

# M20 Junction 10a

## TR010006

### Comments on Responses to ExA's First Written Questions





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# **Comments on Responses to ExA's First Written Questions**

**Planning Act 2008  
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# 1. David Lowe on behalf of the Executors of Marianne Clunies-Ross and others (REP3-006)

## Question 21.19

The Executors of Marianne Clunies-Ross (the Executors) express support for the proposed development, but seek assurance from the Applicant that the balance of the land to be returned to them on completion of the development will enjoy the benefit of direct access to and from the link road. They state that that access should be suitable to serve any future commercial development of that land rather than the limited replacement agricultural access provided for [RR-008].

- i. Would the Executors update the Examination on any discussions held with the Applicant in the period following the submission of their relevant representation? What progress, if any, has been made with the Applicant in respect of the assurances sought?
- ii. How do the Executors envisage that any assurances provided by the Applicant would be secured by dDCO Revision B [OD-008]?

PINS Question Number	Response from David Lowe	Comment on response from Highways England (the Applicant)
21.19	<p>This further submission is made in response to the Examining Officer's request for an update contained in Paragraph 21.19 of the above "First Written Questions and Request for Information" issued on 9th December 2016.</p> <p>The request that provision should be made for a fourth arm off the proposed "Stour Park Roundabout" was duly submitted to Highways England but they have explained that they are unable to adopt the proposal as the roundabout in question was not a feature of their primary scheme but an alternative promoted and to be funded by the private Developers of the proposed Stour Park Development.</p>	<p>Highways England has provided an alternative access off the old A2070 to the field.</p> <p>With regard to the roundabout on the A2070 link road, this roundabout is not part of the Main Scheme put to DCO for approval. This "Alternative Scheme" includes the provision of access in the form of a three –arm roundabout midway along the new A2070 link road which would provide entry to the proposed Stour Park Development, however it is dependent on a financial contribution from the developer. Should funding not be provided then this Alternative Scheme option will not be included. Should you wish to progress a development in the future, then access to this potential roundabout can be included in a planning application to ABC.</p>

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	<p>The said Developers were therefore approached, through their Local Agents, on 13th December 2016, requesting that they open discussions with a view to exploring the idea of a fourth arm being incorporated in their alternative scheme.</p> <p>As at the date of this submission no response has been received from the Developers or their Agents.</p> <p>I would hasten to add that we are not seeking a major alteration merely a token 'stub end' which should not be difficult to incorporate bearing in mind that a "works exit" is already shown as leading off the North Side of the said roundabout.</p> <p>In view of this matter being unresolved I wish, on behalf of my clients to reserve their right to object to the alternative proposals involving the Stour Park Roundabout while continuing to support the main Highways England Scheme.</p> <p>My clients also wish to reserve the right to object to any Compulsory Purchase Order on the grounds that some of their land to be compulsorily acquired will be used to enable the "Stour Park Roundabout" to be constructed to serve the objectives of a Private Developer who does not possess Compulsory Powers.</p> <p>Having made the above points I wish to emphasise that with the application of reason and common sense from all parties involved I feel sure that my clients objections can be easily resolved.</p> <p>As regards question 21.19 (ii) I would suggest that a Direction is incorporated in the Development Consent Order stipulating that if the "Stour Park Roundabout" is incorporated as part of the adopted scheme then provision should be incorporated for a fourth arm off the Northern frontage in</p>	

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PINS Question Number	Response from David Lowe	Comment on response from Highways England (the Applicant)
	order to avoid the block of land sandwiched between the Southern Link Road and the M20 Motorway being landlocked.	

## 2. Environment Agency (REP3-007)

### Question 2.4

Section 2.6 considers the Construction of the Scheme:

- i. Would IPs identify any areas in which they are not content with the Applicant's proposals for the construction strategy, access, construction compounds, and outline Construction Environmental Management Plan (oCEMP) [APP-204]?
- ii. Re paras 2.6.5 to 2.6.7, core working hours and need for night time works, a greater number and range of activities which could be undertaken at night are specified in dDCO Requirement 3(2)(e) [OD-008] in comparison to the works described within the ES. Would the Applicant clarify how all night time works specified in the dDCO have been assessed in the ES, including the assumptions made to inform the assessment?
- iii. Re para 2.6.6, night time working hours, the anticipated hours of the night time works are set out here, but these working hours are not reflected in the dDCO [OD-008]. Would the Applicant state how these night time working hours will be secured in the dDCO? Would the Applicant, ABC and KCC state whether these timings have been agreed between them?
- iv. Re para 2.6.10, presence and use of main construction compound, would the Applicant provide evidence to demonstrate how all assumptions made in this para have been secured in the dDCO and/ or specific sections of the oCEMP [APP-204] (and the same in respect of the other temporary construction compound)?
- v. Re para 2.6.16, PRoWs, would the Applicant clarify the assumptions that have been made with respect to temporary footpath diversions for the purpose of assessing effects on PRoW users on a worst case basis

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
2.4	i. We accept the outline CEMP in principle however we refer you to our Written Representation for our comments on the pollution prevention mitigation measures, soil handling and management plan, materials management plan and site waste	i. It is understood that the Environment Agency wishes to see additional detail on the CEMP. The outline CEMP is provided in DCO Document 6.1, Chapter 17 and will be adopted by the Contractor and be further developed in consultation with the Environment Agency and other key stakeholders during the

