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# Appeal Decision

Site visits made on 27 February and 7 March 2023

**by Grahame Gould BA MPhil MRTPI**

**an Inspector appointed by the Secretaries of State for Transport and for Levelling Up, Housing and Communities**

**Decision date: 27 November 2023**

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**Appeal Ref: APP/HS2/22**

**Site extending from the northwest of Leather Lane to the west of Jone's Hill Wood between the settlements of South Heath and Wendover Dean, Buckinghamshire**

- The appeal is made under paragraph 22 of Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act)<sup>1</sup>.
- The appeal is made by High Speed Two Limited (HS2L) against the decision of Buckinghamshire Council (the Council) to refuse the plans and specifications for the proposed Bowood Lane overbridge and to approve, subject to the imposition of conditions, the plans and specifications for: the Footpath TLE/2 Accommodation Overbridge; the Cottage Farm Accommodation Overbridge; the South Heath Cutting (part of); the Bowood Lane Drop Inlet Culvert; a drainage pond; drainage ditches; earthworks associated with the realignment of Bowood Lane (WEN/37/1) and maintenance access track; earthworks associated with the realigned Cottage Farm access track; earthworks associated with the realigned TLE/2 Footpath; location of the vehicle restraint barriers; and location of the permanent (security) fencing.
- The application, reference 22/01330/HS2, was dated 8 April 2022, and the decision made by the Council is dated 22 July 2022.
- The conditions in dispute are Nos 1 to 7 inclusive and those conditions and the reasons for their imposition are listed in Appendix 1 below.

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## Decision

1. Under paragraph 22 of Schedule 17 of the Act the appeal relating to the plans and specifications application for: the Bowood Lane overbridge; the Footpath TLE/2 Accommodation Overbridge; the Cottage Farm Accommodation Overbridge; the South Heath Cutting (part of); the Bowood Lane Drop Inlet Culvert; a drainage pond; drainage ditches; earthworks associated with the realignment of Bowood Lane (WEN/37/1) and maintenance access track; earthworks associated with the realigned Cottage Farm access track; earthworks associated with the realigned TLE/2 Footpath; location of the vehicle restraint barriers; and location of the permanent (security) fencing, reference 22/01330/HS2, dated 8 April 2022, is allowed in the following terms:
  - A. Approval is given to the plans and specifications for the Bowood Lane overbridge, Bowood Lane realignment earthworks and associated vehicle

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2017/7/schedule/17>

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restraint barriers and fencing locations with the approved plans listed in the decision notice issued by Buckinghamshire Council on 22 July 2022 being varied, as follows:

- a) Plans 1MC06-CEK-TP-DGA-CS03\_CL05- 000020 Rev C02 (General Arrangements) and 1MC06-CEK-TP-DPL-CS03\_CL05-000083 Rev C02 (proposed landform) are deleted.
  - b) The plans listed in item Aa) are replaced with plans:  
1MC06-CEK-TP-DGA-CS03\_CL05- 000020 Rev C04 (General Arrangements) and 1MC06-CEK-TP-DPL-CS03\_CL05-000083 Rev C03 (proposed landform).
  - c) The addition of the following plans:
    - 1MC06-CEK-TP-DPL-CS03\_CL05-000095 Rev C04 (Bowood Lane Overbridge Plan on Deck)
    - 1MC06-CEK-TP- DDE-CS03\_CL05-000026 Rev C04 (Bowood Lane Overbridge Cross Section and Parapet Derails); and
    - 1MC06-CEK-TP- DSE-CS03\_CL05-000054 (Bowood Lane Overbridge Longitudinal Section and Elevation).
- B. The variation of the approval previously given for: the Footpath TLE/2 Accommodation Overbridge; the Cottage Farm Accommodation Overbridge; the South Heath Cutting (part of); the Bowood Lane Drop Inlet Culvert; a drainage pond; drainage ditches; earthworks associated with the realigned Cottage Farm access track; earthworks associated with the realigned TLE/2 Footpath; location of the vehicle restraint barriers; and location of the permanent (security) fencing, by:
- a) The deletion of conditions 1 to 7 (inclusive); and
  - b) The addition of the following documents to the approved plans listed in the decision notice issued by Buckinghamshire Council on 22 July 2022:
    - 1EW03-FUS-EV-FRM-CS03\_CL05-000021 Rev C02 (Archaeological Form A for area C21052P); and
    - 1EW03-FUS-EV-FRM-CS03\_CL05-000022 Rev C01 (Archaeological Form A for area C21054P).

## **Procedural Matters, Relevant Legislation and Guidance**

2. In summary the appealed application sought approval for the plans and specifications for:
  - the Bowood Lane overbridge (BLo);
  - the footpath TLE/2 accommodation overbridge;
  - the Cottage Farm accommodation overbridge;
  - various earthworks, including some relating to the formation of the railway cutting and the realignment of Bowood Lane (BL);

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- drainage works (a pond, ditches and a culvert); and
  - the locations for vehicle restraint barriers (VRB) and permanent security fencing.
3. The above listed works form part of or the entirety of Scheduled Works numbers 2/14, 2/21, 2/22 and 2/23 and they benefit from the deemed planning permission granted under section 20 of the Act.
  4. The three proposed bridges constitute "*building works*" and their design and external appearance are for consideration under the provisions of paragraph 2 of Schedule 17 (Sch17) of the Act. Consideration of the earthworks, VRB and fencing represent "*other construction works*" and fall to be considered under the provisions of paragraph 3 of Sch17 of the Act.
  5. Paragraphs 2 (sub-paragraphs 5 and 7) and 3 (sub-paragraphs 6 and 7) state the grounds on which requests for the approval of details may be refused or the grounds for imposing conditions on any approvals. It is clear from the cases made by the appellant and the Council that they are each well versed with the specifics of the wording of paragraphs 2 and 3 of Sch17, albeit there is some disagreement about how that legislation should be applied.
  6. I therefore consider it unnecessary for me to recite in full the express grounds for either refusing requests for approval or imposing conditions on approvals as stated in paragraphs 2 and 3 of Sch17. Instead in my reasoning below I have drawn attention to the specific wording of the legislation as necessary. That said, I find it necessary to record that compliance/non-compliance with national planning policy and guidance and/or locally adopted development plan policies<sup>2</sup> of itself is not determinative when considering applications or any subsequent appeals submitted pursuant to Sch17. That is because the grounds for either refusing requests for the approval of plans and specifications or imposing conditions stated in paragraphs 2 and 3 of Sch17 do not refer to compliance or otherwise with planning policies. Given that, while the Council has made extensive references to development plan policies, I have not referred to them in my reasoning below.
  7. In determining this appeal, I have had regard to High Speed Rail (London-West Midlands) Act 2017 Schedule 17 Statutory Guidance of 20 November 2023 (the SG) and the Court of Appeal's 'Hillingdon 1' judgment<sup>3</sup>. The November 2023 version of the SG replaces the version published in May 2021, which itself was a revision to the originally published guidance. Having read both versions of the SG, I consider that the revisions that have been made do not have significant implications for the way I should approach the determination of this appeal. Accordingly, I consider it to have been unnecessary for me to seek the parties' views about the recent revisions that have been made to the SG. The SG, amongst other things, advises that the controls available under Sch17 should not be used to modify or replicate controls available under other parts of the Act, for example Sch4 (Highways) or Sch33 (Protective Provisions).
  8. Importantly, paragraph 35<sup>4</sup> of the SG states:

