Day 6

Alan Jones

Evidence in Chief

Dr Jones was asked to read Paragraphs 4.2, 4.3 and section 6 of his proof.

Dr Jones said that setts 6-10 were subsidiary setts, may well be the case that this sett has increased. The bypass would go between two social groups of badgers

Dr Jones was asked to read large sections of his rebuttal evidence, stating that:

Newtown Rd could not be found. 150M from bridge. Proposed bridleway would not affect sett.

Revisited Beres Mere sett, confirmed presence of sett. Much larger sett in past, many holes now used. Stable sett not found, no tracks seen.

PL has carried out no survey and presented evidence. Speculation based solely on estimates. Very different landscapes. No evidence that there are other setts.

Prior to construction, further surveys would be carried out. Any significant discoveries would result in consultation with Natural England.

WCC would accept change to bridleway route. Would negotiate realignment with the landowner, would not be a major change.

Strong association with hazel and dormice, though dormice not only found in areas of hazel. Non-hazel sites likely to be unstable.

Acknowledge that hazelnut survey carried out at the wrong time. Second survey failed to find any nuts touched by dormice.

No perfect survey tool for dormice. Use of nest tubes a good method for surveys, but not long term population management.

Reason to doubt validity of dormice report. Dormouse nest found in November 2004 in fresh green leaves.

No record of hazelnuts chewed by dormice. Dormice nest found in Jan 2007, confirmed by English Nature. Unclear why badger consultants searched for dormice in Jan, surveys normally end in Nov. Large discrepancy between location of nest and Nest Tube 90.

Continuing inconsistencies of dormice reports. The scheme includes mitigation measures on the assumption that dormice are in the area.

Further research indicates that tubes filled with leaves would enable dormice to cross above and underneath road.

Hedgerows strengthened by additional planting. Current hedgerow provides poor habitat.

Not every population of dormice nationally important.

Area barely sufficient to maintain population. No reason to assume that any current population has favourable conservation status.

Scheme would not have an adverse effect. Natural England satisfied that mitigation measures sufficient.

Cross Examination

It is the case that various surveys have found several Euro protected species?
-agreed

Annex 4 protected?
-agreed, some annex 4

List annex 4 species
-Otter, dormice, great crested newt, various bat species.

Some bat species of bat are listed in Annex 2 as requiring additionally protection?
-Agreed

CD8.7A. Directive referred to is Directive 43, transposed into UK law by Conservation Regulations 1994, amended 2007. pg8,1.21 primary aim of directive, measures taken should be designed to maintain and restore favourable conservation status species.
-Agreed

pg10. Favourable conservation status. Para17, What is Natura 2000?
-Special areas of conservation

Favourable Conservation status when species maintaining itself in LT viable, not being reduced in near future, sufficient habitat in LT.
-agreed

Proof 3.85. NO evidence that dormice pop currently favourable con status.
-Agreed

pg11. Parameters for defining FCS – when species doing well with good future prospects.
-no evidence that dormice meet FCS.
-given extensive survey, would expect to find dormice

Accept that there are dormice there?
-Agreed

Pg15. 1.2.3B. Para38. Art 6 concerned with SAC, Art12 individuals.
-Agreed, concerned with Art12

Annex 2 species have dual system of protection with a Natura 2000 site, SAC and SPA, plus individual species protection under Art12.
-Agreed

pg21. Summary of measures to be taken. Objective of directive to maintain FCS.
-Agreed

pg28. Summary of measures to ensure FCS. Maintaining or restoring FCS.
-Agreed

pg37. What is meant by disturbance. Art6 guidelines disturbance by noise can have indirect neg effect on species. Forcing them to use energy to flee. Intensity and repetition of disturbances.
-Agreed

Different species react to disturbances differently.
-Agreed

A species-by-species approach needed to determine meaning of disturbance.
-Agreed

pg50. Art16.- Derogation Article. Provided there is no alternative and maintenance of species at FCS in their natural range not threatened, states may derogate from articles.
-Agreed

Scheme not in the interested of conserving Fauna and Flora?
-Agreed

Therefore concerned with Criteria C, pg55
-Agreed

pg56, para24. Not every kind of public S-E interest sufficient. Careful balancing of interests needed. Assume that public interest overriding if LT.
-Agreed

pg58. Absence of satisfactory alternative. States must be certain that there is no alternative.
-Agreed