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
	management to be detailed as part of the CEMP when produced.	<p>Detailed Design stage. The dDCO includes a Requirement for the production of a detailed CEMP.</p> <p>An outline Site Waste Management Plan is being drafted in cooperation with the Contractor and will be submitted to the Examiner in due course. This will set the requirements for the full Site Waste Management Plan, which will be produced by the Contractor during the Detailed Design stage.</p>

### Question 5.1

Having regard to the judgment of the High Court on 2 November 2016 in which the Court found in favour of the Claimant (ClientEarth) and against the Defendant (the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA)), and quashed Defra's Air Quality Plan (AQP) of December 20152:

- i. Would the Applicant state whether the air quality modelling used in the preparation of ES Chapter 5 is in any way affected by the quashing of the AQP or the critique in the judgment of the modelling used by Defra, and explain why this is indeed the case (or not) with particular reference to assumptions made in relation to emissions from Euro 6 diesel cars and the COPERT calculation factors?
- ii. Will the judgment's conclusion in para 95(ii), that the relevant Secretary of State fell into error in relation to Article 23 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008, in fixing on a projected compliance date of 2020 (2025 for London) (or any other parts of the Judgment) have any implications for the air quality assessment and conclusions presented in Chapter 5 of the ES, particularly in relation to the Compliance Risk Assessment described in paras 5.8.18 to 5.8.19 of that chapter?
- iii. If so, what is the likely timescale for the preparation and submission to the Examination of any revised assessments and documents now needed?
- iv. What is the response of the local authorities and Statutory Parties (the Environment Agency, Public Health England) to this judgment in terms of the air quality assessment for the proposed development?

The ExA is aware that a High Court Order has been made requiring the SoSEFRA to publish a draft modified Air Quality Plan by 4:00pm on 24 April 2017 and a final modified Air Quality Plan to be published and notified to the European Commission by 4:00pm on Monday 31 July 2017.

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Following such publication of a draft plan, the ExA may need to ask further questions as to the extent to which it may affect the Applicant's previous assessment(s), the application documents or any other representations made as part of the Examination. The ExA is also aware that the deadline for publication and notification to the European Commission of the final modified Air Quality Plan in July 2017 post-dates the anticipated closure of the examination in June 2017. The ExA will not have been able to take this into account if its publication is after the close of the Examination, but it will be a matter for the Secretary of State for Transport to take it into account as he sees fit before making his decision.

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
5.1	iv. We note that this is an application for a new road junction on a trunk road. While we are statutory consultee for NSIPs, we only comment on those matters within our planning remit, of which air quality is not.	No response required

### Question 9.3

Section 9.8, Predicted Geology and Soils Effects, discusses anticipated impacts both during construction and operation, and Table 9.7 summarises proposed mitigation measures and anticipated effects following the implementation of mitigation.

- i. Would the Environment Agency expand on the reference to historic landfill at Section 2.2 of its Relevant Representation [RR-011]?
- ii. If further ground investigation is considered necessary (and contamination risk assessments updated accordingly), are the current provisions of the dDCO [OD-008] suitable to secure the delivery of such additional works?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
9.3	i. The historic landfill referred to in the Relevant Representation is a backfilled quarry (Mersham Quarry) which accepted a variety of waste types. The site is centred at National Grid Reference TR0459341333 and is bounded to the south by Hythe Road and is therefore located at the red line boundary of the Main Scheme. Please find enclosed a map showing the landfill site. Historic landfill sites such as Mersham Quarry are	i. No response required ii. Discussions are ongoing between Highways England's and the Environment Agency legal team to resolve the need for Protective Provisions and Requirements within the DCO.

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
	<p>potential sources of contamination that could pose a risk to a variety of receptors. The applicant has since confirmed that there will be no piling in the vicinity of Mersham Quarry.</p> <p>ii: Part 2 of our relevant representation notes that current ground investigation and risk assessment reports assess groundwater to be at risk from historic sources. The introduction of mitigation measures during construction works will not reduce this risk as it is already present prior to construction.</p> <p>National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121). We therefore believe that further action is required.</p> <p>Depending on the responses to question 14.3iv and 14.3v, additional provisions may be necessary in the DCO to ensure there is no unacceptable risk posed to controlled waters from historic sources of contamination. We would like the opportunity to respond to any further submissions related to this matter</p>	

#### Question 11.4

Section 11.7, Mitigation and Compensation Measures, refers to measures to be introduced as part of the proposed development during both construction and operation.

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- i. Would the Applicant summarise (with reference to section 11.7 of the ES and Appendix D of the oCEMP [APP-204]) how these measures would be secured in the dDCO [OD-008]?
- ii. Re para 11.7.2, would ABC state why it has asked for the A20 to remain surfaced with hot rolled asphalt rather than thin surface course (low-noise surfacing)?
- iii. Re para 11.7.2, which states that bunds 2m high will be employed, and para 11.7.4 which states that “a 3m height barrier would ensure no properties are at or above SOAEL” but that this “may be optimised at detailed design to include elements of 2m height at either end of the extents”, would the Applicant clarify what has been assessed as part of the ES and how it would be secured by the dDCO [OD-008] through the Works Plans [OD-011], particularly where specifics of dimensions and the like are to be left to the detailed design stage?
- iv. There appears to be no reference to any ongoing operational noise monitoring. Would the Applicant justify the omission of such monitoring, and would IPs state, with evidence, whether such provision should be made as part of the dDCO [OD-008]?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
11.4	We have no comments to make on the noise and vibration measures in the dCEMP. While we are statutory consultee for NSIPs, we only comment on those matters within our planning remit, of which noise and vibration is not.	No response required

#### Question 14.1

Section 14.3 sets out the Method of Assessment, including the study area and significance criteria (value and magnitude of impact on surface water, ground water and flood risk), based on the DMRB and other sources.

