IN THE COURT OF APPEAL (CIVIL DIVISION) **CA-2025-001450**
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION, PLANNING COURT,
Dove J [2025] EWHC 1248 (Admin)
B E T W E E N:

THE KING
-on the application of-
NORTH WARWICKSHIRE BOROUGH COUNCIL

Appellant

-and-
(1) THE SECRETARY OF STATE FOR TRANSPORT
(2) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

Respondents

-and-
HIGH SPEED TWO (HS2) LIMITED

Interested Party

RESPONDENTS' SKELETON ARGUMENT

References to the Core Bundle and Supplementary Bundle are: [CB or SB /TAB/PAGE]
Paragraph references to the High Court Judgment of Dove J (as he then was) are: HCJ[x]
Paragraph references to the Appellant's Appeal Skeleton Argument are: AS/A[x]

INTRODUCTION AND SUMMARY

1. This appeal concerns a judicial review challenge brought by the Appellant to the joint decision of the Respondents, the Secretary of State for Transport and Secretary of State for Levelling Up, Housing and Communities ("**the Secretaries of State**"), dated 14 May 2024. The decision was to allow an appeal made by the Interested Party, HS2 Ltd, against the Appellant's failure to determine an application for grant approval for plans and specifications concerning certain works for Phase One of HS2 under Schedule 17 to the High Speed Rail (London-West Midlands) Act 2017 ("**the 2017 Act**").

2. The works that remain in dispute[1] are the "formation of a concrete tunnel portal structure, the 'Bromford Tunnel East Portal' [("**the BTEP**")] at the eastern end of the tunnel and western end of the [Water Orton] Cutting". The BTEP, as its name suggests, is the eastern entrance/exit portal to the Bromford Tunnel.

[1] In circumstances where the application also sought approval for the plans/ specifications for the Water Orton Cutting and Attelboro Lane Overbridge and other works and the successful appeal against the Appellant's non-determination of that part of the application has not been challenged by the Appellant.

3. The Bromford Tunnel forms part of the "scheduled works" identified in s.1 and Schedule 1 of the 2017 Act. HS2 Ltd wished to extend the length of the Bromford Tunnel towards the east along the same line of route (the Bromford Tunnel Extension ("**the BTE**")) so as to put more of the HS2 railway underground using the same land. It was not necessary for HS2 Ltd to seek approval for plans and specifications for the BTE as it involved underground building works[2]. They did require approval for the plans and specifications in respect of the portal, and so in this case the BTEP which represents the relocation of the original portal for the Bromford Tunnel.

4. The Appellant had refused to determine HS2 Ltd's application on the basis that it involved works not authorised by the 2017 Act. The Respondents allowed HS2 Ltd's appeal.

5. By its claim below, the Appellant contended (amongst other things) that:

    a. The Respondents had erred in law in their interpretation of s.2(1) of the 2017 Act "(**Ground 1**")[3]. The Appellant contended that the power under s.2(1) of the 2017 Act to carry out non-scheduled works only authorised the carrying out of works "ancillary or incidental" to the scheduled works specified in Schedule 1, did not permit any alterations to the scheme itself, and excluded any power to construct tunnels (or related structures) such as the BTE and BTEP;

    b. The Respondents erred in law in their approach to s.20(2) of the 2017 Act in finding that there was deemed planning permission for the BTE and BTEP ("**Ground 2**")[4]. The Appellant contended that such permission could only apply if the works in question were specifically identified in the environmental statement ("**the ES**") deposited or published in connection with the High Speed Rail (London-West Midlands) Bill ("**the Bill**"), rather than being works which did not give rise to new or different likely significant environment effects to those that had been reported in the ES and so within the "environmental envelope" of what had been assessed.

    c. The Respondents' alleged errors under Grounds 1 and 2 were (it was said) compounded by a lack of adequate reasoning and/or irrationality ("**Ground 3**")[5]. This included allegations that the Respondents had not explained why s.20(2)(c) of

[2] Building works that are underground do not require the approval of plans and specifications. See s.20(3) & Sch17, paras 2(1), 2(8) and 30(g).

[3] See Appellant's Statement of Facts and Grounds, Ground 1: paras 47-60 [**CB/7/81-3**].

[4] See Appellant's Statement of Facts and Grounds, Ground 2: paras 61-70 [**CB/7/84-7**]

[5] See Appellant's Statement of Facts and Grounds, Ground 3: paras 71-77 [**CB/7/87**], where paragraphs 71-76 deal with reasons and paragraph 77 includes the allegation of irrationality

the 2017 Act should not be construed as excluding the BTE and BTEP from the deemed grant of planning permission, and further, or in any event, how the BTE and/or BTEP did not introduce any new or different likely significant effects to those assessed in the ES.

6. The Appellant's claim was rejected on all grounds by a comprehensive and carefully reasoned judgment of the Judge below dated 20 May 2025 ([2025] EWHC 1248 (Admin) [**CB/6/31**]) and Order dated 21 May 2025 [**CB/5/29**]. The Appellant appeals against that decision in respect of Grounds 1 and 2 only[6].

7. The issues raised by those Grounds concern the correct interpretation of s.2(1) and s.20 of the 2017 Act respectively, in light of the 2017 Act's clear purpose of authorising the construction and maintenance of the Phase One high-speed railway line from London to the West Midlands. As the Judge identified: "The purpose is to enable the construction and maintenance of a railway between the points which are specified": see HCJ29 **[CB/6/43]**. Consistent with many similar Acts providing for the provision and maintenance of linear railway infrastructure of this kind, the 2017 Act grants the necessary powers with appropriate flexibility for its delivery. In this case:

   a. S.1 and Schedule 1 of the 2017 Act provide for "scheduled works". The Judge correctly characterised these as parameters, given the description of those works and the limits of deviation (HCJ30 **[CB/6/43]**).

   b. In addition, s.2 of the 2017 Act provides the nominated undertaker with the power to implement other works (therefore necessarily not "scheduled works") "**for the purposes of or in connection with the scheduled works <u>or otherwise for Phase One purposes</u>**". As the Judge further noted at HCJ32 **[CB/6/44]**, such authorised non-scheduled works are not without restriction: not only do they have to be for purposes of, or in connection with, the scheduled works or otherwise for Phase One purposes, but they must also take place within the limits provided within the Act and fall into one of the categories specified by s.2(1)(a) to (i).

