

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Tuesday, 28 July 2020 (Afternoon)

Virtual Proceeding

PRESENT:

Lord Hope of Craighead (Chair)

Lord Brabazon

Lord Goddard of Stockport

Lord Haselhurst

Lord Horam

Lord Liddle

Lord Snape

IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport

Jacqueline Lean, Counsel, Department for Transport

Peter Miller, Director of Environment & Town Planning, HS2

WITNESSES:

Ms Rachel Hackett

IN PUBLIC SESSION

INDEX

Subject	Page
Royal Society of Wildlife Trusts	11
Submissions by Ms Hackett	11
Response by Mr Mould	22
Response by Ms Hackett	38

(At 2.04 p.m.)

1. THE CHAIR: Good afternoon everybody. For the benefit of anyone who was not present for this morning's session, it may be helpful if I were now to set out how this session will work. Everyone participating in this session is on the Zoom call and we can all see each other. You may need to switch to gallery view to do so. My microphone will remain unmuted throughout; others may control their own muting but please remember to unmute before speaking. You may receive a prompt on your screen inviting you to do so. As far as possible, we will follow a predetermined order of speaking as set out in my brief which has been shared with all participants. Unless anticipated in the brief, you should wait to be called before speaking. If you wish to intervene at any point, please physically raise your hand so that it can be seen on screen. I will then call you to speak at an appropriate point.

2. In order to allow for interventions, I invite speakers to pause frequently. I will then either call someone to speak or invite the speaker to continue. Participants should have the exhibit bundles open and available. For this session, that is bundle A7, P26 and R64. We will navigate these documents using the numbers in the bottom left corner of each page.

3. We shall now begin with Petition 26, Royal Society of Wildlife Trusts; Mr Mould would you care to open these proceedings?

4. MR TIMOTHY MOULD QC (DfT): Thank you very much indeed, My Lord. The petition before you this afternoon is from the Royal Society of Wildlife Trusts. You have the petition itself at R64, pages 1 to 4, and the petition cover two topics; no net loss in biodiversity and net gain in biodiversity. The emphasis I believe to be on the latter. And if you turn to R64(4), you will see that the petitioner requests the addition of a clause to the Bill requiring net gain for biodiversity to be secured in perpetuity through the works, mitigation and compensation, including habitat, creation or improvement, and that appropriate funding is allocated. And, as I read the slides that have been provided and which no doubt Ms Hackett will speak to, that request is reflected in the presentational slides.

5. The promoter's response in writing is set out in the petition response document which is document R64 (page 5 to 16). The procedural history is that the petitioned the

House of Commons Select Committee, Petition number 180. In the Select Committee's Third Report 2017/2019, they addressed the petitioner's petition before them in paragraphs 186 to 187. There was no specific response to the Select Committee's report in the promoter's response to that report which followed the publication of the Select Committee's Report.

6. In terms of assurances, two assurances are in the papers before you. Firstly, an assurance given by the promoter to the petitioner on 6 July 2018; that was shortly before or after, I think, they appeared before the Select Committee in the other place. That document is at P26(7) to (9). And then there was a petition assurance letter the promoter wrote to the petitioner on 24 October 2019; that is at P26(10) to (12).

7. My Lord, I don't know whether you have been provided with the reference documents which are numbered R96 through to R101, 102 rather. Do you and your colleagues –

8. THE CHAIR: We got that forwarded to us this afternoon by Mr Turner. R98 down to R102, I've got.

9. MR TIMOTHY MOULD QC (DfT): R96 to 102, I hope.

10. THE CHAIR: Yes, R97; I don't have 96, should I? Thank you; yes, I've got that. I'm sorry; it's at a different place. So we've got from 96 to 102.

11. MR TIMOTHY MOULD QC (DfT): Well bearing in mind that you've only just received them, I'll just give you some references, if I may. I do this simply because it's helpful to have some context to the debate that's going to take place later.

12. THE CHAIR: Yes. Before you do that, I better check with the members of the Committee that they all have this.

13. MR TIMOTHY MOULD QC (DfT): Yes, of course.

14. THE CHAIR: It was emailed to me timed at 13.16. Does anybody not have access to that email? No, I think you can proceed then on the assumption that we all do have access to it.

15. MR MOULD (DfT): Thank you very much. The first document is R101 and that

is the Secretary of State's statement of reasons which was provided to the other place at the third reading of the Bill. That is a document that is required under House of Commons Standing Orders for Private Business Order 224A in order to fulfil the requirements of the Environmental Impact Assessment Directive. And the reason why I draw it to your attention is because you'll see at R101(2), at the bottom of page R101(2), if you're able to find that -

16. THE CHAIR: Yes.

17. MR TIMOTHY MOULD QC (DfT): That it has a sub-heading, 'Ecology and Biodiversity'. And over the page, at 101(3), there is a paragraph, paragraph 464, which neatly encapsulates the promoter's current ambition as regards the scheme-wide policy objective, if you will for, and design objective, for biodiversity, and I'll read it out. 'The promoter's stated ambition is to seek to achieve no net loss in biodiversity on a route-wide basis. To measure losses and gains of habitats a metric was developed in consultation with DEFRA and Natural England. And then the interim results derived from the metric indicate an estimated loss of 17% of biodiversity units based on the value of area-based habitats. The environmental statement methodology takes a precautionary approach in assessing environmental effects and identifying mitigation and this is reflected in the no net loss calculation which is a worst-case estimate'.

18. I draw that to your attention because it neatly sets the context for the two points that I think the petitioner wishes to raise; firstly, as to whether the project is doing enough to achieve its stated objective of achieving no net loss in biodiversity. And then, secondly, her overarching point, which is that the project's overall ambition should be greater, and that it should be required by virtue of a new clause in the Bill to achieve a net gain in biodiversity. So that shows you what it is that she is responding to, if you will.

19. THE CHAIR: Can I see that I've understood this? If you look at 464 again, where it says that the interim results indicate an estimated loss of 17% of biodiversity units.

20. MR TIMOTHY MOULD QC (DfT): Yes.

21. THE CHAIR: That suggests to me that the object of no net loss is not being

achieved. Is that right?

22. MR TIMOTHY MOULD QC (DfT): At the moment, the metric is a means of testing whether that is being achieved by deploying a methodology. At the moment, in its current state, the estimate is that it's not being achieved. I'm going to ask Mr Miller to explain how one moves from that state of deficit to a state of equilibrium, if you will, through the future stages in the development of the design and implementation of the project. But certainly, as at June 2019 when this statement of reasons was delivered by the Secretary of State to the House in the other place, that was the then current estimate of the position.

23. THE CHAIR: Thank you.

24. MR TIMOTHY MOULD QC (DfT): If we go from there to the Bill, I ought just to explain how the Bill addresses impacts on ecology, species and habitats and related interests. Effectively, the Bill provides for the implementation of the range of mitigation and compensation measures directed at mitigating and compensating for the impacts of construction and operation of the railway on ecology, through those measures that are identified for that purposes in the environmental statement, and for which provision is made on the lands that are shown on the construction and operation plans which form of the environmental statement.

25. Now those plans are the plans that I think you will recall when Mr Strachan opened the case, are included under the reference numbers CTO05 for construction and CTO06 for operation. So if you were to look at any one of the CTO05 or CTO06 plans, you would find that on that plan, amongst other matters, are shown areas which are earmarked for habitat creation, other forms of mitigation that are designed to address and to compensate for impacts on ecology and so forth. And the narrative of the environmental statement explains what is required in relation to those lands, and also explains other measures that are authorised by virtue of the Bill in order to enable the impact of the construction and operation of the authorised railway scheme on interests of biodiversity to be managed and to be remedied.

26. The clause in the Bill which most directly enables that process to take its course is clause 17, which is the grant of deemed planning permission. And the majority of the works of mitigation and compensation that I have mentioned in summary in the last few

moments will not form part of scheduled works; they will be works that will be authorised, therefore, by virtue of clause 17(2) of the Bill. They are works that are, as I say, set out in detail and explained in detail in the many pages of the environmental statement and the supplementary environmental statements that form part of the environmental assessment of the Phase 2A project.

27. It is important to note that the conditions that are imposed by virtue of schedule 17 to the Bill, that is to say conditions imposed on the planning permission granted under clause 17, they do not include any condition requiring the nominated undertaker to achieve no net loss in biodiversity. So it is not, in its current form, it is not the purpose of the Bill to impose the objective of no net loss as a mandatory statutory requirement. And in that respect the Bill precisely follows the structure of the High Speed Rail (London to West Midlands) Act 2017; there is no such clause or requirement to be found in that Bill. Rather the no net loss objective is a policy design objective in the way that is, as I've shown you, was mentioned by the Secretary of State in the statement of reasons to the other place.

