

Response to 9.19 Applicant's Comments on Written Representations

**Submitted for Deadline 3
28 January 2020**

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**



REP1-045-2 – Imperative Reasons of Overriding Public Interest (IROPI)

The RSPB notes Highways England's response. However, there are three issues associated with their approach:

- Firstly, the derogation tests must be approached sequentially, so it is not appropriate to take into account the outcomes of compensatory measures at the consideration of the IROPI justification. The adequacy or otherwise of proposed compensatory measures is a separate and subsequent stage in the derogation tests.
- Secondly, as compensatory measures are intended to address the harm caused by the scheme, they cannot be used as a justification for the scheme. The purpose of such measures is to protect the overall coherence of the Natura 2000 network.
- Finally, in relation to the compensation measures proposed, it is important to consider the *reason* for the scheme when considering whether there are beneficial consequences of primary importance to the environment – in this case, it is a road scheme, not a scheme whose central purpose is environmental protection. By way of example, the RSPB undertook a managed realignment scheme at its Titchwell reserve that involved damage to an SPA, but this was done in order to protect a Special Area of Conservation (SAC) from coastal erosion. In that case, the *reason* was clearly environmental protection: the damage to the SPA was compensated.

The RSPB does not wish to engage in further debate about this issue but has raised it as it is aware that this case is being carefully scrutinised by other developers in relation to this issue.

REP1-045-4 – Improving crossing facilities for pedestrians, cyclists and horse riders and incorporate safe, convenient, accessible and attractive routes.

The RSPB notes Highways England's response to our comments on this matter:

- The changes may increase recreational activity in the wooded fringes of the SPA;
- The changes may increase recreational activity along a track already well used;
- The changes will not facilitate increased public access into the open heathland parts of the SPA;
- The Scheme could improve recreational access into the large areas of replacement land in two quadrants around junction 10 that are not within the SPA and so could reduce recreational pressure on the SPA heathland (on the basis of it being a larger area to explore and additional circular routes being provided).

The RSPB wishes to understand further the potential implications of a possible increase in recreational activity in the wooded fringes of the SPA. The RSPB wishes to understand further the potential implications of a possible increase in recreational activity in the wooded fringes of the SPA. The RSPB seeks clarification from Highways England on the precise location of the public access points in/adjacent to the wooded fringes of the SPA. Ideally this would be in map form so that we can understand how far they will be from the open heathland, as this will have implications for the scale of the possible increase in recreational disturbance issues e.g. from off-lead dog walking.

We have sought further clarification directly from Highways England in respect of what it means by "replacement land" and its role in relation to recreational access. Based on its response, it is the RSPB's understanding that the "replacement land" is outside the SPA and is driven by common land requirements, and so is not part of the compensatory measures. On this basis, the RSPB considers

that such “replacement land” could, as Highways England suggest, act to reduce recreational pressure on the SPA heathland and would not place recreational pressure on the SPA compensatory measures.

However, it remains the RSPB’s view that any benefits arising from such replacement land are not relevant to the IROPI issue.