

Written Submission
for
The Royal Society for the Protection of Birds

Submitted for Deadline 1
26 November 2019

Planning Act 2008 (as amended)

In the matter of:

**Application by Highways England for an Order Granting Development
Consent for the**

M25 junction 10/A3 Wisley Interchange Scheme

Planning Inspectorate Ref: TR010030
Registration Identification Ref: 20023015



Contents

1.	Introduction	3
	The RSPB.....	3
	Lowland heathland.....	3
	The Thames Basin Heaths SPA	4
	International and UK status of nightjar, woodlark and Dartford warbler	4
	Current status of Annex I species populations on the SPA	6
	Ockham and Wisley Commons Special Scientific Interest (SSSI).....	6
	Urban Effects of Development on Heathland	7
	The RSPB's Interest in the Case	9
2.	Legal Requirements	11
	Habitats Regulations.....	11
	The Wildlife and Countryside Act 1981.....	12
	The draft Development Consent Order	12
3.	The Impacts of the Scheme.....	13
4.	The case on alternative solutions and imperative reasons of overriding public interest	14
	Absence of Alternative Solutions	14
	Imperative Reasons of Overriding Public Interest (IROPI)	14
	Improving journey time reliability and reducing delay	15
	Improving safety and reducing both collision frequency and severity	15
	Improving crossing facilities for pedestrians, cyclists and horse riders and incorporate safe, convenient, accessible and attractive routes	15
	Minimise impacts on the surrounding local road network	15
	Supporting projected population and economic growth in the area	15
5.	The Compensation Package.....	16
	Ownership of the Compensation Land.....	16
	Duration of habitat management and monitoring of habitats created, restored and/or enhanced	16
	Steering Group	17
6.	The Enhancement Package.....	19
	The potential green bridge.....	19
7.	Conclusions	20

1. Introduction

The RSPB

1. The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe's largest wildlife conservation organisation, with a membership of more than 1.2 million¹. The RSPB manages 220 nature reserves in the UK covering an area of over 158,725 hectares.
2. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international, EU and national law, policy and guidance that assist in the attainment of this objective. It campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy. In so doing, it also plays an active role in the domestic processes by which development plans and proposals are scrutinised and considered, offering ornithological and other wider environmental expertise. This includes making representations to, and appearing at, public inquiries and hearings during the examination of applications for development consents.
3. The Society attaches great importance to the conservation of the 'Natura 2000' network (made up of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs)), and the national network of Sites of Special Scientific Interest (SSSIs) notified by Natural England.

Lowland heathland

4. The result of agricultural reclamation, afforestation, mineral exploitation, and the spread of urban development since 1800 has seen a reduction of around 75-85% of the area of lowland heathland in the UK. In the Thames Basin Heaths area, analysis has shown a 53% loss in the total area of heathland over the last 100 years alone². The last major reclamations of lowland heathland for agriculture and forestry occurred in the early 1970s, but conversion of heathland to urban development and its associated infrastructure continued until well into the 1980s. These have been similar declines across North-Western Europe.
5. Not only has the area of heathland seriously diminished², but what is left has also been considerably fragmented, making it more expensive to manage and less ecologically sustainable: a point well illustrated by the highly fragmented nature of the Thames Basin Heaths³. There is a reduction in the diversity of heathland plant and invertebrate communities as fragments become smaller and more isolated from other heathland areas. In the southern counties where economic activity is greatest, urban expansion and the high population of people puts the greatest pressures on heathlands, which are vulnerable because of past losses, fragmentation and isolation.
6. The RSPB has been actively involved in conserving lowland heathland and its associated wildlife for many years. For example, we manage 14 nature reserves in England with significant areas of lowland heathland⁴ that support important populations of Dartford warblers, nightjars and woodlarks, as well as undertaking the management of land held by public bodies and private

¹ The RSPB Annual Review 2018-2019

(<https://www.rspb.org.uk/globalassets/downloads/documents/abouttherspb/annual-review-archive/annual-review-2018-2019.pdf>)

² Land Use Consultants (2005). *Going, going, gone? The cumulative impact of land development on biodiversity in England*, English Nature Research Report, 626. English Nature, Peterborough.

³ The UK SPA network: its scope and content, Volume 3: Site Accounts. JNCC, 2001.

⁴ The RSPB's heathland reserves are: Arne, Aylesbeare Common, Blean Woods, Broadwater Warren, Budby South Forest, Farnham Heath, Grange Heath, Hazeley Heath, Minsmere, North Warren, Pulborough Brooks, Snape, Stoborough Heath, The Lodge.

individuals, especially in Dorset. In addition, we have co-supervised and contributed to the funding of much of the research into human disturbance to heathland birds; produced numerous booklets and leaflets giving information on heaths and their wildlife; argued the case for the protection and conservation of heathland in our objections to planning applications (particularly housing) including at public inquiries; and lobbied national and local government for better protection and management of heaths, as discussed in more detail below.