28. You and your colleagues may be familiar with the fact that there is an Environment Bill presently before the House in the other place, a public bill. And you may also be aware that that bill makes provision for the incorporation into planning permissions of a condition requiring development schemes to achieve a measurable net gain in biodiversity. The relevant provisions of that bill, which we have included for your convenience at document R98 in the suite of documents that you have received a short while ago, are clause 90 which, if enacted, would bring into effect schedule 14. I've included clause 90 at page R98(2) in your bundle. And if you've been able to turn that up, you will see that it states, 'Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England'.

29. And I've also included schedule 14 which begins at page R98(7), the next page; I'm so sorry, which begins at R98(6). And I don't want to take unnecessary time dealing with the legal architecture but, in a nutshell as you will see when you have a chance just to glance through that schedule, the technique that it deploys in order to impose a mandatory requirement for a measurable net gain in biodiversity on development is by introducing a new schedule into the Town and Country Planning Act 1990; that is to say, schedule 7A as it would become to the 1990 Act. And by virtue of

the terms of that schedule, to make it a core condition of planning permission granted under the 1990 Planning Act that development, which is granted planning permission, should achieve a measurable biodiversity net gain.

30. The complexities are much greater than I have indicated, as you will appreciate, but I'm not sure that it would be helpful now to go into them in any greater detail.

31. THE CHAIR: It does look, however, as though one of the essential things to make the schedule work is a biodiversity metric as defined in paragraph 4.

32. MR TIMOTHY MOULD QC (DfT): Yes.

33. THE CHAIR: That's a starting point, isn't it? And then you've got the 10% which is variable.

34. MR TIMOTHY MOULD QC (DfT): Indeed so. And in terms of commencement, Your Lordship may have had this point in mind in putting that question to me, in terms of commencement, I don't have the commencement clause in the bundle, but the intention is that, if enacted, this clause and this schedule should be brought into effect by virtue of regulations. So allowance is made within the Environment Bill for the underlying mechanism and materials to be put into effect and to allow some time to elapse for that purpose.

35. Now the key point to bear in mind is that government's position, and I use that term advisedly – this is a cross-governmental position – is that it is not government policy that the mandatory arrangements set out in the Environment Bill in these clauses should apply to major infrastructure development, including HS2, including this phase of HS2. In so far as this Bill is concerned, it was actually anticipated, for reasons that Your Lordships will appreciate that this Bill – the Phase 2A Bill – is likely to have become law before these provisions of the Environment Bill either were enacted or, if enacted, were brought into effect by virtue of the commencement arrangements that I have mentioned.

36. And so for the reason –

37. THE CHAIR: Can I just interrupt there? Where do we find the government policy you've just mentioned because that doesn't appear on the face of the Bill, does it?

38. MR TIMOTHY MOULD QC (DfT): No. That is a position that was stated by the Department for Environment, Food and Rural Affairs, which is the sponsoring department for the Bill, in their responses to a consultation round that took place in early 2019. I don't have that document, I don't think, in the documents before you; we can make it available if it would be helpful. But the gist of it is set out in the last page of the petition response document to this petition, that's at page R64(16), paragraph 4. Do you see there's a paragraph which begins, 'The promoter notes the ambition' – R64(16)?

39. THE CHAIR: I've having trouble finding this; which document do I go to?

40. MR TIMOTHY MOULD QC (DfT): This is the petition response document to the RSWT's petition; it's document R64.

41. THE CHAIR: Yes, I've found it; I beg your pardon. Yes, I've got it now.

42. MR TIMOTHY MOULD QC (DfT): And if you find the last page of the document, page (16) -

43. THE CHAIR: Yes.

44. MR TIMOTHY MOULD QC (DfT): Paragraph 4, which states, 'The promoter notes the ambition set out in a green future our 25-year plan to improve the environment and is currently considering the detail of the plan. The plan is still at an early stage and the promoter will be discussing it with DEFRA and other relevant parties in due course. At present the promoter notes that nationally significant infrastructure projects and other major infrastructure projects of equal or greater significance in terms of geographical scale or cost are outside the scope of current mandatory net gain proposals'.

45. Well that, of course, was written in October of last year before, I think, the current Environment Bill was – well definitely before the current Environment Bill was introduced into the House – but it reflected the position that DEFRA and government had taken following publication of the 25-year plan that is there mentioned.

46. But because I wanted the Committee to understand that the government's current position in relation to mandatory biodiversity net gain and major infrastructure is concerned, I did ask the department to consult with ministers, with the Secretary of State for Transport and the HS2 minister, and to write to the petitioner setting out what the

government's current position was. And you may have seen a letter that was dated Monday of this week, 27 July, which I think was provided to – it was addressed to the petitioner – but I think it was also provided to your clerk.

47. THE CHAIR: Yes, we have a copy of it; thank you. We all have a copy.

48. MR TIMOTHY MOULD QC (DfT): And really the intention was that there should be no doubt as to what the government's current policy position is, so that the Committee could begin its deliberations with clarity on that point. As you have it, I won't read it out but that was its purpose.

49. THE CHAIR: Yes, thank you.

50. MR TIMOTHY MOULD QC (DfT): And really it's a rather elongated introduction, but I thought it helpful because I was aware of the focus that Ms Hackett was likely to bring to her petition on the question of net gain, helpful just to indicate where we are with the public bill and also with the government's current position on whether that bill certainly should or should not bring major infrastructure development within its scope. And it also explains to you why, in its current form, the HS2 Phase 2A Bill that is before you – well it neither includes any clause requiring no net loss in biodiversity and nor, for the reasons I've given, does it include any clause requiring a measurable net gain in biodiversity.

51. And unless I can assist you further at this stage, that is how I wanted to introduce the context for the petition.

52. THE CHAIR: Thank you. Do any members of the Committee have any questions at this point? Lord Snape. You'll need to unmute, I'm afraid, Lord Snape; I beg your pardon.

53. LORD SNAPE: Can I just take you back, Mr Mould, again to document R64?

54. MR TIMOTHY MOULD QC (DfT): Yes.

55. LORD SNAPE: (15). You referred the Committee to paragraph 4, and I quote prior to the last sentence, 'major infrastructure projects of equal or greater significance', etc. Would you like to take us through paragraph 5 as well which seems to me to be

fairly important in the context of a railway development running through open countryside, that it's not the intention to take more agricultural land than is actually necessary, which would perhaps be the effect if we accepted the petitioner's view on this particular project?

56. MR TIMOTHY MOULD QC (DfT): Well certainly, paragraph 5 does draw attention to some of the practical challenges of a more ambitious objective in relation to measures to enhance, if you will, biodiversity and ecological mitigation and compensation. Because in so far as that implies that further land would be required to create a larger area of habitat or whatever it may be, that land has to come from somewhere. And as I think Your Lordship has in mind, there is little land in rural Staffordshire and South Cheshire that is lying, if you will, fallow and wilderness. If it's lying fallow and wilderness, it's probably already got an ecological value. If it's in productive use, somebody is making a living out of it. And, therefore, they're going to be unhappy if they have to give it up for some other purpose.

57. I'm conscious that I shouldn't anticipate too far issues that I'm sure Ms Hackett will want to discuss when she makes her presentation to you. Mr Miller, when he comes to give his evidence, he will be better placed than I am to explain some of the wider practical challenges that would need to be grappled with if there was to be a mandatory requirement under this bill to achieve a net gain. But before that, plainly, if I may say so, you must hear from Ms Hackett because she will obviously make the contrary case in her presentation.

58. THE CHAIR: Anything on that from the Committee? Good, well I think we can proceed to Ms Hackett after that introduction from Mr Mould. Are you ready to proceed now?

Royal Society of Wildlife Trusts

Submissions by Ms Hackett

59. MS HACKETT: Yes, thank you, My Lord. Firstly, just before I start, I should point out I've not received the letter you mention that was sent out on Monday. So I am in the dark on that and what the departments were saying, but I'm sure we can pick up on that in a bit.

60. So, yes, I'm the Living Landscape Development Manager at the Royal Society of Wildlife Trusts and, as a bit of an introduction, there's 46 wildlife trusts across the UK, 37 of which are in England, and they're represented at a national level by The Wildlife Trust Central Team, of which I'm part. So we're a conservation charity and collectively we work to create an environment which is rich in wildlife for everyone. We both own and manage land for wildlife and we also help others to manage their land, providing both advice and support to a range of businesses from farmers, local councils, schools and developers. And our charitable aims relating to the conservation and restoration of habitats and species directly affected by HS2, and that's why I'm here today.

