



Department for  
Business, Energy  
& Industrial Strategy

Department for Business,  
Energy & Industrial Strategy

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Our Ref: EN070005

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Dear Mr Sunderland

## **PLANNING ACT 2008**

### **APPLICATION FOR THE SOUTHAMPTON TO LONDON PIPELINE PROJECT [DEVELOPMENT CONSENT] ORDER**

#### **1. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 7 July 2020 of the Examining Authority (“the ExA”), comprising a panel of four examining Inspectors, Richard Allen (Lead Member), Jo Dowling, Neil Humphrey and Kevin Gleeson who conducted an examination into the application (“the Application”) submitted on 14 May 2019 by Esso Petroleum Company Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Southampton to London Pipeline Project and associated development (“the Development”).

1.2 The Application was accepted for examination on 11 June 2019. The examination began on 9 October 2019 and was completed on 9 April 2020. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 7 July 2020.

1.3 Following the receipt of the Report, the Secretary of State requested comments from the Applicant and Interested Parties on 5 August 2020 in respect of: Crown Land; Development Plans; the River Thames Flood Alleviation Scheme; compulsory acquisition; and, the ‘Protective Provisions’ contained in the Order. Responses were

requested by 18 August 2020. Consultation responses were subsequently published and, as the Secretary of State considered that the information provided by the Applicant in response to those letters contained new environmental information, parties were given until 17 September 2020 to provide any additional comments.

1.4 The Secretary of State also requested comments from the Applicant and the Ministry of Justice on 24 September 2020 about the state of the discussions between them in relation to the former's request for the compulsory acquisition of rights over land owned by the Ministry in the vicinity of Bronzefield Prison.

1.5 The Order would grant development consent for the construction, operation and maintenance of an underground steel pipeline 97km in length and approximately 300mm in diameter to carry aviation fuel from the Fawley oil refinery near Southampton to the Applicant's West London Terminal at Hounslow. The linear project would commence at Boorley Green in Hampshire and run through a number of council areas: Eastleigh Borough Council ("BC"); Winchester City Council; East Hampshire District Council ("DC"); Hart DC; Rushmoor BC; Surrey Heath BC; Runnymede BC; Spelthorne BC and the London Borough of Hounslow. It would be located within the administrative districts of Hampshire County Council (CC), Surrey CC and the Greater London Authority (GLA). Part of the route would be located within the South Downs National Park (SDNP) which is managed by the South Downs National Park Authority (South Downs NPA).

1.6 The Development as applied for would comprise (in general terms):

- 97 kilometres (km) of new steel pipeline, approximately 300mm in diameter;
- Remotely operated in-line valves along the Proposed Pipeline route to allow isolation of sections of pipeline for maintenance or in case of emergency;
- New 'pigging' station at Boorley Green to allow the entry and exit points for Pipeline Inspection Gauges (PIGs) from time to time;
- Single replacement external pump at Alton Pumping Station and modifications to the pigging station at the Esso West London Terminal storage facility including installation of a new PIG receiver and connection to the new pipeline;
- Temporary construction compounds;
- Temporary logistic hubs;
- Temporary construction accesses;
- Permanent accesses in connection with the operation of the in-line valves; and
- Other developments including site preparation works; installation of wires, cables, conductors, pipes and ducts; establishment of winching points and temporary scaffolding; a number of works in relation to the Proposed Pipeline, in-line valves and 'pigging' stations such as surveys and investigations, fencing, aerial markers, cathodic protection test posts, cathodic protection rectifier cabinets, sacrificial anodes and field boundary markers; street works; altering of land to facilitate the construction works; and landscaping works.

1.7 Subsequent to the Application being made, the Applicant proposed a number of changes to the Development including removing one of the route options at Hinton Ampner (on National Trust land), reducing the number and size of some of the

construction-related logistics hubs along the route of the proposed Development and changing the location of some of the above ground infrastructure. In addition, other changes were made to respond to matters as they emerged during the Examination [ER 2.2.3 et seq].

1.8 Powers of compulsory acquisition for both land, and new and existing rights over land, are also sought by the Applicant to support the delivery of the project.

1.9 Published alongside this letter on the Planning Inspectorate's website<sup>1</sup> is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The main features of the development proposals, as applied for, and site are set out in section 2 of the ExA's Report. The ExA's findings are set out in sections 4 - 6 of the ExA Report, and the ExA's conclusions on the case for development consent, the request for compulsory acquisition powers and the terms of the Order are set out at sections 7, 8, and 9 (respectively).

## **2. Summary of the ExA's Report and Recommendation**

2.1 The ExA's recommendation in section 10.2 (on page 329 of the ExA Report) is as follows:

*"10.2.1 For all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in the Report, the ExA recommends that, subject to the consent of the relevant Crown Authorities being obtained, the Secretary of State for Business, Energy and Industrial Strategy makes the Southampton to London Pipeline Project Order in the form recommended at Appendix C to this Report."*

## **3. Summary of the Secretary of State's views**

3.1 The Application was accepted for Examination on 11 June 2019. The Examination started on 9 October 2019 and was completed on 9 April 2020. A total of 294 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, utility providers, local councils, local MPs, local organisations and local residents.

3.2 The principal matters considered by the ExA, as set out in the ExA's Report are:

- the principle and need for the proposed Development;
- the consideration of alternatives;
- landscape and visual;
- the South Downs National Park;
- biodiversity;
- Suitable Alternative Natural Green Spaces;
- flooding and water;
- traffic and transport;

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/southampton-to-london-pipeline-project/>

- socio-economic impacts;
- noise and vibration;
- ground conditions;
- land use;
- historic environment;
- climate change;
- civil and military aviation and defence interests;
- major accident and prevention and safety and security;
- construction waste management
- cumulative;
- compulsory acquisition and related matters; and
- findings and conclusions in relation to Habitats Regulations Assessment.

3.3 The ExA concluded that the landscape and visual impacts of the proposed Development would have a negative effect in the planning balance. However, for all other matters raised during the Examination, the ExA's view was that none was of such a magnitude either on its own or in-combination with other plans or projects to justify withholding consent – they should each carry neutral weight in the planning balance. The ExA did acknowledge that there would be a number of adverse impacts during the construction of the proposed Development and that, while most would be short term and localised, some might still be experienced even after the construction phase had ended.

3.4 However, the ExA's overall conclusion is that the impacts of the proposed Development are not so great as to offset its significant benefits and that the substantial weight for the need for the project as set out in the National Policy Statements outweigh the harm. The case for the proposed Development is, therefore, made. The Secretary of State agrees with the ExA's conclusion.

## **4 Matters considered by the ExA during the Examination**

### **Need for the Development**

4.1 The Planning Act 2008 sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects ("NSIPs"). In the first instance, the decision-maker needs to consider whether the proposed NSIP is in accordance with the relevant National Policy Statement(s). The ExA agreed with the Applicant's conclusion that the proposed Development was a 'Nationally Significant Infrastructure Project' ("NSIP") as designated under section 14(1)(g) of the Planning Act 2008 by virtue of the fact that:

- It would be a cross country pipeline longer than 16.093km (10 miles);
- the construction of the pipeline would, in the absence of section 33(1) of the Planning Act 2008 require authorisation under section 1(1) of the Pipelines Act 1962; and
- both ends of the pipeline would be located in England.

4.2 The ExA noted the Applicant had argued that aviation fuel fell to be considered under the 'Overarching National Policy Statement for Energy' ("NPS EN-1") and the

'National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines' ("NPS EN-4") as an 'oil product'. The ExA records [ER 3.3.8] that no Interested Parties raised objections to the applicability of NPS EN-1 and NPS EN-4 to the consideration of the proposed Development. The ExA concludes that aviation fuel is an oil product for the purposes of national policy and as such, the Development is designated by national policy. The ExA has, therefore applied the provisions of section 104 of the Planning Act 2008 to the consideration of the Application.

4.3 Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a national policy statement has effect must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant national policy statement except where doing so would lead to a breach of the UK's international obligations, lead to the Secretary of State being in breach of any duty imposed on him/her by or under any enactment, be unlawful by virtue of any enactment, or where the adverse effects of a development outweighs its benefits (the last at section 104(7) of the Act).

4.4 NPS EN-1 and NPS EN-4 set out a national need for development of new nationally significant infrastructure of the type proposed by the Applicant. EN-1, in particular, sets out that the assessment of development consent applications for nationally significant infrastructure projects should start with a presumption in favour of granting consent. The ExA noted the strong need case for oil infrastructure projects that is set out in NPS EN-1 and NPS EN-4.

4.5 The Secretary of State considers that the proposed Development is in accordance with NPS EN-1 and NPS EN-4 and benefits from the presumption in favour of oil pipelines.

#### Consideration of Alternatives

4.6 The ExA considered two elements of 'alternatives' – an alternative to the application to construct a new pipeline to transport aviation fuel from the Fawley Refinery to the West London Storage Facility and alternatives to some of the detailed route planning for the proposed Development and its associated construction requirements.

4.7 As far as alternatives to the proposed Development are concerned, the Applicant stated that it considered a 'do nothing' option whereby the existing pipeline would either be patched up as and when repairs were required (the pipeline is 50 years old so there is an increasing likelihood of remedial action being needed) or left to fall into disuse. However, neither of those scenarios was considered suitable to maintain consistent, uninterrupted, fuel supplies to Heathrow Airport, with the 'disuse' option potentially leading to up to 100 lorry movements per day between Fawley and Heathrow to replace the pipeline capacity.

4.8 As far as planning alternatives are concerned, these were considered at length during the examination. However, the Applicant set out that once it had decided the retention of the existing pipeline was not a viable option, then it considered a number of alternative route options before deciding on the one that is the subject of the

Application. The Applicant stated that the route under Application was chosen to minimise impacts wherever possible. Despite this approach, there were a considerable number of concerns about the choice of the final route with complaints that the impacts from the Applicant's chosen route were unacceptable and other routes should have been chosen.

4.9 The ExA's conclusion [ER 5.3.28] about the Applicant's consideration of alternatives was that it had conducted a rigorous assessment of the options and that the requirements of NPS EN-1 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 had been met. The Secretary of State sees no reason to disagree with the ExA's conclusion in this matter.

#### Landscape and Visual Assessment

4.10 The Secretary of State notes that the potential impacts of the proposed Development on the landscape and on visual amenity at a number of places along the route of the proposed Development were raised during the Examination. In particular, there were concerns about impacts on the South Downs National Park, on Turf Hill at Lightwater in Surrey and on the Queen Elizabeth Park in Farnborough, Surrey, although other areas also generated concerns. While noting that once the pipeline was undergrounded, it would not have any visual impacts, many of the concerns related to the need for a number of trees to be removed from the route during construction of the pipeline to allow for its installation and subsequent maintenance.

4.11 The Secretary of State also notes that the potential impact of the proposed Development on Queen Elizabeth Park in Farnborough was the subject of a petition submitted to the ExA which drew more than 6,000 signatures from people concerned about "*the inevitable long-term damage [the Proposed Development] will cause*" [ER 4.1.2 and other references].

4.12 The ExA considered the visual impacts of the proposed Development against the policy considerations in NPS EN-1 and NPS EN-4 and assessed the Applicant's treatment of landscape and visual impacts in line with the guidance in those National Policy Statements.