7. In recent years, due to this active involvement in lowland heath conservation and housing development proposals and improving the scientific understanding of the relationship between housing development and heathland birds, the RSPB has worked with Natural England, central and local Government and others in the development of the Thames Basin Heaths Special Protection Area Delivery Framework. This was in order to establish a consistent, cross-boundary approach to mitigate the ongoing pressures of residential development around the Thames Basin Heaths. We are a formal advisory body on the Joint Strategic Partnership Board and the Strategic Access Management and Monitoring Project Board, which have been established to progress this work.

The Thames Basin Heaths SPA

8. Designation of the Thames Basin Heaths as an SPA recognises the area as one of the most important wildlife sites in Europe. Ensuring a healthy and long-term future for such sites, and the biodiversity they support is a key contribution to the achievement of sustainable development.
9. As set out in Regulation 12A of the Conservation of Habitats and Species Regulations 2017 (as amended)⁵ SPAs are required for particular species to ensure their survival and reproduction in their area of distribution (natural range). Rare or vulnerable species are listed on Annex I of the Birds Directive⁶, and particular attention drawn to those that are in danger of extinction, vulnerable to changes in their habitat or rare because of small populations or restricted distribution.
10. The Government has designated the Thames Basin Heaths SPA (the SPA) for three such Annex I of the Birds Directive species, reliant on heathland and other open habitats. These three species and their populations at the time of the designation of the SPA⁷ are detailed in Table 1 below.

Table 1: Thames Basin Heaths SPA Annex I bird species at time of designation

Nightjar (<i>Caprimulgus europaeus</i>)	264 churring males (7.8% of the national population)
Woodlark (<i>Lullula arborea</i>)	149 pairs (9.9% of the national population)
Dartford warbler (<i>Sylvia undata</i>)	445 pairs (27.8% of the national population)

International and UK status of nightjar, woodlark and Dartford warbler

11. All three species have suffered long-term, Europe-wide declines and have yet to recover to levels preceding those declines (as measured from 1970). It is likely that historical declines pre-dated

⁵ Partially transposing and implementing Article 4 of the Council Directive 2009/147/EC on the conservation of wild birds, codified version (**the Birds Directive**).

⁶ Council Directive 2009/147/EC on the conservation of wild birds.

⁷ Natura 2000 Standard Data Form for Thames Basin Heaths SPA.

1970 but insufficient data exists to carry out such analysis at a European level. However, the data from 1970 onwards indicates they are species that are:

- In danger of extinction;
- Vulnerable to specific changes in their habitat; and
- Considered rare because of small populations or restricted local distribution.

12. Cold winters in 2008/9 and 2009/10 resulted in a significant set-back in the recovery of the English Dartford warbler populations, particularly within the Thames Basin Heaths SPA and the nearby Wealden Heaths SPA, where snow cover was prolonged in both 2009 and 2010. A dramatic 94% decline in breeding pairs on the Thames Basin Heaths between 2008 and 2010, took the SPA population down to 38 pairs in 2010⁸.
13. Overall, at an international level, Dartford warblers have also suffered a moderately rapid global decline as a result of the recent significant decreases in the core population in Spain (the European breeding population constitutes more than 95% of the global population), leading to the species being placed in the International Union for Conservation of Nature (IUCN) Red List of species of global conservation concern as Near Threatened status (one step below those species facing global extinction)⁹. The drivers for this sudden decline from part of the species' global stronghold are not completely clear, however contributing factors are known to include habitat degradation and modification. And for just the UK, the Dartford warbler was amber listed in the 2015 *Birds of Conservation Concern 4*¹⁰.
14. Both the woodlark and nightjar are also IUCN Red List species of global conservation concern, although they remain within the Red List's category of Least Concern¹¹. However, the change in international status of the Dartford warbler serves to highlight the fragility of these other two species' recovery and the importance of the UK's role in the protection of suitable available high quality habitat¹².
- Nightjar was also amber listed in the 2015 Birds of Conservation Concern 4 (BoCC4).
 - Woodlark was red listed in 2002 (BoCC2) but numbers have subsequently recovered in England and it was green listed in the 2015 Birds of Conservation Concern 4 (BoCC4). However, it is important to note that no UK woodlark national survey has been carried out since 2006 but following local surveys for woodlark on the Thames Basin Heaths SPA¹³ the population has been generally declining, which is of great concern.

⁸ 2Js Ecology. 2010. Annex I Birds on the Thames Basin Heaths SPA Result of the 2010 Monitoring Programme for Natural England.

