

**M25 junction 10/A3 Wisley interchange  
TR010030**

**9.121 Applicant's note for Action  
points 1, 2, 4 and 5 (CAH Session 2  
Part 3 Special Category Land and  
Replacement Land)**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# Infrastructure Planning

## Planning Act 2008

### 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 response to the Examining Authorities request from Session 2 Part 3 Special Category Land and Replacement Land at the Compulsory Acquisition Hearing to:

- **Point 1** - *Provide a note setting out its 'alternative argument' under s131(5) of the PA2008.*
- **Point 2** - *Provide base figures for replacement land (RL), including what the requirement figures would be for the currently Proposed Development if its RL requirement was being assessed in the context of the legislative provisions for Compulsory Purchase Orders that were in force at the time the M25 was originally constructed.*
- **Point 4** - *Provide a note to clarify any biodiversity gain considerations that have been applied to the proposed R, and explain how these would relate to overall biodiversity mitigation considerations, having particular regard to the proposed SPA enhancement areas and compensation land.*
- **Point 5** - *With respect to the proposed acquisition of rights over the Special Category Land, provide a note clearly setting out plot by plot:*
  - a) *the area for each plot;*
  - b) *what the right or rights to be acquired would be used for, for example: i) providing access between different parts of the Proposed Development for the purposes of the inspection or the maintenance of the highway or utilities, or ii) for the purpose(s) of actually inspecting or maintaining an access route/track, or iii) permanent items of the Proposed Development such as embankments, drainage infrastructure and landscape areas;*
  - c) *the frequency for the exercising of the rights, for example once a day, week, month, quarter or year; and*
  - d) *the duration for the use of a right, for example part of a day, a whole day, a week, a month or multiple months.*

## 2. Note on alternative argument and s132(5)

- 2.1.1 This issue relates to the requirements of section 132 Planning Act 2008 in respect of the acquisition of rights over special category land which, in Highways England's view, will not burden the land. Those plots are identified in table C.4 of the Common Land and Open Space Report [REP8-015] and in Part 3 of Schedule 10 to the dDCO [REP8-013]. No replacement land has been provided in exchange for the acquisition of the rights over those plots.
- 2.1.2 It is important to clarify that Highways England's arguments in relation to compliance with the conditions contained within section 132(3) and section 132(5) relates only to the acquisition of rights over the land parcels identified in table C.4 of the Common Land and Open Space Report [REP8-015] and in Part 3 of Schedule 10 the dDCO [REP8-013]. In particular, in relation to the acquisition of rights over the land parcels identified in table C.3 of the Common Land and Open Space Report [REP8-015] and in Part 2 of Schedule 10 the dDCO [REP8-013], Highways England's position is that the conditions in sections 132(3) and section 132(5) would not be satisfied and accordingly has provided replacement land in exchange for the acquisition of those rights in order to satisfy the conditions in section 132(4) Planning Act 2008. This is explained further at sections 2.7.8 and 6.3.10 of the Common Land and Open Space Report [REP8-015].
- 2.1.3 The rights being acquired and listed in Part 3 of Schedule 10 can be characterised as being environmental in nature or not inconsistent with public access. Two examples of these rights are extracted below from Schedule 5 of the dDCO [REP8-013].

**Table 1 Examples of rights extracted from Schedule 5**

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 11</b>		
11/2	<i>To undertake, retain, inspect, access, maintain, monitor and renew environmental compensation works.</i>	Work No.57(a)
11/3	<i>To undertake, access and maintain tree and shrub planting.</i>	Work No.29

- 2.1.4 As set out at 6.3.13 to 6.3.15 of The Common Land and Open Spaces report [REP8-015], Highways England's primary argument in relation to the acquisition of the rights identified in table C.4 of that report is that the acquisition of those

rights over the land satisfies the condition in section 132(3) Planning Act 2008 on the basis that the relevant land will be no less advantageous to the relevant people and members of the public when burdened with the 'order right' than it is currently. Accordingly, the Secretary of State may record on the face of the dDCO that the condition in section 132(3) is satisfied such that the dDCO need not be subject to special parliamentary procedure.

- 2.1.5 In addition, a secondary argument was set out at section 6.3.17 to 6.3.21 of the Common Land and Open Space Report [REP8-015] namely that one of the conditions in section 132(5) Planning Act 2008 is satisfied. The condition is that the rights are required in connection with the widening or drainage of an existing highway and that it would be unnecessary to provide replacement land in exchange for the acquisition of the rights in the interests of the persons (if any) entitled to rights of common or other rights or in the interests of the public.

### **3. Confirmation of area of SCL proposed for outright Compulsory Acquisition**

- 3.1.1 The proposed extent of outright compulsory acquisition (CA) of SCL, as set out in Table C.1 in appendix C to the Common Land and Open Space report [pages 97-98 of REP8-015], is 12.94 ha. Plot 28/2 in Table C.4 [page 103 of REP-015] is also proposed as outright CA of SCL to avoid leaving an area of severed ownership, giving a total of 12.99ha.
- 3.1.2 Plot 2/13 in Table C.2 [page 99 of REP8-015] is also treated as equivalent to outright CA in that land will be removed from the common in order to construct the Wisley Lane diversion, albeit only taken under temporary possession and then possession returned to Surrey County Council giving an overall total of 13.77 ha (see response to ExAQ 3.16.3 [REP7-004] at page 54-55).