61. So our petition, as you've already mentioned, represents the wildlife trust movement as a whole and focuses primarily on the overarching issue of delivering biodiversity net gain but we will be touching on some of the concerns re the no net loss figure as well. There are two wildlife trusts, Staffordshire Wildlife Trust and Cheshire Wildlife Trust, which are on the route of Phase 2A and impacted by the project, and originally you would have been hearing us side by side if we'd gone ahead in March, but Staffordshire Wildlife Trust will be appearing before the Committee in September to provide you with that detailed local evidence which I don't necessarily have all the answers to.

62. So to start, if you could look at exhibit A72; this sets out the reason for our main appearance today. So, we believe the promoter, as has been pointed out, should be aiming for higher than no net loss; it should be instead aiming for a biodiversity net gain. And I plan to come on and explain the policy context for this and the exhibits that follow.

63. We don't agree with HS2 Limited's assessment or the discussion that we've just had that additional compulsory purchase of land will necessarily be required in order to write biodiversity net gain into the Bill. And again, I'll come on to explain why and also how we believe net gain can be achieved without imposing unwanted purchase of land. And then finally, again, as you've already heard, we request a clause is written into the Bill requiring net gain for biodiversity which is secured in perpetuity with appropriate allocation of funding.

64. So my next few exhibits are intended to provide a bit of policy context for

biodiversity net gain. Moving to exhibit A73, in July last year government set out a clear definition for net gain in planning practice guidance. And it's an approach to development that leaves a natural environment in a measurably better state than it was beforehand. And it goes on to say that biodiversity net gain delivers measurable improvements for biodiversity by creating and enhancing habitats in association with development. And it's also important to note that biodiversity net gain relies on the application of the mitigation hierarchy to avoid, mitigate and compensate for biodiversity losses.

65. So net gain is additional to these approaches, not instead of them. It's fair to say when plans for HS2 were first announced, government's position and policy with regards to biodiversity were different from those of today, the focus being on protection and halting loss. But things have moved on substantially since 2009 and my next exhibits explain what changes have happened within government policy and opinion.

66. So exhibit A74 shows that the intentions for development to go beyond protection and for it to enhance the natural world can be traced back to the Natural Environment White Paper of 2011. And in this, government made it clear that the planning system should be used to enhance a natural environment. It also explicitly recognised that government should enhance the standards set for construction projects. And as a result of the Natural Environment White Paper, there's been a significant shift in the policy and ambition to reflect the environmental crisis we face and the urgent need to reverse decades of decline in our wildlife and natural environment in order to secure nature's recovery.

67. And it's nature's recovery that underpins the ambitions of the government's 25-year environment plan which was published in 2018. So as exhibit A75 shows, this makes very clear that government's commitments are to develop a nature recovery network to protect and restore wildlife. And it reaffirms commitments to connecting habitats into larger corridors for wildlife. So the 25-year plan for the environment also commits to embed an environmental net gain principle for development, including housing and infrastructure, and to make sure that existing requirements for net gain for biodiversity and national planning policy are strengthened.

68. So this latter point about strengthening planning policy and net gains within this, if

you look at exhibit A76, these were enacted in 2018 when the National Planning Policy Framework was strengthened. And two of the significant and important changes to planning policy in 2018 are that it now no longer states that gains should be delivered where possible. So the removal of the words, 'where possible', creates a much clearer expectation; that net gain is applicable to all developments and not just on occasion, as it had been before. And it also makes clear that net gains now need to be measurable, and this comes on to your point earlier about metrics. And this is important because, without this measurement, the process of biodiversity accounting remains inconsistently applied, subjective and negotiable.

69. Now moving on to exhibit A77, in 2019, this is what Mr Mould has been talking about, following a public consultation on mandating a biodiversity net gain, the government announced that it would make net gain a legal requirement for all new development through the Town and Country Planning Act 1990. And as Mr Mould pointed out, while nationally significant infrastructure projects like HS2 are currently outside of the scope of these initial proposals, it was made clear at the same time in the response to the public consultation that government would continue to explore potential net gain approaches for these types of developments.

70. So maybe, at that point, not legally mandated, but they're still committed to deliver net gain. And this commitment to mandate, as we've heard, has played out in the Environment Bill. And while the net gain provisions don't currently apply to HS2, there are provisions within the Bill that are of relevance to HS2 Limited. So I'd like to refer you to exhibit A78 and a specific provision on this exhibit to strengthen the biodiversity duty on public bodies. It's my understanding that HS2 Limited is a public body and the current requirement is for public bodies to have regard to the conservation of biodiversity.

71. But under the new bill, the Environment Bill, this duty is going to be made stronger and public bodies will be required to consider actions to further the conservation and enhancement of biodiversity, and for them to have regard to the relevant local nature recovery strategies as part of this process.

72. THE CHAIR: Are you able to tell us which clauses we should look at there? Obviously, bullet point one is clause 90 that Mr Mould showed us, but what about the

third bullet point? Is that spelt out in clauses in the Bill?

73. MS HACKETT: It is in the Bill; I'm afraid I don't have the clauses at hand, but I could certainly send them to you after this Committee.

74. THE CHAIR: Well, we'll have a look ourselves. I just wondered if you had them at your fingertips but, if not, we'll look ourselves.

75. MS HACKETT: The current duty is part of the Natural Environment and Rural Communities Act. So it's updating that Act to make the duty that currently exists on public bodies a stronger one. So rather than just having regard, they now need to have actions to further the conservation of biodiversity. But not just the conservation; they need to also enhance it. So if the Environment Bill gets Royal Assent, it will be a requirement for those public bodies to go further than they are at the moment.

76. THE CHAIR: Thank you.

77. MS HACKETT: So as well as that, while there isn't a mandated requirement yet for national infrastructure projects to deliver net gain, as set out in my earlier exhibits, infrastructure is specifically part of the government's commitment. And we believe if government's serious about securing nature's recovery and becoming the first generation to leave the environment in a better state than we found it, we would expect major infrastructure to align with these commitments, regardless of the route by which they're permitted and whether it's mandated or not through the Environment Bill. And we believe there's a real opportunity for HS2 Limited to lead the way and be a real exemplar in this regard.

78. And furthermore, I don't think the wildlife trusts are the only ones believing that HS2 Limited should and could aim higher. So as well as the government commitments I've already mentioned, there have been a number of recommendations made to government and HS2 Limited over the last six years. So, as exhibit A79 outlines, in 2014, the Environmental Audit Committee said that on HS2, 'The government should aim higher than no net loss and, as it develops its processes and metrics of biodiversity offsetting, it should seek to weight these to produce biodiversity gains'.

79. Then in 2016, as exhibit A710 outlines, an independent review by Natural

England into the no net loss calculation recommended that for Phase Two, ‘The metric should be applied for the purpose of reaching a net gain objective to accord with national planning policy, and that Phase Two is an opportunity for innovative and existing projects to be realised under a net gain approach’. So that’s government’s agency making that recommendation. Also in 2016, if you please refer to exhibit A711, as some members of this Committee may recall, the report from the House of Lords Select Committee on the London to West Midlands Bill, spoke of the lessons learned from Phase One that could be used to improve the metric and perhaps have more ambitious aim of some net gain on future phases of HS2.

80. So given these clear commitments and the recommendations, we are refuting the promoter’s response to our petition on biodiversity net gain. And I set out our reasons in the next –

81. THE CHAIR: I think we should pause there for a moment to see if any members of the Committee have questions at this point. It’s just an opportunity if they have. No, I think all’s well; I think you can proceed, thank you.

82. MS HACKETT: Okay. So going on to the promoter’s response, firstly, the promoter stated that it’s satisfied that the project’s approach to no net loss is consistent with national planning policy. Well we disagree; the policy quoted by the promoter is outdated policy from the National Planning Policy Framework 2012 and it’s now irrelevant. So, as I discussed under exhibit A76, planning policy was updated and strengthened with regards to biodiversity net gain in July 2018. As a reminder, the new policy removes the highlighted bit on the exhibit, which was quoted by the promoter, and the revised version of the National Planning Policy Framework no longer focuses on halting biodiversity loss or only delivering biodiversity net gain, where possible. So there’s now a much clearer direction in planning policy for all developments to provide net gains for biodiversity.

83. And then this out-of-date policy aside, we would also challenge the promoter’s assertion that the project is even consistent and currently on track with the no net loss approach. So if you move to exhibit A713, I just wanted to draw your attention to a report produced by The Wildlife Trusts in January of this year called, ‘What’s the Damage?’ So this report concluded that in its current form the proposed HS2 scheme

will be unacceptably devastating to the natural environment because it places too many protected sites and the species that depend on them under potential significant risk.

84. So for Phase 2A alone, we identified a total of 78 sites protected for their international, national or local importance at risk of impact. Furthermore, HS2 Limited's proposed mitigation and compensation for the impacts on these wild places was often found to be inadequate or inappropriate to compensate for those losses. So, for example, along the route of Phase 2A, we had examples of losses to local wildlife sites that would be inadequately compensated for, and areas of salt marsh without any current compensation proposals at all.