⁹ BirdLife International 2015. *Sylvia undata*. *The IUCN Red List of Threatened Species* 2015: e.T22716984A60252214. Downloaded on 25 November 2019.

¹⁰ Eaton, M, Aebischer, N, Brown, A, Hearn, R, Lock, L, Musgrow, A, Noble, D, Stroud, D and Gregory, R: *Birds of Conservation Concern 4: the population status of birds in the UK, Channel Islands and Isle of Man*, British Birds (108) December 2015, 708-746.

¹¹ BirdLife International 2017. *Lullula arborea* (amended version of 2016 assessment). *The IUCN Red List of Threatened Species* 2017: e.T22717411A111112585. <http://dx.doi.org/10.2305/IUCN.UK.2017-1.RLTS.T22717411A111112585.en>. Downloaded on 25 November 2019.

BirdLife International 2016. *Caprimulgus europaeus*. *The IUCN Red List of Threatened Species* 2016: e.T22689887A86103675. <http://dx.doi.org/10.2305/IUCN.UK.2016-3.RLTS.T22689887A86103675.en>. Downloaded on 25 November 2019.

¹² Due to climate influenced range shift the UK is becoming increasingly important for the Dartford warbler.

¹³ 2Js Ecology survey data TBH SPA (2011-2016).

For both nightjar and woodlark their recovery has been closely associated with their colonisation of clear-fell areas in planted forestry, yet despite these increases both species occupy only a part of their much more extensive former breeding range and prospects for further recovery may be limited¹⁴.

Current status of Annex I species populations on the SPA

15. Breeding surveys of the Annex I species on the Thames Basin Heaths SPA are undertaken annually by 2Js Ecology on behalf of Natural England¹⁵. And the following can be seen from those surveys:

Nightjar - These surveys illustrate that nightjar numbers across the Thames Basin Heath SPA have been broadly consistent for the last five years and at a higher level than when the SPA was designated, indicating a stable population.

Woodlark - despite the recent improvement in its national status, woodlark numbers have general declined on the Thames Basin Heath SPA and it is concerning that in four of the last five years there have been fewer pairs than when the site was designated and in 2018 numbers had more than halved when compared to their peak in 2007 on the SPA¹⁶. It is thought that quality of available habitat is likely the cause of this decline although other factors such as increasing levels of disturbance and/or predation, cannot be ruled out (2Js Ecology Pers. Comm., 2016).

Dartford warbler following the population crash associated with the harsh winters of 2009 and 2010 numbers have been recovering across the SPA as a result of milder winters and the lack of prolonged snow cover, but their numbers have not yet recovered to pre-crash levels.

Ockham and Wisley Commons Special Scientific Interest (SSSI)

16. Ockham and Wisley Commons SSSI is notified under Section 28 of the Wildlife and Countryside Act 1981 (as amended). The site supports a rich community of heathland plants and animals, including a larger number of rare and local insects. The SSSI covers 269.6 hectares and surrounds the M25/A3 Interchange. All SSSI are divided up into units to help with their management and conservation and each unit is considered on its own and assessed to determine its status and what further conservation measures may be required to ensure its contribution to the overall site and its features reach *favourable condition*¹⁷. There are nine units within this SSSI¹⁸ and the

¹⁴ Langstone et al (2007), Nightjar *Caprimulgus europaeus* and Woodlark *Lullula arborea* – recovering species in Britain?

¹⁵ 2Js Ecology survey data TBH SPA (2011-2019).

¹⁶ 2Js Ecology. 2016. Annex 1 Birds on the Thames Basin Heaths SPA: Results of the 2018 Monitoring Programme for Natural England.

¹⁷ **Favourable condition** for a **SSSI** is achieved when all of a site's notified features are assessed & meet the attributes and targets required. As mentioned above this is done on a unit basis and feed into for each **SSSI**, a **Favourable Condition** Table - <https://designatedsites.naturalengland.org.uk/SSSIGlossary.aspx>

¹⁸

<https://designatedsites.naturalengland.org.uk/SiteUnitList.aspx?SiteCode=s1001052&SiteName=&countyCode=&responsiblePerson=&unitId=&SeaArea=&IFCAArea=>. Accessed on 25 November 2019.

units to the south of the M25 are component parts of the Thames Basin Heaths SPA. The condition of these particular units varies between unfavourable recovering¹⁹ and favourable²⁰.

