

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL SELECT COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 9 May 2023 (Afternoon)

In Committee Room 8

A video of the proceedings can be found [here](#).

PRESENT:

Andrew Percy (Chair)
Grahame Morris
Holly Mumby-Croft
Martin Vickers

FOR THE PROMOTER:

Timothy Mould KC, Lead Counsel, Department for Transport
Michael Eckett, Head of Acquisitions, HS2 Ltd

Exhibits referred to by the promoter during the hearing with National Farmers' Union
can be found [here](#).

FOR THE PETITIONER:

1. National Farmers' Union
 - James Findlay KC
 - Louise Staples
 - Tim Broomhead

Exhibits referred to by the petitioner during the hearing can be found [here](#).

IN PUBLIC SESSION

INDEX

Subject	Page
National Farmers' Union	3
Submissions by Mr Findlay and Ms Staples	3
Response by Mr Mould	14
Evidence of Mr Eckett	17
Submissions by Mr Findlay and Ms Staples	34
Response by Mr Mould	37
Submissions by Mr Findlay and Ms Staples	45
Response by Mr Mould	49
Submissions by Mr Findlay and Mr Broomhead	58
Response by Mr Mould	59

(At 2.15 p.m.)

1. THE CHAIR: Good afternoon and welcome to this afternoon's meeting of the High Speed Rail Hybrid Bill Committee. We have one petitioner today, the NFU. I'm going to dispense with the opening statement, given that the petitioner is a route-wide petitioner, so we don't really need the context of where we're talking about, if that's okay, Mr Mould.

2. MR MOULD KC (DfT): Absolutely, yes.

3. THE CHAIR: So, thank you. Same advice as ever. We're very keen to know what it is petitioners are wanting. We don't necessarily require a very long description of every issue but we're very keen to know exactly what the petitioners are asking of the Committee. So, on that basis, we'll commence with Mr Findlay.

National Farmers' Union

Submissions by Mr Findlay and Ms Staples

4. MR FINDLAY KC: Thank you, sir. I propose to say something very short by way of introduction and then get on to the issues. I understand that indication was given that you would like it taken issue by issue.

5. THE CHAIR: Yes, I think if it assists, if HS2 wish to respond issue by issue, that might be easier, rather than everyone trying to remember what the issues were at the end and respond.

6. MR FINDLAY KC: Absolutely.

7. THE CHAIR: So we'll progress on that basis.

8. MR FINDLAY KC: Yes. Certainly, after the first three issues, all the remainder are quite self-contained.

9. THE CHAIR: Right, okay.

10. MR FINDLAY KC: So you'll be aware we've appeared on two previous Bills and much of what has been obtained then has been carried forward in one way or another in this Bill and the assurances. On the previous schemes, the National Farmers'

Union had achieved a large number of assurances. The NFU's petition was drafted on the basis that such assurances would be forthcoming as a starting point but HS2 have adopted a new strategy. Some assurances are reworded; they appear in different locations and variously distributed as assurances, undertakings or policies. We're still working through a great deal of detail on that but we're not bringing that before you today. We're hoping to ensure that it is (a) necessary, and (b) it can be distilled to points of principle before we do so. So I'm just giving you notice that we're not dealing with that today and there may be some other smaller issues that come on a later date as well.

11. Why are we here today? Well, sir, perhaps we can have slide 54(2). I'm not going to speak to the slides but you'll see there are a large number of farm holdings affected. There are 138 according to the ES. We think there might be actually up to just over 160 farms affected in total and you can see that there's a large acreage proposed to be acquired temporarily and permanently during the course of construction and, hopefully, those figures speak for themselves.

12. We're here for three prime reasons. Firstly, HS2's approach to detailed planning and the undertaking of that planning, and thus the extent of land it compulsorily purchases, it's the lack of planning and the delayed planning that has led to the problems and this has manifested itself in a number of ways.

13. Could I have slide 54(11), please? In Phase One, and this is a slide from one of the introductory sections, when Mr Eckett gave evidence, I really can't put it better than what he said in paragraph 27. 'What we did on Phase One was very much serve multiple notices for a just-in-time land delivery to the contractor and that placed the greatest uncertainty on to the landowner and therefore made it very hard for them to plan and reorganise their businesses'.

14. So not only did it do that, but it meant that they took much more land permanently than we say was necessary, because they were doing it at the last moment so they erred in caution of taking more land rather than less land; and, secondly, much of the planning and the liaison with farmers was really put to one side because the GVDs were issued at a late date.

15. On Phase 2A, we've had some preliminary notices and some general vesting

declarations already but, again, the approach adopted by HS2 is causing the National Farmers' Union considerable concern and that is well expressed by Mr Eckett in the second part of that paragraph. So he says, 'So now we've come up with this integrated approach, which tries to marry the interests of both sides and what they will have the impact of is acquiring a lot of land up front'. I'll just repeat that. 'A lot of land up front early doors, which may mean that we acquire more than we need, and then any surplus land will be sold off under the land disposal policy but, as I say, the benefit of that' – and this is disputed that there's any benefit for farmers – 'the landowner gets a significant advance payment early to enable to reorganise and reconfigure their business'.

16. Again, the problem that is manifesting itself in Phase 2A with this so-called new, integrated approach is that, again, more land is taken permanently than is necessary and, again, the liaison with farmers is very much put to one side and doesn't bear the fruit that it was expected to when the undertakings were sought and given on Phases One and 2A.

17. Just to reinforce one point about GVDs, they are final. There are two methods of securing land. It can be a notice to treat and so forth but GVDs are the method HS2 favours. Once the GVD is made, there's no turning back. The land will vest in the ownership of HS2 and once it's vested then that land has left the farmer's control and it may or may not come back to him.

18. This lack of design and last-minute approach, or the approach that I've just described, is one that NFU and its advisers have not experienced in any of its schemes, this delay in detailed design. The NFU's main point is not, in a general sense, that the land identified is not required but that – and two important points – firstly, that GVDs should not be served until there is greater certainty that the land is actually required permanently; and that, secondly, freehold land should not be acquired when the object could be met by the acquisition of rights or the taking of temporary possession.

19. Now, as I said, the NFU and its advisers have not experienced a scheme like this: the mass or late service of GVDs, the effective breakdown of communications, the delayed detailed design and the lack of proactive help to farmers, and that leads both to practical problems on the farms but also significant increase in stress and impact on

farmers' mental health. I don't wish it to be said that HS2 haven't tried. Their agricultural liaison officers and their suppliers try to be helpful, but they don't have the power when faced with the strategy that Mr Eckett outlined in his paragraph 27.

20. The second reason we're here is to correct what we see as a misunderstanding by HS2, as advanced by Mr Eckett, that much of the problems that we outline can be dealt with by (a) compensation or (b) the Crichel Down rules. Land prices go up, so a farmer is reimbursed for his land at one level; the prices will go up. And perhaps we could move on to slide 54(3) and (4), please. These two slides, which Ms Staples will speak slightly further in a moment, give you an indication of the national farmland supply in acres, which you can see is significantly decreased. It will go up and down. And the next slide gives you some indication of the long-term farmland price performance. These are national figures and one can expect, where land is being acquired along a route such as HS2, there will be greater competition for land.

21. The interest, as you will hear, is minimal. So if payments are made, the farmer isn't reimbursed with interest. It takes no account of the long-term interest on the business in terms of lack of certainty and, in general terms, farmers, perhaps unlike other businesses, would far rather keep their land, rather than have compensation. As to Crichel Down, it may be years before the land is potentially considered for handing back – 10 to 15, even up to 20 years. I understand that you may have been shown one site which is back in agricultural use. That's very much the exception rather than the rule.

22. If one turns to slide 13, one of the issues about Crichel Down is – paragraph 41 – if it's considered by the government that the site has got development value, there's a real risk that it won't be returned to the farmer and, indeed, Mr Eckett here admits from experience that if a site's got development value, it tends to be more economic for the Secretary of State to acquire it permanently. He's essentially saying that they're taking land, if there's an option to take it, permanently if it has development value. That is not an approach that's suitable for farmers and, further, in paragraph 51 on the next slide, there are other exceptions. So if a work site has been assembled from multiple landowners, it's unlikely, if Crichel Down is applied, that the land will be returned to each individual landowner making up that pool of land.

23. So there are a number of reasons, which I've only scratched the surface of, why

compensation and Crichel Down are not the answer to issues on working farms where planning and certainty are at a premium.

24. So we have a large number of asks, which we deal with in our slides. At previous Committees, we've offered to supply a written table of asks. We can do that if that would assist you in due course, but do let us know.

25. THE CHAIR: Yes, please.

26. MR FINDLAY KC: So, with that, I was going to first of all ask Louise Staples, who sits to my right, to introduce herself by reference to slide 6, talk a little bit, very briefly, about farmland value and then we'll move on to issue 1.

27. MS STAPLES: Thank you. Good afternoon. Yes, I'm Louise Staples. I'm the senior rural surveyor for the NFU. If we look at slide 6, this just confirms that I lead on infrastructure schemes across England and Wales for the NFU. I've been working on HS2 since it began in 2010 and I've also been involved with numerous other national significant infrastructure schemes that get taken through a development consent order process, and I've just listed some of those there that I'm involved with at the present time.

28. Just in regard to land values, it was really just to point out that, as you can see from slide 3, the supply in acres at the moment is well down and then, if we go to slide 4, prices for land on a per acre basis is rising again. And, actually, what I did was I looked at the farmland markets from three of the main national firms, so that's Savills, Knight Frank and Strutt & Parker, and they're all confirming from their head estate agents that demand continues to outstrip supply and, yes, that the price has gone back up and over where it was back in 2015. And so this is just on a national scale. So if you then look at where HS2 is proposing to be, taking the amount of land they're taking, there will be an even shorter supply and, again, the price will be pushed up because of HS2. Thank you.

29. MR FINDLAY KC: So, before we start, I'll just ask Mr Broomhead to briefly introduce himself. What we propose to do with each session will be, if it's acceptable to you, a team effort where, particularly for examples, and that's why Mr Broomhead is particularly here, to call him in at the appropriate time.

30. MR BROOMHEAD: Yes, I'm Tim Broomhead. I'm a chartered surveyor and agricultural valuer. I'm a partner at Knight Frank and I act for a number of landowners, farmers, who have been affected by Phase One, 2A and 2B and so hopefully I will be able to assist if there are examples that have come across my books, but I'm actively involved in negotiating compensation both before and during the implementation of the three phases of HS2.

31. MR FINDLAY KC: I'm grateful. So I would propose then to move to issue 1. So that's slide 7, please. In effect, this reiterates what I've said and touched on in opening, that large areas of farmland are acquired permanently when they're not needed, and the matters I'd like to stress are those three in the middle of the page, that land has been acquired even though it's only required for construction purposes. Land has been acquired even though only rights are required over land, and the easiest example of that to give, which we'll come back to specifically at issue 3, is electricity lines. Land has been acquired even though it's only required for environmental mitigation and the landowner has not been given a reasonable opportunity to negotiate an arrangement whereby they keep the land and commit to maintaining it appropriately. And, again, the latter one, for instance, was an example of a number of assurances under Phase One and 2A but experience has proved that they need to be tightened up.

32. The bullet point at the bottom of the page really indicates what I drew from Mr Eckett's evidence, that on Phase 2A, we understand the current intention of HS2 is to serve GVDs over large areas of farmland, without refining its design at all.

33. If we move on to the next slide, please. Can I pass over to Ms Staples to speak to this?

34. MS STAPLES: Thank you, yes. In regard to the first point, it's really our understanding, and we know from what's been happening on Phase One, that HS2 works through multiple design stages as the process is going along. And then in bullet point 2, what we're really trying to say that we would like to see is that some of the design stages take place first, so that they are clear on what land will be required permanently, then temporarily, and where just rights are needed. And the third point to just highlight is that we've had quite a few assurances given to us in regard to land acquisition on Phase One and Phase 2A but they don't really seem to have made a

difference and aren't being considered enough, now, on Phase 2A where, already, pre-notices and GVD notices are just being served on all land.

35. If I could then go to slide 15, just to give a practical example. As you can see here – actually I've put a nice red arrow pointing to – there's a little half-moon shape of pink land there – this originally was only taken – this is on Phase One – on a temporary basis. Then, because time limits were running out for powers, a GVD notice was served. Now what we understand is, actually, HS2 don't need this land at all but now, of course, the GVD has been served so they can't hand it back to the landowner there. We'll have to wait now until after construction and then it will have to be handed back under Crichel Down. So it's an example of showing where Crichel Down really doesn't work.

36. MR FINDLAY KC: Just before we leave that, that exemplifies two points I made earlier: one, the final nature of GVD; and, secondly, when Ms Staples referred to handing back under Crichel Down, you will have to factor into that the increase in land values that may have taken place. So the farmer will be compensated at one level and will be given the opportunity to buy it back at another level, without being compensated in interest in the meantime. So that's an example from Phase One. If you could go on to the next example from Phase 2A.