85. So mitigation and compensation measures need to be tailored to the needs of local habitats and species in consultation with an ecologist and the local knowledge of the area. And as they stand, some of the proposals, we believe are going to add to the negative impact and losses for which they're intended to be mitigating and compensating. So based on the findings of the report, The Wildlife Trusts want to see nature properly assessed and ensure that the scheme is not at odds with the ambitions for nature's recovery, but instead designed to embrace the unique opportunity to create a green legacy, which supports a nature recovery network.

86. And this brings me onto my next exhibit, A714. So we've already touched on this in the introductory discussion, but the promoter's response states that, 'Nationally significant infrastructure projects and other major infrastructure projects are beyond the scope of the current mandatory net gain proposals, as set out in the Environment Bill'. And as mentioned earlier, while we recognise that national infrastructure projects are outside the scope of the current mandatory proposals, infrastructure projects are not, unless there's something revealed in this letter that I haven't seen, outside the scope of government's overall commitments for delivering biodiversity net gain and achieving nature's recovery. And HS2 Limited should still align with these commitments.

87. So referring you back to exhibits A74 and A75, both of which highlight the role that government has set out for infrastructure and construction projects in enhancing biodiversity and achieving net gain, and to exhibit A77, in which I referenced government's commitment to continue to explore net gain approaches for major infrastructure. And, finally, to exhibit A78 and the draft provisions being put forward in

the Environment Bill, to strengthen the biodiversity duty on public bodies, biodiversity net gain. They're three that I've already mentioned, but biodiversity net gain is also a core recommendation in the newly published design principles for all major economic infrastructure projects. And I'd like to just highlight the strength of these principles

88. So if we can move to exhibit A715, these design principles for infrastructure were a commitment in the First National Infrastructure Assessment, which was published in July 2018. They were published in February of this year by an expert design group appointed by the National Infrastructure Commission which itself is an executive agency sponsored by HM Treasury to provide independent impartial advice to government on the country's long-term infrastructure needs. The design principles apply to all economic infrastructure, including transport, and they recognise that design for national infrastructure has been an afterthought for too long, and that infrastructure of the 21st century should not seek to emulate the best examples of the past; it needs to surpass them.

89. And then specifically in relation to ecology and biodiversity, the principles state that well-designed infrastructure should, amongst other things, support local ecology, which is essential to protect and enhance biodiversity, make active interventions to enrich our ecosystems. And specifically in relation to this evidence, seek to deliver a net biodiversity gain, contributing to the restoration of wildlife on a large scale, while protecting irreplaceable natural assets and habitats. They should also make a positive contribution to local landscapes within and beyond the project boundary, which is something that I will come on to, in order to sustain local ecosystems. It reflects a point that was made earlier about the impacts on landowners already affected by the track. So this bit about the project boundary, I will talk a bit more.

90. But before I do, I just wanted to draw your attention to a couple more documents produced by The Wildlife Trusts over the last few years. So, firstly in 2014, we published, 'A greener vision for HS2' and large-scale nature restoration along the proposed line. And this sets out proposals for creating and restoring large areas of habitat and providing new access to nature for people. Research done as part of that report showed that the environmental restoration on the scale we proposed could be achieved with much less than 1% of the then overall £42.6 billion budget for HS2. We would obviously expect that percentage of overall cost to be much lower now, given the

current HS2 projections of £106 billion.

91. And then secondly in 2018, we produced ‘Towards a Wilder Britain’, which shows how a nature recovery network can be established by mapping out important places for wildlife which need to be protected, as well as key areas where habitats should be restored to turn nature’s recovery from an aspiration to a reality. And the reason for telling you about these two documents is that we believe, if HS2 Limited avoided unnecessary impacts in the first place, and if they got the mitigation and compensation right, and we know that this isn’t currently the case from the evidence report that I’ve just told you about, and if they targeted habitat creation more strategically, considered more use of restoration and enhancement, proactively encouraged and approached willing landowners and looked beyond the Bill limits to deliver the mitigation and compensation and net gain, we believe HS2 could be much more effective at properly mitigating the effects of the infrastructure project and achieving biodiversity net gain.

92. And this leads us on to our final disagreement with the promoter’s response, and brings me back to a point that was made earlier. So if you can look at exhibit A717, the promoter has stated that aiming for net gain will lead to excessive third-party land take, and we don’t agree this should be a constraint on achieving biodiversity net gain. So, in the large part, HS2 Limited is focused on land within the Bill limits. And this artificial approach of limiting habitat creation to the area within the Bill limits means that, inevitably, those landowners affected by the railway and the line itself, are then also affected by habitat creation requirements. And we’ve got total sympathy for that; that’s not what we want to happen.

93. What we would propose is, firstly, the promoter should invite and then approach willing landowners to be involved through paid management agreements for habitat creation, restoration, enhancement of appropriate habitats on their land. And there will be willing landowners out there who would welcome such agreements. This could be within the Bill limits but the approach could also be extended beyond. Secondly, as I’ve already mentioned, instead of focusing purely on habitat creation, HS2 Limited should consider greater use of restoration and enhancement of existing habitats within the Bill limits. This would require less land take and can provide results far more quickly and reliably, especially for those habitats with long establishment times. And it could add to

the work being done by conservation NGOs who have already identified the best habitat restoration opportunities along the route. And then, thirdly, HS2 Limited could look beyond the Bill limits at willing landowners within a suitable distance from the route to secure the land acquisition necessary.

94. And I just have one final exhibit which really sums up our position, which I can do now or towards the end; whatever's most suitable.

95. THE CHAIR: Can I ask you just to say a little bit more about the middle paragraph in your exhibit A717, restoration and enhancement of existing habitats within the Bill limits? Can you just explain a little more what you have in mind there?

96. MS HACKETT: So A717?

97. THE CHAIR: Yes.

98. MS HACKETT: So at the moment a lot of what's been proposed is habitat creation. So on areas that aren't of – new areas; actually there are habitats out there that would benefit from recovery and restoration, so they're already owned or being managed, or enhancing what's already there. So actually, not all of our good habitat is in good condition. So investment can be put into bringing them back. It can be invested in creating buffer zones and making links between them. So it's about not just focusing on finding areas of new land to create new habitat; that is an important element of creating a nature recovery network, but it's not solely necessarily the approach. And certainly for HS2, if the issue is about land take, then that is one approach that could be taken that could stop that pressure.

99. THE CHAIR: Is this the kind of thing that you see in motorways, for example? It's quite striking sometimes that the planting either of wild flowers or bushes and things does enhance the appearance of a motorway in comparison with how it looked when the thing was originally constructed. Is that the kind of thing you have in mind?

100. MS HACKETT: Yes, although it depends, because if you're talking about enhancement for an aesthetic appearance then no, but if you're talking about it as an enhancement to actually improve the quality of the land for biodiversity, then yes. So, the two can go hand-in-hand but the key point here is about enhancing it for

bio-diversity, but yes, it will improve the look from the railway line or the homes or wherever it is. Yes, it's about improving what's already there. That land, the implication is that the land has already got some value or has been identified as an opportunity to create. What we're talking about with the nature recovery network is you'll have your pockets of high value sites already but what we've learnt over the years is conserving those in isolated patches doesn't actually do enough for ecological connectivity. Particularly with climate change and species needing to move, what you need to do is create that corridor by linking up and making more, bigger, better and joined up sites. So that enhancement could be on those areas in between. Does that help?

101. THE CHAIR: Before you come to your final point, can I ask the Committee whether anybody has any points to raise. No, I don't think so. You can proceed, Ms Hackett, that's fine.

102. MS HACKETT: I think Lord Haselhurst has got his hand up, I think.

103. THE CHAIR: Oh, sorry. I beg your pardon. Lord Haselhurst, yes.

104. LORD HASELHURST: Thank you, Lord Chairman. There's a problem the government has between a very important commitment to improving diversity, protecting diversity levels at the moment and going beyond them in the future. We're also faced with forecasts that our population may rise by another six million over the course of the next 20 years. This is going to place great requirement on agricultural land or higher productivity from existing agricultural land. How does one get over that difficulty?

105. MS HACKETT: You raise a good point. I don't think it's an either/or argument. It's about spatially and strategically planning your land use. It's about recognising you need space for agriculture, you need space for nature and you need space for your infrastructure. It's about working and looking at that strategically for a spatial plan. In terms of landowners and farmers, there are approaches to work with landowners and we already do that but it's not necessarily about giving away your whole agricultural area. It's about you can combine the two. A lot of landowners and farmers are already doing that, where you create good margins for nature or allocate an area of your land. I think it is about that spatial planning, that land use planning. Having that nature recovery

network so you can plan where your other land uses are going is going to be really essential in that.

