

**RHS COMMENTS ON THE
“REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES
FOR M25 JUNCTION 10/A3 WISLEY INTERCHANGE”**

1. The RHS has reviewed the Planning Inspectorate’s Report on the Implications for European Site (“RIES”) dated 9 April (PD-013).
2. The RIES only covers material submitted to the Examination in relation to the potential effects on European sites up to Deadline 5a (13 March 2020, see paragraph 1.1.3).
3. The RHS is afforded the opportunity to comment on the RIES at Deadline 8 and these comments will be passed to the Secretary of State. However, the RIES itself will not be amended.
4. The RIES is both outdated and inaccurate as a summary of the position with regard to the effects of the DCO Scheme on European sites. It contains errors and it fails to reflect the significant discussions and submissions on this topic placed before the ExA since 13 March 2020. For example, crucial evidence has, since 13 March 2020, been presented by the RHS on the question of DCO Scheme air quality impacts on the SPA (a European Site), namely: REP6-024; REP7-039; REP7-040 and further material at Deadline 8.
5. RHS notes problems with the list of documents provided at section 1.2 of the RIES:
 - 5.1. not all relevant documents appear to have been taken into account within the RIES section 1.2. For example, RHS has noted that the RIES has not taken account of REP5-024, which is an important document supporting RHS’ case. Nor has the RIES taken into account REP3-044 which highlights significant gaps in the SIAA.
 - 5.2. RHS has also noted that while REP3-043 and REP3-047 are discussed in the document they are not listed on pages 3-5 of the RIES.
 - 5.3. In addition, it is noted that REP5-010 listed on page 6 and referred to in the RIES document, is a blank document when downloaded from the ExA website, while REP5-050, which is also a version of the SoCG, is not listed. We assume that where the RIES refers to REP5-010 it is probably really referring to REP5-050.
6. Turning to the substance of the RIES, of particular concern to RHS are:
 - 6.1. the summary provided in the RIES as regards “Degradation of supporting habitat from air quality effects during construction and operation” (4.2.11 – 4.2.22); paragraph 4.3.2; and the integrity matrix Table and associated note (d) on page 30-33 RIES (see further paragraph 14 below); and
 - 6.2. the summary of the no alternative solutions test at 4.4.1-4.4.5
7. These sections of the RIES do not explain the fundamental errors in HE and NE’s approach to appropriate assessment in HE’s SIAA (REP4-018) and their HE/NE Statement of Common Ground (REP5-003); and in HE’s more recent submissions in REP7-008. These errors are fully explained in RHS’s REP6-024 (see in particular Freeths LLP’s Annex and Baker Consultant Ltd’s Appendix) and in the further RHS material provided in Deadline 8.
8. These fundamental errors centre on the inadequate assessment of air quality impacts on the SPA <150m from the roads, referred to by HE and NE as the “woodland buffer”.

9. HE's starting point in its SIAA was that no assessment of air quality impacts was needed for the woodland buffer since only the heathland habitat >150m from the road was relevant to the integrity of the SPA. This incorrect position is reflected in 4.2.20 – 4.2.22 in the RIES.
10. Matters have however moved on considerably since then.
11. Having reviewed RHS's REP6-024, HE has now accepted in REP7-008 that an assessment of air quality impacts on the SPA woodlands <150m from the roads *is needed* for the Secretary of State's appropriate assessment. This is because HE now fully acknowledges the role played by invertebrates in those woodlands as prey for the three qualifying bird species and therefore the need to assess the DCO Scheme air quality impacts on those woodlands so as to judge impacts of the DCO Scheme on the integrity of the SPA.
12. However, the assessment now undertaken by HE in REP7-008 remains flawed, since:
 - 12.1. insufficient air quality data for the woodland <150m for the roads has been provided;
 - 12.2. HE has ignored in this assessment its own previous acknowledgement in its SIAA that the SPA's qualifying bird species have differing invertebrate prey type and size requirements and hence HE is wrong to conclude that only the overall biomass of invertebrates is of relevance to the integrity of the SPA's qualifying features. Instead both the composition of that biomass and the relative abundance of different specific prey items and sizes relied upon by each of the SPA interest features are crucial to the SPA's integrity; and
 - 12.3. HE is still asserting that that the woodland is not SPA "supporting habitat" despite clearly acknowledging the woodland as supporting habitat in its SIAA.
13. HE's bird data from the woodland is also insufficient to support HE's conclusion that the qualifying bird species do not forage in the woodland.
14. RHS' concern regarding the RIES integrity matrix is that the air quality conclusions (under "degradation of habitats by changes in air quality") are incorrect, as is Note (d).
15. Note (d) to the Table on page 30 of the RIES says "Predicted increases in nitrogen deposition of greater than 1% of the critical load are restricted to within the first 12 m of the operational road boundary". This is incorrect:
 - 15.1. First, the source of this statement is not provided.
 - 15.2. Secondly, and more importantly, the evidence presented to the ExA to date does not support this statement. HE's REP5-024 presents nitrogen deposition results using the corrected deposition velocities and incorporating the traffic using the signed route via the A3. This shows that a number of receptors exceed the 1% criterion at 25 m from the edge of the road. But these nitrogen deposition rates do not include the contribution from ammonia. Both HE and NE have acknowledged in their Statement of Common Ground (REP5-003, paragraph 3.3.1) that an appropriate basis for assessment is to double the nitrogen deposition calculated for NOx from road traffic (and hence double the percentage increases) as an approximation for ammonia. This would in fact only amount to a conservative estimate. Nevertheless, on this basis there would then be exceedances of the 1% out to at least 100 m from the road on transect 1 and at least 75 m from the road on transect 4. Footnote (d) is therefore totally unsupported by the evidence before the ExA and is misleading, as is the 'no adverse effect on integrity' entry in the Table of likely effects for the scheme alone (on page 30).

- 15.3. Thirdly, HE has not presented the in-combination impacts on nitrogen deposition for all parts of the SPA. This information is required in order to conduct an appropriate assessment. Thus the 'no adverse effect on integrity' entry in the Table of likely effects for the scheme in combination (on page 34) is also totally unsupported by the evidence before the ExA and is misleading.
16. The result is that the Secretary of State cannot be certain that air quality impacts of the DCO Scheme will not lead to an adverse effect on the integrity of the SPA either alone or in combination with other plans or projects.
17. As such, any alternative which better respects the integrity of the SPA from an air quality impact perspective must be considered in the context of the "no alternative solution" derogation test which we know must be met in this case to allow the DCO Scheme to be consented.
18. The "RHS Alternative Scheme" is referred to at paragraph 4.4.3 of the RIES. This Scheme contains two additional components which the RHS says should have been included in the DCO Scheme namely:
 - 18.1. The provision of south facing slips at the Ockham roundabout; and/or
 - 18.2. The retention of a left-out access to the A3 at Wisley Lane
19. The RHS Alternative Scheme could proceed with either or both of these components – each would improve upon the DCO Scheme.
20. The RHS Alternative Scheme is therefore an "alternative solution" which overall better respects the integrity of the SPA than the DCO Scheme does.
21. In addition, given the flawed air quality data so far provided by HE, it cannot be concluded that the proposed HE compensatory habitat will ensure that the overall coherence of Natura 2000 is protected as is required.
22. As a result, the DCO Scheme is flawed and cannot be granted approval by the Secretary of State.

1 May 2020