37. MS STAPLES: Yeah, could we go to slide 16, please? So, as you can see here, this is actually from a GVD notice. We've got a nice long pink strip here. So that land has now been taken permanently, because the GVD notice has been served. Actually, in regard to this example, we're not sure why that's been taken. We're taking it that, because it's a long strip, it either is a utility diversion or I suppose it could be being taken for access. Just to explain, this is actually a block of grassland on a dairy farm and so, now, that pink strip has completely severed that block of grassland. I'm going to show you a few other plans in a minute to help explain it. What we're trying to say here is that we believe this land should only have been taken on a temporary basis or rights acquired if it is for a utility diversion.

38. If we go to the next slide, please, number 17. This is taken from the environmental statement off the CT-05 plan. You can see there the pink strip. So I've obviously explained why. Then if we go to the next slide, 18, you can see where the actual rail line trace is and that the grey dots are showing actually that it's going to be in

a tunnel. And then you can see that the pink strip's gone completely and all of that land has now been returned back to agricultural use. So, again, the CT-05 plan and this CT-06 plan highlight that that strip of land should have really only been taken either on a temporary basis or only rights should have been taken and it should not have been acquired by GVD.

39. MR FINDLAY KC: Just before we move on to the next example, that exemplifies the point about taking a bit of land because taking that land by GVD means that provisions of access come into – access for the farmer from his main holding to this cut-off bit come into play, as well as the issues about re-acquiring the land. And re-acquiring that land, there may be a suggestion in 10 years' time that that land has ransom element because it's allowing the farmer to connect two parts of his land, which may then increase the value that he's asked for in order to get the land back.

40. And then moving on from that, our last example is on Phase Three and if we turn on to slide 33.

41. MS STAPLES: So 33 shows, if you see here, there's a very large pink area. The red lines that are dotted with 'UT' are that it's a utility. It could be a diversion or it could be a new utility that is required. This is again off a CT-05 plan from the environmental statement, which is the construction phase. The key that goes with this just says, 'This is land potentially required during construction'. And just so that you all know, the orange bit there is a satellite compound. Then if we go to slide 34, as you can see again, as previously shown on our previous example, the land is no longer required and has gone back to agricultural use, and all that's left is the red and white dotted lines showing that there's now a utility there but all the land has gone back to agricultural use. So, again, that shows it is not necessary there to be taking any of that land permanently by GVD. It could all be done temporarily.

42. MR FINDLAY KC: Thank you. So, I think I, by mistake, suggested that was Phase Three. That's an example from the current phase, Phase 2B. Is that correct?

43. MS STAPLES: Yes, that one, yes.

44. MR FINDLAY KC: Could we then go back to –

45. THE CHAIR: Is it from 2A or 2B?
46. MR FINDLAY KC: 2B.
47. MS STAPLES: 2B.
48. THE CHAIR: So it's on the current –
49. MS STAPLES: Yes.
50. MR FINDLAY KC: That's from the current, so that's 2B.
51. MS STAPLES: Yes.
52. MR FINDLAY KC: The example at slide 34 is 2B.
53. MS STAPLES: Yes.
54. MR FINDLAY KC: So we've had one example from Phase One, one from 2A and one from 2B, for that very reason. If you want more examples, that's one of the reasons we have Mr Broomhead here. It's not our purpose to deluge you with examples. It's to give you one example or two examples of the important point we're trying to make but to stress that they are examples. They're not the only example we can come up with. What I wanted to do before we move on to our ask is to take Ms Staples back to the transcript of Mr Eckett. So that's slide 11, please. This is the paragraph where Mr Eckett summarises HS2's current approach, which may mean acquiring more than they need and selling any surplus land off under the land disposal policy. The benefit to the landowner is, they get a significant advance payment. Is that any benefit to a farmer in these circumstances?
55. MS STAPLES: So that's, yes, not going to be any benefit in these circumstances. They're always going to want to be able to retain the land if they can, to make sure they can try and keep their farms as viable as possible through the whole of the construction period, or know that they're going to get the land back sooner rather than later.
56. MR FINDLAY KC: And do farmers place much weight on the eventual possibility of getting land back under Crichel Down?
57. MS STAPLES: Well, it is a possibility but always, even before they can have it

returned to them, it does have to get offered for any other railway purpose first. So there's always a risk there that they won't get back what they think they might get back.

58. MR FINDLAY KC: Thank you. Is there anything else you want to say about that extract?

59. MS STAPLES: No. The only thing that I would like to point out there is just going back to number 19 on slide 10, where Mr Eckett has said that they're now trying to do an integrated land possession plan. He's gone and highlighted, 'that seeks to marry the requirements of the project and requirements of the people that construct the railway,' and then finally there it says, 'and those that are affected'. Well, what's happening at the minute on Phase 2A is that really those landowners that are affected, their requirements are not really being considered yet. Thank you. That's all I want to say.

60. MR FINDLAY KC: Can we move on to the ask? So if we have slide 19. So there are four asks altogether. Ms Staples, can you talk the Committee through the first, please?

61. MS STAPLES: Yes. So this is slide 19. As you can see now, the promoter has gone and actually asked for time limits for compulsory powers to actually be eight years when actually the normal is normally five years, and on Phase One and Phase 2A, they only had five years. Obviously, as we now know, on Phase One, they did run out of time and that's why that led to those multiple GVDs being served right at the end of powers. But what we're trying to ask for is that, if they're going to be given eight years, they should use the first two years to actually carry out far more detailed design before they start serving GVD notices. So that's the requirement A.

62. Then B, 'It can be demonstrated that compulsory acquisition of land in question is required', so that's for the permanent works. So because they'll have done more design, they'll know what they really do need to take permanently.

63. And then at C, again, hopefully, it should highlight also that they might only need rights or they might only need temporary possession and even the third point we've said, subsoil or airspace as well.

64. MR FINDLAY KC: We'll come back in greater detail to the acquisition of rights under issue 3. Could you move on to number 2, please?

65. MS STAPLES: So, number 2 there, we've just highlighted that no compulsory powers should be exercised where land is required for environmental mitigation, unless the owner or occupier agrees otherwise in writing. What we can confirm there now though for the Committee is that we do have a new draft habitat mitigation agreement that's been shared with the NFU, along with payment terms. So that is a major step forward for helping landowners and farmers. But we still do need to make sure that, if one GVD notice is going to be served early on, that it doesn't include mitigation land, where farmers really would like that to only be taken on a temporary basis and they are willing and happy to enter into a habitat mitigation agreement. We do want that to be considered.

66. MR FINDLAY KC: So, we move on to the third ask, which is on slide 20.

67. MS STAPLES: So, third, we've just confirmed that we would like to see that no compulsory powers be exercised where that land is required for the diversion or maintenance of overhead lines or the installation or diversion of other cables, pipes, ducts or similar apparatus; or (b) the provision of access for that purpose, which cannot be met by a combination of the acquisition of rights or temporary possession.

68. And then four, what we're seeking is that the promoter should be required to go through a thorough exercise, before the conclusion of the Select Committee proceedings, of identifying all areas of farmland where it's known that only temporary possession will be required and that the Bill should be amended. So those areas are listed in schedule 16, 'Temporary Possession of Land'. And, actually, we go on a little bit later with a different point about utility rights, so we can explain that further then.

69. MR FINDLAY KC: Yes. Thank you very much. So that's our first issue.

70. THE CHAIR: Thank you.

71. MR FINDLAY KC: And our examples and our ask.

72. THE CHAIR: Thank you. Mr Mould, are you going to respond at this point?

Response by Mr Mould

73. MR MOULD KC (DfT): Yes. I'm going to do it in two ways. I'm going to make a short preliminary response myself but I would like you to hear from Mr Eckett. So perhaps Mr Eckett could go into our witness' customary seat and I'm going to ask Mr Eckett, in a moment, to focus on the practical consequences of the constraints being imposed on the project, that you've just heard mentioned, because it's important that you understand what the practical implications would be for delivery of this railway. But before I do that, can I draw your attention to a document in the pack, which is P302, a two-page letter dated 5 January 2023, and this encapsulates the promoter's response to this important part of the NFU's case. I'm not going to read out because I'm sure you'll read it carefully when you're considering this issue in your deliberations but perhaps I might just make one or two points, which arise from it.

74. The first is this. The question that is raised by this issue is, essentially, is HS2 able to demonstrate the need to have powers of compulsory purchase over the land that is shown in the book of reference, the land that is shown on the parliamentary plans within Bill limits? And the answer to that question is, we consider, yes, we are able to do that and the right forum in which to challenge whether we're right about that is before this Committee. And a central, possibly the central, purpose of the Select Committee procedure which applies to Hybrid Bills, where it is necessary, in order to deliver the scheme that is the subject of the Hybrid Bill, to acquire extensive areas of private land compulsorily, the central purpose is to enable those whose land is affected by that need, and therefore affected by the proposed powers of compulsory purchase, to be able to come on a petition to this Committee and to challenge the need to acquire their land for the purposes of the scheme. And if they make that challenge, the burden passes squarely to the promoter to justify the need for that land. We would have to show you why, in any given case, the petitioner's land is required.

75. Now that's not a theoretical point. It's a practical, which applies to many of the petitioners who have, in fact, petitioned your Committee. Many of those include farmers who have said, 'This part of our land has been included within the Bill limits and we don't consider that there is a need for it, and we are going to ask the Committee to direct its removal or direct an assurance that powers of compulsory purchase won't be exercised in relation to that land, unless the promoter can justify the need for it'.

76. We say we can and we've published the justification in the environmental statement. You'll find that, as you know, on each of the construction phase and the operational phase plans, the CT-05 and the CT-06 series, you'll find that the land that we say is required for construction is shown outlined in pink. You saw an example of it a few moments ago. And on the operational stage, you'll see that the elements of the railway that we say are needed in order to deliver this scheme, whether they be the permanent way itself or those areas of environmental mitigation, environmental compensation and so forth, those utility diversions that are required, each of those is shown on the CT-06 plans and there is an explanation in the relevant community area report as to why those lands are needed. And the impact that that has on farm holdings is explained in detail in each of the community area reports, depending on where that farm holding is located, and that is supported by a technical assessment in the volume 5 series of reports in the environmental statement.

77. So this is the right place for those kinds of challenges to be made. What the NFU are seeking to do is to defer that challenge to a later stage, in other words, to accept that the Secretary of State is able to justify the need for the land that is shown in the book of reference, but to say that the exercise of powers to acquire that land should be contingent on further stages having been reached.

78. Now that is, in my submission, an entirely exceptional position to take in relation to major infrastructure projects. I am not aware of any other scheme of public works, whether it be authorised by legislation or by a development consent order or by a Transport and Works Act order, or simply by a compulsory purchase order, in which the order has been confirmed, the Bill has been enacted granting the compulsory purchase powers that under challenge were found to be justified, in order to enable the scheme to be constructed and operated, and yet the exercise of those powers for the delivery of the scheme is made contingent, or hobbled, by a series of subsequent conditions, which the promoter has to satisfy. I'm not of any such case in other legislation. Perhaps Mr Findlay, better informed as he will be than I am, will be able to point you to such a case, but that's an important consideration.

79. So having made those points, my question to you is, deal as they arise with the cases where farmers, growers and other landowners have challenged the need for us to acquire their land and make a judgment on the basis of the evidence that we put forward,

which justifies, we say, the need for that land to be included. But in the absence of such a challenge, the only reasonable position for this Committee to take is to assume that the promoter's case for the acquisition of that land is reasonable, because had the landowner or the occupier felt that it wasn't justified, they had the opportunity, which they could have taken, to come to this Committee and it is unreasonable, indeed misconceived, to make the contrary assumption that, in the absence of such a challenge, the promoter is unable to justify the need for that land. But that's the position that necessarily the National Farmers' Union are taking in relation to this issue.

80. Now, having said that, I'll turn to Mr Eckett if I may and ask him to deal with the practicalities of the arrangements, the constraints.

81. THE CHAIR: Before you do, Mr Mould, I understand the point in relation to the ask as it relates to GVDs and the effective delay on making decisions around that. When it comes to the temporary possession of land necessary because of utilities, isn't that a little different though? I'm not sure that point really stands quite the same, does it? Because the ask is different in relation to the utility elements that are being taken, isn't it, if that's work that is going to be temporary?

82. MR MOULD KC (DfT): I accept unreservedly that there is a clear distinction to be drawn between land that is required for the permanent way, for long-term and major civil construction works and for the provision of environmental mitigation and compensation, that the promoter, in the exercise of current national planning policy requirements for the proper mitigation of the environmental impacts of a major scheme, is also included within the Bill limits. There's no distinction to be drawn between those elements. In those cases, it would be quite wrong to hobble the delivery of the railway through imposing subsequent constraints on the exercise of compulsory purchase powers.