106. I think the other point to make on that, you talk about a growth in population. Our demand for a healthy climate has never been more certain. We're in a climate crisis and you can't solve the climate crisis by making the biodiversity crisis worse. The two are so intrinsically linked and we really need to be working to secure those. Nature-based solutions, by creating good grasslands that soak up water, which take floods away from homes and farms, and the railway line, are going to be vital in that process. Also, leaving those intact so that you're not releasing more carbon into the atmosphere.

107. THE CHAIR: Good. Are we moving now to your final slide.

108. MS HACKETT: Yes. So that was really to sum up. As I do, sir, I just wanted to come back to my original petition points. We believe the aim of the Bill in relation to ecological impact should be to achieve net gain for biodiversity in line with government commitments and not be limited to no net loss. We don't agree that writing net gain into the Bill will require additional unwanted compulsory purchase of land. As a result, we request that a clause is added to the Bill and a commitment for HS2 Limited to deliver biodiversity net gain in line with government commitments, which is secured in perpetuity with the appropriate allocation of funding.

109. THE CHAIR: Good. Thank you very much indeed, Ms Hackett. I think we're going to break now for five minutes so that people can stretch their legs for a little bit. It being 3.04 p.m., we'll resume again at 3.10 p.m. For the moment, we'll terminate the broadcast.

Sitting suspended

On resuming –

110. THE CHAIR: Well, Mr Mould, I think it's your turn to reply, please.

Response by Mr Mould

111. MR MOULD (DfT): Yes. I'm going to ask Mr Miller to help you as he did this morning. Then, if I may, make one or two brief closing submissions. Before I do, I did

note that Ms Hackett said that she hadn't seen the letter from the department that I mentioned to you earlier, which set out the Ministers' current position. The letter was sent to Ms Sue Young, who I think is the head of land use planning and ecological networks at the Royal Society. It may be, as Ms Hackett herself hasn't seen it, if I just briefly mention that the gist of the letter was that Ministers had considered the promoter's position ahead of the hearing today, noted that the issue of net gain in major infrastructure projects was part of a much wider discussion, the net gain for this part of the HS2 programme. Defra, the responsible department of government, is currently undertaking research into the impact of introducing mandatory net gain requirements for infrastructure schemes.

112. It is right, so Ministers think, that that research should inform conclusions in that wider net gain debate. For those reasons, they have instructed me, appearing as I do for the promoter, to explain this in response to this petition to your Lordship's Committee and invite you not to include the clause, essentially requiring a mandatory net gain in biodiversity within the Phase 2A Bill, the West Midlands to Crewe Bill. Since that would pre-empt the outcome of Defra's research and the wider debate under the Environment Bill about whether major infrastructure development should be required by law to secure net gain in biodiversity. That was the gist of what the letter said. Obviously, I draw it to your Lordship's attention because essentially that is the response that the promoter wishes you to consider to this petition.

113. THE CHAIR: A question, Mr Mould, if I can just interject for a moment. Having a position in the Bill for net gain in one thing but following developing government policy and trying to achieve that, nevertheless, is something else, isn't it? The fact that there's no provision in the Bill doesn't prevent you from moving towards some element of net gain.

114. MR MOULD (DfT): That's plainly right. You'll appreciate that my focus today is first and foremost on responding to the specific requests that the Petitioner makes of your Committee. That was clearly, as one sees from the very last page of Ms Hackett's presentation, that was that there should be a clause added to the Bill requiring net gain for bio-diversity. So the petition is seeking, as I understand it, that there should be a statutory requirement. That is something, as I say, the promoter is very firmly opposed to in its response to your Committee on that. The broader question as to what level of

commitment might be given, I appreciate is not dependent on the outcome of that focus of the debate. As I hope Mr Miller will be able to explain to you in a little better detail than I can, one can put the matter in this way. Most reasonable people, all reasonable people, would acknowledge the force of the aspiration that development, large or small, should aspire to giving more back to the natural environment than it takes away. I don't mean to be rude, but there's an element of motherhood and apple pie about that, one might say.

115. The challenge, as with so many essentially indisputable aspirations of that kind, is how to achieve them in reality. That's where issues of cost and benefit from in. Now, as Mr Miller, will explain, it is challenging although not unrealistic to aspire to no net loss. That is to say, to bring matters back into the balance through the overall design and implementation of the Phase 2A Bill scheme. It becomes even more challenging to achieve any significant improvement on that position. That is not to say that where opportunities arise to achieve an overall enhancement it would be unreasonable to expect the promoter of this scheme, or of any other major scheme to seek to grasp them. Indeed, that would be consistent with government's broader policy as expressed in the national planning policy framework, to which Ms Hackett referred briefly in her presentation, which talks in terms of development taking opportunities to deliver net gains in biodiversity.

116. That would be consistent with your predecessor Committees' advice in their report, to which Ms Hackett drew your attention, I think, in her slides where they said that there might perhaps be opportunities to achieve an element of net gain in future phases of HS2. But if, in the interests of realising the aspiration, one demands too much too soon, if I can put it that way, of the actual body that is required to realise that aspiration, one risks setting a benchmark or a requirement, that is in reality extremely difficult to achieve and possibly, in reality, unachievable. That's been the concern, I think, that government has more broadly in relation to major infrastructure. Certainly, that is the concern here. One needs to make sure that one doesn't set too high a bar because obviously if one sets the bar too high, one risks setting up the project to fail. Failure is as much to be deprecated in relation to this kind of consideration as lacking the necessary ambition.

117. So my Lord, I accept that there may be room for a commitment of some kind, but

it needs to be given in careful terms which reflect A) the challenge and the cost of doing it. And the fact that if, the more ambitious the commitment is, the more likely in reality it is that it will have to be achieved by means other than simply exercising the powers under the Bill. And the fact that there is work being done and will be continued to be done in the near future under Defra's egis to explore how the aspiration for major schemes to achieve an element of net gain can actually be achieved in a way where the benefits of doing so are in proportion to the costs of doing it.

118. THE CHAIR: Just on that point, Mr Mould, just before you move on, I beg your pardon for interrupting yet again. I'm just wondering whether what you've just been saying, which I fully understand, could be the subject of a carefully worded assurance, carefully worded assurance, to reassure Ms Hackett and her organisation that you have this in mind and where possible, and within reasonable limits, would seek to achieve the aim.

119. MR MOULD (DfT): It may be that, as you say, something which is very carefully worded and has appropriate qualifications to it could be put forward. The challenge of doing so, obviously, requires some careful thought. I won't presume to think out loud as to how that might be achieved but I'm obviously very happy indeed that the promoter will look at it. I'm sorry, what I will do if I may – I don't know if one of your colleagues wanted to ask me a question.

120. THE CHAIR: Yes, Lord Goddard has a question.

121. LORD GODDARD: Thank you. I'm just somewhat at a loss because you say you don't want to pre-empt any bio-diversity commitment until we've had Defra and the Environment Bill. Do you not think it would be more sensible to incorporate these recommendations now because quite clearly, anybody with any ounce of sense will understand that the Environment Bill, that clause will go in and that clause will get through. Sooner or later, I think if we were positive, rather than being negative about this issue, you would move faster, swifter. But I am absolutely certain that someone will move an amendment to the ends that that commitment is given and surely, with the way the environmental wind is blowing, that will gain support, I would think, in both Houses.

122. MR MOULD (DfT): Let us assume, if I may, that you are correct about that.

That is rather my point. The right place to have that debate as to whether legislative policy should extend the scope of a mandatory requirement to achieve bio-diversity net gain to large projects as well as what one might call ordinary development. The right place to have that debate, I would respectfully submit, is the parliamentary stages on that public Bill. Nothing is put forward by Ms Hackett and there's no obvious reason to see this phase of HS2 as having some special quality which ought to identify it as a candidate to pre-empt that debate. It isn't actually, in the context of HS2, a particularly significant element of HS2 compared to the scale of Phase One and indeed, the likely scale of Phase 2B. That's my answer, really, to your point. By all means, I have no doubt that the debate that your Lordship foreshadows will take place in the context of the remaining stages of the Environment Bill, but that's the right place for it to take place.

123. If, as a result of that, the government either sees fit to accept an amendment to the Bill or adopt a more ambitious policy in relation to major infrastructure schemes than is currently willing to do – and I emphasis currently willing to do – then, for exactly the same reasons that I've just given, it's reasonable to expect that it may regard that policy as one that HS2 should aspire to achieve as well as other major infrastructure. Really, the point today, is it's too early either to impose a statutory obligation on this phase of HS2 or to expect the promoter of this Bill to give too unqualified or too hard edged a commitment because we do not know enough about the true costs as compared to the benefits of a scheme of this kind to be able to formulate that commitment with any degree of confidence.

