



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**M42 J6 Improvement Scheme**

**Written Representations of Natural England - Summary**

**Planning Inspectorate Reference: TR010027**

**User Code: 20022337**

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3 June 2019

## 1.0 Introduction

- 1.1.1 Natural England confirms it has been working closely with Highways England providing advice and guidance since 2017. Natural England has also been in dialogue with the Warwickshire Wildlife Trust (WWT) and The Woodland Trust (TWT) to provide coordinated advice to this Development Consent Order (DCO).
- 1.1.2 Most recently, we met with the applicants' environmental consultant team on 18 September 2018 in Nottingham, and 14 March 2019 in Birmingham to further advance the application proposals around likely impacts, mitigation and compensation in respect of ancient woodland and Bickenhill Meadows Site of Special Scientific Interest (SSSI) most specifically.
- 1.1.3 Post-submission dialogue has confirmed that further site investigations and development of the scheme by the applicants has progressed. These will be outlined in detail within the Statement of Common Ground (SGC) which is, we understand, is currently in development and being led by the applicant's environmental consultants.
- 1.1.4 This document provides a summary of our Written Representations to this DCO.

## 2.0 Principal Legislation and Policy Context

- 2.1.1 Central legislation to this application includes Section 40 of the Natural Environment and Rural Communities Act (NERC) Act and Section 28G of the Wildlife and Countryside Act 1981. The former imposes a '*duty to conserve biodiversity*' on public authorities, and the latter places legal obligations on public authorities in relation to SSSIs.
- 2.1.2 The relevant National Policy Statement is the National Policy Statement for National Networks (NPSNN). This provides protection for Sites of Special Scientific Interest [5.29], habitats and species [5.35-37], as well as a requirement for biodiversity enhancements [5.23 – 25] and landscape-scale considerations [5.26].
- 2.1.3 Moreover, the National Planning Policy Framework 2018 (NPPF) makes it clear that ancient woodland is irreplaceable habitat. The NPPF glossary defines irreplaceable habitats as: '*Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity.*' Further, NPPF Paragraph 175 sub-section (c) makes it clear that '*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*'..
- 2.1.4 The 25 Year Environment Plan ('A Green Future' - Defra 25 YEP), launched in January 2018, sets out the Government seeks improve the environment over a generation - by creating richer habitats for wildlife and improving air and water quality. Relevant Core aspirations relevant to this application includes: embedding of a 'net environmental gain' principle for all development including housing and infrastructure; creation of a new national Nature Recovery Network; and a commitment to increasing woodland cover in England.
- 2.1.5 More locally, the proposed development works fall entirely within the boundaries of Solihull Metropolitan Borough Council (MBC). The Local planning policies contained within the adopted Solihull Local Plan – Shaping a Sustainable Future (December 2013) therefore apply. Solihull MBC Policy P10 Natural Environment bears relevance to these Representations. This contains

requirements in respect of ancient woodland protection and enhancement, SSSI conservation and enhancement and biodiversity net gain.

- 2.1.6 Natural England's Ancient Woodland Standing Advice – Natural England (updated 2018) is also of relevance. This contains advice in respect of mitigation and compensation, the latter of which must always be a last resort.

