M42 Junction 6 Development Consent Order

Scheme Number TR010027

8.64 Ancient Woodland Clarifications and Proposed Additional Measures Technical Note

Planning Act 2008

Rule 8 (1)(e)

The Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

September 2019

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

M42 Junction 6

Development Consent Order 202[ ]

Ancient Woodland Clarifications and Proposed Additional Measures Technical Note

Regulation Number	Rule 8(1)(e)
Planning Inspectorate Scheme Reference	TR010027
Document Reference	8.64
Author	M42 Junction 6 Project Team & Highways England

Version	Date	Status of Version
1	27 September 2019	Final

Table of contents

List of Tables

List of Figures

1 Introduction

1.1 Overview

1.1.1 Highways England (the Applicant) has submitted a development consent order (DCO) application for the M42 Junction 6 scheme (the Scheme) proposing the creation of a new junction (Junction 5A) approximately 1.8 kilometres (km) south of the existing Junction 6 of the M42 and a new 2.4 kilometre-long dual carriageway link road between the new Junction 5A and Clock Interchange (on the A45 Coventry Road (A45), west of M42 Junction 6) with a free flow slip road to the A45 westbound. There will be capacity and junction improvements at Clock Interchange.

1.1.2 The development will also comprise the realignment and modification of the B4438 Catherine-de-Barnes Lane (Catherine-de-Barnes Lane), Clock Lane and St. Peters Lane located west of the M42, and East Way to the north east of M42 Junction 6. The Scheme will also include the modification of and improvements to public rights of way, footbridges and private accesses, emergency refuge areas, overhead gantries and message signing along the M42.

1.1.3 As reported in paragraph 5.3.34 of the Planning Statement and National Policy Statement Accordance Table **[APP-173/Vol 7.1]** the Scheme is reported to result in the loss of up to 0.46 hectares (ha) of ancient woodland at Aspbury's Copse, equivalent to 17.6% of the existing Copse.

1.1.4 As set out in **Figure 1-1**, the impact on the ancient woodland from the Scheme would principally arise from the construction of a new overbridge (in respect of the associated embankments leading to the overbridge) on Solihull Road, and the proposed on- and off-slip roads at Junction 5A.

Figure 1-1: Maximum Extent of Ancient Woodland Affected by the Scheme

1.1.5 A number of statutory and non-statutory bodies have made representations on the Scheme in advance of, and during, the Examination to raise concerns to the Examining Authority (ExA) that the ratio of compensatory planting proposed by the Applicant is too low. This includes representations from Natural England, the Government's advisor on nature conservation matters. A summary of these representations is provided in **Appendix 1**.

1.2 Purpose of this Technical Note

1.2.1 The Applicant has responded to a number of queries from the ExA regarding ancient woodland during the Examination to date and it has been engaging with Natural England and other stakeholders on these matters.

1.2.2 In advance of the Issue Specific Hearings on the Environment planned for 2 and 3 October 2019, the Applicant has reconsidered its position further and sets out some further clarifications on the likely impact of the Scheme on ancient woodland. In addition, this Technical Note sets out the further mitigation and intervention measures the Applicant will put in place to reduce the impact on ancient woodland further and bolster its approach to compensation planting.

2 Clarifications

2.1 Extent of Impact

2.1.1 As reported in paragraph 5.3.34 of the Planning Statement and National Policy Statement Accordance Table **[APP-173/Vol 7.1]**, the Scheme is reported to result in the loss of up to 0.46 ha of ancient woodland at Aspbury's Copse. This figure is stated as a 'maximum' figure and takes into account the outer extents of the limits of deviation (LoD) of the works at Junction 5A that would give rise to these impacts. These works (as specified in Schedule 1 to the draft DCO **[APP-015/Vol3.1(b)]** include:

I. the Solihull Road overbridge (Work No.3);

II. the M42 north-bound off-slip (Work No.4); and

III. the M42 south-bound on-slip (Work No.5)

2.1.2 The LoD for Work No. 3, 4 and 5 are shown on Sheet 2 of the Scheme's Work Plans **[APP-007/Vol 2.3]**. The maximum impact on the ancient woodland will arise if those works are constructed right on the edge of their LoD – for example, if Work No. 3 is constructed on its southern LoD.

Clarification 1: The 0.46 ha area of habitat loss reported in Chapter 9 of the Environmental Statement **[APP-054/Vol 6.1]** represents the total maximum (worst-case) impact the Scheme could have on Aspbury's Copse ancient woodland.