83. I entirely accept that it's different with utilities in this sense, that once the gas pipe has been diverted or the electricity line has been restrung, there is then no further need for the land, over which that work is being carried out, on a permanent basis. The land clearly then able, in physical terms, to be restored to its former condition and restored to its former use, and where we're dealing with farm land which was previously in agricultural use and will subsequent to the completion of those works be returned to

agricultural use, then plainly that's a different state of affairs.

Evidence of Mr Eckett

84. MR MOULD KC (DfT): What I will do, if I may, is to ask Mr Eckett, in those circumstances, why at this stage it is felt necessary to retain the right to acquire such land compulsorily – I stress, to retain the right to acquire such land compulsorily. Mr Eckett, can we perhaps deal with that point first off?

85. MR ECKETT: Sure. So the utility apparatus that we are diverting, and there are about 300 or so diversions that we need to do, and on each diversion, there are multiple landowners affected, that is national infrastructure serving cities with electricity or gas, and those utilities need to be moved out of the way of the railway, okay? We know that in certain of those cases, the utility company will want to protect their apparatus and ensure that it's safe and, in order to do that, the Secretary of State seeks to acquire the freehold, such that he can grant a wayleave, easement or deed of grant to the energy company. And in our case, the energy company is not prepared to energise, so allow that diversion to become live, until such time as they've got all of the property rights.

86. So if you don't do it the way that we're suggesting, you can then be held up by seeking to negotiate a lease or a licence or an agreement with a tenant or an occupier, an owner, and that could put the whole diversion at risk and then introduce significant delay and risk to the construction programme.

87. MR MOULD KC (DfT): Could we just put up R78(20), please?

88. THE CHAIR: But if it's taking for temporary possession, is the principle of selling back the same, that it would be sold back under Crichel Down?

89. MR ECKETT: If land is taken temporarily, the ownership always stays, in this case, with a farmer or grower, whereas if we vest the land, there is a transfer of that land to the Secretary of State. So the sale back only arises in the circumstances where the Secretary of State has acquired it.

90. THE CHAIR: The proposal for the utility land take is temporary possession, not the GVD process, is it?

91. MR ECKETT: No, because on those large number of diversions, we don't know exactly, today, where we'll need to put those arrangements in place. Where we won't be able to negotiate it with the landowner, then the request in the Bill is that all of those are able to be acquired. The easement wayleaves put in place, and then sold back subject to those easements or wayleaves. And what we've said in our information papers is where land is in agricultural use and likely to maintain in agricultural use, it will be sold back, which addresses one of the points Mr Findlay raised around the difficulties of Crichel Down, which we don't think arise.

92. THE CHAIR: The intention is to negotiate and not to acquire.

93. MR ECKETT: Yes. In the event that we cannot seek an agreement on every piece of land that's in that diversion, then we must have the ability to compulsory acquire.

94. THE CHAIR: What would you be seeking to negotiate? Would that be an easement over the land or rights over the land? So it wouldn't be purchase.

95. MR ECKETT: No. In utility corridors where it's only required for utilities – so there are some circumstances where utilities will overlay other proposed works. But in a case where it's just utilities, then we would seek to negotiate an easement or a deed of grant with the landowner in advance.

96. THE CHAIR: There's no question of where that land then returns to. But the power of compulsory purchase would be used only where agreement couldn't be reached.

97. MR ECKETT: Yes. But we have to recognise that, given the sheer number of utilities that there are, and when there is design of that utility diversion by the utility company, it may be that we don't have sufficient information at the point we need to put that deed of grant in place.

98. MR FINDLAY KC: That was the point I was going to raise.

99. MR MOULD KC (DfT): Put up the relevant page from the petition response document which the National Farmers' Union have from us. For the record, it's R78(20). I just draw attention to paragraph 2 in that response. Mr Eckett, if just read

that. Is that essentially the point that you've been looking to make?

100. MR ECKETT: Yes, exactly, yeah.

101. MR MOULD KC (DfT): And if one thinks of the way in which compulsory purchase powers are deployed in public works projects, we often hear people talk about the shadow of compulsory purchase. Mr Eckett, you know that term.

102. MR ECKETT: Yes.

103. MR MOULD KC (DfT): Just explain, when an acquiring authority or a promoter of a scheme – where they have obtained the compulsory purchase powers they need to assemble the land and rights that they judge to be required to deliver that project. They then go out, with the benefit of those powers, to seek to negotiate as far as they can for the acquisition of those land and rights by agreement with the landowner, rather than through the exercise of those powers. Is that what we mean by acting in the shadow of compulsory purchase?

104. MR ECKETT: Yes, very much so.

105. MR MOULD KC (DfT): Yes, yes. So, in a sense, is it fair to describe this as intended to provide you with the security that you need to know that, if negotiation fails, you can get in the land in order to grant the necessary permanent rights in a timely way?

106. MR ECKETT: Yes. The powers provide a context to those negotiations and are more likely to be successful as a result than where you don't have the backstop of compulsory powers.

107. MR MOULD KC (DfT): Okay. I mean, there is, I think, sir, a difference of view here. If you'd like, it's a difference of principle, but that is our explanation of the case for including land that is, we acknowledge, subject only to temporary works in the sense of being required for utilities diversions and works that, unlike the work sites and so forth, which are going to be required for years, are likely to take place over a matter of either months or a very few years.

108. That's the reason why those lands are included in the book of reference with, in principle, full compulsory purchase powers, rather than simply being confined to

temporary possession under schedule 15 and the power to obtain and grant new rights alone in relation to those lands.

109. Mr Eckett, just turning to the issue of the land disposal policy, accepting the point you make about looking to negotiate rather than exercise perhaps in a case where that's achievable within the delivery timescales for the project. So we are in a situation where, after the works have been completed and the Secretary of State has carved out the necessary permanent rights for the utility undertaker, the land becomes surplus to the project's requirements.

110. In the case of land that is owned by members of the National Farmers' Union, have you got a view as to how likely, in practice, it is that that land is likely to be subject to obvious development opportunities other than being restored to agricultural use? Can we offer a view on that?

111. MR ECKETT: In the main part, where the land is in agricultural use, likely to be maintained in agricultural use, the prospect of development is unlikely. There might be some circumstances where there might be minerals that might seek to be extracted or on the edge of towns, but that tends to be remote, particularly in this route through Cheshire to Manchester.

112. MR MOULD KC (DfT): Can we just look at the way in which the policy on land disposal for this kind of land is expressed in information paper C2? If we just put up P318? I think this is dealt with in section 4, P318(4), under the heading 'Land Disposal in Crichel Down Rules'. 4.1 is the familiar principle on which the Crichel Down rules operate. I won't read that out.

113. Turning to paragraph 4.2, we can see that, just reading from the third line, 'In a case where surplus land previously had a long-term authorised agricultural or forestry use, and there's a good faith intention to resume the long-term authorised agricultural or forestry use, the Secretary of State may decide that the property should be offered back under the land disposal policy, notwithstanding that the land has been materially changed in character'. So that established exception to Crichel Down wouldn't apply.

114. In the case of agricultural land currently an agricultural use, required for utility diversion works, after that no longer required for the construction purposes in relation to

the project, let us assume that it's clear that the land will return to agricultural use. In that kind of case, which I think is what the NFU are talking about here, is there any difficulty in principle with that land being treated in the way that we see in paragraph 4.2?

115. MR ECKETT: No, not at all.

116. MR MOULD KC (DfT): And talking about land value changes, we saw some evidence to show the way in which land prices have been moving over recent years. I think the evidence from Ms Staples was focused on the longer-term trend in land values. But if we think about land that has been acquired for a utility diversion, that utility diversion has been completed and then the land becomes surplus and available to offer back under this. Any thoughts on the degree to which in that case, the movement in land prices is likely to be a significant disincentive to the farmer in taking that land back?

117. MR ECKETT: It isn't, and of course when the land is sold back, the value will have to take account of the fact that it's got a utility above it or in the ground. It won't be the same that you're selling back as you're acquiring.

118. THE CHAIR: Hang on, but on the utility we're not selling back, are we? Because on the utility it's temporary possession.

119. MR MOULD KC (DfT): I'm contemplating that situation that Mr Eckett mentioned where it hasn't been possible to reach terms, which would enable the works to be carried out under temporary powers. And so one is falling back to exercising powers of acquisition, which I think is the principal point of concern for the National Farmers' Union. I'm asking Mr Eckett what his judgment is on the likelihood, in that kind of case, of there being a significant shift/uplift in land value, which might disadvantage the farmer, who obviously has obtained the open market value in compensation at the point of acquisition by Secretary of State, but then is being offered the land back to repurchase at whatever is the market value for farmland at that later date.

120. THE CHAIR: Grahame?

121. MR MORRIS: Just for a point of clarification, I wonder if you might enlighten me. When farmland has had some utility works either above or below ground, is there any longer-term implication for the land value? Does the farmer or landowner derive a rental income from the utility company for allowing passage across the land?

122. MR ECKETT: So it depends on the nature of the easement, but generally in our case, no. So it would be a deed of grant which would have no payment to the landowner. So the land would have the utility in it. They would be able to use the surface for agricultural purposes. There may be some restrictions in terms of what you can do over a gas main, for example. Then there would be access available for maintenance inspection by the utility company.

123. MR MORRIS: Thank you.

124. MR MOULD KC (DfT): One other point, if I might, Mr Eckett. Just turning back to the question, if we go back to A54(19), I think it was. The core of this ask by the NFU, which I think is represented by paragraph 1 on A54(19), which just to remind ourselves is effectively a ban on the Secretary of State exercising his compulsory purchase powers at all for the first two years after Royal Assent. So no land assembly can take place, and secondly, thereafter no acquisition by general vesting declaration unless the conditions set out in A, B and C have been carried out.

125. MR FINDLAY KC: Perhaps I might interrupt. That's not what's intended and it's not actually what it says. It's no compulsory purchase to be exercised unless a detailed design stage has been completed.

126. MR MOULD KC (DfT): I see. My fault, I haven't appreciated that was how it was meant to be read. I'd read it as being discrete. Well, there we are. So it's not quite as onerous as we had thought it was. The effect is that you would be unable to exercise your powers at all within the first two years, unless conditions A, B and C had been satisfied. And throughout the period of eight years during which you are entitled to exercise those powers of compulsory purchase, you wouldn't be able to do so by GVD, as opposed to by notice to treat, unless you have satisfied each of those three conditions. You understand me?

127. MR ECKETT: Yeah.

128. MR MOULD KC (DfT): Can you just explain, just briefly, to what degree do you think that would add or subtract from the certainty that is given to farmers and growers whose land is subject to compulsory purchase within the Bill limits?

129. THE CHAIR: I just need to just be clear on this. As I read this, no compulsory powers be exercised in the first two years following Royal Assent. Then, to me, it reads, ‘No GVD to be made at any time after those two years, unless those three points are met’.

130. MR MOULD KC (DfT): I’m grateful that you read it that way, because that’s how I read it too.

131. THE CHAIR: That’s how I read it, because it seems to be very clear that no powers can be exercised in the first two years and then none thereafter unless those three points are – is that not what’s intended?

132. MR FINDLAY KC: I can tell you it’s not what’s intended. We did have a debate about this before we put the slide up.

133. THE CHAIR: It’s, ‘No compulsory powers to be exercised at any point, unless those three points’ –

134. MR FINDLAY KC: No, no, it may be better to say, ‘Unless a detailed design stage has been completed, B and C, no compulsory purchase powers can be exercised in the first two years and no GVD may at any time thereafter’.

135. THE CHAIR: ‘Can be made at no time thereafter’ to me reads as no time thereafter the two-year effective ban.

136. MR FINDLAY KC: No, no, because you can – if you’ve done your detailed design stage, the purpose is you can exercise your GVD at any stage. If two years have passed, you can serve a notice to treat without doing detailed design. So the prohibition after two years is just for GVDs until a detailed design stage has been completed, and the other two conditions have been met.

137. THE CHAIR: Right, okay.

138. MR MOULD KC (DfT): But it’s designed to introduce greater certainty into the

process, Mr Eckett. So let's proceed on the basis of the explanation that we've had. I'll perhaps expand my question into two parts. First of all, that explained, how would those constraints affect the ability to assemble land and deliver the land needed for the construction of this railway in a timely and economic way?

139. MR ECKETT: So the railway is designed in elements. It's not one design process. So I think it would introduce significant risk, and a risk to the schedule and to the cost of delivering the programme. And because we would have no stable programme, we're unable to provide what the landowner wants. What we agreed with the NFU is that the landowner wants the certainty. So it produces an increased risk to us and greater uncertainty to the landowner in my view.

140. MR MOULD KC (DfT): And in the letter of 5 January, as I read it, the desire to introduce a greater measure of certainty for both the nominated undertaker, and to the receiving landowner, has been at the centre of what has motivated you in adopting the approach that you explain in your teach-in to the Committee.

141. MR ECKETT: Absolutely.

142. MR MOULD KC (DfT): Yeah. Well, there it is. We differ myself, Mr Findlay and his clients on this, but I don't think we can assist you further on the point.

