

**APPENDIX 1**

**RHS COMMENTS ON REP6-010: HE's RESPONSE TO RHS'S DEADLINE 5 SUBMISSIONS**

**Preliminary points**

1. This document addresses points made by Highways England (“HE”) in its REP6-010 document “Response on RHS’s Deadline 5 submissions” submitted at Deadline 6.
2. RHS does not seek to reply to each point made by HE.
3. The usual caveat applies: i.e. where RHS has chosen not to seek to reply to a point made by HE, this does not mean that RHS agrees with the point being made.
4. In particular the RHS notes that many of the points made by HE in REP6-010 have already been shown to be flawed through RHS’s document REP6-024 submitted at Deadline 6. In particular, the Freeths LLP submissions in REP6-024 demonstrate the fundamental errors in NE’s and HE’s approach with regard to the assessment of air quality impacts of the DCO Scheme on land within the Thames Basin Heaths SPA <150m from the roads. This fundamental error is perpetuated through the majority of the content of REP6-010 which is therefore equally flawed on that basis.
5. Instead the following comments merely address paragraphs in HE’s REP6-010 with content which has *not* previously been addressed by RHS.

**HE paragraph 2.1.1**

6. Although HE chose not to review the RHS Alternative Scheme components, all of the distances set out in REP5-046 were measured from the same set of plans as those from which the Existing and DCO Scheme distances were measured and hence they can be taken as being accurate.

**HE paragraph 2.2.1**

7. HE disputes the reference to the switch in RHS traffic from the SRN to the LRN but the data referred to in REP5-047 and REP5-052 (page 2) is all sourced from HE’s own work and is therefore assumed to be accurate.

**HE paragraph 2.2.6**

8. HE has presented no evidence to support its claim that the closure of Wisley Lane will be significantly safer than maintaining the existing (not RHS proposed) junction (not access) with the A3.

**HE paragraph 2.3.1 - 4**

9. There is now a great deal of back-tracking by HE with regard to its reliance on the accident data. HE is now using phrases like; (i) ‘the data is open to interpretation’, (ii) ‘based on the information available to police at the time of the incident’, (iii) ‘data are often self-reported and even more likely to be a subjective view of what happened’ and (iv) ‘the matter is open to debate’. This shows the unreliability of HE’s assertion as to the cause of the accidents. For the reasons the RHS has already explained, HE’s attempt to link the accidents to left-out movements from Wisley Lane is fundamentally flawed.

### **HE paragraph 3.1.2**

10. It is irrelevant for HRA purposes that guidance documents do not require a focus on NO<sub>x</sub> levels. As set out in Freeths LLP's Annex (REP6-024, paragraphs 11 and 51), the Court of Justice of the European Union HRA caselaw clearly requires this. Freeths LLP's Annex has also explained why it is wrong for HE to focus only on air quality impacts on the land within the SPA which is >150m from the roads.

### **HE paragraphs 3.2.1 - 3.2.5**

11. With reference to 3.2.3, the RHS does not agree with the traffic flow figures used by HE for an event day (see REP6-024, Proposition 1.4, pdf page 83), so RHS cannot agree that the figures used do not represent the AADT flow.
12. In terms of 3.2.4, as stated above, the RHS does not agree with the traffic flow figures used by HE for an event day (see REP6-024, Proposition 1.4, pdf page 83), so RHS cannot agree that the figures used do not represent the AADT flow. The second part of the response relates to HE ignoring impacts within 150 m of the roads, which is a proposition not accepted by RHS as set out elsewhere in this document and in REP6-024.

### **HE paragraphs 4.1.2. and 4.1.8**

13. The RHS remains of the view that HE / NE's position, that the woodland is merely a buffer and need not be restored, is incorrect.
14. The RHS refers to its previous submissions on this point (REP6-024).
15. In addition, HE's compensatory habitat measures directly contradict NE's and HE's approach that the buffer must be retained. The suite of compensatory measures presented by HE (see AS-012 Additional Submission - Applicant's Response to Rule 6 - 5.3 Habitats Regulations Assessment Figures (Revision 2) - Accepted at the discretion of the Examining Authority figures 15) include clear felling of woodland within the SPA 'in order to allow heathland restoration' (paragraph 4.2.1 of REP4-014), thereby demonstrating that NE and HE see clear felling of this woodland within the SPA as advantageous to the SPA.

