

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL SELECT COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 27 June 2023 (Afternoon)

In Committee Room 8

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

PRESENT:

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

FOR THE PROMOTER:

Timothy Mould KC, Lead Counsel, Department for Transport

Exhibits referred to by the promoter during the hearing with David Robert Germain can be found [here](#), Harbour Healthcare can be found [here](#) and Sherbourne Court Neurological Centre can be found [here](#).

FOR THE PETITIONERS:

1. David Robert Germain
 - David Robert Germain
 - Mark Armor

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

2. Harbour Healthcare
 3. Sherborne Court Neurological Centre
 - Brett Bernard
 - Delisser Bernard
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IN PUBLIC SESSION

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(At 2.05 p.m.)

1. CHAIR: Good afternoon and welcome to this afternoon's meeting of the High Speed Rail Hybrid Bill Committee. It is still a bit warm so if you want to take your jackets off, that's fine. It's a bit sticky today. We've got three petitioners but split into two today. So usual guidance as normal. If people can be brief, 30 minutes really should be enough for people to make their case. What we're very keen to get down to is what people's asks are of the Committee. We don't need a great deal of context necessarily, because we're obviously keen to get to the nub of issue. We'll start with the promoter briefly outlining the area we're going to be dealing with today, which will be Mr Mould for the first petition, which is Mr – is it Germain or German?

2. MR GERMAIN: Germain.

3. CHAIR: Germain, okay.

4. MR GERMAIN: You were right first time.

5. CHAIR: Right the first time. So, Mr Germain and Mr Armor as well?

6. MR ARMOR: Armor.

7. CHAIR: Terrible.

8. MR ARMOR: You were right second time.

9. CHAIR: I know, right second time, so we get there in the end. If everyone was just called Smith it would be a lot easier. But anyway, thank you for that and for attending today. Mr Mould?

David Robert Germain

10. MR MOULD KC (DfT): Thank you. The plan on the screen shows you outlined in red, Mr Germain's property, Windmill Nurseries at Budworth Road, Pickmere, and you'll remember Pickmere from yesterday evening. Mr Germain operates a nursery business from the premises at the present time and has done over many years, as I understand it. He also has a house on the property, which has an agricultural occupancy condition attached to the planning permission, which obviously requires it to be occupied by somebody engaged in agriculture and I understand the position to be that

the nursery business is one that benefits from having the security of somebody on the site, living on the site, who's able to run the business in that way, provide security for the business during the hours of night time and so forth.

11. You're familiar with the effect of the grey notation on these plans. That shows the extent of the land, which is subject to compulsory purchase within the Bill limits. In this case, the grey land is subject to compulsory purchase for the purposes of constructing and later operating the main railway. If we turn to P538, we can see the Petitioner's land here, again, superimposed in red over the construction phase and you can see that the site lies at the northern end of the Heyrose embankment and you can see that the majority of the land within Bill limits is required in order to construct that part of the railway itself.

12. There's also the yellow notation that shows the arrangement for site haul roads, to enable materials to be moved up and down the trace without going on to the public roads. And you'll also see an outline, a footprint, which shows where, under the Bill, an autotransformer station is proposed to be located. If we go on to the next slide, P538, you can see that, under the Bill, the permanent position is as shown on this side and you can see the railway with lineside planting for screening and landscape mitigation purposes. You can see the autotransformer station and the access to that and you can see that area of land to the east – the north point is to the right-hand side – the area of land to the east that remains uncoloured and which has remained, effectively, uncoloured throughout. That's the area of land that is not subject to acquisition under the Bill and thus remains unaffected by the powers of compulsory purchase under the Bill.

13. I should just refer you to two recent developments, which I hope will fairly set a context in which Mr Germain will present his case. The first is that it has been a longstanding request of Mr Germain that the project should find an alternative location for the autotransformer station, so that it is moved away from his land and elsewhere. The project has, within the last few days, been able to offer him an assurance that would result in the removal of that autotransformer station, essentially to the south, across Budworth Road, on to land adjoining Budworth Road to the south, which is, in any event, within the combined construction boundary and subject to major works.

14. CHAIR: Where would that be on here? Sorry, it would be –
15. MR MOULD KC (DfT): If you just put the cursor on the rectangle and just move it to the left, it would be in that area there.
16. CHAIR: This area here.
17. MR MOULD KC (DfT): Yes.
18. CHAIR: Okay.
19. MR MOULD KC (DfT): And the second change is that, as you'll remember yesterday, the project has worked up a proposal, which would enable Budworth Road to remain open.
20. CHAIR: It would be an additional provision.
21. MR MOULD KC (DfT): It would be an additional provision. That, as you know, I said yesterday, has been informally accepted by the local highway authority. In order for that change to be made, the project's current expectation is that it would be necessary, from Mr Germain's perspective, regrettably no doubt, but necessary to increase the land take from his property along the northern boundary of Budworth Road because it will be necessary in order to maintain Budworth Road in operation and as a highway, it will be necessary to divert it temporarily during the course of works and the diversion that the project thinks will be needed will be to divert it temporarily into Mr Germain's land.
22. So that is something that has not yet been finalised because it is work in progress in relation to the preparation of the arrangements for maintaining Budworth Road in operation, during and after the works but it is something to which Mr Germain's land is presently at risk.
23. CHAIR: That would have to come forward in a future petition against the new AP?
24. MR MOULD KC (DfT): He would have the right to petition against that if he was not satisfied with the arrangements, which are finally put forward in that respect. But he has recently been made aware of that risk because we thought it was right that he should

know about it before he appeared before you today.

25. CHAIR: So the –

26. MR MOULD KC (DfT): Yes.

27. CHAIR: Sorry, the autotransformer would be moved to the other side.

28. MR MOULD KC (DfT): Yes.

29. CHAIR: With the screening obviously moving around it.

30. MR MOULD KC (DfT): Yes.

31. CHAIR: Is that not the crux of – given the Budworth Road issue would have to come in a different AP. Has Mr Germain accepted that assurance or –

32. MR MOULD KC (DfT): I'm afraid I don't know the answer because I know that discussions were taking place up until a few minutes ago and I haven't been given a readout from that. But I thought it best to let him tell you what his reaction to that is.

33. CHAIR: Okay.

34. MR MOULD KC (DfT): What I would like to emphasise, because it is a point that the project has asked me to emphasise, is that whilst the removal of that facility elsewhere would mean that there would be the clear possibility that the land returned to Mr Germain once the construction project has been completed, would be rather larger than you see on the screen in front of you because it would no longer be necessary to retain the land required for the ATS. But that would not affect the need to acquire the land shown within the Bill limits at the present time because that land is primarily required for the main construction works, to serve the Heyrose embankment. So it would not, at this stage, be possible to say that the removal of that facility would lead to a reduced requirement for land for construction purposes within the Bill limits that I showed you on the earlier plan.

35. CHAIR: Given the ATS is over the commercial greenhouses – am I correct? Is that right? If the ATS is moved, do you require the land on which the commercial – for the construction? So those would not be able to be in production; they would have to be

moved during construction.

36. Mr MOULD KC (DfT): They'd have to be removed because we are dealing here with major civil works, which are central to the delivery of the railway here. This is a major piece of civil engineering work, the Heyrose embankment. And the best I can offer today is that, as you know, the secretary of state's commitment before the Committee is that he will exercise his land acquisition powers so as to take only the land that he requires, following detailed design. But it is unrealistic to suggest that it would be possible to say with confidence that any significantly lesser area of land would be required, until much later in the delivery of the project. So I could not, today, offer any commitment, which would involve any significant reduction –

37. CHAIR: In the land take.

38. MR MOULD KC (DfT): – in the extent of the Bill limits, because that would jeopardise the ability of the project to deliver the Heyrose embankment works in a timely and efficient way.

39. CHAIR: Okay, thank you, Mr Mould. So, Mr Germain, given the crux of your petition is really around the ATS, I mean the road issue will be resolved one way or the other through this additional provision, I'm just wondering where, given the assurance that's been offered, where that leaves your petition for today? So it's over to you.

40. MR GERMAIN: Okay. Am I okay to respond to that?

41. CHAIR: Yes, please. Please do, absolutely.

Submission by Mr Germain

42. MR GERMAIN: Okay, so the concerns in the petition were the siting of the proposed ATS, what I deem as being excessive mitigation planting, kind of out of character, and the potential extinguishment of Windmill Nurseries. Now, we've been offered the assurance of the re-site of the ATS, which we're pleased about. Our concerns are this ATS has already been proposed to be on the other side of the road. It's moved a few times and I'm worried further down the line that it may get moved back, you see. It's been on Milley Lane as well, further away in the parish of Pickmere. I'm not splitting hairs. We're the parish of Tapley. That's where we are. So I'm glad it's

been moved. So I'm happy to talk through my petition and I'm happy to skip along and ignore the ATS part of it for now if that cuts to the chase.

