

MINUTES OF ORAL EVIDENCE

taken before the

**HIGH SPEED RAIL COMMITTEE**

on the

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

Tuesday 18 October 2016 (Morning)

In Committee Room 4

PRESENT:

Lord Walker of Gestingthorpe (Chairman)  
Lord Brabazon of Tara  
Lord Elder  
Lord Freeman  
Lord Jones of Cheltenham  
Baroness O’Cathain  
Lord Young of Norwood Green

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IN ATTENDANCE:

Timothy Mould QC, Lead Counsel, Department for Transport  
Meyric Lewis, Counsel, Park Village Limited

WITNESSES:

Tom Webb (Park Village Limited)  
Joan Leyton  
David Auger and Alan Chandler  
Terence Ewing (Camden Association of Street Properties)  
Luisa Chandler

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**IN PUBLIC SESSION**

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(At 10.01 a.m.)

1. THE CHAIRMAN: Mr Lewis, when you're ready.

**Park Village Limited**

2. MR LEWIS: May it please you, my Lord, I'm obliged. I appear, my Lord, for Park Village Limited. Park Village Limited, my Lord, if I could ask that just a snapshot view slide be called up, please, A324(2), Park Village Limited, my Lord, as the Committee can see there circled in yellow on this slide are at number one Park Village East. They're a photographic and film studio, my Lord, housed in the former riding stables associated with Regent's Park.

3. THE CHAIRMAN: It's a building of considerable architectural interest, in which your clients carry on what is plainly a very, very successful business.

4. MR LEWIS: Indeed, my Lord. I'm grateful for that acknowledgement and I appreciate that there's a certain amount of background detail where Park Village is concerned that I needn't go into, because the Committee has already heard that from a number of other petitioners. Just to emphasise, my Lord, and if I may respectfully say so, I remember your Lordship saying, on one occasion, when petitioners for Park Village East were appearing before the Committee, your Lordship acknowledged that Park Village itself is a very special case. I would go so far as submitting that Park Village Limited is themselves a very special case within the area, which itself is a very special case.

5. The reason I say that, my Lord, is if I can go to the promoter's exhibit P3232(1), please, and scrolling down a little bit to the quotation in italics here, talking about 'Discretionary arrangements described above only apply to residential properties. Buildings that may be particularly sensitive to noise, including commercial premises, will be subject to individual consideration by HS2,' or, sorry, HS2's nominated undertaker, 'on the application of any body or person.'

6. My Lord, it's accepted that Park Village Limited comes within that category. As I've said just a second ago, my Lord, given that Park Village itself is a very special case, your petitioner, Park Village Limited, is in my submission entitled to accept special

treatment within that category.

7. My Lord, I showed the location of the business in relation to Park Village East there, my Lord. If I can go forwards, please, in the petitioner's slides, again just as a snapshot, to slide A324(21), this is the construction phase, my Lord, that will follow on from the utility works phase. One can see there the reference to vehicles and plant being located in the road immediately outside the business. One can see to the south of the business the satellite compound identified there by a box in the railway cutting, and then various construction machinery and plant in the railway cutting itself.

8. By the time, my Lord, one adds in notionally to this picture the utility works that will come through down the left-hand side of the slide, the utility works that go down Albany Street – I'm grateful for that, but the Committee has heard before, my Lord, about the 42-inch water main, which will be located partly in the car park serving London Zoo. Those utility works will come down, on the left-hand side of this slide. They will go down Park Village East itself and then carry on round the corner into Albany Street. By the time all of that is taken into account, my Lord, the business will be, at one stage or other, virtually surrounded on all sides by works, either belonging to or associated with HS2.

9. MR MOULD QC (DfT): Before Mr Lewis continues, I wonder if he might allow me just to correct one essentially quite important inaccuracy on this slide. You'll see that the slide purports to show that, for the period between 2017 and 2024, entry to Park Village East from Parkway will be confined to HS2 construction vehicles. That's the purpose of the 'no entry' notation. That's actually incorrect. Access for the public to Park Village East from that northern end will be available throughout that period, save, I'm told, for a period of about a month, when access will effectively be precluded as a result of the need to carry out utilities works. That's just an important inaccuracy to correct.

10. MR LEWIS: Well, if that's a reassurance, I'm grateful for it, of course. I'm grateful to my learned friend. We'll have the opportunity of answering Mr Webb, on my right, who's the director of the company, to see if that accords with his understanding. In all events, my Lord, as I was just saying, because of the proposed utility and HS2 construction works, at one stage or another, the studios will find

themselves virtually surrounded on all sides.

11. Now my Lord, the particular sensitive situation of your petitioner was recognised in the course of their appearance in another place, my Lord. I'm going to be asked to be shown slide A324(24), please. This is my learned friend speaking on behalf of the promoter and just highlighted in this slide, about halfway down the quotation, one can see the line beginning 'awful it's going to be'. My learned friend goes on, 'The right thing to do is to say, "Let's get on and sort it out,"' and emphasising these words, 'because the last thing anyone wants to do is see the studio having to move somewhere else, even for a temporary period, first because it's very difficult to find somewhere else for it to go and, secondly because, as the Committee's been told, a large part of the good will of the business is in the location. Therefore, we want it to stay and it wants to stay, so there's a shared objective. Let's get on and talk positively and constructively.' Identifying that, my Lord, was an aspiration expressed on HS2's part.

12. Then going over to the next slide, please, A324(25), my learned friend is saying, 'We need to work with the studio closely to develop a plan of action. I'm going to be upbeat about it, and so I see no reason, speaking today, why we shouldn't be able to make an arrangement which will enable the studio to continue to operate.'

13. In a similar vein, over the page again, A324(26), talking about the question of noise and vibration, 'Reference to the environment statement for AP3, located in close proximity to the barrette wall construction works, sensitive commercial occupier that requires particular and individual consideration. A plan of mitigation will need to be prepared in collaboration with the studios to seek to give them protection.'

14. The next one, please, is over the page on A324(27), again telling the Committee of the other place 'No reason to assume we can't achieve a successful outcome here. The challenge is to get on with it and see what we can do. Given there's still time to get it sorted out, just to give comfort of the work required in order to get it done, the reasonable costs,' emphasising those words, 'of doing it will fall on the promoter. We don't expect people in this situation who, because of what they do, are sensitive to the works we carry out to pay the costs of investigation and sorting out what needs to be done; we expect to pay for that. Again, the only criterion we ask to be applied is that those costs should be reasonable.'

15. So my Lord, the final one of these quotations, please – to pick up, this is actually quoted in my own summary of arguments, which is A323(1), paragraph 9 at the foot of this page and then it goes over the page – says this, again quoting my learned friend. Sorry, I've skipped too quickly. I'm still on the previous page, thank you. 'The parties need to be working towards a written agreement, which is focused on setting a framework for managing access and it'll examine the particular needs and vulnerability of these premises to the noise and vibration we've been discussing. A range of mechanisms,' can we go over now, please, a range of mechanisms. One more back, please. 'Range of mechanisms available to us: the timing of the works; physical measures to improve insulation; consultation and so forth.'

16. Emphasising there, my Lord, two key factors from those quotations that I've put before the Committee, one is that what was envisaged was a written agreement, and this is talking in December of last year. What was envisaged was a written agreement. Again, the reasonable costs of establishing what needed to go into that agreement were to be met by HS2. At least that's what the Committee of the other place was told, on behalf of HS2. My Lord, those are two aspects of the common understanding that the petitioner had when they left the Committee of the other place.

17. Now, we were nine months; we're now ten months, because of the delay in getting on before your Lordships and Lady's Committee. We're now almost exactly ten months later and the position seems to be being taken that there's limited prospect of reaching a finalised agreement. Now, I qualify that by saying that my learned friend, in the corridor outside, said that, if various written assurances that you've been offered can be converted into a written agreement, then that does remain a shared joint objective. On behalf of the petitioner, I'm grateful for that but, my Lord, there do remain the two outstanding issues between us.

18. If I come to the asks in relation to this, my Lord, we're on the right slide here, if you can go down to my paragraph 13, in my summary of arguments here. Again as I've just said, if one trains one's eyes on ask number one, which is requesting the Committee to instruct HS2 to provide the petitioners with a formal assurance in advance of completion of agreement to safeguard their interests that such an agreement will be concluded as soon as practicable and, in any event, within the sitting term of this Committee; again HS2 has indicated agreement in principle to that, but the sticking

point is the detail.

19. Secondly, my Lord, it is to instruct HS2 immediately to commence an assessment to establish an acceptable operational threshold to inform the terms of the agreement. A consultant has been instructed, my Lord, who has visited the business premises. I'll come back, in a moment or two, to aspects of the detailed terms of the agreement in relation to matters of that sort, which are unsatisfactory as the position stands currently, from the petitioner's point of view.

20. Here we come to the real sticking points, my Lord. Item (c), the petitioner wishes to have their professional costs, in respect of negotiating and finalising the agreement, paid, having regard to the exceptional circumstances of the business, in the exceptional context of Park Village East.

21. Secondly, my Lord, the petitioner wishes to see their business and consequential losses arising from the impacts of the works for the construction of HS2, and including any associated utilities works, and the obstruction of access to their property. My Lord, the Committee has heard submissions on the extent of compensation regime to make up for matters such as trading losses, as distinct from impact on value of a property owner's interest. Specifically, the petitioner is concerned to have monetary compensation to make up for business losses suffered over the period of the works.

22. Equally, my Lord, and again on the exceptional basis of their exceptional circumstances – I'm on item (e) now – they wish to recover damages and costs arising from the installation of any agreed mitigation works and any increased costs, in respect of works or in consequence of HS2 and associated works generally, such as maintenance costs and insurance premiums. In effect, my Lord, they wish to be compensated, as they do for trading losses, which aren't otherwise covered by the compensation regime. They also want to be compensated for consequential losses, which are attributable to the business. Again, this is all against the context that HS2 accepts that the business should be entitled to remain there, if they possibly can, and the fact that, generally speaking, the costs at least of the agreement should reflect investigation and other costs. Your petitioner requires costs to make up for the damage suffered in the course of the works and consequential losses on that.

23. The last few points to mention on the asks, my Lord, are again the agreement,

which I will take up a moment or two looking at, rather than take Mr Webb through that in a minute. Under the agreement, it's for HS2 to undertake that business extinguishment compensation will be payable in the event that mitigation and relocation aren't achievable, under the terms of the agreement.

24. Again against all of background, my Lord, even though I am going to conclude my appearance on behalf of the petitioner today by asking for directions specifically – I respectfully ask for directions, if the Committee pleases – as specific as the Committee can direct in the circumstances but, in any event, my Lord, to afford the petitioners the opportunity of returning to this Committee to report on any difficulties in achieving further progress.

25. My Lord, I said I would come back briefly to the terms of the agreement. I'm not going to seek to take the Committee through the latest draft, which has been put in the promoter's exhibits. The promoter's exhibits include a copy of the latest draft of the agreement. I'm not going to go into the history about what's included and what's not, in relation to previous iterations of those agreements, but if I can ask the Committee to come to slide A324(35) – if we can go to the following slide. Yes, that's the one, thank you – this is a critique prepared by your petitioner's parliamentary agents, the latest iteration of the agreement. They raise various points of detail, which simply aren't reflected in the current draft of the agreement. I'm not going to go through all of these.

26. Just identifying on the first page here, item one, protection under the terms of the agreement is offered only in respect of authorised works, but not expressed to include the utility works, which are said to be separate from the HS2 works. Again items three and four, just homing in on the critique as to why certain things under the risk assessment are unacceptable and determination of operable threshold – that's the level at which the business can run effectively – determination of that, and it's third or fourth box up from the bottom, where it refers to the fact that the HS2 risk assessor isn't stipulated to be independent or acting jointly for both parties. They're points of detail of that sort, which your petitioner is concerned with.

27. There's a similar point if we can go over the page, please, a similar point under the heading of 'mitigation', again there. It's third box up from the bottom on the right-hand side, 'dispute resolution'. This is in relation to the trigger action plan, not stipulated to

be by an independent person.

28. Going ahead please, if we can, to the next slide, it's five and six here. Again the second box down on the right-hand side, there's no provision for payment or reimbursement of fees incurred by your petitioners to review the draft works programme. Again in the third box from the bottom, second bullet in the light grey, more or less in the middle of the slide, there's no clear commitment to pay or to reimburse, that should be, fees incurred by Park Village Limited in finding alternative premises.

29. Yes, just two points more to pick up on this critique.

30. THE CHAIRMAN: I will say now, Mr Lewis, I think it's extremely unlikely that this Committee would think it the right thing to do to get involved in this sort of very, very detailed drafting exercise.

31. MR LEWIS: I am conscious of the difficulties with this, my Lord, but against the background of the principles that I've identified, the guiding principle should be that the business should stay put, if it possibly can do, and the reasonable costs of seeking to achieve that should be payable to your petitioner, my Lord. It's seeking to identify headline points, which the Committee might –

32. THE CHAIRMAN: You heard what I said, Mr Lewis. I won't repeat it.

33. MR LEWIS: Then I won't seek, my Lord, to take up time unnecessarily with that. Again, my Lord, foot of this –

34. THE CHAIRMAN: That is not to say we are not sympathetic to the problem that faces your client's business, but to expect us to produce a detailed draft that meets every one of your last points, we're not in the business of doing that.

