

**COMPLAINT AGAINST HS2 LTD
BY WENDOVER PARISH COUNCIL**

**REPORT BY THE INDEPENDENT COMPLAINTS ASSESSOR
STEPHEN SHAW**

Case number 275 (19/20)

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WENDOVER PARISH COUNCIL: COMPLAINT AGAINST HS2 LTD

Background

1. This is my report into a complaint by Wendover Parish Council against HS2 Ltd.
2. The complaint has three separate elements:
 - A. That HS2 Ltd has not complied with the intentions of a Ministerial comment in the House of Lords that its contractors should be encouraged to be innovative.
 - B. That HS2 Ltd has not complied with undertakings given to Parliament that viaducts would be designed in a manner sympathetic to their local context, environment and social setting.
 - C. That HS2 Ltd has failed to comply with its own complaints procedure.
3. Elements A and B were given the same HS2 Ltd reference (000617). Element C was initially given the reference 000618; a further complaint along similar lines seems not to have been given a reference number.¹
4. A separate complaint that HS2 Ltd misled Parliament and petitioners against the railway in respect of train noise (reference 05294) has been referred to the Private Bill team in the House of Lords (following advice from the House authorities), as it relates to the Parliamentary process.
5. Wendover is situated at the foot of the Chiltern Hills Area of Outstanding Natural Beauty (AONB).

Jurisdiction

6. The ICA terms of reference have recently been revised. The Introduction reads:

“The overall aims of the independent complaints assessor (ICA) process are to put right any injustice or unfairness suffered by customers, to improve services delivered through the DfT, and/or to provide assurance that proper procedures have been followed and that maladministration has not occurred.”
7. Paragraphs 11 and 12 read:

“11. The ICA will decide whether and how much of a complaint is in scope. They will do this after considering the information and documents

¹ An email from Wendover Parish Council of 22 August 2019 refers to this complaint and the absence of a reference number.

the delivery body gives them and any other information they judge relevant. The ICA needs to keep in mind the public interest while doing this. Factors relevant here include:

For a detailed review

- the complainant has, or might have, suffered significant injustice, loss or hardship
- the delivery body's handling of the complaint has been poor. For example, it has failed to conduct a proportionate and reasonable investigation, and/or has failed to apply an appropriate remedy
- the delivery body has asked the ICA to review the case
- an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

Against a detailed review

- the delivery body has investigated the complaint properly and has found no administrative failure or mistake
- the complainant objects to the delivery body's policy or legislation
- a full review would be disproportionate.

"12. Having taken into account the factors set out in paragraph 11, the ICA may decide that subjecting the complaint to a detailed review would not meet the overall aims of the ICA review process set out in the introduction."

8. The protocol to the terms of reference includes amongst the list of exclusions:

"The ICA cannot make determinations on:

- Government, departmental or delivery body policy
- matters where only a court, tribunal or other body can decide the outcome
- decisions taken by independent boards or panels, for example: applications under the HS2 Need to Sell scheme
- decisions taken by, or with delegated authority from, the Secretary of State
- ...
- the exercise of professional judgment by a specialist ..."

9. This latest iteration of the terms of reference has not yet been published, but a very similar wording to paragraph 11 can be found in paragraph 2(v) of the most recently published ICA annual report:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821901/dft-independent-complaints-assessor-report-for-2017-to-2018.pdf.

10. In practice, I believe I have in fact carried out a full review of the matters raised by Wendover Parish Council. But there are fundamental aspects of the grievance upon which I do not believe I can adjudicate given my terms of reference. In particular, I cannot comment upon HS2 Ltd's policies, nor the outcome of its specialist design processes.

Timeline and review

11. HS2 Ltd has provided me with a very helpful timeline and an account of the correspondence from its point of view. To assist the Parish Council, and anyone else who may see this report, I have attached the full document as annex A to this report. (I have made very minor amendments for reasons of clarity and consistency.)
12. Given the timeline, and conscious that my reviews are conducted at public expense, I do not intend to reproduce in this report every exchange between Wendover Parish Council and HS2 Ltd. I think the most sensible place to start is with the letter of complaint that the chairman of Wendover Parish Council, Mr Tom Walsh, sent to HS2 Ltd on 30 October 2018.
13. Mr Walsh contrasted the words of the then Minister (Lord Ahmad of Wimbledon) in the House of Lords on 24 January 2017 that "contractors will be encouraged to be innovative", and that the Government would seek to reduce the environmental effects of the new railway "by innovation", with an email received from the contractor indicating that the design of the railway would be in accordance with the relevant legislation.²
14. Mr Walsh also quoted the words of the promoter (that is, the Secretary of State for Transport on behalf of the Government as a whole) in response