### **HE paragraph 4.2.1**

16. The nitrogen deposition rates in Table 8 do not include the contribution of ammonia from road traffic; therefore, they are not correct. As a conservative assumption, the ammonia contribution from road traffic can be taken into account by doubling the deposition due to NO<sub>x</sub> from road traffic. On this basis the increases in Table 8 would be doubled, so a 0.6% increase would become 1.2%. As a consequence, it can be seen that increases above 1% extend out to 100m from the road on Transect 1 and out to 75m from the road on Transect 4, i.e. well into the SPA. RHS has set out elsewhere in this document and in REP6-024 that this part of the SPA needs protecting.

### **HE paragraph 4.3.1**

17. The RHS notes that HE states at paragraph 4.3.1 that the SIAA determined (point 11, page 9, REP4-005) that *it is not possible to conclude no adverse effect*, based on land take from the SPA and the potential for the woodland being lost to contribute to an invertebrate source. However, we note that on many occasions HE has in fact stated that there in fact *will be an adverse effect on site integrity* through this pathway, see for example:

The Statement to Inform an Appropriate Assessment of the DCO Scheme dated 3 March 2020 at paragraph 7.2.24 (APP-043) states: *“The loss of this land will represent a permanent and irreversible adverse effect on the integrity of the Thames Basin Heaths SPA, with respect to the conservation objectives to ‘maintain the extent and distribution of the habitats of the qualifying features’ and ‘maintain or restore the distribution, abundance and availability of key prey items’...”*

Even at point 11, page 9, REP4-005, just above the very reference given by HE at paragraph 4.3.1, HE itself states *“The SIAA has aligned with this approach, and it is important to note that Highways England have identified an adverse effect to the integrity of the SPA as a result of the Scheme, and in accordance with Article 6(4) of the Habitats Directive”* (emphasis added)

NE and HE have similarly acknowledged that the DCO Scheme *“will lead to an adverse effect on integrity of the SPA”* through woodland “land take” from the SPA, see paragraph 3.2.12 of HE / NE Statement of Common Ground dated 3 March 2020 (“SoCG”) (REP5-003).

#### **HE paragraph 4.4.3**

18. HE accepts that there is an in-combination increase in nitrogen deposition, even at distances beyond 150m from the roads.
19. RHS document REP6-024 para 54.7 (on pdf page 25) shows that these in combination increases in nitrogen deposition are in fact up to 6% of the critical load when ammonia is taken into account. This is well above the 1% criterion below which the impacts are usually considered to be insignificant and this is the position at distances beyond 150m from the roads.
20. HE has not evaluated the ecological effects of these substantial increases even beyond 150m from the roads, let alone <150m from the roads, so cannot conclude that there is no reasonable scientific doubt as to the absence of adverse effects to the integrity of the SPA.
21. It is also irrelevant in terms of the “in combination” HRA legal requirement that (as HE states in paragraph 4.4.3) *“the Scheme makes no material contribution to this in-combination increase at the distance that the heathland occurs”* (this is a reference to the increase of <0.01 kgN/ha/yr cited in paragraph 4.4.3, which is taken from Table 4, page 164 of REP5-003, but note that this increase is underestimated, as it does not include the ammonia contribution from road traffic). HE has clearly conceded (by undertaking an in-combination assessment, see section B.5 starting on page 162 of REP5-003, called a sensitivity test) that an in-combination assessment is appropriate and required in this case. On that basis the combined impacts of the Scheme with other plans or projects must be regarded as relevant and be taken into account as is required under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017.

#### **HE paragraph 4.4.4**

22. HE states here that the Scheme does not cause any adverse effects on the SPA due to air quality in combination with other plans and projects. This however is unsupported by any evidence.
23. Most importantly, HE has not considered the in-combination impacts on the SPA <150m of the roads, where the road traffic air quality levels and impacts, both alone and in-combination, will be even greater than in the heathland zone >150m from the roads.

