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Dear Sir / Madam

Application by Highways England for an Order Granting Development Consent for the M42 Junction 6 Improvement
The Examining Authority's written questions and requests for information (ExQ1) - Issued on 31 May 2019

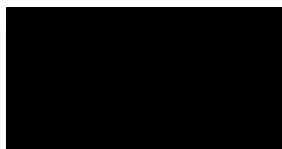
Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England has considered the first round of written questions and finds a series of questions either directly requiring a response from ourselves or potentially benefitting from our input. Our responses are provided in the table overleaf.

We understand that the deadline for responses is 24 June 2019.

If you have any queries relating to the advice in this letter please contact me at the details below.

Yours faithfully



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Table of NE responses to ExAs first Written Questions

ExQ1	Question	Natural England Response
1.0	General and Cross-topic Questions	
	Lighting	
1.0.2	<p>Paragraph 8.3.6 of the ES explains that <i>“Following a review of the type and location of road lighting incorporated into the design of the Scheme it was determined that night time visual effects would not be significant on visual receptors due to the distance between receptors and the components of the Scheme that would be lit. Furthermore, it was identified that the M42 motorway corridor and development such as the National Exhibition Centre (NEC) and Birmingham Airport are already lit, and, are the principal source of light spillage in existing night time views within the landscape. Accordingly, night time visual effects associated with road lighting were scoped out of the assessment.”</i> The LPAs, Natural England (NE) and Campaign to Protect Rural England, Warwickshire Branch (CPRE) and the Open Space Society are asked for their views on this.</p>	<p>The scheme does not impact upon a designated sensitive landscape within its remit and, therefore, does not have a specific comment to make in this regard. We refer you to the local landscape team in the Borough Council for more detailed advice.</p> <p>Natural England does, however, support appropriate measures for the amelioration of light pollution effects upon landscape character and visual amenity as well as indirect biodiversity impacts.</p>
1.7	Biodiversity – ES Chapter 9 and HRA Mitigation and monitoring	
1.7.11	<p>In their consultation response contained in ES Appendix 9.17 [APP-144], Natural England (NE) indicate that whilst they considered that a pumping solution would be effective to mitigate impacts on Bickenhill Meadows SSSI (SE unit), it would be a heavily engineered solution, and they preferred a more passive solution, based on adaption of the natural hydrological processes. The ExA notes that the Applicant states that they intend to agree any refinements to the solution with NE prior to commencement of the Proposed Development. Please can the Applicant provide an update on discussions on this matter with NE, and identify any proposed changes to the strategy and how they may affect the assessment of the effectiveness of the mitigation?</p>	<p>Paragraphs 7.2.10 and 7.2.11 of our Written Representations address this point. These state:</p> <p><i>‘Natural England welcomes the further work the applicants have been undertaking since submission of the DCO in respect of presenting an improved solution to the SSSI mitigation, in response to our concerns.</i></p> <p><i>On 14 March 2019, Natural England met with the applicants, their environmental consultant team and Warwickshire Wildlife Trust to discuss this further work and potential scheme alterations. The minutes of this meeting are provided at Annexes C1 and C2. At this meeting, the applicants provided an update to the hydrological monitoring since the DCO submission and a subsequent update to the hydrological conceptual model.’</i></p> <p>Paragraphs 7.2.12-16 further outline the detail surrounding these discussions.</p>

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		<p>Specifically, these explain that the applicants have tabled a new 'Option C' mitigation scheme for the SSSI. This is a passive system which seeks to draw water from the Catherine-de-Barnes Road (B4438).</p> <p>Whilst, in principle, supportive of Option C going forward, Natural England and WWT have sought further confirmation from the applicants in respect of:</p> <ul style="list-style-type: none"> • 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 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. <p>The above were requested at the 14 March 2019 meeting and are still awaited.</p>
1.7.15	<p>ES para 9.9.102 [APP-054] notes that pre-construction checks, as detailed in the OEMP, would be undertaken pre-construction to confirm the status of other activity on the watercourses within the Order Limits, and appropriate avoidance measures would be implemented in the event that they were found to be present. Examples of the avoidance measures have not been provided. Please can the Applicant provide examples of</p>	<p>Natural England is the licensing authority and, therefore, could potentially issue a licence if it were required although this would be determined via the licensing process.</p> <p>It is for the applicant to suggest the avoidance measures. If they can come up with ways of avoiding impacts they shouldn't need a licence.</p>

