

MINUTES OF ORAL EVIDENCE

taken before the

HIGH SPEED RAIL BILL COMMITTEE

on the

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

Wednesday, 2 September 2020 (Afternoon)

Virtual proceeding

PRESENT:

Lord Hope of Craighead (Chair)

Lord Brabazon of Tara

Lord Goddard of Stockport

Lord Liddle

Lord Snape

Lord Haselhurst

IN ATTENDANCE:

James Strachan QC, Counsel, Department for Transport

Jacqueline Lean, Counsel, Department for Transport

WITNESSES:

Tim Furnell, Bob Hunt and Gareth Morgan (Ingestre Park Golf Club)

Alan Walker, Peter Miller and Colin Smith (HS2 Ltd)

IN PUBLIC SESSION

INDEX

Subject	Page
Ingestre Park Golf Club	3
Evidence of Mr Walker	3
Evidence of Mr Miller	8
Evidence of Mr Smith	14
Closing submissions by Mr Strachan	26
Closing submissions by Mr Furnell	30

(At 2.05 p.m.)

266. THE CHAIR: Mr Furnell, I think it's over to you now to put any questions you may have to Mr Smart.

Ingestre Park Golf Club

Evidence of Mr Walker

267. MR FURNELL: Thank you, my Lord. I think the question is to Mr Walker rather than Mr Smart.

268. THE CHAIR: I beg your pardon. Yes, indeed, it is.

269. MR FURNELL: Thank you. Mr Walker, do you have any experience as a project manager of a golf course construction on clay soils? And if so, where and when?

270. MR WALKER: Yes, bearing in mind I come from Essex, yes, I do. I currently am involved with a project that is a 27-hole infill taking most of the Crossrail cut at Ingrebourne Links, which I've been working on for the past seven years. We've opened up 18 holes this July.

271. MR FURNELL: Thank you. Do you really think it's possible to grow grass and have it ready for play in three months as suggested by yourself?

272. MR WALKER: With respect, I think it's Mr Hunt that said the grass could grow within three months, hence why I'm suggesting, or HS2 is suggesting that we bring the programme forward so that there is a longer growing period. But as Mr Hunt said in his evidence, I was always sceptical whether a grass could grow within three months.

273. MR FURNELL: Thank you. Just moving on to your suggestion of bringing things forward and I think you were suggesting that effectively all the new holes be constructed at the same time. Am I right in that?

274. MR WALKER: I was saying the commencement of the project could start on 1 April: in other words both Collier's land and the land to the east of the clubhouse, yes.

275. MR FURNELL: Would you accept that inevitably would increase the budget

significantly?

276. MR WALKER: In what respect?

277. MR FURNELL: In respect of for example two times everything – two times contractors, two times machinery.

278. MR WALKER: Whyever would it be two times of everything? It would be one time of everything but you'd bring the work forward. When Mr Hunt was explaining he was saying that the two holes on the right-hand side of the clubhouse would be built first. Well I would have thought a construction process wouldn't be the continuation of finishing those two holes. There will be a process. In other words there would be rough earthworks to start with, followed on on the other holes as well. It would be a continuing programme.

279. MR FURNELL: Bearing that in mind, and I'm somewhat confused by that – bearing that in mind, just turning to the budget briefly, you've been familiar with the budget for a long time now and I believe you've seen the latest iteration of that. Did you find any significant gaps or errors in that? And do you think that budget – reflecting what you've just said about that concept of one phase, one sequence of construction, – do you think that budget stands currently?

280. MR WALKER: Would you just go back, Mr Furnell, to the beginning? You dropped out with the first part of your question. Would you repeat it please?

281. MR FURNELL: Apologies, yes. Referring to the budget that's been the subject of much discussion over the last year, I believe you've seen the latest iteration of that from Mr Hunt, are there any gaps or fundamental errors in that. Do you stand by what I think you've just said: the budget would not need to be varied if we took on board your suggestion of one sequence of construction rather than two?

282. MR WALKER: The last budget I saw was the IPG August 2020 v3, which I don't think is the current up to date one which I think was sent over the weekend. I haven't had sight of that. But in general terms, I think the budget is moving towards what I would consider to be a reasonable budget to do the golf course in one hit.

283. MR FURNELL: I repeat; you say you don't think it will need further revision if

your proposal of one sequence were implemented.

284. MR WALKER: I would think a contractor would want to look at that but I doubt whether that would make – the way I look at this, if you have one contractor coming in doing just two holes of work and then having to come back and start again at a later period on the other 10 holes, my common sense mind says that could be more expensive. But again, until such time as you have brought together – or Mr Hunt has put forward a bill of quantities and gone out to tender on this project, we won't ever be fully aware of the cost. We have an estimate at the moment and as I repeat I believe the estimate is within an envelope of what should be spent to build this golf course, yes.

285. MR FURNELL: My Lord Chairman, with your agreement, would it be acceptable for Mr Hunt to briefly come back not that matter?

286. THE CHAIR: Well perhaps I should ask whether you have any objection to this, Mr Strachan.

287. MR STRACHAN QC (DFT): Well, My Lord, it would be a little bit unconventional obviously for the witness to comment whilst Mr Walker was giving his evidence but ultimately I will go with whatever is going to assist the Committee best in eliciting the information, provided Mr Walker has an opportunity to comment. I will happily go along with whatever you decide on that.

288. THE CHAIR: Well I think we're trying to get the best we can out of the evidence to inform us as fully as possible. So my inclination is to grant Mr Furnell's request, unless any members of the Committee object to that. I think you can go ahead there, Mr Furnell. Of course, there will be an opportunity, Mr Strachan, for you to come back in further questioning. Mr Furnell?

289. MR FURNELL: Thank you very much, Lord Chairman. If I could ask Mr Hunt to comment then on Mr Walker's description of that suggested construction alteration.

290. MR HUNT: My Lords, I'm sorry to have to come back again to try to explain. But I do think it's important that the Committee understands what we're proposing. We've been trying to develop a strategy to keep 18 holes in play. You will have seen from Mr Walker's evidence that there are varying numbers of holes which are released

at any time during the Cadent works and during the EPA works. In order to try to do that, it's critical that in the summer of 2021 we build two holes. And those two holes are part of the strategy to try to keep 18 holes in play. If we can do that, then we can maintain a strategy – hopefully, if the weather is reasonable – of trying to keep these 18 holes going. But there is no dispute between Mr Walker and me over what would happen in terms of the placement of a contract. The contractor would start and start to build those two holes, starting in April 2021, as we've always said, but as soon as the first element of those works is complete on the two holes, those elements of work will then transfer across on to the remaining holes.

