



Appeal Decision

Site Visit made on 17 January 2024

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

an Inspector appointed by the Secretaries of State

Decision date: 29 January 2024

Appeal Ref: APP/HS2/23

Land to the south west of Sheephouse Wood, parallel to the existing Aylesbury Link Railway Line (MJC Line), between the settlements of Grendon Underwood and Calvert, Buckinghamshire

- The appeal is made under paragraph 22(1) of Schedule 17 of the High Speed Rail (London – West Midlands) Act 2017 (the Act) against a failure to determine within the specified timescale a request for approval of plans and specifications submitted under Schedule 17 Paragraphs 2 and 3 of the Act for works to construct a stretch of the new high speed railway line (Package AVDC 12 Works) comprising:
 - Sheephouse Wood Bat Mitigation Structure (SWBMS)
 - Footpath CAG/2 Underbridge
 - Footpath SCL/13 Green Overbridge
 - Grendon Underwood Embankment (Part of)
 - Calvert Cutting (Part of)
 - Earthworks associated with the SWBMS Services North and South Compounds
 - Earthworks associated with the realignment of the Network Rail Claydon to Aylesbury Link Railway (MJC Line)
 - Earthworks associated with the 4 No. Footpath realignments
 - SCL/13/2
 - SCL/18/2
 - CAG/2/1
 - CAG/3/1
 - Earthworks associated with 2 No. emergency access tracks
 - East emergency access track
 - West emergency access track
 - 3 No. Culverts (above ground elements only)
 - Mega Ditch Culvert
 - Greatmoor No. 4 Culvert
 - Sheephouse Wood North Culvert
 - Muxwell Brook Watercourse diversion
 - Drainage Ditches
 - Mega Ditch Retaining Wall
 - Location of the permanent fencing
 - The appeal dated 21 November 2023 was made by High Speed Two (HS2) Limited against Buckinghamshire Council.
 - The request for approval Ref 23/02697/HS2, was dated 7 September 2023.
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Decision

1. The appeal is allowed, and approval is granted for the application subject to the requirements, condition and drawing substitutions set out in the attached Schedule.

Preliminary Matters

2. I have been appointed under Schedule 17, paragraph 23(1) of the Act to determine the appeal on behalf of the Secretaries of State. I visited the site and its surroundings on 17 January 2024, viewing the area from publicly accessible locations, was given access to land within the Site and saw the location of the SWBMS, public footpaths and the other works in relation to Sheephouse Wood.
3. The Council is identified as a qualifying authority in the High Speed Rail (London – West Midlands) (Qualifying Authorities) Order 2017. The Council may therefore only refuse to approve plans or specifications on the grounds set out in Schedule 17.

Main Issues

4. The main issues are:
 - Whether adequate information has been made available for the purposes of making the determination.
 - In accordance with Schedule 17, paragraph 2(5)(a) of the Act, whether the design or external appearance of the building works ought to be modified to preserve the local environment or local amenity and is reasonably capable of modification, with respect to:
 - The design and appearance of the SWBMS
 - The effects on Sheephouse Wood
 - The effects on the landscape to the west of the SWBMS
 - Flood risk
 - The effects on Public Rights of Way (PROW) networks
 - Lighting to the CAG/2 underbridge
 - Concrete finishes to the CAG/2 underbridge and the Mega Ditch retaining walls.
 - In accordance with Schedule 17, paragraph 3(2)(b) and paragraph 3(6) of the Act, whether the design or external appearance of the earthworks ought to be modified to preserve the local environment or local amenity and are reasonably capable of modification with respect to the Muxwell Brook watercourse diversion.
 - In accordance with Schedule 17, paragraph 3(2)(e) and paragraph 3(6) of the Act, whether the fencing proposed ought to and could reasonably be carried out elsewhere within the development's permitted limits.

Reasons

SUFFICIENCY OF INFORMATION

5. The Council contends that insufficient information has been provided to allow a decision to be made. In particular, the Council's email of 27 September 2023

to HS2¹ comprises a notice under regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs) stating that the information provided is not adequate to assess the significant effects of the development of the SWBMS on the environment.

