

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

**9.153 Applicant's Response to
Secretary of State's Letter -
27 November 2020**

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M25 junction 10/A3 Wisley interchange

Development Consent Order 202[x]

9.153 Applicant's Response to Secretary of State's Letter- 27 November 2020

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Table of contents

Chapter	Pages
1. Introduction	4
2. SoS Bullet 1- Proposal by the Applicant for Reduced Replacement Land (“RL”)	4
3. SoS Bullet 2 – Article 9 of the Draft Development Consent Order (consent to transfer benefit of Order)	5
4. SoS Bullet 3 – Updated Air Quality Monitoring results relating to the Painshill roundabout	6
5. SoS Bullet 4 – Requirement relating to certain tree roots at Wisley	8
6. SoS Bullet 5 – Diversion of Gas Main Between Court Close Farm and the Gas Valve Compound	10
7. SoS Bullet 6 - Request for comments from the Applicant and Interested Parties on the responses to the Secretary of State’s consultations of 4 and 16 November 2020	12
8. Errata in Highways England document	19

1. Introduction

- 1.1.1 This document sets out Highways England's response to the Secretary of State's (SoS) letter received on 27 November 2020.
- 1.1.2 Where issues raised within the 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.

2. SoS Bullet 1- Proposal by the Applicant for Reduced Replacement Land ("RL")

Secretary of State's comment:

The Secretary of State notes that in response to question 3 of the Secretary of State's consultation letter of 4th November, the applicant has suggested that if the Secretary of State is minded to reduce the replacement land provision, a more suitable proposal would be that the RL provisions in the Order should include:

- *Parcels PBF1, PBF2 and the south part of PBF3 at Park Barn Farm as proposed in the Secretary of State's letter; in addition to the*
- *Areas CF1 and CF2.*

The Secretary of State notes that this proposal would provide a total area of approximately 26.5ha of replacement land, which would equate to ratios of provision of approximately 1.74:1 for acquisition of special category land and 0.31:1 for acquisition of special category (rights) land. The Secretary of State notes it would also enable provision of replacement land for Chatley Heath that is contiguous with existing portions of Chatley Heath. The Secretary of State seeks comments from all interested parties on the above proposal.

Highways England's comments:

- 2.1.1 Highways England wishes to draw the Secretary of State's attention to its comments at 4.6.1 - 4.6.3 and 4.10.4 of its response to his letter dated 4 November 2020, and, in particular, to its comment that the replacement land package to be provided as part of the Scheme would be enhanced by the inclusion of parcel CF3 in addition to CF1 and CF2.

3. SoS Bullet 2 – Article 9 of the Draft Development Consent Order (consent to transfer benefit of Order)

Secretary of State's comment:

In paragraph 2.1.2 of its response to the Secretary of State's letter dated 16 November 2020, the Applicant identified the relevant works applicable to five of the seven undertakers mentioned in article 9(4) of the draft DCO. No works were identified in relation to UK Power Networks (Operations) Limited or National Grid Electricity Transmission PLC. Please would the Applicant identify the relevant works in respect of those two undertakers. If the Order is made, the Secretary of State is minded to remove the tailpiece to paragraph (4), and remove any undertakers from the list in that paragraph where there are no specific works identified as being applicable to them.

Highways England's response:

- 3.1.1 UK Power Networks (Operations) Limited provides a network maintenance, inspection and renewal programme for the UK Power Networks Group's licensed distribution network operations (DNOs) including South Eastern Power Networks plc (SEPN). However, the distribution network assets, including cabling and substations, are owned by the individual DNOs, including SEPN.
- 3.1.2 On that basis Highways England is content that UK Power Networks (Operations) Limited is removed from the list of undertakers in Article 9(4) and replaced with the details of South Eastern Power Networks plc (company number 03043097, whose registered office address is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP).
- 3.1.3 Highways England has discussed this matter with the statutory undertaker concerned which has confirmed that it is content for the amendment to be made.
- 3.1.4 In relation to National Grid Electricity Transmission plc (NGET), Highways England confirms that there are no 'numbered' works concerning the diversion of NGET's apparatus because no NGET apparatus needs to be diverted in consequence of the Scheme.
- 3.1.5 With regard to the Secretary of State's proposal to remove the tailpiece to paragraph (4), Highways England acknowledges that the Secretary of State is minded to do so and also to remove from the list in article 9(4) any undertaker where no specific works have been identified in respect of that undertaker.
- 3.1.6 Although the proposal would not give rise to any concerns as regards the Scheme, Highways England wishes to emphasise that the circumstances of each highway DCO scheme will differ and the removal of such a tailpiece may not be appropriate in the particular circumstances of other projects, notwithstanding the Secretary of State's proposed amendments to this dDCO.