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<sup>2</sup> Arising from the operation of the Town and Country Planning Act 1990 (as amended)

<sup>3</sup> R. (on the application of London Borough of Hillingdon Council) v Secretary of State for Transport, Secretary of State for Housing, Communities and Local Government & High Speed Two (HS2) Limited [2020] EWCA Civ 1005

<sup>4</sup> Previously paragraph 32

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*"The purpose of Schedule 17 is not therefore to eliminate all prejudicial impacts on or to secure the complete preservation of, any sites within the various categories identified in the schedule (for example, the prevention or reduction of prejudicial effects on traffic safety and flow, the preservation of local environment, amenity or historic/natural sites). On the contrary, the operation of Schedule 17 is such that there will be cases where a submission must be approved notwithstanding an identified negative impact unless there are modifications that are reasonably capable of being made.."*

9. The Hillingdon 1 judgment clarified that for the purposes of the determination of requests for approval under Sch17 decision makers should avoid withholding consent in instances when the submission of additional information by the appellant would enable a request for approval to be considered and potentially granted. With that in mind, I have put two rounds of written questions to the appellant and the Council for reply<sup>5</sup>. Further to the asking of those rounds of questions there has also been some need to ask supplemental or clarifying questions. Further to the replies given to my written questions opposing party responses, in some instances, have been submitted by either the Council or the appellant and I have regard to those additional submissions.
10. In response to some of my written questions the appellant has made what I consider to be minor revisions to the design for its earthworks and VRB proposals for BL, as shown on the revision C04 version of the "*general arrangements*" and the revision C03 version of the "*proposed landform*" plans<sup>6</sup>. I have therefore determined this appeal on the basis of the revisions shown on those previously mentioned plans.
11. Further to my asking of IQ2.2 (provision of traffic calming in BL) and IQ2.3 (provision of laybys on either side of the BLo) and the asking of further clarifying questions on 13 July 2023, the appellant submitted a certified copy of an executed unilateral undertaking pursuant to section 106 of the Town and Country Planning Act 1990 (the UU). The UU having been entered into by the Secretary of State for Transport (SoST) and the appellant. I have had regard to the UU and refer to it in more detail in my reasoning below.
12. In relation to the request to have imposed condition 1 (in-situ preservation of buried archaeology) deleted, the appellant has submitted copies of two area specific documents, Form A for area C21052P and Form A for area C21054P (the Form A(s)). Those documents describe measures for the in-situ preservation of buried archaeology and I have had regard to their content in considering whether or not condition 1 is necessary. The need for condition 1's imposition is a matter that I consider in more detail in my reasoning below.
13. The Council in its statement of case has advised that the appellant is intending to change the parapet design for the two accommodation overbridges. Accordingly, the Council has stated that it "*... does not wish to contest the appeal against Conditions 3 and 6 of the Council's decision ...*" and "*... has withdrawn two conditions relating to the parapet detail (Condition 3*

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<sup>5</sup> First round: IQ1.1; IQ1.2 etc and second round: IQ2.1; IQ2.2 etc

<sup>6</sup> Respectively drawings 1MC06-CEK-TP-DGA-CS03\_CL05-000020 Revision C04 and 1MC06-CEK-TP-DPL-CS03\_CL05-000083 Revision C03

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*and Condition 6)*<sup>7</sup>. It is not open to the Council to withdraw conditions 3 and 6 unilaterally following their imposition by it. That said, it is clear that the Council is not opposed to conditions 3 and 6 being deleted and given that I see no reason to take a contrary view. It is therefore appropriate for the appeal, insofar as it concerns conditions 3 and 6, to be allowed without me providing further reasoning for that. Accordingly in determining this appeal I have deleted conditions 3 and 6 in my formal decision above.

14. The Council in submitting its appeal case duplicated a number of the documents that accompanied the appellant's originally submitted appeal. To make it easier to identify the documents originally submitted by the appellant and the Council and cross refer to them as necessary, the Council, at my request, has compiled a document list with a unified numbering system. Below where I have referred to any document included in the Council's document list, I have used the number allocated to it in that list, 1.1, 2.2, 3.3 etc, and added the prefix 'AD' to signify it is an appeal document.
15. I undertook an unaccompanied site visit on 27 February 2023. During the course of my site visit to the appeal site it was evident that the construction of the BLo's piers had been commenced. The appellant in its appeal evidence has drawn attention to a High Speed 1 overbridge at Runham Lane, near Harrietsham in Kent. I visited the Runham Lane overbridge on 7 March 2023.

## **Main Issues**

16. The main issues with respect to the BLo and the associated earthworks and fencing works in BL are whether the design or external appearance of the proposed works ought to, and could reasonably be, modified to: preserve the area's local environment and historic interest; and prevent or reduce prejudicial effects on road safety.
17. The main issue with respect to conditions 1, 2, 4, 5 and 7 are whether the imposition of each of those conditions meets the grounds for imposing conditions under the provisions of either paragraph 2(7) or paragraph 3(7) of Schedule 17 of the Act.

## **Reasons**

### ***The Bowood Lane overbridge and works associated with the realignment of Bowood Lane***

#### **Background and proposed works**

18. BL is a winding, single track, macadam surfaced, bi-directional road with occasional informal passing places, around 1.9 kilometres in length and ranging between 2.5 and 3.5 metres in width<sup>8</sup>. BL is essentially an east/west route between the A413 (London Road/Aylesbury Road) and King's Lane and it is open to all types of motorised and non-motorised users (NMU). BL provides direct access to a very small number of dwellings and some farm premises, all of which are located towards the western end of this road. To the east of those dwellings and premises BL slopes gently upwards from west to east and much of its eastern half is lined by hedgerows on both sides. BL is unquestionably a narrow rural road.

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<sup>7</sup> Respectively paragraphs 1.8 and 5.1.4 of AD1.4

<sup>8</sup> Section 2 of the highway evidence of Mr Black (AD9.3)