Reference made to ECJ case law on derogations, analysis of whether there is no alternative consists of: 1. What is problem. 2. Any other solutions? 3. Will these resolve the problem? Those three considerations must be taken into account?
-Agreed, seem reasonable

pg59. Most appropriate alternative conserves species and solves problem, e.g. Different route or method.
-Agreed
-Wouldn't look at alternatives in the same level of detail

Recourse to Art16 must be last resort.
-Agreed

Requirements must consider alternatives as a primary alternative. Alternative cannot be ruled out merely on basis of greater inconvenience or because they compel change in behaviour. What do you understand by this?
-Difficult to generalise

Scheme must be assessed within context of directive?
-Agreed

Accept that licenses will be required for dormice?
-Yes, and for newts

Otters?
-No

pg61. No appropriate assessment of impact of derogation at a local level, in terms of reg48 – habitats - has not occurred?
-No, no requirement.

Pg62, para49. Must ask: What is actual con status, at bio-geographic and local level? What is impact of derogation?
-Agree

No derogation can be granted by the competent authority if has detrimental effect on conservation status.
-agreed

Competent authority?
-Sec of State, power delegated to Natural England

pg65. Less favourable Con Status less likely derogation be justified, except in exceptional cases. Effect should be neutral, not detrimental.
-Agreed

Summary proof. PS2.2, referred to Parkman March 2000 - Both routes likely to have slight adverse effect. No further examination?
-No

In terms of survey examination, what did Parkman have available to them?
-Was desk study at the time.

What is desk study?
-Enquiries to statutory bodies

Would these studies have found info on otters?
-yes

Record of dormice?
-No

Newts?
-Yes

Bats?
-Yes

Same info available for FW route?
-Yes, similar information available for both routes.

Fair to describe as cursory appraisal?
-Brief appraisal

Has there been a similar exercise since Mar 2000 for both FW and E route?
-No

No further detailed study after Mar 2000 for FW route
-Desk study in early 2007

Results?
-Not certain if in documents

PS2.3. E route most viable. In economic terms?
-Presumably

PS2.5. What was request on Reg19 for?
-Not aware

Further detailed ecological surveys requested. Carried out 2006. When was 2005 application withdrawn?
-Not sure, was withdrawn when realised that further mitigation required

Nor record in evidence for why 2005 application was withdrawn. Any information?
-not able to help

PS5.5. No direct effects. Have indirect effects been considered?
-Yes, on Pickett and Clanger Wood. No direct or indirect effects on Salisbury Plain SAC

Full Proof. P3.4. None of those specifies affected by non-road build option?
-Probably not
-Can think of no specific effect

P3.8. Slight adverse for all routes

Alternative alignment?
-Would be further to north

Current scheme closest to alternative or original?
-To original

P3.10. Slight adverse, subject to further detailed assessment No further assessment taken?
-No

Changes that were required as a result of request for further information warranted withdrawal of 2005 application?
-Agreed

Between 2005 and 2007, was any further consideration given to FW route?
-Not to the best of knowledge

Day Seven

S5.7 full proof. Wildlife casualties. Bats should be added to list?
-A question for Mr Billington

Road lighting adversely affect wildlife. Including bats?
-Agreed

Effects taken into account. Difference between mitigation and compensation?
-Mitigation measures seek to reduce or cancel out effects, compensation alternative provided.

When mitigation no longer possible, compensation begins?
-Agreed

How has practicable been interpreted in the context of avoidance, mitigation and compensation?
-Under CPO, must be shown that land essential to the scheme.

Is practicable the same as necessary?
-Land acquisition necessary, enhancement practicable.

P5.9. Description of species of likely to be affected. Mitigation based on species surveys between 2002-06. Verification surveys would be taken prior to commencement. Ongoing process?
-Agreed

At the present time, what surveys are continuing to be taken?
-Bat surveys

Surveys in 2008?
-Only bat surveys

Surveys since submission of planning application in Feb 2007?
-Only bat surveys, dormice finished Nov 2006.

Last newt survey?
-2004

Even though there have been amendments to the scheme since 2004, there have been no surveys of newts?
-Amendments would not affect newts
-Normal practice not to repeat survey within two years.

Have there have been any amendments since 2004 to the Bitterne brook to Glenmore link?
-Not aware

P5.67. IS it correct that to date, there has been a presence/absence assessment and popn size assessment.
-agreed

Some habitats within 500m of pond would be lost. DMRB10,s4,5.3. Important to check water within 1km within route?
-500m was extent of survey

On what basis, when guidance recommends 1km?
-500m normal range of great crested newts from breeding sites.