4. SoS Bullet 3 – Updated Air Quality Monitoring results relating to the Painshill roundabout

Secretary of State's comment:

The Secretary of State notes that no response was received by Elmbridge Borough Council ("EBC") to his letter of 4th November and would therefore like to again invite EBC to provide details of any updated air quality monitoring results that the Council has obtained in 2020 in respect of its monitoring of the Painshill roundabout and whether they have any views on the impact of this on the air quality assessment undertaken by the Applicant as reported in Chapter 5 of the Applicant's Environmental Statement [APP-050].

Elmbridge Borough Council's response to Secretary of State's consultation dated 4 November 2020

Air Quality Monitoring Results at Painshill Roundabout

- 4.1.1 Elmbridge Borough Council (EBC) has supplied uncorrected nitrogen dioxide monitoring data for January to September 2020 measured at three locations in proximity to Painshill Roundabout and three locations at the junction of A245/A307. EBC note that a number of the tubes around the Painshill area indicate exceedances of the annual mean objective for nitrogen dioxide and that the corrected data will not be available until 2021. EBC also note that the Applicant's consultants may be able to determine a local correction factor using data from the Council's continuous monitoring stations. EBC recommend that the Applicant's consultants advise on any update to the Environmental Statement.

Highways England's response:

- 4.1.2 A review of the monitoring data has shown that there is only one monitoring site, Cob 11, which has recorded uncorrected monthly concentrations above the annual average objective value of 40 $\mu\text{g}/\text{m}^3$ on more than one occasion. The uncorrected monthly concentration was above 40 $\mu\text{g}/\text{m}^3$ at Cob13 for only one month, February 2020. At the other sites the uncorrected monthly concentrations were below the objective value, even during the pre-Coronavirus (COVID-19) lockdown months of January and February 2020.
- 4.1.3 Although the readings may be above the objective value during individual months, the objective applies to an annual period, and needs to be compared against data that is averaged over the full year. Highways England recognises that 2020 may not be a typical year due to the global Coronavirus (COVID-19) pandemic, with less traffic particularly apparent during the months of March, April and May, affecting nitrogen dioxide concentrations.
- 4.1.4 However individual monthly concentrations should still not be compared directly with the annual average. The data is uncorrected data as EBC has noted and would need to be adjusted for bias following collection of data from the full calendar year. Typically, diffusion tubes overread concentrations, although the adjustment factor can vary by location, by laboratory used, and by year. Any

adjustment carried out by Highways England's consultants would not be able to take place until early 2021 and would be indicative until ratified data became available, a process that is usually not complete until March or April each year.

- 4.1.5 The descriptions of the locations of the monitoring sites indicate that they are on street furniture at the roadside, not necessarily representative of exposure over an annual period such as at a residential property. For example, Cob11, which is noted as being located on the lamppost outside West Lodge, is approximately 5 metres closer to the road than the property itself. So even if the adjusted average reading at this site is above the objective, which will not be known for sure until April 2021, the concentration at West Lodge may be below the objective, as concentrations fall with increased distance from the road. This is important as the objective applies at locations of relevant exposure.
- 4.1.6 In any case, the air quality assessment has shown that the effect of the Scheme overall on local air quality is not expected to be significant and that changes in nitrogen dioxide concentrations with the Scheme in proximity to Painshill roundabout are small or imperceptible. The updated monitoring results would not be expected to change the results of the air quality assessment presented in the Environmental Statement Chapter 5: Air Quality [APP-050].