² Lord Ahmed was responding to a question posed by Lord Berkeley when the House of Lords was considering amendments to the High Speed Rail (London – West Midlands) Bill. Lord Berkeley had asked: "to what extent is the successful contractor able to come up with his own ideas for either doing some of the work more cheaply or with less environmental impact? Wendover tunnel comes to mind, because I am advised that building a tunnel in place of the open cut and viaduct is cheaper – and of course it has a much reduced environmental impact. Provided that he does it within the limits of deviation and all the other limits on the drawings, presumably it is up to the contractor to propose it to HS2 – which presumably will accept it if all those conditions are met. Alternatively, is there another way to do this? I will be interested to hear the Minister's response, because tunnels are cheaper – somewhat surprisingly, but we discussed it in Committee – and would obviously have a reduced environmental impact. If it is within the limits of deviation and the other limits on the legislation, it would be good if the contractor just chose to do that – in which case there would be benefits all round." The full passage from which Mr Walsh quoted reads: "As I am sure the noble Lord is aware, contractors come under the powers in the Bill, including the limits on deviation. Contractors are also limited by the environmental statement. *Within those limits*, contractors will be encouraged to be innovative." (My emphasis.)

to the House of Lords Select Committee on the High Speed Rail (London – West Midlands) Bill special report issued in December 2016. In his response (<https://www.parliament.uk/documents/lords-committees/High-Speed-Rail/Promoter's-Response-to-Lords-Select-Committee-Special-Report-Cm9396.pdf>) the Secretary of State had said that viaducts – and all aspects of the built and landscaped environment – would be designed in a manner “sympathetic to their local context, environment and social setting”.³ Mr Walsh enclosed an artist’s impression of the Small Dean Viaduct that had been presented to the Wendover Parish. He said this had been accompanied by the words: “there is no disguising the fact that it is a monster”. Mr Walsh said that the “restrictive Bill limits” and the need to cross both the existing Chiltern line and the A413 at an acute angle “precludes any sympathetic design and this must have been known at the time of the Government’s response to the select committee”. He added that the two complaints were “illustrative of the way HS2 Ltd is treating the public and Government with contempt”.

15. Mr Walsh chased for an acknowledgement of his complaint

16. On 11 December, HS2 Ltd provided reference numbers for the two limbs of the complaint. An apology was offered for the delay in the response. (The HS2 Ltd email also includes a nonsensical sentence in relation to the

³ This was in line with the third bullet point in Information Paper D1, Design Policy, updated by HS2 Ltd in February 2017. This sets out the following design considerations:

- the design is safe, efficient, and meets with the requirements of whole life operation and maintenance alongside initial buildability;
- the design contributes to the government’s pursuit of sustainable development, as set out in the National Planning Policy Framework, which involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life;
- the design of all visible elements of the built and landscaped environment in both rural and urban areas are sympathetic to their local context, environment and social setting;
- the design cohesion is achieved through a strong aesthetic ethos and a recognisable architectural language;
- the design is developed through engagement to seek peoples’ views and ideas on the aesthetic design of the visible buildings and permanent structures;
- the design has a culture of cost awareness to give cost/quality decisions which achieve best value for the funders;
- the design innovation is encouraged to generate best value to funders, users and those affected by the railway; and
- the design considers the passenger experience.

first two complaints: “We would usually aim to respond to you by the 16 November 2018, however we have expedited this matter and aim to respond to you by 17 December 2018.”)

17. Mr Tom Lawson, at the time a Public Response Manager for HS2 Ltd, did indeed reply on 17 December. The key elements were as follows:

“With regard to your first complaint, HS2 and its contractors continue to work closely to develop design. This includes looking at ideas which are suggested through business and residential forums. In order for me to respond fully on this issue please provide the specifics of what you feel has been suggested to HS2 and not looked at appropriately, and I will investigate with our contractor and local community engagement team and respond accordingly ...

“In respect of your second complaint, in September HS2 and EK⁴ held 3 public events - two in Wendover and one in Ballinger (Gt. Missenden) - and over 500 residents and businesses attended to discuss and give feedback on the viaduct designs and the green tunnel.