Guidance specifically refers to newts.
-agreed
-not clear why guidance would recommend 1km
-beyond 500m, popn would be highly unlikely to be affected. 250 m normal range.

P5.71. License would be required.
-Would be no effect on breeding pond.

P5.79. Water vole. Date of last survey?
-2004

Proposal to put large attenuation pond near Bitterne brook. Has the construction impact been assessed?
-Voles do not move far from water course, very likely to have an effect.

Proposal to put attenuation pond later than 2004?
-agreed

Maintain there would be no effect?
-Probably have beneficial effect.

Volume 4, Ecological appendices, part 2. Appendix 9.13. Dormice survey by NPA, Dec 2006. p17 of response. 3.37. No perfect survey tool for dormice. Pg2 NPA survey, para2. Found that dormice do not always use tubes when given opportunity. Woods' statement that tubes not perfect survey tool, backed up?
-Agreed, but dormice handbook based on survey, takes into account finding and still recommends use of tubes as one survey tool.

NPA correct when state that dormice do not always use tubes?
-Agreed, but handbook takes into account.

Pg19 response. Badger consult 3.33. Dormouse nest in tube 2. 3.47. Unlikely that leaves would be fresh. IS it not possible to find green leaves in November?
-Not impossible, but would be very surprised

Impact of climate change?
-Possibly

State that RPS could not find honeysuckle near nest. Pg3 NPA report. Where honeysuckle was present, tubes placed close. Appears that honeysuckle is in fact present?
-NPA survey extended to larger area. Still have not found honeysuckle near hedgerow.
-May have been taken from standard methodology.

Mr Langton asked Dr Jones if he were accepting that dormice were present. Dr Jones said WCC were working on the assumption that they were there.

P7.52. Majority of mitigation measures based on well established guidance. Does that mean that not all measures based on guidance and practice?
-Particularly dormice issue, cutting edge mitigation being used

P7.53. Test of overriding public interest is met by scheme.
-Others for establish, but is the case of WCC

Should be *imperative* reasons of overriding public interest?
-Agreed

P7.55. Only other EPS newts. Now accepted dormice?
-Agreed

What is meant by the 'species' in the area?
-Refers to all EPS

Your evidence that species not be affected?
-Con status not, may be some effects

P7.56. Slight adverse. How arrived at?
-Stage 3 scheme assessment report. 9.12. Table 9.1. Sets out value of species.
-Also look at magnitude of effects. Criteria for assigning effect 9.2
-Matrix on how arrive at level of significance.
-Slight adverse, assessment that popn was of medium importance. Minor negative effect. Equals slight adverse significance.

Effect on great crested newt?
-Slight adverse, for same reasons as dormice.
-Otters would be neutral.

Badgers?
-Slight adverse. Badgers are not EPS.
-Intermediate negative effect. Due to unthreatened conservation status, only slight adverse.

P7.101. No significant effect on sites within 2km. Where does 2km come from?
-Normal search area from Environmental assessment guidance. Could be some effects beyond 2km.
-Took view that no reason to look beyond.

Accept that some annex 2 species have range greater than 2km.
-Agreed

Must assess direct and indirect.
-Agreed

Response 3.22. Site visit 11/06/08. May be that status of sett increased, but road would pass between two social groups, reducing need for crossing.
-Agreed

What was extent of corridor survey?
-500m

DMRB. Guidance on mitigating effect on badgers. HA5992. 7.3. 1km necessary to widen area
-Was referring to 500m either side, meaning survey does extend to 1km.

Interactions between groups important?
-Agreed. Road that cut through territory of 1 group would have greater impact.

Could have adverse effect?
-Agreed, will provide badger crossings.

DMRB 8.4. Badgers aggressive, genetic variance achieved from males mating with females from different group. If effected could affect genetic make up.
-Agreed, but stress reduced by badger crossings – well established mitigation measures.

R3.25. Good practice to carry out further surveys prior to construction. Satisfied that all crossing points have been identified?
-In terms of major construction, badger tunnels straight forward to construct, can be easily adjusted.
-will look at again.
-minimal costs to added tunnels.

