

M25 junction 10/A3 Wisley interchange

TR010030

9.50 Applicant's comments on Ronald Alderson's Deadline 3 submission

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M25 junction 10/A3 Wisley interchange

Development Consent Order 202[x]

9.50 APPLICANT'S COMMENTS ON RONALD ALDERSON'S DEADLINE 3 SUBMISSION

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Author:	M25 junction 10/A3 Wisley interchange project team, Highways England and Atkins

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1. Introduction

- 1.1.1 This document sets out Highways England's comments on the Deadline 3 submission [REP3-068] and three appendices [REP3-069, REP3-070 and REP3-071] submitted by Keystone Law on behalf of Ronald Alderson (received on 28 January 2020).
- 1.1.2 Where issues raised within the submission have been dealt with previously by Highways England, for instance in response to a question posed by the examining authority in its first round of written questions [REP2-013], in Highways England's comments on written representations [REP2-014] or within one of the application documents or another examination document, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 In order to assist the examining authority, Highways England has not provided comments on every point made in the submissions including for example statements which are matters of fact and those which it is unnecessary for Highways England to respond to. However, and for the avoidance of doubt, where Highways England has chosen not to comment on matters contained in the response, this should not be taken to be an indication that Highways England agrees with the point or comment raised or opinion expressed.
- 1.1.4 Section 2 responds to written submissions made on behalf of Ronald Alderson [REP3-068] and Section 3 responds to specific questions directed to Highways England [REP3-070]

2. Highways England's comments on submissions made at Deadline 3 on behalf of Ronald Alderson of Park Barn Farm [REP3-068]

Issue/Objection	Highways England's response to interested party's written representation	Interested party's submissions at Deadline 3	Highways England's comments in response at Deadline 4
<p>(a) Overcompensation for the loss of SCL</p> <p>Acquisition of the land at Park Barn Farm ("PBF") may be desirable, but it is not actually required as replacement land ("RL") to compensate for the Special Category Land ("SCL") which is needed for construction of the Scheme.</p> <p>Highways England ("HE") is seeking to 'overcompensate' for the loss of SCL in the following ways:-</p>	<p>"In the development of the RL proposals for the Scheme, due regard [1] has been had to the statutory requirements of the PA 2008. The development of the proposals has also benefited from detailed consultation and engagement with relevant statutory bodies.[2] Appropriate regard has been had to precedent from other highway schemes involving the acquisition of land from the CL and OS at Wisley and Ockham Commons and Chatley Heath.[3]</p> <p>The details of the approach taken by HE to the identification of suitable RL are set out in section 2.7 of the Statement of Reasons Appendix C document [AS-005], pages 26-30.</p> <p>Accordingly, there is no basis for the assertion that the provision of replacement land as part of the Scheme is 'grossly excessive'. We respond to each detailed point in turn below."</p>	<p>To recap on a key point, the RL ratios which have been used in this scheme are:-</p> <ul style="list-style-type: none"> • 2:1 (Open Space); • 2.5:1 (for Common Land); • 1:1 (acquisition of permanent rights over SCL where HE says the right would be a burden on the land) <p>These ratios are similar to those which were deemed as appropriate in the 1970's and 1980's when the M25 & A3 roads were constructed.</p> <p>[1] "Due regard" to the statutory provisions is not enough. Strict legal compliance is required.</p> <p>[2] It is safe to assume that the consultees would not object to receiving more land (as RL) than is necessary if that opportunity was to present itself. These statutory bodies are not charged with the responsibility of ensuring that strict legal compliance is achieved.</p> <p>[3] This is a fundamentally flawed approach. Past 'precedent' is not an appropriate guide to how much RL is necessary and proportionate given that the impacts arising from the 1970's and 1980's road schemes were far more severe. Chief among these impacts were:-</p> <ol style="list-style-type: none"> a) Full severance of a central part of the Commons, with very few opportunities for maintaining access from the motorway to the severed edges of the Commons; b) The introduction of a significant new noise source (road traffic) to hitherto quiet areas of Commons. 	<p>[1] As set out in the Common Land and Open Space Report [AS-005] and Highways England's comments on written representations, the requirements of section 131 and 132 Planning Act 2008 are plainly satisfied such as to enable the Secretary of State to record accordingly so that the dDCO will not be subject to special parliamentary procedure.[3] In paragraphs 2.7.7 to 2.7.18 of the Statement of Reasons Appendix C [AS-005], it is explained that the replacement land ratios that were used for the 1979 and 1982 compulsory purchase orders relating to the construction of the M25 were up to approximately 3:1. Some of the land acquired compulsorily for the original M25 included areas of special category land adjacent to the existing A3 dual carriageway, akin to the circumstances of the Scheme.</p> <p>Whilst the replacement land ratios which have been applied for the current Scheme have been derived from precedent, these ratios have been adjusted accordingly to reflect the current circumstances relevant to the Scheme as explained in section 2.7 of AS-005.</p> <p>Accordingly the approach taken by Highways England to the calculation of the replacement land ratios for the Scheme is not 'fundamentally flawed.' To the contrary the approach is fundamentally sound.</p>
<p>(i) It has overstated the current 'advantage' provided by the SCL that would be lost due to the Scheme construction;</p>	<p>"The SCL (being CL or OS) that would be acquired for or burdened by rights acquired for the Scheme is all contiguous with larger areas of SCL, but it varies in character and use.[text reproduced as appendix A]</p> <p>These areas, therefore, contribute to the 'advantage' provided by the existing SCL, from their visual character and habitat types, the scope for public use and their connection with larger areas.[5]</p>	<p>[5] Noted, but not even HE has attempted to argue that the SCL affected by the scheme provides a significant 'advantage' to the public. By its own admission:-</p> <p>"the design and associated land take is limited to the adjacent land" [SoR, para. 5.5.2].</p> <p>"It could be argued that much of the SCL required for the Scheme is close to existing busy roads and, therefore, not the best parts of such land in terms of advantage to the public." [SoR, para. 2.7.11].</p> <p>In any event, the key question is relative advantage, whereas HE has not made a full comparative assessment of the relevant matters. It is even doubtful whether the SCL affected by the scheme confers any 'advantage' at all, but on any comparative basis certainly, it can only be reasonably concluded that the</p>	<p>[5] As mentioned above, whilst the replacement land ratios which have been used for the current Scheme have been derived from relevant precedent, these ratios have been adjusted accordingly to reflect the current circumstances relevant to the Scheme, including those points mentioned in Mr Alderson's response.</p> <p>In particular, in identifying land suitable for the provision of replacement land, Highways England has sought to provide connectivity with existing special category land and be therefore generally contiguous where practicable.</p>