Urban Effects of Development on Heathland

17. The effects of urban development close to heathland have been well documented and include a wide range of impacts such as increased risk of fires, litter, disturbance from people and their pets, predation from pets (in particular from cats), eutrophication (nutrient enrichment, for example from dog fouling) and fly-tipping/dumping.
18. Some of these impacts, such as cat predation, are more acute where residential development is located in close proximity to areas of heathland. However, evidence has shown that other impacts, in particular recreational pressures, are much more wide ranging. Studies of visitors to the Thames Basin Heaths have shown that 76% of visitors to the SPA travel from distances of up to 5km²¹. There is a large body of research²² that demonstrates the damaging effects of such recreational disturbance on the breeding success of the three key Annex I bird species for which the SPA is designated. A summary of urban effects is presented in Table 2 below.
19. This evidence is the basis for the agreed, multi-authority approach to the avoidance/mitigation of the cumulative effects of increased housing development surrounding the SPA (as set out in the Thames Basin Heaths SPA Delivery Framework (Appendix 5)).

Table 2: Summary of key negative impacts of development close to heathland European Sites

Effect	Description	Species or group affected
Fragmentation	Loss of supporting habitats	Nectar feeding invertebrates; nightjar, woodlark
	Lack of connectivity between sites preventing movement/genetic exchange between sites	Invertebrates, plants, reptiles, birds and mammals
	Smaller site size increases edge effects from non-heathland species	Invertebrates and plants
Predation and	Access by pet cats, some of which hunt on the heath	Birds, mammals, invertebrates,

¹⁹ "Often known simply as 'recovering'. Units/features are not yet fully conserved but all the necessary management mechanisms are in place. At least one of the designated feature(s) mandatory attributes are not meeting their targets (as set out in the site specific Favourable Condition Table (FCT)). Provided that the recovery work is sustained, the unit/feature will reach favourable condition in time" - <https://designatedsites.naturalengland.org.uk/SSSIGlossary.aspx>.

²⁰ An interest feature is favourable when its condition objectives are being met. See JNCC (2019), A Statement on Common Standards Monitoring Protected Sites 2019 (<http://data.jncc.gov.uk/data/0450edfd-a56b-4f65-aff6-3ef66187dc81/CSM-Statement-2019-FINAL.pdf>)

²¹ Liley, D., Jackson, D.B. & Underhill-Day, J.C. (2005). Visitor Access Patterns on the Thames Basin Heaths. Unpublished English Nature Research Report. English Nature, Peterborough.

²² See Underhill-Day, J.C. (2005). A literature review of urban effects on lowland heaths and their wildlife. In English Nature Research Report No. 623. English Nature, Peterborough.

increased mortalities		reptiles and amphibians
	Increase in some predators on sites with greater human activity	Birds, mammals, invertebrates, reptiles and amphibians
Roads and traffic levels	Road kills from traffic	Birds, mammals, invertebrates, reptiles and amphibians
	Increased levels of noise and light pollution	Birds, invertebrates
	Roads are barriers to species mobility	Invertebrates
Disturbance to birds	Areas with high visitor pressure not settled by breeding birds, resulting in lower densities	Nightjars, woodlarks
	Adults flushed from the nest by people/dogs, disturbance linked to higher levels of predation	Nightjar
	High visitor pressure reduces productivity	Dartford warblers,
Pollution	Ground and water surface pollution from hard surfaces, spills and dumping	Plants and soils
	Air pollution from fires and vehicles	Plants and soils
Trampling	Soil compaction and erosion	Plant communities and species, invertebrates
	Damage to breeding and wintering sites	Invertebrates and reptiles
	Creation of more extensive path networks increases spatial disturbance	Birds, reptiles
Vandalism	Damage to signs fences and gates, reduces visitor information and control	
	Can affect site management practices	
Eutrophication	Enrichment of soils from dog excrement	Plant communities and species, invertebrates
	Dumping of household and garden rubbish	Plant communities and

		species, invertebrates
	Dust, salt, run-off from roads	Plant communities and species, invertebrates
Fires	Higher fire incidence on urban heaths causing: <ul style="list-style-type: none"> • Direct mortality of fauna • Temporary removal of breeding and foraging habitat • Long term vegetation changes from repeated fires 	Birds, mammals, invertebrates, reptiles and amphibians
Restrictions on management	Stock grazing-gates left open, dogs chasing stock, stock injuries	
	Objections to management e. g. scrub clearance, fencing to facilitate grazing	
	Increased costs of wardening	