43. CHAIR: Yes, I mean really, that's important. Thank you for that because if you're accepting the assurance on the ATS, subject of course to concern it comes back in the other direction, in which case, would that – I'm looking at the clerks here – would that give Mr Germain the right to petition again or whether he could seek some action in terms of the enforcement of the assurance? Right, okay.

44. MR ARMOR: If the assurance could be amended and become an undertaking that it was in one of the Council proposal sites, which David's going to introduce shortly, I think that would not leave the open door for it to go back on the commercial greenhouse.

45. MR GERMAIN: Yes, so my concern is, if it got moved back on there again, there'd at least be a mechanism in place where I could come and have my say.

46. CHAIR: You could enforce – okay. I think that's understood on the – and obviously, given the introduction from Mr Mould, in terms of the land take being required anyway during the construction phase, and you obviously seem to have appreciated and understood that, it's a question of what happens after, in terms of the ATS being on the site of what would be your commercial greenhouses and if they were to move. So I think the points made on the ATS, I think, and the question that we'll ask Mr Mould to respond to when you've finished with your petition, is obviously this issue of an undertaking versus an assurance and what I take from that is, you're seeking something stronger than the – well, you've clearly said – you're seeking something stronger than the assurance so that it doesn't flip back at some point in the future and you're left without recourse to the petitioning process. So that's understood. So Mr Mould is raising his hand in a helpful way.

47. MR MOULD KC (DfT): Well, I hope so because I thought if that thoughts in your mind now, I am certainly able to say to you and specifically to Mr Germain that we will provide that assurance in the form of an undertaking, so that he will have a contractual relationship with us in relation to that assurance.

48. CHAIR: Right, okay. That's very helpful, Mr Mould, thank you.

49. MR GERMAIN: Thank you

50. CHAIR: So that deals with that bit. So if there's other bits on – this is a perfect petition, you see. We're all reaching agreement; we're getting through; this is an exemplar. You can come again, Mr Germain. So we're happy on the ATS thing. If there's elements of the petition you want to talk through, please, now's the opportunity.

51. MR GERMAIN: Yes. So it's basically my rural business, now of over 32 years. There's a danger of it being extinguished by the HS2 scheme. I think it's at paragraph 5 of my petition, I would look for it to be reinstated either on our own land, in the first instance, or on land within the Bill limits. And if we can move straight to evidence A96, please, if we could bring that up. So, yes, if we go to 3.14, I'll read this out for everybody.

52. So, 'Under clause 47 of the Bill, the nominated undertaker has the power to reinstate (either on its existing site or on different land within the Bill limits), the whole or part of an undertaking where the secretary of state judges the public interest demands such reinstatement. Recognising the public interest in mitigating the impacts of the Phase 2B western leg on agricultural businesses on the route, the secretary of state accepts that the criteria for reinstatement under this power may be satisfied in relation to the replacement of facilities, which are critical to an operation of an agricultural business'.

53. So if we could bring up A95, please. These are some photographs of our nursery operation. If I can draw everybody first of all to the bottom photograph there. This is in the second of our greenhouses where we tend to grow more tender crops. You can see a heater up in the roof there. The vents are also thermostatically controlled and you can see plants there at different stages. If we can then just move round the other picture briefly. The one, middle left, that's in our first greenhouses where we tend to grow things cold like perennials. Top right-hand corner, that's plants outside and the Fenwick's wagon is a delivery of what we call plug plants. The middle-right, these are plants that we've got on tables ready for sale to the public. The public will have been able to walk up and down and look into the greenhouses and look across our cold frames. We're not a garden centre. We're not a plant centre. We're growers and that's why I feel the clause 47 that I've just been through, really applies to us.

54. CHAIR: Do you sell everything on site, Mr Germain, or do you supply other nurseries?

55. MR GERMAIN: We have other outlets. So we have wholesale outlets that we deliver to and we have wholesale outlets who come and collect the plants from us and we have retail customers as well. If you're going to ask me for a split, I'm going to say about 50:50 but –

56. CHAIR: I wasn't, but you volunteered it, so that's great.

57. MR GERMAIN: Yes.

58. CHAIR: So you sell about 50% on site.

59. MR GERMAIN: Yes. Well, for instance, the middle photo of the middle band there, you'll see that's an order that's been picked ready for delivery for somebody we've been supplying for over 25 years. They're at Huxley near Tarporley.

60. CHAIR: It's all flowers; you don't do vegetables or food production.

61. MR GERMAIN: It's primarily bedding plants, basket plants. We do a wide range of perennials. We do do some veg plants to sell to the public to grow on as a hobby and we could, at the drop of a hat, turn to food production if we chose to do so, if we thought that was the way forward. What I'm trying to point out is, we are growers and just to further substantiate that, if we could just bring up A97, please.

62. Now this flat rate farming certificate, in 1997 the accountant pointed out to me that I needed to be registering for that because of my turnover. I already knew of this scheme from a nurseryman friend and if you look at the scheme, you only qualify for this if you're a grower. A garden centre wouldn't qualify for the scheme. A plant centre wouldn't be a true grower does, you see. It's a flat rate scheme for farmers and growers.

63. And then if we could go to A98, please. I'll just read out what's in between the red line and this is to do with our agricultural dwelling. It was good of Mr Mould to refer to it as an agricultural dwelling because in the promoter's response document, they just refer to it as a residential dwelling and they don't touch on the agriculture part.

64. So, 'The occupation of the dwelling shall be limited to a person solely or mainly working or last working in the locality in agriculture, as defined in section 226 of the Town and Country Planning Acts 1990, or in forestry or a widow or widower of such a person and to any resident dependents. Reason: having regard to the location of the site within the greenbelt, open countryside where there is a presumption against development except where justified for want of agricultural or forestry need'.

65. So when we applied to build the house on our property, we had to prove, like Mr Mould said, there was a need to be there, other than security. We had to prove that there was enough work for one person and we had to prove that we were profitable. So, again, I think this just further substantiates that we – that backs up clause 47. Last week we did have a meeting with Ben Draper with the Hybrid Bill team and he did talk about other localities and that was of great interest to us. We've had a bit more of a talk about that today and it's not quite what we'd hoped but I'm going to let Mark take over for me now and speak. Thank you.

Submission by Mr Armor

66. MR ARMOR: So David has proffered a fair request for reinstatement in the hope of finding a swift and amicable outcome. The response we've consistently had from HS2 is that reinstatement is not something they would be prepared to do. I would like to point out that the legislation does suggest otherwise. In the compensation code for business relocation, information document C7, which Mr Draper has pointed us towards, section 4.1, on Friday, after the exhibit deadline, and therefore I'll quote it here now. 'Experience suggests that in the majority of cases, businesses will be able to use their compensation payments and the open property market to relocate their operations'.

67. Now, I would like to highlight the word, 'majority', there, which should be all businesses because, as we know, a majority could in fact be 51% for all we know. I would hope the Chair and the Committee could consider therefore, it seems to be accepted by HS2 that potentially up to 49% of businesses may happen to be worse off as a result of the proposed scheme. It should not be down to the affected stakeholder, in this case David, to take on additional risk as a result of the unchangeable circumstances he's been presented with. Hybrid Bill legislation informs that the secretary of state deems that no stakeholder should be better nor worse off as a result of the proposed

scheme. As we see it, the only way to properly make sure this is fulfilled, is for full reinstatement, which is why David has petitioned on these grounds. It was mentioned to a land and property agent during an online meeting with HS2 last week that the proposed scheme has already changed three times. The location of the line itself has moved several times but, in the meanwhile, land has been acquired in the process, which is now no longer needed. It would be reasonable to ask that this acquired land, which sits within HS2's portfolio, could be released back to other affected stakeholders such as David who may struggle to relocate an agricultural business in a prime Cheshire location.

68. If HS2 were able to provide us with a list of these potential locations, then that could set things off on the right track, pun intended. Prior to this hearing, about an hour ago, HS2 have actually presented us with a list of properties. However, they have confirmed that they would only be available for rental purposes and couldn't be available to purchase until 2035 upon completion of the construction.

69. It's also subject to Crichel Down. So that's not of any interest to David because he wouldn't want to take further risk to build greenhouses on land that he's renting, potentially increasing the value of that property and then to buy it back off himself.

70. But finally, I would like to point out that this has been an extremely stressful and uncertain 10 years on my parents and their livelihoods. They have managed their frustration levels incredibly well.

71. Despite the changes in the scheme, there has been no offer of help from HS2 to employ an agent to act on his behalf and all his costs and time has been taken for granted. Assurances given so far have not addressed the main concern within the petition which is reinstatement. These assurances mostly already apply within the express purchase scheme but seem to have additional conditions assigned to them so they don't offer anything that would aid David to reinstate his business.