- i. With reference to the Environment Agency’s Relevant Representation [RR-011], would the Environment Agency expand on the information that it wishes to see with regard to maintaining access to the Aylesford Stream?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
14.1	i. The Environment Agency accepts the principles of access however require further information at detailed design stage to	i. Drawings have previously been provided showing this information, although further information has been requested

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
	<p>ensure the area can be accessed, for maintenance and incident management purposes. Previous advice to the applicant has included the need for vehicular access and need for access during works and post development. We have requested detailed drawings and construction method statements (where applicable), to suitable scale with dimensions at the appropriate stage to include:</p> <ol style="list-style-type: none"> <li>1. New access track from the A2070 (Bad Munstereifel Rd), e.g. serving Pond 1, to the existing farm bridge over the Aylesford Stream. This is to ensure the new track from A2070 is suitable for Environment Agency vehicular access to the Aylesford Stream for incident management and maintenance purposes (e.g. weedcutting, blockage clearance, desilting).</li> <li>2. Proposed mammal pipe bridge adjacent to the M20 including dimensions to indicate proximity to the M20. This will allow us to ascertain the length of Aylesford Stream where our access along the channel (e.g. for desilting operations) may now be blocked by the presence of this bridge.</li> <li>3. Badger/mammal fencing in the vicinity of the proposed mammal pipe bridge (as above) in order for us to ascertain where our access to the Aylesford Stream may now be blocked. We recommend that suitably sized vehicular access gates are provided within the fencing to still maintain our access to the Aylesford Stream (e.g. between the mammal pipe bridge and the Lacton Farm culvert).</li> <li>4. Access provision for the Environment Agency to the Aylesford Stream from the A20.</li> <li>5. Temporary works structures: e.g. temporary bridge (e.g. bailey bridge), coffer dams, overpumping arrangements, silt mitigation measures, haul roads, compounds, fencing. This is</li> </ol>	<p>by the Environment Agency. This will either be included as a Protective Provision, or additional detail can be supplied, provided the Environment Agency is able to specify exactly what was lacking in the previous submissions.</p> <p>Discussions are ongoing between Environment Agency and Highways England's legal teams to this effect.</p>

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
	to ascertain whether we can access the Aylesford Stream whilst work on the development is being carried out.	

### Question 14.2

Section 14.6, Baseline Information, refers to the South East River Basin Management Plan and identifies water bodies, SACs, SPAs, licenced abstractions, consents to discharge, pollution incidents, existing drainage, ground water, flood risk and aquatic ecology. The Environment Agency has provided brief commentary in its Relevant Representation [RR-011] as to its satisfaction with the proposed development's compliance with the Water Framework Directive.

i. With specific reference to Appendix 14.1 of the ES (Water Framework Directive) [APP-196], would the Environment Agency confirm that proposals put forward by the Applicant to mitigate adverse effects on the water environment are appropriate, and state whether the dDCO [OD-008] provides the necessary provisions for their implementation?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
14.2	i. The Environment Agency is satisfied that the proposals put forward by the Applicant to mitigate for the adverse effects on the water environment are appropriate and compliant with Water Framework Directive. We have provided additional information in our Written Representations section 3.0 Ecology and section 5.0 Pollution Prevention.	i. No response required

### Question 14.3

Section 14.7, Mitigation and Compensation Measures, outlines mitigation measures to be employed during construction and operation, referring to the oCEMP [APP-204] as the location where these measures will be secured.

i. Would the Applicant clarify how all of the pollution prevention and water management measures set out in and paras 14.7.3 to 14.7.6 of the ES, and para 6.2.8 of the AIES [APP-208], are secured in the dDCO [OD-008] via the oCEMP [APP-204]?

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ii. Would the Environment Agency expand on the comments made at Section 1 of its Relevant Representation [RR-011] as to the need for additional information being required as part of the FRA [APP-197] to demonstrate that flood risk will not be increased by the proposed development? In light of these comments, are the mitigation and flood risk attenuation measures proposed sufficient and capable of being delivered as part of the dDCO?

iii. Would the Applicant confirm its intention to provide an update of the FRA [APP-197] capturing the comments of the Environment Agency?

iv. Would the Applicant respond specifically to the points raised at Section 2.0 of the Environment Agency's Relevant Representation [RR-011] in respect of the risks to groundwater pollution by mobilisation of contaminants and the need for dDCO requirements to cover:

- a) Site investigations;
- b) Remediation strategy;
- c) Verification report to confirm the completion, and effectiveness of measures carried out under the remediation strategy;
- d) Piling risk assessment;
- e) Monitoring and maintenance plan; and
- f) Surface water drainage plan, limiting infiltration drainage to only those areas of the site where it has been demonstrated that there is no resultant pollution risk to the groundwater.

v. In particular, would the Applicant highlight how each of the above is secured as part of the dDCO [OD-008]?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
14.3	ii. Please refer to sections 1 and 1.1 in our Written Representations that expand on the Environment Agency's comments in section 1 of the Relevant Representation. The Environment Agency is unable to provide advice on the proposed flood risk attenuation measures proposed until the updated FRA and modelling is completed and has been reviewed by us.	ii. It is agreed that the FRA requires updating and discussions are ongoing with the Environment Agency with regards to the climate allowances that should be applied to the flood modelling. Once these figures are agreed, the flood model can be run and the FRA updated, to include an assessment of the effects of the embankments within Flood Zone 3, the mammal ledge within the Lacton Farm culvert and the mammal pipe bridge over the Aylesford Stream.

