



The Network Rail (East West Rail Bicester to Bedford Improvements) Order
Transport and Works Act 1992
The Transport and Works (Inquiries Procedure) Rules 2004

SUMMARY OF PROOF OF EVIDENCE
SUZANNE CRUTCHLEY, NATURAL ENGLAND
Ecology – Protected Species

Please address any queries or correspondence about this Statement to:

Suzanne Crutchley

Natural England

Mail Hub, Natural England, County Hall, Spetchley Road, Worcester WR5 2NP

Email: suzanne.crutchley@naturalengland.org.uk

SUMMARY OF PROOF OF EVIDENCE

1. Natural England's objections are set out in our Statement of Case (OBJ/242). My evidence will address the impacts of the East West Rail Bicester to Bedford Improvements ("the EWR2 Scheme") on the following protected species and their habitats:
 - (i) bats;
 - (ii) great crested newts;
 - (iii) otter;
 - (iv) hazel dormice;
 - (v) water vole; and
 - (vi) badgers.
2. I will also address the fact that, as things stand, the Scheme would deliver a net loss in respect of biodiversity.
3. Since our Statement of Case was issued in October, Network Rail published the results of further survey work carried out in 2018. However, there is insufficient evidence that the additional surveys undertaken in 2018, fully address all of Natural England's concerns.
4. The main documents subject to review and comment are: 'The Network Rail (East West Rail Bicester to Bedford Improvements) Order Environmental Statement (NR 16)' which I will refer to as the 'ES' and 'The Network Rail (East West Rail Bicester to Bedford Improvements) Order Further Environmental Information (NR47)' which I will refer to as the 'FEI'.

Bats

5. An assemblage of thirteen bat species was recorded in the area of the EWR2 Scheme. These include Bechstein's and barbastelle bats, which are amongst the rarest mammals in the UK. The information submitted with the application is inadequate as it

does not currently enable Natural England to conclude that the favourable conservation status of bat species affected by the application will be maintained. The particular areas of concern relating to bats are as follows:

- a. There is a lack of adequate survey information, clear analysis of survey results and justification of conclusions. It is not possible to determine the impact of the scheme on bat populations without this information. The level of survey must be sufficient to understand the likely impacts of the scheme on roosts (loss, damage & disturbance), foraging habitats (direct loss, access to and disturbance to bats when foraging/commuting), and collision impacts associated with operation of the line. This information is required in order to ensure that adequate avoidance, mitigation and compensation measures can and will be implemented where required. The information has not currently been presented in a way that enables this conclusion to be reached. Once the data has been presented with further clarity and additional analysis of the data has taken place, it may then be possible to identify whether the conclusions in the ES & FEI are appropriate. If this is not the case, or there is still a level of uncertainty, then further survey will be required.
- b. The suitability and adequacy of mitigation and compensation measures to be utilised, has not yet been demonstrated. The timeframes for their implementation and legal mechanisms to commit to and safeguard their provision have yet to be clarified. It is not clear that compensation proposed for the loss of roosts is suitable or adequate mitigation measures to avoid/reduce disturbance from lighting, noise and vibration will be implemented. It is not clear from the information provided, that the direct and indirect losses of foraging habitat (and removal of commuting routes) have been adequately mitigated or that any temporary disturbance could be licensed. Network Rail have not yet demonstrated that the operational impacts (collision mortality) would be at a level that could be classified as (i) incidental and (ii) below that which could harm the favourable conservation status (FCS) of the bat populations in the local area. If this cannot be demonstrated then suitable additional mitigation measures will need to be proposed to ensure that impacts will be reduced to this level or removed.
- c. There is a lack of detail regarding and commitment to, the management, maintenance and monitoring of mitigation/compensation measures and the planning and delivery of any future remedial mitigation measures that may be required. Network Rail will need to demonstrate that a suitable legal mechanism is in place to secure and safeguard these measures.