### **4. Confirmation of reduction in size of Wisley Common following the Scheme**

- 4.1.1 As set out in Table 13.31 of the Environmental Statement Chapter 13 - People and Communities Rev 1 - changes to application [REP4-028], the extent of Wisley Common (as it would be if the historic exchange land has been registered) is 1,618,830 hectares. Permanent land take as a result of the scheme is 50,926 hectares. This equates to a reduction of 3.1% in the total area of Wisley Common.

### **5. Note on the relative proportions of different elements of the land over which rights are to be permanently acquired**

- 5.1.1 The proportions of the 'rights land' (proposed acquisition of rights where these are considered to be a burden on the land) that are for maintenance access, include earthworks, ditches, etc and what the position is regarding those rights plots that lie on the highways side of the environmental barrier.

- 5.1.2 The table below contains a sub-division of the plots over which permanent rights are to be acquired by CA, where these rights are considered to be a burden on the land, to show the different elements that will be included in these plots. This table has been derived from Table C.3 in appendix C to the Common Land and Open Space Report [REP8-015] with additional columns to show the subdivision.

**Table C.3: Plots for temporary possession with permanent rights over special category land for which replacement land is provided**

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
2/12	2	1307				A	1307						
2/12a	2	45				A	45						
2/13a	2	664				A	664						
2/36	2, 3, 20	6908				A	6408	500					
3/3a	3	13				A	13						
3/3b	3	44				A	44						
3/3d	3	43				A	43						
3/16	3				822	B	822						
3/25	3		16			A	16						
3/26a	3	61				A	61						
3/27	3		47			A	47						

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
3/32	3, 4		1456			A	1356	100					
3/37	3		43			A	43						
4/3c	4		747			A	547	200					
4/3d	4		69			A	49	20					
4/4	4				1352	A	1052	300					
4/4a	4		152			A	112	40					
4/4b	4		44			A	44						
4/10	4	221				A	221						
4/23	4				2395	A	1595	800					
4/31	4				465	B	365	100					
4/34	4				117	B	77	40					
4/37	4				95	B						95	
4/38	4				281	B						281	



Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot					Rights connected with environmental barrier/land inaccessible	
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access		Soakaway and access
4/41	4, 5, 13				6749	B	5349	1400					
4/43	4				727	A	427	300					
4/43a	4	200				A				200			
4/43b	4				319	A	319						
4/43c	4				105	A	105						
4/43d	4				104	A	104						
4/45a	4	34				A	34						
4/46	4	101				A	101						
4/46c	4				0	A							
4/47	4	551				A	551						
4/47a	4				5	A	5						
4/47b	4	49				A	49						
4/47c	4				0	A							

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible	
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access		
4/47d	4	3				A	3							
4/51	4, 12, 21	2992				B	2992							
4/51a	4	496				A	396	100						
4/61	4				133	A	133							
4/63	4				51	A	51							
4/72	4, 21	4416				A	3916	300				200		
4/73	4	21				A	21							
4/75	4	7				A	7							
4/79a	4	1				A	1							
4/82	4				95	A	95							
4/86a	4				73	A	73							
5/1c	5				932	B				932				
5/1d	5, 13				1800	B				1800				

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
5/7	5				809	B					809		
5/7a	5, 13				2592	B	1792	800					
5/7c	5, 6				1976	B			1996				
5/7d	5				139	B				139			
5/7e	5				65	B	65						
5/8	5, 13				1314	B	1314						
5/8a	5				73	A			73				
5/8b	5				82	A	82						
5/12a	5	83				A	83						
5/12b	5	27				A	27						
5/12c	5, 12	2693				A				2693			
5/13a	5				90	A				90			
5/13b	5				54	A	54						

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot					Rights connected with environmental barrier/land inaccessible	
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access		Soakaway and access
5/13c	5				59	A					59		
5/21	5, 12	4320				A			4320				
5/21a	5, 12	1767				A				1767			
5/24	5				1111	B				1111			
5/24a	5				1193	B			1193				
5/30	5, 6				2172	B	1472	200			500		
6/1b	6	1058				B			1058				
6/2	6	2271				B				350	1921		
6/2b	6	90				B					90		
6/3a	6				72	B				72			
6/4	6	141				B					141		
6/4a	6	26				B					26		
6/4b	6	8				B					8		

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
6/9	6				198	B	148	50					
6/10	6				216	B	136	80					
11/19	11, 12	2954				A	1454	100		1400			
11/19a	11, 12	1087				B							1087
11/20	11	146				B						146	
11/21	11, 12	2816				B		1416	1400				
11/22	11				21	B						21	
11/22a	11			25		B						25	
11/23	11, 12			304		B						304	
11/24	11, 12			92		B	92						
11/24a	11, 12			73		B	73						
11/25	11, 12			105		B	105						
11/25a	11, 12				328	B	328						