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### Question 15.1

Section 15.3 sets out the method of assessment for the combined and cumulative effects assessment, including the study areas Zols for each ES topic chapter, an assessment methodology, and significance criteria, based on the DMRB and other sources.

i. Would the local authorities, Natural England and the Environment Agency state whether they agree with the scope of the combined and cumulative effects assessment, including the 2 km study area and the planning applications included in the assessment?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
15.1	i. Within the scope of our remit, we have no concerns on the cumulative effects assessment report as our main concerns are linked to drainage which will be captured under pollution prevention measures.	i. No response required

### Question 15.2

Section 15.6, Predicted Effects, summarises the cumulative residual effects, for each of the other developments for each environmental topic and overall for all other developments and all environmental topics, with the Main and Alternative Schemes in tables 15.9 and 15.10, respectively.

i. The proposed lorry park adjacent to Junction 11 of the M203 (some 8km southeast of the proposed development) does not appear on the 'long list' of 'other developments' at Table 15.8. Given its proximity to, and likely impact on, the proposed development, would the Applicant state why it has not been considered, and if necessary update Chapter 15 of the ES (and other topic chapters of the ES where cumulative effects are assessed) to consider the potential cumulative effect of this scheme, particularly in respect of the traffic modelling study area?

ii. Would other IPs (in particular the local authorities) comment as to the potential for cumulative effects between the proposed development and the lorry park?

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
15.2	ii. the M20 Lorry Park (Operation Stack) is a major development nearby with considerable surface water issues. We cannot fully confirm the cumulative implications on flood risk for both this site and the Operation Stack Lorry Site until Flood Risk Assessments are complete and signed off. However, as both proposals will be required to demonstrate no adverse impact on flood risk, we don't envisage any cumulative impact.	i. No response required

### Question 17.1

Do the local authorities, the Environment Agency and Natural England have further comments, beyond those already expressed, as to the content of the Register of Environmental Actions and Commitments (REAC) contained as Appendix D within the oCEMP, Appendix 17.1, Volume 6.3 [APP-204]?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
17.1	The Environment Agency has provided comments on Environment Management issues in our Written Representation Section 5.0 Pollution Prevention.	For Highways England response to the Environment Agency's Written Representations, please see DCO document 11.4 'Comments on Written Representations from Deadline 1 and 3'.

### Question 18.1

Would the local authorities, the Environment Agency and Natural England state whether the proposed development complies with the need to be designed to minimise social and environmental impacts and improve quality of life in accordance with para 3.2 of the NPSNN?

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
18.1	We have no comments to make on the NPSNN. Our advice on environmental impacts is detailed in our Written Representations.	No response required

### Question 18.2

Would the local authorities, the Environment Agency and Natural England state the extent to which the summaries of key economic, social and environmental impacts are agreed, with evidence to support any disagreement?

PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
18.2	We have no comments to make on the NPSNN. Our advice on environmental impacts is detailed in our Written Representations.	For Highways England response to the Environment Agency's Written Representations, please see DCO document 11.4 'Comments on Written Representations from Deadline 1 and 3'.

### Question 20.22

Requirement 3 Construction Environmental Management Plan

The oCEMP [APP-204] sets out a series of proposed measures and standards to be applied by Highways England and its contractors throughout the construction period.

i. Do the local authorities or Statutory Parties, responsible for approving the oCEMP under Requirement 3 of the dDCO, have any comments on the sufficiency of the oCEMP for securing the necessary mitigation during the construction of the proposed development?

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PINS Question Number	Response from Environment Agency	Comment on response from Highways England (the Applicant)
20.22	i. The Environment Agency has provided comments in its Written Representation on the oCEMP. We do not find that requirement 3 currently secures the necessary mitigation measures as we are not stated as a consultee. The Environment Agency wants to be consulted on pollution prevention measures, soil, waste and materials management plans which should form part of the CEMP.	i. For Highways England response to the Environment Agency's Written Representations, please see DCO document 11.4 'Comments on Written Representations from Deadline 1 and 3'.

### 3. Friends Life and Aviva Investors (REP3-009)

#### Question 21.21

Friends Life Ltd (FLL) and Aviva Investors (AI) support the proposed development in principle. But they object to the proposed Compulsory Acquisition of their land, stating that it is both unnecessary and would significantly prejudice their ability to deliver the Stour Park development [RR-016]. Aviva Investors are not however listed in the BoR Revision B [OD-009].

ii. With reference to the specific plot(s) in the BoR Revision B [OD-009], can AI confirm, or otherwise, any legal interest in the Order lands?

iii. Would FLL and AI update the Examination on the current status of the outline planning application for the Stour Park development? If the application has been decided, can FLL and AI provide a copy of the decision notice to the Examination?

iv. Would FLL (and where applicable, AI) update the Examination on any progress made with the Applicant in respect of the shared balancing pond referred to in its Relevant Representation [RR-016]?