124. As my Lord, Lord Hope, says, it may be possible with those concerns in mind, to formulate some form of more general commitment, perhaps qualified in careful ways, which shows that there's an underlying positive response to the trend that your Lordship has just put to me. It may be that by the time we get to the final phases of HS2, in the coming years, that things have moved on quite considerably in this respect. It may be, for example, that it's seen as acceptable to expect landowners to give up more of their land in order to achieve an overall enhancement in bio-diversity. It may be that that is seen as a justification for the compulsory purchase of their land. Whereas, it's not been thought that that is readily apparent at the present time, for example.

125. THE CHAIR: Lord Horan has a question, I think before we lose sight of this

question completely.

126. LORD HORAN: Yes, Mr Mould made a very reasonable point that the right place to have a discussion of these general principles is the Bill which is going to come before Parliament. That is a Bill where this sort of debate could take place. On the other hand, that is just a piece of legislation which will incorporate, and I think Lord Goddard is quite right, will probably some pretty strong environmental desires. This, on the other hand, is actually a scheme, and a very large scheme. This is allegedly going to cost, in its entirety, over £100 billion. It's the most major scheme in the whole of Europe. You therefore could actually do something, as opposed to legislating for an aspiration, by putting something into the Bill.

127. Just to bring out the significance of this whole area, Lord Heseltine mentioned the point about population and biodiversity. I just happen to have in front of me a pamphlet put out by our colleague, Lord Hodgson of Astley Abbots, on population and the effect of that on bio-diversity, amongst many other things. He says in the course of this that the proportion of wildflower meadows have declined, since the Second World War, by 97%. This is a huge problem in this country. Therefore, while I understand his point that this is a bigger argument which you can have on the Environment Bill, why not do something by adding something into this Bill?

128. MR MOULD (DfT): The question is, what do you do? If you were to write in a clause into this Bill in the way that the Petitioner seeks, you would place a statutory duty on the promoter of this Bill, the nominated undertaker, to achieve a specified output, that is to say, to achieve a net gain in bio-diversity. The question is, how are they to achieve that? The Bill has been drawn in such a way as to enable them, realistically, to achieve the more modest aspiration of no net loss in bio-diversity. The land that is included within Bill limits has been drafted with that objective in mind and all the mitigation and compensation arrangements that have been included within the Bill under the regime that I mentioned in opening some minutes ago, have been drafted with that aim in mind. If you're going to say, at this stage of the Bill process, in the second House, that now the aspiration much change really quite radically and that instead of perusing the objective of no net loss, there is now a statutory duty to achieve, shall we say, a 10% overall net gain, it's extremely difficult to see how that could be achieved within the powers of the Bill.

129. It would almost certainly require in practice, a significant extension of the Bill powers, if it is to be done under the powers of the Bill. Although Ms Hackett says otherwise, there is every good reason to think that any meaningful increase in the scale of the objective to include achieving, as a matter of statutory duty, a net gain, would involve the need for further land. Otherwise you're establishing, you're building into the Bill, an enormous risk of neighbouring landowners being in a position to hold the public purse to ransom because the Bill will say, 'Achieve a net gain'. The Bill powers will not provide the land that is needed in order to do so. So the promoter, the nominated undertaker, will have to go out into the market and seek to acquire the land that is needed, the extra land outside the Bill powers to achieve that. Obviously, the market will say that land will be available but at a significant premium.

130. THE CHAIR: Sorry, I'm interrupting you once again, Mr Mould. Please forgive me. That's why I was suggesting that one could deal with this argument by an assurance, a suitably worded assurance. The problem is, what we are dealing with in this session is a Bill. The Bill is still before the House. It has to go back to the House after our Committee reports for further discussion. Somebody may raise this very issue. The Environment Bill may be actually on our doorstep at that very moment. So it will be in everybody's minds. They will look at this bill and say, 'What has been done about it?' What I'm suggesting is it would be in your best interests to really take seriously the idea of formulating an assurance which will go some way to meet Ms Hackett's point. That's not a complete answer to Lord Horan's point, but it's something that you should bear in mind. This is a Bill, after all. We're not the final arbiters as to what the Bill looks like when it comes up for third reading.

131. MR MOULD (DfT): My Lord, I very much had that thought in mind. The reason why I responded to Lord Horan in the way that I did was because if it is a choice between giving reassurance in the way that your Lordship has put to me, and reminded me of, as opposed to the Bill being amended so as to impose a statutory duty in circumstances where the practical achievement of that realisation of that duty has been no means been considered and scrutinised, and we are at the latter stages of this Bill. Then, plainly, your Lordship's suggestion would be, I would respectfully suggest, the more realistic and practical approach. As I indicated when you put that to me, I shall ask the promoter to give that suggestion very serious consideration.

132. THE CHAIR: Thank you very much. But time is moving on a bit and I'm responsible partly for taking up the time myself but do you think we could move on to Mr Miller's evidence and make some progress?

133. MR MOULD (DfT): Yes, indeed so. Mr Miller, we were going to look at no net loss to start with but I wonder whether, if you're happy to do this, we could start with the question of net gain because that's the issue that's clear in our minds. Then come back to one or two points on no net loss.

134. MR MILLER: I would like to say something. It was a very interesting exchange just then. I wanted to just highlight the fact that what's before this Committee is a bio-diversity assessment which has been carefully written up in environmental impact assessment terms and brought forward in an environmental statement. We shouldn't lose the point that the biodiversity assessment is also looking at – the assessment itself it also looking at how all of these assessment work together. It is the case that if you look at bio-diversity mitigation and compensation within the redline boundary of the Bill, that will have an implication on third-party land. We saw that very clearly through the Commons Select Committee proceedings. In fact, we've changed the approach a little bit to the type of mitigation response that we would have on land. We have made adjustments on land to accommodate farming interests, in particular. That was very real and very live through that Commons Select Committee proceedings. I know that because I had to go away and answer some of those questions that that Select Committee put to me.

135. It's not a case of thinking about biodiversity on its own merit. You've got to think about these things much more broadly. You have to think about the effects on other peoples' land and the effects on neighbouring land as well to make that work. It's also true, and Rachel Hackett mentioned it, mentioned principles about delivering something which is bigger, better and more joined up for bio-diversity. That is the case. I think in my opening I tried to highlight the fact that we have looked beyond, although it's sort of within the redline boundary, we have looked beyond the ordinary confines of the railway engineering, the cuttings and embankments to deliver mitigation, and more so on Phase 2A, this route that's before you, than perhaps before on Phase One. We have taken the opportunity to try and integrate biodiversity in such a way that joins up with other existing sites of biodiversity interest to try and get something that delivers an

outcome which is greater than the sum of parts.

136. When we turn to the no net loss situation, we then move into this accounting mechanism under the metric which is applied to the scheme to understand whether we are getting the right sort of biodiversity units or the performance, perhaps, from the scheme which we're asking for approval for. It is right that there is a deficit. I think maybe if we can move on to the P264, perhaps I can talk about some of the practicalities and things that are to come. So in redressing the balance, if you will, if you think of no net loss as being a balancing kind of arrangement rather than a net gain, we are already on a pathway to think about how we can further reduce habitat losses, what can we do to avoid what's in the scheme at the moment. I think I said in the opening that the environmental statement presents a reasonable worst case of the effects. That's important because we don't want to skimp on the assessment and bring forward something which is misleading. So in a way, the assessment over eggs the effects.

137. It is true that when you get into the detailed design of infrastructure projects like this, moving away from the outline planning approval – or the outline design that you see at this stage – and go into the detail, there are opportunities to further enhance the engineering and avoid these sort of effects coming forward in the first instance. So the baseline will change for the no net loss calculation. That would be true for any net gain calculation, if actually we end up in that position.

138. THE CHAIR: That does mean that, if you look at the various steps that are set out there, you may reach a point where you get beyond zero into having met the net loss but actually moving into something positive and producing a bit of a net gain?

139. MR MILLER: That's right. What I'm hoping to demonstrate to you is not too far removed from what Rachel Hackett has been talking about. It's difficult to understand, without some examples, that this is actually achievable but on Phase One, for example, we are reducing the cutting side slopes in a number of locations. There are very deep cuttings on Phase One, which would ordinarily provide a very wide footprint. If we can narrow that down in the areas where we're affecting biodiversity, then we change the base condition. We'll be preserving more of the biodiversity. That's what that's really pushing at, on that particular slide. So there is more to come. That is one measure, one of the levers that we can pull, to try and redress the balance to achieve no net loss.