8. As the Judge below correctly identified at HCJ 34:

> "There is … a sense in which section 1 and 2 are complementary to each other and also to the purposes of the 2017 Act. Given the scale and nature of the project, it is clear that Parliament regarded it as unrealistic for every last detail of what would be required for the project to be successfully implemented and maintained at the outset. There is, therefore, within the structure of the 2017 Act both identified parameters and

[6] See Appellant's Grounds of Appeal [**CB/1/16**].

constrained flexibility to ensure that the project is delivered effectively. The provisions of section 2(1) are integral to that approach." **[CB/6/44]**

9. There is, or can be, no dispute that the BTE and BTEP are for Phase One purposes. As an extension to the scheduled Bromford Tunnel itself, there can also be no real dispute that the BTE and the consequential BTEP are in fact also "in connection" with the scheduled works. There is also no dispute that both the BTE and BTEP are to take place within the limits provided by the 2017 Act - no additional land beyond that already covered by the 2017 Act powers is required; the same line of route is used. As to the categories of work authorised within these restrictions, s.2(1)(i) specifically permits works "of whatever description, as may be necessary or expedient". It is clear that both the BTE and BTEP fall well within the ambit of that power.

10. Harmoniously with the grant of powers described above, s.20 of the 2017 Act grants deemed planning permission for the works under Part 3 of the Town and Country Planning Act 1990 ("the TCPA 1990"). In light of the requirements of the "Environmental Impact Assessment Regulations"[7], s.20 recognises the distinction between:

    a. Development authorised by the 2017 Act consisting of "scheduled works" under s.1 and Schedule 1 of the 2017 Act – as identified above, the parameters of those works are described in the 2017 Act itself and so identified for the purposes an environmental assessment in the ES for the Bill;

    b. Development authorised by the 2017 Act which is "not a scheduled work" – such work will therefore not be described in the 2017 Act itself. To reflect the requirements of the EIA Regulations, deemed planning permission will **not** apply to such development **if** all three of the specified criteria apply, namely: (i) the development is likely to have significant effects on the environment; (ii) the development is not exempt development within the meaning of the EIA Regulations; and (iii) the development is not covered by an environmental assessment in connection with the Bill. The need for all three criteria to apply is logical. If development that is "not a scheduled work" is not likely to have significant effects on the environment, or if it is exempt development, it is not development for which an EIA would be required in any event. The Appellant has

[7] Defined in section 68 of the 2017 Act as "the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) (or any regulations replacing them"). The 2011 Regulations have been replaced by the Town and Country Planning (Environmental Impact Assessment Regulations 2017 ("the 2017 Regulations").

not pursued the allegation in Ground 3 of lack of adequate reasons or irrationality in respect of the conclusion that the BTE and BTEP would not have any additional likely significant effects on the environment beyond those already assessed. But in any event, consistent with the basic purpose of the EIA Regulations, development which is "covered" by an ES, because it falls within the environmental envelope of the assessment within the ES (as was concluded on the facts in this case) is not development for which any further EIA is required.

11. Accordingly, the Appellant's appeal falls to be dismissed on both grounds for the reasons identified by the Judge and as amplified below. The Appellant's contentions in respect of both ss 2 and 20 of the 2017 Act conflict with the natural and ordinary meaning of the words used construed in accordance with the basic purpose of the 2017 Act.

LEGAL FRAMEWORK

The 2017 Act

Powers to construct and maintain

12. S.1 of the 2017 Act empowers the nominated undertaker to construct and maintain what are identified as "scheduled works" for Phase One of High Speed 2. Schedule 1 lists an extensive description of the scheduled works. The description of the scheduled works must be read together with para.1 of Schedule 1 which provides, as relevant:

> "(1) The scheduled works must be constructed—
>
> (a) in the lines or situations shown on the deposited plans,
>
> (b) in accordance with the levels shown on the deposited sections, and
>
> (c) in the case of any station, depot or shaft for which an upper limit is shown on the deposited sections, within the limit so shown.
>
> This is subject to sub-paragraph (2).
>
> (2) In constructing or maintaining any of the scheduled works, the nominated undertaker may deviate—
>
> (a) laterally to any extent from the lines or situations shown on the deposited plans, within the limits of deviation so shown,
>
> (b) vertically downwards to any extent from the level shown for that work on the deposited sections, and"

13. S.2(1) then goes on to make further provision for authorising works for Phase One which are not constrained by the provision in s.1 of the 2017 Act (generally referred to as "non-scheduled works"):

"2 Further provision about works

(1) The nominated undertaker may, for the purposes of or in connection with the scheduled works or otherwise for Phase One purposes, do any of the following within the Act limits—

(a) carry out and maintain railway electrification and signalling works;

(b) make, provide and maintain all such approaches, bridges, subways, interchanges, roundabouts, turning places, lifts, stairs, escalators, ramps, passages, means of access, shafts, buildings, apparatus, plant and machinery as may be necessary or expedient;

(c) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or expedient;

(d) demolish the whole or part of any building or structure;

(e) alter or remove any structure erected upon any highway or adjoining land;

(f) alter, or alter the position of, railway track and any apparatus associated with railway track;

(g) alter, or alter the position of, other apparatus, including mains, sewers, drains and cables;

(h) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(i) carry out and maintain such other works, of whatever description, as may be necessary or expedient." (emphasis added)

14. The "Act limits" referred to in s.2 of the 2017 Act are defined by s.68(2).

15. S.67 defines the phrase "Phase One purposes" used in s.2 as follows:

"67 "Phase One purposes"

References in this Act to anything being done or required for "Phase One purposes" are to the thing being done or required—

(a) for the purposes of or in connection with the works authorised by this Act,

(b) for the purposes of or in connection with trains all or part of whose journey is on Phase One of High Speed 2, or

(c) otherwise for the purposes of or in connection with Phase One of High Speed 2 or any high speed railway transport system of which Phase One of High Speed 2 forms or is to form part." (emphasis added)

16. "Phase One of High Speed 2" is defined as meaning "a railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Water Orton in Warwickshire to Curzon Street in Birmingham": s.1(3).

17. S. 42 and Schedule 29 of the 2017 Act also incorporate s.16 of the Railways Clauses Consolidation Act 1845 ("**the 1845 Act**") and s.4 of the Railways Clauses Act 1863 ("**the 1863 Act**") into the 2017 Act "in so far as they are applicable for the purposes of this Act and not inconsistent with its provisions".