5. SoS Bullet 4 – Requirement relating to certain tree roots at Wisley

Secretary of State's comment:

The applicant's draft DCO includes the following requirement as requirement 18. "18. No intrusive works in connection with the authorised development may be carried out, and no plant, materials or vehicles will be used or stored in the areas shown cross-hatched red on the RHS Tree Protection Plan, except with the consent of the owner of RHS Garden Wisley, such consent not to be unreasonably withheld or delayed."

The applicant and RHS Wisley are requested to comment on any significant implications for the proposed construction operations if the following alternative to that requirement were to be included in the Order were it to be made:

"18. No soil level changes (excavation or filling), other works or access of any sort within [the root protection areas of the trees shown on] [the areas shown crosshatched red on] the RHS Tree Protection Plan shall be undertaken unless an arboricultural method statement describing the works or access and showing their location on a plan has been approved in writing by the Secretary of State following consultation with the owner of RHS Garden Wisley. The works shall be undertaken in accordance with the approved arboricultural method statement."

Highways England's response:

- 5.1.1 By way of background, and as previously advised by way of an email to the Secretary of State dated 26 October 2020, Highways England and the RHS agreed the terms of a land and works agreement which was entered into following the completion of the examination ('the Agreement').
- 5.1.2 Highways England notes that this agreement and the statement that accompanied it, prepared jointly by Highways England and the RHS, has not yet been posted on the National Infrastructure Planning website, although both parties envisaged that it would be.
- 5.1.3 Among other matters, the Agreement incorporates an arboricultural method statement ('the AMS') which includes detailed mitigation and measures to protect trees during the construction of the Scheme. The AMS resulted from constructive and positive engagement between specialist arboriculturists appointed by both Highways England and the RHS in order to ensure that the trees in question are properly protected during the construction process.
- 5.1.4 The AMS is much broader in scope than requirement 18 as proposed during the examination and has been informed by productive and detailed discussions between the parties' respective arboricultural advisers and with the benefit of additional information, not all of which was available during the examination.
- 5.1.5 In the light of the completion of the Agreement, Highways England considers that requirement 18 no longer serves a useful purpose as more extensive protection is given to the trees within RHS Garden Wisley by the Agreement. As noted, the

more detailed AMS is secured in legally binding form by the Agreement. Accordingly, the Secretary of State is respectfully invited to remove requirement 18 from the dDCO.

- 5.1.6 However, Highways England recognises that the Secretary of State may nonetheless wish to impose a requirement so that provision is made on the face of the dDCO in respect of this matter. If the Secretary of State is so minded, Highways England respectfully submits that the requirement should be in the form originally proposed and not in the form set out in the Secretary of State's letter for the following reasons.
- 5.1.7 Firstly, the restrictions on works within the root protection areas (RPA) of the trees as proposed under the Secretary of State's alternative form of requirement would preclude the delivery of the widening of the northbound carriageway of the A3, a major element of the Scheme, as some of the RPA extends into the A3 carriageway.
- 5.1.8 Additionally, Highways England does not consider that it would be appropriate for a separate arboricultural method statement to need to be approved by the Secretary of State under the requirement in circumstances where a detailed AMS has already been agreed between the parties and secured by way of the Agreement. This part of the proposed requirement is therefore unnecessary.
- 5.1.9 Lastly, Highways England notes that the RHS itself is now content to rely on the AMS as secured in the Agreement and has no further comments to make in relation to tree impact (see the RHS response to the Secretary of State's consultation letter at paragraph 15).
- 5.1.10 For these reasons it would not be necessary or appropriate to amend requirement 18 in the form set out in the Secretary of State's letter.

6. SoS Bullet 5 – Diversion of Gas Main Between Court Close Farm and the Gas Valve Compound

Secretary of State's comment:

The Secretary of State notes the comments from Girlguiding Greater London West ("GGLW") and the Applicant on the above matter, provided in response to the Secretary of State's consultation letter of 4th November 2020. The Secretary of State invites the Applicant and GGLW to provide any further comments in response to these.