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		<p>RL confers significant 'advantages' over the SCL that would be affected.</p> <p>Or to put this another way, the high RL ratios now being applied could only possibly be regarded as being 'reasonably necessary' and 'proportionate' (see CA Guidance, paras 11-13) if the present scheme occasioned a serious loss of advantage on a par with when the M25 & A3 roads were first built. For obvious reasons, this is plainly not the case. The chief disadvantages suffered as a result of the original road schemes are set out at [3] above. By comparison HE's assessment of the value of the SCL that would now be affected focuses on its current lack of amenity or 'disadvantage' [see references at p.6 and p.7 of our written representations]:-</p> <ul style="list-style-type: none"> - "... the current road layout is poor if you wish to walk, cycle or horse ride either around the junction or the land that surrounds it." - "Noise is an important issue with the M25 and A3 both generating high levels of noise which disturbs local people and affects enjoyment of the common land." - "the A3 and M25 are barriers to movement between the different areas of accessible land in each quadrant." - "The Scheme will provide considerably enhanced connectivity for pedestrians, cyclists and equestrians [sic] resulting in significant benefits for these users." 	
	<p>The package of RL parcels within the Scheme aims to provide, so far as is practicable, the range of landscape types and quality found in the SCL that will be acquired, or burdened by rights acquired, for the Scheme. [6]</p>	<p>[6] This aim is reasonably achieved, "so far as is practicable", even without inclusion of the land at PBF.</p>	<p>This is not the case. Areas CF3, CF4, HE1 and HE2 provide only limited connection with the existing special category land. The land at Chatley Farm will need substantial felling and clearance before public access can be provided to substantial areas. The area identified as a construction compound in CF2 will not be available for public use until after the construction period. Therefore, the Chatley Farm and Hatchford End areas of replacement land will not provide equality of advantage as compared with the special category land taken for the Scheme on their own, even in the longer term.</p> <p>By contrast, replacement land parcels PBF1, PBF2 and PBF3 (i.e. the three parcels at Park Barn Farm) provide connectivity to existing special category land that is more akin to that of the special category land areas affected by the Scheme, and substantial areas of replacement land at Park Barn Farm will be available for public access at the start of or early in the construction period.</p>
	<p>For the above reasons, HE has properly assessed the existing 'advantage' provided by the SCL which is required for the Scheme. [9A] Consequently, there is no 'over-inflation' of RL." [9B]</p>	<p>[9A] HE does not argue that the SCL affected by the scheme actually provides any significant advantage—See quotes at [5] above.</p> <p>[9B] This claim is totally without merit. Even according to HE's own broad view equivalence would be achieved because the RL is "in keeping with the nature and status of much of the SCL that will be affected". However, HE has not accounted for the significant overall benefit or 'advantage' of the RL compared to the SCL that would be acquired or burdened given that:-</p>	<p>The package of replacement land was put together following consideration of various factors, such as those related to its current condition and the degree of work that would need to be undertaken to make it suitable for unencumbered public access, in opting for a lower level of provision of replacement land than has been used for past projects in this vicinity. Regarding these three points:</p> <ul style="list-style-type: none"> (i) The special category land affected by the Scheme is itself part of larger single blocks of such land; therefore, seeking replacement land parcels that can be part of and/or form larger blocks of special category land is an appropriate approach and indeed has been adopted in this case.