4.13 The Applicant's assessment of impacts considered that while there would be short term impacts arising from the construction of the proposed Development, these would be moderated over time in light of mitigation measures that would be put in place and secured through the Order. In year 15 post-construction, the Applicant assessed any residual impacts as being localised and not significant. [ER 5.4.23 and 5.4.24]

4.14 The ExA notes [ER 5.4.25] that the key issues raised by Interested Parties during the Examination in relation to landscape and visual impacts were the loss of vegetation (particularly trees) along the route of the proposed Development, its retention wherever possible and the reinstatement of any vegetation that was removed during the construction operation. There were disputes between the Applicant and Interested Parties and relevant local authorities about the absence of detailed data on the numbers of trees that might be affected by the proposed Development at specific



sites which prompted the ExA to seek more detail about this matter from the Applicant during the Examination in order to provide clarity about potential impacts.

4.15 A number of parties also had concerns about the way that the applicant had addressed mitigation measures to alleviate any impacts on landscape through the removal and reinstatement of trees and other vegetation.

4.16 As noted above, the Secretary of State is aware that during the Examination, particular focus was put on the following locations:

Queen Elizabeth Park, Farnborough

4.17 The potential impacts of the proposed Development on Queen Elizabeth Park was a major topic of discussion throughout the Examination. There was considerable discussion between the Applicant and Interested Parties about whether the pipeline crossing of the Park should be undertaken by way of trenching (as proposed by the Applicant) or by way of trenchless crossing (as favoured by a number of the Interested Parties including Rushmoor Borough Council and a local group, the Neighbours and Users of Queen Elizabeth Park). There was also considerable discussion about the level of tree loss that would be sustained within the Park as a result of the proposed Development crossing it.

4.18 The Applicant did produce a site specific plan (“SSP”) for Queen Elizabeth Park which showed the location of individual trees in relation to the route of the proposed Development. (The “SSP” went through several iterations during the Examination.) The Applicant’s analysis showed that around 30 non-mature trees would be removed to make way for the proposed Development (although other parties disputed this figure as being an underestimate) on the basis of using a trenched installation technique.

4.19 The Applicant consistently rebuffed requests to install the pipeline by using a drilling technique, firmly stating that the installation would be technically difficult with the possibility of pollution occurring if the drilling went wrong. Alongside this possibility, a trenchless crossing of Queen Elizabeth Park would result in 28 trees being removed, 3 of which would be mature specimens. The ExA considered the possibility of using a trenchless installation technique through the Park, but decided [ER 5.4.76] that the consideration of the Application would be based on the trenched option in the absence of any significant evidence to suggest that trenchless techniques would be feasible and environmentally better.

4.20 Having taken all the competing views into account, the ExA concluded that, while it had originally had reservations about the information provided by the Applicant in support of its position that trenched installation was the best option, it had revised its opinion as more information became available to it. It concluded [ER 5.4.118] that the final version of the SSP submitted by the Applicant provided clarity on the route of the pipeline in Queen Elizabeth Park, the number of trees that would be removed and their replacement. Requirement 17 of the ExA’s recommended Order that was sent to the Secretary of State secures the Applicant’s commitment to these matters.

4.21 The local MP, Leo Docherty, Aldershot, and the Leader of Rushmoor Borough Council, David Callard, wrote to the Secretary of State on 27 July 2020 (after the ExA’s

Report had been received) to set out their concerns about the impacts of the proposed Development on Queen Elizabeth Park and request that a condition should be included in any development consent that might be issued to give the Council a final say in which pipeline installation technique could be used.

4.22 The ExA considered in its Report [ER 9.4.5 and 9.4.6] whether there should be a specific condition in any development consent order that might be granted by the Secretary of State to provide comfort to Rushmoor Borough Council and others that mitigation measures would be put in place to minimise impacts on Queen Elizabeth Park. The ExA considered that the final SSP submitted by the Applicant provided suitable certainty – secured by Requirement 17 in its recommended Order – which meant no separate, Queen Elizabeth Park, provision was needed. The Secretary of State sees no reason to disagree with the ExA’s conclusion in this matter.

### Turf Hill

4.23 There were also concerns expressed by Interested Parties about the potential for tree loss and the well-being and safety of trees along the route of the proposed Development on Turf Hill – an area of heathland near Lightwater in Surrey. Concerns were also expressed about the lack of detail provided by the Applicant in relation to the number of trees that would potentially be affected by the proposed Development.

4.24 In response to the requests for clarity about how many trees would be affected by the proposed Development at Turf Hill, the Applicant produced a SSP during the Examination, which was updated as the consideration of the Application progressed. In the version of the SSP submitted at Deadline 6 of the Examination, the ExA [ER 5.4.140] notes that the Applicant specified that 60 trees would be removed along the route of the proposed Development (including 21 at one of the construction compounds) of which 39 would be replaced/reinstated. There were complaints from Interested Parties throughout the Examination about the acceptability of the SSP for Turf Hill.

4.25 The ExA noted the continuing scepticism of the Surrey Heath Borough Council and the Heronscourt and Colville Gardens Residents’ Association that sufficient information has been provided by the Applicant to support its case. The ExA also notes [ER 5.4.151] that it initially had concerns about the level of detail provided by the Applicant but concluded [ER 5.4 152] that the updated Turf Hill SSP gave sufficient detail to provide certainty about the route of the proposed Development across Turf Hill and about the removal of trees. In the event that any variation to the tree removal set out in the SSP was needed, then this would require the approval of Surrey Heath Borough Council under Requirement 17 of the development consent order that was recommended to the Secretary of State by the ExA.

4.26 The Rt Hon. Michael Gove MP wrote prior to the receipt by BEIS of the ExA’s Report to draw the Secretary of State’s attention to fires which had damaged parts of the Turf Hill heathland. The Secretary of State notes that no representations have been received in relation to any effects that the fire may have on the conclusions of the Secretary of State’s decision including from the relevant Statutory Nature Conservation Body. Natural England have not submitted any information to suggest that the fire had changed its original view on the impacts of the Development on Turf



Hill. The Secretary of State does not consider, therefore, that this issue has any material impact on his decision.

#### Fordbridge Park

4.27 Spelthorne Borough Council was concerned that the proposed Development would result in damage to a number of trees which provided an important visual barrier to traffic movements along the A30 Staines By-Pass. The Applicant and Spelthorne Council took differing views during the Examination of the potential impacts of the proposed Development on trees in Fordbridge Park. The Applicant provided a SSP for Fordbridge Park during the Examination and Spelthorne Council accepted that its implementation together with suitable mitigation measures (a reduced working width for the pipeline through the Park) would limit impacts to an acceptable level.

4.28 The ExAy concluded [ER 5.4.163] that it considered the mitigation proposed by the Applicant, which would be secured by Requirement 17 of the Order should provide suitable protection to maintain the characteristics of the Park. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### B377 Ashford Road

4.29 Spelthorne Borough Council also expressed concerns about the potential impacts of the proposed Development on trees along the B377 Ashford Road. However, the Applicant provided a SSP for the Road which showed there would be little or no impact from the proposed Development. Spelthorne Borough Council was, therefore, satisfied with the Applicant's proposals. The ExA was also content that Requirement 17 of the Order that it recommended the Secretary of State, should provide suitable protection. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Other Landscape and Visual Effects

4.30 The Secretary of State notes concerns about the impacts of the proposed Development in other areas outside those set out above. In general terms, these concerns were triggered by the removal of trees and vegetation. However, the ExA notes that there were a number of signed Statements of Common Ground in place between the Applicant and local authorities and Natural England which in a number of cases indicated agreement between the parties on landscape and visual effect issues. Equally, however, there were Statements of Common Ground which recorded that no agreements had been reached on those issues with disputes about the numbers of trees to be removed and the timescales within which any re-planting might become effective.

#### The Secretary of State's Conclusions on Landscape and Visual Assessment

4.31 The Secretary of State notes that the potential impacts of the proposed Development on visual amenity were a key concern for many Interested Parties at various points along its route with particular concerns about the number of trees that would be removed – and the consequences this would have for landscape and visual impacts. The Secretary of State also notes the ExA shared some of those concerns

– although he notes the Applicant’s commitment to minimising impacts on trees along the route of the proposed Development. The ExA further notes that no Ancient Woodlands [ER 5.4.187] and ‘veteran trees’ [ER 5.4.188 et seq] would be affected by the proposed Development.

4.32 However, the ExA notes other trees would be lost during the construction phase of the proposed Development. It further notes that there was no evidence presented to the Examination that indicated the use of a trenchless crossing technique in Queen Elizabeth Park would be a better alternative to the trenched approach that the Applicant had put forward [ER 5.4.193].

4.33 The ExA’s overall conclusion is that the loss of trees and vegetation along the route of the proposed Development in the short- and medium-term would have a negative effect on landscape [ER 5.4.195] but that this is an inevitable effect in the circumstances of a project such as the proposed Development. This conclusion is reached while noting that mitigation measures would be put in place to minimise impacts. Given the negative impact on landscape, the proposed Development would be in conflict with NPS EN-1. The ExA, therefore, concludes that the overall effect in the planning balance would be negative [ER 5.4.197]

4.34 As indicated above, the Secretary of State notes the concerns that have been expressed about the potential impacts of the proposed Development on landscape and visual impact. He also notes that the ExA’s conclusion is that the proposed Development would have a negative impact in the planning balance. The Secretary of State sees no reason to disagree with the ExA’s conclusion in this matter.

#### The South Downs National Park

4.35 The Secretary of State is aware that NPS EN-1 records that National Parks have the highest level of protection in relation to their landscape and scenic beauty [ER 5.5.1 et seq]. NPS EN-1 sets out that consent for development in National Parks may only be granted in exceptional circumstances where it is in the public interest. It also provides that conservation of the natural beauty of the landscape and countryside should be given substantial weight in deciding applications for development consent. NPS EN-1 also sets out that where developments National Parks are granted consent, then they should be carried out to high environmental standards. In addition, any developments should be assessed for the detrimental impact that any artificial light might have on amenity within the National Park.

4.36 The impacts of any developments being proposed for National Parks must also consider their impacts in relation to local plans (the South Downs Local Plan 2019 in the case of the South Downs National Park) [ER 5.5.6]. The Applicant’s Environmental Statement that accompanied the Application includes an assessment of landscape character on the South Downs National Park.

4.37 The ExA notes that the proposed Development would have a total length of 25km inside the South Downs National Park in two separate sections.

4.38 In its Application, the Applicant argued that the proposed development met the ‘exceptional circumstances’ test for National Parks set out in National Policy

Statement EN-1. Temporary impacts were identified by the Applicant but these would be local in character and would not alter the general setting of most of the area that comprised the South Downs National Park. The Applicant's overall assessment was that there would be no likely significant effects from construction activities on the landscape character and on recreation, tourism and the general enjoyment of the National Park [ER 5.5.19]. (The Applicant noted in its Environmental Statement that much of the South Downs National Park is privately owned or encompasses farmed landscapes and the public, therefore, has little access to much of the land within the National Park except for public rights of way and 'Open Access' land.)

4.39 The Secretary of State notes the South Downs National Park Authority took a different view to the Applicant and expressed concerns that the proposed Development was not in accord with the South Downs Local Plan or the requirement to conserve and enhance the natural beauty, wildlife and cultural heritage of the area [ER 5.4.20]. During the course of the Examination there were exchanges between the South Downs National Park Authority and the Applicant about the potential impacts of the proposed Development and mitigation measures that might be put in place to avoid or minimise those changes. However, there were still disagreements on a few issues, including impacts on trees, the impacts of light pollution from the proposed Development during its construction and the South Downs National Park Authority's request for a paper from the Applicant setting out why it was not possible to site the proposed Development outside the National Park. The siting of marker posts along the route of the proposed Development was also raised by the South Down National Park Authority as a concern but there was agreement on measures to limit the impact of the proposed Development on the National Park's 'dark skies'.

