

RE: EAST-WEST RAIL 2 INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF NETWORK RAIL

A. INTRODUCTION

1. The purpose of the draft Order before this Inquiry is to provide Network Rail and its EWR Alliance partners with the powers they require in order to deliver the second phase of the East West Rail programme. In technical terms, Network Rail has applied for: (a) the Network Rail (East West Rail Bicester to Bedford Improvements) Order (the “Order”);¹ (b) deemed planning permission for EWR2 to be authorised by the Order;² and, (c) Listed Building Consent for works to Quainton Road Station, Ridgmont Railway Station and Woburn Sands Railway Station – together “the Order Scheme”.
2. This second phase of East West Rail, known as EWR2, will complete development of the western section of East West Rail by 2024. From 2023, fast passenger services will run twice hourly from Oxford to Milton Keynes and hourly from Oxford to Bedford. From 2024, fast passenger services will run hourly from Aylesbury to Milton Keynes. The railway will also provide capacity for freight services.
3. EWR2 passenger services will serve stations at Oxford, Oxford Parkway, Bicester Village, Milton Keynes, Bedford and Aylesbury; a new station at Winslow; and upgraded stations at Bletchley, Woburn Sands, Ridgmont and Aylesbury Parkway. Passenger services will operate at speeds of up to 100mph between Bicester and Bletchley, up to 90mph between Aylesbury Vale Parkway and Claydon, and up to 60mph between Bletchley and Bedford.

¹ Pursuant to ss1 and 5 of the Transport and Works Act 1992.

² Pursuant to s90(2A) of the Town and Country Planning Act 1990.

4. The Order Scheme is described in detail in the Environmental Statement (“ES”), Volume 2.i, “Project Wide Assessment”, Chapter 2. Chapter 2 should be read with Figures 1.1 to 2.3 in Volume 4 of the ES. For ease of assessment, the Order Scheme has been divided into six sections, known as Route Sections 2A to 2E and the HS2 Interface Area. These route sections are shown schematically on Figure 1.2 in Volume 4 of the ES. The Order Scheme is shown on the series of plans at Figure 1.1.
5. There are two detailed map books which will be of assistance in understanding the detail of the Order Scheme:
 - a. The Scheme Drawings³ – these show the scheme in detail broken down into 134 map sheets which correspond to the route sections and the off-route temporary highway works; and,
 - b. The Environmental Design Drawings⁴ – these show the environmental elements of the scheme design broken down into 98 map sheets; and correspond to the Environmental Mitigation Schedule in Appendix 2.3 in Volume 3 of the ES.
6. Construction of the Order Scheme will begin with the reinstatement and upgrade to modern standards of the existing railway corridor between Bicester and Bletchley, programmed to begin in late 2019 and to be completed by the end of 2023. A programme of more limited improvements and associated highway works to the existing, operational railway between Bletchley and Bedford will take place within that four-year period. The works needed to upgrade the existing railway corridor between Claydon Curve and Aylesbury will be carried out between mid-2021 and the end of 2024. Construction of a section of the EWR2 railway at Calvert in Buckinghamshire has already been authorised by the High Speed Rail (London-West Midlands) Act 2017.⁵ That part of the works is known as the HS2 Interface

³ ES, Volume 4, Scheme Drawings.

⁴ ES, Volume 4, Environmental Design Drawings.

⁵ The HS2 Act.

Area. Works within the HS2 Interface Area will also have been completed in time to enable EWR2 services to begin operation from 2023 and 2024.

7. These Closing Submissions are structured in the following way:
 - a. First, Network Rail's response to each of the issues set out in the Statement of Matters, dated November 2018;
 - b. Second, the Statements of Common Ground agreed between Network Rail and various parties;
 - c. Third, Network Rail's response to objections made at the Inquiry; and,
 - d. Fourth, Network Rail's response to objections made by those not appearing at Inquiry.

B. STATEMENT OF MATTERS

(1) The aims of, and the need for, the proposed upgrade of the partially disused Bicester to Bletchley to Bedford and Aylesbury to Claydon Junction routes, together with the construction of a new station at Winslow, platforms at Bletchley and Aylesbury Vale Parkway; and platform extensions at Woburn Sands and Ridgmont Stations, known as the East West Rail Western Section Phase 2

8. Chapter 5 of Network Rail’s Statement of Case states the case for the Order Scheme. The Proof of Evidence of Martyn Angus, Network Rail’s Principal Programme Sponsor for the Order Scheme, explains the need for and the key objectives of the Order Scheme.⁶ This was expanded upon in his oral evidence. His evidence on these matters was not substantially challenged. He was supported by the evidence of Alex Macfarlane, Head of Business Case and Benefits for the East West Rail Company Limited (EWRCo). Mr Macfarlane introduced the report “The Case for East West Rail, Western Section Phase 2” (December 2018), which states the strategic and economic case for the Order Scheme. Mr Macfarlane summarises the key elements of the strategic and economic case for the Order Scheme in his Proof of Evidence.⁷ His evidence was not substantially challenged at the public inquiry.
9. The need for the Order Scheme rests on the following matters:
- a. The need to improve public transport connectivity between Oxford, Milton Keynes, Bedford and Aylesbury;
 - b. The need to support and stimulate economic growth across the Oxford-Cambridge Arc and to enable that region to realise its full economic potential in the national interest;
 - c. The need to support and complement the government’s wider programme of investment in the Arc; and,
 - d. The need to reinstate the railway along the existing rail corridor between Oxford, Bletchley, Milton Keynes, Bedford and Aylesbury in order to facilitate and support planned short- and medium-term housing and

⁶ Proof of Evidence of Martyn Angus (NR53), pp18-20.

⁷ Proof of Evidence of Alex Macfarlane (NR56).

economic growth promoted through current and emerging development plans of local planning authority members of the EWR Consortium.

10. The Order Scheme enjoys unequivocal support in both national and local transport and planning policy as a key element of transport infrastructure to be delivered in order to meet those needs. We summarise those policies below.
11. In 2017, the Government responded to the National Infrastructure Commission's report 'Partnering for Prosperity: A new deal for the Cambridge-Milton Keynes-Oxford Arc' by endorsing the principle of accelerating delivery of EWR2 to see the first passenger services operating in 2023. The EWR Consortium gave evidence to the public inquiry expressing its strong support for the Order Scheme.
12. The Order Scheme will play a key role in transforming the Oxford-Milton Keynes-Cambridge Arc. It has widespread support at all levels of government and within the wider community.
13. The key objectives of the Order Scheme are set out in the Proof of Evidence of Martyn Angus.⁸ In summary, these are:

- a. **First, to improve east-west rail connections.**

The main objective of the Order Scheme is to improve east-west public transport connectivity through rail links between Oxford, Bicester, Bletchley and Milton Keynes, and between Aylesbury, Bletchley and Milton Keynes.

EWR2 solves the current problem of difficult, slow and unreliable trips across the east-west corridor of England. Commuting by rail between key hubs in this east-west corridor is currently almost non-existent. This key area of economic activity does not function as a single labour market.

⁸ Proof of Evidence of Martyn Angus (NR53), pp18-19, §§5.1.1-5.1.4. These can also be found at §5.4 of Network Rail's Statement of Case. The specific need for, and benefits of, the new station at Winslow, platforms at Bletchley and Aylesbury Vale Parkway and platform extensions at Woburn Sands and Ridgmont Stations can be found in the Proof of Evidence of Martyn Angus (NR53), p29, §§6.6.5-6.6.6.

EWR2 will alleviate these problems by improving east-west public transport connectivity through rail links between Oxford, Bicester, Bletchley and Bedford, and between Aylesbury, Bletchley and Milton Keynes. Current journey times by train and by car will be very substantially reduced.

b. **Second, to meet initial forecast passenger demand through new and reliable train services.**

The Order Scheme has been planned and assessed to support the current and proposed service pattern stated in the ES,⁹ with passenger services assumed to come into operation from 2023 and to grow to full operation by 2035. The Order Scheme will help to meet projected increases in travel demands driven by population growth and planned housing development.

EWR2 will provide fast and frequent passenger services between Oxford, Bicester, Milton Keynes, Bedford and Aylesbury.

c. **Third, to stimulate growth across the Oxford-Cambridge arc.**

This corridor has been earmarked by the National Infrastructure Commission as a national priority due to its world-class research, innovation and technology. The Oxford-Cambridge arc can compete on the global stage as a single, knowledge-intensive cluster. The Order Scheme will have a significant role in its transformation by stimulating economic growth, housing and employment.

The Oxford-Cambridge corridor has undergone comparatively high population growth in the last 30 years. Yet notwithstanding higher than average house-building rates, there is a severe undersupply of housing. This has led to prospective workers being priced out of local markets, restricting employers' access to labour. EWR2 will play a key role in

⁹ ES, Volume 2.i, Project-wide Assessment, Chapter 2, pp2-56 – 2-58.

unlocking the constraints that result in this under-supply of housing by enabling the local infrastructure needed to release land for new housing to be served by fast and efficient new train services. The Government's ambition is for one million homes to be built in the area by 2050. Transformational housing growth has the support of the local authorities. The Consortium supports the Order Scheme as a key driver to its delivery.

- d. **Fourth, the Order Scheme will contribute to improved inter-regional passenger connectivity and journey times.**

EWR2 will facilitate interchange between the Great Western network at Oxford, the Chiltern Mainline at Bicester, the London to Aylesbury line at Aylesbury, the West Coast Main Line at Bletchley and the Midland Mainline at Bedford. This will avoid the need for time-consuming interchanges via London and other remote parts of the network.

- e. **Fifth, as well as maintaining current capacity for rail freight, the Order Scheme makes possible new freight flows between Oxford (Great Western Mainline), Milton Keynes (West Coast Mainline) and Bedford (Midland Mainline).**

This has the potential to remove a number of lorries that would otherwise take up space on congested local and national roads.

- f. **Sixth, the Order Scheme makes appropriate provision for future demand and economic growth.**

An appropriate balance is struck between the initial capital costs of the Order Scheme and planning for future development of the network, such as ensuring that new overbridges installed as part of the Order Scheme are built to a sufficient specification to allow for future electrification.

- g. **Seventh, the Order Scheme will provide a sustainable transport solution to support economic growth.**

The Order Scheme will positively contribute to tackling climate change by minimising the potential adverse impacts of growth through a more sustainable means of travel than other alternatives.

14. In summary, there is a compelling case for the Order Scheme to reinstate to modern engineering and environmental design standards an operational railway along the existing railway corridor between Bicester, Bletchley and Milton Keynes and between Aylesbury, Bletchley and Milton Keynes. That compelling case extends also to the engineering and environmental works proposed under the Order Scheme, in order to enable the increased use of the existing Marston Vale Line between Milton Keynes and Bedford as proposed under the Order Scheme. It is in the public interest to reinstate the railway as proposed under the Order Scheme and to bring this unused or under-used railway infrastructure back into effective use, in order to realise the aims and objectives evidenced by Mr Angus and Mr Macfarlane.
15. Authorisation of the Order Scheme will present opportunities for Network Rail, local planning authorities and developers along the line of route to work together, enabling developers to plan and deliver the further infrastructure needed to unlock their development sites in a timely manner. In this way, the opportunities created by public investment in the railway may be realised in the public interest. Network Rail will continue to work together with landowners and developers to reach appropriate agreements to enable developers to realise and build on such opportunities. It is, nevertheless, essential that the Order makes the necessary provision to enable Network Rail to construct and deliver the Order Scheme in a timely and economic manner. Where, therefore, Network Rail, landowners and developers have been or are able to reach agreement to take forward opportunities of the kind we have summarised above, it is plainly necessary that the Order should continue to enable Network Rail to complete construction of the Order Scheme in accordance with its powers: (i) to enable existing public and private rights affected by the works authorised by the Order to be properly safeguarded and accommodated (e.g. through the provision of grade separated or alternative at grade crossings where the Order proposes the closure of an existing level crossing); and

(ii) to allow for the risk that matters do not develop as envisaged by the parties to such agreements.

(2) The main alternatives considered by NR and the reasons for choosing the proposals comprised in this project

16. The Order Scheme is, fundamentally, a railway reinstatement project; it seeks to reinstate into operation and to modern engineering and environmental design standards an existing railway corridor through Route Sections 2A, 2B and 2E. Through Route Sections 2C and 2D, the Order Scheme is already a live railway. These factors have determined the main parameters of the Order Scheme.
17. The way in which the specific elements of the Order Scheme have been appraised and developed can be seen in the Proof of Evidence of Martyn Angus.¹⁰ The main alternatives considered are set out in ES, Volume 2.i, Chapter 3, §3.1.4. The reasons for choosing the proposals comprised in the Order Scheme are explained in the comparative assessment of those main alternatives in that chapter.

(3) The justification for the particular proposals in the draft TWA Order, including the anticipated transportation, environmental and socio-economic benefits of the project

18. Chapters 3 to 8 of Network Rail's Statement of Case provide a detailed exposition of the justification for the particular proposals in the draft Order. In their proofs of evidence, each of Network Rail's witnesses has given evidence in support of the Order Scheme in respect of matters falling within their respective areas of professional expertise (before turning to respond to specific objections). None of those witnesses was substantially challenged at the public inquiry as to their main evidence in support of the Order Scheme.
19. There has been no significant challenge to the transport and socio-economic case for the Order Scheme. There is a general consensus as to the substantial transport and

¹⁰ Proof of Evidence of Martyn Angus (NR53), pp21-29, §§6.1.1-6.6.8.

socio-economic benefits that the Order Scheme will bring. The Order Scheme is supported at all levels of government.

20. As stated in, “The Case for East West Rail, Western Section Phase 2”, in terms of transportation and socio-economic benefits:¹¹

“1.5 EWR strategic objectives include improving public transport connectivity. It is also a key part of realising the economic potential of the Oxford-Cambridge Arc (the Arc). It complements the government’s wider programme of investment in the Arc, including the ‘Oxford to Cambridge Expressway’, promoted by Highways England under the Roads Investment Strategy.”

21. Furthermore:¹²

“1.8 The benefits quantified in the BCRs presented in this report include transport user benefits and some wider economic impacts in line with DfT’s transport appraisal guidance (WebTAG).

- The majority of the quantified benefits in this report relate to the direct transport impacts of the scheme, **the transport user benefits**. These include improved connectivity and journey times for rail users and benefits related to a reduction in travel by car, compared to the future situation without EWR Phase 2. Changes in expected emissions from cars and rail vehicles are also quantified and included in the transport user benefits.
- **Wider economic impacts** are additional to the direct transport user benefits. They include improvements in productivity through agglomeration – having the effect of bringing people and businesses closer together through improved connectivity and journey times.

1.9 It is also likely that EWR (Phase 2 and the complete programme) will bring other benefits to the Arc. These tend to be harder to quantify, some involve estimating changes in land-use as a result of EWR. These sorts of potential impacts, not quantified in this report, include:

- Enabled development: housing, or commercial development (or redevelopment), which is enabled as a result of the scheme.
- Other wider effects on labour markets, investment and supply chains, these are also areas where EWR has the potential to generate benefits that are beyond those in the transport market.
- Freight benefits: EWR is being built to be able to accommodate rail freight. Phase 2 is likely to provide additional opportunities and cost savings for moving freight by rail, which has the potential to deliver

¹¹ NR109, p4.

¹² NR109, pp5-6.

additional direct benefits, lower costs to freight users, and indirect benefits by removing some freight traffic from the roads.”

22. A number of parties appeared at Inquiry in support of the Order Scheme but with suggestions for how it could be more ambitious. This was the position of Railfuture,¹³ Mr Lindsay Milne¹⁴, Mr John Henderson¹⁵ and Mr Leonard Lean.¹⁶
23. It is inherent in these supporters’ argument that the Order Scheme is justified. The further elements that these supporters urged the Secretary of State to consider were principally electrification, with additional future-proofing of railway structures to enable its later introduction, increased freight usage and the double-tracking of the railway in Route Section 2E.
24. As to electrification, Mr Angus and Mr Croft gave evidence explaining that the Order Scheme draws the correct balance between future-proofing and cost. As to freight usage, the Order Scheme is designed to W12 gauge standards and thus enables future freight operations. The real constraint on freight operations lies not with the Order Scheme but within capacity demands on the wider rail network. That is a matter that lies outside the scope of the Order. As to double-tracking the line from Aylesbury to Milton Keynes, current and projected passenger demand does not support the inclusion of that element within the Order Scheme (powers exist under the HS2 Act to enable double-tracking of the railway through the HS2 Interface area south of Calvert). **NR211** responds to the more detailed points raised in this context. These points raised by supporters of the Order Scheme do not call into question the justification for the Order.
25. With respect to environmental benefits, EWR2 will bring the benefits that are inherent to railways. In particular, it will contribute to tackling climate change, by minimising the potential adverse impacts of growth through providing a more sustainable means of travel than other alternatives, particularly the private car.

¹³ SUPP/327.

¹⁴ SUPP/310.

¹⁵ SUPP/373.

¹⁶ SUPP/415.

26. EWR2 uses an existing railway corridor and, to the east of Milton Keynes, an existing operational railway. The existence of this clear, well-defined route means that the extent of the works required, and therefore the amount of disruption, is considerably more limited than would be the case with a completely new alignment.¹⁷
27. The principal potential environmental impacts of the Order Scheme during construction and operation are landscape and visual impacts, impacts on ecology, noise and vibration and flood risk. In order to limit these impacts to the reasonable minimum, the environmental design of the Order Scheme is founded upon the established hierarchy of avoidance, mitigation and compensation.¹⁸ The approach to limiting environmental impacts through embedded design measures and construction management is explained in chapter 7 of the Statement of Case and in evidence by Andrew Shuttleworth¹⁹ (whose evidence was not substantially challenged in these matters).
28. Furthermore, as detailed below, Network Rail has committed to delivering a biodiversity net gain of 10%.²⁰ Delivery of measures to fulfil this commitment will be controlled under a condition to be imposed on the deemed planning permission. In light of the scale of the Order Scheme, this is a significant environmental benefit.

(4) The extent to which proposals in the TWA Order are consistent with the National Planning Policy Framework, transport policies, local planning and environmental policies

29. There is unanimous policy support for EWR2 at the national and local level. The policy position is stated in Chapter 5.1 of the Statement of Case. In the Proof of Evidence of Jill Stephenson, she explains the national planning and transport policy context and the local policy context in which the Order Scheme is brought forward.²¹ She provides her planning policy appraisal in Section 6 of her Proof of Evidence.²²

¹⁷ Proof of Evidence of Simon Croft (NR51), p6, §§3.1.1-3.1.3.

¹⁸ ES, Volume 2.i, Project-wide Assessment, Chapter 2, pp2-28 - 2-32, §§2.4.78-2.4.96.

¹⁹ Proof of Evidence of Andrew Shuttleworth (NR48), pp7-12, Sections 1.4 to 1.5.

²⁰ NR207 -209.

²¹ Proof of Evidence of Jill Stephenson (NR49), pp8-21.

²² Proof of Evidence of Jill Stephenson (NR49), pp22-25.

In oral evidence, Jill Stephenson gave a comprehensive survey of the relevant policies by reference to her appendices. The overall theme is one of strong policy support for EWR2, the need for which is seen as increasingly urgent in more recent and emerging policies. All relevant policies, as identified in the oral evidence of Jill Stephenson, are set out below.²³ Jill Stephenson's evidence on the planning and transport policy support for the Order Scheme was not substantially challenged at the inquiry.

(a) National policy

30. The Order Scheme complies with the following national policies:

i. *National Infrastructure Delivery Plan 2016-2021*:²⁴

31. At p36, East West Rail is listed under the heading "*Key projects and programme*". It states that, "*Phase 2 linking Oxford to Bedford and Milton Keynes is being developed and construction will start as soon as possible.*"

32. At §11.8 (p72), East-West Rail is listed as one of the significant projects that "*will help to unlock major housing development*".

33. In Table 15.A (p108), East-West Rail is listed as a priority to 2020-21.²⁵

ii. *National Infrastructure Commission - "Partnering for Prosperity: a new deal for the Cambridge-Milton Keynes-Oxford Arc" (2017)*²⁶

34. Page 7 states that, "*Cambridge, Milton Keynes and Oxford are amongst the UK's most productive, successful and fast growing cities...To maximise the economic potential of this arc...we must invest in the continued growth and success of these cities and their surrounding areas.*"

²³ As updated following the Note titled, "Update on Planning Matters" (NR270).

²⁴ NR63 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 2.

²⁵ Although it refers expressly to Phase 1, the fact that this is included as a priority to 2020-21 and that it notes "Phase 1 Complete (2016)" suggests that this is also a reference to EWR2.

²⁶ NR65 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 4.

35. Page 8 states that, *“National investment in the East West Rail project and the proposed Oxford-Cambridge Expressway present a once-in-a-generation opportunity. These schemes will enhance connectivity across the arc, expanding the labour markets of key towns and cities, as well as improving connections with international gateways such as Heathrow.”*

iii. **National Planning Policy Framework**²⁷

36. §11 applies a presumption in favour of sustainable development. For decision-taking, this means *“approving development proposals that accord with an up-to-date development plan without delay”*. For reasons set out in the evidence of Jill Stephenson and below, the Order Scheme accords with all of the local development plans.

37. §59 states that *“it is important that a sufficient amount and variety of land can come forward where it is needed”* in order *“[t]o support the Government’s objective of significantly boosting the supply of homes”*.

38. §72 provides that, in identifying suitable locations for housing development, strategic policy-making authorities should *“consider the opportunities presented by existing or planned investment in infrastructure, the area’s economic potential and the scope for net environmental gains”*.

39. §80 states that, *“Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*. Fn40 at the bottom of p23 also refers to the Government’s Industrial Strategy setting out *“a vision to drive productivity improvements across the UK”*.

40. Section 9 is headed *“Promoting sustainable transport”*.²⁸ Amongst other things, it calls for planning policies:

“[To] Provide for any large scale transport facilities that need to be located in the area examples of such facilities include public transport projects] and the infrastructure and wider development required to support their operation, expansion and

²⁷ NR62 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 1.

²⁸ Pp30-31.

contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements.”

*iv. National Policy Statement for National Networks (2014)*²⁹

41. Other than in relation to nationally significant infrastructure projects, the NPS will constitute a material consideration on a case by case basis: §1.4 (p6). This policy is considered to apply to the Order Scheme based on its scale. The Order Scheme is fully in line with the NPS.
42. At page 9, the NPS sets out the Government’s “*vision and strategic objectives for the national networks*”. It provides that, “*The Government will deliver national networks that meet the country’s long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system.*” This policy is expanded upon at §2.2.
43. At §2.10, the Government concludes that “*there is a compelling need for development of the national works – both as individual networks and as an integrated system*”.
44. Pages 16-19 set out “*The need for development of the national rail network*”. Within this section, §2.35 states that “*Rail transport has a crucial role to play in delivering significant reductions in pollution and congestion*”.
45. §2.38 provides that:

“Substantial investment in infrastructure capacity – particularly on interurban routes between our key cities, London & South East routes and major city commuter routes – will be needed. The maintenance of a competitive and sustainable economy against a background of continued economic globalisation will mean that there is a need to support measures that deliver step change improvements in capacity and connectivity between key centres, by speeding up journey times and encouraging further modal shift to rail. The Government will therefore consider new or re-opened alignments to improve capacity, speed, connectivity and reliability.”

²⁹ NR66 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 5.

(b) Local Policy

46. The Order Scheme complies with the following local policies. To the extent that there exist emerging local plans, these do not conflict with existing local plans on the subject of EWR2.
- i. ***Buckinghamshire Thames Valley Strategic Economic Plan Refresh (2016-2013)***³⁰
47. Section 8 is headed "*Connectivity*". §8.1 repeats that the Buckinghamshire Thames Valley LEP 2014 Strategic Economic Plan said that it would prioritise "*Making our major transport infrastructure fit for our economic purpose*". §8.2 states that they also prioritised investments in transport solutions which "*Improved connectivity between major settlements & key economic centre's [sic]*" and also "*...between major settlements & rail connections*".
48. §8.16 states that "*BTVLEP was one of the first organisations to feed into the Strategic Alliance Transport Strategy highlighting the importance of...East West Rail*".
49. §8.17 states that, "*As an area of unique economic potential, BTVLEP welcomes the NIC review of the Oxford to Cambridge Arc. To fully realise this potential we would hope that the NIC recognises the potential of the area as a whole will have to be addressed. In particular, the largely rural area between the cities has both the desire and potential to enhance this sub-regional growth.*"
50. §8.20 provides that, "*BTVLEP believes the NIC must ensure that the East West Rail investment is fully electrified and delivered without unnecessary delay*".
51. BTVLEP's key connectivity priorities to 2020 are set out at §8.17. This includes, "*Supporting the work of the National Infrastructure Commission in relation to east-west connectivity through the Cambridge – Milton Keynes – Oxford corridor*".

³⁰ NR67 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 6.

ii. ***Buckinghamshire County Council Local Transport Plan 4 (2016-2036)***³¹

52. Under the heading *Maximising our rail network* Policy 4 provides for the following: *“Maximising our rail network - We will work in partnership with key stakeholders to develop a reliable rail transport network that: provides effective access within the county; links us to the rest of the country; and is integrated with other modes of transport, including airports.”*
53. To achieve its aims, it states, at pp29-30, that the County Council will *“Continue to work as an active member of the East West Rail Consortium. Supporting the earliest possible delivery of East West Rail services. East West Rail will support economic growth, new housing and jobs. It connects Aylesbury to Milton Keynes, provides a new station at Winslow, and improves service capacity between Aylesbury and Princes Risborough.”*
54. Policy 5 states that, *“We will work to ensure that HS2 is built with minimal disruption to residents and that it brings benefits to Buckinghamshire: including a new East West Rail station in the north of the county and high-quality restoration of construction sites.”* The reference to a new station relates to Winslow station. The need for East West Rail is then further set in a case study on p31.

iii. ***Connecting Oxfordshire: Local Transport Plan 2015-2031***³²

55. Policy 9 states that, *“Oxfordshire County Council will work with the rail industry to enhance the rail network in Oxfordshire and connections to it, where this supports the county’s objectives for economic growth.”*
56. §109 includes as one of the strategic rail priorities *“Supporting the EWR consortium and Network Rail in the design and delivery of EWR Phases 1 and 2”*.

iv. ***Cherwell Local Plan 2011-2031 (July 2015)***³³

57. Policy SLE 4 (p55) is headed *“Improved Transport and Connections”*. It goes on to state that, *“We will support key transport proposals including...Projects associated with East-*

³¹ NR68 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 7.

³² NR69 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 8.

³³ NR70 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 9.

West rail including new stations at Bicester Town and Water Eaton". This assumes that East-West Rail will be delivered and also provides support for the Order Scheme.

58. §B.78 (p54) provides further support for this by saying that *"New rail investment provides the opportunity to both strengthen the role of the two towns and their locations as places to live and work. The new East - West rail project will strengthen the location of Bicester through a vastly improved connection and service links to Oxford, Milton Keynes and Bedford."*

*v. Aylesbury Vale District Local Plan 2004*³⁴

59. Policy GP25 (p39) states that, *"The Council will resist development that might prejudice the use of the rail route running through the District between Bicester and Bletchley, and the northward link from Aylesbury, by passenger and freight services. In considering proposals for any associated rail development the Council will protect the amenities of occupiers close to the route."*
60. Policy GP26 (p39) states that, *"Provision is made for railway stations on sites defined on the Proposals Map at Winslow, Quainton and Calvert. The Council will resist development that would prejudice station schemes or related rail transport proposals for these sites."* Although there is no proposal for station at Quainton or Calvert within the Order Scheme, Aylesbury Vale District Council does not oppose the Order Scheme on that basis.

*vi. Vale of Aylesbury Local Plan: Submission draft 2013-2033 (2017)*³⁵

61. Policy S2 (p34) is headed *"Spatial strategy for growth"*. At (d), it states that *"Strategic growth and investment will be concentrated in sustainable locations as follows...Winslow*

³⁴ NR71 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 11.

³⁵ NR72 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 10. The hearing on this Local Plan took place in July 2018. The Inspector for that hearing has provided his interim findings which set out modifications which are still being finalised. There is currently no timetable in place for consultation on the proposed modifications. None of the modifications alter the strategic policy support for the EWR2 Scheme, nor its importance in relation to sustainable site allocations.

will accommodate growth of 1,166 new homes, linked with the development of East-West Rail and the new station in Winslow”.

62. Policy T2 (p205) is headed “*Protected Transport Schemes*”. It provides that “*Planning permission will not be granted for development that would prejudice the implementation of existing or protected transport schemes including the implementation of the East West Rail project including new stations and twin tracking to the south of Aylesbury.*” The reference to “*twin tracking to the south of Aylesbury*” is not part of the Order Scheme but is, in any event, aspirational with regards to Policy T2.

*vii. Milton Keynes Core Strategy (2013)*³⁶

63. Policy CS11 (p74) is headed “*A Well Connected Milton Keynes*”. It states that, “*The Council will work with neighbouring local authorities and transport providers to meet the demand for: increased movement of people and goods, improved accessibility across the Borough, improved safety and quality of life and a reduction in the Borough's carbon footprint.*”
64. §11.15, which expands upon Policy CS11, refers to East-West Rail. It states that, “*Milton Keynes Council accepts that East-West Rail will contribute to the growth and development of Milton Keynes and provide an excellent opportunity for the Borough in both the local and regional context which will provide significant economic, environmental and social benefits. Milton Keynes Council is a member of the Joint Delivery Board set up by the East-West Rail Consortium as a means of engagement for the eight authorities East-West Rail will run through.*”

*viii. Plan:MK (2019)*³⁷

65. Since Jill Stephenson gave oral evidence to the inquiry, the Inspector’s Report on the examination of Plan:MK has been published (on 12 February 2019) and Plan:MK has been adopted (March 2019).

³⁶ NR77 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 16.

³⁷ The version submitted for examination can be found at NR88 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 27. This version has now been modified. The references set out here relate to the adopted Plan:MK.

