland habitat all year round, although there will be 'drawdown' of water in the summer months. The use of a geosynthetic liner may be required if determined to be necessary for the ponds, to provide standing water for the entire year. This will be confirmed following further survey of ground conditions, which will include a trial pit or auger survey to determine the drainage characteristics of the soil.

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

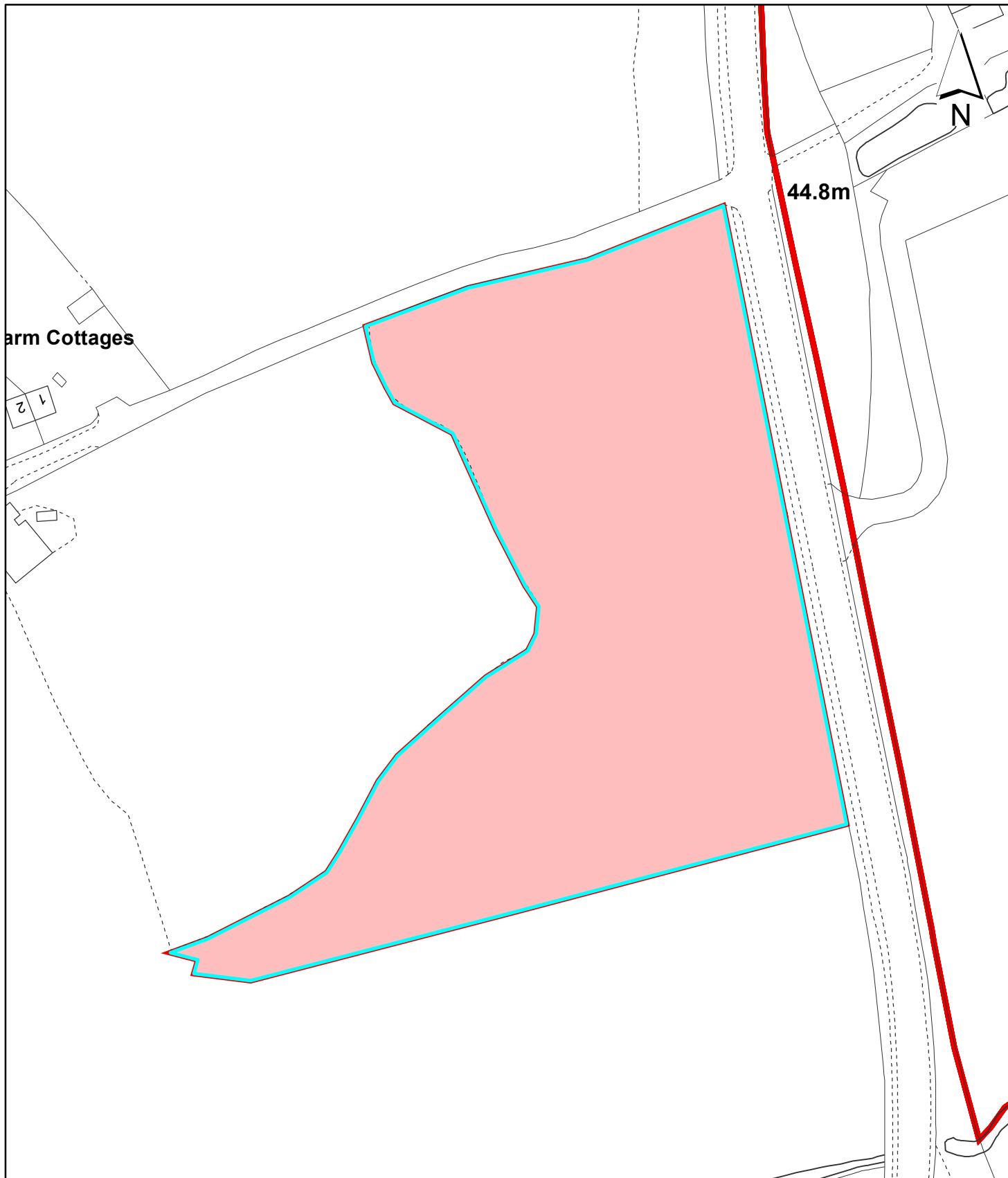
to be implemented, the post and rail and post and wire fencing should not create a flood risk problem, as these are permeable to water. Therefore there are no objections on flood and drainage grounds.