4.40 On recreation and tourism impacts, most matters were agreed – there would be limited impacts on Public Rights of Way during construction but the Outline Construction Environmental Management Plan would set out how any effects would be managed [ER 5.4.49]. However, it is noted that the South Down National Park Authority did ask for reduced construction times on Saturdays to limit any adverse impacts on visitors to the National Park.

#### *The Secretary of State's Conclusions on the South Downs National Park*

4.41 The Secretary of State notes that the ExA considered [ER 5.5.50 et seq] that there would be detrimental effects on the South Downs National Park but that these would be temporary in nature (during the construction phase) and mitigation was adequately provided for. The ExA also assessed the proposed Development's impacts against the provisions of NPS EN-1 and the statutory provisions pertaining to the South Downs National Park. The ExA did not accept the need for shortened Saturday working hours as requested by the South Downs National Park Authority feeling that the level of impact on visitors did not justify it. Overall, the ExA considered that there would be no likely significant effects on the character and setting of the South Downs National Park, it would accord with the cited policies in the South Downs Local Plan and that all relevant tests, including in relation to 'exceptional circumstances' had been met. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

## Biodiversity

4.42 The ExA considered the biodiversity impacts and the requirements placed on developers in assessing those impacts against the provisions of NPS EN-1 and NPS EN-4 [ER 5.6.1 et seq]. The ExA noted that a number of European Sites designated under the Habitats Regulations (see paragraphs 5.1 - 5.4 below) were either crossed by or located a short distance from the route of the proposed Development [ER 5.6.13 et seq] and that the Applicant had considered these in its Environmental Statement.

4.43 The ExA also considered sites of ecological importance at a national level [ER 5.6.20 et seq] – National Nature Reserves, Local Nature Reserves and Sites of Special Scientific Interest – and at a regional or more local level [ER 5.6.42 et seq] – Sites of Importance for Nature Conservation and Sites of Nature Conservation Importance. The ExA noted that the various designations covered a range of habitats and species. The ExA notes that in general terms, the Applicant’s conclusions about potential impacts on these sites were that they were not significant although mitigation would be needed in some cases to drive that outcome.

4.44 Finally, the ExA notes that a lot of relevant representations submitted by individuals and organisations such as local authorities raised concerns about the potential impacts of the proposed Development on biodiversity [ER 5.6.61]. Rushmoor Borough Council, in particular, raised many concerns about the assessments of biodiversity impacts that had been undertaken by the Applicant [ER 5.6.66]. In addition, several local planning authorities (including the South Downs National Park Authority) were concerned that the Applicant had not demonstrated that it had achieved ‘Biodiversity Net Gain’. In response to the last point, the Applicant argued that requirements for Biodiversity Net Gain could not be included in an Order as it would not comprise Associated Development nor qualify as the subject of a requirement or section 106 agreement under the Town and Country Planning Act 1990. [The Secretary of State notes that there is no statutory requirement in the Planning Act 2008 for Biodiversity Net Gain to be provided as part of any development currently being considered under the Act.]

4.45 Rushmoor Borough Council and the Applicant disagreed about the nature of biodiversity impacts and the mitigation that should be put in place to avoid those impacts [ER 5.6.70 et seq].

4.46 Biodiversity matters in the Turf Hill area were also the subject of a considerable number of representations from Interested Parties, particularly in relation to the choice of route for the proposed Development. The route chosen by the Applicant (designated Route F1a+ for the purposes of the Examination) was the subject of a lot of criticism from local people (via the Heronscourt and Colville Gardens Residents Association) who preferred a route (Route F1c) which followed the line of the existing aviation fuel pipeline and which had formed part of the Applicant’s consultation on route options for the proposed Development. The key issues were about which route had the least impact on biodiversity (both directly and through the removal of trees and other vegetation) and on the Turf Hill landscape [ER 5.6.73 et seq].

4.47 The ExA notes [ER 5.6.81] that the Heronscourt and Colville Gardens Residents Association stated that “the Applicant should justify that there are

'Imperative Reasons of Overriding Public Interest (IROPI)' for choosing route F1a+ over F1c". The ExA considered that the Applicant's selection of Route F1a+ was justified in biodiversity terms and therefore there was no reason to progress to stage 3 of the Habitats Regulations Assessment process [ER 6.4.40] – see paragraphs 5.1 to 5.4 below.

4.48 The ExA considered that the Applicant's chosen route was acceptable. (The ExA also noted that Natural England had indicated that the route proposed by the Heronscourt and Colville Gardens Residents Association would lead to significant damage to lowland heathland habits – which was the primary reason for the notification of the habitat as a Site of Special Scientific Interest and a Special Area of Conservation. There would also be impacts upon the favoured breeding habitat of the Dartford Warbler species of bird. [ER 5.6.87].)

4.49 There were also discussions about the impact the proposed Development would have on bats as a result of the removal of trees along its route. Rushmoor District Council raised concerns about impacts on bats and the accuracy and scope of the Applicant's studies of those potential impacts. However, the ExA notes [ER 5.6.91] that Natural England was content with the scope and methodology of the Applicant's ecological surveys.

4.50 Another species which was the subject of concerns about the potential impacts of the proposed Development were Great Crested Newts at several locations along its route. However, the Applicant had prepared an application for a European Protected Species licence to allow Great Crested Newts to be re-located from areas where they might be impacted by the proposed Development to other locations that would not be disturbed. In response, Natural England had issued a Letter of No Impediment and indicated that matters relating to potential impacts on Great Crested Newts had been satisfactorily addressed.

4.51 More generally, Rushmoor Borough Council expressed concerns in relation to several issues that had the potential to adversely impact on biodiversity features within the Borough – a number of which were not resolved at the close of the Examination.

4.52 There were also concerns from Runnymede Borough Council and Spelthorne Borough Council about the potential impacts of the proposed Development on biodiversity [ER 5.6.118 and 5.6.119].

4.53 The ExA notes that there were signed Statements of Common Ground in place between the Applicant and a number of local planning authorities at the close of the Examination (though not all the matters included in the Statements of Common Ground were agreed between the parties) [ER 5.6.120 et seq].

#### *The Secretary of State's Conclusions on Potential Impacts on Biodiversity*

4.54 The ExA [ER 5.6.128 et seq] considered the potential biodiversity against the policies set out in NPS EN-1 and NPS EN-4 which set out the assessment and mitigation requirements with regard to biodiversity. The ExA notes the Applicant's biodiversity assessments and surveys and that these were undertaken in accordance



with the relevant provisions in NPS EN-1. The ExA also considered that with the embedded design features and the use of good practice, there would be no significant effects on features designated under national regional or local designations and the proposed Development would be in accordance with the relevant policies in NPS EN-1. The proposals for the post-construction re-instatement of vegetation and soils would also be in accordance with NPS EN-1.

4.55 The ExA notes that the Applicant identified a potential moderate effect from the interception of groundwater in the pipeline trench which could lead to a reduction of water flows to Groundwater Dependent Terrestrial Ecosystems (wetlands which rely on groundwater flows or chemistry) but considered that mitigation would limit any impacts to minor.

4.56 Similarly, the ExA notes that with the mitigation embedded in the Construction Code of Practice, there would be no likely significant effects on biodiversity and that no additional mitigation was needed. (The ExA records that Rushmore Borough Council did not agree with this conclusion.)

4.57 A number of local authorities mentioned local policies which supported opportunities for Biodiversity Net Gain to be incorporated into development. However, the ExA notes that nationally significant infrastructure projects are not subject to the objective to secure Biodiversity Net Gain and that it is not possible for a development consent order to include provisions for it. The ExA concludes, therefore, that the proposed Development would not conflict with local policies on Biodiversity Net Gain. In addition, the ExA accepted that the proposed Development had mitigated any significant effects through the development consent order.

4.58 As far as biodiversity matters at Turf Hill are concerned, the ExA concluded that the Applicant's chosen route (F1a+) would offer reduced impacts on designated sites in comparison with the alternative that was supported by many Interested Parties (F1c). In drawing this conclusion, the ExA took account of detailed evidence from Natural England.

4.59 The ExA notes that some matters related to biodiversity were still unresolved for some Interested Parties at the close of the Examination. The ExA considers that there would be scope for further dialogue about these matters but concludes that "should resolution not be possible then we consider that Requirements 5, 6, 12, 13 and 17 of the Recommended DCO would provide sufficient controls to ensure that there would be no significant harm to biodiversity interests" [ER 5.6.138]. Further, good practice measures secured in the Order recommended by the ExA would ensure there would be no significant harm to biodiversity arising from the proposed Development and it would, therefore, be in accordance with NPS EN-1 [ER 5.6.139]. The ExA concludes, therefore, that the proposed development would have no likely significant effects on biodiversity, would accord with relevant legislation and policy requirements, that mitigation would be secured by the development consent order and that this matter should carry neutral weight in the planning balance [ER 5.6.140]. The Secretary of State sees no reason to disagree with the ExA's conclusion in this matter.



## Suitable Alternative Natural Green Spaces

4.60 A Suitable Alternative Natural Green Space is an area of greenspace that provides an enjoyable natural environment for recreational use and is created with the purpose to divert people from visiting designated and protected nature conservation sites. (Suitable Alternative Natural Green Spaces are also considered in the Habitats Regulations Assessment that is being issued alongside this decision letter.) Suitable Alternative Natural Green Spaces are not mentioned directly in the National Policy Statements but local authorities can support the concept through local policies in development plans.

4.61 The proposed Development would pass through five Suitable Alternative Natural Green Spaces along its length: Crookham Park (Hart District Council); Southwood Country Park (Rushmoor Borough Council); St Catherine's Road (Surrey Heath Borough Council); Windlemere (Surrey Heath Borough Council); and Chertsey Meads (Runnymede Borough Council). The Applicant's Habitats Regulations Assessment considered that construction activities in the Suitable Alternative Natural Green Spaces might lead to visitors avoiding the areas and visiting designated sites – the Thames Basin Heaths Special Protection Area – instead [ER 5.7.4]. However, it concluded that impacts of the proposed Development would be minor and short-term and that the number of visitors potentially displaced would be low and that, overall, there would be no likely significant effects [ER 5.7.5 et seq].

4.62 A number of councils raised concerns about the potential impacts of construction on the Suitable Alternative Natural Green Spaces – particularly Rushmoor Borough Council and Surrey Heath Borough Council. Surrey Heath Borough Council sought the inclusion of two conditions in any development consent order that might be issued to safeguard the Suitable Alternative Natural Green Spaces and open spaces more generally, but the Applicant advised that suitable provisions already existed in the Code of Construction Practice which would limit the durations of construction work in the Suitable Alternative Natural Green Spaces and that no other provisions were necessary.

4.63 The ExA notes that Natural England was satisfied with the Applicant's Habitats Regulations Assessment and that it concluded there would be no significant effects from the displacement of visitors from the Suitable Alternative Natural Green Spaces [ER 5.7.15 et seq].

4.64 The ExA asked the Applicant whether it would be able to limit the time period of works in the Suitable Alternative Natural Green Spaces and whether it would be able to ensure that only one of the Suitable Alternative Natural Green Spaces was being worked in at any one time. The Applicant responded that, for operational reasons, it was not able to provide commitments to limit timescales or overlaps of work in Suitable Alternative Natural Green Spaces – it had taken a precautionary approach to assessment of impacts and did not consider that further restraints on activities were necessary [ER 5.7.19 et seq].