143. MR FINDLAY KC: Perhaps I could ask Mr Eckett a question or two just before you finish.

144. THE CHAIR: Yes, yes.

145. MR FINDLAY KC: Mr Eckett, if we go to slide 16, just as background for my questions, and assume that that pink line there is for an electricity diversion. It's showing land to be – and we know that it's been compulsory purchased, because there's a GVD been issued in respect of it. So you must be, presumably on the basis – I'm not suggesting you will know this particular example, but HS2 must have been satisfied that the area encompassed by the pink was sufficient to enable that line either upgrade or diversion to take place.

146. MR ECKETT: Okay, if I can go to A54(17). So now that same image that was shown on the slide that Mr Findlay showed at 16 is now running east/west on this plan,

north of that bubble line. So what you have here is a tunnel passing beneath Whitmore Heath. That pink line is a haul road linking both tunnel portals, so it's a haul road for significant construction traffic, will be in use for a significant period of time. The reason it takes that location is because of the topography of the area.

147. The only other way, as you will see, to link the two tunnel portals is to come around the highway through Snape Hall Road, which is a residential road. Therefore there is a balance to be struck as to whether you impact on all of those residents with a significant haul road. Also there is topography issues with Snape Hall Road. So the decision was taken to run it as shown here. So I'm not sure your question follows, Mr Findlay, because it's a haul road.

148. MR FINDLAY KC: If it's a haul road, the same question, the same principle applies. The haul road is only needed temporarily.

149. MR ECKETT: Yes, temporarily, but in this case we're talking about probably more than five years.

150. MR FINDLAY KC: And it would be perfectly possible to have acquired the land for the haul road temporarily or by the acquisition of rights, would it not?

151. MR ECKETT: Yes, but in our information paper, and this shouldn't have come as any surprise to the National Farmers' Union, it says that where land is proposed to be taken for a significant period of time, it won't be economic for the Secretary of State to take it temporarily.

152. MR FINDLAY KC: But there's no reason why it couldn't be taken temporarily and why it's been acquired permanently, except for the economics of the Secretary of state, even though the farmer may have wished otherwise.

153. THE CHAIR: What's the economic argument? Maybe I missed it.

154. MR ECKETT: Under schedule 15, where we have the powers to take land temporarily, the compensation is assessed on the basis of any loss. There are circumstances on this and other schemes where the compensation payable under any loss is significantly greater to the Secretary of State than if he were to acquire the land permanently and then subsequently sell it. So in all cases we will do that judgment as to

whether it's economic for us to take it temporarily or permanently.

155. And as the information paper says, it sets out the sort of considerations the Secretary of State will have when exercising powers. Length and duration of the works is one of them.

156. MR MOULD KC (DfT): This is P19(5). This is information paper C3, I think, just so the Committee has the document you're referring to. It's section 4 of that.

157. MS MUMBY-CROFT: Can I just ask a quick question please?

158. THE CHAIR: Holly?

159. MS MUMBY-CROFT: There was a comment made in relation to that strip about ransom value of land at future dates. Can you just elaborate on that a little bit? I wasn't entirely sure what was meant. Well, I mean I know what a ransom strip is but –

160. MR FINDLAY KC: It may be more for Ms Staples than Mr Eckett. The comment came from our side of the room.

161. MS STAPLES: Yes, possibly.

162. MR BROOMHEAD: Okay, so in this particular scenario, this strip is, as I understand it, partly for haul road and partly –

163. MS MUMBY-CROFT: In the middle of somebody's – two houses.

164. MR BROOMHEAD: It goes through the middle of a dairy farm, and if one comes to value that strip in compulsory purchase terms, we would be valuing the value of the land and the value of the severance of the land that's the other side. When we come to potentially buy it back again, it reverses back out again, potentially, that we have to buy the value of the land and, potentially, we are ransomed because we are putting our farm back together. So that's why farmers are so wanting to avoid, as much as possible, these strips, which we know, regardless of whether they're for utilities or for access roads, they are coming back because farmers are there for the long haul, 15-20 years.

165. It's the fact that we have to go through another negotiation to purchase it back, and the Secretary of State and HS2 will be under a duty to make sure they maximise the

amount of land. What we need to do in these examples is to avoid the purchase in the first place, because most of my clients understand what's got to happen to their farm. They understand that they are willing to, you know, have a haul road but let it come back. There's temporary powers in the Bill. Why is it that this land is being permanently acquired? We're using one example but for this next Bill –

166. THE CHAIR: The point's understood. To Mr Eckett, during the period of the use of this strip as a haul road, does the farmer continue to have rights over the road, the haul road, to access the rest of the farm?

167. MR ECKETT: That will be determined on a case-by-case basis.

168. THE CHAIR: Depending on the use?

169. MR ECKETT: It's set out in the farmers and growers – as to whether it's safe to then cross our works. So not always possible, but where, on a case-by-case basis, it is safe to do so, those arrangements can be made.

170. THE CHAIR: But in that example, the farmer will be compensated for the strip of land taken for the haul road, but not compensated for their inability to access the remainder of their farmland.

171. MR ECKETT: Under section 7, sir, on severance and injurious affection, any depreciation in the land that is severed by that haul road can be taken into account.

172. MR MOULD KC (DfT): Mr Eckett, in the event that there is some further loss, for example, in terms of temporary loss of profits, something of that kind, would that be recoverable in principle as disturbance compensation would?

173. MR ECKETT: Yes.

174. MR FINDLAY KC: You were asked by Mr Mould that, when the land would come back, you were clear there'd be no problem about price increase in land. But you've just accepted the haul road is going to be used for five years, if not longer. How can you be at all certain that the land value won't have risen in that five-year period?

175. MR ECKETT: What I said was the circumstances in which we're buying it is unencumbered and we're selling it back, subject to – I think in this case there's also

electricity, so subject to any permanent requirements for apparatus or utilities.

176. MR FINDLAY KC: Well, in this case, as I understand it, it's a haul road. It's not for electricity.

177. MR BROOMHEAD: It's got an electricity cable.

178. MR FINDLAY KC: It's got electricity cable, too. It's going to buy it back unencumbered but the underlying value of the land, the fact that there's an electricity wire over land doesn't prevent it being used for dairying or even for cropping, does it? It's just where the pylon is. But you also said – you were asked a specific question by Mr Mould about increase in value. The land could increase significantly in value, the underlying land.

179. MR MOULD KC (DfT): I think my question was focussed on utilities and the relatively short duration of the need to carry out works there, but I appreciate the principle applies across to this case as well.

180. MR ECKETT: If you look at the other example you cited, which is the D piece of land on Phase One, I think, at A54(15). I can explain, sir, if you'd like me to, the circumstances in which we acquired that and why now it may not be required. But the point I was going to make here is the reverse, effectively, of the point that you're making, Mr Findlay. When this piece of land is sold back, it's being sold back as a piece of land with no access. So the differential in price between when it was acquired with access and selling it back without access works the other way around.

181. MR FINDLAY KC: I don't know the details of that, Mr Eckett, so I'm not in a position to deal with that.

182. MS MUMBY-CROFT: A differential in value, as well though, isn't it, in line with that? If it's worth less, it's worth less.

183. MR ECKETT: Yes. I give an example, but it's not all one way.

184. MS MUMBY-CROFT: There could be a scenario, presumably, where a piece of land was bought, land prices in that area increase quicker than interest rates or quicker than that person's investment or whatever they've done with that purchase price, and

that they may find it difficult to buy it back because it's worth more.

185. MR ECKETT: The way that advance payments have changed, so under the old regime we had on Phase One, is the first day an advanced payment could be made was on the day that the land was acquired or the landowner had been dispossessed, whereas now, following changes in the legislation, advance payments are available early.

186. So that enables a position where the landowner can reinvest before the valuation date, so that they're not impacted by the inflation in the way that was described because they're getting their money and yet they've not yet lost the land if you still what I mean. They're still benefitting from the inflation and yet have got their money to go into the marketplace and buy replacement land if it's available.

187. MS MUMBY-CROFT: If it's available, which it hardly ever is.

188. THE CHAIR: Okay. Any further questions?

189. MR MOULD KC (DfT): No. As it was referred to, I wanted just to show you R6(27), which is where you find the explanation that I think someone was asking for, for what the Secretary of State meant by economic considerations in choosing whether to exercise powers of compulsory purchase or to rely only on temporary possession powers.

190. This is from section 21 of the published farmers and growers guide. If you look at 21.1.6, you'll see that the basic position is that if agricultural land is available to the Secretary of State on a temporary basis for construction works, it will normally be considered economic for him to acquire temporary rights of occupation provided the land concerned is planned to be used solely for agricultural purposes after hand-back. So that's the default position.

191. But then we see those circumstances or combination circumstances where that will not normally be the case. And they're then set out in those bullet points, Mr Eckett. We see for example, about halfway down, the period of occupation exceeds five years.

192. THE CHAIR: Under five years, the intention is temporary acquisition.

193. MR ECKETT: Yes.

194. MR MOULD KC (DfT): And then we see that there's some information given to farmers and growers at 21.7 about the consideration of the balance between the cost of occupation, which would be payable under schedule 15, and the cost of acquisition and subsequent disposal. These arrangements I think stem from Phase One. Is that right?

195. MR ECKETT: They do.

196. MR MOULD KC (DfT): They were thrashed out before the Phase One Select Committee, I think in part at the behest of the National Farmers' Union.

197. THE CHAIR: Thank you.

198. MR MOULD KC (DfT): Thank you.

199. MR FINDLAY KC: Can I just, to respond to the evidence, ask Ms Staples to comment first of all on the issue – you see the factors that Mr Mould has just referred to? Are you aware of any case where, in terms of access tracks or electricity line diversions on Phase 2B, that land has been taken temporarily?

200. MS STAPLES: Well, I can't say on 2B. All I can confirm is, for Phase 2A, that what we've seen from what happened on Phase One is where everything was taken to start off with on a temporary basis. But because HS2, again going back to, did not have enough design, they ran out of time. So then they just had to serve GVDs on everybody, on everything that was left, whether it could have stayed on a temporary basis or not.

201. So now what we've seen is, on 2A, is they've swung completely the other way and they're just serving one GVD notice. They're pretty much taking all the land within Act limits, whether it's for a utility diversion or it's land that could only be taken on a temporary basis. So that negotiation is not happening. They are just going the full hog the other way.

202. So if there was some negotiation happening about what could be just done under rights, or what could be taken on a temporary basis, then of course that would be much more satisfactory. But that isn't happening and that is what we're trying to stop going to happen now on Phase 2B.

203. THE CHAIR: Okay. So I'm confused now as to where we're at, because I've had

HS2 tell us that under five years the intention is temporary, for the utility diversions or works, temporary. Your contention is everything's been taken under GVD. Now, is this because you wish to retain the rights but HS2 wishes to retain those rights to compulsory purchase, but intends to temporarily take land where appropriate in these circumstances? I'm just confused.

204. I'll be perfectly honest. In my own view, I want to ensure that farmers have viable businesses at the end of all this. But I also understand that, in Parliament deciding to build this railway, land has to be acquired and has to be taken and sometimes that will be against the will of people. That is a decision Parliament has taken, but in the middle there rests reasonableness. I'm confused as to where exactly we are on this, because I'm hearing conflicting things. So I don't know if Mr Mould or Mr Eckett can respond to that.

205. MR ECKETT: The Phase 2A land assembly programme that you've heard referred to is in its infancy. Okay? You'll also know Parliament has decided there's going to be a pause on 2A. So that gives further time for those negotiations that I say is baked into the process to happen.

206. MR MOULD KC (DfT): I think it's the Government who's made that decision rather than Parliament.

207. THE CHAIR: The Government, yes, but the intention, just to be very clear what HS2 are saying to the Committee today, is to follow these principles set out in 21.1.6 and where it relates to utilities to seek to do that via temporary acquisition of land. Is that HS2's position?

208. MR ECKETT: Where it only relates to the utilities. So you get utilities and multiple uses.

209. THE CHAIR: Yes, then the other principles kick in.

210. MR MOULD KC (DfT): Yes, and we are concerned with this Bill, first and foremost I would suggest, with making sure that the legislative and policy arrangements are satisfactory. What I have shown you on the screen is the current published statement of policy in the farmers and growers guide. That is the stated policy that I am

instructed represents the promoter's intention.

211. But you're absolutely right, if I may say so. Underlying all this is our case that it is necessary to retain the right to exercise powers of compulsory purchase, in other words to retain those rights unencumbered by the constraints that the NFU seek to impose upon them, so that, in any given case, if agreement for lesser terms of occupation – if the circumstances are such, for whatever reason, that in order to deliver the railway in a timely and effective way, it is necessary to fall back to the exercise of compulsory purchase powers, this promoter, as with any other promoter of public works, is able to fall back on those powers without the constraints that the NFU seeks to impose upon them.