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

10.0 REFERENCE DOCUMENTS

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

Contact Officer:	Karl Dafe	Telephone No:	01895 250230
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Notes



Site boundary

For identification purposes only.

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Site Address

**Ecological Mitigation Site
Harvil Road**

Planning Application Ref:

73195/APP/2017/3486

Planning Committee

HS2 Application

Scale

1:1,250

Date

**November
2017**

**LONDON BOROUGH
OF HILLINGDON**

Residents Services

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



HILLINGDON

D1604

Hillingdon Council wins HS2 planning case in Court of Appeal

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



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

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

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

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

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

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

Soprano Pipistrelle Bats - photos taken under strict licence

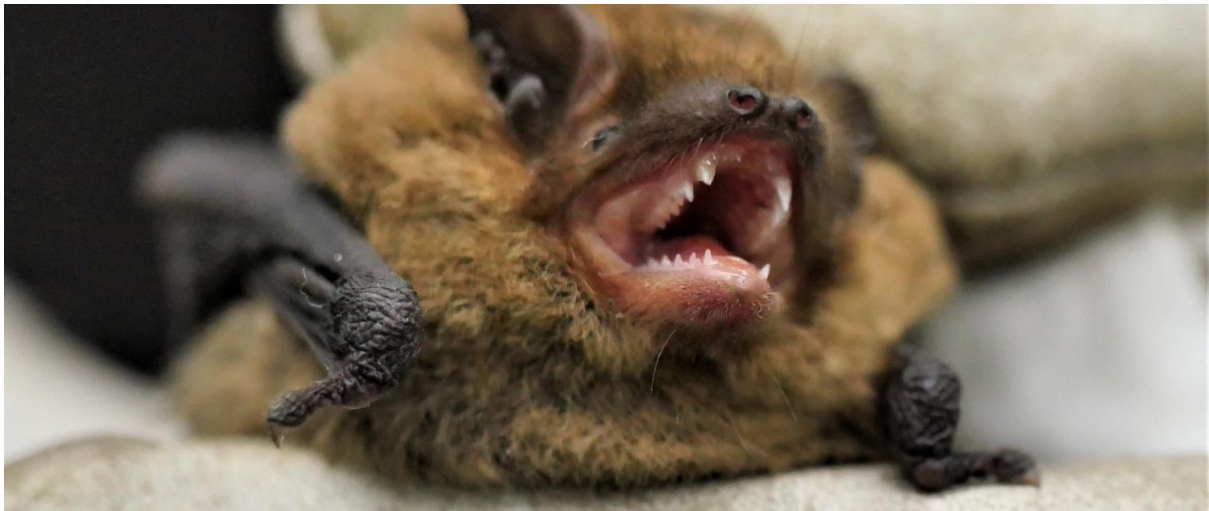
Watching bats in the Colne Valley

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



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

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



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

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

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

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

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

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

What has Colne Valley been doing for the Bats?

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

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



OVERVIEW

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

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

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

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

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

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

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

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

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

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

In determining suitable mitigation, users must consider the level of impact in comparison to the overall woodland resource available within the core sustenance zone¹ for the species involved. The favourable conservation status of bats within the area covered by the licence must remain favourable post works and the mitigation and compensation measures must ensure that the habitat retains, or

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

improves, its ecological functionality.

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

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

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

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

LEGISLATION

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

LICENCE TERMS AND CONDITIONS

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

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

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

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

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

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

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

LICENCE CONDITIONS

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

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

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

Survey and Assessment Requirements

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

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

Working under the licence

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

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

Dealing with bats discovered during pre-work assessments or unexpectedly

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

Use with other Licences

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

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

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

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

Mitigation and Compensation (also see relevant Annexes)

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

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

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

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

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

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

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

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

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

Monitoring and reporting requirements

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

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

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

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

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

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

Licence compliance

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

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

42. Registered Consultants must inform Natural England:

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

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

IMPORTANT

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

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

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

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

This licence does not derogate against offences for other species.