66. One of the 17 key strategic objectives of Plan:MK, set out at p9 and in Appendix F (p255 – objective 12), is *“To manage increased travel demands through...Promoting improvements to public transport and supporting the development of the East-West rail link between Oxford and Cambridge, including the Aylesbury Spur”*. The *“Target”* in this respect is to *“Assist in delivering East West Rail services to Oxford and Aylesbury by 2023/2024”*.
67. In relation to housing development, §4.17 (p15) refers to East-West Rail as a *“key infrastructure project”* and the importance of future housing development not prejudicing its delivery.
68. With respect to Policy SD16 (p68), *“Central Bletchley Prospectus Area”*, §5.36 states that:
“The Council is seeking to deliver transformational regeneration of Central Bletchley over the plan period in conjunction with the proposed delivery of East-West Rail (EWR) services. The key point about EWR is that it will place Bletchley at the intersection of strategic east-west and north-south rail routes, linking key centres of economic activity, both within and beyond the South East Midlands Local Enterprise Partnership area. The increased accessibility and connectivity created by EWR will act as a catalyst for new investment in Bletchley.”#
69. Policy CT1 (p127) is headed *“Sustainable Transport Network”*. It provides that, *“The Council will promote a sustainable pattern of development in Milton Keynes, minimising the need to travel and reducing dependence on the private car”*. In particular, it requires the Council to *“Continue to engage with relevant stakeholders along the East-West Rail line and Expressway to identify operational benefits, which provide additional support for a more sustainable transport strategy and/or economic growth of the city”*.
70. Furthermore, in the commentary to Policy CT5 (p133), headed *“Public Transport”*, §8.42 states that, *“The Council will develop the quality and capacity in public transport by...Working in partnership with transport providers and other stakeholders to bring forward improvements to public transport infrastructure and services in Milton Keynes, and support the development of an East West Rail link and Oxford to Cambridge Expressway.”*

71. Policy CT7 (p135), headed “Freight”, provides that, “Planning permission will not be granted for development that would prejudice the implementation of national infrastructure projects including East West Rail and Oxford to Cambridge Expressway. The Council will continue to work with transport providers and stakeholders to minimise impacts and maximise the potential benefits from the proposal.”

ix. **Milton Keynes: Local Transport Plan 3 (2011 to 2031)**³⁸

72. Policy Ro10 is included under the title “Rail Interventions”, under the sub-heading “Delivery Date – Long Term” (p50). It provides that:

“East West Rail and connections to major urban areas and national networks beyond, including construction of additional platforms at Bletchley and extension of a fifth track between Bletchley and Milton Keynes Central [sic]

The strategic infrastructure project will support economic growth and investment in new jobs and homes; provide for faster journeys between towns and cities to the north and west of London, avoiding the need to travel via the capital; provide an alternative to travel by road, reducing congestion and carbon emissions; and create increased capacity elsewhere on the rail network in the longer term.

East West Rail would link the knowledge economies of Cambridge and Oxford with Milton Keynes. Whilst the western section from Reading to Bedford via Oxford and Milton Keynes (with a spur to Aylesbury) has a stronger business case and is more likely to receive Central Government funding, Milton Keynes Council supports the construction of both sections, and direct services connecting Milton Keynes to beyond both cities. In order for Milton Keynes to receive East West Rail, high-level track and platforms will need to be constructed west of and at Bletchley; and for direct services to Milton Keynes Central, a fifth track will need to be constructed between Bletchley and Milton Keynes Central.”

x. **Bedford Borough Council Local Plan 2002**³⁹

73. Due to the age of this plan, EWR2 is not mentioned specifically. Nonetheless, Policy 9 (p115) states that, “The Borough Council will encourage improved rail services to and from Bedford, the improvement of the Marston Vale line including improved parking provision, and the electrification of the route north of Bedford.” The Marston Vale line, of course, forms part of EWR2.

³⁸ NR81 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 20.

³⁹ NR86 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 25.

74. Further, Policy T10 (p115) provides that, *“The Borough Council will encourage improved access to rail services and support the construction of new stations where these are consistent with the other policies of this plan and contribute to the review of the Bedford Integrated Transport Strategy.”*

xi. Bedford Borough Local Plan 2030 (Draft Plan for Submission)⁴⁰

75. This emerging plan has been submitted to the Secretary of State for examination.

76. Policy 94S (pp152-153), headed *“Transport infrastructure and network improvements”* states that *“The Council will work with its partners, agencies and developers to deliver reduced congestion around the town centre and key strategic routes while promoting sustainable transport modes, through the consideration and the early provision of:…iv. East-West rail scheme (Oxford/Bedford/Cambridge)”*. In the commentary to Policy 94S, at §12.27 (p151), East-West Rail is described as a *“strategic infrastructure project”*.

77. There is, therefore, no conflict between this emerging plan and the current local plan set out above.

xii. Bedford Borough Local Transport Plan (2011-2021)⁴¹

78. The *“Action”* aligned with Policy PT15 states that (p52):

“Support the work of the East West Rail Consortium for the reinstatement of rail services between Oxford / Milton Keynes / Bedford / Cambridge”

79. This is said to support five of the Local Transport Plan’s six objectives as follows (p48):

- (1) To provide a reliable and efficient transport system, in order to support a strong local economy and facilitate sustainable growth;
- (2) To deliver improvements that encourage a reduction in transport emissions and greenhouse gases, in order to tackle climate change and develop a low carbon community capable of adapting to the impacts of climate change;

⁴⁰ NR89 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 28.

⁴¹ NR90 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 29.

- (3) To promote greater equality of opportunity by providing opportunities for all residents to access key services and facilities;
- (4) To contribute to better safety, security and health by reducing death, injury or illness from transport and promoting travel modes that are beneficial to health; and,
- (5) To encourage and support a sustainable transport system that contributes to a healthy natural and urban environment.

*xiii. Central Bedfordshire Core Strategy (2009)*⁴²

80. There are 11 strategic objectives. Strategic objective 7 (pp19-20) calls for, *“Taking account of the rural nature of Mid Bedfordshire, reduce the need to travel, promote more sustainable transport modes, maximise capacity of the existing transport network and add additional capacity and new infrastructure where needed.”* The expressed *“Intended Effect”* of this is listed as *“E-W Rail improvements will have begun with enhanced accessibility through the Marston Vale Line to Milton Keynes and the West Coast Mainline.”* and *“The Marston Vale Line will have become a key element in delivering sustainable growth in the area.”*

*xiv. Central Bedford Council Local Plan 2015-2035 (2018)*⁴³

81. This plan was submitted to the Secretary of State in April 2018. The examination is expected to take place in May 2019.

82. At §5.4 (p31), headed *“Spatial Strategy Approach”*, it is stated that the plan seeks to:

“Deliver around 39,350 new homes through new villages, moderate extensions to existing towns and villages in line with the provision of new infrastructure and to meet identified housing need close to key transport corridors (East-west, A1/East Coast Mainline and M1/Thameslink). This includes 23,528 homes that are already planned for or built.

...

Identify and deliver spatial options and strategic opportunities that could provide for longer term economic and housing growth across the corridor including through a Partial Plan Review. This growth will support, and must be supported by, new strategic infrastructure particularly the Oxford – Cambridge Expressway, A1

⁴² NR82 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 21.

⁴³ NR84 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 23.

improvements and new rail stations/transport interchanges along the East West Rail route."

83. In the section headed "*The Proposed Locations for Growth*", it is stated that (p37):

"6.4.4 The future opportunities in this area for consideration in the Partial Plan Review are related to the proposed future strategic infrastructure investment committed for East-West Rail and the Expressway. This strategy supports the proposed East-West rail route and the Oxford-Cambridge Expressway and in turn the National Infrastructure Commission's central finding that the Oxford-Cambridge area which runs through Central Bedfordshire provides a 'once in a generation opportunity' to be the UK's Silicon Valley, delivering growth in science, technology and innovation.

6.4.5 When delivered, these will strongly support the development potential of further large scale growth in the Marston Vale."

84. Further, under the heading "*Employment and Economy*", it is stated that (p143):

"12.1.15 Our approach to greater economic growth across Central Bedfordshire is further supported by the National Infrastructure Commission final report (November 2017) which re-emphasised that new east-west transport links present a once in a generation opportunity to secure the area's future success, and that to succeed in the global economy, the UK must build on its strengths. The arc connecting Cambridge, Milton Keynes and Oxford, which crosses through the north of Central Bedfordshire, could be Britain's Silicon Valley – a globally recognised centre for science, technology and innovation. Central Bedfordshire Council is therefore actively engaged and working collaboratively with neighbouring authorities and partners to secure future, economic-led growth across Central Bedfordshire and the wider strategic corridor in order to achieve the Governments ambitious growth proposals."

xv. Central Bedfordshire Council Transport Strategy (2011)⁴⁴

85. Under Section 9 (p95), headed "*Major Schemes*", there is a section on East-West Rail. This states that (p101), "*Central Bedfordshire Council will continue to support the East-West Rail Consortium in developing and delivering the Western section."*

- (5) The likely impact of the exercise of the powers in the proposed TWA Order on land owners, tenants and statutory undertakers, including any adverse impact on their ability to carry on their business and undertakings effectively and safely and to comply with any statutory obligations applying to their operations during construction and operation of the scheme. Consideration under this heading should include:**

⁴⁴ NR85 and found in the Proof of Evidence of Jill Stephenson (NR49), Appendices, Tab 24.

a) the impact on roads, including the Strategic Road Network, from increased traffic and construction vehicles

86. Section 2.5 of Chapter 2 in Volume 2.i of the ES gives a detailed description of the arrangements for construction of the Order Scheme, including proposed controls on the construction and transport impacts of the Order Scheme. The draft Code of Construction Practice⁴⁵ and Framework Construction Traffic Management Plan⁴⁶ will be finalised with the approval of the local planning and highway authorities under the terms of conditions to be imposed on the deemed planning permission. Construction access routes, construction compounds and touch points are shown on the plans at Figure 2.1 in Volume 4 of the ES.
87. Chapter 4 of the Statement of Case provides an account of the proposed works in each route section of the Order Scheme. It addresses working hours, construction phasing, programme and compounds. Against this background of published information in the ES and the Statement of Case, Phil Holland explains and justifies the proposed construction arrangements in his proof of evidence.⁴⁷ There was no significant challenge to his evidence at the inquiry.
88. The construction impact and operational impact of traffic generated by the Order Scheme is assessed in the Transport Assessment,⁴⁸ whose findings are reported in Chapter 14 of Volume 2.i of the ES. In his Proof of Evidence, Tim Colles explains the main findings of the Transport Assessment.⁴⁹ As Appendices to his evidence, Tim Colles produced a series of Technical Notes which provide further assessment and consideration of particular traffic and transport issues arising from the construction and operational impact of the Order Scheme. Mr Colles took the inquiry through these Technical Notes in his oral evidence to the inquiry.
89. The position at the close of the inquiry is that substantial agreement has now been reached with both Highways England and with the local highway authorities whose

⁴⁵ ES, Volume 3, Appendix 2.1.

⁴⁶ ES, Volume 3, Appendix 2.2.

⁴⁷ Proof of Evidence of Phil Holland (NR50), p33, §§3.3.1-3.3.7.

⁴⁸ ES, Volume 3, Appendix 14.1.

⁴⁹ Proof of Evidence of Tim Colles (NR55), pp4-12, §§2.1.1-2.3.11.

areas are affected by traffic generated by construction and operation of the Order Scheme. A comprehensive highways condition which will regulate and control the impact of construction traffic has been agreed between Network Rail and those authorities, and will be imposed on the deemed planning permission.

90. The inquiry has heard no evidence questioning the adequacy or effectiveness of the arrangements to control the impact of construction of the Proposed Scheme as set out in the evidence referred to above. Operation of the conditions imposed on the deemed planning permission, which will control construction, traffic, noise, flood risk, land contamination and other impacts, provide a proper and effective basis upon which to proceed with the construction of the Order Scheme.

b) the impacts on land use, including the effects on commercial property and the effect on other planned development in the area

91. Network Rail's witnesses have responded, in their Proofs of Evidence, to objectors who have raised concerns about the impacts of construction or operation of the Proposed Scheme on the existing use of their land: see Sections 7 and 8 of Simon Croft's Proof of Evidence,⁵⁰ in which he explains and justifies the use of land subject to compulsory purchase or temporary possession, where that explanation and justification rests upon the engineering requirements of the Order Scheme; see also Section 4 of Phil Holland's Proof of Evidence,⁵¹ where he explains and justifies the use of land subject to compulsory purchase or temporary possession, where the land in question is required for the purposes of construction of the Order Scheme. In Sections 9.4 and 9.5 of his Proof of Evidence, Andrew Shuttleworth explains and justifies the need for land subject to compulsory purchase or temporary possession for the purposes of environmental mitigation and compensation works authorised under the Order.⁵² At §§4.1.160 to 4.1.205 of her Proof of Evidence, Stephanie Wray explains and justifies the compulsory purchase or temporary possession of land subject to the Order for the purposes of ecological mitigation and compensation.⁵³

⁵⁰ Proof of Evidence of Simon Croft (NR51).

⁵¹ Proof of Evidence of Phil Holland (NR50).

⁵² Proof of Evidence of Andrew Shuttleworth (NR48).

⁵³ Proof of Evidence of Stephanie Wray (NR54).

Finally, in Sections 8 and 9 of his Proof of Evidence, Jonathan Smith provides a comprehensive response to objections lodged by landowners.⁵⁴

92. Of those statutory objectors who raised concerns about the impact of the exercise of the powers under the Order on the existing use of their land or on their existing commercial activities, only the Trustees of the Woburn Estate/Bedford Estate⁵⁵ have pursued their objection at the public inquiry. We address that objection below. Otherwise, Network Rail has provided a written response to those objectors with whom it has not (or not yet) been possible to reach agreement enabling them to withdraw their objection. Network Rail therefore relies both on the written evidence of its witnesses and upon the written responses that have been made to each outstanding objection.
93. A number of non-statutory objectors have raised concerns about the environmental impact of the Order Scheme upon their use and enjoyment of their land. We address the objections of those who appeared at the inquiry, Mr and Mrs West⁵⁶ and Ms Jordan⁵⁷ below. Otherwise, Network Rail has responded in writing to non-statutory objectors.
94. The impact of the Order Scheme on other planned development in the area is dealt with in the Proof of Evidence of Jill Stephenson.⁵⁸ Of those objectors who raised objections to the Order Scheme on the grounds of its alleged impact on the planned or future development of land in their ownership or control, only Gladman Developments Limited,⁵⁹ HC Stock Will Trust⁶⁰ and the Trustees of the Woburn Estate/Bedford Estate⁶¹ presented their cases to the inquiry. We address those objections below. O&H Q6 Limited and O&H Q7 Limited⁶² made a short position statement to the inquiry but did not call evidence in support of their remaining

⁵⁴ Proof of Evidence of Jonathan Smith (NR52).

⁵⁵ OBJ/114.

⁵⁶ OBJ/223.

⁵⁷ OBJ/194.

⁵⁸ Proof of Evidence of Jill Stephenson (NR49), pp33-42, §§8.1.1-8.7.3.

⁵⁹ OBJ228/231.

⁶⁰ OBJ/27.

⁶¹ OBJ/114.

⁶² OBJ/156.

objections. Nevertheless, we set out Network Rail's response to that objection below. Where the owners or developers of land subject to planning or future development have not appeared at the inquiry in support of their objections, we rely upon the evidence given in response to those objections in the Proofs of Evidence of Simon Croft, Phil Holland, Andrew Shuttleworth, Stephanie Wray and Jonathan Smith (as mentioned above). Network Rail has also provided a written response to those objectors with whom it has not (or not yet) been possible to reach agreement enabling them to withdraw their objection. Network Rail therefore relies both on the written evidence of its witnesses and upon the written responses that have been made to each outstanding objection.

95. Of those statutory undertakers who lodged objections against the draft Order, only Thames Water Utilities Limited⁶³ appeared at the inquiry, and in relation only to the terms of Article 19 of the Order, which concerns the proposed regulatory regime for the discharge of water by Network Rail into any watercourse, public sewer or drain. We address that particular issue below. Otherwise, Network Rail has now reached substantive agreement with Thames Water Utilities Limited in relation to its objection. Western Power Distribution,⁶⁴ Anglian Water⁶⁵ and Arqiva⁶⁶ have withdrawn their objections. Network Rail has reached substantive agreement with National Grid.⁶⁷

c) the impact on Public Rights of Way and access to public amenities

96. Both the temporary and permanent impacts of the Order Scheme on public rights of way have been assessed in the Transport Assessment⁶⁸ and the findings summarised in Chapter 14 of Volume 2.i of the ES. The baseline for both public rights of way and the cycle network is stated in Sections 4.7 and 4.8 of the Transport Assessment. Section 14.6 of the Transport Assessment ("PROW Overview") outlines the impact

⁶³ OBJ/226.

⁶⁴ OBJ/24.

⁶⁵ OBJ/175.

⁶⁶ OBJ/186.

⁶⁷ OBJ/204.

⁶⁸ ES, Volume 3, Appendix 14.1.

of the Order Scheme on public rights of way, tabulating both temporary and permanent changes to the public rights of way network. The assessment of the impact of the Order Scheme on public rights of way is set out at §§14.5.35 to 14.5.67 of Volume 2.i of the ES, including detailed assessments for those public rights of way for which the impact of the Order Scheme is assessed to be significant. Mitigation measures are described in §§14.6.23 to 14.6.31 of Volume 2.i of the ES, and the predicted residual effects stated in Section 14.7 thereof. Tim Colles summarises the position in Sections 2.4 to 2.6 of his Proof of Evidence.⁶⁹

97. Subject to the imposition of the agreed highways condition on the deemed planning permission, there are no outstanding objections from local highway authorities in relation to the impact of the Order Scheme on public rights of way. The Ramblers Association⁷⁰ has withdrawn its objection. We address the objection presented to the inquiry on behalf of Cycling UK below.⁷¹ Network Rail has provided a written response to the question raised with Tim Colles during his oral evidence by Fox Land and Property⁷² regarding the existing level of public use of Bridleway 0014 (Pony Crossing) at Bow Brickhill.
98. As regards access to public amenities, we address the outstanding issues in relation to the closure of Woburn Sands School Crossing and Lidlington School Crossing below. We also summarise the written responses provided by Network Rail to those objections which raise concerns about the impact of the Order Scheme on the Cattle Arch.

d) the impact from the cumulative effects of HS2

99. The area within which construction of the Order Scheme interfaces with the construction of HS2 under the powers of the HS2 Act is described in §§2.4.6 to 2.4.9 of Chapter 2 of Volume 2.i of the ES. The approach to assessment of the combined effects of each project is stated in §2.4.9 of that Volume. The key dates during which

⁶⁹ Proof of Evidence of Tim Colles (NR55), pp12-17, §§2.4.1-2.4.2 and §§2.6.1-2.6.8.

⁷⁰ OBJ/168.

⁷¹ OBJ/243.

⁷² OBJ/154.

there will be an interface between the construction programme for HS2 and for the Order Scheme are stated in §§2.5.10 to 2.5.13 of Chapter 2 of Volume 2.i of the ES. Phil Holland also explains the position in his Proof of Evidence.⁷³ The principal potential source of combined impacts from the construction of HS2 and the Order Scheme is in relation to the effects of construction traffic. For the purposes of the Transport Assessment, the HS2 project is treated as an integral part of the baseline: see §§7.2.5 to 7.2.7 of the Transport Assessment.⁷⁴ Section 9 of the Transport Assessment provides a detailed analysis of the impact of HS2 construction and operational traffic. The position is summarised in the Proof of Evidence of Tim Colles.⁷⁵ Volume 2.ii of the ES (HS2 Interface Area) provides an assessment of the HS2 interface with the Order Scheme in relation to other potential areas of environmental impact. No issue was raised at the inquiry in relation to these assessments of the combined effects of the Order Scheme and HS2.

(6) The likely impact of level crossing closures including the impact of closing Woburn Sands School Crossing

100. Section 14.5 of the Transport Assessment⁷⁶ (Level Crossing Assessment) assesses the impact of the Order Scheme on vehicle queuing and delay at level crossings that are proposed to remain in operation; and the impact that closures of level crossings proposed under the Order Scheme will have on vehicles, pedestrians, cyclists and users of public transport. The Level Crossing Assessment also considers the impact of the Order Scheme on London Road, Bicester (see our response to the objection of Langford Village Community Association⁷⁷ below).
101. The impact of closure of footpath level crossings, including Woburn Sands School Crossing and Lidlington School Crossing, is assessed as part of the assessment of permanent changes to the PROW network (see §14.6.6 and following of the

⁷³ Proof of Evidence of Phil Holland (NR50), pp6-8 §§2.1.12-2.1.16.

⁷⁴ ES, Volume 3, Appendix 14.1.

⁷⁵ Proof of Evidence of Tim Colles (NR55), p14, §§2.5.1-2.5.5.

⁷⁶ ES, Volume 3, Appendix 14.1.

⁷⁷ OBJ/142.

Transport Assessment and §14.5.35 and following of Chapter 14 of Volume 2.i of the ES).

102. The Proof of Evidence of Martyn Angus sets out Network Rail's general approach to level crossing closures.⁷⁸ In particular, he states that, *"Throughout all the development stages Network Rail has looked to follow the ORR's guidance on reducing and controlling risk at level crossings."*⁷⁹

103. The Office for Rail and Road's policy, "Level Crossings: A guide for managers, designers and operators" (December 2011) states that:⁸⁰

"Risk control should, where practicable, be achieved through the elimination of level crossings in favour of bridges, underpasses or diversions. Where elimination is not possible, ORR aims to ensure that duty holders reduce risk so far as is reasonably practicable and in accordance with the principles of protection."

104. Network Rail's detailed approach to level crossing closures can be found in the Proof of Evidence of Simon Croft.⁸¹ This states that:

"3.3.1 The project strategy in general has been to target the closure of all existing crossings on route sections where there is a material change in risk as a result in the change in use, increases in train service frequency and change in line speeds..."

3.3.2 The routes between Bicester and Bletchley and between Aylesbury and Claydon (Sections 2A, 2B and 2E) will see substantial change of use, frequency of train services and speed, with regular services being introduced where there were previously little or none. The only credible option in this case is to pursue closure and resort to enhanced protection based on a risk assessment approach as a last resort where closure was not seen as possible, practical or cost effective. As a result of this approach, the project is proposing to close all level crossings on these route sections where it is carrying out major works.

3.3.3 On the section of route between Bletchley and Bedford (Section 2D), there will be an increase in traffic required by the project from 1 train per hour (with occasional freight) to 2 trains per hour (+ freight) but no change in the existing line speed. The approach taken has therefore been risk based using Network Rail's All Level Crossings Risk Assessment Model (ALCRAM) assessment process.

3.3.4 ...Existing crossings that have been identified as High Risk (classified as D4 or above under this process) as a result of their predicted scores were then targeted for closure and a detailed risk assessment review was carried out on each crossing by a specialist consultant, AEGIS, which led to decisions being taken to close some of the existing highways and accommodation crossings.

⁷⁸ NR53, p28, §§6.5.1-6.5.5 and pp40-41, §§10.15.1-10.15.6.

⁷⁹ NR53, p28, §6.5.1.

⁸⁰ NR214, §2 (p5).

⁸¹ Proof of Evidence of Simon Croft (NR51), p7, §§3.3.1-3.3.6.

3.3.5 In addition, other crossings along the route were assessed to see if the project provided a “reasonable opportunity” in line with the ORR policy, to close them where possible...

105. Where a crossing is proposed to be closed, an alternative method for crossing the railway has been identified and this has been assessed for its diversity impacts as part of the overall assessment of the effects of closure.
106. Specific objections in relation to the closure of Woburn Sands school crossing, the closure of Lidlington school crossing and the effect of the Order Scheme on the Bow Brickhill and London Road level crossings are dealt with further below.

(7) The likely environmental impacts of constructing and operating the project

107. The ES, published on 27 July 2018, comprehensively covers the environmental impacts of EWR2. It assesses the likely significant environmental effects of EWR2 on land use and agriculture; cultural heritage; air quality; ecology; noise and vibration; geology, soils and land contamination; landscape and visual impact; water quality and flood risk; and traffic and transport. The ES considers intra-scheme and inter-scheme cumulative impacts, the latter on the basis of Reasonably Foreseeable Future Projects.⁸²
108. The main reports of the ES comprise both a project wide assessment report (Volume 2.i) and assessment reports for each of the route sections (Volume 2.ii). Also of particular interest are the draft Code of Construction Practice (Volume 3, Appendix 2.1), the Framework Construction Traffic Management Plan (Volume 3, Appendix 2.2), the Transport Assessment (Volume 3, Appendix 14.1) and the Environmental Design Schedule (Volume 3, Appendix 2.3).
109. Network Rail published Further Environmental Information (FEI) in November 2018, following further ecological survey work carried out throughout 2018. The FEI includes Part I - Main Report (which updates the ecology chapters in volumes 2i and 2ii of the main ES); Part II (which revises the technical appendices 9.1-9.15 in volume

⁸² ES, Volume 2.i, Project-wide Assessment, Chapter 15.

3 of the main ES and includes an additional appendix 9.16 on Biodiversity Accounting); and Part III (which revises Figures 9.1 to 9.19 in volume 4 of the main ES and adds further figures including Fig. 9.20 Bat Crossing, Static Points and Transect Lines, Fig. 9.21 Bat Transect Survey and Fig. 9.24 Habitat Connectivity).

110. In his Proof of Evidence, Andrew Shuttleworth describes and explains, for each environmental topic, the main findings of the environmental impact assessment set out in the ES.⁸³ He summarises under each environmental heading the likely environmental impacts of constructing and operating the Order Scheme. For ease of reference, for each of the environmental topics (Chapters 6 to 14) in Volume 2.i of the ES there is a summary under the sub-headings “scope of assessment”, “potential effects”, “mitigation” and “residual effects” at the beginning of the chapter, and a table at the end of each chapter which summarises the principal findings.

111. In her Proof of Evidence, Stephanie Wray provides a comprehensive account of the likely ecological effects of constructing and operating the Order Scheme on habitats and species, based upon the ecological impact assessment reported in Chapter 9 of Volume 2.i of the ES; the ecology chapters in each of the Route Section reports (Volume 2.ii of the ES); and the FEI published in November 2018.⁸⁴

(8) The measures proposed by NR to mitigate any adverse impacts of the project including:

a) the proposed Code of Construction Practice

112. The contents of the draft Code of Construction Practice are summarised in the Proof of Evidence of Phil Holland.⁸⁵

113. The draft Code of Construction Practice itself can be found in the ES.⁸⁶ The draft Code of Construction Practice and Framework Construction Traffic Management Plan (Appendix 2.2 of Volume 3 of the ES) will be finalised with the approval of the local planning and highway authorities under the terms of conditions to be imposed on the deemed planning permission. Construction access routes, construction

⁸³ Proof of Evidence of Andrew Shuttleworth (NR48).

⁸⁴ Proof of Evidence of Stephanie Wray (NR54).

⁸⁵ Proof of Evidence of Phil Holland (NR50), p34, §§3.5.1-3.5.6.

⁸⁶ ES, Volume 3, Appendix 2.1.

compounds and touch points are shown on the plans at Figure 2.1 in Volume 4 of the ES. In his Proof of Evidence, Andrew Shuttleworth explains the role of the CoCP and the Construction Environmental Management Plan (CEMP) in controlling the environmental impacts of construction of the Order Scheme.⁸⁷

b) any measures to avoid, reduce or remedy any major or significant adverse environmental impacts of the project

114. This is dealt with in relation to each environmental topic in the Proof of Evidence of Andrew Shuttleworth.⁸⁸ He refers to the mitigation hierarchy at p8, in Table 1.1:⁸⁹

Mitigation action	Description	General examples
Avoid	Measure(s) taken to ensure an identified effect does not occur. This is the most preferable solution.	Design change to avoid land take; consultation with stakeholders to avoid impacts; management of emissions at source, e.g. dust control measures set out in the Code of Construction Practice; re-siting of the construction compound at Fleet Marston to avoid archaeological impacts; re-distribution of construction traffic to avoid Stratton Audley.
Minimise or reduce	Measure(s) taken to decrease the significance of an identified effect. Effects can either become not significant or remain significant, although to a lesser extent. Where effects cannot be avoided this is the next most preferable solution.	Use of continuously welded rails to reduce noise and vibration impacts; provision of noise insulation and barriers; reduction of construction compound (B3) area at Furze Lane; reducing vegetation removal requirements on Route Section 2E; implementation of landscape planting.
Restore or compensate	Where an effect cannot be avoided or reduced, it is proposed to rehabilitate affected areas, or provide alternative equivalent resource elsewhere (and preferably nearby).	Ecological compensation sites; landscape restoration and reinstatement of agricultural land condition after construction; implementation of compensatory flood storage areas.

115. This incorporates the hierarchical process of avoiding, mitigating and compensating for adverse impacts. The specific application of this approach can be

⁸⁷ Proof of Evidence of Andrew Shuttleworth (NR48), p12, §§1.5.1 - 1.5.3.

⁸⁸ Proof of Evidence of Andrew Shuttleworth (NR48), pp13-33.

⁸⁹ This can be found in the Proof of Evidence of Andrew Shuttleworth (NR48), p8, Table 1.1 and in ES, Volume 2.i, Project-wide Assessment, Chapter 4, p4-13, Table 4.5.

seen in the route-specific chapters of the ES.⁹⁰ In the context of ecology, this approach complies with §175(a) of the NPPF.⁹¹

116. The mitigation hierarchy has been built into the design of the Order Scheme. In a section on “*Environmental Design*”, volume 2i of the ES states:⁹²

“2.4.78 The design of the engineering aspects of the Project has sought to avoid environmental impacts wherever possible, and this has been facilitated through an iterative design process informed by the EIA and consultation. This includes repositioning of infrastructure or temporary works to reduce impact on or avoid environmental constraints and use of specific, modern engineering solutions that reduce environmental impacts (for example, using continuously welded rails, which reduce noise and vibration).”

2.4.79 Where it has not been possible to avoid impacts, environmental features have been integrated into the Project design. The environmental design is integral to the overall design of the Project, and has been created using the design objectives, considerations and principles that are set out in the Environmental Design Statement...The design itself is illustrated on the Environmental Design Drawings...and is accompanied by an Environmental Design Schedule...which sets out the purpose and requirement for each element of mitigation.”

117. In his Proof of Evidence, Andrew Shuttleworth explains the proposed mitigation measures for each of the following categories: land use and agriculture, cultural heritage, air quality, noise and vibration, geology and land contamination, landscape and visual impact, and water quality and flood risk.⁹³ Chapter 16 of Volume 2.i of the ES “Summary of Mitigation” includes a comprehensive table (Table 16.1) of the full range of mitigation measures to be applied in constructing and operating the Order Scheme. The range of mitigation measures and how they have been or will be secured is summarised in §§16.1.1 to 16.1.4 of that chapter.

⁹⁰ ES, Volume 2.ii, Route Section Assessments, Routes 2A-2E and HS2 Interface Area.

⁹¹“175. When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.

⁹² ES, Vol 2.i, Chapter 2, p2-28. Greater specifics can be seen in the Proof of Evidence of Andrew Shuttleworth (NR48), pp8-12, §§1.4.10-1.4.26 with respect to “*Land use and agriculture*”, “*Landscaping and ecology*”, “*Noise and vibration*” and “*Water quality and flood risk*”.

⁹³ Proof of Evidence of Andrew Shuttleworth (NR48).