72. The reason to petition has been to hopefully reach an outcome where the case for reinstatement could be heard impartially. I can confirm that HS2's level of engagement in the past two weeks alone during the build up to this hearing has been more than the whole two years prior which was only made up of slow responses which were mainly hypotheses. It would be a shame if we had to return the latter environment once this

hearing has concluded.

73. Thank you. I'll pass you back to David.

74. MR GERMAIN: Okay. I've got a petition about mitigation planting as well.

75. CHAIR: Yeah.

76. MR GERMAIN: Would you like me to go through that or leave that out?

77. CHAIR: You can do in a moment. Just before we do that, I just want to understand the timeline here and the ask. So, during the period of construction, your property which is being compulsorily purchased.

78. MR GERMAIN: Eventually, yeah.

79. CHAIR: Eventually. During the construction period, you will not be able to carry on your business at all on this land.

80. MR GERMAIN: Yeah. So the approach I've taken is in the first instance, I would have tried to be reinstated on our own land because I'm trying to be reasonable, rational.

81. CHAIR: Post-construction?

82. MR GERMAIN: Yes, yeah. But obviously, during construction, it doesn't make a lot of sense.

83. CHAIR: You'll be compensated in that period?

84. MR GERMAIN: Right, okay.

85. CHAIR: No, no, no, that's what I'm saying; that's a question really. In that period then you'll be compensated during the construction period. Correct? Is that correct?

86. MR ARMOR: Yes, but unless we were offered another site –

87. MR GERMAIN: Sorry, I'm not sure how we'll be compensated during that period, you see, so I don't know the answer to your question.

88. CHAIR: I'm just trying to work out in my head what happens when. So A1 of construction, the site is unusable.

89. MR GERMAIN: Yeah.

90. CHAIR: You have to relocate somewhere else, either temporarily, which requires you building new greenhouses, or cease your business for the period. And so your request is to be relocated somewhere else permanently.

91. MR GERMAIN: Yeah, that makes more sense to me.

92. CHAIR: Not to come back to this site once construction is ended.

93. MR GERMAIN: Well, it's moved towards that, yeah, because of the impact.

94. CHAIR: Why is the movement of the ATS important then, if you don't want to come back to the site, given that's going to be over the greenhouses?

95. MR GERMAIN: That's a fair point. So, coming back, I would have considered coming back to the sites at a later date but it would have lost me the continuity of my business, you see.

96. CHAIR: You lose that either way, don't you?

97. MR GERMAIN: Yeah.

98. CHAIR: Because if you can't – I'm just trying to clear this in my head. Whether the ATS is on that site or not, you can't effectively farm, grow on that site, during any of the construction period. The location of the ATS is only important if you wish to return and be reinstated on that site, right. Is that right? Am I right in that?

99. MR GERMAIN: If relocation wasn't an option, I would leave the door open –

100. CHAIR: Coming back to the site.

101. MR GERMAIN: Yeah.

102. CHAIR: You're asking to be relocated. Is that what you want?

103. MR GERMAIN: Well, I think it makes more sense now. That's why I put in

paragraph 5 either reinstatement or relocation within the Bill, you see.

104. CHAIR: Just before we move on to mitigation stuff. Mr Mould, can you just, for the Committee's indulgence, during the period of construction where Mr Germain is unable to operate his business on the site, what is he entitled to?

105. MR MOULD KC (DfT): He'd be entitled to compensation for the loss of profit.

106. CHAIR: The loss of profit.

107. MR MOULD KC (DfT): But I mean – when I get to my chance, there's a way through this which I hope will provide that Mr Germain and the Committee with reassurance that a practical solution is available.

108. CHAIR: You're teasing us, Mr Mould.

109. MR MOULD KC (DfT): Well, I don't want to –

110. CHAIR: No, it's fine, we're happy to continue on and then we'll come back to this nugget that has been hung out before us all, so we'll look forward to that. So, Mr Germain, we'll come back to this when Mr Mould responds then. So if you want to go on to the other parts of your petition now, we can come back to –

Submission by Mr Germain

111. MR GERMAIN: Can I go to A100 then? Land requirements.

112. CHAIR: Is this on the mitigation issue?

113. MR GERMAIN: Yeah. So this just kind of sets out the land requirements, the house, the driveway, garden, etc is 0.175 hectares. We don't need to have as big a garden. The nurseries, including in the shed, the greenhouses, car park, overflow car park etc is 0.355 hectares, so in total, 0.53 hectares. Then with the counter proposals, I was going to talk through; counter proposal 1, but you see the ATS has been moved, but our counter proposal was to put the ATS west of the trace, north of Budworth Road. The land is split into two but the bigger portion is to the east of the trace.

114. So with counter proposal 1, we would've been left with 1.15 hectares which would've given us more than enough land to reconfigure.

115. MR ARMOR: It's worth going to the counter proposals, David.

116. CHAIR: This is all on the premise of coming back to this site?

117. MR GERMAIN: Yes, yeah, yeah. I mean we've only learned recently about this new construction with Budworth Road, we were only told this because it's only happened recently and I think Budworth Road is going to be lowered so it can go underneath the Arley Brook viaduct.

118. So looking at this, there was a counter proposal 3 was for the ATS to be on land that doesn't belong to ourselves but in that instance, we would've relinquished our land west of the trace to our neighbours, Heyrose Golf Club. So, they would've needed to release less farm land to reinstate themselves. So, we would be giving more than we were taking, so we're being fair, you see.

119. Again, that would've left that portion to the east of the trace but you're quite right highlighting what happens during construction and a lot of the answers, I don't know because I've not been given to what we're entitled, etc. So, I have two options there where obviously the business is virtually dormant and I would come back, I would come back to that site, I'd love to.

120. Or if we can be relocated; in a lot of ways, it makes more sense to the taxpayer. We carry on trading, we carry on paying tax, I carry on employing people. It's good for the suppliers, the people I supply, the produce they sell, that goes into the public purse. So, yeah, relocation, I agree, is more sensible and that's why I've drawn, HS2 And Mr Mould to this Clause 47 in the farmer and growers' guide.

121. MR ARMOR: Can I just point out there, sorry, something about David as a person is that he likes to work, so therefore continuation of the business is highly important without pushing too much on mental health because I know it has been mentioned a lot during in petitions, but from knowing my own parents I think that would be preferable if they had a scenario where they could continue to trade during the construction phases. As David said, I think that is a more efficient way, to relocate, reinstate to the taxpayer.

122. CHAIR: If you relocated, this issue of the ATS becomes irrelevant then, doesn't

it?

123. MR GERMAIN: It does.

124. CHAIR: Okay. Right. Is there anything else in your petition on other points that you wish to mention? I think we'd be keen to hear the promotor's response.

125. MR GERMAIN: Yeah. So the only other point I made was about the mitigation planting and this was heavy to the east of the trace and this will be at the foot of the earthworks so some of this was to mitigate the ATS.

126. CHAIR: Which has now gone.

127. MR GERMAIN: Which has now gone.

128. CHAIR: Which isn't an issue – if you're not coming back.

129. MR GERMAIN: Yeah. But some of it was also to mitigate the embankment. So, if I could just bring A94. If we look at the bottom picture, this is our easterly boundary and you can see there's an established hawthorn hedge there already and the neighbours that side, that hedge casts their eyesight up well into the air. So, for that reason I don't know why there needs to be such excessive planting at the foot of the earthworks because this is already achieving that mitigation.

130. Also, what we were hoping to do, if we can bring up A93, please.

131. CHAIR: Is it always sunny where you live? Every picture we've had of Cheshire so far has been bright, blue skies. Almost like living in Goole where it's always sunny. Or Cleethorpes where it's occasionally sunny.

132. MR GERMAIN: So the top left-hand corner there, if you look towards the house, there's a long purple beach hedge which will be lost to the demolition of Windmill House. If we can just go back to the four pictures again, please. Yeah. And then if you look to the bottom right, that hedge returns round the back of the house and then towards the garage. If we go back to the original picture, please.

133. CHAIR: Do you think the mitigation for the embankment is too significant?

134. MR GERMAIN: Well, I think it will be good to reinstate the hedgerows that are

lost to the demolition of Windmill House, and where the line enters our land and leaves our land, hawthorn hedging will be lost as well. And the other picture, the top right hand corner, there's a hedgerow between the nurseries and the house, holly, pyracantha, again, that will be lost. So that could be used. It would maintain existing habitat so it would be more in keeping. The excessive planting they've put on there, it's not in keeping with that area. And it would leave more agricultural land.