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		<ul style="list-style-type: none"> (i) a single block of RL would be generally more useful and usable compared to the aggregate loss of the existing SCL which suffers from being too close to the existing carriageway and road junctions; and (ii) the noise environment for PRoW users would be significantly better. HE has referred to the low quality of the current user experience at locations close to the existing road network from where the RL would be acquired; and (iii) PRoW links to existing SCL would be substantially enhanced even without additional RL provision. These factors ought to have been reflected in a significant reduction of the overall RL requirement. 	<ul style="list-style-type: none"> (ii) Highways England does not dispute that the noise environment for users of the replacement land may be better at Park Barn Farm than that experienced at some locations of the special category land affected by the Scheme, but this does not make the land at Park Barn Farm inappropriate as replacement land or that its provision is unnecessary. (iii) Highways England does not accept that the provision of enhanced public rights of way (PRoW) links as part of the Scheme would enable a 'significant reduction' in the overall amount of replacement land to be provided, given the extent of special category land subject to permanent acquisition and the acquisition of rights over such land which would burden the land when compared to the existing situation.
<p>(ii) It has ignored the significant benefits to the existing PRoW network that would result from are-modelling of the existing road junctions;</p>	<p>"Without specific additional NMU provision or mitigation, the 'remodelling' of the road layouts of the three junctions along the A3 will make movements across Ockham Park and Painshill junctions more difficult for NMUs and will prevent all movement of NMUs around or across junction 10. Accordingly, the Scheme also includes additional crossings and signal controls at Ockham Park and Painshill junctions and a new parallel route for NMUs alongside the A3, with new crossings over the M25 and A3. These PRoW works are necessary for suitable provision for NMUs [10] and do not influence the extent of RL provided, [11] although existing and potential PRoW and NMU access do influence the location of RL."</p>	<p>[10] Agreed. But it goes without saying that specific NMU provision should have been made as part of the construction of the new junction arrangements since any well-designed scheme will seek to minimise harm, and to mitigate any resulting effects wherever it is reasonably possible to do so.</p> <p>[11] HE's response is totally illogical because, absent this new NMU provision, the existing routes (for NMUs) would either become significantly worse, or they would be lost entirely as a result of the implementation of the scheme. The direct corollary would be an even greater requirement for RL to compensate for the seriousness of that loss to the accessibility of the remaining areas of SCL.</p> <p>In this case HE has issued a series of claims (as highlighted in our previous written submissions) about how the road scheme will deliver a series of substantial benefits for PRoW users. This enhanced NMU provision completely eliminates any 'loss of advantage' in respect of how the remaining areas of SCL would be capable of being used, for which additional RL provision would otherwise be needed. Neither are these significant PRoW enhancements dependent on the acquisition of additional land at PBF.</p> <p>All this must be judged in the context of what is currently a severely constrained and disturbed user experience – see [5] above / references at p.6 and p.7 of our written representations.</p> <p>This is in direct contrast to the original impacts of the original M25 and A3 road construction which caused a total separation of the Commons, through a central part, and total destruction of access across vast swathes of the CL and OS. Plainly, these considerations do not give rise to any similar concerns now.</p>	<p>As to [11] Highways England does not accept that the enhanced non-motorised user (NMU) provision which forms part of the Scheme would 'completely eliminate' any loss of advantage of remaining areas of special category land which are affected by the Scheme. The provision of those links does not alter the fact that nearly 14 ha of special category land will be permanently lost as a result of the Scheme and accordingly that replacement land must be provided if special parliamentary procedure is to be avoided.</p> <p>Moreover, Highways England has not claimed that the Scheme would entail a significant 'loss of advantage' to the remaining extent of existing special category land, because of the provision of new and/or replacement NMU links will ensure that suitable access is provided and because noise mitigation measures are included in the Scheme. As noted, was Highways England not to do this (i.e. not to provide new or replacement NMU links) could lead to a substantial increase in the need to provide replacement land (in order to avoid special parliamentary procedure being engaged) as greater areas of existing special category land would become either inaccessible or much harder to access.</p> <p>However, there will be some disadvantage to users of the special category land where hard-surfaced tracks, with some associated earthworks, are introduced across areas of such land as part of the Scheme. There will be no loss of advantage to users of the special category land associated with the acquisition of rights in land to undertake SPA enhancement works and Highways England has not therefore provided replacement land in exchange for the taking of such rights. To do so would lead to a potentially substantial need for additional replacement land and would not be justifiable given the nature and purpose of these works, their relative transience and because such an approach would be disproportionate to any perceived loss of advantage.</p>

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		<p>It is also notable that HE takes a completely different approach (i.e. it recognises the benefit) where it is seeking to acquire rights for the purpose of carrying out environmental works benefiting the biodiversity of the SPA –see comments at [17] below.</p>	
<p>(iii) It is seeking to provide RL in a 1:1 ratio for the acquisition of permanent rights over the order land even where those rights do not cause any disadvantage to the public interest;</p>	<p>“As explained at section 6.3 of the CL & OS report appended to the Statement of Reasons[AS-005], pages 76-79, where the acquisition of rights over SCL will impose a burden on the land, RL has been provided for within the order limits of the dDCO [APP-018] in accordance with section132(4) to compensate for the loss of advantage to the SCL that will result from the acquisition of the right in question.[12]</p>	<p>The key issue here is that is that HE has chosen to compensate for rights to be acquired at a RL ratio of 1:1 even where there would be no significant disadvantage caused to the public interest. HE has described that loss (for which it has compensated at a 1:1 ratio) as a “limited loss of advantage” [SoR, para. 2.7.16]. This is excessive.</p> <p>[12] Noted, however the relevant legal test is less onerous than for SCL which is to be acquired. For SCL burdened by rights the RL provision must simply represent “adequate” compensation for the disadvantages.</p>	<p>Highways England does not accept the submission made.</p> <p>As regards the acquisition of permanent rights over special category land, the relevant provision is section 132 Planning Act 2008.</p> <p>Special parliamentary procedure may be avoided under section 132(4) Planning Act 2008 where the Secretary of State is satisfied that replacement land has been provided. For the purposes of section 132(4), ‘replacement land’ must be ‘adequate...to compensate for the disadvantages which result from the compulsory acquisition of the order right’</p> <p>As set out in AS-005 and REP2-014, the rights taken over the special category land will impose a burden on the land when compared to the existing situation. As regards the Scheme, the rights taken over special category land include rights of access with vehicles to maintain highway and utility infrastructure.</p> <p>The provision of replacement land for the taking of such rights at a 1:1 ratio is therefore appropriate. The ratio used reflects on the one hand the extent to which the land will be burdened by the rights taken but also recognises that the effect of the rights will not be to permanently exclude or prevent public access which may have otherwise necessitated a higher ratio.</p>
	<p>If the exception under section 132(4) Planning Act 2008 to avoid SPP being engaged is to be satisfied, RL must be ‘adequate to compensate... for the disadvantages which result from the compulsory acquisition of the order right.’ The RL provision meets this requirement. [13]</p>	<p>[13] Fundamentally, this test does not require an equivalent area of RL to be provided. The RL provision must simply be necessary and proportionate (See CA Guidance, paras. 11-13) having regard to the significance of the burden suffered.</p>	<p>As explained in AS-005 and REP2-014, the provision of replacement land at a 1:1 ratio for the rights to be taken over special category land which will burden that land is plainly reasonable.</p>
	<p>The categories of land to which this approach has been applied are specified in paragraph 6.3.13 (a) and (b) ofAS-005. These comprise circumstances where a permanent surfaced track would be left in place and/or where there would be use of the land from time to time by vehicles used for inspection and maintenance of utilities or highways assets, which are viewed as being a burden on the land when compared with the existing situation.[16]</p>	<p>[16] HE says that there would be a “limited loss of advantage” [SoR, para.2.7.16]. There is no indication that these rights would cause any serious detriment to users of the SCL. On the contrary, a surfaced track would also be a distinct benefit for some users, e.g. the disabled, elderly or infirm.</p>	<p>A hard-surfaced track, with associated earthworks and occasional use by highway or utility maintenance vehicles, will be perceived by some users as an imposition on the informal character of the open land. Whilst the new PRoW will upgrade the standard of access provided, the earthworks will also be a constraint to some other movements.</p> <p>Accordingly, Highways England is justified in providing replacement land at a 1:1 ratio in respect of the acquisition of rights which will impose a burden on the land when compared with the existing position.</p>
	<p>Where the rights being sought will be for undertaking and maintenance of environmental works to improve the biodiversity of the SPA (which are considerably larger areas), or for the upgrading of PRoW without any permanent works, then RL is not being provided, as HE consider that these permanent rights being</p>	<p>[17] Noted. However, this is directly at odds with its approach to RL provision where PRoW enhancements are being made that will improve accessibility to these same areas (see comments at [10] & [11] above).</p>	<p>Please see Highways England's response to the interested party's comments at paragraphs [10] and [11] above.</p>

