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# HS2 BILL- NFU

The Select Committee Process

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# What has happened so far

- 1925 petitions have been deposited
- Select Committee heard representations from agents about programming on 13 May 2014
- Committee made announcements about programming on 12 June 2014
- Counsel for Promoter made opening address on 1 July 2014
- Route description by Professor McNaughton on 2 July 2014

# What has happened so far

- Noise teach in and visit 8 July 2014
- Birmingham/N. Warwicks site visit 15 July 2014
- Compensation teach in 21 July 2014
- Locus challenges
- Birmingham City Centre petitioners

## Committee website

- See link at end
- Has links to useful documents, including information about appearances, transcripts of hearings
- You can sign up for email updates from Parliament

# Watching the proceedings

- Attending in person: best way to see how the committee works
- Watching on the internet: see link at end
- Reading the transcripts

# The Committee

- Robert Syms (chairman): Poole (Con)
- Henry Bellingham: NW Norfolk (Con)
- Sir Peter Bottomley: Worthing W (Con)
- Ian Mearns: Gateshead (Lab)
- Yasmin Qureshi: Bolton SE (Lab)
- Mike Thornton: Eastleigh (LD)

# The Clerk

- The clerk is Neil Caulfield, assisted by Miguel Boo Fraga
- Advises the committee on procedure
- Will advise petitioners on procedure to some degree
- Channel of communications to committee (but see later)
- Sits with the committee

## Other key people

- Tim Mould QC: counsel for the promoter (plus a team)
- Professor Andrew McNaughton: possibly the promoter's primary witness
- Winckworth Sherwood and Eversheds: the two firms of agents acting for the promoter
- David Walker of Winckworth Sherwood: primary contact for programming



# Programming (1)

- Geographical order, starting at Birmingham City Centre
- Staffordshire will follow, beginning on 14 October
- Then Warwickshire and all points south, with NFU interspersed on 17 November

## Programming (2)

- “The Committee strongly encourages the agents for HS2 to arrange the petition programme to allow for at least four weeks’ notice of hearings to petitioners, unless there are exceptional reasons for not giving such notice.”
- Before then, Winckworth Sherwood (probably David Walker) will contact petitioners to discuss dates

## Programming (3)

- “Petitioners with particular difficulties about certain dates should certainly have their needs accommodated, but there is a duty on petitioners and their representatives to make themselves available, subject to reasonable allowance being made for other considerations. We do, however, expect particular consideration to be given by Mr Walker to the needs of disabled and otherwise disadvantaged petitioners.”

## Programming (4)

- “We will generally hear local authorities first within each locality, in the following order: county councils, then district and unitary councils, then parish and town councils, followed by community groups, other public bodies, businesses, and then individuals.”
- You may find that on the day there is some waiting around – but be there in good time. You may find that you are put off to a later date if other cases run on

## Sitting times

- Mondays: 2.00-5.00 and 7.00-9.00 (and beyond)
- Tuesdays: 9.30-12.30 and 2.00-5.00
- Wednesdays: 9.30-11.30 and 2.00-5.00
- Thursdays: 9.30-12.30

## Site visits

- Staffordshire, Solihull, North Warwickshire (again) on 16 July
- People can attend the visit locations where there would normally be public access
- Not an evidence-giving opportunity: approaching committee members could backfire so take care
- Banners etc likely to be expected by committee

## Committee Room 5

- Located in main building – no advance notice needed to enter, but give plenty of time for security
- Members sit at a horseshoe table, parties face them, public sit behind the parties
- Members and public have screens for displaying documents

# Etiquette

- Participants are not expected to stand when addressing the committee
- Addressing members as “sir”, “madam”, “Mr X” etc is acceptable
- Quasi-judicial role: the committee should not be approached informally or outside the room, and submissions should not be sent to the members directly
- Dress appropriately



# Lead up to the appearance

- Never too early to begin preparation (see evidence preparation later)
- Petition Response Document should be received at least 4 weeks before the appearance
- Any exhibits to be given to committee should be sent to HS2 no later than two working days in advance of the appearance, along with names of witnesses and person who will present the case (rule applies to HS2 as well)

# Petition response document

- Response to each paragraph of the petition
- Quite detailed, but likely to be in standard form, referring to information papers

# Discussions with promoter

- HS2 may approach petitioners to discuss individual concerns: or they may not
- Petitioners can also write to HS2 asking for discussions or a response. Keep copies of correspondence.
- HS2 might offer undertakings, assurances, or legal agreements (or be persuaded to do so). For some farmers, they have come forward with amendments to the Bill already
- Chairman has encouraged HS2 to agree things

# Undertakings and assurances

- See information paper B4
- Register of undertakings and assurances
- Overarching undertaking to Parliament given in opening address
- Formal agreements, oral undertakings to the committee, information papers backed up with undertakings, letters

## Should an appearance be made at all?

- The committee will not read the petition of a petitioner who does not appear
- Therefore, if they want their views to be made known, petitioners should appear on their petition, or lend support to another petitioner who does appear (eg by letter of support or appearing as a witness or presenting a joint case)