4.65 The ExA reports that by the close of the examination, Hart Borough Council and Runnymede Borough Council had indicated they were content with measures to ensure that the effects of construction at the Crookham Park and Chertsey Mead

Suitable Alternative Natural Green Spaces would not lead to the users of those spaces going to the Thames Basin Heaths Special Protection Area [ER 5.7.21]. Meanwhile, Surrey Heath Borough Council had concerns about the Applicant's proposed route through Windlemere Suitable Alternative Natural Green Space because of potential impacts on Great Crested Newts and had concerns about the impacts of the proposed Development on St Catherine's Road Suitable Alternative Natural Green Space.

4.66 Rushmoor Borough Council was concerned about displacement of visitors from Southwood Country Park Suitable Alternative Natural Green Space to the Thames Basin Heaths Special Protection Area. The Council disagreed with Natural England's assessment of impacts. It also suggested that construction works within Southwood Country Park Suitable Alternative Natural Green Space should be phased, should take place in the Autumn and that a temporary Suitable Alternative Natural Green Space should be provided as an alternative to Southwood Country Park [ER 5.7.23 et seq].

4.67 Rushmoor Borough Council also stated that the capacity of the Southwood Country Park Suitable Alternative Natural Green Space had already been allocated to other projects and there was nothing available for the construction phase of the proposed Development. The Applicant disagreed with the Council's assessment [ER 5.7.25]. However, in response to concerns, the Applicant produced SSPs for both the St Catherine's Road Suitable Alternative Natural Green Space and the Southwood Country Park Suitable Alternative Natural Green Space which set out how the construction process would be managed. The SSPs would be secured by Requirement 17 of the Order.

#### *The Secretary of State's Conclusions on Suitable Alternative Natural Green Spaces*

4.68 The Secretary of State notes that the ExA considered the potential issues in relation to St Catherine's Road Suitable Alternative Natural Green Space and Southwood Country Park Suitable Alternative Natural Green Space and concluded that the measures that would be put in place by the Applicant to minimise impacts on the Suitable Alternative Natural Green Spaces would avoid displacement of visitors to the Thames Basin Heaths Special Protection Area or the Thursley, Ash, Pirbright and Chobham Special Area of Conservation. The ExA concludes that the proposed Development would accord with all relevant legislation and policy [ER 5.7.28 et seq]. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Flooding and Water

4.69 The ExA considered the proposed Development against the policy framework set out in the National Policy Statements which covers the potential for flooding impacts to arise from development and for them to affect the development. The National Policy Statements set out that developments need to pass a 'sequential test' and then an 'exception test' if they are to be sited in a high-risk flood zone area: the Secretary of State should not grant consent for a development in Flood Zone 3 (land with the highest probability of flooding) unless the sequential and exception test requirements have been met.

4.70 The ExA notes that the Applicant provided a range of information about potential flooding and water impacts in the environmental statement that accompanied the Application, including a Flood Risk Assessment. The Flood Risk Assessment identified a number of potential impacts (some significant) linked to the proposed Development if mitigation was not put in place. However, the Flood Risk Assessment did set out mitigation for a range of potential issues – the Assessment also the proposed Development would largely be all underground with the pigging station at Boorley Green being the only significant above ground facility. The ExA records the Applicant's conclusion that with mitigation there would be no significant effects arising from the proposed Development.

4.71 The Examination considered several specific matters relating to flooding and water: flood risk; groundwater quality and resource; surface water quality and resource; fluvial geomorphology (including hydrogeomorphology); and compliance with the Water Framework Directive [ER 5.8.21].

### Flood Risk

4.72 There were concerns about the proposed Development increasing the risk of flooding at certain areas along the route of the proposed Development. The Environment Agency had a number of concerns which were addressed by the Applicant during the Examination [ER 5.8.25 et seq]. At the close of the Examination, the Environment Agency and the Applicant were still discussing the relationship of the proposed Development to the Agency's River Thames Flood Alleviation Scheme. This matter was subject to consultation after the receipt of the ExA's Report with the Environment Agency and the Applicant still taking different positions in relation to the resolution of the issue and the Agency's concerns still in place – see paragraphs 4.79 to 4.80 below.

4.73 In addition, there were concerns about an increase in the potential for flooding impacts at Turf Hill and Queen Elizabeth Park as a result of the removal of trees and vegetation at those sites [ER 5.8.33 et seq] but the ExA considered there was no evidence to support those contentions.

### Water Quality and Resources

4.74 The Environment Agency was concerned about whether the Applicant had supplied enough detail to enable an assessment to be undertaken into compliance with the Water Framework Directive. Local planning authorities also had concerns about the amount of information that had been made available in respect of the management of wastewater generated by the construction of the proposed Development. In addition, Rushmoor Borough Council raised concerns about the impacts of the proposed Development on landfill sites and the potential contamination on the route of the proposed Development that might result from their disturbance.

4.75 The Heronscourt and Colville Gardens Residents Association was concerned about the possibility of damage to the proposed Development at Turf Hill polluting an adjoining water pipe. The water pipe is owned by Affinity Water which the ExA reports [ER 5.8.49] is content with the construction of the proposed Development in close proximity to its water pipe. However, at the close of the Examination, two water

utilities – Affinity Water and Portsmouth Water – had concerns about the post construction monitoring of abstraction wells at Chertsey (Affinity) and about potential impacts on a Source Protection Area [ER 4.8.50 et seq].

4.76 The ExA concluded [ER 5.8.55 et seq] that the proposed Development would not give rise to any unacceptable risks in respect of flooding. In addition, the proposed Development would not have any unmanaged adverse effects on water quality and resources and would, therefore, comply with the Water Framework Directive. With regard to the concerns from Affinity Water, the ExA considered that the Applicant was bound by the Pipeline Safety Regulations 1996 to ensure the safe operation of its pipeline throughout its operational life and that Affinity’s concern was addressed by this obligation [ER 5.8.52]. In relation to the concerns raised by Portsmouth Water, the ExA concluded that the Applicant had adequately addressed them through the Construction Code of Practice, the Construction and Environment Management Plan and the outline Water Management Plan and that these would be secured by Requirements in the Order.

4.77 The ExA’s overall conclusion was that this matter should carry neutral weight in the planning balance. The Secretary of State sees no reason to disagree with the ExA in this matter.

*Submissions to the Secretary of State after Receipt of the Examining Authority’s Report*

4.78 In light of comments in the ExA’s Report about continuing disagreements between Affinity Water and the Applicant in respect of protective provisions for the former’s interests in any development consent order that might be made, the Secretary of State consulted both parties on 5 August 2020 to find out if there were any changes in their respective positions. In response, both Affinity Water and the Applicant re-stated their arguments with the former providing a text for alternative protective provisions that it felt provided better protection for its position than those circulated and recommended for adoption by the ExA. In considering this matter in light of the consultation responses from Affinity Water and the Applicant, the Secretary of State considers that the arguments rehearsed in the consultation correspondence did not add to information already considered by the ExA and he therefore agrees with and accepts the ExA’s recommended wording for the protective provisions to be included in the Order.

4.79 The Secretary of State notes that the Environment Agency and the Applicant were still in disagreement over protective provisions relating to the potential impacts on the former’s proposed River Thames Flood Alleviation Scheme and how these should be mitigated and where the costs should lie. In its final submission to the Secretary of State, the Environment Agency provides a form of words to include in the protective provisions. The wording provided by the Environment Agency would require Environment Agency approval for some pipeline works in the vicinity of the River Thames Flood Alleviation Scheme, would allow the Environment Agency to impose conditions on the pipeline works and would make the Applicant seek approval from the Agency for any amendments to the vertical limits of deviation for the pipeline. The Environment Agency argues that the changes to the Protective Provisions are

necessary to ensure the River Thames Flood Alleviation Scheme can proceed without undue cost burdens being passed on to it in the future.

4.80 The Applicant responded to the Environment Agency's suggestion by stating that it did not agree with the inclusion of the Agency's wording – the River Thames Flood Alleviation Scheme was at a very early stage of development and there was, therefore, no justification for the provisions that were sought. The Applicant argued that if any further provisions were necessary to protect the Environment Agency's position, then these could be taken forward in any discussions about obtaining the necessary consents for the River Thames Flood Alleviation Scheme.

#### *The Secretary of State's Conclusions on Flooding and Water*

4.81 The Secretary of State is aware that there is still no agreement between the Applicant and the Environment Agency on measures needed to find a mutually acceptable outcome to manage the interaction between the proposed Development and the River Thames Flood Alleviation Scheme. However, the ExA's Report sets out the view that even in the event that agreement was not reached between the Applicant and Affinity Water and the Applicant and the Environment Agency, then the Protective Provisions in the Order submitted to the Secretary of State would provide suitable protection for third parties. The Secretary of State accepts the ExA's recommendations in this matter.

#### Traffic and Transport

4.82 The ExA notes the policy considerations in the National Policy Statements and the requirements placed on applicants seeking development consent in providing information to support their cases [ER 5.9.1 et seq]. No significant effects were expected to arise during the operation of the proposed Development so the scope of the Transport Assessment was limited to construction activities. The proposed Development would pass through the areas of two Local Highways Authorities – Surrey County Council and Hampshire County Council, which did not challenge the scope, methodology or approach of the Transport Assessment.

4.83 The Transport Assessment set a threshold limit of four weeks duration before impacts became significant and impacts from works of shorter duration were scoped out [ER 5.9.9]. The Assessment considered impacts at four locations where works of more than four weeks duration were envisaged and at two locations where roads would be closed [ER 5.9.10]. In light of the Assessment, the Applicant concluded that there would be no significant effects on the road network from construction activities [ER 5.9.12].

4.84 There were many issues raised during the Examination about the potential traffic and transport disruption that would result from the construction of the proposed Development. There were also concerns that the potential for traffic disruption would extend beyond those roads where construction works would actually take place into surrounding streets. The Applicant had produced a Construction Traffic Management Plan that aimed to set out how such disruptions would be managed but had not been able to provide detail for every road impact as some of these would not be known until specific construction details had been finalised [ER 5.9.19]. A number of the local



Councils argued that there was insufficient detail in the Construction Traffic Management Plan and the Applicant subsequently produced an Outline Construction Traffic Management Plan which addressed a number of the issues raised in the Examination.

4.85 The ExA considered requests from Rushmoor Borough Council and the South Downs National Park Authority for local planning authorities rather than local highways authorities to sign off the Construction Traffic Management Plan. There were discussions during the Examination about where sign off authority for the Construction Traffic Management Plan should lie, with the ExA exploring the issue with the Applicant. The Applicant strongly maintained that this should be dealt with by the highways authority but the ExA taking the position that the potential impacts of construction activity on traffic and transport would be local and so should be dealt with at a local level – by the relevant local planning authorities following consultation with the highways authorities. Both of the highways authorities, Surrey County Council and Hampshire County Council, were content with this arrangement. The ExA, therefore, amended the development consent order submitted by the Applicant to require sign off of the Construction Traffic Management Plan by relevant local planning authorities. In response, the Applicant requested that the ExA should record its disagreement with the Authority’s position in its Report to the Secretary of State – which it did [ER 5.9.32].

4.86 A number of business interests – including Network Rail and the Royal Mail – raised concerns about the potential for their activities to be disrupted by the construction of the proposed Development through its impact on the road system and sought provisions in the development consent order to protect their activities. However, the ExA decided that the Construction Traffic Management Plan would provide suitable protection and it did not, therefore, add any explicit references to individual organisations in the development consent order it recommended to the secretary of State [ER 5.9.33].