R3.76, refer Appendix D. Article by Mr Woods. Problems facing dormice fragmentation of habitat. No evidence that dormice use rope bridges. Green bridges should be aimed at, but have down sides?
-Agreed

Take some time to become usable by dormice. Relevant to R3.80, bridges at Chalford at Newton.
-agreed

How long will planting take to be effective in terms of dormouse mitigation?
-Can plant preformed hedges, dormice require robust vegetation
-1-2 years

In intervening what will the effect be?
-Will not cross road on green bridges, but tubes will be constructed to cross road.

For 2 years GB's not taken up by dormice?
-agreed

What effects will this have on fragmentation of habitat?
-Environmental status report 4.3B, 9.2A. Fig2A in full proof appendices. On the basis that dormice are woodland animals, main habitat are woodlands. Only place where dormice evident between hedgerow Beres Mere and White Scar Hanging. Extent to which dormice move around valley restricted. Permeability not good currently. Provision being provided at location where dormice currently cross. Fig4.3B. Planting along road connects with GB's.
-At the moment connectivity is not good, but there will be connectivity in the future

At present habitat not fragmented by road?
-Agreed

Considered that for popn be sustainable, 20hec required?
-At present around 18 hectares.

Close in principle to providing sufficient area for LT sustainable popn?
-agreed

Will not be the case unless mitigation will work?
-Agreed
-Enough different methods to ensure mitigation work

How high would you put requirement of certainty?
-Likelihood

Means balance of probabilities?
-Agreed

Not as high a standard as beyond reasonable doubt?
-Agreed

Further problem is that popn not at FCS?
-Agreed

R3.87. Agree that license be required?
-Agreed

R3.94. Net gains of 9.2hec. Compensation?
-Compensation and enhancement

How long will take to reach maturity?
-Tall trees would be present from outset.
-Normal planting scheme would take 5 years for continuous vegetation cover.
-Broad leaf veg would take 40 years.

R3.94. Scheme would not have adverse effect on conservation status. However slight adverse effect on dormice. How would slight advice effect on species which does not have FCS, not effect conservation status?
-Given provisions in scheme, con status not effected in LT

What is meant by LT?
-Up to 5 years for cover

R3.95. Natural England satisfied with measures. Does sentence make sense?
-Not grammatically sensible.

R3.100. Dormice encouraged to cross road by tubes. How are dormice encouraged to cross road?
-Not good word.

Alternative term?
-Able to cross road

<u>Mr Moorland's Questions</u>

Would other roundabouts have adverse impacts on wildlife interests?
-Not aware

Reptile habitat on old railway embankment.
-Agreed

FP5.62. Suitable reptile habitat. Has field work been carried out on this land?
-ES Appendix 9.7
-Good population of slow worms on disused railway

Any difficulty in clearing slow worm popn?
-If there was a good reason for developing site, then translocating reptiles relatively easy, does not require license.

Difficulty in translocating slow worms from disused to operational railway line?
-Possibly could be carried out.

Would low level lighting designed for bats affect other species adversely?
-Not aware of possibility that other species could be lured.

Re-examination

PPS9 pg3 sets out key principles. 1.2 states that in taking decision appropriate weight should could be given to protected species. 1.6 aim of planning decisions should be to prevent harm to conservation interests. In the absence of alternatives, appropriate mitigation should be provided, or if not then compensation provided or permission refused.

LA's should attach conditions when a planning decision threatens conservation. Statutory requirments must be adhered to. Para99, extent of species should be established before planning permission granted.

European law and PPS9 entirely compatable.

NE will advise on the effect of the proposal on the conservation status.

No inadequancies in survey work that has been carried out. Intensive and extensive. Beyond work done for other schemes.

Inspector's questions

4m high trees at roundabout would need considerable maintainence, but could be successful if properly maintained.

The biodiversity action plan has been released on 26/06 and is a core document.

A major increase in noise and a major deterioration in air quality would be needed to harm species.

FP5.33. Selection of trees is primarily a landscape issue, but would be determined in one area by their effect on the dormice popn.

FP5.95. Tubes would be hung from the roof of the underpass. There is no experience of using these in the past. Other options could also be considered, including encouraging hedgerow growth at each end of the underpass.

Ongoing maintenance would be required in the underpasses and bat gantries. There is no experience of doing this.

Underpasses would need to be drained and dry for badgers to use, but badgers would use steep slopes.

The frequency at which dormice tubes needed to be replaced would depend on whether they were located on gantries or in tunnels. Tubes in tunnels would need to be replaced more frequently. Expected to last at least 5-6 years.