

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Thursday, 3 September 2020 (Morning)

Virtual proceeding

PRESENT:

Lord Hope of Craighead (Chair)

Lord Brabazon of Tara

Lord Goddard of Stockport

Lord Haselhurst

Lord Horam

Lord Liddle

Lord Snape

IN ATTENDANCE:

James Strachan QC, Counsel, Department for Transport

Jacqueline Lean, Counsel, Department for Transport

WITNESSES:

Luci Ryan (Woodland Trust)

Peter Miller (HS2 Ltd)

IN PUBLIC SESSION

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(At 10.30 a.m.)

1. THE CHAIR: Good morning, everyone. Welcome to this virtual meeting – indeed, probably the last virtual meeting – of the House of Lords Select Committee on the High Speed Rail (West Midlands – Crewe) Bill. It may be helpful before we begin our proceedings if I were 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 that.

2. 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 that. 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 I can see it on screen. I will then call you to speak at an appropriate point.

3. In order to allow for interventions, I will invite speakers – and this applies particularly to you, Ms Ryan, when you’re making your presentation – to pause from time to time, so that I can call on any member of the Committee who wishes to put a question to you before we proceed further. We will adjourn for a few minutes’ break after about one hour, and we expect to finish by 1.00 p.m.

4. Participants should have the exhibit bundles open and available. For this session, these are bundles A11, P29, R60, R105, R106 and R107. We will navigate the documents using the numbers in the bottom left corner of each page. We shall now begin with petition number 24, the Woodland Trust, and Mr Strachan, I’d be grateful if you would open the proceedings for us.

5. MR STRACHAN QC (DfT): Thank you, my Lord. You’ll be hearing a petition by the Woodland Trust, petition number HS2-HOL-024. The Woodland Trust is a woodland conversation charity raising issues regarding the effect of HS2 on woodland and trees, including ancient woodland. There isn’t a slide to show you regarding land that they own, for example, directly affected which I can point you to in the exhibit packs, but there is in P29(3), a table – table 4, which identifies, along the route, ancient woodland which is affected by the scheme.

6. It has the amounts affected and you can see the totals entry at the bottom of the table: total direct loss of ancient woodland, and then identification of areas of new planting and enhancement for each of the parts of the woodland affected. And if it's of particular interest to the Committee, in the slides that follow, the promoters set out plans for each of the areas of woodland, which show – of the ancient woodland that is – which show effects and the measures being taken to address those.

7. So, for example, P29(4) is a slide showing effects on Lower Birches/Titler's Plantation, the area affected is shown in red and the compensation planting is shown, generally speaking, or identified in the orange boxes. That actually arises out of an overhead line. An example of effects arising from the line of route itself are shown on P29(5). This is just an example, but Flushing Covert, shown here, again with the same notation: the areas in red, 0.1 hectares lost, pointed out on the plan. And then in orange, compensation planting or soils receptor sites identified and where they are proposed. I won't take you through all of those, but there are available for the Committee if a particular area arises of interest.

8. The issues that are being raised, as I understand them today, are summarised on slide A11(14). Ms Ryan will obviously address the Committee about that in a moment. Just if it helps to orientate the Committee on some of these issues, it's fair to say that some of these issues have been addressed in the past, both in relation to the Phase One part of the HS2 route, which went through Parliament, but also in the other place. And, so far as directing you to where some of those issues are covered, in the R bundle, or the R exhibits, you can see both the petition from the Woodland Trust begins at R60(1), and petition response document, which is the response from the promoter, begins at R60(16), and if the Committee want to see where any of those issues address, I recommend the petition response document because it sets out the paragraphs from the petition and then the response in one place. I hope this is of assistance in case one needs reference to where some of these points were addressed, but just for your notes, loss of ancient and veteran trees was considered at R60(29).

9. THE CHAIR: Can I just interrupt there, Mr Strachan? I've been looking at R60(18) which I think is setting out the table of contents, and that one lists the issues which Ms Ryan has raised and has got a key to the petition paragraphs. Is that something we should look at?

10. MR STRACHAN QC (DfT): Yes, absolutely. It's is fair to say – I think Ms Ryan will make this clear – that not all of those issues are going to be pursued today before you, and I can see Ms Ryan's agreeing. So that is a list of the full issues addressed in the petition, some of which are no longer being pursued because there is agreement, or resolution, on those. But your Lordship's entirely right; for example, where those issues are identified, you'll see where they're dealt with in the petition response document. It's probably sufficient just to draw your attention to that.

11. THE CHAIR: Right. The other document that caught my eye was A11(5) which Ms Ryan will no doubt draw to our attention, which is headed, 'We ask the Committee', and that it is focusing on four particular issues which strike me as the key issues that arise today. But Ms Ryan will correct me if I'm wrong about that.

12. MR STRACHAN QC (DfT): My Lord, that's entirely right. And in fact, the slide I took you to, A11(14) is, in effect, the same – I don't mean this in any disparaging way – it's in effect the same as A11(5). They're expressed as the asks on A11(5) and then they're repeated in the summary A11(14) but your Lordship's entirely right. That's the focus of those matters, and I just give you an example. The ratio issue of 30:1, as you will have seen from the petition response document, is a matter that there have been views expressed on in the past. I leave it neutrally in that way, but you will see in the petition response document reference to, for example, the Phase One House of Lords Select Committee where that issue was raised by the Woodland Trust in respect of Phase One. I just draw your Lordship's – the Committee's attention to that. Ms Bryan may have things to say about that.

13. My Lord, with that introduction, I think I have to hand over to Ms Ryan to address you on the request that the Woodland Trust has before your Committee today.

14. THE CHAIR: Good, thank you very much. Well, Ms Ryan, it's over to you to make your presentation. Can I just explain that we'll, of course, listen to you? Please don't feel rushed at all in making your presentation. Pauses from time to time so that we can put questions, if we have any, and to then Mr Strachan will reply, and after his reply I'll give you a chance to come back with any points that you may wish to make that arise out of his reply. Is that satisfactory?

15. MS RYAN: Okay, fine, thank you. Yes, that is. Thank you very much, your

Lordship.

16. THE CHAIR: Right, over to you then.

The Woodland Trust

Submissions by Ms Ryan

17. MS RYAN: Okay. So I'm going to be starting with my slides, which start A11(1), and I'll be working through those. This is very strange doing this over the internet. So it's just lovely to see everybody because this is third time lucky for me because I should have been giving evidence in November last year and then again in March, so I'm just really pleased to be here, albeit remotely.

18. So if we go to A11(2). I'm Luci Ryan. I'm a lead policy advocate at the Woodland Trust on infrastructure. I have a degree in ecology, I have a master's of research in science and the environment, and I'm a full member of the Chartered Institute of Ecology and Environmental Management, CIEEM. I've over 20 years' experience working as an ecologist and I've been working for the Woodland Trust for the last eight years on the HS2 work that we do. So I cover all three phases of HS2, from London right up to the top of the Y route.

19. So the Woodland Trust is the UK's largest woodland conservation charity. We own a sizeable estate ourselves, over 1,000 woods around the UK, all of which are free to access for the general public. We also help other landowners manage and maintain their woodlands, as well as planting lots of new woodlands.

20. We have over half a million members and supporters, and we're widely seen as the national authorities on ancient woods and ancient and veteran trees, which is why I'm here to speak to you today.

21. I'd just like to make it clear in my evidence that we're not opposed to the concept of high speed rail. It's sometimes wrongly reported that we are. It's just we have serious concerns about the environmental potentials of HS2 in its current format and that's what I'm going to talk about. So if we can move on to my next slide, that's A11(3)

22. I just want to give an overview really of Government ambition around the environment, starting with – we’ve had initially Theresa May and then Boris Johnson, and most recently Rishi Sunak, state that this Government intends to be the first in history to leave our natural environment in a better state than we found it, which is a wonderful thing for people to state, and as an ecologist, that’s great, and feeds nicely into the Environment Bill, and the ambitions of the Environment Bill that hopefully is about to start its proper passage through the House: that the Environment Bill is going to help deliver the Government’s manifesto commitment to delivering the most ambitious environmental programme of any country on earth. It is part of a wider Government response to the clear and scientific case and greater public demand for step change in environmental protection and recovery, and again, that is a wonderful ambition. Not only does it recognise how important the environment is and the fact that we need to improve on what we currently have, but that the public is also very concerned about this.

23. Now, with particular reference to ancient woodlands and ancient and veteran trees, we’ve also seen a strengthening of the National Planning Policy Framework in the last couple of years around irreplaceable habitats, in particular ancient woodlands, because ancient woodlands and ancient and veteran trees are irreplaceable. The NPPF clearly states that permission should be refused for anything that’s affecting these things, unless it is wholly exceptional. So you have this beautiful package of intentions around the environment, but what we’re finding is that HS2 is at odds with this Government’s ambition and I’m hoping that I’ll be able to explain that to you as I go through my evidence.

24. So if we go on to my next slide, so that’s A11(4), and this is talking about the impact of Phase 2A. So, as you’re aware, Phase 2A is the shortest section of the whole scheme, running from Birmingham up to Crewe; it’s 64 kilometres. And from that route at present, as it stands, there’s a loss of 9.8 hectares of ancient woodland from 10 ancient woodlands; 9.8 hectares is quite difficult to visualise, it’s around about 15 football pitches, and I always find people like it when I compare it to football pitches, because people can see it.

25. Unfortunately, compared to what was originally proposed in the draft environmental statement, that’s only a 7% reduction on what was originally proposed. Now, to give you some indication of why this isn’t as good as it could be, on Phase One,

HS2 have managed to achieve a 33% reduction on what was originally proposed and we would expect to see this getting better as it goes up the country because it's a huge project – we accept that, it's the biggest project in Western Europe – and the steep learning curves here, but what's happened on Phase 2A is that, if we look at ancient woodland loss per kilometre of track laid, actually 15% more ancient woodland is lost per kilometre of track laid on Phase 2A, than it is on Phase One. So it's getting worse; it's not getting better.

26. In addition to direct effects – and by direct effects, I mean actual removal of ancient woodlands, so removal of trees, vegetation and soil – there's also indirect effects, and unfortunately HS2 don't always clearly recognise the indirect effects the scheme has on ancient woodland that isn't actually having bits of it removed. But indirect effects do impact negatively on ancient woodlands, and this is recognised in the Government's policy document *Keepers of Time* around woodland, that indirect effects do need to be considered.