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	<p>sought under the DCO would not be a burden that would disadvantage the owner and/or the public in their use of the SCL. Further explanation is provided at paragraphs 6.3.14 -6.3.15 of AS-005.[17]</p> <p>The provision of RL at a 1:1 ratio in respect of the acquisition of permanent rights over SCL which will constitute a burden on the land."</p>		
	<p>As regards section 131(5), this section applies in respect of the compulsory acquisition of SCL. Under this provision, a draft DCO is not subject to SPP where:</p> <p>(a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and</p> <p>(b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.</p> <p>This means that the exception in subsection (5) only applies if the land required is very small or is for drainage and/or widening of an existing highway alone.</p> <p>As the CL and OS report [AS-005] correctly identifies, the order land (i.e. the SCL subject to permanent acquisition) is required for other purposes, including new overbridges, an enlarged roundabout at junction 10, upgraded and lengthened slip roads on the M25 and A3, free-flow slip roads, the new Wisley Lane diversion and new gantries. It is not properly arguable that the acquisition of SCL for the purposes of undertaking these works can be said to be for the 'widening' or 'drainage' of a highway within section 131(5).</p> <p>Accordingly, the order land cannot be said to be required 'for' either the widening or drainage of a highway, or partly for either of those activities. Section 131(5) is therefore not engaged. [19]</p>	<p>[19] The exception in s.131(5) is engaged:-</p> <p>1. Firstly, the order land is required for the purposes of the widening of an existing highway, with associated drainage works. The Examination Panel must consider what other label can legitimately describe the scheme given that is how HE describes it too: "widening and enlargement of existing highway infrastructure" (see Planning Statement, para. 5.3.14).</p> <p>That is also a perfectly reasonable description to give seeing that the whole <i>raison d'être</i> is to add capacity to the existing Trunk road network by adding new lanes to the existing carriageway, along with upgraded and lengthened slip roads, free-flow slip roads, and re-modelled junctions etc. which are designed to accommodate the additional traffic flows. These core elements, along with other ancillary features such as overbridges, roundabout, diversion and gantry are all part and parcel of the same road widening project: they do not fulfil any separate purpose which is distinct from that primary purpose.</p> <p>2. Secondly, regardless of the overall description one chooses to give to the scheme, it clearly does include significant discrete elements for which the order land is only required in relation to the 'widening' or 'drainage' of an existing highway: see for example, paragraph 2.2 of the "Scheme Description" -Application Document Reference TR010030/APP/1.2. HE has imbued the test in limb (a) of section 131(5) PA 2008 with an implied meaning, namely that the purposes of road widening or drainage of an existing highway (or a combination of those purposes) must be the sole requirement in order for this legal provision to be engaged. This is not accepted. If HE's interpretation was correct, then the subsection would be otiose since it is highly unlikely that any nationally significant infrastructure project would ever cause it to be engaged.</p> <p>It is a significant pity that HE has apparently misunderstood the true meaning of these legal powers because we consider that, for a scheme such as this one where, on any rational view there would be, at most, a "limited loss of advantage" (see SoR, para.</p>	<p>Section 131(5) is not engaged in this case, and nor is there any plausible basis on which it may be, as set out under the heading Point iv) on page 75-76 of REP2-014.</p> <p>As has been stated, discounting the provision of replacement land, the Scheme will lead to the permanent loss of 6.97 ha of common land and 6.96 ha of open space.</p> <p>In asserting that section 131(5) is or may be engaged, the interested party appears to be arguing that it would be acceptable for Highways England to acquire nearly 14 ha of special category land without providing <i>any</i> replacement land, (let alone a lesser amount of replacement land).</p> <p>For Highways England not to provide <i>any</i> replacement land for the significant areas of special category land permanently acquired as a result of the Scheme would plainly not be in the public interest and nor would it be compliant with the National Policy Statement for National Networks.</p>