118. Andrew Shuttleworth explains that landscape and ecological mitigation measures have been treated as an interrelated aspect of the environmental design of the Order Scheme⁹⁴. In her Proof of Evidence, Stephanie Wray states the mitigation measures that are included in the Order Scheme to avoid, reduce or remedy impacts on interests of ecological importance affected by the construction or operation of the Order Scheme.⁹⁵ Dr Wray explains the mitigation proposals under each topic heading in Part 3 of her Proof of Evidence. Dr Wray has produced (as Appendix A to her Proof of Evidence) a comprehensive register of ecological mitigation commitments. Appendix A has now been updated and will be incorporated into the ecological management plan that is required to be submitted to local planning authorities for approval, and implemented following that approval, under the terms of the proposed ecology condition to be imposed on the deemed planning permission.
119. Dr Wray also includes, in Section 3.14 of her Proof of Evidence, details of the package of Ecological Compensation Sites (ECS) that are included within the Order Scheme in order to mitigate for the loss of or disturbance to breeding or foraging habitat for species, including protected species, resulting from construction of the Order Scheme. These ECS are designed to replace habitats lost and provide alternative habitats for species affected by the Order Scheme. The ECS are designed to act as “stepping stones” along the Order route and to promote East/West connectivity for wildlife and biodiversity. The locations of ECS are shown on the Environmental Design Drawings and on Figure 9.24 in Part III of the FEI. Details of the rationale for each ECS, its purpose and proposals for its future management are included in the updated Technical Appendix 9.13 (v2) in Part II of the FEI. Section 2 of Appendix 9.13 (v2) summarises the criteria upon which ECS have been selected for inclusion in the Order Scheme.
120. In assessing the operational impacts of the Order Scheme, Network Rail has used the operating characteristics set out in the ES, Volume 2.i, Chapter 2, p2-57, Table 2.15. In this way, the likely environmental impacts of the operation of the Order

⁹⁴ Proof of Evidence of Andrew Shuttleworth (NR48), pp8-12, §§1.4.10-1.4.26.

⁹⁵ Proof of Evidence of Stephanie Wray (NR54).

Scheme, in particular noise and vibration, have been assessed on the assumption of full service operation. Network Rail has done this to make sure it has used the reasonable worst-case assessment.

121. In relation to noise, where the impact of operational noise requires mitigation in order to comply with the Noise Policy Statement for England, noise attenuation will be provided in the form of 2.5m high acoustic barriers. In particular, in locations in Route Sections 2B and 2C there are predicted to be significant adverse effects at groups of properties. Noise insulation packages will be provided to individual properties where significant adverse effects are predicted: see Chapter 10 (Noise and vibration) of Volume 2.i of the ES, Section 10.6. The location of acoustic barriers is shown on the Environmental Design Drawings. Mr Shuttleworth summarises the mitigation measures included in the Order Scheme to address operational noise and vibration in §§1.4.19 to 1.4.25 of his Proof of Evidence (NR48).

122. In §1.4.26 and section 8 of his Proof of Evidence, Mr Shuttleworth explains the mitigation measures to address potential impacts on water quality and flood risk, including the provision of Compensatory Flood Storage Areas (CFSAs) within the design of the Order Scheme. The location of CFSAs is shown on the Environmental Design Drawings. Network Rail has agreed a Statement of Common Ground with the Environment Agency.

c) whether, and if so, to what extent, any adverse environmental impact would still remain after the proposed mitigation

123. Residual effects that are predicted to remain after the proposed mitigation measures are identified in the final section of each environmental topic chapter in Volumes 2.i and 2.ii of the ES. A summary of residual effects is set out in the Summary of Findings that is included at the beginning of each environmental topic chapter. In his Proof of Evidence,⁹⁶ Andrew Shuttleworth details the “*Significant residual effects*”, following mitigation, with respect to each of the following categories: land use and agriculture, cultural heritage, air quality, noise and vibration, geology and land

⁹⁶ Proof of Evidence of Andrew Shuttleworth (NR48), pp13-33.

contamination, landscape and visual impact, and water quality and flood risk. Stephanie Wray provides similar information in section 3 of her Proof of Evidence in relation to impacts on habitats and species.

d) any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of statutory undertakers

124. Schedule 16 to the draft Order contains Protective Provisions for the protection of electricity, gas, water and sewerage undertakers, for the protection of operators of electronic communications code networks and for the protection of drainage authorities and the Environment Agency. Information on protective provisions in the draft Order is given in Section 3.2 of the Proof of Evidence of Phil Holland.⁹⁷

(9) The adequacy of the Environmental Statement submitted with the application for the TWA Order, together with the further environmental information provided in support of the Order, having regard to the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, and whether the statutory procedural requirements have been complied with

125. Network Rail has complied with the procedural requirements in the Transport and Works Act 1992 and Rules 6 to 7A and 11 and Schedule 1 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006: see §1.7.10 and Table 1.2 on page 1-8 of Volume 2.i of the ES.

126. The scope of the EIA, the overall methodology of assessment and a summary of public consultation is set out in Chapter 4 of Volume 2.i of the ES. The ES provides a comprehensive and detailed assessment of the likely environmental effects of the construction and operation of the Order Scheme both in its own right and cumulatively with other projects. The interface with the works authorised within the HS2 Interface Area under the HS2 Act has been assessed. Further environmental information and assessment has been reported in the FEI published in November

⁹⁷ Proof of Evidence of Phil Holland (NR50), p32, §§3.2.2-3.2.5.

2018. The ES and the FEI provide both the public concerned with the Order Scheme and the Secretary of State with sufficient environmental information to enable them to understand, comment on and take into account the likely significant environmental effects of construction and operation of the Order Scheme.

(10) Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the MHCLG Guidance on the “Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (published on 29 October 2015, updated on 28 February 2018)

a) whether there is a compelling case in the public interest for conferring on NR powers compulsorily to acquire and use land for the purposes of the project; and

b) whether the land and rights in land for which compulsory acquisition powers are sought are required by NR in order to secure satisfactory implementation of the project

127. In Sections 4 and 5 of his Proof of Evidence,⁹⁸ Jonathan Smith confirms that, in the light of the evidence of Messrs Croft (land and rights required for engineering purposes to enable construction and operation of the Order Scheme), Holland (land required for construction purposes for the Order Scheme), Colles (land required for temporary highway works to enable construction of the Order Scheme), Shuttleworth (land required for environmental design mitigation and compensation of the Order Scheme) and Dr Wray (land required for ecological mitigation and compensation of the Order Scheme), he is satisfied that:

- a. Network Rail has had due regard to paragraphs 12 to 15 of the MHCLG Guidance on the compulsory purchase process and the Crichel Down Rules;
- b. Network Rail has sought to minimise the land and rights to be acquired or used to the extent necessary for the construction and operation of the Order Scheme;

⁹⁸ Proof of Evidence of Jonathan Smith (NR52), pp6-9.

- c. Network Rail has sought to revise and reduce the extent of land take and interference for which powers are sought in the Order Scheme following consultation with affected landowners and occupiers;⁹⁹
- d. The land interests and rights identified by Network Rail are required for the construction and subsequent maintenance and operation of the Order Scheme;¹⁰⁰ and,
- e. The powers of compulsory acquisition conferred by the Order Scheme are necessary for Network Rail to deliver the Order Scheme.¹⁰¹

128. In all the circumstances, and given the compelling need for delivery of the Order Scheme for the reasons that we have summarised above, Network Rail contends that there is a compelling case in the public interest for the conferral of powers to acquire compulsorily and/or temporarily possess the lands and rights included within the Order. We respond below to those objectors who have presented a case to the inquiry that their land is not required for the Order Scheme and that powers of compulsory purchase or temporary possession have not be justified in respect of their land – Gladman Developments Limited (OBJ/228-231); HC Stock Will Trust (OBJ/27); the Trustees of the Woburn Estate/Bedford Estate (OBJ/114).

(11) NR's proposals for funding the project

129. The funding arrangements for the Order Scheme are set out in the Proof of Evidence of Martyn Angus¹⁰² and the Funding Statement.¹⁰³
130. In summary, the Order Scheme is fully funded provided that it has the required consents and continues to be value for money. This was confirmed by the Department of Transport in a letter, dated 9 February 2018.¹⁰⁴

⁹⁹ Proof of Evidence of Jonathan Smith (NR52), p8, §5.1.1.

¹⁰⁰ Proof of Evidence of Jonathan Smith (NR52), p9, §5.1.12.

¹⁰¹ Proof of Evidence of Jonathan Smith (NR52), p7, §4.1.13.

¹⁰² Proof of Evidence of Martyn Angus (NR53), p6, §§2.3.1-2.3.4.

¹⁰³ NR05.

¹⁰⁴ NR05, p2.

(12) The conditions proposed to be attached to the deemed planning permission for the project, if given, and in particular whether those conditions satisfy the six tests referred to in Paragraph 206 of the National Policy Framework

131. The draft conditions originally proposed by Network Rail can be found at Schedule 1 of the Request for Deemed Planning Permission.¹⁰⁵
132. These were revised in order to address matters raised by objectors and in representations. The amended version of the draft conditions can be found in the Proof of Evidence of Jill Stephenson.¹⁰⁶
133. The draft conditions were further revised to take into account additional representations. The most recent version can be found at **NR263**. These satisfy the tests referred to in §206 of the NPPF, as confirmed in the Proof of Evidence of Jill Stephenson.¹⁰⁷ Although the wording of the conditions has been revised since the Proof was submitted, this does not alter their consistency with the NPPF tests as adjudged by Jill Stephenson.

(13) Whether the statutory procedural requirements have been complied with

134. The statutory procedural requirements have been complied with. This is confirmed by **NR205** which includes all of the relevant material.
135. Network Rail consulted widely on the Order Scheme with key stakeholders and the local community from August 2014 to March 2018. The consultation went through early stakeholder engagement followed by three formal consultation rounds. These included 33 events attended by 3,677 people.¹⁰⁸ Furthermore, bespoke targeted

¹⁰⁵ **NR08**.

¹⁰⁶ Proof of Evidence of Jill Stephenson (**NR49**), pp26-31, §7.1.3.

¹⁰⁷ Proof of Evidence of Jill Stephenson (**NR49**), pp31-32, §§7.1.5-7.1.9.

¹⁰⁸ Proof of Evidence of Martyn Angus (**NR53**), p32, §9.1.5.

consultation events have been held in Lidlington, Woburn Sands and Chardon to address specific concerns of local residents. The feedback received from the consultation played a key role in the iterative design process where significant changes were made to the Order Scheme.¹⁰⁹ Network Rail continues to engage.

136. The consultation process, each stage and response are explained in full in the Consultation Report.¹¹⁰

(14) The extent to which proposed works affecting the Listed Building and Conservation Areas are in accordance with the development plan for the area including any 'saved policies'

(15) In relation to the proposed works affecting the Listed Buildings and Conservation Areas, the weight that should be attached to the development plan, and any emerging plans

(16) The extent to which the proposed works affecting the Listed Buildings and Conservation Areas would accord with the National Planning Policy Framework and in particular the desirability of sustaining or enhancing the character or appearance of the heritage assets and Conservation Areas

137. A summary of the Listed Building Applications can be found in the Proof of Evidence of Jill Stephenson.¹¹¹ Importantly, no objections have been received in relation to these applications.

138. The works affecting the Listed Building and Conservation Areas are in accordance with the relevant development plan, the NPPF and the Planning (Listed Buildings and Conservation Areas) Act 1990. The reasons for this are set out in:

- a. Quainton Road Station Heritage Statement.¹¹² An Officer Report, dated 18 October 2018, recommended that the Secretary of State be informed that had Aylesbury Vale DC retained the power to determine the application, it would have granted Listed Building Consent subject to conditions;¹¹³

¹⁰⁹ Proof of Evidence of Martyn Angus (NR53), p32, §9.1.8.

¹¹⁰ NR12.

¹¹¹ Proof of Evidence of Jill Stephenson (NR49), pp6-7, §§2.8.1-2.8.7.

¹¹² NR91. Confirmation that there is compliance with local policy can be found at p27, §6.1.7.

Confirmation that there is compliance with the NPPF can be found at pp26-28, §§6.1.1-6.2.1.

¹¹³ NR265. This is also mentioned in the Proof of Evidence of Jill Stephenson (NR49), p7, §2.8.6.

- b. Ridgmont Station Heritage Statement.¹¹⁴ An Officer Report has recommended that Central Bedfordshire Council supports the application subject to conditions;¹¹⁵ and,
- c. Woburn Sands Station Heritage Statement.¹¹⁶

139. This is confirmed in the Proof of Evidence of Jill Stephenson.¹¹⁷

(17) If consent for the proposed works affecting the Listed Buildings and Conservation Areas is granted, the need for any conditions to ensure they are carried out in a satisfactory manner

140. The Listed Building Consent draft conditions for Quainton Road Station can be found at **NR267**.

141. The Listed Building Consent draft conditions for Ridgmont Station can be found at **NR268**.

142. The Listed Building Consent draft conditions for Woburn Sands Station can be found at **NR269**.

143. These correspond to the draft proposed conditions that are set out in the Proof of Evidence of Jill Stephenson.¹¹⁸

¹¹⁴ **NR92**. The Officer Report does not report any conflict with the development plan. Confirmation that there is compliance with the NPPF be found at pp18-19, §§6.1.1-6.2.1.

¹¹⁵ **NR264**.

¹¹⁶ **NR93**. Confirmation that there is compliance with the NPPF be found at pp20-21, §§6.1.2-6.2.1. There is no suggestion that there is a conflict with the development plan.

¹¹⁷ Proof of Evidence of Jill Stephenson (**NR49**), p7, §2.8.4.

¹¹⁸ Proof of Evidence of Jill Stephenson (**NR49**), p7, §2.8.7.

C. STATEMENTS OF COMMON GROUND

144. Network Rail has agreed Statements of Common Ground or otherwise arrived at a common position with the following relevant local authorities and public bodies.

(a) Oxfordshire County Council and Cherwell District Council¹¹⁹

145. By a document, signed on 28 February 2019, Network Rail agreed a Statement of Common Ground with Oxfordshire CC and Cherwell DC.¹²⁰

146. The only matters on which the parties have not reached agreement are:

- i. Matters relating to the temporary use of land at Mill Mound and the potential effects on the archaeological feature; and,
- ii. Matters relating to the approach of the Order Scheme to the delivery of a net gain in biodiversity.

147. Network Rail's response to these points can be seen at **§§431-433 below**. The parties intend to continue discussions with a view to resolving all outstanding matters of disagreement.

(b) Milton Keynes Council¹²¹

148. By a document, signed on 26 March 2019, Network Rail agreed a Statement of Common Ground with Milton Keynes Council.¹²²

149. The matters on which Network Rail and Milton Keynes Council have not reached agreement are:

- i. Matters relating to Network Rail's proposals for achieving a net gain in biodiversity;

¹¹⁹ OBJ/221.

¹²⁰ NR234.

¹²¹ OBJ/233.

¹²² NR245.

- ii. Matters relating to closure of Woburn Sands school crossing;
- iii. Matters relating to Woodley’s Farm Overbridge; and,
- iv. Matters relating to Bow Brickhill Bridleway crossing.

150. Network Rail’s response to these points can be seen at **§§434-438 below**. The parties intend to continue discussions with a view to resolving all outstanding matters of disagreement.

(c) Buckinghamshire County Council¹²³

151. By a document, signed on 26 March 2019, Network Rail agreed a Statement of Common Ground with Buckinghamshire County Council on the issues originally in dispute between the parties, save for highways and ecology.¹²⁴

152. By a document, dated 10 April 2019, Network Rail agreed a further Statement of Common Ground with Buckinghamshire County Council relating to highways issues.¹²⁵

153. The sole matter on which Network Rail and Buckinghamshire County Council have not reached agreement relates to ecology. This is dealt with at **§224 below**.

(d) Bedford Borough Council¹²⁶

154. A Statement of Common Ground has not been agreed with Bedford Borough Council but this is due to logistical issues. Notwithstanding this, the Borough Council’s letter, dated 5 February 2019, has a similar effect.¹²⁷ This states that *“through ongoing positive dialogue with Network Rail over recent months the Council is now in a position to remove the majority of its objections”*.

¹²³ OBJ/232.

¹²⁴ NR246.

¹²⁵ NR254.

¹²⁶ OBJ/214.

¹²⁷ NR258.

155. It sets out the remaining issues between the parties, as of 5 February 2019, which relate to:

- i. Traffic and transport; and,
- ii. Ecology – net gain.

(e) Natural England¹²⁸

156. By a document, signed on 30 April 2019, Network Rail agreed a Statement of Common Ground with Natural England. This divides Natural England’s original objections into “*Matters which have been resolved*”, “*Matters which the parties agree are capable of being resolved*” and “*Matters which are not yet resolved*”.

(f) Environment Agency¹²⁹

157. By a document, signed on 25 April 2019, Network Rail agreed a Statement of Common Ground with the Environment Agency on the issues originally in dispute between the parties, save for one point.¹³⁰

158. The remaining issue is the wording of paragraph 17(3)(b) of Schedule 16 to the draft Order, which relates to deemed approval by the drainage authority of specified work. This issue is essentially the same as that raised by Thames Water Utilities Limited¹³¹ in respect of article 19(8) of the draft Order. We respond to the Environment Agency on this issue at ~~§§442-444~~ **below**.

¹²⁸ OBJ/242.

¹²⁹ OBJ/178.

¹³⁰ NR271.

¹³¹ OBJ/226.

(g) Highways England¹³²

159. By a document, signed on 26 April 2019, Network Rail agreed a Statement of Common Ground with Highways England.¹³³

¹³² REP/8.

¹³³ NR272.

D. OBJECTORS AT INQUIRY

160. This section deals with the objections heard in the Inquiry.

(a) Natural England¹³⁴

i. General approach to ecological impacts

161. The environmental design of the Order Scheme is supported by the Ecological Impact Assessment described in Chapter 9 (Ecology) in Volume 2.i of the ES.

162. A precautionary approach to ecological impact assessment has guided the provision of mitigation and compensation measures to avoid, limit or offset the impact of the Order Scheme on habitats and species, in accordance with the established environmental design hierarchy and the precautionary principle. Following cross-examination of the various ecology witnesses, it is clear that no party appearing before the inquiry on ecological issues now contends that the Ecological Impact Assessment that provides the basis for the Order Scheme design and the schedule of mitigation and compensation measures is contrary to good practice or approach. A comprehensive list of the proposed mitigation works is summarised in the Proof of Evidence of Stephanie Wray.¹³⁵ This includes general mitigation works as well as mitigation works on specific topics, covering both the construction and operational phases of the Order Scheme. The broad suite of mitigation measures set out has remained constant over time but these have been refined as further survey work and more detailed design has been completed. For example, the FEI has shown that white-clawed crayfish are not present in the Order Scheme area meaning that related mitigation is no longer needed.

163. A 30-year maintenance and management plan will be put in place for each ECS.¹³⁶ This is expected to be sufficient in practice to enable these sites to maintain their

¹³⁴ OBJ/242.

¹³⁵ Proof of Evidence of Stephanie Wray (NR54), Appendices, Appendix A. The Post Construction Management and Maintenance plan for ECSs can be found in FEI, Part II, Technical Appendix 9.13 (v2). This is a high-level description as to how each type of habitat will be managed. There will be specific management plans drawn up for each ECS which will apply the high-level approach to the specific site in question.

¹³⁶ Proof of Evidence of Stephanie Wray (NR54), Appendices, Appendix A, p30.

nature conservation function in perpetuity. After 30 years, these created habitats will have reached a significant level of maturity.

164. Network Rail's preference is to return such land to the previous landowner with the maintenance and management plan in place. This would be secured by legal agreement obliging the landowner to carry out the maintenance work. Such legal agreement would provide for a remedy in the event of the landowner failing to comply with his obligations by, for example, empowering Network Rail to step in to manage the land or transfer responsibility to a local wildlife trust. The means by which Network Rail would monitor the carrying out of these plans will be secured under the terms of the ecological management plan required by the ecology condition. Where, however, the relevant landowner is unsuitable or unwilling to manage the land, Network Rail will either find an alternative agent to manage the land or Network Rail will manage the land itself.

ii. Net gain

165. Following the hierarchical process of avoiding, limiting, mitigating and compensating for adverse impacts, biodiversity accounting is and will continue to be used to assess the overall performance of the Order Scheme against its stated objective of achieving an overall 10% net gain in biodiversity. It is measured by the use of a biodiversity unit, which helps to compare losses and gains. This biodiversity unit takes into account the quality of a replacement, as well as the quantity, thereby taking into account the fact that introduced habitats will take time to mature and to function as effectively as those lost to the Order Scheme. Biodiversity net gain relates to habitats only.¹³⁷ Nonetheless, it is generally accepted that a habitat gain results in benefits for species that live in those habitats.

166. Network Rail has used three alternative metrics to calculate whether there is a net loss/gain in biodiversity units: (i) Network Rail's Biodiversity Calculator (Version 5.10) designed specifically for rail networks; (ii) Defra's Biodiversity Offsetting Metric 2012 - this is the preferred metric of Natural England; and, (iii) Warwickshire,

¹³⁷ Proof of Evidence of Stephanie Wray (NR54), p59, §3.15.5.

Coventry and Solihull Biodiversity Impact Assessment Tool (Version 19.0) – this is the preferred metric of Buckinghamshire County Council.¹³⁸

167. The net loss/gain calculation based on the ES and FEI was based on a very conservative, worst-case scenario. It assumed that nothing would be retained within the red-line boundary and that there would be no on-site enhancement.¹³⁹ On the basis of those assumptions, there was a net loss of 432 units (Network Rail’s metric), 681 (Defra metric) or 984 (Warwickshire metric).¹⁴⁰ The losses were largely concentrated on Route Section 2B.
168. Following an Instruction from EWRCo,¹⁴¹ dated 21 December 2018, and approved by the Department for Transport, Network Rail has committed to delivering a biodiversity net gain.¹⁴² Network Rail has produced a five-stage approach to achieve this:¹⁴³
- a. *Avoidance of habitat loss* – the EWR Alliance has completed a process to reduce the scale of habitat loss, as far as possible, to preserve foraging and commuting habitat for bats. This has preserved a significant percentage of the habitat in Route Sections 2A and 2B. The net loss of habitats will be recalculated as a result;
 - b. *Consultation with Natural England* – the EWR Alliance will agree with Natural England the metric to be used and the appropriate level of gain;
 - c. *Delivery of biodiversity gains on site* – the EWR Alliance will calculate the habitat gains created through the landscape planting and ECS;
 - d. *Delivery of net gain in partnership in the local area* – the EWR Alliance will enter into partnership discussions to deliver habitat creation of appropriate habitats in the local area;
 - e. *Purchase of an offset* – recognising that local people may not want to partner with Network Rail, Network Rail will, alternatively, make an investment into habitat banking for the required number of biodiversity

¹³⁸ Proof of Evidence of Stephanie Wray (NR54), Appendix B, §2.1.1.

¹³⁹ Proof of Evidence of Stephanie Wray (NR54), Appendix B, §§2.2.9-2.2.10.

¹⁴⁰ Proof of Evidence of Stephanie Wray (NR54), §§3.15.30-3.15.31.

¹⁴¹ NR207.

¹⁴² NR208.

¹⁴³ The East West Rail Company has, subsequently, approved this approach: NR209.

units through, for example, the Environment Bank. This would allow Network Rail effectively to specify that the funds should be used for relevant species/ habitats such as bats, woodland etc. A net gain can be guaranteed in this way because it is known that the Environment Bank has sites in the local area to deliver extra units.

169. This five-stage approach complies with the Government policy, as set out in paragraph 175 of the NPPF and its “25 Year Plan to Improve the Environment”,¹⁴⁴ “that the planning system should provide biodiversity net gains where possible”.

170. On the basis of this approach, it is submitted that both Natural England’s and other objectors’ objections (including local authorities) on the issue of net gain have been satisfactorily addressed in line with the current requirements of national planning and environmental policy.

iii. Precautionary approach

171. No linear infrastructure scheme of the scale of the Order Scheme will ever obtain 100% survey coverage or be able to state with certainty its impacts on flora and fauna, at this stage in the development of the project.¹⁴⁵ Consequently, for the purposes of the Ecological Impact Assessment and the FEI, Network Rail has adopted a precautionary approach. This involves taking a reasonable worst-case approach to assessment as to the presence of species, the impacts of the Order Scheme and mitigation and compensation arrangements.

172. By way of example:

- It has been assumed on a precautionary basis that all vegetation within the Order Scheme area will be lost during construction;¹⁴⁶

¹⁴⁴ “A Green Future: Our 25 Year Plan to Improve the Environment”, pp32-33 found in Stephanie Wray’s Proof of Evidence (**NR54**), Supporting Documents.

¹⁴⁵ Stephanie Wray in oral evidence on 12 April.

¹⁴⁶ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-7, §9.3.4.

- Where information is missing as to the existence of fauna or flora or the impacts upon them, a reasonable precautionary approach has been taken. As a result, further surveys are anticipated to decrease the importance of receptors or the level of predicted impact or the significance of the residual effect;¹⁴⁷
- In the case of bats, a reasonable precautionary approach has been used to measure the presence of bat roosts in the Bat Roost Study Area (100m from the Order Scheme boundary). As such, Network Rail has assessed that there is potential for moderate numbers of roosts of common species and smaller numbers of roosts of rarer species and the rarest species. It has further assessed that most of these roosts are likely to be of low conservation significance but a smaller number are likely to be of higher conservation importance, including maternity and hibernation roosts;¹⁴⁸
- In the case of Great Crested Newts (“GCN”), incomplete survey results have led to a precautionary approach being used to assume that there are a further 460 water bodies with populations of GCN.¹⁴⁹

iv. Licensing

173. The test at the *licensing* stage is contained within Regulation 55 of the Conservation of Habitats and Species Regulations 2017. This provides as follows:

“55. – Licences for certain activities relating to animals or plants

(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are –

...

(e) preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

...

(9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied –

¹⁴⁷ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-22, §§9.3.71-9.3.73.

¹⁴⁸ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-43, §§9.4.80.

¹⁴⁹ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-45, §§9.4.86.

- (a) that there is no satisfactory alternative; and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

174. The test at *the development consent* stage – here, the decision whether to make the Order and to grant deemed planning permission – is quite different. Rather, the correct approach for the development consent decision maker to follow is authoritatively stated by Lord Brown in §29 of the Supreme Court’s judgment in *R (Morge) v Hampshire County Council* [2011] 1 WLR 268:

“29...I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers.” (emphasis added)

175. As such, the question is whether a relevant activity is “*unlikely to be licensed*”. Put another way, in the present case, is there an obvious impediment which is likely to be insuperable to the future grant of any species licence that will be required to enable lawful construction (or operation) of the Order Scheme?

176. Lord Brown also expressly set out what does *not* have to be shown at this stage:

“28 Ward LJ dealt with this question in para 61 of his judgment:

‘...If the planning committee conclude that Natural England will not grant a licence it must refuse planning permission. If on the other hand it is likely that it will grant the licence then the planning committee may grant conditional planning permission. If it is uncertain whether or not a licence will be granted, then it must refuse planning permission.’

29 In my judgment this goes too far and puts too great a responsibility on the planning committee whose only obligation under regulation 3(4) is, I repeat, to “have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by” their decision whether or not to grant a planning permission...” (emphasis added)

177. In short, the fact that there remain uncertainties or issues that will need to be addressed in the detailed documentation submitted in support of the actual licence

applications, but which have not yet been addressed given the earlier stage that the Order Scheme has so far reached, is completely consistent with the grant of deemed planning permission. The Secretary of State, as development consent decision-maker, is entitled to proceed on the basis that those uncertainties are able to be resolved and details supplied at the licensing stage itself, and to grant planning permission on that basis.

178. In the present case, Natural England will be the competent authority responsible for deciding whether any requisite species licences should be granted on the application of Network Rail. At the request of Natural England, Network Rail has provided draft licence applications to Natural England at this stage in the development of the Order Scheme. This is to assist Natural England in its understanding of the likely licensing requirements for the construction of the Order Scheme following the making of the Order and the grant of deemed planning permission.

179. In total, Network Rail is seeking the following licences:

- a. *Bats*: two licences are to be sought – (1) the replacement of a significant bat roost at Swanbourne Station with a nearby bat house;¹⁵⁰ (2) a route-wide licence covering the loss or disturbance of low or medium significant roosts across the scheme. In addition, Network Rail is delivering a bat strategy which sets out the activities which are not presently considered to require licensing. In the event that Network Rail encounters a high value roost close to the scheme before or during construction, a further licence application will be made with its own mitigation plan. With regard to incidental loss through collision with trains during the operational phase, Network Rail does not presently intend to make a licence application. In light of mitigation designed at each crossing point, the risk of collision is expected to reduce to an incidental level. This risk is not expected to be such as to impact on favourable conservation status of any affected species of bat. The bat mitigation structure to the south-west of Sheephouse Wood, authorised

¹⁵⁰ ES, Volume 4, Environmental Design Drawings, Sheets 33-34 of 98.

under the HS2 Act,¹⁵¹ will be extended over the Order Scheme. The extension will be constructed by HS2 as part of constructing the main structure, in order to avoid the creation of a sheltered corridor between the HS2 structure and Order Scheme which might otherwise encourage bats to fly into oncoming trains;

- b. *Great-crested newts*: four licences are to be sought for the main route sections – (1) one licence is sought for Route Section 2A; (2) one combined licence is sought for Route Sections 2B and 2C; (3) one licence is sought for Route Section 2D; and, (4) one licence is sought for Route Section 2E;
- c. *Otters*: one licence is to be sought to cover the two resting sites identified in the ES;
- d. *Badgers*: one licence is to be sought under national law for the whole Order Scheme.

180. In the present case, it is reasonable to assume that: (1) construction of the Order Scheme will, following the making of the Order, satisfy the requirements of Regulation 55(2)(e) of the Habitats Regulations – i.e. the need to undertake the authorised works to construct the Order Scheme and thus bring EWR2 into operation will constitute an imperative reason of overriding public interest of a social or economic nature; and, (2) there will be no satisfactory alternative to those works, since the Order Scheme must necessarily be constructed along its defined and authorised route within the Order limits. The second condition (Regulation 55(9)(a) of the Habitats Regulations) is thus likely to be fulfilled. These points were accepted by Suzanne Crutchley in cross-examination.