“The local community had the opportunity at these events and online to provide feedback by completing a questionnaire to further develop the design and to have any queries with regard to the construction proposals answered. I would like to reassure you that the feedback gathered is being taken into consideration by HS2 and EK's design team. This will be followed up by further public events in Spring 2019.”

18. Mr Lawson gave details of other means of local engagement, and said he was keen to talk to Mr Walsh in order to formulate a more comprehensive reply.
19. On 11 January 2019, Mr Walsh wrote again to HS2 Ltd. He said Mr Lawson's reply did not address the Parish Council's issues. While they were happy to meet with Mr Lawson, they sought escalation of their complaint to stage 2 of the procedure.
20. Mr Lawson himself replied on 17 January. He said that he had yet to receive clarity about the terms of the original grievance and, for that reason, it would be inappropriate to escalate to stage 2.
21. Mr Lawson continued:

⁴ The Main Works Construction Contractor (MWCC), Eiffage Kier Joint Venture.

“I have spoken to our Senior Construction Manager ... with regard to your concerns and understand that your complaint is that HS2 has not fully considered the proposal that a mined tunnel in the Wendover area would be cheaper and easier to construct. This is an issue that has already been addressed clearly by the Secretary of State for Transport Chris Grayling, in his letter to your local MP David Lidington, dated 27 November⁵ ...

“As noted in the letter, the arguments put forward by Wendover Parish Council have been subject to independent consideration on behalf of the Department for Transport (DfT) by both the Infrastructure and Projects Authority (IPA) and by independent consultants. Both reviews found that the proposal for a mined tunnel in the Wendover area was subject to proper scrutiny and evaluated appropriately in terms of engineering, construction, cost and schedule impacts by officials in both HS2 Ltd and in the Department. They concluded that mining would not be an

⁵ The Secretary of State’s letter is in highly technical terms. In respect of a mined tunnel, the letter reads:

“I have considered the arguments for this at some length and remain unconvinced that the proposal would be either cheaper or easier to construct. The arguments put forward by Wendover Parish Council have now been subject to independent consideration on behalf of the Department for Transport by both the Infrastructure and Projects Authority (IPA) and by independent consultants.

“The IPA review found that the proposal for a mined tunnel in the Wendover area was subject to proper scrutiny and evaluated appropriately in terms of engineering, construction, cost and schedule impacts by officials in both HS2 Ltd and in the Department. The Department’s independent consultants reached similar findings but also questioned the engineering principles upon which the mined tunnel proposal is based. Their position was that your constituents’ proposals did not adequately consider the geological conditions at Wendover and did not adequately address the full scope, cost or schedule impacts of the proposed scheme. They concluded that mining would not be an appropriate method of tunneling for the area in question, that the proposal for a mined tunnel would not be deliverable within the current funding envelope or delivery into service dates, and that the cost and schedule impacts of revisiting the Bill would not be justified. You may also recall that in my 15 October letter to you on this issue I asked whether your constituents would be able to provide my officials with the complete report from OTB Engineering Ltd so that they can assess how OTB proposes to overcome the expected ground water ingress.

“Either way, the proposed mined tunnel still lies outside of the physical and environmental limits specified in the Phase One Act and is therefore at odds with the Phase One scheme that Parliament has decided should be delivered. I therefore reject the suggestion that HS2 Ltd are acting unlawfully by ensuring that contractors only consider good ideas that remain within the limits set out by Parliament in the Phase One Act.”

appropriate method of tunnelling for the area in question, that the proposal for a mined tunnel would not be deliverable within the current funding envelope or delivery into service dates, and that the cost and schedule impacts of revisiting the Bill would not be justified.”