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19. The carriageway of BL for much of its eastern half sits below the ground level of the immediately adjoining open farmland. Given those characteristics the Council has identified BL as being a "holloway", a narrow, sunken rural lane type that is characteristic of this part of the Chilterns Area of Outstanding Natural Beauty (the AONB).
  20. Prior to the asking of any of my written questions the appellant and the Council were in agreement that forecasted average annual daily traffic flow (AADT) for BL was in the range of 15 and 20 vehicles. However, in replying to IQ1.1 the Council has referred to automated counts being undertaken in 2000, when the average flow was of the order of 61 vehicles, two-way, per day (around 30 vehicles eastbound and 30 westbound). Whether the daily number of vehicle movements would be up to 20 or 61, the volume of vehicles that have used or are expected to use BL is/would be very low. I consider that is unsurprising, given: the narrowness of BL and its winding nature; the small number of properties directly accessed via BL; and the fact that BL does not form part of an obvious route between the larger settlements in the area.
  21. Although BL is a derestricted road subject to a speed limit of 60mph (96kph), the appellant and the Council are agreed that the recorded average speed is of the order of 18mph (29kph). That low recorded average speed is consistent with the narrowness, sinuous nature of sections of BL and the limited number of passing spaces. The volume and the speed of vehicles using BL are factors which I consider are relevant to both the consideration of the design and appearance of the proposed works affecting BL, including the BLo, and road safety and I consider those factors further in my reasoning below.
  22. The proposed BLo would be a concrete structure spanning a cutting ranging in depth between 10 and 15 metres and its deck would be around 70 metres long and 8.5 metres wide. The BLo's deck would accommodate a 5.5 metre wide carriageway, with a 1.5 metre wide verge on either side of the carriageway. While the carriageway would be 5.5 metres wide, the appellant is proposing that it would be demarcated with white painted lines so that there would be a single 3.5 metre running lane, with 1.0 metre wide over run strips between the running lane and the verges. The appellant has submitted that would allow sufficient room for vehicles crossing the BLo in opposing directions to pass one another safely should that eventuality arise.
  23. The appellant and the Council are agreed that that there are no national highway design standards applicable to rural roads in general, and specifically for rural rail overbridges. However, the United Kingdom's only operational high speed railway line, High Speed 1 (HS1)<sup>9</sup>, has been built with a number of vehicular overbridges in rural locations. The experience of designing and use of HS1's rural bridges, including the demarcation of 3.5 metre wide running lanes within 5.5 metre wide carriageways, for example as at Runham Lane, has been used to devise design criteria to be applied to High Speed 2's (HS2) single track road bridges<sup>10</sup> [AD8.13].
  24. Under the provisions of paragraph 6 of part 1 of Sch33 (highways and traffic Protective Provisions) prior to constructing a new highway bridge the appellant is required to seek approval for its design from the relevant highway

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<sup>9</sup> Previously known as the Channel Tunnel Rail Link

<sup>10</sup> Appendix C – HS2 rural road design criteria of the "Technical Standards – Roads", High Speed 2 Limited 2015



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authority. In response to IQ1.9 the appellant has advised that it applied for an approval for the BLo's design under Sch33 on 21 April 2022, with permission having been deemed to be granted on 19 May 2022 under paragraph 6(3) of Sch33. That is because the Council failed to issue a decision within 28 days of the submission's receipt under Sch33.

25. Although the Council originally submitted in section 4.4 of its statement of case [AD1.4] that it had approved what it identified as a second submission made under Sch33, it has accepted that a permission for the BLo's design was deemed to have been granted on 19 May 2022 in commenting on the appellant's response to IQ1.9.
26. The overbridge benefiting from the deemed permission under Sch33 is of an identical design to the overbridge for which approval under paragraph 2 of Sch17 has been sought and refused by the Council.

### **Preserving the local environment and a site of historic interest**

27. In essence the Council's concerns about the design and external appearance for the proposed BLo are that its appearance would be unsympathetic of the AONB's landscape quality, while being harmful to the historic character of BL as a holloway. The Council further contends that the works associated with the realignment of BL either side of the BLo (the formation of access bellmouths and the siting of VRB and security fencing) should be modified so that those works were of a scale that would be more consistent with BL's character. The Council is of the view that the BLo and the associated works in BL could reasonably be modified to address its concerns.
28. The Council is of the view that this holloway should be considered as a non-designated heritage asset, while the appellant disputes that proposition. For reasons I have given below I am of the view that whether BL is or is not to be treated as an asset of heritage significance is of no particular consequence.

### Bowood Lane overbridge

29. The Council's concerns relate to the finer points of the appearance for the BLo's deck, most particularly the extent of the carriageway relative to the space available to accommodate soft landscaping. Importantly, the Council's concerns relate to the appearance of the BLo's "*interior*"<sup>11</sup> and it has raised no objections with respect to the BLo's overall dimensions, ie its length or width.
30. The modifications to the BLo promoted by the Council would result in it having a 3.5 metre wide carriageway flanked by 2.5 metre wide verges, which it is argued would address the Council's appearance concerns. The Council contends making those modifications to the BLo's deck would enable planting to be undertaken, avoiding this bridge looking out of place in the AONB or being harmful to the Holloway's character.
31. Of utmost importance to the appellant is the avoidance of collisions on road overbridges passing over HS2 which could result in: vehicles or debris from those vehicles (including any loads they may be hauling); or debris from a damaged bridge falling onto the high speed railway below. The appellant submitting that vehicles or debris falling onto the railway line would have the potential to cause: accidents involving trains carrying up to 1,100 passengers

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<sup>11</sup> ie the bridge deck and the internal faces of the overbridge's parapets

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and travelling at up to 360kph (225mph) [paragraphs 6.12 and 6.13 in AD1.2]; and/or operational disruption to train services. The appellant has therefore been mindful of the causes of and the resulting outcome of the Great Heck, near Selby train crash in 2001 (the Selby accident). Further to my asking IQ2.1 the appellant submitted a copy of the Selby accident investigation report<sup>12</sup>.

32. The Selby accident involved a collision between an intercity passenger train and a freight train that led to 10 fatalities and injuries to 82 passengers. That tragic accident having been precipitated by a car towing a trailer travelling on the M62 motorway departing from the carriageway just ahead of a motorway overbridge. The car and trailer then careered down an embankment onto the railway line. The passenger train struck what had become an errant car and trailer, partially derailing the train. The passenger train's derailment was exacerbated by it passing over a set of points. The partially derailed passenger train was then struck by what was an early running freight train travelling in the opposite direction.
33. From the investigation report it is evident there were a number of events that uniquely combined within a short space of time to make the Selby accident a particularly severe one. In that regard no failings were attributed to the Highways Agency (now National Highways), the train operating companies or Railtrack PLC (now Network Rail).
34. I consider the very specific circumstances that gave rise to the Selby accident would be very unlikely to be replicated in association with the BLo's use. Particularly, when the AADT for BL is so many orders of magnitude lower than the M62's, reducing the potential for errant vehicles or debris to fall onto the railway below. Having regard to the assessment for the risk of accidents to arise undertaken by the Council and the appellant<sup>13</sup>, I consider the frequency for any falling vehicle or debris incidents involving the use of the BLo would be very low. That is because any such incident would require an accident to have occurred on the overbridge and there to be a train or trains passing beneath the bridge or to be within its vicinity at the time of the accident on the bridge. The frequency for vehicles using the BLo at the same time and travelling in opposing directions has been estimated as being between once in every 5.1 days (appellant) and once in every 43.2 days (the Council), with that variation, in part, being attributable to whether an AADT of 21 or 61 is used. However, the consequences of any falling vehicle or debris incident could potentially be very severe because of the speed that HS2 trains would be travelling at and their passenger capacity.
35. I consider it must be recognised that should a falling vehicle or debris incident arise when a train was in the vicinity of the BLo a collision between an errant object or objects and a train may well be unavoidable. That is because it is expected trains would be running at intervals of around three minutes, at speeds of up to 360kmh (224mph). Trains travelling at full speed would have a stopping distance of approximately 5km (3 miles) [paragraphs 6.12 and 6.14 in AD1.2]. At a speed of 360kmh a train would cover a distance of 1km every ten seconds<sup>14</sup>.