135. CHAIR: The planting would have to be agreed with the local authority anyway, wouldn't it?

136. MR GERMAIN: Yeah. Well, I'm happy to just read a closing statement –

137. CHAIR: Yes, please do.

138. MR GERMAIN: Okay. Alright. So, okay. So we're not against infrastructure, in this case the HS2 railway line in principle. The present proposed scheme takes both my home and livelihood off me. We're in the midst of a global climate crisis and our actions will either be enhanced or diluted by the actions of the rest of the world, hopefully the former.

139. I welcome any efforts taken by HS2 to negate the negative impacts of the scheme. I must, however, draw attention to the fact, with construction, this is a scheme for at least 50 years. Last year, the world's population reached eight billion, 50 years ago it was under four billion. I hope, quoting HS2's own words, 'Recognising the public interest in mitigating the impacts of the proposed scheme of agricultural businesses along the route that they will now work with ourselves to reconfigure both Windmill Nurseries and Windmill House on either our own sites or different land within the Bill limits'.

140. Now, in layman's terms, from my side I will bend over backwards to make this work. Thank you for listening.

141. CHAIR: Thank you, Mr Germain, thank you very much. Mr Mould.

Response from Mr Mould

142. MR MOULD KC (DfT): It is in the Secretary of State's interest as much as it is in

Mr Germain's interest, to seek to put in place arrangements under which Mr Germain is able to maintain the continuity of his business throughout the construction operation of this railway.

143. The reasons for that are self-evident because the more the effect of the scheme is to prejudice and to diminish Mr Germain's business, the higher the compensation bill will be. So it is obvious that there's a shared interest there.

144. The solution that Mr Germain has alighted on in order to achieve that, which is Clause 47 of the Bill; unfortunately, Clause 47 will not do it and it won't do it for a very simple, practical reason. The powers of reinstatement under Clause 47 will not become available to the nominated undertaker until Royal Assent. The land which is – Mr Germain's land within Bill limits is going to be required no later than 12 months after Royal Assent, so there is only at most a year, possibly less, in which to be able to carry out the necessary works to relocate, reinstate and so forth.

145. Now, you can see immediately there is a very, very serious risk that that year will not be enough to make all the necessary arrangements to construct the necessary replacement infrastructure, having located a site etc. So what we need to do is to find another way of enlarging that time scale. And in order to do that we've got to find a legal route which doesn't depend upon enactment of this Bill.

146. There is that legal route, and it's the one that Parliament has, for many years, identified as the means of assisting somebody in Mr Germain's position; that is to say the owner and occupier of an agricultural unit whose property is subject to compulsory purchase for public works. That is the blight notice regime.

147. The simple solution here is for Mr Germain to serve a blight notice requiring the Secretary of State to acquire his agricultural holding. The Secretary of State, as far as I can see, has no reason to do other than to accept that blight notice. We're satisfied, I think, that Mr Germain is a qualifying owner occupier of an agricultural holding, and the process of proceeding on the basis of that blight notice will enable substantial funds to be released to Mr Germain, in the form of interim payments for compensation which he can then deploy towards the process of relocation.

148. At the same time, this project will be able to – the nominated undertaker, HS2,

will be able, in the fulfilment of its own stated policies, will be in a position to assist him in the site search for an appropriate site on which to relocate his home, to relocate his plants and machinery, his poly tunnels, etc, and to facilitate the transfer from the existing site to a relocated site within a much longer period than, at maximum of 12 months.

149. So the thinking behind resorting to Clause 47, I understand, but the practical reality is it's not the right solution. The right solution is for, is for Mr Germain and HS2 Ltd to continue the work which to some degree they've started, which is to use the blight notice regime to ensure that he has the funds in a timely way to enable him to get on, and we will help him – in accordance with our own stated policies – we will help him in that relocation exercise.

150. That will, in no way, diminish his right to claim compensation. He has his statutory rights to compensation following service of a blight notice in just the same way as if the Secretary of State, in due course, came to exercise compulsory purchase powers over his land. The extent of the compensation right, following service of a blight notice is exactly the same as the extent of the compensation right following compulsory purchases.

151. So there is no diminution in his rights in that respect. All it does is it brings forward in effect the process of compulsory acquisition, but it does so significantly before the date on which the Secretary of State actually requires his land. And so it gives that far greater window of opportunity in which to affect the timely and efficient transfer of his business.

152. CHAIR: Okay. And that would be for a permanent relocation?

153. MR MOULD KC (DfT): Permanent relocation. It would clearly be in everyone's interest if we can achieve relocation in a single move. Nobody favours a temporary stop and then a permanent stop. So, we will be looking to assist him in locating an alternative site which he can then acquire with the benefit of the funds that are released by compensation payable on completion of the blight notice, and he can acquire a freehold.

154. He will obtain full unblighted market value for his current site and obviously that

that ought to be broadly comparable to the price he would expect to pay in the broad locality for essentially the same – a site to accommodate the same facility.

155. In other words, he'll be selling agricultural land which is a going concern as a nursery and he would be looking to acquire agricultural land on which to reinstate that facility. He will need to obtain planning permission for that purpose, obviously, but on the face of it, reinstating an agricultural – a nursery business together with a tied agricultural home in order to translocate a mature and thriving business from site A to site B, that should present no difficulties in terms of planning policy.

156. So there is a, I would say with some degree of confidence, that we would be able to assist him in securing a timely grant of planning commission for that purpose. We have made it clear in assurances offered to him which reflect our own commitments in the farmers and growers guide, that we would offer appropriate assistance in relation to that planning process as well.

157. So although I know that the question of serving a blight notice is one that Mr Germain has slightly recoiled from in the past, we're now in a situation where that is frankly the obvious and most practically efficient route. The reason why we do need a blight notice is because, like it or not, the Secretary of State does require some legal act upon which to hang the peg of giving the assistance that I've mentioned.

158. He needs a legal instrument, if you like, which can trigger an entitlement to land compensation at an earlier stage that would otherwise arise following Royal Assent for the Bill. If a blight notice were to be completed as there is no reason to suppose it could not be, within, shall we say, the next nine months or so, that would be ample time, I would suggest, to get the necessary arrangements in place.

159. If that could be done, that would bring forward that opportunity to make arrangements for relocation very significantly in advance of Royal Assent because Royal Assent for this Bill is not expected until, at the earliest, the end of 2024, I think it is. You may have your own views about how realistic that is.

160. CHAIR: I have an election as well.

161. MR MOULD KC (DfT): That solution which is entirely orthodox – it's what the

blight notice regime is there to do, that solution offers, by far greater prospects, of securing the continuity of business that is Mr Germain's goal than resorting to Clause 47, which, as I say, would create a huge risk in practice in this case, of the time that is required for the purposes that Mr Germain needs.

162. Surely in the circumstances it makes sense to go for the mechanism which buys much more time than that which is – which doesn't. Bear in mind also, the blight notice regime is one that is available now for the parties to make work as best it can for their mutual self-interests. In other words, there's flexibility. The earlier the blight notice is served, the earlier we can get on to get to an interim payment, but there is no flexibility on Royal Assent. Royal Assent will only come when the Parliamentary process has run its course, so it's much less flexible in terms of securing an early release.

163. I was a little surprised to hear it said that there had been no offer of assistance with agents. In fact, I understood that there had been offer of assistance, but no matter; I can say that moving forward that offer is available and I hope that will be received in the spirit of constructive engagement, which is what I intended to be.

164. I know that it means that Mr Germain has to get himself into the mindset where he does serve a blight notice but that is the inescapable consequence unfortunately of the fact that the majority of his land is going to be taken from him for the purposes of constructing this railway. He's either going to have his land taken after Royal Assent, which leads him with very little time to reorganise, or he is proactive and takes the opportunity to require that event to come forward, which is what the blight notice enables them to do. That's why Parliament has enacted the blight notice regime to deal with precisely this kind of case.

165. CHAIR: Okay.

166. MR GERMAIN: Am I okay to come back to Mr Mould on that point?

167. CHAIR: Yes, yes.

168. MR GERMAIN: Okay. So Mr Mould seems very confident that we will be able to be relocated, reinstated, he seems very confident. So could he back that confidence up by giving us an undertaking that that will happen? Because my worry with this is,

the foundation stalled, as Mr Mould I'm sure will tell us, of compensation is equivalence.

169. I'm not looking to be better off from this but I don't wish to be worse off and that's why I've used Clause 47 to try and bridge a potential disparity, you see, this is my worry.

170. I've had this business for 32 years. Like I say, I'm not against the scheme, I'm just playing this hand I've been dealt. I disagree with how the picture has been painted a bit by Mr Mould. I think we've been pretty resilient through all this, we've kept trading, traded through the pandemic, we kept going. He's telling me really, 'Mr Germain, just sell up', but my default setting at the moment is I've got a nursery, I've a site and I can carry on and try and get as many years out of it and then cross the compensation bridge, not so much when I come to it, but when it comes to me.