The RSPB's Interest in the Case

20. Since the designation of the Thames Basin Heaths SPA in 2005, as mentioned above, the RSPB has had extensive involvement in the establishment of the Thames Basin Heaths Delivery Framework and the Strategic Access Management and Monitoring (SAMM) scheme, which were designed and implemented to ensure the effective protection of the SPA and its species.
21. The RSPB's primary concern with the present scheme is its potential impacts on the SPA and its species. As currently proposed, the scheme involves a direct land take from the SPA of 5.9 ha permanently and 8.6 ha temporarily.
22. The RSPB is grateful for its involvement in detailed discussions with Highways England and its consultants, during the pre-application phase, to ensure that the impacts upon the SPA and its species arising from the scheme are minimised and pleased to note the reduction in the scheme's land take in the application once it was made.
23. The RSPB is also grateful for the discussions on the package of compensation measures proposed by Highways England to ensure that those measures will fully address all potential adverse effects of the scheme. To be effective it is essential that there can be confidence in the compensation measures':
- (i) ecological effectiveness;
 - (ii) legal and financial security; and
 - (iii) duration of a long-term maintenance plan to ensure that they continue to function in perpetuity.
24. In addition, and separately to the requirements discussed above, the RSPB has reviewed the proposed enhancement measures and our comments on them are set out below.

25. Finally, the RSPB wishes to ensure that the justification presented by Highways England for the scheme going ahead in respect of the Conservation of Habitats and Species Regulations 2017 (as amended) is sufficiently evidenced and therefore justified, namely, the absence of alternative solutions to the scheme, and imperative reasons of overriding public interest for it and that these are clearly set out in the application documents. Please see below for our further comments on these aspects.

2. Legal Requirements

Habitats Regulations

26. The Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”) provide for the protection of ‘European sites’ and their species by including certain planning controls – as set out below. In addition, regulation 9(1) places a general duty upon competent authorities (in this instance the Secretary of State) exercising any of their functions, to have regard to the requirements of the Birds and Habitats Directives²³.
27. The Habitats Regulations set out the sequence of steps to be taken by the competent authority (here the Secretary of State) when considering authorisation for a project that may have an impact on a European site and its species before deciding to authorise that project. These are as follows:
- i. Step 1: identify the Plan or Project;
 - ii. Step 2: Under regulation 63(1)(b), consider whether the project is directly connected with or necessary to the management of the SPA. If not –
 - iii. Step 3: Under regulation 63(1)(a) consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA, either alone or in combination with other plans or projects (the Likely Significant Effect Test).
 - iv. Step 4: Under regulation 63(1), make an appropriate assessment (“AA”) of the implications for the SPA in view of its conservation objectives. Regulation 63(2) make provision for the competent authority to request further information from the Applicant for the AA. There is no requirement or ability at this stage to consider extraneous (non-conservation e.g. economics, renewable targets etc) matters in the AA.
 - v. Step 5: Pursuant to regulation 63(5) and (6), consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the SPA and its species, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions on any authorisation granted (the Integrity Test).
 - vi. Step 6: In light of the conclusions of the AA and in accordance with regulation 63(5) and (6), the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the SPA and its species, alone or in combination with other plans or projects.
 - vii. If it is concluded that an adverse effect cannot be ruled out or it is uncertain and the applicant wishes to proceed then it is necessary to pass further tests, namely that there are no alternative solutions to the application that would have a lesser effect, or avoid an adverse effect on the integrity of the site (regulation 64(1)). If there are no alternative solutions then it must also be shown that there are imperative reasons of overriding public interest for the development (IROPI) including those of a social or economic nature (regulation 64(1)). And all necessary compensatory measures for the effects on the SPA

²³ Council Directive 92/43/EEC, 21 May 1992, on the conservation of natural habitats and of wild fauna and flora

and its species, need to be secured to ensure that the overall coherence of Natura 2000 is protected (regulation 68). Only if all these tests and requirements are met can authorisation be granted.

28. It is clear that the NSIP scheme is not directly connected with or necessary for the management of SPA.

[The Wildlife and Countryside Act 1981](#)

29. In addition, section 28, the Wildlife and Countryside Act 1981 (as amended)(the WCA) as well as setting out the requirements to notification and protection SSSIs as national sites providing protection for wildlife, also includes two further requirements – namely in section 28G a duty to further the conservation of SSSIs and in section 28I the requirement for Natural England’s advice on any proposals likely to damage a SSSI and/or its features.

30. Section 28G states:

- (1) An authority to which this section applies (referred to in this section and in section 28I as “a section 28G authority” which includes the Secretary of State) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) The duty is to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

31. Section 28I Statutory undertakers duty in relation to authorising operations, states:

- (1) This section applies where the permission of a section 28G authority is needed before operations may be carried out.
- (2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, a section 28G authority shall give notice of the proposed operations to Natural England.

...

- (5) The authority shall take any advice received from Natural England into account –
 - (a) in deciding whether or not to permit the proposed operations, and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission....