### **3.0 The Principal Issues**

#### **3.1 Likely adverse impacts to Bickenhill Meadows SSSI**

- 3.1.1 Bickenhill Meadows SSSI comprises of two separate units (NW Unit and SE Unit) located either side of the proposed link road. The cutting and associated works are also in close proximity to streams that flow through both SSSI units, which may be impacted during the construction and operation phases.
- 3.1.2 Natural England is concerned that the proposed DCO would result in likely significant adverse impacts to the SE unit and adjacent nature reserve which is also a wet meadow habitat, reliant on a particular water supply to maintain the vegetation assemblage for which the site is designated.
- 3.1.3 Natural England considers the existing mitigation scheme as contained in the DCO, deliverable but not ideal. Since the submission, the applicants have sought to further refine the mitigation scheme based on further hydrological monitoring evidence and a focus upon a more passive, naturalistic approach. This is welcomed by Natural England.
- 3.1.4 We have had sight of a revised mitigation scheme referred to as 'Option C' which we support in principle. Option C' is a passive system which seeks to draw water from the Catherine-de-Barnes Road (B4438).
- 3.1.5 Whilst, in principle, supporting of Option C, Natural England seeks further confirmation from the applicants in respect of:
- Further evidence demonstrating whether or not the water drawn from the Catherine-de-Barnes Road (B4438) would need treating before entering the SSSI unit;
  - Further hydrological evidence determining the 'significance' of the catchment loss to the SSSI SW Unit;
  - More clearly defining the potential impacts upon WWT land to understand implications of land ownership and access requirements;
  - More clearly defining what prior provision will be made in the event, once operational, the passive solution indicated that insufficient water was being fed into the SSSI Unit. The applicants agreed to consider the installation of 'ghost infrastructure' for this purpose.
- 3.1.6 These above were requested at a recent meeting with the applicants environmental consultants (14 March 2019 in Birmingham) and are still awaited.

#### **3.2 Ancient Woodland Concerns**

- 3.2.1 Aspburys Copse is the only ancient woodland shown on the Ancient Woodland Inventory (AWI) where loss, as well as direct impacts, will definitely occur from this development. The construction of two new slip roads to service the new motorway junction 5A, will bisect both halves of Aspburys Copse. This will result in direct loss of this irreplaceable habitat, and severe disturbance.
- 3.2.2 Natural England notes that a number of the Scheme revisions have been made in order to help minimise the extent of permanent land take required from within Aspbury's Copse. These include realignment of the J5A slip roads and reduction in span of Solihull Road overbridge. These measures are welcomed by Natural England and are in accordance with the mitigation hierarchy.
- 3.2.3 Nonetheless, Natural England confirms that, based on the information provided to date, the proposed development will result in direct loss to Aspbury's Copse Ancient Woodland. This does not accord with the objectives of the NPSNN, NPPF 2018 Paragraph 175, aspirations of the Defra 25 YEP, Solihull Local Plan Policy P10 or Natural England's Standing Advice which collectively seek to protect and enhance this precious and irreplaceable asset for all.
- 3.2.4 In summary, Natural England welcomes the efforts by the applicants to modify scheme design which sought to directly reduce the loss and damage to ancient woodland. We also welcome the siting of compensatory measures adjacent to the eastern side of this important asset. However, National Policy dictates that ancient woodland is an 'irreplaceable habitat' which must be protected and conserved. The compensation package as provided in the DCO has seen no further progression since the submission, despite further discussions. We consider the existing package unacceptable on grounds of: low habitat compensation ratio; lack of compensatory planting for the western half of Aspbury's Copse; and poor connectivity of the compensatory area to the wider ecological network (hence limiting its long term functional performance). Furthermore, more detail is needed on long term management and monitoring.
- 3.2.5 Should your authority determine that the DCO proceed despite the impact upon ancient woodland, further evidence and detailed dialogue is required in order to ensure the loss of this irreplaceable habitat is more appropriately compensated.
- 3.2.6 Natural England further advises that the impacts of the scheme are likely to be compounded by a separate proposal for a new motorway service area. Natural England advises the need to take into account cumulative impacts in this respect. Cumulative impacts over time, particularly of ancient woodland loss and severance caused by the M42 as a whole, including its construction, should also be considered when determining impacts and compensation.

### **3.3 Habitat Enhancement and Biodiversity Net Gain**

- 3.3.1 Natural England is disappointed that this significant scheme does not aspire to deliver in terms of Biodiversity Net Gain. We welcome use of the Defra Biodiversity Metric in helping measure losses and gains and hence, offset, individual losses. However, we consider this exercise potentially fails to account for the wider local impact caused by the introduction of this significant linear road feature itself, hence severing existing and potential Nature Recovery Networks in perpetuity. We would welcome further dialogue around this including the potential greening of Solihull overbridge which was once a consideration but regrettably did not feature in the DCO.

## Natural England