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
12/1c	12			4		B		4					
12/4	12	1031				B	1031						
12/4a	12	835				B		835					835
12/5a	12				380	B		80					300
12/5b	12				168	B	168						
12/5c	12				10	B		10					
12/5d	12				28	B	28						
12/5e	12			54		B		54					
12/6	12	185				B		185					185
12/7	12	163				B		163					163
12/11	12	55				B	55						
12/12	12	43				B	43						
12/17	12	5				B	5						

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot					Rights connected with environmental barrier/land inaccessible	
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access		Soakaway and access
12/18	12	592				B	592						
12/23	12	6				B	6						
12/25	5, 12	1996				B	1996						
12/25b	12	315				A	315						
12/25c	12	723				A			723				
12/31	12	211				A		211					
12/34	12	1198				A		300		898			
12/34a	12	76				A	76						
12/34b	12	349				A		200		149			
12/34c	12	2262				A	1862	400					
13/2	13		1147			B			1147				
13/2d	13		1127			B				1127			
13/2e	13		493			B			493				

Plot No.	Sheet No.	Land type and area (sq m)				Purpose of rights to be acquired (see notes)	Functions provided by rights plot						Rights connected with environmental barrier/land inaccessible
		Common CL350	Common CL446	Common CL447	Open Space		Maintenance access track	Earthworks to track	Ditch earthworks	Ditch access	Filter drain and access	Soakaway and access	
13/4c	13			404		B			404				
13/4d	13				95	B			95				
13/4e	13				294	B	294						
13/4f	13				72	B	72						
13/4g	13			243		B	243						
13/11	13			523		B	523						
<b>Land type totals</b>		<b>47709</b>	<b>5341</b>	<b>1827</b>	<b>30231</b>	85108	44197	9288	15634	5827	7723	1072	2570

## Notes

A: access for inspection and maintenance of highways equipment (including drainage) and utilities

B: access for inspection and maintenance of highways equipment (including drainage)

The column for drainage ditches also includes infiltration ditches, which are shown on the scheme plans as large soakaways



5.1.3 The approximate extents of each element can be summarised as:

- 4.42 ha of access tracks, which will be affected to varying degrees by access for inspection and maintenance of highways assets and utilities (see response to point 6 below).
- 0.93 ha of earthworks to the access tracks, which will cause impediment to the movement of users of the SCL.
- 1.56 ha of drainage ditches and infiltration ditches, which will cause impediment to the movement of users of the SCL.
- 0.58 ha of access tracks that just serve the related ditch, which will be affected from time to time by access for inspection and maintenance (see response to point 6 below).
- 0.77 ha of filter drains and associated access space, which will be affected from time to time by access for inspection and maintenance (see response to point 6 below).
- 0.11 ha of soakaways and associated access space, which will be affected from time to time by access for inspection and maintenance (see response to point 6 below).
- 0.26 ha of earthworks to the access tracks that will be on the highways side of the environmental barrier fence, meaning that public access will be prevented.

5.1.4 All these factors have been taken into account when arriving at the proposal to provide replacement land at a ratio of 1:1 to satisfy the requirements of Section 132 of the Planning Act 2008 and avoid the dDCO being subject to special parliamentary procedure.

## **6. Note regarding use of tracks along which rights have been acquired that are considered a burden on the land**

6.1.1 The frequency of likely maintenance and inspection visits.

6.1.2 The table below summarises the principal maintenance and inspection activities that are expected to be undertaken along the tracks included in the DCO Application design, as shown on the scheme plans [REP8-012 and REP8-013].

6.1.3 This information is based on current estimates and maintenance guidance and not on specific maintenance and inspection schedules for the completed scheme, as this level of detailed design and planning has not yet been undertaken. The actual frequency of visits and the types and numbers of vehicles that may be used will be influenced by external factors, such as staff rotas and availability, what other parts of the SRN are being visited on the same day, which different activities are being combined in each visit and so on. However, it is clear from the table that many of the maintenance access routes within the SCL will be used frequently, particularly by teams inspecting and maintaining Highways England's assets.

- 6.1.4 These estimates do not include the effects of using these tracks for access to undertake major repair or unplanned replacement activities, as these will be reactive to circumstances and not predictable. Such works could entail intensive use of the associated track for several days and may entail temporary closure.

