

PUBLIC SESSION

MINUTES OF ORAL EVIDENCE

taken before

HIGH SPEED RAIL COMMITTEE

On the

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

Thursday 23 October 2014 (Morning)

In Committee Room 5

PRESENT:

Mr Robert Syms (In the Chair)
Mr Henry Bellingham
Sir Peter Bottomley
Mr Michael Thornton

IN ATTENDANCE

Mr Michael Carpenter, Speaker's Counsel

Mr Timothy Mould QC, Lead Counsel, Department for Transport
Ms Jacqueline Lean, Counsel, Department for Transport

Mr Charlie Banner, Counsel
Mr Christopher Stanwell, Nabarro LLP

IN PUBLIC SESSION

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(At 9.30)

1. CHAIR: Order, order. Welcome, everybody. We have some discussion about the environmental statement this morning. Mr Banner, are you okay with Mr Mould kicking off?
2. MR BANNER: I am indeed. Thank you, sir.
3. CHAIR: Okay. Mr Mould.
4. MR MOULD QC (DfT): Thank you. Yes. This hearing I think arises in order to enable the Committee to understand as precisely as possible the case that the Alliance want to make in relation to the environmental statement and then to decide how it can best and most efficiently use its time in order to hear that case. Both Mr Banner and I have put in notes to you. I don't know if you've had a chance to read them. I wasn't proposing to read mine out—I'm not sure that would be a profitable use of time today—but what I have put up is the first page of it, and, with a view to trying to, I hope, narrow down the issues such as they are between us in a way that's helpful to you, I thought that I would just take you through these first few paragraphs.
5. In the first paragraph I identify briefly what I hope is agreed is, broadly speaking, the role of the Committee. It's clearly set by the instruction of the House and by the practice of Parliament. "It is to hear, consider and report on the petitions of those directly and specially affected by the Bill (or the local authorities and other bodies or associations representing the interests referred to in Standing Orders 95 to 102).
6. "The Select Committee is thus primarily concerned with the impacts of the Bill upon those persons who live and work along or close to the line of the proposed railway."
7. "The environmental statement is there to assist the Committee in its consideration both of those impacts and of the adequacy of the proposed mitigation measures to alleviate those impacts."

8. Now, in 4 and 5 I draw attention to two broad categories of petitioner. Paragraph 4 is really dealing with individuals, businesses and companies, and what I say is that in the context of that kind of petition, “it will be open to the petitioner to argue that the environmental statement has not adequately reported the impact of the Bill upon him”—or her or it. “The petitioner may argue further that the promoter’s proposals as explained in the environmental statement fail adequately or effectively to mitigate that impact. A petitioner may advance such an argument in relation to his particular case.” Now, you’ve had one or two petitions which have already had at least part of that type of argument in them and I expect that as we go forward you will find such arguments coming forward. That is something which is the very stuff of the work of the Committee, and the environmental statement is important, if you like, in providing the evidence against which such petitions will need to be considered.

9. The second class of petitioner, which I think is the one that really covers the role of the Alliance that you have said you’ll hear them on as a result of the locus decision—that is to say hear them on route-wide issues—is in paragraph 5. “Such an argument may also be advanced as part of a generic case”—you might say a route-wide case—“of the kind typically made by a local authority petitioner”. The role that you have given the Alliance I think very closely aligns, if you like, to the role of a local authority. Effectively, they say, “We come in representing the interests of people up and down the route and we have the resources to be able to add value to the concerns they raise before the Committee”. But those concerns, of course, are nevertheless concerns of the private interests of those who are specially or directly affected by the Bill.

10. So, “Such an argument may also be advanced as part of a generic case of the kind typically made by a local authority petitioner. One example of the latter kind is the argument that the design standards upon which the promoter relies are inadequate to provide acceptable living conditions for homes situated close to the railway.” The classic example of that, as you know, is noise. We’ve told you that we have designed the railway and assessed its performance against a series of design standards that Mr Thornely-Taylor has briefly explained to you. Perfectly understandable that petitioners such as the Alliance may come forward and say, “Those standards are over-generous and they will not produce an acceptable living environment for people who live along

the route. The Committee should report that those standards should be set more rigorously”, if you will. We don’t accept that such an argument could be justified here, but that is an argument that I accept falls within—clearly within—the purview of the Committee’s consideration.

11. “Another such example is the argument that the promoter has neither adequately examined nor provided adequate measures to mitigate”—if you can turn over—“the impact of the Bill on wildlife along the route”. Indeed, yesterday you had such an argument raised by the Staffordshire Wildlife Trust in the context of their county, and you know from Mr Miller’s evidence that we are doing further work, which will result in due course in a supplementary environmental statement dealing with the product of that work.