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<sup>12</sup> Published by the Health and Safety Executive in 2002

<sup>13</sup> Including AD9.6 for the appellant and AD9.14 for the Council and the respective responses to IQ1.1

<sup>14</sup> Paragraph 1.9 in the appellant's response to IQ1.1



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36. Accordingly, taking account of all of the accident risk assessment evidence before me, I am of the view that it is reasonable for the appellant to seek to do everything possible to minimise the potential for railway accidents to occur, ie to reduce the level of risk so that it would be "*as low as reasonably practicable*" (ALARP). The potential for the severity of injuries or the number of fatalities to be high because of a rail accident, no matter how infrequent such an accident might be, would be intolerable and should be avoided, even if that means the design of the BLo and the associated earthworks and fencing on either side of the overbridge were to have a less than desirable appearance within the AONB.
37. The BLo would clearly be located in a sensitive landscape and highly engineered, concrete bridges are uncharacteristic of the area. Importantly, the Council has not objected to the overbridge's overall dimensions, ie its length and width. In that regard the Council has commented "*Design development of the bridges<sup>(15)</sup> has resulted in structures that have an elegance and outward-facing appearance that is appropriate to context ...*" [paragraph 7.6 in AD9.1].
38. I am sympathetic to the Council's desire to minimise the BLo's impact on the character and appearance of BL. However, that desire must be weighed against the need for potentially severe accidents arising from the BLo's use being avoided. That in my view means that the BLo's appearance unavoidably would be likely to exhibit elements of being over engineered, particularly given the intention for BL to be retained as bi-directional vehicular route. The proposed BLo has therefore been designed with a 3.5 metre wide running lane, flanked by 1.0 metre margins, resulting in a proposed carriageway with an overall width of 5.5 metres, to accord with what is a "*mandatory*" guidance clause<sup>16</sup>, namely clause C.6.9, in appellant's "*Technical Standards – Roads*" (HS2TSR) [AD8.13]. The HS2TSR setting out the appellant's "*technical requirements and design guidance*" for works affecting roads [paragraph 1.1.1 in AD8.13].
39. A guiding principle for the geometry of new rural roads stated in the HS2TSR is that their widths "*... should generally match those found on adjacent routes ... subject to the limits given below*" [paragraph C.6.1 in AD8.13]. There might appear to be some contradiction between what is stated in clauses C.6.1 and C.6.9 in the HS2TSR. However, in clause C.6.9 it is explained that for overbridges on single track roads the carriageway width "*... shall be 5.5 metres, using road markings to give a centred 3.5 running lane to discourage a sudden increase in traffic speed or unsafe overtaking manoeuvres. Inter-visible passing places shall be provided at each end of the structure*".
40. Irrespective of what is stated in clause C.6.1, which is a non-mandatory clause for the purposes of the HS2TSR, the design for rural overbridges is to be treated in a different way. That is because the appellant is seeking to avoid the severe consequences of errant vehicle(s) or debris falling onto HS2, wherever rural overbridges are to be installed, by using control measures that have the purpose of reducing the likelihood of an incident occurring to a level

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<sup>15</sup> Ie the BLo, as well as the footpath TLE/2 and Cottage Farm accommodation overbridges

<sup>16</sup> As per the explanation for mandatory clauses, ie clauses included in black boxes, given on page 7 of the HS2TSR

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that is ALARP<sup>17</sup>. I consider that managing incidents to a level that would be ALARP explains why there is a difference between what is stated in clauses C.6.1 and C.6.9 in the HS2TSR.

41. On face value the design approach taken by the appellant could be considered as not being entirely consistent with providing a road overbridge for such a lightly trafficked road, that has a recorded vehicle speed of around 18mph (30kph). The design speed for vehicles crossing the BLo having been taken to be in the range of 28 to 34mph (up to 50kph). The recorded vehicle speed being much lower than BL's 60mph (96kph) speed limit. However, with all of that said, I consider it should be recognised that a 70 metre long overbridge, no matter how it appeared externally, would give the impression of being an alien structure in BL, regardless of it being in the AONB and affecting a holloway. In that regard I consider it is of no particular consequence whether BL is or is not treated as being an asset of heritage significance.
42. The Council, taking into account the representations made by the Chilterns Conservation Board [AD10.2], considers the design of the BLo should be modified. However, I consider the modifications sought by the Council would largely be cosmetic and in practice would do very little to soften and/or improve the proposed overbridge's appearance or contribute meaningfully to the BLo's integration into the holloway. Providing two, 2.5 metre wide verges planted with grass or a mixture of grass, wildflower grassland and/or scattered low density woody species<sup>18</sup>, with a 3.5 metre wide carriageway between them, in my view would not mimic a sense of being within a hedge lined holloway. In that regard I consider providing 2.5 metre wide grassed verges would appear no more in keeping with BL than having 1.5 metre wide verges, given flat grassed or planted verges do not typify BL, with there being a preponderance of vegetated banks.
43. I consider a road bridge, such as the BLo, would need to be significantly wider than 8.5 metres to accommodate planted verges capable of tellingly: disguising the bridge's presence when it was being viewed from its deck; and replicating the appearance of being within a holloway.
44. The appellant intends the BLo's carriageway would be surfaced with asphalt. While the Council favours a surfacing treatment for the BLo other than asphalt, I consider that the use of an alternative surface treatment would not materially assist with this overbridge's integration with its surroundings. That is because seeing asphalt on the deck of the BLo could reasonably be expected, given that surfacing is already present in BL.
45. In terms of the BLo's integration into the wider AONB and BL as a holloway, I consider that the modification to the BLo's design sought by the Council would bring about very marginal positive benefits. Importantly, it must be recognised that the purpose of seeking approvals pursuant to Schedule 17 is not to eliminate all prejudicial impacts and that there will be instances when requests for approval will need to be approved even, if there would be a *"... negative impact, unless there are modifications reasonably capable of being made"*<sup>19</sup>. As I have indicated above I consider the BLo would need to be

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<sup>17</sup> As explained in paragraph 4.2.4 the appellant's "Briefing Note – Bridges on Single-track Roads" (Revision P02) of August 2022 in AD8.14

<sup>18</sup> As depicted in Figure 8.10 in AD9.1

<sup>19</sup> Paragraph 35 of the High Speed Rail (London-West Midlands) Act 2017 Schedule 17 Statutory Guidance of November 2023

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significantly wider in order for it to replicate the character of a holloway and I am of the view that the proposed BLo would not reasonably be capable of being so modified.

