

Personal Statement of Concern

This statement details the apparent failure of due diligence by HS2 Ltd* in their approach to the clearance of woodlands and other habitats that harbour protected species. As a result, offences under various wildlife protection Acts are likely to have been committed. Furthermore, such offences are likely to continue to be committed without corrective action by HS2 Ltd. A lack of transparency from HS2 Ltd is hindering prompt investigation of such likely offences.

The concerns expressed within this statement are shared by three major conservation organisations and their own statement is appended to the end of my own. I have also discussed the matter with professional experts at the ecological consultancy Bioscan UK Limited and Nevis Eco Services and can confirm a position of common concern.

Rob Mileto
5th November 2020

*For clarity HS2 Ltd is used throughout, but includes other associated contactors that are involved in enabling works, such as National Grid in relation to Denham Country Park

Summary

I present two examples of where, as a consequence of inadequate survey effort by HS2 Ltd contrary to industry standards and Government advice, HS2 Ltd's actions have resulted in likely or actual wildlife crimes being committed. HS2 Ltd has, despite requests, to date not provided substantive evidence to the contrary. Both cases are being investigated by the police.

In order to bring clarity to this issue and assist the police, wider Government and the concerned public in coming to a view as to whether offences are being committed, there is a need for transparency and full disclosure of survey information. Currently, FOI requests are the only route to obtain information on which sites have or have not been surveyed in accordance with Government advice or which protected species licences have been obtained. This is significantly hindering the concerned public, the police and in some instances Natural England from identifying where actions may be illegal, or where they are being carried out in accordance with properly evidenced and enacted licences.

I find it inconceivable that first two sites researched and presented here are the only ones along the HS2 Phase 1 route where these issues are pertinent. HS2 Ltd is actively clearing other sites where the same or similar apparent failures are highly likely to apply.

This strongly suggests a clear disregard by HS2 Ltd for due diligence (as represented by Government advice) and for the efforts and measures required to avoid, or at least minimise, the risk of breaching wildlife legislation throughout enabling and construction works. It would surely be expected that a Government-backed scheme of this magnitude would use 'gold standard' survey for each and every site where protected species may be present.

Desired outcomes

In order to prevent or minimise the risk of a wildlife crime, it is considered essential that, as matter of urgency, HS2 Ltd:

- Makes public all survey information relating to protected species along the Phase 1 route in a timely manner (as is required during the planning process for far less potentially damaging schemes).
Providing such information will alleviate the concerns of the public and wildlife conservation organisations about strongly suspected wildlife crimes and lack of due diligence taken to prevent these. It will also save police time and resources investigating likely offences.
- Pauses all works on or near habitats that commonly support protected species (including woodland, mature trees, wetland, within 50m of ponds, caves and buildings) until such information has been issued, independently audited and found to be in order.
Until there has been a thorough and transparent independent audit of the adequacy of surveys and how these have informed the construction of Phase One and enabling works, continuation may constitute deliberate, intentional or reckless breaches of applicable laws.

Government advice on protected species

The law for each species or species group is complex, but is adequately summarised in the Government standing advice at [here](#)

It includes the statement:

“Protected species standing advice:

tells you which survey methods need to be used to detect whether a protected species is present and how they use the site”

Whilst this standing advice is aimed at local authorities, it is pertinent to all work (including enabling work) undertaken for HS2 Ltd, as the High Speed Rail (London - West Midlands) Act 2017 has not provided any exemption for HS2 in relation to wildlife legislation pertaining to protected species.

Below, for two protected species/species group I provide evidence of:

- a) Where survey is either clearly lacking and/or has not been undertaken to the levels required by the Government advice to detect likely presence/likely absence of protected species.
- b) A clear lack of transparency to make public all post-2014 survey reports used to detect likely presence/likely absence of protected species. For planning applications all such information is made public as and when it is produced. Comments on, and concerns about wildlife crimes, can thus be addressed. It is therefore in the public interest that HS2 Ltd also do this. This would alleviate the concerns of the public and many conservation bodies about alleged wildlife crimes and lack of due diligence. Currently, this is leading to use of police time in investigating possible offences, many of which are being reported or are expected.

Below I highlight key elements of the Government’s advice, and where it has not been followed:

Bats

The Government advice is [here](#)

Some key statements are:

“You can only use some methods at certain times of year - timings are explained in this guide. Read the [bat surveys guidance](#) by The Bat Conservation Trust.

The local planning authority will need to see the survey reports and mitigation plans to check they meet the standards required.