Highways England's response:

- 6.1.1 Highways England has continued to review options for the route of the diverted gas pipeline. However, following further consideration, the alternative northern route mentioned by GGLW and by Southern Gas Networks in their respective letters is not feasible within the Scheme boundary. Additional land would be required north of the land currently identified as parcels 7/15, 7/15a, 7/16 and 7/17. This additional land is not in the ownership or control of Highways England and is also designated as ancient woodland. The environmental effects of a diversion on the northern alignment have also not been assessed.
- 6.1.2 Similarly, the option of diverting the gas main through the camping field used by GGLW (which would avoid the trees) is similarly not feasible as it would require land outside the Order limits, nor has there been an assessment of the environmental effects of that alternative, which may be more disruptive to GGLW given that construction works would need to be undertaken within a core area of the GGLW site.
- 6.1.3 Therefore, the only practicable solution within the Order limits is the alignment of the gas main diversion as applied for, which remains acceptable.
- 6.1.4 Highways England acknowledges that there will be some consequential tree loss from the construction of the gas main diversion through the campsite. However the trees affected by those works are not part of the designated ancient woodland and nor are they protected trees. The designated ancient woodland between the existing access road to the Heyswood campsite and the A3 will not be affected by the gas main diversion and will continue to provide a tree screen between the campsite and the A3. As explained in Highways England's document 9.150 Applicant's Response to Secretary of State's Consultation Letter - 4 November 2020, the design of the gas main diversion was developed so as to avoid affecting ancient woodland.
- 6.1.5 In recognition of the effects of the construction of the gas main through the Heyswood Campsite, Highways England maintains its commitment to the offer of mitigation/screening planting, both on those parts of the gas main diversion which may be replanted following construction and additionally elsewhere within the Heyswood Campsite should GGLW wish for such planting to take place.
- 6.1.6 Highways England would also be prepared to carry out or meet the costs of other measures as may be agreed with GGLW in order to mitigate the effects of the

Scheme on the campsite. Highways England recognises that the Secretary of State may wish to impose a requirement in order to formally secure these commitments. In that regard, Highways England proposes a draft requirement in the following form for the Secretary of State's consideration:

6.1.7 *Requirement [X] Heyswood Campsite*

(1) No trees within the Heyswood Campsite may be removed as part of the carrying out of Work No. 63(c) until a scheme for the landscaping, planting and the carrying out of such additional or alternative measures to mitigate the effects of the routing of Work No. 63(c) through the Heyswood Campsite, has been submitted to and approved in writing by the Secretary of State following consultation with Girlguiding Greater London West.

(2) In so far as the scheme approved under paragraph (1) may include the carrying out of work on land at Heyswood Campsite not within the ownership or control of the undertaker, it may provide for the carrying out of those works by the undertaker or, in default, by the provision of funds by the undertaker for the carrying out of those works by, or on behalf of, Girlguiding Greater London West.

Girlguiding Greater London West response to Secretary of State's consultation dated 4 November 2020

"There have been no further meetings between the Applicant and GGLW since the site meeting on Thursday 2nd July and a virtual meeting held on Thursday 12 November".

Highways England's response:

6.1.8 By way of clarification as to engagement with GGLW since the close of the examination, Highways England proposed a meeting with GGLW in the summer of 2020 about the process of how the works in their site would be undertaken, in a similar way to the engagement with other local stakeholders. GGLW, understandably given COVID-19 related conditions of the past year, were busy with opportunities for using the outdoor space at Heyswood for small groups. GGLW also indicated that they considered there was some doubt about the value of a meeting now that their submissions had been made to the examining authority and a decision on the application was not expected until January. In any event, as noted in the GGLW response, a meeting duly took place on 12 November 2020. A further meeting took place on 3 December 2020.

7. SoS Bullet 6 - Request for comments from the Applicant and Interested Parties on the responses to the Secretary of State's consultations of 4 and 16 November 2020

Andrew and Robert Macateer response to Secretary of State's consultation dated 4 November 2020

"Comments under Deadlines 11 and 12 have been made that the road does not need to be as wide as has been shown on the plans and that a section of that access road can be reduced to 3m with passing bays, with presumably the remainder...being 4.8m wide with passing bays. If the access road is to be constructed, it must be of a sufficient width to prevent both accident and congestion and that cannot be less than a complete carriageway in each direction.