**Table 2 Frequency and duration of maintenance activities within special category land**

Highways England drainage assets						
Asset type	Balancing pond	Ditch / infiltration ditch (per 100m)	Soakaway	Filter drain (per 100m)	Culverts, headwalls, chambers	
Average frequency of visits	General Visual Inspection - Twice Yearly Litter / Debris Removal - Monthly (As Required) Grass Cutting - Monthly (As Required) in season Shoreline Vegetation Management - Twice Yearly Inflow / Outflow Blockage Clearance - Monthly (As Required) Sediment Management / Removal – 1 to 5 Years (As Required) Structural Repairs – 20 to 25 years (As Required)	General Visual Inspection - Twice Yearly Litter / Debris Removal - Monthly (As Required) Grass Cutting - Monthly (As Required) in season Sediment Management / Removal – 1 to 5 Years (As Required) Vegetation Clearance - Yearly Structural Repairs – 1 to 5 years (As Required)	General Visual Inspection - Twice Yearly Litter / Debris Removal – 3-Monthly (As Required) Sediment Management / Removal – 5 Years (As Required) Vegetation Clearance – 2 Years Structural Repairs – 1 to 5 years (As Required)	General Visual Inspection - Twice Yearly Litter / Debris Removal - Monthly (As Required) Vegetation Clearance – 2 Years Jetting/Rodding – 2 Years Sediment Management / Removal – 5 Years (As Required) Structural Repairs – 1 to 5 years (As Required)	General Visual Inspection - Twice Yearly Litter / Debris Removal - Monthly (As Required) Jetting/Rodding – 2 Years Structural Repairs – 1 to 5 years (As Required)	
Average duration of visits	General Visual Inspection – 4 hr / visit (Assumed) = 1 day/year Litter / Debris Removal - 4 hr / visit = 6 days/year Grass Cutting - 4 hr / visit 3 days/year Shoreline Vegetation Management - 8 hr / visit = 2 days/year Inflow / Outflow Blockage Clearance - 4 hr / visit 6 days/year Sediment Management / Removal – 16 hr / visit = 0.5 day/year Structural Repairs – 40 hr / visit = 0.25 day/year	General Visual Inspection - 1 hr / visit = 0.25 day/year Litter / Debris Removal - 2 hr / visit = 3 days/year Grass Cutting - 2 hr / visit = 1.5 days/year Sediment Management / Removal – 8hr / visit =0.25 day/year Vegetation Clearance - 4hr / visit = 0.5 day/year Structural Repairs – 8hr / visit = 0.25 day/year	General Visual Inspection - 1 hr / Visit = 0.25 day/year Litter / Debris Removal - 1 hr / Visit = 0.5 day/year Sediment Management / Removal – 8 hr / Visit = 0.25 day/year Vegetation Clearance – 4 hr / Visit = 0.25 day/year Structural Repairs – 8 hr / Visit = 0.25 day/year	General Visual Inspection – 1 hr / Visit = 0.25 day/year Litter / Debris Removal - 1 hr / Visit = 1.5 days/year Vegetation Clearance – 4 hr / Visit = 0.25 day/year Jetting/Rodding – 8 hr / Visit = 0.5 day/year Sediment Management / Removal – 8 hr / Visit = 0.25 day/year Structural Repairs – 8 hr / Visit = 0.25 day/year	General Visual Inspection – 0.5 hr / visit Litter / Debris Removal - 0.5 hr / visit Jetting/Rodding – 0.5 hr / visit Structural Repairs – 0.5 hr / visit	
Highways England other assets					Utilities	
Asset type	Gantries	SGN	SGN	Environmental barrier	SGN	Others
Average frequency of visits	Structural condition - every 2 years Signs/signals/ VMS Once per year Power supplies annually	Repair and visual inspection – 1 visit every 2 years SGN HP inspection – 1 visit per month during winter months	Repair and visual inspection – 1 visit every 2 years SGN HP inspection – 1 visit per month during winter months	Assess and record integrity every 6 months and structural condition every 2 years	Repair and visual inspection – 1 visit every 2 years SGN HP inspection – 1 visit per month during winter months	Repair and visual inspection – 1 visit per year
Average duration of visits	Structural condition – 4 hrs/visit = 0.25 day/year Signs/signals/ VMS 2 hours/visit = 1 day/year Power supplies 4 hrs/visit = 0.5 day year	Visual inspection – 1 day per site Repair – 2 days per site	Visual inspection – 1 day per site Repair – 2 days per site	Integrity – 1 day per 4km Structural condition – 1 day per km	Visual inspection – 1 day per site Repair – 2 days per site	Visual inspection – 1 day per site Repair – 2 days per site

**Table 3 Duration of use of main access routes within SCL for maintenance access (days per year)**

	Balancing pond	Ditch / infiltration ditch (per 100m)	Soakaway	Filter drain (per 100m)	Total days by route	Related DCO rights plot ref numbers
Wisley Lane to Hut Hill and Cockrow Hill	Two ponds = 38 days	none	One soakaway= 2 days	1 km = 30 days	70 days	2/36, 3/3a, 3/3b, 3/3d, 3/25, 3/26a, 3/27, 3/32, 3/37, 4/3c, 4/3d, 4/4, 4/4a, 4/4b, 4/43, 4/43b, 4/43c, 4/43d, 4/46, 4/47, 4/47a, 4/47b, 4/47d, 4/51, 4/51a, 4/61, 4/63, 4/72, 4/73, 4/75, 4/79a, 4/82, 4/86a
Old Lane to Cockcrow bridge and Sandpit Hill bridge	Two ponds = 38 days	400m = 13 days	One soakaway= 2 days	400m = 12 days	65 days	4/23, 4/31, 4/34, 4/41,
Junction 10 west to Clearmount bridge area south of M25	One pond = 19 days	80m = 3 days	One soakaway= 2 days	400m = 12 days	36 days	5/12a, 5/12b, 5/12c, 5/13a, 5/13b, 5/13c, 11/24, 11/24a, 11/25, 11/25a, 12/4, 12/5b, 12/5d, 12/25, 12/25b
Clearmount bridge eastwards and westwards to north of M25	One pond = 19 days	500m = 16 days	One soakaway= 2 days	none	37 days	11/19, 12/34a, 12/34c
Sandpit Hill bridge to Pointers Road and Red Hill bridge	Two ponds = 38 days	550m = 18 days	One soakaway= 2 days	300m = 9 days	67 days	5/7a, 5/8, 5/8a, 5/8b, 5/30, 6/2, 6/9, 6/10