291. So there's no dispute about one programme of one complete sequence of works. Where we had understood and I think there's some misunderstanding here that what was being suggested was that we had two contractors both of whom started on site on 1 April – one on one side of the road and one on the other. That just, as Mr Furnell was trying to ascertain, would increase costs. But we're not proposing that. We have no dispute between Alan and me over the idea of having one single contractor. But what I suspect isn't understood by HS2 is that we have to build those two holes in order for the strategy of keeping 18 holes in play. We have to get those completed as quickly as possible. But it is one moving sequence, one contract starting with the two holes and gradually as the various trades progress through those two holes, they will move on and finish the other holes on the other side of the road. With that programme it still remains an extremely high risk to the weather, both in the construction of the two holes and then having to work through the following winter to do the rest of the holes.

292. MR FURNELL: Thank you, Mr Hunt, and thank you for your forbearance, Lord Chairman. I had just two final questions if I may of Mr Walker. Mr Walker, you stated that you acknowledged that it would be difficult on very busy days for our competitions to be held and the like during the works involved. Just to clarify, citing the example of this Sunday where we had 150 playing in a medal competition and our booking system booked solid, do you really think it is realistic for us to be able to hold competitions during this period?

293. MR WALKER: Just to confirm, we're talking in the 12-hole period?

294. MR FURNELL: Yes.

295. MR WALKER: Okay, in the 12-hole period, as I mentioned in my evidence, I felt that it was possible with tee reservations to be able to get 18 holes for people to play those. You had 150 people playing at the weekend. I think Mr Hunt will remember from Belfry days when shotgun starts were played to maximise the amount of play on the golf course. My Lords, to expand on that, that is when everybody goes out to a certain tee in four balls and plays at one time. With a shotgun going out, you maximise the amount of play you can get on the golf course. I would imagine on 12 holes, you could easily get 14 or 15 four balls for a morning flight and that could probably be done in the afternoon. Shotgun is an opportunity. Intermingling with tee times on the first is also. But as I said in my evidence, I appreciate it will be difficult on busy days. But it is a possibility and I maintain that.

296. MR FURNELL: I presume you'd agree, even more difficult with the current Covid situation which for the foreseeable future means separation of tee times. We have a 10-minute pause between tee times, for example.

297. MR WALKER: I think we would all hope that in 2022 Covid is behind us.

298. MR FURNELL: Final questions my Lords, Mr Walker. Mr Walker, I presume you understand the risks that Mr Hunt identified in his evidence to the programmes that we've been talking about. Would you say they were an accurate and fair summary of the risks to the programme?

299. MR WALKER: I would.

300. MR FURNELL: Thank you, My Lord.

301. THE CHAIR: Good. Mr Strachan, before you come back, do any members of the Committee have questions for Mr Walker? No, well I think Mr Strachan over to you to re-examine.

302. MR STRACHAN QC (DFT): I've only got one follow-up question, my Lord. Mr Walker, it relates to Mr Hunt's comments about a single contractor but bringing forward the construction programme in the way you've envisaged. I think it's now common ground that you're both talking about using a single contractor. But perhaps you can check if I've correctly understood it. But can I please just ask you to comment

on whether you maintain your position that the construction of all 12 holes can commence on April 2021 or, whether as Mr Hunt's suggesting, you would only construct the first two holes at the beginning of April 2021? Just before you answer that – sorry, Mr Walker – my Lord, I'm referring to the A10(6) programme.

303. THE CHAIR: Yes, I understand that.

304. MR STRACHAN QC (DFT): Mr Walker, can you help? Can you explain the position as to when construction starts on the 12 holes?

305. MR WALKER: I concur 100% with Mr Hunt that it will be a one contractor operation and if possible the starting date would be onsite on 1 April 2021 and with good weather, as we've gone through, it's been already highlighted and I fully concur with that, the construction of those 12 holes can take place during that summer period. There can be some seeding in the late autumn and with luck and good fortune, the golf course could be open the following year, 2022, September 2022.

306. MR STRACHAN QC (DFT): Thank you. Mr Walker, to be clear, are you referring to two or 10 or 12 holes in that respect?

307. MR WALKER: 12 holes.

308. MR STRACHAN QC (DFT): Thank you. My Lord, that was the only follow-up question I had.

309. THE CHAIR: Good, thank you very much. Now where do we go from here? Do you have another witness you want to call?

310. MR STRACHAN QC (DFT): My Lord, I have two other witnesses but they are going to be very brief because in light of the focus of the petition, I think I can get Mr Miller to briefly assist you with the planning direction points and the conditions and then very briefly Mr Smith to assist you in relation to the question of acquisition of land and the notices being served. But I don't anticipate being very long with either of them. If I could ask Mr Miller to go first –

311. THE CHAIR: Yes, please go ahead.

Evidence of Mr Miller

312. MR STRACHAN QC (DFT): Mr Miller, I hope you can hear me.

313. MR MILLER: Yes.

314. MR STRACHAN QC (DfT): Again, you're familiar to the Committee so I won't reintroduce you much. You're the environment director for HS2. But can I ask you to help in relation to the question of securing planning consent for the reconfigured golf course? In the exhibit material there is reference to a planning direction being sought from the Secretary of State for Transport under this Act, if it's enacted under the powers of Royal Assent. There was reference by Mr Furnell to potentially onerous conditions to any consent or reconfiguration. Can I just get you to briefly comment on that and whether that is being factored into the programme that we've outlined?

315. MR MILLER: Yes. It might be worth turning to P28(31) in your slides, which shows the red line outline of the area which is subject to a planning direction. You'll have heard from Mr Smart earlier on in the day pointing to a pink area of land which was included in Additional Provision 2, which is associated with an environmental statement. That pink area of land is commensurate with the red line boundary on that plan.