The spur serving only Court Close Farm can certainly be narrower if the level of use is low enough and that is not a matter for us, but the entire access road from the main road going East needs to be two carriageways and therefore even the proposed width of 4.8m with passing bays is insufficient to cater for all the users identified".

Highways England's response:

- 7.1.1 Highways England is satisfied that, for the extent of the proposed access road from the Painshill junction to the Heyswood campsite car park, a road width of 4.8m is acceptable. Surrey County Council has also mentioned that it considers that the proposed substitute private means of access to serve the Gas Valve Compound and Heyswood campsite from the A3 southbound Painshill on-slip is fit for purpose as currently designed (see point 2.4.2 of Table 3.2 Statement of Common Ground (SoCG) Between Highways England and Surrey County Council (SCC) Table of Issues/Matters - Final Version dated 10 July 2020 [REP12-008]).

Elm Corner Residents Group response to Secretary of State's consultation dated 4 November 2020

"Rewilding the disused part of the current Elm Lane will increase Elm Corner Residents Group, 18 November 2020 2 replacement land, protect the area from antisocial behaviour, increase biodiversity and create an additional buffer around the SPA".

"We therefore once again urge Highways England to accept our request for acoustic fencing along the A3 southbound carriageway that abuts land plots 2/20, 3/11, 3/12, 3/16, 3/17, 3/21 and 3/22 (ie the stretch between the proposed Wisley overbridge and Old Lane)".

"No Work Order has been specified for the required driveway realignment at residence 'Twenty Twelve', Elm Corner, which will be affected by a change of access from the opposite direction".

Highways England's response:

Elm Lane

- 7.1.2 As set out in 9.152 Applicant's Response to Secretary of State's Letter dated 16 November 2020, paragraph 3.1.8, maintenance access is required to the drainage attenuation ponds either side of the new Wisley Lane overbridge, to the gantries on the A3 and for the Wisley Lane diversion, for associated highway drainage, for the Wisley Lane embankment and for maintenance of public rights of way. Given the significant difference in levels it is not possible to access these features via the Wisley Lane diversion. For safety reasons maintenance of the gantries on the A3 cannot be undertaken from the carriageway of the A3 itself. The drainage attenuation ponds and the drainage ditches are not accessible from the A3.
- 7.1.3 Access from the A3 onto the existing Elm Lane will be permanently stopped with the Scheme and a fence installed as shown on Sheet 2 of the Scheme Layout Plans [REP8-009]. The section of Elm Lane that will form the new NMU route will, between the former Wisley Airfield and the A3, will be utilised as a maintenance access, however the existing Elm Lane will be gated to prevent access from the Wisley Lane diversion as also shown on sheet 2.
- 7.1.4 Vehicular access along Elm Lane through Elm Corner from Old Lane will be stopped with a secure gate or barrier in the vicinity of access to Orchard Cottage, as shown on Sheet 23 of the Scheme Layout Plans [REP11-003] therefore, there will be no vehicular access to 'old' Elm Lane from Old Lane. These measures will prevent access to the redundant section of Elm Lane by all but authorised maintenance vehicles accessing the drainage ponds or gantries by the Wisley Lane diversion. Stopping up access at either end of the redundant section of Elm Lane will deter its use for those engaging in anti-social behaviour.