22. Mr Lawson said he hoped this reply clarified the position of HS2 Ltd, but again offered to discuss further.
23. The next day, Mr Walsh repeated his call for the complaint to be escalated. He said it appeared that Mr Lawson was “determined to answer questions which are not contained in the written complaint(s)”. Mr Walsh said the letter from the Secretary of State and the question of a tunnel were being addressed through other channels. In the meantime, it appeared that the complaints process was unable to produce timely outputs.
24. It is apparent that there was then a telephone conversation between Mr Lawson and Mr Walsh, but there were no notes on the HS2 Ltd file I have reviewed.
25. In any event, on 30 January Mr Lawson emailed Mr Walsh with details of the design considerations for the two viaducts (Wendover Dean viaduct and Small Dean viaduct) in the Wendover area.
26. So far as I can see, there was no further correspondence until 29 April 2019, when Mr Walsh once more asked for his complaint to be escalated. He wrote:

“Having considered the answers supplied by HS2 Ltd to date, [Wendover Parish] Council is not convinced that the railway and its proposed structures, in the Chiltern AONB, is being constructed in accordance with the wishes of Parliament, particularly the wishes of the H of L ...”
27. A formal acknowledgement that the complaint had been escalated was sent on 3 May. It was anticipated that the final response would be received by 31 May.
28. In line with HS2 Ltd’s standard procedures, responsibility for conducting the step 2 review was passed to a member of the Senior Leadership Team with no previous involvement (in this case, Mr Gordon Alexander), but it rapidly became clear that the anticipated time target would not be met. Some further delay occurred as Mr Alexander wished to meet with Mr Walsh, and it took time to find a mutually convenient date and location.
29. The meeting eventually took place on 31 July.
30. Meanwhile, on 3 May, a further complaint had been submitted alleging that HS2 Ltd had been deceitful in respect of train noise. (Further to what

I have written in paragraph 4 above, this complaint was not among the papers drawn to my attention. Its thrust is apparent, however, from paragraph 32 below.)

31. On 22 August, the clerk to Wendover Parish Council, Mr Keith Shelley, wrote to Mr Lawson. He questioned why no reply to the step 2 complaint had yet been forthcoming. He also listed what he said was a new complaint: that HS2 were unable to conform to their complaints procedure and respond within 20 days of a complaint being submitted.
32. Mr Shelley said the Parish Council was now insisting that their complaint be escalated to stage 3 (the independent tier). It is less clear what the Council required in respect of the complaint submitted on 3 July. This was characterised as “HS2 incomplete and deceitful regard to EMR [Environmental Minimum Requirement] LOAEL [Lowest Observed Adverse Effect Level] train noise and HS2 deceived Parliament and Petitioners with regard to EMR LOAEL.”

33. In his reply of 27 August, Mr Lawson wrote as follows:

“Firstly, the meeting which we held with Cllr Tom Walsh and Mr David Ball on 31 July 2019 was a formal meeting specifically for your Step 2 complaint - CPA-000617. The meeting was set up for Gordon Alexander, our Senior Leadership Team member who is reviewing the handling of the complaint, to meet with Cllr Walsh to agree the terms of reference for the review and to confirm that his understanding of the complaints, as they were written, was correct. To provide an update on that case, Gordon has now submitted his draft report into the Public Response team to share with the HS2 CEO, Mark Thurston. As per our published complaints process, HS2's CEO will then review the report and write a letter setting out how HS2 will act on any recommendations made through the report. We do not work to a specific timeframe for completion of a Step 2 review.

“With regard to complaint HS2-19-05294, this was submitted on 3 July, with a target response date of 31 July 2019. At the end of our meeting with Cllr Walsh and after Gordon had left the meeting, I shared the proposed response with Cllr Walsh and Mr David Ball. As noted in my follow up email dated 31 July 2019⁶, the letter was not considered to fully answer the complaint and, as such, we asked Cllr Walsh to set out by reply the points that he wanted a further response on.”

⁶ Further to paragraph 4 above, like the complaint of 3 May this follow up email was not amongst HS2 Ltd's paperwork that I have considered.

34. Mr Lawson explained that he was moving to other work, and that Ms Victoria Burgess would now be leading on the response to complaint 05294.

35. Mr Walsh replied on 30 August. I think it sensible to reproduce his letter in full:

"This is very disappointing. You will excuse me if I take a completely contrary view to you on the circumstances surrounding our complaint and its processing.

"In general, HS2 complaints handling is unfit for purpose. It is evident that it is not timely and it's not professional. Specifically, WPC makes valid complaints, CPA 000617, that are not responded to in the reasonable timescale laid out in your own process.

"The first, late, response is hopelessly inadequate in so much as it attempts to answer questions posed by HS2 rather than those in our complaint. We are then told that the complaint is escalated to level 2 of your process.

"We are invited to meet Gordon Alexander. We expected that this would be a meaningful meeting but in truth it is merely to confirm his understanding of the complaint and the process. We then receive your latest communication. According to our notes it's not quite accurate. Is it?

