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**“Observations to the Aarhus Convention Compliance Committee in support of
ACCC/C/2014/100”**

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I. Information on observer

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The Observer is claiming that the UK, as a Party to the ‘Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters’ (the Aarhus Convention), has breached a number of the Articles of the Aarhus Convention and this has impacted the Observer, Parish of Twyford and others in Doddershall and the Aylesbury Park Golf Club (APGC) and the public.

The Observer alleges the UK Government has breached the Aarhus Convention in the formation and development of the HS2 rail route and submit this document to be considered to be granted preliminary admissibility.

The Observer and others are inhabitants of or have interests in Buckinghamshire County Council (BCC) and the Aylesbury Vale District Council (AVDC) areas.

1. Assertions

- 1.1 That the UK Party did not follow the requirements of Article 7 for consulting the public when all options were open for consideration prior to the depositing of the Labour Secretary of State's Command Paper in 2010
- 1.2 That on the change of UK Government in 2010 steps were not taken to rectify this breach.
- 1.3 That the UK Party favoured certain organisations likely to be affected with privileged information and/or decisions that were not made available to other organisations, affected parishes and the public. This was also a breach of Article 7.
- 1.4 That the Decision and Next Steps (DNS) delivered by the Coalition Secretary of State in 2012 and the subsequent Second Reading of the Hybrid Bill do constitute planning decisions within the requirements of the Aarhus Convention and the UK Judges have not accepted this by claiming no planning decision and not a framework for planning before Royal Assent putting the UK in breach of Article 6 of the Aarhus Convention of effective consultation. All the objections from the public in 2011 leading to the DNS outcome after which the Judges in the Courts, except Lord Justice Sullivan dissenting exclaimed no planning decision until Royal Assent. Also there is an Article 7 breach following Judicial Review Judge's statement in the Judicial Review to Aylesbury Park Golf Club (APGC) and to the two local farmers that they could petition against the alignment of the HS2 Route to lower impacts. They and other members of the public and the Parish of Twyford were all barred from the House of Commons Select Committee petitioning by the House of Commons barring the Select Committee from hearing and acting on public requests to realign the HS2 Route.

2. Supporting Information

2.1 Early Parliamentary Events

2.1.1 It is proposed that a breach occurred as the UK Party did not openly advise and guarantee the rights of access to the same information in 2009 and 2010, or to public participation in decision-making in 2010 to all the public, people, Parishes and amenities that are set to lose land and have land taken. This did not provide people with the timely access to justice to avoid losses and mitigate on environmental matters in accordance with the provisions of this Convention or to vote on locations whilst all options were available. A thin line on a map became a very wide swathe of land and some facilities were added later. Misrepresentation of the impacts was evident after 2012 but there was no later opportunity to minimise impacts.

2.1.2 The Secretary of State (SOS) Department for Transport (DFT) Statement launching HS2 and High Speed Rail in January 2009 was vague and confused, several different transport and energy saving areas that were never been clarified. The SOS did not intend HS2 to be debated with a vote in Parliament. There was no vote even though some MPs requested a vote. The objective of the Statement meant that MPs did not have a realistic presentation by SOS of the public need for this very High Speed Rail project and its impacts. The Statement was a mixed message about Heathrow, High Speed rail transfer of passengers from air to rail and carbon emissions and of a direct rail route from Birmingham to Europe which it no longer provides. The documents that SOS deposited in the House of Commons library in January 2009 were without statement of the detailed remit and inadequate relationship to the damages to the environment and impacts on people. The public were not alerted to be able to obtain this information. SOS stated he did not intended to debate or vote in Parliament on the HS2 Route, or on the remit of HS2 regarding the extent or not, of mitigations, or the methods that were to be used by HS2 and DFT for the formation of the route details and alternative alignments, tunnels and route section.

2.1.3 It is alleged SOS required a plan in place quickly for a route that was direct between London and Birmingham/West Midlands and how the route related to the environment was not adequately considered when the scheme was drawn in 2009, as a Route 3 plan of the proposed route. Then SOS did not correct this prejudged approach, when all options were still open to the new UK Government against Article 7. There was not a robust explanation of the alternative routes that were said to have been considered in 2009 and early 2010 by HS2, but there was only a statement that the early selection of a preferred route (Route 3) was made in order that “wholesale blight be avoided” ..