12. Now, just stopping there, I would suggest that the role of the Alliance and their arguments in relation to the proposed scheme and the standards upon which we propose it should operate in terms of its environmental performance—that’s where any evidence they bring forward and any case they bring forward in relation to the environmental statement should be focused, because that is completely consistent with the role of the Committee. What I do not accept and what I ask the Committee to consider carefully is that the Alliance should go substantially further and that they should effectively mount a freestanding attack on what they term the accuracy of the environmental statement.

13. SIR PETER BOTTOMLEY: Sorry, accuracy or adequacy?

14. MR MOULD QC (DfT): Accuracy. That is the word that they use in paragraph 73 of their petition under the heading of “Environmental Statement”. They say—I will not put it up yet—“Your Petitioner submits it is vital that the deficiencies in the Environmental Statement are remedied by the Promoter of the Bill, whether by way of an addendum to the Environmental Statement or otherwise. One reason this is so important is that the Environmental Minimum Requirements, which have been produced by the Promoter of the Bill in draft, contain important obligations which will fall on the Nominated Undertaker when constructing and operating the railway, and a number of those obligations are specifically tied in to the Environmental Statement and depend upon its accuracy.”

15. That's not actually the case. It's true that the scheme is founded upon a series of environmental minimum requirements, which, as you know from my opening, are intended to be enforceable through contractual commitments on the part of the nominated undertaker and enforceable by the Secretary of State if those commitments are not honoured. But it's the environmental minimum requirements that are the key to the scheme doing what it says it's going to do; it's not the environmental statement. The environmental statement is founded upon the proposed environmental minimum requirements, but it is not itself an environmental minimum requirement. That, in a sense, is the flaw in the case that I think that the Alliance are seeking to put forward here. They're shooting at the wrong target. It's perfectly reasonable for you to consider whether the environmental minimum requirements are properly set, but you don't need to line by line go through the environmental statement in order to answer that question; you simply need to focus on the relevant noise standards, or the relevant standards for ecological mitigation, and ask yourselves the question, in the light of the evidence you hear, "Are those standards acceptable?"

16. That's really where we are. Where I think there is common ground is that it's no part of the Committee's function to assess the legal adequacy—so far as that is a concept that is helpful—of the environmental statement. The Alliance, as I understand it, also accept the broad account of where the Committee's role sits within parliamentary process as a whole on the Bill, which I've set out in later paragraphs of my note; and, indeed, as I've reminded you, they have actively participated themselves through the process which is laid down by Standing Orders for public participation and comment on the environmental statement under Order 27A and under 224. Likewise, they have actively participated in the proceedings of the Environmental Audit Committee, which has taken on the role of auditing the environmental statement in a broader sense, particularly—as you might say—from a public policy perspective rather than from the much more narrow private-interests focus which is the role of this Committee. I don't think there's any issue about that either, and indeed in practice for this Committee to go into matters of that kind would simply be to duplicate the work that is being done by those other organs of Parliament which have the duty under the Standing Orders to deal with those matters.

17. Before I hand over to Mr Banner, can I just put up the petition? Can we go first of all, please, to page 29? The Committee may find it helpful to be reminded that in their petition, which is set out in commendable detail, there are two relevant sections to today's proceedings. I have put up the last of them—the second of them—because it's helpful to look at this one first. Under the heading "Compliance with the Environmental Impact Assessment Directive & Aarhus Convention", the Alliance set out a series of arguments which, as that sub-heading implies, seek to assert failures on the part of the promoter and in the environmental assessment of the Bill against those two international standards—the European standard, the Directive; and the international treaty obligation, the Aarhus Convention. Now, I would submit simply that by definition they do not fall within the purview of the committee, those questions. As I say, I don't think there's any issue that it's not the role of this Committee to audit the legal adequacy of the ES. And so those matters, if they are directed at Parliament, they're directed to the House rather than being directed to this Committee, in my submission. Really I don't need to say any more than that.

18. Then if I can come back to the other relevant part of the petition—that's at page 8. So, here you have it; the heading "Environmental Statement". Paragraphs 70 and 71 simply report to you that they have had and taken the opportunity to set out their written response on the environmental statement under the regime which provides for that—that is to say Order 27A and Order 224—and their responses will have been part of the summary of responses and issues raised that was provided by the independent assessor to the House in advance of Second Reading. So, that forms part of that quite separate process which the House has laid down in order to secure conformity with this country's obligations under the Environmental Impact Assessment Directive.

