

Transport Strategy

Buckinghamshire County Council

County Hall, Walton Street
Aylesbury, Buckinghamshire HP20 1UA

Winckworth Sherwood LLP
Minerva House
5 Montague Close
London
SE1 9BB

Mr Ben Stutman
01296 382577
bstutman@buckscc.gov.uk
www.buckscc.gov.uk

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Dear Sir/Madam,

With regards to Buckinghamshire County Council's (BCC) comments as a landowner, the Council wishes to express its intention to retain the land required to construct and operate a future car park at the Winslow station site (part of ref. 0652) and not allow Network Rail unrestricted powers to acquire the land. The Council stresses the importance of working closely with Network Rail moving forward. BCC already has a close working relationship with Network Rail, and are in the process of discussing the heads of terms for the land transfer of the station land at the Winslow station site.

We would like to highlight that our understanding is that Network Rail wish to have unrestricted access to a small area of the Winslow rugby pitch site (adjacent to the station site – ref 0654) for potentially the next 4 years. BCC are proposing to develop this land within the next five years, and therefore any Network Rail use of this site will require a dialogue with BCC to ensure we are satisfied with the progression of the site. Additionally, Network Rail's works and any related restrictions required could have a significant impact on our Winslow regeneration proposals unless we can plan around them. If the decision has already been made to grant unrestricted access to BCC land, BCC will require some legal mechanism to ensure we are kept informed on Network Rail's programme and works being completed.

The Council therefore requires the inclusion of a condition obligating Network Rail to provide BCC with an up to date programme and scope of works for the Winslow centre development:

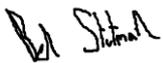
"As soon as possible and before starting the Project on site, Network Rail shall prepare and submit to BCC a programme (in an approved form) for the Winslow centre development with full details of the nature and scope of works and any relevant limitations caused by the proposed works to the site.

Network Rail shall update said programme and keep BCC informed of any changes at all times to the programme, proposed works and restrictions to the site".

With regards to other site areas under BCC ownership, we have no objection in transferring these to Network Rail on a temporary or permanent basis as set out in the TWAO application.

We look forward to our continued engagement with Network Rail.

Yours sincerely,



Ben Stutman



Buckinghamshire County Council (BCC) and Aylesbury Vale District Council (AVDC): Further ecology evidence to justify holding objection to East West Rail Phase 2 Transport and Works Act Order

BCC and AVDC stand by the objection regarding this developments position towards net gain. I welcome the commitment (“Net Positive”) from EW Rail to ensure that the project delivers a net gain in biodiversity. I consider this commitment to be exactly what is required by the NPPF and other policy drivers and therefore consider that the TWAO, as well as the overall project, should be clearly seeking a net gain in biodiversity rather than no net loss. I do not agree with the fact that Network Rail are applying for consent under a TWAO application on the basis of achieving “no net loss” in biodiversity rather than a “net gain” in biodiversity. The steer in planning policy is clearly for “net gain” in biodiversity rather than “no net loss”. Wording in the 2012 NPPF gave a clear support to the assertion that the TWAO application should be seeking a net gain in biodiversity. In July 2018 the new NPPF was published and has stronger policy still in relation to net gain. The amendments to policy in favour of net gain in biodiversity are a clear indication that that is what is now expected. For example, paragraph 170, with our underlining, states: ..”Planning policies and decisions should contribute to and enhance the natural and local environment by:

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”

Other references in support of the case that the EW Rail TWAO application should be achieving a “net gain” rather than “no net loss” of biodiversity include:

The Natural England review of the HS2 No Net Loss metric

(<https://www.gov.uk/government/publications/review-of-hs2-ltds-no-net-loss-in-biodiversity-metric>) stated:

“26. It is recommended that for Phase 2 the metric should be applied for the purpose of meeting a net gain objective, in order to fully accord with national policy, rather than simply aiming to achieve NNL.” (where NNL = no net loss)

The commitment from Network Rail in the EIA Scoping Report in paragraph 9.62 to provide a measurable net gain “In line with Network Rail objectives, the scheme is aiming for a measurable net gain”

So whilst I recognise (and welcome) that Network Rail have a project intention to achieve “net positive” the TWAO application target appears to be “no net loss” of biodiversity. The planning policy requirement is for a net gain and it is considered therefore that the TWAO application should clearly aspire to a net gain. For whoever ultimately takes this project forward and manages it in the long-term it must be clear that a net gain should be aimed for and that in order to ensure that this is the outcome it is essential that the TWAO order is clearly worded as showing a net gain in biodiversity will be expected, rather than just “no net loss”.