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		<p>2.7.16] it would be perfectly justifiable to conclude that the provision of exchange land is wholly unnecessary.</p> <p>One must also consider what other possible legislative purpose this provision was designed to serve if it was not to relieve promoters of major road projects (i.e. those projects which meet the description of an "NSIP") from the obligation to provide RL where the scheme is primarily intended to increase capacity on a trunk road corridor. The underlying rationale is that it will often be the case that the loss of advantage caused to SCL will be inconsequential, which indeed appears to be HE's underlying view here.</p> <p>The fatal flaw in HE's putative legal justification for this scheme is that it instead of concluding that exchange land is unnecessary, it has chosen to activate its powers of CA on a grand scale, which is presumably to ward off any scintilla of doubt or criticism that the RL might not be sufficient. This is not the sort of response which Parliament could reasonably have wanted when enacting these protective provisions. The unfortunate result in this case it that it has led HE to hope that it can justify providing RL on a vastly inflated scale, where it is manifestly both unnecessary and wholly disproportionate to do so, and would also be harmful to the landowner's Convention rights. It has therefore very clearly failed to demonstrate a compelling case in the public interest.</p>	
	<p>As regards section 132(5) Planning Act 2008, this section applies in respect of the compulsory acquisition of rights SCL. Under this provision, a draft DCO is not subject to SPP where:</p> <ul style="list-style-type: none"> (a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and (b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public. <p>As regards the application of section 132(5) in this case, as noted at section 6.3.17 of AS-005, reliance is made in the alternative on section 132(5) (to the extent that the Secretary of State is not satisfied that the exception in section 132(3) is made out).</p>	<p>[20] HE's argument betrays an inconsistency in how it has chosen to label different constituent elements of the road scheme. The distinction between "for" and "in connection with" merely represents the difference between order land which is physically required for road widening and/or drainage, and order land which is to be burdened by rights relating to that same that purpose (e.g. the right of access for maintenance and inspection). In either case the underlying requirement for the order land is 'widening' and/or 'drainage' of an existing highway. In other words, if section 132(5) is engaged, then section 131(5) must also be engaged.</p>	<p>Highways England does not accept that if the requirements of section 132(5) are satisfied in respect of the Scheme, it must necessarily follow that the different requirements of section 131(5) are also satisfied.</p> <p>There is a clear difference in the legal effect of these provisions as set out in REP2-014 under the heading 'Point iv' on pages 75-76.</p> <p>Moreover, there is manifestly a difference between the acquisition of rights in land and the permanent acquisition of land.</p> <p>As set out at section 6.3.17-6.3.20. of AS-005 Highways England has explained that, if the Secretary of State does not accept its case that the requirements of section 132(3) are satisfied as regards the acquisition of rights over special category land for environmental purposes (as set out at 6.3.12 to 6.3.16 of AS-005), he may consider that section 132(5) is satisfied for the reasons given.</p>

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	<p>The extent of section 132(5) is broader than the equivalent provision in section 131(5). The use of 'in connection with' in section 132(5), in comparison to 'for' in section 131(5) indicates that the parliamentary draftsmen intended that the provision of section 132(5) should have a wider meaning.</p> <p>In this case, the rights to be acquired over SCL for which RL is not to be provided (i.e. for those purposes set out in section 6.3.13 (c) to (f) of AS-005), are manifestly required in connection with the widening of a highway. As noted at 6.3.13 of AS-005, the relevant rights are required for the following purposes:</p> <ul style="list-style-type: none"> • works to maintain enhanced NMU routes across SCL • access to RL for maintenance • works to carry out enhancements to existing and proposed parts of the SPA • general environmental mitigation works. <p>Each of these categories of works are necessary in connection with the widening of the A3. The widening of the A3 will give rise to environmental effects, including the acquisition of land from the SPA and SSSI, and will affect existing NMU routes. Accordingly, the relevant rights sought over the affected SCL are necessary in consequence of the widening of the A3 to mitigate for its environmental effects. Thus, the acquisition of the relevant rights is plainly within the scope of section 132(5). [20]</p>		
(v) The high environmental quality of the land at PBF	HE does not accept that the environmental quality of the land at PBF is 'just as good' as the SCL required for the Scheme.[21]	[21] This comment appears to diverge from HE's conclusion above (see text at [7]) that the land at PBF "is in keeping with the nature and status of much of the SCL that will be affected to the west of the A3."HE does not seek to contend that the land at PBF is not itself of a high environmental quality, and it unlikely that it would have been considered desirable to incorporate these land parcels within the scheme were that not so.	It is noted that the objection chiefly relates to visual and landscape character. However, the SCL around junction 10 is characterised by its usability, its visual quality, its habitat interest and its noise levels, as well as its continuity with large areas of SCL. The various areas of replacement land display these qualities to varying degrees and will need a varied range of works to bring them all up to a suitable standard in all aspects. It is acknowledged that the land at Park Barn Farm will need less work than the land at Chatley Farm and Hatchford End.
(vi) It has applied historically high land replacement ratios which have no direct bearing on the current situation	Sections 131 and 132 of the PA2008 (and sections of the Acquisition of Land Act from which they are derived) do not make provision as to what should be considered as 'no less advantageous' (for section 131) or 'adequate to compensate' (for section 132) and, therefore, precedent has been sought from other similar or related projects involving the same commons in calculating the ratios or provision. This is set out in section 2.7 of	[25] It is obvious that HE's approach as explained at section 2.7 of the Statement of Reasons Appendix C document [AS-005], pages 26-30, is heavily flawed. See comments at issue (iii) above - [12] to [17].	Highways England's approach to the provision of replacement land is not heavily flawed, as explained above in the response to paragraphs [1] to [3] above. Notwithstanding the soundness of the replacement land provision in the dDCO, in the event that the Secretary of State does not consider there to be a compelling case for provision of replacement land at the given ratios, then it is open to the Secretary of State to provide for a lesser amount in making the DCO by not authorising the compulsory acquisition of some of the replacement land parcels.