27. So when I talk about indirect effects, I mean things like increased lighting, changes to noise regimes, actually just severing these woodlands from the wider landscape by the hard structures that are being put in place, and more complex things like, if you're digging cuttings, you have to de-water them, and actually, the removal of the water from – as part of the de-watering activity can cause changes to hydrology of woodlands and this causes insidious damage to the ancient woodlands, which is actually quite difficult to measure and may happen over a long period of time. So often, it's put in the 'too hard' basket and it isn't really accommodated.

28. So, based on that, I believe that there is a further seven ancient woodlands on this section that are indirectly affected by HS2 as a result of these indirect effects. What's important to know, all these losses contribute to the national decline of ancient woodlands. The Woodland Trust knows of over 1,000 ancient woodlands around the UK at present that are under threat from developments.

29. As I've said before, ancient woodland is irreplaceable. This isn't just a Woodland Trust belief; this is an accepted fact. HS2 accept it, but it's not good enough just to accept that ancient woodlands are irreplaceable; if it's irreplaceable, we should be avoiding it. Any loss can't be replaced. It can't be mitigated for. It can only be

compensated for. No amount of new planting will replace what's been lost.

30. THE CHAIR: Could we pause there just for a moment to see whether anybody has any questions so far? Lord Liddle first. Lord Liddle, can you unmute first before you put your question? Unmute, please.

31. LORD LIDDLE: I'm unmuted now, I hope, Lord Chairman. I just – I'm very sympathetic to what you're saying, but you make this statement that ancient woodland is irreplaceable and that new planting can't deal with the problem. Can you explain to a lay person like me why that is so?

32. MS RYAN: Yes, of course I can, your Lordship. So ancient woodland has developed over an extraordinarily long period of time. So in England ancient woodland is defined as any woodland that's been in continuous existence since at least 1600. The fundamental point of ancient woodland is that it's completely undisturbed, so that land's never been subjected to modern farming practices, the soil's not been dug up and moved around.

33. It also formed under climates that no longer exist, so the whole ecosystem is this very stable, continuous environment. And as a result of that, there are species – so there's over 256 species of conservation concern there that's specifically related to ancient woodland. That's the habitat they need to occupy, so if you remove it and plant new trees, many of those species just are not adapted to live in new planting. As you know, if you plant a new tree, it takes a considerable period of time before it reaches a size that many species can then inhabit, particularly if you're a species that inhabits holes, or old wood or dead wood. So these species have nowhere to go. We've only got 2.3% of land cover in the UK is ancient woodland, so every bit of it lost, it's gone forever. Does that answer your question, your Lordship?

34. LORD LIDDLE: That's very helpful, thank you.

35. THE CHAIR: Lord Horam, next. Lord Horam, your question?

36. LORD HORAM: Yes. I was just interested in the extent of ancient woodland. You say here that there is loss of 9.8 hectares from 10 ancient woodlands. How many ancient woodlands are there in the UK? Perhaps I should say England; maybe that's

more relevant.

37. MS RYAN: That's a very good question. Off the top of my head, your Lordship, I can't answer that. I can find that answer out for you. I know that 2.3% of land cover in the UK is ancient woodland, but how many individual ancient woodlands, that is –

38. LORD HORAM: It's 2.3%, is that the UK?

39. MS RYAN: Yes, it is the UK.

40. LORD HORAM: Because that includes the whole of Scotland, and Northern Ireland –

41. MS RYAN: Scotland, Wales and Northern Ireland, yes.

42. LORD HORAM: England is particularly deficient in the ancient woodlands, is it not?

43. MS RYAN: Well, it varies – yes, it varies massively around the country. So different parts of the country have bigger pockets of it than other parts of the country.

44. LORD HORAM: So it's very small. What you're really saying is ancient woodlands are a very small part of our earth coverage and therefore more precious.

45. MS RYAN: Yes. They're our most biodiverse habitats, and as you're probably aware, we're the least wooded country in continental Europe.

46. LORD HORAM: Ah, yes, that's what I mean. Yes. If you go to Germany –

47. MS RYAN: Our most biodiverse habitat and, as I was explaining to Lord Liddle, if you remove it, you can't replace it. And that's accepted – it's accepted by Natural England; it's accepted by ecologists; it's accepted by HS2. They themselves admit that it's irreplaceable. So it's one of the few irreplaceable habitats that we have in this country, and so we're in a situation where we have to decide – as I said, HS2 isn't the only project that's impacting on ancient woodland, so we have to decide at what point we pass the point of no return. If we say we've got irreplaceable habitats being lost all the time and it's all these little bits that add up to essentially a big bit that's going, when do we decide enough is enough?

48. LORD HORAM: Okay, thanks.

49. THE CHAIR: Lord Brabazon, I think you were wanting to put a question; am I right?

50. LORD BRABAZON: Yes, thank you, Lord Chairman. Actually, my question is very similar to what was asked by Lord Liddle, but really, if you are planting new woodland now to replace ancient woodland, if somebody was to come along in 100 years' time or so, would they be able to tell the difference between what you described as an ancient woodland and one which was planted next week?

51. MS RYAN: Yes, and in fact, there's been some really interesting experiments done where woodlands that has grown up next to ancient woodland. There are some studies done in England – and I can't remember off the top of my head exactly where they are – but that clearly show where woodland has grown actually joining ancient woodlands, even 120 years, 130 years later, you can still clearly see the difference, because the species that inhabit ancient woodland, because they are designed to live in very stable environments, they don't move well, they don't disperse well, and they have very, very specific habitat requirements. So yes, in answer to that question, you could clearly see the difference.

52. LORD BRABAZON: Thank you very much.

53. THE CHAIR: Just one question from me: in the third point, in your sheet, 11(4), you point out that there's a greater impact on ancient woodland per kilometre as compared with Phase One, but Phase One begins at Euston station and much of it is in Greater London, isn't it, so it is a factor of the point you made earlier that the spread of ancient woodland depends on where you are in the country. Obviously in Staffordshire and much more attractive areas, Warwickshire and so on, you've got lots of woodland there, but you don't find the same concentration of woodland around Greater London, do you?

54. MS RYAN: No, you don't. I mean, it's surprising, actually Lord Hope: there are some ancient woodlands in Greater London which you wouldn't expect; there are a fair number of urban ancient woodlands. But no, I take the point that you're making. I think the point that I'm trying to make is, because obviously, I can't ask your Lordships

to do anything that requires an additional provision, so I'm in this slightly difficult position where I have to accept – the Woodland Trust, one of our aims is no further loss of ancient woodlands and I am having to talk to you today accepting that I can't ask you for changes to avoid most of this ancient woodland because it would require additional provisions.

55. So what we're saying is that, from the draft environmental statement to the point that we're at now, which obviously is quite a number of years, we've only seen 7% reduction in what was originally proposed and that's quite disappointing from our point of view, when we're talking about big areas. The single biggest loss of ancient woodland is on this section at the moment, based on what we understand. So that's Whitmore Wood and 5.5 hectares.

56. THE CHAIR: Good. Well I think we should make progress now, but thank you very much for your answers. So we can move to 11(5), can we?

57. MS RYAN: Yes, please. So this is just a quick summary of what I'm going to go through. So it's four points that we've honed it down to, mainly because of the issue that some of the things that we were asking for in the other place, obviously I can't ask for here because they require additional provisions.

58. So the four main points that I'm asking for today, which I will go on to articulate in my other slides: if ancient woodland is lost, which we've just discussed, that compensation planting is at a ratio of 30:1; that no ancient woodland or ancient and veteran trees, which are also irreplaceable, should be lost to any temporary works; and this is a biosecurity issue – that all trees planted in compensation will be UK and Ireland sourced and grown, and not brought in from overseas; and that all the trust's assurances are secured as a binding undertaking, and I'll explain why we want that towards the end of my presentation.

59. So if we can move on to slide A11(6), this is connected with compensation planting ratio of 30:1. So as I've already talked about, ancient woodland is irreplaceable, so no amount of planting can replace it, but if you are going to destroy it, then any compensation provided should be commensurate – should recognise what's happened.

60. Now, HS2 are in a position where they've stated what they're going to remove, but they've also been in a position where they've stated how they are going to compensate for it. So they are, in effect, marking their own homework there. HS2 haven't used a compensation ratio to calculate; they have stated repeatedly that they've used professional judgment to determine how much compensation is needed.

61. Well, in my professional judgment the compensation provided it is not adequate because it doesn't recognise the damage that's being done. In addition, in February this year, before I was due to appear before you in March, Natural England provided a statement to support our ask of 30:1. Now, I put that on the slide, which is probably tiny and you can't read it. It's also at appendix 2 in my written evidence. I'm not going to read the whole thing out to you, which is Appendix 2, and that is A11(28) – sorry, A11(27) it starts and A11(28) is the full Natural England position which we were provided with in February.

62. The bit I would like to point out to you is on A11(28) and this states – because this was raised on Phase One, and Natural England, along with us, said that an area ratio 30:1 is appropriate and that at the time, if it was legal and practicable to implement that for Phase One, it should be implemented for Phase Two, and the reason they said that was that this all happened very late in the process on Phase One because there was a lot of negotiation around the no net loss calculation and removing irreplaceable habitats from that calculation.

63. Natural England strongly believes that the level of compensation needs to be commensurate with the irreplaceable nature of the habitats and with the highest standards expected from any Government-led scheme that has a significant environmental footprint. So again, this ties into the slide I was talking to about Government ambition around environment, leaving the environment in a better state than they found it.

64. Natural England goes further and says that they want a net gain in biodiversity, and I know the Wildlife Trust discussed this with you when they gave evidence in July. If you lose irreplaceable habitats, even achieving no net loss is impossible because you can't replace it, so you've lost biodiversity. And, as you know from previous discussions I think with the Wildlife Trust and maybe other petitioners, that the

promoter's own no net loss calculation shows on Phase 2A a net loss to biodiversity of 17%. But that's actually a headline figure, and actually within that – and I don't know if your Lordships have the actual report around the no net loss calculation for Phase 2A – there's actually a significant trading down for woodlands within that calculation, so there's an even bigger loss of biodiversity for woodlands within that calculation that's not clearly indicated from that headline figure of 17%.

65. So if we go onto my next slide, A11(7).

66. THE CHAIR: Just before you move that, could I ask you how the 30:1 ratio would actually work in practice, what would be done? I mean, you're planting 30 trees for every one taken down.

67. MS RYAN: It's actually – it's an area based ratio, your Lordship, and that's what Natural England have asked for as well; so it would be 30 hectares for every one lost.

68. THE CHAIR: Ah, so it's area, not trees.

69. MS RYAN: Yes.

70. THE CHAIR: You don't count the number of trees in Whitmore Wood and see how many are lost.

71. MS RYAN: No, it's area, not – but obviously, to point out if ancient woodland wasn't being lost, I wouldn't be sitting here asking you to do this level of compensation planting. Did anybody else have any questions? I thought I saw Lord Liddle put his hand up.