#### **HE paragraph 4.5.1**

24. The RHS acknowledges that the RHS Alternative would not entirely avoid impacts on the SPA from either the air quality or landtake impact pathways.
25. The RHS has stated its position in its draft statement of common ground with HE, see REP6-024, page 99: NA9 Relevant Issue: Impacts of the RHS Alternative on the SPA, RHS Wisley Position: “The RHS Alternative would reduce Scheme impacts on the SPA” (emphasis added).
26. The RHS Alternative Scheme would however reduce the air quality levels impacts by comparison to the DCO Scheme as the RHS Alternative would greatly decrease annual mileage generated thereby reducing the increase in nitrogen deposition and other pollutants arising from the scheme. In comparison with the proposed signposted route of the DCO Scheme, the RHS Alternative would result in 2.6 million km per annum less travel.

**HE paragraphs 4.5.2. and 4.5.4 - bullet point 2**

27. HE states that the RHS Alternative would be worse in terms of the “land take within the SPA” impact pathway than the DCO Scheme.
28. There will in fact be no additional impact on the integrity of the SPA from the RHS Alternative Scheme through SPA land impacts compared to the DCO Scheme.
29. The DCO Scheme will have a permanent land take from the SPA of 5.9 ha (see paragraph 3.3.21 of REP4-018). The DCO Scheme will have a temporary impact on the SPA of 8.7ha (see paragraph 3.3.21 of REP4-018).
30. The RHS Alternative Scheme will, by contrast, require an additional, permanent land take from the SPA of 3.63m<sup>2</sup> and an additional, temporary land impact within the SPA of 28.0m<sup>2</sup>. Thus the total additional SPA land impact (temporary plus permanent) of the RHS Alternative Scheme at Wisley Lane (by contrast to the DCO Scheme) is 31.63m<sup>2</sup>. This additional SPA land impact is shown in **Figure 1**.
31. 3.63m<sup>2</sup> of SPA permanent land take amounts to an additional 0.00615% when compared to the 5.9ha (59,000m<sup>2</sup>) of SPA land take that is to be permanently lost to the DCO Scheme. 28m<sup>2</sup> of temporary land take amounts to an additional 0.032% when compared to the 8.7ha (87,000m<sup>2</sup>) SPA land take that is to be temporarily taken by the DCO Scheme. The overall total additional land take (both permanent and temporary) from the SPA as a result of the RHS Alternative Scheme is 31.63m<sup>2</sup>. This amounts to an additional 0.02% of the SPA when compared to the 87000 + 59000 = 146,000m<sup>2</sup> to be taken under the DCO Scheme. This cannot be considered material in any way.
32. Notwithstanding the tiny scale of the additional SPA land impact of the RHS Alternative Scheme by comparison to the DCO Scheme, the RHS Alternative Scheme will have no additional impact on the integrity of the SPA through the land impact pathway. This is because:
  - (i) The additional 31.63m<sup>2</sup> area of SPA land to be affected under the RHS Alternative Scheme consists of the road verge which is already occupied by street furniture. See the photos in **Figures 2** and **3** below.
  - (ii) This area is therefore part of the SPA “site fabric” as defined by Natural England as “*land and/or permanent structures present within a designated site boundary which are not, and never have been, part of the special interest of a site, nor do they contribute towards supporting a special interest feature of a site in any way, but which have been unavoidably included within a boundary for convenience or practical reasons. Areas of site-fabric will be deliberately excluded from condition assessment and will not be expected to make a contribution to the achievement of conservation objectives*” (taken from NE’s Internal Guidance – Approach to

advising competent authorities on Road Traffic Emissions and HRAs V1.4 Final – June 2018, page 16).

- (iii) As such the works in this area under the RHS Alternative Scheme have no impact at all on the integrity of the SPA and must be disregarded.