INFORMATION AND ADVICE specific to this licence

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

Training and experience requirements

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

Guidance on surveying and best practice

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

General Welfare Considerations

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

INFORMATION AND ADVICE for all Class and General Licences

General Information

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

The limits of licences

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

Protected sites

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

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

Using and Sharing Your Information

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

Contact Details for Natural England

For licensing enquiries

Telephone 0208 026 1089

Email HS2wildlifelicensing@naturalengland.org.uk

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

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

For other enquiries use the Enquiry Service:

Telephone 0300 060 3900

Email enquiries@naturalengland.org.uk

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

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

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

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

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

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

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

Important:

To minimise the risks of disturbing bats:

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

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

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

A - Dealing with the bat or bats found

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

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

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

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

Ruling of DJ Pilling on aggravated trespass – 7 March 2022

All four Defendants appeared for trial in February, each charged with aggravated trespass.

The case against each is that he or she trespassed and then obstructed/disrupted lawful activity on that or adjoining land belonging to HS2.

On 24 July contractors had attended Denham Country Park to fell an Alder tree to allow for an overhead power line to be fitted. Protesters had attached cables to the Alder tree and another in the protest camp. Each Defendant was said to have obstructed/disrupted the works by attaching themselves to the line or by standing on line or by pulling climbers ropes.

Their case is that the stripping of tree was likely to have involved wildlife crimes - WCA 1981 or European Conservation of Habitats and Species Regs 2017.

I heard evidence from all witnesses including expert evidence from William Horlock for the prosecution and Robert Milto for the defence.

I have taken all the evidence into account. I was referred to events that took place on 23/7 when a similar protest had taken place and a protester had fallen a similar distance. It was clear that emotions were running high on 24/7. The prosecution has the burden of proving the case to high standard. I must not be swayed by any personal views as to the way in which works was conducted or way in which the Defendants chose to demonstrate their opposition.

The prosecution must prove that each D was trespassing, that there were persons engaged in lawful activity and that the Defendants did something intending to obstruct/disrupt that activity.

The Defendant relied on s.3 Criminal Law Act 1967 as a defence.

There was no dispute that by attaching herself to the cable, Ms Smithson was trespassing

The others each knew that the protest camp had been set up without permission.

I am not satisfied that a bare licence had arisen due to the failure on part of the golf club to take expensive legal proceedings to evict the Defendants.

I am certain Mr Roblyn knew camp that the camp was set up on golf club land without permission and found his denials disingenuous.

I am sure that Mr Winterton knew the camp was set up without permission and knew that he was trespassing – my suspicion is that he was there to swell numbers and to seek retribution for what had happened before.

I am satisfied that Wiktoria Zienuik was in the camp and on the wire as a trespasser and only able to remember facts when convenient to her.

The issue of lawful activity has been fairly raised by the Defence. Ms Smithson can be heard asking about nests and ivy on the body worn footage.

The Prosecution must prove that the activity was lawful. This has required me to consider in some depth evidence of the ecologists. Mr Horlock was clear that the work was not covered by the bat licence.

I was not impressed by the lack of detail from Mr Horlock. He could not recall if contractors were there before him or crucially when they had commenced work. I saw video evidence showing that work had commenced when Ms Smithson asked about the whereabouts of the ecologist.

Also concerned about:

- His lack of knowledge about bats or bat roosts
- The lack of detail in diary – this has resulted in uncertainty over what surveys were carried out and when

Therefore I cannot be sure that he took necessary steps to ensure that the works were carried out lawfully.

I have therefore concluded that the felling may have resulted in wildlife crimes being committed in particular in relation to paragraph 43(1)(d) of the Regulations which is a strict liability offence.

I am not sure that any offence would have been committed but there was a real risk.

As a result I cannot be sure that the said activity was lawful and I must acquit each Defendant of aggravated trespass.

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HS2 announces new landmark as 700,000 trees planted and over 100 new habitats thriving on Phase One of the project: Cubbington Wood, Warwickshire

HS2 announces new landmark as 700,000 trees planted and over 100 new habitats thriving on Phase One of the project

Published on
05 Jul 2021

- **700,000 trees have been planted of the 7 million planned across the Phase One route.**
- **118 environmental sites now home to a range of species including amphibians, dragonflies, otters, great crested newts, reptiles and badgers.**
- **HS2's Woodland Fund has allocated over £1.2m as part of a grant scheme managed by the Forestry Commission, with another 213,000 trees planted.**
- **New photos available here:**
<https://mediacentre.hs2.org.uk/resources/f/environment-wider-ecological-work-and-how-we-are-reducing-our-carbon-usage/tree-planting-2>

As part of its extensive environmental programme, HS2 has today [Monday 5 July] announced that its contractors have now planted 700,000 trees and created over 100 wildlife sites along the route between the West Midlands and London. The wildlife sites represent a mix of different habitat types, including grassland, woodland, scrub and ponds, and are already havens for wildlife including birds, bats, barn owls, badgers, great crested newts, butterflies and dragonflies.