46. For the reasons given above I am not persuaded that the modifications to the BLo's external appearance sought by the Council would afford a level of mitigation that would actually preserve either the local or historic environments. Notwithstanding the BLo's presence in the AONB and BL having some historic interest, being one of a number of holloways characterising the surrounding area, I consider it inevitable that an overbridge of the proposed external dimensions would cause some harm to the area's character and appearance. In that regard at paragraph 3.5.3(2) of the "*Chilterns AONB HS2 Chilterns Enhancement and Integration Plan (CEIP) Part 1: Detailed Designed Principles*" 2018 (the AONB guidance – [AD8.11]) it is recognised that 300 metres of the holloway within BL would be removed through the construction of the BLo and its approaches.
47. I would categorise the modifications to the BLo's design promoted by the Council as being 'minor tweaks', which of themselves would have a negligible effect in mitigating the incongruent appearance of a concrete overbridge being inserted into BL's street scene. I consider such an affect to be unavoidable, which could not be meaningfully improved by a narrowing of the carriageway to accommodate more planting as promoted by the Council. In that regard it must be recognised that deemed planning permission has been granted for the construction of an overbridge within BL, with the construction of such a structure forming part of scheduled Work Number 2/23.
48. I further consider that a potential unintended consequence of modifying the BLo's deck to create a slightly more pleasant appearance would be the creation of an environment that would be potentially unsafe for the small number of NMUs making use of BL. That is because, when compared with the deck layout proposed by the appellant, the provision of two, 2.5 metre wide, planted verges would leave less space on the BLo to be shared by NMUs and motorised users when both were making crossings of the overbridge concurrently. That might result in NMUs trying to make use of planted verges either as a place of safe refuge or to make their way across the overbridge. That would not be conducive to planting within wider verges reaching a state of maturity capable of providing any meaningful screening for the BLo's parapets.
49. I am therefore of the view the BLo's design ought not be modified in the way favoured by the Council. That is because the modifications sought in practice would not meaningfully contribute to the BLo's integration into its local landscape context, with them, in particular, doing nothing to lessen the inevitable truncation of the holloway arising from the introduction of a new overbridge.
50. Accordingly, I conclude that from a visual perspective the design and external appearance for the overbridge, as proposed by the appellant, would be unobjectionable and does not require modification to preserve either the local environment or the historic interest of the area. In reaching that conclusion I am mindful of both the AONB guidance and the Assurances, most particularly Assurance 2488, given by the Department for Transport (and binding upon

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the appellant) at the Bill stage for the HS2 Act, as cited by the Council at paragraph 3.8.3 in its statement of case [AD1.4].

51. When regard is paid to the AONB guidance and the Assurances, I consider that the Appellant's detailed design for the BLo strikes a reasonable balance between providing an overbridge within the AONB while meeting the obligations on the appellant to operate a safe railway. In that regard Assurance 2488 requires the appellant to use "*reasonable endeavours*" to design works that accord with the provisions of the AONB guidance. It is clear from the wording of Assurance 2488 that there may be instances when the design principles included in the AONB guidance cannot be fully met. I am content that when the specific circumstances of the proposed BLo are taken account of full compliance with the AONB guidance is not possible and should not be a bar to approval being given to the proposed BLo's design.
52. Even if I had agreed with the Council that providing 2.5 metre wide planted verges would effectively conserve the environment within BL, I consider those verges could not be secured as part of an approval for plans and specifications given under paragraph 2 of Sch17. In that regard I share the appellant's view that the process for seeking approvals for means of mitigation for HS2, such as soft landscaping, would be a matter for a submission to be made under paragraph 9 (bringing scheduled works into use) of Sch17.

#### Realignment of Bowood Lane

53. To accommodate the formation of the railway cutting and the introduction of the BLo there are proposals to: realign BL on either side of the new overbridge; provide two accesses, with one of those being to the west (the western access) and the other to the east (the eastern access) of the BLo; and install VRB and security fencing. The western access will provide access to adjoining agricultural land and parking for HS2 maintenance vehicles. The eastern access will serve as a maintenance access for, amongst other things, some drainage infrastructure, including the BL drop inlet culvert, as well as providing parking facilities for maintenance vehicles. The appellant intends to provide vehicle passing places either side of the BLo, albeit those carriageway works do not form part of the works subject to the appealed Sch17 application.
54. The Council is concerned that the formation of maintenance and accommodation accesses, including the scale of the associated bellmouths and earthworks and the lengths of VRB, on either side of the BLo, would be harmful to BL's rural appearance. With the Council contending that harm would be compounded by the presence of the proposed passing places.
55. In responding to IQ1.7 the appellant has clarified that it is the earthworks and fencing associated with the accesses that are subject to the approval process under Sch17 and that the accesses and bellmouths of themselves are not for approval.
56. The appellant's reply to IQ1.10 explains that the western access has been designed to accommodate 7.0 metre, long wheel based vans (vans) that would be used in connection with the general inspection and maintenance of the railway once a month. When vegetation clearance and ditch de-silting works were being undertaken on an annual campaign basis, those works would be expected to involve more intense use of the western access. The

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appellant has submitted that to enable vans to make use of the western access, at a minimum, radii of 9 metres would be required at the junction with BL.

57. Prior to the appeal's submission it had been expected that the western access would need to accommodate farm vehicles larger than the appellant's vans. That being reflected in the 15 metre radii for the western access shown on the originally submitted application drawings. However, in post appeal discussions between the owner of the farmland and the appellant it has been agreed that the western access need only accommodate farm vehicles comparable in size with the appellant's vans. Given that, in replying to IQ1.10 the appellant submitted revised plans showing a modification to the earthworks flanking the western access. That modification being a reduction (tightening) in the width of the bellmouth with the incorporation of 9 metre radii.
58. The appellant's reply to IQ1.10 indicates that the agricultural use of the western access would be of a seasonal nature, varying significantly over the course of a year. At some times of the year there would therefore be more frequent daily use of the western access by farm vehicles.
59. The eastern access has been designed to accommodate 16.5 metre long articulated vehicles and would have radii of 15 and 16 metres. As explained in the appellant's reply to IQ1.10, those radii having been determined by reference to the HS2TSR and that guidance's cross references to National Highways "*Design Manual for Roads and Bridges*" (DMRB). The standards included in the DMRB being applicable to the strategic highway network for which National Highways is the highway authority, ie motorways and A class trunk roads. The appellant envisages that the eastern access would be used once a month for routine maintenance purposes, with it being used more intensely when maintenance activities were being undertaken on an annual campaign basis.
60. As a general point I consider collectively the works in BL on either side of the BLo would significantly affect BL's character and appearance because they would extend over several hundred metres. However, that effect would be inevitable because of their association with the insertion of a new railway line. The need to maintain elements of the railway's infrastructure will be an entirely new long term activity and providing accesses to facilitate that activity would be bound to look out of place.
61. In relation to the western access, I consider it must be borne in mind that it would have the dual purpose of serving farmland and maintaining HS2. Given that dual purpose I consider the western could not be designed to have a significantly less engineered appearance to be more reflective of the less formal farm accesses that have historically been found in BL. Further to my asking of IQ1.10 the appellant has promoted a modification to the earthworks flanking the western access, enabling the extent of this access to be reduced, with there being minor changes to the extent of the VRB. While that modification would give rise to a comparatively modest reduction in the visual impact of the western access, it would nevertheless provide some improvement in the appearance of the works required on the western side of the BLo. That modification is to be welcomed and I consider it represents the extent of what could reasonably be done to modify the works in BL on the western side of the BLo.



