

**M25 JUNCTION 10/A3 WISLEY INTERCHANGE IMPROVEMENT SCHEME
PROPOSED M25 JUNCTION 10/A3 WISLEY INTERCHANGE DEVELOPMENT
CONSENT ORDER (“DCO”)
ROYAL HORTICULTURAL SOCIETY (“RHS”) – REGISTRATION NUMBER 20022900**

**OVERVIEW OF MATERIAL SUBMITTED ON BEHALF OF THE RHS AT
DEADLINE 3 (28 JANUARY 2020)**

This Overview is submitted on behalf of the RHS. Richard Max & Co LLP are the duly appointed solicitors to the RHS and are authorised to submit this Overview and other documents on its behalf.

OVERVIEW

1. This Overview summarises the position of the RHS following ISH2 and encloses various additional documents in accordance with the requirements of the ExA.

2. The additional documentation comprises:
 - **Appendix 1** – *Summary of RHS Oral Case at ISH2;*
 - **Appendix 2** - *Submissions and written responses to REP2-014 including Appendices X and Y; Managing Natura 2000 Provisions; TTHC Drawings: M16114-A-051 ‘Ockham Roundabout: South Facing Slips (including Ripley Services) – Option 1’ and M16114-A-052 ‘Ockham Roundabout: Comparison between RHS Alternative and DCO Scheme’.*
 - **Appendix 3** – *Written responses to REP2-022.*
 - **Appendix 4** – *Letter from BDB Pitmans to Richard Max & Co dated 24 December 2019.*
 - **Appendix 5** – *“Counterculture” Report dated November 2017.*

- **Appendix 6** – *Plans showing recent consented development at RHS Wisley.*
- **Appendix 7** – *Travel Plans and Section 106 Agreement associated with RHS Wisley consented development.*
- **Appendix 8** – *Plans showing RHS Redwood Trees still at risk of harm by the DCO Scheme and Alignment Options Assessment.*

POST-HEARING SUBMISSIONS

Highways and traffic impacts

3. The RHS maintains its position that the DCO Scheme would result in the significant worsening of access to and from the RHS Garden. Each visitor would have to drive further (round trip) when visiting the RHS Garden and the new route, whether via the signposted A3 or via local villages, would be significantly less attractive. Cumulatively, the DCO Scheme would add approximately 3.0 million additional miles to the road network each year via the signposted route.
4. In comparison with the DCO Scheme, the RHS Alternative Scheme would result in much improved access arrangements; reduced journey times and less vehicular mileage (and therefore less pollution).
5. HE's modelling shows that all RHS traffic from the south would not use the A3 Ripley Bypass route (strategic Road Network) but instead travel via the local villages of Send and Ripley. This is a less commodious route than the existing A3 route and results in significant inconvenience for RHS visitors.
6. HE's modelling has not modelled the DCO Scheme taking accurate account of the RHS or Wisley Airfield. Without this modelling the ExA cannot properly assess the impact the DCO Scheme would have.
7. Further and in any event, HE's modelling cannot be relied upon because by its own admission (see letter from BDB Pitmans to Richard Max & Co dated 24 December 2019 – **Appendix 4**) HE has not been able to validate the congested conditions within Ripley. As a consequence, the HE

Baseline modelling is deficient which subsequently affects the reliability of the future modelled scenarios (with the DCO Scheme). Despite these deficiencies, HE now relies on the route through the villages in the future to accommodate traffic currently on the Strategic Route Network (A3).

Air Quality

8. HE's air quality analysis relies on the flawed traffic modelling referred to above. Further and in any event, the air quality material before the ExA has a number of flaws that undermine the credibility of the assessments of both ecosystem and health impacts. The key flaws with regard to the ecosystem assessment are:
- the assessment does not take into account the in-combination impact of the DCO Scheme with other plans and projects, as required by the Habitats Regulations.
 - the calculations of nitrogen deposition (Ndep) have not included ammonia emissions from road vehicles and are therefore underestimated; and
 - the exceedances of the critical level for NOx have not been considered either alone or in-combination.

As a consequence, the ExA cannot rely on the findings as presented.

9. With regard to health impacts, the model underestimates the concentrations of nitrogen dioxide in Ripley. This is because the model has not been verified and adjusted against the monitoring data for Ripley. Again, this means that the ExA cannot rely on the conclusions that HE presents in this regard.
10. The RHS Alternative Scheme would lessen the air quality impacts as traffic flows and associated emissions through Ripley and on the A3 past the SPA would be significantly reduced.

Habitats Regulations and Biodiversity

11. The HE SIAA is in turn based on the flawed air quality data referred to above. Further and in any event, the SIAA does not comply with published guidance or established case law and cannot be relied upon.