19. It follows that paragraph 72, where they ask this Committee, as it were, to duplicate the role of the independent assessor and, as it were, to go through and to consider the accuracy of the environmental statement and, as it were, to down tools almost until it has reported on that and required us as appropriate to correct the environmental statement, in my submission is simply not the role of this Committee. If the House had felt that this Committee should do that, then it would have said so in an instruction, and it didn't say so. In the note I've drawn the contrast with the very limited

role that the Crossrail committee was instructed to perform in that respect.

20. Paragraph 73 is really as close as it gets to something that is, I would concede, relevant to the work of this Committee, and this is the paragraph I quoted to you earlier. As I say, essentially, if you analyse it correctly, what this paragraph is saying is the Committee should review and should test the appropriateness of the environmental minimum requirements upon which the scheme—the railway project—is fundamentally founded. I accept that that is the role of this Committee. If you want to put that in terms of topics, it involves, for example, consideration of the noise EMRs; it involves consideration of the EMRs relating to ecology; it involves consideration of the EMRs relating to visual impact; it involves consideration of the EMRs relating to the waste-handling strategy, all of which topics are among the route-wide issues that these petitioners, as you have agreed and have decided, should be able to address this Committee in due course.

21. What that means is that there isn't actually any room for or need for the Committee to have a freestanding inquiry into the accuracy of the environmental statement, because those points relating to the EMRs upon which the petitioners are quite properly raising their concerns can be dealt with when they come to present their petition on those very route-wide issues that you have said you will hear them on.

22. The question then becomes one of programming. Should they be heard on those issues in a job lot or would it be more useful to the Committee to take advantage of the lead-authority arrangements that you know have now been put in place by many of the local authority petitioners and, for example, to hear the Alliance's case on noise at around the same time that you hear Chiltern District Council's case as lead authority on noise, or their case on other matters set out within their petition when you hear those cases presented by local authorities?

23. What I don't see—and this is my final point—on the basis of that analysis is where there is a need for this Committee to devote what I think was estimated to be five days of its time to hear argument about the environmental statement. It simply isn't something which, in my suggestion, is profitable or necessary given the very specific

function of this Committee and given the role that effectively you have vouchsafed to the Alliance in the light of your decision on locus.

24. That's all I want to say at the moment, unless there's anything else that you need to hear from me at this stage.

25. CHAIR: Thank you. Mr Banner.

26. MR BANNER: Thank you, sir. Good morning. What I propose to do, if it's convenient to the Committee, is start by setting out what we seek to do before the Committee and then at the end pull that together in terms of the next steps going forward if you agree with our request.

27. SIR PETER BOTTOMLEY: Can you give us a rough idea of how long it will take?

28. MR BANNER: About six or seven minutes. Something of that order. Not too long, I promise.

29. I'm going to start, actually, by saying what we don't seek to do. The purpose for which the Action Alliance seeks to present evidence on the ES is not for the Committee to make a ruling on the legal validity of the environmental statement. I'm sure you'll be relieved to hear that. That's not what we seek to do. What we do seek to do is to rebut the conclusions in the ES about the environmental impacts of HS2 and the appropriate mitigation on matters that are within the Committee's remit and which are within the scope of the locus that the Committee has granted the Action Alliance.

30. In short, what we say is that in considering what, if any, recommendations to make about the changes to the HS2 proposals within the Committee's terms of reference, it's relevant for the Committee to understand whether the environmental statement paints an accurate picture of what the impacts will be and what mitigation is required, because that is at least one of the principal documents which Mr Mould and his team seek to persuade you what the impacts will be—a sort of question precedent to

then what do you do about it within your terms of reference—what do you recommend about it. We say that is squarely within your terms of reference and our locus, and my note—which I hope you’ve also had—explains that in more detail.

31. I’ve highlighted at paragraph 5 of the note—I don’t know whether that can be brought up on the screen—the reference to the ES by Mr Mould in his opening, calling it a “key document” setting out their assessment of the environmental effects. What we essentially say is there are aspects of that assessment we disagree with; we would like to seek to persuade you through evidence that we are right in disagreeing with those aspects, and we seek to persuade you to require further information to inform subsequently your consideration of what, if any, changes to recommend within your terms of reference.