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	measures that may be implemented in this event, explain how they are secured, and indicate if any relevant statutory body, eg NE, would have any role in agreeing the measures and ensuring they are implemented, where required?	
1.7.16	It is noted that in relation to Bickenhill Meadows SSSI, dipwell monitoring, in order to record water table levels, is ongoing and is intended to continue for two years post-submission of the DCO application, the outcomes of which will be shared with NE. Further monitoring would be undertaken during construction (period to be agreed with NE) and the first five operational years of the Proposed Development, and would include hydrological and vegetation monitoring to determine the success of the mitigation solution. It is not indicated where this is secured in the DCO or other legally binding document, or what action would be taken in the event that the mitigation was found not to be effective. Please can the Applicant provide this information?	<p>Natural England welcomes the continuation of monitoring for two years post DCO submission and will need to have sight of the findings. We also welcome further monitoring during construction (period to be agreed) and the first 5 years of the proposed development. We will require this to be formally secured.</p> <p>We have also discussed with the applicant the need to more clearly define 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. We are awaiting further details.</p>
1.7.17	In respect of Aspbury's Copse pLWS, it is explained in the ES that the effectiveness of the compensation measures would be evaluated through post-construction monitoring and that, where necessary, the data would inform the prescriptions for its future management, although it does not indicate what these could be. Please could the Applicant provide examples of management measures that could be implemented, and indicate if any relevant statutory body, eg NE, would have any role in agreeing the measures and ensuring they are implemented, where required?	Natural England would recommend consultation with the Forestry Commission over the woodland management plan. NE would expect to be consulted on the management plan, particularly on the detail of the monitoring plan, including arising management actions.
	Ancient Woodland	
1.7.20	ES paragraph 9.9.30 states that the loss of ancient woodland from Aspbury's Copse totals 0.46ha. ES Appendix 9.2, Appendix 1, Figure 1 depicts the anticipated loss of ancient woodland as 0.58ha. NE, in their response of 2 October 2018 to the Applicant, state the loss would be	Natural England understands that this discrepancy has likely arisen as a result of both parties using different calculations for ancient woodland. Natural England has based the figure on the loss of Aspbury's Copse ancient woodland in respect of the Ancient Woodland Inventory (AWI) post removal of the 'highly disturbed land' (HDL) in

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	0.33ha in total. Please could the Applicant and NE address these discrepancies?	2018. This HDL was a result of the original development of the motorway.
1.7.24	What does NE consider to be a sufficient and proportionate compensation ratio?	<p>This issue is addressed at paragraphs 7.3.8 – 15 of our Written Representations. These state as follows:</p> <p><i>‘The proposed compensation package for the loss of and damage to ancient woodland at Aspbury’s Copse is the creation of woodland by planting on a site immediately south of the eastern half of the wood, where translocated ancient woodland topsoil will be spread. The proposed compensation ratio is 3:1. Natural England deems this compensation ratio too low for an irreplaceable habitat. It is of note that whilst irreplaceable habitats are not covered by the emerging Defra’s Biodiversity Metric 2018 suggested evidenced compensatory area ratios for the most technically difficult ‘replaceable’ habitats are of the order of 24:1 (See Annex K – ‘Updating the Defra Biodiversity Metric’).</i></p> <p><i>NPPF Paragraph 175 requires ‘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’.</i></p> <p><i>Since the 2018 revision of the NPPF there is growing evidence that developments are being refused partly or wholly on the basis of loss and damage to ancient woodland; however, evidence around the application of the revised NPPF for compensation is currently lacking.</i></p> <p><i>Clearly, compensation needs to be considered on a scheme by scheme basis, exploring all opportunities where unavoidable irreplaceable habitat loss is to occur. The level of compensation should reflect the amount (area) and nature of the irreplaceable habitat loss. Cumulative losses of ancient woodland</i></p>

