

Date: 02 September 2019  
Our ref: 290983 ExQ2 Natural England 020919 final  
Your ref: TR010027 Deadline 4 Natural England



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**Planning Inspectorate Reference:** TR010027  
**User Code:** 20022337

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 (ExQ2) - Issued on 5 August 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.

**Second Round of Written Questions**

Natural England has considered the second round of written questions and finds three questions (ExAQ2 2.3.1, 2.3.2 and 2.3.3) directly requiring a response from ourselves. Our responses are provided in the below.

It is noted that the examiner requested responses from the applicant, Solihull MBC, Warwickshire Wildlife Trust (WkWT) as well as ourselves. To this end, and in the interests of seeking a co-ordinated response to inform the examination, Natural England has been working closely with all relevant parties and has positively sought to identify areas of agreement cross-organisation as well as those as identify those issues / areas of agreement as yet outstanding.

**Biodiversity – ES Chapter 9 and HRA**  
**Bickenhill Meadows (SE Unit) SSSI : Mitigation and monitoring**

*ExQ2 2.3.1 - The answer to ExQ1.7.10 is welcome. Please submit an agreed position on V.9 of the Technical Note by Deadline 4 (2 September 2019). Please indicate whether the consequent controls necessitated should be contained within the DCO or accommodated in a separate Section 106 Agreement*

&

*ExQ2 2.3.2 - The Panel welcome the consideration being given to the possibility of a new Requirement to deliver the monitoring necessary to mitigate the effects of the scheme on the Bickenhill Meadows SSSI (SE unit). Please submit the necessary documentation by Deadline 4.*

Our response – The applicants have prepared a 'Bickenhill Meadows SE Unit Draft Position Statement (DPS)' for the express purpose of addressing these questions and helping further partner confidence in the passive SSSI mitigation scheme now proposed. This was issued to Natural England

for comment, and circulation to WkWT and Solihull Ecology, on 27 August. WkWT has been unable to provide comment on this document to date owing to annual leave and I ask that you look to their separate representations for this purpose. However, Natural England and Solihull MBC Ecology agree that the document provides an accurate reflection of the current position of the discussions and aspects that we agree on with the applicant. **We have no objection to the monitoring strategy provided, however, this lacks the technical detail which we need to see to help us ensure the appropriate triggers and agreed measures are in place to secure the conservation of the site going forward. Areas of agreement and issues still outstanding were confirmed in our email to the applicant dated 30 August and which is provided as Annex A to this submission.**

For context, prior to the release of the DPS on 27 August, Natural England issued the applicant with an email (dated 14 August) detailing the outstanding issues in this regard collated from themselves, Solihull MBC Ecology and WkWT. This was provided to assist development of the DPS and help ensure it covered the necessary issues, as required, by these interested parties.

The table below was provided in an 14 August email to the applicants and collated the comments in respect of the updated technical note on Bickenhill Meadows SSSI SE Unit updated Technical Note TN9.1. This is relevant here as many of the comments relate to monitoring and maintenance.

Elements of TN9.1	NE	Solihull Ecology	WKWT	Additional comments
Broadly agree', in principal, to the methodology and figures contained in TN9.1.	yes	yes	yes	
Support the newly proposed scheme as provided in Annex H which is entirely gravity fed	Yes	Yes	yes	But ongoing maintenance issues and adoption still needs to be firmed up.
Welcome the additional evidence gathering that has taken place, in particular, the additional information on hydrological conditions in relation to the SE parcel of the SSSI, which WKWT own and manage.	Yes	Yes	Yes	
Welcome the proposed entirely passive design replacement for the engineering solution, which has been designed to maintain water levels in the SE parcel of the SSSI.	Yes	Yes	Yes	Yes, but again need to clarify the ongoing monitoring of water levels and feedback loop in the event that this changes outside agreed acceptable limits (still to be confirmed).
Broadly accept the descriptions provided in Section 5 (Bickenhill Meadows SSSI and Shadowbrook meadows LNR	Yes	Yes	Yes	Minor point only- although Shadowbrook Meadows is not a designated Local Nature Reserve (LNR) as stated in the TN, it is a nature reserve which comprises part LWS and part SSSI.
Confirm they have no concerns in respect of the remainder of the baseline (Sections 6-11)	Yes	Yes	yes	