"CPA 000617. Although you say you do not work to a timescale for stage 2, Gordon Alexander did undertake to respond in 15 working days. The idea of that response being to a third party, Mark Thurston, rather than to WPC was not mentioned. Gordon seemed to understand that time was important for all parties. Could you please inform Mark Thurston that we expect the stage 2 reply by Monday the 2nd of September.

"HS - 19 - 05294. At no time did either Tom or David accept that there was any need for further clarification. Our reluctance to accept or even consider the response was pointed out to you quite plainly. The response was not addressed to WPC, it was addressed to David Lidington MP. We explained, though it should not have been necessary to explain, that as we had not had sight of David's complaint, we could not comment on your response to it. When Wendover PC makes a formal complaint, it expects that the answer will be addressed to it directly and that the answer will be focused on the substance of the PC's complaint.

"Please stop being evasive and action the original complaints or escalate CPA000617 to level 3."

36. Ms Burgess sent a first acknowledgement on 4 September, followed by a fuller email on 23 September. She apologised for the further delay. Ms Burgess said that she had asked Mr Alexander to clarify some points in his review, but she was hopeful it would be completed shortly and that Mr Thurston would then write. In respect of complaint 05294, Ms Burgess wrote:

“I am aware that Tom met with Cllrs Walsh and Ball on 31 July 2019. During this meeting he provided our response to the issues raised under this reference. There was an action from this meeting for the Cllrs to provide clarification of the points they remained dissatisfied with. This culminated with your email dated 12 August 2019.⁷

“Based on the comments made in your email and in order to provide a further response, Tom passed the enquiry to our contractors and I have received a response regarding the noise levels. However, as the concern relates to matters that occurred during the bill process, I have had to seek further clarification.”⁸

37. The step 2 response was finally issued on 22 October. In his covering letter, the chief executive, Mr Mark Thurston, said that both at step 1 and step 2 it had been identified that Eiffage Kier had considered innovation in their design process, but it was apparent that Wendover Parish Council took a different view. Mr Thurston quoted approvingly this passage from Mr Alexander’s review:

“The complaint is essentially querying compliance with a design management process as a result of dissatisfaction with the outcome. Such complaints are unlikely to be satisfactorily resolved unless there is evidence of the design process not having been followed and the design subsequently revisited.”

38. Mr Thurston said all four of Mr Alexander’s recommendations had been accepted and would be implemented.

39. Mr Alexander’s internal case review runs to 13 pages, and I need only summarise its contents.

40. Mr Alexander began by explaining that his review did not consider the relative merits of the design of this section of the railway or possible alternatives, but rather (i) whether the design management processes satisfied corporate obligations; (ii) whether HS2 Ltd complied with its

⁷ I assume that Ms Burgess meant to say 22 August.

⁸ Clarification that resulted in this part of the overall complaint being referred to the House of Lords authorities.

design management processes; and (iii) how effective the step 1 complaints process had been in communicating its findings.

41. In relation to the first part of the complaint, Mr Alexander quoted from Eiffage Keir's contract, which he said complied with the HS2 Ltd innovation strategy and contained an explicit reference to innovation. He added that design management processes for the Small Dean viaduct had been followed. Mr Alexander set out the correspondence, culminating in the response of 30 January 2019 (see paragraph 25 above).
42. In regard to the second limb of the complaint, Mr Alexander set out where the design of both the Wendover Dean and Small Dean viaducts were addressed in the Detailed Design Principles in the Chilterns AONB Enhancement and Integration Plan (see also below, paragraphs 50-53). He also listed the engagement activity in and around Wendover in respect of both the Wendover Dean and Small Dean viaducts.
43. Mr Alexander said there had been a lack of clarity as to the terms of both elements of the complaint.
44. The four recommendations were as follows:
 - HS2 should consider the appropriateness of accepting complaints relating to design decisions and provide clarification that only the process can be reviewed.
 - Where complaints are generic or based on a view, belief or opinion, HS2 should ask for clarification/reasons or evidence or it may not be possible to undertake an effective investigation.
 - Where evidence is provided without context this should be sought to ensure there is no misunderstanding or misrepresentation.
 - Where the complaint is unclear or ambiguous, HS2 should ensure it seeks clarification at the earliest opportunity.
45. On 20 November, Mr Walsh asked for Wendover Parish Council's complaint to be escalated to the independent tier of the DfT complaints procedure. Mr Walsh said the question was not whether there was innovation, yes or no, but whether innovation had led to an environmentally acceptable outcome:

"The Lords clearly challenged HS2 to create something visually appealing in the Wendover area. What HS2 is offering is a bog-standard concrete and steel 'cuckoo' that sucks the life out of the A413 and scars the AONB forever."