171. At the moment, HS2 haven't got Royal Assent, so I could – because I want to galvanise because this does consume a lot of our time and I do have a business to run.

172. CHAIR: I understand that, but of course, it also comes down to how much notice and time you wish to give yourself to be relocated, and only you can judge on whether the blight notice gives you more or whether you wait for Royal Assent with the limitations that may offer. So, I mean that is only something you have to assess for yourself.

173. MR GERMAIN: Well, my understanding is whether we serve a blight notice, or blight is served on us, assuming a stable property market, the compensation will be exactly the same and I might have to accept in those circumstances, we go as long as we can, we sell up and then I've got to go on look for somewhere and just sort it out myself thereafter.

174. CHAIR: I think Mr Mould's point was that you serving the blight notice now gives you more time to do that, to secure the future of your business on alternative property. I think that was his point. Only you can decide whether you believe that or whether you want to give yourself that time or not, but I think that was Mr Mould's point. I mean, speaking personally, I think most of the community probably would be in the same position on this, we're sympathetic to what's happening to you through no

fault of your own. A massive railway is being put through the middle of your property and your property is going to be taken off you regardless. So, we would be sympathetic but I want you absolutely to be in the best possible position.

175. The situation Mr Mould has outlined is one of, where he says, there is more time available through that than the other, but the effect is going to be the same regardless.

176. MR GERMAIN: For me, the fear is that because where we are, we're in a prime location where we are, nice rural location, near to the M6, a six-acre site with a house, a business with low overheads where we are, they're few and far between. So my worry is that when I sell up, I won't be able to get myself back to where I were.

177. CHAIR: Is that not an argument for a process that gives you the maximum time, which I think was – I mean, I'm not advocate for the promoter here, I'm on your side here in the sense of I want this process to ensure that the people who are affected are dealt with as fair and as equitably as possible.

178. MR GERMAIN: One situation – sorry to cut in – one situation I don't want to end up in is if I'm drawing down compensation and I become a tenant of what I own, that I'm looking and I can't secure the land. People will know a nice situation that I'm being bought out by HS2 locally, it would be locally I would look to relocate because of my retail customer base, but the fear is that this will just extinguish my business. It puts myself out of work, my staff out of work and it's a way of life to me.

179. Like I said, Mr Mould could give us an undertaking that, through serving the blight process, that we will find another property, we would flex, we would work with him, if he could give us an undertaking that we would still end up with a nursery that I could move forward in that vein.

180. CHAIR: Okay. Mr Mould, did you want to –

181. MR ARMOR: Sorry, could I just jump in there? The question I think that should be asked is should any stakeholder be worse off? Because what this scenario of blight presents is additional risk and because we don't know what's going to happen in the future, it seems that all the uncertainty around it when you've already running a business anyway, you shouldn't really have to take that on.

182. I mean, if HS2 can't put stakeholders back where they started before the announcement of the railway, then the scheme isn't being properly managed. This is the most basic principle that stands to logic, for me. HS2 should be shouldn't be talking about majority, they should be talking about a fair resolution for every single affected business.

183. CHAIR: We got that point. I'm just going to cut in there because it was Mr Mould's go at the moment. So, Mr Mould, is there anything you wish to respond to on Mr Germain's –

184. MR MOULD KC (DfT): I cannot guarantee a successful outcome but what I can say is that service of a blight notice offers the best chance of a successful outcome. It requires both parties to work collaboratively and HS2 will work collaboratively. So that is what I can say. We have offered assurances hitherto. I'm not going to take time showing you them now. They broadly reflect the arrangements I've just set out. But no doubt further consideration can be given to moving things forward and whether those assurances need to be reviewed. But the importance of an early and effective search for sites, which is a point that Mr Germain just emphasised, I entirely accept that and HS2's willingness to participate proactively in that process is one that is stated in terms, effectively, in information paper C7. So I don't offer anything in that respect that isn't already on offer as a matter of policy in the information papers.

185. So far as the point that was made about, 'Can we be sure that we'll be put back into the position that we are?', the secretary of state has no choice in that matter. The law requires a person whose land is taken compulsorily to be put back in the position that they were before the land was acquired. Now, in many cases, that can only be achieved by the payment of money, so one gets, essentially, by way of money's worth, what is said to be the equivalence of what you have lost.

186. But in this case, by using the blight notice regime, by Mr Germain serving a blight notice at an early point, it provides with the opportunity to do more than simply pay money, but actually to facilitate, to assist him, in finding an alternative site, maintaining continuity of business. Back to my starting point, it's in our interests that he should do that, as much as it is his, because we want to limit the amount of compensation we pay by way of money and maximise the opportunity that we provide by assisting him in

relocating his business with the minimum of disruption. It's easy to say; it's very much more difficult to do. But that's why we need to make sure we give ourselves as much time as possible in which to do it.

187. CHAIR: Okay, thank you.

188. MR ARMOR: Can I just say that HS2's role is not just to provide a railway. It's to manage the whole project of acquiring land, businesses, homes, in a fair manner, which is within keeping of the Hybrid Bill, which HS2 itself has prepared and set out before Parliament. There's clause 46 in the Hybrid Bill and 47 in the Farmer and Grower's Guide. It's in both documents. It's been set out before Parliament and all we respectfully ask the Committee is that they could take that on board, please.

189. CHAIR: I mean, I think the challenge comes, of course, you've just heard Mr Mould's response, which is – I'm not sure whether it's reasonable to expect HS2, or the promoter, to guarantee that they can find you a new site, because if land isn't available, they can't fulfil that undertaking, right? And then the alternative to that is increased compensation payments. So I think what – wanting to assist you here –

190. MR GERMAIN: Thank you.

191. CHAIR: – and get the best outcome for you which is, you relocating somewhere else, I just think I have to be honest and say I think it's very hard to ask the Committee to demand and undertaking of something HS2 – it's not in their gift necessarily, right?

192. MR MOULD KC (DfT): Yes

193. CHAIR: The guaranteeing you alternative land in the vicinity or in the area where you can carry on the business, because that's not in their gift. That depends on land being available, of course. What is, of course, is the support they provide to you during, be it the blight notice period or through the period which would kick in through the Bill, the process that would kick in through the Bill, is in providing you appropriate support and that's where the Committee can be of assistance in requiring in the strongest terms, from the promoter, that support, which I believe is what Mr Mould has offered up anyway. But that's where this Committee is able to assist in requiring and stating its position on those assurances.

194. So I mean I don't – I'm probably saying more than I should on this because I want to be helpful here – the parties to me don't seem too far apart. It's just the lack of trust in what's been offered or in the ability for anyone to promise absolutely that you can be provided with an alternative site.

195. MR GERMAIN: Yes, just an hour ago, Amy Collier gave us a list of properties. I thought, 'Great, we're going somewhere here', but then we were told we can only rent these properties.

196. CHAIR: Those would be properties that were within the Bill limits.

197. MR MOULD KC (DfT): As I understand it, yes.

198. MR GERMAIN: And that would be until 2035.

199. CHAIR: That would be in relation to land within the Bill limits then, because that would be covered – is that right?

200. MR MOULD KC (DfT): Yes, I'm getting a nod, yes.

201. CHAIR: Yes, so that would be land within the bill limits and that is subject to those rules and there's nothing we can do to override that.

202. MR GERMAIN: If that land had been available for us to think, 'Well, Windmill Nurseries is so much, that's worth so much', and we can go through the figures and then think, 'Right, we'll swap that and adjust it', that might have been a way forward. But sadly, those properties were only offered to rent for us. They weren't offered for sale, you see.

203. CHAIR: That's because the statutory provisions require that. Is that correct?

204. MR MOULD KC (DfT): Yes, and in a sense, it only serves to reinforce the point. I entirely understand the priority here should be identifying an alternative site that can be held on the same tenure as the present site. I understand that Mr Germain holds his land on a freehold so we're looking for a site to which he can relocate his business on a freehold basis. He needs to be able to buy a site. Ultimately, that's a matter for him to choose. What I'm saying is, we have a policy to the world, to offer assistance in that respect, and we will apply that policy to his case because of the need to move in a timely

and efficient way to try and achieve that objective.

205. We are in fact furiously agreeing really on the way forward here. As you say, it's perhaps just that these things take some time to land but that is what I'm offering, yes.

206. CHAIR: No, I understand from Mr Germain's point of view of whether you believe that what's offered will come to anything and that's something –

207. MR GERMAIN: Well, I would say if there was a broad stroke approach to finding another site then there could be movement but it needs to be a broad stroke from both parties. But like I said in my ending, I'd bend over backwards to make another site work.