Elements of TN9.1	NE	Solihull Ecology	WKWT	Additional comments
Broadly agree with the conceptual models (Section 12)	Yes	yes	Yes	<p>However, the document asserts that the impact on MG5 grassland in the SSSI is unlikely to be altered as this relies less on wet conditions. They, therefore, do not seek to monitor this even though they inform us there will be a 26.4% reduction in the MG5 areas catchment area. All take the view that the MG5 community should be monitored also. i.e. if it dries out too much this could destroy the grassland community.</p> <p>Recommend document revise its description of what it describes as a 'small' impact on habitat communities as there is no evidence to support this judgement. The SE Unit has a small catchment and hence any small change may be impactful. The fact that the embedded mitigation scheme is proposed at all shows that there is not a 'small impact' – the description of any impacts needs to be quantified either using figures based on evidence or using standard EIA terminology.</p>
Confirm that they have no concerns in respect of the Interim monitoring results – (Section 13)	Yes	Yes	-	
Confirm that they have no concerns in respect of the summary of findings (Section 14)	Yes	Yes	Yes	the wording in para 14.3 is especially welcome, highlighting the limitations of the data and that there may be impacts on the more sensitive grassland species over a period of drier years.
Confirm that they are happy with the proposed mitigation hierarchy and options as well as margins of error (Sections 15 - 16 and Table 3)	Yes	Yes	Yes	
Welcome preparation of a SE Unit SSSI MHMM Plan	Yes	Yes	Yes	The MHMM should also be sent to NE, WKWT and SMBC for approval. NE for SSSI consultation, WKWT as

Elements of TN9.1	NE	Solihull Ecology	WKWT	Additional comments
				landowners and managers, and SMBC as will be responsible for the ongoing management and maintenance of part of the mitigation scheme  Likely sit under wider ShadowBrook Meadows Management Plan – is this taken into account in OEMP?
Broadly happy with conclusions	Yes	yes	yes	para 18.4 – has it been considered what the impact on the SSSI would be if too much water is provided via the mitigation scheme?
Monitoring and maintenance	No	No	No	NE, WKWT and Solihull Ecology are unclear as to the monitoring and mitigation of the passive solution will be appropriately secured and undertaken. We are concerned that the existing two year period for monitoring water levels may be insufficient. In a complex wetland mosaic such as the SE parcel, in some pockets of mosaic there will be varying water levels due to small changes in topography and in some places water movement is likely to be more slow-moving, have longer response times and be less predictable. It is likely, therefore, that all changes would not be picked up in two years. We would appreciate also a more substantial “feedback loop”, in order to make it clear how: 1. the water levels and any changes to vegetation will be measured; and 2. what measures will be taken in the event that monitoring shows a reduction or increase in water levels and impact upon vegetation.

In this email, Natural England, WkWT and Solihull Ecology also confirmed the following preferences in terms of controls.

- *‘ALL agreed we would welcome all mitigation controls to be captured and contained within the DCO itself as opposed to S106;*
- *Agree SSSI SE unit Hydrological Management and Maintenance Plan would likely be an*

It is from this submission that the applicant then drafted the DPS.

Natural England (and Solihull MBC Ecology) identified the following issues still outstanding in relation to the SSSI and proposed mitigation solution upon which that agreement has yet to be reached:

- Timescale for agreement of the threshold/triggers from which to monitor against? Triggers must be agreed before the DCO is approved and should be based on changes in balance between wet and dry NVC communities or species distribution over the site.
- What is the contingency plan if there is too much or too little water reaching the SSSI / if monitoring shows that damage is found, and what is the feedback loop for this? There must be appropriate contingency measures included in the design of the mitigation to respond to monitoring feedback. How it could be modified to increase or decrease water supply to the site?
- The feedback loop needs to have a clear set of rules to it including a resolution process (in case required)
- Design and location of the swale on Shadowbrook Lane and any other infrastructure relating to the mitigation scheme that SMBC will be responsible for maintaining in the long term.
- The MG5 community within the SSSI should also be included in the monitoring scheme

On 2 September, the applicant confirmed by email to Natural England that they will '*take away the ... comments and progress the required documents that they are likely to be best suited to*'.

Both Natural England and the applicant have agreed to maintain the current dialogue in order to continue to resolve these issues over the next month.

See Annex A for further detail including Natural England's request to have early sight of and input into the new Requirement.

### **Ancient woodland : Mitigation and monitoring**

*ExQ2 2.3.3 - It is understood that the woodland soil survey was completed in June 2019. Please submit the results of that survey by Deadline 4 (2 September 2019). Do the results support the translocation of ancient woodland from Aspbury's Copse? And, if not, where should such translocation take place?*

Our response – Natural England pressed the applicants for comment in this regard in our email to Graeme Cowling dated 6 August 2019. We received a response back from the applicant that same day confirming that the report in question was being finalised and would be shared with Natural England following AECOM sign off and HE approval. A telephone conversation with the applicants on 12 August confirmed that NE were unlikely to have sight of this ahead of 2 September deadline. We confirm, therefore, that we are still awaiting sight of this document and can provide no further comment at this stage.