72. THE CHAIR: Right, well, take Lord Liddle first and then I'll come to Lord Brabazon. Lord Liddle? Again, unmute, please. Sorry, we can't hear you yet.

73. LORD LIDDLE: I hope I'm now unmuted.

74. MS RYAN: Yes.

75. LORD LIDDLE: Are there any other examples of major projects in Britain which affect woodland where the replacement ratio is better than 7:1?

76. MS RYAN: That's a really good question. I know the Manchester bypass relief

road – have I got that right? The Stockport relief road, their compensation was much higher than that. Other than that, I would have to go away and double check for you, Lord Liddle, if you wanted me to.

77. LORD LIDDLE: The 30:1 number, Natural England is recommending this, right?

78. MS RYAN: Yes.

79. LORD LIDDLE: Does that mean that this is something that the Government has accepted as a ratio, as a reasonable ratio?

80. MS RYAN: Again, that's a very good question. I have just had the statement from Natural England, as Natural England is the statutory body.

81. LORD LIDDLE: Natural England is the – I'm not quite sure what it's – it's an advisory body to the Government.

82. MS RYAN: Mm-hmm.

83. LORD LIDDLE: Yes. I mean, I think it's right to have ambitions, but I was just trying to get some sense of whether HS2 is a very bad boy, or whether the fact is that their efforts are reasonable, given how far we are behind, if you see what I mean.

84. MS RYAN: Right. I understand what you're saying. I think our point is that if you're going to be in a position, it's no good saying, 'Yes, we understand this habitat's irreplaceable, but in our professional opinion this is what we're going to replace it with'. I think if you look at – so all these ratios are based on Defra's no net loss – not no net loss, biodiversity offsetting. Now, this isn't biodiversity offsetting, and HS2 haven't claimed that this is biodiversity offsetting. But these figures are based on calculations around replaceable habitats, and I don't like using the word 'replaceable', but it's accepted some habitats are replaceable, and so there are ratios for replacing destroyed habitats, and the rarer the habitats, the higher the ratio.

85. If you work out of Defra's draft biodiversity offsetting ratio, the highest you can get out of that is around about 24:1, so it makes sense that if you're actually destroying something that's irreplaceable, then you should be asked to compensate at a higher level than the hardest replaced replacements. Does that make sense? I've used the word

‘replaceable’ a lot. So that’s where this is coming from. I think the idea is because it focuses the mind, I think. If you know that you’re destroying irreplaceable habitat – there are solutions to avoiding these, or there were solutions to avoiding these habitats, and protection is expensive and it’s cheaper to remove them and plant trees.

86. LORD LIDDLE: Lord Chairman, could I ask another question?

87. THE CHAIR: Yes, please.

88. MS RYAN: Of course.

89. THE CHAIR: And Ms Ryan, if you could try to keep your answers reasonably short because we’re got a lot to get through.

90. MS RYAN: Sorry.

91. THE CHAIR: I understand. You’re obviously enthusiastic about your subject, but Lord Liddle, your next question.

92. LORD LIDDLE: Well, when we say that ancient woodlands are irreplaceable, I understood what you – how you explained it very well, but is it not possible to transfer some of the biodiversity in ancient woodlands to new woodland, at least to some extent? Now, maybe that issue is dealt with in the papers which I haven’t read properly, but is that a partial solution to transfer – to be able to transfer some of what’s in ancient woodland into the new woodland?

93. MS RYAN: In short, no. The translocation, which technique that you’re referring to, has been very rarely done around ancient woodland because it is a salvage operation. It’s not accepted, or it hasn’t been accepted as a process. It’s been very rarely done. There are very few examples of it ever having been done, and the longest one of those that’s ever been monitored was 10 years, which is nowhere near long enough to prove whether it works or it doesn’t work. So, no, my answer to that is, no.

94. LORD LIDDLE: Thank you very much. Thanks.

95. THE CHAIR: Now, Lord Brabazon.

96. LORD BRABAZON: Well, I think my question has been, to some extent,

answered, but I was going to ask how the ratio of 30:1 had actually been arrived at. But my second question is, is there not a grave danger that when you get all this 30:1 land, you're going to be taking away good agricultural land, which is more and more important the whole time now?

97. MS RYAN: I completely agree with you, Lord Brabazon. We're not asking for grade A farming land to be taken into account. When we went through this on Phase One, there's environment bank and land bank schemes that could be accessed. There's landowners willing to take part, so you won't be giving up grade 1 food growing land or anything like that. So we're not sort of demanding that farmers give up land that they're currently growing crops on, so there are solutions to this.

98. LORD BRABAZON: Thank you.

99. THE CHAIR: Good, thank you very much. Lord Haselhurst, you would like to put a question.

100. LORD HASELHURST: Yes, thank you very much, Lord Chairman. Following up on an answer Ms Ryan gave to a colleague, if, as I understand it – my understanding might not be anything like hers of these matters – but if you were to plant a new forest as compensation, I think you said that species would not necessarily move to it, even within 100 years. If that is so, why do it?

101. MS RYAN: Well, yes, because in this instance, this is really the best of a bad job. I can't ask you to avoid these areas of ancient woodland as I've specified because it requires additional provisions. So planting new wood – I mean, planting wood is a good thing; I'm not saying it's not a good thing, but we should also be protecting that that we've got. And I think we have to accept that there are lots and lots of species, and we'll see the sort of general species decline with these species that require these very specialist habitats whilst we've got this lag between woodland going and woodland coming.

102. THE CHAIR: Good. Well, thank you very much indeed, Ms Ryan. I think we were at 11(6), were we?

103. MS RYAN: I think we're on 11(7), your Lordship.

104. THE CHAIR: 11(7). Right, thank you.

105. MS RYAN: Actually, this leads on very nicely from the questions I've just been asked because obviously, 30:1, people talk about – these are big areas of land and I hope I've explained that we're not expecting farmers to give up prime land to do this.

106. To give you some example about tree planting, I'm not asking HS2 to do anything that my organisation doesn't already do. In the 2018/2019 planting season, we planted over 3 million trees; we're a medium sized charity and we planted over 3 million trees. To put that into context, that's 43% of the total number of trees to be planted over the HS2 scheme as a whole, over the entire period of HS2. 30:1 also represents less than 1% of the Government's annual tree planting target of 30,000 hectares per annum by 2025. This is to put into context – I hope you can understand that these are smaller numbers than perhaps – I'm not asking anybody to do anything that other people aren't aiming to achieve, or aim to achieve more of.

107. As I've already said, ancient woodland is irreplaceable and in my professional opinion the compensation offered does not reflect that, and that solutions did exist to avoid these ancient woodlands, but unfortunately they haven't been adopted, and so we're in this situation that we're in now. In addition to all the biodiversity benefits that ancient woodland offers, ancient woodland also stores huge amounts of carbon and actually removing it is contrary to achieving the Government's targets of net zero.

108. We're currently in a state of climate and nature emergency. And I'm sure your Lordships are aware, the Government has set a target of net zero carbon emissions by 2050, which is enshrined in the Climate Change Act. Importantly, the Climate Change Committee advice on this is that both the protection of and substantial expansion of existing woodland is required to meet the Government's legal commitment, and I think that's my emphasis, the protection of. This is the hard bit; tree planting is the relatively easy bit. Protecting what we've already got seems to be the hardest bit, but we need to, because ancient woodland stores massive amounts of carbon and it continues to store massive amounts of carbon. It doesn't reach a stasis where it can't absorb anymore. So the mere act of removing it and digging up the soils is releasing huge amounts of carbon.

109. Removing ancient woodland and failing to compensate adequately to its loss is

contrary to achieving the Government target of net zero and reversing wildlife loss, and that's all I want to say on compensation planting, Lord Hope.

110. THE CHAIR: Thank you.

111. MS RYAN: So if we can go onto A11(8). This is about tree provenance. Actually this, I think, is quite timely that I'm talking to you about this over Zoom because of a pandemic, because we currently have a tree disease pandemic, namely ash dieback, which is estimated to going to cost the UK economy around £15 billion. We've had a previous tree pandemic, Dutch elm disease; it's very rare these days, because of that, to find an elm tree in the wild. Currently, HS2 have given us an assurance that they will attempt to use UK and Irish sourced and grown seeds and tree stock, but they have the ability to source from up to five degrees latitude south if they need to. I've already stated we planted 3 million trees in the 2018/2019 season. Every single one of those 3 million trees was UK and Irish sourced and grown. We're not asking HS2 to do anything that we don't already achieve. We plant trees in numbers far greater than they will ever do, so we consider that this is achievable.

112. THE CHAIR: Can I just –

113. MS RYAN: Sorry, Lord Hope.

114. THE CHAIR: Do you take the point that there is a climate change issue here, but gradually the climate is warming up and if one is looking, say 100 years ahead, what you're planting now is going to have to survive whatever the climate will be in 100 years' time, particularly if you're thinking of ancient woodland which survived for many decades.

115. MS RYAN: Yes.

116. THE CHAIR: Is there a point there that you recognise?

117. MS RYAN: Yes. There is a point but, leading on to my next point, there's a lot of talk about needing to bring stuff in from outside of the UK to do with climate change resilience, but actually last year, we were involved in writing a public Government-funded research report – well, policy advice note, which was published by the Forestry Commission, us and Natural England. I'm just going to read a little bit of

that that addresses that point.

118. This states, the policy advice note, that, 'Planting appropriate southerly provenance is a valid choice for maintaining and enhancing timber production, but it is not proven for enhancing the resilience by increasing the genetic diversity on site'. So it's recognised that five degrees south may be appropriate if you're in the timber production business, which obviously HS2 isn't. All HS2's planting is conservation planting.

119. Our own tree stock in the UK has massive genetic diversity, that's already recognised, so by suggesting that you bring in material from outside of the UK, you're adding in additional biosecurity risks that you don't need to add in the conservation planting. As I said, the Woodland Trust, we don't do it, so we don't think that HS2 should do it.

120. So if you actually go onto A11(9), I've done a map to show what five degrees latitude south actually looks like. So the big blue line across the middle of that map shows the area down to which material can be sourced. HS2, in their assurance to us, have said that all material bought in this way will be plant passported, but again, I can point to a real life example in 2019 last year where oak processionary moth, which is a serious tree pest, and also has implications for human health, was brought into the UK on plant passported material. Plant passports are no guarantee that you will avoid biosecurity risk. UK and Irish sourced and grown seeds and trees are a guarantee of reduced – well eliminated biosecurity risk. We don't consider it's necessary, we don't do it ourselves, and we think that HS2 should follow suit. So that's everything I've got.

