

**Application by Highways England under s.37 of the Planning Act 2008 for a Development Consent Order in relation to the M25 Junction 10 / A3 Wisley interchange improvement scheme**

**Closing submissions on behalf of the Royal Horticultural Society**

**Introduction**

1. The submissions do not rehearse the exhaustive (and at times exhausting) evidence that has been submitted to the ExA over the course of the examination. Rather, they aim to provide the ExA and the SS with a simple route map, setting out the stepping stones of the RHS's case as to why the DCO Scheme should not be confirmed.
2. It is important to stress at the outset that the RHS is not opposed to the principle of road improvements on this part of the road network. Quite the opposite – it has spent very considerable resources promoting the RHS Alternative Scheme – a scheme which would not only fulfil HE's objectives but would also be of benefit to the RHS and deliver very substantial wider environmental benefits. Rather, the RHS's position is that *this* scheme – the DCO Scheme – must be rejected.
3. As set out below, the RHS's position is that the DCO Scheme would cause real and lasting damage to RHS Wisley – to the extent that its continued existence would come under threat. The RHS's position is that this harm should lead the ExA to recommend – and the SS to conclude – that the DCO Scheme should not be confirmed.
4. In addition, however, it is plain that, due to land take and air quality impacts, neither the ExA nor the SS can conclude with certainty (as the law requires) that the DCO would not harm the integrity of the Thames Basin Heaths SPA. As a result, consideration must be given to whether there is a feasible alternative solution which would better respect the integrity of the SPA. In this case there is. The RHS Alternative Scheme – which is essentially the DCO Scheme with the addition of south facing slips at the Ockham roundabout and the retention of an improved left

out Wisley Lane junction with the A3 – would fully meet the highways objectives underpinning the DCO Scheme and would better respect the integrity of the SPA.

5. Furthermore the proposed SPA compensatory habitat does not allow the SS to secure that the necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.
6. The RHS' position is that it follows as a matter of law that the SS must refuse to confirm the DCO Scheme.

### **Harm to RHS Wisley**

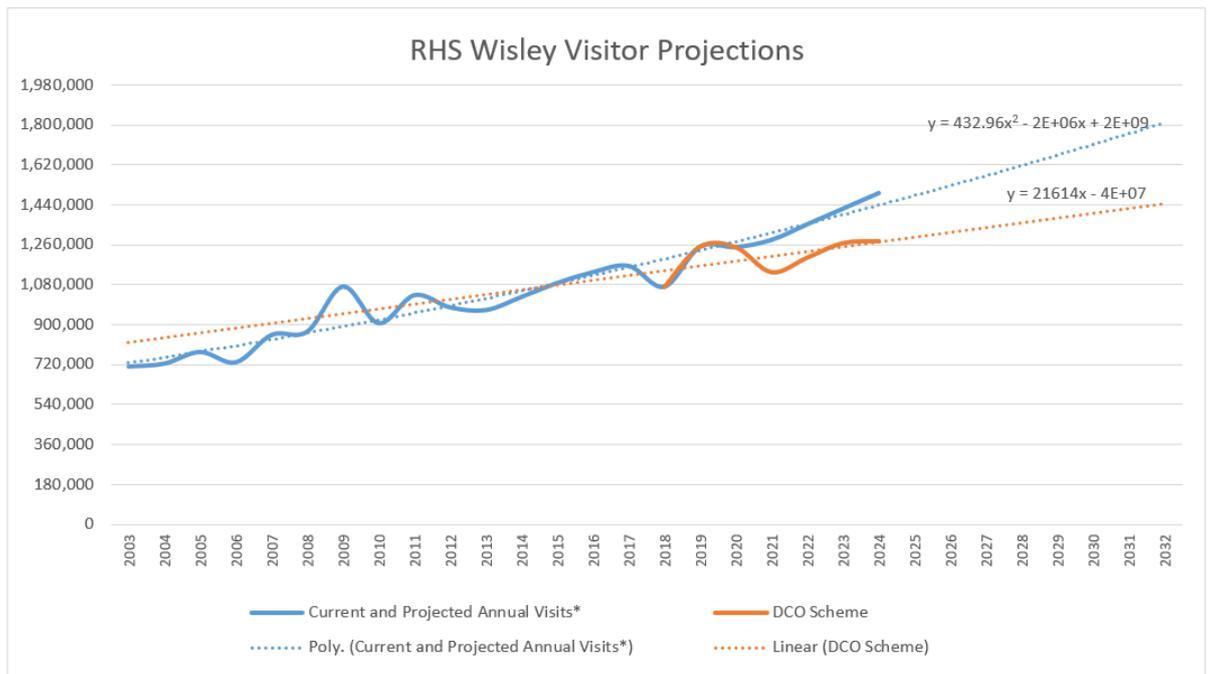
7. Dealing first with the harm that the DCO Scheme would cause to RHS Wisley, the starting point is the incontrovertible fact that the DCO Scheme would increase both travel distance and travel time for the overwhelming majority of visitors travelling to RHS Wisley via the A3. The table below sets this out:

