

**Highways England: A303 Amesbury to Berwick
Down Project, Development Consent Order
Application**

Scheme Reference: TR010025

**Comments on Highways England’s “Deadline 6 –
Responses to ExA’s Written Questions”**

(REP6-032)

for

**The Stonehenge Alliance
(Reference No. 2001870)**

by

**Dr. Simon Temple and Dr. Kate Fielden and
Charlie Hopkins**

1. Introduction

1.1 This document provides The Stonehenge Alliance’s comments on Highways England’s responses to the Examining Authority’s written questions, submitted at Deadline 6. The absence of a comment on a particular issue does not imply that we agree with Highways England on this point.

2. Question Tr.2. Traffic and Transportation (REP6-032)

Comments by Dr. Simon Temple

Question Tr 2.1 on Traffic Forecasts

2.1 The Stonehenge Alliance’s concerns about the traffic forecasts for the project relate to the narrow range of forecasts used by Highways England to support their application. We consider that they do not reflect the uncertainty about future traffic forecasts that is now recognised by the Department of Transport. We are also concerned that they forecast higher levels of growth than have occurred over the past 15 years. In addition, Highways England and its predecessors have a record of producing forecasts in support of projects, which overstate the actual traffic when the project is completed¹.

2.2 As Highways England note in their response (Paragraph 2), the Department for Transport (DfT) has adopted a scenario-based approach in the National Road Traffic Forecasts 2018. These scenarios are not “extreme” as claimed by Highways England in Paragraph 7, allegedly quoting Paragraph 2.4 of the DfT document. In fact, Paragraph 2.4 states the direct opposite: “the range of scenario forecasts is not considered to represent extremes”². In reality, DfT’s position is that the scenarios they tested represent a number of equally likely projections for future traffic growth. The fact that one scenario is significantly lower (or higher) than others does not mean it is extreme, simply that the factors that drive change in travel demand are expected to function differently. We acknowledge that DfT has yet to mandate the use of scenario-based forecasting for road schemes, but – as we noted in our Written Representation (REP2-129) – the Director of Roads (Patricia Hayes) has stated that “more emphasis will be given to appraising schemes against different scenarios reflecting DfT’s move to scenario forecasts for road traffic”. Given the importance and sensitivity of this project, there is a very strong case for the use of this new approach here.

2.3 The Stonehenge Alliance remains convinced that there is much more uncertainty about future traffic growth than Highways England’s narrow range of forecasts assume. As we stated at Issue Specific Hearing 6 on Traffic and Transportation, estimated benefits will be over-estimated in a low growth future situation, while traffic speeds will be over-stated if growth is higher (REP4-055).

¹ Nicolaisen M and Naess P “Roads to nowhere: the accuracy of travel demand forecasts for do-nothing alternatives”, Transport Policy, 2015.

² Department for Transport, “National Road Traffic Forecasts 2018”, paragraph 2.4, page 18

2.4 As we noted in Paragraph 5.7.2 of our Written Representation (REP2-129), DfT acknowledge that previous modelling has significantly over-stated demand growth on non-motorway trunk roads over the past decade. While the base year for modelling has been updated to eliminate the impact of past errors, this does not eliminate the risk of them occurring in future.

2.5 In the second part of their response Highways England proceed to argue that the project is required irrespective of future traffic growth, and therefore uncertainty about future traffic growth is not material. The Stonehenge Alliance disagrees with this position.

2.6 Firstly, the economic case for the scheme is very weak. If traffic growth is lower than forecast, this will reduce the claimed economic benefits of the project and could reduce it to less than 1.0, which means that the negative impacts (in this case costs) would exceed the benefits. Of course this purely monetary assessment excludes some important negative impacts that have not been expressed in monetary terms in the appraisal.

2.7 Secondly, The Stonehenge Alliance believes that the strategic case for intervention is already weak, as set out in Section 3 of our Written Representation (REP2-129). If traffic growth is lower than Highways England claim, then it will be weaker still.

2.8 In Paragraphs 8 and 9 of their response, Highways England refer to the issue of congestion on the M3 and its potential impact on the project. In Paragraph 8, they concede that their modelling, for a particular model year, of traffic speeds on the M3 does not vary with traffic flow.

