

M25 Junction 10/A3 Wisley Interchange TR010030

9.92 Applicant's comment to the Examining Authority's Report on the Implications for European Sites (RIES) Deadline 8 submission

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M25 junction 10/A3 Wisley interchange

Development Consent Order 202[x]

9.92 APPLICANT'S COMMENT TO THE EXAMINING AUTHORITY'S REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES) DEADLINE 8 SUBMISSION

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1. Highways England's comments on Examining Authority's Report on the Implications for European Sites (RIES)

- 1.1.1 Highways England notes that the examining authority's (ExA) Report on the Implications for European Sites (RIES) has been produced taking account of submissions which have been made by the applicant and interested parties up to examination deadline 5a. Highways England notes that the ExA has invited comments on the RIES from interested parties at deadline 8 and will provide its comments on those responses at deadline 9 as appropriate.
- 1.1.2 At this stage, Highways England wishes to draw the ExA's attention to two particular matters which are referred to in the RIES.
- 1.1.3 Firstly, paragraph 4.2.7 of the RIES refers to comments made by Natural England in REP5-032 to the effect that Natural England considers that the works forming part of the authorised development which are to be carried out within the boundaries of the Ockham and Wisley Commons site of special scientific interest (SSSI) will require its assent under section 28H of the Wildlife and Countryside Act 1981 (1981 Act). Highways England's position is that the works within the SSSI which form part of the authorised development do not require Natural England's assent under section 28H.
- 1.1.4 This is because section 28I, rather than section 28H of the 1981 Act is engaged in this case, on the basis that the Secretary of State's permission (in the form of development consent) is required before any works within the SSSI may be carried out.
- 1.1.5 Under section 28I of the 1981 Act, the Secretary of State is required to give notice of Highways England's application for development consent for the Scheme to Natural England and to take into account any advice received from Natural England in deciding whether or not to grant development consent. Natural England is an interested party in the examination and was a statutory consultee during the pre-application stage. In those capacities it has made representations which are before the ExA. Natural England has also been sent a copy of the RIES by the ExA and invited to provide comments. Accordingly, following the completion of the examination and upon receipt of the ExA's report, it will be for the Secretary of State to take any advice received from Natural England into account in determining whether or not to grant development consent. If the Secretary of State decides to grant development consent, it will not be necessary for Highways England subsequently to request an assent from Natural England under section 28H of the 1981 Act as Natural England's functions under the 1981 Act will have been discharged by giving its advice to the Secretary of State.
- 1.1.6 Secondly, at paragraph 4.2.28 of the RIES, the ExA makes reference to the draft development consent order (dDCO) as submitted at deadline 5 in relation to concerns raised by several interested parties concerning the definition of "commence" in Schedule 2 (requirements). In this regard Highways England wishes to draw the ExA's attention to its comments on interested parties' responses to ExAQ 2.15.5 [REP6-013 at page 17-20] together with the updated dDCO submitted at deadline 6 [REP6-003] which explain that the definition of

“commence” has been amended to take account of the concerns which have been raised.

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