2.1.3 However, were Junction 5A to be built exactly on the centre lines shown on Sheet 2 of the Work Plans (which is the same alignment as is presented on the design shown on Sheet 2 of the General Arrangement Plans **[APP-008/Vol2.4]**), the total habitat loss would be less than that reported in the Environmental Statement, at approximately 0.36ha, or 13.7% of the existing woodland. This is set out in Table 1-1, extent of impact on the ancient woodland of the design as proposed.

Clarification 2: Were Junction 5A, including the Solihull Road overbridge, to be built exactly as presented on the design on Sheet 2 of the General Arrangement Plans **[APP-008/Vol2.4]** without further encroachment into the LoD, the total habitat loss within the ancient woodland would be 0.36ha.

Table 1-1 Potential extent of impact on ancient woodland from Work No. 3, 4 and 5 if they were built exactly on the centre lines as presented on Sheet 2 of the Scheme Works Plans

	Impact on Ancient Woodland (Ha)				Total Impact on the Ancient Woodland (Ha)
	Solihull Road West of M42 Motorway (Work No. 3)	Solihull Road East of M42 Motorway (Work No. 3	M42 NB Off-Slip Road (Work No. 4)	M42 SB On-Slip Road (Work No. 5)	
DCO Layout Without Variation Based on Permanent and Temporary Works	0.1342	0.009	0.1946	0.019	0.36

2.2 Receptor Site

2.2.1 Paragraph 9.9.42 of Chapter 9 of the Environmental Statement **[APP-054/Vol 6.1]**, Biodiversity, confirms that approximately 1.9 ha of land has been included within the Order Limits of the DCO to form a receptor area for translocated soils and compensatory planting. This site is approximately 73% the size of the existing ancient woodland at Aspbury's Copse.

2.2.2 Standing advice states that any compensation measure for impacts to ancient woodland should be appropriate for the site and for the scale and nature of the impact on it[1]. Broad recommendations for measures are provided, which include soil translocation, compensatory planting, habitat management and habitat monitoring. No specific guidance is provided by standing advice on the specific replacement planting ratios for ancient woodland.

2.2.3 Natural England and the Woodland Trust have made reference to specific replacement ratios for woodland planting, and these statements have applied or make reference to the biodiversity offsetting metric. However, it is a key principal of the biodiversity metric that it does not apply to irreplaceable habitats, which includes ancient woodland[2]. Best practice guidance on the application of the offsetting metric details approaches on how the compensation of irreplaceable habitat may be considered alongside biodiversity offsetting, and this stresses that measures should be designed on a case-by-case basis[3].

2.2.4 A review of impacts upon ancient woodland on other highways scheme has demonstrated variability in the measures proposed, including the ratio of compensatory planting. This is considered likely to reflect in part the magnitude

1 https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences

2 IAN CROSHER, SUSANNAH GOLD, MAX HEAVE, MATT HEYDON, LAUREN MOORE, STEPHEN PANKS, SARAH SCOTT, DAVE STONE & NICK WHITE (2019) The Biodiversity Metric 2.0 Auditing And Accounting for biodiversity USER GUIDE (Beta Version). Natural England

3 Baker J, Hoskins R & T Butterworth (2019) Biodiversity net gain: Good practice principles for development. CIRIA

of impacts and emphasises the relevance of considering impacts on a case-by-case basis.

2.2.5 In line with this, Chapter 9 of the Environmental Statement **[APP-054/Vol 6.1]** has considered the impact of both direct habitat loss and the indirect impacts of increased 'edge effects' upon the ancient woodland of Aspbury's Copse. The scale of impact is considered in the context of the size and form of Aspbury's Copse, the quality of existing ground-flora and the coverage of this habitat type in the wider area. A strategy for compensation is proposed that reflects the standing advice and best practice, with soil translocation to the receptor area, replacement planting, habitat management and replacement planting are proposed.

2.2.6 The total extent of land identified within the Order Limits for a receptor site would therefore allow the Applicant, at worst case, to provide compensatory planting at a ratio of approximately 4:1 (i.e. the receptor land available would be approximately four times the size of the total amount of ancient woodland affected by the Scheme as reported in the Environmental Statement and Planning Statement).

2.2.7 Taking into account the information presented in **Table 1-1**, were Junction 5A and the Solihull Road overbridge to be built exactly as presented on the design on Sheet 2 of the General Arrangement Plans **[APP-008/Vol2.4]** without further encroachment into the LoD, the total habitat loss within the ancient woodland would be lower and therefore the ratio of compensation planting that could be achieved on the receptor site would be higher; approximately 5.3:1.