6. The notice requests, firstly, details of works carried out or proposed to be carried out to the trees within the ancient woodland beyond the HS2 Act limits. Secondly, details, including timescales, of the alternative options considered in arriving at the current design proposal for the SWBMS, focussing on how the options considered sought to avoid, prevent or reduce adverse effects on the ancient woodland. It also requests details of HS2's consideration of the option of reducing the quantity of trees felled by the active management of retained trees within the Zone of Influence, as is common Network Rail practice.
7. In addition, the Council contends that the SWBMS is not scheduled work since it is not specifically identified under Schedule 1 Work No. 2/49 of the Act. If so, s20(2) of the Act is engaged and s20(2)(c) requires the development to be covered by an environmental assessment in connection with the HS2 Bill. In my view, this point is not clearcut, since the extent of the site is defined in Work No. 2/49 but its content 'includes' but may not be limited to the elements listed. S20 of the Act is reproduced below:

20 Deemed planning permission

- (1) Planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the carrying out of the development authorised by this Act.

This is subject to the other provisions of this Act.

- (2) Where the development authorised by this Act consists of the carrying out of a work which is not a scheduled work, subsection (1) does not apply if –
 - (a) the development is likely to have significant effects on the environment by virtue of factors such as its size, nature or location,
 - (b) the development is not exempt development within the meaning the Environmental Impact Assessment Regulations, and
 - (c) the development is not covered by an environmental assessment in connection with the High Speed Rail (London – West Midlands) Bill.

8. The line running directly alongside the HS2 track is the Network Rail Claydon to Aylesbury Link Railway (the MJC line), whose upgrading was included in the East West Rail Order 2020.² The HS2 ES did not cover all the works in the AVDC 12 package (which forms the basis of this Schedule 17 application) arising from the juxtaposition of these lines. In particular, the SWBMS

¹ Council's Statement of Case Appendix C1

² The Network Rail (East West Rail) (Bicester to Bedford Improvements Order) made under the Transport and Works Act 1992.

structure as extended to encompass the MJC line, and the accompanying Woodland Edge Management Zone (WEMZ), were not included.³

9. The environmental statements covering the East West line and the Greatmoor Sidings TWA Order, authorised 7 June 2018, sited just south of Sheepphouse Wood, may contribute to relevant environmental impact assessment information. Inspector Whitehead's report to the Secretaries of State of 6 February 2019⁴ on the East West Order Inquiry notes, at paragraph 8.75, that the Scheme ES considers that during operation the western boundary of Sheepphouse Wood SSSI and ancient woodland could be indirectly affected by shading from the bat mitigation structure to be constructed over HS2.
10. It also confirms, at paragraph 7.14, that the bat mitigation structure to the south-west of Sheepphouse Wood, authorised under the HS2 Act, will be extended over the Scheme as part of the construction of the main structure. The Scheme ES therefore covers at least some operational aspects of the SWBMS. It is also important to note that the indicative design for the bat mitigation structure over the MJC line illustrated as Figures 1 and 2⁵ in the Council's Statement of Case (CSC) shows a combined structure whose bulk is similar the SWBMS's bulk.
11. Paragraphs 27 and 28 of the Statutory Guidance⁶ state that the information necessary to make a decision is defined in the planning forum notes. Moreover, that as works have been subject to full environmental assessment, further assessment should only be required where there is a change in the proposals or a change in circumstances. Such a change would apply to the extension of the SWBMS over the MJC Line which is not included in the HS2 ES.
12. Planning Forum Note 17⁷ (PFN 17) paragraph 3 states that where it appears to a local planning authority that the information contained in the HS2 Environmental Statement (ES) is not adequate to assess the likely significant effects, local authorities shall request HS2 provide further information. It notes that the relevant environmental baseline for this purpose is the baseline used in the HS2 ES, not the environmental baseline at the time at which the Schedule 17 request is made.
13. The Appellant's Environmental Assessment Summary Paper (EASP) deals with the changes and their consequences arising in the Schedule 17 application works since the HS2 ES was produced, including landscape and visual matters. In doing so, together with the Appellant's Response to the CSC, and its appendices, it addresses the points made in the Council's EIA Reg 25 notice.