212. THE CHAIR: Good. I think we've concluded that portion. Have we, Mr Findlay?

213. MR FINDLAY KC: Well, no. Mr Mould threw down a gauntlet which I'm going to pick up in a moment, but also Ms Staples wished to respond to, I think, two more matters to give you an example.

214. MS STAPLES: Just two more matters. We really are not trying to encumber HS2 at all. It is perfectly possible to divert utilities, even major utilities, without taking land compulsorily. They can do it by just taking rights. This happens on every other major infrastructure scheme across the country in England and Wales under a development consent order.

215. I know this is a bigger scheme, but the principles apply. They can do that. There's no encumbrance from it at all. It's the same with actually only taking land that's needed temporarily. I think the five years is just a hurdle that they are putting there that's not needed, to keep land under temporary possession that does not need to be taken permanently.

216. THE CHAIR: Okay.

217. MR FINDLAY KC: Mr Mould said that our first ask was unprecedented, but can I ask you to have a look at slide P29(98) please, and paragraph 15.1? 'If at any time when it's proposed to implement the powers of the Bill,' and that is by GVD primarily,

in relation to property, ‘the Secretary of State is satisfied in the light of detailed design,’ and that chimes with what we’re asking for, ‘that any part of the property will not be required for the accommodation of any permanent works, the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill’.

218. We’ve asked for a development upon that for a different onus, but it’s the same concept. Mr Mould, with respect, misstates the NFU’s case. Our case is, with respect to him, slightly more subtle than he presented it. It’s the exercise of the powers when they’ve carried out this further detailed design that we’re seeking an assurance in respect of, and on similar terms that assurances have been given, albeit they’ve proved ineffective, on Phase One and 2A.

219. Likewise, assurances are given in terms of land taken temporarily on the subsequent pages, 9 and 10. I won’t take time now to go through them, but it is simply not the case that what we’d be doing would be wholly exceptional or novel.

220. The second point to close with is that, as Ms Staples has just said, in terms of acquisition of rights for utilities, for accommodation crossings and the like, and we’ll show you an example in a moment, they are absolutely acquired as normal under DCOs. There’s still in acquisition of permanent rights, but as I pointed out in opening, it’s not an acquisition of the freehold. It’s a difference.

221. If one comes to that strip of pink land, there’s a significant difference to the farmer if it’s acquired freehold, or whether permanent rights are required over it, or temporary rights. Farmers up and down in the country have easements, electricity line easements over their land. They live with them. They may or may not get a small payment in respect of them, depending on the legalities behind which they’re put in place.

222. But there’s a significant difference to the farmer and the continuing operation of his business if he knows that that land is only either acquired temporarily or it’s only rights over that land are going to be required because he will get the farm land back to use eventually. So those are my two points.

223. THE CHAIR: First of all, I think the Committee understands your position and we understand where HS2 are. I think we’re at risk of talking around in circles things we’ve already covered. So I don’t know if the Committee agrees but I’m keen we’ve

got other things to move on to. Mr Mould, did you wish to respond to this?

224. MR MOULD KC (DfT): I was simply going to say that the assurance that you were shown at P29(98) is actually an application of the Secretary of State's statement of policy at paragraph 3.3 in information paper C3, which you have at P319(3) and (4), which I think you were shown in my opening statement. So that remains the Secretary of State's position.

225. THE CHAIR: Okay, thank you. If you're concluded on this piece, did you wish to move on to your next issue?

226. MR FINDLAY KC: Well, sir, I understand you've heard enough on issue one.

227. THE CHAIR: I think the point is made. We understand what you're asking for and we understand the reasons you're asking for it. I think the Committee's aware of that and I think we understand the disparity between the two sides on the issue. So I think we're fairly clear what the argument is here and what the ask is. So the floor is yours, if you wish to continue.

228. MR FINDLAY KC: I'm grateful, sir. The next two issues are, if you like, sub-issues under this main issue. So those points that we may wish to pick up, may be picked up under the next two issues in any event.

229. THE CHAIR: They're principally the same issue then. When people say they're sub-issues, they're the same. In which case, the reason I'm urging as to whether we're moving on or not is because I do want to just suspend for five minutes for a comfort break for our older members of the Committee, and by that I mean me.

Sitting suspended.

On resuming –

230. THE CHAIR: Mr Findlay, over to you again.

Submissions by Mr Findlay and Ms Staples

231. MR FINDLAY KC: Thank you. So the next issue is environmental mitigation, which has been mentioned, but the requests, we'll take you straight to, it's slide 29, are

focussed on issues different from those which we've just been discussing. So I think it's easiest to take you to the asks first and then to work backwards. I'm going to ask Ms Staples to deal with the paragraphs A and then B, C and D.

232. MS STAPLES: Thank you. Yes, the first point to make on this slide is in regard to biodiversity net gain. What the NFU would really like to see is that absolutely no land within Act limits is taken to achieve the biodiversity net gain.

233. THE CHAIR: This is the 10% net gain, is it?

234. MS STAPLES: Yes.

235. THE CHAIR: Because I have to admit to being a bit staggered to hear, when it was presented to us. So this is the voluntary 10% net gain, which could potentially be over your members' land.

236. MS STAPLES: Yes.

237. THE CHAIR: Okay.

238. MS STAPLES: Obviously if a landowner would like more mitigation, then of course that absolutely can be agreed. So with that request, we thought actually that that had been addressed when Mr Mould gave his address to you before with Peter Miller on environment. And if I could just take you back to slide 27, at 2.31, it says, 'The land that is included within the Bill limits and thereafter subject to compulsory purchase... Ordinary the land is not included with a view to it being used for delivery of biodiversity net gain'.

239. So we thought that had been addressed, but then we received in our PRD, in our response from HS2... So if you can go back to slide 24, what we received in the response, as you can see there, it says, 'Biodiversity gain within Bill limits'. So we were a little bit shocked to see that. It says, 'This will include refining the land take required for construction and protecting habitat within the construction boundary to further reduce biodiversity losses'.

240. So what we're concerned about is now that so much land at the present time, which is all going to be taken, as we've just been hearing, by GVD, won't get handed

back, some of it could end up being kept to achieve the biodiversity net gain. The NFU requests that this is not allowed, and that all biodiversity net gain, the 10%, is achieved outside of Act limits and done by negotiation, or within Act limits if it's by negotiation agreed.

241. THE CHAIR: Yes, got the point, no, understood.

242. MR FINDLAY KC: That's our first point.

243. MS STAPLES: First point.

244. THE CHAIR: Good. Did you wish to do your second one?

245. MR FINDLAY KC: It may be helpful if we go through the four points and then Mr Mould can –

246. THE CHAIR: Mr Mould, if you wish to respond to that?

247. MR FINDLAY KC: No, I was going to go through all four together.

248. THE CHAIR: Sorry, I thought we were going point by point and then respond. Sorry.

249. MR MOULD KC (DfT): I'm happy to do either.

250. THE CHAIR: Mr Findlay then. We'll do all four and then Mr Mould will respond.

251. MS STAPLES: Okay, so point 2, what we still have concerns about, and a lot of our NFU members raise, is that there is still a lot of land taken to achieve habitat mitigation, even within Act limits. You know, sometimes there can be up to three times the amount of land taken, planted up or some type of habitat mitigation compared to what is lost. They always ask the NFU, 'Why is this amount needed? How do I understand and get confirmed that that amount really is needed?'

252. So to help all of our landowners, farmers understand that, we really would like to see that there is some type of metric, so that when discussions are happening with each individual landowner, it can be explained why that amount of land is needed to reach the no net loss target that is definitely there within Act limits. So that's our second one.

253. Then our third one is just notifying farmers where land is required for ecological mitigation. Again, this is going back actually slightly to some of our points that we've just been raising, is that they could retain ownership if they are happy to maintain that habitat mitigation there.

254. As I've said, we now do have a draft generic agreement. We have been told what payments might be, so we are a step forward to achieving that. But again, the big question there is that it stays in temporary possession rather than having a GVD served on it straightaway.

255. And then finally, that is mentioned about there will be a biodiversity action plan. And we've just asked that the National Farmers' Union could be consulted on that. Thank you.

256. THE CHAIR: Thank you. Mr Mould, I'll have some questions but I'll restrain myself. Mr Mould, and then I'll call myself later.

257. MR MOULD KC (DfT): Right.

258. THE CHAIR: A rare moment of self-restraint.

Response by Mr Mould

259. MR MOULD KC (DfT): If you turn to A54(27), which I think you were shown fleetingly a minute ago, but in paragraphs 231 and 233, I explained to this Committee that land has not been included within the book of reference within the Bill limits for the purpose of using that land in order to deliver a net gain in biodiversity.

260. And in the environmental statement, where the explanation is given for the use of land shown on the CT-05 and CT-06 plans, you will not find, as I understand it, anywhere within the community area reports any attempt to justify the use of land within Bill limits for the purposes of delivering on the project's wider aspiration towards biodiversity net gain. What you will find is ample reference to land being taken for the purposes of mitigating the environmental impact of the railway on ecology and, where necessary, for compensating where mitigation can't achieve the desired outcome, which is that there should be no net loss, in other words, that the impact should be brought back into balance.

261. The purpose of the metric, as Mr Miller explained to you, I think, in the teach-in, that hasn't guided the environmental design. That is a means of auditing the effectiveness of the environmental design. So the metric will be deployed once we understand precisely what metric we are required to deploy from Natural England.

262. The metric will be deployed in order to test whether the proposals that are included within the Bill, explained in the environmental statement, for the use of land within Bill limits for environmental mitigation and compensation, have in fact, applying the metric, achieved the ambition, the objective, of bringing matters back into balance, or whether there is a shortfall, in which case some arrangements will need to be made within the powers of the Bill or through other techniques that are available to us, in order to achieve that.

263. THE CHAIR: Is that like-for-like mitigation as opposed to the 10% element?

264. MR MOULD KC (DfT): Yes. Yes. The stated policy objective of seeking to achieve a 10% net gain in biodiversity is one that the project has and the Government has asked it to seek to achieve that. But you will not find in the environmental statement any assertion or contention that land within the Bill limits has been identified and included within the book of reference for the purpose of fulfilling that objective.

265. MR FINDLAY KC: It may help if I say we wholly accept that. That's not our point.

266. THE CHAIR: Rather than interrupt Mr Mould, we'll let Mr Mould finish. Then I'll go back to the other parties.

267. MR FINDLAY KC: I hoped it was going to short circuit that if I said we accepted that's the position.

268. THE CHAIR: Right.

269. MR MOULD KC (DfT): The reason I emphasise that was because I understood from the petition that that was the concern upon which this point was found.

270. THE CHAIR: I find myself confused again because point A was specifically asking for it not to be included in the Bill limits for the plus 10%, which I expressed a

concern about at the session we had on this, as to what it would do to the cost of this project. But that was specifically the ask, wasn't it, A?

271. MS MUMBY-CROFT: The absence of something is not the same as saying we won't do it, is it? It just doesn't say that in there. It doesn't say that you're going to do it for those purposes, but it doesn't say you won't either.

272. MR MOULD KC (DfT): I didn't catch that last comment.

273. MS MUMBY-CROFT: Yes, sorry, it's my accent. I'm sorry.

274. MR MOULD KC (DfT): No, no.

275. MS MUMBY-CROFT: The absence of something is not the same as saying that it won't happen. It's just that it's not currently for those purposes.

276. MR MOULD KC (DfT): If what you mean is that there is a possibility that land that has been acquired for other purposes, that is to say constructing the railway or for the siting of works and so forth, is then found to be surplus to the requirements of engineering and so forth, and that that might be seen as presenting an opportunity to some ecological works which might go towards the 10% net gain objective, then that is a possibility, yes.

277. MS MUMBY-CROFT: Is that a concern?

278. MR FINDLAY KC: That's the concern.

279. MR MOULD KC (DfT): Right.

280. MR FINDLAY KC: Yes, our concern – just to explain to Mr Mould, we wrote our petition. We've then seen what Mr Mould has said here and we're seeking to take that forward and have it put in assurance. Our concern is with the extent of land that's being taken that it will not come back to farmers, or a large proportion of it won't, because the temptation to use it for biodiversity net gain for this 10% will be too great to resist.

281. MR MOULD KC (DfT): I think I went on to say at the top of the page 28, at A54(28), that the expectation would be that such a case, the promoter be looking to deal

with that land in partnership with the landowner.

282. THE CHAIR: Aren't we all aggressively in agreement with each other here?

283. MR MOULD KC (DfT): I did discuss this beforehand with Mr Miller, who, as you know, is responsible for these matters. Mr Miller made the characteristically sensible, practical point, if I may say so, that in a case where that opportunity arose, the promoter's desire would be that that land should be handed back to the former landowner with a view to them taking on the role of managing that land. Of course, it would be a matter for them whether they wish to do that, but certainly the promoter of this railway would ordinarily wish, in a case like that, the former owner to take on that responsibility under the aegis of one of the management agreements that Ms Staples said we're now making progress with in her earlier evidence. So that's a practical aspect, which tends to reinforce your reaction, I would suggest.