#### **HE paragraph 4.5.3**

- 33. HE's statement that it has already been demonstrated that there will be no adverse effect on the SPA as a result of air quality impacts from the DCO Scheme, is simply incorrect.
- 34. The RHS has demonstrated comprehensively through its REP6-024 submission by Freeths LLP that this is incorrect. The fact that NE has agreed with the approach taken in the SIAA does not negate the fact that HE has erred in its assessment of the air quality impacts. Likewise, the fact that HE here is (apparently, according to paragraph 4.5.3) using the same approach as on other projects does not correct the errors in this case.
- 35. Since the correct conclusion is that an adverse effect on SPA integrity via the air quality impact pathway from the DCO Scheme cannot be ruled out, then air quality impacts must feature in the analysis of alternative solutions as is made clear by Court of Justice of the European Union's judgment in C-304/05 paragraph 83 "*the assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration.*"

#### **HE paragraph 4.5.4 - first bullet point**

- 36. As noted above, in comparison with the proposed signposted route of the DCO Scheme, the RHS Alternative would result in 2.6 million km per annum less travel (note, that this reduction is on all roads, not only the A3) which will inevitably lead to fewer emissions and less serious air quality impacts. HE must assess accurately the air quality impacts of the DCO Scheme and the RHS Alternative to identify the beneficial effects of the RHS Alternative and this will no doubt be assisted by the responses by HE to be given at Deadline 7 to the questions in section 13 in ExQ3.