Woodland

14. The effect on woodland of the present proposals, including the WEMZ, is set out on a tree-by-tree basis in Appendices A to C of the Appellant's Response to the CSC. This is analysed in the EASP in terms of the ecological effects on the Sheepphouse Wood SSSI. In addition, in its consultation response of 2 October 2023, Natural England (NE) summarises its advice. The EASP analyses

³ The main elements which differ from the Baseline Scheme assessed in the ES are set out in the Environmental Assessment Summary Paper (EASP) at para 3.1.5

⁴ Ref: TWA/17/APP/05

⁵ Network Rail EWR Alliance planning drawings

⁶ High Speed Rail (London-West Midlands) Act 2017 Schedule 17 statutory guidance (Updated 20 November 2023)

⁷ Planning Forum Note 17 Information for Decision Making

landscape and visual effects, and Appendix F of the Appellant's Response to the CSC comprises a Landscape and Visual Note.

Design Options for the SWBMS

15. Appendix D of the Appellant's Response to the CSC comprises a summary of the design development of the SWBMS. It sets out the seven options considered in detail for the structure, and compares and assesses them.

Active Management of the Zone of Influence

16. The Appellant's Response to the CSC, at paragraphs 2.50 – 2.62, sets out the risk analysis which led to the adoption of the zone of influence proposed. Appendix E: How Effective is Network Rail's Approach to Tree Management, provides further information.

Conclusion

17. In my view, the information provided by the Appellant in the EASP and in its Response to the CSC satisfies the requirements of PFN 17 with respect to information deficiencies in the ES. Therefore, S20(2)(c) of the Act is not relevant in this case and deemed planning permission applies to all elements of the Schedule 17 application. Therefore, the question of whether the SWBMS is scheduled work does not need to be considered here.

THE DESIGN AND APPEARANCE OF THE SWBMS

18. The Design and Access Statement (DAS) provides the background to the development of options for the SWBMS. They initially ranged from non-structural bat deterrents to underground tunnels to a variety of above ground enclosed structures. The HS2 ES assumed either a portal frame structure or a flat roofed box structure with loadbearing walls. Following the East West Rail Order, the SWBMS became conjoined with the equivalent structure over the MJC Line.
19. I am content with the analysis and conclusions set out in Appendix D of the Appellant's Response to the CSC. In particular, the Single Arch option adopted represents an extremely elegant solution, of equivalent width to the Portal Frame option, enclosing the least space of all the options considered and using minimal materials in a structurally efficient manner thereby generating a low carbon footprint. Unencumbered by gantry maintenance accessways, and without the need for smoke extraction fans, thus avoiding large associated service buildings, the single arch option would also occupy the least visual space. With a rectangular structure, as the HS2 ES envisaged, seen from close distances the eye would rest at the highest point at the top of the nearer wall. However, in the case of the single arch proposed, the eye would pass over the visually unobstructed curve towards its highest point on the mid-line of the structure, much further away from the viewer.
20. The structure would, with its gently curved form and visually semi-permeable envelope, arising from the mesh inserts between the ribs, tend to be visually absorbed into the landscape. The effect would be enhanced by the screening foliage to the southwest. It would not disturb the existing landscape character.
21. As explained in the Appellant's Response to the CSC, the risks to the railway lines arise principally from the possibility of trees in Sheephouse Wood falling or shedding branches. The HS2 line is to run at substantially higher speeds