2.9 They then argue that this is immaterial because “only around 20% of traffic using the Scheme whose routeing may be affected by M3 congestion also use this section of the M3.” As they point out in REP4-034, one third of traffic using the scheme is also forecast to use the M3. The difference between this and the 20% quoted in this response, is presumably traffic that they claim would continue to use the A303 regardless of M3 congestion. We do not have access to their traffic model so cannot comment on the accuracy of these data. It would be very helpful for the ExA and interested parties to have access to the model, so that all parties could understand traffic patterns better and the model’s sensitivity to a range of assumptions.

2.10 In REP4-034 they state that 20% of traffic originates or destines to the north and east of the M3 and could potentially switch to the M4/M5. Our understanding is that this is the 20% referred to in their answer. Highways England estimate that only 2% of current traffic might switch to the M4/M5 based on their assessment of current congestion on the M3. However a much higher percentage could switch if congestion continues to increase on the M3, as predicted in the Road Investment Strategy. In addition, some of the 12% of traffic from the south east of the M3 might switch to other roads, though not necessarily the M4/M5 if the M3 becomes more congested, resulting in drivers not using the A303 near Stonehenge. As is well established, the relationship between traffic flow and delay is not linear so that even a relatively small reduction in traffic flow can lead to a significant reduction in delay, impacting on both the need for the project and its – already very weak –

economic case. Conversely, a relatively small volume of extra traffic on the – already very busy – M3 could lead to much greater congestion, leading to traffic diverting to other routes.

3. Question Tr.2.2 on Traffic Analysis Based on the “Fastest Day”

3.1 The Stonehenge Alliance has always recognised that the analysis of journey times relative to the fastest day (as recorded by Trafficmaster) does not form part of the economic analysis and is used for presentational purposes. However, we believe it has been used to convey a potentially misleading impression of traffic issues on the relevant section of the A303.

3.2 Highways England accepts that the fastest day represents more or less free flow conditions and it is not realistic to expect this to be typical on almost any British main road, including those where the relevant Highway Authority sees no need to intervene. By using the fastest day, Highways England are creating an image where almost any increase in journey time is seen as part of the problem, which needs to be addressed by the project.

3.3 It would be very helpful if Highways England were to publish a table showing the average journey time for each day of the year (with dates), so all parties could have a shared information base. Unfortunately, they have chosen not to provide this.

4. Question Tr. 2.3 on the Inclusion of Monetised Cultural Heritage Benefits in the Examining Authority’s Assessment of Impacts

4.1 In responding to this question, Highways England seek to make a distinction between the results from the Contingent Valuation Study (CVR) and other elements of the economic case.

4.2 Highways England argue that the Development Consent Order and business case development processes are different. In reality, both are concerned – in part - with determining whether the benefits of the project exceed its adverse impacts and it is important to use a consistent evidence base across both processes. This is confirmed by paragraph 4.5 of the National Policy Statement for National Networks which states “Applications for road and rail projects (with the exception of those for SRFIs, for which the position is covered in paragraph 4.8 below) will normally be supported by a business case prepared in accordance with Treasury Green Book principles. This business case provides the basis for investment decisions on road and rail projects. The business case will normally be developed based on the Department’s Transport Business Case guidance and WebTAG guidance. The economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development. The information provided will be proportionate to the development. This information will be important for the Examining Authority and the Secretary of State’s consideration of the adverse impacts and benefits of a proposed development.” From this it is clear that the information developed as

part of the economic business case is highly relevant and should be taken into account by the Examining Authority.

4.3 Highways England seem to be arguing that alleged benefits which, on their own evidence, make up over 70% of the monetised benefits of the project should not be taken into account in monetary terms. Without these alleged benefits the Benefit: Cost Ratio would be only 0.29, creating a very strong prima facie case for rejecting the Development Consent Order.

4.4 In their response to the first round of questions from the Examining Authority (REP2-035, Question SE.1.25), Highways England state “the CVR does not assess benefits to the economy of the scheme. Instead it interprets benefits in order to express them within an economic framework.” In other words, contingent valuation is a technique to value social welfare benefits, which do not have a direct money value, in money terms. The same applies to many of the other benefits included in the appraisal, for example time savings for non-business trips, which do not have a direct economic value and are monetised based on social welfare principles. Accordingly, it is illogical to include some categories of monetised welfare benefits and not others.