You may be asked for more surveys if:

- habitats or other information (such as local records) show that it's very likely that bats are present
- the bats' use of the habitat varies between seasons
- your survey was done outside of the bats' active season (May to September)
- your survey was done in unusual weather conditions like a particularly bad storm
- your planning or licence applications are based on poor data, unless you can show the area is not very important to bats

You should assess how likely it is that concentrations of bats will be present at the site and how they'll use it."

At Jones' Hill Wood (grid reference SP8872 0444) and nearby, the HS2 Ltd project EIA (available at [here](#)) states:

"2.3.4 Access was not possible to all sites and accessibility was also intermittent. This resulted in inconsistent and incomplete survey sets of some features which required emergence surveys. In addition, where landowners did not permit trees to be climbed or tagged, this prevented trees being fully assessed and/or identified as requiring further surveys.

2.3.5 The hybrid Bill programme imposed a time constraint on these already seasonally confined and weather-dependent surveys, which meant that a full set of emergence surveys (which can involve up to three visits) on all 2,000 identified tree features was not possible."

And for the general area (note that Jones' Hill Wood is not mentioned by name, so it is reasonable to conclude that none of the surveys below relate specifically to trees within Jones' Hill Wood. Nevertheless, they are provided as examples of serious inadequacy):

2.4.97 Of the 54 trees assessed as having moderate or high potential to support roosting bats:

- 19 were subject to climbing surveys;
- as a result, no trees were re-assessed as having of low or negligible potential to support roosting bats;
- the remaining trees were not climbed owing to the constraints listed in sections 1.41 and 1.42.

This means 61% of trees (33 trees) were not subject to a climbing survey

2.4.98 Six trees of the 19 trees climbed were subject to a total of six emergence surveys resulting in four confirmed roosts being identified. The remaining 12 trees could not be climbed due to access restrictions at some sites and trees which were not safe to be climbed as discussed in sections 1.4.1 to 1.4.5 in the constraints and limitations section.

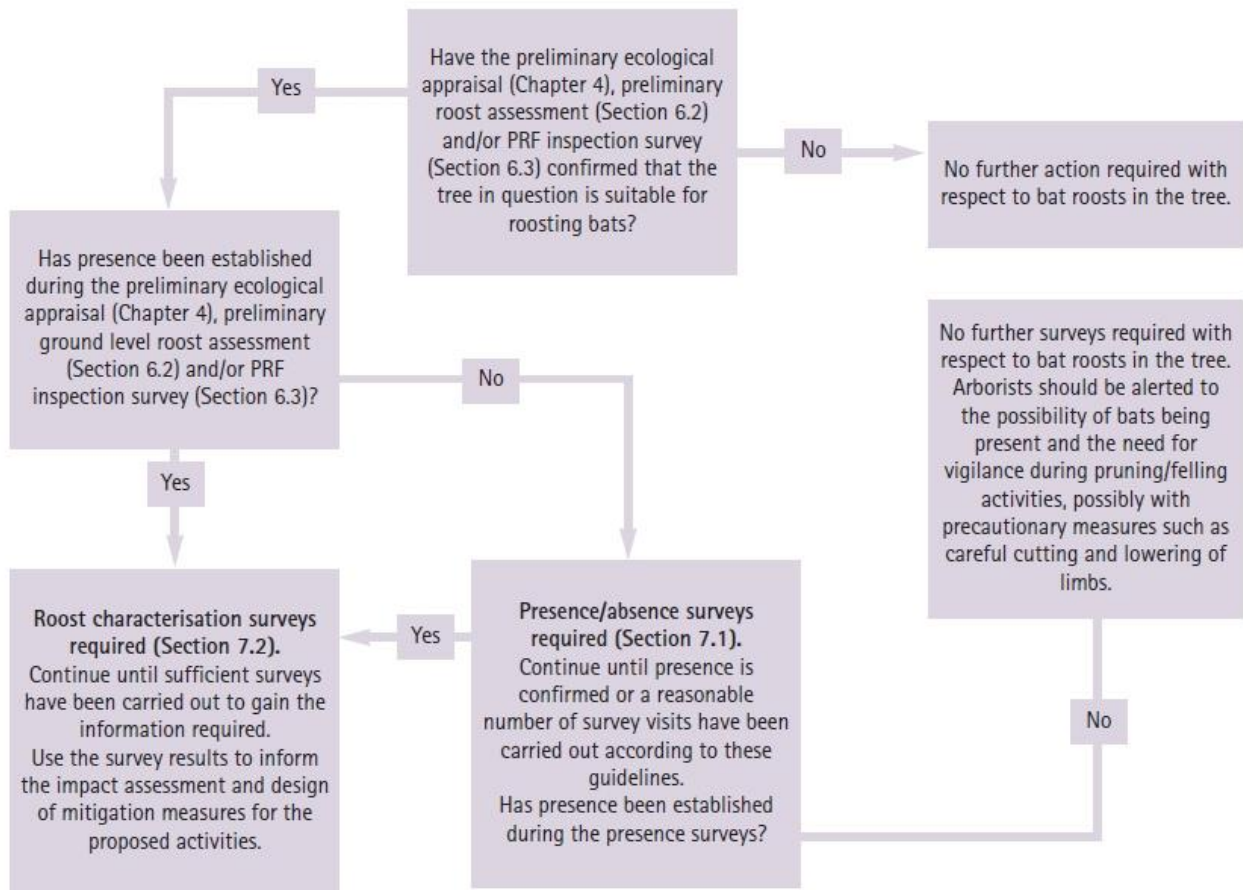
This means that 68% of high potential trees (13 trees) were not subject to emergence surveys, where the advice requires 2 such surveys and one re-entry survey. Moreover, given 4 of the 6 trees that were subject to emergence surveys were confirmed as roosts it is highly likely that some 9 high potential trees held protected roost that were not identified. I believe this is clear evidence of negligence and seems effectively acknowledged as such [here](#).