181. The relevant question, therefore, is whether the evidence before the Inquiry justifies the conclusion that the construction of the Order Scheme in accordance with the requirements of the draft Order, and in accordance with the conditions imposed on the deemed planning permission (including an approved Scheme-wide ecological management plan securing the full range of mitigation and compensation measures identified in Appendix A to the draft ecology condition), will nevertheless be so

¹⁵¹ ES, Volume 4, Environmental Design Drawings, Sheet 78 of 98.

detrimental to bats, GCN and other protected species present in the area affected by the works as to present an unmanageable and unacceptable level of risk to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

182. It is Network Rail's submission that this is manifestly not the position. Dr Wray, speaking with her impressive, highly relevant expertise and experience as an ecologist in relation to the development of railway schemes has explained in evidence to the Inquiry why it is not the position. The Ecological Impact Assessment presented in Chapter 9 of Volume 2.i of the ES, supported by the extensive further survey work presented in the FEI, provides the objective assessment that substantiates her expert judgment. The Inspector is invited so to conclude and to recommend to the Secretary of State.

v. Response to Natural England's Case

183. By the Statement of Common Ground, signed on 30 April 2019, the only matter which is "*not yet resolved*" relates to bats. All other matters have either been resolved or the parties agree they are capable of being resolved. Consequently, to a large extent this overtakes Natural England's Closing Submissions, dated 26 April 2019.
184. This is significant because, as set out at **§§174-177 above**, the test at this stage is whether the relevant activity is "*unlikely to be licensed*". It is not whether "*it is uncertain whether or not a licence will be granted*" nor is it whether "*it is likely that [Natural England] will grant the licence*". In those circumstances, it is only the matter "*not yet resolved*" – bats – which needs to be dealt with and which these submissions will focus on; matters that have either been resolved or the parties agree are capable of being resolved are, by definition, not *unlikely* to be licensed.
185. As summarised in the Statement of Common Ground, Natural England's position is that it has "*reservations over the level of bat survey which has been undertaken, and hence the reliability with which impacts can be predicted and mitigation or compensation provided. This view is presented in its Position Statement dated 9 April 2019.*"

186. Network Rail disagrees with this assessment and, critically, in the light of the Ecological Impact Assessment and Dr Wray's evidence does not accept it can *reasonably* be said that the Order Scheme's impacts on bats are unlikely to be licensed. For the purposes of Network Rail's response, the Inspector is referred generally to:

- i. ES, Vol 2.i, Project-wide Assessment, Chapter 9, Section 9.3 – which refers to assessment methodology;
- ii. ES, Vol 2.i, Project-wide Assessment, Chapter 9, pages 9-39 to 9-43 and 9-59 to 9-61, which refer to the baseline for bats. This has been updated by FEL, Part I, Main Report, pp80-82, pp86-88 (2A), pp91-93 (2B), pp99-100 (2C), pp103-104 (2D), pp107-108 (2E), pp111-112 (HS2);
- iii. ES, Vol 2.i, Project-wide Assessment, Chapter 9, pages 9-76 to 9-81, which refer to the impacts on bats and the suite of proposed mitigation measures for bats during the *construction* phase. This has been updated by FEL, Part I, Main Report, pp83-85, pp88-90 (2A), pp94-97 (2B), pp100-102 (2C), pp105-106 (2D), pp108-110 (2E); and,
- iv. ES, Vol 2.i, Project-wide Assessment, Chapter 9, pages 9-95 to 9-98, which refer to the impacts on bats and the suite of proposed mitigation measures for bats during the *operation* phase. This has been updated by FEL, Part I, Main Report, pp85-86, pp90-91 (2A), p98 (2B), pp102-103 (2C), p106 (2D), p110 (2E), p112 (HS2).

187. Two bat licences have been applied for.

188. The first relates to impacts at Swanbourne Station. In relation to this, Natural England states that "*in the main the proposals are satisfactory. However, there are some changes required before the draft can be approved...Subject to relatively minor changes it is considered that it is likely that this licence could be issued.*"¹⁵² In oral evidence, Stephanie Wray stated this would not seem difficult to resolve. We understood that to be

¹⁵² Natural England Position Statement, dated 9 April 2019 (OBJ/242-5), pp10-11, §3.1.36.

Suzanne Crutchley's position in cross-examination. Consequently, it cannot be said that these impacts are unlikely to be licensed.

189. The second relates to a scheme-wide bat roost licence and is more contentious.¹⁵³ Network Rail makes eleven general points followed by several more discrete points.
190. First, Dr Wray is a bat specialist. She holds a PhD in mammal ecology and is a member of Natural England's Expert Panel on Bats. In 2011 she was awarded the Mammal Society Medal for her work on the effectiveness of mitigation for mammals affected by development projects.¹⁵⁴ This is a significant factor when one comes to consider her professional judgment on the following matters. To the extent that the Inspector has to prefer the evidence of one expert over another, he should prefer the evidence of the specialist in bats: Dr Wray. Put another way, there is no *good* reason to do other than both to accept and to give very considerable weight to her evidence.
191. Second, the development of a large infrastructure scheme, such as the Order Scheme, will necessarily be iterative to a significant degree. The level of information known following publication of the FEI, in November 2018, was greater than the level of information known at the ES stage, in July 2018. Similarly, the level of information known at the licencing stage, in the months and years to come, will be greater than the level of information known now. Any decision at this consenting stage – including coming to a conclusion on whether the grant of a licence is “*unlikely*” – must take this background into account.
192. Third, as confirmed in cross-examination by Suzanne Crutchley, Natural England does not take any objection, in principle, to:
 - a. The matters to be covered by the Ecological Impact Assessment;¹⁵⁵

¹⁵³ Impacts on foraging habitat and commuting habitat are not the subject of a draft licence and Network Rail does not believe that they are a licensable issue. Rather, they are dealt with in the Strategic Bat Mitigation Approach.

¹⁵⁴ Proof of Evidence of Stephanie Wray (NR54), p8, §1.1.2.

¹⁵⁵ ES, Volume 2.i, Chapter 9, p9-3, §9.1.1.

- b. The staged approach in undertaking the Ecological Impact Assessment;¹⁵⁶
- c. The background legislative and policy context pursuant to which Network Rail operated;¹⁵⁷
- d. The assessment methodology used as part of the Ecological Impact Assessment;¹⁵⁸ and,
- e. The precautionary approach in the sense of assuming that all vegetation within the Scheme area will be lost during construction.¹⁵⁹

193. Furthermore, Suzanne Crutchley accepted in cross-examination that:

- i. Network Rail's approach to desk study and field surveys, including Table 9.2, and searches of available data sources represented good practice;¹⁶⁰
- ii. The approach to missing information represented good practice.¹⁶¹ She did qualify this with the caveat that "*insofar as there is a justifiable reason for not accessing a particular area*";
- iii. She had no concerns about the bat survey methodology used in the Ecological Impact Assessment.¹⁶² Indeed, a number of consultative meetings were held with Natural England so that it could express its views on the Ecological Impact Assessment;¹⁶³ and,
- iv. The range of mitigation measures set out in ES, Volume 2.i, Project-wide Assessment, p9-80, in relation to fragmentation and loss of foraging habitat are, in principle, an appropriate menu of measures.

¹⁵⁶ ES, Volume 2.i, Chapter 9, p9-4, §9.1.2.

¹⁵⁷ ES, Volume 2.i, Chapter 9, pp 9-4 – 9-6, §§9.2.1-9.2.8.

¹⁵⁸ ES, Volume 2.i, Chapter 9, p9-6ff, Section 9.3.

¹⁵⁹ ES, Volume 2.i, Chapter 9, p9-7, §9.3.4.

¹⁶⁰ ES, Volume 2.i, Chapter 9, p9-14 – 9-20, §§9.3.39-9.3.49.

¹⁶¹ ES, Volume 2.i, Chapter 9, p9-22, §§9.3.70-9.3.73.

¹⁶² ES, Volume 2.i, Chapter 9, Table 9.4, p9-25.

¹⁶³ ES, Volume 2.i, Chapter 9, Table 9.5, pp9-26 – 9-27.

194. Fourth, in Dr Wray's opinion, the baseline information set out in the ES and FEI is sufficient for a major infrastructure project *of this nature*.¹⁶⁴ These projects will always have incomplete data because they rely on landowners to allow the promoter on. Importantly, she stated that the current level of information was quite typical for where developers would be at this stage for major infrastructure schemes. This is particularly the case for linear schemes, such as railways.
195. By contrast, when asked in cross-examination whether she had personally dealt with a railway scheme subject to either a Transport and Works Act Order or a Development Consent Order, Suzanne Crutchley said "yes" but could not remember any specific schemes; she stated "*I would have to look that up*". At the very least, this demonstrates that her experience of linear schemes is limited and that in turn limits the weight to be given to her oral evidence that Network Rail's survey effort is "*way below what would normally be expected*".¹⁶⁵ Similarly, in cross-examination Suzanne Crutchley accepted both that her experience is principally with licensing and that the level of information for licence applications is likely to be different and significantly more detailed than the level of reasonably available information at the development consent stage.
196. In examination-in-chief, Dr Wray stated that there were two schools of thought as to how a project could deal with a lack of information. One approach was that taken by HS2 Phase 1 where there are large white areas on the map with no information and the project accepts that it has no information for those areas. Network Rail took the second approach: this involved using a combination of survey information, desk study information, any existing records and reports from consultees, and the professional judgment of competent ecologists. Rather than assuming the absence of species, species were assumed to be present.
197. The FEI, published in November 2018, addressed many, but not all, of the limitations in empirical survey data. It was important, in this regard, that assumptions made in the ES – relying on a precautionary approach – did not change significantly in the FEI when greater information had been collected. The FEI did not cause Network

¹⁶⁴ Oral evidence of Stephanie Wray.

¹⁶⁵ Natural England's Closing Submissions, §23.

Rail to report any significant worsening in the level of impact on any species or the need for a significantly greater level of mitigation. This demonstrates the robustness of the precautionary approach taken.

198. In relation to bats, by way of example, the Swanbourne Station roost was assessed as having moderate to high conservation status. In the FEI, this status was confirmed and the licence identifies it as of moderate conservation value. This further supports the coherence of the precautionary assessment adopted.
199. The oral evidence of Dr Wray was that there was an intensive and time consuming exercise of bat survey work undertaken during summer 2018 involving roost surveys, transects along and parallel to the Order Scheme and monitoring of crossing points with night-vision equipment and bat detectors.¹⁶⁶ Even methods that are not normal on most schemes, such as trapping and radio tracking, had been carried out. In cross-examination, Suzanne Crutchley accepted that “*a substantial body of survey work has taken place*”. According to Dr Wray, these gave a good idea as to where roosts were likely to be present because roosts were more likely to be present where there were high levels of bat activity. Although more could always be done, she stated that Network Rail had a good understanding of how bats use the area.
200. One example of where Network Rail disagrees with the approach required by Natural England relates to radio tracking information to assess foraging and commuting habitats. In her oral evidence, Suzanne Crutchley stated that there were gaps in the data relating to radio tracking. The oral evidence of Dr Wray in cross-examination, however, was that the activity data that has been most useful has been transect data and static data. In particular, through static data, one can collect huge amount of data in a non labour-intensive way to find out which species are using the site. In her opinion, radio tracking is not always justified; it is an intrusive research technique which is helpful in certain cases where there is good land access but that it has become overused in consultancy for development projects. Where

¹⁶⁶ Detail on these methods can be seen in FEI, Part I, pp80-82. Heat maps derived from bat transects can be found in FEI, Part III, Figure 9.21A-9.21D. More information and results can be found in ES, Volume 2.i, Project-wide Assessment, pp9-39 – 9-43, §§9.4.56-9.4.80.

there is poor land access – such as in a linear scheme of this type – you will get poor returns. For example, you will not see a huge amount of detail about habitat use or flyways if you cannot get onto the land to triangulate where bats are properly. Notwithstanding this, this information was obtained by Network Rail and relayed to Natural England.

201. Fifth, in response to Natural England’s complaints as to the (in)sufficiency of reasons for gaps in surveys, Dr Wray disagreed in oral evidence with the premise that there are good and bad reasons for gaps in survey data. Natural England’s position has been that if the gaps were due to access not being provided that would be fine but other reasons – such as weather and cows being in the field – would not be acceptable.¹⁶⁷ This is not a coherent position. It is illogical that Natural England can work with the data (or lack of) if arising from a lack of access but cannot work with it if arising from some other reason. In evidence, Dr Wray confirmed that considerable efforts had been made to access all relevant land.
202. Sixth, given the admitted gaps in data, Network Rail has used a reasonable precautionary approach in assuming the existence of roosts. The ES states that:¹⁶⁸

“In the absence of complete field survey data, based on a reasonable precautionary approach, there is potential for moderate numbers of roosts of common species (common pipistrelle, soprano pipistrelle and brown long-eared bat), and smaller numbers of roosts of rarer species (e.g. whiskered bat, Natterer’s bat, Daubenton’s bat and Brandt’s bat) and rarest species (e.g. barbastelle) to be present in the Bat Roost Study Area...Most of these roosts are likely to be roosts of low conservation significance, but a small number are likely to be of higher conservation importance including maternity and hibernation roosts.”

203. One of Suzanne Crutchley’s biggest concerns was the possibility of Network Rail discovering an important maternity colony of a rare species of bat during further survey work within the Bat Roost Study Area. Dr Wray accepted that this remained a risk as Network Rail had not been able to access areas within the Bat Roost Study Area. Notwithstanding this, she stated that it was important to bear in mind the

¹⁶⁷ See Natural England’s Closing Submissions, §23(i), which also talks about justifiable and unjustifiable reasons for survey gaps.

¹⁶⁸ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-43, §9.4.80.

huge amount of survey work already carried out; in Route Sections 2A and 2B on land in Network Rail's ownership extensive survey work had been carried out and surveyors were regularly present throughout the season. She stated that it was unlikely that there would be a very significant colony of bats directly affected on Network Rail's land without its knowledge. On third party land, it is possible that such a colony might exist. Network Rail has tried to address this, however, by making sure that there are continuous corridors of vegetation. Moreover, one has to bear in mind that is in the nature of rare and rarer species (and their roosts) that if they do exist, it is unlikely that there will be that many of them; otherwise they would not be rare species.

204. In cross-examination, Counsel for Natural England asked Dr Wray why, if Network Rail's approach was robust, any developer would ever do roost surveys. Dr Wray's answer was that if comprehensive roost surveys could be carried out, a lot less mitigation would be required. This demonstrates the robustness of Network Rail's approach. It has provided more mitigation than might otherwise be necessary to reduce the risk of unacceptable impacts on bats to an acceptable level.
205. Ultimately, it comes down to the level of risk. Although Natural England says that it is *"not seeking a complete survey effort or a counsel of perfection"*,¹⁶⁹ this, in our submission, is what it is calling for in substance. By way of example:

- a. At §26 of its Closing Submissions, Natural England states that:

"A reasonable precautionary approach is not, by definition, the same as a worse case [sic] scenario. It assumes a likely ecological scenario. A worse case [sic] scenario would require NR to assume that every suitable roosting feature contains the roosts of the rarest species. That is not the assumption which has been applied here (Wray XIC, "it is not inconceivable that an important bat colony could be found...but there won't be hundreds throughout the un-surveyed areas")."

This is a criticism that Network Rail has adopted a reasonable precautionary approach rather than assuming that the rarest species of bat is present in every suitable roosting feature. Such an assumption

¹⁶⁹ Natural England's Closing Submissions, §22.

would be unsound, disproportionate and illogical; as Dr Wray said in oral evidence, if they existed in every roosting feature, they would not be rare/the rarest species;

- b. In oral evidence, albeit in the context of providing suitable habitats for otters, Suzanne Crutchley was asked “So if the risk could be entirely removed, then you would be in a position to say there was no impediment to licensing?”.¹⁷⁰ Her response was “Yes”. This is symptomatic of Natural England’s approach in this case to all species, including bats; and,
- c. In relation to bats specifically, in examination-in-chief Suzanne Crutchley stated that “If those mitigation measures could be effective in all circumstances – no matter what bat species were adjacent to the line or the significance of the impacts – those measures would be suitable in a worst-case scenario. Natural England would accept that as adequate but that is not the case.”¹⁷¹ She further stated that, after being asked why Natural England was maintaining its objection given that Network Rail was now not going to lose all vegetation within the red-line boundary:¹⁷²

“Because the proposals do not in every case ensure that no matter what roosts are present, no matter what the significance of the roosts, the significance of the colonies, they would cater for every eventuality...”

206. This method is simply wrong in principle. It fails to follow the correct approach at the development consent stage, as stated by Lord Brown in *Morge*. It incorrectly sets up certainty as the requisite yardstick, admitting of no risk whatsoever and does, indeed, seek a counsel of perfection. It has the effect of setting up the licensing regime as an insuperable impediment to a large scale infrastructure scheme such as the Order Scheme. Network Rail considers that it has undertaken a sufficiently robust approach so as to reduce the risk to a sufficient degree of control and

¹⁷⁰ Emphasis added.

¹⁷¹ Emphasis added.

¹⁷² Emphases added.

management to justify concluding that the requisite licences are at least likely to be forthcoming.

207. Seventh, Network Rail has demonstrated how it will manage roosts once their presence has been confirmed. Swanbourne Station is a good example of this. This is the way that Network Rail will look to deal with any unknown roosts discovered in future surveys: if a significant roost is discovered, a bat house will be provided in an appropriate location; a minor roost will lead to the provision of bat boxes.
208. Eighth, in terms of foraging and commuting habitat, Network Rail has made sure that there are continuous corridors for bats throughout the Order Scheme during construction and operation.¹⁷³ It has been assumed for design and construction purposes that Route Sections 2A and 2B provide a key commuting and foraging corridor for bats.¹⁷⁴ There will be alternative corridors of vegetation alongside the Order Scheme outside of the railway corridor that will be retained or planted.¹⁷⁵ They will be planted in advance of construction. The aim is to make sure that there is always a suitable corridor of vegetation for bats. Network Rail has undertaken comprehensive work to understand how populations of bat actually use the foraging and commuting habitat – including heat maps – in order to ensure this solution is effective. For this reason, in the opinion of Dr Wray, Network Rail does not need to know *at this stage* the actual location of all roosts because it does know where bat activity is concentrated.
209. The issue of foraging and commuting habitat has not been made the subject of a draft licence because, in Dr Wray's view, this is not licensable. Instead, these are dealt with in the Strategic Bat Mitigation Approach.
210. Ninth, on operational impacts, through extensive survey work – including a Collision Risk Analysis – Network Rail has identified 31 places where bats cross the railway, the number of bats crossing and the probability of bats and trains being present at the same time. This was how it calculated predicted levels of collision

¹⁷³ How this will be achieved can be in ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-80, §9.5.117.

¹⁷⁴ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-80, §9.5.116.

¹⁷⁵ ES, Volume 2.i, Project-wide Assessment, Chapter 9, p9-80, §9.5.117.

mortality.¹⁷⁶ In evidence, Dr Wray stated that this was a more straightforward way of assessing the impacts than working it out on an individual roost by roost basis. It was not a deficiency in assessment. By analogy, if one is analysing how many school children use a level crossing, the exact house from which they departed is irrelevant. The surveyor needs to know how many children are crossing the road.

211. Overall, Network Rail found during the Collision Risk Analysis that there would be an incidental level of mortality, even in the absence of mitigation, with respect to Myotis bats.¹⁷⁷ In any event, any mortality would be at incidental levels due to mitigation in the form of vegetation of such a height so as to encourage bats to cross safely. No licence application has therefore been made in relation to the operational phase because there is no suggestion of a requirement for licensing for these impacts. At the time of giving her evidence, Suzanne Crutchley stated that Natural England had not had a chance to consider the Collision Risk Analysis.
212. Tenth, in Dr Wray's opinion, the suite of measures that Network Rail can draw on for mitigation purposes will allow the favourable conservation status of bats (and, indeed, all other European Protected Species) to be maintained.¹⁷⁸ These mitigation measures can be found in the ES, Volume 2.i, Project-wide Assessment, Chapter 9, pp9-79 – 9-81, §§9.5.106-9.5.120. Although she accepted Natural England's position that it did not currently have enough detail to *issue* a licence – nor was she suggesting that a licence should be issued today – Dr Wray was not able to conceive of a situation where a mitigation solution could not be put forward to ensure favourable conservation status. She judges that Network Rail has the set of mitigation and compensation techniques available to resolve any issues that arise. In 25 years of working on this type of scheme, Dr Wray stated that she had never found a scheme where there was not a way to avoid affecting favourable conservation status.

¹⁷⁶ In cross-examination and in its Closing Submissions, Natural England takes a point as to a few surveys that were missed in April/May: Natural England's Closing Submissions, §33. This is unlikely to have affected the overall result as, as stated in the oral evidence of Stephanie Wray, Network Rail took forward the peak count from all other surveys during the rest of the year.

¹⁷⁷ Network Rail has updated its analysis since the FEI. As such, the previous assessment in FEI, Part I, p86, §§9.1.32-9.1.33 is now out of date.

¹⁷⁸ Oral evidence of Stephanie Wray.

213. Eleventh, Natural England has (as we have submitted) misunderstood the legal test that the Inspector must ask at this stage. The test at this stage is whether the relevant activity is “*unlikely to be licensed*”. It is not whether “*it is uncertain whether or not a licence will be granted*”.

214. That Suzanne Crutchley has adopted the wrong test – important because it supports her conclusion that the Order should not be made – is clear from the following:

a. At p13 of the Natural England Position Paper, in relation to mitigation for operational impacts on bats, she states:

“3.1.52 NE will retain its objection (summarised at 6.2.66-6.2.67 OBJ/242) until such time that either, evidence has been provided that impacts are incidental and will not harm FCS or that suitable additional mitigation measures have been proposed to ensure that the impacts are reduced to this level or removed altogether.” (emphasis added)

b. At p15 of the Natural England Position Paper, in relation to the conclusion on bat licences, it is stated that:

“3.1.60 At the present time, until the above objections have been addressed and all of the draft bat licence applications and mitigation proposals have been screened and fully considered together, it is not possible for NE to conclude that there would be no adverse effect on the FCS of the species concerned. It is, therefore, unlikely that, as things stand, the bat licences could be granted (see paragraph 6.2.72 OBJ/242).” (emphasis added)

215. Rather than asking whether it is *unlikely* that a licence would be issued when the applications are in fact sought, Suzanne Crutchley asks whether favourable conservation status would be harmed, or a licence could be issued, as things stand. This same error is recapitulated in the Closing Submissions, where it is stated that:

“19...Due to the current insufficiency of baseline information, NE cannot be confident about the adequacy of the proposed mitigation strategy for bats and is not able to conclude, when the impacts on bats are considered as a whole, that it is likely that bat licences could be issued (PS 3.1.60). Indeed, Dr Wray herself stated in XIC that she accepted that NE ‘could not issue a bat licence today’, although in her view she considered NE would be able to do so in future.” (emphasis added)

216. In doing so, Natural England has effectively raised the bar that Network Rail needs to pass to an impossible level at this stage of such a large project.
217. Natural England's Closing Submissions demonstrate a different, but equally significant, legal error. At §10, it is stated that:
- “The relevant question for the Inspector to consider in his report to the Secretary of State is whether the works to be authorised by the Order would be *likely* to be licenced by NE.” (original emphasis)
218. The Closing Submissions apply this “*likely*” test at §§19, 41, 47 and 54. That is categorically not the relevant question. Confusingly, Natural England's Closing Submissions also state that, “11...*The test for the Secretary of State is whether or not it is unlikely (i.e. probable) that the licensing tests would be satisfied.*” This “*unlikely*” test is then applied at §§13, 17, 37 and 64.
219. It appears that Natural England believes that the “*likely*” and “*unlikely*” tests are interchangeable. That is not correct. Saying that a consent cannot be granted where it is shown that an activity is “*unlikely to be licenced*” is different to saying that a consent can only be granted where the activity is “*likely to be licenced*”. Lord Brown recognised this in his judgment in *Morge* as set out above. The former allows only identifiable and relatively insuperable problems to lead to refusal of consent; the latter allows a much greater category of problems – including uncertainty – to lead to refusal of consent.
220. In the present case, the essence of Natural England's objection is based on uncertainty; because it is uncertain about the baseline position, it cannot be said that it will likely grant a licence.¹⁷⁹ That approaches the matter from the wrong end. As confirmed by Lord Brown in *Morge*, uncertainty cannot be the basis upon which the Order is not made.
221. Tellingly, Natural England has not put forward an identifiable problem which would be relatively insuperable for Network Rail. It has, therefore, failed to bear the *evidential* burden in this regard, as opposed to the *legal* burden which is the subject of the case referred to by Natural England in its Closing Submissions at §16 – *R*

¹⁷⁹ Natural England's Closing Submissions, §11.

(Mynydd y Gwynt Ltd) v SSBEIS [2018] PTSR 1274 (CA), §31 (Peter Jackson LJ). If Natural England did not carry this evidential burden, Network Rail would be in the position of having to prove a negative.

222. In all the circumstances, Network Rail's position is that it cannot be said, at this stage of the project, that it is unlikely that a licence will be granted.
223. With respect to more discrete points raised by Natural England, Network Rail's position is as follows:

- i. The suggestion in Natural England's Position Paper,¹⁸⁰ based on a quote in the Strategic Bat Mitigation Approach, that even Network Rail believes that the baseline has not been properly understood is rejected. What is being said in the quoted section is that because locations change over time, further surveys will be undertaken in the future for the purposes of detailed design and to refine the mitigation. This is standard practice. Network Rail is not making any comment on the survey work done in the past; and,
- ii. Suzanne Crutchley is concerned about the permanent loss of three areas of vegetated railway corridor.¹⁸¹ Network Rail's approach has been to identify alternative flight ways and to seek to plant new hedges to make sure that there is an alternative flight route for bats.¹⁸²

In FEI, Part III, Figure 9.24A, the first gap can be seen on the south side of the railway line where a purple line can be seen indicating a new hedge to be planted.¹⁸³ In evidence, Dr Wray stated that there was little bat activity here, as can be seen from the bat transect heat maps. There are very strong hedges and tree lines to the north of the Order Scheme that will be retained. These will provide alternative flight routes for bats.

¹⁸⁰ Natural England Position Statement, dated 9 April 2019 (**OBJ/242-5**), p7, §3.1.16.

¹⁸¹ Natural England Position Statement, dated 9 April 2019 (**OBJ/242-5**), p11, §3.1.44.

¹⁸² Oral evidence of Stephanie Wray.

¹⁸³ FEI, Part III, Figure 9.24A (sheet 1 of 26).

Consequently, it is not believed that there is a significant gap that could potentially have any impact on favourable conservation status.

The second gap can be seen in FEL, Part III, Figure 9.24E close to ECS B26. At this location, there exist strong linear features of hedgerow and tree lines. There is also a river network running up and down either side of a large ploughed field. Consequently, there are other strong linear features that bats could follow if going east to west on this route.

The third gap can be seen in FEL, Part III, Figure 9.24G, relating to Winslow Station. Here, there are hedges with trees along the minor roads to the back of the station. As such, there is again a route for bats around Winslow.

(b) Buckinghamshire County Council¹⁸⁴

224. It is understood that the Council has removed/will remove its objections on ecology with the exception of those matters relating to bats and GCN. With regard to bats and GCN, the Council will defer to Natural England's position. Consequently, Network Rail repeats its response as set out above.

(c) Woburn Sands school crossing¹⁸⁵

225. This objection focuses on the provision made by Network Rail following the proposed closure of the school level crossing.¹⁸⁶

¹⁸⁴ OBJ/232.

¹⁸⁵ This objection was made by a large number of objectors. At Inquiry, evidence was given by Councillors Michael Geddes and David Hopkins on behalf of Woburn Sands Town Council (OBJ/9) and, later, by Ms Judith Barker (OBJ/139). Milton Keynes Council maintains its objection on this point but did not appear separately at the Inquiry.

¹⁸⁶ This location can be seen in Deposited Plans and Public Rights of Way Plan (NR14), Sheet 46 of 136; and, the Proof of Evidence of Simon Croft (NR51), Appendices, Appendix A.

226. Network Rail proposes to close the school level-crossing on safety grounds.¹⁸⁷ This assessment was also based on the ORR policy on level-crossings.¹⁸⁸ It is notable that, since February 2018, there have been 7 incidents of misuse.¹⁸⁹ This is probably the highest number of recorded serious incidents during that period on the route.¹⁹⁰
227. Woburn Sands Town Council¹⁹¹ does not dispute the closure of the school level crossing.¹⁹²
228. In the process of considering alternative provision, Network Rail carried out a census.¹⁹³ This demonstrated that, on weekdays, the destination of approximately 30% of households using the school level crossing was Swallowfield Lower School and/or Fullbrook Middle School. This amounted to 16 households during the morning peak hour. No empirical evidence contradicting Network Rail's evidence was provided by any of the objectors.
229. Subsequently, Network Rail's assessment process led to the conclusion that the school level crossing should be closed and a diversion route provided across the controlled crossing on Station Road.¹⁹⁴ An information event was held on 5 December 2018 explaining the rationale behind this.¹⁹⁵
230. Woburn Sands Town Council opposes this on the basis of safety grounds, particularly with respect to school children. Its concerns focus on the northern side

¹⁸⁷ Proof of Evidence of Simon Croft (NR51), pp7 and 24-25, §§3.3.1-3.3.5 and §§6.1.1-6.1.7.

¹⁸⁸ ORR, "Level Crossings: A guide for managers, designers and operators (December 2011) (NR214), §2 (p5).

¹⁸⁹ Woburn Sands Information Event document (NR213), pp2 and 9.

¹⁹⁰ Oral evidence of Simon Croft.

¹⁹¹ OBJ/9.

¹⁹² This was its express position in oral evidence at the Inquiry. Judith Barker (OBJ/139) gave oral evidence to the effect that it was preferable for the school level crossing to remain open but with added safety improvements. In terms of potential safety improvements to the school level crossing also raised by Woburn Sands Town Council for the first time at the Inquiry, even with such improvements Network Rail would struggle to justify keeping the crossing open to the ORR in light of the number of serious incidents. In any event, it is unclear that lights or gates at the school level crossing would have prevented the recorded misuse; the on-site logs suggest that many of the misusers were intent on trespassing. Moreover, incorporating locks would require expensive alterations to the signalling system: oral evidence of Simon Croft.

¹⁹³ Woburn Sands Information Event document (NR213), p3.

¹⁹⁴ Proof of Evidence of Simon Croft (NR51), pp25-26, §§6.1.9-6.1.15.

¹⁹⁵ The slides displayed at this event are referred to as Woburn Sands Information Event document (NR213).

of the crossing on Newport Road. Its preferred option is a stepped-footbridge at the same location as the current school level-crossing.

231. Network Rail maintains that the diversion route across the controlled crossing on Station Road, following proposed improvements,¹⁹⁶ will accommodate the extra traffic and be safe for all users, including school children.¹⁹⁷ In this respect, it is important to bear in mind that the traffic will be spread over the morning peak hour (i.e. it would not all be approaching the Station Road crossing at the same moment) and the barrier down time is only 10 minutes per hour. Moreover, there is no evidence of traffic accidents at this location with the current arrangements.
232. Furthermore, there is limited risk of danger to school children whilst waiting at the Station Road level-crossing due to presence of the “Keep Clear” box on the Newport Road side of the crossing.¹⁹⁸ This would diminish the possibility of cars waiting in very close proximity to/having limited visibility of those pedestrians waiting for the barriers to open or spilling out onto the road.
233. Judith Barker¹⁹⁹ raised concerns over the safety of the highway even with the proposed enhancements, particularly in relation to HGVs turning left from Cranfield Road. Network Rail’s view is that this is a safe and satisfactory arrangement; the proposed bollards and raised kerb will disincentivise large vehicles from mounting the kerb. Importantly, no specific objection has been raised by the highways authority that an unsafe turning movement for HGVs would be created.
234. Consequently, it is Network Rail’s position that there is no need for a footbridge at the current location of the school level crossing. Nonetheless, in light of local concern, Network Rail continues to keep under review whether to provide a

¹⁹⁶ Proof of Evidence of Simon Croft (NR51), pp26-27, §§6.1.16-6.1.19 and Appendix A. These are subject to approval from the highways authority.