208. CHAIR: Okay.

209. MR GERMAIN: So, there's no lack of willing from my side.

210. CHAIR: Right.

211. MR GERMAIN: This, it's taking my likelihood off me, simple as that.

212. CHAIR: Absolutely, I understand.

213. MR GERMAIN: Windmill Nurseries puts tea on the table.

214. CHAIR: And other people's, potentially. So, Mr Mould, just a final question from me is, the offer of assistance, did you say that includes land agents?

215. MR MOULD KC (DfT): Yes. It's always better if the party we are trying to assist, instructs their own land agent and then we will pay the reasonable costs of that. So we'll pay the reasonable fees. But, again, there's no fixed regime here. If Mr Germain would rather that we identified an appropriate person and then to assist him – some people would much rather choose their own because, again, it's a question of trust but we're happy to see what arrangement suits him. The bottom line is, I would suggest, with respect, and I mean this without any disrespect at all, I would suggest that this is a case, which cries out for some professional assistance for him. He's got a business to run. He doesn't want to be distracted by all this. Instruct an agent to act for him in relation to this matter.

216. CHAIR: And HS2 will pay.

217. MR MOULD KC (DfT): And we will pay the reasonable costs of that, yes. And that means we will, effectively, I think, enter into arrangements with the agent so that we can identify the work that they need to do with them and Mr Germain obviously will be fully involved in that process. But that's no more than the straightforward application of our stated policy position.

218. CHAIR: Okay. Mr Germain, final point then I think we'll draw things to a close.

219. MR GERMAIN: Yes, so just to come back to this about agents, obviously I know we've been building up to petitioning. If I have any agents' time for this, I pay for it myself. So I understand that and that's why I've chose to present myself, to keep the costs down. It's cost me £600 for the three of us to come down on the train to be here today and all the time I've put into this, I've put in myself at my own expense. I'm handling my licence agreements, both environmental and geotechnical surveys myself. I've not instructed an agent, saving the taxpayer money. When we've asked about a bit of fees for help to try and progress things, it's only really if we'd been – it's needed the blight process to trigger that help so it's been a bit six and two threes really.

220. CHAIR: Yes, I mean I think that's just the facts of the situation, right? If you want to access the support from HS2, you either have to wait for the Bill to kick in and go that route, or you have to access it via the blight notice process now. You can't have half of it. You can't be half in the process and half out. You have to commit one or the other, right? I mean that's just the reality of the facts. The taxpayer's not going to pick up the Bill unless you're going down the statutory process that Parliament has laid out. So that's a decision –

221. MR GERMAIN: But our situation one day will have to be resolved some way and when I feel I've got to a point where there's something to enact, I'll happily put this on a good land agent's desk. It's just I don't feel there's enough detail, enough meat on the bone yet to take us forward. And it's only been the last week really that Ben Draper and his team have started coming up with feasible options for us.

222. CHAIR: Well, I think I will have to bring proceedings to a close here. I mean obviously we have another petition but where this leaves whether we need to move the

ATS or not, I'm a bit at a loss now.

223. MR GERMAIN: Well, I would like it moved –

224. CHAIR: You definitely –

225. MR GERMAIN: – so in the eventuality, if I can't find another site, in time I'll reconfigure on the land I've got.

226. CHAIR: Well, that's a fair point. But I think, if nothing else, hopefully the undertaking has been offered on that. I think Mr Mould and HS2 have, I think – and none of my colleagues have disagreed with me. Some of them have texted me to tell me they agree – that obviously we have sympathy for your situation here. So I think the encouragement we would – well HS2, the pledge from us is that those intensive conversations that you say have been happening in the last two weeks, which I'm sure would have continued and happened anyway, will continue to happen and that every possible advice and support in helping you make the right decision for your business and the livelihood of others, will be taken. Well, that will continue. So I think we're all fairly clear on that. But at the end of the day, whether you choose to enter the blight notice procedure is obviously a matter for you.

227. MR GERMAIN: Yes.

228. CHAIR: But hopefully this has been a useful process in bringing parties together. And I'll probably draw it to a close there, on this petition, if that's alright. Thank you for your time. I'm sorry it was expensive for the trains. If you want to visit my part of the world, it's a lot cheaper on the east coast line and we'd welcome your cash. But, anyway, I jest of course but wish you all the very best of luck in resolving this in a satisfactory way that allows you to continue with your livelihood. So, thank you very much.

229. MR GERMAIN: Yes, no, thank you. We'll go away and galvanise our thoughts.

230. CHAIR: Good. Thank you very much, thank you. I'm just going to suspend for five minutes.

Sitting suspended

On resuming –

231. CHAIR: The Committee's resumed. We move on to the second petitioners now who are Harbour Healthcare and Sherborne Court Neurological Centre. We have – it's Mr Bernard and Mr Bernard. And you will be – you're Harbour Healthcare but will be speaking on behalf of?

232. MR D BERNARD: I'm both.

233. CHAIR: On both of them, excellent, thank you. So same as before, we'll go to Mr Mould for a quick scene set of the petition area and then we'll move on to listening to your petition. So thank you for bearing with us. Mr Mould?

Harbour Healthcare and Sherborne Court Neurological Centre

234. MR MOULD KC (DfT): Thank you. If we can put up P527. We're back in Crewe and this –

235. CHAIR: Is this Yellow Park?

236. MR MOULD KC (DfT): Yes.

237. CHAIR: Yes, it is, yes.

238. MR MOULD KC (DfT): Bentley Manor Care Home, which is a care home, which is operated by Harbour Healthcare, is indeed just to the north of that park, as you recall from Councillor Faddes' appearance.

239. CHAIR: I do.

240. MR MOULD KC (DfT): Yes. And so we see that property and, as you know, it's located over the Crewe tunnel and we can see the line of the tunnel shown with the dashed line on the plan and we can see it just passes underneath the western boundary of the care home property. If we turn on to P516, we can see that the next property to the north of the care home is the Sherborne Court Neuro-disability Centre which, again, is located above the Crewe tunnel and you can see the running tunnel and you can see the western part of the facility building itself, which lies over the top of the line of the

running tunnel.

241. The point perhaps just to draw to your attention, which arises from that, and which I think is at the heart of the petitions that are before you, relates to the promoter's published assessment of the ground-borne noise and vibration that is predicted from the operation of the railway through that tunnel in relation to those two facilities at the surface above. And the relevant information is contained, firstly, in relation to the care home, at P531(2) and you can see that the noise impact assessment in the environmental statement predicts ground-borne noise at a level of 43 decibels and vibration during the daytime at 0.24 VDV and during the night, 0.12 VDV. The corresponding lowest observed adverse effect levels are 35 decibels for ground-borne noise, 0.2 VDV for daytime vibration and 0.1 VDV for night time vibration.

242. So you can see that in each case, the current predicted levels are above the lowest observed adverse effect levels for ground-borne noise and vibration. They are below the significant observed adverse effect levels, the SOAELs. In the case of ground-borne noise, the SOAEL is 45. In relation to daytime noise and vibration, the SOAELs are 0.8 and 0.4, daytime and night time respectively. The same numbers apply to the neurological centre. We don't need to turn it up but, just for the record, the corresponding table is at P520(2) and it shows, as you would expect, the same outputs, given that the properties are neighbours.

243. So far as assurances are concerned, I know you like to know where we are with assurances. In relation to both of these premises, assurances were offered in mid-May and I can draw your attention to the assurance offered to Sherborne Court. You'll find that at P521. It relates to a number of other matters. We may or may not need to deal with those, depending on the petitioner's case but so far as ground borne noise is concerned, we can see at P521(5), the promoter has offered an assurance under the heading, 'Operational Ground-borne Noise'.

244. 'The promoter will require the nominated undertaker', this is paragraph 4.1, 'to, in so far as reasonably practicable, reduce ground-borne noise and vibration from the operation of the railway, with a view to removing the likely significant adverse operational ground-borne noise effects, as identified in the environmental statement deposited within the Bill on the Neurological Centre'. And then a related assurance,

5.1, ‘During the detailed design of the railway through the Crewe tunnel, the promoter will require the nominated undertaker to engage with the petitioner in relation to the development of the design of the track form, including on measures intended to meet the objective in paragraph 4.1 of this assurance’. And an assurance in, I think, precisely the terms, offered to Harbour Healthcare on the same day, 18 May. So sorry, 16 May of this year. That’s at P532(5) and I don’t need to read that because you’ll see when you see that that essentially the same assurance has gone on those points to both parties. I think that’s where I should stop and I hope that sets the scene.

245. CHAIR: Okay, thank you, Mr Mould. I think I need to correct myself. Mr & Mr Bernard, you’re from Sherborne Court.

246. MR B BERNARD: Yes, so we’re from Sherborne Court.

247. CHAIR: I think I got you the other way around when I introduced you. Sorry for that, sir. Anyway, yes, over to you.

Submission by Mr B Bernard

248. MR B BERNARD: I’m the operations director of Select Healthcare, which operate Sherborne Court Neurological Care Centre, and Delisser Bernard is the owner of Sherborne. Harbour Healthcare couldn’t make it today but we’ve had a conversation and we share some of the same concerns so they were happy that I would speak on their behalf.