HS2 Ltd and its environmental contractors have designed tailored ecology plans that provide habitats for local wildlife and protected species including new badger setts, bat houses, bird boxes, reptile banks and bug houses, along with wildflower seeding, aquatic habitat creation and the reintroduction of native flora to help local wildlife populations thrive.

Up to 7 million trees will eventually be planted alongside the line from the West Midlands to London and HS2 will leave behind more than 33 square kilometres of new woodland, wildlife and river habitats - the equivalent of 23 new Hyde Parks lining the spine of the country.

In addition, HS2's Woodland Fund has also allocated over £1.2m as part of a grant scheme managed by the Forestry Commission., with 213,000 trees already planted including 92 hectares of new woodland creation and 52 hectares of ancient woodland restoration. For example, a project at Avon Wood in Warwickshire has created a diverse new 11-hectare woodland within three miles of the new railway. More than 18,000 new trees have been planted there, with 30% of the woodland being oak, with the rest mainly made up of hornbeam, alder, beech, lime, holly and birch.

HS2 continues to progress with potential new schemes to be supported through the Woodland Fund, which could eventually support an additional 440 hectares of new native woodland creation as well as the restoration of 245 hectares of existing ancient woodland sites.

Mark Bailey, HS2's Head of Natural Environment said:

"HS2's Green Corridor is the largest single environmental project in the UK and these figures for tree planting and habitat creation demonstrate fantastic progress so far.

"We aim to leave behind habitats that can sustain healthy populations of UK flora and fauna, creating a network of bigger, better-connected, climate resilient habitats and new green spaces for people to enjoy.

"These new sites across Phase One show how the project is already improving landscapes around the new railway, ensuring HS2 protects the UK's precious biodiversity."

Richard Greenhous, Director of Forest Services, Forestry Commission said:

“As administrators of the HS2 Woodland Fund, we recognise and welcome the opportunities the HS2 Green Corridor brings to people, places and nature along its route. The activity supported by the Fund supports the reversal of habitat fragmentation, by creating native and extending ancient woodlands, and we will continue to work with HS2 and our Defra colleagues to ensure that the inevitable adverse impacts of the scheme will be more than counteracted by the legacy it creates. We therefore welcome these tree planting and habitat creation achievements as just the start of HS2 Ltd and landowners delivering this ambition.”

Every habitat site is designed specifically to support local biodiversity, to link up existing wildlife habitats and create ecological networks which help to protect, maintain and enhance biodiversity and allow species to move through the landscape.

Five examples of new habitats sites:

- In Warwickshire, Finham Brook was previously a short-grazed field with no flowers and very few invertebrates. Since 2018, HS2's contractor Keystone Environmental has planted over 6,000 trees, created four new ponds and a new 35 metre reptile basking bank. The ponds are already being used by great crested newts, skylarks, barn owls, badgers, and dragonflies and butterflies in the summer months.
- Also in Warwickshire, near Stoneleigh Park, a 'training pond' for otters has been created so pups can safely learn anti-predator behaviour and foraging and hunting skills, before they take to the nearby River Avon. Artificial burrows and perches have also been established for kingfishers, while a bat house offers a mix of roosting sites to different species. Ecologists imagined it could be two years before it was occupied, but bats moved in within weeks.
- At South Cubbington Wood in Warwickshire, environmental contractor Five Rivers Environmental Contracting have planted 60,000 trees, along with species-rich grasslands. They have created

seven new ponds designed for newts to breed in, as well as attracting other wildlife such as frogs, swallows, swifts and badgers. Like many of HS2's new habitat sites, Cubbington has public rights of way, so local people are able to enjoy the habitats that have been created.