35. MR LEWIS: My Lord, I do appreciate the difficulty faced there and, on the last occasion when I appeared in front of your Lordship, your Lordship made the point that this is unusual in the context of a negotiation over an agreement. When your Lordship would be sitting as a judge, one wouldn't expect to see the background workings of the discussions which went on.

36. Just to highlight the point of concern, where your petitioners are concerned, one more point on this same slide, again just to identify the point, the foot of the page, concern with regard to access. Your petitioner feels the draft ignores or fails to appreciate your petitioner's need to use both vehicle accesses to serve both studios and to operate around the clock, without any disruption.

37. Then just skipping ahead, my Lord, to slide A324(39), please, it's just to identify there, my Lord, rather than laboriously going down the list, if I may. This identifies the headline points of concern, where your petitioner is concerned with the current draft of the agreement. I guess the one point to identify specifically here, which I may not have covered before – but someone will prompt me if there's any specific important point that I should emphasise – at the foot of the page here, there's no provision to allow for the company to elect for business extinguishment if, despite everyone's common hope and intention that their situation should be adequately remediated by the presence of an agreement, they want the comfort of being able to claim compensation for business extinguishment.

38. Again with apologies, my Lord, because I do appreciate the difficulties in the context of the terms of reference of this Committee and the Committee's ability generally, as it were, to descend to the detail of nuts-and-bolts negotiation, I also apologise if that's rather laborious going through the critique there. I did seek to take it as swiftly as I could, my Lord.

39. So my Lord, I've identified the petitioner's asks. One point I ought just to cover before calling Mr Webb, please, is the last matter. Again, it goes back to A323(2). It's ask (d), please, the point about payment of compensation in respect of business and consequential losses arising from impacts. That is something that your petitioner would like to see enshrined in a written agreement, in accordance with the common intention expressed on both sides, before the Committee in another place.

40. MR MOULD QC (DfT): Just to be clear, I have never, ever suggested that the promoter would be willing to contemplate writing into an agreement a liability to reimburse losses of that kind, because that would be to extend the general law as regards land compensation far beyond the principles that were established by the House of Lords in the Wildtree Hotels case. Of course Mr Lewis is going to argue that this Committee

should step in and make an exceptional provision, in this case, but the suggestion that I might have countenanced, on behalf of the promoter, any such a clause is quite wrong. I'm sure Mr Lewis didn't intend to say that, but just lest there be any doubt about it. That is an issue that the Committee will have to resolve.

41. MR LEWIS: If I said so in so many words, no, my Lord, I wasn't attributing to my learned friend an intent, on his behalf, to commit the Secretary of State to payment of compensation in respect of the items identified there.

42. Backtracking to what I was intending to say, it was the common intention of the parties to seek measures or provisions for the protection of your petitioner, enshrined in a written agreement. Of course, Mr Mould says that the Secretary of State wouldn't have said that extended to compensation but, to the extent that that is what your petitioner seeks, my learned friend has correctly anticipated that I would submit that they should be entitled to protection and a special provision, in terms of compensation, in that respect.

43. Either, my Lord, that should be covered as part of the agreement that it's the common intention the parties should enter into; or, if not, my Lord, and that comes to the petitioner's slide A324(41), this is a special protective provision drafted by your petitioner's parliamentary agents. Actually, if it can't go into a written agreement – sitting here as I am, I can't see any reason why it shouldn't go into a written agreement, but if it can't go into a written agreement – then your petitioner would urge the Committee to include provision of this sort in the HS2 Bill.

44. As appears from paragraph 1 of this draft, protective provision, it provides for the making of compensation to your petitioner in respect of any loss or damage. Again, it covers loss of profit and damages to fixtures or fittings. The key and important item there is loss of profits there, which the business is concerned about, which the business may sustain by reason of enduring the exercise Secretary of State's powers under the Act and the execution of work connected therewith by the statutory undertakers. It covers loss of profit sustained by reason of enduring the carrying-out of works, whether it's by the Secretary of State or the utility works.

45. Again, there are other aspects to it that aren't important. That provision doesn't preclude the making of any other compensation claim, so long as that's authorised by

some other enactment and, again, provision of a dispute resolution by the upper tribunal, my Lord. The key part of it there is, if it's not included in an agreement, my Lord, what your petitioners would ask for is that, actually, this protective provision should be enshrined in the Bill itself.

46. Those are my opening remarks, my Lord. I have sitting to my right Mr Tom Webb, who's the managing director of your petitioner. My Lord, would you prefer, if he's to give evidence, that he comes to the witness table or is it acceptable that he stays where he is?

47. THE CHAIRMAN: He's your only witness, is he?

48. MR LEWIS: He's my only witness.

49. THE CHAIRMAN: I think it's probably acceptable for him to stay where he is.

50. MR LEWIS: I'm very grateful, my Lord. Mr Webb, would you introduce yourself to the Committee, please?

51. MR WEBB: My Lords and Lady, I'm Tom Webb. I'm the managing director of Park Village Limited. It's a small family business that was set up –

52. THE CHAIRMAN: Can you try to speak a little bit louder, please?

53. MR WEBB: Sorry, my Lord. It was set up in 1973 by my father and I have been working there for approximately 20 years. I've been running the business for just under 10 years now. I know that you've seen all of these slides, so perhaps I could just whizz through.

54. THE CHAIRMAN: Please do really whizz through, because we know that you run a very successful business that has won many prizes and awards, so do go fairly quickly.

55. MR WEBB: I don't need to go into, necessarily, particular slides, in that case. We have a successful business, but it's a small business. The nature of the fact that we're talking about business extinguishment as something that we're concerned about, because the building that you see in front of you – if I can have, say, slide A324(1), just to show the building – I would say that we are the only other company aside from

Ridley Scott Associates that has managed to go through the decade – obviously it's a kind of rollercoaster – and the building has been key to this.

56. The issue, the thing that we're most concerned about, is if you look at the detailed slides of the construction works and all the disruption over such a sustained period of time, we want to stay there and we are doing everything that we can to do that. Knowing and being in that building every day, and knowing what we do, I'm very concerned that our clients, even if we put in mitigation, whatever we try to do, are not going to want to be doing their photography shoots or film shoots, and all the things that we've been able to do, by nature of the business residing in a kind of tranquil street, slightly secluded.

57. MR LEWIS: For the purposes of explaining how the business might be affected by works, can I ask you to go to slide A324(6), please, Mr Webb?

58. MR WEBB: This is obviously just a plan of the building. Just to give you an idea, the main studio, studio one and two, is where we do all of our filming and photographic shoots. We do our own filming with a production company and we also dry hire to external companies. My immediate fear is that external companies, which will pay to hire the space, will be put off by any sort of building works, noise, disruption. It's that external dry hire work that might look like we have the likes of Coldplay or famous people, but they don't pay a lot. They might pay £1,000 to be there for a day. If you add what is necessary to make our overhead on our yearly basis, that dry hire business is immediately very significantly threatened.

59. MR LEWIS: You use the expression 'dry hire'. Explain that to the Committee, if you would.

60. MR WEBB: Dry hire is where we would hire the building to an events company, another production company, a music company, and they would pay us a rate to come and do a photographic shoot or filming of some moving image. They would also hire some of these other rooms, which are, say, the make-up room, the other ancillary offices.

61. If for example, through the period of HS2, I know that the studio one entrance is perhaps due to be closed for periods of time, that would mean – I think there's a

misunderstanding that, should that be closed, we could use some of the entrances, where you see studio two or the other – there are four entrances in total – the other two. We would be able to use the other entrances to kind of get into studio one. If you look at the floorplan, the actual entrances, aside from the main access, are no dissimilar to a door like this. You would not be able to get equipment in there. All the people that who we hire it to, they have very tight schedules and they're not wanting to be given hurdles or obstacles, in terms of getting into and using our space, because they'll just go to somewhere else that's not amongst such large works.

62. MR LEWIS: Forgive me, Mr Webb, for cutting you off. Inasmuch as you may have your schedules and your clients may have their schedules, what's the impact on them going to be of works on the street then if, on any given occasion, there may be scheduled works going on in the streets outside the studios?

63. MR WEBB: For our clients?

64. MR LEWIS: Yes.

65. MR WEBB: I guess the problem we have is that our business, someone could pick up the phone on a Monday and say, 'Can we hire you on a Wednesday?' If we're unsure of what the disruption might be, we can't arrive on the day and say, 'Look, I'm very sorry, but the noise levels have been exceeded,' or 'You couldn't get in.' If we were then to cancel, there's not just compensation. We're not going to be asked to pay for losses just for the dry hire. They've got their clients. There's a kind of chain of people involved in one production.

66. In our own productions, you might have a day for casting. You might have a day for a pre-light. You might need to build a set and then you might have two days of filming. At the end of that week, you would have to strike the set and take it all out. These type of productions can span a couple of weeks. Trying to work around a kind of possible lack of access is not actually possible, I don't see. We would obviously try our best to make anything work, because that's what we do as a business anyway; we try to solve problems. I don't see how that is possible and that's just the access, obviously, let alone the kind of...

67. You see how close the road is, which is where the yellow signs are really. Our

production office, which you'll see – there are three offices – that's where we kind of operate everything and do all of our pre-production, booking of clients, etc. We're very, very close and you have skylights along the whole building, by nature of it being an old building. It would seem very difficult to mitigate, but I appreciate that there will be experts who will. All we've had to date is words, kind of vague words. They don't really give me security.

68. MR LEWIS: Mr Webb, if I can ask you to deal with one specific point, please, which is in relation to the need for pre-programming of bookings, which you may get, given the example of somebody who may ring up and say they want to come in on a given day. How would you accommodate their needs in terms of seeking to organise bookings to keep your business ticking over?

69. MR WEBB: Well, I probably didn't explain it very well, but we have a diary that operates at a very short space. What HS2 was trying to do, which I understand, was to say, 'We'll give you a six-month plan of what we're doing,' but the nature of the business is that people can ring up with two days' notice or a month's notice. It's very, very difficult to work around that, unless HS2 were to say, 'Right, you're going to be closed for two months, for this period while we do all of this work.' In which case, we would say, 'Okay, we will warn everyone, but we need to be compensated, because we're not a business that can sustain losses in any way.' The industry is tough enough as it is.

70. I'm slightly just deviating but, in terms of one of our asks, which was to be covering our legal costs and costs associated with reaching an agreement, we have spent just shy of £100,000 on fees. If I could say that I've spent many years working up a kind of cushion so that, when the business is in trouble, we might be able to lean on to that cushion, as most businesses try to do, that cushion has been absolutely decimated by trying to stand up for ourselves. No, I don't see that we have any other option.

71. MR LEWIS: If I can ask you two follow-up questions on that, Mr Webb – and far be it from me to accuse you of waffling, but can you seek to do your best to answer these questions as shortly as possible?

72. MR WEBB: I am waffling, sorry.

73. MR LEWIS: You said £100,000. Is that related to petitioning costs or purely to the costs of seeking to resolve agreement with HS2?

74. MR WEBB: I don't have an exact breakdown, but I've been trying to get that. On the kind of back of a receipt, there is a significant proportion that is to do with petitioning, but I would say about £35,000, off the top of my head, is just in terms of drafting the agreement. There may be more. I don't know; is there more after this? I don't know. It's like if you take the third quarter, which I've just received figures for –

75. MR LEWIS: We get the point about that, and I'm grateful, Mr Webb. I think you're anticipating my next follow-up question, but a short answer to this one as well, please: what's been the impact on the profitability of your business having to pay so much, in terms of fees and professional costs related to HS2?

76. MR WEBB: I think it's what I was saying about the cushion. If you take the third quarter, which I've just had the draft figures for, I know at the beginning you were saying we're a successful business, but it is a very challenging business. If you take the third quarter, we were just about breakeven, but the HS2 costs have taken us into a loss by something like £25,000 or something for that quarter. It's kind of an example of how it's very difficult to keep an eye on what we need to do just to stay afloat, whilst kind of having this big thing. I don't see that we have any other option than to try to protect us, because this is detailed stuff. I've already spent an enormous amount of my time just dealing with it and our advisors anyway, but I can't be expected to do this without the help of parliamentary agents, you know.

77. I thought when we other place, there was a slight ambiguous statement, but I was under the impression that it was all agreed that reasonable costs to reaching the agreement would be covered. I still think that the petitioning costs are down to something that we don't have a choice again with, but I don't know.

78. MR LEWIS: A couple more questions, if we may. Going to your slide A324(17), please, these are the utility works. If there's any specific you want to say about these, to an extent, you just covered what the impacts were but, if you want to go through and there are particular points you want to draw out, please do so.

79. MR WEBB: I would quickly say that the utility works are an example of how it's

very difficult to manage a business. We went to a meeting with HS2, within the last two months, to discuss our continuing trying to work the draft agreement. The utility works were put to us, at the beginning of the meeting, as ‘We need to talk about this.’ I’d never heard about it. This is just a ginormous bombshell. I mean, I didn’t know how to move. Obviously we carried on the meeting but, each slide, as you went through it, was like, ‘Ah, it starts off like this; that’s bad, then we shut off the access to you.’ That’s something that is supposed to start in a couple of months or even less. I’m unsure as to what stage it gets so bad.

80. I guess what I’m saying is there’s this kind of overall thing I picked up that no one should be worse off. We are already significantly worse off, to the point where it’s affecting our business on a huge scale. I don’t think we’re being difficult, because we want to stay; we’re very reasonable people. It’s just all about the detail.