4.5 Highways England argue in Paragraph 6 of their response that “the monetisation of heritage benefits it [the economic business case] contains is not primarily relevant to the decision on whether to grant development consent for the Scheme, because those benefits do not need to be monetised in order to be taken into account in the planning balance.” This is an extraordinary argument. Highways England have sought to value the alleged cultural heritage benefits – at significant public expense - and claim that they have made a robust assessment, but then argue that this is irrelevant because they were not compelled to do so.

4.6 In Paragraph 8, Highways England argues that “the question of value for money does not form the basis of the ExA’s assessment of the heritage impacts of the scheme”. This misses the point. As part of its assessment of whether the overall negative impacts of the project exceed its benefits, the ExA needs to consider all aspects of it including both those that are expressed in monetary terms and those that are not. Highways England claim that there are significant cultural heritage benefits from the proposed tunnel and have sought to value them in money terms. It is therefore entirely appropriate that the Examining Authority takes this into account in its assessment.

4.7 The Stonehenge Alliance considers that the results of the assessment are uncertain and that there are a number of methodological concerns with it, which we reserve the right to comment on further elsewhere.

5. Question EC.2. Biodiversity, ecology and biodiversity (REP6-024)

Comments by Kate Fielden and Charlie Hopkins

Question Ec.2.1

The landowners of Normanton Down reserve have stated that they would not agree to the erection of enhanced fencing to deter trespass and to manage the risk of increased visitor pressures in the southern part of the World Heritage Site (ie south of the existing A303) impacting adversely on the breeding success of protected species such as the stone curlew.

- i. Please explain how this could be addressed, and what other measures could be put in place; and how such measures would be secured.*
- ii. In the absence of such agreement in respect of enhanced fencing, what are the consequences in terms of any assumptions made in the HRA and ES that this solution would be successfully delivered.*

Question Ec.2.2

The Stonehenge Alliance remain concerned about the volume of work in progress which may have a bearing on the assessment of impacts of the scheme on the Salisbury Plain SPA and River Avon SAC.

- i. Please provide a progress update on the status of the HRA technical note and the proposed s253 legal agreement to secure the provision of mitigation plots for Stone Curlew.*
- ii. Please ensure that all HRA information that may be relevant to the question of Appropriate Assessment (if needed) is clearly identified and collated in respect of any supplementary information to [APP-266].*

Question Ec.2.3

4.1 to 4.3 of the SoCG with RSPB refer to ongoing discussions around mitigation delivery and monitoring in respect of stone curlew, including "in the unlikely event that the need for additional plots is triggered by unsuccessful mitigation" [REP2-017].

Noting that these matters may be considered in the HRA technical note being prepared, can the Applicant, RSPB and Natural England comment in particular on how the need for additional plots would be triggered and how they would be delivered.

In particular, the ExA is concerned about being satisfied 'beyond reasonable scientific doubt' whilst uncertainty remains (as demonstrated by the phrase "in the unlikely event that") and the acknowledgement that further mitigation might be necessary (where the proposed mitigation proves "unsuccessful") to address potential effects of the Proposed Development.

SA Response

5.1. We note that Highways England, in answering these three questions, proposes three new Stone Curlew plots to compensate for any disturbance of current Stone Curlew nesting

sites at Normanton Down reserve, one of which is the “legacy” plot at Winterbourne Downs and therefore, we understand, may not be considered as “compensation” or “mitigation”.

5.2. The RSPB confirms (REP6-070) that *two* new plots are required (excluding the Winterbourne Downs plot) that would ideally be “sited as close as practicable to Normanton Down” and that these plots are to “be secured and described as such in the DCO i.e. the necessary ecological, legal and financial requirements to deliver and maintain the plots is secured via the DCO and accompanying technical documents before the Examination closes.”