The net gain should also be measurable in order to be properly assessed. In a previous consultation (Round 2 consultation in 2017) EW Rail provided a Metric calculation paper (Appendix 9.19 Net Positive) setting out their intention as follows:

1.1.1 The East West Rail (EWR) Alliance committed to “delivering measureable net biodiversity gain and positively contributing to the conservation of nature in the region” (Sustainability Objective ENV03). To realise this commitment, the Alliance has undertaken a Biodiversity Net Positive assessment of the Project.

1.1.2 The assessment uses Defra’s metric1 to quantify biodiversity losses and gains from the Project in terms of ‘biodiversity units’ (BU) and ‘linear units’ (LU) for hedgerow habitats.”

and then went on in figure 9.19.1 to set out all the metric work that would be done over the next year culminating in the following: “final report submitted with TWAO application and final ES”.

It seems that this timeline has slipped so that, contrary to the above commitment, no metric calculation accompanies the TWAO application.

As well as being a commitment by EW Rail as set out above, the revised NPPF published just before the submission of this application also gives a very strong steer towards the net gain in biodiversity requirement set out in NPPF paragraph 170 being measurable e.g.:

“174. To protect and enhance biodiversity and geodiversity, plans should:

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”

It is not appropriate to determine the application until the metric report, demonstrating a net gain in biodiversity, is submitted and made available to be reviewed and commented on by relevant parties such as prior to the determination of the TWAO application. EW Rail are, contrary to the assertion above that a net gain is a necessary outcome of the project at TWAO stage, seeking “no net loss” of biodiversity. Without the submission of the metric it is not possible to assess even whether the lesser aim of no net loss of biodiversity has been achieved. There is no information in the ES that allows consultees to assess if no net loss or net gain has been achieved. It is not acceptable to determine the application without proper evidence in the form of a metric calculation. Determination should be delayed until the metric is published for consultation and comments have been considered.

Even the limited information that has been provided in Table 9.15 on page 67 of “Environmental Statement Volume 2i Project Wide Chapter 9 Ecology” is incomplete. Paragraph 9.5.18 on the preceding page states that “The gains listed do not include the habitats that will be created in Route Section B (except for B2, B7 and B13), D and E ECS”. Table 9.15 shows significant or even severe losses in several key biodiversity habitats. For example it shows 56.7 hectares of broadleaved semi-natural woodland are to be lost. And yet only 6.8 hectares of land have been currently identified for the planting of compensatory woodland habitat, and no figure is given for how many hectares it is intended would be created. It is not possible to know whether the habitat creation that is to be considered following determination of the TWAO application will be enough to achieve “net gain” or even just “no net loss”. It is not appropriate for the application to be determined whilst this matter is still outstanding and with no indication of how much compensatory habitat will be created for what are some highly significant losses of key wildlife habitat, including priority habitats. The TWAO application can not be determined until this issue is resolved.

East West Rail is expected to be in operation for the foreseeable future, that is in perpetuity. The impact on habitats lost or damaged in the process is therefore in perpetuity. If a “net gain” in biodiversity is to be achieved, as required by the NPPF, then any habitats created to compensate for habitat loss so as to achieve that net gain should be present, and managed for wildlife, as long as the railway is there and in operation. Even if the EW Rail lesser aim of “no net loss” in biodiversity is accepted, then the case is the same, any habitats created to compensate for habitat loss so as to achieve no net loss in biodiversity should be present, and managed for wildlife, as long as the railway is there and in operation.

Volume 2i Chapter 16 Summary of Mitigation states that “Each Ecological Compensation Site will be subject to a 30-year maintenance and management plan as part of a legal agreement between NR and the landowner”. There is no indication as to what happens after these 30 years have elapsed. It is to be assumed that the railway will still be there and operating. Therefore the habitats it has impacted on will still be impacted. Once the 30 year agreements have ceased there is no guarantee that the habitats created to compensate for those lost will not be lost to development, intensive agriculture or many other land uses that will not be providing compensatory habitat for wildlife. This application can not be determined until this serious issue is resolved.