81. When I’m in a meeting like I was however long ago that was, and someone said, ‘Right, we really need to get to understand your business,’ it’s almost insulting, because it’s like we’ve been talking about this for three years and here we are, maybe six weeks from the beginning of utility works. We don’t have a plan. Someone’s popped along to do a kind of assessment, of which they’re going to come back and start monitoring. I don’t know how long that will take. That was a month ago.

82. If it were me, and I understand it’s a big project, but if I really was concerned, I’d be kind of in there having meetings and trying to really drill into the detail. The draft agreement is very detailed and looks very detailed, but there are a lot of words in that that allow for me – and I don’t mean to be rude – the kind of backtracking or wriggle room or, you know, ‘We will do our best.’ I appreciate that that’s something that – you know, it’s a constantly evolving thing. I’m waffling.

83. MR LEWIS: Focusing on the slides again, do you want to say anything more about utilities works? If not, let’s go to the construction phase.

84. MR WEBB: It’s just that they’re very, very soon and I’m under the understanding that we may not be mitigated for utility works. In which case, I think the utility works are disruptive enough, just looking at all the diagrams, that immediately we will suffer losses.

85. If you take for example the guy who's one of these music managers, who drops off his famous band and he comes there because it's a quiet street, he's going to ring up and say, 'Can we...?' I'll have to mention that there are massive works outside our building and you may not be able to get in here. It's a lot of... These guys, they don't have time for that. 'Thank you very much. Good luck with that. We'll go to blah-de-blah down the road.'

86. I don't think we're being unreasonable in saying that losses are almost inevitable, to the point that we're mentioning business extinguishment, because it's a high overhead to maintain without being able to use the special premises. Our lease is all about using it as a film and photographic studio. If we can't do that, how are we supposed to pay for 10,000 square feet in Regent's Park and sustain a business, in a very tricky industry? That's just how, to me, the way it is.

87. THE CHAIRMAN: I think Mr Webb's evidence is very clear. Are there any other points you wanted to put forward?

88. MR WEBB: No, no.

89. MR LEWIS: I'm grateful, my Lord, because he has given full answers to my questions. The Committee has, I think, had the benefit of what he wants you to hear.

90. THE CHAIRMAN: Baroness O'Cathain would like to ask Mr Webb a question.

91. BARONESS O'CATHAIN: This is really a very difficult situation. I have some knowledge, having worked on the fringe of the arts world for a while. It is the point of David and Goliath. The problem is the work has to go, if this infrastructure project goes ahead. You've got to have your business. Where the two come to meet, most people who don't have a really deep understanding of either would probably say, 'Oh well, they could shut it for six years or something and move somewhere else,' but of course that's not feasible.

92. Have you made any assessment at all or do you feel capable of making any assessment of the long-term problems that would affect your business, at the end of this? I mean, for all the works that you know about for this part of HS2, can you see a part of it where you could work for, say, six months and then perhaps not be capable of

working at all for about, say, two or three years, and then building up and going somewhere else? Have you done a long-term plan like that? This is so immediate and it's so detailed that you must be utterly confused with all of this.

93. MR WEBB: I've tried to kind of look at – yes, we are looking at it. Because the building is so key to the business that's why we're entering discussions about business extinguishment. The long-term thing is, if we can't survive in the building, then we don't have a company. You know, we'd have to go and set up a new type of business somewhere else, so I feel like we're in a rock and a hard place.

94. BARONESS O'CATHAIN: It's really short term versus the long term, isn't it? Is there any way you could actually mitigate yourselves, in finding another place, say about six miles away or somewhere, where you could decamp for three, four or five years?

95. MR WEBB: There has been discussion of relocation and I think what we've said is, in the long term, I don't think we could recreate; we couldn't recreate this building, because there's a lot of... This was found in the 1960s. Things have changed, and also it just has the characteristics that I don't think you could create elsewhere. If you were to do that, you need investment; you'd need money, because there's a transitional phase.

96. It all goes back to compensation. We agree that might be one of the best ways forward is to go, 'Okay, the worst parts of the works are one year or whatever,' I'm making that up, because I think it's actually worse. 'Therefore, you should relocate to X place for that year.' Well, the problem is that we're being asked to be the people who pay for looking for the relocation. There are not enough people. We're already at our wits' end, as to how to afford to pay for various other things, in terms of fighting our case. It always to me falls back to we want to stay; we will do everything we can to kind of somehow adapt the business but, if we don't get compensation, I do not see how that is possible.

97. BARONESS O'CATHAIN: I'm sorry for taking up the time of the Committee on this. I just wanted to make sure that, in the long term, you could look forward with hope in some ways, but it's very difficult.

98. MR WEBB: Not without compensation.

99. THE CHAIRMAN: That's about it, is it, Mr Lewis?

100. MR LEWIS: Yes, thank you very much. I was handed a note from behind me, which I will pick up. Mr Webb, we have heard that certain measures are being put in place for the protection of residents in the road, because of the situation particularly with night-time noise, which will affect them and I think, from the nature of your business, may affect you, too. Where residents are concerned, we know first of all that there's provision for rehousing residents, in certain circumstances. Equally where two and four are concerned – we can see them on the slide, which is up on the screen, at the moment – we would have an assurance of access.

101. MR MOULD QC (DfT): The assurances that have been given to residents relate to the obstruction of access, not in relation to noise. We are predicting, as you know, that the noise that will result to residents of the street will effectively be mitigated through the provision of sound insulation. We're not predicting the need to rehouse anybody on this street, on account of noise.

102. MR WEBB: The only thing I'd say about access is we are part of the residents' association. I don't want to kind of put anything that looks negative towards the residents, because we're all affected by HS2. Residents are having access. For example, where I live, I could park round the corner and then walk to my house. The thing with the business is you can't ask clients to deliver their equipment down the road or somewhere else. Access is not more key than the residents, because I do not want to say that, because I'm very concerned about them, as well. As a business, without access, you've got to close 10,000 square feet that can't be used for what we're supposed to use it for.

103. I guess I was under the impression that some people were going to be rehoused but, if that's not the case, I was under the impression that 6 to 30 – some of them are opposite our studio two – are going to be rehoused. I guess that just suggests that, if they're talking about rehousing people, then the scale of it is clear. Why then, as a business, are we not being dealt with in some sort of way, because that's a compensation, isn't it, rehousing of some sort? Did that make sense?

104. MR LEWIS: It certainly did to me, Mr Webb. Unless there's anything else you have to say, that concludes your evidence.

105. THE CHAIRMAN: Mr Mould.

106. MR MOULD QC (DfT): I'm not going to ask Mr Webb any questions, my Lord. If that's the end of your presentation, I'll provide my response. If we can put up P3250(1), please, Mr Lewis has shown you extracts from some submissions I made last December when these petitioners appeared in the Select Committee of the other place. It is right to say that there was a meeting of minds during that appearance, between myself and Mr Lewis, as to the need for the parties to seek to reach agreement on a bespoke plan, which would be reduced to the form of agreement, to seek to enable the petitioners to continue to occupy and to operate their business from these premises, during the course of the HS2 construction works.

107. With that shared objective having been expressed, on 6 January, HS2 Ltd provided a draft agreement, which sought to reduce that shared objective to writing and to provide a series of specific measures that would give effect to the arrangements that had been canvassed during the course of the Committee proceedings.

108. There was then a meeting between HS2 Ltd and the petitioners in March, I think, of this year, after which a further revision of the draft agreement was provided by HS2, seeking to reflect the comments that had been made on behalf of the petitioners at that meeting.

109. Then in the early summer of this year, we were provided with a radically revised draft of that agreement, by the petitioners. That may be where some of the costs that you heard a moment ago were expended. We were surprised by that, because we had thought that it was sensible to continue to work to the draft that we had provided in January. Anyway, notwithstanding that, we then commented on that radically revised draft that had been provided by the petitioner's agents and a further meeting took place on 30 August of this year, at which we, whether rightly or wrongly, were given to understand that the petitioners were less confident than they had been that we would reach agreement.

110. In the light of that, we decided that it would be appropriate, given what had been said in the Committee in the other place and also given our appreciation of the likely effects of the scheme on the operation of their business from these premises, to offer them a series of assurances, unconditionally, which would be shown on the register and

therefore upon which the petitioners could rely; assurances which set out the substance of what had been offered in the agreement that we had drawn up. That is why I put up in front of you this slide, because it was under the cover of this letter of 13 September that we provided that set of assurances.

111. If we can turn on, please, to the next page, I would invite the Committee to look at the assurances carefully. I'm not going to read them all out, because that's not a good use of your time, but if I might just summarise the position, the basic logic of this scheme of assurances is that it seeks to put in place a regime that would enable the petitioners to continue to occupy the premises and to operate within the premises, in an acceptable aural environment, noise environment. In the event that that proves not be achievable for some part of the period of construction of the works, it then offers to fund the relocation of the business to other appropriate premises, at HS2 Ltd's cost, for as long as that relocation is required. That's the essential gist of these assurances.

112. What it does not do is to offer to pay compensation for business losses or to pay for the cost of extinguishing the business, because the objective is to enable the business to continue to operate, ideally at these premises, or, failing that, to relocate to other premises. We took the view that that was consistent with not only with what had been said on the previous occasion but, in any event, was consistent with the underlying logic of what had been said.

113. It also happens to be consistent with the legal position, which is that where, as in this case, a business owner occupier is not subject to compulsory acquisition, under the terms of the Bill, but is facing the prospect of neighbouring on to works that are authorised by the Bill, as in this case, they have a statutory right to claim compensation under section 10 of the Compulsory Purchase Act 1965. Their right is limited to those matters that, in the absence of the statutory authority granted by the Bill to do the works, would have been actionable at common law.

114. For example in this case, in the event that the fear that was expressed by Mr Webb, that access to the petitioner's premises is closed off by our works, as a result of which the petitioners are unable to make any use of their premises for a period of time, then they would be able to maintain a claim for compensation under section 10 for the diminution in the value of the premises – no doubt measured on the basis of its annual

letting value –that would flow, would result, from having been deprived of their access.

115. What they will not be able to claim is business losses that result from noise and disturbance, because nobody, either in private law or under section 10 of the Compulsory Purchase Act, is able to maintain a claim of that kind. The emphasis is on trying to mitigate to avoid such losses, as it were, rather than to compensate for them.

116. Coming back to this set of assurances, the first assurance deals with settlement and seeks to give them reassurance in relation to any risk of the works causing any settlement damage to their premises. Then assurances numbers two through to four are to do with, first of all, establishing through careful examination and survey an understanding of the way in which the building currently performs in terms of noise, whether it is properly insulated against noise, and establishing, as you can see from the third bullet, if you can just put the cursor here, a series of what are described as operable thresholds, above which the company could not reasonably continue to operate its business or part of its business in the property. It's trying to understand where, if you like, the envelope is at the premises at the present time, within which the company can reasonably be expected to do its business.

117. Having done that, to take steps to carry out the works in the vicinity of these premises, in such a way as to ensure that the internal noise environment of the premises stays within those operable thresholds. There is a recognition in assurance three that it may not be possible to achieve that.

118. In order to ensure that we then move to the next stage of mitigation, we have given an assurance as to the preparation of what is known as a trigger action plan. The purpose of that is to establish a series of trigger levels, if you will, beyond which we accept that we need to seek to provide further measures. What they may be is a matter for further detailed consideration, but the assurances provide a regime to enable us to deal with a situation where, as you can see at the bottom of the page, operable thresholds are exceeded during the construction of the specified works.

119. If we just turn over, what the promoter will then do is investigate the cause of the exceedance. If it's found to be due to HS2 works, review the activities being undertaken to see whether further measures can be implemented in order to bring noise and vibration levels down below operable thresholds and, if that isn't achievable, then and

only then, to consider whether alternative premises should be secured or temporary accommodation to enable the petitioner to relocate for that purpose.

120. Four is important, because one of the concerns that Mr Webb voiced in the other place and voiced again this morning is the need to be given as much detailed advance notice as possible, so they can plan their diary. That is what four is all about. As you can see, it involves dedicating a senior qualified and experienced liaison officer, so that they have some access to somebody who will provide them with information of that kind.

121. The reason for offering those assurances, which as I say can be reduced to an agreement tomorrow and we can sign the deal tomorrow, the reason for offering those assurances is with a view to seeking, as far as is reasonably possible, to provide, through appropriate mitigation, an internal environment that will enable this business to continue to do what it does. Recognising that that may not be achievable, the question then is: does one then say, 'Well, let the business go to the wall,' or does one say, 'Let's see if we can find somewhere else for them to go to carry out their activities, for as long as is necessary, whilst the current premises remain unsuitable for that purpose'? That is what assurance five is about.

122. If the promoter considers that, for the shorthand, it's not possible, through mitigation works, to maintain an acceptable environment at their current premises or the costs of doing so are disproportionate compared to the costs of relocation, then what the assurance says is the promoter stands ready and willing to discuss proposals for the provision of alternative premises and to enter into an agreement to enable such premises to be used.

123. If we go to the next page, I was very surprised to hear Mr Webb still expressing concern about who would fund that because, you can see, the agreement will include provisions for the reimbursement by the promoter to Park Village Limited of the reasonable and properly incurred costs, in relation to temporary relocation, and such other provisions in relation to compensation, as may be agreed between the parties.