- d. There is a lack of information to determine, in certain cases, whether the scheme would trigger offences which would need to be licensed, and where licences would be required, clear proposals have not yet been provided to demonstrate that FCS would be safeguarded.

Great Crested Newts

6. Natural England is satisfied that sufficient great crested newt (GCN) survey has been undertaken to date to inform the Environmental Impact Assessment. There is however a lack of information to determine whether the mitigation proposals would be sufficient to satisfy the three licensing tests and therefore it is not yet clear that there would be no impediment to issuing a licence, should the Transport and Works Act Order (TWAO) be granted.
7. The particular areas of concern relating to GCN are as follows:
 - a. Evidence needs to be provided to confirm that the mitigation measures, to reduce harm, can be implemented in line with Project timetables
 - b. There needs to be clarification that sufficient land for habitat compensation has been included in the red-line boundary in the right places for the populations concerned, or secured outside of the scheme boundary. The impacts relating to losses of terrestrial habitats, fragmentation and isolation need to be re-considered as they have been underestimated. The additional risks associated with the proposed use of Natural England's (new) Licensing Policies also need to be factored into the analysis of losses and gains.
 - c. Sufficient evidence has not been provided to demonstrate that the compensation land will be functional and accessible at the right time to enable the mitigation and compensation solutions to be delivered in a suitably effective way.
 - d. Management, maintenance and monitoring of the compensation land has not yet been secured and safeguarded through an enforceable legal mechanism in the long term, with a commitment to undertake remedial action, where required.
 - e. There are no commitments to monitor GCN populations, and these will be required.

Otter

8. Additional clarification is required for certain aspects of the otter survey methodology, where the survey effort, in particular relating to survey coverage and number of visits, is not clear. Until this has been provided, Natural England cannot determine whether the level of survey is considered to be sufficient at this stage of the process.
9. The approach to mitigation and compensation for otter is considered broadly acceptable, however, insufficient detail has been provided regarding the location, design and monitoring of mammal passages, and the legal mechanism by which these measures will be secured. In addition, the measures that will be taken to avoid construction disturbance are vague. A licence will be required as there will be direct loss of and disturbance to resting sites. Until such time that a draft licence application is submitted and assessed, Natural England cannot confirm that there would be no impediment to the issue of a licence.

Hazel Dormice and Water Vole

10. Additional clarification is needed for aspects of the hazel dormouse and water vole survey methodology, in cases where survey effort appears to deviate from standard recommendations. This is required before Natural England can determine whether survey effort is considered to be sufficient at this stage of the process.

Badgers

11. The East West Rail Alliance provided Natural England with a hard copy of a document detailing the proposed Strategic Badger Mitigation Approach on 11th December 2018. Natural England has reviewed this document and although it goes some way to dealing with points of concern, several issues will need to be addressed before Natural England can provide a view on whether there would be any impediments to a badger licence being issued.
12. Mitigation proposals relating to artificial sett creation will need to be further developed by Network Rail. Additional badger survey will be required at this stage of the process to inform the mitigation measures. Timescales relating to the licensable activities (sett exclusion and destruction) will also need to be clarified. This will enable Natural England to fully consider issues relating to badger welfare, impacts on conservation status and any disease risks associated with the licensed activities.

Further Survey and Mitigation Approach

13. Additional clarification is required regarding the strategy for further survey (of all protected species covered in this evidence), if the Transport and Work Act Order is granted, in areas where survey effort has been restricted to date. Especially if the consequence of proceeding with reduced or no survey effort in these areas, would be the likely risk of an offence being committed. If further survey is required, a mitigation approach identifying how these impacts would be addressed will need to be developed.

Net Gain

14. Natural England expected that this Scheme would deliver a “net gain” for biodiversity. That is because there is a clear expectation in policy and based on Ministerial Statements that in schemes of this nature net gain will be delivered. In particular, strong policy support for net gain for biodiversity has been added to the revised National Planning Policy Framework (NPPF) published in July 2018 and is also contained in Defra’s 25 Year Environment Plan.