18. S.16 of the 1845 Act (subject to the omissions set out in the 2017 Act) specifically provides, as relevant:

> **"16 Works to be executed.**
>
> Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, herein-after mentioned, to execute any of the following works; (that is to say,)
>
> > They may make or construct in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper…
> >
> > They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway…" (emphasis added)

19. S.4 of the 1863 Act (again with omissions set out in the 2017 Act) provides a power to alter engineering works:

> "**4. Power to alter engineering works.**
>
> Notwithstanding anything in the said Railways Clauses Consolidation Acts, respectively contained, the company, in the construction of the railway may deviate from the line or level of any arch, tunnel or viaduct, described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and so as the nature of the work described be not altered, and may also substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon; ..." (emphasis added)

Deemed Planning Permission

20. S.20 of the 2017 Act grants deemed planning permission in respect of the railway in terms of development that is authorised by the 2017 Act, with s.20(2) applying to non-scheduled works. It provides, as relevant:

> **"20 Deemed planning permission**
>
> (1) Planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the carrying out of development authorised by this Act. This is subject to the other provisions of this Act.
>
> (2) Where development authorised by this Act consists of the carrying out of a work which is not a scheduled work, subsection (1) does not apply if—
>
> > (a) the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location,
> >
> > (b) the development is not exempt development within the meaning of the Environmental Impact Assessment Regulations, and

(c) the development is not covered by an environmental assessment in connection with the High Speed Rail (London - West Midlands) Bill.

(3) Schedule 17 imposes conditions on deemed planning permission under subsection (1)."

21. S.68(4) of the 2017 Act also specifically provides:

" (4) For the purposes of this Act, development is covered by an environmental assessment in connection with the High Speed Rail (London - West Midlands) Bill if it is development in relation to which information contained in a deposited statement constituted, at the time of the statement's deposit or publication, an environmental statement within the meaning of the Environmental Impact Assessment Regulations."

Principles of Statutory Interpretation

22. As noted at HCJ 23 **[CB/6/42]** the approach to statutory interpretation was described by the Court of Appeal in *CG Fry & Son Ltd v SSLUHC* [2024] 2 P&CR12; [2024] EWCA Civ 730 at [68] in an approach that has now been endorsed by the Supreme Court [2025] PTSR 1823; [2025] UKSC 35 at [44]-[46]. Both the Court of Appeal and Supreme Court have rejected as false the suggested dichotomy between the "natural and ordinary meaning" of legislation and a "purposive approach". As stated by Lord Sales in the SC at [45]-[46]:

"45. … a purposive approach should be adopted. This is encapsulated in the oft-cited statement of Lord Bingham of Cornhill in *R(Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687 at para 8:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context which led to its enactment." …

46. In this case the Court of Appeal correctly observed ([2024] PTSR 2000, para 68) that there is no dichotomy between looking at the natural and ordinary meaning of legislation and purposive approach to construction. The authorities make it clear that the correct approach is that legislation must be construed having regard to its context and in the light of its purpose. "The purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it": *PACCAR* [2023] 1 WLR 2594, para 41."

23. Two further principles of statutory interpretation are of relevance in this case:

a. First, Parliament does not legislate in a vacuum. It is presumed to be aware of the state of the relevant pre-existing law and to legislate in light of that knowledge (see e.g., *Hirachand v Hirachand* [2025] A.C. 599 at [58] *per* Lord Richards)

b. Second, as Lord Millet explained in *R (Edison First Power Ltd) v. Central Valuation Officer* [2003] 4 All ER 209:

> "116. … The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless." (see also *Settlers Court RTM Co Ltd v. First Property Services Ltd* [2022] 1 WLR 519 at [54] to similar effect)

BACKGROUND

The Bromford Tunnel, HS2's proposed extension of it and the Screening Report

24. The scheduled works for Phase One of HS2 under the 2017 Act include Work No. 3/203. This scheduled work provides, so far as material, for *"A railway (2.86 kilometres in length in tunnel) commencing by a junction with Work No. 3/200 at its termination…"*. It is this tunnel which is known as the Bromford Tunnel.

25. The BTE would extend the length of the Bromford Tunnel by approximately a further 2.9km towards the east, so the extended tunnel would be approximately 5.8km in length. But the BTE would be on the same line of route and therefore simply place the railway in tunnel along exactly the same length authorised by the 2017 Act, using the same land within the areas already covered by Work Nos 3/200 ('*A railway (2.06 kilometres in length)…*') and 3/157 ('*A railway (1.13 kilometres in length) partly on viaduct…*'). The effect of the BTE is to place an additional length of the authorised railway in the extended tunnel rather than above ground.

26. As the BTE was not part of the "scheduled works", it was the subject of an Environmental Impact Assessment Screening Report ("**the Screening Report**") undertaken by HS2 Ltd in February 2021. The purpose of the Screening Report was to compare the "*relevant aspects of the Phase One scheme with the Proposed Development* [i.e. the BTE] *to determine whether the Proposed Development is likely to have new or different adverse significant effects on the environment"* (para. 1.1.7) **[SB/19/173]**.

27. That Screening Report concluded that *"following mitigation, there are no new or different significant adverse effects caused by the Proposed Development, as compared with the Phase One scheme"* (para. 19.1.17) **[SB/19/215]**. It noted that there would be *"relative benefits… primarily due to placing of the railway in tunnel and the corresponding reduced influence of development proposals on areas of land, and associated environmental receptors, between Water Orton and the eastern edge of Birmingham"* (para. 19.1.17). This

assessment included the works necessary to construct the BTEP (para. 2.3.4, bullet 5 **[SB/19/194]**).

28. The Screening Report reflects what is quintessentially an evaluative judgement. There is no extant rationality challenge to the Respondents' agreement with that conclusion[8]. It is therefore now not open to the Appellant to assert baldly at AS/A15 that the effects of the extended BTE and BTEP have not been appropriately assessed in terms of impact and mitigation. Nor is it permissible for the Appellant to seek to criticise the judgment below at AS/A79 &87, for proceeding on the basis that the BTE and BTEP would not give rise to new or different significant effects, and therefore those works fell within the "environmental envelope" provided for in the ES published with the Bill (see, e.g. HCJ 62 **[CB/6/5]**). The Appellant's position is all the more unattractive , and untenable even if it were open to it to advance an irrationality challenge, given that, as explained below, the Appellant itself originally came to the same judgment as that expressed in the Screening Report.

Screening Decision, Screening Opinion and TWAO application

29. HS2 Ltd were of the view that the BTE, and the consequentially relocated BTEP, could lawfully be constructed under the existing powers conferred by the 2017 Act. However, they considered it would be desirable, in order to avoid any inconsistency with the description of the scheduled works in the 2017 Act, to provide for an amendment to the description of Work No. 3/157 so as to remove the words "partly on viaduct" that currently appear in the description of that Work. Of the 1.13km of railway authorised by Work No 3/157, less than 30m was to be on viaduct.

30. HS2 Ltd therefore proposed an amendment to the description of scheduled Work No. 3/157 by way of an application for an order under the Transport and Works Act 1992 ("**TWAO**"). That application was made on 20 January 2022. In the event, determination of the application has been deferred pending the outcome of the Schedule 17 appeal, now the subject of this challenge.

31. In February 2021, prior to that TWAO application, HS2 Ltd had requested a screening decision[9] from the Secretary of State for Transport as to whether an EIA of the works

[8] As noted above, Ground 3 has not been pursued by the Appellant.