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62. The Council has challenged the ability of BL to accommodate 16.5 metre long articulated vehicles and thus the justification for the eastern access needing to be so wide. I recognise that the DMRB design standards applied by the appellant would not usually be applicable to a road such as BL. However, I consider it must be recognised that the appellant is designing for a major infrastructure project and it could reasonably be expected to have a full understanding of what elements of its project would need to be accessed via BL and by what types of vehicle, including their sizes. To develop a design that ignored the physical limitations of BL and the vehicle sizes it can accommodate without modifications would be illogical and a futile exercise.
63. Given BL's limited width I consider it likely that the eastern access' bellmouth would be required to provide manoeuvring space for articulated maintenance vehicles. To enable such manoeuvring to occur, an access appreciably wider than those that have historically been found in BL would be required. I am therefore of the view that the design standards adopted by the appellant are reasonable, even though their origins lie with the DMRB. I am therefore not persuaded that the appellant in formulating its proposals for the eastern access has over sized the bellmouth to accommodate vehicles incapable of negotiating BL.
64. I note that the appellant in paragraph 8.3 of its response [AD1.6] to the Council's statement of case [AD1.4] indicated that it would not object to minor modifications being made to the BL bellmouths. However, that is not consistent with its subsequent answer to IQ1.10. In answering that question the appellant commented that it considered the minimum radii for the eastern access should be as shown on the originally submitted application drawings, namely 15 and 16 metres. Given that answer to IQ1.10 I consider it should take precedence over what the appellant previously stated in its response to the Council's statement of case.
65. I therefore consider a bellmouth of the width identified by the appellant for the eastern access would be necessary and that the scale of the proposed earthworks required to form that access would be appropriate. I therefore consider it has not been demonstrated that the proposed earthworks associated with the eastern access could reasonably be modified. Allied to that I consider the proposed length of VRB between the eastern access and eastern end of the BLo is what would be required and could not reasonably be carried out elsewhere, which in this context would mean reducing its extent. Even if it was possible to tighten the eastern access' radii and earthworks, I consider that would not significantly alter the appearance of the works on the eastern side of the BLo.

### **Highway safety**

66. The Council contends that BLo's carriageway arrangements would be unsafe because they could result in a localised increase in (surging of) vehicle speeds, ie speeds above BL's recorded average speed of 18mph. The Council is further of the view that reducing the carriageway's width to 3.5 metres would avoid vehicle speeds on the bridge exceeding those on BL on either side of the overbridge, while also providing conditions that would be less confusing and safer for drivers.
67. I note that ANOB guidance indicates that with respect to the width of carriageways on bridges, wherever possible they should be minimised so that



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widths are comparable with the carriageway on either side of a bridge. While I consider that to be an entirely laudable aspiration to avoid speed surging on bridges, I am of the view that it is also a potentially problematic design objective to adhere to strictly. That is because if the carriageway on either side of an HS2 bridge is very narrow, as the case would be for BL, it may not be possible to provide a bridge deck carriageway capable of safely accommodating vehicles traversing the bridge concurrently in opposing directions. While it is intended that passing places would be provided in BL on either side of the BLo, the presence of those passing places would not necessarily preclude two vehicles concurrently travelling along the BLo in opposing directions. I therefore consider the potential for a hazardous collision could not be ruled out were the BLo's design to be modified along the lines promoted by the Council.

68. I do not doubt that the modification sought by the Council would be suitable were BL a one-way road. However, the intention is for BL to remain as a two way street. Given that I have major reservations as to whether a 70 metre long and 3.5 metre wide carriageway on the deck of the BLo would amount to a safe public highway crossing for the high speed railway line. In that regard I share the appellant's concern that the availability of just a 3.5 metre wide carriageway would increase the likelihood of either collisions occurring on the BLo or drivers taking evasive action and in so doing potentially losing control of their vehicles resulting in parapet impacts.
69. I am therefore of the view that the BLo carriageway modification promoted by the Council could increase the risk of a severe railway incident arising, the very thing the appellant is seeking to avoid. It is predicted BL will continue to be a lightly trafficked road and the likelihood of incidents involving falling vehicles and/or debris would be low. However, the consequence of a railway incident would potentially be very severe. I therefore consider it would be imprudent for the BLo's carriageway layout to be modified in such a way that it could increase the risk of a severe train accident occurring.
70. In support of its case the Council has drawn attention to the HS1 overbridge at Stone Street, Westenhanger, which has a 3.5 metre wide carriageway<sup>20</sup>. However, I consider it is not a comparable example. That is because unlike BL, Stone Street is a no through road on one side of HS1. That being explained in paragraph 6.64 of the appellant's response to the Council's Statement of Case [AD1.6], with a photograph in that document clearly showing road signage indicating the presence of a no through road for vehicles.
71. The carriageway layout of the Runham Lane HS1 overbridge mirrors that for the proposed BLo. Having driven across the Runham Lane bridge several times in each direction, I am not persuaded that the availability of a 3.5 metre wide running lane, demarcated by painted lines, supplemented by 1.0 metre wide overrun strips is confusing for drivers. The appellant has submitted that "*There are no known records of any collisions on comparable HS1 crossings since opening ...*" [paragraph 2.1.2 in AD9.6]. The absence of any known incidents involving "*... single track road layouts on the CTRL bridges ...*" has been further referred to by the appellant in its "*Bowood Lane Safety Assessment*" [page 64 in AD9.14]. That suggests drivers encountering

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<sup>20</sup> Referred to by the Council in section 7 of its Statement of Case [AD1.4]

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the combination of 3.5 metre wide running lanes and 1.0 metre wide over run areas, demarcated by carriageway level paint, have not been confused by this form of highway layout. I consider incorporating such a layout into the design for the proposed BLo would not be inherently unsafe, given the absence of evidence demonstrating that this highway layout type has been the cause of any road accidents.

72. That said, I do consider there would be some potential for vehicle speed surging to arise as drivers completed their crossings and departed the BLo, something for which there is agreement between the appellant and the Council. Any such increases in speed being more likely for downhill crossings made from east to west. My finding about the potential for vehicle speed surging to arise being consistent with the fourth conclusion stated in the Council's "*Explicit Risk Estimation*" report, namely "*The introduction of a road over rail bridge that increases the road width, albeit over a discrete distance, may tempt drivers into unsafe or ill-judged manoeuvres e.g. speeding*" [AD9.5] and the appellant's acknowledgement in paragraph 12 of its "*Road Safety Review of Bowood Lane Bridge*" [AD9.12].
73. Controlling the speed of vehicles departing the BLo I consider could be addressed by installing traffic calming measures (TCM) either on or immediately beyond each end of the BLo. Traffic calming might take the form of gateways, kerb lines or a combination of both. The provision of traffic calming would also have the potential to address the Council's concern about the long-term performance of the painted road markings on the BLo's carriageway as a speed mitigation measure were they to become obscured by dirt or leaf litter<sup>21</sup>. I therefore do not share the Council's view that reducing vehicle speeds could only be achieved through dispensing with the proposed 1.0 metre wide over run strips and only having a 3.5 metre wide running lane on the BLo. I am also not persuaded that the use of narrower carriageway widths on HS2 accommodation bridges establishes a precedent for the BLo having a 3.5 metre wide carriageway. That is because accommodation bridges do not form part of the public highway and by their very nature are intended to generally carry low volumes of traffic, ie below the 60 or so daily vehicles movement that have previously been recorded using BL.
74. Modifying the design of the proposed BLo through the introduction of some TCM was something that I sought the appellant's and the Council's views about, through the asking of IQ2.2. The appellant's response to that question was that TCM (gateways and related signage) could be incorporated into the BLo's design as a modification, with the implementation of those measures being capable of being secured through the imposition of a condition. With the approval of the detailed design for such matters being something that would be for consideration as part of an application to be made to the highway authority under the provisions of Sch4 of the HS2 Act.
75. In responding to IQ2.2 the appellant further expressed the view that it considered it would be preferable for any TCM to be located off the BLo, ie in BL on either side of the overbridge. Should the provision of TCM off the BLo be favoured, the appellant submitted those works could not be made the subject of a condition but could be secured through the SoST and the appellant entering into a UU. In that regard an indicative TCM plan, showing a

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<sup>21</sup> Section 4 of Mr Black's "Proof of Evidence" [AD9.3]

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pair of "entrance gateways" (localised carriageway narrowings) and priority road signs, and a draft UU accompanied the appellant's reply to IQ2.2.