PINS Question Number	Response from Friends Life and Aviva Investors	Comment on response from Highways England (the Applicant)
21.21	<p>ii. The representation has been made in the joint names of FLL and AI in that FLL forms part of the Aviva Investors Group. The freehold titles to the plots referenced in the Relevant Representation [RR-016] are registered in the name of FLL. AI has no registered interest and its interest is as a group company and as the fund which will take forward the development known as Stour Park referenced in the Relevant Representation [RR-016].</p> <p>iii. Ashford Borough Council resolved to grant planning permission for the Stour Park development in May 2016. The resolution was subject to completion of a section 106 legal</p>	<p>The Environmental Masterplan (DCO Document 6.2, Figure 2.6f) provides full details of the Scheme's proposals, including the new A2070 Link Road and balancing ponds, for which it will be necessary to permanently acquire approximately 73966.8 square metres of land. Any increase in the size of this balancing pond will most likely affect the existing trees surrounding it and will affect our arboriculture assessment and landscape design although it has not been assessed in the Environmental Assessment. Whilst in theory it is possible for Highways England and Friends Life to share the balancing pond, it would need to be enlarged to accommodate run-off</p>

PINS Question Number	Response from Friends Life and Aviva Investors	Comment on response from Highways England (the Applicant)
	<p>agreement and referral to the Secretary of State. Since the resolution in May 2016 discussions and negotiations have taken place on the section 106 agreement and there have been continued discussions with the Applicant in respect of its representations on the application. Formal confirmation has now been received by Ashford Borough Council from the Applicant that it has no objection to the planning application for Stour Park. The Secretary of State will now be consulted on the resolution. Following the Secretary of State's confirmation that it does not intend to intervene the section 106 agreement will be completed and this will allow the Council to issue a planning permission. As soon as the planning permission is available a copy will be provided to the Examining Authority.</p> <p>iv. FLL has indicated to the Applicant that it is willing to transfer the land required for the balancing pond (plot 3/16/b) to the Applicant subject to the Interested Party being able to discharge into the balancing pond that will be created. The Interested Party's designs have been sent to the Applicant to provide comfort that its flows do not impact on the pond size and both the Scheme's requirements and the Interested Party's requirements can be accommodated. The Applicant's requirements can, therefore, be met through private agreements.</p>	<p>from both sites. Further investigations are taking place to establish whether it is practically possible.</p> <p>This matter is currently under discussion and would be subject to legal agreement and further environmental assessment.</p>

## 4. Kent Downs Area of Outstanding Natural Beauty Unit (REP3-027)

### Question 2.3

Section 2.5 addresses Environmental Mitigation Design Measures:

- i. Further to the matters raised as part of their relevant representations, are IPs content with the proposed mitigation measures for Nature Conservation (Natural England, other IPs), Landscape Design (IPs), Noise (IPs), Replacement Open Space (IPs)?
- ii. Re para 2.5.10, acoustic bund to the rear of Summerhill Place, the height of this bund is not specified. Would the Applicant specify the dimensions of this bund as used for the purposes of the ES assessment?
- iii. Re para 2.5.11, would the Applicant state how the thin surface course will be secured in the dDCO [OD-008]?

PINS Question Number	Response from Kent Downs Area of Outstanding Natural Beauty Unit	Comment on response from Highways England (the Applicant)
2.3	i. The Kent Downs AONB Unit considers it important to ensure that sufficient compensatory planting is provided, particularly on the east side of the realigned A20, where many existing trees and groups of trees would be lost to accommodate the new highways works. The loss of the trees has the potential to open up views of the highways infrastructure and the associated lighting in views from the Kent Downs AONB. In order to secure maximum early screening potential we consider it important to incorporate more specimen trees in the landscape design, particularly along the east side of the re-aligned A20.	i. Current proposals include the introduction of specimen standard trees alongside the northwestern side of the new M20 J10a junction (Refer to Environmental Masterplan DCO Document 6.2 Figures 2.6a to g and 2.7 a to c). Opportunities to provide linear belts of trees and shrubs south east towards Bockham Lane have been constrained by the presence of utilities. However, subject to this constraint, opportunities for further specimen tree planting extending along the A20 in this area will be explored during the Detailed Design stage.
	The Kent Downs AONB Unit also considers it important to secure more substantial tree planting along the south-west side of the proposed new link road to the A2070. This is required to	Planting has already been maximised in this locality within the limited space available (Refer to Environmental Masterplan DCO Document 6.2 Figures 2.6a to g and 2.7 a to c). The

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PINS Question Number	Response from Kent Downs Area of Outstanding Natural Beauty Unit	Comment on response from Highways England (the Applicant)
	<p>assist in screening of the proposed development at Stour Park, south of the link (subject to a separate planning application, with a resolution to grant AS/14/00906), which will be enabled as a result of the proposed highways works.</p>	<p>linear belt of native tree and shrub planting coupled with specimen trees proposed to the south of the Link Road will, in combination with planting incorporated into the Stour Park development, help to screen the development from views from the AoNB. It should be noted that the planting proposed for the Stour Park Development is outside of the control and scope of Highways England.</p>
	<p>This supplementary tree planting is required to ensure that the requirements of Section 85 of the Countryside and Rights of Way Act are met (the Duty of Regard). This requires that "In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty" (my emphasis added). The nPPG confirms that this Duty of Regard is relevant in considering development proposals that are situated outside of AONBs, but which might have an impact on the setting of, and implementation of the statutory purposes of them (para 003 Ref ID 8-003-20140306).</p>	<p>Any additional opportunities for further screening planting within the DCO boundary will be explored during the Detailed Design stage.</p>
	<p>The additional tree planting would also help ensure compliance with several policies of the Kent Downs AONB Management Plan. The national Planning Policy Guidance confirms that Management Plans can be a material consideration in planning decisions and this view is confirmed in previous appeal decisions, including APP/U2235/W/15/3131945, Land west of Ham Lane, Lenham, Maidstone, where at para 48 of the Inspectorate's decision letter it is confirmed that "the Kent Downs AONB Management Plan April 2014 (the Management Plan) is also a further significant material consideration".</p>	<p>No response required</p>