4.87 In addition to business interests, concerns were raised about the use of a particular road (Celia Avenue) as an access route for construction works in Fordbridge Park in Staines/Ashford (west London). The ExA notes that the Applicant worked with the local council (Spelthorne Borough Council) to find an alternative access route, which it was successful in doing. However, use of the new route is subject to the Applicant concluding a separate and private agreement (and falls outside the scope of the Application) so, in order to preserve an access option for the works in Fordbridge Park, the ExA retained provision for Celia Avenue as an access route in the Order [ER 5.9.38 et seq].

#### *The Secretary of State’s Conclusion on Traffic and Transport*

4.88 The Secretary of State is aware of the importance of provisions in the Order to require the approval of mitigation measures to reduce the impacts of the construction of the proposed Development. Its overall conclusion is that the proposed Development would have no likely significant effects on transport and traffic and is, therefore, in accordance with policy and legal requirements. He notes the ExA concludes that the proposed Development attracts neutral weight in the planning balance.



4.89 The Secretary of State has considered the ExA's conclusions and agrees with them. He notes that the Applicant is unhappy that the Construction Traffic Management Plan will be signed off by local planning authorities rather than local highways authorities but considers that the ExA's consideration of this matter is reasonable and see no reason, therefore, to take a different view to that set out in the ExA's Report.

#### Socio-economic Impacts

4.90 The ExA considered the proposed Development against the requirements of the National Policy Statement. It noted that that the Applicant's assessment of impacts had concluded that the focus should be on tourism – with economic impacts and jobs scoped out of the assessment and not, therefore, covered during the Examination. The Applicant's assessment noted that a small number of tourist facilities would be significantly affected by the proposed Development as the route ran through those sites but that the impacts would be over a short period of time and would be managed as much as possible to limit harm. The Applicant advised that the construction of the proposed Development would not have any impacts on the Farnborough Airshow or the Chertsey Agricultural Show. The Applicant concluded that there would be no residual effects on tourism as a result of the proposed Development [ER 5.10.1 et seq].

#### *The Secretary of State's Conclusion on Socio-economic Impacts*

4.91 The Secretary of State noted concerns were raised about potential impacts by the South Downs National Park Authority, the National Trust, Spelthorne Borough Council, Rushmoor Borough Council, Runnymede Borough Council and Spelthorne Borough Council. However, it concluded that: the effects would be of short duration and would be mitigated wherever possible; that there would be no likely significant effects on socio-economic matters; and that the proposed Development met all relevant policy and legal requirements. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Noise and Vibration

4.92 NPS EN-1 and NPS EN-4 set out how noise and vibration are to be considered, the assessments an applicant for a development consent order needs to make in support of its application and give examples of mitigation that might be put in place to minimise impacts. The NPSs require that development consent should not be granted unless the decision-maker can be satisfied that the proposed development would avoid significant adverse impacts on health and quality of life from noise, mitigate and minimise other adverse impacts on health and quality of life from noise, and (where possible) contribute to improvements to health and quality of life through the effective management and control of noise [ER 5.10.1 et seq].

4.93 The Applicant identified that some urban and rural properties would potentially experience significant but temporary and localised noise impacts. However, mitigation measures were offered through a Noise Mitigation Management Plan which would be secured in the Order [ER 5.11.13]. There would also be limits on the times when construction activities would take place. The Applicant's overall conclusion was

that “only a few receptors would, after mitigation, experience likely significant effects, but these would be short term and temporary” [ER 5.11.20].

4.94 During the Examination, a number of residents of Turf Hill expressed concerns that the removal of trees along the route of the proposed Development would result in an increase in noise levels from traffic on Red Road and on the M3 Motorway [ER 5.11.22]. Residents of other roads along the route near Queen Elizabeth Park also raised concerns about noise impacts from the construction of the proposed Development. Both Rushmoor Borough Council and Surrey Heath Borough Council raised concerns about potential impacts and had not agreed mitigation measures with the Applicant at the end of the Examination. However, the Councils did indicate they would continue discussions with the Applicant in the event that a development consent was granted and noise related conditions had to be discharged.

4.95 In response to the Turf Hill residents, the Applicant set out that it did not consider that the removal of the trees would lead to a rise in noise and disturbance.

#### *The Secretary of State’s Conclusion on Noise and Vibration Impacts*

4.96 The Secretary of State has noted that the ExA agreed with the Applicant in respect of the concerns expressed about noise and vibration impacts at Turf Hill and Queen Elizabeth Park (while acknowledging that there might be short term effects at the latter). The ExA acknowledged Rushmoor Borough Council’s concerns about the Applicant’s methodology for the Noise and Vibration Management Plan but considered that the final version would give local authorities the powers to approve all necessary noise mitigations. The ExA accepts that there would be an increase in noise and vibration impacts for some receptors and that these would be significant for some properties without mitigation being put in place. However, the ExA also considered that the impacts would be mitigated as far as they could be and would be of short-term duration.

4.97 The Secretary of State agrees with the ExA’s conclusion that the proposed Development would not lead to any significant effects, would accord with relevant policy and legal requirements and that mitigation is secured in the development consent order that it has recommended should be made. He also notes that the ExA drew the conclusion that the matter should carry neutral weight in the planning balance. While noting the adverse impacts identified, the Secretary of State sees no reason to disagree with the ExA’s conclusion in this matter.

#### Ground Conditions

4.98 The Secretary of State notes that the ExA considered the proposed Development against the policy requirements in the National Policy Statements. The Applicant stated that good practice measures and the generally short duration of any works would mean that the quality of the majority of soils over which the proposed Development would run would recover. The Applicant noted that the Order limits would not cross any Mineral Safeguarding Areas in Hampshire but in Surrey, one third of the route of the proposed Development would cross such areas. Also, there were two ‘preferred areas’ for mineral extraction within the Order limits for the proposed Development. The Applicant noted the potential for contamination along the route of

the proposed Development but that with good practice measures in place any potential risk during construction would be avoided. The Applicant's overall conclusion was that there were no likely significant effects from construction activities [ER 5.12.1 et seq].

4.99 There were concerns from a mineral extraction company – Brett Aggregates – that its permitted mineral extraction area might be compromised by the proposed Development. However, the Applicant and Brett Aggregates discussed the matter and the Applicant considered that the depth of the proposed Development was shallow enough to allow a planned underground conveyor belt to co-exist alongside the Development. Brett Aggregates did not demur from the Applicant's view.

4.100 Rushmoor Borough Council was concerned that the construction of the proposed Development by means of an open-trenching method through the Blackwater Valley Frimley Bridge Site of Importance for Nature Conservation could lead to pollution of the Site and the River Blackwater. The Council and others also raised concerns about the Applicant's proposed Soil Management Plan but this was amended by the Applicant with no further comments from concerned parties [ER 5.12.20].

#### *The Secretary of State's Conclusion on Ground Conditions*

4.101 The ExA concluded that the proposed Development would be subject to suitable mitigation methods and was in line with relevant policy and legislative requirements. It also concluded that ground conditions should carry neutral weight in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Land Use

4.102 The Secretary of State notes the ExA's consideration of the requirements of NPS EN-1 in assessing potential impacts and the way the Applicant had considered them and mitigated for them [ER 5.13.1 et seq]. The ExA notes that this would mean there would be some demolition of buildings (garages, sheds, greenhouses and outbuildings though no residential or business properties) and there would be some disruption to land use and access to land. The proposed Development would potentially affect several different types of land which were assessed in the Application: community land and facilities; commercial property and land; agricultural land; development land; and Green Belt.

4.103 The Applicant assessed the impact of the proposed Development on Green Belt land – while much of the proposed Development would be underground, there would be some small above ground installations and there would be temporary works associated with construction activities that would sit within the Green Belt which would impact on considerations of 'openness'. The Applicant concluded that the proposed Development would be inappropriate in a Green Belt context and would, therefore, need to pass the Very Special Circumstances test which applied to such impacts. The Applicant's own assessment was that Very Special Circumstances would exist which would outweigh any harm which would mean the proposed Development would accord with NPS EN-1.

4.104 There were concerns raised during the Examination [ER 5.13.18] about the impacts of the proposed Development on community land with particular emphasis on sports, school and community facilities. However, by the close of the Examination, the ExA considered that these facilities would not be adversely affected by the proposed Development, with mitigation secured in the recommended development consent order.

4.105 There were also representations made about the potential impacts of the proposed Development on residential property and land, including from the owners of garages at Stake Lane in Farnborough which would be removed to make way for the proposed Development and from Rushmoor Borough Council, Surrey Heath Borough Council and Runnymede and Spelthorne Borough Council [ER 5.13.26]. However, the ExA accepted the Applicant's position that the impacts would be temporary and mitigated where necessary.

4.106 There were also concerns about potential impacts on commercial property and land – mainly about the compulsory acquisition powers requested by the Applicant [ER 5.13.29 et seq]. However, the ExA accepted the Applicant's position that the impacts would be temporary and mitigated where necessary.

4.107 There were concerns about a number of issues related to the use of agricultural land for the proposed Development including its potential impact on private water supplies [ER 5.12.32]. The Applicant indicated it had tried to reduce impacts on agricultural land and mitigation would be put in place that would need to be agreed by relevant local planning authorities, including a Water Management Plan. The ExA concluded the proposed Development would comply with NPS EN-1.

4.108 There were also concerns about the potential impacts of the proposed Development on development land, particularly from Eastleigh Borough Council and the London Borough of Hounslow who were interested in the potential impacts on a proposed development at Boorley Green and on the expansion of Heathrow Airport respectively [ER 5.13.36]. However, any outstanding issues were resolved by the close of the Examination. In addition to the local authority concerns, the St James Senior Boys School was worried the proposed Development could affect its development plans which had extant planning permission. However, the Applicant submitted a SSP for the School which set out how adverse impacts could be avoided. The ExA concluded that the proposed Development would not have an adverse effect on development land.

4.109 Potential impacts on Green Belt land were not raised as concerns [ER 5.13.40].

#### *The Secretary of State's Conclusion on Land Use*

4.110 The Secretary of State notes the range of land use types that would be found along the route of the Development. He also notes that the ExA concluded [ER 5.13.41 et seq] that impacts would be limited to construction activities and be of short-term duration. The ExA concluded that there would be no likely significant effects on agricultural land. In addition, while the proposed Development would impact on the openness of Green Belt land, the ExA considered that the temporary nature of the impacts and the need for the proposed Development set out in the National Policy

Statements meant that Very Special Circumstances existed which would outweigh the limited harm. The overall conclusion was that land use impacts should carry neutral weight in the planning balance.

4.111 The Secretary of State notes that paragraph 5.10.17 of NPS EN-1 states that “In view of the presumption against inappropriate development, the [decision-maker] will attach substantial weight to the harm to the Green Belt when considering any application for such development”. However, the Secretary of State also notes that the ExA accepts the Applicant’s argument that much of the proposed Development – including the pipeline – would be classed as an ‘engineering operation’ and so would not be ‘inappropriate development’ in respect of Green Belt land (see paragraph 5.10.12 of NPS EN-1). In addition, the Secretary of State considers that the ExA’s consideration that any other impacts would be temporary and that the need for the proposed Development has been made, overcome the substantial weight that NPS EN-1 accords to harm in the Green Belt. The Secretary of State, therefore, sees no reason to disagree with the ExA’s conclusion in this matter.