76. The Council has submitted that it did not favour the indicative TCM presented by the appellant because: gateways, kerb line build-outs and signage would have an urban appearance which would appear out of place in a rural location; while in safety terms the measures would be incompatible with a road subject to a 60mph speed limit, with the installation of street lighting also being necessary. The Council further contended that in the event of the TCM being made the subject of a UU that could undermine the consideration of their detailed design under the provisions of Sch4.
77. Although BL is subject to a derestricted speed limit of 60mph, in practice the vehicle speeds for this road are much lower than that, having been recorded as being around 18mph. Given that and the lightly trafficked nature of BL I am of the view that highly engineered traffic calming, akin to what is frequently utilised in an urban area would be unnecessary. I therefore see no reason why very obtrusive TCM would be necessary in this location. In that regard I agree with the appellant that when regard is paid to the volume of traffic using BL there would be no requirement for the installation of street lighting. I am therefore of the view that it would be possible to install TCM without those measures of themselves causing significant harm to the character and appearance of the AONB or the holloway, not least because the TCM would be located in an area which will be subject to substantial change.
78. The executed UU requires TCM to be implemented prior to Work No. 2/23 (the realignment of the BL and the BLo) being used by general traffic (ie non-construction traffic) for the first time. While the UU includes a TCM plan that plan is an indicative one, with the precise details for the TCM to be determined through any approval granted under Sch4 of the Act, with safety auditing being necessary. I am therefore of the view that the inclusion of the indicative TCM plan in the UU should not of itself be prejudicial to the subsequent determination of a Sch4 application, especially given the modest nature of what would be required to preclude speed surging as vehicles exit the BLo.
79. Accordingly, I am of the view that with the installation of TCM the Council's concern about localised surging in vehicle speeds when vehicles were exiting the BLo in either direction would be addressed. I am also of the view that the installation of TCM need not cause significant harm to the character and appearance of the area. With the installation of TCM, I consider it would be possible for the BLo to be used by vehicles in a way that would neither compromise the safety of all of its users nor the operation of HS2.

**Overall conclusions for the Bowood Lane overbridge and realignment of Bowood Lane**

80. For the reasons given above I conclude that the design and external appearance for the proposed BLo would be acceptable and that the proposed works ought not be modified. While the Council has promoted modifications being made to the BLo, for the reasons I have stated above I have not been persuaded they would meaningfully contribute to the BLo's integration into its immediate surroundings.

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81. I have also found that the BLo's carriageway layout, as shown on drawing 1MC06-CEK-TP-DPL-CS03\_CL05-000095 Rev C04 (Bowood Lane Overbridge Plan on Deck) ought not be modified to prevent or reduce prejudicial effects on road safety, subject to TCM being provided in BL. The provision of those TCM having been secured via the executed UU that has been submitted by the SoST and appellant.
82. With respect to the earthworks and the associated siting of the VRB and security fencing in BL, for the reasons given above I conclude that with the making of modifications to the earthworks and the VRB for the western access, as shown on drawings 1MC06-CEK-TP-DGA-CS03\_CL05- 000020 Rev C04 and 1MC06-CEK-TP-DPL-CS03\_CL05-000083 Rev C03, that the design and external appearance of the proposed works would be acceptable. Accordingly, I find those works ought not be further modified to preserve the area's local environment and historic interest.
83. I therefore conclude that the appeal concerning the proposed BLo and works in BL should be allowed, with the aforementioned drawings replacing their predecessors, as listed in my formal decision above.

### **Conditions 1, 2, 4, 5 and 7**

#### **Condition 1 - Archaeology**

84. Condition 1 imposed by the Council seeks to preclude works being undertaken in two archaeologically sensitive areas, identified by the appellant as parcels C21052P and C21054P, until such time as a method statement for preserving any buried archaeology in-situ has been submitted to and approved by the Council. Importantly, the appellant recognised that buried archaeology of significance should be preserved, albeit no details of how that might be achieved were included in the originally submitted application.
85. Prior to the application's determination it was open to the Council to request that the appellant submit a method statement (details) for preserving buried archaeology in-situ. Furnishing the Council with a method statement would have accorded with the judgment handed down by Court of Appeal when it considered the Hillingdon 1 case. That is to say, the Council in performing its statutory duties under the provisions of Sch17 would have had before it details to evaluate the effects of the proposed works on buried archaeology within parcels C21052P and C21054P. Instead, the Council imposed condition 1 requiring the submission of absent information following its decision, akin to the approach commonly used when planning applications are being determined under the provisions of the Town and Country Planning Act 1990 (the TCPA).
86. However, under the provisions of paragraph 3 of Sch17 in connection with earthworks approvals, conditions may only be imposed in instances when "*... the design or external appearance of the works ought to, and could reasonably, be modified - ... (c) to preserve a site of archaeological ... interest ...*". Of itself condition 1 would not have secured a modification to the design of the earthworks, with it requiring the appellant to submit additional details for approval. In the absence of details accompanying the originally submitted application, had a condition been imposed specifying the precise methodology for preserving any buried archaeology in-situ, I consider such a condition would have constituted a modification for the purposes of

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paragraph 3 of Sch17. That is because the appellant would have known exactly what was required of it and compliance with such a condition would have effected a modification to the earthworks for which approval had been requested.

87. I therefore conclude that condition 1's imposition failed to meet the grounds for imposing a condition under paragraph 3(7)<sup>22</sup> of Sch17 and that this condition should be deleted from the partial approval given by the Council.
88. As explained above in the procedural and preliminary matters section above, the appellant, as part of its appeal case, has submitted a "Form A" for each of the two archaeologically sensitive areas included within the application site. The submitted Form A(s) set out specifications for preserving buried archaeology in-situ within parcels C21052P and C21054P. The Form A(s) in effect are method statements.
89. I therefore consider the submission of the Form A(s) has addressed the matter that led to the imposition of condition 1 by the Council. The imposition of condition 1 having been informed by Historic England's suggestion in its application written representation that "*It might be appropriate ... to attach a condition to any approval granted requiring that a method statement ... is submitted and approved before any approved works take place ... to ensure that the appropriate methodology is used*" [AD10.3].
90. To ensure the specifications stated in the Form A(s) are implemented when the approved earthworks are being undertaken, I consider those documents should be added to the list of approved documents cited on the decision notice issued by the Council on 22 July 2022. That would bring the implementation of the specifications to preserve buried archaeology within parcels C21052P and C21054P within the scope of paragraph 3(1) of Sch17<sup>23</sup>, namely that works approved under Sch17 must be carried out in accordance with approved specifications. Accordingly, in my formal decision above, I have made provision for the list of the approved plans to be amended so that the Form A(s) are added to it.