Issue/Objection	Highways England's response to interested party's written representation	Interested party's submissions at Deadline 3	Highways England's comments in response at Deadline 4
	<p>the Statement of Reasons Appendix C document [AS-005], pages 26-30, with the results being set out in sections 6.1(pages 73-75) and 6.4 (pages 80-82). The ratios used as a guide for this Scheme are lower than those used on the M25 scheme, with the influence of traffic noise on the order land being one of the factors taken into consideration.[25]</p>		<p>However, were the Secretary of State minded to do so, it should be borne in mind that the land at Park Barn Farm is better connected to existing special category land than some of the other replacement land parcels at Hatchford End and Chatley Farm.</p>
<p>c) Other alternatives for RL HE has also failed to pursue other potentially better opportunities for acquiring RL, e.g. the option of securing the current use of the land at Pond Farm as a direct benefit to the scheme.</p>	<p>As explained in section 5.5 of the Common Land and Open Space report [AS-005], HE has explored other opportunities for RL in the vicinity of the Scheme, but these locations were either not well connected to the existing area of SCL (if at all) and/or were considered unlikely to be successful. Pond Farm was one of the opportunities explored, due to its position as an enclosure within the extent of CL and OS in the western portion of Wisley Common.</p> <p>Identification of the land at Pond Farm land as RL for the Scheme would not "provide a valuable guarantee that such uses would be able to continue for the benefit of future generations" as asserted in REP2-018 (page 12), as the land is already owned by Surrey County Council. [30] The opposite would be the case, as public access would be incompatible with the safe continuation of the herd management business. [31]</p> <p>The situation for Pond Farm is described in section 5.5 of the Statement of Reasons Appendix C document [AS-005], page 71. In summary, acquisition of land at Pond Farm would have meant finding a new location for the Surrey Wildlife Trust herd management business, by which they maintain a network of Surrey County Council wildlife sites from this relatively central location, including several heathland SPA locations. This, in turn, would have jeopardised the ability of Surrey County Council to provide appropriate, grazing-based maintenance of the SPA habitat at the Wisley and Ockham Commons site.[32]</p>	<p>[30] This is a non-sequitur. As a private landowner Surrey County Council is generally able to deal with the land as it pleases, subject to the current licence in favour of SWT. Compulsory acquisition of the land (as RL) would enable permanent future rights and management obligations to be imposed on the land via the DCO process. This would represent a significant public benefit.</p> <p>[31] HE should be required to provide additional information, since on the basis of current information it is not possible to conclude that this option has been adequately explored. Certainly, its rejection has not been properly explained.</p> <p>In particular, whilst there is no existing public right of access it appears that such rights could in theory be provided without undue interference being caused to SWT's cattle herd management business, even if this public use needed to be restricted at certain times of year to accommodate this. Most importantly, we note that the land at Pond Farm is only required for winter grazing of cattle which would allow unencumbered public use in the Summer months.</p> <p>[32] It is not accepted that these consequences are inevitable, or even likely. PRoW and cattle farming will often co-exist without serious problems arising.</p>	<p>The acquisition of land and rights over land at Pond Farm as suggested by the interested party would not be in the public interest. The use of the land as replacement land with public access would not be compatible with its current use. Indeed, it would interfere with it. Pond Farm is used throughout the year as the hub for the maintenance of the cattle herd used to manage the Wisley & Ockham Commons site and other sites within Surrey that also form part of the Thames Basin Heaths SPA.</p> <p>Providing seasonally limited public access would not be compliant with the requirements of the Planning Act 2008.</p> <p>The assessment of alternative replacement land locations at section 5.5.1 of AS-005 provides a clear explanation as to why Pond Farm was discounted as a possible alternative location.</p> <p>Surrey Wildlife Trust made it clear that moving the herd management facility to a new location would adversely affect management of this part of the SPA and, potentially, the entire SPA. Surrey County Council were not able to provide a suitable alternative location.</p> <p>This is not an issue of PRoW, which do cross land used for cattle farming, as users can be constrained to the PRoW alone. This issue relates to the unconstrained access afforded by common land or open space status, which is not compatible with the safe management of cattle with calves or the quarantining of new or sick animals.</p>

3. Responses to Questions for Highways England [REP3-070]

Question Number	Question	Highways England Response
1	<p>In relation to the land shown highlighted orange and yellow (Buxton Wood) on the attached plan:-</p> <p>a) Please confirm that Surrey County Council is the current owner;</p> <p>b) Please confirm its current status as either registered as Common Land or Open Space?</p> <p>c) Is any of this land subject to the proposed land swap with Highways England which we understand is required to correct the historic commons register?</p>	<p>a) This land is owned by the Royal Horticultural Society.</p> <p>b) It is registered common land [REP2-046].</p> <p>c) No.</p>
2	<p>Does Highways England consider that the land at Park Barn Farm is required as replacement land for the M25 improvement, the A3 improvement, or for both those road schemes?</p>	<p>Both.</p>
3	<p>If your answer to 3 above is “both” then please provide the breakdown of the replacement land requirement which relates to each of those separate schemes.</p>	<p>This has not been a factor in the determination of the replacement land areas. The Scheme has been considered as a whole, not least because the works associated with the replacement non-motorised connections and associated maintenance routes relate to both NSIP elements.</p>
4	<p>Please provide the following data (in hectares) in respect of the special category land that would be affected:-</p> <p>a) The total area of Common Land to be acquired;</p> <p>b) The total area of Open Space to be acquired;</p> <p>c) The total area of Common Land in respect of which permanent rights are to be acquired;</p>	<p>Note that the answers to questions 4 and 5 include the small amendments to plot areas resulting from the DCO changes submitted at Deadline 5.</p> <p>a) Total area to be acquired or removed from common land is 6.97ha (including plot 2/13 for Wisley Lane diversion, but excluding plot 28/2 which is only to avoid a small area of remnant title).</p> <p>b) Total area to be acquired from open space is 6.74 ha.</p> <p>c) Total area of acquisition of permanent rights in common land is 31.98 ha</p>