124. That's our proposal in relation to letting these people continue to do their business. We share their desire to do that. That's our focused proposal for doing so and it is one that is fully consistent with the established legal basis upon which people who

neighbour on to public works of this kind have in the past been dealt with. The emphasis is on mitigation and accommodation, rather than moving straight to some form of monetary compensation.

125. Access, which is the other concern raised by the petitioner, you can see a recognition as to their entitlement to make a claim for compensation under section 10. I've mentioned that to you a minute ago. You can see that the assurance is to seek to keep any interference with access to the reasonable minimum. There are then some further provisions regarding reimbursement of minor costs.

126. Then there was a supplementary letter, which was written on the following day. That's at P3259, which again, just so we're clear, gave an unconditional assurance, again entered on the register, that the Secretary of State will require the nominated undertaker to pay the reasonable and properly incurred costs of a technical specialist or expert to advise Park Village Limited, in relation to those matters that I have just shown you form part of the previous set of assurances, in relation to establishing a baseline and operable thresholds – in other words, enabling them to participate in establishing a regime for them to continue to operate at the premises. It makes it clear also that the commitments regarding maintaining access apply as much to the utilities works, which are due to start at the beginning of the project, as they do in relation to the main works. That is what we propose.

127. Just completing the position with regard to the promoter's approach, if we then finally turn to A324(30), which is one of Mr Lewis's exhibits, it's convenient just to show you this. In a letter of 23 September, HS2 Ltd made completely clear that the Secretary of State was not prepared to countenance a special regime, which would provide for monetary compensation for matters that would put the petitioners in a better position than they would be in private law, if these works were being carried out without the benefit of statutory powers, and which would substantially extend their rights, as compared to any other claimant, in relation to section 10 of the Compulsory Purchase Act.

128. It also made clear that, so far as legal expenses were concerned, consistent with the approach that every petitioner accepts or virtually every petitioner accepts, as has been the established practice, as far as I'm aware, for many, many years, the cost of

petitioning, including negotiations that take place in the background of the petition, for agreements to settle the petition and so forth, those costs are borne by the petitioner or rather there's a no-costs principle. The promoter bears their costs; the petitioner bears their costs.

129. Finally on that, at the bottom of the page, you can see that Mr Lewis showed you a clause that he invites you to write in the Bill. In that letter, we explain that that would certainly not be consistent with the practice, in relation to hybrid Bills, so far as we're aware of it.

130. Members of the Committee who sat on the Crossrail House of Lords Select Committee, Lord Young and Lord Jones, may recall that a similar request for a special compensation clause was made on behalf of the Smithfield Market tenants – that is to say the meat traders. The Select Committee did not support that, essentially for the same reasons that I invite you to take the same course in the present case. I have put into the exhibits the relevant extract from the special report of the Crossrail Bill of the House of Lords Select Committee. It's at P3698(2). The full extract begins at paragraph 120 at the bottom of this page.

131. If we just go to the next page, 3, you'll see that the Committee's reasons for not supporting the petitioners in that case were not for want of sympathy. At paragraph 123, the Committee is on record as saying that they fully understood the petitioner's concerns. Those concerns related to the risks of harm and damage to meat and to the trading performance of the Smithfield Market traders, through having major Crossrail works being undertaken at Farringdon for the construction of the Farringdon station for Crossrail.

132. As the Committee said at the end of paragraph 124, 'The petitioners requested us to recommend the insertion into the Bill of a new special clause providing them with comprehensive compensation for injurious affection. If we accepted this recommendation, the amendment would be brought forward by the Department for Transport during public Bill proceedings in the House. The promoter's noted that the petitioner's proposal did not accord with the Law Commission's recommendations on this issue. Furthermore, we recognised that it would be very difficult to change compensation provisions for one petitioner without offering the same provisions to all

similarly affected along the route, and we do not wish to amend this Bill to anticipate a change in the general law. We therefore did not accede to the petitioner's request for a new clause.'

133. If we go to the next page, as an alternative way forward, the petitioner asks for an undertaking from the promoters in a form that would amount to a comprehensive indemnity. 'There's no novelty in this request, since a number of petitioners have likewise requested indemnities for their own particular perceived problems with the Crossrail scheme. We did not accede to the petitioner's request for such an undertaking.'

134. What they did go on to do was to say that they invited the parties to go away and see whether a focused regime could be introduced, so as to give protection to the petitioners in relation to specific aspects of their business, in this case the risk of contamination to meat, which would then become condemned by the environmental health officer, and also the deprivation of access to loading bays, which again was something that was a source of concern. As you can see from the remaining paragraphs, the parties did reach agreement on that.

135. Here, the focused and bespoke arrangements that we propose are those that I have set out to you in the assurances that I've shown you. As you've seen, they do involve an acceptance on the part of the Secretary of State that, in the event that it is not possible to maintain the operational environment that is satisfactory for these petitions throughout the construction of the works, and we're then driven to compensating some temporary relocation, we would reimburse the costs of that. Also, we're willing to enter into an agreement for appropriate compensation in relation to that as well.

136. We have very much taken the same approach here as was endorsed by your colleagues in the Select Committee, in the Crossrail Bill. What we have not done is to accede to the arrangements that Mr Lewis may speak about when he replies, which resulted in a protective provision in a private act, in 1983, which is at A324(43). I think Mr Lewis is going to refer you to this, but he hasn't done so, so far.

137. This was a statute that gave powers to acquire land and to undertake works to improve the Metropolitan and Circle line underground station at Liverpool Street. In this case, it's fair to say, that K Shoes, which you may or may not remember, had a shop

in the arcade at Liverpool Street station. They and the freeholder of that shop premises came before a Select Committee of the House of Commons, which was hearing petitions against this Bill, and asked for a special compensation clause. They persuaded the Select Committee, in that case, that they should have such a clause. You'll find that the clause that they succeeded in persuading the Committee to recommend is at A324(47). I think Mr Lewis has used it as the model for the clause that he's inviting you to introduce here.

138. What that shows you is that, in that case, those petitioners were successful. What it doesn't tell you is anything about the facts and the circumstances which led to that success. What I can tell you, because I've had a look at the debate, which took place before that Committee, is that the factual position was different there in one, I would suggest, rather significant respect.

139. If we just put up P3699 – P3700, I'm sorry – Mr Laurence was acting for the petitioners and Mr Drinkwater was acting for the promoter, in that case. You can see, as I've highlighted it, Mr Laurence said 'The issue was whether there ought to be a proper compensation provision to cater for the situation that arises, in the event that none of my client's premises were acquired, but they did suffer from damage to trade, loss of fixtures and fittings.' What we know is that, in that case, the petitioners in question were faced with the possibility of compulsory acquisition.

140. What they were also faced with was uncertainty as to whether there would actually be compulsory acquisition. If there was compulsory acquisition, then of course they would be able to recover business losses and so forth, including if necessary total extinguishment, under the compensation code; but, in the event that there wasn't compulsory acquisition, they would be left with the more limited rights of compensation, which arise under section 10 of the Compulsory Purchase Act.

141. It may be that, in those circumstances, the Select Committee of the other place, in the case of this Bill, felt that they ought to have certainty that, whether they were acquired or not, they would have, essentially, a coterminous basis for compensation. That doesn't arise in this case, because we don't seek powers to acquire any land from Park Village Limited. It's to be distinguished on that simple basis.

142. Effectively, what Mr Lewis is asking for here, as is apparent from the list of asks

that he showed you, is for you to assume that Park Village Limited is subject to compulsory acquisition, because that's what he's asking for. He's asking for the ability to claim compensation for disturbance losses and, if necessary, for total extinguishment. Those are the sorts of things that an owner-occupying business of premises that are subject to compulsory acquisition would be able to claim, but he's not. We are not taking this land.

143. There's a fundamental inconsistency in the approach that this petition is based upon, and I would invite the Committee to reflect on that and to recognise that the right course here is the course that we have sought to take, since 6 January this year, which is to provide a regime, as best we can, to enable the petitioners to remain in situ; but, in the event that it's not possible to do that, then to fund the relocation of the business to enable it to continue to function, whilst the works continue elsewhere.

144. My final comment is that that is no more than an expression of the fact that there are mutual obligations, on the part of both promoter and practitioner, under the general law. Those mutual obligations are expressed in the notion of having to mitigate one's loss. It would be completely inconsistent with the notion of mitigating one's loss for the petitioner to take the course that Mr Webb says he wants to take, which is, 'If we can't continue at our current premises, then we want the promoter to fund the extinguishment of the business.' That's not mitigating your loss and that wouldn't be acceptable if he were the subject of compulsory acquisition. You've always got to take reasonable steps to find another way of continuing, and that other way in this case, as with any other, is looking to relocate for as long as is necessary, whilst the premises are subject to the sorts of impacts that he's worried about.

145. I'm sorry I've taken a little longer than I would normally do in responding, but it's quite a complex case. For those reasons, I would invite the Committee to encourage the parties to continue to negotiate. I would invite the petitioner at least to accept an agreement, in the terms of the assurances that I've shown you. That doesn't stop us from continuing to review whether that could be refined in the way that Mr Lewis suggested when he was opening his case, but not to accede to the exceptional course of a special compensation clause, which really would be a major departure from the established principles and procedures of the general law of compensation and is, I would submit, unprecedented in the context of a hybrid Bill, with which the Committee is

concerned.

146. THE CHAIRMAN: Mr Lewis.

147. MR LEWIS: I'm most grateful, my Lord. In reply, my Lord, Park Village Limited is perhaps the most affected business in the most affected street that this Committee will ever hear from. I say 'the most affected', my Lord, both in terms of impact on their general environment and their business environment, but also most affected, my Lord, because again, just as Mr Mould says, they are not subject to any compulsory acquisition, even though they will have to endure the advance works on construction of utilities in the road outside their business, and even though they will have to endure many long years of construction works of HS2.

148. Nonetheless, because none of their property is being acquired for the works, they are left, at best – and it's a very questionable best – with a claim for compensation under my old friend, as it were, section 10 of the Compulsory Purchase Act of 1965, which extends to compensation, again at best, only for severance or obstruction of access, such as that is as a proper measure of compensation, to make up for what will unquestionably be serious business losses suffered by your petitioner in this case.

149. My Lord, as briefly as I'm able, Mr Mould has referred to the history of negotiations between the parties. He used the expression that he was 'surprised' to receive a version of the agreement, prepared by the parliamentary agents instructed by your petitioners, to review the agreement that had been put forward by HS2, and also attributes to your petitioners a lack of confidence in seeing any agreement ever concluded between the parties.

150. The first point, my Lord, I reject for detailed reasons, which I'll come back to in a second or two. The second point, my Lord, is to attribute to Park Village Limited a lack of intention actually to move forward positively and seek to resolve matters is, if I may say so, adding insult to injury. In the 10 months that have elapsed since their last appearance –

151. THE CHAIRMAN: Mr Lewis, we've heard Mr Webb's evidence and it really speaks for itself.

152. MR LEWIS: Very well, my Lord. I won't take time with that. On the nature of the agreement, my Lord, just to highlight some key points on what was not acceptable in the agreement, my Lord: first of all, albeit that Mr Mould has referred you to a place where the utilities works are referred to in the assurances, they were not covered by the definition of any specified works covered by the agreement. It's just the sort of matter that you would expect a lawyer/parliamentary agent to pick up as a point of significance, on a draft agreement, which it was proposed to be entered into.

153. The agreement, albeit put forward by HS2, did not include any provisions for independent dispute resolution, if there was an issue over risk assessments, operable thresholds or trigger action plans, which again any person involved in seeking to resolve would expect to see – provision for independent dispute resolution. Again, payment for professional fees was a matter that one would expect to see in a mutual agreement for compromise of a dispute between parties. It would be exactly the sort of thing that one would expect to see covered by the agreement, particularly if the agreement has taken a certain amount of time to resolve and against the background of a common intention to secure the agreement.

154. Again, my Lord, critically there was no provision for compensation for business extinguishment – I'm going to come back to the compensation point in a moment – and again concerns about access were expressed. That was referred to by my learned friend Mr Mould under the assurances, but again Mr Webb has indicated the differences that the business has for timetabling matters in. Again, there are very real concerns about any obstruction to access.

155. Two matters, my Lord, in relation to any payment of expenses or compensation on behalf of your petitioner, again, Mr Webb has referred to this. Inasmuch as the business is expending money on fees and in taking part in the petitioning process, which isn't a matter they seek to recover the costs of at the moment, but under the agreement seeking to recover fees, in effect, they are spending money in advance, which either they won't recoup at all or they will only recoup after the event. Again, that's putting a strain on their business.

156. My Lord, on the terms of the agreement, which again as my learned friend told the Committee of the other place, HS2 would expect to meet the reasonable costs of

establishing or investigating the matters which went to inform its ultimate terms, I would submit that, at the very least, any agreement should make provision for the payment of your petitioners' professional fees.

157. As for compensation and exceptional circumstances of your petitioner in the context of the proposed HS2 works and the proposed utility works, in my respectful submission, on any view they are in a sufficiently singular category that they are a prime candidate for particular special treatment. Again, my Lord, I've touch on section 10 of the Compulsory Purchase Act. Mr Mould suggests that they'll be able to claim compensation based on their annual letting value. Again, it's a matter I've referred to before about the difficulties with the extent of that particular compensation provision.