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		<p><i>should be considered when determining appropriate compensation.</i></p> <p><i>Ancient woodland is deemed irreplaceable largely because of the time taken to reach the target community being more than 100 years and beyond the scope of scheme proposals. New planting, even on ancient woodland soils, will take long periods to develop the species and structural diversity of the target community. This time lag must be taken into account when considering compensation ratios, increasing compensation area to allow for the fact that the condition of the compensatory habitat will be sub-optimal for the duration of the scheme.</i></p> <p><i>Natural England welcomes the location of the proposed compensation area adjacent to the southern boundary of the eastern half of Aspbury's Copse. However, this is a single compensation measure affecting a single location for compensatory habitat. The ancient woodland itself is already severed by the existing M42, and this further loss will impact upon both halves of the woodland yet compensatory benefits are only provided on one side of the motorway. This does not, in our view, provide adequate compensation in terms of habitat buffering and functional connectivity to the wider ecological network. Moreover, whilst Natural England recommends maximizing connections to the wider ecological network, such as via hedgerow linkages, compensatory areas are best located in functional blocks rather than in linear strips.</i></p> <p><i>In addition to the proposed compensation area, Natural England encourages the applicant to seek further opportunities to enhance Aspbury's Copse and the ecological networks in the wider area by buffering, extending and linking woodland and trees, e.g. by new woodland planting and hedgerow creation and restoration. The current condition and management of ancient woodland in the area should be considered when designing the</i></p>

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		<p><i>compensation package, including measures to ensure positive management of Aspbury's Copse and nearby Barber's Coppice. We understand that both Aspbury's Copse and Barber's Coppice are narrowly located outside the airport safeguarding zone and hence opportunities for further planting may apply. Hence, long term management plans should be drawn up for Aspbury's Copse, including the compensatory planting area, and any other ancient woodlands to be managed as part of an improved compensation package.</i></p> <p><i>In particular, as ancient woodland losses will occur in both halves of the Aspbury's Copse woodland it would be useful to explore further woodland creation contiguous with the western half of the wood. This could further extend and buffer Aspbury's Copse. Furthermore, additional woodland creation north of Aspbury's Copse would buffer the woodland from potential impacts of the proposed new motorway service junction. Natural England advises that opportunities to enhance the diversity of additional created woodland, such as by ground flora species introductions, should be explored.'</i></p>
1.7.25	<p>The Applicant, NE and the Woodland Trust are asked how the success of the new woodland planting and translocation of ancient woodland soils and habitat might be affected by the proposed area being adjacent to the eastern boundary of the M42 motorway and new slip road?</p>	<p>Paragraphs 7.3.16-18 of our Written representations discuss the soil translocation methodology. These read as follows:</p> <p><i>'Natural England advises that the evidence base for the success, or otherwise, of translocation of ancient woodland soils, is lacking, however, we feel it is preferable to retain this important component of the ecosystem, as close to the donor site as possible, as is proposed.</i></p> <p><i>Natural England has no objections to the proposed soil translocation methodology, the allocated area of soil translocation or the allocated area for contiguous replanting proposed, as detailed in the associated Technical Note to the environmental statement, provided that the soil types are suitable. However, we would urge that</i></p>