121. THE CHAIR: Any questions from anybody so far? No, I think we can continue, Ms Ryan. Oh, sorry, I beg your pardon, Lord Snape, yes.

122. LORD SNAPE: Can you just elaborate on this question of the five degrees latitude south?

123. MS RYAN: Sorry, Lord Snape, you're breaking up; I can't hear you.

Brief technical issue

124. LORD SNAPE: Can you hear me now?

125. THE CHAIR: Yes, it does sound a little better. Can you try again?

126. LORD SNAPE: Yes, I'd just like the witness to elaborate on the danger of French, German or Swiss trees or plants coming into this country. I mean, I don't quite understand the dangers that she's outlined. I mean, biodiversity and global warming surely means that these things are going to happen anyway.

127. MS RYAN: The danger is that we bring in diseases that aren't already present here. So for example, ash dieback. There's also something called *Xylella fastidiosa* which is on the continent, which actually has more than one host, so could devastate various tree crops here as well as plant crops. We don't want them to come, and if you don't have to bring in stock from overseas, you're eliminating that potential risk of introducing a new pest or new disease into the UK.

128. As I've said, it's estimated that the current problem with ash dieback is potentially going to cost the UK economy £15 billion, so there are knock-on effects. So it's not just that we might lose trees and tree species, but there are knock-on effects on the economy. So we're saying, as an organisation, we made the decision to no longer bring in stock from overseas a long time ago, and we managed to do that with millions of trees planted every year that are sourced and grown here. So I think my point is that we're just asking HS2 to do what we're managing to do to reduce the biosecurity risk.

129. THE CHAIR: The only reason for going overseas is the conservation point, and if you're right that that's useful for timber but not for conservation, then the argument will be: well, stick within the UK because there's plenty of stock within the UK without the risk of going abroad. Is that the issue?

130. MS RYAN: Yes, that is, and the fact that we have enough genetic diversity within our own seed stock to cope with climate change.

131. THE CHAIR: Yes.

132. LORD SNAPE: Lord Chairman, perhaps I could pursue his point with the promoters, but I am grateful to the witness for her explanation. Thank you.

133. THE CHAIR: Thank you very much indeed. Any other questions? Right, okay, we can proceed a little further, thank you.

134. MS RYAN: Okay. So on to my third point: temporary works. So, the impact – so sorry, that’s A11(10) – so temporary works should just be that, temporary; they shouldn’t cause permanent impacts. But unfortunately we’re seeing at least six veteran trees being removed due to temporary works, for example, a temporary satellite compound, a temporary bridleway diversion and haul routes, and also Whitmore Wood which is losing so much of its area to permanent works, is also losing some of its area to temporary works. We consider this actually sets a really negative precedent, HS2 saying... You can’t describe impacts on irreplaceable habitat as temporary. It’s gone; you can’t replace it.

135. So if we move on to slide A11(11), this is just an example of one of the trees; I’m not going to go through all of them. The information that you need is within my written evidence, if you want more details about the specific trees. So this slide, the orange – what is it – rhombus, up in the top left with a blue dot on it, and I’ve drawn a circle round it on the slide, this shows the location of a black poplar. Now, black poplars are the rarest tree in the UK, and they’re also a declining species. This sits on the edge of the Blithbury central cutting satellite compound, and is being lost to a haul route.

136. HS2 have offered us an assurance that they will do everything they can to try and avoid these trees and also that patch of ancient woodland in Whitmore Wood in the more detailed design work. But the issue I have, going on experience of Phase One, is that more detailed design work isn’t open to public consultation. It isn’t necessarily something we’d been involved in. It’s obviously done by contractors and subcontractors. We would like something more firm to commit to avoiding these trees altogether.

137. If we go onto slide A11(12), this shows – again, I think I’m just using this really to illustrate how complicated these maps are, as I’m sure your Lordships are aware, having had a look at all this evidence before you – that we get given an environmental statement, and we have to trust what’s in the environmental statement is as accurate as it can be, and obviously, it takes an awful lot of time and effort to go through all this to work out exactly what’s happening, but it changes all the time.

138. So the two trees here, which are veteran beach trees near Yarlet, originally we were told they were lost to temporary works, one to a temporary diversion of the A34

and one to a haul route. But now we're being told they're being lost to permanent works. And I think this is just – I'm using this just as an illustration of how complicated this process is as we go through it. So really my point here is we have got six veteran trees that are detailed in my evidence and we've also got this area of ancient woodlands at Whitmore Woods. You shouldn't lose irreplaceable habitats for temporary works, and we just request that HS2 commit now to avoiding those areas for temporary works. If anyone has any questions on that before I move on to my next point.

139. THE CHAIR: Lord Haselhurst has a question.

140. LORD HASELHURST: Thank you, Lord Chairman. I understand that in putting forward the considerable doubts that you have, Ms Ryan, about any loss at all, and one understands that, I just wonder whether the argument is actually assisted by looking at the loss of trees in the course of the temporary works. What we will have to consider, and what presumably HS2 would be asked to consider is, if you had to have different haul routes from which they have at the moment, that could inflict damage of a different kind elsewhere. And obviously we've been hearing evidence from other people who are concerned by those haul routes anyway. So it would seem to me that if you wanted to press the temporary works loss argument, you ought to have a very clear idea of what a non-damaging alternative would be.

141. MS RYAN: Thank you, Lord Haselhurst. That's a very good point. I don't know if I made it completely clear; I'm not talking about all trees. This relates to six specific veteran trees because veteran trees are also considered to be irreplaceable. So I've detailed the six trees in my written evidence and where they are.

142. So, for example, one of them is being lost to a bridleway diversion. Again, it's a difficult situation because obviously I'd prefer to see no trees lost, but this relates to six specific trees which we consider could be avoided and that HS2 could give a better commitment, because a haul route could go round a tree; we're not asking for huge diversions. Sorry, you wanted to ask a question.

143. THE CHAIR: Yes, on you go, Lord Haselhurst. I think you need – yes, thank you.

144. LORD HASELHURST: When you mention a bridleway, I immediately get

nervous because some years ago, I was the chair of the Rights of Way Review Committee, and I found considerable resistance from defenders of bridleways that the slight diversion was totally unacceptable, so one could run into a storm of protest if one thinks of interfering with a bridleway.

145. MS RYAN: Well I think that's my point, Lord Haselhurst. This is interference with a bridleway because this bridleway's being moved and, in the process of being temporarily diverted, is taking out a veteran tree.

146. LORD HASELHURST: It's then a question of what the alternative is, is the point I was really trying to make.

147. MS RYAN: Yes, okay, I understand. So our issue here is that temporary works – it's not a great situation to be in – that something that's described as temporary is removing something that can't be replaced and I just think we'd like to see HS2 make a better commitment to avoiding these, rather than a commitment that they'll be looked at in detailed design, because I know from my Phase One experience that that becomes very, very complicated and difficult to remain involved with.

148. THE CHAIR: Right. Any other questions? No. We can move on.

149. MS RYAN: Okay. So, I'm moving onto my fourth and final point now so if you'd like to go to A11(13) which is the need for a binding agreement. So, as I explained at the beginning, I've been involved in HS2 for the Woodland Trust for nearly eight years now and I'm heavily involved in Phase One. As your Lordships are aware, assurances are not legally binding in the same way as a contract.

150. Unfortunately, the Woodland Trust has had the experience already of having four assurances breached on Phase One, and our experience of how that was dealt with was not a good experience. In fact, it was us that had to tell HS2 that the assurances were being breached, and in fact, it took several weeks of toing and froing between ourselves and HS2 to get them to accept that that had happened. Then when it was accepted that it happened, we then discovered that, despite HS2 having issued over 3,000 assurances to various petitioners on Phase One, they had no protocol in place for dealing with breaches of assurance.

151. We, in the end, had to get lawyers involved to get a response from HS2 as to how these assurances had been breached, and in fact, the whole process was very expensive, it took months and was wholly unsatisfactory. As a result, we had to raise this matter before the Phase 2A Select Committee in the House of Commons to point out there was no protocol in place for dealing with breached assurances, which, as a petitioner, is quite a shocking thing to discover, because you're issued these assurances and you think that HS2 will then have a process in place for dealing with any breaches.

152. Because of our petition in the other place, HS2 were then required to put a process in place, which they've done, and I've included a copy in appendix 2 – sorry, I'm just finding the paperwork, so I can give you the page number. A11(29) shows the flowchart for dealing with breaches.

153. It's our point that this protocol that they've now got in place means that HS2 Ltd and the Department for Transport are effectively self-regulating and, on a scheme of this size and complexity, we don't consider that to be appropriate, and that is based on our actual experience, not a theoretical, 'What if this happens?'

154. I'll go back to the point: we wanted to see some sort of independent arbitration on this, and I go back to the point about the Environment Bill and the Government's ambitions around the Environment Bill which include the creation of the Office of Environmental Protection, precisely to give independent arbitration. Now, we're not asking for that, but because we don't feel we've had the satisfaction that we needed, or we believe that the assurances can be adhered to in the manner that we'd like them to be adhered to, we're requesting that the Committee enters into, or directs the Secretary of State to enter into a binding undertaking in favour of the trust and secure all our commitments previously given by way of letters of assurance on 2A as binding undertakings.

155. THE CHAIR: I'm looking at this as a lawyer, Ms Ryan. The trouble with a binding agreement is you need two sides. Obviously, one side would be the promoter; who is the agreement to be with?

156. MS RYAN: With the Woodland Trust.

157. THE CHAIR: So you are expecting an agreement with your organisation, which

you then would seek to enforce through the courts if it was breached.

158. MS RYAN: Yes.

159. THE CHAIR: Is that what you are asking for?

160. MS RYAN: Yes, it is.

161. THE CHAIR: Right, I understand. Good.

162. MS RYAN: And so, anybody have any questions on that? I can summarise.

163. THE CHAIR: Yes, please.

164. MS RYAN: Okay. So moving onto my final slide, A11(14). It's just really a summary of what I've just said. So the Woodland Trust were asking for, if ancient woodland is lost, compensation planting to ratio of 30:1, which we've explained and showed you the information from Natural England supporting this. With reference to biosecurity and reducing any biosecurity risk to woodlands in the UK, we'd like to see all trees planted to be UK and Ireland sourced and grown; that no ancient woodlands or ancient and veteran trees, which were all irreplaceable habitats, should be lost to temporary works; and that, because of a result of our experience around assurances and breaches of assurance and how they've been dealt with, that we'd like all the trust assurances secured as a binding undertaking. Thank you. That's the end of my presentation.