2.1.4. It is considered that the HS2’s 90 route sections and their indication of possible routes were not all considered, particularly to avoid the Parish of Twyford where your Observer lives and is the Chairman of the Parish Council. At the Stoke Mandeville road show in 2011 one of the Judicial Review case preparers was advised by HS2 CEO that Route 3 was selected to prevent wider blight from London to Birmingham. .

2.1.5 There has been an Article 6 breach because there was not the opportunity for the public and the Observer to participate effectively in 2009 and 2010, before the Labour Government’s SOS Command Paper was put before Parliament in 2010. The UK did not provide for early public participation, when all options were open or permit effective public participation as required by Article 7 and Article 6. The suggestion from SOS in 2009 was the straightest and very fast routes extending to Scotland and some Cities beyond the West Midlands was required.

2.1.6. It is alleged SOS required a quick plan for a route that was direct between London and Birmingham/ West Midlands and how that related to the environment was not fully, or sufficiently understood when the route was drawn in 2009 and named Route 3, the SOS’s proposed route. The UK Party did not make accessible to the public the text of the SOS internal decision along with the reasons and considerations on which the decision was based and the purpose of the ongoing work on other routes without commitment to any real prospect of adoption or intent to change to another route, or change the alignment, for example to pass by Bicester for a local station for Oxfordshire and Buckinghamshire rail users. There was not and has not been a robust explanation of any of the alternatives. The decisions to effectively exclude alternatives were not explained fully in 2009 or in early 2010. Some of the 90 route sections and notional 8 routes were not derived by extensive feasible considerations and these notional routes do not demonstrate evidence of any serious intention or commitment to optimise the better route configurations, or to ensure the rail services from a route can increase the fare earnings, such as from connecting with a location such as Bicester and enabling road users on the M40 to use rail instead. The House of Lords Economic Affairs Committee Report presented concerns in 2014/2015 after taking evidence to which the Observer contributed and were not convinced of the decision that the UK Party made.

2.1.7 The UK breached the General Provisions. The UK Party did not endeavour to ensure that officials and authorities assist and provide guidance to the wider public seeking access to relevant information. They did not facilitate participation in the decision-making and those seeking access to justice for environmental matters, especially to the Parishes, farmers, amenity operators and all the people who now understand the wider impacts such as of width and of the impacts on road connection that they were not made aware of from 2009 through 2010 and 2011.

2.1.8 The UK Party did not ensure that:

- Comparisons with Bucks CC baseline, AVDC Local Plan and the 2009 and 2010 Appraisal of Sustainability AOS’s were completed for each route comprehensively for all key factors relating to the environment. The JR Judge said the AOS (Analysis of Sustainability) was not an EIA (Environmental Impact Assessment).

- Adequate information flowed to the BCC and AVDC for the Parish Councils and the APGC amenity operator at a time when changes could have been made.
- The public could effectively participate in 2009 and 2010 on relevant impact and planning matters. DFT, HS2 and DEFRA were under resourced and locally uninformed due to their insufficient research and understanding.
- Removal of the more diligent UK public planning inquiries and Planning Inspectorate competencies to the embryonic HS2 with the Hybrid Bill process in Parliament would not achieve what the JR judge had indicated should include opportunities to request realignment of the route.
- The design, oversight and feedback processes to involve the public would be balanced and Aarhus compliant. There was not effective engagement but dictating of Route 3. There is not evidence of HS2 being diligent with either scrutiny and deep technical surveys in 2009 and 2010. There were no ground surveys or LIDAR surveys for comparisons.

2.1.9 DFT and HS2 officials did not support the public in seeking access to information under the Aarhus Convention when HS2 was established at the outset in 2009 and HS2 did not respond effectively to suggestions and to questions for changes to the route and concerns.

