

**RHS RESPONSE TO HE'S REP10-003
(9.108 Applicant's comments to Deadline 9 submissions dated June 2020)**

1. This document presents RHS' response to HE's comments in REP10-003.
2. The usual caveat applies i.e. where RHS has chosen not to seek to reply to a point made by HE, this does not mean that RHS agrees with the point being made.
3. **HE's section 2**
 - 3.1. No comment
4. **HE's Section 3**
 - 4.1. A response to Section 3 is provided in the RHS REP11 which responds to the South Facing Slips report (REP8-040).

HE's Section 4 (HE's comments to RHS's document Appendix 2 – AQ / BIOD comments on REP8-022 [REP9-013])

5. HE has now provided additional air quality information in answer to ExQ4 4.3.3 (see REP10-007). Although this data is still incomplete and HE has not provided what was asked of it in that question (due to, for example, HE'S failure to include ammonia data for the distances 30m to 150m from the roads), RHS has been able to estimate the complete data by doubling the rate of N deposition that is due to NO_x (see RHS's results Table appended to RHS's Deadline 11 response to the HE / NE / SWT responses to the ExQ4 question 4.3.3). The doubling of the NO_x contribution is a 'proxy' method to estimate the ammonia component. HE claims that it is precautionary, but the evidence is that it is non-precautionary. REP5-049 submitted by RHS sets out that a doubling may well underestimate the ammonia contribution (see for example Figure 19 of REP5-049).
6. RHS agrees with HE that, based on RHS's own results Table referred to in paragraph 6 above, which takes into account the "ammonia proxy", the operational nitrogen deposition rate falls below current baseline levels for every transect point within the SPA.
7. However, this is not the relevant issue. The relevant issue is the extent to which any improvement in air quality is being slowed down (worsened) by the DCO Scheme alone or in combination with any other plans or projects.
8. RHS's own results Table shows that:
 - 8.1. for Transect 1 there is a worsening effect of the DCO Scheme between 10m and 125m /150m south from the M25 road, when the DCO Scheme is considered alone and also when considered it is considered in combination with other plans and projects. The worsening effect is up to 34% of the critical load of [10 Kg N/ha/yr];
 - 8.2. for Transect 3 (which is west of the A3) there is a worsening effect of the DCO Scheme between 0m and 25m / 50m, when the DCO Scheme is considered alone and also when considered it is considered in combination with other plans and projects. The worsening effect is up to 21.6% of the critical load of [10 Kg N/ha/yr];
 - 8.3. for Transect 4 (which is east of the A3) there is a worsening effect of the DCO Scheme between 0m and 75m / 100m, when the DCO Scheme is considered alone. The worsening effect is up to 12.2% of the critical load of [10 Kg N/ha/yr]. The in-combination effect is shown as an improvement although the HE results for Transect 4 are not accepted as accurate by RHS, as is explained in RHS's deadline 11 response to the response to the HE / NE / SWT responses to the ExQ4 question 4.3.3;

- 8.4. Note that these figures are likely to represent an underestimate, due to the use of a doubling of the NO_x contribution as a proxy for the ammonia contribution (see paragraph 6 above).

HE's heading: Paragraphs 18-19: the SPA qualifying features do not use the established woodland