249. Sherborne Court cares for individuals who have a range of complex needs, including head and spinal injury, Huntingdon’s disease, motor neurone disease, MS, Parkinson’s disease and stroke rehabilitation. Currently it’s predicted the line will affect the care home in regards to sound and vibrations and there’s a commitment to mitigate the impacts.

250. I think what our concern is, HS2’s communication has been consistently inconsistent in terms of what the impact will be on the home and the residents we look after. In terms of the timeline, it’s worrying really, because obviously there’s different phases that we’ve petitioned against but the line’s due to be operational 2038 and testing can’t be fully done until 2037. So if, at that point, the testing showed that the HS2

would mean it's not safe for people to live at the home, what would happen then? I mean, that's our number one concern.

251. CHAIR: Because of the noise?

252. MR B BERNARD: Yes, the noise and the vibrations.

253. CHAIR: Vibrations, yes.

254. MR B BERNARD: So that's our number one concern but if I start with the construction phase. Obviously, as we put in our petition, obviously the concern is noise but there's also access and egress to the site. As the gentleman, the petition before, obviously the way the economy is at the moment, recruitment, as you all probably know, in healthcare, it's not the easiest. If you're going to have higher traffic levels, that could potentially have an impact on the home. And also, from a business perspective, if people weren't using the home, which at the moment we're regularly full, it would have an impact on the financial viability. So that was a short-term concern.

255. MR D BERNARD: I think one of our big concerns is that the noise level, if it works out that the noise is unacceptable then we're stuck with a home with nowhere to go. I mean to buy a new site and to build it, we're talking three years from purchasing the land to actually opening the new home. So our concern really is – well, first of all, we don't want to sell the home. Second, we want to keep the home as it is. So we're not looking at an angle of what we can get out of this. We're looking at what happens if when they've done all their testing, it follows that the home is unacceptable, the noise levels, where do we go from there? We can't just de-camp the people into another home because we haven't got one. So we believe that if it's a care home, we should be addressed earlier rather than later, because we're dealing with people.

256. MR B BERNARD: And we're dealing with extremely vulnerable residents and that's our concern that the timeline, when I say HS2's been inconsistent, I'd say over the last 18 months we've had meetings where it shouldn't be an issue because we're duty bound to mitigate the risk. Then we've had meetings a few months later that the tracks got to be adapted and that would mitigate the risk and up until December, it was, 'Well, the technology's not there yet for the track so it's something that we'll need to do down the line', but that doesn't give me confidence to feed back to our stakeholders really, the

families, the residents and the staff.

257. MR D BERNARD: And with Harbour, they're thinking the same as us that, rather than leave it until the last minute to say, 'On the evidence this can happen or can't happen', we get looked at earlier rather than later. Because if they said to us today, 'We want to buy your home', well, we don't want to sell it. So we're quite happy to stay there but we just feel that, what happens if the noise levels arrive and they say we can't continue like this. Where do we go and what do we do? That's our sole concern, isn't it?

258. MR B BERNARD: Yes, and I think that Harbour share the same view as us that HS2 have engaged and I'm not saying that they haven't been helpful but every meeting you have over a period, you leave one meeting thinking it's going to be no impact, then the other meeting we're feeling there's a major problem and it's not going to be known until right to the end of the programme.

259. MR D BERNARD: And we have another home, not in the same area but on the track. So we're dealing with two homes and it's the same thing.

260. CHAIR: Okay, thank you. Members, any questions? We'll go to Mr Mould

Response from Mr Mould

261. MR MOULD KC (DfT): I think the principal concern is the risk that we get too close to the date on which the railway starts to run trains through the tunnel and it becomes clear that, notwithstanding the engineering efforts that have been made in terms of enhancing the track form, it hasn't been possible to reduce those numbers I mentioned to you earlier, sufficiently, to be able to enable the care home and the neurological centre, or either of them, to think that they're able to continue and they need to relocate.

262. I mean I can address that very straightforwardly. It boils down, effectively, to, I think, a request for a trigger date – I think you said at least three years before the trains start to come into operation – a trigger date, at which point, we will be able to – we say to the petitioner, either, 'We have now on the basis of our updated noise impact assessment, achieved a situation where we can run these trains through the tunnel at

noise levels that conform to the lowest observed adverse effect level and the same for vibration’.

263. CHAIR: Which is what you predict?

264. MR MOULD KC (DfT): Which is what we are seeking to achieve.

265. CHAIR: Right, okay.

266. MR MOULD KC (DfT): At the moment, as I said, we are predicting levels in advance of the process of detailed development of the engineering, which are above that level.

267. CHAIR: Alright.

268. MR MOULD KC (DfT): 35 is, for ground-borne noise –

269. CHAIR: No, no, it’s 43.

270. MR MOULD KC (DfT): 43 is the predicted impact here; 35 is the desired objective. So if we have a trigger date, at least three years before the railway is due to come into operation, so before the train starts to run, at which we say to each of these petitioners either, ‘It’s good news; we can achieve that’, or, ‘I’m afraid it’s not good news. We are going to be exceeding that by one, two, three decibels, whatever it may be’, and the same with vibration. Then that will, as I understand it, give the petitioners the time that they need to decide whether they are prepared to stay in those circumstances or whether they wish to relocate. In either scenario, if the running of the railway is predicted to cause the value of their premises to reduce from that which it would enjoy in the absence of the railway, then they would be entitled to claim that difference by way of the Compulsory Purchase Act 1965 and the care home I think asked for, and received, a letter on 22 June, which is P523, which just summarised very simply the rules on which a compensation claim of that kind would be valid. It’s essentially on a before and after valuation.

271. So where you have premises whose value lies in their ability through design and suitability to accommodate quite a specialist healthcare undertaking like a neurological centre, obviously if on day 1 they’re perfectly capable of accommodating that operation

without being prejudiced by ground-borne noise and then on day two it becomes very difficult to continue with that operation because it's being affected by ground-borne noise, which is affecting the machines, it's affecting patients and so on, then the before and after valuation is likely to show that there's been a significant reduction in the value of the property. Well, that reduction, in money's worth, would be the measure of compensation.

272. So if you tie that in to having a trigger date, three years advance, you can see that, subject to what the evidence shows, there would be an opportunity to rely on the statutory rights in order to generate a sum of money that reflects that diminution in value but also, if Sherborne Court as the freehold owner of these premises, as well as their occupier, is put to some expense in terms of moving costs and so forth, which they would otherwise not have had to incur, then the project would be willing to commit to underwriting those reasonable costs as well, at the appropriate time.

273. So there is a solution there and one which we can reduce to an appropriately worded assurance in order to give effect to that arrangement. So far as the –

274. CHAIR: The trigger date would be in the assurance.

275. MR MOULD KC (DfT): Yes, yes.

276. CHAIR: Okay.

277. MR MOULD KC (DfT): And I ought to say, I hope this may give some further reassurance, that is no more than is essentially contemplated in our published policy on ground-borne noise and design because what we do is we rely, as you will see from – the commitment is in paragraph 3.3 of that policy document, which is to seek to reduce the predicted noise levels from ground-borne noise and vibration to the lowest observed adverse effect level. Part 4 of that information paper sets out the practical means whereby the nominated undertaker seeks to achieve that and it focuses very much on track design as the engineering solution.

278. So very much the priority here is to use the time between now and probably up to 10 years hence, whilst the detailed design process takes its course in relation to engineering and track design, to use that time to – as our existing assurance I showed

you earlier foreshadows – to seek to try and achieve a reduction in those predicted noise levels through engineering and track design. Hopefully, that will be successful and that will give the confidence to both these parties so that they can remain. If, at the end of that period, let's say that that ties in with three years before operation, it's actually likely to be considerably shorter of it because I think operation isn't likely to happen until the late 2030s, but if at that point the work done under the aegis of E10 hasn't achieved that, hasn't achieved the objective that the assurance is seeking to achieve, then we move to that alternative scenario and the trigger date would provide the comfort that I've given in relation to that.

279. So that's my suggested solution there. It actually does have some similarities to the previous petitions. The mechanism is slightly different but it's essentially giving the petitioner the opportunity to make a choice, informed by the current state of development of the project and an up to date prediction of its output, of its impact, but to do – to make that choice at a time when they are, in practice, able to act on it without unnecessary disruption to their business and also through the operation of the statutory compensation code, supplemented by an offer to make a contribution towards the costs of moving, if that is what has to happen, in point of money, to close any remaining gap.

