

**M25 junction 10/A3 Wisley
interchange
TR010030**

**9.53 Applicant's comments on the RSPB's
Deadline 3 submission**

Rule 8(1)(c)(i)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

February 2020

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

M25 junction 10/A3 Wisley interchange Development Consent Order 202[x]

9.53 APPLICANT'S COMMENT ON RSPB'S DEADLINE 3 SUBMISSION

Regulation Number:	8 (1)(c)(i)
Planning Inspectorate Scheme Reference	TR010030
Application Document Reference	TR010030/EXAM/9.53
Author:	M25 junction 10/A3 Wisley interchange project team, Highways England and Atkins

Version	Date	Status of Version
Rev 0	11 February 2020	Deadline 4

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1. Introduction

- 1.1.1 This document sets out Highways England's comments on the Deadline 3 Submission [REP3-060] by the Royal Society for the Protection of Birds (RSPB) (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], within one of the application documents or other examination documents, 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 by the RSPB including for example statements which are matters of fact and 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 sets out Highways England response to RSPB.

2. Response to RSPB's Submission

RSPB'S Written Representation Issue	Highways England Response
<p>REP1-045-2–Imperative Reasons of Overriding Public Interest (IROPI)</p> <p>The RSPB notes Highways England's response. However, there are three issues associated with their approach:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>	<p>The Habitats Regulations Assessment Stages 3-5 [APP-044] applies the derogation test sequentially. The IROPI takes the replacement land and green bridge into account when assessing the beneficial consequences of primary importance to the environment, but does not consider the suite of compensatory measures for the SPA. Highways England confirms that the SPA compensation land, SPA enhancement areas and replacement land are compensatory measures. Highways England notes the view of RSPB that improved public safety is the key justification for IROPI. Highways England has not relied upon the SPA compensatory measures as justification for the Scheme. They have been provided in order to meet the legal requirements of the Habitats Directive, such that the Scheme may proceed.</p>
<p>REP1-045-4–Improving crossing facilities for pedestrians, cyclists and horse riders and incorporate safe, convenient, accessible and attractive routes.</p>	<p>As explained in paragraphs 7.2.105 to 7.2.116 of the HRA Stage 2 [APP-043], the Scheme will not improve access to, or car park options for, Ockham Common or Wisley Common. Therefore, the operation of the Scheme is not expected to result in</p>

RSPB'S Written Representation Issue	Highways England Response
<p>The RSPB notes Highways England's response to our comments on this matter:</p> <ul style="list-style-type: none">• 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). <p>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.</p>	<p>changes to the numbers of visitors to the Thames Basin Heaths SPA or the way in which visitors gain access to the SPA.</p> <p>The Scheme will provide a new non-motorised user (NMU) route within the SPA running between Wisley Lane bridge, Cockcrow bridge and Sandpit Hill bridge, broadly parallel to the A3. This will run through the retained woodland for the most-part and will fall outside the existing heathland areas where the SPA qualifying species occur.</p> <p>There are also some upgrades in status of existing tracks, including a bridleway through Wisley Common that will follow the existing access track to Pond Farm and falls outside the existing heathland areas where the qualifying species occur, and a bridleway along the edge of Ockham Common and Chatley Heath near the M25 boundary that falls outside the existing heathland areas where the qualifying species occur.</p> <p>It is the utilisation of the new NMU route through the edges of Wisley Common and Ockham Common by existing users that is referred to in the response to reference number REP1-045-4 in Highways England's response to written representations [REP2-014], when it is noted that recreational activity may increase within the wooded fringes of the SPA. As the access and parking will not change as a result of the Scheme, any increase in use of this NMU route would be as a direct result of visitors being drawn away from the heathland areas.</p> <p>Due to access to the SPA not improving, the number of recreational visitors is not predicted to increase as a result of the Scheme. Therefore, due to the provision of additional NMU routes away from sensitive heathland areas and the provision of replacement land outside the SPA, the recreational pressure on the heathland areas will not increase and may even reduce as a result of the operational Scheme.</p> <p>Due to there being no increase in recreational disturbance as a result of the Scheme, there will be no adverse effects on the integrity of the SPA as a result of increased recreational disturbance. The findings of the statement to inform the appropriate assessment, with regards to recreational disturbance, were discussed and agreed with the RSPB in a meeting on 5th December 2018, as recorded in the HRA Annex B [APP-041].</p> <p>The proposed NMU routes are shown in Figure 12 of the HRA figures [AS-006].</p>

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<p>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.</p>	<p>This is noted by Highways England.</p>
<p>However, it remains the RSPB’s view that any benefits arising from such replacement land are not relevant to the IROPI issue.</p>	<p>This is noted by Highways England.</p>

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ
Highways England Company Limited registered in England and Wales number 09346363