32. Mr Mould’s primary point in his written note appears to be that it would be inappropriate for us to invite the Committee to make a legal ruling as to whether the statement complies with the requirements of European law, and as I say—to repeat—that’s not the purpose for which we’re seeking to call the evidence. What we do say, to make our position clear on the legal side of things, is that if, having heard evidence about what we say are inaccuracies in the conclusions and methodology of the ES about matters within your remit, you conclude that we’re right and the environmental statement doesn’t portray an accurate picture of the impacts of HS2 and the mitigation within your remit, and if those inaccuracies aren’t remedied by HS2, there may then be a legal issue and there may then—

33. SIR PETER BOTTOMLEY: Could you repeat that? You had two conditions in that.

34. MR BANNER: Indeed. Of course. So, if you hear evidence from us that the conclusions in the environmental statement are not reliable conclusions as to either the impacts or the mitigation or both, if you agree with us on that and if thereafter they don’t do anything about it—so they simply leave it and they don’t improve the information so as to fill the gaps that you have found—then there may be a legal issue, the reason being that the relevant legal requirement is that the environmental statement

provides such information as is reasonably required about the impacts and mitigation, and if you've found effectively that it doesn't do that, it may be a knock-on consequence—a collateral consequence of your factual finding might be a legal issue. But we're not inviting you to make a legal ruling, and that's really a matter for another day, because it's dependent upon whether you agree that the ES paints an inaccurate picture in some respects and what, if anything, HS2 do about that, and we're not at that stage yet. It's very much premature to get into consideration of that issue and, indeed, who is the appropriate body to make a finding. It may be appropriate for the Committee, if we were in that situation, to recognise that situation so as to inform Parliament of the issue, but there may not be an issue, because it may simply be that you agree with us that the environmental statement doesn't paint an accurate picture and then HS2 provide further information to make the picture accurate.

35. Going forward to where we go from here, what we say is that whether or not the ES paints an accurate picture is really a condition precedent of your consideration of everything that follows, because if its purpose is to inform you in assessing and concluding what to recommend to Parliament in terms of the changes that may be made, it's the starting point. You need to be satisfied that that starting point for your consideration is a good one, and if not then invite HS2 to make it a good one. That's why we say it is appropriate to have that preliminary session on the ES where we can call evidence within the scope of our petition, our locus and your remit. We can absolutely guarantee we won't duplicate evidence and submissions made by other people. Nonetheless, we wish to address you on that preliminary question: does the ES paint an accurate and sound picture which you can rely upon for your subsequent deliberation as to what, if any, changes to recommend?

36. In terms of the timescale, I think I can fairly say that the five-day estimate was only one that was being mooted as a worst-case scenario. I haven't been involved in the preparation of the evidence and I'm pleased to say I'm not in a position to give any detailed evidence today as to what we will be saying, but I can give you an assurance that the evidence will be presented as efficiently and effectively and in as time efficient a manner as is possible, without any duplication, and obviously programming can ensure that the appropriate amount of time is given to do that.

37. That's all I wish to say at this stage, but obviously I'm happy to answer any questions from members of the Committee if that would assist.

38. SIR PETER BOTTOMLEY: It's very difficult to go into detail having heard what I think was a sentence which had three subjunctives in it, which beats the double-negatives we're more used to.

39. MR BANNER: Yes. I apologise for that.

40. SIR PETER BOTTOMLEY: You say in paragraph 71 that it's "impossible" for us to do what we've been doing. What does that mean?

41. MR BANNER: What it means—and really it needs to be read in conjunction with 72, because 72 tells you what we say you should do as a result of 71. It's my point about it being a preliminary issue. Unless you know first of all what the environmental impacts are and you're satisfied that the picture that has been painted in the statement is a fair and accurate one, then you're not in a position to reach conclusions as to what should be done about those impacts.

42. SIR PETER BOTTOMLEY: So it's not a question of impossibility; it's a question of we shouldn't have started.

43. MR BANNER: You shouldn't proceed until you have—

44. SIR PETER BOTTOMLEY: We have started. We've been going for weeks.

45. MR BANNER: Yes.

46. SIR PETER BOTTOMLEY: Are you saying we shouldn't have started

47. MR BANNER: We're not yet dealing with matters within our case, as I understand it, sir.

48. SIR PETER BOTTOMLEY: No, I know, but I just want to get—I'm perfectly happy to come to the detail, but when you say something's impossible, it means it's not possible. We've been doing it, so it's not impossible.

49. MR BANNER: Well, clearly not, because you have—yes.

50. SIR PETER BOTTOMLEY: Okay, well if you agree with me on that, that's fine.

51. MR BANNER: Conceptually, that must be right.

52. SIR PETER BOTTOMLEY: Next thing. If we take some of the important elements which were in the environmental statement—the minimum standards—like noise, we've been standing by the West Coast Mainline. We've been with people who are, if it goes ahead, going to experience HS2 there as well—or by itself—and we've got an understanding of what noise levels come. Are the noise levels in the environmental statement wrong or are they not wrong?

53. MR BANNER: I'm not a noise expert, so I'm not in a position to give evidence on that, I'm afraid.

54. SIR PETER BOTTOMLEY: Okay. How about the visual? What we've been shown on a number of occasions and in front of a number of petitioners—for example, yesterday we were shown sight lines. Were they wrong?