284. If there is a nervousness on this side of the room, it's this. The assurance, in the way in which it's put, is an assurance, if you like – it's a commitment of universal application, and supposing that the landowner in question in a given case was asked whether they would agree to their former land being devoted towards the purpose of achieving environmental net gain, they said no they wouldn't agree to it, and then they were asked, 'Would you like the land back?', and they said, 'No, we wouldn't like the land back because it's too small. It doesn't have any particular utility to it anymore', then the promoter is therefore in the situation where they have land, which they judged to be suitable for environmental net gain purposes, and yet they can't reach agreement with the landowner that it should be, and so they have some surplus land for which the best use is being denied them.

285. Now, I hear from my right the suggestion that that is a drafting point. Well, quite, that's precisely the point and if there's room for manoeuvre on this point, it's in relaxing the nature of this commitment, so it is more aligned to the practicalities and doesn't seek, as so many of these assurances do in this presentation, to fit everything into one size, some kind of bed of Procrustes, which has to apply to everything. We're happy to move this forward in a more pragmatic way, in line with what I said to you in those passages that are included from the transcript.

286. MR FINDLAY KC: So, if my learned friend wished to come up with some

further drafting, we'd of course consider it and we can bring it back to you at another case if we don't reach agreement, but it sounds as though we should reach agreement on it.

287. THE CHAIR: That sounds the case to me and I would have thought point D would be easy to reach an agreement on as well.

288. MR MOULD KC (DfT): Indeed.

289. THE CHAIR: So we're left with B and C.

290. MR MOULD KC (DfT): Well, B, the explanation is to be found in the environmental statement but it doesn't follow that I'm going to say – we're going to simply direct the farmer to that explanation. The farmers and growers guide has a detailed section, section 2 at R67, on communication with farmers, landowners and rural business owners. If those who haven't petitioned against the location of environmental and ecological mitigation on their land – if the NFU's position is that those of their members who haven't petitioned, but whose land is earmarked for that, would wish to receive further information, I see no difficulty in principle with reasonable arrangements being made for them to receive such information.

291. THE CHAIR: Okay. So with relation to A, you will have a fairer period of negotiation, because I'll be very open about what my position would be. I would have been sympathetic to the NFU's position on this, with relation to the 10% gain. I wouldn't wish to see land being used, which could go back to other uses, to meet that. Throughout this, I've been very open, as many of us have, about what our view is. I'm sympathetic on this point so I hope that there will be some further work done on this so that we're not then required to produce something ourselves on it.

292. MS MUMBY-CROFT: I completely and totally agree with you on that, yes.

293. THE CHAIR: Well, there's a majority of us and Grahame's nodding-ish in agreement, so that's where we would be on this issue. Let's be open about that to facilitate all parties. But then that work can take place and we can be updated on that.

294. MR MOULD KC (DfT): Thank you.

295. THE CHAIR: Thank you. Mr Findlay, back to you.

296. MR FINDLAY KC: Well, I think that covers the whole of 2. I mean, we're hoping we're going to get agreement on – we'll wait to hear from HS2 on A, B, C and D, noting particularly what you said in respect of A. Ms Staples wished to mention something about C.

297. MS STAPLES: Just I really do want to clarify in C that, yes, if the land can remain in temporary ownership, because the landowner wishes to take it over, the maintenance, and the agreement can be reached, then that's what needs to be achieved. And we just want to make sure that there's an assurance given that that discussion will happen with that landowner first, rather than just a GVD being served straightaway on those areas.

298. THE CHAIR: I'll let Mr Mould respond to that. My comments, to where my sympathies were, were in relation to the point at A. I, on the other points, was not referencing those. Mine was in particular reference to point A. So if Mr Mould wants to respond on that point.

299. MR MOULD KC (DfT): Well, insofar as what is being suggested is that there should be a constraint on exercising powers of compulsory purchase in relation to land that has been identified without challenge before you as needed for ecological mitigation and compensation, then my response to that is the response I made on issue 1, because it's essentially the same point. In the absence of challenge before you, there's no justification for imposing any such constraint on the exercise of those powers.

300. Having said that, in the farmers and growers guide, there are a number of scenarios put forward in which the Secretary of State would be willing, in principle, to discuss the exercise of temporary powers, and thus avoid the need to exercise compulsory purchase powers, and they embrace, amongst other things, where land is to be maintained long term for ecological mitigation purposes, and it's in that context that the draft template agreement that you were told about a few minutes ago has been developed.

301. So there are a number of cases, as I understand it, in which, on previous phases, arrangements of that kind have been or are being discussed, but for the reasons I gave,

which are obviously a matter for you to consider in response to issue 1, the promoter needs to be able to know that, if all else fails, land that is subject to compulsory purchase can be compulsorily purchased and the timing of the exercise of those powers must, in the final analysis, be judged by reference to the needs of the economic and timely delivery of the railway.

302. This is, as you know, the largest infrastructure project in living memory and if it's a choice between making sure that it's delivered in a timely and effective way and forgoing the exercise of compulsory purchase powers in relation to land whose need for some particular purpose hasn't been challenged, then the balance, in my submission, must favour the first rather than the second of those alternatives.

303. THE CHAIR: Understood.

304. MR FINDLAY KC: Can I respond to that briefly?

305. THE CHAIR: Yes.

306. MR FINDLAY KC: Mr Mould is making, with respect, a mountain out of a molehill. The background to this – and can we have slide P299(9), please – and it's assurance 17; this is from Phase 2A. We understand that at least an equivalent is being proposed for Phase 2B, not as an assurance though, which we've agreed to put over until the next time. The background to this is that the parties accept that the Secretary of State has identified areas of land which it requires for mitigation, but the Secretary of State understands that, in certain cases, farmers may wish to manage that land and so provide the mitigation, but be owned by the farmer, and this is what assurance 17.1 did. There are a number of provisos and then, 'The Secretary of State shall not exercise the powers of compulsory acquisition in relation to the property, but instead the nominated undertaker may exercise the powers to enter and take temporary possession of the property'. That is effectively where the farmer has agreed to provide the mitigation.

307. So that is the background against which this ask is made, that we're not making a great imposition on the Secretary of State. We're just asking him, against the background of an assurance, or a similar assurance, that they actually do ask the farmer. That's all that C is asking. That's why I say Mr Mould's making a mountain out of a molehill. We're just asking that this be put in place and not seeing what's happened on

the previous schemes where GVDs have been executed without this having the chance to be worked through.

308. THE CHAIR: And this assurance is from 2A.

309. MR FINDLAY KC: 2A. And we understand, although it's not in the same wording, and it's caused a great deal of confusion, a similar type of assurance, or an expectation is going to be similarly provided for 2B, and what request C does is just nail the Secretary of State down to making sure he actually considers that before exercising a GVD, which is, with respect, a small ask in the scheme of things but it's an important ask for the farmers.

310. THE CHAIR: Okay, that's understood.

311. MR MOULD KC (DfT): Well, it may be my fault. Perhaps I misunderstood the scale of what was being asked but what I can say, the substance of that assurance 17 is carried forward in the farmers and growers guide for Phase 2B and although it's not before you today, the parties, I think, have been making progress on the need for an overarching assurance that will commit the promoter to effectively treating certain specified paragraphs of the farmers and growers guide as assurances offered to farmers affected by this Bill. So, on that basis, that gives some reassurance.

312. MR FINDLAY KC: It does, but the reason we've asked for it is because, in the farmers and growers guide, this particular aspect is not covered, in our understanding. If Mr Mould tells me it is, no doubt he can point it out to me without wasting your time further. But it's to ensure that proper consideration is given to the mechanism that has been set up before GVDs are issued that we are seeking, and we've been forced to ask for it because that is not what has happened on previous phases, even though that assurance has been in place. So we're not asking – it's just for proper consideration.

313. MS MUMBY-CROFT: Can we know which part it is? It's in the growers guide?

314. MR MOULD KC (DfT): It's paragraph 22(6) and 22(7) in the farmers and growers guide. In R6(30) and (31), headed, 'Scenarios for the Potential Use of Temporary Occupation Powers rather than Power of Compulsory Purchase', there's a series of scenarios in which the Secretary of State has indicated that he would be

willing, in principle, to proceed on the exercise of temporary powers as opposed to compulsory acquisition. And I think the one that Mr Findlay actually had particularly in mind is paragraph 22(8) on R6(31). You'll correct me again if I've got that wrong.

315. MR FINDLAY KC: Absolutely. And what we're asking is that the Secretary of State, before exercising his GVD, gives some thought to that and involves the farmer in the process. That's all we're asking. Otherwise, if he doesn't have to do that, it's effectively a useless provision.

316. THE CHAIR: Okay.

317. MR MOULD KC (DfT): Yes. I see no difficulty in principle with giving some thought to fulfilling his own stated policy, yes.

318. THE CHAIR: Not all Secretaries of State do indeed follow their own stated policies, but that's for another day. Anything further on here then? Great, thanks. No questions anyone? Okay, thank you. Right, we seem to be almost at agreement there.

Submissions by Mr Findlay and Ms Staples

319. MR FINDLAY KC: So can we then turn to 3 and slide 30, please? We're at utility works and this may be considered a second bite at the cherry but we'll make it a small bite. The point in the first slide to emphasise is that the Bill currently makes provision in schedule 8 for the purpose of acquiring rights for works but the only purpose mentioned in the table to schedule 8 is the provision of access, not the construction or alteration of access tracks. So although the Bill makes provision for simply the acquisition of permanent rights, or temporary rights – it could be either – they're never used for utility works. They're not specifically identified and, with that in mind, if I can ask Ms Staples to talk you through the example at A54(31), to make good a point she alluded to earlier, about DCOs and the remainder of the examples, but we've probably done one of them already.

320. MS STAPLES: So, yes, this just to confirm again is where this was actually for the improvement scheme of the A14 between Cambridge and Huntingdon, which some of you might know. This was a development consent order, so a major infrastructure scheme, started in 2016. And as you can see there, in schedule 5 – and this happens on

all DCOs, so it's nothing exceptional – where land is on which only new rights are to be acquired and, as you can see, we've done a snippet from that DCO. And, again, it outlines there about some access tracks where only rights will be acquired and then at 46(a) at the bottom there, it highlights about, 'a new right to construct, use, protect, inspect and maintain a water pipeline', so a utility, but this one's just a water one, from Anglian Water. Again, actually, we looked further to check, and we can send this to you, but again, for the A14, it highlights as well about overhead lines, saying that only rights can be acquired but they do not acquire the land to carry out those diversions or build a new utility and that's what we're asking for with HS2.

321. THE CHAIR: Thank you

322. MR FINDLAY KC: If you go onto the next slide, 32.

323. MS STAPLES: So, if I go just to slide 32, again, it's just another example of a utility strip that has been taken, does not need to be acquired by GVD. Rights could just be taken. And then if we went to slide 33, this is the one that we showed you earlier, the same point. They do not need to acquire the land. They just take the rights to do all of those utility diversions. So it is possible and that does not encumber HS2, as they've been saying.

324. MR FINDLAY KC: Just to pick up a further point, have you ever experienced a utility company suggesting they need the freehold land to be acquired to do these, rather than rights?

325. MS STAPLES: No, it's absolutely no problem. It all just happens. It's no problem at all on the other major infrastructure schemes.

326. THE CHAIR: But the contention from Mr Mould was that the farmer may refuse to engage in that process, we won't come to an agreement and then the diversion can't happen. I mean, have you had examples of that?

327. MS STAPLES: We've had no examples of that.

328. MR FINDLAY KC: Sorry to interrupt the answer. First of all, we're not suggesting no rights, or it should only be done by agreement. We're suggesting that there shouldn't be compulsory purchase of the freehold of the land but there can be

compulsory purchase of what are, in effect, easement rights over the land, so that if one goes back to slide 31, what is being acquired there is not the freehold of the land but rights over the land. So if one goes to the bottom example, and although that related to a pipeline, it could easily relate to an electricity line, so you could have a new right, to construct, use, protect, inspect and maintain an electricity line.

329. I mean, it will no doubt be slightly different wording for electricity lines but you can acquire ample rights to install or upgrade an electricity line over land without acquiring the freehold of the land, and that is the point that this issue is meant to highlight, that there's absolutely every justification for not being held to ransom by a farmer who won't agree to the electricity line going over the land. That is not our case. Our case is that the rights acquired should be limited to those that are necessary and for electricity line diversions, it is simply not necessary to acquire the freehold of land, although you may have to acquire permanent rights over it. You undoubtedly will and it's the – and I might ask Mr Broomfield –

330. THE CHAIR: Well, is the legal process different for compulsory purchase of the freehold versus acquiring rights over the land for –

331. MR FINDLAY KC: In essence, no. It's just more limited rights that you're acquiring. Leaving aside this Bill, if you have a compulsory purchase right to acquire land, that includes the whole land or any lesser right within the land that you might need. So as one can see here from this slide, in many cases, and indeed the Bill provides for it in clause 8, there will be instances where only rights are required. And if the rights that are acquired compulsorily – if we go to slide 32 now – for that line were simply, in effect, rights to construct, use, protect, inspect and maintain an electricity line, there would be one exercise where those rights required one compensation payment.