Question Number	Question	Highways England Response
	d)The total area of Open Space in respect of which permanent rights are to be acquired.	d) Total area of acquisition of permanent rights in open space is 38.71 ha.
5	For the areas quoted in answer to 5 (c) and 5 (d) above, please state the total area of such land which Highways England considers will be disadvantaged by the acquisition of rights, and for which land it intends to provide replacement land at a 1:1 ratio.	<p>a) Total area of acquisition of permanent rights in common land for which replacement land is provided at a 1:1 ratio is 5.45 ha.</p> <p>b) Total area of acquisition of permanent rights in open space for which replacement land is provided at a 1:1 ratio is 2.98 ha.</p>
6	<p>HE has quoted different figures for the total area of Replacement Land to be provided:-</p> <ul style="list-style-type: none"> • Planning Statement para.3.6.1 (39.8 ha); • SoR, appendix C para. 6.1.1. (41.39 ha). <p>Why is there a discrepancy between these figures? Which of the totals is correct, and how does this affect the “target ratios” which have been applied?</p>	<p>The total for para 6.1.1 reflects the typographical errors discussed in the response to question 7 below; the correct total from adding all three bullet points should be 39.79 ha.</p> <p>The outcome against the target ratios is shown in Table 6.2 of Appendix C; the correct outcome for acquisition of title from common land unit CL350 should be 2.5:1 and not 2.6:1.</p>
7	<p>Please confirm the equivalent total for replacement land to be provided, split between Common Land and Open Space. The following data is taken from para. 6.1.1 of SoR, appendix C:-</p> <ul style="list-style-type: none"> • 25.17 ha of Common Land; • 16.22 ha of Open Space. 	<p>There are some typographical errors in paragraph 6.1.1 of Appendix C to the SoR.</p> <ul style="list-style-type: none"> • The figure of 21.85 ha for common land in the first bullet point should be 19.85 ha. • The reference to CF3 in the second bullet point should be to CF4. • The figure of 16.22 ha for open space in the 3rd bullet point should be 16.62 ha. <p>Therefore, the correct total for common land from the first and second bullet points added together should be 23.17 ha and not 25.17 ha.</p>
8	<p>Highways England refers to what it calls “target ratios” which it says it has derived from “precedents” (i.e. the 1970s and 1980’s road schemes for the A3 and M25) and “discussions” (See para 2.7.18, SoR appendix C):-</p> <p>a) Why does it consider that such “target ratios” are appropriate?</p>	<p>a) The target ratio is a means of expressing a working method; as the scheme design develops, the land requirements change and so the ratio provides a basis on which to review the consequent changes to the replacement land proposals at each stage Please see responses in the first section above as regards the appropriateness of the target ratios which have been used in this case.</p>

Question Number	Question	Highways England Response
	b) Please clarify the nature of these “discussions” and explain how it has influenced the fixing of “target ratios”.	b) This discussion is included in AS-005 at 2.7.4 to 2.7.17 within the Appendix C report.
9	In respect of the “precedent” road schemes mentioned by Highways England was any exchange land given in respect of rights acquired over common land and/or open space as opposed to compensation for land that was acquired?	Highways England understands that the CPOs for the construction of the original M25 did not provide exchange land where rights were taken over special category land. This is likely to have been because, unlike section 132 Planning Act 2008, the Acquisition of Land (Authorisation Procedure) Act 1946 (under which the 1979 CPO was confirmed) and the Acquisition of Land Act 1981 (under which the 1982 CPO was confirmed) did not contain specific requirements as to the provision of replacement land where permanent rights were acquired compulsorily over special category land.
10	<p>Highways England acknowledges that equality of advantage can be achieved by “providing some other public benefit, such as new linkages between areas of public access” (SoR, appendix C, para. 2.7.4):-</p> <p>a)How does it account for this in the calculation of its Replacement Land requirement?</p> <p>b) Why does it now claim that these substantial rights of way enhancements should be wholly discounted? (See Highways England’s answer given under point (ii) on page 75 of doc 9.19 “Applicant’s response to written representations”).</p>	<p>The type of linkage referred to in this context was the provision of exchange land in places that linked previously unconnected areas of common and/or open space, or provision of new PRoW where no existing links exist.</p> <p>For the junction 10 scheme, the rights of way enhancements do not provide new connections where none exist at present but do provide continuity of access on horseback to areas of common land, provide access to the areas of replacement land and replace the connections lost due to the highway changes at junction 10.</p>
11	<p>Highways England has cited a number of factors as being relevant to the exchange land calculation for the A3 and M25 road schemes:-</p> <ul style="list-style-type: none"> • Severance: Commons units were severed; • Area of land take: Land was acquired from central portion of commons; • Replacement land areas: Exchange land was contiguous with existing common land and open space, and generally complementary in character; 	<p>These factors characterised the exchange land proposals for the earlier schemes and, as not all apply to the same degree for the junction 10 scheme, indicate that a lower level of provision of replacement land is applicable for the junction 10 Scheme than for the earlier schemes, which is what Highways England has provided.</p>

Question Number	Question	Highways England Response
	<ul style="list-style-type: none"> Noise / tranquillity: The 1979 M25 scheme affected some of the quieter parts of the common near Pond Farm and Telegraph Hill; Barriers to access: The new motorway provided no access to the severed edges of the Commons. New PRoW links: For the A3 scheme there were two new links provided and a 1.65: 1 commons land exchange ratio was adopted. For the M25 scheme, there were no new links provided and a 2.99: 1 commons land exchange ratio was adopted. <p>How does Highways England explain that it has taken account of these factors in its calculation of Replacement Land requirement for the current scheme?</p>	
12	<p>Highways England has stated that “how the land could be used by the public” (SoR, appendix C, para. 2.7.5) is a relevant consideration in respect of the land replacement ratio. Given that it has also stated the Replacement land will “increase the extent of public access in the north western quadrant of Wisley Common, which is the direction from which many of the users come” (SoR, appendix C, para. 6.1.1), how does it explain that it has taken account of this factor?</p>	<p>The special category land to be acquired is currently usable for informal recreation on foot or horseback through a range of woodland types and some open areas, as part of large areas of common land and open space of related character and adjoining open heathland. The replacement land at Park Barn Farm will be able to provide a similar experience, but only once new planting has become established in existing open fields and routes are created through existing dense woodland and with less connection to open heathland. Hence, a larger area is being provided as replacement land than is affected by the acquisitions within the dDCO.</p> <p>For the visitors that approach from the north-west, it is logical to provide replacement land at Park Barn Farm, which will become their new point of entry into the Wisley and Ockham Commons site. This also fits with the intention to avoid increasing visitor pressure on the SPA as a result of the Scheme, by providing a new area of public access that retains some people in the north-west quadrant and out of the SPA.</p>
13	<p>Has Highways England considered whether the Replacement Land that would be provided in respect of Common Land and Open Space to be acquired by the scheme might also be</p>	<p>The acquisition of rights in special category land can be a burden on that land, one that extends away from the areas or permanent acquisition of special category land. Highways England has, therefore, considered this as an issue for consideration in</p>