### Historic Environment

4.112 The Secretary of State agrees with the ExA’s position that NPS EN-1 sets out a presumption in favour of conserving designated heritage assets. The Applicant’s environmental statement included assessments of archaeological remains, historic buildings and historic landscapes. There are a small number of historic assets within the Order limits of the proposed Development and more within 500 metres of the Order limits, including 3 Grade I listed structures, 10 Grade II\* structures and 1 Grade II. A number of Historic Landscape Types were also identified as being in close proximity to the proposed Development. The Applicant identified a possible significant effect on a possible Roman villa at Stephen’s Castle Down (in Hampshire) from the proposed location of a construction compound and possible significant effects in the absence of mitigation on the setting of the Grade I listed main building at Farnborough Hill School and the Grade II listed Froyle Place (in Hampshire) [ER 5.14.20]. However, the Applicant’s overall assessment was that there would be no substantial harm to any heritage assets [ER 5.14.24].

4.113 Various concerns were raised during the Examination about the scope of the archaeological and heritage assessments provided by the Applicant. However, as the Examination progressed, many of the concerns were overcome – the potential impacts on the site of the potential Roman villa were addressed by the Applicant removing the construction compound. In addition, the Applicant argued that the impacts on Farnborough Hill School would be mitigated by the use of a reduced working width along the pipeline corridor which would reduce the impact on adjacent trees at the School. The Applicant continued to refine the Archaeological Management Scheme throughout the Examination and Statements of Common Ground were agreed with most of the relevant local planning authorities (with the exception of Winchester City Council, where discussions continued). The agreed Statement of Common ground with Rushmoor Borough Council confirmed that the Council’s concerns about the impact of the proposed Development on the setting of the Farnborough Hill Conservation Area (which includes the Farnborough Hill School) had been overcome and that it had no concerns about impacts on the conservation area or listed buildings [ER 5.14.45].



### The Secretary of State's Conclusions on the Historic Environment

4.114 The Secretary of State noted that most matters relating to the historic environment had been resolved (while also noting that there had been concerns raised by Interested Parties). The ExA concludes [ER 5.14.54] that there would be no substantial harm from the construction or operation of the proposed Development either physically or on the setting of any archaeological remains, listed building or Historic Landscape Types nor would there be any loss of heritage assets. Accordingly, the ExA concluded that there would be no likely significant effects on the historic environment and the proposed Development would, therefore, would accord with all policy and legal requirements. The proposed Development should, therefore, be accorded neutral weight in the planning balance.

4.115 The Secretary of State is aware that there is case law which means that where the Secretary of State finds harm to the setting of a heritage asset he/she must give that harm considerable weight. The Secretary of state also notes that the signed Statement of Common Ground between Historic England and the Applicant includes the following as an agreed matter:

*“[Historic England] supports the conclusion that there would be no residual impacts resulting in significant effects on any designated archaeological remains, designated historic buildings or designated Historic Landscape Types during construction or operation, after the implementation of the Archaeological Mitigation Strategy and other good practice and mitigation measures described in the ES.”*

4.116 Given the ExA's conclusions and the Statement of Common Ground between the applicant and Historic England, the Secretary of State is satisfied that there are no harmful residual impacts on heritage assets.

### Climate Change

4.117 The Secretary of State notes that the ExA considered the impacts of the proposed Development against the policy set out in NPS EN-1 and the Climate Change Act 2008 (as amended to require a 100% reduction in greenhouse gas emissions by 2050). The Applicant provided a figure for greenhouse gas emissions related to the construction and 60-year operational life of the proposed Development – 190,398 tonnes [ER 5.15.2 et seq]. The Applicant calculated that the average annual emissions figure during operation would equate to approximately 0.005% of the United Kingdom's 2017 CO<sub>2</sub> emissions and concluded that there would be no likely significant effects from the proposed Development.

4.118 Some of the Interested Parties to the Examination took the view that the proposed Development would contravene Government commitments to reduce carbon emissions and argued that it was only needed to facilitate the expansion of Heathrow Airport. One of the Interested Parties considered that the Applicant had severely understated the proposed Development's total for greenhouse gas emissions as it did not include emissions from construction traffic, the burning of uprooted vegetation or trees and the CO<sub>2</sub> absorption capacity lost by the uprooting of the vegetation – the Interested Party's figure was 332,000 tonnes of emissions which



would he argued contravene the Paris Agreement. More general climate change-related arguments were also put forward by Interested Parties [ER 5.15.6 et seq] concerned about its impacts.

4.119 The Applicant responded to the points raised [ER 5.15.9] by stating that the proposed Development; was needed; was not linked to nor necessary for the expansion of Heathrow Airport; decommissioning the existing pipeline and using lorries to replace it would lead to far greater greenhouse gas emissions than would arise from the proposed Development; the burning of uprooted vegetation would not be allowed under the Code of Construction Practice; and, the Interested Party's calculation of emissions was disputed.

#### *The Secretary of State's Conclusions on Climate Change*

4.120 The Secretary of State notes the ExA's position that development consent is sought only for the fuel pipeline and that no decision has to be made on the acceptability of the fuel source. The ExA considered that there would be a better outcome with the replacement pipeline than if the original line was closed down and road tankers used to transport aviation fuel between refinery and terminal. The ExA was satisfied [ER 5.15.13] that the proposed Development would not lead to a significant increase in emissions of CO<sub>2</sub>. Finally, the ExA noted support for projects of this type in the National Policy Statements, that there would be no significant effects on climate change arising from the proposed Development, and that the proposed Development would accord with all legislation and policy requirement. The ExA concluded that this matter should carry neutral weight in the planning balance [ER 5.15.15].

4.121 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter, agreeing that the decision on the Development does not need to consider issues beyond those related to the project itself. He considers that matters related to the wider implications of aviation impacts on climate change are not ones that need to be considered in his decision-making. He accepts that this is a replacement pipeline and, as such, is not directly linked to any project which would increase climate change effects e.g. through expansion of Heathrow. Any expansion of Heathrow would require separate consent.

#### Civil and Military Aviation and Defence Interests

4.122 The Secretary of State notes the potential for national significant infrastructure projects to have impacts on aviation and defence interests and that where adverse impacts arise that compromise effective and safe operation of aviation and defence assets, then development consent should be withheld [ER 5.16.1]. The Applicant concluded that the proposed Development would not prevent any licensed aerodrome from maintaining its licence, nor would it impede or compromise the safe and effective use of defence assets, limit military training or impact on air traffic control operations for civilian aircraft. There would, therefore, be no conflict with the requirements set out in NPS EN-1 [ER 5.16.4 et seq].

4.123 The ExA noted that the Ministry of Defence raised concerns about the potential impacts of the proposed Development but that, after discussion during the

examination, these were not significant and it was likely that an agreement would be reached between the parties [ER 5.16.6 et seq]. The Secretary of State notes that the Ministry of Defence withdrew its representation on 31 July 2020.

#### *The Secretary of State's Conclusion on Civil and Military Aviation and Defence Interests*

4.124 The Secretary of State notes that the ExA concluded [ER 5.16.11 et seq] that setting aside the need for a land use agreement between the Ministry of Defence and the Applicant (which has now been signed), there would be no adverse impacts on defence or aviation interests. The matter should, therefore, carry neutral weight in the planning balance. The Secretary of State sees reason to disagree with the ExA's conclusions in this matter.

#### Major Accident Prevention and Safety and Security

4.125 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 provide that significant health and safety risks relevant to a proposed development need to be considered when seeking consent for it. NPS EN-1 states that applicants seeking consent for their projects should also contact the Health and Safety Executive.

4.126 The Applicant set out a range of potential risks in its environmental statement but concluded that there would be no likely significant effects from major accidents or to safety and security matters. Concerns were raised by Interested Parties [ER 5.17.8 et seq] during the Examination including the possibility of an explosion and the potential security risks at working areas during construction. The Health and Safety Executive indicated that its concerns had been addressed by the Applicant.

#### *The Secretary of State's Conclusion on Major Accident Prevention and Safety and Security*

4.127 The Secretary of State notes that the ExA considered [ER 5.17.18 et seq] that, because the proposed Development would be largely underground and aviation fuel has a low combustion potential, the likelihood of an accident was low and, therefore, relevant legal and policy requirements would be met. In addition, mitigation would be secured in the development consent order and there would be no significant effects. The ExA concluded that the matter should be given neutral weight in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Construction Waste Management

4.128 The Secretary of State notes that NPS EN-1 sets out Government policy on waste management. He further notes that the Applicant concluded that there would be no significant effects from waste management issues and that the ExA records that no Interested Parties raised concerns about waste management issues although it also notes that the absence of a Site Waste Management Plan was a matter it raised with the Applicant. A Site Waste Management Plan was subsequently provided during

the Examination which would form part of the Construction Environment Management Plan and be secured in the recommended development consent order.

#### *The Secretary of State's Conclusion on Construction Waste Management*

4.129 The Secretary of State agrees with the ExA's conclusion [ER 5.18.11] that the Site Waste Management Plan would deal with any waste management impacts arising from the proposed Development. The proposed Development would accord with all relevant policy and legal requirements and so the matter should be given neutral weight in the planning balance. The Secretary of State, therefore, sees no reason to disagree with the ExA's conclusion in this matter.

#### Cumulative Effects

4.130 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 require assessments of cumulative impacts to be made when applications for development consent are made. The ExA notes [ER 5.19.1] that the Applicant's Environmental Statement included studies into other projects that could potentially be affected by or have an effect with the proposed Development – including Heathrow Expansion and the River Thames Flood Alleviation Scheme. However, the Applicant's detailed assessment indicated there was limited potential for cumulative effects [ER 5.19.4 et seq].

4.131 Rushmoor Borough Council questioned why the impacts of decommissioning the existing pipeline and the proposed Development were not considered in the Applicant's Environmental Statement. The Applicant responded to say that removal of the existing pipeline would be covered by the Pipeline Safety Regulations and it did not, therefore, need to be considered as part of the Application. The Applicant stated that the existing pipeline would be decommissioned once the proposed Development was operational: the removal would be undertaken in accordance with the Pipeline Safety Regulations and would involve consultation with Natural England and the Environment Agency [ER 5.19.8].

4.132 The ExA queried whether both pipelines could operate together. The Applicant said that they could, albeit with some technical difficulties. As a result of this discussion, the Applicant provided wording for a Requirement in the development consent order that would ensure this situation did not occur (Requirement 16) [ER 5.19.9]. Rushmoor Borough Council raised concerns about decommissioning of the existing pipeline but did not advance any rationale for its position. A separate concern was raised about the decommissioning of the above ground infrastructure that formed part of the proposed Development. In response, another Requirement (Requirement 18) was included in the development consent order to ensure the removal of the above ground infrastructure.

#### *The Secretary of State's Conclusions on Cumulative Effects*

4.133 The Secretary of State agrees with the ExA's conclusion [ER 5.9.13] that while there would be disturbance arising from the construction of the proposed Development, this would be limited to specific times. The ExA did not, therefore, consider there would be any significant cumulative effects from the construction of the

proposed Development. The ExA was also satisfied that the decommissioning of the existing pipeline and the proposed Development would be subject to adequate controls. The ExA considers, therefore, that there would be no likely significant cumulative effects. The proposed Development would, therefore, be in accordance with relevant legislative and policy requirements. The ExA thus gives neutral weight to this matter in the planning balance. The Secretary of States sees no reason to disagree with the ExA's conclusion in this matter.