¹⁹⁷ With respect to future developments in the area, Network Rail has no real detail of the potential number of users that would use the crossing when such developments are brought ahead. As such, it is very difficult to carry out any assessment on these extra numbers. This evidence would be for the developer to provide at the appropriate time once they had been granted permission. At that point Network Rail would be able to reassess the crossing: oral evidence of Simon Croft.

¹⁹⁸ See diagram in Proof of Evidence of Simon Croft (NR51), p27.

¹⁹⁹ OBJ/139.

stepped-footbridge. Network Rail will reconsider the position when: (1) it is able to secure planning permission; (2) it is able to purchase the land necessary to build such a footbridge on acceptable terms; and, (3) it is able to satisfy itself that a stepped-footbridge (as opposed to a ramped footbridge) would not breach s149 of the Equality Act 2010.²⁰⁰

(d) Lidlington school crossing

235. This objection also focuses on the provision made by Network Rail following the proposed closure of the school level crossing.²⁰¹ Network Rail proposes to close the school level-crossing on safety grounds.²⁰² This assessment was also based on the ORR policy on level-crossings.²⁰³ The alternative will be diversion via the controlled crossing at Station Road and enhancements to the highway along this route.²⁰⁴ By way of summary, Network Rail chose this approach due to: (i) the short distance of the diversion; (ii) the safe nature of the controlled crossing at Station Road; (iii) the desire to save costs; (iv) the lack of need to acquire extra land; and, (v) the lack of community consensus on a preferred option.

236. Central Bedfordshire Council (the “Council”),²⁰⁵ Lidlington Parish Council²⁰⁶ (the “Parish Council”) and Councillor Sue Clark,²⁰⁷ who gave evidence to the Inquiry on this issue, do not dispute the closure of the school level crossing. Further, they all support the Order Scheme, in principle. They do now seek a stepped footbridge, albeit this evidence only came before the Inquiry on the day that these parties gave

²⁰⁰ Letter from Network Rail to Milton Keynes Council, dated 12 February 2019 (NR212). In terms of equality concerns, see Proof of Evidence of Martyn Angus (NR53), p35, §§10.5.6.

²⁰¹ This location can be seen in Deposited Plans and Public Rights of Way Plan (NR14), Sheet 53 of 136; and, the Proof of Evidence of Simon Croft (NR51), Appendices, Appendix B.

²⁰² Proof of Evidence of Simon Croft (NR51), §6.2.4 and §6.2.6(a).

²⁰³ ORR, “Level Crossings: A guide for managers, designers and operators (December 2011) (NR214), §2 (p5).

²⁰⁴ As set out in Network Rail’s letter, dated 4 February 2019 (NR228).

²⁰⁵ OBJ/241.

²⁰⁶ OBJ/215.

²⁰⁷ OBJ/182.

evidence.²⁰⁸ Nevertheless, they are cognisant that this would require Network Rail to acquire land outside of its Order powers. As such, they are not calling for the Order Scheme to be modified, with the delay for EWR2 that this would entail. Rather, they are asking only for the Inspector to recommend that Network Rail follows a similar course to its approach in Woburn Sands, as set out in its letter to Milton Keynes Council, dated 12 February 2019.²⁰⁹

237. Network Rail's position remains that the closure and diversion option is the most appropriate with regards to the school level crossing. Network Rail's letter, dated 1 February 2019, sets out its response in full.²¹⁰
238. First, the diversion is relatively short. The property most affected will be diverted by approximately 400m. This distance will be less for all other properties and substantially less for most other properties.²¹¹ That translates into an extra few minutes of walking.
239. Second, the crossing at Station Road is safe. It is a CCTV controlled crossing. There are no reported traffic accidents at this location. The diversionary route will be made even safer by the provision of improvements proposed by Network Rail and accepted by the Council.²¹²
240. Third, a stepped footbridge will cost approximately £1.05m.²¹³ In light of the above, and the availability of a satisfactory alternative, it is not considered justified to incur this extra cost at public expense.
241. Fourth, building a stepped footbridge will require Network Rail to acquire further land.²¹⁴ Again, this will come at an extra cost at public expense.

²⁰⁸ Wednesday 27 February 2019. In evidence, Councillor Sue Clarke said that the reason for this was that they only found out in January that a stepped footbridge was being considered by Network Rail in Woburn Sands.

²⁰⁹ NR212.

²¹⁰ NR231.

²¹¹ Appendices provided by Central Bedfordshire Council, OBJ/241-4.

²¹² As set out in Network Rail's letter, dated 4 February 2019 (NR228). This can also be seen in the Proof of Evidence of Simon Croft (NR51), p30, §6.2.10 and Appendix B.

²¹³ Oral evidence of Simon Croft.

²¹⁴ Oral evidence of Simon Croft.

242. Fifth, Network Rail had previously understood that there was no community consensus on a preferred option. Network Rail had, initially, proposed to build a stepped-footbridge at the location of the school level crossing.²¹⁵ This was opposed by the community on the bases of visual intrusion, amenity and accessibility.²¹⁶ As a result, Network Rail changed its approach and consulted on a number of options in June 2016. This resulted in 70 individuals supporting an underpass, 62 supporting closure and diversion, 23 supporting a stepped footbridge, 3 supporting a ramped footbridge and 3 supporting steps with a lift.²¹⁷ Consequently, there was no clear preferred option.
243. At the Inquiry, Lidlington Parish Council adduced fresh evidence which, it asserted, showed an overwhelming preference in the community for a stepped footbridge.²¹⁸ This was on the basis of a survey carried out from 22-25 February 2019.²¹⁹ It was said that out of 151 responses, 145 were in favour of a stepped footbridge and 6 were in favour of the close and divert option. Little weight should be given to this survey as the introduction to the questionnaire was tendentious and left no doubt as to the views of those asking for the questionnaire to be filled out – i.e. they were in favour of the stepped footbridge. That was not a satisfactory way of undertaking empirical analysis. In those circumstances, the answers cannot be taken as a reliable indicator of the community’s preference. Alternatively, even if this survey can be relied upon, Network Rail considers that the close and divert option is still the most appropriate in light of reasons (i) to (iv) above.
244. There are several objections made to Network Rail’s approach.
245. First, it is argued that this would harm the connectivity of Lidlington. Network Rail does not believe that this is the case. The controlled crossing at Station Road would remain open and, as stated above, the maximum length of diversion would be 400m. The Parish Council and Councillor Sue Clark refer to the possibility of the controlled crossing being temporarily and suddenly closed preventing north-south

²¹⁵ Proof of Evidence of Simon Croft (NR51), p28 §6.2.5.

²¹⁶ Consultation Report (NR12), Table 5.4, pp20-21.

²¹⁷ Letter of Network Rail, dated 1 February 2019 (NR231).

²¹⁸ Appendices provided by Central Bedfordshire Council, OBJ/241-5.

²¹⁹ The Parish Council appeared at Inquiry on Wednesday 27 February 2019.

movements. The only example provided of this actually happening was on a Sunday when, in light of there being no Sunday service, the crossing was closed for maintenance works.²²⁰ This is unlikely to occur when EWR2 is operational as Sunday services are proposed to run. This was a point recognised by the Parish Council. All of the other examples provided were hypothetical – barriers breaking, trains failing, serious incidents – and have never occurred at this location resulting in the crossing being closed. The unlikelihood, and speculative nature, of these events occurring militates against the need for a footbridge. In any event, if one of these exceptional events did occur, there is a level crossing (part of the public highway) on the playing fields approximately 375m to the west of the school level crossing which could be utilised.²²¹

246. Second, it is argued that diverting school-children to the controlled crossing at Station Road would be unsafe.²²² Network Rail’s position is that the diversion to Station Road controlled crossing is safe for school-children to use and will become even safer following the proposed enhancements.²²³ In her letter to Network Rail, dated 5 February 2019, Ms Frost-Bryant accepted the enhancements, albeit she did not consider that this precluded the need for an additional safe crossing for the school. The objectors have provided no evidence from the highway authority that the proposed diversion would be unsafe. This is notwithstanding that one of the objectors, the Council, is the relevant highways authority. Indeed, the Council did not mention safety concerns in its Statement of Case or Proof of Evidence. If this was a serious concern, one might expect it to have been raised at an earlier stage by the Council. Moreover, the 62 individuals who supported closure and diversion during the consultation must be assumed to have regarded this as a safe solution. Indeed, Network Rail’s 9-day traffic survey – showing the daily movements in the area – demonstrated that this is a low-traffic area.²²⁴ Furthermore, there is no evidence of any traffic accidents occurring on Station Road.

²²⁰ Based on an email from Jean Peall, found in the Proof of Evidence of Sue Clarke, Appendix 3.7.

²²¹ ES, Volume 4, Scheme Drawings, Sheet 62 of 134.

²²² The Council itself did not raise this concern in its Statement of Case or Proof of Evidence but raised it in the oral evidence of Ms Frost-Bryant for the first time.

²²³ As set out in Network Rail’s letter, dated 4 February 2019 (NR228).

²²⁴ Appendices provided by Central Bedfordshire Council, OBJ/241-4.

247. Third, the Council argues that a further reason why a stepped footbridge should be built is to cater for future developments in the area. The Council's witness – Ms Connie Frost-Bryant – accepted in her oral evidence, nonetheless, that this was not a primary concern. Network Rail's position is that it should not have to build the footbridge to cater for future growth in the area in circumstances where: (i) the Council itself did not seek to include these future developments in the list of Reasonably Foreseeable Future Projects that were to be assessed as part of the cumulative impact assessment;²²⁵ and, (ii) the Council cannot say at the moment where the appropriate crossing points would be for the future developments.²²⁶ It may well be the case that the desire lines and points of origin and destination do not call for a footbridge at this location. Rather, it is the developers of these future developments who, having carried out their own cumulative impact assessments, should take responsibility for providing such infrastructure in appropriate locations.
248. Fourth, it is argued that the approach adopted with regards to Woburn Sands school crossing (see **§234 above**) should also be adopted for Lidlington school crossing. Network Rail's position is that the circumstances in Lidlington are different to the circumstances in Woburn Sands, such that they cannot be regarded as comparable; assuming closure of both school crossings, there are no justifiable highway safety concerns for pedestrians using the existing Lidlington Station road crossing, whereas the busyness and relative complexity of the roads approaching the Woburn Sands Level Crossing calls for more consideration (as expressed by Woburn Sands Town Council in relation to the Woburn Sands station crossing).²²⁷ Whereas Network Rail has sought to be consistent in its *approach* to these two locations, it does not follow that there must be consistency in *outcome*.
249. Notwithstanding the above, by a letter, dated 18 March 2019, Network Rail confirmed that it is considering the feasibility of providing a stepped footbridge at

²²⁵ Technical Note – Draft Policies SA2 and SE2: Cumulative Impact Assessment (February 2019) (NR230), §2.1.1-§2.1.5.

²²⁶ Ms Frost-Bryant was unable to provide this information during cross-examination.

²²⁷ NR243.

Lidlington school crossing.²²⁸ It is, however, unable to reconsider at this stage the construction of a footbridge as this will depend on: (1) confirmation from Network Rail's Equalities Act Advisory Board that a stepped footbridge complies with Network Rail's public sector equality duty under the Equality Act 2010; (2) confirmation that the land required for construction of a stepped footbridge can be acquired through negotiation subject to agreement being reached on acceptable terms; and, (3) confirmation of a successful application for planning permission for the stepped footbridge.

(e) Electrification²²⁹

250. Several objectors have objected to the Order Scheme on the basis that it does not provide for an electrified service. Rather, the trains will be diesel-powered. Network Rail's position can be seen in the Proof of Evidence of Martyn Angus.²³⁰
251. In summary, EWR2 was originally meant to be part of the nation-wide Electric Spine programme. The Electric Spine programme, however, was deferred by the government in 2015. In 2016, the Department of Transport announced that plans to electrify the section between Oxford and the West Coast Mainline at Bletchley were also to be removed and that EWR2 would be a wholly non-electrified railway.
252. The reason why electrification on EWR2 was descoped was: (a) to save money;²³¹ and, (b) thereby to allow project resources to be focused on opening EWR2 at the earliest opportunity; and, (c) having a section of EWR2 electrified between Oxford and Bletchley and an unelectrified section between Bletchley and Bedford would have raised challenges around the rolling stock, timetabling and depots.

²²⁸ NR243.

²²⁹ This objection was made by a number of individuals, for example Langford Village Community Association (OBJ/219), Milton Keynes Green Party (OBJ/212), Cycling UK (OBJ/243), and Railfuture (SUPP/327).

²³⁰ Proof of Evidence of Martyn Angus (NR53), pp37-38, §§10.8.1-10.8.4.

²³¹ By way of example, even taking the step of replacing existing bridges between Bicester and Bletchley to enable electrification would cost approximately £34.5m (NR211), q3.

253. Notwithstanding the above, any proposed *new* structure being built as part of EWR2 (including highways and footbridges) will allow sufficient clearance to accommodate electrification, should it be pursued in the future.
254. Based on the Order Scheme using diesel-powered trains, it has been assessed for air quality effects both during construction and operation as part of the ES.²³² This shows that the operation of the railway will not give rise to any significant adverse effects. The operation of the railway and its contribution to overall levels of pollution will not affect compliance limits in the Directive 2008/50/EC on ambient air quality and cleaner air for Europe.
255. Importantly, the success of EWR2 and the benefits that will flow from it are not predicated on electrification and will still be achieved with a diesel-only railway.²³³

(f) Luton Borough Council²³⁴

256. Luton Borough Council is, in general, supportive of the Order Scheme as a whole. Its concerns relate to the closure of an existing road level crossing at Manor Road, Kempston Hardwick and replacement with an overbridge.²³⁵ Network Rail is proposing to close this level crossing due to safety concerns.²³⁶ Luton Borough Council is concerned that if the Central Section of EWR follows Route A, B or C in the recent consultation,²³⁷ and if the Council's proposals for a chord across to the Midland Main Line are accepted, the proposed overbridge at Manor Road will become superfluous. The costs of constructing it would, thereby, be abortive. The East West Rail Company expects to announce its preferred route in August 2019.

²³² A summary of the findings can be found at ES, Volume 1, Non-Technical Summary, p18. A more detailed analysis can be found in ES, Volume 2.i, Project-wide Assessment, Chapter 8.

²³³ Proof of Evidence of Martyn Angus (NR53), p38, §10.8.4.

²³⁴ OBJ/244.

²³⁵ Work Number 38 (Order, Schedule 1 (p34) and Schedule 5 (p62)); found in Deposited Plans and Public Rights of Way Plan (NR14), Sheet 57 of 136.

²³⁶ Proof of Simon Croft (NR51), pp7-8, §§3.3.3-3.3.4 and §3.3.6.28.

²³⁷ East West Rail, "East West Rail Bedford to Cambridge Route Option Consultation - Consultation Document" (January 2019) (NR215), pp15-17.

257. Mr Keith Dove, on behalf of Luton Borough Council, clarified the Council's position at the Inquiry. He confirmed that it does not object to the Order as it stands and its provision for the closure of the Manor Road level crossing together with an overbridge. In response to the Inspector's question that "*In effect, you are not objecting to the Order as it is?*", Mr Dove agreed and stated that the representation was really to do with the *exercise* of the Order powers at a later date. In other words, the Council wants Network Rail to review whether it is necessary to exercise its powers under the Order with respect to these works if Route A, B or C are chosen as the preferred Central Section route.

(g) Thames Water Utilities Ltd²³⁸

258. Network Rail has amended the draft Order such that the reference to "*operation*" in Article 19(1) has been removed.²³⁹ This means that the power under Article 19 applies only to the construction and maintenance of the authorised works and resolves that aspect of Thames Water's case.

259. Thames Water maintain their objection with respect to Article 19(8) of the draft Order. This provides that:

"If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be." (emphasis added)

260. In her Proof of Evidence, dated 9 January 2019, Ms Jane Battle set out her concerns in the following terms:²⁴⁰

"2.2... deemed consent could result in unconditioned and therefore uncontrolled discharges to TWUL owned sewers and drains, which may occur through no fault of TWUL e.g. application forms can be lost in the post or be sent to incorrect departments to be processed, and also may not be processed in accordance with the specific requirements of the Order, which do not constitute business as usual process for TWUL.

²³⁸ OBJ/226.

²³⁹ The revised draft Order is listed as **NR202**.

²⁴⁰ Ms Battle's oral evidence was to similar effect.

...

uncontrolled discharges can result in flooding of customer's homes, damage to the sewer network and to sewerage treatment works, damage to the environment and health and safety risks. These issues could also result in potential breaches of statutory duty and significant criminal and civil liabilities. TWUL has always been liable to prosecution if effluent escapes from its sewers on to land or in to rivers (whether or not TWUL caused the offence to occur, as the offence is one of strict liability), or for discharges from its sewerage treatment works that are in breach of environmental permits."

261. In her Proof of Evidence, Ms Battle's proposed solution was to replace deemed consent with deemed refusal.²⁴¹ At the time of the Inquiry, this had changed to removal of Article 19(8) altogether and for the Order to refer neither to deemed consent nor deemed refusal.²⁴²
262. Network Rail maintains its position that Article 19(8) should be retained in its current form.²⁴³
263. First, it is essential to recognise that exercise of the power under Article 19(1) is for the approval of detail and that it is subject to prior consent by the responsible sewerage undertaker: Article 19(3). Pursuant to Article 19(3), the relevant undertaker may impose terms and conditions but must not withhold consent unreasonably. In other words, if Thames Water is not satisfied in a given case that the material to be discharged is appropriate or suitable for discharge, it is able to refuse consent.
264. Second, there is no model clause providing either for deemed consent or deemed refusal. Nonetheless, Article 19 follows a model that has become established in practice in Orders for railway schemes.
265. Third, at the stage where an application for prior consent will be made by Network Rail, the environmental effects of the Order Scheme will have been considered in detail by the Inspector and Secretary of State; the timely delivery and construction

²⁴¹ Proof of Evidence of Jane Battle, dated 9 January 2019, §3.1.

²⁴² Thames Water, Response to Note of Network Rail (**OBJ/226-2**), p5, §13, sent on 11 March 2019.

²⁴³ This is also summarised in a Note in response to Thames Water (**NR237**).

of the Order Scheme will have been judged to be in the public interest. It is thereby important to avoid unnecessary delay to delivery of the Order.

266. Fourth, the deemed consent clause in Article 19(8) of this Order has been included in all recent Orders made under the Transport and Works Act 1992 authorising railways. By way of example:²⁴⁴

- i. The Network Rail (Ordsall Chord) Order 2015 - Article 17(8) states that:

“If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.”
- ii. The London Underground (Bank Station Capacity Upgrade) Order 2015 - Article 17(8) provides that:

“If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.”
- iii. The London Overground (Barking Riverside Extension) Order 2017 - Article 14(8) states that:

“If a person who receives an application for consent or approval fails to notify TfL of a decision within 28 days of receiving that application for consent under paragraph (3) or approval under paragraph (4)(a) then that person is deemed to have granted consent or given approval, as the case may be.”
- iv. The Network Rail (Hope Valley Capacity) Order 2018 - Article 14(8) states that:

“If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case maybe.”
- v. The Network Rail (Werrington Grade Separation) Order 2018 - Article 16(8) provides that:

²⁴⁴ The following extracts are found at **NR235**.

“If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.”

267. Evidently, any concerns of the relevant statutory undertaker similar to those raised by Thames Water for the purposes of this Order Scheme were either not raised in those cases or rejected. Indeed, the London Overground (Barking Riverside Extension) Order 2017 and the London Underground (Bank Station Capacity Upgrade) Order 2015 related to the area of Thames Water. The provisions set out above appear to have been accepted by them.
268. Thames Water raises the point that deemed consent has not been included in some Development Consent Orders. Notwithstanding that there are many examples of Development Consent Order including deemed consent provisions, this ignores the point that the Planning Act 2008 has a different regime and that the examples cited by Thames Water do not relate to railway projects.
269. Fifth, the obvious reason for including these deemed consent provisions is to provide a streamlined process for approval of details. This ensures that the relevant regulatory authority or statutory undertaker considers the application in a timely way preventing lengthy delays.
270. Sixth, it is not reasonably conceivable that prior consent for any application will be deemed in circumstances where Thames Water is in a position of ignorance:
 - i. Crucially, no evidence whatsoever has been produced by Thames Water that provisions materially the same as Article 19 in relation to other similar schemes have had the negative consequences now posited by Thames Water. It was open to Thames Water to speak to other sewerage undertakers subject to orders like this Order and ask whether there were instance of harm resulting from a deemed consent regime. It failed to do so and has not otherwise become aware of such instances of harm;
 - ii. Any application will be accompanied by plans provided by Network Rail and an opportunity for Thames Water to supervise any opening into a

public sewer or drain must be given: Article 19(4). This regime is, therefore, designed to ensure that the sewerage undertaker has the requisite level of information on what is proposed as to engineering works and the quality and quantity of material to be discharged;

- iii. If Thames Water considers that it has been given inadequate information, it can refuse an application within 28 days of it having been made;
- iv. In cross-examination, Jane Battle accepted that they are “*happy to agree*” as part of a side-agreement that decisions will be delivered within 28 days. In order to do this, Thames Water will set up a point of contact which allows Network Rail to deliver applications to a particular destination which can then be fast-tracked to the right department. As the feasibility of this procedure has been accepted in principle by Thames Water, it is difficult to see how Ms Battle’s concerns in oral evidence – that an application may never be received by Thames Water or go to the wrong person or be mistakenly locked in cupboard – have any basis in reality.

271. In this way, Article 19 as a whole – and also Article 19(8) specifically – is designed to draw a balance between enabling Thames Water to make an informed decision, on the one hand, and to avoid unnecessary delay to the delivery of a railway scheme, on the other hand.

272. Similar reasoning was accepted by the Inspector in relation to the Network Rail (Werrington Grade Separation) Order 2018, where it was stated that:²⁴⁵

“301. Both sides cite various legislative provisions in support of their respective stances. However, I am convinced by the points made by Network Rail on this matter. Deemed approval is the established precedent in relation to a failure to determine details submitted pursuant to TWA Orders. In such a circumstance the protective provisions provide for approval of detail; at the time they are implemented the principle of the Scheme’s acceptability will have already been determined, by the decision to make the Order. The EA is

²⁴⁵ As stated orally, this part of the Inspector’s report was not directed to Article 16 of that Order but, rather, in relation to one of the protective provisions in favour of the Environment Agency. That is, nonetheless, not a relevant distinction because the points made by the Inspector are points of principle that are equally applicable to Article 19(8) of this draft Order.

therefore being asked to approve detailed drawings for a scheme that has already been given consent by the Secretary of State, where matters such as environmental impacts and controls have already been fully considered by an independent body. This is a quite different situation to the regulatory position under the Environmental Permitting Regulations where the EA is asked to give consent to an application made to it at first instance. [198, 200, 224-6].

302. The form of protective provisions in TWA Order cases which include a deemed approval provision has been consistently adopted since the inception of TWA Orders in 1993 through to the present. There is no instance of a made TWA Order which includes deemed refusal. Although the EA relies on the terms of Development Consent Orders (DCOs) for its stance, DCOs are considered and made under a significantly different legislative and regulatory process. [202-3,227].

303. The protective provisions are a streamlined process in place of any normal arrangements. Their purpose is to provide a bespoke regime for delivery of the authorised works, not merely to replicate the regulatory provisions to be disapplied. Deemed refusal would create potential for delay in the construction of the Scheme through no fault of the applicant, with impact on costs to Network Rail and to passengers, whilst the parties go to arbitration. Avoiding unforeseen delay in the construction process is particularly important because possessions of the railway require careful planning and timing. Given the level of agreement that has already been reached between the EA and Network Rail as to the form that the drainage works should take, I consider it appropriate that the EA should be expected to determine any subsequent application to it for approval of details of the works within the prescribed period, and for potential for delay to the Scheme through a failure to do so to be avoided. [201, 204].”

273. The Secretary of State, at §33 of his decision letter dated 24 July 2018, agreed with the Inspector.

274. It is true that this part of the Inspector’s judgment does not relate specifically to Article 16, as set out above. Rather, it refers to a protection provision in favour of the Environment Agency. Nonetheless, the points made by the Inspector in these paragraphs are points of principle that are as applicable to Article 19(8) of the Order as they were to the provisions at issue in §§301-303 above.

(h) Gladman Developments Ltd²⁴⁶

275. The remaining issue between the parties relates to ecology. In particular, Gladman does not consider that ECS B10 is necessary.²⁴⁷ The background to this objection is that ECS B10 is located on land which has been granted a draft allocation for housing in the emerging Vale of Aylesbury Local Plan 2013-2033 (“VALP”) (NR72).²⁴⁸ The effect of ECS B10 is to reduce the housing development now applied for by Gladman from 235 dwellings to 215 dwellings.²⁴⁹

276. Network Rail’s position is that ECS B10 is necessary. This is for the reasons set out in the ES:²⁵⁰

“2.3.13 ECS B10 is close to an area where pond habitat supporting great crested newts would be lost. ECS B10 will be used for the translocation of great crested newts (under a Natural England licence). ECS B10 will also be used for the translocation of reptiles ECS B10 will include creation of ponds and marginal planting, lowland mixed deciduous woodland, open mosaic habitat, lowland meadow, native species-rich hedgerows with trees, scrub, south-facing reptile embankment, hibernacula and log piles. The provision of these habitats, once established, will support great crested newts, reptiles, birds, badgers, bats and terrestrial invertebrates such as black, brown and white-letter hairstreak butterflies.

2.3.14 ECS B10 is situated immediately east of Old Quarry, Winslow BNS and 90 m north of Wood Copse off Magpie Way LWS and ancient woodland. Once the habitats within ECS B10 have established and are under adaptive management, this will connect up the BNS with the LWS and ancient woodland, consequently extending the habitat within each of these designated sites and enabling the ranges of the protected and/or notable species these support to expand.”

277. The necessity of ECS B10 will be dealt with below. But insofar as one must choose between EWR2 and Gladman’s housing scheme – assuming that ECS B10 amounts

²⁴⁶ OBJ/228-231.

²⁴⁷ The location of ECS B10 can be found in the ES, Volume 4, Environmental Design Drawings, Sheet 30 of 98. It is known as Plot 0677.

²⁴⁸ The location of the affected housing allocation site, WIN001, can be seen in the Proof of Evidence of Laura Tilston, Appendix 1. The Vale of Aylesbury Local Plan is awaiting final recommendations from the Inspector.

²⁴⁹ Oral evidence of Laura Tilston.

²⁵⁰ ES, Volume 3, Appendix 9.13, p9.

to necessary mitigation and given Gladman's case is that ECS B10 will lead to the loss of 20 dwellings – the VALP requires the housing allocation to yield to EWR2.

278. This is for the following reasons: (i) Policy T2 in the VALP Proposed Submission²⁵¹ states that “*Planning permission will not be granted for development that would prejudice the implementation of...the East West Rail project including new stations...*”;²⁵² (ii) Policy S2 in the VALP Proposed Submission states that “*Winslow will accommodate growth of 1,166 new homes, linked with the development of East-West Rail and the new railway station in Winslow*”.²⁵³ Laura Tilston confirmed in evidence that this figure included the homes planned to be provided within WIN001; and, (iii) the reference in the VALP Proposed Submission to WIN001 sets out a phasing timetable: 50 homes will be delivered from 2017-22 and 535 homes from 2023-2033.²⁵⁴ The latter stage of phasing looks clearly to be linked to the coming into operation of EWR2, at which point Winslow's credentials as a sustainable development will have become enhanced.

279. The necessity of ECS B10 will be dealt with under the following headings:²⁵⁵

- i. GCN; and,
- ii. Ecological designations.
 - i. *Great Crested Newts*

280. In oral evidence, Dr Wray summarised the strategy for compensation with respect to GCN contained in the Order Scheme.²⁵⁶ There is a route-wide mitigation and compensation strategy which ensures that there is no effect on the favourable conservation status of GCN. As GCN live in metapopulations based around clusters

²⁵¹ NR72 and also in the Proof of Evidence of Jill Stephenson (NR49), Supporting Documents, Tab 10, p127.

²⁵² VALP, p205.

²⁵³ VALP, p35.

²⁵⁴ VALP, p127.

²⁵⁵ The evidence put forward by Gladman also referred to “Habitats”: see the Proof of Evidence of Dan Simpson, pp12-14. This was not, however, dealt with at the Inquiry. Network Rail's response can be seen in the Rebuttal Evidence of Stephanie Wray (NR54/1), pp4-5.

²⁵⁶ The overall approach to GCN is summarised in the Proof of Evidence of Stephanie Wray (NR54), pp22-25.

of ponds, this requires looking at GCN terrestrial and aquatic habitats in combination.²⁵⁷ As a result, mitigation at a metapopulation level has been sought with stepping stones across the Order Scheme. This may mean that certain specific locations are enhanced whilst other locations lose GCN habitat. The overall effect, however, is simply to avoid an effect on the favourable conservation status of GCN as required by the licensing regime and the Habitats Regulations. This is an entirely separate calculation to the one required for determining biodiversity net gain. It is a mitigation of impact.

281. The process of determining which ECS were necessary as part of the Order Scheme is set out in the ES.²⁵⁸ This sets out that 26 ECS were initially identified as being potentially required in Route Section 2B. Subsequently, in advance of publication of the ES, an exercise was undertaken in order to distil down the ECS for which Order powers would be needed to provide appropriate compensatory habitats. Subsequently, 14 of the 26 potential ECS identified in Route Section 2B were determined no longer to be required.²⁵⁹

282. It was judged that ECS B10 was necessary. The reason why ECS B10 was selected, specifically with respect to GCN, is set out in the ES. This states that:²⁶⁰

“2.3.13 ECS B10 is close to an area where pond habitat supporting great crested newts would be lost. ECS B10 will be used for the translocation of great crested newts (under a Natural England licence). ECS B10 will also be used for the translocation of reptiles ECS B10 will include creation of ponds and marginal planting, lowland mixed deciduous woodland, open mosaic habitat, lowland meadow, native species-rich hedgerows with trees, scrub, south-facing reptile embankment, hibernacula and log piles. The provision of these habitats, once established, will support great crested newts, reptiles, birds, badgers, bats and terrestrial invertebrates such as black, brown and white-letter hairstreak butterflies.” (emphasis added)

283. The *“area where pond habitat supporting great crested newts would be lost”* referred to above includes an area of currently disused railway line in which construction

²⁵⁷ ECS B10 falls within the territory of metapopulation 2B6.

²⁵⁸ ES, Volume 3, Appendix 9.13, p2, §2.1.6.

²⁵⁹ ES, Volume 3, Appendix 9.13, p3, §2.1.7.