2.4.99 No backtracking surveys were undertaken in this area."

Given other survey methods fell well short of the advice standards, I believe failure to not undertake any backtracking surveys is clear evidence of negligence and seems effectively acknowledged as such [here](#).

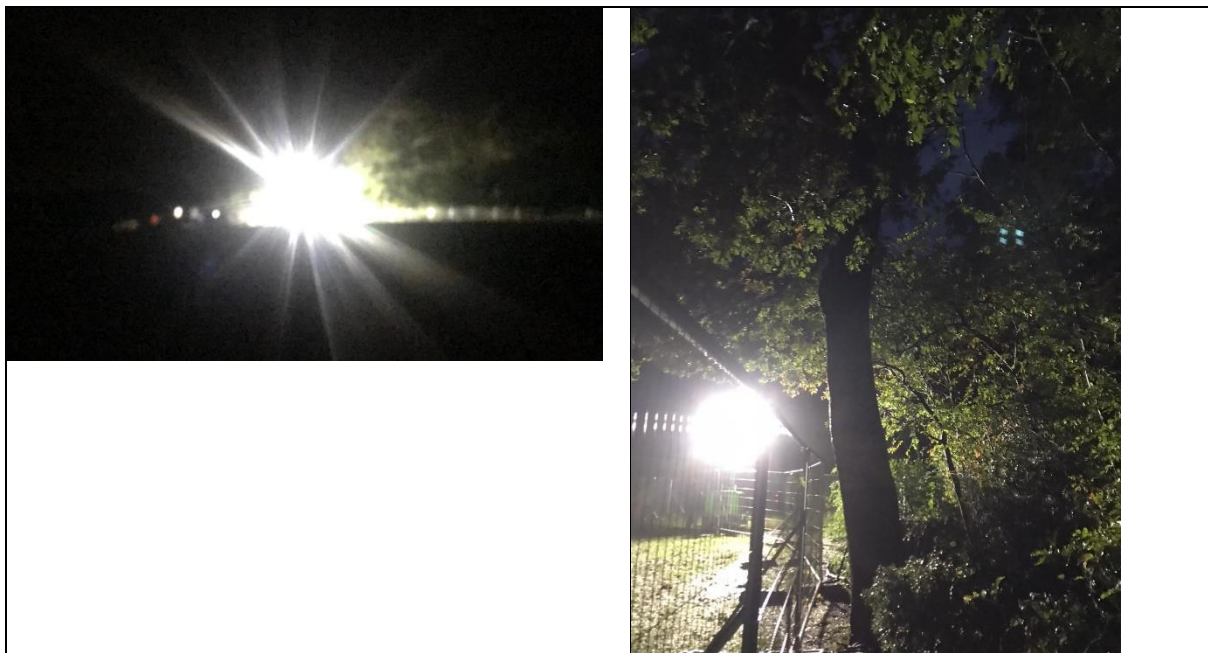
It should be noted that this site is known to have significant numbers of trees with high roosting potential and the Government signposted guidance for such circumstances is copied below for ease of reference.