### **The Secretary of State's Findings and Conclusions in Relation to Habitats Regulations Assessment**

5.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") and the Conservation of Offshore Marine Habitats and Species Regulations ("the Offshore Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a Natura 2000 Site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations and regulation 28 of the Offshore Regulations to consider the potential for adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a European site. This process is collectively known as a Habitats Regulations Assessment ("HRA").

5.2 The Secretary of State's HRA is issued alongside this decision letter. The HRA concluded that a likely significant effect could not be ruled out in respect of six European sites when considered alone or with other-plans and projects. The HRA identified the potential for a likely significant effect from the effects of:

- Water quality and/or nutrient release on ornithological features of the Solent and Southampton Water SPA and Ramsar and Solent and Dorset Coast pSPA;
- Water quality and/or nutrient release on habitat, plant and animal features of the Solent Maritime SAC;
- Direct loss of habitats supporting ornithological features and contamination of habitats supporting ornithological features of the Thames Basin Heaths SPA;
- Noise and visual disturbance of ornithological features of the Thames Basin Heaths SPA due to construction activities within the SPA;
- Noise and visual disturbance of ornithological features of the Thames Basin Heaths SPA due to increased recreational use within the SPA due to displacement of visitors to Suitable Alternative Natural Green Spaces during construction activities within the Suitable Alternative Natural Green Spaces;
- Direct loss of habitat features of the Thursley, Ash, Pirbright and Chobham SAC;
- Adverse hydrological changes to habitat features of the Thursley, Ash, Pirbright and Chobham SAC; and
- Adverse changes to substrate properties and functioning of habitat features of the Thursley, Ash, Pirbright and Chobham SAC.

5.3 It was, then, necessary to consider whether the proposed Development would have an adverse effect, either alone or in-combination, on the integrity of those six European sites. An Appropriate Assessment was, therefore, undertaken to determine whether an adverse effect on the integrity of the sites could be ruled out in light of the sites' conservation objectives. The overall conclusion of the Appropriate Assessment was that, with the implementation of the mitigation measures secured by the Order, the proposed Development, either alone or in-combination with other plans or projects, would have no adverse effects on the integrity of any European sites. The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations in granting consent for the proposed Development.

5.4 The Secretary of State further notes that both Natural England and the ExA also concluded that the proposed Development would not have any adverse effects on the integrity of any European sites [ER 6.8.8]

## **6. Consideration of Compulsory Acquisition and Related Matters**

6.1 The Secretary of State notes that the Applicant is seeking powers for the Compulsory Acquisition of the freehold of land, rights over land, the creation of new rights in land and the temporary possession of land. The Secretary of State also notes that the linear nature of the Development means that there are a large number of landholdings that are potentially affected by it. Construction of the proposed Development would use the temporary powers while operation and maintenance would be carried out under compulsory acquisition powers. The ExA records [ER 8 .4.1] that the Applicant is seeking those powers "because land that is presently owned or occupied by persons other than the Applicant is required for the carrying out of the works. The Applicant advocates that without acquisition and temporary use of the land, the scheme could not be delivered."

6.2 The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act compulsory acquisition may only be authorised if:

- the land is required for the development to which the consent relates, or
- it is required to facilitate or is incidental to that development; or
- it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act; and
- there is a compelling case in the public interest.

6.3 In connection with this:

- the land required to be taken must be no more than is reasonably required and be proportionate
- there must be a need for the project to be carried out;
- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
- they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.



6.4 The ExA notes [ER 8.3.1] that the Applicant submitted a number of documents with its application to support the request for compulsory acquisition powers. The powers sought were set out in the development consent order that the Applicant submitted with its application for development consent. The ExA considered a broad range of matters related to the request for compulsory acquisition powers and asked a considerable number of questions during the Examination.

6.5 The ExA noted that the 'red line' limits for the proposed Development in the development consent order would set the boundary within which compulsory acquisition and temporary possession powers could be exercised [ER 8.3.2]. The ExA also noted that the working width of the pipeline element of the proposed development would be around 30 – 36 metres although it might be slightly more than that in some circumstances and down to around 10 metres in others. However, the Applicant would require permanent rights to access and maintain the pipeline over a maximum corridor width of 6.3 metres (0.3 metres for the pipeline itself and 3 meter easement strips on either side of it) [ER 8.4.4 et seq]. The ExA pointed out that there were some errors in the documentation submitted by the Applicant to support its request for compulsory acquisition and temporary possession powers [ER 8.3.9 et seq].

6.6 The ExA notes that the Applicant indicated that it was continuing its discussions with landowners to obtain voluntary agreements that would allow the required access to the land necessary for the proposed Development but that, even if these were put in place, it would not seek to remove compulsory purchase powers from the development consent order [ER 8.6.6. et seq].

6.7 The Applicant considered possible alternatives to the proposed Development including doing nothing (the continued use of the existing pipeline), the use of road transport and the renewal of the existing pipeline. While none of these options would require the compulsory acquisition of land, the Applicant considered they were not feasible. The Applicant also considered numerous corridor options for the proposed Development before determining the chosen route which would have required compulsory acquisition and temporary possession powers [ER 8.6.11 et seq]. The Applicant set out that there was a reasonable chance of funding the exercise of any compulsory acquisition powers [ER 8.6.15 et seq] and set out its justification for seeking the powers [ER 8.6.18 et seq].

6.8 The Applicant also set out the different sorts of land over which compulsory acquisition and temporary possession powers were sought: statutory undertakers' land; special category land (the compulsory acquisition of which could be subject to Special Parliamentary Procedure unless certain requirements were met) - including common land, open space land, National Trust land and field or fuel garden allotments – and Crown Land (in which Crown interests cannot be compulsorily acquired but third party interests can) [ER 8.6.24 et seq].

6.9 The Applicant concluded that there was a compelling case for granting it compulsory acquisition and temporary possessions powers in respect of the proposed Development.

6.10 The ExA considered the Application under sections 122, 123, 127, 135 and 138 of the Planning Act 2008 and under the Human Rights Act. The ExA assessed that development consent should be granted for the proposed Development and that the 'need case' had been made for it. The ExA also considered that the need for the grant of compulsory acquisition and temporary possession powers had been made [ER 8.8.1 et seq].

6.11 The ExA considered a long list of cases where parties whose land was the subject of the request for compulsory acquisition and temporary possession powers argued that their interests would be harmed if those powers were granted. However, while acknowledging that some harm might fall on some of those parties, the ExA considered that the powers requested should be granted as it was satisfied that any private loss would be outweighed by the wider public benefits of the proposed Development.

6.12 Provisions in the Planning Act 2008 permit developers of nationally significant infrastructure projects to extinguish or relocate the rights of Statutory Undertakers where the Secretary of State is satisfied that the use of those powers is necessary for the project in question. The ExA noted [ER 8.11.1 et seq] that the Applicant had tried to reach agreement with a number of Statutory Undertakers (bodies with a legal right to carry out certain functions) on Protective Provisions for inclusion in any development consent order for the proposed Development that might be made that would ensure mutually acceptable provisions to protect each other's interests). While the Applicant had agreed Protective Provisions with some Statutory Undertakers, others remained unresolved: Affinity Water, Network Rail, Portsmouth Water and Thames Water Utilities. The ExA concluded [ER 8.11.28 et seq] that appropriate provisions would be in place to protect the interests of Statutory Undertakers, that there would be no serious detriment to the carrying out of their undertakings and that any interference with the carrying out of their activities would be necessary for carrying out the proposed Development.

6.13 The Secretary of State consulted with Network Rail and Affinity Water and other parties on 5 August 2020 after receiving the ExA's Report to seek further information from them about the status of their discussions with the Applicant over protective provisions. Both Network Rail and Affinity Water responded by stating that they had not reached agreement with the Applicant and set out that their own suggested texts were necessary to protect their interests. In its response, the Applicant re-stated that the provisions it had proposed adequately protected the interests of the Statutory Undertakers likely to be affected by the proposed Development.

6.14 The Secretary of State notes that, while the ExA recommended that the Secretary of State (via his officials) should consult with Network Rail to seek an update on its discussions with the Applicant, it did conclude that the wording it proposed to the Secretary of State adequately protected Network Rail's interests. Although the Secretary of State sought an update, no agreement had been reached between the applicant and Network Rail. In the circumstances, the Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

6.15 As far as the position with Affinity Water is concerned, the ExA was satisfied that the Protective Provisions in the recommended development consent order adequately protect the company's interests. However, in the wake of receipt of the ExA's Report being submitted to the Secretary of State, Affinity Water wrote to him to request that alternative wording should be adopted to make sure that there was no harm to its interests. Affinity Water re-iterated its position in its consultation response. Notwithstanding Affinity's Water's position on the suitability of the Protective Provisions, the Secretary of State sees no reason to disagree with the ExA's conclusion in this matter.

6.16 As indicated in paragraph 4.102 above, the ExA considered the request for compulsory acquisition and temporary possession powers over Special Category Land. The ExA concluded [ER 8.12.1 et seq] that for each of the specific land types that were classified as Special Category Land – common land, open space land, National Trust land (the National Trust raised no objection) and fuel or field garden allotments – there would be no detriment to it from the construction and operation of the proposed Development and that compulsory acquisition and temporary possession powers can be granted. There would, therefore, be no need for the Special Parliamentary Procedure to be adopted. As required, the relevant provisions are recorded in the development consent order that the ExA has recommended to the Secretary of State. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter and is satisfied that the relevant tests in section 132 of the Planning Act are met.

6.17 The Ministry of Defence and the Ministry of Justice own land that is needed for elements of the proposed Development. As also indicated above, the Ministry of Defence has given its consent for its land to be used for the proposed Development. However, the Ministry of Justice has not provided approval for use of its land.

6.18 The Secretary of State notes from correspondence that has been submitted to him by the Applicant and the Ministry of Justice that there appears to be an in principle agreement over some of the plots of land and there is no reason to believe that agreement cannot ultimately be reached in relation to the other plots in question. Without the consent of the Ministry of Justice, the Secretary of State cannot grant powers over the land in question or include provisions in the Order. However, the Secretary of State does not see that this should in principle prevent the grant of development consent. The Secretary of State has weighed the fact that this may cause some difficulties with the implementation of the project if consent from the Ministry of Justice is not forthcoming at a later date in the planning balance.

6.19 The Secretary of State is, therefore, prepared to grant development consent without the compulsory acquisition powers sought over Ministry of Justice land. The Secretary of State acknowledges that this means the Applicant will have to seek the necessary rights over the Ministry of Justice land by other means – a private agreement between the parties. In order to ensure that development work does not start and then cannot be completed because agreement in respect of the rights over the Ministry of Justice land cannot be obtained by the Applicant, the Secretary of State has added a requirement to the Order that development shall not commence until the necessary rights over the Ministry of Justice land have been obtained.

6.20 As far as the request for powers of temporary possession is concerned, the ExA concluded [ER 8.14.1] that this was necessary for the project but that exercising these rights would infringe Convention rights under the Human Rights Act 1998. However, the ExA goes on to state that the grant of the powers would be proportionate, legitimate and in the public interest. The development consent order proposed to the Secretary of State by the ExA includes provision for compensation to be paid to affected parties. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

### Human Rights

6.21 The Secretary of State notes the ExA was satisfied that that the relevant requirements of the Human Rights Act 1998 would be met [ER 8.15.1 et seq]. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

### Equality Act

6.22 The Secretary of State also notes that the ExA concluded that there was no evidence the proposed Development would have any specific impact on persons who share a protected characteristic under the Equality Act as compared to those who do not, nor is there any evidence that granting consent for the Application would have any harmful equality impacts [ER 8.16.2]. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

### The Secretary of State's Overall Conclusion on Compulsory Acquisition

6.23 With the exception of the Ministry of Justice land, the Secretary of State considers that relevant legislation and guidance relating to compulsory acquisition and temporary possession have been followed by the Applicant and the ExA and that, given his overall consideration that development consent for the proposed Development should be granted, there is a compelling case in the public interest to grant compulsory acquisition and temporary possession powers to facilitate the Development.