316. Now, under the Bill, there is provision under clause 47 to provide a planning direction for a use on that land for a golf course. This relates and goes back to a previous assurance that was entered into to facilitate the planning activities in this location, to speed up and enable the golf course to come about in good order. It's proposed that a planning direction, I don't think there's any dispute with the golf course about this, there's a planning direction, that will be issued by the Secretary of State for Transport, proposed for January of next year following Royal Assent. That will enable the golf course, the 12-hole extension of the golf course – the sideways move, as other people have described it – to come about. What comes along with that planning direction are a number of conditions. I think we've got a slide which identifies those.

317. MR STRACHAN QC (DFT): 532.

318. MR MILLER: Yes, thank you. What we can reasonably anticipate – and you've heard a little bit about ecological surveys. There's still a little bit more work to be done to complete those. But I think it's fair to say that we've done everything we can to

progress the access on to other people's land at the moment for things like ecological surveys and indeed archaeology. If there are aspects of ecology that are of interest that further action will need to be taken, then that will have to be built into the plans for that area of land, for the sideways move. Now we consider that if any action was required, there's plenty of time in the programme and there is plenty of space to enable any mitigation or compensation works to take place.

319. But the conditions really are going to the protection of the natural environment. That's inescapable whether you're a high speed railway or you're a golf course or any other type of development, if you're facing up to those sorts of things. So they have to be taken into account. Similarly for archaeology, we will have to do surface walk overs and maybe even some intrusive trench-type surveys to check out any archaeology. That points to making sure that the overall design of the plan and the programming and the flexibility of the construction take all of those things into account. That's a familiar feature for all sorts of projects.

320. I'll briefly talk about drainage. There'll have to be some drainage activities sorted out so that by imposing a golf course on that land it will no doubt alter the surface drainage regime and that will need to be thought about and accommodated.

321. Then finally the construction. We consider there will be construction management arrangements. This sort of flows through from the commitments that HS2 has to make on the project. I understand there's a bit of concern about those obligations and hopefully what I'm going to say next will allay some of those fears. But the code of construction practice is designed for a major construction programme and it takes into account a wide range of circumstances that we find ourselves in with building a high speed railway. But when it comes down to it, this site management plans that will be finally entered into and indeed what we expect the golf course designers and builders to be entering into is something which is tailor-made to the scale and nature of the works that are going to take place. So whilst we have a pretty comprehensive set of rules for the control of things like noise, vibration, ecology, management plans, water and all that sort of stuff on High Speed Two. Whilst we'll be applying those principles, those principles will be taken up in a way which is specific to the works in hand. So I don't see these as being particularly onerous and, as I say, can be tailor-made.

322. MR STRACHAN QC (DFT): Thank you.

323. THE CHAIR: Can I ask a question at that point, Mr Strachan, to pursue the point a little further? We're looking, at least it has been suggested we should be looking to a start date on 1 April next year. Is it realistic to expect all the conditions to be identified by then to enable work on the ground to begin on 1 April next year?

324. MR MILLER: I think a lot of the survey aspects are already in train. If we go to P28(18) that might help. You'll see from the third bullet point down there are a number of what we call Housing and Planning Act notices. Those have been entered into and you can see the timings of the final surveys that need to take place. That's being done in good order and in advance of the planning direction and in advance of a start on site. If indeed there are arrangements that need to be incorporated into the design, as I've just indicated surface water drainage, for example, they indeed will have to follow through. It may well be that there are detailed matters that have to be incorporated in the design.

325. So the start onsite could mean many different things and because it's quite a big area of land and there are a number of holes that have got to be configured and the golf course is looking to advance a couple of those holes in any case, it may well turn out to be that the golf course designers can flex in their construction plan to accommodate anything else that needs to be accommodated, say for example, a bit of habitat creation and that sort of thing, on the periphery of the land. So I think we've got a good start with the environmental statement, as I mentioned, that was accompanying the Additional Provision 2. So we have a fair idea of what is likely to be needed onsite and what can be planned for or indeed take a precautionary approach about. So I can't see any impediment to the works taking place, albeit that you might have to face up to some complex construction planning.

326. THE CHAIR: Looking down the list, the third bullet point is a notice being served in August 2020. Has that been done?

327. MR MILLER: I believe it has, yes.

328. THE CHAIR: And then the following one is again archaeological. I think we've covered that one.

329. MR MILLER: Yes.

330. THE CHAIR: Then a further note, archaeological trial trenching and so on, and notices for an intrusive GI survey to be served in October. That won't have happened yet but could be done in time, in October.

331. MR MILLER: Yes, all of these are able to be in time and they've been scheduled in that way so that they are most effectively.

332. THE CHAIR: Right. Thank you very much.

333. MR STRACHAN QC (DFT): My Lord, if it assists, for context, the Housing and Planning Act provisions that have been used to serve those notices are relatively recent provisions and that Act has been used of course because the land is a little bit further away from the line of the route where notices under the relevant previous act for the railway could have been used but they are too distant from the line, the route. But that's why that Act has been used to achieve the notice in advance of course of Royal Assent of this scale. I hope that helps.

334. Thank you very much, Mr Miller. The only other matter I wanted to ask you to briefly address is the question of HS2 and approach to keeping the golf course going in terms of flexibility on environmental mitigation. Could you as an illustration – because it's in the exhibits. There's a plan in the exhibits which shows a rearrangement of environmental mitigation works, just as an example of what has been going on to assist in this process.

335. MR MILLER: Yes. The reference I have is P28(67). Hopefully this will help.

336. MR STRACHAN QC (DFT): Yes. To introduce that, that's a plan attached to an assurance that was issued to the golf club.

337. MR MILLER: That's right.

338. MR STRACHAN QC (DFT): There's areas in orange boundary and then an area in red, if you could briefly explain what's going on there.

339. MR MILLER: Yes. There are a number of areas of land that were required for mitigation for the railway itself, particularly relating to great crested newts. That sort of

habitat was identified on portions of the golf course land. The team has subsequently talked this through with the golf course and I understand at their request have looked for some flexibility around that mitigation. You can see on that plan there's a large area of red – it's an upside-down dog leg shape next to the green area of land. The green area of land is the sideways move of the golf course. We have indeed moved the mitigation works associated with HS2 on to that land. The idea of that is to enable some further flexibility for the golf course but also meeting our obligations under the Bill to provide new homes for the great crested newts. So I think that's a good indication of some good collaboration which has taken place between HS2 and the golf course. Indeed, if it comes to it in their plans, they seek flexibility on their own land, the remainder of the holes which Mr Walker went through and described to you, then indeed, they have a bit more flexibility as a result of that action.