Figure 1

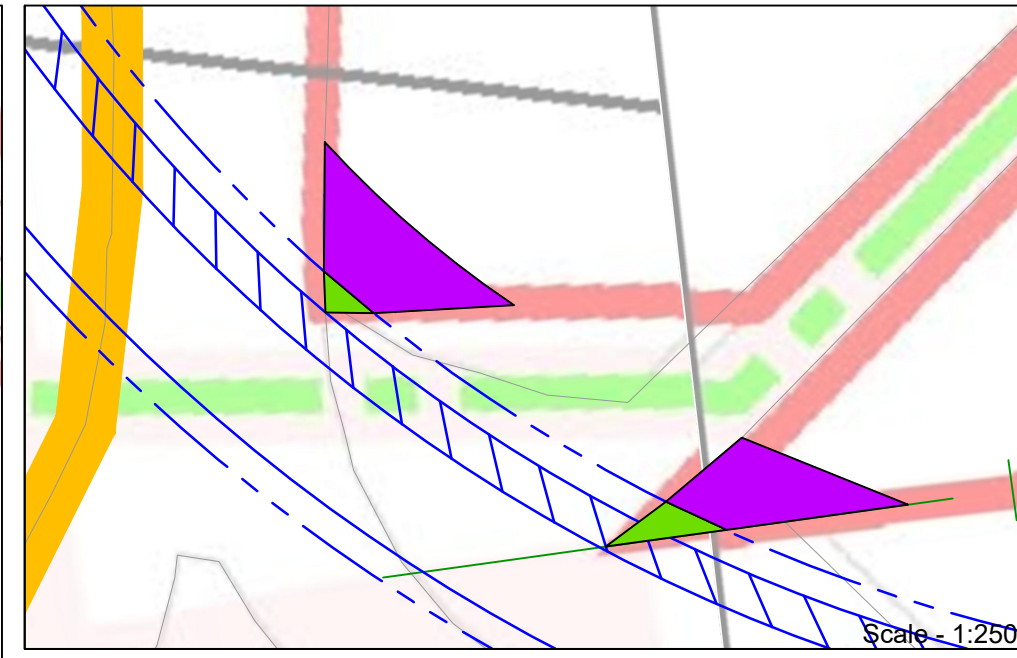
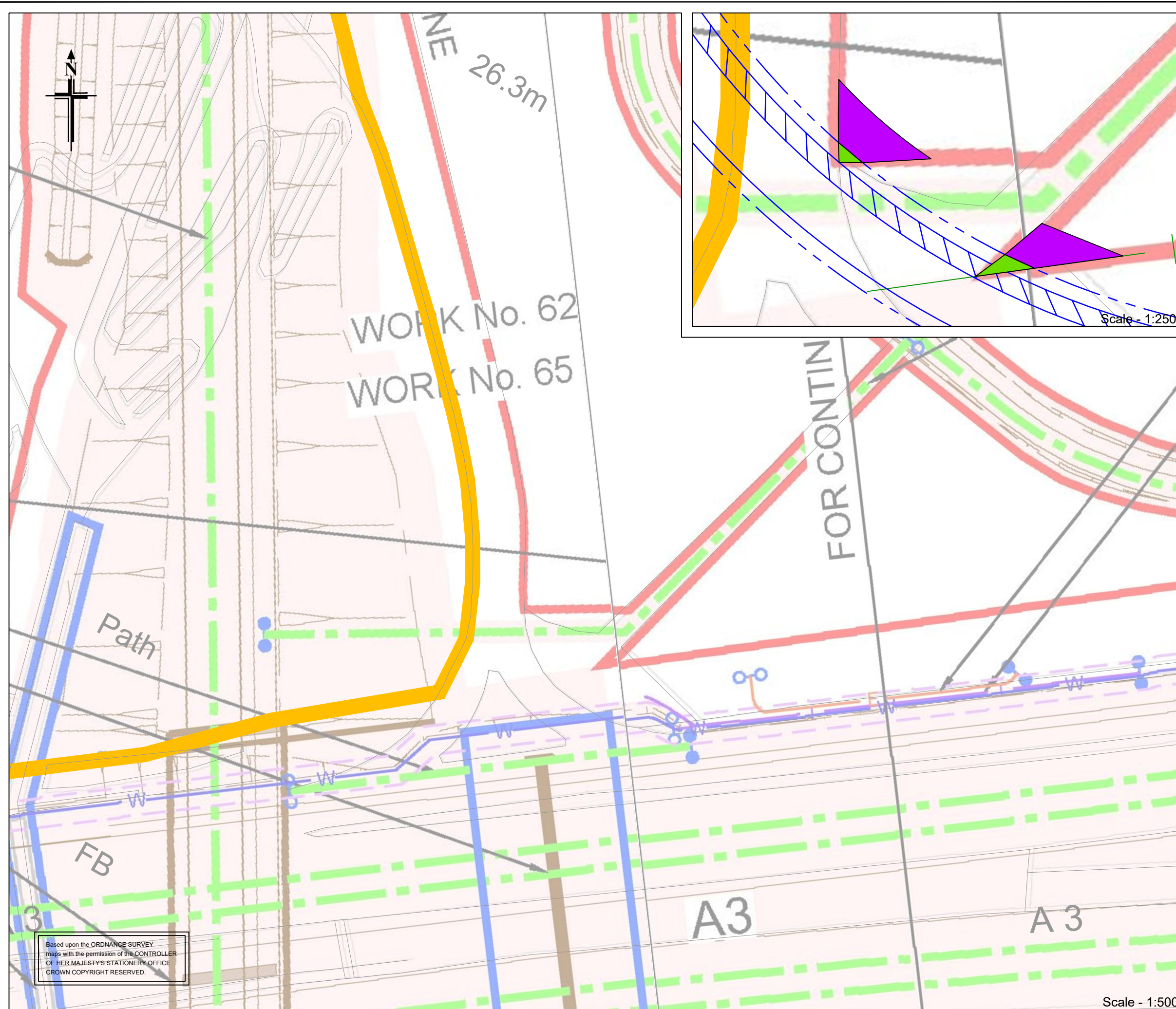
Figure 2



Figure 3







- KEY:**
- LAND REQUIRED FOR CONSTRUCTION = 3.65 SQ. M.
  - LAND REQUIRED AS A WORKING AREA FOR CONSTRUCTION = 28 SQ. M.

**NOTES:**  
 THE HIGHWAYS ENGLAND INFORMATION EXTRACTED FROM PDF OF DRAWINGS TR010030/APP/2.3 SHEET 2, 3 AND 20. EXACT AREA TO BE CALCULATED FROM THE CAD PLAN

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**PROJECT**

**RHS, WISLEY**

**DRAWING TITLE**

**SPA LAND TAKE WITH WISLEY LANE LEFT TURN ON A3**

**CLIENT**

**RHS, WISLEY**

<b>SCALE</b> AS SHOWN	<b>PAPER SIZE</b> A3	<b>DATE</b> 16.04.20
<b>DRAWN BY</b> UD	<b>AUTHORISED BY</b> MH	<b>FILE REFERENCE</b> M16114-A-075

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