2.1.10 As a result:

(a) The proposed activity and the application on which the decision and stage of planning would be taken were not made clear by HS2 or DFT or UK HMG at the outset. People were not informed that this would limit engagement and scope for mitigations and there would be the alleged Aarhus breaches. The Judicial (JR) and following court cases demonstrated that the UK did not have suitable controls within the Hybrid Bill process for changes. There was no intent by the UK Party to prevent breaches to the Aarhus Convention and even handedness. There was no legal access to justice, only to a court process ineffective and not leading to rigor for such a significant decision. This has resulted in the public and the Parish Council to request this assessment of alleging the UK Party knew of the breaches to the Aarhus Convention, by the UK Party, several MPs and PMs, DFT and/or HS2 through the barred Hybrid Bill petitioning process that proved ineffective in delivering the changes needed by people to the HS2 DFT Route 3 plan. Also no equivalent of a SEA (Strategic Environmental Assessment) or EIA processes were applied at the time to determine and make the necessary changes to enable the public in the UK to accept the Aarhus Convention was being complied with.

(b) It is considered that DFT and/or HS2 were unable to be competent in all the aspects of planning needed for this very large project impacting roads, communities and ways of life. They were a public authority responsible for making planning process decisions, without the track record of a rail route that was 160Km long being rushed on a desk top remote length basis. HS2 Limited was not suitably equipped, resourced and did not have an Executive Structure in 2009 to 2012 to act as the Planning Inspectorate and should not have had the delegated powers without independent diligent oversight. The petitioning process was not a suitable procedure alone, as it was not equivalent to a 'public planning inquiry' permitting real technical cross examination needed for applying balance to such a large project with many impacts and conflicts. The petitioning had legal people trying to be technically qualified, which they were not competent to address and lay MPs being judges of technical and circumstantial issues in a hurry. This was not diligent thoroughness the JR judge had described could arise post the JR.

2.2 Post Command Paper Events

2.2.1 The Observer asserts that the following steps were not taken by the UK Party, DFT and HS2 and:

(a) The time-frames post announcement were insufficient for effective participation. This would not have been the case in 2009. . HS2 was an under resourced and inexperienced new organization with near absolute planning role without competence in such railway projects.

(b) Draft rules should have been published or otherwise made publicly available. In 2009 and early 2010 HS2 did not have the specialists or resources or local understanding, or a fair plan of engagement based on local knowledge. Changing Governments from Labour to the Conservative/Liberal Coalition in 2010 led to direct adoption of Route 3, without sufficient consideration of the other routes or rail passenger services objectives and without the public's participation for agreeing these were tested transparently. .

(c) The public were not given the opportunity to comment, directly or through representative consultative bodies adequately, and they did not understand the full impacts. HS2 applied an incremental iteratively approach with further disclosures of land take and changes. Each iteration breached Article 7 as options were dropped too early. The results from the public participation were not taken into account by HS2, as far as was possible. There was little executive authority or actions to capture and change the plan. Analyses were summarized and not applied to reduce impacts effectively. . The processes adopted by DFT and HS2 were mainly by autocratic statements, not multiple party Community Forums for collaborations to remove and reduce specific impacts and to resolve the number of issues and mitigate for Communities in a balanced way.

2.2.2 The UK Party was in breach of Aarhus by not committing to promote effective public participation at an appropriate stage, or stages, when all options were still open. This was particularly during the 2009 and 2010 period when the DFT and HS2 and public authorities were producing executive regulations and other generally applicable legally binding rules that had a significant effect on the environment but were not revealed clearly. For example the proposal to put a siding in the Sheephouse Wood at the expense of displacing rare bats protected by a European Habitat Directive is being made in 2016.

2.2.3 The preliminary HS2 road-shows in May 2011 were too late for significant changes and other options to be considered with Communities and people. People visiting events did not believe the noise levels projected in booths, or that sufficient work had been undertaken to justify the HS2 selected Route as Route 3 with its lack of a station for local users or the location of heavily impacting facilities. For example no mention was made of the large Quinton National Grid and HS2 power feeders. These were not articulated in 2010 or 2011. HS2 failed to address the location of these in petitioning even though alternative sites exist.

2.3 The Hybrid Bill

2.3.1 The Hybrid Bill limits the consideration only to what is in the Bill documentation, a route corridor whilst impacts are across much larger areas. For example, the impacts on many school journeys at Twyford. There was a very curbed remit imposed on the Select Committee by the specific Bill Standing Orders of the House of Commons on the scope of locus of people and of the scope of topics that could be discussed, or presented to the Hybrid Bill Select Committee, or lay MPs and Barristers who are not technical competent in all petitioning areas and subject matters. The UK process for planning for a development was higher and diligent for Heathrow Terminal 5 a benign project compared to HS2. This arbitrariness was not to be expected in the UK, a previous advocate of a participating democracy, with enforceable reasonableness and proportionality expected of the European Union/European Commission/UK. The pronouncement by Secretary of State for Transport on 15th January 2009 in the House of Commons indicated haste and mixed airport and high speed rail objectives. .