## Joint cases

- The committee will appreciate petitioners with similar concerns clubbing together and making a joint appearance through one spokesperson (with or without evidence in support)

## Order of proceedings: scenario 1: no evidence called by petitioner

- Counsel for promoters may make brief introductory remarks (unless petitioner objects)
- Petitioner (or representative) makes statement to the committee (referring to documents, if any)
- Committee may ask questions (during or after the statement)
- Counsel for promoters respond and may be questioned by committee
- Petitioner (or representative) responds

# Order of proceedings: scenario 2: evidence called by petitioner

- Witnesses sworn in/affirmed by clerk
- Counsel for promoter may make brief introductory remarks (unless petitioner objects)
- Petitioner (or representative) makes brief opening remarks and calls witnesses (referring to documents, if any)
- Committee may ask questions (during or after the giving of evidence) and counsel may cross-examine each witness. Petitioner may re-examine on points raised
- Counsel for promoter may call evidence (but does not have to): procedure as above
- Counsel for promoter sums up and may be questioned by committee
- Petitioner (or representative) responds and may be questioned by committee



# Time restrictions (1)

- David Walker will ask for a time estimate from you and it will be transmitted to the committee. If they have concerns, they will be made known via Mr Walker
- “Where a series of petitions addresses related issues, the Committee will invite the second and subsequent petitioners to say whether they wish to make points not already addressed by the first petitioner. These petitioners will be asked to address only those further points, unless there are exceptional reasons. Petitioners choosing not to speak will be deemed for formal purposes to have appeared, provided they or their agent are present in the room and identify themselves.” (Committee guidance note)

## Time restrictions (2)

- “The Committee will take time to hear and understand petitioners’ arguments. However, unnecessarily lengthy argument on either side will be deprecated, as will reading out of speeches without good reason. Petitioners should feel free to include in their evidence a summary of their arguments, of no more than two pages. If they do, they can assume the Committee will have read it and that there will be no need to expand on it in the hearing.” (Committee guidance note)

# Locus

- Even though locus standi may not have been challenged at the outset, be prepared for HS2's counsel to suggest to the committee that the points you make are not within your remit and/or are more appropriately dealt with by others

# Presentation tips

- Committee is unlikely to be impressed with:
  - Repetition
  - Waffle
  - Aggressiveness to HS2 or (especially) to the committee
  - Complaining without explaining what remedy is sought from the committee
  - Pulling rabbits out of the hat: do not come forward with new engineering solutions at the last minute
  - Bombardment of correspondence

# Presentation tips

- Committee is likely to be impressed with:
  - Concise delivery of the key points
  - Joint presentations
  - Interesting and informative exhibits and evidence
  - Individuals making their own cases

# An intimidating experience?

- Committee has shown already that they will treat petitioners fairly and with respect
- Committee likely to put petitioners without professional representation at their ease
- But don't turn up late.....

# Committee decisions

- Decisions unlikely to be announced at the end of each case
- Some “big ticket” decisions may be made early, particularly those requiring additional provisions
- Other decisions likely to be left to the end or at recesses but indications given some may come sooner
- Government may respond: and may not agree

# Committee members

- Early days, but points to note:
  - Quorum is 3, and that means members may come in and out: so far absences have not been high
  - Varying behaviour/level of questioning between members has been demonstrated, but they have asked a good number of well-informed questions



# Preparation and exchange of evidence

- Statements to be read by petitioners and written proofs of evidence to be given orally need not be submitted to HS2 or the committee
- Exhibits (documents to be handed to the committee) have to be exchanged 2 days in advance

# Proofs of evidence

- Name, address and occupation of witness; involvement with project
- Summarise what the evidence covers and what the committee is being asked to do
- Explain the problem being tackled
- Explain the solution
- Refer to exhibits throughout

## Technical evidence

- If promoter agrees an alternative design is achievable in engineering terms, then no need to provide detailed engineering evidence: give it to them well in advance (no rabbits out of hats) and seek to agree feasibility
- If technical reports and evidence is going to be relied on, seek to agree in advance if possible

# Exhibits

- Essential part of the case: this is what the committee will have in front of them, on screen and in hard copy
- Number each one “A1”, “A2” etc
- Use photographs, maps, tables, short textual extracts, bullet points
- First and final exhibits: set out what you want the committee to do
- Let the exhibits tell the story: imagine someone picking them up having not heard the evidence: would they still be able to see what was being sought and understand why?