9. HE continues to protest that the woodland 0m-150m from the roads is not “supporting habitat” of the SPA even though HE has already made clear on numerous occasions that it is (see for example references throughout HE's SIAA REP4-018 and also throughout its document REP4-014).
10. HE provides 7 paragraphs of text (4.3.1 – 4.3.7) seeking to argue, by reference to specific wording buried deep in the fourth column of NE's Supplementary Advice on Conserving and Restoring Site Features [REP5-034], why the air quality target in NE's Supplementary Advice does not apply to the woodland habitat within the SPA.
11. Whilst those paragraphs do indeed support the heathland of the SPA being covered by air quality target in NE's Supplementary Advice, they do not support the claim by HE that the woodland is excluded from the air quality target.
12. It is important to note all of the following:
- 12.1. First, HE's 4.3.1 and 4.3.2 are incorrect as there is insufficient survey information presented by HE to conclude that nightjar or woodlark do not use the woodland for feeding or other activities. Whether nightjar / woodlark use the woodland for feeding / other activities is, based on the survey evidence presented, simply uncertain. See RHS' REP8-054 (paragraphs 48-55).
- 12.2. However, even leaving that point aside:
- 12.3. The adverse effect test of regulation 63 of the Conservation of Habitats and Species Regulations 2017 relates to effects of the plan or project on “site integrity”. This concept is defined by the European Commission (see page 58 of the European Commission Guidance Managing Natura 2000 dated November 2018): “*The 'integrity of the site' can be usefully defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated*” (underlining added). The woodland is within the SPA boundary and it is acknowledged by both NE and HE that there is a pathway of impact from air quality to the SPA's qualifying features via air quality impacts on the woodland vegetation and thereby on the woodland invertebrates (for NE see the third paragraph to its answer to ExQ4 4.4.2 at REP10-016; and for HE see paragraph 2.2.12 of its REP7-008). Hence, taking into account the integrity test, it would absolutely be expected that there should exist air quality targets on the entirety of the SPA including the woodland.
- 12.4. As noted above, HE has stated on numerous occasions that the woodland 0-150m from the roads *is* a SPA supporting habitat. Just one example is paragraphs 7.4.3-7.4.7 SIAA (REP4-018). There are numerous other examples in REP4-014.
- 12.5. HE refers specifically at Table 12 of REP4-018 and at paragraph 7.4.5 of REP4-018 to the two specific Conservation Objective Attribute “Targets” which it believes apply to the woodland in terms of the land take impact pathway (ie extent, distribution and availability of suitable breeding habitat which supports [nightjar] for all necessary stages of its breeding cycle (courtship, nesting, feeding and roosting); and “maintain

or restore the distribution, abundance and availability of key prey items (e.g. moths, beetles) at prey sizes preferred by Nightjar. Both these targets fall under the same listed "Attribute" of "Supporting habitat (both within and outside the SPA)". This is the very same "Attribute" under which the air quality target falls (see REP5-034). Hence, given the consistent use of "Attribute" wording, it is impossible to conclude reasonably that the woodland is covered by the two targets above identified by HE; and yet not by the air quality target.

13. HE concludes in 4.3.8 that "*HE and NE accept that the established woodland buffer is 'supporting habitat'*". But then it states "*It is not supporting habitat for any of the qualifying species*". This is extremely confused. HE seems to be arguing that, unless the qualifying birds are actually themselves found present in the habitat in question, it is not "supporting habitat" within the meaning of the "Attributes" in NE's Supplementary Advice. But HE's own case cuts squarely across this because HE at the same time fully acknowledges that the invertebrates from the woodland are relevant to site integrity and that even though (according to HE's case) the qualifying species are not found present in the woodland, the woodland *is* "supporting habitat" in terms of the two specific Conservation Objective Attribute "Targets" listed above.

HE's heading: Paragraphs 18-19: the SPA qualifying features do not use the established woodland

14. RHS now refers to the Baker Consultants Ltd Figures 1-4 and to Baker Consultants Ltd's Table 1 (attached to RHS's deadline 11 response to the ExQ4 answers given by HE / NE and Surrey WT). These show that HE's purported compensatory measures in its SPA Enhancement Areas are in very large part already envisaged under the Wisely and Ockham Commons Management Plan 2010-2020 and in some cases represent a down grading from what is envisaged in the Wisely and Ockham Commons Management Plan 2010-2020.
15. In HE's response to Q4.4.1 (4), HE relies upon "mechanisms within the SPA management and monitoring plan" which "allow for adaptive management within the SPA enhancement and SPA compensation area where required" as an answer to the question of air quality impacts from the DCO Scheme alone or in combination with other plans or projects on HE's SPA Enhancement Areas and the SPA compensation areas. This response is wholly inadequate. The SPA enhancement areas are within the existing SPA; and the SPA compensation areas will need to be treated as classified SPA (see paragraph 176 of the National Planning Policy Framework). Hence NE's Supplementary Advice (REP5-034) applies to all these areas (both the SPA enhancement and the SPA compensation areas), including the air quality target as well as the other conservation objective targets listed therein. If the approach of "we can manage our way out of the problem" is an adequate response to air quality impacts on the supporting habitat of the SPA then this certainly begs the question as to why NE would ever have included the air quality target in the Supplementary Advice (REP5-034).