## 7. Action Point 2 ‘Provide base figures for replacement land (RL)...’

- 7.1.1 Firstly, to set this matter in its legal context, the Scheme requires development consent under the Planning Act 2008 and is therefore subject to the provisions relating to the compulsory acquisition of special category land and of rights over such land set out in sections 131 and 132 of that Act.
- 7.1.2 Were the Scheme promoted in accordance with the requirements of the Acquisition of Land Act 1981 or its predecessor the Acquisition of Land (Authorisation Procedure) Act 1946 (the two pieces of legislation in force at the time the 1979 and 1982 Orders were promoted), comparable but different requirements would apply in relation to the compulsory acquisition of rights over special category land.
- 7.1.3 It should be noted that the 1979 Order authorised the compulsory acquisition of rights in land over a small number of land parcels. In each case the rights sought were expressed as “*The right to cleanse, deepen and widen an existing stream*”. The land subject to those rights was not identified as forming part of a common or open space. The 1982 Order did not authorise the compulsory acquisition of rights over any land. Accordingly, neither the 1979 nor 1982 Orders authorised the compulsory acquisition of rights over special category land and are therefore distinguishable from the current Scheme in this respect.
- 7.1.4 Had the 1979 and 1982 compulsory purchase orders included provisions authorising the compulsory acquisition of rights over special category land, the relevant legal framework was contained in the Acquisition of Land (Authorisation Procedure Act 1946) (in respect of the 1979 Order) and the Acquisition of Land Act 1981 (in respect of the 1982 Order), as follows:-

*Acquisition of Land (Authorisation Procedure) Act 1946*

*(Paragraph 11, Part III of Schedule I to the Act as amended by paragraph 4 of Schedule 6 of the Highways Act 1971)*

*(1) In paragraph 11 of the Schedule (common land, open spaces, etc.) substitute the following for sub-paragraph (1)—*

*“(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—*

*(a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and to the persons, if any, entitled to rights of common or other rights, and to the public, than it was before; or*

*(b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order; or*

*(c) that the land affected by the right to be acquired does not exceed 250 square yards in extent or the right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and certifies accordingly.”*

*(2) In the said paragraph 11, in sub-paragraph (3), substitute the following for the words from “and for discharging” to the end—*

*“and for discharging the land over which any right is to be acquired from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of that right”. Acquisition of Land Act 1981*

*Paragraph 6 of Schedule 3*

*(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—*

*(a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before, or*

*(b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or*

*(c) that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and certifies accordingly.*

*(2) In the case of a compulsory purchase order under the Highways Act 1980 sub-paragraph (1)(c) above shall have effect as if after the words “extent” there were inserted the words “or the right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway”.*

*(3) Where it is proposed to give a certificate under this paragraph, the Secretary of State shall give public notice of his intention so to do, and—*

*(a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and*

*(b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,*

*the Secretary of State may, after considering any representations and objections made and, if any inquiry has been held, the report of the person who held the inquiry, give the certificate.*

*(4) A compulsory purchase order may provide for vesting land given in exchange as mentioned in sub-paragraph (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and for discharging the land over which any right is to be acquired from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of that right.*

(5) *In this paragraph—*

*“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,*

*“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,*

*“open space” means any land laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground.*

7.1.5 In this regard, Highways England wishes to clarify its response to the affected party's deadline 3 submissions (REP4-004 response to question 9 on page 15). That response was given in good faith and was expressly caveated as detailed legal research into the historic legislative framework had not been undertaken.

7.1.6 In any event, the circumstances of the current Scheme, including in relation to the nature and extent of permanent rights which are sought over special category land, are not comparable with that of the 1979 and 1982 compulsory purchase orders for the construction of the M25/A3 interchange. Whilst it would not be appropriate to express a definitive view on what the “requirement figures” for replacement land would be had the Scheme been promoted under either of the previous historic legal frameworks, it can be seen that similar provisions relating to special parliamentary procedure would have operated in respect of the compulsory acquisition of rights over special category land. On that basis, there is no reason to suspect that the replacement land provision would have been materially different had the Scheme been promoted under the historic legislative framework rather than under Planning Act 2008.

## 7.2 M25 Scheme completed in 1983

7.2.1 As stated in the Common Land and Open Space Report [REP8-015] at paragraphs 2.7.7-2.7.8, the ratios of provision of exchange land for the original M25 scheme were as follows:-

- Approximately 2.99:1 in respect of common land; and
- Approximately 1.67:1 in respect of open space land.