[The draft Development Consent Order](#)

32. The RSPB notes that regulation 3(1)(f) seeks to disapply section 28E of the Wildlife and Countryside Act 1981. We consider that this is unnecessarily broad as currently drafted and request that a proviso to the following effect is added: “provided that any operations to which this provision would apply conform to the Landscape and Ecology Management and Monitoring Plan”.

3. The Impacts of the Scheme

33. The RSPB's comments are based on the scheme as submitted.
34. The scheme involves the permanent loss of 5.9 ha of the Thames Basin Heaths SPA and a temporary loss of a further 8.6 ha (confined to the woodland edge of the SPA).²⁴ The impacts on the SPA are summarised at paragraphs 5.16 and 5.17 of *5.3 Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures* and arise from a reduction in supporting habitat e.g. reduction in buffer between the roads and the open heathland areas.
35. Highways England have advanced a package of compensation, restoration and enhancement measures to address these issues. The RSPB's focus in these written submissions is on those measures proposed by Highways England to address these impacts and the justification for the scheme under regulation 64(1) of the Habitats Regulations and the effectiveness and security of the measures being advanced under regulation 68 in the long term.

²⁴ *5.3 Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures*, paragraph 5.1.6.

4. The case on alternative solutions and imperative reasons of overriding public interest

36. The RSPB has a number of observations upon the case set out by the Applicant in relation to the absence of alternative solutions and imperative reasons of overriding public interest (IROPI).
37. These are focused on the question of need, whether there are less damaging alternative solutions to meet that need, and whether we consider the justifications are such that imperative reasons of overriding public interest are made out.

Absence of Alternative Solutions

38. The RSPB welcomes Highways England's rejections of several more damaging options and the efforts it has made to reduce the land take of the scheme (both permanent and temporary) to a minimum. Therefore we do think the consideration of alternative scheme designs has been fully addressed. However, it needs to be highlighted that the legal requirement of an absence of alternative solutions is more wide-ranging than the scheme design, and also requires consideration of alternative means to achieve the purpose the scheme is intended to deliver. The RSPB does not have the relevant expertise to be able to comment on these wider issues but wanted to highlight the need for that consideration and that the Examining Authority and the Secretary of State must be satisfied with the case advanced by Highways England including the two further tests required by regulation 64(1), the Habitats Regulations.

Imperative Reasons of Overriding Public Interest (IROPI)

39. Although the RSPB does not have the technical expertise to review and comment on in detail the Applicant's traffic safety figures, we have considered the Transport Assessment Report and its arguments on need²⁵, focusing on the five key objectives included namely:
- Improve journey time reliability and reduce delay
 - Improve safety and reduce both collision frequency and severity
 - Improve crossing facilities for pedestrians, cyclists and horse riders and incorporate safe, convenient, accessible and attractive routes
 - Minimise impacts on the surrounding local road network
 - Support projected population and economic growth in the area

We wish to highlight that for each of these objectives we consider it is important for the Examining Authority and the Secretary of State to consider whether taking these issues into consideration risks increasing any impacts (such as facilitating further development) upon the Thames Basin Heaths SPA.

40. The RSPB, of course, recognises the very important issue of highway safety for all possible users, but are concerned by Highways England's advancement of arguments under the other headings – namely improve journey time reliability and reduce delay, minimise impacts on the surrounding local road network but in particular - support projected population and economic growth in the area.
41. The RSPB also notes the assertion that the scheme offers beneficial consequences of primary importance to the environment²⁶. As the environmental measures provided by this scheme are

²⁵ 7.4 Transport Assessment Report, paragraph 1.2.3.

²⁶ 5.3 Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures, paragraphs 4.3.20 to 4.3.22.

required as a result of the scheme rather than being the reason for the promotion of the scheme we do not consider that this justification applies.

Improving journey time reliability and reducing delay

42. The RSPB is not commenting in detail on this argument but do think it is important to mention that we do not consider that the compounding of small time savings for journey times is capable of justifying damage to a protected site of European importance on its own or as part of the wider justification.

Improving safety and reducing both collision frequency and severity

43. As mentioned above the RSPB recognises the important of this need and therefore considers this the strongest argument advanced by Highways England. However, we do wish to stress again it is for the Examining Authority and the Secretary of State to consider whether the details provided are of a level to be *imperative* reasons of *overriding* public interest and that this evaluation can only be undertaken once the Examining Authority and the Secretary of State have reached the conclusion that there are no less damaging alternative solutions available that would serve to reduce the frequency and severity of collisions to an acceptable level.

Improving crossing facilities for pedestrians, cyclists and horse riders and incorporate safe, convenient, accessible and attractive routes

44. As with our comments above on highways safety, there is also considerable merit in improving crossing facilities ensuring that convenience, accessibility and attractiveness of these routes to encourage people to use them as opposed to less safe alternatives²⁷. However we are not sure they demonstrate IROPI in their own right, particularly if there are potential risks in them encouraging increased recreational access to parts of the SPA (to which access is currently constrained by the road layout).