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- than Network Rail services resulting in much greater energy dispersion in an accident. It would also carry higher passenger numbers, with greater likelihood of a train coming in the opposite direction. Moreover, the incidence of falling trees and branches on Network Rail lines is not insignificant.⁸ This means that the focus must turn from continual monitoring and management of potential hazards to design arrangements to prevent hazards occurring at all.
22. Accordingly, the HS2 Technical Standard for Lineside Vegetation Management (HS2 standard), as distinct from the Network Rail standard, has been developed. The Network Rail standard requires a risk assessment to be undertaken for any vegetation protruding into the 45 degree zone of influence, whereas the HS2 standard prohibits the projection of any vegetation into the zone. This is to avoid the potentially catastrophic consequences of impact between a fallen tree or flying debris and a train travelling at up to 360km/hr.
 23. Moreover, whilst the Network Rail zone of influence normally starts from the outermost rail, the HS2 zone starts from the base of the catenary mast or from the base of the SWBMS. The more robust HS2 standard must also be applied to the parallel Network Rail tracks lying closer to Sheephouse Wood because of the risk of direct impact of a fallen tree on a train on either line, on the SWBMS (with the risk of structural failure), or on the catenary system (which might cause derailment or secondary impact from flying debris). Also, the impact of a fallen tree could derail or partially derail a Network Rail train with serious consequential effects on a high-speed train on the parallel track, or generate a secondary impact of flying debris on the SWBMS or on a high-speed train.
 24. The adoption of the HS2 standard on fundamental safety grounds would apply whatever above ground bat mitigation structure were adopted, including the abutting of separate structures for the HS2 and MJC lines. Moreover, were separate structures built, a similar built space would be occupied, the zone of influence would remain much the same, and the advantages of an elegant and efficient combined structure, resting easily within the landscape would be lost.
 25. A further aspect raised by the Council⁹ concerns the lack of information on the mesh inserts between the curved ribs of the SWBMS, including dimensions, material, finish, colours, and details of the junction with the concrete panel. The parties have agreed a form of words for a requirement under Schedule 17 para 2(3) which I consider appropriate, and this is set out in the attached Schedule.
 26. In addition, the Council requested information regarding the design and appearance of the aperture edge protection to the SCL/13 Green Overbridge.¹⁰ Again, the parties have agreed a form of words for a requirement under Schedule 17 para 2(3) which I consider appropriate, as set out in the Schedule.
 27. Finally, the Council requested details of the hard surfacing proposed for the PRoW SCL/13 to the Green Overbridge.¹¹ The Appellant refers to its Statement of Case Appendix E8, Table I, page 17,¹² which notes that the surface will be a limestone MOT Type 1 sub-base material, covered by Schedule 4 (Highways), rather than a Schedule 17 matter. I am satisfied that this is the case.

⁸ Appendix E of the Appellant's Response to CSC provides details

⁹ CSC para 4.8.2

¹⁰ CSC para 4.8.3

¹¹ CSC para 4.8.4

¹² In Appellant's Response to Inspector's Requests dated 10 January 2024

28. Overall, I conclude that the design and appearance of the SWBMS ought not to be modified and, in any event, the Council has not suggested how it might reasonably be capable of modification.

THE EFFECTS ON SHEEPHOUSE WOOD

29. The EASP notes that the extension of the SWBMS over the adjacent MCJ line results in the eastern edge of the structure being located some 12m closer to the boundary of the Sheephouse Wood SSSI than would be the case under the baseline scheme, thus extending the lineside vegetation management zone further into Sheephouse Wood.¹³ However, much of the area included would have been subject to lineside vegetation management arising from the upgrade of the line whatever bat mitigation scheme were adopted. The reasons for extending the SWBMS over the MJC line, rather than building an abutting separate structure, have been set out above, together with the compelling safety reasons for applying the HS2 standards to the SWBMS in relation to all vegetation.
30. The Woodside Edge Management Zone (WEMZ) has been designed in consultation with NE and, along with all other aspects of the HS2 development potentially affecting the SSSI, has been subject to detailed SSSI Impact Assessments.¹⁴ NE's consultation response dated 2 October 2023 notes that the WEMZ has a management plan requested as part of the SSSI assenting process containing enhanced planting to improve botanical diversity and that any temporary ecological impacts are negligible and mitigated through the provisions of the management plan.
31. The Appellant's written application statement describes the landscape and visual effects of the SWBMS and the proposed treatment of the WEMZ at section 4.8. In addition, Appendix F of the Appellant's Response to the CSC comprises a note by the landscape architects involved in the proposals setting out their professional opinion and responds to matters raised by the Council.
32. The aim of the proposals is to produce a layered woodland edge with a diverse understorey flowing informally to the higher canopies of the taller mature oaks. Blackthorn would be used, providing butterfly habitat, and existing trees would be coppiced and allowed to regenerate, supplemented with smaller native shrub and tree species.
33. Lineside vegetation management is authorised by the Act and does not require approval under Schedule 17. However, in my view, the WEMZ is well considered and, subject, to mitigation proposals aimed at reducing regularity of form which might harm character or appearance, is appropriate. I do not consider that the design or external appearance of the building works ought to be modified to ameliorate effects on the WEMZ and no suggestion has been made as to how they might be reasonably capable of modification.