340. MR STRACHAN QC (DFT): Thank you. My Lord, those are the only questions I had for Mr Miller. There may be other questions for him.

341. THE CHAIR: Any members of the Committee with questions? No, I think you can go on then, Mr Strachan.

342. MR STRACHAN QC (DFT): Thank you very much. Finally then, just to Mr Smith to assist the – sorry, I think Mr Furnell has raised his hand, my Lord.

343. THE CHAIR: Mr Furnell?

344. MR FURNELL: Sorry, I hoped you'd ask me if I had any questions, Lord Chairman.

345. THE CHAIR: Oh, I'm so sorry, yes, of course, I should have done that. I beg your pardon.

346. MR FURNELL: Okay. It's been a long day already. Don't worry. Just one question, Mr Miller. Whilst acknowledging that a lot of work is going ahead on the planning questions, the Lord Chairman asked you – actually he asked you about the realism of discharging the conditions that might be imposed on the planning direction whereas I think you answered referring to the, as it were, preparatory works, the surveys, about getting those conditions drafted and their requirements. You also talked

about flex. We look forward to hearing where the flex is in the programme. You're presumably familiar with that programme. I wonder if you could tell us where that flex is.

347. MR MILLER: No, sorry, what I'm thinking about is the flexibility on the land. Partly the reason why – for illustrating the plan on the map here, it shows that there's plenty of room to adapt to the mitigation, what actually has to be discharged as a consequence of meeting those conditions. Indeed, if you have, as a result of the design on the sideways move part of the golf course, the part which is subject to the planning direction, if indeed you have to accommodate your own great crested newts because they're on the site, what I'm suggesting is that on that site that the design will have to flex, be able to take that into account. But looking at the area of land and the configuration that I think you've shown on your earlier aerial photograph, on the periphery of land, such flexibility could be found. So there may be occasions where if there was some important archaeology, for example, you may well have to flex and we would have to find that in due course. But I don't think that we are genuinely expecting that.

348. MR FURNELL: Thank you.

349. MR MILLER: Thank you.

350. THE CHAIR: Back to you, Mr Strachan.

Evidence of Mr Smith

351. MR STRACHAN QC (DFT): Thank you very much and I move then to Mr Smith, Colin Smith in relation to compensation matters. I don't apprehend that some of this is controversial so I won't spend any length of time on it although I'm sure Mr Smith would be happy to answer questions about it. A couple of points for you, Mr Smith. First of all, in the petition and previously there was, as I indicated earlier, a debate about equivalent reinstatement as the approach to compensation towards the golf course. Do you recall that, Mr Smith?

352. MR SMITH: Yes.

353. MR STRACHAN QC (DfT): Great, thank you. In the exhibit pack there were

three slides dealing with that at the P28(13), (14), (15) and then after that two slides which deal with the mechanism for resolution of that dispute. I'm not going to ask Mr Smith to go through that material unless it's controversial, but the Committee has before it the promoter's evidence about the available markets in relation to golf courses and golf course valuations, as to how one would ordinarily approach compensation affecting a club of this nature for compensation purposes. I think that's what is set out in those slides, Mr Smith; is that correct?

354. MR SMITH: That is correct, yes.

355. MR STRACHAN QC (DfT): I also referred the Committee to an offer to resolve the question of the appropriate base of compensation through the early neutral evaluation process, Mr Smith, and I indicated that that offer had not been taken up. Is that correct or have I misunderstood the position?

356. MR SMITH: No, that is correct.

357. THE CHAIR: Can I ask too then Mr Smith, if the offer had been taken up, how far would the discussion have gone? It would, as it were, elide the necessity to go to the Land Compensation Act rules, would it, and it would be an agreed compensation package? Is that what it was intended to achieve?

358. MR SMITH: My Lord, yes, it was a dispute on the basis of assessment of compensation. The club were considering it was under rule 5, which is equivalent reinstatement. HS2, because there was a ready market in the sale of golf clubs, were saying, they alleged that the proper assessment of compensation was under rule 2, market value. HS2 put forward a suggestion, rather than wait and go through a long tribunal process, that we could have an early neutral evaluation from an expert in compensation matters and his decision would be binding on both parties. So we didn't have to take the matter through to the courts, the public tribunal. So it was an agreed method of assessing compensation.

359. THE CHAIR: I see. I suppose it would have been possible to accede the figure that a rule 2 compensation would reach but not go so far as a rule 5. It might be somewhere in the middle?

360. MR SMITH: I think you can say quite safely that the rule 5 compensation is well in excess of rule 2 compensation, my Lord.

361. THE CHAIR: Yes. But at any rate there was a certain amount of flexibility in applying rule 2, if one looks at it from that point of view. But that opportunity has not been taken up. I think that is the long and short of it.

362. MR SMITH: Strictly looking at the compensation code, that decision has been left open and it hasn't been taken up by the club. However, what HS2 had regard to is the view of the first House Committee, in the other place, to say that they put a great emphasis on the community benefit of the club and hence the way that the promoter is looking at it, and HS2, is that we're looking at the benefits that will be gained in the future by use of this as a community asset in order to justify the additional compensation between rule 5 and rule 2.

363. THE CHAIR: Yes.

364. MR STRACHAN QC (DfT): Mr Smith, can you assist in that respect as to whether the reconfiguration proposals that have been considered and contemplated are in excess of what would have been potentially payable based on these comparators under rule 2, for example?

365. MR SMITH: Yes, I can confirm that the cost of reconfiguring the golf course will be well in excess of the rule 2 compensation by some degree. I think we're talking about two or three times.

366. MR STRACHAN QC (DFT): Thank you. My Lord, unless there are further questions on that, I was going to invite Mr Smith to briefly comment on A10(7), which are the requests so far as they relate acquisition and agreements. Mr Smith, I don't know if you have slide A10(7)?

367. MR SMITH: Yes.

368. MR STRACHAN QC (DfT): My Lord, I see my Lord Haselhurst is –

369. THE CHAIR: I'm so sorry, yes, I didn't notice your hand. Yes, there are. Would you like to put your question, Lord Haselhurst?

