

M25 Junction 10/A3 Wisley Interchange TR010030

9.101 Applicant's Comments on The Royal Society for the Protection of Birds' (RSPB) Deadline 7 Submission

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Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

M25 junction 10/A3 Wisley interchange

Development Consent Order 202[x]

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1. Introduction

- 1.1.1 This document sets out Highways England's comments on documents submitted by Royal Society for the Protection of Birds (RSPB) at Deadline 7 (20 April 2020). It responds to the points made by RSPB in respect of the Examining Authority's third written questions and requests for information, issued 3 April 2020.
- 1.1.2 Where issues raised within the RSPB submission have been dealt with previously by Highways England, 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 those 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.

2. Applicant's Comments to The Royal Society for the Protection of Birds' (RSPB) Deadline 7 Submission

No	RSPB	Highways England
1	<p>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</p>	<p>Highways England has no comment on this point.</p>
2	<p>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.</p> <p>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</p>	<p>As explained in response 2.4.3 of Highways England's Comments on Interested Party Responses to ExQ2 [REP6-013] and 3.4.4 of Applicants Response to Examining Authority Third Written Questions [REP7-004], with regards the concerns expressed by the RSPB regarding the management and monitoring measures to undertaken as regards the Special Protection Area (SPA), the full details of these measures have not yet been finalised . This is commensurate with the preliminary design of the Scheme pending detailed design. An appropriate level of detail is shown in the SPA Management and Monitoring Plan [REP4-031] which will form the basis of the scheme to be approved by the Secretary of State under requirement 8 of the dDCO [REP6-003] following consultation with the named consultees including Natural England.</p> <p>It is neither necessary nor practicable for Highways England to provide the information requested by RSPB during the examination. Compliance with the Habitats Regulations is secured because the dDCO [REP6-003] includes the necessary powers to ensure that Highways England can acquire the requisite powers over the SPA enhancement and compensation areas to ensure that the SPA enhancement and compensatory measures can be implemented.</p>

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		<p>The dDCO also includes a requirement (requirement 8) which provides for the SPA management and monitoring measures to be documented in a scheme to be approved by the Secretary of State and thereafter carried out in accordance with the approved scheme. Requirement 8 therefore provides further reassurance that obligations on the Secretary of State under the Habitats Regulations will be properly discharged even though final details of the SPA compensatory and enhancement measures are not presently available and will be developed as part of the detailed design and discharge of requirements process.</p> <p>Discussions with interested parties including Natural England, Surrey County Council (SCC) and Surrey Wildlife Trust (SWT) on the works proposed within the management plans have been ongoing since the DCO application was submitted in June 2019.</p> <p>As explained in Highways England's previous responses, the SPA Management and Monitoring Plan [REP4-031] will be refined during detailed design following engagement with key stakeholders including Natural England and the RSPB. A final version will be submitted to the Secretary of State for approval under Requirement 8 of the dDCO [REP6-003]. As has already been noted in this response, the submission of the measures for approval under Requirement 8 must be following consultation with the relevant planning authority, SCC and Natural England.</p> <p>Highways England remains willing to engage and work with the RSPB to further develop the measures to be implemented within the SPA compensation land parcels and the SPA enhancement areas.</p>
3	<p>The RSPB summarised the concerns raised at the beginning of the Examination Period in its Written Representation [REP1-045] below:</p> <ul style="list-style-type: none"> • 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. 	<p>As outlined in Highways England's response to the RSPB written representation in row 'REP1-45-7' of Applicant's Comments on Written Representations [REP2-014] the lengths of management and monitoring time proposed are based on when those individual habitats could, realistically, achieve a condition which is 'established' and can thereafter be managed with ease together with the rest of the SPA site by the existing arrangements in place between SCC and SWT. Natural England confirmed that they satisfied with the proposed periods of time for</p>

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	<ul style="list-style-type: none"> • 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. <p>Habitat Management and Monitoring for the compensation and enhancement package There are two aspects to this:</p> <ul style="list-style-type: none"> • 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 	<p>management (and monitoring) in response 1.4.34 of the Response to Examining Authority's First Written Questions and request for information [REP2-034].</p> <p>In regard to an increase in frequency of monitoring, and inclusion of invertebrate monitoring for SPA compensation land, please see the response under point 5 below.</p> <p>In regard to securing compensation land, funding and terms of reference for the Steering Group, please see the response under point 9 below.</p>