140. The next thing, that accords with Ms Hackett's message, I suppose, is enhancing the ecological value of other things. We have planting in the scheme design which... Sorry, I've had a message come up on the screen called 'Mark Cooper'. That's –

141. THE CHAIR: I think you can carry on.

142. MR MILLER: Okay, sorry. Yes, we have planting schemes in the scheme design which are designed to provide screening. It is the case that in the detailed design we will look at those planting schemes to see if we can enhance the biodiversity value. So if you think about that lever we could push. Here's an opportunity for us to improve biodiversity even within the scheme boundaries. On Phase One, we've got some plans in place for restoration of construction sites. One of the things we're looking at in the Colne Valley, we haven't finally settled the details yet, but we're changing the restoration plan from going back to an agricultural use to something which will lead up to a great area, over 100 hectares, of calcareous grassland. If we can get that plan in place, we suddenly find ourselves in a game changing position where we can put in high performing biodiversity by restoring sites which we've used during the construction phase. That would realise a better outcome. That starts to push towards the possibility of realising gains from within a project like this.

143. It's also true on Phase One that the landed estate is changing. Again, this perhaps pushes in the direction that Rachel Hackett is alluding to. The estate that's being acquired by HS2 or by the promoter, offers up different opportunities beyond the redline boundary. On Phase One, we're purchasing outright the land and building. Hopefully, we'll want that back into the market so we don't have a great effect on agricultural uses and the productive land but there may be opportunities within that to think about some of that land being used, or put back, to a biodiversity outcome. So, there are more things that are to come, and then there may well be opportunities at third-party sites. I would point, on Phase 2A, to the commitments that we've made to funded schemes along the line of the route. One of the lessons that we learnt on Phase One was if you can work with local interests well, you can get better outcomes. One of the opportunities that came forward on Phase 2A was something called the Trentons Parklands. It was a scheme which was promoted by the National Trust, very well known, obviously they have land interests with neighbouring lands. We've got behind that scheme by offering up an assurance to provide up to £1.5 million for funding local

amenity and quite possibly biodiversity improvement schemes through that particular arrangement.

144. Then, the second thing is in East Cheshire, the debate that we had in the Commons with them was – and this goes to a site called the Meres and Mosses, that was a nature improvement area, money of which has dried up. We have put forward a plan for £800,000 to be put forward for biodiversity gain. So I'm quite confident that although we're staring, at this moment, at a 17% deficit, I'm confident that in Phase 2A we have the wherewithal, not necessarily now, but we have the wherewithal through the future term of the Phase 2A scheme to redress that balance. That may well push towards some further gains for biodiversity.

145. MR MOULD (DfT): Mr Miller, in light of that evidence, can I just ask you to think back to the point put to me by the Lord Chairman, and indeed the point put to me by Lord Horan about the pressure to bring some commitment into the Bill. You've identified opportunities which might, when they are realised, actually delivers some element of net gain across the project. The aspiration is for no net-loss, as we saw from the statement of reasons given by the Secretary State. It's the third reading in the other place. In the event that those opportunities for an element of net gain were to be available, as the detail of the project progresses, do you see any objection in principle with a commitment that essentially says we will take those opportunities as and if they arise?

146. MR MILLER: I see no problem with that. What I would be nervous about is hardwiring a commitment to this Bill that gets us into a place where it's very difficult to row back from taking other peoples' land. If there's another way of thinking about this more laterally and I don't know whether voluntary arrangements will do it, frankly. That doesn't work in my view, if you're trying to secure biodiversity gains in perpetuity. That does seem to me to warrant some sort of covenant on land, the sort of provision we do have within the Bill. But were there an arrangement, I don't know, perhaps with well-known land owners like National Trust, who perhaps are going to be around in perpetuity, maybe there is an opportunity there to think a little bit more laterally. Not necessarily to take agricultural land but to think about it in a slightly different way. But it's not straightforward.

147. I come back to the point about not hard wiring this to the approval because I think what will happen is that there will be a lot of pressure to put that into the redline boundary of the scheme design. It will be all too easy for, dare I say it, Committees and decision makers to say, 'It's got to be in the design. It's got to be in the design before you can get that approval.' Then you find that actually, there are a lot of unintended consequences. What I heard in the Commons was a lot of concern from farmers. It tends to be from the smaller farmsteads who really do rely on every ounce of land that they've got but if they're pressured in a certain direction to lose a certain amount of land, they're vulnerable to losing their business. That's a very hard thing to face up to, and I would not want to be trying to promote that in these sorts of arrangements, or any planning approval or DCO transport and works order. I think that would be a very difficult thing to accept. But if there is something which is a different way forward then maybe there is something there which could be perhaps funded differently and thought about more laterally. It is the case that – sorry, I should let others ask questions perhaps.

148. MR MOULD (DfT): Well, I wanted to ask you if you could help the Committee with the current thinking of Natural England. You had something that you wanted to say to them about Natural England and their current approach to realising gains in relation to major schemes.

149. MR MILLER: Yes. It's clear to me, and it's not lost on anyone on this call and probably listening in on these arrangements, that there is a move towards looking at biodiversity gains. We have recently, alongside a request from the HS2 Minister and the Chair of Natural England, taken them up on an offer to try and further our understanding of potential opportunities for realising further biodiversity gains on a major project. We're not stopping in this space. We are continuing to try and find ways of making improvements. The exam question which was set there was: are there opportunities out there which would not cause any additional cost or schedule delay? I think it's fair to say, after two workshops with Natural England and then a slightly wider group with Forestry Commission and the Environment Agency, at a second workshop, we have found it quite difficult to find other opportunities. But I am interested in understanding what the Royal Society have to say because they may well have some other opportunities.

150. THE CHAIR: Slow down, Mr Miller. I know Lord Liddle has a question before

you move much further.

151. MR MILLER: Apologies, I can't see everyone on the screen here. Forgive me.

152. THE CHAIR: Lord Liddle, would you like to put your question?

153. LORD LIDDLE: Yes, Lord Chairman. The question of farmers and the incentives they face and loss of land being serious for their income, of course all this as Lord Hope and I and others have participated in the Agriculture Bill, that is presently going through the House, is going to change a great deal in the next few years. In the next five years, when the incentives for farmers are going to move much more to environmentally sustainable land management. Isn't there an opportunity for HS2 to pledge to work with local farmers adjacent to the HS2 line to help them, and financially help them, to move to this new scheme of financial incentives which are designed to have a positive effect on biodiversity.

154. MR MILLER: That might well be the case. My Lord, if I may, I think you've hit the nail on the head. With the Agricultural Bill, the Environment Bill, this Bill, everything is proceeding in parallel. There may well be opportunities within all of that to be realised. This may be the sort of thing that a major project could well come alongside with, which makes a major project much more palatable for those who are the nearest neighbours of such a project and may actually work well for people. So that rather than perhaps receiving a major project like ours with all sorts of protests and whatever, there may be a different sort of local dialogue which comes out of this, which actually proves quite productive. So, I am with you on that point. But none of this is decided upon at the moment. It sounds like we're in this – there are compelling ideas probably coming from all sorts of different quarters.

155. LORD LIDDLE: Sorry, if I could just interrupt. It isn't decided but I think the direction of travel is pretty clear. There's no serious party political argument about the direction in which things should be going.

156. MR MILLER: Yes, okay.

157. LORD LIDDLE: That would be my view, anyway.

158. MR MILLER: Therein perhaps lies the opportunity. Whether that could be

realised on Phase 2A or whether that could be realised on subsequent phases of HS2, I guess remains to be seen. My suggestion would be that it would be on those latter phases rather than on this Bill otherwise – we can't provide certainty on those arrangements at the moment.

159. LORD LIDDLE: No, you can't.

160. THE CHAIR: Where do we go from here, Mr Mould? Looking at the time, we're at 3.55 p.m. We can of course run on after 4.00 but normally 4.00 is closing time. We've got to give Ms Hackett time to reply as well.

161. MR MOULD (DfT): Yes, I rather think that Mr Miller has said what he wanted to say to you on the main issue that is before you. Unless Mr Miller tells me otherwise, and unless there are any further questions for him, if I had another minute and a half of your time I think that would conclude the response to this petition.

162. THE CHAIR: Yes. Don't feel too pressed by timing, it's just I don't want to run on too late. You must take your time.

163. MR MOULD (DfT): No, I think, Mr Miller, am I right? You've given the evidence you wanted to give in response to this, to the key issue, which is whether the Bill should –

164. MR MILLER: Net gain, yes. I was going to respond to the slide A713 because I wanted to clear up a couple of matters but I'm in your hands.

165. MR MOULD (DfT): My Lord, if we could just turn to that slide.

166. THE CHAIR: Yes.

167. MR MOULD (DfT): This was the slide which introduced you briefly to the Petitioner's report, 'What's the Damage?' We can provide a detailed response on the designated sites that are mentioned there if the Committee would find it helpful. I'm not sure that you need to have that exposition now. It's something we could give you a note on. We'd share that with the Petitioner, obviously. But Mr Miller, what's the headline point in response to what we see on slide 13?