165. THE CHAIR: Good. Well thank you very much indeed. I think what we should do is break for five minutes to give everybody a rest, and we'll come back to Mr Strachan's reply and then your opportunity, Ms Ryan, to come back after we've heard from him. So we'll come back again, let's say, 11.35. That gives us a little more than five minutes, 11.35.

Sitting suspended.

On resuming –

166. THE CHAIR: Mr Strachan, over to you.

Response by Mr Strachan

167. MR STRACHAN QC (DfT): Thank you, my Lord. What I'm proposing to do is just give you a couple of factual pieces of information arising out of the questions which, in due course, I think Ms Ryan can check, but may assist you, and then I'm going to ask Mr Miller just to address the four points, and then I'll just summarise our position at the end, picking up, for example, on the question of assurances rather than binding undertakings, if it's convenient to deal with it in that way.

168. THE CHAIR: Yes.

169. MR STRACHAN QC (DfT): My Lord, first, just some factual information if it helps, and if it is something that can be agreed with Ms Ryan later on, that would be great, but if I've got anything wrong... What I am told is that there are 52,000 ancient woodland sites in England on the Ancient Woodland Inventory. And there are 363,143 hectares of ancient woodland in England. I think both questions arose during the course of discussions and it maybe that those points could be capable of being agreed.

170. On the question of the 30:1 ratio, a question arose as to where that comes from as a source. Just for your notes, if it helps, this was a matter raised – the question was similarly raised in the Phase One House of Lords Select Committee. The report addressed that – the extract from the report is on page R60(46) in your exhibit bundles – where the House of Lords Select Committee on Phase One stated in particular, 'We're not persuaded by Natural England's opinion that, where ancient woodland is lost, the aim should be to create new woodland on the scale of 30:1'. Having emphasised the changes should be evidence-based, the report seems to pluck this figure out of the air, and as far as I'm aware there isn't any new material or evidence from Natural England, or the Woodland Trust, that has changed the position since then as to where the figure 30:1 comes from.

171. But what I'm now going to do is ask Mr Miller just to help respond to the points in turn, including, first of all, that point about whether 30:1 is an appropriate figure to use and what is actually happening in relation to HS2. So, my Lord, if it's convenient, I'll go straight to Mr Miller on that issue.

Evidence of Mr Miller

172. MR STRACHAN QC (DfT): Mr Miller, you've obviously heard the request, the repeated requests for 30:1 ratio to be used by of compensation planting. Could I just get you to deal with that point; first of all, about the principle of using a ratio, and secondly, the factual position as to what planting is actually occurring in relation to Phase 2A in any event?

173. MR MILLER: We don't use a ratio for our mitigation and compensation on the projects. I think I said in the past and in the teach-in that our assessment is based on professional methodology, professional judgment from specialists, ecological specialists in this case, through the environmental impact assessment and environmental statements which is required to be submitted alongside this Bill. And indeed, that takes into account the environmental mitigation and compensation aspects that need to be accounted for in relation to the effects of the scheme, and that does include ancient woodland.

174. MR STRACHAN QC (DfT): Can you just give an example? I think Ms Ryan, for example, focused on Whitmore Wood; there is a plan P29(11) which shows the Committee the loss of ancient woodland at Whitmore Wood, and then the proposed compensation measures that are part of the Bill. Could you just explain, by reference to that exhibit, Mr Miller, what's going on and why you consider that's the approach to be adopted?

175. THE CHAIR: Could you say the reference again, please?

176. MR STRACHAN QC (DfT): P29(11).

177. THE CHAIR: Thank you.

178. MR STRACHAN QC (DfT): And it carries on, I think, onto P29(12).

179. MR MILLER: Yes, that's right.

180. MR STRACHAN QC (DfT): There's two parts to the ancient woodland there.

181. MR MILLER: Okay, thank you. On this drawing, you can see just to the right hand side, there is a red blob in the middle which is highlighted with a text box saying,

‘Whitmore Wood: 5.5 hectares lost’. That’s the loss from the Whitmore Wood ancient woodland that Luci Ryan has been referring to. The plan itself is an extract from the ancient woodland strategy which takes account of everything which has been included in the environmental statement, brings it together in one place and simplifies what’s going on with regard to ancient woodland.

182. So you can see in the middle of the drawing from right to left the railway itself. It was subject to quite a bit of debate in the previous place about a long tunnel. A long tunnel wasn’t accepted in this location. Had a long tunnel been accepted in this location, the loss of this ancient woodland would have been avoided, but that isn’t the case. So the loss is still with us and part of the scheme.

183. So the area of land there shows Whitmore Wood and it also shows, in sort of a light green and a hatched area, Whitmore Wood areas that are retained, so we’re not taking all of the woodland in this location. But then we also have an ancient woodland compensation response, and this response here is what’s within the Bill redline boundary, and despite it going away from the railway, there are some considerable additional woodland that’s proposed for the losses and those are all depicted in the orange areas, and some of those orange areas are bounded by some redlines; hopefully you can see on those diagrams.

184. What we’re aiming to do here, just to illustrate what the project’s approach is to this, is to deliver a bigger, better and more joined up response that partly addresses the ancient woodland compensation aspects. It also tries to address the ecological aspects following the Lawton principles, which are well known, and the idea is that we join up existing ancient woodlands with new woodland planting. In this location, you can see that the orange areas extending into the middle of the diagram out to the left hand side of the page are following field boundaries, and the idea here is to endeavour to keep as much agricultural land in productive use, so that we try to avoid disturbing landowners’ land adjacent to the route, but also try and do our best to provide the ancient woodland compensation.

185. Here you can say that there are some striped areas of dark green land which are existing ancient woodlands and you can see how we’re trying to provide a mosaic of – a joined-up response to link up existing ancient woodlands. And indeed, there is scope

for ancient woodland soils translocation in this location. That means lifting the existing soils, replacing them in receptor sites, so the area just to the right of the diagram which says 'Whitmore Wood: 5.5 hectares compensation' will have some ancient woodland soils spread on it, and we try and follow existing advice to retain the biodiversity in the soils and then help promote the biodiversity in any case.

186. THE CHAIR: If you do that, is it possible that wood sorrel, for example, which one finds in ancient woodlands, would be able to grow in this new area? If maybe it was transported through seeds and so on, would that be able to regenerate in the new woodland?

187. MR MILLER: That's the idea. There are a number of species which are in the soil which could grow on. I'm not an ecologist, so I can't confirm that wood sorrel point, Lord Hope, but that's generally the idea, that there are some indicator species that you would see growing up in quick succession once you've done that, soils translocation, probably supplemented with planting of tree saplings and that sort of thing.

188. Indeed, there are cases – Cossington Fields, which was an ancient woodland site associated with the A2/M2 widening and the Channel Tunnel Rail Link scheme, was subject to just sort of a provision, and that, I think, is the site that Luci Ryan was referring to, where there is 10 years – I think it's probably a bit more than 10 years' research now, on that particular site, that's been undertaken.

189. I visited that site with our ecologists and those sorts of understory indicator species were pointed out to me, and it seems that, providing you look after those soils, that does have an effect. But of course, that's not going to provide an immediate and magical solution to the total biodiversity that is within the ancient woodland itself. So our response is to then reinforce the biodiversity and make the biodiversity within the ancient woodland response be bigger and better and more joined up.

190. And then if I can go on, I'll try to illustrate with the next slide, P29(12).

191. So, within the scheme design, the redline boundary of the Bill in this location, because of the losses of the ancient woodland at Whitmore Wood, we have further extended the woodland, and you can see that this green area of land, the stripy land

which is existing woodland called Hey Sprink is then further supplemented to the top of the page here, just to the north-east on the plan orientation. And you can see here that we're putting in a substantial additional woodland, just over 10 hectares, to join up that big piece of woodland with another remnant of woodland just to the north-east. And the idea here is to try and reinforce all of the biodiversity, recognising that we have got 5.5 hectares of ancient woodland losses.

192. MR STRACHAN QC (DfT): Thank you. Lord Horam.

193. LORD HORAM: These receptor sites on the map are very narrow areas. Are these just simply lines of soil? I mean, what are they, exactly? How does it operate in practice?

194. MR MILLER: Those will be planted up with woodlands. So those are woodland strips, in large part, where you can see the strips in the middle of the page, and to the right where it says, 'Whitmore Wood compensation planting', that's a large area of extended woodland. And then, if you go back onto the next slide at the top there, that's a large chunk of woodland. So it's a bit of a mixture, to be honest, in this location.

195. LORD HORAM: It's rather a peculiar thing to have though, isn't it: these very narrow strips of receptor sites, presumably alongside normal farm land?

196. MR MILLER: Well, that was the idea in this instance that it's – here, we're trying to join up existing ancient woodlands to help the biodiversity, and here we're also trying to –

197. LORD HORAM: Oh, I see, the point is to connect, is it?

198. MR MILLER: That's right, yes.

199. LORD HORAM: I see; I hadn't realised that: not just to have a place to store the soils and the trees, but to actually connect with the existing ancient woodland.

200. MR MILLER: That's right, so that you get animals transferring from one location –

201. LORD HORAM: I see; I didn't understand that. Thank you very much.

202. MR MILLER: That's really to reinforce the biodiversity. And indeed, you're correct, that what we're trying to do here, is we're trying also to balance the effect on the agricultural land and to strike the right balance between a good biodiversity response, alongside a response which preserves the farming activity as well.

203. MR STRACHAN QC (DfT): Thank you. Mr Miller, I just want to come to the numbers in relation to the ratio. Just before we do that, I gave an indication about where the ratio 30:1 arose previously. Can you just help? Is there any evidence or underpinning for a ratio of 30:1 that you're aware of?

204. MR MILLER: Yes. That was subject to quite a bit of debate in Phase One and it wasn't substantiated then through Natural England. I am not aware of a 30:1 ratio being substantiated with any scientific evidence, and we will come onto the numbers to show what's actually going to arise. But there is nothing that I can point to in any guidance or policy which says that ancient woodland must be replaced 30:1.

205. MR STRACHAN QC (DfT): Can we go on... I'm so sorry, my Lord. My Lord Liddle raised his hand, so I paused.

206. LORD LIDDLE: Can I come in on this point? Essentially what you're saying – and I'm going to be rude about this really – essentially, you're saying that your professional judgment is of greater value than the opinion of Natural England. Am I correct in that?

207. MR MILLER: No, we rely on recognised policies and guidance and what I'm saying is a 30:1 ratio has not flowed through into any policy or guidance, indeed, from Natural England, as far as we are aware. So if there was such a thing then we would be looking at it.