# Assumptions to be made

- Assume:
  - The committee will not read any document given in advance
  - The committee will not read any lengthy or complicated document
  - The committee will not spend time “out of hours” working on the documents
  - The committee will be familiar with HS2’s counsel and main witnesses

# What can the committee do?

- When setting out each grievance, set out what it is you want the select committee to do. This can include:
  - Asking for changes in the route alignment – so long as they are within the “broad alignment” of the railway
  - Asking for the bill and/or the deposited plans to be amended
  - Asking the select committee to require the promoter to carry out a further environmental assessment on a particular aspect
  - Asking the select committee to require the promoter to amend one of the Bill’s supporting documents (eg the code of construction practice, the environmental minimum requirements)
  - Asking the select committee to require the promoter to give an undertaking or assurance about a particular matter

# How will the committee decide?

- It is likely that in most cases it will simply be a case of cost vs benefit
- Quote from the report of the Commons Committee on HS1:  
“We have said that in making our decisions we have been mindful of cost: we have had to reach a compromise between the cost and the benefit of proposals to alter the link. Cost was not the only consideration, however: often the promoter and the Petitioner sought to call into question the practicality of one another’s proposals, and we had to gauge whether or not either or both were possible.”
- Committee will reject expensive engineering alterations where they are unconvinced that they are justified: an example on HS1 being Boxley long tunnel (where alternative improvements were secured instead), and other tunnel proposals (see later)

# Examples of success

- HS1 – House of Commons (1)
  - Boxley long tunnel rejected but lowering required
  - Assurances on HS1 and M2 works to be constructed together so no “double whammy”
  - Ashford: Urging DfT to provide county council with extra funding for an associated road
  - Aylesford: Additional crossing point to be provided
  - Certain demolished listed buildings to be reconstructed without delay
  - Leacon: A rural lane not to be used by HGVs
  - Harrietsham: A short additional rural tunnel to be provided



# Examples of success

- HS1 – House of Commons (2)
  - Hoo Junction: Not to be used as railhead (promoters said it was never going to be)
  - Waterloo spur: must be constructed
  - Northfleet Station: consideration to be given to pedestrian link
  - Support use of spoil to reclaim land
  - Mardyke: Line diverted away from housing estate
  - Barking tunnel extension approved (major change)
  - King's Cross/Caledonian Rd: Fully tunnelled option (major)

# Examples of success

- HS1 – House of Lords (1)
  - Boxley long tunnel again rejected but further lowering required
  - Retained wall cuttings for certain ancient woodlands
  - Islington horizontal alignment
  - Charing: lowering of viaduct if practicable (shows importance of having idea of costs)
  - Eyhorne St: extension of tunnel and lowering
  - M2 at Sellindge: undertaking given that noise levels would not increase – backed by requirement that M2 would be resurfaced if they did
  - HGVs not to use a further rural road
  - Construction bridge across Regents Canal to minimise use of public roads
  - Newington: construction site should not be used

# Examples of success

- HS1 – House of Lords (2)
  - Forum to be set up to resolve location of a feeder station
  - Inter-departmental working group on blight (set up after Commons should investigate 2 particularly bad cases)
  - Further efforts to be made in providing rehousing solution for King’s Cross residents
  - CTRL required to purchase 3 houses even though occupiers failed the hardship test and 1 further should receive extra compensation for moving costs
  - Undertaking to provide businesses with full information about date and terms of any relocation required
  - Farmers whose land is taken temporarily for construction should retain the freehold
  - Encouraged DfT funding for Medway Towns northern relief road

# Examples of failure

- HS1 – House of Commons
  - Boxley long tunnel – not allowed, but more mitigation and lowering required
  - Central railways group freight requests
  - Extended tunnel at Sandling
  - Lowering of line at Saltwood
  - Sandway tunnel extension
  - Longer tunnel at Harrietsham
  - Moving construction site at Harrietsham

# Examples of failure

- HS1 – House of Commons (2)
  - Tunnel extension at Eyhorne Street, but lowering of line encouraged if practicable
  - Reduction in number of Medway bridges
  - M2 park and ride and other highway improvements at Medway
  - Tunnel beneath Ashenbank and Cobham woods
  - South Thameside development roads
  - North Kent line connection on viaduct not embankment
  - Changes to St Pancras station
  - Requirement for parish councils to be consulted

# Examples of failure

- HS1 – House of Lords
  - Boxley long tunnel: but further mitigation secured
  - Bluebell Hill tunnel extension
  - Rainham horizontal alignment
  - Marlowe Park M2 horizontal alignment
  - Sandling tunnel
  - Cobham tunnel
  - Increase in countryside management scheme funding and Inner Thames Marshes compensatory scheme funding
  - Noise from vent shafts
  - Moving Harrietsham construction site
  - Marley pit: Use of alternative spoil disposal site

# Examples of failure

- HS1 – House of Lords (2)
  - King’s Cross residents: better temporary rehousing during construction (but better efforts should be made)
  - Special compensation for named individuals (but encouragement given for them to be treated better)
  - Changes to deed relating to ground settlement
  - Protection for businesses outside limits of bill
  - Statutory undertakers cases
  - Minimum railway services
  - Use of St Pancras chambers to be found within 2 years
  - Disputes over heritage deeds

## Useful links

- Select Committee website:  
<http://tinyurl.com/p8koc9x>
- Watching proceedings: [www.parliamentlive.tv](http://www.parliamentlive.tv)
- HS2 Information papers:  
<http://tinyurl.com/pf8uk97>