## 7.3 The Applicant's M25 junction 10 DCO Scheme

7.3.1 As stated in the Common Land and Open Space Report [REP8-015], paragraph 2.7.18, the proposed ratios of provision of replacement land for the compulsory acquisition of title to SCL for the M25 junction 10 scheme are:

- 2.5:1 for land permanently acquired from common land; and
- 2:1 for land permanently acquired from open space.

7.3.2 As explained at paragraph 2.7.15 of the Common Land and Open Space Report [REP8-015], the ratio for replacement land for open space which has been applied is closer to that for common land on the basis that the open space land to be acquired falls within Ockham Common which is used and managed in the same manner as adjoining common land (despite itself not being registered common).

- 7.3.3 As stated in the Common Land and Open Space Report [REP8-015], paragraph 2.7.18, the proposed ratios of provision of replacement land for the compulsory acquisition of permanent rights over SCL for the M25 junction 10 scheme are:
- 1:1 for rights permanently acquired where the rights would burden the land (as identified in table C.3 to REP8-015); and
  - No replacement land has been provided for the acquisition of rights which would not burden the land (as identified in table C.4 to REP8-015).
- 7.3.4 As stated in the Common Land and Open Space Report [REP8-015], paragraph 6.4.6, the proposed ratios of provision of replacement land for the compulsory acquisition of title and of permanent rights in land for the M25 junction 10 scheme are, if bundled together:
- 3.4:1 (in respect of Wisley Common (CL350 and CL447));
  - 3:1 in respect of Chatley Heath (CL446); and
  - 2.5:1 in respect of open space.
- 7.3.5 It is important to note that the ratios cited in 7.3.4 above are based on a comparison between the extent of land to be *permanently acquired* from special category land for the Scheme and the *overall* amount of replacement land to be provided. Accordingly, the ratios do not factor in the effect of the acquisition of rights over special category land which in some instances will burden the land and reduce or impair its accessibility to the public, as has been explained extensively by Highways England in the application documents and examination submissions. The ExA and Secretary of State should accordingly be very wary about regarding the above ratios as reflective of the actual position.
- 7.3.6 As can be seen from the above, were the historic ratios from the original construction of the M25 to be applied in this case, the effect would be that a larger overall amount of replacement land would be provided.

## 8. Applicant's note on biodiversity mitigation and replacement land

### 8.1 Relationship between replacement land and biodiversity measures

- 8.1.1 As requested by the ExA, this part of the note explains the relationship between the replacement land and the biodiversity mitigation measures which are proposed to be carried out on it.
- 8.1.2 The compelling case in the public interest for the compulsory acquisition of the replacement land is made out on the basis that the land is needed as replacement land in compensation for the common and open space land to be acquired for the Scheme.
- 8.1.3 Having identified a requirement to provide replacement land and selected the locations where replacement land would be provided, Highways England has considered whether other biodiversity measures which would be consistent with the purpose and function of replacement land could be incorporated in the design and layout of the replacement land to mitigate biodiversity losses



elsewhere within the Scheme and in order to improve the overall environmental benefits of the Scheme.

- 8.1.4 Accordingly, whilst the primary purpose and function of the replacement land is to provide recreational and public access land in compensation for that lost as a result of the Scheme, it will also provide ancillary biodiversity benefits as explained further below.
- 8.1.5 As explained in 2.4.11 on page 23 of the response to ExQ2 [REP5-014], the replacement land does not form part of the compensatory measures for the SPA. Instead the necessary compensation for the SPA is fully provided by the suite of compensatory measures, as set out in the HRA stages 3-5 [REP4-014]. Due to the distance and separation by the M25 of Park Barn Farm and Chatley Farm replacement land, these replacement land parcels are unlikely to provide any benefit whatsoever to the SPA (such as increased invertebrate resource) and the replacement land has not been considered in the residual impacts assessment of the Scheme on the SPA in the Environmental Statement (Table 7.8 on pages 133-134 of Chapter 7 Biodiversity [REP4-023]). Therefore, there is no reliance on the replacement land with regards to compensation for the SPA.
- 8.1.6 However, as also explained in 2.4.11 on pages 23-25 of the response to ExQ2 [REP5-014], the replacement land does also provide compensatory and mitigation measures for other biodiversity impacts resulting from the Scheme, namely:
- Woodland planting at Park Barn Farm (PBF1 and PBF2 as set out in Section 5.2 of the Statement of Reasons Appendix C [REP8-015]) and Hatchford End (HE1 and HE2 as set out in Section 5.4 of the Statement of Reasons Appendix C);
  - Woodland enhancement at Park Barn Farm (PBF3 as set out in Section 5.2 of the Statement of Reasons Appendix C) and Chatley Farm (CF1, CF2, CF3 and CF4 as set out in Section 5.3 of the Statement of Reasons Appendix C). This includes enhancement of the ancient woodland at The Bogs (CF3 as set out in Section 5.3 of the Statement of Reasons Appendix C) and also the ancient woodland at Queens Anne's Hills (PBF3 as set out in Section 5.2 of the Statement of Reasons Appendix C);
  - Creation of a woodland linkage between two existing parcels of woodland (Queen Anne's Hills ancient woodland and Buxton Wood) at Park Barn Farm (PBF2, as set out in Section 5.2 of the Statement of Reasons Appendix C);
  - A receptor site for ancient woodland soil at Park Barn Farm (PBF2, as set out in Section 5.2 of the Statement of Reasons Appendix C).
- 8.1.7 The biodiversity measures within the replacement land as listed above have been taken into account in the residual impacts assessment of the Biodiversity chapter of the Environmental Statement [REP4-023] for the Ockham and Wisley Commons SSSI and LNR, the ancient woodland (although it should be noted that the enhancement of ancient woodland at Queens Anne's Hill is not included in the residual impacts assessment of the Scheme), the Habitats of Principal Importance (HPIs) and species (bats, common reptiles, breeding birds (not SPA qualifying species), badgers and terrestrial invertebrates).