Clarification 3: Based on the Scheme design as shown on Sheet 2 of the General Arrangement Plans **[APP-008/Vol2.4]** for Junction 5A and the Solihull Road overbridge, the minimum compensation planting ratio that the applicant would achieve is 4:1 while the maximum ratio would be 5.3:1

2.3 Solihull Road overbridge

2.3.1 In its first round of written questions the ExA sought clarification from the Applicant in question 1.7.29 about whether the new *"Solihull Road overbridge… and the raised vertical alignment of its approaches,* [could] *be positioned further to the north so as to avoid or further minimise encroachment into the Aspbury's Copse?".*

2.3.2 In the response to this question **[REP2-008/Vol 8.6]** the Applicant noted the constraints which would limit the extent to which the Solihull Road overbridge could be moved further north from the alignment shown in Sheet 2 of the General Arrangement Plans **[APP-008/Vol2.4]**. The Applicant confirmed in this response that the LoD for this work *"prescribed in the Development Consent Order enable the maximum shift in the alignment of Solihull Road overbridge without introducing additional adverse impacts".* In its response, however, the Applicant did not set out whether moving the Solihull Road overbridge north within the LoD could result in the loss of habitat within the ancient woodland being avoided or reduced at this location.

2.3.3 Since this response, the Applicant has undertaken further work to establish the extent to which this loss could be reduced if the overbridge were to be moved as far north as possible without requiring alterations to the design of Junction 5A. The result of this work, as shown in **Table 2-2**, now demonstrates that if the Solihull Road overbridge was moved north by approximately 10 m, there would be no impact on Aspbury's Copse at its border with Solihull Road. This modification would serve to greatly reduce the land required within Asbury's Copse to construct the Scheme, as habitat loss would only then be the two slip roads connecting the M42 to Junction 5A. This would reduce the loss by approximately 1,340 square meters, leaving a total habitat loss of 0.21 ha.

Table 2-2 – Potential Impact on ancient woodland if Solihull Road overbridge was moved 10m north from the centre-line of the Work as presented on Sheet 2 of the Works Plans

	Impact on Ancient Woodland (ha)				Total Impact on the Ancient Woodland (ha)
	Solihull Road west of M42 motorway (Work No. 3)	Solihull Road east of M42 motorway (Work No. 3)	M42 northbound off-slip road (Work No. 4)	M42 southbound on-slip road (Work No. 5)	
Moving Solihull Road overbridge 10m further north	0	0	0.1946	0.019	0.21

Clarification 4: Moving the Solihull Road overbridge north, within the LoD could reduce the total loss of ancient woodland habitat within Aspbury's Copse to 0.21 ha.

Clarification 5: In the event Solihull Road overbridge is moved north as described above the receptor site of 1.9ha would therefore be able to deliver a compensation planting ratio in excess of 9:1.

3 Further Mitigation and Intervention Measures

3.1 Detailed Design

3.1.1 As set out above, the Applicant recognises that further work can be undertaken at the detailed design stage (i.e. further design refinement prior to construction) to establish if the total loss of habitats within Aspbury's Copse can be reduced further, within the extents of the LoD, than that currently reported in the Scheme.

3.1.2 As demonstrated by the information presented in **Table 1-1** and **Table 2-2**, it is recognised that there is potential for the design of the works to be refined in such a way that the ancient woodland habitat losses could be reduced or even avoided in places. Examples might include moving Solihull Road overbridge north within the LoD and steepening the embankment on the western side of the M42.

3.1.3 Given the level of work needed for detailed design and the fact that the Principal Contractor has not yet been appointed, the Applicant is unable to confirm at this stage what further reductions in impact can be achieved. Notwithstanding this, to ensure that the Principal Contractor will look to reduce the impact on the ancient woodland, the following commitment is given:

> Highways England and / or its Principal Contractor will use reasonable endeavours through the detailed design and construction of Works 3, 4 and 5 to reduce the impact on ancient woodland from that reported in the Environmental Statement so far as practicable.

3.1.4 Subject to ongoing discussions with stakeholders, the above commitment will be included within the updated Register of Environmental Actions and Commitments (REAC), when next published, and made binding through the CEMP.

3.2 Enhanced Management of Aspbury's Copse or other ancient woodland

3.2.1 Through engagement with Natural England the Applicant recognises that in addition to its package of compensation measures, it would be beneficial to the remaining area of woodland within Aspbury's Copse if an active woodland management regime were also introduced. Alternatively, similar benefits would also arise through an active woodland management regime within Barber's Coppice.

3.2.2 The Applicant therefore proposes that the commitment below is made within the updated REAC when next published prior to the end of the Examination.

> Highways England will use reasonable endeavours to secure an agreement with the owner of Aspbury's Copse or an area of other local ancient woodland to allow it to bring forward a woodland management regime for the woodland.

If an agreement is secured with those owners, Highways England, prior to implementation of the management regime, will consult with and seek agreement of Natural England on the management measures.