158. One thing that the Wildtree Hotels, which has been mentioned to the Committee before, does not cover is it does not cover compensation for total extinguishment of a business, if that were to arise for severance of access or other factors, which might not themselves be compensated under section 10. What Wildtree Hotels compensation is based on, again as Mr Mould said, in that case, it was based on an assessment of annual letting value of the property. It can't be based simply on loss of profits to a business, so that is the – a lawyer's word – lacuna that Park Village Limited find themselves in or a black hole, under the compensation code. There's one significant aspect where they cannot claim their compensation in respect of extinguishment of their business if that dreadful fate should befall them.

159. A final word to mention to the Committee on Liverpool Street and Smithfield protective provisions: Smithfield, it seems, is simply one example of where a Committee was not prepared to grant or impose a special protective provision. Liverpool Street is an example of where a Select Committee, by contrast, was. It's up on screen still, which is convenient. As Mr Mould has told the Committee in terms of the context of the special provision put forward under the Liverpool Street act, that was to provide for the situation where the petitioners in that case were not subject to compulsory purchase.

160. In my respectful submission, rather than being a difference in a significant respect, which Mr Mould referred to in introducing the Liverpool Street example, in my respectful submission, given that the protective provision was proposed to cover the situation where K Shoes wasn't subject to compulsory purchase, it's precisely in point

from Park Village Limited's point of view. Again, it appears from this extract, the highlighted passages cater for the situations that arise in the event that none of the client's premises are acquired, but they did suffer from damage to trade. That's precisely the concern where Park Village Limited is concerned themselves.

161. My Lord, in my respectful submission – and I'm approaching my final words here – it would be a peculiar situation if it was said that your petitioners weren't entitled to recourse because they weren't subject to compensation. Then again, they're not subject to any further recourse, despite their very particular and singular predicament. In my respectful submission, that involves wilfully blinding oneself to the acute circumstances of your petitioner and also wilfully blinding oneself to the expressed intention to seek to agree matters to resolve their concerns.

162. My very last point to make is, if it's said that it's unprecedented for a hybrid Bill to include such a protective provision, well, so be it, my Lord. In any event, Mr Mould comes back again to the question of not going beyond what the statutory code is. In my respectful submission, come what may, the particular circumstances of your petitioner do justify affording them some kind of special protective provision. Again, it doesn't necessarily have to be Bill, if only subject to this Committee's direction. In accordance with the other matters I've included within my list of asks, if only it could be included in a written agreement, such as the Secretary of State has indicated, a willingness to conclude.

163. THE CHAIRMAN: Thank you very much, Mr Lewis.

164. MR LEWIS: I'm very much obliged.

165. THE CHAIRMAN: Thank you very much for coming along, Mr Webb.

166. MR WEBB: Thank you, my Lord.

167. THE CHAIRMAN: Daisy Ayliffe and Benjamin Wicks. Is Daisy Ayliffe here, Daisy Ayliffe and Benjamin Wicks?

168. MR MOULD QC (DfT): We've not had exhibits from these petitioners, so it may be that... I haven't heard that they're not coming.

169. THE CHAIRMAN: Joan Leyton.

**Jeannette Leyton, Penny Leyton and Joan Leyton**

170. MS LEYTON: Good morning. I've not done this before, so I'm not sure –

171. THE CHAIRMAN: Pour yourself a glass of water, if you want to. Oh, you've got one, have you? Good, well we're back at the Alexandra Place vent shaft now, are we?

172. MS LEYTON: We are, yes, if we could have slide 1, please, A371(1). My name's Joan Leyton, and I'm here presenting the interests of my mother, Jeannette Leyton, and my sister Penny, with regard to my mother's property, which is very close to the HS2 route and closer to the ventilation shaft.

173. My mother is 91 years old and she's not in great physical shape. She's deaf and recently she had an accident, which has reduced her mobility. She lives at the flat on her own and has lived there for 30 years, and is leaving the flat in her will to both me and my sister. Could we have the next slide, please?

174. THE CHAIRMAN: That's flat number 6, I think, is it?

175. MS LEYTON: Number 6, yes. This is just showing you where her property is in relation to the shaft. I just wanted to give you an idea of the narrowness of the streets. The promoter says there are going to be between 80 and 100 HGV movements a day, which are just going to increase the amount of traffic and the extra dust and noise and disruption that it's going to cause. Also we anticipate that this disruption is going to depress the property prices for the foreseeable future. If we could have the next slide, please?

176. This I'm just going to go through very quickly, because there was another petition from Dinerman Court, which went into a lot more detail. Before we got the promoter's response document, we were concerned about the increased danger and difficulty of Jeannette, in accessing the local shops and the local buses, and the devalue of the property prices and the extra cleaning from the dust in the air. Could we go to the next slide, please?

177. Having read the promoter's response document and such assurances as the

promoter can give, we've decided that there's very little that we can do with regard to the air quality, the noise and any of the bus delays. The work is going ahead and these things are unavoidable. While we're not convinced that all the measures put in place to reduce impact from the work will work fully to mitigate them, we accept the promoter's efforts to do so, so we're limiting our petition to two remaining concerns. Next slide, please.

178. Our first one is – okay, I'm a little bit out of sync here – yes, is the route to and accessibility of the local shops. As I said, my mother is 91 years old. She is extremely independent and relies on being able to get to the local shops and the buses. Because of her independence, there is no question of others buying supplies for her. She is very frail and works very slowly with two sticks. Being deaf, she cannot hear vehicles clearly when she's crossing the road and, at the moment, she just manages the route to her local Tesco and sometimes to the 31 bus stop to get to the hospital. If her route is lengthened in any way, or made difficult or unsafe, this will directly affect her mental and physical health. We believe that the road and traffic changes that HS2 proposes will affect her route. Can we have the next slide, please?

179. This slides shows you my mother's preferred route to and from the shops and the bus stop and the post box. My mother is not good with stairs and the only stair-free entrance to Dinerman Court is on Alexandra Place, at the corner with Dinerman Court's car park. You can see that on the map. Alexandra Place is extremely narrow. It is a one-way street with almost no traffic, so currently a very safe road for my mother to inch her way along. She doesn't have to worry about getting out of the way of cars quickly. Loudoun Road also has little traffic, most of the time, and is safe and easy to cross. This has been her route for the past 30 years. Unfortunately, the changes HS2 proposes to Alexandra Place and surrounding roads would cause extra impediments and dangers to my mother's route. If we could have the next slide, I'll show you how. Thanks.

180. This slide displays HS2 vehicle entrance and exit routes, and shows how the southern part of Alexandra Place will be used for all traffic entering the HS2 construction site, plus any other traffic that would need to access Alexandra Place, for example refuse lorries, delivery lorries. HS2 reckons there will be between 80 and 100 HGV movements along this road at peak times, for up to six months. This is the same

route my mother uses to get to the shops and transport. It's very difficult to imagine her tottering along this road whilst large lorries attempt to pass each other on this tiny street never intended for two-way traffic. Could I have the next slide, please?

181. On this image, we see a section of Camden Council's own recommendation for the width of a street with two-way traffic. They recommend a width of six metres. This is taken from Camden's 'Streetscape Design Manual'. We did a little bit of research into the width of lorries, and we found it to be 2.55 metres excluding mirrors, which can mean an extra 0.6 metres, and some refrigerated lorries can be even wider. Can we have slide 9, please?

182. We took some photographs of Alexandra Place in August. As you can see, the road is very narrow and quiet. The top-left view looks around the western side of the road. The entrance to the construction site will be just after the car park on the left. The photo was taken from the entrance of Dinerman Court, so you can imagine a line of HGVs queuing up to get into the site. In addition, they'll be other vehicles trying to turn in Dinerman Court car park, so they can head back out again. I measured Alexandra Place and I measured it to be 5.258 metres, which is narrower than the 6 metres that Camden recommends for two-way traffic.

183. If I could have slide 10, please, with lorries potentially 3.125 metres wide including mirrors, two lorries would need over 6 metres to pass each other comfortably, so this road is just not wide enough. We're concerned that, because of this, lorries will jump on to the pavement to pass each other, which is endangering pedestrians, particularly those who can't move quickly. The best solution to protect pedestrians making their way along the southern side of Alexandra Place – and some people live along here, so they have to use that side – would be to limit Alexandra Place to one-way traffic and not use it for two-way traffic, but we feel that it's probably not possible to do this.

184. The second idea that we had was to build up some kind of a dedicated barrier between the road and the pavement, so that vehicles can't jump on to the pavement and it's safer then for my mother. Could we have the next slide, please?

185. In addition to the danger posed by two-way traffic on a very narrow street, we believe that massively increased amounts of HGV traffic that would be using Loudoun

Road will make crossing that road extremely dangerous for mobility-impaired people. HS2 maps show a proposed uncontrolled crossing point, although there is already one near this location.

186. If I could have the next slide, please, an uncontrolled crossing point is also known as a 'pedestrian refuge crossing', so it's basically an island in the middle of the road where cars, not pedestrians, have right of way. The pedestrian must cross quickly to the refuge and then wait for a gap in the traffic, before crossing quickly to the other side. Cars do not have to stop and generally they don't.

187. At the moment, the traffic on Loudoun Road is light and there are plenty of long gaps in the traffic, which gives enough time for mobility-impaired people like my mother to cross. However, with the additional traffic as well as a possible increase in traffic from local diversions, the traffic on Loudoun Road pedestrian refuge crossing, with no pedestrian right of way, poses huge danger for someone who walks very slowly and with difficulty, so we believe that this crossing should be changed to a zebra or a puffin crossing, where pedestrians are given right of way and cars are obliged to stop.

188. Our second concern is about the value of the property at Dinerman Court. Jeannette is 91 now so, by 2019 when HS2 is starting, she'll be 94. There is a history of longevity in our family – her sister died at 95 – but it is a real possibility that she could die beforehand. There is also an equally likely possibility that she will have to vacate her flat, if she reaches a point where she can no longer look after herself. If either of these happen, 6 Dinerman Court will have to be sold promptly. Any delay in selling the property will cause undue hardship to myself and my sister, since we will inherit the property and will be responsible for all maintenance costs, such as management fee, council tax, etc. Normally a flat in an area as sought after as South Hampstead would practically sell itself, but we believe that its proximity to a large HS2 construction site will substantially deflate the desirability of my mother's flat.

189. Could I have slide 14? These are just giving us the reasons why we think that HS2 will adversely affect the ability to sell, because it's very close to the HS2 construction site, with the additional lorries, with the addition of the traffic queuing along Alexandra Place to access the site, the construction noise and the car park being used as a turning bay. We don't believe that anyone would be willing to pay the full market price in these

conditions.

190. Slide 15, please. The promoter showed that, to some extent, they understand this concern by offering a discretionary need-to-sell scheme for properties that are not in protection zones and deemed close enough to the work to be seen as unequivocally blighted. We believe that the discretionary basis of need-to-sell properties outside the HS2 protection zones unfairly puts the onus on the seller to provide burden of proof. Providing this proof creates a massive amount of extra work and stress for the people inheriting the property, who may live far away, be in full-time work and bearing extra financial responsibility.

191. For those selling because of death of a close relative, such as a parent, burden of proof could be required at a time when they may also be grieving. We believe that, in such a situation, a gruelling application and decision process, which may result in their application being ruled unsuccessful is unfair, when it could be proven through property valuation that HS2 has affected the property value.

192. Local and recognised estate agents have a wealth of experience and know when a property's value has been blighted by huge construction projects on its doorstep. We feel that HS2 should require no more than this to prove a property's value has been affected in this way.

193. On the need-to-sell, there are five criteria. The third of these is effort to sell and the impact of blight. The criteria contains two conditions that we consider particularly unfair and unrealistic, given the London property market. One is that, if you don't receive an offer within 15% of its realistic unblighted asking price, or you can show evidence that an offer received above this level represents a blighted offer and, two, that your property has been on the market for at least three months immediately prior to the date of application, with at least one recognised estate agent.

194. 17, please. With regard to accepting offers at 15% under unblighted value, HS2 states, 'The requirement that all reasonable efforts should have been made to sell a property and that, despite those efforts, no unblighted offers have been received within 15% of its realistic unblighted asking price helps to demonstrate any effect of HS2.' We believe that, if you're taking an offer of 15% under unblighted value, that's an indication that the property has been affected by HS2.

195. The need-to-sell notes add that, if you get an offer above 15% of unblighted value, you must show evidence that an offer received above this level represents a blighted offer. By using the term 'unblighted value', HS2 appears to acknowledge that such an unblighted value exists. Therefore, if we accept that a property does have an unblighted value, why should HS2 expect people to take 15% less for their properties?

196. The need-to-sell guidelines also recognise that estate agents know when a property's blighted and what its unblighted asking price is. This would seem to indicate that getting an estate agent to deem a property's value-blighted should be proof enough, since even HS2 admits estate agents are able to recognise this.

197. Just as a note, 15% of a typical one-bedroom property near Dinerman Court is over £75,000. We just did some comparable properties in the same area. Assuming that all prices are reasonable or even slightly above, we can see that the lower range for this kind of property is over £500,000. Next slide, please.

198. This is just to summarise our concerns. One is safety of the route to and accessibility of the local shops and transport, due to HS2 works. We require the promoter to erect a barrier between the pedestrian footpath or pavement and the roadway barrier in Alexandra Place, so that it gives it complete safety, and then to change the uncontrolled crossing to a controlled crossing. Sorry, can we skip to slide 22, please?

