

Submission by The Royal Society for the Protection of Birds

**Submitted for Deadline 10
2 June 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**



The Royal Society for the Protection of Birds (RSPB) would like to take the opportunity to respond to sections 3.4.4 and 3.4.5 of [REP7-004] 9.82, the Applicant’s Response to the Examining Authority’s Third Written Questions, which include content that relates to the RSPB’s Deadline 7 Submission [REP7-028] of outstanding concerns. The relevant Examining Authority Questions, response from Highways England, and the RSPB’s own response in turn are provided in the table below. We wish to highlight that the RSPB’s other concerns as outlined in its Deadline 7 Submission [REP7-028] still remain, and this Deadline 10 Submission is solely in reference to the below responses from the Applicant, Highways England.

Reference	HE Response	RSPB Comments
<p>3.4.4 Please provide an update on the progress in drawing up the agreement between yourself, SCC and SWT regarding ensuring the necessary environmental and ecological works are undertaken [REP2-014, p56 RSPB response]. In answering this please state the date by which the agreement will be executed and be available for submission as an Examination document.</p>	<p>Discussions have been in progress between Highways England, SCC and SWT for some months with a view to concluding the agreement as soon as possible and ideally before the examination ends. There will also be a similar agreement between Highways England and SWT in respect of land not owned by SCC (although SCC is the owner of most of the land in question).</p> <p>To put these agreements in their proper context, they are a means whereby Highways England can in effect sub-contract the discharge of obligations to which Highways England will be and remain subject under the relevant requirements of the dDCO [REP6-003] (6,7,8,10 and 17), to the extent that Highways England considers appropriate. It is not the case that Highways England needs to enter into these agreements in order that the relevant requirements can be discharged.</p> <p>However Highways England would like to enter into these agreements at this stage so there is more certainty as to the position for when the obligations under the relevant requirements become due and SWT is plainly a suitable organisation to undertake the relevant maintenance and monitoring work when, in due course, the detailed extent of that work has been approved by the Secretary of State under the relevant requirement.</p> <p>It is not Highways England’s intention to make the agreements available to the public by submitting them as an examination document, although it is intended to provide either a summary of them or redacted versions. This is because the agreements have a</p>	<p>The RSPB welcomes the update from Highways England with respect to its ongoing discussions with Surrey County Council and Surrey Wildlife Trust and Highways England’s desire to reach an agreement with those organisations before the examination ends. The RSPB agrees that the Surrey Wildlife Trust would be a suitable organisation to undertake the management and monitoring work in respect of the compensation land. However, the RSPB notes Highways England’s statement that it does need to enter into these agreements in order for the relevant requirements to be discharged.</p> <p>It is the RSPB’s view that this is not acceptable since any agreements with SCC and SWT will not be made available now as an examination document and that any summary or redacted version is likely only to be provided by the final deadline, with no opportunity for careful scrutiny by Interested Parties.</p> <p>Similarly, the RSPB is disappointed that Highways England is unable to provide more detail on the measures to be undertaken (with or without an agreement with SCC and SWT) and continues to state that these only need to be submitted for approval once it has received DCO consent. We strongly disagree with this view and urge the ExA to insist that these details are made available with time for comments before the end of the Examination.</p> <p>Consequently, the concerns set out in the RSPB’s Deadline 7 response remain with regards to the lack of further evidence for scrutiny during the examination in respect of:</p>

Reference	HE Response	RSPB Comments
	<p>commercial element not least the making of payments to SWT for the service to Highways England that SWT will be contracted to provide.</p> <p>As regards the concerns expressed by the RSPB regarding the measures to undertaken as regards the SPA, they have not yet been determined other than in outline. The details of the measures to be taken are a matter for approval by the Secretary of State under Requirement 8 of the dDCO [REP6-003]. The submission of the measures for approval under Requirement 8 must be following consultation with the relevant planning authority, SCC and Natural England.</p>	<ul style="list-style-type: none"> • whether the land and its appropriate long-term management and monitoring can be secured to deliver the compensatory measures. This includes, but is not confined to, securing management beyond the proposed 20-year period and appropriate detail on the management and monitoring; • the financial arrangements and the security of those arrangements that demonstrate that the compensation land has the necessary funding and financial mechanisms to guarantee it in perpetuity. <p>These concerns apply equally to the two scenarios envisaged by Highways England: 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>The RSPB therefore remains concerned as to the extent to which it is possible to be satisfied that all the necessary legal, technical, financial and monitoring arrangements are in place to ensure the compensation measures are secured and capable of being fully implemented.</p>
<p>3.4.5 When will the terms of reference for the proposed Steering Group be made available, and how will these be consulted upon?</p>	<p>The terms of reference of the steering group are intended to be a matter for the environmental agreement and although it is not Highways England’s intention to undertake a formal consultation upon them, the current draft of the agreement provides for the group to consist of the parties to the agreement, with other organisations being invited to join the group as and when appropriate. The overall objectives of the group (as presently drafted) are to:</p> <ul style="list-style-type: none"> • To help inform decision making under the agreement • Discussing when major changes to the final Landscape and Ecology Management Plan (LEMP) or final SPA Management and 	<p>The RSPB welcomes Highways England’s response to the Examining Authority’s question. However, we remain disappointed that Highways England was unwilling to provide a more detailed draft of the terms of reference for the Steering Group for public scrutiny during the Examination. Therefore, the concerns set out in our Deadline 7 response remain.</p>

Reference	HE Response	RSPB Comments
	<p>Monitoring Plan (SPAMP) (and/or its prescribed management activities) are required.</p> <ul style="list-style-type: none">• Discussing when or whether targets have been met• Managing disagreements or conflicts between the parties <p>However, the obligations themselves as regards these matters flow from schemes approved by the Secretary of State under the relevant requirements, each of which require consultation with relevant organisations and/or persons as specified.</p>	