THE EFFECTS ON THE LANDSCAPE TO THE WEST OF THE SWBMS

34. The HS2 ES assumes grassland in the area to the west of the SWBMS. Planting plans submitted with the proposals for information¹⁵ show broad types of treatment including woodland, hedgerow, aquatic and wildflower meadow. This

¹³ EASP para 4.1.17

¹⁴ Appendix 1 of the EASP

¹⁵ 1MC06-CEK-TP-DPL-000194/5 and /6

treatment would normally be developed in a Schedule 17 paragraph 9 (Bringing into Use) application, which must be made for all scheduled work.

35. The Council expresses doubts about whether such an application will be made since it does not see the SWBMS as a scheduled structure. However, the Appellant maintains that the SWBMS is scheduled work¹⁶ and confirms that a paragraph 9 application will be made. In any event, the line itself is scheduled, so were the SWBMS found not to be, it and planting to the west would fall into the category of mitigation and be subject to a Bringing into Use application.
36. The Council notes that the presence of the maintenance access track alongside the SWBMS, and the PRoW a little further to the west, together with external service areas, would unacceptably diminish the width available for planting, and suggests combining the PRoW and access track. However, this would bring the PRoW hard up against the SWBMS which would be undesirable in my view. The Council also points to the effects on space restrictions of applying the HS2 standard zone of influence necessary for safety reasons, and the effects of security fencing and underground services on the nature of planting.
37. I find the principle of including a planting screen within landscaping to the west of the SWBMS appropriate and am satisfied that it would mature well given careful design and maintenance, in relation to fencing and services in particular. Moreover, it would integrate satisfactorily with anticipated future landscaping and planting on the FCC landfill site to the west.

MUXWELL BROOK DIVERSION

38. Muxwell Brook lies to the south and east of the SWBMS. A new route is proposed, along a natural low gully line to allow it to be passed under the railway lines and into Greatmoor No 4 Culvert to the south west of the SWBMS. The original perched route would remain, allowing spillage down the northern bank into the realigned brook, increasing the range and variety of habitats on the south side of Sheephouse Wood.
39. The DAS notes that the channel through which the realigned brook would flow can be shaped to create wetland woodland areas, gently stepping down towards the entrance to the culvert. Also, that wide, shallow basins will retain water and provide appropriate growing conditions for wet woodland and wet woodland edge species, to form a continuation of the WEMZ.¹⁷
40. This is an approach sympathetic to the preservation of the local environment. However, I agree with the Council that the details shown on the application drawings would not achieve these aims, because of the uniformity of the channel profile, the lack of variation in gradient and depth, the lack of shelving, and the uncertainty of significant pooled water retention. Indication of a choice and arrangement of materials sympathetic to the local character and capable of supporting natural plant growth is also absent, but this can be rectified in a Bringing into Use application.
41. I consider that the design of this element of the building works ought to be modified to preserve the local environment and is reasonably capable of being so modified using the concept indicated in the Council's drawings titled Muxwell Brook Diversion: Reasonable Amendment Drawings 1, 2, 3, 4, 5 and 6,

¹⁶ Appellant's Response to CSC, paras 2.11 and 2.66

¹⁷ DAS para 4.2.3

accompanying the Council's email dated 17 January 2024. The Appellant suggests a condition under Schedule 17 paragraph 3(7) which I intend to adopt, set out in the attached Schedule.