370. LORD HASELHURST: Thank you very much indeed, Chairman. It's a broad question I want to ask Mr Strachan: how does one measure equivalence in relation to a golf course? If you were replacing a tennis court, if you were replacing a football ground, they are very similar to a standard. But a golf course has character, depending on the lie of the land. You're not just marking it out by the number of yards or metres that there are from tee to green. There are dog legs. There are all sorts of varying factors. So how is one able to measure equivalence? In terms of money compensation as opposed to any other form of compensation, that the elimination of perhaps a hole, which is generally not to be satisfactory for whatever reason by another one that is slightly different design could – in other words, a replacement in kind – might work with the golf course in a way that it wouldn't with any other kind of sporting facilities.

371. MR STRACHAN QC (DfT): My Lord, I'll invite Mr Smith to address you on both those points because I think they relate particularly to – but I'm happy to answer anything that he leaves unanswered, but bear in mind, it's his area of expertise. Mr Smith, can you assist with those two points?

372. MR SMITH: I think that's a very good question. The answer is though that it's very difficult at times to get an exact equivalent. I think the point that's been made is true. Very often you have old buildings which have to be replaced by new ones. So you cannot get an exact equivalent. But I think you'll find in various cases the tribunal has accepted that in assessing that you're assessing the cost of building a new facility to modern standards. This is the general view that the tribunal has taken. That would be the way forward normally in assessing compensation. I don't think it would be possible unfortunately to put a mature, 30-year old tree back. It's physically not possible. I think that's the point possibly that my Lord is making.

373. MR STRACHAN QC (DFT): Or to recreate the character of a particular hole or golf course in that way. By way of response, it is only in approaching valuation or the question of equivalence as a matter of law, there has to be a degree of judgment and flexibility for precisely the reasons a particular in approaching valuation there has to be a degree of judgement and flexibility, precisely for the reasons my Lord has put, that you can't have an equivalent hole or a course recreated elsewhere. But the law certainly looks to deal with that in a judgment way.

374. It brings me on, if I may to the question I wanted to ask Mr Smith about, which is that whilst the dispute about whether the compensation would have been under rule 2 or rule 5 is one that we offered to resolve by alternative dispute mechanisms, in taking on board the point that everyone is working towards continuing the golf course in its current location as a community asset, the proposals that have been taken forward are about reconfiguring the golf course on land adjacent to it, so it remains there. Of course, it won't have the same hole. But it will have new holes built as an 18-hole golf course. But I wanted to deal with the steps that have been taken from a property perspective to facilitate that, Mr Smith, in light of A10(7) and the requests that have been made.

375. I've already dealt to some degree and answered a question that was put to me about extinguishment and the meaning of the letter. My Lord, I'll come back to that in a few closing remarks in a moment, but could you just assist, Mr Smith, with item 3, that as written it was seeking a request from the Committee that HS2 use best endeavours to secure third-party land. As it was put orally, it wasn't actually a request for 'best endeavours', which has a particular meaning in law. It imposes certain legal obligations. But it was put on the basis of try and acquire the land as soon as reasonably practicable or use reasonable endeavours, was the way that Mr Furnell put it. Can I just ask you to comment, Mr Smith, as to whether that is or is not what HS2 are seeking to do at the moment in relation to the land?

376. MR SMITH: Yes. There are three landowners who own the land that is in the area that the reconfigured golf course will be built. These are the three landowners who we are all in discussion with and if we can reach agreement in advance of servicing a compulsory purchase notice, we will do so. Obviously, time is getting short now, but we have been in discussion throughout with these landowners. The unfortunate thing is we're unable to guarantee by private treaty that HS2 will be able to do that at a reasonable cost. I just need it there because, having said that, of course, we have already served on those three landowners a notice, an advance notice that we intend to take possession of the sites on 1 March 2015. We've stated it's our intention to take temporary possession and then follow that up by acquisition of the land as soon as it's possible afterwards. Therefore we can, aiming to secure those sites on 1 March, which is the date that we understood may be needed for the club to commence their works. To add also, we served all the relevant survey notices for surveys through the autumn as

you've already indicated, under the Housing and Planning Act.

377. MR STRACHAN QC (DfT): Those notices don't require acquisition of the land, as indicated already.

378. MR SMITH: No.

379. MR STRACHAN QC (DfT): So that's item 3. Then items 4 and 5 are regarding confirmation of a budget and agreements of heads of terms. I just want to address that, Mr Smith. First of all is: what's the promoter's position from a property perspective of whether or not it would be a good idea to agree heads of terms and an agreement to take forward this proposal?

380. MR SMITH: I think we're in agreement there. We do need to get on and agree heads of terms. We need to agree them quickly. So we are as one with that. We do wish to agree heads of terms and follow that up immediately with a contract between the parties that sets clearly the obligations of both parties to an agreed scope, an agreed capped cost and a package of measures to secure future local community use.

381. MR STRACHAN QC (DFT): Mr Smith, of course agreeing things obviously requires both parties to agree. Mr Smith, can I ask you to explain briefly what it is by way of further information or detail that we require from the club to take forward those agreements?

382. MR SMITH: We have had a series from Mr Hunt. We have had a series of costs that have been received over the last few weeks and I believe he said one came in yesterday. I didn't see it on Saturday. That is being looked at. So a lot of work has been done on the actual physical costs of constructing the reconfigured course. I'm hopeful that we can agree the scope and cost on that element soon.

383. But we also need further financial information because that won't be the end of the matter. The club are concerned about their future business and the impact HS2 will have on the business. We have requested further financial information on trading information on their accounts that will help give us an understanding of what their position is and then we can come to some form of discussion and decision on what that might be. That is something that we really do need quite quickly if we're going to take

these matters forward.

384. The other point is that we need to understand – and I respect the fact that the Secretary of State’s letter has only gone out recently – but we need to understand what package of measures for community benefit the club propose, to get those agreed so that we can bridge the gap between cost and value, as we discussed previously, in terms of compensation, the excess compensation. We can look at the community benefits and the extra community benefits that they may bring, so that we can assess that it is good value for money for the taxpayer to pay this amount of money over. I think all these things are capable of being worked through and resolved, but both parties need to get onto it quickly. That would be my judgment.

