

**Submission by
The Royal Society for the Protection of Birds**

**Submitted for Deadline 7
20 April 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**



1. To assist the Examining Authority, the RSPB would like to take the opportunity to highlight its understanding of the current state of play with key concerns expressed in its Written Representation [REP1-045] following consideration of responses by the Applicant during the Examination. This is in part the RSPB's delayed response to the Applicant's Response to the Examining Authority's Second Written Questions.
2. We have been seeking to obtain clarification from the Applicant as to when further information on matters relating to the relevant management plans would be presented to the Examination for further consideration by Interested Parties. The Applicant has indicated to the RSPB that we should rely on the answers already provided to the RSPB during the examination and that a further opportunity for input would be provided as part of a detailed design process post-consent.
3. Given that our specific concerns relate to matters regarding the securing of compensatory measures under Regulation 68 of the Conservation of Habitats and Species Regulations (the Habitats Regulations) we consider it would be helpful to the Examining Authority if we summarised our position at this late stage of the examination process. We respectfully make a request for further information to be provided on these matters during the Examination Period to ensure that the highlighted concerns are addressed and able to be scrutinised before the Examination ends.
4. The RSPB summarised the concerns raised at the beginning of the Examination Period in its Written Representation [REP1-045] below:
 - **Habitat management period (paragraphs 52-53):** For the management of the compensation and enhancement habitat to cover the lifetime of the operation of the scheme (a 60-year appraisal period used by the scheme Habitats Regulations Assessment Stage 3-5¹), not just the proposed 20 years.
 - **Monitoring (paragraphs 54-55):** For an increase in the frequency of the monitoring plan for the compensation and enhancement habitat SPA species to better understand the impacts of severe weather events throughout the duration of monitoring. Further, the RSPB would like to see the inclusion of monitoring of invertebrates of which the SPA species feed upon in the compensation land within the SPA Management and Monitoring Plan.
 - **Securing of compensation land (paragraph 51):** For the Applicant to ensure that the legal agreement of the landowners for the use of their land as compensatory measures has been secured and is compatible with the land's use as compensation, or that the necessary compulsory purchase measures are being put in place.
 - **Funding (paragraph 53):** Adequate funding will be made available to enable monitoring and management of the compensatory measures in perpetuity.
 - **Terms of reference for Steering Group (paragraph 56):** For a draft set of terms of reference for the proposed Steering Group to be made available during the Examination period. We consider these terms of reference needs to be made available so they can be considered as part of the overall scheme package.

¹ [REP4-014] 5.3 Habitats Regulations Assessment Stage 3-5: Assessment of Alternatives, Consideration of the IROPI and Compensatory Measures, paragraph 4.3.10, 4.4.28, and Appendix D, paragraph D.1.3.

Habitat Management and Monitoring for the compensation and enhancement package

5. There are two aspects to this:
 - ensuring the management of the compensation land in particular continues in perpetuity in order to ensure the overall coherence of the Natura 2000 network is protected (as per Regulation 68 of the Habitats Regulations); and
 - ensuring the monitoring package continues for a sufficient time period to be confident that the compensation (and enhancement) measures have met their objectives and, in the case of the compensation measures, have protected the coherence of the Natura 2000 network.
6. Notwithstanding that concerns have not been raised by Surrey County Council (SCC) nor Surrey Wildlife Trust (SWT) regarding the suggested 20 years for habitat management and monitoring work,² the RSPB's concerns remain.
7. In respect of the long-term management of the compensation land, the continued absence of the agreement between Highways England, SCC and SWT being placed in front of the examination for scrutiny remains a serious concern. It means it is not possible to assess whether or not the long-term management of the compensation land has been secured. In the absence of such an agreement and reliance on compulsory purchase (see "Securing the compensation land and funding" below), we would expect Highways England to be able to set out how it intends to secure the long-term management of the land beyond 20 years. A guaranteed period of 20 years management would not, in the RSPB's view, be sufficient to satisfy the test that the overall coherence of the Natura 2000 network will have been protected. Further details on how management will be secured beyond 20 years should be provided, especially in the case of compulsory purchase where current land management arrangements between SCC and SWT cannot be relied upon.
8. Related to this is the need to secure associated monitoring to ensure the compensation land achieves its objectives over the long-term. In regards the frequency of monitoring and the inclusion of the monitoring of invertebrates, the RSPB welcomes the inclusion of these measures by the Applicant, as stated in [REP6-013], paragraph 2.4.3³:

'Highways England has agreed with Natural England that increases in the frequency of monitoring of SPA bird species would be appropriate in order to detect population fluctuations that may occur as a result of environmental factors, such as severe winters (refer to Item 1 of the meeting minutes for 11 November 2019 in the Statement of Common Ground between Highways England and Natural England [REP5-003] for a reference to increasing monitoring frequency, with a particular focus on the construction phase). The frequency will be agreed with Natural England but is likely to involve surveys every three years, possibly with increased frequency during the first five years.