46. Mr Walsh said that HS2 Ltd had not considered the complaint properly or fairly: “It appears that your team cannot look at the substance of the complaints with clarity.”
47. I received the papers on 11 December 2019, and confirmed their receipt the next day.

Further information

48. I have quoted above from Information paper D1, Design Policy. Table 1 of the document makes clear that both Wendover Dean viaduct and Small Dean viaduct are key design elements – that is, ones where the Promoter “will engage the public on the design development of key elements of infrastructure”.

49. The Promoter’s requirements included:

- to provide an efficient high speed rail network capable of safe construction and operation;
- to limit adverse environmental and visual impacts during design construction and operation;
- to deliver value and maintain budget compliance;
- to develop a sustainable development policy setting out defining principles;
- trains, stations and associated facilities to be fully accessible to all passengers and provide efficient access to other rail networks and other transport modes;
- stations to contribute fully to their built environment and to the financial case for HS2 and the overall journey experience;
- to engage with local authorities and other stakeholders to identify additional potential regeneration opportunities within area planning frameworks;
- to comply with relevant European Union Technical Specifications for Interoperability;
- to develop proposals in order to minimise whole life whole system operation, maintenance and renewal costs; and
- to plan with zero-based targets for accidents and injuries.

50. I have also considered the Chilterns AONB HS2 Enhancement and Integration Plan (CEIP) (https://www.chilternsaonb.org/uploads/6974-Chilterns%20AONB_HS2%20CEIP_Part%201_Detailed%20Design%20Principles_low%20res.pdf).

51. Referring to the Wendover Dean and Small Dean viaducts, the CEIP says:

“The viaducts’ design must embrace the established tenets of good design to produce a wholly integrated solution of good proportions and excellent landscape fit. Both viaducts have a particular

challenge posed by their relatively low height compared to their length.”

52. Of the Small Dean viaduct, the CEIP says:

- “The viaduct crosses a complicated mesh of existing routes including the A413 and Chiltern railway in cutting. This will have significant impact on the structural solution particularly as the crossing is skewed.
- This is exacerbated by further access roads, road junctions and the pylon line, all of which are at a variety of levels.
- The immediate landscape context is peri-urban, road-dominated and of low value.
- Road users will have direct experience of the bridge – both its elevation on approach, and close range views of its underside as they pass beneath it.
- Low noise barriers are required on both sides of the viaduct. These extend to the west for over 200m before passing into the Green Tunnel portal and pressure attenuation facility. Both are on embankment with little opportunity for meaningful screening to views from the north.
- To the east of the viaduct the alignment is on an embankment for nearly 1km on the north side with the large false cutting landform providing screening to the south side. No noise barriers are required in association with this part of the alignment.
- Both overhead line equipment and trains will be clearly visible from the north for over 1.5km. *The structural and logistical complexities of this viaduct, its greater visibility and less tranquil setting all indicate that a more visually dynamic structure may be appropriate.* This might involve a deliberate contrast of the single central long span with the repetitive side spans.” (Italics added.)

53. In contrast, the CEIP says of the Wendover Dean viaduct: “The Wendover Dean viaduct crosses open land with few ground level obstacles ... The relative simplicity of the backdrop of this viaduct suggests a matching simple and elegant structure.”

54. HS2 Ltd has also provided me with the Three Parishes slide presentation on Small Dean Viaduct dated 13 April 2018. The presentation says the preferred scheme design is for a double composite deck, the advantages of which include reduced pile foundations.

55. Also amongst the papers was the Eiffage Kier/HS2 Ltd document 1MC06 – Stage One C2 – MWCC – North Portal of Chiltern Tunnels to Brackley: Community Engagement Report for the Wendover Key Design Elements. This sets out the local response to the design and delivery proposal for both Wendover Dean and Small Dean viaducts, as well as the Green Tunnel South Portal, that were shared at public events in September

2018. The executive summary reports: “The most common message received was the preference from the community for a mined tunnel.”