8.1.8 It is entirely appropriate that Highways England has sought to increase the environmental benefits of the Scheme by the incorporation of additional biodiversity measures within the replacement land areas as described above, which in no way reduces the compelling case for compulsory acquisition of the replacement land on account of the need to provide replacement land in order to avoid the application of special parliamentary procedure.

## 8.2 Implications for biodiversity measures if replacement land reduced or removed

8.2.1 As explained in 2.4.11 on pages 23-25 of the response to ExQ2 [REP5-014], if the area of replacement land was reduced, then it would still be possible to achieve the necessary compensatory measures to maintain the residual impacts as identified in the residual impacts assessment of the Scheme in the Environmental Statement (Table 7.8 on pages 133-134 of Chapter 7 Biodiversity [REP4-023]). However, the key biodiversity elements to maintain within the replacement land would be:

- The amount of woodland planting (i.e. the woodland planting at PBF1, PBF2, HE1 and HE2);
- The woodland linkage across PBF2, linking Queen Anne's Hills ancient woodland and Buxton Wood;
- The ancient woodland enhancement measures proposed at The Bogs ancient woodland (CF3);
- The ancient woodland soil translocation proposed at PBF2.

8.2.2 It follows from this that if there were to be a reduction in replacement land, from a biodiversity perspective, this reduction would be best placed to be from the Chatley Farm replacement land parcels CF1, CF2 and CF3.

8.2.3 However, Highways England accepts that some reductions in the Park Barn Farm replacement land, namely options 4 (removal of 11/17d (PBF2) and 11/17h (PBF3) from the replacement land package) and 4B (removal of 11/17d, 11/17e (both from PBF2) and 11/17h (PBF3) from the replacement land package) in Table 1 of the Applicant's response to Ronald Alderson's deadline 7 submissions [REP8-044] could also be acceptable from a biodiversity perspective. Please refer to the Land plans Rev 3 [REP8-003] for land parcel locations.

8.2.4 These reductions would still achieve the necessary biodiversity measures to maintain the residual impacts as identified in the residual impact assessment of the Scheme in the Environmental Statement [REP4-023].

8.2.5 The intention, as set out in paragraph 7.5.2.1 of the Landscape and Environment Management and Monitoring Plan [APP-106] is to enhance the woodland within PBF3, including the Queen Anne's Hills ancient woodland area. However, the compensatory measures for the loss of ancient woodland do not take into account the enhancement of the Queen Anne's Hills ancient woodland area and therefore the removal of PBF3 from the replacement land would not have any implications on the residual impact assessment of the Biodiversity chapter of the ES.

- 8.2.6 In addition, from a biodiversity perspective, it would also be acceptable to remove the woodland enhancement works proposed for PBF3 in land parcel 11/17i, as this woodland is already established and the proposed woodland enhancement works are not essential in order to achieve the residual impacts as identified in the residual impacts assessment of the Scheme in the Environmental Statement [REP4-023].
- 8.2.7 These reductions in the Park Barn Farm replacement land would still retain the woodland planting at PBF1 and would also allow a woodland linkage to be created across PBF2, linking Queen Anne's Hills ancient woodland and Buxton Wood. This would ensure that the residual impacts as identified in the residual impact assessment of the Scheme in the Environmental Statement [REP4-023] are maintained.
- 8.2.8 Should the ExA recommend the complete removal of the land parcels at Park Barn Farm from the scope of replacement land provision, this would change the residual impact for the SSSI and LNR as reported in the environmental statement. However, these designated sites are currently expected to have large permanent positive residual impacts, and with the removal of Park Barn Farm, would still result in a positive permanent impact (albeit at a slightly smaller scale), due to all the beneficial measures resulting from the SPA Suite of compensatory measures.
- 8.2.9 The residual impact assessment of the Scheme in the environmental statement [REP4-023] determined the loss of ancient woodland as a moderate permanent negative impact. This is based on the loss of irreplaceable habitat, and as a result, the relevant compensatory measures do not alter the residual impact assessment. Therefore, this residual impact would not change if the parcels at Park Barn Farm were removed from the Scheme. However, the package of compensatory measures (ancient woodland soil translocation, enhancement of ancient woodland at CF3, woodland linkage across PBF3) were agreed with Natural England, which may wish to make representations to the Secretary of State in the event that Park Barn Farm is proposed to be removed from the replacement land package.
- 8.2.10 The residual impact for HPI is permanent neutral, and is based on the permanent loss of 21.9 ha of wood pasture and parkland (of which 10.3 ha is also classed as lowland mixed deciduous woodland), and the creation of 22.5 ha of new heathland, 27.4 ha of woodland, 10.4 ha of wood pasture and enhancement of 45.1 ha of woodland. The removal of Park Barn Farm would reduce the creation of woodland to 19.3 ha and the enhancement of woodland to 39.4 ha. However, when taking into account the woodland creation, woodland enhancement and the 10.4 ha of wood pasture creation as well, then the Scheme would still result in a permanent neutral impact. The package of compensatory measures (woodland creation, wood pasture creation, woodland enhancement) were agreed with the Forestry Commission. The Forestry Commission, Natural England and Surrey County Council may wish to make representations to the Secretary of State if Park Barn Farm is proposed to be removed from the replacement land package.
- 8.2.11 Although the measures at PBF will benefit some species (bats, common reptiles, breeding birds (not SPA qualifying species), badgers and terrestrial invertebrates) the residual impacts do not specifically rely on PBF measures and