385. THE CHAIR: Can I ask you, Mr Smith? You use the expression ‘cap’ or the word ‘capped’ and it is an indication in the department’s letter that a ceiling figure will be arrived at; how is that done? Is that arrived at by assessing the costs which have been identified on the basis of the information you’ve been given and putting a reasonable price on these things, or is it a figure taken out of the air, as it were, just simply the Government’s not prepared to spend more money than so many million pounds? Is it looking at the real facts or is it a hypothetical cap?

386. MR SMITH: It’s looking at the real facts, but I think if we agree a scope and a cost and Mr Hunt’s done a lot of work on that, but there are other elements that aren’t worked through that we need to – we just need to finish it off. I mean we just need to know what the actual figure is.

387. MR STRACHAN QC (DFT): My Lord, I hope it’s an opportune moment to refer to that letter because the ceiling that your Lordship’s referred to is not a ceiling which then means there can be no agreement. It’s the ceiling of the amount the Secretary of State or public money that would be paid. It doesn’t preclude, as the letter indicates, the club from adding to contributions in excess of that ceiling. I don’t know if your Lordship has got the provision itself. It’s on page 97, I believe.

388. THE CHAIR: I think it’s at the very end of your grouping. Yes, it is. It’s 97.

389. MR STRACHAN QC (DFT): Yes. Sorry, my Lord.

390. THE CHAIR: Yes, it does say, the first bullet point, it's subject to a ceiling or cap beyond which the Secretary of State is not prepared to go and anything above that will have to be met by the club.

391. MR STRACHAN QC (DFT): My Lord, yes, potentially. But the idea to reach the ceiling, as Mr Smith's indicated, is that the ceiling represents the reasonable sum for the works plus the wider packaging measures. If for example the club wanted to go beyond that in any respect in the specifications and details of what was reasonable, they wouldn't be precluded from doing that. It's just a cap on the public funds are going towards what is a reasonable cost, the reconfiguration assessed against all of the community benefits that would flow from expending public money in that way to keep this golf club there. I hope either assists. We're not precluding the golf club for taking a different view if they wanted to add things further. They would have to meet that from their own funds.

392. THE CHAIR: Does that conclude your questions to Mr Smith?

393. MR STRACHAN QC (DFT): It does indeed, my Lord, so unless there are any questions for him, at some point I'd like to draw the threads together but there may be questions before that.

394. THE CHAIR: Well I'm going to offer Mr Furnell a chance to put his questions and then I'll come to Lord Snape, who is wanting to ask a question as well. Mr Furnell, do you have any cross-examination?

395. MR FURNELL: Yes, thank you Lord Chairman, I do. Mr Smith, turning to the summary you provided with Mr Strachan about – you've used the phrase, 'Refusal to use EME,' if I can put it that way. Do you acknowledge that – I forget the MP's name – but one of the MPs at one of our hearings referred to that process as being a 'gamble' on our behalf of some millions of pounds of consequence? Do you also agree that the costs of EME are borne on us and us alone? Particularly, do you agree that you stated that the results will be binding? Our clear understanding was that they would not be binding.

396. MR SMITH: As far as we were concerned, they could be binding. We wanted to decide and get rid of this difference in approach if it would help move things forward. We gave the opportunity and it wasn't taken up. It's as simple as that. The club said no

and so that's really the end of it.

397. MR FURNELL: I wanted to make the Committee aware of why we said no. Do you also accept that we are firmly of the view we don't accept necessarily that the outcome of the rules 5 settlement would be in excess of a rule 2 settlement? That's clearly our position, isn't it?

398. MR SMITH: That is your position, yes. As I've said, it hasn't been tested and so we're in a different ballgame now.

399. MR FURNELL: Next question if I may. As Whittington Golf Course were awarded compensation on the basis of rule 5, as documented in the HS2 response to the Select Committee on 12 July, why are we being treated differently?

400. MR SMITH: I can't answer for Wittington Heath. I do know that obviously there's a number of factors I've been told are very different. I can only go on the evidence I see with this course. The evidence is that that there is a market in golf clubs. So strictly speaking, as far as HS2 are concerned here, really rule 2 would be the appropriate assessment of compensation.

401. MR FURNELL: So final question, are you saying that there wasn't a market when Whittington was settled?

402. MR SMITH: Again, I wasn't dealing, I'm sorry, I can't answer that.

403. MR FURNELL: Thank you, Lord Chairman.

404. THE CHAIR: Thank you. Mr Furnell. Lord Snape? Lord Snape, a chance for you to put your question.

405. LORD SNAPE: Yes, thank you, Mr Chairman. It's been partially answered by Mr Furnell's last question and the response. But looking at request number 4 on A10(7), Mr Smith, what would be the global sum that the golf club are asking for, the £6 million plus land costs and the two crossings in the Ingestre Road? I mean do you have a figure as to the total sum that that would amount to?

406. MR SMITH: At the moment, no we don't have an agreed figure, but I can agree that it would be in excess of £6 million.

407. LORD SNAPE: Sorry, you are breaking up. I can't hear, my Lord.

408. THE CHAIR: No. If you try again, Mr Smith?

409. MR SMITH: The budget, firstly, there are several components to the budget. So if we stick with the elements that are in the control of the club. There is the cost of the reconfiguration, the design planned by the club, and then there are the elements of interference in their business, disturbance that may be caused by HS2. That is the element at the moment where we don't have the degree of certainty on and we still have to sort that out with the club. Does that answer your question, my Lord?

410. LORD SNAPE: Yes, it does. I just wondered thinking out loud, are the promoters sympathetic to this sort of figure or does it fall, in your opinion, outside what you would regard as being reasonable?

411. MR SMITH: I think the way this has been looked at, this is rather a hybrid, the way this has been viewed by the department is that they are willing to spend more than would be applicable under normal compensation law provided they are satisfied there would be continued community benefit, for the benefit of the local community, and not just for the benefit of the private members of the club. I think that is my reading of that letter.

412. LORD SNAPE: So in conclusion then, you think there's still scope for negotiation about this overall figure so far as the £6 million plus is concerned?

413. MR SMITH: Of course, yes, yes.

414. LORD SNAPE: And does the initiative in your opinion lie with the golf club?

415. MR SMITH: My Lord, it's very easy to be critical of either party. We've both got to get together and sort it out. That would be ideal.