56. In its referral documentation, HS2 Ltd acknowledged some flaws in its correspondence handling:

“Please note that HS2 Ltd had a meeting with the Councillors of WPC where it was agreed that the Cllrs would consider the response provided to David Lidington M.P. and then come back with clarification relating to their complaint. When HS2 Ltd sought this further clarification, WPC referred HS2 Ltd back to their original complaint letter. This impacted on the complaint handling timescale.

“HS2 Ltd acknowledge that the Step 2 review took longer than we would have liked, this was due to resource issues. The Public Response Manager responsible [Mr Lawson] left and the Public Response Manager taking on the case was also deputising for the Senior Public Response Manager [details redacted by ICA]. However, HS2 Ltd endeavoured to keep WPC updated and assisted them with other issues through this period ...”

Consideration and Observations

57. As I have explained, as an Independent Complaints Assessor, I am not authorised to question the policies followed by Department for Transport delivery bodies (including HS2 Ltd). My jurisdiction extends only so far as an assessment of the extent to which those policies have been appropriately followed.

58. Nor can I possibly offer any views on the design of the new railway (including the Little Dean viaduct), or the extent to which that design is determined by practical as well as environmental considerations. I am a lay person with no expertise whatsoever in the design or construction of viaducts or any other road or rail infrastructure.

59. I have therefore found it somewhat hard to structure my report effectively. I infer from Mr Alexander’s step 2 review that he too found it difficult to identify the heart of the complaint from Wendover Parish Council.

60. I say this not in any criticism whatsoever of the Parish Council. It is quite clear that they believe that the proposed Little Dean viaduct evidences neither innovation in its approach to the environmental challenge, nor is sympathetic to the local context. However, these are political and aesthetic judgements. They are not criticisms of behaviours, processes and systems that are the proper subject of a complaints procedure.

61. So far as the first limb of this complaint is concerned, it is abundantly clear that innovation is a design criterion required by HS2 Ltd's policies. It seems to me, therefore, that the company is acting within both the spirit and the letter of Lord Ahmed's comments in the House of Lords in January 2017. I do not read those comments as suggesting that innovation was the sole criterion that contractors must follow. Indeed, leaving aside the many other criteria listed in footnote 3, the Minister was at pains to emphasise that contractors had to work within the parameters set by the High Speed Rail Bill.
62. I am also content that HS2 Ltd has followed appropriate policies to try to ensure that the two viaducts in the Wendover area are designed in a manner sympathetic to their local context, environment and social setting. Indeed, it is clear that a very different approach has been taken to the Wendover Dean viaduct to that for the Little Dean Viaduct to reflect the context and environment. It is also apparent that there has been extensive consultation with local residents and their representatives.
63. As I have said, it is the contention of the Parish Council that the Little Dean viaduct is not sympathetic to the local context (although the Parish Council has not used the term, it is apparent that they regard it as brutalist in design). However, this is not something upon which I can sensibly offer any views. I note that the CEIP refers to a "more dynamic structure" for the Little Dean viaduct compared with that for Wendover Dean.
64. The issue on which I can offer more extensive views is the extent to which HS2 Ltd has followed its complaints procedure. There have been a number of flaws.
65. The initial complaint from Wendover Parish Council was sent on 30 October 2018 but received no acknowledgement until 11 December and no reply until 17 December. This was a clear breach of the time targets in HS2 Ltd's policy.
66. It is apparent that Mr Lawson sought to delay escalation to step 2 until he had greater clarity about the terms of the complaint. I think it was appropriate to offer a conversation with the Parish Council, albeit this meant that the complaints policy was placed somewhat in abeyance. However, Mr Lawson's letter of 17 January 2019 served only to muddy the waters with its focus upon the arguments surrounding a mined tunnel. This had not formed any part of the original letter of complaint although, in fairness to Mr Lawson, he would have been aware of the local support for that route option. (I have also referred to those arguments in this report.)
67. There was then a very significant delay at step 2. From the Parish Council first requesting step 2 to their receiving Mr Thurston's letter and Mr Alexander's report took from January to October 2019.