Minimise impacts on the surrounding local road network

45. The RSPB thinks that consideration of this argument as part of the IROPI justification should be constrained to impacts upon safety.

Supporting projected population and economic growth in the area

46. Given the RSPB's concerns about the potential impacts of housing development and anything else that may lead to increased risks to the SPA and its species, we are very concerned that this is being advanced as an IROPI argument here. We note that it is anticipated that the scheme will allow an additional 2,200 trips (a 28% increase)²⁸. We do not consider that either housing development or works which facilitate such development (or anything else that may lead to an increased risk to the SPA and its species), are ever likely to constitute imperative reasons of overriding public interest, and we are clear in our view that this should not be the case here.

²⁷ See for instance 5.3 *Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures*, paragraph 4.3.16, which notes that a route "feels unsafe" along with crossing points on the junctions that have no signals.

²⁸ 5.3 *Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures*, paragraph 1.1.6.

5. The Compensation Package

47. It is vital that the compensation package is appropriately designed and effective in addressing the loss to the SPA caused by the scheme and all possible resulting conservation impacts (if mitigation is not possible) and it is properly secured to ensure conservation measures will be delivered including in the long term. This is central to the evaluation of its potential effectiveness, and hence its suitability under regulation 68.
48. The RSPB does consider the compensation package of two areas of habitat that will be enhanced to form wood pasture with a 20% tree cover, is likely to be effective.
49. The RSPB welcomes Clause 8(3) in the requirements set out in Schedule 2 of the draft DCO (under the heading of Thames Basin Heaths Special Protection Area (SPA) Compensatory Habitat Creation and Enhancement Measures) that the compensatory habitat creation measures must be begun before any part of the authorised development within the boundaries of the SPA may commence unless otherwise agreed by the Secretary of State after consultation with Natural England.
50. However, despite the suitability of the conservation measures and the welcome stipulation in the draft DCO, there are a number of issues associated with the delivery of the compensation package that have yet to be secured and therefore the RSPB continues to be concerned but hopes that these further issues can be resolved and included within the DCO to ensure consent could be given with confidence in the compensatory measures. We set our concerns out below.

Ownership of the Compensation Land

51. One of the crucial requirements for compensation measures is that they are certain and secured – legally and financially. Currently, the RSPB is not aware of any legal agreements having been secured to allow the *compensation* land to be used as such (we note that the Examining Authority has raised this issue in its First Written Questions ExQ1.4.27). The landowners, Surrey County Council and the Royal Horticultural Society, are currently under no legal obligation to make their land available for compensatory measures, so until such agreements have been secured it is not possible to conclude that the compensation will be implemented. Therefore the RSPB urges the Examining Authority and the Secretary of State to adopt one of the two following approaches if the compensation land has not been secured by the end of the examination:
- i. To refuse consent as the necessary legal agreements are not secured; or
 - ii. To condition the scheme via the DCO such that no scheme works can begin until the necessary legal agreements are secured to the satisfaction of the Secretary of State and Natural England.

We wish to add that Option (i) is consistent with Action Point 5 agreed at Issue Specific Hearing 1 in relation to the draft Development Consent Order, which requires the Applicant “To ensure that, as far as is in their power, any and all other consents outside the DCO required for the scheme are progressed with and concluded by the close the Examination.”

Duration of habitat management and monitoring of habitats created, restored and/or enhanced

52. The RSPB considers it very important when evaluating the likely effectiveness of habitat creation, restoration and/or enhancement, to consider the duration of proposed management and monitoring. The reason is straightforward. Lowland heathland is a successional habitat i.e. it requires management to retain its characteristic features. If left unmanaged it will develop into woodland which will no longer support the birds for which the SPA is designated. Therefore, since the compensation and enhancement habitat must be in an appropriate condition for the

lifetime of the operation of the scheme (we note that the scheme assessment under webTAG uses a 60-year appraisal period²⁹), the suggested 20 years for habitat management and monitoring, as set out in the draft SPA Management and Monitoring Plan³⁰, is not sufficient.