55. MR STANWELL: Perhaps I can interject at that point. Mr Banner hasn't really been involved in this particular aspect of HS2AA's case. We have been preparing our work on the environmental statement, and that's necessitated instructing a consultant team, at significant expense to HS2AA. We have some disagreements, for example, around methodology on which the environmental assessment is carried out. We don't agree with the ES methodology that HS2 have promoted. But we haven't actually finalised our case, and that has been on hold pending the outcome of these proceedings, because we didn't know whether the Committee would want to proceed in that manner, so we couldn't put that funding at risk. So, I'm afraid we can't give you specific details

on issues that we want to take at this moment.

56. SIR PETER BOTTOMLEY: But the deficiencies are so serious that what we're doing is impossible.

57. MR STANWELL: I think when we say "impossible"—that's perhaps a counsel of perfection on our part. You can come to a view on certain issues, but if you were to have the totality of the understanding in terms of had you stood by that railway line and you had our view on the methodology of the ES, that might have better informed the position on which you took that evidence.

58. SIR PETER BOTTOMLEY: At the risk of going further than perhaps I should, I just want to be fairly open with you. The expectation of noise will be known on HS1.

59. MR STANWELL: Well I'm not sure that we agree with that.

60. SIR PETER BOTTOMLEY: Well, if you put a noise meter by HS1 in environmental circumstances similar to some on HS2, you would expect the readings to be the same.

61. MR STANWELL: Again, I haven't been as closely involved in the noise angle as others, but these trains go significantly faster than HS1 and there are different forms of mitigation on HS1 and, indeed, the world has moved on in the 20 years since HS1 was consented in terms of methodology as well. So it's not quite as simple as making that assessment.

62. SIR PETER BOTTOMLEY: If your clients are saying that the physics has changed or the physics is wrong, I would expect that to have come out earlier—I would expect some of the petitioners to have raised that. I can fully understand there can be disagreements and different views on particular things, but in terms of major issues, which the environmental statement I thought was supposed to do, I don't find that it's likely to be so.

63. MR STANWELL: What I would say to that is insofar as the Committee has made

its decision as to how to hear petitions, it didn't want to do so on route-wide issues first; it went down a locality-based approach, and that's why we are where we are on this issue in terms of the programming of specific hearings. As we've said, we would like to go earlier to provide you with that information, but you've been working on a north-to-south route and that's just something that we've had to work with. Again, just drawing the analogy back to HS1, there is a significant difference in speed between HS1 and HS2.

64. SIR PETER BOTTOMLEY: I understand that. I've probably done more physics than you have.

65. MR STANWELL: I wouldn't doubt that for a moment, sir.

66. SIR PETER BOTTOMLEY: Can I then come on to my last thing, then I can leave it there for the moment, Chairman? We've had our attention drawn to Hoffmann saying "they are likely to be few and far between". Are we to understand that your clients believe—and you support them in believing—that this is one of the "few and far between" cases?

67. MR BANNER: We haven't got to that stage yet, because what Lord Hoffmann's addressing is the situation where, after the totality of the process—so, the environmental information and/or any supplementary information on top of that—looking at it in the round after any holes have been plugged that have been pointed out, is the totality of what was before the decision-maker at the time when the decision-maker reached its decision sufficient? We're not there. We're at a relatively early or middle stage of the process. What we're saying at the moment is there should be provided more information. If that information is provided and if you find that the ES does paint an incomplete or an inaccurate picture, then it's very likely they'll make that picture up—they're not going to do nothing about any findings you make—and then the matter may well be resolved. But the point is it's far too premature to say what the position will be at the end of the process when we're at an early stage.

68. Could I just, in response to Sir Peter's earlier comments, remind the Committee of what is said in my note at paragraph 10, on the second page of that note, which is—the

second sentence—that because of the two-day rule and because, as Mr Stanwell has been on hold pending today’s proceedings, we haven’t got the evidence either ready or certainly before you, but there is a danger, of course, of pre-judging its relevance and content. We can assure you that we will put before you only that evidence which we think is relevant and appropriate and within your remit and within our locus. We can’t say anything more than that at this stage. All we ask is not to be precluded from having that opportunity, and ask the Committee to trust our judgment in our selection of what we put before the Committee at the appropriate time.

69. SIR PETER BOTTOMLEY: Can I ask one other question, Chairman? Would you lose a lot if, when HS2AA come in at the end—which is almost a precedent; the locus issue was not obvious—if you brought any remaining issues up then, would that be a great difficulty to you?