68. It is perhaps surprising that Mr Alexander did not formally recommend an apology for this delay in his review. However, an apology and a commitment to learning the lessons was appropriately offered in Mr Thurston's covering letter.
69. I have said in other reports that HS2 Ltd's practice of commissioning an internal review from a senior manager represents a 'gold standard' in complaints handling. However, the absence of any time target at step 2 is a significant lacuna. Time targets provide transparency for complainants, and an incentive for the organisation complained about, and are a mainstream feature of almost every well-designed complaints procedure. **I recommend that HS2 Ltd consider amending its complaints procedure to make clear that the Step 2 review will be conducted within a set period (two or three months might be reasonable).**
70. In general, I think Mr Alexander conducted his review in a thorough and professional manner. I think there is good sense in his four recommendations which are designed to ensure that use of the complaints procedure is confined to the issues of behaviour, process and systems to which I have referred in paragraph 60. However, I think that there could have been a greater focus on the delay that had occurred both at step 1 and step 2.
71. I am also concerned that the Parish Council's complaint about HS2 Ltd failing to comply with its own complaints procedure (initially given the reference 0618, and then re-visited but apparently not given a new reference in August 2019 – see paragraph 31) seems to have slipped under the radar entirely. **I recommend that HS2 Ltd apologises to Wendover Parish Council for the complaint handling flaws identified in this report.** However, I acknowledge there was a definite improvement in the complaint handling from August 2019 onwards.

Conclusions

72. Given my consideration of the issues, I will record the complaint from Wendover Parish Council as having been part upheld.
73. This report now completes my review of the matters Wendover Parish Council have raised, and all stages of the Department for Transport complaints process. I hope my findings can help bring this particular grievance to a close. However, HS2 Ltd comes within the jurisdiction of the Parliamentary and Health Service Ombudsman (www.ombudsman.org.uk), and it may be that Ombudsman would conduct a further investigation if the matter were referred for his consideration.

74. A copy of this report goes to HS2 Ltd and to the clerk of Wendover Parish Council.

Stephen Shaw
Independent Complaints Assessor

February 2020

Annex A: Timeline and account of the correspondence provided by HS2 Ltd

30 October 2018

Email raising a complaint sent by Wendover Parish Council (WPC) to Vernon Loo, HS2 Community Engagement Manager.

11 December 2018

Email, HS2 complaint acknowledgment sent to WPC.

17 December 2018

Step 1 response.

11 January 2019

Email from WPC stating the response does not address their issues, suggesting a meeting and asking to escalate the matter to Step 2.

17 January 2019

Email from HS2 clarifying the HS2 complaint process and providing a copy of HS2 Ltd's response to their MP who had raised the same issue with the Secretary of State on their behalf.

18 January 2019

Email from WPC asking the matter is escalated to the next stage.

18 January 2019

Telephone conversation between HS2 and WPC regarding email received same day.

30 January 2019

Email from HS2 to WPC responding to their complaint and points raised in the telephone conversation on 18 January 2019.

30 January 2019

Email acknowledgement from WPC to HS2.

29 April 2019

Email from WPC to Vernon Loo asking to escalate their complaint. They state: "... Council is not convinced that the railway and its proposed structures, in the Chiltern AONB, is being constructed in accordance with the wishes of Parliament, particularly the wishes of H of L, as referenced in our original complaint."

1 May 2019

Vernon Loo email to WPC acknowledging request and forwarding to HS2 Complaints.

3 May 2019

HS2 Complaints formal acknowledgement to WPC of their request to escalate case.

28 June 2019 – 29 July 2019

Email exchange between HS2 and the Chair of WPC seeking to arrange a meeting with the member of Senior Leadership Team (SLT) conducting the Step 2 review.

22 August 2019

Email from WPC complaining they had not received a response within 20 days of the Step 2 meeting.

27 August 2019

Email from HS2 to WPC clarifying the matter.

30 August 2019

Letter (via email) from WPC complaining about the time taken to respond to complaints.

4 September 2019

Email from HS2 explaining Tom Lawson had left the role and Victoria Burgess would take over.

4 September 2019

Email from WPC thanking HS2 for the update.

23 September 2019

Email from HS2 providing an update.

24 September 2019

Email from WPC thanking HS2 for the update.

23 October 2019

Letter from Mark Thurston, CEO, Step 2 review response sent to WPC. Sent via Royal Mail due to size of pack. Email to WPC to advise.

23 October 2019

Email from WPC thanking HS2 for the update.

20 November 2019

Letter from WPC asking for the matter to be escalated to the DfT ICA, sent via email.

22 November 2019

Email from HS2 to WPC acknowledging request and providing link to ICA for information.