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		<p><i>methods to translocate an intact soil profile and field layer are further explored. Such techniques are widely used in grassland translocation, and whilst we recognise the additional difficulties that woodland soils represent, we think that taking this type of approach where practicable will be beneficial.</i></p> <p><i>We advise the completion of a soil survey at the receiver site, because evidence shows that translocations have only been successful where the receiver site soil types have been matched to the donor site. If the soil types do not match, an alternative site (preferably close to another ancient woodland) should be sought. We understand such a survey was planned for October 2018 although we are uncertain we have had sight of the full results. We further advise long term monitoring of the translocated site; with data being made publically available to allow its incorporation into the evidence base for ancient woodland soil translocation. If additional compensatory planting were provided, the opportunity for a control site in a soil translocation experiment arises - Natural England encourages exploration of this opportunity.'</i></p> <p>In terms of the likely impacts of the proximity of the motorway and slip road to the compensatory woodland area, Natural England acknowledges this as a very valid point. There will of course be likely additional air, water and light pollution which may have a bearing upon effectiveness. For this reason we recommend more functional block compensation as opposed to linear strips.</p>
1.7.30	<p>There appears to be little scope to provide effective buffer strips to Asbury's Copse alongside the southern slip roads so as to avoid root damage and to help protect the remaining ancient woodland from damaging edge effects, including chemical run off, air pollution, noise pollution, light pollution and litter. The ExA would welcome comments from the Applicant, NE and the Woodland Trust about this.</p>	<p>Natural England considers this a welcome point which we perhaps neglected to particularly highlight ourselves. The options we see as available are either (a) scheme re-design or (b) additional compensatory habitat to appropriately accommodate for the limitations relating to effective buffer provision.</p>
	<p>Habitats Regulations Assessment (HRA)</p>	

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1.7.34	<p>It is not stated in the NSER whether the European sites and features to be included in the HRA and the methodology that was used were agreed with the statutory nature conservation body (SNCB) and/or other relevant body.</p> <p>i) Please can the NE confirm whether they are satisfied that the correct sites and features have been assessed in the NSER?</p> <p>ii) Please can the Applicant set out the extent of agreement with relevant consultees to the approach taken to undertaking the assessment?</p>	<p>(i) Natural England confirms it is satisfied with the European sites and features included in the HRA as well as the methodology utilised in the 'No Significant Effects Report' (NSER).</p> <p>We confirm we had sight of the NSER prior to DCO submission in draft form HE551485-ACM-LSI-ZZ_SW_ZZ_ZZ-RP-DC-0608 AECOM (Version 1 – Issued for comment – September 2018).</p> <p>Further, Natural England has reviewed the Habitat Regulations Assessment – 'No Significant Effects Report' submitted as part of the DCO and has concluded there is no potential for Likely Significant Effects (LSE) or 'Adverse Effects' on the Integrity of any European Sites.</p>
1.7.40	<p>It is noted in NSER Section 6 Tables 6-1 to 6-4 that no formal consultation had yet been undertaken with the relevant statutory bodies. Please can the Applicant state whether subsequent consultation has taken place, particularly with NE, and indicate the extent of any agreement with the conclusions of the HRA?</p>	<p>See above.</p> <p>Further, in our Section 42 response dated 2 October 2018 we stated:</p> <p><i>'European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is located <u>in excess of 15km</u> of the following (i.e. it's closest) European designated sites (also commonly referred to as Natura 2000 sites):</i></p> <ul style="list-style-type: none"> • <i>Ensor's Pool SAC</i> • <i>Fens Pools SAC</i> • <i>Cannock Extension Canal SAC</i> • <i>The River Mease SAC</i> <p><i>Natural England has reviewed the evidence contained in the applicant's draft (shadow) Habitat Regulations Assessment – No Significant Effects Report. The HRA screening exercise has concluded that there is no potential for Likely Significant Effects or Adverse Effects on the Integrity of any of the sites in question, either as a result of the scheme, either alone or in combination with other plans or projects. Given the intervening distance and the lack of specific environmental pathways between the application site and the designated sites in question, NE concurs with its conclusions.</i></p> <p><i>In summary, Natural England advises that there will be no need for the Secretary of</i></p>

ExQ1	Question	Natural England Response
		<i>State for Transport to progress the assessment to Appropriate Assessment stage.'</i>