[9] Under Rule 7 (4) of The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("**the 2006 Rules**")

covered by that proposed TWAO would be required. In doing so, HS2 Ltd relied on the Screening Report of the BTE referred to above.

32. On 10 March 2021, the Appellant issued its own Screening Opinion[10]. The Appellant itself concurred with the evaluative judgment HS2 Ltd had made in its Screening Report, concluding that "…*following mitigation, there are no new or different likely adverse significant environmental effects caused by the Proposed Development, and it therefore should not be considered the subject of additional and separate environmental impact assessment."* **[SB/20/224]**.

33. On 31 March 2021, the Secretary of State for Transport issued a screening decision ("**the Screening Decision**" **[SB/21/226-7]**). It acknowledged that the Screening Report had concluded that the BTE *"would not result in any new or different significant environmental effects as compared against the existing consented project*" and the Secretary of State for Transport did not disagree with that judgement, but instead took the view that, as *"changes to the project* [i.e the BTE] *are likely to have significant effects on the environment (even if these are no greater than previously assessed)"* an EIA should take place.

34. On 20 October 2021 Eversheds Sutherland, acting on behalf of HS2 Ltd, wrote in response explaining HS2 Ltd's position that the TWAO proposed would not confer any power to carry out works, given that the power to carry out the works to construct the BTE was already conferred by the 2017 Act **[SB/23/231-6]**. They identified that the proposed TWAO would simply remove *"reference to the railway being constructed on viaduct in the description of Work No. 3/157"*. They therefore requested a screening direction that an EIA was not required because the proposed TWAO would not authorise any works.

35. The Secretary of State for Transport responded on 4 November 2021 noting that, if the TWAO application would not comprise any works, there would be no statutory requirement for an environmental statement; but that it was for HS2 Ltd to decide on the scope of the TWAO application, and consequently to decide whether the Screening Direction issued on 31 March 2021 (which concerned the BTE) was in fact relevant to that application **[SB/24/237-9]**.

36. The draft TWAO that has been proposed by HS2 Ltd does indeed only seek a very minor amendment to the 2017 Act and does not seek authorisation for any works. Accordingly,

[10] Under Rule 7(8)&(9) of the 2006 Rules the Secretary of State is not permitted to give his screening decision until he has obtained the written opinion of *inter alia* the local planning authority in whose area the works would be carried out.

HS2 Ltd did not submit an ES with its TWAO application. That is consistent with their identified position that the *"amendment to the description of Work No. 3/157 will not authorise any development itself since the construction of the railway in the location of the Bromford Tunnel (and the tunnel itself) is authorised by the Act"* (see Statement of Aims, para. 3.5 **[SB/26/253]**).

The Schedule 17 application and appeal

37. Separately, on 22 September 2021, HS2 Ltd applied to the Appellant under Schedule 17 of the 2017 Act for the Appellant's approval of plans and specifications relating to the construction of the BTEP (amongst other works) ("**the Application**").

38. On 8 October 2021 the Appellant declined to determine the application on the basis of their contention that the proposed works were not authorised under the 2017 Act and that they did not benefit from deemed planning permission **[SB/22/228-30]**.

39. HS2 Ltd consequently appealed to the Secretaries of State on 21 November 2021 against this failure to determine the Application. The Inspector appointed to report on the application to the Secretaries of State held a hearing on 27 April 2022. On 9 August 2022 the Secretaries of State directed that they would jointly determine the appeal.

The Inspector's Reports

40. The Inspector issued his first report on 31 March 2023 ("**IR**") **[CB/11/146-74]**, followed by an Addendum Report on 13 December 2023 ("**AR**") **[CB/12/175-84]**.

41. In his first report, the IR, the Inspector recommended that HS2 Ltd's appeal be allowed, except in respect of the application for approval of plans and specification relating to the BTEP. He recommended that the appeal in respect of the BTEP be dismissed because, in his view, the works to construct it were not authorised by the 2017 Act and did not benefit from deemed planning permission under s.20(1) [IR47] **[CB/11/157]**.

42. Following a request by the Secretaries of State that he report on *inter alia* the BTEP's design, the Inspector produced his AR concluding that no conditions be imposed in connection with the request for approval of plans and specifications relating to the BTEP [AR28] **[CB/12/182]**, albeit he did not alter his earlier view that this aspect of the appeal

should be dismissed due to his (erroneous) interpretation of the powers of the 2017 Act [AR4] **[CB/12/177]**.

The Decision Letter

43. In a decision letter dated 14 May 2024, the Secretaries of State issued their decision disagreeing with that part of the Inspector's recommendation in respect of the BTEP and allowing the appeal in full (**"the DL") [CB/10/138]**.

44. At DL6 the Secretaries of State identified three main issues raised by the appeal:

    a. whether the BTE and relocation of the BTEP are authorised under the 2017 Act;

    b. whether the proposed works subject to the request for the approval of details under Schedule 17 benefit from the deemed planning permission granted under s.20 of the 2017 Act; and

    c. whether those works should be approved or refused having regard to the conditions stated in either paragraphs 2 or 3 of Schedule 17 to the 2017 Act. **[CB/10/139]**

45. This appeal is only concerned with the Secretaries of States' conclusions on the first and second main issues, which are set out in DL7-8 and DL9-14 (HCJ 13 **[CB/6/35]**).

46. As to the first issue, the Secretaries of State identified – correctly– that the power to carry out works within s.2(1)(i) of the 2017 Act was *"sufficiently broad to cover an extension to a tunnel* [i.e. the BTE]*, and ancillary works to such an extended tunnel such as the BTEP relocation"* [DL7-8] **[CB/10/140]**.

47. As the second issue, the Secretaries of State:

    a. considered –again correctly– that, for the purposes of s.20(2)(c) of the 2017 Act, a "*development is "covered by an environmental assessment in connection with the High Speed Rail (London- West Midlands) Bill" where there are no new or different likely significant effects to those reported in the environmental assessment"* [DL11];

    b. concluded, therefore (again correctly), that the 2017 Act brought *"within the ambit of DPP* [deemed planning permission] *those works which would not result in new or different likely significant effects to those assessed in the ES"* [DL12];

    c. found (as they were entitled to as a matter of evaluative judgment), by reference to the Screening Decision, that neither the BTE nor the BTEP would result in new or different likely significant effects to those reported in the environmental statements deposited or published in connection with the Bill [DL13]; and

d. lawfully concluded that the BTE and relocation of the BTEP both benefited from deemed planning permission under the 2017 Act [DL14]. **[CB/10/140-1]**

SUBMISSIONS

Ground 1 – alleged error of law in interpretation of s2(1) of the 2017 Act

48. In short, the Respondents submit that the Judge's analysis at HCJ 31-42 **[CB/6/44-7]** as to the proper interpretation of s.2(1) in light of the purpose of the 2017 Act is manifestly correct and this ground of appeal should be dismissed.