These plots are yet to be secured but Highways England suggests, in its HRSA “sift assessment” Clarification Note (REP6-039, para.1.6), that Natural England and the RSPB do not consider they need to be secured before the end of the Examination – which does not appear to be the case in respect of RSPB. Nor has this assurance been provided in Natural England’s submission to the Examination on the matter, unless the following sentence is intended to do so:

“However, subject to suitable commitments from Highways England, we see no particular reason why this mitigation cannot be treated as being certain to be effective (in HRA terms) both in terms of delivery certainty and certainty of ecological efficacy once delivered.”
(REP6-062, para.ii, in response to EXQ2 Ec.2.3)

5.3. The Alliance considers that both of the proposed two new plots – as well as the agreed replacement plot at Parsonage Down – need to be secured in the DCO, as pointed out by RSPB before the end of the Examination, in order to ensure that the Statement to Inform the Appropriate Assessment is compliant with the Habitats Regulations. To leave securing of the plots “in the air” as NE and Highways England appear to suggest, does not give certainty.

5.4. With reference to the “People Over Wind” case in the CJEU (C-323/17; <http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>), Art 6(3) of the Habitats Directive has two stages. First, Appropriate Assessment (AA) is needed when a project is likely to have a significant effect on a European designated site. Secondly, following stage 1, following AA, such a project can only be approved if there will be no adverse effect on integrity of the site (to the degree of certainty of no reasonable scientific doubt).

The “People Over Wind” Judgement clarified that you can’t avoid AA by inclusion of mitigation measures at the screening stage, but also says more than that.

Para 38 of the judgement states that the AA must not have “lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects . . .”.

Further, para 39 (referring to the NGO and Mr Sweetman) states that the public, which includes Non-Governmental Organisations, have a right to participate in the procedure for the adoption of a decision relating to an application (i.e., AA).

We submit that since the UK Government has decided to comply with the EU Directive by way of an Examination in this case with public involvement, the public can't then be subsequently excluded from the AA process – as they would be if there were still things up in the air following the close of the Examination.

Since it is the Secretary of State who undertakes the AA, it must be assumed that the Statement to Inform the AA effectively takes the place of that document (see Statement to Inform the AA, APP-266, paras.1.1.4–5, 1.2.3, https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000419-6-3_ES-Appendix_8.25_HRA_AppropriateAssessment.pdf) and that the public should be assured, by the close of the Examination, that the Statement to Inform the AA contains all the information necessary to assure the Secretary of State that there would be no adverse effects on integrity of the SPA (Stone Curlew) – and indeed Great Bustard and the River Avon SAC. The Statement to Inform the AA needs to be amended to include the newly proposed mitigation measures (two new plots for Stone Curlew); and to clarify the situation concerning the “legacy” plot at Winterbourne Downs which cannot be considered as “mitigation” (e.g., cf. APP-266, para.5.1.5).

5.5. The Alliance is also concerned that Highways England, in its response to Question Ec.2.3, says at para.3, that the two new plots for Stone Curlew would be sited “if practicable, within 5km of the Scheme”, whereas RSPB says “Ideally, such plots would be sited as close as practicable to Normanton Down”, i.e., well within 5km of the scheme. The Alliance doubts the efficacy of what would effectively be replacement plots for the Normanton Down reserve being sited any further away than the RSPB suggests.

5.6. Without securing, under legal agreements, new plots in optimum locations, we submit that there is no certainty in Highways England's statement that its current commitment *“ensures the robustness of a conclusion of no adverse effect on integrity in the Statement to inform the Appropriate Assessment [APP-266]. It goes beyond reasonable scientific doubt and provides the highest level of confidence regarding a conclusion of no adverse effect on the integrity of the SPA.”*

(Highways England, response to ExQ.2. Ec.2.3, para.8)

6. Question Ec.2.4

With reference to OEMP MW BIO8 [REP4-020], please clarify what specific and appropriate measures might be undertaken to avoid disturbance of nesting Great Bustard during the construction phase, and whether or not such measures/ options are intended to be stipulated in the wording of the OEMP.

6.1. The Stonehenge Alliance notes that “specific and appropriate measures” have not been clearly set out in Highways England's response. Screening is not described; bunding will not deter birds in flight; while decisions to be made by the contractor on a “case by case” basis gives no certainty that adequate protection would be afforded to Great Bustards.