12. The air quality assessment is fundamentally flawed and therefore does not meet the required test of demonstrating *beyond reasonable scientific doubt* that there is no adverse effect from air quality upon the SPA.
13. The ExA must conclude that adverse impacts upon the integrity of the site and surrounding areas from changes in air quality cannot be ruled out and that the RHS Alternative Scheme must be considered as an alternative. HE has not assessed the RHS Alternative (or any variation on it, e.g. just the south-facing slips). It would therefore be unlawful for the DCO Scheme to be approved.

Socio-economic matters

14. The RHS maintains its position that the adverse highways and traffic impacts caused by the DCO Scheme will result in significant direct and indirect economic loss in relation to the operations of RHS Wisley Garden.
15. The evidence base provided by the RHS forecasting the potential reduction in visitor trips to the RHS Wisley Garden is robust and no credible counter-evidence is produced by HE.

SUMMARY OF POSITION ON AGREEMENT OF SoCG

16. A draft SoCG has been circulated following ISH2 by HE including a number of propositions which are under discussion between the parties.

FURTHER INFORMATION REQUESTED FROM THE RHS BY THE ExA

17. Copy of the “Counterculture” Report referred to by Mr Bunney in [REP1-039] and during the course of the ISH is attached as **Appendix 5**.
18. Plans to illustrate how the Gardens were prior to the implementation of the RHS’s investment programme and how they will be at the conclusion

of that programmes in terms of built development are attached as **Appendix 6**.

19. Travel Plans associated with built development at the RHS Gardens are attached as **Appendix 7**.

UNRESOLVED DESIGN ISSUES LEADING TO POSSIBLE TREE ROOT IMPACTS

20. The RHS remains extremely concerned that the trees which were meant to be protected along the RHS Garden boundary of the A3 by the introduction of the overbridge from Wisley Lane remain at risk.

21. The trees in question are shown on the Atkins survey carried out for the HE, pdf attached as **Appendix 8**.

22. On 27th January the RHS received an Alignment Options Assessment (also forming part of **Appendix 8**) which RHS arboriculturalists are now considering. The RHS has asked HE for the survey and technical information that would support this high-level design change but this has not yet been supplied.

23. If what is proposed in the Alignment Options Assessment is to be incorporated in the DCO Scheme, this will require further changes to the DCO Scheme. The RHS requests the ExA to direct HE that all available technical evidence and procedural time and process is afforded through a Targeted Consultation on detailed and deliverable design. The RHS reserves its position in this regard.

LEGAL SUBMISSIONS

24. For the reasons set out in the RHS's evidence and its submissions at ISH2, the ExA cannot conclude with certainty (this being the relevant legal threshold) that the DCO Scheme would not harm the integrity of the SPA.

25. It follows that the DCO Scheme should only be consented if (amongst other things) it could be shown that there was no reasonable alternative

that would cause less harm to the SPA – see regulation 64 of the Conservation of Species & Habitats Regulations 2017.

26. HE has not assessed the RHS Alternative Scheme as an alternative to the DCO Scheme. It plainly should have done. In particular, the provision of south facing slips at the Ockham roundabout would take several million vehicle miles off the road each year, thereby reducing the impact of vehicle pollutants on the SPA.
27. The HE has belatedly tried to argue that there are practical issues with delivering the south facing slips, but its arguments are far too light touch to justify the conclusion that the south facing slips could not have been included in the DCO Scheme. Most obviously, HE's observation that the south facing slips would require the acquisition of third party land is a point that applies equally to land that was included in the DCO scheme. HE has provided no engineering analysis to support its other contentions as to the delivery of the south facing slips. It simply cannot be concluded that the south facing slips would not be deliverable.
28. HE has additionally sought to argue that the RHS Alternative Scheme would not be less harmful to the SPA than the DCO Scheme. Again, however, it has provided no substantive analysis to support its position.
29. Finally, HE confirmed at ISH2 that the extent of the DCO scheme was influenced by the availability of funding. That is no answer to the legal requirement for a proper assessment of reasonable alternatives.
30. In conclusion, it is absolutely plain that the inclusion of south facing slips (either on their own, or as part of the RHS Alternative) should be considered to be a reasonable alternative to the DCO Scheme. There has been no substantive assessment of the RHS Alternative Scheme and therefore it cannot be concluded that there is no reasonable alternative to the DCO Scheme. It would therefore be unlawful for the DCO Scheme to be confirmed.

CONCLUSIONS

31. For the reasons set out above, the ExA is asked to require HE either to undertake a proper assessment of the RHS Alternative Scheme in accordance with the requirements of the Habitats Regulations or to withdraw the DCO Scheme. The ExA is asked to consider and action this issue now, to avoid further wasted costs.

Richard Max & Co LLP for and on behalf of the RHS

28 January 2020