49. The Appellant is wrong to suggest that Dove J "took a 'broadbrush' or impermissibly wide approach in his interpretation of the relevant provisions of the Act" (AS/A 53), or that he effectively subjugated "the language of the Act in favour of a 'purposive' approach" (AS/A 54). Rather, as the Judge makes clear, he adopted a "*unified process in which the language of the legislation is read and understood in its context in the light of its purpose*" reflecting precisely the approach to interpretation endorsed by the SC in *CG Fry* (as above).

The straightforward interpretation

50. Moreover, and in any event, the Judge's interpretation aligns with the straightforward and proper interpretation of the statutory language used in s.2(1), consistent with the basic purpose of the 2017 Act, which clearly authorises the construction of the BTE and BTEP as non-scheduled works for Phase One purposes:

    a. S.2(1)(i) of the 2017 Act expressly permits the nominated undertaker "*for the purposes of or in connection with the scheduled works or otherwise for Phase One purposes"* to *"do any of the following within the Act limits…(i) carry out and maintain such other works, of whatever description, as may be necessary or expedient" (emphasis added).* The BTE and BTEP are works which are obviously for Phase One purposes, and so that is sufficient in itself, but they are also in connection with the scheduled works anyway.

    b. The construction of the BTE and BTEP also obviously amount to the carrying out of works which fall within the category of s.2(1)(i), being *"works…of whatever description, as may be necessary or expedient"*); it is difficult to conceive of a deliberately broader use of language to authorise such works than Parliament stating that it is permitting works "of whatever description" (subject to the other restrictions which these works satisfy).

c. The limitation that the works are "necessary or expedient" is clearly met in this case– and no-one has suggested otherwise[11];

d. The limitation that the construction of both the BTE and BTEP must be carried out "within Act limits", as defined in s.68(2), is also met and again no-one is suggesting otherwise; and

e. The BTE and BTEP are being constructed "for Phase One purposes" and again no one suggests otherwise. The works are "*being done…for the purposes of or in connection with Phase One of High Speed 2*" (s.67(2)(c)), as they deliver the construction of a railway which forms part of a "spur from Water Orton in Warwickshire to Curzon Street in Birmingham".

51. This straightforward interpretation is entirely consistent with the purpose of the whole 2017 Act. The Judge correctly identified that purpose, expressed in s.1(3), as being to enable the construction and maintenance of a railway between specified points (HCJ 29 **[CB/6/43]**). Contrary to AS/A 54 this does not mean that the Act is to be interpreted as enabling the construction of "any railway". To the contrary, it only permits: the construction of the Phase One HS2 railway between the specified points identified in s.1(3); by scheduled works within limits of deviation; and/or by non-scheduled works which are in connection with the scheduled works *or* otherwise for Phase One purposes, which must take place within the Act limits and, at least in respect of those works falling in s.2(1(i)), are necessary or expedient.

52. The Judge was, therefore, correct to conclude that the interpretation by the Secretaries of State of the power in s.2(1) of the 2017 Act accords with both the plain meaning of the language used and the purposes of the 2017 Act (HCJ33 **[CB/6/44]**).

The Appellant's contrary interpretation

53. The Judge was correct (in HCJ34-43 **[CB/6/44-7]**) to reject the Claimant's contentions that construction of the BTEP and BTE somehow fell outside the scope of s.2(1) and the suggestion that such works could only be permitted if they were scheduled works. [12]

[11] The need for the BTE is summarised within the Screening Report at para 2.2.1 **[SB/19/190]**

[12] Contrary to AS/A 55, the Judge was also correct at HCJ 30 to describe the specification of scheduled works as "more properly parameters" "in the sense that they contain limits of deviation governed by the construction requirements which are set out in paragraph 1 of Schedule 1 of the 2017 Act …" But in any event, this submission goes nowhere when the focus of this challenge is concerned with the proper scope of the power to construct non-scheduled works under section 2, not the correct description of scheduled works under section 1.

54. First, the Judge rightly rejected the contention that exercise of the power under s.2 to construct non-scheduled works of the type here involves amendment (or, as is now pleaded in AS/A 47 and 56, an "alteration" or "substantial…change") to the scheduled works specified in Schedule 1.[13]

55. As a matter of general principle, s.1 of the 2017 Act confers the *power* to construct and maintain any of the scheduled works. It does not *require* that all of the scheduled works are constructed. So long as the conditions in s.2 are met for any non-scheduled works (i.e. "for Phase One purposes"; "within Act limits"; and being "necessary or expedient"), then it is open to the nominated undertaker to construct Phase One of High Speed 2 using non-scheduled works as far as is appropriate. There is no basis for purporting to read down s.2 in the way the Appellant attempts to do.

56. Second, the Appellant is incorrect to assert (at AS/A47) that the scope of s.2 must be limited to the authorisation of works which are "ancillary" to the scheduled works. S.2 is not expressed in that way and clearly could have been had that been the intention. The phrase "ancillary works" is used in the Explanatory Memorandum (as identified at AS/A 57) – it is correct that s.2 would indeed permit works ancillary to the scheduled works to be undertaken. But it is clear that s.2 is deliberately drafted in the way it is without limiting such works to those which are considered to be ancillary to the scheduled works. S.2 is not limited, as it could have been, to authorising works "*for the purposes of or in connection with the scheduled works*". It goes beyond this, authorising works "*otherwise for Phase One purposes",* and specifically includes "*other works…of whatever description"*.

57. The Judge was therefore right not to "elevate the status of the Explanatory Memorandum above the clear terms of the statutory language" (HCJ 40 **[CB/6/46]**). Such external aids cannot displace the meaning conveyed by words of a statute which are clear, unambiguous and do not produce absurdity*: R v SSHD ex p O* [2023] A.C. 255 at [30] *per* Lord Hodge.

58. Third, it follows from the above that the Appellant's submission at AS/A 62 that "if the BTE is not consented, then the BTEP has nothing to which to be ancillary, hence cannot (at least at the present time) be authorised pursuant to s2" is predicated on a false premise that s.2 is limited to ancillary works. The submission was rightly rejected by the Judge at HCJ

[13] It is also worth noting that HS2 Ltd also has the powers to:(a) lower the railway "vertically downwards to any extent" (emphasis added) from the level shown on the deposited plans (Schedule 1, paragraph 1(2)(b)); and (b) "alter engineering works" - a power conferred by section 4 of the 1863 Act which would encompass alterations from a viaduct to a tunnel. The Appellant's earlier contention that neither paragraph 1 of Schedule 1, nor section 4 of the 1863 Act, permit changes to the specified authorised works (SFG§55 **[CB/7/82]**) is therefore wrong. The very purpose of both sections is to permit alterations to that which is shown on the deposited plans.