- At Bernwood in Buckinghamshire, an ecologically and historically valuable area includes a network of ancient woodlands that are home to a range of wildlife, including rare and important species like Bechstein's Bat and the Black Hairstreak butterfly. HS2's extensive tree planting here has linked existing woodlands to create new bat flight lines away from the railway corridor, and several green bridges will maintain connectivity across the railway and between habitats.
- In the Colne Valley, HS2 has revealed ambitious plans to create one of the largest areas of chalk grassland on the edge of the Chilterns in the Colne Valley. The site will receive a continuous supply of chalk from the nearby tunnelling underneath the Chilterns Hills until 2024, helping to establish over 127 hectares of new chalk grassland, woodland, wood pasture and wetland habitats. Field trials are currently in preparation ahead of final seeding, and planting of trees and shrubs in 2025.

ENDS

Jones' Hill Timeline

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

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

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

.....

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



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

CO/1327/2021

In the matter of an application for Judicial Review

THE QUEEN

on the application of

MARK KEIR

Claimant

versus

NATURAL ENGLAND

Defendant

(1) FUSION AND MURPHY JOINT VENTURE

(2) HIGH SPEED TWO (HS2) LIMITED

Interested Parties

Application for permission to apply for Judicial Review and interim relief

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

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

Order by the Honourable Mrs Justice Lang DBE

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

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

Case management directions

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

Listing Directions

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

Case NOT suitable for hearing by a Deputy High Court Judge

☐

Observations

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

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

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

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

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

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

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

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

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

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

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

Signed:



Dated: 16.4.21

Amended on 16.4.21



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

For completion by the Planning Court

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

Solicitors: Richard Buxton Solicitors
Ref No. KEI1/1



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

Case No: CO/1327/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2021

Before :

THE HON. MR JUSTICE HOLGATE

Between :

The Queen on the application of MARK KEIR

Claimant

- and -

NATURAL ENGLAND

Defendant

-and-

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

**Interested
Parties**

(2) HIGH SPEED TWO (HS2) LTD

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

Hearing date: 23rd April 2021

Approved Judgment

Mr Justice Holgate :

Introduction

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

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

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

The proceedings in the High Court

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

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

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

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

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

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

Statutory framework and legal principles

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

“(1) A person who—

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

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

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

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

is guilty of an offence.

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

(a) to impair their ability—

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

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

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

(2) The purposes are—

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

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

(f); (g)

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

.....

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

(a) that there is no satisfactory alternative; and

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

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

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

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

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

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

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

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

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

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

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

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

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

The context for the decision being challenged

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

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

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

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

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

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

A summary of the grounds of challenge

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

Ground 1

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

Ground 2

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

Ground 3

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

Ground 4

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

Ground 5

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

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

Ground 1

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

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

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

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

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

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

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

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

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

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

Ground 2

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

Bat Mitigation Guidelines

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

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

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

Policy LP4

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

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

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

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

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

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

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

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

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

84. Paragraph 5.1 states:-

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

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

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

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

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

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

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

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

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

Ground 4

98. Mr. Streeten relies upon the principle established in planning law that where a decision is taken which is materially inconsistent with a previous decision, it must ordinarily give reasons for disagreeing with that decision (*North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137). NE submitted that this principle does not apply to decision-making under regulation 55. I will assume that it does.

99. The alleged inconsistencies relied upon are set out in paragraph 57 of the claimant's skeleton, comparing the Method Statement Assessment: Additional Notes with the decision letter dated 3 February 2021. In summary the points are:-

(i) NE no longer maintained that for a rare species of bat, such as the barbastelle, advanced level survey techniques would be required, in addition to standard surveys, to inform how the colony used the license site and the wider landscape and to assess the importance of the site for the continued viability of the colony and the impact of the works on future breeding success;

(ii) In relation to the predicted scale of impact of the felling, NE changed its position from treating the conservation status of a barbastelle maternity roost from regional to local;

(iii) NE ceased to be concerned about the adequacy of the proposed arrangements for monitoring the success of the compensation measures given the lack of sufficient baseline data.

100. It should be remembered that the decision dated 3 February 2021 was not a final decision, as, for example, where planning permission has previously been granted or refused for a particular type of development on a site. Here, NE's earlier decision did not rule out in principle the grant of the licence sought. Instead, it indicated a number of areas where further information, explanation, clarification or proposals were judged to be necessary.

101. Dealing with the claimant's point (i), it is to be noted that the decision letter of 3 February 2021 stated that advanced level surveys would *normally* be required. The letter did not in fact lay down any such requirement in this case. The immediately preceding sentence sought clarification. In fact the interaction between NE and IP1 is

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

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

Ground 5

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

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

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

Interim injunction

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

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

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

Conclusion

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