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Planning Inspectorate

**BY EMAIL ONLY**

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Dear Planning Inspectorate

## **M25 Junction 10 / A3 Wisley Interchange Project – TR010030**

### **The Examining Authority's written questions and requests for information (ExQ1) - Issued on 20 November 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.

Please find below the Examiner's questions to Natural England with our responses:

#### **1.4.2 Applicant and Natural England (NE)**

**Please can you provide the ExA with an update on the discussion around the inclusion of the Heathrow Expansion in the scope of the in-combination assessment? Are both of you in agreement with the scope?**

Natural England has discussed this further with the applicant who provided helpful explanation of the rationale behind the decision not to include Heathrow Expansion in the scope of the in-combination assessment. Whilst the detail of the scope of Heathrow Expansion was not available at the early stages of the M25/A3 J10 improvement scheme development, and therefore could not be included in the scope of the assessment as a 'plan or project', the more recent design plans for Heathrow Expansion state clearly that the proposal seeks to avoid net increase in vehicle movements. With this principle in place the project does not have the potential to have in-combination effects through additional aerial pollution via vehicle emissions. Natural England is satisfied that this aspect has been properly considered by the applicant.

#### **1.4.9 Applicant, NE and Surrey Wildlife Trust (SWT)**

**Noting the information in the HRA Reports and the SPA MMP [APP-105] around existing management plans and Countryside Stewardship arrangements for land proposed as SPA compensation land, can the Applicant, NE, and SWT comment on whether the compensation measures and the enhancement measures can be considered to be in addition to the actions that are normal practice for the Thames Basin Heaths SPA.**

The compensation measures and the enhancement measures set out in the application are certainly outside the scope of existing management plans and legal agreements. With regard to the current 10 year Countryside Stewardship agreement held by Surrey Wildlife Trust, this is limited in terms of the areas of land that it pertains to at Ockham and Wisley Commons SSSI and the works required. Management obligations in the agreement relate to existing

areas of open heathland and three discrete grassland areas only, and place no obligation on the agreement holder to expand the area of heathland through tree felling or other works. There are no legal requirements on Surrey County Council or Surrey Wildlife Trust to carry out the works proposed as compensation and enhancement measures arising out of the designation of the land as SSSI or SPA. The maintenance of the integrity of the SPA and the maintenance of the SSSI in favourable condition is achieved to a satisfactory level through management of the existing areas of open heathland and open water - this has consistently been the basis of our advice to Surrey Wildlife Trust. In other component parts of the Thames Basin Heaths SPA the felling of blocks of conifers and restoration of heathland from conifer woodland are critical elements of habitat maintenance required to sustain populations of woodlark, Dartford warbler and nightjar, the three species for which the SPA is classified but that is not the case at Ockham and Wisley Commons where management effort is focussed, rightly, on maintenance of suitable conditions in the areas of existing open heathland habitat.

In the case of the area of grassland which is proposed to be included in the SPA compensatory measures (C1) which is included in the current Countryside Stewardship agreement the proposed measures are additional to the requirements of the agreement. These measures are specifically intended to improve habitat suitability for foraging nightjar by increasing structural variation, which is over and above the primary objective of the agreement which is to maintain species-rich grassland.

#### **1.4.11 Applicant and NE**

**Please can you provide an update regarding progress made to address issues raised in NE's RR [RR-020], including in relation to monitoring and management of enhancement measures, re-instatement of temporary land-take, and drainage design, and the level of agreement reached in this regard? Can NE explain the extent to which efforts in this regard affect the conclusions presented in the Applicant's HRA?**

Natural England met with representatives of Atkins in September to discuss this and other issues. It was agreed that the detail of monitoring will be subject to further discussion. However, there are no significant areas of disagreement between Natural England and the applicant over this aspect. Our concern is to ensure that the monitoring procedure is appropriate to enable conclusions to be drawn over the success or otherwise of the compensatory measures. This monitoring will be in addition to an existing programme of bird recording across the whole of the Thames Basin Heaths SPA, including at Ockham and Wisley Commons SSSI. The key aspect will be to ensure that specific monitoring is in place which is able to determine whether the compensatory measures are effective in replacing the supporting function of the areas of habitat which will be permanently lost as a result of the project. Natural England is confident that the applicant understands this.