70. MR BANNER: The primary difficulty that I see—and Mr Stanwell may have his own comments too—is that if our evidence persuades you that actually what you’ve been told by the promoter about the impacts and appropriate mitigation within your remit doesn’t paint an accurate picture—

71. SIR PETER BOTTOMLEY: Is wrong in a major and significant way.

72. MR BANNER: Yes. Then—

73. SIR PETER BOTTOMLEY: Can we—if it’s wrong in a major and significant way.

74. MR BANNER: Well, “in a significant way” may be enough. It may not necessarily need to be major; it may bear upon aspects which go to detail.

75. SIR PETER BOTTOMLEY: If that, then—

76. MR BANNER: Yes; then you will have wasted your time, because you’ll have considered matters upon a potentially significantly inaccurate premise.

77. SIR PETER BOTTOMLEY: That won't have been raised by individual petitioners.

78. MR BANNER: They may not have been.

79. SIR PETER BOTTOMLEY: Or by county councils. Or by district councils. Or by parish councils.

80. MR STANWELL: Yes.

81. MR BANNER: They may not have been. As I say, we assure you that we won't duplicate evidence and material that you've heard certainly to date.

82. CHAIR: Okay. Any questions, Henry?

83. MR BELLINGHAM: I've got no questions, no.

84. CHAIR: No. Mr Mould.

85. MR MOULD QC (DfT): I just have one point. If I may say so with respect, Sir Peter's question in relation to what Lord Hoffmann said was a perfectly fair question to put now. If we just put up P665(2) and P665(3), what Lord Hoffmann does in that passage that I have set out in italics there and over the page is he draws a distinction between the process of environmental impact assessment and the particular role that the environmental statement plays within it. Whilst Mr Banner is right to say that the process includes both the environmental statement and any comments and other information that comes broadly within the rubric of environmental information that is the product of that process, there is a freestanding issue that in exceptional cases may arise as to whether the statement itself is, to use his words, "so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations". Now, that freestanding question therefore is perfectly proper, because the statement has been put in to Parliament and it is not, as I understand it, the case of these petitioners that the statement is so deficient that effectively it does not constitute an environmental

statement.

86. I can illustrate that in a simple way. As I've reminded you, it is the function of the examiners to test whether the submitted environmental statement is one that complies with the requirements of Order 27A. They considered that issue; they directed that some missing pages—there was an omission and that should be made good, and it was. These petitioners did not submit a memorial suggesting that the environmental statement was so deficient that it should be ruled as not an environmental statement at all. In other words, it is fair to ask the question that was posed just now, and the answer to it is perfectly clear: it is not this petitioner's case to say that this is so deficient a statement that it does not constitute a statement. What they are saying is, as I understand it, that they have concerns about some of the content. That brings you back to my point. They're really shooting at the wrong target here. Their concern on analysis is with the scheme and whether the scheme proposes environmental protection measures that are sufficient. They can make that case when they come to present their case, as Sir Peter has pointed out. There's no reason for you to hear a freestanding debate about the accuracy of the environmental statement for that purpose.

87. CHAIR: The environmental statement has already been considered in quite a lot of detail by the Environmental Audit Committee, of which some papers we have, which presumably HS2 paid some attention to.

88. MR MOULD QC (DfT): Of course.

89. CHAIR: And amended or changed?

90. MR MOULD QC (DfT): Well, the best example of that that's clear in your minds is yesterday, because it is as a result of the recommendations of the Environmental Audit Committee that we have set in train a process of developing an ecological monitoring body; we have set in process the work on developing a long-term maintenance regime for ecological mitigation; and we have set in train the process of carrying out further ecological investigations, which, as I say, will be reported before this Committee ceases its work in the form of a supplementary environmental statement. So, that's a very good way of illustrating how we are taking account of the

recommendations of that Committee.

91. CHAIR: We don't live in a perfect world, and I'd be very surprised if everything in any document produced by any Government or quasi-Government organisation was right, but I presume, from that we've heard so far in the process, that there is always further information coming forward; the process is being updated. So, is the environmental statement a static document, or is it something which actually will change as the process goes by—as more information becomes available?

92. MR MOULD QC (DfT): It will be supplemented. It is being supplemented by the material that you receive. When we promote the Additional Provision in relation to the Staffordshire matters that I mentioned to you, that will be accompanied by a supplementary environmental statement that will assess the performance of those Additional Provisions and do so in the context of the statement that is already in. So, it is very much in that sense a living instrument. And insofar as petitioners—how many petitioners are there before you? 1,900, I think.

93. CHAIR: 1,900, yes.

94. MR MOULD QC (DfT): Yes. Many of those petitioners will raise points in which they will ask you to consider whether further noise mitigation should be provided for their premises, and if you in your special report say, “We think that the village of X should have a significantly improved set of noise mitigation in order to give it an acceptable noise environment” and that requires us to do further works, they may well require further assessment as part of a supplementary assessment. So, that is the practical reality of this: that the statement is, in that sense, a living process.