199. Then the second concern is the difficulty in selling or achieving the true value for Jeannette's flat, should her death or disability require prompt sale of her property. We believe that the need-to-sell scheme imposes unreasonable conditions on sellers of property where sale is prompted by death or disablement. We would require the promoter to amend the wording in the need-to-sell, in clauses 3.1.17 and 18, to ask them to change the unblighted per cent from 15% to 2.5%, which still, on a £500,000 property, works out to £12,500. When it asks that the property's been on the market for three months, it's changed to six weeks, which is the average selling time for a London property.

200. The last slide is just kind of detailing the same thing. I think it's a fact that, when a close relative has died and you are expected to go through all of these when you will be grieving, it's unfair. Thank you.

201. THE CHAIRMAN: Well, thank you very much, Ms Leyton. Mr Mould?

202. MR MOULD QC (DfT): P3327. I'll deal firstly with the highway arrangements. I think you've heard Mr Strachan explain the position with regard to Alexandra Place vent shaft in response to a previous petitioner, so I won't –

203. THE CHAIRMAN: Well, we have, but could you just remind us?

204. MR MOULD QC (DfT): Yes. This is a vent shaft which – the need for which is currently under review. And I think you've been told that the promoter is expecting to reach a view on that in the coming weeks but, for the time being, we need to retain powers to create this vent shaft because, on our current understanding of the position, this is needed in order to fulfil established safety and ventilation requirements under the relevant railway standards.

205. So if we assume for today's purposes, as we must, that the vent shaft will continue to be – to need to be constructed, then the arrangements for accessing the work site which will support the construction of the vent shaft are that HS2 construction traffic will come into Alexandra Place on a one-way system from this point, and then pass around this part of the road network, access the work site and then leave the work site and go back onto the highway, Loudoun Road, which is this road here, from the north. So HS2's movement will be one-way.

206. And the peak HS2 HGV traffic along this part of the route, as opposed to Loudoun Road, is predicted to be up to 50 HGVs a day, with 80 to 100 construction vehicles on Loudoun Road. Now, at the moment that route around Alexandra Place is one-way for all traffic but, because we are closing off ordinary vehicular use of the – this element here to – on the northern side of the loop, we have to convert the southern arm, Alexandra Place, we have to convert that to two-way use for ordinary traffic. So it's one-way in for HS2 construction traffic, but two-way for ordinary traffic, which means that people who are using that route in to get to Dinerman Court and other destinations within that area, they will be using it for two-way. So it's clear that there will be some prospect of HS2 HGVs coming in passing ordinary traffic going out, and I think that's the concern that's being raised by the petitioner. What I do want to be clear on is we won't have HS2 lorries meeting each other along that stretch of the route, because they will be going one way only.

207. Now, the question then is whether there should be a barrier. That ultimately is a matter for agreement with the London Borough of Camden, as the local highway authority, but, if London Borough of Camden's view is that a safety barrier should be provided along that route in order to provide protection to people using the pavement with those lorries, then that is something that we would have to accede to.

208. The next point relates to the pedestrian crossing that is shown at this point here across Loudoun Road. It's shown on this plan as controlled but, again, whether that is provided as a controlled crossing and, if so, what form of controlled crossing, that is something that we would have to agree with the London Borough of Camden as the highway authority. And as you'll appreciate, there are other factors that come into play in deciding whether or not one has a controlled crossing, and if so what form it takes, but – so there's no difficulty in principle with that, but it's not something that – our position is that it's not something that we can guarantee unilaterally. We have to work with the local authority in relation to those matters.

209. What I can show you on this plan is that the route between the petitioner's mother's flat and Tesco, which is here, and indeed the bus stop which I understand she uses, bus stop Y, that route will remain throughout the course of the works. And indeed there is – we will be maintaining pedestrian routing through the northern side of the loop as well, as is shown by the purple arrow. So she'll be able to get to and from, and the case for some further protective arrangements for her and other pedestrians affected by the work, that's something which is to be considered, in my submission, with the local highway authority. That's the position in relation to those matters.

210. If I turn then to the need to sell point, if we put up R27 and page 11, this is the up to date need to sell scheme guidance notes document, which I think I said I would show the Committee last week. This is the guidance note on the third criterion which has to be met, which is – as it says, 'The purpose of this criterion is to determine whether it is the blight resulting from the route of Phase One or Phase 2A rather than any other factor which is the reason why the property has not sold, or could not be sold other than at a substantially reduced value, described as the blighted value.'

211. Just pausing there, I'm sure the Committee will recognise readily that a property scheme that is designed to provide focused remedy for those residential owner occupiers

who have a need to sell their property but are unable to do so other than at a blighted value, where that blight has resulted from the shadow of HS2, that one of the things that those people – that any such applicant will need to do is to show that it is indeed HS2 rather than some other factor which has caused blight, and also, of course, to show that there is blight. Both of those matters will need to be satisfied, and that is what this criterion is about.

212. Now, in terms of evidence, the paragraph goes on to identify a number of matters that the panel who makes a recommendation on any given application would consider. And I won't read them all out but they are, I would suggest, the sort of things that you would expect the Secretary of State to want to see established if he is to step in and to provide a remedy of this kind. Now, the third of those is you've not received an offer within 15% of its realistic unblighted asking price, or you can show that an offer received above this level represents a blighted offer. So far from it being a rigid rule that one has to show that one has, firstly, marketed the property and, secondly, not received an offer within 15% of its realistic unblighted asking price, if you can produce evidence to show that an offer received above that level is nevertheless evidence of blight, then the Panel will accept it. And that is set out in paragraph 3.1.18 just below.

213. The requirement that all reasonable efforts have been made to sell a property and that despite those efforts no unblighted offers have been received within 15% of its realistic unblighted asking price helps to demonstrate any effect of HS2. We make the distinction between the asking price of the property and the final purchase price of the property. The asking price is set with the aim of achieving the best possible price. We would not expect applicants to accept the blighted value of the property, that is to say the amount that the property is worth following the HS2 announcement. If you have evidence that an offer received within 15% of the realistic unblighted asking price is a blighted offer, then you should submit this.

214. So there is a recognition that the 15% is no more than a rule of thumb, and there may be cases where the market is very buoyant, such as, for example, in parts of London, where an applicant is able to show that, albeit that they've had an offer which is within 15% of the asking price, nevertheless that offer represents a blighted value, in which case they will have satisfied this criterion.

215. The other point that I would make in response to concerns raised by the petitioner is that the remainder of this part of the guidance, 3.1.20 and then over the page down to 3.1.23, recognises that, these days, people put their properties on the market and seek to sell their properties through a variety of different mechanisms. People, for example, use the internet to market their property, so the guidance takes account of that. But what it does make clear is that there should be and there must be evidence which the Secretary of State can rely upon as showing that the property is blighted, in other words that the prospective vendor is unable to sell other than at a blighted price, and that that blight results from HS2. And I would submit that that is reasonable.

216. THE CHAIRMAN: On another point, Mr Mould, is this scheme available to the personal representative of a deceased owner occupier?

217. MR MOULD QC (DfT): Yes, it is. Just coming to that right away.

218. THE CHAIRMAN: I see.

219. MR MOULD QC (DfT): Yes. But I deal with that question of blight because that seemed to be the focus of the argument. And I would reject the suggestion, respectfully, that there should be any relaxation of the need for the Secretary of State, effectively, to be able to account to the public purse that he has acquired a property on account of it being blighted by HS2, rather than for some other reason which has nothing to do with the scheme.

220. Coming to my Lord's point, if we then go on to R27(15), this is in relation to demonstrating a compelling reason to sell. Paragraph 3.1.34, 'The winding up of an estate of a deceased person would normally be regarded as representing a compelling reason to sell, even where the new owner did not occupy the property themselves.' And one category of person who qualifies to make an application are the personal representatives of a deceased person. That's made clear in paragraph 3.1.6 of the guidance.

221. So the scenario that the petitioner raises of a property which is being placed on the market following the death of a relative and then the desire of personal representatives to – in the event that that property cannot be sold, other than the blighted price, by reason of HS2, to apply to the Secretary of State to acquire that property, that is

provided for under the need to sell scheme absolutely clearly. But the notion that there should be some relaxation of the requirement to show that it is indeed blighted by HS2, that's not, in my submission, a reasonable request, and therefore the scheme properly addresses the concerns that the petitioner raises.

222. THE CHAIRMAN: Do you want to say anything briefly in reply?

223. MS LEYTON: Yes. You didn't make any acknowledgement about the changing the three months.

224. THE CHAIRMAN: Please say it to us, not to Mr Mould.

225. MS LEYTON: Oh, sorry. Yes, I've read the need to sell thoroughly, and one of the points that we had made was that the amount of time should be relaxed from three months to six weeks. And fair enough if you don't agree with changing the 15%, then can you acknowledge anything about the amount of time that it needs to be on sale, bearing in mind that this is London, where properties do not take long to be sold, and three months is – creates too much of a burden in the circumstances when a relative has died.

226. THE CHAIRMAN: Well, thank you very much, and I hope your mother goes along – continues to be fiercely independent.

227. MS LEYTON: She is at the moment.

228. THE CHAIRMAN: Mr Auger?

**David Auger**

229. THE CHAIRMAN: Now, Mr Auger, we have, of course, heard you at considerable length on behalf of the Camden cutting. Your own personal petition is one of the longest petitions filed against this Bill in this House. I hope you're not going to be as long repeating everything you said on behalf of Camden Cutting.

230. MR AUGER: There is no intention to repeat. I'm very aware of what's been before presented before. We want to focus on one particular thing, which is why Mr Chandler is here with me, who is a specialist architect, to talk about external mitigation on my property and others in Mornington Terrace, which has come up

recently.

231. THE CHAIRMAN: Thank you very much.

232. MR AUGER: If I could have slide P2888 please. Just to start, this is just a map to show you where my property is. So I'm at the top end of Mornington Terrace, and you heard last week from Guy Burkill at number 4 Park Village East. I'm directly opposite the cutting. And you actually heard from Park Village Limited this morning, who again are almost opposite me on the opposite side of the cutting. So I'm not going to talk about the huge impacts on my property. Can we just go to A385(2), please?

233. So this is the top end of Mornington Terrace, which you didn't get to. I'm on the ground and lower floor, ground and lower ground. I've got shutters in the main reception window. We've been looking at an external solution for the noise insulation problem, and what I'd like to do is ask Mr Chandler to take you through that and the next couple of slides. And there's only a few slides, so he can either sit in the middle or he can stay where he is, whichever your Lordships would prefer.

234. THE CHAIRMAN: I think it'll probably be easier if Mr Chandler stays where he is, yes.

235. MR AUGER: That's fine.

236. MR CHANDLER: Yes. I'm an accredited specialist conservation architect. I'm also an assessor for the RIBA Conservation Register, and I'm also a member of the RIBA conservation committee. I've worked on listed buildings and monuments in the UK and mainland Europe, and in South America. I also am academic reader in architecture, and I've created masters programmes on sustainability, including retrofit on architecture –

237. THE CHAIRMAN: Could you please speak a tiny bit slower and a tiny bit louder?

238. MR CHANDLER: Of course. Certainly. I also contribute to the Society for the Protection of Ancient Buildings. I'd like to call slide P21552 just to zoom in a little bit from David's map. I'm here to discuss the requirement for noise insulation mitigation through the use of secondary glazing, in relation to historic buildings, arguing for the

adoption of an external glazing option as an alternative to the current internal solution defined in the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996. These buildings that I'm talking about are identified here. They are a mixture of listed and unlisted historic buildings and also modern buildings, so I'm focusing on historic listed and unlisted buildings in the site, particularly with shutters.

239. Secondary glazing should obviously be compliant with the established performance specification. It should also be cost effective; after all, taxpayers are paying for it. It should make a minimal intrusion to the surroundings of the occupants, as these people are already putting up with a huge imposition on their daily lives. Indeed, the work that does get installed should be reversible, with a minimum physical impact on historic building fabric, whether the buildings are listed or not. Indeed, they ought to apply that rule to modern buildings too.

240. Can I have slide A385(4), please? This slide is a summary of the promoter's response to the Camden Cutting Group's proposal for the use of externally fitted glazing as noise insulation. The very significant disadvantages which are quoted here applied by the promoter to external secondary glazing can, I would assert, equally be applied to the internal glazing solution, which also carries justifiable concerns around appearance, nuisance, the disabling of shutters and overly complex installation issues and associated costs, which I shall address now.

241. So what is the reality of fitting internal glazing to historic windows that the promoter is insisting upon? Slide A385(3), please. Shutter boxes are, in reality, sound boxes, as you'll see in the slide. Noise leaks around the frame and the shutter box becomes like a cello: it amplifies. If you fix it closed and internally insulate the shutter to kill the reverberation, you remove ventilation from behind the historic joinery. Now, shutter boxes are set one brick away from the outside. That's the way they work. 19<sup>th</sup> century bricks are highly porous and they absorb driven rain. They then dry out through the process of evaporation, through lime mortar and pointing. So the hydrostatic profile within the first six inches of an historic wall is quite volatile.

242. If you seal joinery shut close to the outside of the wall you risk creating stagnation and dampness behind the joinery, which is the atmosphere for dry rot, also creating irreversible movement in the timber, especially in winter. In the summer you get solar

gain through the thin, historic glass, and when you put secondary glazing on the inside that creates a thermal buffer. I've in many instances replaced joinery in this manner. I've had to take out internal secondary glazing because the joints of the glazing bars, which are very fine, have all shrunk, the putty has desiccated and, in the end, you lose the glass in trying to rebuild the sashes, so for me this is not a particularly good thing to find in historic buildings.