**Conditions 2, 4, 5 and 7 - Green verges and surfacing for the footpath TLE/2 accommodation overbridge and the Cottage Farm accommodation overbridge**

91. Conditions 2 and 5 imposed by the Council each require details for the provision of green (planted) verges on the footpath TLE/2 and Cottage Farm accommodation overbridges (the accommodation bridges) to be submitted for the Council's approval. I consider the details to be submitted for approval under the terms of conditions 2 and 5 would amount to final mitigation measures, falling outside the scope of the details for which approval is being sought under the provisions of paragraph 2 of Sch17 for building works. I am of the view that the detailed design of any green verges would be a matter for consideration as part of a bringing into use application to be submitted under the terms of paragraph 9 of Sch17.
92. Additionally, conditions 2 and 5 have been worded as TCPA type conditions and of themselves would not require the design or external appearance of the accommodation bridges to be modified. Accordingly, I conclude the imposition

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<sup>22</sup> When read in conjunction with paragraph 3(6)

<sup>23</sup> Carrying out the development in accordance with approved plans and specifications

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of conditions 2 and 5 failed to meet the tests for imposing conditions under the provisions of paragraph 2(7)<sup>24</sup> of Sch17 of the Act. In my formal decision above I have therefore deleted conditions 2 and 5 from the approval issued by the Council.

93. Conditions 4 and 7 would require details for the "*finish to the bridge surface*", guttering and the inner faces of the parapets of the accommodation bridges to be submitted for the Council's approval. Conditions 4 and 7 are TCPA type conditions and in themselves would not require the design and external appearance of the accommodation bridges to be modified. As with conditions 2 and 5, I therefore conclude that the imposition of conditions 4 and 7 failed to meet the tests for imposing conditions under paragraph 2(7) of Sch17 of the Act. Accordingly, in my formal decision above I have deleted conditions 4 and 7 from the approval issued by the Council.
94. I have given consideration as to whether there would be any need for additional details of the accommodation bridges' surface finishes, guttering or inward facing elements to be submitted for the Council's approval pursuant to paragraph 2(3) of Sch17. Given the functional requirement for there to be accommodation bridges and their comparatively modest scale I consider the absence of the previously mentioned additional details would not be prejudicial to the appearance of the area. Accordingly, I have not made it a requirement of the varied approval for the additional surface finishes, guttering or inward facing element details be submitted for the Council's approval pursuant to paragraph 2(3).

## **Conclusion**

95. For all of the reasons given above I conclude that the appeal be allowed. In allowing the appeal approval is given to the plans and specifications for the proposed BLo and the BL realignment earthworks and associated VRB and fencing and the deletion of conditions 1 to 7 (inclusive) that were imposed by the Council when it gave its partial approval to the plans and specifications subject to the appellant's Sch17 application.

*Grahame Gould*  
INSPECTOR

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<sup>24</sup> When read in combination with paragraph 2(5)



# Appendix 1

Conditions imposed by Buckinghamshire Council in its partial approval of application 22/01330/HS2

- 1) No development or preliminary groundworks of any kind shall take place within Fusion parcel reference numbers C21052P and C21054P until a Method Statement for preservation of archaeological remains has been submitted in writing and approved by the planning authority.

The location of Fusion parcel reference numbers C21052P and C21054P are identified within the High Speed Two ArcGIS Web Map dated 27 June 2022 below.



Ground: To ensure a site of archaeological value is preserved in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 2) Notwithstanding the details shown on the approved plans, prior to construction above the deck, parapet stub and stitch of the Footpath TLE/2 Accommodation Overbridge details of the verge(s) provision shall be submitted to and approved in writing by the local planning authority.

The submitted details of the green verge(s) provision shall include appropriately detailed plans, elevations and cross-sections that demonstrate the following:

- i. Position and dimensions of the relevant green verge provision across the overbridge.

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- ii. Depth and specification of all components of the green verge solution selected to ensure their satisfactory establishment and subsequent maintenance. This should include but not be limited to all proprietary products, their fixings, specialist soil and other substrates, plant material and seed. Any above deck services shall be accommodated in a way that does not impair the satisfactory establishment of green verges.
  - iii. Drainage details within the green verge(s) to support the establishment and ongoing success of the green verge.
  - iv. The alignment of vehicle restraint systems and other fencing shall be clearly shown on all relevant drawings together with 'illustrative information' regarding their scale and appearance.
  - v. Provision of green verges of both side of the overbridge.

Ground: To protect the local environment and to ensure an overbridge design that is both sympathetic to, and integrated with, its local landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 3) Notwithstanding the details shown on the approved plans, prior to the installation of the parapets of Footpath TLE/2 Accommodation Overbridge, details of the parapet finishes shall be submitted to and approved in writing by, the local planning authority. The submitted details of the parapets shall include appropriately detailed plans, elevations and cross-sections that demonstrate the following:
  - i. Vertical joints between the parapet units and their ability to cope with variations in the longitudinal profile of the bridge structure without 'grinning' (unsightly and unevenly wide joints).
  - ii. Internal facing parapet detailing.

Ground: To protect the local environment and to ensure an overbridge design that is both sympathetic to, and integrated with, its historic and local landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 4) Notwithstanding the details shown on the approved plans, prior to construction of the bridge deck, appropriately detailed plans, elevations and cross-sections must be submitted to, and approved in writing by the local planning authority, showing:
  - the finish to the bridge surface
  - gutters
  - inward facing elements and finishes to the parapets

Ground: To protect the local environment and to ensure an overbridge design that is functional, sympathetic to, and integrated with, its historic and local landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 5) Notwithstanding the details shown on the approved plans, prior to construction above the deck, parapet stub and stitch of the Cottage Farm Accommodation Overbridge details of the verge(s) provision shall be submitted to and approved in writing by the local planning authority.

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The submitted details of the green verge(s) provision shall include appropriately detailed plans, elevations and cross-sections that demonstrate the following:

- i. Position and dimensions of the relevant green verge provision across the overbridge.
- ii. Depth and specification of all components of the green verge solution selected to ensure their satisfactory establishment and subsequent maintenance. This should include but not be limited to all proprietary products, their fixings, specialist soil and other substrates, plant material and seed. Any above deck services shall be accommodated in a way that does not impair the satisfactory establishment of green verges.
- iii. Drainage details within the green verge(s) to support the establishment and ongoing success of the green verge.
- iv. The alignment of vehicle restraint systems and other fencing shall be clearly shown on all relevant drawings together with 'illustrative information' regarding their scale and appearance.
- v. Provision of green verges of both side of the overbridge.

Ground: To protect the local environment and to ensure an overbridge design that is both sympathetic to, and integrated with, its local landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 6) Notwithstanding the details shown on the approved plans, prior to the installation of the parapets of Cottage Farm Accommodation Overbridge, details of the parapet finishes shall be submitted to and approved in writing by, the local planning authority.

The submitted details of the parapets shall include appropriately detailed plans, elevations and cross-sections that demonstrate the following:

- iii. Vertical joins between the parapet units and their ability to cope with variations in the longitudinal profile of the bridge structure without 'grinning' (unsightly and unevenly wide joints).
- iv. Internal facing parapet detailing.

Ground: To protect the local environment and to ensure an overbridge design that is both sympathetic to, and integrated with, its historic and local landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.

- 7) Notwithstanding the details shown on the approved plans, prior to construction of the bridge deck, appropriately detailed plans, elevations and cross-sections must be submitted to, and approved in writing by the local planning authority, showing:

- the finish to the bridge surface
- gutters
- inward facing elements and finishes to the parapets

Ground: To protect the local environment and to ensure an overbridge design that is functional, sympathetic to, and integrated with, its historic and local

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landscape context in accordance with Schedule 17 of the High Speed Rail (London - West Midlands) Act 2017.