²⁶⁰ ES, Volume 3, Appendix 9.13, p9.

works will take place.²⁶¹ This area is also addressed in a letter from Network Rail to Gladman, dated 4 November 2018.²⁶² It is true that Network Rail has not specifically surveyed this area of disused railway corridor to assess the presence of GCN. This is because a survey of GCN in their terrestrial habitats is not accepted survey methodology; it is too difficult to find them in these locations.²⁶³ Rather, the accepted survey methodology involves surveying GCN in their breeding ponds, as has been carried out, followed by a professional judgment as to suitable surrounding terrestrial habitats in which GCN are likely to reside.

284. In the professional judgment of Dr Wray, GCN will reside in this section of disused railway line as it is a habitat “*ideal for great crested newts*”.²⁶⁴ In cross-examination, Gladman’s witness Dan Simpson accepted this. Dan Simpson also accepted that there was a “*real possibility*” that GCN were present within the disused railway corridor and that, applying the precautionary approach, it would have to be assumed that GCN were present here. This is supported by the reptile surveys which recorded GCN as being present on this section of the disused railway line.²⁶⁵ The carrying capacity of the disused railway with respect to GCN has not been calculated. That is because this sort of analysis is not normal practice; in cross-examination Dr Wray stated that she had never attended an Inquiry where that calculation had been made nor seen an ES which provided that level of information.
285. Taking this into account, it is Dr Wray’s professional judgment that approximately 57% of the total suitable terrestrial habitat within 500m of the ponds habituated by metapopulation 2B6 will be lost due to construction works. As such a loss is likely to affect negatively the favourable conservation status of this GCN metapopulation, some sort of mitigation or compensation works are necessary.

²⁶¹ This area can be seen in the Proof of Dan Simpson, Appendix 7, p46 (the dark orange area). It is common ground that there will be no loss of *aquatic* habitats in this area: Rebuttal of Stephanie Wray (NR54/1), p1, §1.1.4.

²⁶² Proof of Evidence of Dan Simpson, Appendix 11, pp65-66.

²⁶³ Oral evidence of Stephanie Wray.

²⁶⁴ Letter from Network Rail to Gladman, dated 4 November 2018: found in the Proof of Evidence of Dan Simpson, Appendix 11, p66.

²⁶⁵ Oral evidence of Stephanie Wray.

286. This 57% figure was arrived at by:

- i. Adopting a *functional*, rather than dogmatic, approach to the core area of GCN terrestrial habitat – i.e. where GCN are actually likely to reside. In other words, rather than the core area being drawn as a perfect circle around the GCN aquatic habitat, it ought to be skewed towards the railway line to the south. This reflects the fact that the disused railway line is agreed to be an “*ideal*” habitat for GCN, whereas the land to the north comprises arable land and a landscaped garden likely to be less attractive and less safe for GCN;²⁶⁶ and,
- ii. From that functional core area, accounting for: (1) the loss of the full length of the railway to the end of the 500m radius from the ponds; and, (2) loss of land adjacent to the existing railway line that is required for construction.

287. The necessity for an ECS having been established, the exact location of ECS B10 is based on a number of factors, as set out in Network Rail’s letter to Gladman, dated 4 November 2018:²⁶⁷

“The location of ECS B10 is based on a number of factors, including: being adjacent to the railway in order to maintain long-term connectivity for great crested newts post construction, via trackside habitat; being close to existing great crested newt populations to form part of a functioning metapopulation; and being of a size to provide local great crested newt populations sufficient opportunity to maintain and enhance their populations. ECS B10 also provides a suitable location to translocate grass snake and common lizard, which are present in significant numbers on the existing railway and receive protection under the Wildlife and Countryside Act 1981.”

288. Ultimately, ECS B10 is an integral part of the overall ecological compensation package that leads Network Rail to conclude that there would be no residual significant adverse effect on GCN as a result of the Order Scheme.

²⁶⁶ In cross-examination, Dan Simpson accepted that the area between the ponds and the disused railway line was likely to be the part of the core area that was more attractive and safer for GCN. See also Rebuttal of Stephanie Wray (NR54/1), p2, §1.1.7.

²⁶⁷ Proof of Evidence of Dan Simpson, Appendix 11, p66.

289. In developing its approach, Network Rail has worked closely with Natural England. As well as the three rounds of consultation, Network Rail: (i) in May 2016, paid to make use of Natural England’s Discretionary Advice Service to obtain advice on scope and methodology; (ii) in July 2017, paid to make use of Natural England’s Discretionary Advice Service to obtain advice on licensing strategy; (iii) since then, has had monthly phone/email contact with Natural England discussing various aspects of the project; and, (iv) towards the end of 2018 and early 2019 has had a number of meetings with Natural England.
290. Gladman makes a number of arguments against the approach taken by Network Rail.
291. First, Gladman argues that ECS B10 is not required to compensate for the loss of aquatic habitats for GCN because there is no loss of aquatic habitats within 500m of ECS B10. It is thereby argued that ECS B10 is being used for enhancement rather than compensation and Network Rail cannot use its compulsory acquisition powers for this purpose.²⁶⁸
292. This is wrong; the issue of terrestrial and aquatic habitats cannot be looked at in isolation. As stated by Dr Wray:²⁶⁹
- “This is a significant over-simplification of the situation. Network Rail has developed a comprehensive strategy for the mitigation and compensation of impacts on great crested newts as a result of EWR2. This involves the replacement of lost habitat, both terrestrial and aquatic along the length of the Scheme in order to address impacts on each metapopulation of newts affected. New ponds are proposed in areas suitable for pond creation (in terms of their proximity to newt metapopulations, their physical characteristics, such as underlying geology, slope or aspect, and their location close to the railway corridor). Not every location for the creation of proposed ponds will be within 500m of a lost pond; instead the new ponds form part of a route-wide solution based on great crested newt metapopulation ecology.”
293. Second, Gladman points to the project-wide net gain of ponds²⁷⁰ and argues that this exceeds the Natural England guidance ratio of 2:1 compensation. As such, to the extent that ECS B10 contributes to the net increase of ponds, it is unnecessary.

²⁶⁸ Proof of Evidence of Dan Simpson, §§3.1.1-3.1.2.

²⁶⁹ Rebuttal of Stephanie Wray (NR54/1), p1, §1.1.4.

²⁷⁰ Proof of Evidence of Stephanie Wray (NR54), pp24-25, §3.6.20 and §3.6.26.

294. In fact, 2:1 provision is the minimum acceptable ratio.²⁷¹ It is entirely expected that Network Rail would deliver a net gain in ponds because a newly dug pond will not have the conservation value of a pond established for years with a mature population. It is, therefore, normal practice to create greater capacity in order to mitigate the short-term loss – thereby avoiding a negative effect on the favourable conservation status of GCN – albeit incidentally producing a longer-term gain.²⁷² In other words, there is a quantitative gain in ponds to offset the qualitative loss. This should not be confused with the concept of biodiversity net gain or use of the Defra metric, which involves a separate calculation.
295. Third, Gladman argues that the amount of suitable terrestrial habitat lost within 500m of the relevant ponds will be approximately 10% rather than the 57% calculated by Network Rail. This is said to be supported by the plan in the Proof of Dan Simpson, Appendix 7, p47, which shows the darker orange area to be lost as 10% of the wider yellow area.
296. This approach is flawed for the reasons set out at **§§285-286 above**. In particular: (i) in determining suitable GCN terrestrial habitat Gladman has adopted a rigid radial approach.²⁷³ This ignores the fact that the land to the north of ponds comprises a landscaped garden and arable land, neither of which are suitable for GCN. A better approach is to skew the core area to the south to include a greater amount of disused railway given that the ecologists on both sides recognise that this is “*ideal*” GCN habitat; (ii) only loss of the existing railway line is accounted for without regard to the extra land adjacent to this required for construction purposes.
297. Fourth, Gladman argues that rather than using ECS B10 for the translocation of GCN from the disused railway line, it would be preferable to translocate them to the Old Quarry Winslow Biological Notification Site.²⁷⁴

²⁷¹ Proof of Evidence of Stephanie Wray (NR54), p24, §3.6.20.

²⁷² Oral evidence of Stephanie Wray.

²⁷³ Proof of Evidence of Dan Simpson, Appendix 5, p32.

²⁷⁴ Proof of Evidence of Dan Simpson, p7, §3.1.12, The location of the Biological Notification Site can be seen in the Proof of Evidence of Dan Simpson, Appendix 12, p72.

298. This would not be an effective approach, as stated by Dr Wray in cross-examination. Network Rail specifically considered the BNS as one of a number of sites that could potentially accommodate mitigation and compensation measures. It was not progressed on the ground that it was not possible to achieve additional capacity at this location; as it is already an ideal GCN habitat, it would be surprising if any measures could be carried out to enhance this area. For example, if the measures such as refugia are not limiting factors at the moment, introduction of them will not have any impact on carrying capacity.
299. Fifth, Gladman argues that Moco Farm, now acquired by Network Rail, is a suitable alternative so that ECS B10 is not necessary.
300. Moco Farm is considered to be suitable in principle for the creation of GCN habitat and is larger than ECS B10.²⁷⁵ Nonetheless, in ecological terms it is a less desirable solution than ECS B10; it is approximately 2km away from the point of origin and would necessitate disease screening.²⁷⁶ ECS B10, however, would allow for natural recolonisation back onto the railway in the Winslow area. In this respect, Dan Simpson agreed with the principle that it is desirable to keep GCN closer to their point of origin rather than locating them further afield.²⁷⁷
301. Moreover, until Natural England accepts that Moco Farm is a suitable alternative, ECS B10 is the only viable solution which Network Rail can be confident will deliver a licensable Scheme. The corollary is that Network Rail will agree to omit ECS B10 from the Order, and use Moco Farm instead, if Natural England agrees that Moco Farm is a satisfactory alternative. This is notwithstanding that Moco Farm is not the optimal solution in ecological terms; Network Rail recognises that, sometimes, the second-best option has to be accepted. As things stand, Natural England does not consider that Moco Farm is a suitable alternative.²⁷⁸

²⁷⁵ Rebuttal of Stephanie Wray (NR54/1), p3, §1.1.11. For the other advantages of Moco Farm, see Moco Farm Ecological Compensation Site B28 technical note, March 2019 (NR238), pp3-11.

²⁷⁶ Rebuttal of Stephanie Wray (NR54/1), p3, §1.1.11. For the disadvantages of using Moco Farm, see Moco Farm Ecological Compensation Site B28 technical note, March 2019 (NR238), pp3-11 to 3-12.

²⁷⁷ Examination-in-chief of Dan Simpson. His preferred solution was, therefore, to relocate GCN immediately adjacent to the BNS.

²⁷⁸ Natural England's Closing Submissions, pp15-16, §§48-50.

302. Sixth, Gladman argues that the lack of need for ECS B10 is demonstrated by what is said in the ES; there is an asserted contradiction in the ES between the role assigned to ECS B10 in the ES, Volume 2.i, Project-wide Assessment, and the fact that ECS B10 is not identified in the ES, Volume 2.ii, Route Section Assessment, Route Section 2B. In particular, it is stated that ECS B10 is not identified in the ES, Volume 2.ii, Route Section Assessment, Route Section 2B, §9.4.143 and §9.4.147, even though ECS B7, B13 and C1 are identified.

303. This is an overly legalistic approach which involves reading the ES in discrete chunks rather than as a single, integrated assessment. There is no contradiction here. In particular:

- (1) The ES, Volume 2.i, Project-wide Assessment and ES, Volume 2.ii, Route Section Assessment, Route Section 2B ought to be read together. They are complementary. The fact that ECS B10 is not specifically mentioned in the relevant parts of ES, Volume 2.ii, Route Section Assessment, Route Section 2B cannot supersede the express reference to ECS B10 in ES Volume 2.i, Project-wide Assessment, §9.5.136 (and the related comments at §9.5.137,²⁷⁹ §9.5.139 and §9.5.141) and in ES, Volume 3, Appendix 9.13 (p9) as set out above. These paragraphs leave no doubt as to the need for ECS B10;²⁸⁰
- (2) The reason why ECS B7, B13 and C1 were specifically mentioned, but ECS B10 and others were not, in ES, Volume 2.ii, Route Section Assessment, Route Section 2B, §9.4.143 and §9.4.147,²⁸¹ is because those three sites had already been acquired at the time of writing the ES.²⁸² Further, at the time of the FEI, those sites had been constructed as

²⁷⁹ For example, §9.5.137 refers to “Appendix 9.13 in Volume 3” which, as set out at **§282 above**, details the need for ECS B10 in some detail.

²⁸⁰ See also the ES, Volume 2.ii, Route Section 2B, p9-95, Table 9.25, which lists GCN_072 and GCN_501 under the heading “Water bodies where great crested newt populations will lose core, intermediate and distant terrestrial habitat” and GCN_456 under the heading “Water bodies where great crested newt populations will lose intermediate and distant terrestrial habitat”. This demonstrates Network Rail’s awareness of the risks to the ponds next to proposed ECS B10. In cross-examination, Dan Simpson accepted that the risks set out in Table 9.25 were reasonably stated.

²⁸¹ Or the equivalent paragraphs in the FEI, Part I, Main Report, pp134-135, §11.3.10 and §11.3.14.

²⁸² Oral evidence of Stephanie Wray.

advanced mitigation sites. It was known that, by the time of translocation, these areas would have matured and be ready to accept GCN. Nonetheless, it was always Network Rail's intention to acquire all of the other ECS sites to create a network of stepping stones across the Order Scheme. Indeed, in evidence Dr Wray stated that there were 13 other ECS, expected to have the same function as ECS B10, which were also identified in ES, Volume 3, Appendix 9.13 but which not mentioned in the Route Section-specific volumes of the ES;²⁸³

- (3) ECS B7,²⁸⁴ B13²⁸⁵ and C1²⁸⁶ cannot be read as providing an exhaustive list of the relevant ECS for GCN because they are located too far from the 2B6 GCN metapopulation to fulfil this function. In evidence, Dr Wray confirmed that all of these ECS would be less favourable than ECS B10 – the “*standout preferred favourite*” – because of ECS B10's proximity to the GCN 2B6 metapopulation;²⁸⁷ translocating the GCN to ECS C1 would require disease screening and ECS B13, whilst preferable to B7 and C1, may not have the requisite carrying capacity. In cross-examination, Dr Dan Simpson accepted that these sites were not as “*preferable*” as ECS B10.

ii. *Ecological designations*

304. Network Rail has assessed that 0.1ha of woodland within Old Quarry Winslow BNS will be lost due to construction works. It is proposing to reinstate half of this area to woodland and to plant an additional 0.2ha area of woodland to the east of the Designated Site.

²⁸³ There has also been no detailed survey of ECS B10. This would usually occur once the site has been acquired. There is, however, no dispute as to the suitability of the land within ECS B10, physically or functionally, for the creation of the habitats proposed.

²⁸⁴ The location of ECS B7 can be found at ES, Volume 4, Figure 9.14F, Sheet 6 of 26.

²⁸⁵ The location of ECS B13 can be found at ES, Volume 4, Figure 9.14G, Sheet 7 of 26.

²⁸⁶ The location of ECS C1 can be found at ES, Volume 4, Figure 9.14K, Sheet 11 of 26.

²⁸⁷ Rebuttal of Stephanie Wray (NR54/1), p2, §1.1.8.

305. Gladman criticises this on the basis that as only 0.1ha is being lost there does not need to be 0.25ha of restoration.
306. Again, this fails to take account of the standard principle that quantitative gains will usually be required to offset qualitative loss: new woodland planting will take several decades to mature and at 900mm tall, when planted, will not serve the same ecological function as an established woodland of the same size.²⁸⁸
307. This fact is reflected in biodiversity accounting metrics which attempt to calculate how much *new* semi-natural woodland, for example, is required to compensate for the loss of established woodland. In particular, Network Rail applied the Defra metric in which semi-natural woodland is treated as having a high distinctiveness (score of 6) and a condition score of 3. This metric calculates that Network Rail ought to plant 0.45ha of newly planted woodland to achieve no net loss.²⁸⁹ This demonstrates that the 0.25ha of newly planted woodland proposed by Network Rail is not excessive. In evidence, Dan Simpson stated that a distinctiveness score of 6 and a condition score of 3 would be “*top-end*” scores for semi-natural woodland and that the woodland actually being lost is “*somewhere below that standard*”. The fact is that: (i) using the Defra metric, there is no discretion to alter those scores for semi-natural woodland;²⁹⁰ and, (ii) Network Rail used its judgment to reduce the amount of new planting to 0.25ha rather than 0.45ha.
308. Separately, it is Network Rail’s aspiration to better connect existing valuable habitats in the Old Quarry Winslow BNS and the nearby Wood Copse off Magpie Way LWS.²⁹¹ As set out in Dr Wray’s Rebuttal to Dan Simpson’s Proof of Evidence (NR54/1), “1.1.16...*by extending the area of the habitats present in these protected sites, it will enable the ranges of the protected / notable species these sites support to expand.*”²⁹² This is part of a route-wide strategy to improve connectivity and avoid habitat fragmentation.

²⁸⁸ Rebuttal of Stephanie Wray (NR54/1), p4, §1.1.15.

²⁸⁹ Rebuttal of Stephanie Wray (NR54/1), p4, §1.1.15.

²⁹⁰ This is a point which was accepted by Dan Simpson in evidence.

²⁹¹ Rebuttal of Stephanie Wray (NR54/1), p4, §1.1.16.

²⁹² See also ES, Volume 2.ii, Route Section 2B, p9-61, §9.4.7.

309. Gladman criticises this on the basis that there will be a double-track railway line between the BNS and LWS such that there will be no improvement in connectivity.²⁹³
310. Network Rail disagrees with this; the presence of the railway will not be a complete barrier to the movement of species across it. Invertebrates, amphibians and reptiles will not find it to be a barrier and plants may spread through wind-dispersal of seeds. In this way, ECS B10 acts as a stepping stone between the BNS and LWS for movements across the railway.²⁹⁴
311. In summary, Network rail submits that (i) the need for the inclusion of ECS B10 in the Order Scheme has been demonstrated; (ii) there is no satisfactory and available alternative site; and (iii) the compulsory acquisition of the land required for ECS B10 is compellingly in the public interest.

(i) Trustees of the HC Stock Will Trust²⁹⁵

312. The single issue between the parties relates to the necessity of their land, confined to plot 613, required for ecological mitigation.²⁹⁶
313. Network Rail's position is that ECS B9 is necessary.²⁹⁷ The reasons are set out in a letter from Network Rail, dated 27 March 2019.²⁹⁸
314. The ES sets out the following reasons why ECS B9 is needed:²⁹⁹

²⁹³ Proof of Evidence of Dan Simpson, p11, §4.2.3.

²⁹⁴ Rebuttal of Stephanie Wray (NR54/1), p4, §1.1.16. This was emphasised in the oral evidence of Stephanie Wray.

²⁹⁵ OBJ/27.

²⁹⁶ In addition to plot 613, Network Rail is requesting powers over plots 604, 605, 606, 608, 610, 617, 617a, 620, 623, 626, 639 and 646. There were, initially, objections to the acquisition of several of these plots. As can be seen from the Trustees' Closing Submissions and the email from Network Rail, dated 5 April 2019, (NR253), however, these plots are either no longer required by Network Rail, no longer objected to by the Trustees or no longer owned by the Trustees.

²⁹⁷ The location of ECS B9 can be found in ES, Volume 4, Environmental Design Drawings, Sheets 28-29 of 98. It is known as Plot 613. The relevant ponds can be seen as GCN_503 and GCN_551 in ES, Volume 4, ES Figures, Figure 9.14G Sheet 7 of 26.

²⁹⁸ NR251.

²⁹⁹ ES, Volume 3, Appendix 9.13, pp8-9.

“2.3.10 ECS B9 is close to an area where pond habitat supporting great crested newts would be lost. ECS B9 will be used for the translocation of great crested newts (under a Natural England licence). ECS B9 will also be used for the translocation of reptiles. ECS B9 will include creation of ponds and marginal planting, open mosaic habitat, lowland meadow, native species-rich hedgerows with trees, scrub, south-facing reptile embankment, hibernacula and log piles. The provision of these habitats, once established, will support great crested newts, reptiles, birds, badgers, bats and terrestrial invertebrates such as black, brown and white-letter hairstreak butterflies.

2.3.11 ECS B9 is location north of the unnamed tributary of the Claydon Brook. It is immediately north of an ecological compensation site for a housing development project to the east of Furze Lane. ECS B9 will extend this existing ecological compensation site and benefit the protected and/or notable species that the existing ecological compensation site supports.”

315. Consequently, the primary reason for ECS B9 relates to GCN and it was this issue that was dealt with almost exclusively during the Inquiry. As such, these Closing Submissions will deal only with GCN. Nonetheless, it is important to emphasise that ECS B9 is also needed to support reptiles and other fauna.
316. Surveys conducted by Network Rail have demonstrated that GCN are present in ponds GCN_503 and GCN_551, albeit the population size of both ponds has been assessed as small.³⁰⁰ Works required by the Order Scheme will result in a loss of terrestrial habitat along the existing mothballed railway line, which is within both the core area (50m) and the intermediate area (250m) of these ponds.³⁰¹ This is good GCN habitat and is highly likely to be used by GCN from these ponds. Consequently, there will be habitat loss of approximately 250m in either direction from the ponds along the railway line.³⁰²
317. ECS B9 is very well located to contribute to compensation both as: (i) a receptor site for individual animals within 500m of ECS B9 to be moved to a place of safety outside the working area – it can confidently be predicted that there is no risk of disease contamination here as, due to the proximity, the GCN will be on home turf; and also, (ii) for habitat enhancement to improve carrying capacity and resilience of

³⁰⁰ FEI, Part I, Main Report, p130, Table 11.5.

³⁰¹ FEI, Part I, Main Report, p133, Table 11.6.

³⁰² Oral evidence of Claire Wansbury.

populations from those two ponds and the wider metapopulation that they form part of.³⁰³

318. Proposals to improve the GCN carrying capacity of ECS B9 include the introduction of ponds and marginal planting, south-facing reptile embankments, hibernacula and log piles.
319. The Trustees do not consider that ECS B9 is necessary.
320. First, the Trustees point to the fact that the estimated increase in carrying capacity of ECS B9 is stated to be “0”. Therefore, it is argued that there is no significant gain to be had through using ECS B9 as a compensation site given that it is already fulfilling its role of providing terrestrial habitat for GCN.³⁰⁴ Network Rail rejects this argument. Thomas Haynes took this evidence of increase in carrying capacity from the Moco Farm Ecological Compensation Site B28 technical note.³⁰⁵ This information has been taken out of context, which was to assist Natural England in coming to a decision on whether Moco Farm was a suitable alternative. It ignores the clear statements throughout the document that there *will* be an increase in carrying capacity at this location.
321. The technical note looked at carrying capacity using a particular methodology where the type of habitat was used to give an estimate for how many GCN per hectare the relevant type of habitat could take. The enhancements planned for ECS B9, such as ponds and hibernacula (in respect of which there is currently no evidence of their existence on ECS B9), are extremely well-established ways of improving carrying capacity but they were not factored into the particular methodology used, which is habitat-based. Consequently, in order to take a precautionary approach in this specific case there was no attempt to come up with a number, whilst recognising and clearly stating that the carrying capacity would be expected to increase. There are methods for estimating carrying capacity based on water bodies but the risk was

³⁰³ Oral evidence of Claire Wansbury.

³⁰⁴ Proof of Evidence of Thomas Haynes, p13, Table 1.

³⁰⁵ NR238.

that if Network Rail attempted to make estimates based on terrestrial habitat and water bodies, there would be double-counting.³⁰⁶

322. Second, the Trustees argue that enhancements are not needed to ECS B9 because the current carrying capacity is already 420 GCN. Network Rail rejects this argument. It is wrong as a matter of licencing to adopt a purely numerical analysis. Licencing decisions are based on areas of each of zone of habitat being lost. In oral evidence, Claire Wansbury stated that she fully expected a licence application made on the basis of the Trustees' numerical approach would be rejected by Natural England; she was not aware of any licencing decisions where a numerical calculation such as this had been used instead of a habitat-based assessment of losses and gains. In the present case, there will be loss of terrestrial habitat in the core and intermediate area of the ponds which require compensation. Moreover, on the substantive point, it is not the case that enhancements to ECS B9 will only provide minimal ecological benefit to GCN because it is already suitable GCN habitat. As confirmed in oral evidence by Claire Wansbury, the enhancements proposed to be made to ECS B9 will provide significant ecological benefit to GCN.
323. Third, the Trustees make the same point at Gladman - see **§293 above** - that ECS B9 is not necessary because overall there is going to be a net gain of ponds and terrestrial habitat for GCN.³⁰⁷ Therefore, to the extent that ECS B10 contributes to the net increase of ponds, it is unnecessary. Network Rail rejects this approach. Further, it is argued that the specific ponds to be lost on Route 2B are very far from ECS B9 such that this land cannot be necessary for their compensation. Network Rail's response is similar to that set out at **§294 above**. In summary, it is normal practice to create greater capacity in order to mitigate the short-term loss - thereby avoiding a negative effect on the favourable conservation status of GCN - albeit incidentally producing a longer-term gain.

³⁰⁶ Oral evidence of Claire Wansbury.

³⁰⁷ Proof of Evidence of Stephanie Wray (NR54), pp24-25, §3.6.20 and §3.6.26. See also FEI, Part I, Main Report, p123, §11.1.11.

324. Further, the ECS are located “*along the length of the Project*”³⁰⁸ and are designed to act as “*stepping stones*” along the route and to promote East to West connectivity for biodiversity.³⁰⁹
325. Fourth, the Trustees argue that the fact that ECS B9 is not necessary is demonstrated by the FEI, pp134-135, in which no specific reliance is placed on the provision of ECS B9 for aquatic and terrestrial habitat compensation. This is a similar argument to that raised by Gladman at **§302 above**. Network Rail’s repeats its position as set out at **§303 above**. In summary, this is an overly legalistic approach that fails to look at all of the documentation and detail on ECS as a whole. For example, there is a clear reference, at §11.3.11, to Appendix 9.13 (v2) of the FEI, Part II, which has a whole section on the necessity of ECS B9.³¹⁰ Similarly, there are references at other parts of the ES to the express need for ECS B9 in creating aquatic and terrestrial habitat.³¹¹
326. Fifth, the Trustees argue that an area of land known as the “Yellow Land”, also in the ownership of the Trustees, can be designed to mitigate the environmental effects of the Order Scheme instead of ECS B9.³¹² Network Rail disagrees with this position:
- i. The Yellow Land already contains suitable aquatic and terrestrial habitat for GCN (which are using the two balancing ponds for breeding) and other species. Any improvements to the land would not provide any meaningful additionality in relation to environmental mitigation;
 - ii. The overall scale of what is proposed for ECS B9 would not be providable within the Yellow Land, for example, the additional ponds and the scale of embankment;³¹³

³⁰⁸ ES, Vol 2.i, Project-wide Assessment, p2-29, §2.4.84.

³⁰⁹ Proof of Evidence of Stephanie Wray (NR54), p52, §3.14.1.

³¹⁰ FEI, Part II, Appendix 9.13 (v2), p9.

³¹¹ ES, Volume 2.i, Project-Wide Assessment, pp9-83 – 9-84, §§9.5.135-9.5.137. Although these references are in the ES, the role of ECS B9 to compensate for the impacts on loss of terrestrial habitats for ponds GCN_503 and GCN_551 has not changed following further surveys as showed in the FEI.

³¹² The location of the Yellow Land can be seen in the Trustees’ Statement of Case, Appendix 6. The entire Statement of Case can be found in the Proof of Evidence of Thomas Haynes, Appendix 3.

³¹³ Oral evidence of Claire Wansbury.

- iii. Balancing ponds, like all surface water drainage systems, require maintenance to enable them to function as they have been designed. This maintenance is not compatible with mitigation requirements for GCN. For example, in order for the Yellow Land to be appropriate, at the very least the grass would have to change to rough grassland. This is not possible for the foreseeable future, however, as the flat land surrounding the two large balancing ponds on the Yellow Land has to be kept that way in order for the ponds to be accessible for maintenance work; and,
- iv. As accepted by Thomas Haynes, ECS B9 and the Yellow Land should be seen as a collective whole in ecological terms.³¹⁴ Given their integrated nature, ECS B9 will *complement* the Yellow Land in ecological terms and the two cannot be seen as alternatives; the two areas are directly adjacent and with the enhancement planned there will be more types of terrestrial habitat and ponds to provide connectivity between the Yellow Land and the railway corridor. This contradicts the Trustees' position, which includes a desire to develop the land on which ECS B9 is located.

In oral evidence, Thomas Haynes was asked which of the following two options better served the public interest in limiting the impact on GCN: (1) ensuring that both ECS B9 (with enhancements) and the Yellow Land (in its current state) are used as ecological habitat; or, (2) enhancing the Yellow Land but losing ECS B9 to development. He accepted that (1) – the option in the Order Scheme – was the preferable option, albeit he said that there was a fairly marginal difference. Network Rail considers that there is no question that (1) is preferable and necessary.

327. Sixth, the Trustees argue that the introduction of further ponds in ECS B9 would not be of value given that there are already balancing ponds in the Yellow Land. Network Rail rejects this position; the addition of ponds in ECS B9 would of substantial benefit to GCN. Pond numbers and their density are two of the most critical factors affecting the local population of GCN. This is both in terms of

³¹⁴ Proof of Evidence of Thomas Haynes, p17, §5.18.

carrying capacity and resilience, i.e. if something was to happen to make one pond unsuitable, the more alternative ponds there are the greater the likelihood that the local population and wider metapopulation would survive and thrive. This argument as to resilience is especially important in this location because the ponds on the Yellow Land are balancing ponds. For these ponds to have their balancing function, there would have to be occasional maintenance requiring intrusive works.

328. Seventh, the Trustees argue that Moco Farm, now acquired by Network Rail, is a suitable alternative such that ECS B9 is not necessary. Network Rail's response is similar to its response to Gladman Developments Ltd at **§§300-301 above**.
329. It is true that Moco Farm is suitable for the creation of GCN habitat and is larger than ECS B9.³¹⁵ Nonetheless, in ecological terms it is a less desirable solution than ECS B9; it is a large distance away from the point of origin and would necessitate disease screening.³¹⁶
330. Moreover, until Natural England accepts that Moco Farm is a suitable alternative, ECS B9 is the only viable solution which Network Rail can be confident will deliver a licensable Scheme. The corollary is that Network Rail will agree to omit ECS B9 from the Order, and use Moco Farm instead, if Natural England agrees that Moco Farm is a satisfactory alternative. This is notwithstanding that Moco Farm is not the optimal solution in ecological terms. Thomas Haynes agreed that this was a reasonable approach. As things stand, Natural England does not consider that Moco Farm is a suitable alternative.³¹⁷
331. In summary, Network rail submits that (i) the need for the inclusion of ECS B9 in the Order Scheme has been demonstrated; (ii) there is no satisfactory and available alternative site; and (iii) the compulsory acquisition of the land required for ECS B9 is compellingly in the public interest.