	Measured Route Distances in metres		Journey Times in Seconds RHS Estimate (Applicant Estimate)		
	Measured Distance	Difference vs Existing (A3)	AM Peak Hour	Inter-Peak Hour	PM Peak Hour
<b>Round Trip A3 South-RHS</b>					
Existing (via A3)	14,810	-	1048 (1056)	821 (894)	1074 (972)
DCO Scheme (signed via A3)	23,175	8,365	1541 (1458)	1304 (1326)	1537 (1434)
DCO Scheme (via Send and Ripley)	12,860	-1,950	1438 (1350)	1218 (1200)	1439 (1236)
RHS Alternative	11,670	-3,140	692 (876)	584 (834)	685 (858)
<b>Round Trip A3 North-RHS</b>					
Existing (via A3)	6,675	-	483 (420)	348 (324)	420 (366)
DCO Scheme (via Ockham & Link)	8,870	2,195	550 (504)	479 (462)	562 (510)
RHS Alternative (via Wisley slip)	6,545	-130	352 (270)	311 (252)	375 (300)
<b>Round Trip M25(E)-RHS</b>					
Existing (via A3)	7,325	-	537 (702)	380 (504)	457 (606)
	9,535	2,210	592	516	604

DCO Scheme (via Ockham & Link)			(522)	(582)	(534)
RHS Alternative (via Wisley Slip)	7,210	-115	380 (288)	340 (372)	409 (324)
<b>Round Trip M25(W)-RHS</b>	Measured Distance	Difference vs Existing (A3)	AM Peak Hour	Inter-Peak Hour	PM Peak Hour
Existing (via A3)	7,120	-	512 (654)	373 (450)	451 (570)
DCO Scheme (via Ockham & Link)	9,415	2,295	581 (672)	507 (516)	597 (672)
RHS Alternative (via Wisley Slip)	7,075	-45	382 (438)	338 (306)	409 (462)

Data extracted from REP5-046 and REP11-036

8. Accessing RHS Wisley will also be much more convoluted. For example, a visitor from Guildford who followed the newly signed route to and from the gardens would pass the gardens four times and negotiate J10 twice. HE's modelling neatly demonstrates how unattractive the DCO Scheme would be: it shows visitors rejecting the signed route, leaving the A3 early and travelling through Send and Ripley instead. It is truly remarkable – and damning - that a scheme aimed at improving the strategic road network should result in drivers leaving the strategic network in their droves to use the local road network instead.
9. The RHS Alternative would avoid the impacts on the local road network. HE's own modelling of the south facing slips alone shows that when compared to the DCO Scheme these components of the RHS Alternative Scheme would result in a reduction in travel on the local road network of 1,049,000 vehicle kilometres each year and some 1,740,000 vehicle kilometres if the strategic road network savings are included.
10. The link below shows the complexity the DCO Scheme would introduce. It also shows the simplicity and efficiency of the RHS Alternative Scheme.  
  