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PINS Question Number	Response from Kent Downs Area of Outstanding Natural Beauty Unit	Comment on response from Highways England (the Applicant)
	<p>Ensuring compliance with AONB Management Plan policies is one way of ensuring that the S85 Duty of Regard is met.</p> <p>The following policies from the Kent Downs AONB Management Plan are considered particularly relevant:</p> <p>SD10 - Positive measures to mitigate the negative impact of infrastructure and growth on the natural beauty and amenity of the AONB will be supported.</p> <p>SD12 - Transport and infrastructure schemes are expected to avoid the Kent Downs AONB so far as practicable. Essential developments will be expected to fit unobtrusively into the landscape, respect landscape character, be mitigated by sympathetic landscape and design measures and provide environmental compensation by benefits to natural beauty elsewhere in the AONB.</p>	<p>The Environmental Statement (DCO Document 6.1, Chapter 7, Section 7.2.4) and the Environmental Masterplan (DCO Document 6.2 Figures 2.6a to g and 2.7 a to c) were both produced with reference to the Kent Downs AONB Management Plan.</p>

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## 5. Natural England (REP3-028)

### Question 2.3

Section 2.5 addresses Environmental Mitigation Design Measures:

- i. Further to the matters raised as part of their relevant representations, are IPs content with the proposed mitigation measures for Nature Conservation (Natural England, other IPs), Landscape Design (IPs), Noise (IPs), Replacement Open Space (IPs)?
- ii. Re para 2.5.10, acoustic bund to the rear of Summerhill Place, the height of this bund is not specified. Would the Applicant specify the dimensions of this bund as used for the purposes of the ES assessment?
- iii. Re para 2.5.11, would the Applicant state how the thin surface course will be secured in the dDCO [OD-008]?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
2.3	i. We had requested further air quality information to rule out the potential for the proposals to impact on the interest features of the SSSI. It may have been the case as the result of this that further mitigation measures are required for nature conservation. However we have been in conversation with the applicant and agree that there is no adverse effect on the SSSI due to air quality.	i. No response required

### Question 8.2

Section 8.5, Assumptions and Limitations, refers to five site surveys, and points to Appendices 8.1, 8.2 and 8.3, Volume 6.3 [APP-175 to APP-178] for pertinent constraints or limitations to the surveys.

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i. Would Natural England and the local authorities identify any specific areas of concern as to the content of this section, in particular the level of the survey effort?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
8.2	i. We have no specific areas of concern and are satisfied with the level of survey effort that has been carried out.	i. No response required

### Question 8.3

Section 8.6, Baseline Information, lists the surveys that have been undertaken, including designated sites, habitats, and protected species, together with an assessment of value and decisions on whether to include or exclude.

i. Would Natural England confirm agreement (or otherwise) as to whether the Applicant has screened all of the relevant European sites into its Assessment of Impacts on European Sites (AIES) report [APP-208]; and with reference to tables 5.3 to 5.10 of the AIES [APP-208], whether it has identified the correct qualifying features/ interests for each European site? If not, would Natural England identify which European sites and qualifying features/ interests are not accurately reflected in the AIES and confirm the correct European sites and their qualifying features/ interests?

ii. Would the Applicant confirm that it will submit at Deadline 4 an updated version of the AIES or of tables 5.3 to 5.10, as appropriate, in the event that Natural England identifies, in its response to question (i), any discrepancies with the European sites and/ or qualifying features/ interests screened into the AIES?

iii. Would Natural England confirm agreement (or otherwise) with the Applicant's conclusion as presented in its AIES [APP-208] that the proposed development would not result in any likely significant effects, either alone or in-combination with other plans or projects, on any of the following European sites: Stodmarsh Ramsar; Stodmarsh Special Protection Area (SPA); Stodmarsh Special Area of Conservation (SAC); Thanet Coast and Sandwich Bay Ramsar; Thanet Coast and Sandwich Bay SPA; Thanet Coast SAC; Sandwich Bay SAC; and Wye and Crundale Downs SAC?

iv. Would Natural England and the Applicant confirm (or otherwise) that an Appropriate Assessment is not required?

v. Re designated sites, Table 8.6, these sites are not annotated on the Environmental Constraints Plan, Figure 2.3 [APP-051], so it is unclear which site is which. Would the Applicant provide a revised version of Figure 2.3 which clearly labels each of the sites?

vi. Re Table 8.9, Ashford Green Corridor Local Nature Reserve (LNR) and Highfield Lane Roadside Nature Reserve (RNR) both lie partially within the DCO boundary. The proposed development would result in the permanent loss of 0.12ha of broadleaved

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woodland and amenity grassland habitats within the Ashford Green Corridor LNR and the permanent loss of 0.02ha of semi-improved grassland habitat within the Highfield Lane RNR. Would the local authorities state whether they are in agreement that appropriate mitigation measures are proposed and secured in the dDCO [OD-008] to mitigate for the loss of these habitats?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
8.3	<p>i. We agree that the Applicant has screened all of the relevant European sites into its Assessment of Impacts on European Sites (AIES) report and has identified the correct qualifying features/ interests for each European site.</p> <p>iii. We agree with the conclusion made, specifically that the proposed development would not result in any likely significant effects on European Sites.</p> <p>iv. As such, we do not consider it necessary to carry out an Appropriate Assessment.</p>	No response required

### Question 8.5

Section 8.8, Predicted Nature Conservation Effects, discusses anticipated impacts both during construction and operation, and Table 8.14 provides a summary of the predicted impacts with residual effects.