38 **[CB/6/45]**. The terms of s.2(l), when read with s.67(c), make it plain that non-scheduled works are not limited to works which are ancillary to scheduled works authorised by s.1 and Sch. 1.

59. Fourth, the Appellant attempts to rely upon the fact that s.2 does not expressly refer to "tunnels" (AS/A 48). But it is unnecessary to do so given the language of s.2(l)(i), quite apart from the additional powers that the 2017 Act specifically incorporates in s.16 of the 1845 Act and s.4 of the 1863 Act which do refer to "tunnels" (as noted by the Judge at HCJ 41-2 **[CB/6/46-7]**). The Judge was correct at HCJ35 to reject the assertion (now pursued again at AS/A48) that what is otherwise the "obviously broad statutory language" of s.2(1)(i) somehow has to be cut down by reference to s.2(1)(a)-(h). The Judge was clearly right to observe that had Parliament wished to exclude "tunnels" from the provisions of s.2 then it would have (and would needed to have) done so expressly (HCJ 36). There is no purpose or logic in treating "tunnels" as excluded from the ambit of non-scheduled works anyway, as distinct from other works which the Appellant accepts are authorised under s.2.

60. The Appellant's attempted characterisation of s.2(1)(i) as a 'tail end piece' (AS/A 56), rather than as a deliberately broadly worded provision, is wrong. By the same token, the Appellant's attempted reliance on the *ejusdem generis* principle is inapposite in this context: the wide variety of activities (which go beyond simply "works") permitted by s.2 do not disclose any particular genus; the very broad statutory language deliberately employed in s.2(1)(i) (*"of whatever description"*) indicates to the contrary that Parliament did not intend to constrain the scope of works permitted under s.2, quite the opposite; moreover, such an interpretation would operate to frustrate rather than further the purpose of the 2017 Act and the flexibility it is intended to provide for the construction of a linear infrastructure project of this kind (see *Lowe and Potter* 'Understanding Legislation' (2018), pp43-45; *Quazi v Quazi* [1980] A.C. 744[14]). S.2 does, where intended, impose restrictions on the works: they must be for the purposes of or in connection with the scheduled works or otherwise for Phase One purposes; they must be within the Act limits; and they must be necessary or expedient. There is no basis for seeking to read in additional restrictions which are not so expressed.

[14] At 823-824, *per* Lord Scarman *"[The ejusdem generis rule] is at best, a very secondary guide to the meaning of a statute. The all-important matter is to consider the purpose of the statute… If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it: the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master."*

61. Fifth, the Appellant is wrong to attempt to characterise the works in s.2(1)(a)-(h) as being concerned only with works "to be done in order to "receive" (or "accommodate") the scheme" (AS/A 60).[15] Again, this is reading in a restriction which is not expressed and ignores: (a) the fact that non-scheduled works are not limited to "purposes of or in connection with the scheduled works" but includes works "or otherwise for Phase One purposes" – the list could and no doubt would have been so restricted if the sole purpose of s.2 was only to authorise works to "accommodate" the scheduled works into the existing environment; (b) the fact that potentially very extensive works are expressly permitted by s.2, including bridges, subways, interchanges and buildings; (c) the fact that s.2(1)(i) is not expressed by reference to such a restriction that they must be to receive or accommodate the scheme; and (d) a tunnel extension, and a consequential portal, do receive or accommodate the scheme anyway – the railway line is accommodated along the same line of route within the extended tunnel structure.

62. Finally, the Appellant asserts at AS51it: "*would be bizarre if the Act were interpreted so as to authorise a tunnel of twice the approved length, in a different location a considerable distance away, on the basis that that was in connection with or otherwise for the purposes of Phase One. Within the scheme of the Act, that would frustrate Parliament's intention.*

63. This submission is misconceived for at least two basic reasons. First, although it is obviously the case that an extension to a tunnel and the consequential relocation of the portal means that the tunnel is longer and the portal is at the end of the extension, such differences are obviously constrained by the fact that the route alignment remains the same and that the non-scheduled works associated with such extension must still be within the same land identified in the Act (including that land which has been compulsorily acquired). Second, the submission - which echoes that of the assertion of "carte blanche" advanced below (see HCJ 37 **[CB/6/45]**) - is tendentious. The power to undertake such works under s.2 has clearly expressed limitations, as detailed above, and what is proposed falls within them.

64. In addition, deemed planning permission for such non-scheduled works is specifically addressed by the 2017 Act. Whereas all scheduled works benefit from deemed planning permission under s.20, non-scheduled works are not subject to such deemed permission if the criteria in s.20(2) apply. So non-scheduled works which would have likely significant effects on the environment and are not exempt development will not benefit from planning

[15] The Appellant's reference to "the scheme" appears to be a reference to the "scheduled works", see e.g. AS 47

permission if they are not covered by the ES considered during the passage of the Bill. In such circumstances the non-scheduled works will require separate planning permission, at which point the EIA regime will be engaged.

65. As a matter of logic, therefore, s.20 clearly envisaged that there can be cases of non-scheduled works being proposed which could generate likely significant effects which are materially different to those that have been assessed. This further strongly tells against the Appellant's assertion that such works permitted under s.2 are limited to those which are "ancillary" to the scheduled works.

66. Likewise, the Appellant's assertion that some people have been "denied the opportunity to petition…" in respect of the BTE (AS/A 50) is misplaced. Any person specially and directly affected by the Bill had the ability to petition given what was proposed in relation to the Bill powers which included what was identified by way of scheduled works in s.1 and Schedule 1 and, necessarily, any potential non-scheduled works that were being authorised by s.2. The latter non-scheduled works that were being proposed in the Bill were subject to the restrictions in ss 2 and 20 discussed above, including the fact that if the non-scheduled works were to give rise to likely significant effects on such persons where such effects were not covered by the ES, then planning permission was not granted for them. The Bill therefore built in the necessary flexibility subject to those restrictions. In this case, the conclusion (on the facts) that construction of the BTE and BTEP would not have likely significant effects beyond those covered by the ES demonstrates that the Appellant's contentions in this respect are misplaced.