Noise and acoustic screening

- 7.1.5 Highways England provided a response to the Elm Corner Resident's Group on the issue of noise and acoustic screening in its response to Written Representations [REP2-014], table reference REP1-022-7, the salient part of which is reproduced below.
- 7.1.6 As set out in Environmental Statement Chapter 6: Noise and Vibration [APP-051] 6.8.24 for short-term impacts, a comparison is made between the Do Something and Do Minimum scenarios in 2022, the opening year of the Scheme. For long term impacts as a result of the Scheme, a comparison is made between the Do Minimum scenario in 2022 and the Do Something scenario in 2037. Long-term impacts without the Scheme have also been considered.
- 7.1.7 As set out in paragraph 6.8.33 and Figures 6.11 and 6.12 in Environmental Statement: Chapter 6 Noise and Vibration Figures 2 of 2 [APP-067], minor decreases in traffic noise are predicted during operation over the short term. As indicated in paragraph 6.8.26 and shown on Figures 6.13 over the long-term a, long-term changes to road traffic noise of up to 3 dB were predicted without the Scheme, which the DMRB 11:3:7 classes as a negligible impact magnitude. Therefore the noise levels generated by the Scheme do not justify the provision of an environmental barrier in this location.

Twenty Twelve

- 7.1.8 With reference to the driveway realignment at 'Twenty Twelve', as indicated in the document submitted by Elm Corner residents in response to the Secretary of State's letter of 4 November 2020, Highways England wrote to the owner of 'Twenty Twelve' in December 2019 confirming that work would be undertaken to realign the access to the property in agreement with the landowner. These works do not comprise part of the Scheme to be authorised by the DCO but Highways England wishes for the works to be undertaken alongside the main scheme works.
- 7.1.9 Further correspondence has been exchanged between Highways England and the owner of 'Twenty Twelve' during 2020. The extended examination and decision period has slightly delayed the follow up on the detail of the design promised in the letter, but Highways England will be pleased to discuss this further with owner of 'Twenty Twelve' in the coming weeks.

Ockham Parish Council response to Secretary of State's consultation dated 4 November 2020

- 7.2 The issues Ockham Parish Council raise in sections 3 and 7 of their response related to rewilding of Elm Lane, noise and acoustic screening for Elm Corner and 'Twenty Twelve' are addressed in the response to Elm Corner Residents Group.

Painshill Park Trust response to Secretary of State's consultation dated 4 November 2020

"In a recent email, Andy Rowe, Associate Director of Operations (West) of the South East Coast Ambulance Service has confirmed that he would "support any provision that can be maintained for at least Emergency Vehicle access to the site from both entrances". He states that Secamb are required to respond to category 1 calls within a mean of 7 minutes and that they would not be able to achieve this for much of the park.

These comments by Secamb are entirely in keeping with the concerns already expressed by Surrey Fire and Rescue Service. In Item 4 of the minutes of the meeting on 23.01.2020, headed "Review of Existing Emergency Access Arrangements", Paul Kenny, Group Commander, SFRS Central Command, commented on the unsatisfactory nature of the access for emergency services and reported that a trial had shown that the closure of the western entrance would cause SFRS to miss its response time standard. (See in particular 4.9, 4.10, 4.11, 4.12 and 4.26). His proposals for improving the route through the landscape would not allow SFRS to meet its standard but would seriously impact the views which are central to the appeal of the 18th century landscape. These minutes accompanied PPT's Deadline 11 submission and are attached again here."

Highways England's response:

- 7.2.1 The Trust has not provided the full email response from Mr Andy Rowe and so Highways England is not in a position to respond to the point raised here. A similar verbal comment was provided by Painshill Park Trust at REP6-023. As

Highways England stated at that time [REP7-009] it could not respond as it had not seen the report from the South East Coast Ambulance Service. This report was not subsequently provided by Painshill Park Trust as part of their examination submissions.

Park Barn Farm response to Secretary of State's consultation dated 4 November 2020

Highways England's response:

- 7.2.2 For completeness, Highways England wishes to inform the Secretary of State that the blight notice and related Tribunal proceedings were withdrawn by agreement on 25 November 2020. Highways England has no further comments to make on this representation.

Royal Horticultural Society response to Secretary of State's consultation dated 4 November 2020

- 7.2.3 Highways England sets out below its responses, section by section, to the RHS document dated 19 November 2020 and published on the Planning Inspectorate website 2 December 2020. Highways England notes that, due to the timing of its submission, the RHS response does not take into account Highways England's submissions to the Secretary of State's consultation dated 4 November 2020 and thus a number of the issues raised were dealt with in Highway's England's submissions on 19 November 2020.