208. LORD LIDDLE: Are you saying that Natural England hasn't recommended 30:1?

209. MR MILLER: No, they have recommended it in the previous phase of the project, on Phase One, but when asked to substantiate it, it wasn't substantiated. What I'm saying is that I don't believe that that has been substantiated once again and now.

210. LORD LIDDLE: But you're saying the 7:1 ratio, which we're told you're doing, is substantiated by lots of professional environmental evidence that you've had.

211. MR MILLER: I'm not even saying that we are following a ratio of 7:1; we're not following any ratios. What I'm saying is that the environmental assessment is there for good purpose, to understand the effects on biodiversity in ancient woodland, and there is a response to that in the environmental statement. And that is reflected through the Bill provisions.

212. THE CHAIR: Can I extend that point, Mr Miller? You're not accepting, then, what we see in the slide 11(6), that the proposed planting is around 7:1. You don't accept that figure; is that right?

213. MR MILLER: Sorry, forgive me, that may well be a ratio which you can establish through the mitigation and compensation that's in the design. What we're not saying – what I'm not saying is that we have used a 7:1 ratio to deliver the mitigated response. We have used professional ecologists and professional assessment methodologies to come up with the numbers within the scheme design. And I'm going to go on and talk a little bit more about the further compensation which comes along with the scheme.

214. MR STRACHAN QC (DfT): I was just to ask you about that, Mr Miller, because it is an important point that the – as Mr Miller has explained, one doesn't, so far as the promoter is concerned, start with a ratio approach. We start with what Mr Miller has described, albeit that the numbers that Ms Ryan has identified as to the amount of planting provided for in the Bill would equate to in the region of 7:1, but it's that point I just wanted to explore, whether that's actually the full picture with Mr Miller.

215. Can we just go to P29(2) in the exhibit pack? We've got there the figures 9.8 hectares of ancient woodland lost, which is a reduction down from the original scheme showing 10.2 hectares. Within the provision, there's 78 hectares of new woodland planting provided to compensate for that ancient woodland loss. And you showed an example of where that takes place in relation to Whitmore Wood; is that correct?

216. MR MILLER: That's correct. And the remainder of those exhibits, if you'd go through those, and I think P29(3) provides the summary which you were taken to a little earlier, gives you an indication of what's going on at each one of those woodland sites. Within the scheme design, within the redline boundary, there's 78 hectares of new woodland planting, so new woodlands in the way I've just described on that diagram.

And then there's additional 13.4 hectares of woodland enhancement, which is described on this slide.

217. MR STRACHAN QC (DfT): Well that's the point I was just going to clarify, where there's proposals for ancient woodland enhancement, as identified on the sides, that hasn't been included in that Ms Ryan's figures, because it's not new woodland, but it's enhancement measures to existing woodlands; is that correct, Mr Miller?

218. MR MILLER: I believe that's the case, yes.

219. MR STRACHAN QC (DfT): Could I just, on that point, ask you, Mr Miller? Ms Ryan was talking about what ancient woodlands are, undisturbed woodland for a number of – hundreds of years. Could you can you just assist the Committee in relation to what types of ancient woodland there can be, and what disturbance, if any, can occur?

220. MR MILLER: Yeah. Ancient woodland is an historic feature which features on the very earliest of maps, broadly equating to map evidence of about 400 years ago. The nature of the ancient woodland, it can either be fully mature, native woodlands, oak woodland or that sort of thing, or indeed, it can be plantation ancient woodland where the woodland boundary has existed for that period of time but has changed. Coppice woodland is a good example of that, through time. There are ancient woodlands which are about more of the native naturalised type, and then there are plantation ancient woodlands, which have had man's intervention on them – more of a sort of a farming or agricultural type activity.

221. MR STRACHAN QC (DfT): Thank you very much. And then taking that figure that we had of direct new woodland planting shown on P29(2) of 78 hectares, could I ask you then just to go to other measures that are part of the proposals which are referred to elsewhere in the pack? And P29(19) I think helps.

222. MR MILLER: Yes. I said in my teach-in – we highlighted some issues around ancient woodlands and what I was indicating there was the promoter's response is quite comprehensive and it doesn't just sit within the boundaries of the Bill scheme itself. So what I've just described is what's within the Bill scheme, and this followed on from the Phase One debate about ancient woodland. On that part of the project, we included a further £5 million woodlands fund to assist further compensation for woodland losses –

sorry, ancient woodland losses. And indeed, that is followed through on Phase 2A. And the third bullet down shows that we've got a £2 million fund associated with Phase 2A.

223. If you look at the experience that we've had when we're planting woodlands on Phase One, I highlighted that in my teach-in as well. We've got the first £1.2 million worth of planting from the £5 million fund on that phase, now allocated and trees in the ground. We did a calculation on that experience and that indicates that the £2 million fund would come up with a further 170 hectares of new woodland planting. And if you add that to the 78 hectares, you get to something close to, or maybe even just a bit over a 25:1 ratio. That's all got to come good, obviously, but here I think we've got a good means for addressing a much bigger outcome for compensating ancient woodland through these funding mechanisms.

224. And also that funding mechanism, if it follows Phase One, which works on a 25 kilometre basis out from the central line of the railway, it gives an opportunity to put new woodland in, and indeed enhance ancient woodlands regionally alongside the railway. It opens up opportunities for other farmers who are more receptive to the trees and that sort of thing, and avoids the imposition of tree planting along the line of the route where farmers perhaps are already feeling the strain of receiving the railway and all of the additional mitigation and compensation.

225. So we think that the scheme works very well. I have, over time, tried to encourage the Woodland Trust to buy into that scheme. I understand their reasons for not moving in that direction. I think they feel that that would undermine their position to preserve it. But nevertheless I think we're doing a good job here of providing a bigger response and going much further and beyond the redline boundary of the Bill scheme.

226. MR STRACHAN QC (DfT): Just for clarity on the maths, Mr Miller, 170 hectares is the amount you anticipate to be deliverable from the Phase 2A woodland fund of £2 million.

227. MR MILLER: Yes.

228. MR STRACHAN QC (DfT): And that was added to the 78 hectares that's already proposed for planting to get to the 248 hectares overall.

229. MR MILLER: Yes.

230. MR STRACHAN QC (DfT): There are a number of other funds identified. There's the Cheshire East environment and landscaping enhancement fund, there's the Trent and South Parklands and Cannock Chase AONB fund, the community and environment business and local economy fund, and, of course, in response to the Wildlife Trust, there's an addition to the expansion of that environment fund with the biodiversity fund of another £2 million, I think. Can I just get you to comment as to whether you expect any trees or woodland to arise from those funds, in addition to what you've identified or not?

231. MR MILLER: Yes. So the Trent and South Parklands, that funding is associated with the landscape response in that location. It was a proposal that was put forward by the National Trust in the lead-up to the Commons proceedings on Phase 2A, so these Bill proceedings. And that will support further landscape enhancement and that could well include additional woodland. It may well include some enhancement of existing ancient woodlands within the Trent Valley there and in the Cannock Chase area. That's obviously independently managed through a group, but nevertheless, that opportunity exists.

232. Cheshire East was a specific environmental fund. At the time that we were talking about the meres and mosses, which are a feature in that location, but that could well assist with woodland planting. And indeed, it may well assist with enhancement to existing ancient woodlands in that patch.

233. The community environment fund is also open to legacy projects of a green nature; so if people come forward – and I've indicated that to the Woodland Trust – I think they have now received a briefing about that from the community and environment fund team. They will be able to bid in and seek funding to further enhance ancient woodlands, or indeed, create new woodlands, and to further support their type of operation.

234. And then, you're right, the community environment fund is intended to be enhanced with this further £2 million biodiversity fund, particular arrangements which will be associated with just this sort of outcome. So I think that this leads to a broader response that enables a lot of choice to be had locally, regionally, possibly nationally as

well, that could well reinforce ancient woodland losses and provide new woodlands and indeed, ancient woodland enhancement where ancient woodlands have fallen into decline.

235. MR STRACHAN QC (DfT): Unless there are any questions on that, I was going to move on to seed provenance, My Lord.

236. THE CHAIR: Yes, I think you can.

237. MR STRACHAN QC (DfT): Right. Mr Miller, the second issue that Ms Ryan raised was about provenance of planting stock for the proposed scheme and requested it all be sourced from the UK, if you recall that. And could you please just explain why the promoter incorporates the potential for some seed stock from further afield, and your reaction to the request.

238. MR MILLER: Yes. I think the point has been explored. The fundamental point is to provide resilience for anticipating climate change and to build in resilience for the planting that is proposed to mitigate and compensate for the losses on HS2. That's important because our commitment to that mitigation and compensation has got to exist to provide that mitigating effect, and we want to ensure that those mitigation and compensation measures can indeed thrive through time and taking into account a changing world.

239. So our approach is to follow the existing guidance and we've cited the Forestry Commission's guidance that indeed there is other guidance from Natural England, all of which points towards a mixed-use approach. And we've described that as a portfolio approach. And the matter was taken up in the other place through these parliamentary proceedings, and I think we provided a note, which we haven't got in evidence here, but I think that might be useful to provide. But essentially, we're providing a portfolio approach as part of our scheme design and to provide that resilience, and broadly that's to use seed stock, about one third of that from existing regional sources, so from the UK, about a third of that from sources between up to a latitude of two degrees south, and up to a third two to five degrees south, and I think Luci Ryan's diagram, which puts the bar at the lowest latitude, is a good indication. It shows you where the broadest reach of that is.

240. So the idea is to provide resilience and I think the other point on this is – well, a couple of other points. First of all, reference has been made to the passport system. That is indeed there to look at the transit of seeds between regions and to make sure that those are bio-secure. That passport system has come in, as I understand it, to reinforce measures to make sure that the transfer of bugs and diseases is minimised. I daresay, even with a system like that, that's not without risk, but indeed, our contracts required the following of the passport system. So we are within the system with this approach.

241. And if I look at Phase One, we have a UK-based nursery, Crowders in Lincolnshire, who are growing on all of the seed stock, and they are doing that within the auspices of the scheme. And at the moment, on Phase One, they've got about 55% of the stock which is grown regionally, so within the UK, about 43% up to the first latitude boundary of two degrees south, and about 3% a bit further out, up to five degrees. And, indeed, notwithstanding all the passport system, when they get that seed in place, they are growing that stock on for two years within their facility. That would further reinforce the biosecurity credentials of the system.

242. So I think that overall we are doing everything we can to secure the biodiversity that is necessary and to follow the guidance and to meet the climate change objective and have the planting resilience, and meeting its obligations.