[https://www.youtube.com/playlist?list=PLcTDIIV1xbZWCXD5S\\_BAx8GBwKRLHOY](https://www.youtube.com/playlist?list=PLcTDIIV1xbZWCXD5S_BAx8GBwKRLHOY)
11. The longer, slower, more convoluted journeys that the DCO Scheme would introduce would make RHS Wisley much less attractive to visitors. Fewer people will visit. The RHS has presented survey data that demonstrates that the drop off in numbers will be substantial and sustained:



Source: Hatch Regeneris Report (REP6-024)

12. In turn, this will lead to a very substantial reduction in visitor generated revenue. The construction period alone will reduce income by £6.6m from 450,000 fewer visitors. Over the construction period and 10 years after, the cumulative impact is a loss of 1.1m visitors and a reduction of £19.2m income.
  
13. The economic harm that RHS Wisley would suffer is a very substantial disbenefit of the DCO Scheme in its own right and weighs heavily against the confirmation of the DCO Scheme.
  
14. But there is an additional point here. The RHS's evidence explains that the loss in revenue will harm the RHS's ability to fund the very activities for which it is nationally and internationally renowned. In short, the loss of revenue compromises the charitable objectives of the Society, its ability to maintain the Garden and undertake those related activities which go to its mission, of supporting the science, art and practice of horticulture. And as Dr Miele's report explains, that would in turn lead to harm to the significance of RHS Wisley as a heritage asset. The Government's policy is that harm to the significance of heritage assets must carry great weight, and the more important the asset the greater the weight should be. As a heritage asset RHS is of high national significance (Grade II\*); it is of international importance in terms of the work that it does and in terms of its reputation. The harm that the DCO Scheme should therefore carry very great weight against the confirmation of the DCO Scheme.

15. The RHS notes that Historic England has not objected to the DCO Scheme but it is plain that Historic England has not taken into account the economic impact that the DCO Scheme would have on RHS Wisley and the consequential impact on the significance of RHS Wisley as a heritage asset.
16. The fact that the DCO Scheme would harm the heritage significance of RHS Wisley also brings into play a further important consideration: the availability of alternatives. It is highly relevant for the ExA and the SS's consideration of the DCO Scheme that the RHS Alternative Scheme would result in less economic loss and thus less harm to the ongoing operations at RHS Wisley. The availability of a feasible alternative that would cause less harm to the significance of RHS Wisley as a heritage asset very strongly supports the RHS's case that the heritage harm the DCO Scheme would cause has not been justified in accordance with national policy.
17. On the assumption that the ExA and the SS agree with the RHS that the DCO Scheme would cause economic harm to RHS Wisley or that it would harm the significance of RHS Wisley as a heritage asset they would be bound to conclude that the Environmental Statement submitted in support of the DCO Scheme is not fit for purpose: it is entirely silent on these issues. In this scenario it would be unlawful for the SS to confirm the DCO.
18. The DCO Scheme would also cause direct physical harm to the setting of RHS Wisley:
  - (i) The new overbridge has not yet been designed in detail but it will inevitably harm the sense of arrival into the Gardens;
  - (ii) The scheme would put a substantial number of the trees along the north side of the A3 at risk. Of the 44 trees in question, 39 are Grade II Heritage trees and 5 are Grade II\* Heritage Trees (according to the definition as set out in *Tree Assessment for Heritage* v12, 2013). This would harm the significance of RHS Wisley as a heritage asset; it would also constitute free-standing environmental harm in its own right.
19. In conclusion, the RHS's position is that the DCO Scheme would seriously harm RHS Wisley, both as an ongoing business and as a heritage asset. The Director General's letter (submitted alongside these submissions) summarises the national and international importance of RHS Wisley. It is globally unique. It would be an appalling decision to sanction harm to such an important place such as RHS Wisley – particularly when there is such a simple solution in the

form of the RHS Alternative Scheme. The RHS's case is that this harm should lead to the rejection of the DCO Scheme.

20. It should be noted that this harm will not simply be confined to the RHS as an organisation but will also affect the visitors, workers, volunteers as well as the thousands of organisations within the Garden's supply chain, with an estimated socio-economic loss to the local and regional economy of £60m to £100m.