To achieve such a resolution EW Rail should either.....:

- a) ensure that the land for mitigation/compensation/enhancement is purchased and retained within the railway estate with a legal commitment to manage on an in perpetuity basis for biodiversity, or
- b) ensure that if land for mitigation/compensation/enhancement is purchased and passed onto another body, there is a requirement for perpetuity management for biodiversity

....or a combination of the above as appropriate for each parcel. If mitigation/compensation/enhancement is secured with private landowners a management plan lasting for the lifetime of the railway needs to be established, so that as long as the railway is there and running, the compensation is provided. Without this an outcome of Net Positive or even No Net Loss can not be definitively stated by the applicant..

I accept that it may be difficult to find private landowners who would agree to such terms of in perpetuity management for the lifetime of the development and therefore suggest EW Rail pursue compensation methods which ensure that land for mitigation / compensation / enhancement is either:

- a) purchased and retained within the railway estate with a legal commitment to manage on an in perpetuity basis for biodiversity, or
- b) purchased and passed onto an appropriate organisation that will commit to its in perpetuity management for biodiversity.

This may involve locating habitat away from the railway line in order to find landowners willing to sell but it is considered this to be the only way of ensuring a genuine net gain is achieved by the development. Discussions with the Local Wildlife Trust, BBOWT, have occurred to address this point as they are major landowners of nature reserves in close proximity to the proposed line. Any habitats created for mitigation/compensation/enhancement need to be located so as to maximise the creation of ecological networks, and with substantial proportions located in BOAs. These discussions need to continue so as to garner the biodiversity gains required. The TWAO application can not be determined until these issues are resolved.

National policy and guidance

NPPF paragraph 7 states:

“7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:.....

- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

NPPF paragraph 8 states:

“to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system...”

NPPF paragraph 9 states:

Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):.....

- moving from a net loss of bio-diversity to achieving net gains for nature;

NPPF paragraph 17 states:

“Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:.....
.....contribute to conserving and enhancing the natural environment”

NPPF paragraph 109 states:

“The planning system should contribute to and enhance the natural and local environment by: minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”

NPPF paragraph 114 states:

“114. Local planning authorities should:

- set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure....”

NPPF paragraph 118 states:

“118. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm 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;.....

- opportunities to incorporate biodiversity in and around developments should be encouraged;”

NPPF paragraph 152 states:

“Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three.”

NPPF paragraph 157 states:

“Crucially, Local Plans should:

[...]

- contain a clear strategy for enhancing the natural, built and historic environment, and supporting Nature Improvement Areas where they have been identified.”

NPPF paragraph 187 states:

“.....Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.”

NPPF planning guidance (provided only on .gov.uk)

<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>

“Is there a statutory basis for planning to seek to minimise impacts on biodiversity and provide net gains in biodiversity where possible?

Yes. Section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by Government in its Biodiversity 2020 strategy.....

The National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution.

See related policy: paragraph 9 ; paragraph 17 – 7th bullet; paragraph 109; paragraph 113; paragraph 114; paragraph 117; paragraph 118; paragraph 119; paragraph 157 – last bullet”

The Natural Environment White Paper

Issued in 2011 by the Coalition Government, the Natural Environment White Paper remains the Government’s formal policy, although a green paper setting the framework for a 25 year plan for the natural environment is expected imminently.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf

The Executive Summary states:

“5. Past action has often taken place on too small a scale. We want to promote an ambitious, integrated approach, creating a resilient ecological network across England. We will move from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and coherent ecological networks.....

“6..... Through reforms of the planning system, we will take a strategic approach to planning for nature within and across local areas. This approach will guide development to the best locations, encourage greener design and enable development to enhance natural networks. We will retain the protection and improvement of the natural environment as core objectives of the planning system. We will establish a new, voluntary approach to biodiversity offsets and test our approach in pilot areas.”

The white paper states:

“2.33... The Government expects the planning system to deliver the homes, business, infrastructure and thriving local places that the country needs, while protecting and enhancing the natural and historic environment.