243. MR STRACHAN QC (DfT): My Lord, the note that was provided to the House of Commons includes the guidance which is referred to in the footnotes in the petition response document. That's the Forestry Commission guidance and the Natural England guidance or advice on the recommendations on seed sources to adapt with climate change, and certainly, we can make that available to this Committee if that would assist. The reference to both those pieces of advice was in R60(50) of the exhibit pack to which Mr Miller has referred to.

244. THE CHAIR: Can I just come back on that point, Mr Strachan? Ms Ryan told us that the advice to go overseas for this – not to the 5% line – was related to timber production, and that chimes in with the fact that this advice is coming from the Forestry Commission. We are concerned here with conservation and it's a question of balance of risk here, surely. I mean, there's been a good deal of concern about the importation of diseases from tree stock coming from abroad. Do you really have to incur that risk in

the conservation measures that are being taken here? Is there is not enough in the UK sources to meet the requirements of the scheme? That's really a question, I suppose to Mr Miller, rather than you, Mr Strachan. But it's rather an important point, because we really don't want to run risks that need not be run to achieve the aim of providing an answer to the loss of ancient woodland.

245. MR STRACHAN QC (DfT): Well, my Lord, as you say, Mr Miller may be able to assist you on that. My understanding of the advice, the current advice, is that it's not limited to timber production. The advice from Natural England, which we referred to in that note, is a wider advice on new planting of trees to deal with climate change adaptation. Mr Miller can correct me if I've misstated the position.

246. MR MILLER: Yes. My understanding of the Forestry Commission advice is, yes, it relates to timber, but it also relates to native woodlands, and the further Natural England advice relates to native woodland. So in each case, it points to a mixed approach and that portfolio approach that I've described.

247. MR STRACHAN QC (DfT): I think what Ms Ryan was referring to was the policy advice note that arose out of the 2019 research, the extract to which she had identified that planting appropriate southerly provenance is not proven for enhancing resilience by increasing the genetic diversity on the site, was the extract that she, I think, quoted from, but so far as we're aware, the policy advice note, whilst saying it's not proven, doesn't suggest that you don't adopt the portfolio approach to seed sources that continues to be expressed in the relevant advice. It's just a question of: has it yet got to the stage of being able to prove that that will increase resilience for genetic diversity?

248. THE CHAIR: Mr Strachan, before we lose the point, for Phase One, Mr Miller's given figures which are really quite different from what are being proposed here. A third has been proposed from the UK here for this phase, but for Phase One it was 55%, and it was a third for up to five degrees south, as opposed to two. Why?

249. MR MILLER: What I'm indicating there is that, indeed, there is quite a proportion of existing UK stock in there and we think we have got the right mix. The portfolio approach is up to a third in each instance, so I don't want anyone to go away with the impression that, every time, we are going to do a third, a third, a third. I think it will change through time and those numbers that I quoted were from a period of 2018 to

2019. So I think it's right – I point that out to you so that you are a little bit aware of where those figures have come from.

250. THE CHAIR: Thank you.

251. MR STRACHAN QC (DfT): My Lord, it strikes me that the Committee may be assisted by having copies, if your Lordship doesn't have them already, but copies of the documents or the relevant extracts to which reference is being made, so that you can see them in their context.

252. THE CHAIR: Well, speaking for myself, I would like to see that; if you could make that available, I'd be very grateful.

253. MR STRACHAN QC (DfT): Certainly.

254. THE CHAIR: Any questions from other members of the Committee before we move on? Well, I think we can move on, Mr Strachan.

255. MR STRACHAN QC (DfT): Thank you. Mr Miller, I think the third point that Ms Ryan was concerned about was loss of veteran or ancient and veteran trees to temporary works; you recall that point.

256. MR MILLER: Yes.

257. MR STRACHAN QC (DfT): She drew attention to examples of where she was concerned that veteran trees might be lost to temporary parts of the works. Can you just explain the position as to what work has been done on that and the current set of assurances that are being provided. I'll give you the references to the assurances, my Lord, in a moment.

258. MR MILLER: Yes. We've looked very carefully at tree losses associated with temporary works and indeed I think we put an assurance up to Staffordshire Council on the points, and if you bear with me a second, I'll find the reference. If you go to P29(51), hopefully this gives an illustration of at least the direction of travel that we are adopting on HS2. So through the Commons process –

259. MR STRACHAN QC (DfT): I think, just to be clear, for those following it in the pages, the assurance that was offered begins on page 50, P29(50), the impact on veteran

trees, and then, continuing over the page, there's an assurance delivered to the Woodland Trust, and then there were assurances given to Staffordshire County Council, which I'll then set out on page 51.

260. MR MILLER: Yes, thank you. Sorry, I was getting ahead of myself with going straight to Staffordshire. This is indeed correspondence to the Woodland Trust, and thanks for pointing that out. Just to give an idea of the direction of travel on this, and I'll explain the approach in just a second, firstly, a particular tree was identified in the other place in the lead-up to those proceedings. It was a tree known as Noddy's Oak, and that was associated with a road widening of an existing road for HGV traffic. In the scheme design in that instance, the limits or the redline boundary that I keep referring to was drawn quite widely, and necessarily so, because we carry out an assessment on a reasonable worst case basis at that outline kind of level, which I indicated at my teach-in, or the Lords teach-in a few weeks ago. And of course, the assessment picks that up to say that there is a potential effect on the loss of that tree.

261. We subsequently looked at that and this follows the approach that we will be taking, and which is set out in the code of construction practice, that is to review, as we go through into the detailed design, the need for taking down any trees that are affected by temporary works, work sites or the limits that had been drawn relatively widely to accommodate the scheme design and the build of the new railway. So here is a good example where Noddy's Oak, we looked at it fairly early on, we did a few quick calculations and we realised that we could indeed miss Noddy's Oak, and indeed, that's now preserved. So that's the sort of direction of travel that that is on offer.

262. Subsequently, to Staffordshire, who had identified some other trees, we've looked at that. That's elaborated in P29(51), but generally we will be looking through the detailed design to see how we can further reduce the effects of the temporary works, and where there are haul road presented that Luci Ryan had pointed out to you, that we review those properly, and if indeed the haul road can go round a tree for its preservation, or indeed we can provide fencing around a tree, avoid the roots of the tree being affected and that sort of thing, that is all part and parcel of the next stage of the design and beyond these proceedings. We can't deal with all of that detail now until we've got the detailed construction plans from our construction contractors.

263. Ms Ryan mentioned six trees, and I think that we have got those in our sights to be looked at. And if it would help the Woodland Trust, we will look at those with the Woodland Trust to see what opportunities there are to further avoid those trees, or the effect on those trees and to try and preserve them as far as we can.

264. I think it might be worth just going up to the Whitmore diagram once again because I wanted to clear up a little bit of confusion around it. So if we go back to P29(11). If you can see the red boundary of the area of ancient woodland loss that we're currently predicting, that is not only for the railway; it's also got to accommodate the construction of the structures alongside that railway. And in this instance, the temporary works, albeit they are temporary, they will lead to a permanent effect on the woodland.

265. There may be some scope to further reduce that boundary and try and preserve some more of those trees, but for the time being, we've got the worst case being described in there, and that's the 5.5 hectares loss. But when it comes to it, we've got a retaining wall in that location to support the railway and that's quite a heavy operation and that does require quite heavy plant and machinery in there – I think you may have all come across piling rigs and that sort of thing – all of which have got to be serviced to put concrete in and steel work in. There is, through some of these temporary works, some inevitable loss of the ancient woodland. So I didn't want you to go away with the impression that it's easy to change all of these temporary matters and areas of land described as temporarily being needed for construction, because they are complex and they do lead to permanent effects. In some ways that reinforces Luci Ryan's point. Otherwise it's an important clarification. I think.

266. MR STRACHAN QC (DfT): Thank you. My Lord, Mr Miller has given you the references already to the assurances that are currently in place in respect of those veteran trees which I was going to go to, but I hope your Lordship's now seen what's in place for considering those veteran trees during the construction process.

267. THE CHAIR: I think Mr Turner has identified this, but the trouble is, I can't look at it without closing down screens and so on, but I think something's been sent us by email, which we'll be able to read later.

268. MR STRACHAN QC (DfT): My Lord, I'm sorry about that. So the references

that were given were P29(40) and (41), I think. I'll just check that for your Lordship. No, that's not the right reference. Sorry –

269. MR MILLER: I've got the letter to Luci Ryan at the Woodland Trust as 22 February, P29(50).

270. MR STRACHAN QC (DfT): Thank you very much.

271. MR MILLER: Then I was referring to P29(51), to illustrate the Noddy's Oak point, which was the direction of travel or the approach that we were taking to the preservation of trees. And then that elaborates, further down the page on P29(51), the assurances around Staffordshire County Council.

272. And then I further said that of the six woodlands that are of concern – sorry, of the six veteran trees that are of concern to the Woodland Trust, that we were happy to talk that through with the Woodland Trust to see what else that could be done, given that we, through our code of construction practice will look, once again, to see if we can preserve those trees.

273. MR STRACHAN QC (DfT): Thank you. Can I, my Lord, if that's convenient, go on to the very last point which was just about the question of assurances versus undertaking?

274. THE CHAIR: Yes, I think you can go onto that now, thank you.

275. MR STRACHAN QC (DfT): Thank you. Mr Miller, I'm going to pick it up from a legal perspective in a moment, but Ms Ryan was referring to an incidence of three assurances being breached in relation to Phase One, and the response to that. Can you just comment on that briefly, Mr Miller?

276. MR MILLER: Yes, indeed. It was eventually recognised that there were breaches. I think that the experience that we went through did highlight the fact that we needed to reinforce the measures associated with breaches of assurances. Indeed, Luci Ryan has pointed to the procedure that was revised and updated as a consequence of these matters arising. That enhancement was born out of that experience. The general approach to this, and what's been reported on Phase One, and I believe in the other place on Phase 2A, is that where assurances are given to organisations or individuals

that the way of tackling those, if indeed there is a breach, is to in the first instance talk to HS2. That did occur; timing notwithstanding in that instance, that did occur. HS2 did investigate and HS2 did notify the Department, which was the approach which is to be adopted.

277. The investigation then looked to see whether indeed the breach took place. It was agreed the breaches did take place and corrective action was then entered into. I think one of them was associated with some branches being taken down of trees where someone on one of our sites was under pressure to get some fencing up because there was protestor action taking place. They made a decision in the moment and they cut the branches of the trees down. Whilst regrettable, that action should have been notified to the Woodland Trust in advance. It wasn't. That was, I think, the primary case that was investigated.