95. CHAIR: Sir Peter.

96. SIR PETER BOTTOMLEY: If an environmental issue came up which hadn't been seen before that went to the heart of the Bill, what should then be done by this Committee or by the promoters or by Parliament?

97. MR MOULD QC (DfT): What should be done by the promoters is that the

promoters would need to react to it. In an extreme case, if we discovered as a result of a case that was presented here that we had omitted to consider an important environmental impact on a village or something of that kind—for example, due to the topographical relationship between the line and a village we had grossly underestimated the level of noise impact that would occur and therefore we hadn't properly provided for that—we would have to deal with it. And if we didn't, this Committee would report to the House that we needed to deal with it and we'd have to react to that report.

98. SIR PETER BOTTOMLEY: And if HS2AA come in—or when they come in—towards the end of the process and if they raise an issue which actually has an along-the-line impact, how would the HS2 promoters deal with that?

99. MR MOULD QC (DfT): Again, we would hear what they said. We're trying to read the runes anyway, and you're giving us a great deal of help, if I may say so, with where you think we need to do more work. The combination of those processes would mean that if something of that kind occurred where we recognised that we needed to do further work, we would do it. And again, if we didn't do it, I'm sure you would include that in your special report.

100. SIR PETER BOTTOMLEY: Picking up the points that Mr Banner was making, there are obviously some things which are local—taking examples from memory, taking out the double-crossing of the canal—

101. MR MOULD QC (DfT): In Staffordshire, yes.

102. SIR PETER BOTTOMLEY: Which has an environmental improvement and is, on balance, probably locally supported and happens to save money as well. That wasn't us directing it; it just sort of came out of being there with various people. But I think that's not what HS2AA are actually after at the moment; I think what they're after is something broader and more fundamental.

103. MR MOULD QC (DfT): Well, it's not entirely clear what they are after, if I may say so, but I think what I divine they're after is—take the question of noise, because it's

the most obvious one. I've read their petition on noise, obviously; it has a good deal of detail on their concerns. I think what they're saying is that they detect two problems with the promoter's project. The first is that the promoter has designed his project to a set of design standards which do not in fact produce an acceptable living environment. The second is—which follows from that—that the mitigation that the promoter has proposed in order to alleviate the effect of noise on people—both construction and operational noise—those measures are inadequate for that purpose. The two go hand in hand, effectively. They argue that on a route-wide basis and they will no doubt call a noise expert in due course to seek to make good that case.

104. If you're persuaded by that case and you think that we need to revisit our noise standards so as to introduce a more rigorous set of design standards than those Mr Thornely-Taylor has explained to you, we'll have to address it, and the product of that will no doubt be that we will have to introduce a good deal of additional noise mitigation; we may have to consider the operational specification for the railway—that kind of thing. If that comes very late in the day, then obviously it has implications in terms of the overall progress of the Bill. It may be that in those circumstances, as I think I floated in my opening remarks to you today, there might be some advantage in programing terms, given that you're to hear from Chiltern District Council on operational noise, no doubt putting forward fairly similar arguments, judging by what I've read of their petition, for you to hear both of those presentations broadly at the same time. But it brings out the fundamental concern I have, which is, if you like, the environmental statement is being set up as a sort of Aunt Sally here. What we're really talking about is, as I say, those environmental minimum requirements—those noise standards or ecological mitigation standards—that the scheme is founded upon. That's what they're really interested in, and that's perfectly proper.

105. SIR PETER BOTTOMLEY: Last thought, if I may air it in public. This is one of the few times where we actually have to make a decision, and whether we say yes or whether we say no—well, we have to make a decision at the end, but an earlier decision. We either say yes or say no. Whether we say yes or we say no—especially if we say no—would the promoters be prepared to have their people talk with the people who are associated with the clients for those in front of us today to actually see where there are

points that do matter that can be considered and, if necessary, put in a note to us or tell us what's come from that?

106. MR MOULD QC (DfT): I am certainly prepared to say that we would seek to do that. If I may say so—I don't want to add unnecessary heat—that implies an element of mutual goodwill, and it would certainly help from our part in engendering that if the Alliance could find a way of stopping judicially reviewing us in the courts at every opportunity and we could focus our energies on that kind of thing. But I make that comment because if we have a focus on that productive conversation, I think that would be very helpful.

107. SIR PETER BOTTOMLEY: Just to save me looking it up, how many judicial review applications are around at the moment?

108. MR MOULD QC (DfT): At the moment we have an appeal. The most recent judicial review was a judicial review of the safeguarding directions. Mr Justice Lindblom comprehensively rejected that judicial review application over the course of the summer, and he has granted permission to appeal but he did so expressly on the basis that he didn't think that the appeal was likely to succeed on legal grounds but he thought that there was a public interest in the Court of Appeal considering the issue of safeguarding on a broader basis. As I say, I don't want to up the ante on this; I do just think that if we are going to show willing it would be helpful if we had a less confrontational and a more co-operative approach.