416. LORD SNAPE: Thank you. Thank you, Chairman.

417. THE CHAIR: Thank you very much. I'd like to assess where we are. Normally we would rise her for a brief break after about an hour but I don't know how much longer you are likely to take, Mr Strachan and Mr Furnell, with your concluding remarks. Can we have some kind of assessment? Mr Furnell, you put up your hand.

418. MR FURNELL: Yes, my Lord Chairman, I put up my hand because you'll recall at the beginning of the proceedings I asked whether it would be possible to plug Mr Morgan into the process. We didn't anticipate that would be necessary, but in view of the last five to 10 minutes, it would be helpful if we could now plug him in before Mr Smith leaves his billet.

419. THE CHAIR: Well I wonder whether the best thing is to have a short break. The problem is that these proceedings on video screens and so on are quite tiring to everyone and we would probably benefit by having a short break and coming back with what you're offering us in five minutes' time. Shall we meet again at 3.10?

Sitting suspended.

On resuming –

420. THE CHAIR: Now Mr Furnell, back to you please.

421. MR FURNELL: Thank you, My Lord. Just a few further questions for Mr Smith, if I may? Your expertise in relation to golf course compensation, is that extensive?

422. MR SMITH: Compensation? No, this will be the first golf course I think that I've had to deal with but I'm only giving you my views of where we are, as the expert witness. I haven't challenged any values or any costs.

423. MR FURNELL: Thank you. Turning to the matter of in summary of missing information on our behalf. I think it's common knowledge that our accounts had been shared with HS2. We've been struggling to understand what further information beyond the accounts is requested.

424. MR SMITH: I'm sorry. If they have been, then the people that are involved haven't seen them but maybe that can be rectified.

425. MR FURNELL: You'll be aware that accounts are public knowledge, are they not?

426. MR SMITH: It's not just the accounts. It's more of the details. I'm told we have requested many times details of your accounts and trading information and they

haven't been provided. If that is easily rectified, that's great, that's fine.

427. MR FURNELL: Okay, well I think your summary is a fair one. Thank you. For the purposes of the Committee, could you summarise in these circumstances what the purpose of compensation is? Is it not to leave us pretty much where we were in general layman's terms?

428. MR SMITH: Yes, the land compensation, you are quite right, the principle is equivalence, so that people are no better and no worse off, as far as possible, that can be achieved by money.

429. MR FURNELL: Thank you. Just turning to the matter of the cap that has been mentioned to the budget. Would you accept it's something we've been asking for, for some time, discussing at length for some time, and would you accept also that it's rather unreasonable for us to plan our business, to share with our membership the future, if we don't know what that cap is?

430. MR SMITH: Yes. My answer to that is quite simply these things have been taken forward in earnest over the recent months and there hasn't been an agreed cap. The plans have been developing and so have been the costs. Now in front of this Committee, you're saying we must confirm a cap. Yes, we must confirm a cap, one where both parties sit down and agree it. But as I say I don't think there is necessarily a lot there. It's just been a moving feast up to now.

431. MR FURNELL: Just going on from that finally, would you also accept there are some uncertainties around that? There are some risks in our accepting a cap at this stage given for example we discussed today various temporary periods, various closures for six months, is it nine months? There are risks involved, aren't there, in that cap endorsement?

432. MR SMITH: Of course. That's why we need to get together and discuss these matters.

433. MR FURNELL: Final question, without wishing to go back over very old ground in relation to our previous relocation cost estimates and the sideways cost estimates, would you accept that the difference between those two was not enormous

when we last discussed that matter?

434. MR SMITH: Can you be clear about which estimate you're talking about? Are you talking about the current one that has come through recently?

435. MR FURNELL: I'm suggesting perhaps that the figures we're now talking about in terms of budgets in my presentation and the exhibit referred to, circa £6 million, plus compensation, plus land is not a million miles away from the figure that we suggested was accurate for our relocation a couple of years ago?

436. MR SMITH: I think we're still lower than that figure. I think we're talking about a figure of £6 million at the moment?

437. MR FURNELL: For construction only.

438. MR SMITH: Yes.

439. MR FURNELL: Okay. I think we'll just agree to disagree on that. Thank you very much, my Lord.

440. THE CHAIR: Thank you. Do any members of the Committee have questions for Mr Smith? Further questions I should say. Thank you, Mr Smith. Mr Strachan, it's back to you. Have we reached the stage we're you're going to sum up on the promoter's behalf?

441. MR STRACHAN QC (DFT): My Lord, yes, I'm going to try and do that as briefly as possible because you've heard an awful lot and I think the issues are pretty clear for your Lordship. Can I draw the threads together as I see them?

442. THE CHAIR: Yes, please.

Closing submissions by Mr Strachan

443. MR STRACHAN QC (DFT): We certainly do welcome and endorse and then share the aspiration of working constructively and cooperatively with the club to keep or retain it in place with a reconfiguration of the type you've heard some detail about. That is, as you can see from the correspondence, the aspiration of the promoter to achieve the continuation of the golf club.

444. Secondly, we are very happy that the golf course now accepts that principle of reconfiguration. Considerable work has already taken place collaboratively to make that happen, albeit it's within a reduced timescale that's occurred as a result of the timing of when that acceptance was reached.

445. Thirdly, I don't accept the characterisation of events given by Mr Furnell as to the approach of HS2 in treating the golf course either unfairly or delaying matters. As you will have seen and heard from the evidence, considerable efforts have been made to progress the dual aspirations, first of all to construct the scheme properly and effectively within the construction programme, but secondly to deal with the effects – and there are obviously serious effects on the golf course – but to deal with them as effectively as possible to allow them to continue in operation, albeit there will be these temporary impacts that we've identified in the programme, which we are doing our best to mitigate.

446. If I just summarise what those impacts are that you've heard. As a result of the work that HS2 has done. We have, contrary to the original understanding, we've limited the impacts so that there would continue to be 18 holes playable at the golf course until January 2022. There is then anticipated to be the nine-month period, January 2022 to September 2022, when those first utility works are due to take place, when the golf course will be down to I think it's approximately 12 holes, although Mr Walker has explained the ability during that period potentially to play an 18-hole course but with some repeat holes.