280. So far as the access is concerned, an assurance has been given in relation to that. It's at P521(3). This is the assurance letter of 16 May to Sherborne Court, to these gentlemen's facility. And you'll see at the top of the page that a commitment is being given requiring the nominated undertaker, in exercising the powers of the Bill, 'to maintain pedestrian and, so far as reasonably practical, vehicular access to the neurological centre at all times during construction of the proposed scheme'. The underlying position is that, as I understand it, we don't foresee any circumstances in which it would be necessary to close off vehicular access to the premises.

281. The works here, as you know, the surface works are essentially concerned with the vent shaft. So if the petitioner would find it more reassuring to have an assurance in a slightly modified form, which said, 'save in unforeseen circumstances and in a case of emergency the promoter will require the nominated undertaker to maintain vehicular and pedestrian access', the I'm happy to ask the project to consider reissuing it in those terms. It comes to, broadly speaking, the same thing but I draw that to your attention.

282. CHAIR: Clearly, for these two facilities, access needs to be maintained –

283. MR MOULD KC (DfT): It's vital.

284. CHAIR: – except in the most exceptional of circumstances –

285. MR MOULD KC (DfT): Yes.

286. CHAIR: – which are almost beyond your control.

287. MR MOULD KC (DfT): Yes. No contractor will contemplate interfering with access so as to prevent these facilities operating unless it really is unavoidable, yes.

288. CHAIR: Okay, thank you. Mr Bernard?

289. MR B BERNARD: Yes, I think the gentleman suggested similar to the previous petition. I think what I'd say with this is, it's very different. We're dealing with vulnerable people and I think the timeline of three years to move and build a care home or care homes is potentially doable but the people we look after have been in road traffic accidents. The home's strategically placed to hospitals. They've got neuro-consultants. They've got an MDT that are on the doorstep. So it's not just a case of finding a home in Manchester or wherever it might be, building it and moving the residents. And, actually, a three-year period might suffice for building but it's not suffice for planning how you'd work and find – because the site would have to be in a certain area. So I just feel that timeline's –

290. MR MOULD KC (DfT): Well, I selected three because that was what I was asked for.

291. MR B BERNARD: Yes, we do, but obviously there's a lot of planning that's got to get in place, I think.

292. MR MOULD KC (DfT): Well, we can keep the – forgive me, I don't want to jump in but I'm happy for us to craft an assurance, which includes firstly the three-year drop-dead date if you like – sorry, that's not a very appropriate metaphor – but also builds on the commitment to provide timely information at each stage and detailed design proceeds. So I mean obviously you can envisage that there may come a point where we can say, 'We're not quite there but we've done an updated noise impact

assessment here and it looks like we're moving in the right direction', and that might be something that we could provide in five years or something like that.

293. MR D BERNARD: Can I just say as well, we own the freehold and we own the operation and one of our other issues is that we've been developing this site over seven years and obviously our plan is to keep developing it. Obviously, with what's going on now, all development's stopped. We were going to put extra beds on but that's all stopped now so we're in limbo as a company in that particular care home. So we haven't just got the sound. We've got no development. We've got refurbishment plans, which we've had to halt because we don't know where we're going with it. So it's not just the three-year build and the noise, it's the whole project.

294. CHAIR: No, I mean, I understand that but I suppose the question is, given that the tunnel is going to happen, it's then a question of whether the assurance, which is offered, is sufficient.

295. MR D BERNARD: I think the assurance is sufficient. It's just that we feel that we've got to make these decisions early.

296. CHAIR: Yes, alright.

297. MR D BERNARD: And I'm not convinced on the noise being the trigger because that noise can – they can come up with whatever they want to and take us right to the limit on that.

298. MR B BERNARD: I've actually felt that the correspondence with HS2 was generally quite good. It was just the fact that at each meeting I was more confused of, 'Is the noise issue going to be mitigated?' I suppose I don't really know now, to be honest, apart from there's a will to achieve –

299. CHAIR: Grahame had a question.

300. MR MORRIS: Thanks, Chair. I mean I appreciate this is rather different to a nursery growing plants where we're dealing with very vulnerable people who have got brain injuries and Huntingdon's disease and motor neurone disease and so on. Mr Mould suggested that the prime method of reducing noise and vibration would be through the design of the track. I wonder, is there anything that could be done to

mitigate the ground-borne vibration and noise for these particular premises as well, in terms of is there anything that could be done beyond the tunnel to mitigate the noise and vibration?

301. CHAIR: As in property-level measures?

302. MR MORRIS: Pardon?

303. CHAIR: As in property-level measures, you mean?

304. MR MORRIS: Yes, yes.

305. MR MOULD KC (DfT): The answer is that based on long experience of trying to address this problem, the answer is no. As you can imagine, having worked as an advocate on these kinds of schemes for some time now, it's a question I've often asked myself and consistently I've been told, no, there isn't anything effectively that can be done. It's got to be engineered at source.

306. MR MORRIS: At source, right. Yes, I just thought I'd ask.

307. MR MOULD KC (DfT): Yes.

308. CHAIR: Thank you. Is there anything else the petitioners wanted to add?

309. MR B BERNARD: No, I think that's the key issues. I think it was, from my point of view, it's from, in a six-month period it was, 'It will be overcome', to 'The technology's not there yet'. So it's just that uncertainty, really, and that's where I feel HS2 have communicated well but, at the end of the day, they haven't given us assurances that make us feel as if they can feed back comfortably to our stakeholders.

310. CHAIR: It's a question that can't be answered yet.

311. MR B BERNARD: Yes, yes.

312. CHAIR: So, I guess the question is whether the assurances that are offered provide you with the timeframe you require to then make a decision, assuming that the question is eventually answered in the negative or still not answered at that point and Mr Mould seemed to suggest that three years was the timeframe of your asking. So is that a satisfactory –

313. MR B BERNARD: But it's obviously three years if you've got a site that's in the vicinity of the acute hospital and works. If you haven't got a site, then obviously you can't just put it somewhere else in the country and say, 'Let's move the residents'.

314. CHAIR: We're into unknown unknowns again. This is the problem, isn't it?

315. MR B BERNARD: Yes. And I think next, I think Bentley Court is about 60 residents there. We're registered for 40 so you're talking around 100 residents and we employ 80 staff. Bentley Court's slightly bigger. They probably employ 120. So there's a lot of people to consider from our point of view, the communication.

316. MR D BERNARD: But I do think three years is coming to where we want to be. Obviously, we'd like to extend that longer because what Brett's alluding to is, we've got to find the site, exactly the same as what the gentleman said prior, that you can't just get a site like that. But we do need to come up with an agreement where it gives us time before the actual track starts to be laid.

317. CHAIR: Of course.

318. MR B BERNARD: And essentially, I've been looking myself, there's not much land for sale in Crewe because of HS2 so it's exactly where does that site come from really?

319. MR D BERNARD: I think in a nutshell, what we're saying is, we should be looked at different because we're looking after vulnerable people and we're a business but it's a little bit different to a shop or a hotel. We are looking after vulnerable people so we feel we should be treated differently.

320. MR B BERNARD: And the last thing we want to do is to move the home because it will have an impact on the residents that live there and, yes.

321. MR D BERNARD: Yes. I mean, I think I said earlier, the last thing we want to do is to sell the home. We don't want to sell the home. Both businesses are successful but we see this as a problem down the line.

322. CHAIR: Excellent. Alright, thank you. Mr Mould, is there anything else you wanted to add? I have been going backwards and forwards.

323. MR MOULD KC (DfT): Well, it's rather similar to before. I mean, I recognise, of course, we're dealing with a wholly different factual scenario but it boils down to a similar point. It's in the project's interest to find an engineering solution if it can because these care homes are not the only properties where presently there is predicted to be some ground-borne noise effects above the lowest observed adverse effect. There are a number of residential properties, ordinary dwellings, which are in the same situation. So, in each case, there is at least a risk of a compensation bill, which would be avoided in the event that we're able to find that presently elusive solution. But progress is being made in relation to that, as I understand it, and within a relatively long period of time that we have – we're talking about, as I say, possibly up to 10 years before the design has to be concluded on this – the expectation is that the project will be able to deliver on its stated objective in paragraph 3.3 in information paper E10. I can't guarantee it, obviously, but the journey at the moment, if you'll forgive the metaphor, is one that is making good progress.

324. Three, we can perhaps in the light of the discussion, the points that have just been made about the lead times for getting planning permission and so forth, perhaps we can, in further discussion with the petitioners, consider whether three years could be treated as a minimum and perhaps whether we could give some form of reasonable endeavours to give earlier notice if possible, something of that kind, yes.

325. CHAIR: Right, thank you. Thank you for coming to the Committee today.

326. MR B BERNARD: Thank you.

327. CHAIR: I appreciate it and for waiting your turn as we dealt with the other petition. So that's the end of our proceedings today.