243. I will sketch out for the Committee the actual installation resulting from the application of the Noise Insulation Regulations 1996 used by the promoter, to give an idea of the physical and therefore cost implications of avoiding the external glazing option. Most of the windows we're talking about are less than 800 millimetres from the floor. That triggers the use of eight millimetre thick glass on the internal secondary glazing. Eight millimetre glass weighs 19.95 kilos per square metre. An average window of three feet wide by five and a half feet high will have secondary glass weighing over 30 kilos, which is 67 pounds in old money, so the framing is very substantial for these items. They're not lightweight.

244. Now, that framing can't be fixed to the shutter boxes because they're too fragile, so therefore the secondary glazing would need to be fixed across the shutters. If you have a width of more than 1,100 millimetres, that's three and a half feet, you trigger the need for 10 millimetre glass, which is 25 kilos per square metre, so your window now weighs 84 pounds. If you have lime plaster on the inside walls you can't fix directly to that because it's held off the wall. You would need to remove it in order to make a secure fixing. The only alternative to this is to remove the shutters entirely and reinforce the box with timber. This is a visually and philosophically very crude solution, and one asks whether Camden would grant a blanket permission for such work to an entire listed terrace. You also have an entire listed terrace's worth of shutters which you have to find a home for. This is the reality of the implementation of the regulations that I bring to the attention of the Committee.

245. Now, part of the reluctance to accept the external option is that there is a lack of precedents, but I think this is a misconception. Double glazed low-e coated external systems are actually new, modern windows. The original window then becomes the secondary glazing on the inside. This option effectively creates a primary glazing situation, as the external glazing takes over the true function of the window in keeping

temperature, rain and wind out. This option allows the original window to remain untouched, protecting the historic fabric and people's enjoyment of it. Can I have slide A385(5), please?

246. All of the residents were concerned about the visual presentation of this option, and so the community came together and organised an installation of a pilot window on the ground floor of Mornington Terrace. Slide A385(6), please. There is concern about external glazing in relation to access. This window was installed using a mobile scaffold tower, which the installers were happy to use on the entire terrace for ground and first floor purposes. These are generally the windows that have shutters of significance. Minimal fixings into the reveals allow for easy repair when removed. The reveals are all rendered in this location and they are square, so surveying, manufacturing and installing these items is very easy. No internal damage or redecoration is necessary. These units are double glazed and not single glazed, and they have a low-e coating, which minimises solar gain in summer, avoiding the need for the solar blinds which the promoter is putting forward. Low-e coatings, if you need to know, filter particular wavelengths of light energy, so they limit heat gain.

247. I've taken out internal glazing that's caused condensation damage to the internal face of historic windows. That's one of the concerns that's been voiced about external glazing; it equally applies to internal glazing. With double glazing, you have the advantage of a thermal layer, which prevents the contact of warm air with a cold glass surface, creating condensation, so you actually eliminate the problem. Slide A385(7), please.

248. As you can see, the unit is openable for cleaning, and it allows for easy purge ventilation. The internal shutters remain useable and unaffected by the problems created through internal secondary glazing. Now, regarding the issue of Listed Building Consent, I would argue that the externally applied glazing, limited to the duration of the disturbance and the works, is therefore temporary, albeit an extended temporary, enabling work. It is not a permanent change to the character or appearance of the listed building. It is an acoustic equivalent of erecting maintenance scaffolding, and it's obviously more discreet. The external glazing does not interrupt the view of or from the windows with secondary framing. As you can see, it's a single pane, so you don't get the doubling effect of normal secondary glazing.

249. The supplier, who's Granada Glazing, has provided a comparative cost for both external glazing and an internal option to the current HS2 requirements. The simplicity of the process of installation gives you a 25% saving over the internal option. It also comes with a 10 year guarantee, which is the duration of the works.

250. Can I have slide A385(8), please? A view was aired at the beginning of this process to the residents that some of the residents may opt for internal and others would opt for external glazing, thereby creating a non-uniform appearance. This is mitigated by the fact that there's actually a huge diversity of windows already present in what is ostensibly a uniform frontage to streets like Mornington Terrace. This fine grained detail of diversity adds character to the uniformity of the material composition of the whole. As we are also talking about a temporary fix, this is not a permanent condition. Can I have slide A385(13), please?

251. The Camden Town Conservation Area Advisory Committee agrees with the view that external glazing has distinct advantages for the listed or historic buildings affected. Slide A385(11), please. So too, significantly, does Camden, and I quote, 'We would regard this sort of secondary glazing as acceptable and preferable where an internal option would have a detrimental impact on the building.' Slide A385(12), please.

252. THE CHAIRMAN: So they attended the demonstration at number 30, did they, Camden Council?

253. MR CHANDLER: Yes. The letter continues, 'We would anticipate that consent could be obtained for grade II listed buildings', which is Mornington Terrace. In addition, Historic England have recognised the value of an external glazing option, and have reported to us that they envisage consent for grade II\* being given, which is significant in the light of the impacts on Park Village East on the other side of the cutting. Slide P2154(12), please.

254. The promoter has stated that guidance from Historic England's 'Energy Efficiency and Historic Buildings: Secondary Glazing for Windows' will be followed, and I quote from it: 'Secondary glazing improves insulation, draft proofing and noise control. However, not all windows are suitable for secondary glazing, owing to the narrowness of the internal sill or reveals, the difficulty of accommodating new panes within oddly shaped or unduly protruding architraves, or clashes with internal shutters.' This

paragraph effectively compromises the only proposal that is being put forward by the promoter.

255. So to conclude, I would suggest that this collaboration between planning officers, councillors, residents and amenity groups, and a helpful manufacturer, as a proactive and positive engagement with noise issues that accompany the arrival of HS2, gives an opportunity for the promoters to recognise that this external glazing proposal seeks to help HS2 achieve the best noise reduction solution possible for residents and for the historic building they live in, throughout the duration of the construction work. I would therefore ask, in my professional capacity, that the Committee consider it appropriate to direct HS2 to accept such external glazing as an option for residents as part of the package offered for noise mitigation. Thank you.

256. THE CHAIRMAN: Lord Young?

257. LORD YOUNG OF NORWOOD GREEN: I was listening carefully, but I'm not sure I quite understood. Did you say there are circumstances where you can't use external glazing because of the – there's not enough depth to fit it, or did I misunderstand that?

258. MR CHANDLER: No, you can't use it on the inside if there's not enough depth.

259. LORD YOUNG OF NORWOOD GREEN: Right.

260. MR CHANDLER: That's when you need to start fixing it to shutter boxes and all the rest of it. On the outside all of the windows that we're talking about have a setback of one brick, which was established after the great fire as a fire proofing device, which then everybody followed even though we didn't have any timber buildings to burn.

261. LORD YOUNG OF NORWOOD GREEN: It's got a bit of historical precedent. Does it only apply to square or rectangular shaped windows?

262. MR CHANDLER: The option that we installed had a hinge at the top that allowed it to open, so that would preclude it from being top hung for, say, an arch topped window.

263. LORD YOUNG OF NORWOOD GREEN: So you can't use this solution for an

arch topped – you haven't got an external –

264. MR CHANDLER: If you hinge it from the side you could, but most of the buildings that we're talking about being affected here have square windows.

265. LORD YOUNG OF NORWOOD GREEN: Thank you.

266. THE CHAIRMAN: Mr Mould?

267. MR MOULD QC (DfT): To a large degree, there isn't an issue here. The petitioners have put forward an option for consideration as the means of providing noise insulation to properties in Mornington Terrace, as I understand it. It's being put forward not simply on the basis of Mr Auger's own property but others as well. The promoter will certainly consider this option, because the promoter will wish to ensure that the solution that is found to providing secondary glazing noise insulation to those who are eligible for it is the most cost effective method that is available, and one that meets the requirements of the local authority, both in terms of planning and environmental health.

268. So it's ruled in, and indeed that was clear from the passage that was quoted from closing submissions to the Camden Cutting Group's presentation, which was being shown at A385(4). True it is that that paragraph raised a number of concerns about the external glazing solution, but at the bottom of the page you will see 'But the question of what solution is appropriate will depend upon the survey process that is due to take place.' So this is not ruled out as a potential option; it is ruled in.

269. The other practical reality is this, that we have given assurances, as you know, to the London Borough of Camden, and I'll put up P2487(28). And as you can see, 10.1, refers to agreement with the London Borough of Camden of the package of measures which are to be comprised within the noise mitigation package for affected properties, provides for survey works, 10.2, provides at 10.3 that any equipment that is installed should meet the specifications of the Noise Insulation Regulations. In other words, it should be effective to do what it's provided for. And 10.4 deals with the timing of the installation.

270. So we have some hint in the documents you've seen this morning that Camden looks favourably upon this particular option as a candidate for the type of noise

insulation that might be provided in certain types of properties. We've expressed some general reservations about the cost effectiveness of external glazing, as opposed to internal glazing. The witness has suggested that some of our concerns, or indeed all of our concerns, may be misplaced. He may be right about that, and the upshot is that the option is ruled in, but it would be wrong, in my submission, for the Committee to direct us to adopt this option, because ultimately the decision as to what is the right option, in terms of an overall assessment of cost effectiveness, is a matter that should be judged by the promoter in agreement with the London Borough of Camden, in accordance with the assurances that I've just shown you. And it would be wrong to pre-empt that process by specifying that a particular type of kit should be deployed, and that is where I leave my response to this petition.

271. THE CHAIRMAN: Well, thank you. Yes, Mr Auger, do you have anything to say in reply to that? I thought it was a very helpful response from –

272. MR AUGER: It is. I'm a little concerned that I thought this started off as questions for my witness, then took on a response to what I had to say when I hadn't actually finished.

273. MR MOULD QC (DfT): Oh, sorry.

274. THE CHAIRMAN: Right. Well, perhaps you could finish then.

275. MR AUGER: So if we could have slide A385(9), please.

276. THE CHAIRMAN: I do hope you – it's been very useful to hear from your witness, but we are trying to get quite a lot of petitions finished today.

277. MR AUGER: I will be finished in a couple of minutes.

278. THE CHAIRMAN: Thank you.

279. MR CHANDLER: Sorry, David. I just would like to come back on two small things just – and then that concludes my role. I did actually suggest that we would be compelling HS2 to consider it – to make the external option part of the required options. I think the internal solution is not the only one. All of the literature that's been produced has only discussed the internal option. I would argue that it was ever ruled in; quite

explicitly it was ruled out. So really this is about making the external option something which should be available to consider fully as part of the works, and that's –

280. MR MOULD QC (DfT): I just indicated that.

281. THE CHAIRMAN: I think it is in the highest degree unlikely that we would prescribe the external option as the only one, and I have refrained from asking you whether you have any financial interest in the external option.

282. MR CHANDLER: No. I think HS2 might if they go for the cheaper version which works better. Thank you. Okay.

283. MR AUGER: We've not asked for the external to be adopted. We've asked for a level playing field. And I welcome Mr Mould's comments, although I did notice that, in judging the right option, he listed the promoter and the London Borough of Camden, but not residents, which obviously I would not be happy about. We want it to be a level playing field in considering the best option, given the implications of the internal solution. And HS2 attended on – last week with the installation, and the feedback today has been far more positive than their feedback then, hence our willingness – our desire to come here.

284. We're concerned about the timing of getting this done. We've missed 10 months since the hearings in the other place. Mr Mould pulled up the assurances with Camden. I won't pull them up again, but 10.4 which he talked about, timing, and this is the only assurance I'm going to refer to, but a lot of residents have expressed a lot of concern, and I use this as an example of where the devil is in the detail. But 10.4 says, 'The Secretary of State will require the nominated undertaker to use reasonable endeavours to ensure, subject to securing the necessary access and consents' – okay, so there's a potential delay that they're not happy with consents – 'and the construction timetable.' So this assurance that's about timing says that if they want to get on and build it they shouldn't wait for the noise insulation, and this is why we're concerned about the adequacy of all the assurances that Camden have been given, because we suggest when you look at the small print there are too many gaps in it.

285. So we ask that – proper consideration given to the external solution, that we need to get on with it, and that the noisy works don't start outside core hours. So utility

works that they want to get on with, because utility works are normal, we say, ‘Okay, but that’s during the day’, but works at night. And I’m encouraged by Mr Mould’s comments about looking at a good solution, but we did ask – and I’m still concerned about the people on the ground really believing this is a good solution – that we have an independent adjudicator or an arbitration process, and I’ll leave that point there. Obviously this affects not only me, but I am very keen on this because of my own property, but Mornington Terrace, Mornington Place, Mornington Crescent and Delancey Street and possibly Park Village East are all impacted. I think you could make a lot of people’s lives a lot better.

286. 385(10), please. So I’ve talked about the fact that the assurance that we’ve just read out, 10.4, doesn’t really protect us, and I would like to consider all the impacts on my property, and me, and other residents, but the assurances don’t really prevent the long list of significant or adverse effects, and that a proper evaluation of the alternatives is done to try and mitigate the impact.

287. I know you’ve heard from the Network Rail letter, and this is my last point, my Lords. It’s in my pack at A385(14). It lists 27 days or nights of night time working, with a certain amount of ambiguities. I mean, there’s a lot of flaws in this letter. And of that we don’t have noise insulation for any of it, and actually even if the policy was in place with the 10 days, if you count up the number of days it’s only breached once or twice. So this great long list of night time work would go ahead without the mitigation in place that is designed to protect us. So I would ask that consideration is given to what we’re facing and ways of mitigating it. Thank you.