#### **Harm to the Thames Basin Heaths SPA**

21. The RHS's position is fully detailed in the submissions prepared by Freeths LLP provided alongside these submissions. It is supported by voluminous evidence. But at its heart are a series of very simple points:

- (i) The DCO Scheme will result in the SPA receiving significantly greater levels of nitrogen deposition than would otherwise be the case in certain areas of the woodland located up to 150m from the A3.
- (ii) HE has wrongly assumed that all of this woodland will remain as woodland. On the contrary, under the Management Plan for this part of the SPA some of the woodland is proposed for restoration to heathland and some is proposed to be thinned, both being techniques to improve the quality of the habitat for the SPA's qualifying bird species. HE has presented no evidence as to whether in this scenario the air pollution impacts could harm the integrity of the SPA.
- (iii) But even if HE's assumption was right – i.e. that all of this woodland will remain as woodland – there is still uncertainty as to whether there will be an adverse impact on the integrity of the SPA.
- (iv) There is clear evidence that this pollution could affect the invertebrate populations that live in the woodland. These invertebrates are a food source for the qualifying bird species (particularly Nightjar).
- (v) On the evidence that has been presented (and noting the significant gaps in that evidence) there is a clear risk that the impact on the invertebrates could lead to an

impact on the bird species and in turn to an adverse effect on the integrity of the SPA. It plainly cannot be concluded with certainty that this would not be the case. For the reasons set out in the Freeths submissions, the conclusions to the contrary of HE and NE are plainly misconceived.

- (vi) It follows as a matter of law that the consideration of whether there is a feasible alternative scheme that would better protect the integrity of the SPA must extend to alternatives which would better respect the integrity of the SPA from the air quality impact perspective.
- (vii) The RHS Alternative Scheme meets this test. It meets all the objectives underpinning the DCO Scheme. HE says that it would not because the “left out” Wisley Lane / A3 junction would not be safe. That is simply wrong. But even if the ExA / the SS agreed with HE on this point, the Wisley Lane / A3 junction could simply be excluded from the RHS Alternative Scheme without affecting the ability of the RHS Alternative Scheme to outperform the DCO Scheme in terms of protecting the integrity of the SPA.
- (viii) The RHS Alternative Scheme (either with or without the Wisley Lane “left out”) would better protect the integrity of the SPA by reducing the air pollution impact on the SPA in comparison with the DCO Scheme.
- (ix) Given the availability of a feasible alternative solution it would be unlawful for the DCO Scheme to be confirmed.

22. Further and in any event the SS cannot conclude that the compensatory habitat proposed by HE meets the tests set out in regulation 68 of the 2017 Regulations:

- (i) The compensatory habitat included within the scheme is provided as compensation only for the land-take impact that the DCO Scheme would have on the SPA, not for the air-quality impact it would have (HE’s position being that there would be no air-quality impact);
- (ii) Substantial elements of HE’s compensatory habitat package are already envisaged under the SPA’s Management Plan and therefore cannot be counted as valid

compensatory habitat. Indeed, some elements even amount to a downgrade by reference to the Management Plan;

- (iii) HE has not assessed adequately the air quality impacts that the DCO Scheme would have on the compensatory habitat so that the technical feasibility and effectiveness of delivery of certain areas of compensatory habitat has not been demonstrated; and
- (iv) When assessing the benefits of certain compensatory habitat areas, no discount has been applied by HE to reflect resulting losses of or changes to existing benefits of those areas to the SPA.

### **Conclusions.**

23. The RHS has engaged constructively throughout the examination process. It has put its cards on the table throughout, patiently identifying the errors in HE's evidence and analysis, and pointing out the clear legal errors in its approach. It has single-handedly designed the RHS Alternative Scheme, handing HE a clear and obvious solution to the problems that the DCO Scheme would cause. HE has had every opportunity to address the flaws in its case but it has conspicuously failed to do so. The end position is simple: the harm that the DCO Scheme would cause to RHS Wisley is unjustified; and, for the reasons set out in the Freeths submissions, it would be unlawful for the SS to confirm the DCO Scheme.

**Robert Walton QC**

**Landmark Chambers**

**10<sup>th</sup> July 2020**