168. MR MILLER: What I wanted to say is the report that was published by the Royal

Society, as I understood it – or understand it – took quite a broad brush view on the potential risks and effects that might arise out of HS2. The bracketed numbers are attributed to Phase 2A. It comes back to my opening point in my evidence today, in this session today. The important thing that is before Parliament is the environmental statement and that assessment of effects and whether there is anything significant which arises from that documentation. That's what required to be put before Parliament through the examiners and standing orders and so forth. That doesn't accord with the disposition put forward by the Royal Society for Wildlife Trust.

169. For example, in that scheme, in that table, it hides something which says, 'There are five wildlife sites of international importance affected.' I think Rachel Hackett mentioned a saltmarsh. Well, we designed this route of the railway away from that saltmarsh, that special area of conservation. That was done deliberately to avoid that international site. So that is just one of a number of examples where we think that that report is incorrect and is potentially misleading. If I look at the sites of special scientific interest, for example, we've avoided one of those sites of – in fact, we've avoided all of the sites of special scientific interest. Betley Mere, for example, was looked at in depth and hydrological arrangements there and we don't have any direct effect, any physical effect, on Betley Mere.

170. So I think it would be worth us putting a note to you about that so that you have it from a – you've got a balanced perspective. I think if I go through all of what I've got in front of me it's just going to take up too much time. But perhaps if we put that to you and the Wildlife Trust together then maybe that would be worthwhile doing.

171. THE CHAIR: Yes. That would be very helpful. Can you be sure of letting us have it before the beginning of September when we resume our hearings?

172. MR MILLER: Yes, I will. Yes.

173. MR MOULD QC (DfT): Thank you, Mr Miller. My Lord, if I may then just very briefly sum up.

174. THE CHAIR: Yes.

175. MR MOULD QC (DfT): I do so by reference to slide A7 (18), which is the slide

which Ms Hackett very clearly stated represents the main request that the petitioner makes to Your Lordship's Committee. And the focus of my submissions today, as I hope has been clear, has been on that particular issue and that is to seek to persuade Your Lordships that it would not be prudent or appropriate to write into this Bill effectively a mandatory requirement upon this project to achieve a measurable net gain in biodiversity. The reasons for that have been ventilated in the evidence before you but both the emerging statutory landscape and the emerging policy landscape and debate would support a more nuanced approach in the way that Your Lordship suggested to me in argument; that is to say that a more carefully graded commitment. Mr Miller, I hope you will agree, was very positive in some of the opportunities that might arise and which could be reflected in a commitment of that kind but the key point is that it would be a commitment that could sensibly be expected to be capable of being realised in practice. Whereas if one is to write in a hard-edged frankly rather arbitrary requirement into the Bill, arbitrary because there's very little evidential basis upon which to show how any measurable requirement to net gain could be realised within the powers of the Bill, then plainly the alternative of something outside the statute itself is by far the more prudent and desirable aim.

176. And, of course, the final point is it would provide the opportunity for continuing engagement with not only Natural England but also with interested bodies such as the Wildlife Trust. In the slides we've mentioned the Ecological Review Group. We haven't discussed that in the meeting but that's one possible way in which a commitment might be taken forward in practice with involvement from those who have expertise in this area beyond HS2 and its own advisors and consultants.

177. So I commend that approach rather than the approach which the petitioners have sought, which is to impose a statutory duty in the way that the slide A7 (18) invites you to do.

178. THE CHAIR: Would you guide us about how to handle that element of procedure? If we felt that an assurance of the kind you've just described would be an answer to this petition, how do you proceed? Obviously you can't do it overnight but when would we receive it and how do we acknowledge it?

179. MR MOULD QC (DfT): What I'm going to do is to ask if those who instruct me

can see a way to formulating a draft assurance of that kind within as short a time as possible. It won't be, I think, before the end of this week but if we can commit to getting something to you and to the petitioner within the same timescale that Mr Miller mentioned, that is to say by the end of August, and then that will allow time for you to receive any response from the Royal Society perhaps in writing before you conclude your business in September. That's a possible way of approaching it.

180. THE CHAIR: That would make sense, I think. I mean there's obviously no rush while we're in recess in August but to have it at the very beginning of September would be very useful. And, if possible, Ms Hackett's response to what you've put before her in writing.

181. MR MOULD QC (DfT): Yes. Well, I'm certainly happy to proceed in that way. And if that presents any insurmountable problems which I have not been told about while this session's been going on then obviously we'll make that known to you. But I don't see why it should. I would have thought that we can press on with the work on that during the weeks between now and the end of next month.

182. THE CHAIR: Yes. Well, thank you very much.

183. Ms Hackett, can we come to you because you've got a right of reply and it would be interesting to know what your reaction is to what we've been discussing.

Response by Ms Hackett

184. MS HACKETT: Well so much to reply on, actually, but within the time limits I'll focus on two key areas and I suppose firstly to come back to Peter Miller on our report. We would welcome to see the evidence that he has that corrects our report because we have asked to see a list of the sites in very clear detail. At the moment we're having to wade through thousands and thousands and thousands of pages of environmental statements. We do know that there are a lot of sites that haven't been visited by HS2 Ltd that aren't included. There's nature improvement areas that are designated locally that aren't included in the environment statement. And our report does make very clear this is about the risk. Biodiversity doesn't know red lines, it doesn't know the boundaries of a track so the impacts aren't always direct but they can be significant. So our evidence comes from local experts who know the sites, who know what the impacts

could be. But it does come with a caveat of risk because we don't know the detail. It hasn't been transparent and it's very hard so we've looked at the red line boundaries and an area around that and greater transparency on that would be fantastic. So we would welcome to see that and review our figures based on what we receive.

185. And then the other key point I would like to raise here is something that's come up quite a bit, Mr Mould mentioned it, about it's too soon, this business of time. I didn't see the letter from the Department that they're waiting for research. We have research that we have an ecological and a climate crisis and we don't have time. So the inter-government panel on climate change has said that the decisions we make in the next 10 years are crucial to avoid a climate catastrophe. We can't tackle the climate crisis without a similar ambition to meet the nature crisis head on. Government have clearly set their commitment for a nature recovery network. They've clearly set their commitment for biodiversity net gain. And because it's not mandated, and that's clearly the direction Government are waiting now, waiting for research we haven't got time. Whether it's mandated or not there's a commitment to deliver a biodiversity net gain and we just need to be dealing with that otherwise we're going to be in trouble. Awareness has grown about the role of healthy habitats that they play in regulating the climate and reducing impact on climate change, which is already happening, and it's important to our health and wellbeing. We're in a very different time. In the last four months we've never seen the value of nature to people so much. So to wait for the right time, I really question that. I really think we need to be acting now not soon when we have the data and the research.

186. So yes, we would like net gain to be included in the Bill but certainly we're very interested to hear what assurance HS2 Ltd can give us that if Government's advice is it's not going to be we would like that assurance that actually one of the biggest infrastructure projects this country has ever had gives more back to nature than it takes away.

187. THE CHAIR: Thank you very much, Ms Hackett. That's a very realistic approach. And what we'll do, I think, is await the correspondence which will take place and look forward to seeing what comes out of this when we resume our proceedings at the beginning of September. But I think that's enough for today's proceedings, unless you've something else to say.

188. Perhaps we can finish it there and terminate our broadcast. But before I do that, I should make it clear that the Committee is sitting again tomorrow. The next public meeting will be at 10.30 in the morning and that's when we look forward to seeing, I think, perhaps you, Mr Mould, again for the petition tomorrow.

189. MR MOULD QC (DfT): That's right.

190. THE CHAIR: Before we finish, I just want to be clear whether you and Ms Hackett have found the virtual proceedings we've been conducting working satisfactorily because we've got to have another session of this in September when we come back and we'd like to know whether you were able to work with us or whether there are any disadvantages that you've been able to spot.

191. MR MOULD QC (DfT): I'm not on mute, am I?

192. THE CHAIR: No, you're not. We can hear you and you're in public too because I'm trying to reassure anybody who's thinking of joining us virtually in September that these proceedings are actually working sufficiently well for people to be heard fairly and efficiently.

193. MR MOULD QC (DfT): For my part I have found today to have gone without any noticeable hitches. It seems to have been a successful process. So I'm reassured by how things have gone.

194. THE CHAIR: Thank you. Ms Hackett, what about you? How have you found it?

195. MS HACKETT: Thank you. It's been very good, thank you. Everything's been efficient and all the testing beforehand to make sure the tech worked was great. So it's appreciated.

196. THE CHAIR: Good. Well, thank you both very much, indeed. And, Mr Miller, again thank you for your evidence.

197. MR MILLER: Thank you very much.

198. MS HACKETT: Thank you.

199. THE CHAIR: We'll say good afternoon and we'll terminate the broadcast at this

point. Thank you.