By adopting the Hybrid Bill approach for this project the UK HM Government has removed the faith in the Public Planning Inquiry involving specialists from the Planning Inspectorate or cross examining witnesses. It handed the day to day whole planning responsibilities to HS2 Ltd (the Government owned Project Promoter) as judge and jury and excluder. HS2 was an

unproven organisation without resources and not leaving the final decision making to lay MPs in Parliament but taking it. Neither body/group had the necessary expertise and competence to carry out the complex roles..

2.3.2 There was the admission that each Reading of the Hybrid Bill would be “whipped” thus reducing opportunity of Parliamentary MPs to defeat, or significantly amend the plan, project or programme. This prevents the sponsors of the Bill, a small number of Ministers in the Coalition administration just ended and now in the Conservative Government to be challenged objectively. . A key issue was that the Judge opinion was that a few MPs in Parliament were final arbitrator for the project and that they had control over a total process. The Hybrid Bill process in practice has not provided for reconsideration of route issues, alternatives and thoroughness. This is a prime concern for the Observer and this document. It is clear that HS2 planning was not established to be Aarhus compliant.

The UK and DFT, HS2 public authorities did not endeavour to provide opportunities for the public to understand the consequences and there was not the public participation in the preparation of policies relating to the impacts on the environment and the impacts of the facilities, Route 3 and the changes to roads and the loss of the APGC amenity. The local public believed with such large cost of over £50B for Phase 1 and Phase 2 and more projected now to £80B that every effort would be taken to cooperate with the public to reduce the environmental impacts along the route and at facilities and decision making would be comparable to previous standards without bias. There has been little commitment by HS2 and the DFT to first develop plans, programmes and policies with local people and Parishes. Route 3 is a very damaging and poorly mitigated route without the facilities in the Observer’s areas for better rail services for the Parish people and there have been Article 6 and 7 breaches of the Aarhus Convention.

2.4 Unreasonable favouritism

2.4.1 That some non-government organisations, which in some cases look to the UK Government for support, were consulted by HS2 and/or lobbied HS2 at a time in 2009 and 2010 when options should have been still open to the people and the few were able to comment on the plan(s) and obtain their required changes to the route that would benefit them to the disadvantage of communities, amenities and local businesses appears contrary to the Aarhus Convention. This is because after such a prejudicial change not all options are open and the engagement and the will for many is then limited. DFT and HS2 were fettering discretions and denying options. This is an abuse of power, as there was no later oversight, or audit, or appeal to the HS2 planning authority..

2.4.2 One example of such unreasonable favouritism resulted in a JR at which the Judge stated there was not a planning decision at that time until the Royal Assent in Parliament. However the Judge said they would have the opportunity to petition for a route change. The remit of the Select Committee prevented petitioning on realignment. It is proposed there were effectively planning decisions from 2009. One decision was in 2012 when the then SOS announced the DNS decision to proceed with Route 3 for Phase 1 and also another when Parliament agreed a second reading prior to petitioning. .

3. Summary

3.1 The Aarhus Convention does not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters. The UK has breached the Aarhus principles by the UK Government, the ‘Public Authority’ delegating the main positional planning matters for the HS2 facilities and route to HS2 and not to an independent Planning Inspectorate or not establishing a Public Planning Inquiry for full technical challenge not the dialogue in a Hybrid Bill Select Committee.

3.2 Procedures for public participation did not allow the public to submit in writing or, as appropriate, to a public hearing, or competent planning inquiry when all options were open.

The DFT and HS2 did not manage the project with sufficient fairness, diligence, or face relevant and direct challenges on technical and specific points for the Observer. The Parish and Observer found the Community Forums were too late and too ineffective due to the lack of intentions and responsiveness by HS2 to change requests. This was the reality in breach of the Aarhus Convention. The Judicial Review was tried in a Court with a Judge able to be wrong on how petitioning would be. It is asserted the Royal Assent process is not compatible with staged planning envisaged by the Aarhus Convention but not UK law.