332. As envisaged by HS2, first of all you're going to acquire the whole freehold of the land, which will need to have a claim put in, and then when the land is, hopefully, returned to the farmer, if it is, there'll be another exercise gone through where the farmer has to pay for that land.

333. THE CHAIR: The response from Mr Mould earlier was, when it comes to the issue of utilities, then the intention would always be to gain temporary rights, temporary

ownership, well, presumably permanent rights to continue inspecting and all the rest of it, and for anything that was construction related for a period of under five years, that would be the intention. So what you're asking isn't satisfied by those commitments.

334. MR FINDLAY KC: If those commitments were put in writing for us to consider, they might well satisfy.

335. MS STAPLES: That might meet our requirements, but that's not completely, I don't think, what Mr Eckett was saying. What Mr Eckett was saying was they will need to actually acquire the freehold completely. They will not just take rights to do the utility diversions.

336. I just wanted to give you another example to help understand. All of the big offshore windfarms, where all of those electricity cables come on to land and go to the nearest national grid substation, they only take rights for those underground massive big cables. They do not go and purchase the freehold of the land. So I think if all of those offshore windfarm developers can do it, then it is absolutely possible for HS2 to do it.

337. THE CHAIR: Thank you. Any further points, Mr Findlay?

338. MR FINDLAY KC: No, no, we've got – well, perhaps I should just say what our ask is. It's on slide 35 and I hesitate again, but it may follow, if Mr Mould gives an assurance that access tracks to use for less than five years and electricity line diversions won't permanently acquire land, it will either be an acquisition of rights or a temporary acquisition, then that may go a long way to sufficing, but it would be unfair to put Mr Mould on the spot and ask him to give an assurance.

339. MR MOULD KC (DfT): Surely not.

340. MR FINDLAY KC: It would be and I hate being unfair to Mr Mould.

341. THE CHAIR: You seem to quite enjoy it. You seem to quite enjoy being unfair to each other. You should go into politics. If we're going to Mr Mould now, I really do want to bottom out my understanding of where we were earlier on this, then, because I'm a bit confused as to where the difference is here.

342. So my understanding, as I expressed a moment ago, was the intention would not

be to acquire the freehold in the circumstances I outlined, the under five years requirement, where it's based around utilities. Have I understood that correctly or perhaps it's more nuanced.

Response by Mr Mould

343. MR MOULD KC (DfT): I think, if I say so, you have but perhaps I can just bring out a couple of points, which may help to make it clearer, if you like. The policy that you were shown on those circumstances in which the Secretary of State would be willing to proceed on the basis of the temporary possession powers conferred under schedule 15, in place of exercising his powers of compulsory purchase, those were primarily focused on the approach taken to land, which is in the book of reference, where it is known that that will not be required permanently; it will be required only for construction purposes. One of the factors which the Secretary of State will take account of, as that paragraph I showed you in the farmers and growers guide made clear, is the predicted duration of occupation of that land for construction purposes. Now, the example of the access track over the roof of the Whitmore Heath tunnel that you were shown earlier is, Mr Eckett told you, an example of that, because that tunnel will take five years-plus to construct; the access road will be in place; the haul road will be in place for that period and therefore that is a case where in the ordinary application of his policy as set out in the farmers and growers guide, the Secretary of State would expect to acquire that land compulsorily, rather than simply to rely on temporary possession powers and the compensation obligations that would come with that.

344. That deals with, if you will, the main construction activities. Utilities can, I suggest, be treated as rather different because, in the ordinary way, utility diversion works, you would not expect those to take place on land which is only included within the book of reference for that purpose, or wouldn't expect those works to endure for anything like five years. One would expect that they would take far less. They might take over a year if it was a major utility diversion. They might take close to two years but, ordinarily, they wouldn't come anywhere close to that. And so they would, to that extent, be obvious candidates to be dealt with through the exercise of the temporary possession schedule.

345. So one would serve a notice saying, 'We need entry over your land on X date in

order to be able to carry out the utility diversion work that is shown on the plans in the environmental statement'. And when that work is concluded, we would expect then that we would quit the land in accordance with the obligations under schedule 15, and the land would be restored and ownership wouldn't have passed, because temporary possession, as Mr Eckett said, throughout that period, would have left the ownership of the land with the former owner, the farmer.

346. What would be required permanently in that case would be the appropriate rights in favour of the utility operator and the concomitant obligations that are a common feature of wayleave agreements and arrangements between utility companies and landowners who have utilities passing through or beneath or above their land. So those arrangements would need to be secured and it would be necessary to take powers to secure those arrangements by compulsion, if they couldn't be achieved by agreement.

347. So I think Mr Findlay is contemplating a scenario in which, in any case where we are dealing only with land which is required for utility diversions, and not for any other construction purpose, the Secretary of State, the nominated undertaker, goes on to the land temporarily in the exercise of the schedule 15 power, carries out the works, quits the land at the end, restores it and then the Secretary of State, in the meantime, in the absence of agreement between the landowner and the utility company and HS2 as to the necessary permanent rights and obligations, is able to impose those rights by granting them compulsorily, as Mr Findlay indicated, and you saw an example of that, I think, in the A14 order.

348. THE CHAIR: That would be to compulsorily purchase the freehold.

349. MR MOULD KC (DfT): It wouldn't be to compulsorily purchase the freehold; it would be to compulsorily purchase the permanent right of the utility company to maintain their utility, their pipeline, across that land; to come on to inspect; to do all the things that utility companies would need to do in order to maintain supply and so on and so forth, but also, and this is the critical point, obligations on the part of the landowner because, as I understand it, it is commonplace for wayleaves and rights granted to utility companies for gas, electricity and so forth to be a mixture of concomitant rights and responsibilities, or rights and obligations, as between the utility company and the landowner across whose land that utility has to pass.

350. And it's on that point that the issue, the need to retain the power compulsorily to acquire the landowner's freehold, rests. That's why I showed you earlier R78(20) and the answer that was given on this point in the petition response document – perhaps we could just put that back up again. You see paragraph 2. In order to carry out the utility diversions required by the Bill, it's necessary for the promoter to have powers to grant permanent rights to statutory undertakers. That's common ground. We both agree on that. Mr Findlay said so. 'The promoter would seek to engage with farmers and rural landowners to secure those rights by agreement'. It's common ground that that's ordinarily what should happen. Indeed, as you said, and if I may say so correctly, that was what you understood to be the proposal, to try and reach agreement on these matters.

351. However, this is where the dispute arises. However, to be certain, and I emphasise, to be certain, that the promoter is able to grant the rights required by the statutory undertakers, it is necessary that the promoter retains the ability to acquire a freehold interest in the land.

352. At this point, the promoter of this Bill cannot be certain, in every case of the 320-odd utility diversions that are proposed and required in order to deliver this proposed scheme, that it will be possible to grant – he will be able to grant the rights required by the statutory undertakers, including any concomitant obligations on the landowner, without the ability, if all else fails, to take, to acquire, the freehold on the land. That's the position.

353. Now it may be that in many cases that problem won't arise, but we cannot say that it won't arise in at least one case. That is why the Bill adopts what may no doubt be a relatively conservative and precautionary approach, but that's why the Bill adopts the approach that it does.

354. I don't know what approach is taken in relation to other consent regimes on this point. And you certainly don't learn that from the extract from the A14 development consent order that has been shown. You need to look into a far more detailed analysis of that order in order to understand it, but that's the answer that's been given there.

355. Now, it will be the intention of the promoter of this Bill, if it's possible to reach agreement with the affected landowner, to proceed by agreement. Indeed, I believe there

is already at least one case where assurances have been offered in that respect. I can't remember the name of it, I'm afraid. We can certainly give you the details.

356. No doubt some may say out of an abundance of caution, but certainly in order to give the powers that are required here if all else fails, those lands are subject to compulsory purchase under this Bill.

357. THE CHAIR: I think what I'm maybe not understanding is the ability to take those rights over the land to undertake the necessary works. Those can be effectively compulsorily purchased.

358. MR MOULD KC (DfT): They can, yes.

359. THE CHAIR: Right. So if those rights can be compulsorily purchased, what is a situation in which the freehold is also required to deliver those rights?

360. MR MOULD KC (DfT): It is commonplace, as I understand it, in wayleave agreements, wayleave arrangements, that apply to certain utility companies, that the wayleaves, not only do they grant rights to the utility company but also they impose obligations on the landowner through whose land the utility is run.

361. It is in order to ensure that there is no difficulty in securing those concomitant obligations that it is felt necessary at this stage in the process to retain the power to acquire the land through which those utilities are to be diverted, to acquire that land, the freehold of that land, so as to ensure that the Secretary of State is in a position to create those concomitant rights and obligations, both as regards the utility company but also as regards the freehold owner of the land in question.

362. THE CHAIR: If you're acquiring the freehold you're not placing those obligations on the landowner because the landowner is now the Secretary of State.

363. MR MOULD KC (DfT): Sorry, this is all in contemplation of the land then being offered back to the previous owner.

364. THE CHAIR: Why would the landowner take the land back with obligations that they didn't themselves originally want and that required you then to purchase the freehold?

365. MR MOULD KC (DfT): Well, that would be a matter for them because they would have to make a judgment. I mean, one assumes in this scenario that the land has been restored to agricultural use and it has the utility running beneath the surface. But it's been grassed over, suitable for grazing or for arable production, whatever it may be.

366. So the former owner would have to make a choice. Are they willing to take on the rights and responsibilities that come with the wayleave that the Secretary of State has created, and, subject to that, receive the land back for farming purposes, or do they regard the burden that has been created, that burden of that wayleave, as so burdensome, that actually they've decided they'd rather not take it back at all. I mean, that would be a judgment that the farmer would make in any given case.

367. THE CHAIR: But to be absolutely clear here, your contention is that it is possible that a utility diversion would be unable to be achieved. There is a circumstance in which that could not be achieved unless the freehold was also purchased. There is a scenario where that could occur. Is that what your contention is?

368. MR MOULD KC (DfT): There is a risk that the permanent position, in a way that would be satisfactory to the utility company, would not be achievable without the Secretary of State having first acquired the freehold of the land, so that he can create all the rights and responsibilities on both parties, landowner and the utility company, that would secure what both he and the utility company consider to be a satisfactory arrangement.

369. MS MUMBY-CROFT: So what is the difference between this scenario with HS2 and the other examples that were given, where my understanding was that utility companies and landowners were able to reach an agreement without needing the freehold?

370. MR FINDLAY KC: Perhaps I can answer that –

371. THE CHAIR: Mr Mould has the floor, so we'll let Mr Mould answer for now.

372. MR MOULD KC (DfT): Where matters have been dealt with by agreement then no doubt that's because the parties have been able to reach agreement between themselves on appropriate terms. I can't help you, and this may be where Mr Findlay

can come in, on what lies behind that schedule that you see. I don't know whether that matter was the issue that I have said – the powers as they currently stand in relation to land required for utilities – whether those issues, those uncertainties, if you like, had been resolved by the time the application for the development consent order in that case was concerned.

373. I don't know whether there were 320 utility diversions in that case or fewer than that. I rather suspect there were rather fewer than that. I don't know how many utility companies were involved and what their respective requirements were. So that's the risk, I would suggest, of trying to draw too much from that kind of comparison. But Mr Findlay may be able to be more positive in his approach.

374. MR FINDLAY KC: So in order to answer, can I ask the Bill to be put up at clause 5? The heart of Mr Mould's concern was that these concomitant rights could not be imposed, but they can be, and the Bill makes provision for that. So it's the acquisition of right and the imposition of restrictive covenants.

375. The power under section 4 includes the power to acquire such easements or other rights, creating new easements or other rights, acquiring easements or other rights, and to impose such restrictive covenants over land to which the power relates as may be required for Phase 2B purposes. So there is a broad enough power there to both impose obligation on the landowner – that's the restrictive covenant – and to acquire the rights.

376. So we are unaware of, if proper consideration is given to this, why broad enough powers cannot be acquired under section 5 to prevent the need to acquire the freehold. Mr Mould says he doesn't know what lies behind the A14; there no doubt were fewer than 320 lines. There may not have been. It's a long road. I'll ask Ms Staples to comment on whether she's aware of any utility company or any DCO or compulsory purchase situation where it has been necessary to acquire the freehold.

377. MR MOULD KC (DfT): Before he does, because I think, as you said, I had the floor, I just want to complete my submission. One example, I'm told, of the kind of concomitant obligation that would not be possible to impose under clause 5.3, I think it was, is what is a standard feature of many utilities wayleaves and easements, which is an indemnity provision, under which the landowner gives an indemnity to the utility company against damage and so forth. It wouldn't be possible to impose that by way of

a restricted covenant. It wouldn't fall within the ordinary understanding of that concept.