109. CHAIR: Mr Banner.

110. MR BANNER: Thank you, sir. Just a few short points in response. Can I deal firstly with the point about the environmental statement being not a static document, as you, sir, described, but something which would go through a process of evolution through supplementation? That's right, but the purpose of why we seek to be heard on this issue is to encourage that within that evolutionary process certain holes which we identify which we say will lead to the Committee being presented with an inaccurate picture are made good. So, we completely endorse what Mr Mould says, but that's one of the reasons why we want to be heard on this subject.

111. The second point—if I could ask for page 172(2) to be brought up, which is the second page of my skeleton note. I do want to flag up: if, before the Committee were to consider whether it should say no and effectively preclude us from making these points, I do highlight what is said at paragraph—

112. SIR PETER BOTTOMLEY: Making these points now.

113. MR BANNER: Now; indeed. But I do want to highlight paragraph 8. It appears, at least on one view, that there are hints of a suggestion that we have to treat the environmental statement as definitive—we can't challenge it; it's gospel. We can make other points about the merits, but we have to treat it as gospel. That can't be right. As I said to you with reliance on what I say at paragraph 5 in my note, the statement is being relied upon by HS2 to inform you as to what the impacts will be. You can't address the question of what the mitigation for the impacts will be without knowing what the impacts will be, and that's a significant part of what the environmental statement seeks to do and we seek to question that. That's why we say it is an antecedent preliminary issue.

114. The next point I want to just address briefly is to remind what I think has already been said at the locus hearing. Mr Mould says other individual petitioners will take points like these. They may do, but one of the reasons why HS2AA appears to have been granted locus was that HS2AA was in a prime position to act in a quasi-representative way due to the greater resources it may have than individual petitioners.

115. Next point. In relation to Lord Hoffmann, Mr Mould suggests that we don't say that the statement is so deficient that it couldn't legally be concluded to be an environmental statement. As I said before, it's premature. I don't make any concession about that; I don't make any assertion about that. It's premature; we're not at that stage yet.

116. What I do say is that it would be appropriate in all the circumstances to have short, focused preliminary sessions on the reliability of the statement. We don't think that it

will add unduly to the Committee's burden, and we think that it would be the appropriate thing to do in all the circumstances.

117. CHAIR: Given, Mr Banner, the Environmental Audit Committee has already gone through this and clearly with a long document you can go through bits and pieces and argue the toss about what are relatively minor issues but may not have very much impact on whether we make a decision one way or the other, I think what we'd be looking for is significant, to go back to Sir Peter's point, because if it's significant it might have an impact. I'd also make the general point that just because we look at the environmental statement and HS2 assure us something's X, we generally speaking take a sceptical view about what HS2 tell us, simply because we're politicians and we generally don't believe what people tell us. We take a sceptical approach. When people put up flow charts and documents—we've read a lot of them in our time. You made a very sensible point to start off with. You conceded that five days hadn't really been thought through at the moment, and I know you haven't done your homework in terms of—you said you'd do some work. How long do you think you would need if you were to address anything that you considered significant?

118. MR BANNER: Can I confer for a moment?

119. CHAIR: Yes.

120. MR BANNER: We'd need to take instructions because the relevant people aren't here. I think it's fair to say I don't believe there was intention before to draw the Committee's attention to things that were insignificant, but plainly if that was a steer that the Committee were to give us then, as a matter of programming, we would seek urgently to confirm that.

121. CHAIR: I think as a starting point it would be quite useful, since you're going to have to confer and I don't want to mess about with trivial stuff—I want something significant. I want written representations. So, if you could come back to me with the sort of timescale you'd need and some of the issues you'd like to raise, and then we will dwell on that.

122. MR BANNER: We'll do that. Thank you, sir.
123. SIR PETER BOTTOMLEY: That's not a steer; that's information.
124. MR BANNER: Yes.
125. CHAIR: Okay.
126. MR BANNER: I'm grateful. Thank you very much.
127. CHAIR: Alright. I'll go to you, Mr Mould, and then I'll give the final comment to Mr Banner.
128. MR MOULD: I've got nothing else to say.
129. CHAIR: You've got nothing else to say.
130. MR BANNER: I don't have anything else to say either.
131. CHAIR: You've been wonderfully brief as well, Mr Banner. Thank you.
132. MR BANNER: Thank you very much.
133. CHAIR: Alright. Order, order.