³¹⁵ For the advantages of Moco Farm, see Moco Farm Ecological Compensation Site B28 technical note, March 2019 (**NR238**), p3-11.

³¹⁶ For the disadvantages of using Moco Farm, see Moco Farm Ecological Compensation Site B28 technical note, March 2019 (**NR238**), pp3-11 to 3-12.

³¹⁷ Natural England's Closing Submissions, pp15-16, §§48-50.

(j) Trustees of Bedford Estates/ Woburn Estate³¹⁸

332. The single remaining issue between the parties relates to the necessity of plot 1171.³¹⁹ The Trustees were represented by Mr Michael Horton at the Inquiry.

333. There are two points of contention: (i) whether plot 1171 is necessary as an ECS (ECS D2); and, (ii) if plot 1171 is found to be necessary, the relevant proprietary arrangements by which ECS D2 can be secured.

334. On (i), Network Rail's position is that plot 1171 is necessary for the purposes of ECS D2. ECS D2 is necessary for the reasons set out in the ES:³²⁰

“ECS D2 is close to an area where the loss of pond habitat supporting great crested newts would be lost. ECS D2 will be used for the translocation of great crested newts (under a Natural England licence). ECS D2 will also be used for the translocation of reptiles.”

335. Two ponds – GCN_176 and GCN_177 – will be lost as a result of construction work.³²¹ Survey work shows that pond GCN_176 has a medium population and GCN_177, although not surveyed because access to that land was not available, is also assumed to have a medium population.³²² They are part of a wider metapopulation of GCN present in ponds close by.

³¹⁸ OBJ/114.

³¹⁹ The location of plot 1171 can be found in the Deposited Plans and Sections and Rights of Way Plans (**NR14**), Sheet 50 of 136. There were, originally, objections as to various plots said to be required by Network Rail. There is now agreement between the parties that: (i) the Trustees do not maintain their objection in relation to Plot 1191, which will be subject to temporary use and possession for construction purposes. They have expressed a preference that the plot be returned in its state of altered use. Network Rail is willing to do this subject to any necessary planning consents being obtained: see Article 28(4) of the draft Order together with Schedule 4, p57; (ii) Network Rail will not exercise powers of compulsory acquisition over plots 1194 and 1195; (iii) the Trustees do not maintain their objection with respect to plots 1209 and 1214; and, (iv) the Trustees do not maintain their objection in relation to the provision of access over plot 1164. At Inquiry, Network Rail's position was that it was willing to restrict its exercise of the powers granted in the Order to acquisition of a permanent right in the form of an easement. Mr Horton indicated that this would be acceptable to the Trustees subject to the detail being agreed.

³²⁰ ES, Volume 3, Appendix 9.13, pp13-14.

³²¹ These ponds can be seen in FEI, Part III, Figure 9.14N, Sheet 14 of 26. The fact that these ponds will be lost is confirmed in FEI, Part I, Main Report, p140, Table 11.12.

³²² FEI, Part I, Main Report, p139, Table 11.11.

336. The creation of a minimum of four ponds is necessary to compensate for the long-term effects on GCN of the loss of this aquatic habitat during construction.³²³
337. The creation of terrestrial habitat is also necessary as GCN do not live solely in ponds but also in surrounding terrestrial habitat. This will take the form of, for example, grassland, scrub, edge vegetation and refuges.³²⁴ Furthermore, the loss of terrestrial habitat along the railway corridor must be compensated. Substantial areas are required to ensure a variety of types of habitat and to have confidence that what is being produced is going to support GCN.
338. The key reason why plot 1171 specifically is required is its proximity to the ponds that will be lost; it is literally adjacent to them and so in an ideal location.³²⁵ This is important for the GCN population as a whole but in terms of translocation it will enhance the survival chances of individual GCN.³²⁶ This is also important for other protected and notable species.
339. The Trustees refute that plot 1171 is necessary. First, it is argued that land to the north or east of the railway line should be used instead. Network Rail does not consider that these alternative plots are appropriate; they are not as proximate as plot 1711 to the lost ponds and the active railway will be a deterrent and partial barrier to GCN movement.³²⁷ Another plot suggested, for example the plot adjacent to plot 1164 on its eastern boundary, would not be as good as plot 1171 as it is existing grassland with wet areas – i.e. it will already be contributing to GCN habitat in a way that the arable field (plot 1171) would not. In other words, the gain would be greater using plot 1171 rather than this other proposed plot. Moreover, Mr

³²³ FEI, Part I, Main Report, p141, §11.5.10.

³²⁴ What is proposed for this particular site can be seen in FEI, Part I, Main Report, pp141-142, §11.5.11 and §11.5.14. Design considerations for ECS are set out in FEI, Part II, Appendix 9.13 (v2), p2, §2.1.1. The considerations relating to licence requirements and proximity to effects on specific important ecological features are particularly important here.

³²⁵ Oral evidence of Claire Wansbury.

³²⁶ Claire Wansbury explained this in evidence: the translocation process will never take every single animal. For example, in the case of a pond, not every GCN will be back in that pond in a particular spring; some of them might not necessarily go to a breeding pond in the first year. Therefore, there will be GCN present in the wider terrestrial habitat that would not be picked up in a translocation exercise (focused on the pond). Consequently, replacement ponds in the immediate proximity of plot 1711 give a very strong chance of the whole population being able to benefit from the new ponds.

³²⁷ Oral evidence of Claire Wansbury.

Horton confirmed that this area of land was not owned by the Trustees. Notwithstanding this, if other appropriate, nearby land was found which was acceptable to Natural England and the proprietary arrangements were satisfactory, Network Rail would be happy to progress such matters, thereby decreasing the amount of plot 1171 acquired.

340. Second, it is argued that plot 1171 is not appropriate because there is a public footpath on this land. Network Rail's position is that this does not affect the suitability of the land in any way.³²⁸ It is, rather, a factor that Network Rail will need to take into account at the detailed design stage. Detailed design will mitigate any risk to animals or reptiles from people who might stray from the public footpath. Moreover, detailed design will mitigate any risk to people, including children, going into the pond and putting themselves in danger. This could be done, for example, by fencing, as is often done for GCN translocation schemes for housing sites where ponds are deliberately located very close to human populations.
341. Third, it is argued that such a large area of land – 7.2 ha – is not necessary. Network Rail's position is that, given the loss of ponds and the amount of loss of GCN terrestrial habitat along the railway corridor, inclusion of the whole area is justified as an ECS. Based on discussions with Natural England, they are not expecting a smaller area to be sought. Notwithstanding this, if it was possible to save one or both of the ponds during detailed design, it may be appropriate for Network Rail to raise this with Natural England and explore the possibility of decreasing the size of ECS D2.
342. On (ii), it is intended that ECS D2 will be subject to a 30-year maintenance and management plan between Network Rail and the landowner. The key point is that the assumption on which this part of the Order Scheme rests is that land would be restored to the landowner following construction of ECS D2 but subject to legally binding provisions which require the site to be maintained and managed to fulfil its purpose. One way of achieving this would be for the matter to be dealt with without any transmission of title but for the Trustees to grant rights to Network Rail to create

³²⁸ Oral evidence of Claire Wansbury.

ECS D2 and then to accept responsibilities for future management. Although this would be subject to Natural England and Network Rail being satisfied as to the landowners' willingness and ability to fulfil the monitoring and management requirement, it is unlikely that there would be concerns with respect to the Trustees. Mr Horton indicated that this would be the Trustees preferred option.

343. Notwithstanding this alternative pragmatic approach, the Order powers would still be necessary as a backstop as it may be the case that a relevant point cannot be dealt with contractually.
344. In summary, Network rail submits that (i) the need for the inclusion of ECS D2 in the Order Scheme has been demonstrated; (ii) there is no satisfactory and available alternative site; and (iii) the compulsory acquisition of the land required for ECS D2 is compellingly in the public interest.

(k) O&H³²⁹

345. As can be seen from its Statement of Case, O&H has four areas of land affected by the draft Order and in respect of which objections are made.³³⁰ These relate to land in: (i) the former Bletchley Brickworks; (ii) the Woburn Estate; (iii) Marston Valley; and, (iv) Kempston Hardwick.³³¹
346. The parties are close to agreement in relation to the land at the former Bletchley Brickworks, Marston Valley and Kempston Hardwick. Further, the principal disagreement with respect to the land at Woburn Sands is the issue of shared value. On this point, and for the reasons set out below, Network Rail has gone as far as it properly can.
347. Notwithstanding this, O&H appeared at Inquiry stating that its whole objection remained. It did not, however, call any witnesses. Rather, it relied on a single-page Position Statement, dated 25 April 2019. This was, no doubt, a result of the

³²⁹ OBJ/156.

³³⁰ O&H's Statement of Case, p3, §5.1.

³³¹ The relevant plot numbers are set out on p3 of the O&H Position Statement, dated 25 April 2019.

productive discussions between the parties significantly narrowing the issues. Nevertheless, this does limit the weight that should be given to its unexamined evidence in the absence of any Statement of Common Ground or formal settlement.

348. In relation to land at the former Bletchley Brickworks, the proposal for a Compensatory Flood Storage Area is now broadly accepted by O&H.³³² The Proof of Evidence of Phil Holland explains why O&H's land is needed for construction purposes.³³³ The Proof of Evidence of Simon Croft explains why the land is needed for engineering purposes, including Compensatory Flood Storage Areas.³³⁴
349. In relation to land at Marston Valley, the proposal for a Compensatory Flood Storage Area is now broadly accepted by O&H.³³⁵ The Proof of Evidence of Phil Holland explains why O&H's land is needed for construction purposes.³³⁶ The Proof of Evidence of Simon Croft explains why the land is needed for engineering purposes, including for Compensatory Flood Storage Areas.³³⁷ The Proof of Evidence of Stephanie Wray explains why the land is needed for Ecological Compensation Sites.³³⁸
350. In relation to land at Kempston Hardwick, the proposal for a Compensatory Flood Storage Area is now broadly accepted by O&H.³³⁹ The Proof of Evidence of Phil Holland explains why the land is needed for construction purposes.³⁴⁰ The Proof of Evidence of Stephanie Wray explains why the land is needed for Ecological Compensation Sites.³⁴¹
351. In relation to land at Woburn Estate, the Proof of Evidence of Andrew Shuttleworth explains why O&H's land is needed for a Compensatory Flood Storage Area.³⁴² The Proof of Evidence of Phil Holland explains why O&H's land is needed for

³³² Proof of Evidence of Andrew Shuttleworth (NR48), p46, §9.4.29.

³³³ Proof of Evidence of Phil Holland (NR50), pp48-49, §§4.3.74-4.3.84.

³³⁴ Proof of Evidence of Simon Croft (NR51), pp48-49, §§7.14.6-7.14.13.

³³⁵ Proof of Evidence of Andrew Shuttleworth (NR48), p46, §9.4.29.

³³⁶ Proof of Evidence of Phil Holland (NR50), p50, §§4.3.96-4.3.98.

³³⁷ Proof of Evidence of Simon Croft (NR51), pp51-53, §§7.14.36-7.14.54.

³³⁸ Proof of Evidence of Stephanie Wray (NR54), p94, §§4.1.185-4.1.188.

³³⁹ Proof of Evidence of Andrew Shuttleworth (NR48), p46, §9.4.29.

³⁴⁰ Proof of Evidence of Phil Holland (NR50), p50, §§4.3.99-4.3.101.

³⁴¹ Proof of Evidence of Stephanie Wray (NR54), p94, §§4.1.189-4.1.191.

³⁴² Proof of Evidence of Andrew Shuttleworth (NR48), pp46-47, §§9.4.29-9.4.32.

construction purposes.³⁴³ The Proof of Evidence of Simon Croft explains why the land is needed for engineering purposes, including for Compensatory Flood Storage Areas.³⁴⁴

352. O&H has a specific objection in relation to Network Rail's plan to replace Woodley's Farm Level Crossing in Woburn Sands. The position is set out in the Proof of Evidence of Martyn Angus:³⁴⁵

"10.6.2 Following a safety risk assessment, Network Rail is proposing to replace Woodley's Farm Level Crossing with a new overbridge (Woodley's Farm Order Bridge) to facilitate the closure of the Woodley's Farm Level Crossing. The Woodley's Farm Order Bridge is felt by the objectors to be insufficient to address planned development; they have referred to Milton Keynes Council's emerging policy which supports provision of a new bridge in support of place making and connectivity objectives in aid of the wider development of the South East of Milton Keynes.

10.6.3 Since the purpose of the Woodley's Farm Order Bridge is to provide an alternative means of access across the railway to the Woodley's Farm Level Crossing and the Fisherman's Path footpath crossing, the scope of the bridge is commensurate with the rights of access which these existing crossings provide – this being a farm access route and public footpath, rather than public highway."

353. There are two substantive points to be made here.
354. First, the Order Scheme makes provision to accommodate the farm crossing which is to be closed on safety grounds. Appropriate provision to accommodate this existing right clearly needs to be made. Network Rail cannot just close it without making alternative arrangements. The Order Scheme also has to accommodate Fisherman's Path, which is a public right of way. It makes sense to combine the two so that that the public right of way previously enjoyed over Fisherman's Path is diverted over new accommodation overbridge. Consequently, the Order does what it should do; it addresses the interference with existing rights.

³⁴³ Proof of Evidence of Phil Holland (NR50), pp49-50, §§4.3.85-4.3.95.

³⁴⁴ Proof of Evidence of Simon Croft (NR51), pp49-51, §§7.14.14-7.14.35.

³⁴⁵ Proof of Evidence of Martyn Angus (NR53), p36, §§10.6.2-10.6.6. It can also be seen in the Proof of Evidence of Simon Croft (NR51), p50, §§7.14.24-7.14.28.

355. Second, it is wrong for O&H to assert that the Order should anticipate and make provision for a new grade-separated public crossing to serve future development coming forward under aegis of the South East Milton Keynes Urban Extension (“SEMK”).
356. Heather Pugh wrongly states, in her Proof of Evidence,³⁴⁶ that Network Rail wrongly failed to include SEMK within the shortlisted Reasonably Foreseeable Future Projects. This is wrong because at the time when the shortlist of Reasonably Foreseeable Future Projects was being drawn up, there was insufficient certainty about the detail of SEMK and the location of a future overbridge to accommodate that development. Given this uncertainty, it was reasonable for Network Rail to make provision to accommodate existing rights and to allow future development needs to come forward through the ordinary planning process under the aegis of the development plan.
357. The validity of this point has been confirmed by the recently adopted policies in Plan:MK as follows:³⁴⁷
- i. Policy SD11(B)(2) now provides the planning policy framework for the provision of a new grade-separated crossing over the railway line at Woburn Sands to ensure appropriate connectivity between the northern and southern parts of SEMK;
 - ii. This policy makes clear that the number, location and provision of such crossings must be determined through the development framework, whose preparation is a prerequisite to development by virtue of Policy SD10;
 - iii. Section 4 of Plan:MK, on “*Development Strategy*” makes clear that housing delivery must not “*[prejudice] the delivery of either of these key infrastructure*

³⁴⁶ Proof of Evidence of Heather Pugh, p21, §7.17.

³⁴⁷ Further commentary on this can be found in the note titled, “Update on Planning Matters” (NR270).

projects", referring to both EWR and the new Cambridge-Milton Keynes-Oxford growth corridor.³⁴⁸

358. Consequently, Plan:MK recognises by its in-built sequencing that development should avoid prejudicing the EWR scheme rather than the other way around. This makes obvious planning sense because the Order Scheme is at a much more advanced stage.
359. Heather Pugh's Proof of Evidence, Appendix 13, attaches a plan. Crucially, that document has no planning status, either in planning policy or as a draft planning application. It is, rather, no more than a speculative attempt to identify how a future scheme *might* be brought forward. Indeed, it prejudices the forward planning process now laid down in the newly adopted policies of Plan:MK, which supersede it.
360. This analysis and division of responsibility is usual, consistent with planning policy and in accordance with sound planning practice. It simply places the responsibility of bringing forward new infrastructure that is needed to release or to serve planned new development upon those developers who wish to deliver that new development. It is a conventional element of the developer's costs of bringing forward its development. By contrast, Network Rail's role is to accommodate existing rights rather than speculate about future rights related to development needs.
361. Notwithstanding this, Network Rail's stated and constant position is as follows:³⁴⁹ provided that plans for a new crossing or crossings are brought forward through the planning process under the aegis of Plan:MK and can be delivered without prejudicing the timely and economic delivery of EWR2 under the Order, Network Rail will be in a position to agree not to exercise the powers in the Order that authorise the provision of the Woodley's Farm Occupation Overbridge. This is consistent with Policy SD10B.

³⁴⁸ P15, §4.17.

³⁴⁹ Proof of Evidence of Martyn Angus (NR53), p36, §§10.6.5-10.6.6 and Proof of Evidence of Simon Croft (NR51), p50, §§7.14.27-7.14.28.

362. In the meantime, whilst the detailed planning process for SEMK is inchoate, it is prudent and necessary for Network Rail to accommodate existing rights as set out above. It is, therefore, essential that powers to construct the overbridge and to acquire or possess the land needed for its provision be retained within the Order.
363. As regards the shared value for any alternative bridge constructed for the benefit of SEMK, Network Rail's position is set out in its note **NR260**. This is no more than a conventional approach of its shared value policy, as set out in **NR206**. In summary, whilst Network Rail does not currently believe that it has a shared value position in respect of SEMK, Network Rail cannot presently confirm this. This is because of the uncertainties over the planning process and, in particular, the lack of a specific planning application and the absence of any detailed scheme in existence for SEMK. In those circumstances, Network Rail cannot, in the public interest, prudently give up the possibility of a shared value situation arising with the result that it must reserve its position. Network Rail is, however, happy to commit to the joint appointment of an independent valuer to assess the shared value position.
364. Separately, it is incorrect to say, as Pippa Cheetham essentially suggests in her Proof of Evidence, that the situation could and should have been resolved earlier. O&H has been able to participate in the consultation processes and to engage with NR extensively. The main difficulty faced by O&H has not been a lack of engagement. Rather, it has been the fact that the planning position as regards SEMK was too uncertain and inchoate at the time when the Order Scheme was assessed in the ES and published to make any provision at that stage other than to accommodate existing rights. That remains the position today as confirmed by the policy framework set out in the recently adopted Plan:MK.
365. Overall, the position taken by O&H is misconceived. It is misconceived as it resolves down to an argument that the pace of delivery of EWR2 should be dictated by the pace of delivery of O&H's scheme at Woburn Sands. This is an unjustifiable approach to delivering on the public interest in circumstances where there is very clear evidence of powerful support at all levels of policy and government to deliver the EWR scheme at the earliest opportunity.

366. Finally, all of these points would and could have been explored during cross-examination had O&H presented its evidential case to Inquiry. By failing to do this, the evidence put forward in writing should attract only limited weight. This is because it has not been possible to explore and examine the degree to which O&H's evidence has faced up to these critical considerations.

(l) Milton Keynes Green Party³⁵⁰

367. In oral evidence, Alan Francis, on behalf of Milton Keynes Green Party, confirmed that the Green Party supported delivery of EWR2 as early as possible. Consequently, he also confirmed that he did not wish the Order to be modified so as to include additional powers to acquire further land compulsorily due to the delay this would result in. He did, nonetheless, raise several issues. These were previously addressed in Network Rail's letter, dated 7 December 2018.³⁵¹

368. These submissions will focus on the main issues raised by Mr Francis at the Inquiry.

369. First, Mr Francis believes that the track between Aylesbury and Aylesbury Vale Parkway should be double-tracked to avoid delays and potential conflict between train services.

370. Network Rail's position is that in order to double-track this section of line, extra width would be required either by acquiring extra land and/or installing additional retaining wall.³⁵² The earthworks would also potentially require widening, necessitating slackening of the earthworks and/or additional land and/or retaining measures. This issue was looked at in an earlier stage of the project but the latest Train Service Specification descoped this route; the double-track was deemed no longer necessary following removal of the London Marylebone to Milton Keynes service. The single-track renewal will, however, be designed in such a way as not to preclude the installation of a second track in the future.

³⁵⁰ OBJ/212.

³⁵¹ NR222. Network Rail's response can also be seen in the Proof of Evidence of Simon Croft (NR51), pp73-74, §8.50.

³⁵² Oral evidence of Simon Croft.

371. Second, Mr Francis argues that Bletchley high level platforms should be extended – using space to the north of the platforms – to 6-car or 8-car capacity, as originally planned, before they were descope to 4-car.³⁵³
372. Network Rail’s position is that extension of the platforms is not necessary to deliver the Train Service Specification which forms the basis of the Order Scheme.³⁵⁴ This has been the case since the hourly inter-regional train service was descope. In those circumstances, it would be disproportionate to spend extra money on extending the platforms; extending the platform north would cost approximately £1.2m for 6-car capacity and £2.7m for 8-car capacity and extending the platform south would cost approximately £1.4m for 6-car capacity and £3.2m for 8-car capacity.³⁵⁵ Moreover, extending the platforms to the north, whilst technically possible, would not be easy, as there is a refuge area currently in this location.³⁵⁶ The refuge area would have to get bigger and move closer to Summit junction. Network Rail would also have to look at the ability of the embankment, in terms of space constraints and capacity, to take an additional length of platform. These added complications would be more expensive and require a design and optioneering analysis. Moreover, the current exits to the platforms are at the very southern end of a 212m platform. It would be undesirable to extend the platforms to the north, in terms of station design, as this would require many passengers to walk to the opposite end of the platform to exit.³⁵⁷ Notably, the current design does not preclude the future extension of these platforms at a later date if future EWR train services justify the need.
373. Third, Mr Francis argues that Bletchley high level platform should allow for reversing so as to provide more flexibility and enable the Central Section of EWR to operate.

³⁵³ The location of the platforms can be seen at ES, Volume 4, Scheme Drawings, Sheet 45 of 134. The original plans for 8-car platforms were descope once the Department for Transport decided that the inter-regional service was not going to be provided as part of EWR2.

³⁵⁴ Oral evidence of Simon Croft. See also Proof of Evidence of Simon Croft (**NR51**), p73, §§8.50.2-8.50.3.

³⁵⁵ Oral evidence of Simon Croft.

³⁵⁶ Under the original plans, the assumption was that the platforms would be extended to the south. There was never consideration of extending the platforms to the north.

³⁵⁷ Oral evidence of Simon Croft.

374. Network Rail does not plan to introduce reversibility at Bletchley;³⁵⁸ it is not necessary for the Order Scheme and would require alteration of the signalling system which would increase cost. The objective of the Order Scheme is to get the Western Section of EWR up and running as soon as possible. It will be for those promoting the Central Section to deal with matters that directly affect its proposal. Moreover, it is not correct to say that future-proofing works must happen now to avoid unnecessary disruption in the future. Such work, if necessary for the Central Section, could happen at the same time as other work necessary for the Central Section which would also require possessions and blockades on the line.³⁵⁹
375. Fourth, Mr Francis argues that the speed limit at Denbigh Hall junction should be increased from 25mph to 40mph by replacing a switch diamond junction with a ladder junction. This would save approximately 10-20 seconds and free up pathing on the line.
376. Network Rail's position is that this would require the junction to be lengthened and moved further north necessitating a bridge to be provided. An option selection study on this was conducted in November 2016 – July 2017 which considered seven options. The option suggested by the Green Party would lead to a maximum speed of 35mph and would have a significant impact on the West Midlands Trains depot. It would also require a significant disruptive possession to the West Coast Main Line. Altogether, including extra spans on Watling Bridge, the option set out by the Green Party would cost approximately £40-50m.³⁶⁰ This does not provide value for money and cannot be justified.
377. Fifth, Mr Francis argues that although he is not pushing for EWR2 to be electrified immediately, it should be fully future-proofed for electrification. In other words, existing bridges on the railway line should be replaced now with structures that can

³⁵⁸ NR223, q2.

³⁵⁹ Oral evidence of Simon Croft. For example, joining EWR2 with the Central Section, extending the platforms at Woburn Sands station etc.

³⁶⁰ Oral evidence of Simon Croft.

support an electrified railway at some point in the future. It is said that the saving of £7.3m in current prices justifies this work now as part of the Order Scheme.³⁶¹

378. Network Rail's position is that replacing the five structures is not justified as it would cost £34.5m extra at current prices.³⁶² First, this immediate saving, along with others, gave the Department for Transport confidence that the case to build EWR2 was made out; like deferring electrification, this supported the economics of opening EWR2 at the earliest opportunity.³⁶³ There is no economic analysis challenging the view that de-electrification is a key component of the objective to deliver EWR2 in an economic way at the earliest opportunity. Second, £7.3m represents the saving in current prices. It is, however, unhelpful and meaningless to extrapolate capital expenditure in current prices and to draw a comparison with what might need to be done in the future. For example, there might be changes in technology for electrification of trains which means that, in the future, these structures do not need to be raised. The focus is, rightly, on what can be justified at the moment for EWR2.
379. Sixth, Mr Francis makes objections relating to Woburn Sands station. These have been dealt with above in the specific section on Woburn Sands school crossing.

(m) Langford Village Community Association ("LVCA")³⁶⁴

380. LVCA is generally supportive of the EWR2 and the enhanced opportunities it brings for the area. Nonetheless, it maintains two objections based on: (1) electrification; and, (2) the barrier down-time at the London Road level crossing³⁶⁵ – in oral evidence, Ms Carole Hetherington stated that EWR2 will have the "*net effect of closing the level crossing*".

³⁶¹ NR211, q4.

³⁶² NR211, q3.

³⁶³ Oral evidence of Martyn Angus.

³⁶⁴ OBJ/142.

³⁶⁵ The location of this can be seen in NR240.

381. Network Rail's response to these objections can be seen in its letter to LVCA, dated 4 December 2018.³⁶⁶ It is important to note that this location is a significant distance away from the limits of the Order Scheme.³⁶⁷
382. On electrification, Network Rail's position can be seen at **§§250-255 above**. Importantly, in cross-examination Andrew Smith, on behalf of LVCA, did not call for the Order Scheme to be rejected or modified to incorporate additional work for electrification. Rather, he stated that his representations on electrification were intended to feed into the broader "*strategic*" discussion on this issue; it amounted to a plea to Government to reflect on the pace at which it carries out electrification.
383. On barrier down-time at the London Road level crossing, Ms Carole Hetherington, on behalf of LVCA, called for the Inspector to recommend bringing into the Order Scheme a solution to resolve the existing issue. This was notwithstanding the attendant delays and costs that would be caused to EWR2. Network Rail vehemently rejects this approach.
384. Network Rail accepts that the introduction of EWR2 train services will result in increased barrier down time. Its position is that: (1) a permanent solution is being investigated - i.e. to replace the level crossing with a bridge or underpass - which will render this concern academic; and, (2) in any event, the slight inconvenience is justified by the benefits of the Order Scheme.³⁶⁸ Significantly, Oxfordshire County Council no longer raises an objection on this issue.³⁶⁹
385. In order to respond to concerns, Network Rail has sought to reduce barrier down times; it has identified signalling alterations which will reduce the time between the start of each crossing operation and the first train arriving at the crossing. Barrier down time will be reduced by between 25 and 40 minutes for each 24-hour period. By a letter, dated 18 March 2019, Network Rail has committed to undertaking these

³⁶⁶ **NR239**.

³⁶⁷ This can be seen in **NR240**.

³⁶⁸ Network Rail's analysis of the Order Scheme's impact on London Road level crossing can be found in the ES, Volume 3, Appendix 14.6.

³⁶⁹ Statement of Common Ground between Network Rail, Oxfordshire County Council and Cherwell District Council (**NR234**), Appendix 1, Item Number 196.

signalling improvements prior to commencement of EWR2 train services.³⁷⁰ This intervention will be accelerated to take place in 2021/22.

386. The barrier time is currently 10.6 minutes per hour.³⁷¹ Without the signalling alterations set out above, the barrier down time would increase to 24.9 minutes per hour in the Core Scenario (opening year) and 30.9 minutes per hour in the Growth Scenario (2031).³⁷² With the proposed signalling alterations, the barrier down time will be 21.7 minutes per hour in the Core Scenario (opening year) and 26.4 minutes per hour in the Growth Scenario (2031).³⁷³ These barrier down times are comparable to other busy level crossings around the UK which are considered to operate safely. LVCA has provided no evidence to the contrary.
387. Network Rail also accepts that the increased barrier down time will have an impact on road traffic at the level crossing.³⁷⁴ The crossing will, nonetheless, remain well within capacity in both the Core Scenario (opening year) and Growth Scenario (2031).³⁷⁵ In other words, the crossing has enough capacity for all cars within each hour such that queues would build up during each closure but would clear each time. This is the case both with and without the “mitigation”, i.e. the signalling alterations referred to above. It is also relevant that Network Rail’s analysis does not take into account the fact that drivers will inevitably adapt to local conditions and use alternative routes, or drive at alternative times, if there is significant traffic build-up at the level crossing.³⁷⁶
388. Moreover, Bicester Village station has a north and south entrance. The south entrance has car parking, cycle-parking lifts. This means that able-bodied and less able-bodied residents of Langford can access the south entrance of the station

³⁷⁰ NR242.

³⁷¹ ES, Volume 3, Appendix 14.6, p13, §4.2.2.

³⁷² ES, Volume 3, Appendix 14.6, p14, Table 4.1.

³⁷³ ES, Volume 3, Appendix 14.6, p14, Table 4.2.

³⁷⁴ This is considered at ES, Volume 3, Appendix 14.6, pp14-18, §§4.4.1-4.4.24.

³⁷⁵ Oral evidence of Tim Colles. This can also be seen from ES, Volume 3, Appendix 14.6, Table 4.4 (p16), Table 4.5 (p16) and Table 4.6 (p17), where 100% shows that a crossing is at capacity, 90% shows the crossing is close to capacity and anything below 80% shows the crossing working well. “MMQ” refers to Mean Max Queue, “PCU” refers to Passenger Car Unit and “DoS” refers to Degree of Saturation.

³⁷⁶ See ES, Volume 3, Appendix 14.6, p18, §§4.4.19-4.4.24.

without needing to cross the level crossing and, therefore, without being affected by any traffic impacts.

389. Notwithstanding the above, Network Rail is committed to working with Oxfordshire County Council to find a permanent road solution.³⁷⁷ An initial feasibility study has been undertaken to examine the possible solutions and costs and presented to Oxfordshire County Council. Network Rail and Oxfordshire County Council will now jointly fund a report that will recommend one option to be taken forward for delivery.

(n) Twyford Parish Council³⁷⁸

390. The Parish Council is generally supportive of the Order Scheme. Its concern is that the Order Scheme is not ambitious enough. In particular, at the Inquiry Roger Landells, on behalf of the Parish Council, set out its main complaint relating to there being no new station to serve communities in and around the Calvert area.