Natural England is confident that the monitoring procedures as currently set out provide sufficient safeguard to allow for external scrutiny and review of the success or otherwise of management of the areas subject to compensatory and enhancement measures. The proposed establishment of an advisory group which will have the ability to identify the need for changes to management or monitoring procedures provides a powerful mechanism to ensure that the desired objectives are achieved.

There is agreement between the applicant and Natural England that the detail of management of the compensatory and enhancement areas will be the subject of further discussion as the detail of the scheme is developed. Natural England is confident that the applicant has a good understanding of the methods of habitat enhancement and heathland creation which will be required at this site.

It has been agreed that there will be a need for further discussion between the applicant and Natural England over the detailed design of road drainage features and the re-instatement of

areas of temporary land-take. Natural England is confident that the applicant understands the importance of ensuring that road drainage does not pose a risk to the features of special nature conservation interest at Ockham and Wisley Commons SSSI, in particular, wetland features such as mires, wet heath and Boldermere Lake.

Whilst these aspects will require further discussion Natural England is confident of reaching satisfactory conclusions. There are no areas of disagreement between Natural England and the applicant over these aspects and they do not affect our view of the conclusions in the HRA.

#### **1.4.24 Applicant and Natural England**

**Whilst you have both agreed that the areas of compensation land can be considered for recommendation to be classified as SPA please provide details of the process by which this would take place. Furthermore, what is the likelihood of this land not becoming SPA and if that were to be the case what implications would this have in terms of the 'compensation' element of the Habitats Regulations?**

Where a competent authority determines it necessary to proceed with a plan or project notwithstanding an adverse effect on a European site, because there are no alternative solutions and there are imperative reasons of overriding public interest, all necessary compensatory measures must be secured and provided to the satisfaction of the Secretary of State. The project proponent must formulate, fund and deliver the compensatory measures, and the competent authority should satisfy itself as to the efficacy of the compensatory measures and ensure that they will be implemented.

In the above situation, the UK Government has to ensure that the coherence of the European Site network is secured. It is essential that compensatory measures are effective, comprehensive and put in place in time to provide fully the ecological functions for which they are intended to compensate. In general, compensation should be delivered before the adverse effect occurs so as to ensure that there is continuity of ecological function and the coherence of the European Site network is protected.

Member States are required to inform the European Commission where compensation takes place and to give details of the measures adopted and the reasoning which led to the project or plan being approved. This is the responsibility of the appropriate authority (in this case the relevant Secretary of State). The Commission's role is to advise the Member State whether the compensation meets the provisions of the Directive, but not to suggest what would be suitable compensation.

Whether or not the compensation land is designated formally as part of the SPA is a secondary consideration. In practice, whenever such cases are submitted by UK Government to the European Commission the land is treated as 'de facto SPA' with all of the implications associated with classified SPAs.

I am afraid we do not have any information on the likelihood of this land becoming compensation. We are hopeful it does. If for whatever reason the compensation land could not come forward or be adequately secured, then Natural England would have serious concerns about this scheme. The proposed compensation is critical for this NSIP passing the tests of the Habitats Regulations. We would draw your attention to the following DEFRA link for more information on this matter <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>

#### **1.4.28 LAs, NE and Surrey Wildlife Trust**

**In Appendix 7.11 Great Crested Newts [APP-097], Appendix 7.12 Reptiles [APP-098] and Appendix 7.14 Otters and Water Voles [APP-100] the Applicant indicates the presence of great crested newts, reptiles (including sand lizards) and otters either within, or in close proximity, to the Proposed Development. Do you consider that the Applicant has had sufficient regard to the presence of these species in drafting the Requirements in the dDCO, the Outline CEMP [APP-134], the Landscape and Ecology Management and Monitoring Plan (LEMP)[APP-106], the SPA MMP[APP-105]. If not, then what other measures would you wish to see included?**

The presence of specially protected species and potential impacts arising from the scheme has been the subject of discussion between Natural England and the applicant from the early stages of project planning and design. Natural England is satisfied that our advice over ways of working to avoid or minimise the risk of impacts has been adopted by the applicant and that the issue has been given due weight. Natural England has agreed a range of requirements that will be submitted with applications for protected species licences for activities affecting bats and badgers, as set out in the Letter of No Impediment provided by the applicant. There are outstanding issues of concern to Natural England outside the scope of licensing which will be the subject of further discussion with the applicant as the detail of the CEMP is developed, such as the design of road lighting, the design of lighting at works compounds and temporary lighting during construction. These aspects have the potential to have adverse impacts on the foraging behaviour of bats (as well as nightjar). However, we are satisfied that the applicant has acknowledged that this is an important issue and has agreed to discuss this further with Natural England. It should be possible to avoid or reduce the risk of impacts through careful phasing of works, selection of type of lighting used and other measures.