67. Moreover, the suggestion that it is bizarre if the provisions of s.2 cover tunnels is self-evidently not the case; the opposite is true. If the Appellant's interpretation were correct it would potentially cause significant practical difficulties for the construction of Phase One of HS2 for no obvious or logical reason. In a project of this size and complexity it is self-evident that the design of the railway is likely to need to be refined as the project progresses, including to reduce its environmental effects (see the witness statement of Paul Gilfedder, e.g.§9.2 **[SB/2/31]**). The 2017 Act unsurprisingly accommodates that flexibility. But on the Appellant's interpretation, whenever it was considered necessary to extend a tunnel beyond the length specified in the scheduled works (even by a few metres), the nominated undertaker would have to secure an amendment to Schedule 1 of the 2017 Act (whether by way of TWAO or otherwise), even though such a tunnel extension would be within the Act limits and therefore not involve any additional land, it would be taking place along the line of a route already provided for on the surface, and in circumstances where the extension

was not generating any likely significant effects beyond those previously assessed. Parliament cannot logically have intended to require such a process to be followed in order to accommodate expedient design changes of this kind; that is why it legislated to confer the specific powers on the nominated undertaker to *"carry out and maintain such other works, of whatever description, as may be necessary or expedient"* (subject to the express restrictions it articulated), in addition to choosing to incorporate the powers within s.16 of the 1845 Act and s.4 of the 1863 Act in addition.

68. Ground 1 of the appeal should therefore be dismissed.

Ground 2 – Alleged error in interpretation of s20 of the Act

69. As with Ground 1, the Respondents submit that the Judge's analysis of Ground 2 at HCJ 43-63 **[CB/6/47-63]** as to the proper interpretation of s.20 in light of the purpose of the 2017 Act is manifestly correct and this ground of appeal should be dismissed.

70. On the proper interpretation of s.20(2)(c) and s.68(4) of the 2017 Act, "development" in the form of non-scheduled works is *"covered by an environmental assessment in connection with the High Speed Rail (London-West Midlands) Bill"* where such works do not result in any new or different likely significant effects to those assessed in the ES published in connection with the Bill. That is consistent with the basic purpose of EIA and the EIA Regulations.

71. In accordance with the established principles of statutory interpretation (see ***C G* Fry**), these statutory provisions must be construed in light of the language used and having regard to the context and in light of their purpose to give effect to that purpose.

72. Furthermore, the Judge was plainly correct (at HCJ 45-49 **[CB/6/47-9]**) to interpret s.20(2)(c) and s.67(4) in the *"context of the Environmental Impact legislation and the case law which exists governing how that legislation is to operate"* (HCJ 45). That approach is consistent with the principle that Parliament is presumed to be aware of the state of the relevant pre-existing law and to legislate in light of that knowledge (*see, e.g. Hirachand*).

73. The overarching purpose of s.20 is to grant planning permission for development authorised by the 2017 Act in a manner that is consistent with objectives of the EIA Directive[16] and Regulations.[17]

[16] Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

[17] Town and Country Planning (Environmental Impact Assessment) Regulations 2017

74. S.20(1) deems planning permission to be granted for "*the carrying out of development authorised by* [the 2017 Act]".

75. The deemed grant of planning permission applies to scheduled works without any qualification. No qualification is necessary because the likely significant environmental effects resulting from the parameters of the scheduled works will, necessarily, have been expressly assessed within the ES deposited or published in connection with the Bill.

76. By contrast non-scheduled works are by their very nature not specifically described within the 2017 Act, but can be any works that fall within the scope of s.2(1) as discussed above. They are therefore unlikely to have been identified in the ES deposited or published in connection with the Bill at the time. Indeed, given the nature and extent of the non-scheduled works authorised by s.2, and the practical reality that the detailed design of Phase One will continue to be refined after Royal Assent was granted, it is inevitable and anticipated that very many of the non-scheduled works authorised by s.2 will not have been specifically identified in the ES deposited or published in connection with the Bill.

77. The purpose of s.20(2) is, therefore, to exclude from that the grant of deemed planning permission works which do generate likely significant effects which are not covered by the environmental envelope of assessment in the ES. So the 2017 Act operates by granting deemed planning permission for all non-scheduled works, unless the criteria in s.20(2) are met, namely they give rise to likely significant effects (s.20(2)(a)), they not exempt development within the meaning of the EIA Regulations (s.20(2)(b)) and they are not covered by the ES (s.20(2)(c)).

78. The purpose of s.20(2)(c) is to exclude from the grant of permission works which would result in likely significant environmental effects beyond those which have already been assessed. This ensures that such works which are not covered by such assessment will need to be the subject of a separate grant of planning permission prior to which an EIA of those unassessed likely significant effects on the environment will be considered.[18]

79. As the Judge rightly recognised (HCJ 50 **[CB/6/49]**), in this way s.20(2)(c), and s.68(4) operate so to give effect to the well-established concept of an "environmental envelope" (see e.g. *R v Rochdale Metropolitan BC ex parte Milne* [2001] Env.LR 22 (HCJ46-47)), ensuring that deemed planning permission is granted only in respect of works which would

[18] Pursuant to Reg 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 which prohibits the grant of planning permission or EIA development unless an EIA has been carried out in respect of that development.

not give rise to likely significant environmental effects other than those which have already been assessed. This approach is entirely consistent with, and fulfils the purpose of, the underlying EIA Directive.

80. This interpretation is also entirely consistent with the interpretation of s.20 of the 2017 Act set out by Jay J in *R (Hero Granger-Taylor) v HS2 Ltd* [2020] EWHC 1442 at [7]-[13].[19]

81. That this is the purpose of s.20(2) of the 2017 Act might be considered to be self-evident, and the Judge rightly considered it sufficient to dispose of this ground (HCJ 52 **[CB/6/50]**). But it is also reinforced by a number of aids to interpretation (in so far as it is considered necessary to have regard to them):

    a. the Environmental Minimum Requirements ("**EMRs**"), which were available in draft during the passage of the Bill through Parliament, and were published in final form at or around the time of Royal Assent. The General Principles document[20] explains that:

> "1.1.3 The controls contained in the EMRs, along with powers contained in the High Speed Rail (London - West Midlands) Act (the Act) and the Undertakings given by the Secretary of State, will ensure that impacts which have been assessed in the ES will not be exceeded, unless any new impact or impacts in excess of those assessed in the ES:
>
> - results from a change in circumstances which was not likely at the time of the ES; or
> - would not be likely to be environmentally significant; or
> - results from a change or extension to the project, where that change or extension does not itself require environmental impact assessment (EIA) under either (i) article 4(1) of and paragraph 24 of Annex 1 to the EIA Directive [fn4]; or (ii) article 4(2) of and paragraph 13 of Annex 2 to the EIA Directive; or
> - would be considered as part of a separate consent process (and therefore further EIA if required)." (emphasis added) **[SB/10/97]**

The Judge was correct in observing that this document is consistent with the interpretation of s.20(2) set out above, and which he found to be correct (HCJ 53 **[CB/6/50]**). Contrary to the Appellant's assertion (AS/A 75), the Respondent has not read this document selectively. The Appellant points to the first bullet in para 1.1.3 of the General Principles document, but ignores the fact that the bullets are disjunctive, each one providing for circumstances in which the impacts which have been assessed in the ES may be exceeded. In this case, the second bullet applies

[19] That the case dealt with different environmental implications is neither here nor there (see AS[84]), the judgment of Jay J is obviously highly pertinent to the issue before this court.