- i. Would the Applicant confirm whether draft European Protected Species (EPS) licences for dormouse and great crested newt and a draft mitigation licence for badger have been submitted to Natural England? If draft applications have not yet been submitted to Natural England, when is it anticipated that these will be submitted?
- ii. Is Natural England satisfied that the proposed mitigation measures are sufficient to maintain the favourable conservation status of the dormouse and great crested newt populations?
- iii. Does Natural England anticipate that it will be able to issue Letters of No Impediment (LoNI) for dormouse, great crested newt and badger?

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PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
8.5	ii. Yes, we are satisfied.  iii. By 17th October 2016 a LoNI had been issued for dormice, great crested newts and badgers.	No response required

### Question 15.1

Section 15.3 sets out the method of assessment for the combined and cumulative effects assessment, including the study areas Zols for each ES topic chapter, an assessment methodology, and significance criteria, based on the DMRB and other sources.

i. Would the local authorities, Natural England and the Environment Agency state whether they agree with the scope of the combined and cumulative effects assessment, including the 2 km study area and the planning applications included in the assessment?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
15.1	i. We agree with the scope of the effects including the 2km study area.  A proposed warehouse development (subject to a separate planning application, with a resolution to grant AS/14/00906) has been brought forward south of the link.  With regard to landscape it may be possible that additional tree planting along the south west side of the new link road to the A2070 could help assist screening this from the Kent Downs AONB.	i. Planting has already been maximised in this locality within the limited space available (Refer to Environmental Masterplan DCO Document 6.2 Figures 2.6a to g and 2.7 a to c). The linear belt of native tree and shrub planting coupled with specimen trees proposed to the south of the Link Road will, in combination with planting incorporated into the Stour Park development, help to screen the development from views from the AoNB. It should be noted that the planting proposed for the Stour Park Development is outside of the control and scope of Highways England.

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Question 17.1

Do the local authorities, the Environment Agency and Natural England have further comments, beyond those already expressed, as to the content of the Register of Environmental Actions and Commitments (REAC) contained as Appendix D within the oCEMP, Appendix 17.1, Volume 6.3 [APP-204]?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
17.1	We have no further comments to make.	No response required

Question 18.1

Would the local authorities, the Environment Agency and Natural England state whether the proposed development complies with the need to be designed to minimise social and environmental impacts and improve quality of life in accordance with para 3.2 of the NPSNN?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
18.1	<p>Paragraph 3.2 of the National Policy Statement for National Networks states;</p> <p>'The Government recognises that for development of the national road and rail networks to be sustainable these should be designed to minimise social and environmental impacts and improve quality of life.'</p> <p>We would say that, within our remit, we consider the proposal to comply with the above.</p>	No response required

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Question 18.2

Would the local authorities, the Environment Agency and Natural England state the extent to which the summaries of key economic, social and environmental impacts are agreed, with evidence to support any disagreement?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
18.2	We agree with the summaries of environmental impacts.	No response required

Question 20.22

Requirement 3 Construction Environmental Management Plan

The oCEMP [APP-204] sets out a series of proposed measures and standards to be applied by Highways England and its contractors throughout the construction period.

i. Do the local authorities or Statutory Parties, responsible for approving the oCEMP under Requirement 3 of the dDCO, have any comments on the sufficiency of the oCEMP for securing the necessary mitigation during the construction of the proposed development?

PINS Question Number	Response from Natural England	Comment on response from Highways England (the Applicant)
20.22	i. We have no further comments to make, and therefore consider the oCEMP sufficient.	No response required

## 6. Public Health England (REP3-038)

### Question 5.1

Having regard to the judgment of the High Court on 2 November 2016<sup>1</sup> in which the Court found in favour of the Claimant (ClientEarth) and against the Defendant (the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA)), and quashed Defra's Air Quality Plan (AQP) of December 2015<sup>2</sup>:

- i. Would the Applicant state whether the air quality modelling used in the preparation of ES Chapter 5 is in any way affected by the quashing of the AQP or the critique in the judgment of the modelling used by Defra, and explain why this is indeed the case (or not) with particular reference to assumptions made in relation to emissions from Euro 6 diesel cars and the COPERT calculation factors?
- ii. Will the judgment's conclusion in para 95(ii), that the relevant Secretary of State fell into error in relation to Article 23 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008, in fixing on a projected compliance date of 2020 (2025 for London) (or any other parts of the Judgment) have any implications for the air quality assessment and conclusions presented in Chapter 5 of the ES, particularly in relation to the Compliance Risk Assessment described in paras 5.8.18 to 5.8.19 of that chapter?
- iii. If so, what is the likely timescale for the preparation and submission to the Examination of any revised assessments and documents now needed?
- iv. What is the response of the local authorities and Statutory Parties (the Environment Agency, Public Health England) to this judgment in terms of the air quality assessment for the proposed development?