FLOOD RISK

42. The Council's concerns relate to flood risk at the CAG/2 underbridge, the route of Muxwell Brook, and its impact on the PRow. In response, the Appellant notes that¹⁸ the PRow is affected by a pre-existing flood risk which would not be exacerbated by the works and points out that the Council's drainage advisor accepts that the proposals do not worsen flood risk.¹⁹
43. The Council requested MicroDrainage calculations to ascertain the effects on ditches upstream of a blockage downstream. The Appellant contends that the detailed calculations need not be provided since the flow of water in the event of blockage would be less than the greenfield run-off rate and there would, therefore, be no increase in flood risk. I see no reason to question this analysis.
44. In these circumstances, I do not find that this section of the works ought to be modified, and the Council has not suggested ways in which it reasonably could be modified.

PRow NETWORKS

45. The matters to which Council draws attention are generally outside the scope of this Schedule 17 application. The Council's two remaining areas of concern appear to be:
 - Whether the requirement in the Greatmoor Railway Sidings Order for a footpath linking the CAG/2 underbridge with the GUN/31 bridleway on the south west side of the Mega Ditch would be frustrated by the current proposals.
 - Whether the application proposals would prevent the provision of the Calvert Cycleway on the current route set out in Undertaking and Assurance (U&A) 1859 of the HS2 register.
46. The Council notes that there is no physical barrier ascertainable within the details submitted for approval that would prevent the provision of the TWAO public footpath or the Calvert Cycleway.²⁰ In these circumstances, and without any indication from the Council of a reasonable modification to the works, I see no reason why the Schedule 17 application should be refused because of its effects on PRow networks.

LIGHTING TO THE CAG/2 UNDERBRIDGE

47. The Council notes that the underbridge is long, narrow and low, and is subject to the risk of flooding. It maintains that at times it could be dark and gloomy, an unattractive place where users may not feel comfortable or safe, much worse than the previous crossing provided under the Network Rail line. It would not preserve local amenity.²¹

¹⁸ Appellant's Response to CSC paras 2.74 – 2.78

¹⁹ CSC Appendix A4

²⁰ CSC para 4.6.15

²¹ CSC para 4.6.17

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48. The Council's ecology advisor notes that the underbridge has been designed as a key flightline for bats, to provide a safe crossing between Sheephouse Wood to the east and foraging and roosting habitats to the west. Understandably, therefore, the underbridge should not be lit at night. However it could be illuminated during daylight hours, with strict controls in place.²²
49. The Appellant refers to Condition B16 of NE's bat licence, requiring that bat flight paths shall not be artificially lit or be impacted by light spillage of more than 0.5 lux. Moreover, the Appellant confirms that it has not applied for consent for artificial lighting in this location and there is therefore nothing in the submission which is capable of being modified.
50. Regarding local amenity, it appears to me that pedestrians could use the light of a mobile phone or torch where thought necessary. Otherwise, this is a matter between HS2, who may be responsible for user safety, and NE. It would be inappropriate for me to decide whether permanent artificial lighting should be provided, however controlled.

CONCRETE FINISHES

51. The Council notes that the application contained no details of the internal materials or finishes of the CAG/2 underbridge, and that the plain concrete finish implied could be an attractive and accessible surface for graffiti. It suggests a vertical ribbed finish to the internal walls, as used elsewhere, to introduce visual interest and present a less attractive surface for graffiti.²³
52. The Appellant observes that the possibility of a ribbed finish has not been raised by the Council in previous discussions. This delay is significant because construction of the underbridge, which is buried and therefore does not require consent, is already underway. The first pre-cast concrete units were installed on 21 November 2023. This modification cannot, therefore, reasonably be provided.²⁴ I agree that changing the internal walls of the underbridge to a ribbed concrete finish, even if they ought to be so modified, would not comprise a reasonable modification at this stage.
53. The Council is also concerned that the Mega Ditch retaining wall, part of the structure linking the underbridge to the Culvert No. 4 structure, would be visually intrusive, seen as a long expanse of plain concrete from the nearby PRow. It suggests that the vertical ribbed concrete finish intended for the adjacent culvert wingwalls should be continued onto the Mega Ditch retaining walls.²⁵
54. I consider this modification, which is reasonable and still possible, ought to be made to preserve the character and amenity of the local environment. Accordingly, the Appellant has supplied drawings identified in the attached Schedule showing the modification. These drawings will be incorporated into the application set, superseding the equivalent submitted drawings.