the residual impact assessment would not change as a result of the removal of Park Barn Farm from the replacement land package.

- 8.2.12 In summary, the complete removal of Park Barn Farm from the replacement land package would result in some changes to the residual impacts on the SSSI and LNR, however, they would still result in permanent positive residual impacts. However, in relation to compensation for ancient woodland and HPis, Natural England (and also the Forestry Commission and Surrey County Council with regards to woodland compensation) may wish to make representations to the Secretary of State.
- 8.2.13 Although the residual impacts, as identified in Table 7.8 of Chapter 7 Biodiversity [REP4-023] would not be significantly affected as a result of the complete removal of Park Barn Farm from the replacement land package, the replacement land at Park Barn Farm does provide a number of biodiversity benefits including its connectivity to the SSSI woodland, the provision of open acid grassland (a habitat of which there is minimal within the SSSI, and which is confined to enclosed woodland areas), the creation of woodland habitat, the creation of a woodland linkage between existing areas of woodland, the receptor for ancient woodland soil translocation and the enhancement of existing woodland (including Queen Anne's Hills ancient woodland).

## **9. Applicant's questionnaires from the survey of users of the Wisley Common and Ockham Common sites in 2017**

- 9.1.1 Surveys were undertaken at several locations around Wisley and Ockham Commons on Sunday 24 and Wednesday 27 September 2017, which included brief interviews with those users of the sites who were willing to participate, following a pro-forma questionnaire. These interviews are reported in Appendix 13.2 to the junction 10 Environmental Statement of June 2018 [APP-125], including a tabular summary of the interview findings.

## **10. Applicant's comments in relation to the judgment in *Greenwich London Borough Council v Secretary of State for the Environment (1993) Env LR 344 (the Oxleas Wood case)* as suggested precedent for replacement land ratios**

- 10.1.1 As indicated during CAH session 3, Mr Garbett on behalf of Park Barn Farm wishes to refer to the Greenwich case in support of his case that the replacement land ratios proposed as part of the Scheme are too high. Highways England explained why this is inappropriate in its oral submissions at the CAH session on 17 June 2020 and has also set out below its position on the relevance of the court's decision in *Greenwich* to the Scheme.
- 10.1.2 Highways England's position is that the judgment of the Divisional Court in the *Greenwich* case is not precedent for a 1:1 ratio of replacement land being

appropriate in other circumstances and the Examining Authority should be very wary of regarding it as a precedent in this case. The Examining Authority does not have before it the evidence relating to the particular circumstances of Oxleas Wood or the detailed reasoning upon which the Secretary of State concluded that a ratio of 1:1 was appropriate in those circumstances.

- 10.1.3 In the *Greenwich* case the High Court was asked to consider whether (a) there was evidence on which the Secretary of State could properly find that, in the circumstances of that case, a 1:1 ratio of replacement land was appropriate and (b) if there was such evidence, whether it was rational for him to have come to that conclusion. The High Court did not purport to be setting some wider precedent for appropriate levels of replacement common and/or open space land subject to compulsory purchase.
- 10.1.4 As the Examining Authority may be aware, irrationality is one of the grounds on which a decision of a public body may be challenged by way of judicial review and is commonly assessed by reference to what is known as “Wednesbury unreasonableness”, that is whether a decision is so unreasonable that no reasonable person acting reasonably could have made it. Irrationality is a relatively high bar to make out in judicial review proceedings and the mere fact that the court in *Greenwich* held that the Secretary of State’s decision to endorse a 1:1 ratio of replacement land on the particular facts of that case was not irrational does not mean that a 1:1 ratio is necessarily appropriate or reasonable in other circumstances.
- 10.1.5 It is perhaps worth noting that within months of the High Court’s decision the Government abandoned the project altogether due to the scale of opposition to its environmental impact, central to which was the impact on Oxleas Wood and the associated exchange land and mitigation proposal. For those reasons the approach taken by the promoter of the East London River Crossings project to replacement land is not a model which Highways England considers appropriate to adopt for the Scheme.

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