#### **1.4.33 LAs, NE, RSPB and Surrey Wildlife Trust**

**Please confirm whether or not you are satisfied with the amount, nature and proposals for long-term management of both the SPA compensation land and the SPA enhancement areas. If not, then please state why and explain any other measures you would wish to see included.**

The applicant acknowledges that the document setting out the proposals for management and monitoring of the SPA compensation and enhancement areas is a 'working document' subject to further discussion with stakeholders, including Natural England. We will welcome further discussion. Whilst the detail of management in these areas has not yet been provided by the applicant Natural England is in agreement over the broad objectives and principles set out in APP105. We have been engaged with site meetings alongside other stakeholders to discuss appropriate management with the applicant, so that this provides the desired functions for Annex 1 bird species, such as expansion of open heathland, provision of improved linkage between blocks of habitat, improved habitat structure and better habitat conditions for feeding nightjar. Natural England is confident that the applicant has clear understanding of the importance of achieving these objectives within a reasonable timescale in the SPA compensation and enhancement areas.

It will be important to ensure that the applicant properly estimates the cost of achieving the long-term management and monitoring objectives, and that sufficient funding is allocated in the project budget. Natural England has not yet seen information on this aspect but it is our understanding that there is work in progress to address this. Natural England is able to assist the applicant in this regard.

**1.4.34 LAs, NE, SWT**

**Are you satisfied with the duration of management/monitoring for each management type as set out in Table 7.2.1 of [APP-105]?**

Natural England is satisfied with the proposed duration of management/monitoring set out in Table 7.2.1. In our experience the proposed timescales are likely to give sufficient time for implementation of necessary work and allow for monitoring of the success or otherwise of implementation.

It is acknowledged that the SPA Management and Monitoring Plan (APP105) is a draft document and subject to development through further discussion between the parties involved. Natural England will be party to those on-going discussions.

Note that the duration of monitoring of aspects relating to specially protected species will be determined by conditions attached to protected species licenses, such as for bat mitigation works, or the closure of badger setts.

**1.15.8 LAs and NE**

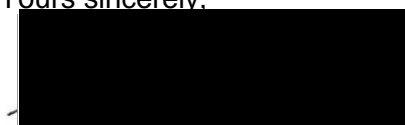
**Are you satisfied with the relationship between the CEMP and the HEMP, and that the HEMP would provide sufficient safeguards in regard to environmental protection measures? If not, then please detail what measures you would wish to see specifically included in the HEMP.**

Natural England is satisfied with the proposed wording in the draft DCO to ensure that the safeguards and provisions set out in the CEMP will be carried forward and incorporated in the HEMP. Natural England has recently been in discussion with the applicant over aspects such as the detail of longer-term environmental monitoring and re-iterated the need for consideration of measures to reduce the risk of impacts on bats through design of lighting. Some of this detail will require further discussion. However, Natural England is satisfied that we will be in a position to agree the content of both CEMP and HEMP with the applicant through on-going discussion as the detail of scheme construction is developed.

**1.15.11 LAs and NE Please comment on the proposed wording of R5(1) having particular regard to the tailpiece that would potentially allow for an amended scheme that has not been subject to this Examination process to be approved by the Secretary of State.**

Natural England is satisfied that, as the Secretary of State is bound by the same requirements as the Examining Authority any amendments made to the scheme would be subject to the same tests, as set out in the Conservation of Species and Habitats Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended). Natural England would expect to be consulted over any amendments which may have a material effect on the integrity of the Thames Basin Heaths SPA, the Ockham and Wisley Commons SSSI, or have implications for specially protected species. We are confident that in such a scenario there is no additional risk of adverse impacts in respect to those aspects for which Natural England has a specific regulatory and advisory role.

Yours sincerely,



Marc Turner  
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