Highways England has also agreed that the monitoring of invertebrate abundance within the SPA compensation land (C1 and C2) and areas of woodland enhancement within the SPA enhancement land will be required in order to measure the success of the suite of compensatory measures (refer to Item 6 of the meeting minutes for 24 January 2020, on page 153 of the SoCG between Highways England and Natural England [REP5-003]).'

² [REP2-014] 9.19 Applicant's Response to Written Representations, Reference REP1-045-7, page 56

³ [REP6-013] 9.78 Applicant's comments on Interested Parties response to Examining Authority's second written questions, paragraph 2.4.3, page 6

9. However, the RSPB would like to be confident that these measures are agreed with Natural England and included within the final version of the SPA Management and Monitoring Plan prior to the conclusion of the Examination period. In addition, we have seen no information pertaining to the proposed monitoring programme beyond the 20-year period to ensure the necessary ongoing management continues to meet the compensation land's objectives beyond that 20-year period.

Securing the compensation land and funding

10. In respect of plans or projects requiring compensatory measures under the Habitats Regulations it is necessary for the competent authority to be satisfied that the measures have been secured.
11. Based on Defra guidance,⁴ this means that in order for the Secretary of State to be able to grant consent they must be satisfied all the necessary legal, technical, financial and monitoring arrangements are in place to ensure the compensation measures proceed. If it is not possible to secure adequate compensatory measures, a derogation allowing the proposal to succeed must not be granted (paragraph 35).
12. In respect of securing the compensation land, the RSPB has seen no evidence presented to the Examination that a legal agreement has been finalised between the Applicant, SCC, and the Royal Horticultural Society (RHS). It is our understanding that if the landowners refuse to give their consent it may still be possible for Highways England to request powers within the DCO for compulsory purchase of the required land. The RSPB notes that this view was given in the response from Highways England to the Examining Authority's Second Written Questions [REP5-014], paragraph 2.4.4.⁵
13. In respect of securing adequate funding for the compensation land in perpetuity (or even for the 20 years proposed by Highways England), Highways England has responded in REP5-014, Question 2.4.5⁶:

'As stated in the Applicant's Funding Statement [APP-024], the Government has committed to fully fund the Scheme in the Department for Transport's 'Road Investment Strategy: for the 2015/16 – 2019/20 Road Period' (RIS1), published in December 2014. The full funding of the Scheme includes all the mitigation measures required as part of the Scheme and the proposed long-term management and monitoring of any such measures. Highways England's most recent Delivery Plan for 2019-20, continues to show the Scheme as a commitment for construction.'

14. While the RSPB welcomes this commitment, we do not consider it provides the necessary evidence to the Examination as to the financial arrangements and security of those arrangements between Highways England, Surrey County Council and the Surrey Wildlife Trust that demonstrate that the compensation land has the necessary funding and financial mechanisms to guarantee it in

⁴ Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures.*

⁵ [REP5-014] 9.58 Applicant's Response to the Examining Authority's Second Written Questions, paragraph 2.4.4, page 21

⁶ [REP5-014] 9.58 Applicant's response to The Examining Authority's Second Written Questions, paragraph 2.4.5, page 21

perpetuity. To provide the Secretary of State with the necessary confidence, the Examining Authority should be supplied such information that they can be confident that the funding for the long term management of the compensation land is secure and that appropriate financial safeguards are in place should the predicted level of funding prove inadequate. This should cover the two scenarios envisaged by the Applicant: the first where agreement has been reached with SCC and RHS over securing the land and with SCC/SWT over managing the land; the second where Highways England has had to rely on compulsory purchase to secure the land.

Steering Group

15. The RSPB would like to highlight to the Examining Authority that a draft set of Terms of Reference for the Steering Group has not been produced and should be made available to those Interested Parties involved in the Steering Group to be able to assess its effectiveness. Notwithstanding the Applicant's commitment to produce draft Terms of Reference for agreement post-consent^{7,8}, the RSPB would have expected the Terms of Reference to be subject to scrutiny as part of the Examination. The roles of the different bodies, as well as the way in which the Group will operate and how any disputes will be resolved, are all key issues to understanding how the compensation measures will be secured, especially if monitoring highlights the need for amendments to the management plan. Therefore, the RSPB would still see value in Interested Parties being provided with the opportunity to comment on draft Terms of Reference before the closing of the Examination period.

⁷ [REP2-014] 9.19 *Applicant's Response to Written Representations*, reference REP1-045-10, pages 56-57

⁸ [REP6-013] 9.78 *Applicant's comments on Interested Parties responses to Examining Authority's second written questions*, paragraph 2.4.3, pages 5-6