288. THE CHAIRMAN: Thank you, Mr Auger. Thank you, Mr Chandler. You don’t want to say anything else, do you, no?

289. MR MOULD QC (DfT): No, I think you’ve had our responses on these other matters.

290. THE CHAIRMAN: Is there anyone here from the Beaumont Walk Tenants and Residents Association? No. Is there anyone here from the Camden Association of Street Properties? Right.

### Camden Association of Street Properties

291. THE CHAIRMAN: Yes, Mr Ewing.

292. MR EWING: Yes, as your Lordships will see, if I can just inform your Lordships, in view of the response of the promoter, he did criticise our House of Commons petition for raising general objections to the scheme. However, your Lordships will be aware that in our House of Lords petitions to this House, we have not repeated those submissions, and of course we wouldn't seek to pursue those submissions at all, and our petition to this House is considerably pruned from what it was in the other place. So I just wanted to establish that first so we don't get off on the wrong – go down the wrong path.

293. And, in short, our points are set out in our initial written submissions, which is at – I think it must be number one in the exhibits. And there's a short witness statement from myself regarding public engagement, and, although I haven't put in a further witness statement, I would be seeking your Lordships' leave to raise an issue that has arisen since that occurred, in relation to the Temperance Hospital and a matter of consultation that has arisen about that, but I'll perhaps leave that until last, because there is a matter that your Lordships may or may not be aware of with the planning application.

294. THE CHAIRMAN: We've already had a number of complaints about the hospital demolition starting on a Sunday.

295. MR EWING: Well, my point is that, as your Lordship will know, that the original proposed demolition of that building was in the Bill, Schedule 18 I think it was, along with all other proposed schemes and demolitions. But apparently what has happened is that the promoters have gone off and made a planning application to Camden Council, which has been granted. I hesitate to use the phrase 'behind closed doors', but there was no indication or notification to any groups or – so far as I was aware, that they were going to deviate from the proposal to deal with it in the Bill.

296. So I will be making some submissions on that, with your Lordships' leave – I know it's not in the petition, and it's not – but this is a matter that's only recently come to light – and perhaps address your Lordships about possible future undertakings, that

there will be no deviation from what's set out in the Bill, possibly affect all along the line as well, with planning applications being made to suit themselves.

297. THE CHAIRMAN: Would you try and be just a little more objective and impartial?

298. MR EWING: Yes.

299. THE CHAIRMAN: It's very difficult to listen to a constant tally of nagging against the promoter.

300. MR EWING: Yes, indeed. So I'll –

301. THE CHAIRMAN: You didn't think they were going to demolish the National Temperance Hospital and leave it as an empty site forever, did you?

302. MR EWING: No. My concern was that a planning application was made behind the scenes, if I can put it that – well, a planning application was made, but there was no consultation that that was going to be done. Groups, to my knowledge, were not notified that the promoter had decided to make a private planning application to Camden Council. So I think I just –

303. THE CHAIRMAN: And you think you should have been informed?

304. MR EWING: Well, I think everybody should have been informed.

305. THE CHAIRMAN: Well, if you make a planning application it is given wide publicity and people can make representations about it.

306. MR EWING: Well, indeed, but there was a forum, which people are attending, the Euston – the group which we attend, and there was no notification – Euston Community Representative Group. No indication was given to members of – people or representatives attending that representative group that this was being done. Unless anybody privately was able to consult the Camden Council website they wouldn't know about it. Of course the local authority are only obliged, under planning legislation, to notify the immediate occupiers. So I'm just simply drawing this to your Lordships' attention, as if there's any other plans there may be to not include things in the Bill and proceed privately by way of planning applications. This was the first time that I've – we

were aware that this has occurred. So I'm simply drawing it to your Lordships' attention that this is what was done.

307. Anyway, going through my submissions, brief submissions, there's been little – in our view there's been little – although you have heard from other groups about this – little public engagement by HS2 since the start of the Bill, and it's been extremely difficult in getting information from them. They've only since the Bill reached the Lords started the Euston Community Representatives Group meeting, local groups concerned with the Euston station redevelopment.

308. These meetings so far have been, in our view, unproductive, and little information has emerged, and we consider that it's necessary to have full public engagement. And it's included that we can see that HS2 should arrange full public meetings so the whole scheme can be fully explained, what the design and other proposals are, reasons for them, along with any other proposed changes to the present scheme. And this could be done in a user friendly way, with slides, pictures and competent speakers, so that residents don't have to plough through reams of paperwork. And I have to say the volumes of paperwork that have been produced in this case would be daunting to any person, be they professional or otherwise. I just make that point.

309. The presentation skills could, in my view, be a lot – our view, be a lot improved with coherent presentation. And the whole exercise of public engagement is virtually non-existent up until very recently, as a result of pressure being put on by the Committee in the other House and here, and contended that – well, I won't go on and say what I've put in in paragraph 8, in view of your Lordship's comments. So that's what I say about the lack of consultation.

310. And I would just draw your Lordships' attention to the brief witness statement that I've produced. I'm not going to read it again, but I'll just give your Lordships an example that a member at one of the last meetings did actually raise the issue of the demolition of the Temperance Hospital, and the person concerned was informed – I think it was about the costs of the demolition being – exceeding what was authorised in the Bill. They didn't know the answer. They did say they would come back, but no information was provided about the planning application. So I just – I'm not going to say anything further about it.

311. And going on, there have been disclosure – Freedom of Information requests, major projects and so forth. I'm not going to dwell on that, because I appreciate it is not a matter for the Committee.

312. So going on, the cutting and Euston Parkway tunnel. I'm not going to dwell too much on this because you've heard from other groups, so I'll be very brief. Important not to repeat the mistakes of Crossrail. We consider that there are other solutions, which I think the solutions refer with – there's been some photographs produced of Euston station. I'm not going to go through in detail with the slides. Your Lordships will have seen them. We think, in short, along with other organisations, that there's ample space to have alternative schemes to build the station on the present footprint. And I'm not going to go through the details of that, either – on page 4, either burrowing to the left of the present cutting and going on behind it, or underneath the present track, and if necessary could be removed. The present cutting wall could be removed and replaced again afterwards if tracks were slotted into the hillside.

313. What I would say is that the whole scheme so far has been short on detail. It's been said that we have to proceed, as we're going to proceed, with these 11 platforms and so on, and we can't consider going – building underneath, and we can't consider building above or using the outside space at Euston station, etc. And your Lordships have seen the photographs with the very wide platforms that are at Euston. Masses of space in there, we would submit. But there's been very little detail or justification, in our view, for proceeding with this scheme as presently proposed. So that's what we say about that, and we support the suggestions of a tunnel – going straight into a tunnel much earlier than at Parkway. So that is our submission on that.

314. And we have presented some questions, which – I'm not going to read them all out. Page 4 and 5 and 6, which your Lordships have read, so I don't need to refer to them.

315. As I say, apart from the Temperance issue, as I say, on that issue we do seek some – we do think it desirable to seek some undertakings from the promoter that they will undertake to pursue their scheme in the context of the Bill, and we think it's quite wrong that in future they should, if they think fit, make a private planning application and not go through the scheme of the Bill, because we can't see the point of putting, say, for

instance, the Temperance Hospital, putting it in the Bill and then going off and making a private planning application. Presumably in this case they wanted to demolish it earlier. I'm not even sure what the reasons are for early demolition.

316. Whether your Lordships would eventually approve of it, as your Lordship has indicated, your Lordships may well do, but, in our view, we don't see the relevance or the justification for the demolition of the Temperance hotel. It's not actually in the area where –

317. THE CHAIRMAN: It was a hospital about 40 years ago.

318. MR EWING: I'm aware of that, yes, but we can't see the point or the reason for the demolition of the building at all, because it's not even in the proposed extension of the station which is proposed to be demolished. As I say, we object to that as well, because we think it should be in the footprint, but we can't see the justification for demolishing the Temperance Hospital which is about half a mile away from the proposed site, so we would have put forward or wanted to put forward an objection to that being – the demolition of that building being included in the Bill. It could, in our view, be renovated and revamped and reused in – using the present building.

319. So that is our view, and we do object to this going outside the Bill and putting forward these private planning applications, and we don't know whether this is planned for anything else in the future. They've come along, they've presented a Bill setting out all that they're going to do in the Bill, and we think it's quite wrong to deviate from that course. So I don't think I can take that point any further. I think we've made our point on that.

320. Finally – I think I'm dealing with 7 and 8 – we would seek that there be a clause in the Bill to either provide for provisions so that a judicial review can be made – if appropriate, we're not saying that anybody would want to do so – and to disable Article 9 of the Bill of Rights, which, as your Lordships will know, precludes legal challenges in respect of any proceedings in Parliament. And we rely on Article 9 of the Aarhus convention on this, which does provide for remedies in general planning applications and environmental decisions to be reviewed by a court, on page 10 it is, and I'm – I'll not read out the provisions. But I'm aware that it has not been incorporated into domestic law. It's been incorporated into a directive, an EU directive, but that's not

binding, because it's a regulation, but I would have thought that it is appropriate that if you're going to legislate you take cognisance of international treaty obligations.

321. And we would submit that there should be some provision for disabling Article 9 of the Bill of Rights if somebody were minded to seek a judicial review. I'm not saying that anybody would, but in order to be treaty compliant and Aarhus Convention compliant. And we've looked through the Bill and we've – I can't find anything in there that provides for this, and you see on page 7 and 8 there is a proposed suggested clause, probably not very well drafted or good, but it hits it on the nail. And I think at paragraph 7 we just make the point that aggrieved parties do have, of course, the right to go to the Aarhus compliance committee themselves if they think that the Bill, or the Act when it's enacted, is insufficient and they don't think that they have had a right of access to a court for any review for any particular reason.

322. So I'm aware that none of these Crossrail Bills in the past, and presumably there will be other hybrid Bills, that it is not the – nothing like this has been included in them before, but this is perhaps the first time that this has been raised, and we seek to draw this to your Lordships' attention. So unless there's anything else, as I say, I don't propose to go through the questions. I think they're all adequately set out and it would take some time to do so.

323. THE CHAIRMAN: Thank you very much, Mr Ewing. Can you conveniently answer this, or would you prefer to put it in a written note which Mr Ewing can reply to, Mr Mould?

324. MR MOULD QC (DfT): It may be more sensible if I do something in writing for you. I mean, my understanding is that the Government is satisfied that the Bill in its current form enables it to fulfil its treaty obligations under the Aarhus Convention, but I can elaborate on that as necessary.

325. THE CHAIRMAN: Well, I think the Supreme Court has, in advance, said much the same, hasn't it?

326. MR MOULD QC (DfT): Yes.

327. THE CHAIRMAN: Although that of course was in relation particularly to the

original environmental statement.

328. MR MOULD QC (DfT): Yes. I only put it in the way that I did because we're hearing a few of the legislation, and obviously Aarhus is a treaty, rather than a directly legally binding obligation on the – but I can address the Supreme Court's reasoning on that.

329. THE CHAIRMAN: Because we are pressed for time now, if you could kindly put in a written –

330. MR MOULD QC (DfT): I will do so, yes.

331. THE CHAIRMAN: – submission, and then you, Mr Ewing, will of course have the opportunity to reply to that.

332. MR EWING: Yes. I would just like to point out so far as I was aware the Supreme Court ruling which the learned counsel is referring to didn't consider this particular issue.

333. MR MOULD QC (DfT): Well, I'll deal with that. My Lord, can I just ask you for your note just to write down P2279(11) and (12) –

334. THE CHAIRMAN: P2279.

335. MR MOULD QC (DfT): P2279(11) and (12), which give you details of the public consultation events in relation to the demolition of the National Temperance Hospital.

336. THE CHAIRMAN: Right.

337. MR MOULD QC (DfT): 19,000 households were leafleted about that particular... Maybe we should have done 19,005. I don't know. Thank you.

338. THE CHAIRMAN: Well, it's now past one o'clock. I think that, Mr and Mrs Chandler, if you could speak to our – the clerk, we'll see whether we can arrange to –

339. MR MOULD QC (DfT): I gather Mrs Chandler will only be about a minute.

340. THE CHAIRMAN: Right.

341. MR MOULD QC (DfT): And if she's a minute I shall be 30 seconds, so...

342. THE CHAIRMAN: If you want to break records and do it all in a minute, that's fine. Otherwise we could take you fourth this afternoon.

343. LORD YOUNG OF NORWOOD GREEN: Is that without hesitation or deviation?

**Luisa Chandler and Alan Chandler and on behalf of their two children**

344. MRS CHANDLER: Like Mornington Crescent. That's where I live. We've dotted an I and we still have to cross a T, so all I'm asking for at this moment is the right to come back to you if that doesn't quite work out. I don't have a final letter and I understand now that I am going to be offered an assurance, which I'm very grateful for, because I had a quite disappointing email on Friday, which made me feel as if we'd gone backwards rather than forwards. So it's looking positive and hopefully I won't have to come back to you again.

345. THE CHAIRMAN: That is good news, and thank you for addressing us so briefly. I hope you don't have to come back, because you don't want to need to.

346. MRS CHANDLER: So do I, although you're delightful. Thanks very much.

347. THE CHAIRMAN: We'll adjourn then until two o'clock.