378. MS MUMBY-CROFT: Would it be possible to agree it?

379. MR MOULD KC (DfT): It might be possible to agree it, but that's precisely my point. It's in case it's not possible to agree it that one needs to have the right to fall back. Otherwise, you do find yourself in the situation that Mr Findlay said he acknowledged one needed to avoid, which is one effectively engineers a situation where, if you don't have the right to acquire the freehold, you are held to ransom by the landowner, because the landowner says, 'I know the utility company requires an indemnity in order to maintain and to operate this pipeline across my land. I know that you can't force me to give that indemnity in the exercise of the power granted by paragraph 5.3. I'm only willing to do that by agreement if you pay me a very large amount of money'.

380. So that's the very real risk that we face here. It may seem entirely unsatisfactory from the farmer's perspective. I understand that. But it's in order to protect the public purse from that kind of problem that that land is included within the powers of permanent acquisition.

381. MR FINDLAY KC: I can respond to that in two ways. Firstly, I'm very surprised by the indemnity point, because all electricity lines, the Electricity Act makes provision. So, for instance, if you have a voluntary wayleave over your land, then the landowner can terminate it. The electricity company then has the right to compulsory acquire rights over the land to enable them to keep the line there or to upgrade it, as the case may be.

382. There's specific provision for that under the Electricity Act. There are compulsory purchase provisions in schedule 2 and 3 of the Electricity Act 1989, which enable the electricity company to do so without the agreement of the landowner. And I fail understand why the position of HS2 with this Bill is any different from an electricity company under the Electricity Act.

383. This issue of requiring an indemnity from the landowner, we've heard for the first time today. I shall ask Ms Staples and Mr Broomhead to answer the question I first asked them, whether they're aware of any issue where utility companies have not

accepted rights of the type that are contained in the DCO.

384. MR BROOMHEAD: So in the vast majority of cases with gas pipes and electricity lines, there is the background of compulsion within the two Acts that are there. In the main, agreements are reached all the time, really. It's very rare that, particularly, the electricity companies, or even the gas companies, have to go and utilise their compulsory powers.

385. There's certainly no ability, as I understand it, for power lines, for a power company to acquire a freehold strip in order to put a line in. They can only acquire a necessary wayleave. And so the difficult bit here is that, as we understand the normal practice of the electricity companies, the electricity companies don't need freehold strips. They've got no ability to do so.

386. What appears to be happening is that HS2 is saying across the route, 'We need to acquire the freehold in order to grant the document, whatever document it is that the electricity company needs, because we need to be the freeholder'. But that's the bit that's really why this is so difficult, because electricity lines, gas pipes, go over the country all the time. This is just a different practice that seems to have arisen, purely through HS2.

387. THE CHAIR: Okay. This is quite complicated for us because we have two sides saying very different things as to the necessity of this right. And certainly, I would like to be clearer on this point before we give any thought to it ourselves.

388. MS MUMBY-CROFT: Can I just ask one more quick question?

389. THE CHAIR: Yes, certainly.

390. MS MUMBY-CROFT: Is there a record of the utility companies putting this forward and asking for these extra measures, or putting forward concerns that you may not be able to reach a stage where they're happy, or has it come from HS2?

391. MR MOULD KC (DfT): Well, no, I think it has come from our understanding of the position of the utility companies. It's particularly the gas suppliers, I think, where this is a point of concern. There are protected provision agreements in place in relation to Phase One and Phase 2A. Indeed, Mr Irving tells me that the point of concern was

prompted by the gas undertakers.

392. Now, obviously we have to ensure that the gas undertakers are willing to take on the diverted pipelines for the purposes of maintaining their supply into the future. But I'm conscious of what you say about the complexity of this. I mean, I wonder whether, given that we're clearly not going to finish the NFU's petition today, in the intervening period to when we resume, I might see if we can prepare a joint position statement which reflects our respective positions.

393. MS MUMBY-CROFT: Presumably the utility companies don't mind whether it's via owning the freehold or via reaching an agreement, as long as it's in place what they need to be in place. They don't mind how you do it. They just want it to be as it needs to be.

394. MR MOULD KC (DfT): They simply want to know that they've got the rights that they require, including the obligations owed to them from the landowner to be able to maintain security of supply and also to ensure that their commercial position is properly safeguarded. I mean, as Mr Broomhead said, under the utilities Acts, whether it be the Electricity Act or the Gas Act, they have powers of compulsory purchase themselves which they are able to bring to bear if all else fails by agreement.

395. We're essentially saying the same thing here. We need to have the power of compulsory purchase if all else fails. But it may be that we can develop a more specific understanding with the NFU as to quite where we are on this.

396. THE CHAIR: I think that would be useful, because we seem to be in a position where, on the one hand, we all agree that we want to do this by agreement where it's for utility diversions. Ms Staples can't think of an example where any freehold compulsory purchase has been required, which would suggest you could read that both ways as, one, it's not going to be a required power, so therefore there's nothing to worry about, or we can read it as a potential power grab, as it were, over land.

397. But the only point of contention, the only point of disagreement, seems to be around this: is there actually a scenario in which the freehold purchase would be required? If Mr Findlay seems to say there isn't, then we shouldn't be concerned by this power, surely. But at the same time, if there isn't, I don't know why HS2 would be

concerned by this power. So this is where the difficulty for us is.

398. We need to nail down very clearly, because, look, Parliament has decided this railway line should be built. If there is a situation in which the progression of this railway line could be prevented by one farmer refusing to agree to a diversion of a pipeline or whatever, then I don't think I would be particularly sympathetic to that, and I would understand the need for this power.

399. What I'm not clear on is if there is a need for this power. We need to bottom that more clearly before when we resume. But presumably we're going to be resuming again with the NFU, because we're not going to get through all of our issues in the next 10 to 15 minutes. So maybe rather than labour that point, if we agree that we perhaps come back to this when the NFU return again, if that's acceptable to all parties. So, did we wish to move on to another issue that takes 10 minutes?

Submissions by Mr Findlay and Mr Broomhead

400. MR FINDLAY KC: Yes, the next one, number 4, is two slides. It's a short issue. It's what I might call a procedural point, but it's an important one for reasons that I think Mr Broomhead might be able to illustrate. So it's a A54(36). It's the issue of multiple GVDs. If I just talk through the issue to try and make sure we finish before 5.00.

401. THE CHAIR: We can go to 5.05, because we did have a comfort break. Then we will have to end because otherwise I'll be in trouble.

402. MR FINDLAY KC: You've heard about Phase One where there are a large number of GVDs, some in respect of very small plots of land, often the same ownership of the farmer. Under Phase 2A, we consider that the approach has swung too far the other way. That's the second bullet point. And also on Phase One, the promoter has executed GVDs which include within their scope a number of different farms, which causes unnecessary confusion.

403. Our asks are that they should be required, if the farmer agrees to combine multiple plots within the farmer's ownership, provided that doesn't mean they acquire land too early. And any GVD served should relate to one landownership only. And perhaps I

can ask Mr Broomfield to explain the issues in practice that have arisen where those suggestions aren't followed.

404. MR BROOMHEAD: Yes, certainly. The GVDs are often produced with plans which cover multiple landholdings, and it's extremely confusing for the people who are receiving it. Quite often you find that you've got a strip of land that's half of a road and the rest of the GVD doesn't relate to your landholding at all. I think the request is quite simple.

405. HS2 is very well aware of the landownership boundaries. It would make life so much more straightforward to understand what is being acquired if those GVDs related to the ownership that is being acquired and nothing else. So often what we find is that we're receiving maps of neighbouring properties, neighbouring ownerships, and it's extremely difficult to work our way through.

406. The other thing about multiple GVDs is that you find that the notices that are served are in multilayers. You'll get one notice which deals with part of the farm and another notice which interlinks with it. It's just a confusion thing. I think, as Mr Findlay says, it's a matter of policy more than anything here.

407. It would make life so much easier for people to understand what it is that is being taken from them, rather than having to build up a layer of plans to understand what land is being taken from them at what point in time.

408. MR FINDLAY KC: That's our ask.

409. THE CHAIR: Thank you. Mr Mould?

Response by Mr Mould

410. MR MOULD KC (DfT): I'll put up P302(2). This is that same letter of 5 January 2023. I put this up essentially in the spirit of saying this I understood to be the substance of what is being requested, but I may have misunderstood it. If you look at P302(2), you see the paragraph beginning, 'following enactment of the Bill'. So we have the powers. 'The exercise of compulsory acquisition powers will continue to focus on the effective delivery the Bill scheme in accordance with the works powers and deemed planning permission conferred by Parliament'.

411. Then this, ‘The aim will be to limit the number of permanent acquisition notices to one per landowner where possible. This will provide effective landowners with a level of certainty over the extent of land to be acquired and timing of acquisition’.

412. So Mr Broomhead mentioned – this is really a policy point. So there is a statement of policy, if you will. The aim will be to limit the number of permanent acquisition notices to one landowner where possible for the reasons given. That’s the promoter’s current position on that. I’m not quite sure whether that is felt to be sufficient, in terms of a policy position or whether something more is required of us by the NFU in relation to this issue.

413. THE CHAIR: That was presumably because there’s no disagreement here then, that in the first phase lots of different GVA notices were served to the same owner. HS2 accepts that that happened.

414. MR MOULD KC (DfT): There were, yes. Towards the end of the five years, I think, there was a flurry of activity. For various reasons that I’m certainly not going to trouble you with, the judgment of the project was that it was necessary to proceed in that way in order to avoid losing the power to assemble land under the CP powers of the Act. I’m sure that there are different views about that, but that was the principal reason why matters were dealt with in that way.

415. THE CHAIR: The policy of HS2 now is to limit it to one notice wherever possible.

416. MR MOULD KC (DfT): Where possible, yes.

417. THE CHAIR: Okay.

418. MR FINDLAY KC: If there’s an assurance in those terms that would be –

419. MS STAPLES: Yes, just in request 1, what we really want to make clear is that we’ve now understood, and this was brought up earlier, that we now know HS2 don’t want to serve multiple GVDs. That’s been made quite clear over the last few months. The important point in our request 1, actually, is that even though we understand now they might only want to give one GVD, it goes back to our original point that we were raising at the beginning. Now they’re just wanting to serve that one GVD, but taking all

land, whether it could be taken on a temporary basis or, as we've just been discussing, only take rights.

420. So what we want to just make sure is that those areas are considered before they serve that one GVD. But I think we have accepted that now the principle will be to only serve one GVD. Thank you.

421. THE CHAIR: Okay, Mr Mould?

422. MR MOULD KC (DfT): I'm keen not to go back to a logically separate issue. So if we assume that we get to the point of what is said here in our letter, we get to the point where issue 1 has been resolved in whatever way you choose, you think it should be, that we will then serve only one GVD where possible in relation to land in which we are able, under the powers of the Bill, to exercise compulsory purchase powers. I think that would meet Ms Staples's concern.

423. THE CHAIR: Okay, thank you.

424. MR FINDLAY KC: And we still have our request 2, which I don't think Mr Mould has responded to yet.

425. MR MOULD KC (DfT): I struggle to see –

426. THE CHAIR: The policy was –

427. MR FINDLAY KC: To keep it one landownership only per GVD.

428. THE CHAIR: Was that not what the statement said?

429. MR FINDLAY KC: Yes, it's a practical point that, when a GVD is being served, there's one per ownership with a plan showing which parts the land are included in the GVD. It's a short procedural request just to avoid the confusion.

430. THE CHAIR: So the first was where it's different plots of land within the same ownership. This is where it's taken across a number of different businesses, potentially.

431. MR FINDLAY KC: And not other landowners. So it's one GVD per landowner with a plan.

432. THE CHAIR: Right. We'll let Mr Mould take some time. Mr Mould?

433. MR MOULD KC (DfT): Well, I was going to say I've just spoken to Mr Eckett. This is where we moved from the realms of legal principle to the realms of practicality. I can either ask Mr Eckett to have a further chat with Ms Staples about this and see whether we can resolve it, or I can ask him to come in with 30 seconds to go and see if we can –

434. MR FINDLAY KC: Let's do the former.

435. MS STAPLES: Yes, the former.

436. THE CHAIR: Good.

437. MR MOULD KC (DfT): Right. And if we need to, if I may say so, if you'll allow me to say this without provoking your patience. If we haven't, heaven forbid, resolved this before we come back, you know where we're going to start next time.

438. THE CHAIR: Yes, indeed.

439. MR MOULD KC (DfT): I suspect you will say, 'Please don't start with this one'.

440. THE CHAIR: Yes, please try to resolve it for our own sake. Can I thank the parties today? That was very interesting, genuinely. We look forward to having the NFU back again. The date will be 4 July. So anyway, we will see you at some point in the future to pick up where we have things. I think you understand, we're very keen to understand that particular point where we would like to have that resolved. Anyway, on that basis I'll call this afternoon's meeting to a close.