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	<p>compensation measures, have protected the coherence of the Natura 2000 network.</p> <p>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, the RSPB's concerns remain.</p>	
4	<p>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.</p>	<p>As has been explained in Highways England's previous responses and at point 2 above, the dDCO [REP6-003] includes sufficient land and works powers to ensure that Highways England is able to implement the SPA compensatory and enhancement measures which are required as part of requirement 8 of the dDCO.</p> <p>As has also been explained previously, most recently in Highways England's response to the ExA's third written question 3.4.4 [REP7-004 at page 17-18], completion of the agreement with SCC and SWT is not required in order to secure the provision of the SPA compensatory and enhancement measures. The agreement is a vehicle by which the implementation of the measures will be sub-contracted to SWT who will carry out the measures in practice. The agreement does not in any way affect Highways England's obligations to implement and maintain these measures as provided for in requirement 8 of the dDCO.</p> <p>In terms of the management and monitoring period provided for in the SPA Management and Monitoring Plan, the ExA may be satisfied that the twenty year period proposed is sufficient. As has been explained under point 3 above this 20 year management and monitoring period has been agreed with Natural England [REP2-034], Elmbridge Borough Council [REP-028] and Surrey County Council [REP2-045].</p> <p>The existing arrangements for Wisley and Ockham Commons referred to in the response above, and Highways England's previous response to the RSPB's written representation [REP2-014] include Surrey Wildlife Trust's long-term management plan for the site (which includes a monitoring strategy for Wisley and Ockham Commons), a specific long-</p>

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		<p>term woodland management plan and an active Countryside Stewardship Higher Tier agreement. These existing arrangements will ensure that management/monitoring of the SPA compensation and enhancement land parcels continues after the habitat has established (and once the period of management and monitoring that Highways England have committed to funding ends).</p> <p>Furthermore, the SPA compensation and enhancement land parcels will be subject to the wider targets and strategies set by Natural England for the Thames Basin Heaths SPA (which the compensation areas will become part of) and the SPA enhancement land parcels will also be subject to Natural England's objectives to achieve 'favourable condition' status for all Sites of Special Scientific Interest (SSSIs).</p> <p>In summary, the safeguards for in perpetuity management are clearly defined and committed to for these land parcels as part of their international and national nature conservation designations and Highways England's 20-year management and monitoring period is agreed with stakeholders and is sufficient and appropriate.</p>
5	<p>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:</p> <p><i>'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</i></p>	<p>As stated in 2.4.3 of Highways England's Comments on Interested Party Responses to ExQ2 [REP6-013], monitoring frequencies and methodologies, including invertebrate monitoring, will be developed in consultation with Natural England and included within the final version of the SPA Management and Monitoring Plan, which will be refined during detailed design. A final version of the plan will be prepared for submission to the Secretary of State for approval under Requirement 8 of the draft DCO [REP6-003].</p>

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	<p><i>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]).'</i></p> <p>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.</p>	
6	<p>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. Based on Defra guidance, 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).</p>	<p>As will be clear from the response to points 2 and 4 above, the ExA and Secretary of State can be satisfied that all necessary compensatory measures have been secured as required by the Habitats Regulations.</p>
7	<p>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</p>	<p>Further to the response to point 4 above, discussions are ongoing with SWT as to the carrying out by SWT of SPA compensatory measures on land currently owned by RHS which will be subject to compulsory acquisition of rights pursuant to the dDCO. As already noted at point 4 above, the delivery of the required SPA compensatory measures is not dependent upon the conclusion of an agreement with these parties as Highways England has taken powers in the dDCO to ensure that the measures will be implemented.</p>

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	<p>given in the response from Highways England to the Examining Authority's Second Written Questions [REP5-014], paragraph 2.4.4.</p>	
8	<p>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 2.4.5: <i>'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.'</i></p> <p>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 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.</p>	<p>Whether or not Highways England concludes an agreement with SCC and SWT, funding for the SPA compensatory and enhancement measures for the requisite management period is included as part of the Scheme budget. The Funding Statement [APP-024] provides sufficient comfort that funding for the compulsory acquisition of land is available. In any event requirement 8(2) of the dDCO imposes a positive obligation on Highways England to manage and maintain the SPA compensatory and enhancement measures for the requisite management period.</p>
9	<p>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</p>	<p>A response has been provided to question 3.4.5 of Applicants Response to Examining Authority Third Written Questions [REP7-004].</p>

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	<p>of Reference for agreement post-consent, 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.</p>	

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