Figure 6.1 Flow chart illustrating the process used to establish which types of survey are necessary for roosts in trees.



Moreover, the felling was, I believe, due to commence in October 2020 (given the presence of a large machine used to clear trees) and was only stopped by prompt public action and the timely intervention of the police.

I also remain very concerned that very bright security lighting has been put in place since the 1st October 2020, which on the balance of probabilities has already caused reckless disturbance to bats at roost, which is an offence. Photos of this are included below.



Water vole

The Government advice is [here](#)

Some key statements are:

“Survey for water voles if...:

- distribution and historical records suggest they may be present

Surveys should be done between April and October by an ecologist experienced in water vole ecology.

Aim to avoid negative effects by:

- avoiding works to areas where there are water voles
- avoiding habitat fragmentation and isolation by ensuring connectivity of habitat
- limiting damage to water vole habitat

If a protected species licence is needed the application needs to follow the above standing advice and this additional licensing information.”

At Denham Country Park (grid reference TQ0525 8696) and surrounding areas, the project EIA (available [here](#)) states:

“...due to limitations on land access within the available survey timeframe, it was not possible to carry out two survey visits to each site between April and September or to allow a two month interval between surveys at all sites. This resulted in a restricted survey season with consequently fewer opportunities for encountering water vole field signs.”

This seems clear evidence of negligence. Correspondence with the Metropolitan Police is on-going, but it would appear that more recent surveys are equally lacking. Moreover, work is continuing unlicensed despite water vole evidence being found by the enabling development’s own ecologists.

“Areas suitable for water vole were also identified along a section of the River Colne (020-WV1-027006) where the habitat provided areas of good food availability, low disturbance and good connectivity.”

Given the previously quoted statement, this seems clear evidence of negligence.

“4.4.6 BBOWT reported water vole activity on the River Misbourne in 2010 at Denham. No specific locations for activity were provided, but the stretch of the River Misbourne at Denham is approximately 0.3km away from land required for construction of the Proposed Scheme at its closest point. Water vole has also been recorded over 75 times along the Grand Union Canal and the connecting habitats of lakes, ponds and ditches further south of the A40. The most recent records were from 2009 and range between 7m and 0.96km from land required for the construction of the Proposed Scheme. Mink (Neovision vision) has been recorded on 15 occasions, most recently in 2009, within 0.6km south-west of land required for construction of the Proposed Scheme. It is possible that a small number of water voles from nearby colonies are infrequently using the land that will be required for the construction of the Proposed Scheme. There remains the possibility that in future, water voles may disperse into this area and colonise the watercourses and water bodies if this habitat remains suitable, but it would require mink to be eradicated.”

The presence of mink does not preclude the presence of water vole, as has been demonstrated by the independent September 2020 survey where water vole evidence was found within 10 minutes of the survey commencing (see below). This seems clear evidence of negligence and misdirection.

It should be noted that this site, despite having historical records of water vole and a publicly available independent survey report dated 6th September 2020 (available [here](#)) showing clear signs of water vole presence, was subject to unlicensed works soon after that caused

significant damage to the same location where water vole were recorded. This likely offence was reported to the Metropolitan Police via an additional statement dated 23rd October 2020 (available [here](#)). More clear evidence of water vole presence was recorded on the 4th November within some 10m of ongoing clearance for enabling works. These will be submitted to the police in due course.

Since wholly inadequate survey appears to have been undertaken (even though it is a requirement under Government advice), I remain very concerned that, on the balance of probabilities:

- ongoing works will cause reckless disturbance to water voles in their places of shelter (burrows).
- ongoing works will cause reckless damage, destruction or blocking of access to water vole

places of shelter (burrows).

These are both offences under the Wildlife and Countryside Act 1981 (as amended).



The RSPB, The Wildlife Trusts and Woodland Trust share concerns about the findings detailed by the independent ecologist. We are increasingly hearing about examples like these; they are not isolated incidents.

HS2 Ltd has had many years to plan and deliver what is the country's largest major infrastructure project. The scheme must set an example and show best practice in its environmental protection and management, and not lead the system astray by limiting transparency or disregarding due diligence. In the case of ecological surveys and the obtaining of correct licences for instance, HS2 Ltd has had more than adequate time to follow the proper processes.

It would be a grave error if the Government allowed work to proceed that could be illegal as well as actively endangering wildlife - risking undermining every environmental commitment the Government has made about HS2.

We urge the Secretary of State to listen to and act on the concerns raised by professional ecologists.

04 November 2020