447. Of course, that's far less ideal than an 18-hole golf course. We accept that. But it's a workable solution for a temporary impact to the club, which Mr Walker has identified he's confident the members will see as acceptable, bearing in mind what's to come. From September 2022 when the main works have to start, we are all working towards at that point the delivery of 18 holes as a result of the reconfiguration taking place. We had put forward a timetable, a programme, which of course requires goodwill on all parts, it requires good weather, but it's an achievable programme if everyone collaborates, works together and follows the indications of what needs to be done when, to bring back 18 holes at the course in September 2002, when we have to start our main works.

448. If, contrary to our expectations, there is a delay for whatever reason in that and it's not achievable, as Mr Walker has explained, there will still be nine holes playable and that delay would again be a short-term delay with the prospect of the new, 18-hole, newly constructed golf course coming on stream the following year. Whilst that again would not be desirable, it's a tenable position for the golf course to continue in situ with the members again, knowing what's coming down the track very shortly in terms of the 18 holes payable before the end of the year. So whilst we don't anticipate that will occur and we're doing our best to ensure that doesn't occur, it still enables the golf course to continue.

449. In contrast, it is not viable, reasonable and we would submit contrary to the whole purpose of the Bill to delay the construction to 2023 in either of the two ways that the golf course have suggested for the reasons given by Mr Smart. There are two fundamental impacts. One a delay to the whole delivery of Phase 2A, which is contrary to the whole point of it being accelerated to run alongside with Phase One, but it is also a massive cost impact of delaying construction works far in excess of any sums that we're talking about in terms of compensation. All of which is contrary to the public interest. We've considered carefully any delays and from the promoter's perspective those are simply not acceptable.

450. Turning then if I may just to the outstanding requests A10(7), I can respond briefly. On item 1, your Lordship has already heard from me. It is not the intention of the promoter to extinguish the golf course, but the letters that you've seen and in particular the letter on behalf of the Secretary of State dealing with having a cap and conditions requiring community benefits are secured are all directed at ensuring that the ultimate cost to the public purse represents value for money in terms of maintaining the golf course there, but securing public assets at what will be a considerable expense. There can't be a blank cheque by which extinguishment is completely ruled out as an eventual outcome. It's certainly not the intention. But to rule or direct no extinguishment would therefore create in effect some expectation that it doesn't matter how much it costs, which is contrary, we say, to what was originally anticipated.

451. I dealt with the second point, which is delay to the works, which we say are unacceptable.

452. As to the third point, which is about securing third-party land and ‘best endeavours’ was the way it was put. That would impose an unacceptable obligation on the promoter to achieve third-party acquisition at whatever costs. Indeed you’ve heard that we are already taking measures to try and acquire the land voluntarily, but with the notices being served to compulsory acquisition with Royal Assent taking place at an accelerated way through these services of notice.

453. As to items 4 and 5, which relate to confirming the budget, confirming agreement of heads of terms, there’s not really much between the parties in that respect. We are working assiduously towards getting an agreed budget of the scope of the works, getting a head of terms agreed. It is sorting out an agreement which achieves all the interests I’ve identified. But it does require cooperation from the club. That includes providing us with their – not their accounts, not their published accounts, which are just the overall accounts – their operating accounts, profits and losses, how the club operates, what mechanisms are going to be there to deliver the community asset for the benefits of the community and the details of that to enable an overall agreement to be reached.

454. Just on that last points, can I just assist in answer to my Lord, Lord Snape’s question about an overall assessment of where the Secretary of State’s current judgment lies? It’s important to note that in that letter at page 97, which refers to – I’ll refer your Lordships to the paragraph 2, ‘You have been in discussion with HS2 Ltd, who are working on behalf the promoter of the Bill, and the Ministers have been made aware of the most recent cost estimates for the Ingestre Park Golf Club reconfiguration provided by the International Design Group. I can confirm that the Secretary of State is committed to the AP2 reconfiguration scheme but I also want to reiterate the conditions upon which the offer of reconfiguration was made.’

455. It was clear from that that the general cost estimates at that stage are ones the Ministers were aware of when identifying their commitment, but it’s subject of course to the overall package of establishing the community asset principles, which are then set out in the letter as part of an overall agreement. In my submission, that is an entirely reasonable approach to take. It does consequently require both parties to cooperate. We are willing to do so. It doesn’t require the intervention of the Committee, in my submission, but it does require continued cooperation by both parties, which for our part

we are keen to progress. Unless I can help you further with any of the details that you've heard about the evidence, that's my response to the requests that are sought.

456. THE CHAIR: Thank you very much indeed. Mr Furnell, do you have any closing comments please?

Closing submissions by Mr Furnell

457. MR FURNELL: Thank you, Lord Chairman. Yes, I wish to start by reiterating our desire to resolve matters and move things forward. That is the central message we want to portray to you today. You'll have heard a lot of concerns but that is our central message. Today has been about asking you and HS2 to treat us fairly. We've talked about having the same treatment as Whittington. We've talked about leaving us where we were before, the basis Ms Thornton's comment to us in 2018. We ask that we are treated fairly in those respects.

458. You've heard today from two golf experts and they clearly have slight differences of opinion. I just remind you briefly that Mr Walker used lots of reference in his presentation to 'luck' and 'good fortune'. We don't think that's the basis for helping us move forward.

459. Our immediate future is that next month we could well see the start of the surveys that have been talked about. From January to September next year, 2021, Cadent will be arriving and subsequently in 2021 further works kick in. That's the reality.

460. Two things in closing, very final comments. We wish to, in the light of today, update the recommendation we set out in A10(7) item 2 relating to a delay of any works to that delay purely being a request to push back the Cadent utility works to January 2023. So that is a specific update we'd like to offer before closing.

461. My Lord, to use a golfing analogy, the pace of play has been snail-like. We've been standing on the tee for months and years now waiting to get our future sorted out. Today is our last formal opportunity to ask you to help us crack on with that and to help our staff and our members and in so doing help the delivery of Phase 2A. Thank you.

462. THE CHAIR: Well thank you very much. I think we've now reached a stage

where on behalf the Committee I can thank both you, Mr Furnell and Mr Strachan for your presentations. Of course we'll consider very carefully the points that you particularly Mr Furnell have been putting before us, including your adjustment to request 2. I think that's as far as we can take proceedings today. What I propose to do is to adjourn this sitting of the Committee. We will meet again tomorrow, Thursday 3 September at 10.30 a.m. So that being the position, I suggested we close this session now.