[20] See also, to the same effect. Information Paper E1, referred to at HCJ 55

because the BTE/BTEP would not result in any new or different likely significant effects beyond those already assessed in the ES.

b. The approach of the EMRs is, as the judge recognised (HCJ 54 **[CB/6/51]**), reinforced by the Environmental Memorandum (one of the annexes to the EMR), which explained:

> *"*3.6.1 It is the intention of the Secretary of State to carry out Phase One of HS2 so that its environmental effects are no greater than as assessed in the HS2 Phase One Environmental Statement…" (emphasis added) **[SB/12/123]**

c. the Explanatory notes to the 2017 Act provide yet further support for this interpretation (see HCJ 57 **[CB/6/52]**). Most notably, the explanatory note to Schedule 32 - which extends permitted development rights for statutory undertakers, and which employs precisely the same language found in s.20(2)(c) ("covered by an environmental assessment in connection with the [Bill]") – explains that

> "Schedule 32 allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights, say for the diversion of their apparatus to accommodate Phase One, where the likely significant effects of their works are covered by Phase One environmental assessment." (emphasis added)

82. The language of ss20(2)(c) and 68(4) of the 2017 Act is consistent with – and certainly should not prevent the court from giving effect to – the identified statutory purpose. S.20(2)(c) excludes from the deemed grant of planning permission *"development…not covered by an environmental assessment in connection with the High Speed Rail (London-West Midlands) Bill".*

83. The "development" in question is the "carrying out of a work which is not a scheduled work" (i.e. works authorised by s.2). It is clear that "covered by an environmental assessment" *must* mean that the non-scheduled works do not give rise to any new or different likely significant effects which have not already been assessed in the environmental statements deposited or published with the Bill (see HCJ 50 **[CB/6/49]**).

84. Contrary to the Appellant's contention (AS/A 81) this interpretation does not "sideline" the words in s.68(4) of the 2017 Act. S.68(4) refers to "information" (and not "the development") "contained in a deposited statement". The "information" in question must mean the likely significantly effects on the environment identified and addressed in the environmental statement published with the Bill which sits harmoniously with the concept of such information providing an environmental envelope for assessment purposes. As noted above, the likely significant effects of the scheme are not changed as a result of the BTE or BTEP. The BTE and BTEP are "development[s] in relation to which information

contained in a deposited statement…constituted an environmental statement within the meaning of the Environmental Impact Assessment regulations".

85. The Appellant's alternative interpretation – that, in order to benefit from deemed planning permission, the non-scheduled works *themselves* must have been identified in the environmental statements deposited or published with the Bill – is illogical, unnecessary to meet the requirements of the EIA Regulations and Directive, and would clearly frustrate, rather than further, the legislative purpose of the 2017 Act. It would be illogical in at least two respects:

    a. First, because (for the reasons explained above), it is inevitable that many non-scheduled works authorised by s.2 may not be specifically identified in the deposited ES. And therefore, on the Appellant's asserted interpretation, the powers granted by Parliament to enable the railway to be constructed would be heavily and unnecessarily curtailed. The courts should "lean against" a construction of legislation which produces unworkable or impracticable results: ***Settlers Court RTM***; ***Edison First Power***.

    b. Second, adopting this interpretation would not serve any utility and would be unnecessary in terms of EIA. It does not matter, from the perspective of EIA, whether the precise nature of the works themselves change, if in reality no additional or different significant environmental effects will occur. The critical question is whether, as a result of the non-scheduled works, the likely significant effects on the environment will be different to those already assessed.

86. It follows that the Secretaries of State did not misinterpret s.20(2) of the 2017 Act. Their interpretation, as endorsed by the Judge below, gives proper effect to the legislative purpose and is consistent with the statutory language.

87. Two further points raised in the Appellant's skeleton can be addressed shortly.

88. Contrary to AS/A 72 and 82, neither the Secretaries of State nor the Judge amalgamated the separate statutory questions posed by ss. 20(2)(a) and (c). Ss20(2)(a), (b) and (c) are conjunctive. Their effect is that deemed planning permission does not apply if (a) the non-scheduled works will have likely significant effects on the environment; (b) those works are not exempt development within the meaning of the EIA Regs; *and* (c) those works are not "covered" by the EIA undertaken in connection with the Bill.

89. On the correct interpretation of s.20, as identified by the Judge, there remain separate questions to be asked: will the non-scheduled works give rise to likely significant effects

on the environment (s.20(2)(a)); and, if so, are those effects new or different from the likely significant effects which have already been assessed in the environmental assessment (s.20(2)(c)). There is no conflation of the separate statutory questions.

90. Finally, central to the Appellant's case on ground 2 now appears to be the repeated assertion that the BTE and/or BTEP would in fact give rise to likely significant effects beyond those which were assessed in the environmental statement. See, e.g. AS/A 76[21], 79[22] and 87.

91. It is not open to the Appellant to advance such a case before this Court:

    a. First, Grounds 1 and 2 for judicial review, which form the grounds of appeal to this court (AS/A 5), are concerned only with the correct interpretation of ss2 and 20 of the 2017 Act. There is no challenge to the lawfulness of the Secretaries of State's conclusion that neither the BTE nor the BTEP would result in new or different likely significant effects to those reported in the environmental statements deposited or published in connection with the Bill ([DL13)]. Ground 3 is not pursued and no permission for it to proceed has been granted.

    b. Second, although the Appellant has changed its position during the proceedings, the Appellant originally came to the same conclusion as the Secretary of State (see the Appellant's Screening Opinion, referred to at paragraph 32 above).

    c. Third, and in any event, the Secretary of State's conclusion was an evaluative judgement which is simply a matter for the relevant decision-maker, subject only to a *Wednesbury* rationality challenge under well-established principles relating to environmental impact assessment (see e.g. *R(Friends of the Earth) v Heathrow Airport* [2021] PTSR 190 at paragraphs 142-7 by way of example). There is no plausible basis for such a challenge in any event, given that the decision reached by the Secretaries of State that replacing a railway overground with further tunnelling and consequential movement of the portal did not raise any likely significant effects which had not previously been assessed when considering the railway overground.

92. Ground 2 of the appeal should also be dismissed.

JAMES STRACHAN KC, ROBERT WILLIAMS, VICTORIA HUTTON

16 January 2026, references corrected 24 March 2026

[21] "*It is hard to see how a significant change such as this can be said, without more, not to raise at least the prospect of new/different significant effects on the environment".*
[22] *"[T]hose works were not within the "environmental envelope".*