## **7. Secretary of State's Consideration**

7.1 The Secretary of State notes the ExA determined that consent should be granted for the proposed Development. He further notes it concluded that, while there would be impacts arising from the proposed Development across a range of issues, those impacts were not of such significance or would be mitigated to such a degree as to be not significant as to outweigh the substantial benefits that would derive from the proposed Development.

7.2 The Secretary of State notes that the determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The Secretary of State notes the ExA identifies that there are undoubtedly concerns that the proposed Development would have adverse impacts on a number of individuals and their properties as well as on

some businesses. He also notes that the ExA has had regard to these matters in framing its recommendation. However, he is also aware that he can take a different decision to the one recommended to him by the ExA if he feels the evidence presented to him can support a different conclusion.

7.3 However, the Secretary of State considers the reasoned arguments in the ExA's Report together with the strong endorsement in the National Policy Statements of developments of the type that is the Development means that he does not support taking a different course to the one recommended to him.

7.4 The Secretary of State has also considered whether removing the Ministry of Justice's land from the compulsory acquisition powers has any impact on the planning balancing exercise he is required to conduct in coming to his decision on whether development consent for the proposed Development should be granted or refused. The removal of the plots of land means there is a risk to the completion of the proposed Development. However, the Secretary of State notes that the Applicant and the Ministry of Justice's land agents are confident that it will be possible to reach a satisfactory agreement between the parties (including with Ministry's tenant at Bronzefield Prison, Sodexo Justice Services) to ensure access to the land to enable the proposed Development to be taken forward. Given the identified need for the proposed Development in NPS EN-1 and NPS EN-4, the Secretary of State considers that this matter is one that carries some weight but does not outweigh the arguments in favour of granting development consent for the Development.

7.5 The Secretary of State's overall conclusion is that in light of the above, the benefits of the project outweigh the adverse impacts and no information received since the close of the Examination would lead him to conclude otherwise.

## 8. **Other Matters**

### Representations Received Following the Close of Examination

8.1 In addition to the responses that were submitted to the Secretary of State in the wake of the 5 August 2020 consultation, a number of other parties have made representations about the proposed Development. The Secretary of State notes that some of these representations cover ground that was considered during the Examination of the Application.

8.2 The Secretary of State notes that The Rt Hon Michael Gove MP wrote to him on 20 August 2020 with correspondence from Michael Blackham on behalf of the Heronscourt and Colville Gardens Residents Association to draw attention to a matter concerning the relative locations of the proposed Development and a water pipeline which crosses Turf Hill. The allegation was that the Applicant had provided incorrect information about the location of the water pipeline and that the route of the proposed Development could not be known accurately: this would impact on the number of trees that might need to be removed to facilitate the installation of the proposed Development invalidating the SSP for Turf Hill which set out the number of trees that would be impacted.



8.3 In response, the Secretary of State notes that the ExA considered [ER 5.4.192] that the SSP for Turf Hill located and specified which trees would be removed. The ExA concluded that no trees above the number specified or located in the SSP could be removed without the approval of the relevant local planning authority. In addition, the Secretary of State notes that that the Order limits for the proposed Development definitively fix its boundaries and any work outside those boundaries would have to be subject to separate application for consent. He considers, therefore, that suitable protections are in place for trees and the route of the proposed Development to address Mr Blackham's concerns. [The Applicant also acknowledged during the Examination that it would need to conduct a detailed survey to allow it to micro-site the proposed Development across Turf Hill.]

8.4 In response to comments submitted during the consultation write-around, the Applicant, Network Rail, the Environment Agency and North Surrey Green Party provided further submissions to clarify certain matters and provide updates on discussions between the parties. The Applicant's letter of 17 September 2020 set out that it was still in discussions with the Ministry of Justice about gaining approval for the use of its land at Bronzefield Prison. While the Ministry of Justice seemed content to give its approval in principle, there are still issues for its tenant which runs the Prison (Sodexo Justice Services). The Applicant's position is that it will continue to seek the necessary approvals but that the lack of consent for use of the land at Bronzefield Prison should not stop the grant of a development consent order for the proposed Development. The Secretary of State agrees that the lack of consent does not mean that development consent could not be granted but any development consent granted would have to exclude compulsory acquisition powers over Ministry of Justice land given the relevant provisions of the Planning Act.

8.5 As indicated in paragraph 6.14 above, the disagreement between Network Rail and the Applicant about protective provisions has not been resolved despite exchanges between the parties after the close of the Examination. As noted above, the Secretary of State agrees with the ExA's position in this matter.

8.6 As indicated above, the Secretary of State notes that there remain differences between the Applicant and the Environment Agency on matters related to the proposed River Thames Flood Alleviation Scheme with the Agency concerned about the potential for costs to fall to it as a result of the need to incorporate design features to account for the proposed Development in future planning for the Scheme. The most recent correspondence from the Environment Agency (which was copied to the Applicant) provides the preferred wording of the Environment Agency in relation to the Protective Provisions in the Order which the Applicant disagrees with, arguing that existing provisions in the order would be suitable for a project, that is the Flood Alleviation Scheme, which is still at the proposal stage. The Secretary of State agrees that the Protective Provisions in the Order provide appropriate protections for the Environment Agency.

8.7 While, as noted above, the absence of an approval from the Ministry of Justice over the Crown land requirements would preclude the grant of compulsory acquisition powers for that land, the Secretary of State does not consider that the disagreements between the Applicant and Network Rail and the Applicant and the Environment Agency are reasons to refuse the grant of consent. In both cases, the ExA was

satisfied that the Protective Provisions it recommended should be included in any development consent order provided adequate protection for Network Rail and the Environment Agency.

8.8 Further submissions were received after the receipt of the ExA's report from the Governors of St James School in Ashford (Middlesex) and from the North Surrey Green Party. The submission from St James School requested that the Secretary of State should include a condition in any development consent order which would require the Applicant to undertake any works in the school grounds outside term time to minimise disruption to school activities. The Secretary of State notes that the ExA reports [ER 5.13.24] the Applicant had confirmed it would wherever possible undertake construction works outside school terms times and that a SSP would specify working practices and this would be governed by a condition in the recommended development consent order. However, the School Governors do not consider that the Applicant's SSP provides sufficient comfort that term times would not be subject to construction works. Nevertheless, the Secretary of State does not consider that any further conditions are necessary to meet the School's concerns believing that the SSP and the requirement in the recommended development consent order provide sufficient protections.

8.9 The representation from the North Surrey Green Party raised concerns about a landfill site that would be crossed by the proposed Development. The representation referred to a fatal incident close to Lavenders Landfill near Chertsey when a young boy (Zane Gbangbola) was poisoned by noxious fumes within his house. The inquest into the child's death recorded that the cause of death was carbon monoxide poisoning (from a faulty heater) but North Surrey Green Party sets out that it and other parties – there is a Parliamentary Early Day Motion calling for an independent inquiry into the fatality – believe that the cause of death was inhalation of hydrogen cyanide which had migrated from a nearby landfill site. The Secretary of State notes that Spelthorne Borough Council wrote to the Home Secretary on 25 September 2020 to request an independent inquiry into Zane Gbangbola's death.

8.10 In response, the Secretary of State notes that the ExA considered impacts on landfill sites along the route of the proposed Development. He further notes that the ExA's Report records [ER 5.12.10] that the Applicant identified around 50 sites where there could be a risk of contamination but that the Applicant concluded that with good practice measures in place, the potential risks of contamination could be managed. The ExA also records that the Applicant states the good practice would be enforced through requirements in the recommended development consent order. Finally, the Secretary of State notes that the ExA concluded that the proposed Development met all policy and legal requirements and he sees no reason to disagree with the conclusions.

## **9. Equality Act 2010**

9.1 The Equality Act 2010 includes a public sector equality duty ("PSED"). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Planning Act 2008; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age;

gender; gender reassignment; disability; marriage and civil partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

9.3 The Secretary of State notes that the ExA states [ER 8.17.16] that it had due regard to the relevant provisions of the Equality Act 2010 during the Examination and in preparing its Report and that it is satisfied that the proposed Development would not have any differential impacts on any person with a characteristic protected under the Act. The ExA was confident that there was no evidence that the proposed Development would not accord with the Equality Act duty.

9.4 The Secretary of State has no reason to disagree with the ExA's conclusion in this matter.

## **10. Natural Environment and Rural Communities Act 2006**

10.1 The Secretary of State has considered his duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

10.2 The Secretary of State is of the view that the ExA's Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform the Secretary of State in reaching the decision to grant consent to the proposed Development.

## **11. Climate Change Act and the Net Zero Target**

11.1 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

11.2 The Secretary of State notes that the National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the proposed

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<sup>2</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Development and that the Development is, therefore, still in accordance with the National Policy Statements and more recent Government statements on the future of the aviation industry do not contradict that position.

## **12. Modifications to the draft Order**

12.1 The ExA records that there were a number of changes to the development consent order submitted by the Applicant as part of its Application as it progressed through the Examination process. Many of the changes were minor in nature but others were more substantive. All potential changes the development consent order were subject to discussion and consultation during the Examination.

12.2 Two proposed changes to the development consent order should be noted: Rushmoor Borough Council suggested that there should be a specific condition related to construction works in Queen Elizabeth Park in Farnborough; and there was a suggestion that the Construction Traffic Management Plan should be approved by relevant planning authorities rather than by the relevant highways authorities. In the case of the Queen Elizabeth Park, the request for a condition was related to the lack of detailed information in the Applicant's original Site SSP for the area. However, the Applicant submitted a revised SSP for Queen Elizabeth Park which the ExA considered obviated the need for a specific condition.

12.3 With regard to the Construction Traffic Management Plan, the ExA decided that, despite the Applicant's objection, it would accept a change to the development consent order to give the responsibility for approving the Construction Traffic Management Plan to local planning authorities (with the highways authorities being consultees). This decision was supported by the local highways and local planning authorities.

12.4 The Secretary of State sees no reason to disagree with the ExA's proposed changes to the development consent order. The Secretary of State also considers that a condition should be included in the Order to prevent the Applicant from starting any works on the proposed Development until an agreement with the Ministry of Justice over access to its land is in place. Notwithstanding the Applicant's view that an agreement is close to being signed, such a condition would help to allay any fears that the proposed Development might be commenced and then abandoned or significantly delayed because of the absence of an agreement between the parties. The Secretary of State has also made consequential changes to remove land in which the Ministry of Justice has an interest from the provisions in relation to powers of acquisition and interests in land from the Order.

12.5 The Secretary of State has also removed Article 3(2) from the recommended order. This provided that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. The Secretary of State considers that this is unnecessarily wide and that the provisions within the Order including amendments to relevant legislation, are sufficient.

12.6 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency.

### **13. Challenge to decision**

13.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

### **14. Publicity for decision**

14.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

14.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

*Gareth Leigh*

**Gareth Leigh**  
**Head of Energy Infrastructure Planning**



## ANNEX

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/southampton-to-london-pipeline-project/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**