The ExA is aware that a High Court Order has been made requiring the SoSEFRA to publish a draft modified Air Quality Plan by 4:00pm on 24 April 2017 and a final modified Air Quality Plan to be published and notified to the European Commission by 4:00pm on Monday 31 July 2017.

Following such publication of a draft plan, the ExA may need to ask further questions as to the extent to which it may affect the Applicant's previous assessment(s), the application documents or any other representations made as part of the Examination. The ExA is also aware that the deadline for publication and notification to the European Commission of the final modified Air Quality Plan in July 2017 post-dates the anticipated closure of the examination in June 2017. The ExA will not have been able to take this into account if its publication is after the close of the Examination, but it will be a matter for the Secretary of State for Transport to take it into account as he sees fit before making his decision.

PINS Question Number	Response from Public Health England	Comment on response from Highways England (the Applicant)
5.1	<p>iv. It is noted that the applicant is asked a number of sub questions that precede the question above which drill down into specifics of the applicants modelling in comparison to elements of the High Court judgement.</p> <p>It is understood that the applicant's air quality assessment has considered predicted local levels against air quality objectives, as well as compliance with EU limit values (as would be undertaken on an annual basis nationally by Defra through the application of the pollution climate mapping (PCM) model, to assess compliance at locations defined within the Directives).</p>	No response required
	<p>The applicant's air quality assessment indicates that concentrations of nitrogen dioxide (NO<sub>2</sub>) are predicted to exceed air quality objectives with or without the Scheme at some locations in the study area. However, the promoter states that no exceedances are predicted to be caused by the Scheme and any changes in NO<sub>2</sub> concentrations are predicted to be 'imperceptible' (i.e. a concentration change of less than 0.4µg/m<sup>3</sup> of NO<sub>2</sub>). As we have highlighted during the consultation stages, the applicant's air quality assessment is dependent on a number of assumptions, for example related to traffic flows and traffic emissions. We understand that the applicant has undertaken a number of steps to try to consider the limitations and uncertainties in the modelling methodologies applied (associated with traffic and air quality predictions). For example IAN 170/12 guidance has been used to consider uncertainty associated with future NO<sub>2</sub> projections and the applicant has verified the modelling output by comparing modelled data against monitored data in the baseline year and applying an 'uplift' factor for subsequent years. We would expect the applicant to comment in more detail on specific modelling input parameters in comparison to those used by</p>	<p>The notable difference between the approach adopted by Defra in support of their air quality reporting to the European Commission and Highways England air quality assessment for the scheme is the projection of future NO<sub>x</sub> and NO<sub>2</sub> concentrations.</p> <p>Mr Justice Garman in the High Court judgement identified that the modelling approach adopted by Defra for future vehicle emissions (the PCM model) was too optimistic in relation to the emission reductions that could be achieved (for diesel cars and vans). Whilst the scheme assessment uses the same published vehicle emission factors, it has made an allowance for a less optimistic reduction in future NO<sub>x</sub> and NO<sub>2</sub> concentrations and this approach is set out in IAN 170/12.</p> <p>The assessment for this scheme has adopted a very precautionary approach assuming a very limited reduction in future NO<sub>2</sub> concentrations between the base year (2014) and opening year (2018). This is the equivalent of assuming no discernible reduction in vehicle emissions from Euro 6/VI diesel vehicles.</p>

PINS Question Number	Response from Public Health England	Comment on response from Highways England (the Applicant)
	<p>Defra which were highlighted in the High Court judgement and any potential impact on their assessment.</p> <p>The High Court judgement raises potential limitations associated with the input parameters for the PCM model. We would expect the applicant to review/update their assessment once Defra update/re-issue the PCM model predictions. It would also be prudent to request that Highways England evaluates the scheme once the development is complete. If it is found that that the development has worsened air quality, a scheme of mitigation should be developed and implemented in consultation with the relevant local authorities.</p>	<p>The compliance risk assessment is based on Defra's published PCM modelled concentrations. As reported in paragraph 5.6.14 of the ES, the equivalent annual mean NO<sub>2</sub> concentration from the PCM model in 2018 was 28.3ug/m<sup>3</sup> without the scheme. Even with the additional modelled concentration of 1.1ug/m<sup>3</sup> with the operation of the scheme, resulting in an equivalent PCM concentration of 29.4ug/m<sup>3</sup>, it would be approximately 10ug/m<sup>3</sup> below the EU limit value of 40ug/m<sup>3</sup>.</p> <p>If in the update to the PCM modelling, Defra identify that concentration were now above the EU limit value along this section of the M20, it would need to be included in their Air Quality Plan with a set of mitigation measures. Highways England would review the AQP and see how it would be able to support the delivery of any measures where they encompass the M20.</p> <p>It should be noted that the PCM modelled link affected by the Scheme are much lower than the maximum PCM link modelled in the South East Zone. As a result, any revisions to the PCM modelling is highly unlikely to trigger the conditions set out in paragraph 5.13 of the NN NPS.</p> <p>Highways England has provided a copy of the outcome of its compliance risk assessment to Defra.</p> <p>However, until such times as Defra publish their revised modelling results and Air Quality Plan it is not possible for Highways England to re-evaluate their compliance risk</p>

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PINS Question Number	Response from Public Health England	Comment on response from Highways England (the Applicant)
		assessment. Advice relating to the matter of updated PCM and AQP would however need to be sought from Defra.