391. Network Rail's response to the Council's observations can be found in a letter, dated 20 February 2019.³⁷⁹

392. The reason why the Order Scheme does not provide for a new station in this area is because it would cut across the strategic objectives of, and economic case for, EWR2.³⁸⁰

393. For example: (i) the first strategic objective is to improve east-west public transport connectivity through rail links between the between key towns and cities in the corridor. The idea is to provide fast rail links for commuters, not a local stopping service; (ii) another strategic objective is to stimulate economic growth, housing and employment.

³⁷⁷ NR239 and Proof of Evidence of Martyn Angus (NR53), p39, §10.12.5.

³⁷⁸ SUPP/132. Twyford is not in the ES, Volume 4, Scheme Drawings because it is outside the limits of the Order Powers. Nonetheless, its location can be seen on the "Key and Location Plan Sheet I of II" just north Sheet 11.

³⁷⁹ NR224.

³⁸⁰ See Department for Transport, "The Case for East West Rail, Western Section Phase 2" (December 2018) (NR109), p14ff.

394. On (i), as set out in Network Rail's letter, dated 20 February 2019:³⁸¹

- An increase in journey times between terminus stations due to an increased number of station stops will affect the business case for the scheme;
- It would lead to a reduction in capacity on the OXD Line because trains would be utilising more capacity in stopping at additional stations;
- The inclusion of any additional stations does not form part of the Department of Transport remit for East West Rail Phase 2 (EWR2) and as a result such stations are not included within the cost estimate or business case analysis; and,
- The current draft Order does not include powers to construct an additional station between Bicester and Winslow and consequently this has not been assessed in the ES.

395. On (ii), neither national government nor local government (including as part of the East West Rail Consortium) considers the provision of a local station as necessary to achieve this objective. In other words, those authorities who will bear the principle role of supporting and facilitating housing growth, e.g. Buckinghamshire County Council and Aylesbury Vale District Council, have given full support in principle to the Order Scheme, which does not include a station as suggested by Twyford Parish Council.

(o) Walton Community Council³⁸²

396. Walton CC was represented at the Inquiry by Ms Lesley Sung. In cross-examination, Ms Sung confirmed that it was *not* her position that the Order Scheme should not be made as it stood. Rather, her position was that Walton CC had concerns and it was not for her to say what the best method of resolving those concerns were.

³⁸¹ NR224.

³⁸² OBJ/246.

397. Walton CC's concerns relate to the potential highway impact of the Order Scheme on the level crossing at Bow Brickhill in light of future developments in the area. In particular, Walton CC want the level crossing to be replaced by a road bridge.
398. Network Rail's position is that the Order should be made as it currently stands and not delayed for this purpose.
399. First, the planning policies governing the future developments which Walton CC are concerned about do not identify the need for, or require the provision of, a bridge within the period of those plans to enable these sites to come forward. This can be seen in Policy WNP6 of the Walton Neighbourhood Plan (2016-2016)³⁸³ and Policy SD14 of Plan:MK.³⁸⁴
400. Second, the introduction of enhanced train services under the Order Scheme will not materially worsen the existing situation at Bow Brickhill level crossing. This can be seen from the Transport Assessment, which shows that the resultant impact of EWR2 will be negligible.³⁸⁵ These calculations took into account the future development that is the subject of Policy WNP6 of the Walton Neighbourhood Plan (2016-2016).³⁸⁶ No evidence was adduced to challenge the methodology or calculations in the Transport Assessment.
401. Third, to the extent that future developments – such as the development which is the subject of Policy SD14 of Plan:MK – are promoted in the future, the primary responsibility for addressing and accommodating the impact of their development on the highway network will be on those developers.³⁸⁷ It will be for those developers to make a transport assessment. If the development creates a need for new or improved infrastructure, it will be developer's responsibility to fund or contribute to those improvements. It cannot be the role of this Order to solve a

³⁸³ NR261.

³⁸⁴ NR262.

³⁸⁵ ES, Volume 3, Appendix 14.1, p190, Table 14.16.

³⁸⁶ ES, Volume 3, Appendix 15.1, p7, 4th entry.

³⁸⁷ The developments included in the recently adopted Plan:MK local plan and the South East Extension were not included in Network Rail's Transport Assessment because they had not reached a sufficient stage of certainty when the ES was carried out nearly a year ago and when the Order Scheme was finalised for publication.

problem that it has not created. The same points as set out at §§355-362 above apply equally here.

402. Consequently, Network Rail considers that the correct approach is not for the Order to be delayed but for the Inspector to report as follows: there will be a need to review the performance of Bow Brickhill level crossing in the context of new development planned within Policy WNP6 of the Walton Neighbourhood Plan (2016-2016) and Policy SD14 of Plan:MK as part of the promotion of those development schemes.

(p) Cycling UK³⁸⁸

403. Cycling UK was represented at the Inquiry by Mr Philip Ashbourn. When asked by the Inspector, Mr Ashbourn accepted that it supported the Order Scheme as it stood as it was better to have a railway which was diesel-powered than no railway at all.

404. Notwithstanding this, Cycling UK did voice its concerns over the use of diesel-motored trains, as a major contributor to air pollution, as compared to electrification. Network Rail's response on this point has already been made.³⁸⁹

405. Further, Cycling UK stated that the stepped footbridge to be built at the Jarvis Lane level crossing in Bicester proposed to be closed should be replaced with a ramped footbridge so that those with poor mobility can access it.³⁹⁰

406. Network Rail is not proposing to construct a ramped footbridge as there is no justifiable reason for a ramped footbridge. In particular:³⁹¹ (i) the section of footpath on the north side of the crossing is not a public right of way; (ii) the approaches to the footpath on both sides are muddy and unsurfaced meaning that they are not in

³⁸⁸ OBJ/243. The pre-Inquiry email correspondence between Cycling UK and Network Rail can be found at **NR226**.

³⁸⁹ See §§250-255 above.

³⁹⁰ The location of this crossing can be seen in ES, Volume 4, Scheme Drawings, Sheet 2 of 134.

³⁹¹ Oral evidence of Simon Croft.

suitable condition to be used by a number of protected groups; (iii) there is a steep gradient at the crossing making it a significant engineering challenge; (iv) a ramped footbridge would take up a lot more space; (v) this route is not an obvious desire line for a route into Bicester; (vi) a ramped footbridge would ordinarily cost around £3.5m compared to £1m for a stepped footbridge. A ramped footbridge may cost more here due to the significant engineering challenges.³⁹²

407. This approach was accepted by Oxfordshire County Council following Network Rail agreeing to put in cycle channels at this location.³⁹³ A ramped footbridge could not be installed in exercise of the powers in the Order Scheme.

408. In relation to cycle-parking at stations, Network Rail has provided a note setting out the cycle-parking available at each station.³⁹⁴ The 66 spaces to be provided at the new Winslow station will be covered and supported by good surveillance.³⁹⁵ There will also be lifts at the stations measuring 1600mm x 1600mm.³⁹⁶ At other stations, local authorities are able to provide additional cycling parking provision through the works-in-kind arrangements; local authorities have contributed towards a fund which can be spent on such projects associated with EWR2. Funding for these projects can be provided following an application to the Department for Transport.

(q) Ed and Caroline West³⁹⁷

409. Their concerns focus on: (i) construction noise and vibration; (ii) operational noise and vibration; (iii) visual impacts; and, (iv) traffic impacts.³⁹⁸ Network Rail's general response is set out in its letter, dated 28 January 2019.³⁹⁹

³⁹² Oral evidence of Simon Croft.

³⁹³ Oral evidence of Simon Croft.

³⁹⁴ NR225.

³⁹⁵ Oral evidence of Tim Colles.

³⁹⁶ Oral evidence of Simon Croft.

³⁹⁷ OBJ/223 - Littleworth Farm can be found in ES, Volume 4, Scheme Drawings, Sheets 24 and 121 of 134.

³⁹⁸ Network Rail is seeking to set up construction compound B2 in proximity to the Wests' property.

³⁹⁹ NR219.

i. *Construction noise and vibration*⁴⁰⁰

410. In relation to noise, the Wests will not suffer from an adverse effect during construction – i.e. the noise levels would not be above the lowest observed adverse effect level (“LOAEL”). This is because their property is further than 63m away from the compound and from the main works.⁴⁰¹ Network Rail has calculated that this is the distance outside of which there will not be an adverse effect.⁴⁰²

411. The Code of Construction Practice provides for reducing types of noise which are of specific concern to the Wests, including reversing alarms. It provides as follows:⁴⁰³

“8.1.1 The EWR Alliance will control and limit noise and vibration levels, so far as is reasonably practicable, so that residential properties and all other sensitive receptors are protected from excessive noise and vibration levels arising from the construction activities.

...

8.1.3 The potential noise and vibration effects of the construction works will be managed by the use of control measures, as suggested by BS5228. General principles for the control of noise and vibration during the construction works will include wherever reasonably practicable, as appropriate:

- Inherently quiet plant will be used where appropriate. All compressors and generators will be “sound reduced” models, where the use of audible warning systems, such as reversing or MEWP operating systems, is used broadband alarms. Where traditional alarms are unavoidable, equipment will be in good working order and operators suitably trained to ensure that unnecessary triggering of alarms does not occur

...

- Access roads, haul roads and construction sites and compounds would be designed to minimise the need for reversing alarm.”

⁴⁰⁰ Network Rail’s general approach to noise assessment can be seen in the ES, Volume 2.i, Project-wide Assessment, pp10-12 – 10-32, §§10.3.1-10.3.104. Table 10.13, at p10-26, provides a summary of significance criteria for residential buildings. In other words, this shows the Significant Observed Adverse Effect Level (“SOAEL”) and Lowest Observed Adverse Effect Level (“LOAEL”) for different types of noise and the time. The thresholds for mitigation are then set out at §§10.3.77-10.3.83.

⁴⁰¹ See Network Rail letter, dated 28 January 2019 (NR219), p4. The nearest point of the compound will be approximately 120m from the house building. The entrance of compound B2 will be 70m from the property.

⁴⁰² Network Rail’s methodology can be seen in ES, Volume 3, Appendix 10.3, pp3-8, §§1.2.1-1.2.6. Calculations as to construction noise and vibration can be found in the ES, Volume 3, Appendix 10.3, pp8-9, Table 1.2. A note produced by Network Rail, dated March 2019, was introduced to answer questions raised during the Inquiry (NR247). This demonstrates the limited impact of a topsoil bund for noise mitigation purposes.

⁴⁰³ ES, Volume 3, Appendix 2.1, p12.

412. In relation to vibration, the Wests will not suffer from an adverse effect during construction. This is because their property is further than 40m away from the compound and from the main works.⁴⁰⁴ Network Rail has calculated that this is the distance outside of which there will not be an adverse effect.⁴⁰⁵

ii. Operational noise and vibration

413. On noise, during operation of the railway the Wests' property will be subject to a major adverse impact because noise levels will increase by at least 10dB L_{Aeq} from the current baseline – from 41dB L_{Aeq} at night and 45dB L_{Aeq} during the day to 54dB L_{Aeq} and 56 dB L_{Aeq} , respectively.⁴⁰⁶ Nevertheless, the Wests will not suffer from a *significant* observed adverse effect as the figures do not meet the Significant Observed Adverse Effect Level (“SOAEL”) criteria set out in the ES.⁴⁰⁷

414. Notwithstanding this – and the fact that the Wests would not be eligible for noise insulation under the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996⁴⁰⁸ - since the ES was published Network Rail has decided to consider providing noise insulation for a small number of properties where a *moderate* or *major* adverse impact is predicted and the resultant levels would be within 3dB of the SOAEL. The Wests' property satisfies these criteria and they have, in fact, been offered a package of noise mitigation measures to minimise adverse effects using all reasonable steps. This package includes glazing and/or ventilation improvements so that windows can be kept closed at night. Network Rail has subsequently considered provision of a noise barrier but has discounted this on the basis that it would result in a cost/benefit ratio of 0.02.⁴⁰⁹

⁴⁰⁴ See Network Rail letter, dated 28 January 2019 (NR219), p4. The nearest point of the compound will be approximately 120m from the house building. The entrance of compound B2 will be 70m from the property.

⁴⁰⁵ Network Rail's calculations as to construction noise and vibration can be found in the ES, Volume 3, Appendix 10.3, p10, Table 1.3.

⁴⁰⁶ Network Rail letter, dated 28 January 2019 (NR219), p4. See also ES, Volume 4, ES Figures, Figure 10.6C. Information as to how the baseline noise level has been calculated with respect to this specific property can be seen in Network Rail's Note (NR247), §§4.1.1-4.1.4.

⁴⁰⁷ ES, Volume 2.i, p10-26, Table 10.13.

⁴⁰⁸ These Regulations require that the predicted noise level at façade be above 64dB (night-time).

⁴⁰⁹ The Network Rail Note (NR247), §§3.1.4-3.1.5, calculates this on the basis of the noise barrier costing £490,000 and reducing noise levels at the nearby properties by 4-5dB from one major and one

415. On vibration, the Wests will not suffer from an adverse effect. This is because their property is further than 20m away from the Order Scheme.⁴¹⁰ Network Rail has calculated that this is the distance outside of which there will not be an adverse effect.⁴¹¹

iii. Visual impacts

416. On visual impacts, Network Rail will plant a line of trees and hedgerow parallel to the railway line adjacent to the Wests' property.⁴¹² This will be an unmanaged, dense hedgerow, which will be allowed to grow to natural height. Visually, this would reinstate the vegetated corridor that is seen now. It will grow to around 4-5m in height in 7-10 years and potentially more quickly. Moreover, during the detailed design stage Network Rail will look for opportunities to retain existing line-side vegetation.

iv. Traffic impacts

417. On traffic impacts, construction traffic is not expected to result in any significant delay to other traffic on the road; total traffic flows will remain very low.⁴¹³

(r) Ann Jordan⁴¹⁴

moderate adverse impact to one moderate and one minor adverse impact. This would lead to a benefit of £10,400 to these properties.

⁴¹⁰ See Network Rail letter, dated 28 January 2019 (NR219). The house will be approximately 110m from the railway line.

⁴¹¹ Network Rail's calculations as to ground-borne vibration can be found in the ES, Volume 3, Appendix 10.5, p2, Table 1.1.

⁴¹² See ES, Volume 4, Environmental Design Drawings, Sheet 23 of 98.

⁴¹³ Oral evidence of Tim Colles. Traffic movements across the Wests' property will go from 75 vehicles in the morning peak and 82 in the evening peak (before construction) to an additional 83 HGVs, 80 LGVs and 14 vehicles of staff and operatives over the course of a day during the peak months. The peak months are programmed to run from June 2020 to September 2020. Overall, the construction traffic is programmed to run from December 2019 to April 2021: see ES, Volume 3, Appendix 14.1D, p12 and Appendix 14.1I (link 100).

⁴¹⁴ OBJ/194.

418. Ms Jordan has three major concerns. Network Rail has responded to these in two letters, dated 5 February 2019⁴¹⁵ and 20 February 2019.⁴¹⁶
419. First, she argues that the consultation process was inadequate in terms of its accessibility, timing and the amount of detail provided. Network Rail's position is that it complied with the form of consultation laid down by law.⁴¹⁷ As far as the ES is concerned, Network Rail complied with the requirements in the Transport and Works Act 1992 and Rules 6 to 7A and 11 and Schedule 1 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. This included: a detailed statement of the likely significant environmental effects of the works, including sound and vibration effects; and, a non-technical summary of the assessment of the environmental impacts of the Order Scheme. Further detail is set out in the ES.⁴¹⁸
420. Network Rail thereby followed a statutory procedure which gave people the opportunity to have information in both non-technical and technical form and allowing them to raise questions, if necessary, directly to the promoter. In Ms Jordan's case, she asked questions directly to Network Rail on specific issues on two occasions and obtained responses both times – on 5 and 20⁴¹⁹ February 2019. She then appeared at the Inquiry with her objections on noise and vibration. This shows that the process worked as intended.
421. Second, she raises noise and vibration concerns in relation to the operational phase of the railway.⁴²⁰ Network Rail's position is that, following mitigation, there will not be a significant observed adverse effect on Ms Jordan's property.
422. In relation to noise:⁴²¹

⁴¹⁵ NR220.

⁴¹⁶ NR221.

⁴¹⁷ See Proof of Evidence of Martyn Angus (NR53), p32.

⁴¹⁸ ES, Volume 2.i, Project-wide Assessment. In relation to noise, this can be found in Chapter 10.

⁴¹⁹ NR221.

⁴²⁰ Ms Jordan lives on Newton Road. Other objections, including those relating to construction impacts, were not repeated at the Inquiry. Network Rail's response to these can be seen in its letter, dated 5 February 2019 (NR220).

⁴²¹ For the methodology used here, see ES, Volume 2.i, Project-wide Assessment, pp10-15 – 10-16, §§10.3.20-10.3.25. Operational noise is assessed on the basis of two noise indices: $L_{Aeq,T}$ and L_{Amax} . L_{Aeq}

- i. The night-time façade baseline level for Ms Jordan’s property is 51dB L_{Aeq} and the daytime façade baseline level is 59dB L_{Aeq} .⁴²²
- ii. As it is a sensitive noise receptor, Ms Jordan’s property will be protected by a 2.5m high noise barrier which runs for approximately 1800m. The noise barrier will run between the line of the railway and Newton Road. At the detailed design stage, when Network Rail has a better understanding of the rolling stock to be used, it will continue to review the noise barrier design to see if it is adequate for this location;
- iii. Following this mitigation, the noise levels during operation will be 52dB L_{Aeq} at night and 59dB L_{Aeq} during the day. In other words, the increase in noise will be +1dB during the night and 0dB during the day. This is above the LOAEL but below the SOAEL.⁴²³ Furthermore, as the increase will be less than 3dB L_{Aeq} , the operational noise impacts are considered to be negligible;⁴²⁴
- iv. The separate calculation of whether there will be a significant adverse effect based on *maximum* noise levels at night takes into account: whether the applicable upper limit for maximum noise (85dB L_{AmaxF}) will be exceeded, the number of times it will be exceeded, and the underlying L_{Aeq} level.⁴²⁵ Although it is predicted that the applicable upper limit for maximum noise will be exceeded, given that this is only predicted to occur a maximum of four times per night⁴²⁶ and when seen in the context

refers to equivalent continuous noise levels in accordance with the technical memorandum entitled Calculation of Railway Noise (1995) published by the Department for Transport. It is a weighted equivalent index, developed over a number of years, which averages noise occurring over a period of several hours. It has been found to correlate well with people’s perception of how noisy an environment is and, therefore, the extent to which they are disturbed. The predictions at night have been supplemented by a proportionate assessment of maximum noise levels in dB L_{Amax} , as described in ES, Volume 3, Appendix 10.6. This relates to individual measurable noise events.

⁴²² These have been based on representative freefield baseline measurements undertaken in the area. These are reported in the ES, Volume 3, Appendix 10.2, p6, Table 3.2. The relevant Receptor Number is ML5 – 176 Newton Road, MK3 6PP.

⁴²³ See ES, Volume 2.i, Project-wide Assessment, Chapter 10, Table 10.13 (p10-26), “Rail traffic noise”.

⁴²⁴ This can be seen in the ES, Volume 4, Figures 10.6D, Sheet 4 of 12 and 10.6E_2, Sheet 6 of 8.

⁴²⁵ ES, Volume 3, Appendix 10.6, p5, §1.2.21.

⁴²⁶ This is based on a worst-case assessment. Westbound freight trains are predicted to result in 86dB L_{Amax} as they will be accelerating away from a 40mph speed limit at Bletchley. The predicted

of the much lower equivalent continuous noise levels at night, a significant adverse effect is not predicted. It is to be borne in mind that individual traffic events, such as large HGVs or motorbikes would be expected to generate noise levels in that region.⁴²⁷ Notwithstanding this, Network Rail will continue to review the position at the detailed design stage to see if the mitigation can be refined to further reduce the impacts.

423. In relation to vibration,⁴²⁸ Ms Jordan will not suffer from an adverse effect. This is because her property is further than 20m away from the Order Scheme.⁴²⁹ Network Rail has calculated that this is the distance outside of which there will not be an adverse effect.⁴³⁰

424. Third, she raises concerns as to visual impacts following the removal of line-side trees. Network Rail's response can be seen in its letter, dated 20 February 2019:⁴³¹

"The trees located behind the existing Network Rail fence will be removed to allow construction of the railway to modern standards, specifically earthworks improvements, earthworks retaining wall construction and filter drain installation. In relation to the mature trees outside of Network Rail's land but within the boundary of the Order Scheme, whilst it is currently assumed to be necessary to remove a number of these trees as part of those works, Network Rail will comply with the requirements of the Construction Code of Practice (CoCP). The CoCP includes: -

a) a requirement to retain mature trees and hedges where reasonably practicable; and

b) to apply a range of tree protection measures during construction to those trees able to be retained.

maximum number of westbound freight trains passing within 50m of Ms Jordan's property during night-time operation is four. This prediction is also based on the noisier of the rail classes being used.

⁴²⁷ Ambient noise surveys were carried out on Newton Road for the purpose of assessing the baseline noise level. The results for Newton Road can be seen at ES, Volume 3, Appendix 10.2, p19. This shows individual noise events, presumably passing traffic, regularly exceeding 80dB and often 85dB.

⁴²⁸ For the methodology used here, see ES, Volume 2.i, Project-wide Assessment, p10-16, §§10.3.26-10.3.27.

⁴²⁹ See Network Rail letter, dated 20 February 2019 (NR220), pp4-5. The house will be approximately 35m from the nearest track.

⁴³⁰ Network Rail's calculations as to ground-borne vibration can be found in the ES, Volume 3, Appendix 10.5, p2, Table 1.1.

⁴³¹ NR221.

Where it has been necessary to remove trees for construction of the railway, appropriate arrangements for re-planting will be included in the proposed landscape works to be delivered under the Order.”

425. A description of the visual baseline on Newton Road can be found in the ES.⁴³² This states that:⁴³³

“Urban view from Newton Road, Bletchley, near to residential properties, looking towards the disused railway corridor on vegetated embankment, which dominates and restricts the view south. Tall street trees within the road verge provide a strong presence and linear avenue along the road corridor...”

426. The ES assesses, on a worst-case scenario, that all lineside vegetation will be lost during construction. Based on this, during construction, this will result in a predicted high adverse visual impact during construction.⁴³⁴ During the first year of operation of the railway, it is predicted that there will still be a high adverse impact.⁴³⁵ After 15 years of growth, however, the predicted impact reduces to medium adverse as replanted trees and scrub vegetation will have matured by then.⁴³⁶

427. As Network Rail undertakes detailed design, it will seek to retain as many trees as possible, reducing the predicted impacts set out above. Furthermore, compliance with the Code of Construction Practice will be a condition of the deemed planning permission. It is anticipated that Council officers will be working with Network Rail to limit the tree loss to the greatest extent possible.

⁴³² ES, Volume 2.ii, Route 2B, p12-11, Table 12.1, 2B31 Viewpoint.

⁴³³ This viewpoint can be seen in the ES, Volume 4, Figure 12.8, Sheet 27 of 55.

⁴³⁴ ES, Volume 2.ii, Route 2B, p12-41, Table 12.3, 2B31 Viewpoint.

⁴³⁵ ES, Volume 2.ii, Route 2B, p12-46, Table 12.4, 2B31 Viewpoint.

⁴³⁶ ES, Volume 2.ii, Route 2B, p12-48, Table 12.5, 2B31 Viewpoint.

E. OBJECTORS NOT AT INQUIRY

428. There are a number of objectors who have not appeared at Inquiry but whose objection has not been withdrawn. Network Rail has responded to each of these objectors in writing.

429. This section is split into the following parts:

- a. Schedule of objections;
- b. Oxfordshire County Council and Cherwell District Council;
- c. Milton Keynes Council;
- d. Bedford Borough Council;
- e. Environment Agency; and,
- f. Cattle Arch.

(a) Schedule of objections

430. Network Rail's has compiled a Schedule of Objectors not appearing at Public Inquiry with references to Network Rail's response. This is set out in the attached document.

(b) Oxfordshire County Council and Cherwell District Council⁴³⁷

431. There are only two matters on which the parties have not reached agreement.⁴³⁸

432. With respect to the issue of net gain, Network Rail's position is set out at **§§165-170 above**.

⁴³⁷ OBJ/221.

⁴³⁸ NR234.

433. With respect to the temporary use of land at Mill Mound and the potential effects on the archaeological feature, Network Rail relies on the Proof of Evidence of Andrew Shuttleworth.⁴³⁹ It also relies on a Technical Note.⁴⁴⁰

(c) Milton Keynes Council⁴⁴¹

434. There are four matters on which the parties have not reached agreement.⁴⁴²

435. On biodiversity net gain, Network Rail's position is set out at **§§165-170 above**.

436. On the closure of Woburn Sands school crossing, Network Rail's position is set out at **§§225-234 above**.

437. On matters relating to Woodley's Farm overbridge, Network Rail's position is set out in the response to O&H (OBJ/156) at **§§355-362 above**.

438. On matters relating to Bow Brickhill Bridleway crossing, Network Rail's position is set out in the Proof of Evidence of Simon Croft.⁴⁴³ The same points as set out at **§§355-362 above** apply equally here. The Order proposes to retain that existing level crossing subject to safety improvements. In the event that future development of SEMK under the aegis of Policies SD10 or 11 of Plan:MK requires the provision of a new grade separated railway crossing to serve new development in that location, the location and delivery of that crossing is able to be planned and come forward through those Policies.

(d) Bedford Borough Council⁴⁴⁴

439. The two remaining objections relate to ecology and transport issues.⁴⁴⁵

⁴³⁹ Proof of Evidence of Andrew Shuttleworth (NR48), pp17 and 35, §3.1.3 and §§9.2.12-9.2.15.

⁴⁴⁰ NR273.

⁴⁴¹ OBJ/233.

⁴⁴² NR245.

⁴⁴³ Proof of Evidence of Simon Croft (NR51), pp73-74, §8.50.6.

⁴⁴⁴ OBJ/214.

⁴⁴⁵ NR258.

440. With respect to ecology, and the issue of net gain, Network Rail's position is set out at **§§165-170 above**. To the extent that the Borough Council maintains its other ecological objections, Network Rail relies on the Proof of Evidence of Stephanie Wray.⁴⁴⁶

441. With respect to transport issues, Network Rail believes it has now resolved this objection by amending the wording of the highways condition to reflect the wording desired by the Borough Council.

(e) Environment Agency⁴⁴⁷

442. The sole remaining issue between the parties relates to the wording of paragraph 17(3)(b) of Schedule 16 of the draft Order. In particular, the Environment Agency believes that deemed approval should be replaced with deemed refusal.

443. Network Rail rejects this. Its position is the same as in relation to Thames Water at **§§263-273 above** and those points are repeated. Indeed, the points made at **§§271-273 above** apply with even greater strength here because the Inspector in that case was rejecting the very same argument being put forward by the Environment Agency.

444. In addition:

- i. The EA's own Boston Barrier Order (2017/1329) provides for the Port of Boston's deemed plan approval of the EA's authorised works. As regards approvals by flood (land drainage) authorities, the other category of body that is covered by these protective provisions, the Land Drainage Act 1991 also includes a deemed approval provision. It is therefore entirely appropriate that the protective provisions reflect this legislative position;

⁴⁴⁶ Proof of Evidence of Stephanie Wray (NR54), pp73-74, §§4.1.62-4.1.71.

⁴⁴⁷ OBJ/178.

- ii. The effect of the EA's changes as they stand would also mean that either (a) the powers of the local authorities (as lead local flood authorities in respect of the Orders) would be increased, by extending a deemed refusal to them or (b) in order to preserve the position regarding flood authorities the protective provisions would have to have different arrangements for each category of body; and,
- iii. It is true that there have been recent Development Consent Orders ("DCOs") made under the Planning Act 2008 which have included a request for deemed refusal. However, the position regarding disapplication of legislation under DCOs is different to that for TWAOs. The Planning Act 2008, section 150, provides that an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision. The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 sets out in Regulation 5 and Schedule 2 the list of prescribed consents. It includes a consent under s109 of the Water Resources Act 1991 for works affecting main rivers (which has since been included within the Environmental Permitting regime) and environmental permit or exemption under the Environmental Permitting (England and Wales) Regulations 2010 (which would now extend to cover the Environmental Permitting Regulations 2016). If Network Rail was promoting a DCO, not a TWAO, it would require the consent of the EA to disapply these consents and would, therefore, be in a different position in negotiating protective provisions. That may explain the rather limited response from the Applicant to the EA's case presented for the M20 DCO application, which did not address the substantive point at issue here.

The TWA 1992, however, allows for the disapplication of such consents without any requirement for this to be agreed by the consenting body concerned, and so with a TWA application the parties are coming at this

from a different position, backed by legislation with a different policy. The form of protective provisions which include deemed plan approval are the standard that are to be found since the inception of TWAOs in 1993 and which continues to date, i.e. after the Environmental Permitting regime. This continued the private and hybrid Bill standard for the EA and its predecessors, which itself continues to date in hybrid Bills in Parliament promoting railway schemes, as in the Crossrail Act 2008 and the recent High Speed (London – West Midlands) Act 2017.

(f) Cattle Arch

445. 14 objections related specifically to the restriction of access to public amenity facilities – including allotments and a cemetery - via Selbourne Avenue underbridge (OXD/4 Cattle Arch). These objections have either been withdrawn or have been made by individuals who have not appeared at Inquiry.
446. Network Rail intends to carry out general repair works to this bridge.⁴⁴⁸ Its response to these objections can be found in the Proof of Evidence of Martyn Angus.⁴⁴⁹
447. In summary, Network Rail will restrict all works undertaken at this location to be carried out at night in order to maintain access during the day when there is a higher footfall along the access road to the facilities on the south side of the railway. The repair works that need to be undertaken on the Selbourne Avenue Underbridge (OXD/4 Cattle Arch underbridge) will be programmed to take place under overnight road closures with the road being reopened for use the following morning each time. This way, individuals will still be able to visit the Cemetery during daylight hours. Unfortunately, until such a point that the Order is made and Network Rail is closer to construction phase, it is not possible to confirm which dates these night works will be undertaken. That information will however be made available to the local community in advance of works.

⁴⁴⁸ More detail on this can be found in the Proof of Evidence of Phil Holland (NR50), p24, Table 2.

⁴⁴⁹ Proof of Evidence of Martyn Angus (NR53), p40, §§10.14.1-10.14.4.

448. Consequently, the works will not affect the operation of and or access to the Allotments, Selbourne Avenue Cemetery and Mausoleum, Bowling Club and Scot Sports and Social Club. Network Rail will implement its line-side neighbour pre-notification of works policy in the lead up to and during construction phase and work closely with local residents and users of the facilities.

F. CONCLUSION

449. In conclusion, in light of the agreed significant benefits to be brought about by the Order Scheme, as well as the other reasons set out above, the Inspector is requested to recommend that the Order be made and the Secretary of State is requested to make the Order.

Tim Mould QC
Yaaser Vanderman

30 April 2019

Landmark Chambers
180 Fleet Street
London EC4A 2HG