Question Number	Question	Highways England Response
	adequate to compensate for the disadvantages caused by the acquisition of rights over such areas? If not, why not?	addition to that of the permanent acquisition of special category land. To assume that the replacement land provided for permanent acquisition will also provide for acquisition of rights is, in essence, to ignore any burden imposed by those rights and would therefore amount in practice to 'double counting'. It is not a sound basis on which the Secretary of State could authorise the compulsory acquisition of rights over special category land as part of the Scheme.
14	Highways England states that s.131 and s.132 PA 2008 are not engaged where it is seeking temporary possession powers only (para. 2.7.12, SoR, appendix C), however please confirm specifically that Highways England has not sought to provide replacement land in respect of land over which these temporary possession powers are being sought.	Highways England has not sought to provide replacement land in respect of land over which temporary possession powers alone are being sought, except for plot 2/13 which is owned by Surrey County Council and is needed for the Wisley Lane diversion and for which temporary possession powers have been sought. As explained at paragraph 3.5.4 of AS-005 and as shown in table C.2 of AS-005, replacement land has been provided for this land which will cease to be common land following construction of the Wisley Lane diversion.
15	What are Highways England's proposals or future intentions for management and use of the land parcels at Park Barn Farm?	The broad intentions are indicated on the Scheme Layout Plans [AS-002 and APP-012] and the Landscape and Ecology Management Plan [APP- 106]. These will be developed further during detailed design, in consultation with SCC/RHS as owners, SWT as (assumed) leaseholder and manager for the SCC land, and access organisations. There will be planting to create a wooded character with varied density and frequent glades on area PBF1 and the lower parts of PBF, as well as to provide connectivity between the woodland character and habitats of Clearmount, Buxton Wood, Foxwarren and the ancient woodland on St Anne's Hills. Existing wooded areas will be managed to provide for public access and, where appropriate, hence biodiversity. The remaining open grassland areas will be managed to reduce the soil fertility, if possible, and enhance biodiversity.
16	What are the environmental works planned for the land at Park Barn Farm which are intended to improve its public amenity value?	The proposals outlined above are intended to improve public amenity, in terms of both increased variety of character and improved biodiversity, along with provision of a new bridleway between Bridleway 8 / Footpath 7 and Bridleway 12 / Footpath 11 and various informal paths where appropriate.

Question Number	Question	Highways England Response
17	<p>Highways England has stated that “how the condition could be improved ”is a relevant consideration in respect of the land replacement ratio (SoR, appendix C, para. 2.7.5). How does it explain that it has taken account of this potential?</p>	<p>This relates to areas of replacement land that are not particularly suitable as replacement land in their current condition, but are capable of being made more suitable and, therefore, appropriate for consideration as replacement land. Such areas include the damp grassland in PBF1, the dense birch thicket in PBF3, the rhododendron thickets in the Chatley Farm plots and the dense coniferous plantations in CF1, CF2 and CF3. Such areas will take time to become fully suitable as replacement land and, therefore, the area of replacement land is larger than the area of special category land affected.</p>
18	<p>Please provide further information in respect of the option for Replacement Land at Pond Farm (this matter is subject to a separate freedom of information request), and in particular:-</p> <ul style="list-style-type: none"> a) Please provide a plan of the site, and also indicate which areas are physically used by SWT for grazing of its cattle in Winter; b) Has HE considered whether public rights of access could be accommodated on this site at other times of year, other than in Winter? If not, why not? 	<p>Highways England acknowledges the freedom of information request referred to in the question. A response to these issues will be provided to this request.</p> <p>b) The option of providing public access only at certain times has not been considered, as this would not be compliant with the requirements the Planning Act 2008.</p>
19	<p>In relation to the re-surfaced sections of track over which Highways England intends to acquire permanent rights for future inspection and maintenance:-</p> <ul style="list-style-type: none"> a) How often does Highways England actually propose to use vehicles for these purposes –e.g. daily, weekly, monthly, annually? b) Will the tracks make appropriate accommodation for vehicles and walkers / horse-riders so that it will be possible for vehicles to pass by users of the track at the same time? If not, why not? 	<p>a) The frequency of use of each length of track will depend on the quantity and type of facilities that need to be inspected and maintained along its length and the degree to which Surrey Wildlife Trust makes use of the new tracks as part of its day-to-day management activities. b) The sections of new bridleway that will also be used by maintenance vehicles will be about 6m wide and will include a hard surface suitable for road cyclists and a softer surface suitable for horse riders. This width will enable vehicles to pass by other users of the track at the same time. The upgrade of Footpath 10 to Bridleway 10 along the access track to Pond Farm is already a route with shared use by farm vehicles and non-motorised users; addition of occasional maintenance vehicles will make little difference to this situation. The Footpath 14 diversion that will also be used by maintenance vehicles may require walkers to stand to one side for a vehicle to pass, as would be the case on a farm track also used as a footpath. Many of the existing bridleways around the Wisley and Ockham Commons site are also used as</p>

Question Number	Question	Highways England Response
		accommodation tracks for Surrey Wildlife Trust or other landowners' maintenance vehicles and no specific provision is made for other users to pass by.
20	<p>On a plan please identify the area of any meadow land which is affected, give the total area of such land (in hectares), and state whether such land is to be acquired or burdened with rights?</p> <p>Please name any other nationally significant infrastructure project (for which an application for a development consent order has been made) which has involved the widening or drainage of a highway but which has not also included other related elements, such as (i) junction improvements; (ii) new slip-roads; (iii) new roundabouts, overbridges and gantries?</p>	<p>The plots of special category land described are shown on the Land Plans [APP-009]. The meadow common land to be acquired from the RHS is in Plots 11/3a and 11/4a. The meadow common land to be acquired from SCC is in Plot 11/27. Total area approximately 0.70 ha (part of plot 11/3a is wooded).</p> <p>It is not practicable for Highways England to review every highways NSIP scheme to provide the information sought by the interested party. As to Highways England's position on the application of sections 131(5) and 132(5) Planning Act 2008 to the Scheme, please see the responses above and in AS-005 and REP2-014 as also referred to above.</p>

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