53. Instead, the RSPB would expect to see a clear statement of how the long-term management of the created, restored and/or enhanced will be secured in perpetuity. This does not need to cover who will do the works (as such matters can be dealt with at an appropriate time), but must clearly set out how the works will be contracted for (i.e. by the land owners or an alternative party) and funded (i.e. who will be responsible for paying for the long-term maintenance works). In the absence of such a statement serious concerns remain about the long-term security of these measures and therefore whether the compensatory measures as currently proposed can be relied upon.
54. The RSPB is also concerned by the approach proposed towards monitoring the impacts. Despite it being provided as compensatory habitat for SPA birds, the Objectives set out in paragraph 7.3.4 of the SPA Management and Monitoring Plan do not make any reference to either SPA birds or the invertebrates that they forage upon. This is a very concerning omission and the RSPB strongly recommend that both are included in the monitoring package set out in table 7.3.5 of the SPA Management and Monitoring Plan. We note that paragraph 7.11.1 sets out a reason for this approach (concern about the potential impact of harsh winters on the SPA bird population) but we consider that it is possible for this to be taken into account when considering the effectiveness of the compensatory measures (i.e. setting an expected number of birds of each species that would be found on the compensatory habitat save where one or more harsh winters has caused the population numbers to decline significantly). To this end we note that the proposed frequency of monitoring of SPA birds (set out in table 7.11.1 of the SPA Management and Monitoring Plan) is such that it may be difficult to identify the extent to which one or more harsh winters have caused the population to decline. Consequently, we recommend that Highways England, the Examining Authority and the Secretary of State give careful consideration to a revision of the frequency of monitoring.
55. We have similar concerns in relation to the restoration of the temporary land take areas within the SPA/SSSI, noting that although these measures are intended to benefit invertebrates that there is no such objective (paragraph 7.7.3) and that this is not included as a monitoring requirement (table 7.7.5). We note with concern the absence of this requirement and the limited 5 year monitoring period (paragraph 7.7.5.1) which raises concerns about the level of confidence that can be attributed to the likely effectiveness of the restoration measures and the degree to which the effects will be temporary.

Steering Group

56. The RSPB welcomes its proposed inclusion on the Steering Group to inform decision making throughout the duration of the SPA Management and Monitoring Plan.³¹ However, we note that terms of reference are not yet available, which limits our ability to assess the likely effectiveness of the steering group which will depend in particular on setting an appropriate frequency of meetings and establishing an appropriate means of resolving any potential conflicts.³² We note that the dispute resolution method has been picked up by the Examining Authority in its First

²⁹ 5.3 Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures, paragraph 4.3.10, 4.4.28, and Appendix D, paragraph D.1.3.

³⁰ Appendix 7.19 SPA management and monitoring plan, Table 7.2.1.

³¹ Appendix 7.19 SPA management and monitoring plan, paragraph 7.2.1.11.

³² Appendix 7.19 SPA management and monitoring plan, paragraph 7.2.1.13.

Written Questions (ExQ1.4.26). We consider that a draft set of terms of reference need to be made available to be considered as part of the overall scheme package.

6. The Enhancement Package

58. Throughout our discussions with the Applicant we have been clear that in order to be classified as “enhancement” the measures that are proposed need to be over and above what are required for the SPA to be in favourable condition.
59. The RSPB is confident that if the enhancement areas are implemented in the way proposed, and with appropriate follow up management, they will benefit the Annex 1 bird species (Dartford warbler, nightjar and woodlark) as well as a wider suite of heathland species of birds and other wildlife.
60. The RSPB has set out its concern in relation to the monitoring approach to the compensatory habitat at paragraph 54 above. We have similar concerns in relation to the woodland and heathland restoration that is presented as part of the enhancement package. We recommend that the objectives (set out in paragraphs 7.4.4 and 7.5.4) and monitoring requirements (set out in tables 7.4.4 and 7.5.4) are also amended to reflect the heathland birds that the measures are intended to benefit.

The potential green bridge

61. The RSPB notes the recent letter from Highways England stating the intention to widen the potential green bridge from 10m to 25m. We consider that this will be the absolute minimum that would be acceptable to enable the bridge to function ecologically. The RSPB will not be engaging further with this aspect of the scheme and we defer to Surrey Wildlife Trust on this issue.

7. Conclusions

63. The RSPB has highlighted a number of concerns associated with the security of delivery of the proposed compensatory measures, along with their effective future monitoring and management. We consider it vital, so that the compensatory measures can be taken fully into account, that before the end of the examination the Examining Authority be provided with information that provides the confidence required, namely:

- the legal agreement of the landowners for the use of their land as compensatory measures has been secured and is compatible with the land's use as compensation, or that the necessary compulsory purchase measures³³ are being put in place; and
- adequate funding will be made available to enable monitoring and management of the compensatory measures in perpetuity.

64. For the reasons stated above the RSPB considers that whilst the ecological measures proposed for compensation, restoration and enhancement are appropriate, the current state of the documents associated with the Development Consent Order mean it is not currently possible to have the necessary confidence that the package will be delivered.

³³ It is our understanding that if the landowners refuse to give their consent it may still be possible for Highways England to request powers within the DCO for compulsory purchase of the required land.