2.35...We need a more strategic and integrated approach to planning for nature within and across local areas, one that guides development to the best locations, encourages greener design and enables development to enhance natural networks for the benefit of people and the environment as part of sustainable development. We will retain protection and improvement of the natural environment as core objectives for local planning and development management.

2.8...We will move progressively from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and establishing more coherent ecological networks.”

Natural England’s review of HS2 Ltd’s No Net Loss Metric

In preparing the Bill to bring forward the first phase of the High Speed Two rail proposals, HS2 Ltd, the government owned company established to deliver the project, set themselves a target of No Net Loss to biodiversity from the scheme. An independent review of HS2 Ltd’s approach was requested

by the High Speed Rail (London - West Midlands) Bill Select Committee (Commons), which was carried out by Natural England.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565691/review-of-hs2-no-net-loss-metric.pdf

“10.34 Looking ahead to HS2 Phase 2, and having regard for the emerging commitments to achieving a net gain for biodiversity by other infrastructure providers such as Network Rail and Highways England, there is clearly an impetus to make a greater contribution to biodiversity conservation for HS2 Phase 2. The terms ‘net positive’ or ‘net gain’ are now commonly used to signal a commitment to achieving a biodiversity credit rather than simply preventing a deficit.

10.35 The NPPF requires development to achieve a net gain where possible. It is also a principle promoted by the aforementioned international biodiversity offsetting standard (BBOP, 2012). Natural England advises that in applying this national policy and conforming to international standards, it should be assumed that achieving a net gain is possible, unless there are clear justifications as to why it is not possible. If biodiversity declines are to be reversed, a net gain approach needs to be embedded as standard practice. Phase 2 is an opportunity for innovative and exiting biodiversity projects to be realised under a net gain approach, with the benefit of a considerable timeframe in which to develop stakeholder relations, commission research and gather evidence.

Recommendation

10.36 It is recommended that for Phase 2 the metric should be applied for the purpose of meeting a net gain objective in order to fully accord with national policy, rather than simply aiming to achieve NNL.”

Industry approaches to net gain in biodiversity:

CIRIA CIEEM IEMA Biodiversity Net Gain – Principles and Guidance for UK Construction and Developments

<http://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments>

Principle 5: “Make a measurable Net Gain contribution - Achieve a measurable, overall gain for biodiversity and the services ecosystems provide while directly contributing towards nature conservation priorities.”

The Berkeley Group

Berkeley Group have committed to achieving a net gain in biodiversity on their developments - see <https://www.berkeleygroup.co.uk/sustainability/environmental-sustainability>

Network Rail

For the proposed East-West Rail line, Network Rail are committed to providing a net gain in biodiversity. The EIA Scoping Report states in paragraph 9.6.2: “A biodiversity unit calculation to measure losses and gains in biodiversity will be applied to the Scheme.....In line with Network Rail objectives the Scheme is aiming for a measurable net biodiversity gain”

https://consultations.networkrail.co.uk/communications/ewr-phase-2/supporting_documents/Scheme%20Scoping%20Report%20Final%20inc.%20Appendices.%20Version%201.3.pdf

The NPPF sets out clearly that Local Plans must result in a net gain in biodiversity (e.g. paragraphs 7, 8, 9, 17, 109, 152 and NPPF guidance). In so doing the NPPF is putting in place the means to secure a contribution to the aims of the Natural Environment White Paper which states “We will move from net biodiversity loss to net gain” and specifically references the planning system.

In effect, Local Plans can only achieve a net gain in biodiversity if the vast majority of applications approved under the Local Plan achieve a net gain in biodiversity and so it is reasonable therefore to make a net gain in biodiversity an expectation of each application either directly themselves, or through a mechanism for pooled contributions where one exists.

In their Review of the HS2 No Net Loss metric Natural England advises that “in applying this national policy and conforming to international standards, it should be assumed that achieving a net gain is possible, unless there are clear justifications as to why it is not possible.”

Paragraph 118 of the NPPF sets out that where significant harm to biodiversity cannot be avoided (and makes clear that alternatives should be sought as a first principle), mitigation or compensation should be put in place which serves the aim of enhancing biodiversity. It follows therefore that, where applications cannot achieve a net gain on-site, off-site compensation which provides a net gain to biodiversity must be delivered.