### **Second Version of Statement of Common Ground – Natural England and Applicant**

Natural England has been in dialogue with the applicant in respect of the second version of the Statement of Common Ground and is happy with the draft proposed for issue today (Rev 2). This was confirmed in an email earlier today to Graeme Cowling and Jamie Gleave of AECOM in which we stated:

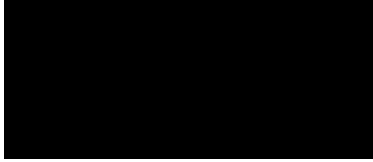
*'We welcome the share of the updated version on 28 August and confirm we have no comments to make with regard to what is provided. However, NE recommends inclusion of recent DPS and*

*collated comments (30 August) as appendices. These are also to be included / updated in the Tables 2.1 Record of Engagement and 3.1 Issues Raised, along with this email confirming our position at Deadline 4.'*

We understand that the deadline for responses is 2 September 2019.

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

Yours faithfully



Susie Murray  
West Midlands Area Team - Planning Lead Adviser  
Planning for a Better Environment Team  
Natural England



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## **Annex A – Email from Natural England to the applicant dated 30 August 2019 (time 17.13)**

Good afternoon Graeme and Jamie

Thank you for the Draft Position Statement for Bickenhill Meadows SSSI (SE Unit) which you shared with us on 27 August.

This email provides comments from Natural England and Solihull MBC Ecology in respect of this document. For the most part, we are in agreement as regards our comments. Where our comments differ, or are specific to our organisations, I have sought to make this clear.

Please be aware that Warwickshire Wildlife Trust has been unable to comment on this document owing to absence. This will need to be made clear in the document and Monday's submission for ExAQ2 Deadline 4.

Natural England and Solihull MBC Ecology agree that the document provides an accurate reflection of the current position of the discussions and aspects that we agree on with the applicant. We have no objection to the monitoring strategy provided, however, this lacks the technical detail which we need to see to help us ensure the appropriate triggers and agreed measures are in place to secure the conservation of the site going forward.

We recognise and welcome that the document includes:

- A commitment to hydrological and ecological monitoring for the site during construction and post 5 years
- A commitment to quarterly reporting and a discussion at the end of the 5 years to agree if further monitoring is required.
- Confirmation that we have yet to agree on detailed monitoring thresholds and triggers
- Confirmation we have yet to agree on detailed contents of the Hydrological Monitoring and Management Plan
- Confirmation that the monitoring and maintenance will be secured by a new Legal Requirement to the DCO (in the REAC)

It is important to make it clear in the Position Statement that there are still issues outstanding in relation to the SSSI and proposed mitigation solution upon which that agreement has yet to be reached. These comprise:

- What is the timescale for agreement of the threshold/triggers from which to monitor against? Triggers must be agreed before the DCO is approved and should be based on changes in balance between wet and dry NVC communities or species distribution over the site.
- What is the contingency plan if there is too much or too little water reaching the SSSI / if monitoring shows that damage is found, and what is the feedback loop for this? There must be appropriate contingency measures included in the design of the mitigation to respond to monitoring feedback. How it could be modified to increase or decrease water supply to the site?
- The feedback loop needs to have a clear set of rules to it including a resolution process (in case required)
- Design and location of the swale on Shadowbrook Lane and any other infrastructure relating to the mitigation scheme that SMBC will be responsible for maintaining in the long term.
- The MG5 community within the SSSI should also be included in the monitoring scheme

We are aware that the Hydrological Monitoring and Management Plan has yet to be developed and which is expected to contain the above. Are we able to bring the timescale for delivery of this forward or have sight

of further working towards the above points to provide us with improved confidence in the effective operation of the design?

To reiterate yesterday's email to you both, Natural England also requires confirmation from HE that all post consent engagement will be subject to a Discretionary Advice Contract (DAS contract) enabling Natural England to recover time and costs associated with the monitoring. This agreement should be made explicit in the Position Statement.

NE also requests early sight of, and input into, the new draft Requirement for this purpose. Please confirm for us when this will be sighted for our potential input and approval.

I am around on Monday – I have sent you a placemaker for a call at 1pm in case it is needed.

*Many thanks,*

Susie Murray  
West Midlands Area Team (East) Urban Planning Lead Adviser  
Planning for a Better Environment Team  
Natural England

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*Hours of work – 27 hours per week:*

*Generally Mon.9.30-3.00; Tues. 8.00-5.30; Wed. 9.30-3.00; Thurs.9.30-3.00; Fri.9.30-1:00*