FENCING

55. Schedule 17 paragraph 3 relates to 'other construction works', including at 3(2)(e) fences or walls. This is distinct from paragraph 2 which relates to

²² CSC Appendix A1

²³ CSC paras 4.6.19, 20 and 29

²⁴ Appellant's Response to CSC paras 2.87-2.89

²⁵ CSC paras 4.8.5.1-4.8.5.7

'building works'. Paragraph 3(6) states that the planning authority may only refuse to approve plans or specifications on a ground specified in the accompanying table which, for fences and walls, is that the development ought to and could reasonably be carried out elsewhere within the development permitted limits.

56. I appreciate the Council's concern that lack of details of the height and appearance of the permanent fencing makes it difficult for the decision maker to consider environmental effects and judge whether the location of the fencing should be amended.²⁶ However, these details are not required in relation to the present application, though they may be relevant to a Bringing into Use application.
57. The Council also has specific concerns over the lines of fencing at the SLC/13 overbridge.²⁷ These relate to the location of the security fencing on the southern edge of the overbridge obscuring the proposed viewpoint and appearing unsightly; and possible unwanted access to the maintenance track on the eastern side. In response, the Appellant proposed an amended layout in which the 1.4m high boundary fence alongside the footpath would be omitted but noted that, were the security fencing repositioned further down the slope as the Council suggests, taller fencing would be needed to compensate for a reduction in effective height.
58. I am satisfied that the Appellant's modified layout ought to be adopted to preserve the character of the environment and local amenity. Any remaining issues may be the subject of a Bringing into Use application. Accordingly, the Appellant has supplied the drawings²⁸ identified in the Schedule showing the modified fencing layout. They will be incorporated into the application set, superseding the equivalent submitted drawings:

Requirements and Condition

59. The requirements and condition are necessary for the reasons set out in this decision and accord with advice in the National Planning Policy Framework (NPPF) and associated Planning Policy Guidance (PPG).

Conclusion

60. I conclude that the works proposed are acceptable subject to the requirements, condition, and drawing substitutions noted.

Alan Novitzky

INSPECTOR

²⁶ CSC Section 4.7

²⁷ CSC para 4.7.14

²⁸ Appellant's Response to Inspector's Request dated 10 January 2024, Appendices H, I and J

SCHEDULE OF REQUIREMENTS, CONDITION AND DRAWING SUBSTITUTIONS

A: REQUIREMENTS

- 1) In accordance with Schedule 17, paragraph 2(3), the nominated undertaker is required to submit plans and specifications of the following elements of the development for approval by the Local Planning Authority prior to their installation on the bat mitigation structure:
 - (i) dimensions, material, finish and colour of the mesh panels; and
 - (ii) particulars of the detail between the mesh panels and the adjacent concrete arched panels including any visible fixings.
- 2) In accordance with Schedule 17, paragraph 2(3), the nominated undertaker is required to submit plans and specifications of the proposed aperture edge protection on the SCL/13 overbridge for approval by the Local Planning Authority prior to its installation.

B: CONDITION

- 1) Pursuant to Schedule 17 paragraph 3(7) High-Speed Rail (London-West Midlands) Act 2017 and notwithstanding the details of earthworks shown on the Approved drawings relating to the diversion of Muxwell Brook to the east of the railway line and the provision of drainage ditches feeding into this diversion, the earthworks involved shall be modified to provide variation to the width and depth of the watercourses including their bed, shelves and banks in accordance with the attached drawing references 1, 2, 3, 4, 5 and 6.

C: DRAWING SUBSTITUTIONS

Concrete Finishes:

1MC06-CEK-TP-DSE-CS05-000074 rev C02

1MC06-CEK-TP-DSE-CS05-000126 rev C03

1MC06-CEK-TP-DPL-CS05-000133 rev C03

1MC06-CEK-TP-DSE-CS05-000037 rev C03

Fencing:

1MC06-CEK-TP-DPL-CS06_CL09-000153 rev C03

1MC06-CEK-TP-DGA-CS05-000012 rev C03

1MC06-CEK-TP-DGA-CS05-000014 rev C03