3.3 Additional Land for Compensation Planting

3.3.1 Recognising the broader concerns of Natural England, Warwickshire Wildlife Trust and Solihull Metropolitan Borough Council, the Applicant has been engaging with landowners around the area of the Scheme to establish the potential for securing additional land to act as a receptor site for compensation planting.

3.3.2 Discussions with landowners have to date been productive but no agreement has yet been reached. The Applicant therefore gives the following commitment:

Highways England and / or its Principal Contractor will use reasonable endeavours to secure agreement with landowners to bring forward additional land for compensation woodland planting to that already identified within the Scheme, where this would be necessary to achieve a replanting ratio of no less than 7:1.

3.3.3 The above commitment will be included within the updated REAC when next published.

4 Summary of Ancient Woodland Mitigation and Compensation Measures

4.1.1 Summarising the details in this Technical Note, the Applicant can confirm that its approach to ancient woodland mitigation and compensation for the Junction 5A element of the Scheme is as follows:

i. The Scheme, as currently designed, would achieve a compensation planting ratio between 4:1 and 5.3:1 on the receptor site identified within the Order Limits.

ii. Highways England and / or its Principal Contractor will use reasonable endeavours through the detailed design and construction of Works 3, 4 and 5 to reduce the impact on ancient woodland from that reported in the Environmental Statement so far as practicable.

iii. Highways England will use reasonable endeavours to secure an agreement with the owner of Aspbury's Copse or an area of other local ancient woodland to allow it to bring forward a woodland management regime for the woodland.

iv. If an agreement is secured with those owners, Highways England, prior to implementation of the management regime, will consult with and seek agreement of Natural England on the management measures.

v. Highways England and / or its Principal Contractor will use reasonable endeavours to secure agreement with landowners to bring forward additional land for compensation woodland planting to that already identified within the Scheme, where this would be necessary to achieve a replanting ratio of no less than 7:1.

Appendix 1: Summary of Representations from Key Stakeholders

The Woodland Trust

Within its Statement of Common Ground (SoCG), the Woodland Trust noted that ancient woodland is an irreplaceable habitat, and so by definition it cannot be compensated for. For all developments resulting in ancient woodland loss, the Woodland Trust requests a 30:1 planting ratio to reflect the biological importance that an area of ancient woodland provides to the wider landscape. **[REP2-013 & REP4-014]**

Natural England

Natural England submitted a relevant representation to the Examining Authority (ExA) on 28 March 2019 which recorded its view that the proposed compensation for the part destruction of Aspbury's Copse was insufficient and not proportionate. **[RR-021]**

Natural England submitted a written representation to the ExA for Deadline 1 of the Development Consent Order (DCO) Examination on 3 June 2019, which identified the loss of ancient woodland as a principal issue from its perspective and noted that this would run counter to national and local policy objectives that seek to protect and enhance such assets. Although the efforts to minimise the loss of ancient woodland resource at Aspbury's Copse were recognised and welcomed by Natural England, it remained of the view that the compensation package was unacceptable on the grounds of: low habitat compensation ratio; a lack of compensatory planting to the western half of Aspbury's Copse; and poor connectivity of the compensation area to the wider ecological network. Natural England asserted in its written representation that evidenced compensatory area ratios for the most technically difficult replaceable habitats are of the order of 24:1 (based on the emerging DEFRA Biodiversity Metric), and highlighted that irreplaceable habitats are not covered by the metric. Additionally, Natural England requested further information be provided on the long-term management and monitoring of the compensation area and encouraged Highways England 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. A further recommendation was made to consider the current condition and management of ancient woodland in the area in the compensation package, including measures to secure the positive management of Aspbury's Copse and Barber's Coppice. **[REP1-019]**

Natural England reiterated to the ExA the concerns raised in its written representation and recommended additional compensatory habitat to accommodate the limitations relating to buffer strip allowances alongside the proposed M42 Junction 5A slip roads adjacent to Aspbury's Copse. **[REP2-032]**

Natural England has reaffirmed its position regarding the adequacy of the compensation package within its SoCG, and requested Highways England examine other opportunities to deliver additional planting and possible management interventions. **[REP5-003]**

Warwickshire Wildlife Trust

Warwickshire Wildlife Trust recorded its concerns over the adequacy of the measures described within the DCO application identified to compensate for the loss of ancient woodland, and its view that additional woodland planting (in the form of blocks rather than strips) should be created. **[RR-035].**

Solihull Metropolitan Borough Council

Solihull Metropolitan Borough Council's Local Impact Report claimed that the proposed compensation ratio was *"…unacceptable, and does not accord with Woodland Trust standards"*. **[REP2-033]**