278. That led to that enhanced approach and I believe that approach now reinforces the general approach, which is HS2 needs to step in where there is a potential breach, investigate that, if indeed there is a breach, and take corrective action. If there's not any corrective action from HS2 and there is still a concern, that should be taken up with the Department or the promoter of the project in this case. If the Department is then not able to resolve it, it does go to the Secretary of State. I know this sounds all very convoluted but ultimately, the ultimate arbiter would be back to Parliament. That chain of events, reinforced by that process, I believe is still sound and can be relied upon.

279. MR STRACHAN QC (DFT): My Lord, if this is a convenient moment I can just take you to P29(28) so the Committee can see the two types of commitments that exist in this process, assurances and undertakings. Assurances have always played a part of these processes, both in Phase One and Phase 2A. Both can be enforced. Indeed, the Woodland Trust as an organisation has these various assurances both in respect of Phase One and Phase 2A. Slide 30 explains what happens in the event of noncompliance with an assurance. Slide 31 summarises the mechanism for reporting a noncompliance with an assurance. There is a protocol that exists as a result of what's been described, now in place for Phase One. A similar protocol would be published, on Royal Assent, for Phase 2A as to how one raises an issue about a breach of an assurance. Ultimately, of course, as explained in the slides, the Secretary of State is answerable for compliance with the assurances to Parliament.

280. My Lord, if I could just illustrate the point practically that Ms Ryan's referred to. As Mr Miller has explained, there was a breach of an assurance that occurred by the cutting of branches without proper notification to Ms Ryan. That breach that occurred was then the subject of the processes that have been explained, absent the protocol which has now been explained. It would not been any different in substance had the matter been the subject of an undertaking. The breach would still have occurred because it wasn't deliberate. It was a breach which shouldn't have occurred. It wouldn't make it any less likely to occur were it contained in an undertaking as compared with an assurance. There's nothing to be gained by transposing what are assurances into a form of undertaking. Indeed, subject to the protocol, explaining how matters work, there was no issue with the fact that there was a breach identified as it occurred. Again, nothing would have changed if it had been an undertaking.

281. THE CHAIR: Were there any examples in Phase One of situations that were dealt with by binding undertakings?

282. MR STRACHAN QC (DFT): I'll have to find out if any sort of breaches of undertakings occurred but certainly undertakings are provided and are part of undertakings and assurances. Generally speaking, as your Lordship has pointed out, they arise where there are two parties and indeed where there's a party whose land is directly affected by the scheme. Therefore, it's common to find a contractual undertaking entered into by the two parties dealing with the consequences of the interference with the land. I'm not suggesting that has to be the case but that's where they're most commonly used, for obvious reasons. But in terms of the effectiveness of an assurance versus undertaking, they're both, in my submission, effective in those two mechanisms. Indeed, the point Ms Ryan is making about the involvement of lawyers is, in fact, more likely in the event of having to have a contractual undertaking which then is enforceable in the courts, again for obvious reasons. It also adds a layer of complexity that one has to draw up the relevant contractual provisions with lawyers, no doubt, in circumstances where that's unnecessary.

283. Certainly, so far as the Woodland Trust is concerned, its status, your Lordship knows, is we're not taking land directly owned by the Woodland Trust. We're providing assurances, as has happened in relation to Phase One, to the Woodland Trust as to how matters will proceed. If there are breaches of assurances they can be raised in

that way, as they were. It's not going to be assistive and it's unnecessary to translate them into contractual undertakings in these circumstances. It doesn't actually reduce, facilitate or even prevent the underlying actions that are being complained about for the reasons I've just explained. So, we do submit that's an unnecessary requirement and one which would be counter the way in which the assurances have generally been provided throughout these processes, effectively, in the past.

284. That's from us, a legal perspective, My Lord, as to why we don't think that what Ms Ryan is proposing are necessary, given the assurances that have been provided. My Lord, it may be Ms Ryan has questions for Mr Miller before I just summarise our position but I won't take very long at all in that respect.

285. THE CHAIR: Yes, well, Ms Ryan, do you have any questions to put to Mr Miller? If so, there is an opportunity for you to do that now.

286. MS RYAN: Your Lordship, no, I don't have any questions. Sorry, because I've not done it like this before, will I have a chance to reply to some of the things that have been said or am I to do that now?

287. THE CHAIR: No, I think the best thing is to allow Mr Strachan to sum up and then you'll have an opportunity to reply then.

288. MS RYAN: Absolutely, thank your Lordship.

289. THE CHAIR: I'm a little concerned about Lord Snape who has had great difficulty with his connection. At one point he was suggesting he wanted to ask questions. I would be sorry to lose the opportunity for him to do that but it looks as though he's not in contact with us. That being so, I think Mr Strachan, if you be kind enough to do your summing up. If Lord Snape does come back online, we might have a question or two from him.

Closing submissions by Mr Strachan

290. MR STRACHAN QC (DFT): My Lord, I hope you'll forgive me for being brief in summary because I'll just be repeating largely what Mr Miller has said on the four points. Just so your Lordship knows, we don't accept the need for a requirement to impose a ratio of 30:1 by way of compensation for loss of ancient woodland. First of

all, that figure is an arbitrary figure which doesn't have underpinning. It's not actually one that Natural England itself has substantiated, as your Lordship has seen. But it also is inherently arbitrary on the basis Ms Ryan herself has identified where she's not suggesting that loss of ancient woodland is compensable in particular terms.

291. The process that the promoter has followed is one of looking at losses where they occur and addressing those where they occur with very generous compensation measures, which take account of other biodiversity concerns as well. Mr Miller explained those. However, if one were to look at things mathematically, in the way that Ms Ryan is suggesting, in fact, the availability of woodland planting that Mr Miller has described and anticipated arising from the scheme is not 7:1 or 1:7; it is very much more generous than that in the results. Indeed, even with the limited addition of the woodland fund, one's looking at figures around 25:1. There are a whole host of the other funds available which may well increase that amount.

292. The problem with a mechanistic approach of 30:1 imposed on the project in the way suggested is it's not clear where that would actually be delivered. It has the added problem of potentially burdening other farmland or other affected landowners in an unfortunate way, which doesn't balance the respective interests. In contrast, the woodland fund mechanisms that have been identified are a far better way to address the question of ancient woodland.

293. As to the problems of planting, we're going to provide you with the relevant extracts but our very short point is we are complying with the current advice on provenance and the need to respond to climate change. Indeed, the passporting mechanism, plus the measures Mr Miller described of growing seeds in isolation are all proper mechanisms to address any risk that might arise. We'll give you the relevant guidance extracts, as I've indicated.

294. On the question of ancient and veteran trees lost to temporary works, well you've heard about that. As was pointed out as an observation during the course of the discussion, the law of unintended consequences comes in if one seeks to impose restraints on the way construction takes places at this stage. For example, insisting on retention of the veteran trees which are in construction sites, it may actually have knock-on environmental consequences or consequences on others in terms of

availability of hauler routes, which are all there and intended to address a whole range of measures. But there are clear assurances provided in the documents to Stafford County Council and the Woodland Trust as to how that will be looked at very carefully in the detailed design process to try and avoid the unnecessary loss of veteran trees. We say that is indeed the right way to approach this.

295. I just addressed you on the question of assurances and undertakings so I won't repeat what I've just said but we don't see the need for undertakings in this case. I hope that assists your Lordship.

296. THE CHAIR: Thank you very much. Any questions from the Committee before we pass to Ms Ryan? Good. I think, Ms Ryan, it's for you to sum up, please.

Closing submissions by Ms Ryan

297. MS RYAN: Thank you, Lord Hope. I'll be brief because I'm conscious of time. On the issue of 30:1, it's interesting to hear about the woodland fund. As Mr Miller stated, the Woodland Trust is not currently taking money from the woodland fund because we thought it would be inappropriate whilst we were acting as a petitioner on HS2 to access money from that fund. However, one of my colleagues does sit on that fund in providing our expertise around woodland planting and assessing the applications to that fund. So we do have some involvement there, even though at this stage we're not taking money from it.

298. With reference to translocation, the issue around translocation and how that works is that the Cossington Fields example was only monitored for 10 years because there were ownership issues about getting in and monitoring further. The big issue around translocation is that there have been translocations done that I'm aware of that have failed. Nobody ever publishes results when they've failed. So the very few results that we do have are massively skewed anyway, because people only tend to publish if they're deemed to be a success. For example, there were 15 done on the Channel Tunnel Rail Link; none of those results have ever been published or they haven't been properly monitored.

299. Going on to biosecurity, the science in this area is moving very fast. Obviously HS2 at this process – I mean, I can't remember when I appeared in the other place. I

think it was 2018. The science is moving on fast. What I would like to say around this is that it's the Woodlands Trust's huge part of our core business to plant woodland. We only source trees from the UK and Ireland. It wouldn't be in our interests, as experts in this area, to do something that might fundamentally cause a problem in the future. This is something we care deeply about and forms a fundamental part of our business. We believe it's the right thing to do and we believe there's enough genetic diversity in this country not to increase biosecurity risk by bringing in material from overseas. We think the science has moved on enough for that to be the case, which is why we're asking for that.

300. Looking at assurances and undertakings, our real experience on Phase One – I'm in a slightly more privileged position here than I have been previously when I've given evidence to committees in that actually Phase One is actually happening now. So I can say to you real time examples of things that have happened, have not occurred in the way we would have liked them to occur or the way we thought they were going to occur. I know we're not the only people that are affected by this. I know yesterday in Prime Minister's questions this issue came up around assurances and breaches of assurances. I know the Prime Minister said yesterday, 'Anybody who has worked with HS2 over the last few years will know that they treat local residents with, I'm afraid, a high-handed approach.'

301. And I have to say that's been our experience around the breaches of our assurances, which is why we've asked for undertakings. I'm not a lawyer; I'm an ecologist, but obviously I have had legal advice over this. I can only speak to my experience. We don't consider that offering us undertakings instead of assurances is going to bring HS2 down but we do think it will give us the surety that we require, that we feel we don't have at the moment with our existing experience on assurances. That's everything I would like to say.

302. THE CHAIR: Well, thank you very much indeed. Ms Ryan, can I say on behalf of the Committee how grateful we are for the clarity of your presentation?

303. MS RYAN: Thank you.

304. THE CHAIR: I think all of us have found it's a very interesting subject to study this morning. We're grateful to you. Well, obviously, we'll have to take time to

consider what decisions we take as a result of what we've been hearing this morning. For the time being, I think it's for me to close these proceedings. I should announce that our next meeting will be in public on Monday 7 September at 2 p.m. in a committee room in the House of Lords. We won't be meeting virtually but we will have a system by which those who are not able to be in the committee room with us can join in on a hybrid system. So until then, until we meet again, until the Committee, at least, meets again, I adjourn today's proceedings with thanks to everyone who's taken part.