Highways England's response:

Highways and traffic impacts

- 7.2.4 Highways England does not dispute that the RHS Alternative scheme would result in reduced journey times of several minutes for some RHS visitors compared to with the Scheme, see Section 2.4 of the Transport Assessment Supplementary Information Report [REP2-011]. However, Highways England does not consider the additional journey times for some RHS visitors due to the Scheme to be significant in the context of the overall investment in time made by people visiting the Garden, which is typically likely to be several hours consisting of travel time and duration of stay at the Garden.
- 7.2.5 Highways England has also demonstrated that south-facing slips at Ockham do not provide any strategic benefit and would be very lightly used, so the business case for them is likely to be weak even if the Highways England traffic modelling has slightly underestimated the additional journey times due to the Scheme for some RHS visitors, see response REP1-038-3 in [REP2-014], response to question 3.13.2 [REP7-004] and Section 4 of [REP8-040].

Air quality and ecology

Ecology

- 7.2.6 With regard to the matters raised in the document '*RHS' Submissions in response to Question 4 of the Department for Transport's letter dated 4 November 2020*', prepared by Freeths, Highways England has already explained

in in section 4 of document 9.150 Applicant's Response to Secretary of State's Consultation Letter - 4 November 2020 submitted on 19 November 2020 that the proposed changes would not alter the significance of residual effects on designated site including the SPA, ancient woodland, HPIs or species.

- 7.2.7 Section 4.2 of document 9.150 Applicant's Response to Secretary of State's Consultation Letter - 4 November 2020 submitted on 19 November 2020) confirms that there still would be no increase in recreational disturbance without CF1-4, and Chapter 5 of the HRA Stages 3-5 [REP4-014] makes it clear that replacement land does not form any compensation for the SPA.
- 7.2.8 As the Secretary of State is aware, Highways England disagrees with the Secretary of State's proposal to reduce the amount of replacement land to be provided in respect of the Scheme. Highways England considers that the amount of replacement land proposed to be provided is appropriate, a position supported by Surrey County Council, RSPB, Natural England, Surrey Wildlife Trust, Ockham Parish Council and Elm Corner Residents Group. Nor would the proposed reduction satisfy Mr Alderson, the only party to the examination that opposed the extent of replacement land proposed by Highways England.
- 7.2.9 RHS' response to the Secretary of State's consultation letter of 4 November 2020 only came to the attention of Highways England on the afternoon of 2 December 2020, when it appeared on the National Infrastructure Planning website. It contains a lengthy submission by Freeths LLP, that Highways England has only had a very limited time to consider, upon the legality of the Secretary of State deciding to reduce the amount of replacement land proposed by Highways England. However, one can presume from its submission that the RHS is also not supportive of the proposed reduction
- 7.2.10 Suffice to say that the Secretary of State will no doubt wish to satisfy himself as to the legality of proceeding with any alternative replacement land package that he considers appropriate.
- 7.2.11 Highways England does not consider that it is necessary for the environmental statement it submitted in respect of the scheme to have been updated. Highways England cannot have been expected to anticipate such modification or modifications that the Secretary of State has in mind and to have prepared a corresponding ES or such addenda to the scheme ES in order to reflect a possible variation of the Scheme. Highways England acknowledges, however, that in making his decision the Secretary of State will have in mind the regulation 21 of the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017 which imposes certain requirements upon the Secretary of State in coming to a reasoned conclusion on the relevant environmental effects.

Heritage impacts (including direct financial impact)

- 7.2.12 Points 9 and 10: Highways England has responded to RHS Wisley regarding the impacts the scheme may have on the historic significance (value) of the Registered Park and Garden (RPG) due to potential changes in financial revenue and does not agree that there would be an impact. This was covered in the response to the D11 representations [REP12-024].

7.2.13 Point 11: Highways England has reviewed the Montagu Evans report on heritage matters [REP11-047] and does not agree with the assertions made in that report. Highways England notes that the Montagu Evans report indicates that a request for comment from Historic England was made regarding the financial impacts on the RPG and that Historic England declined to respond (see paragraph 9.16 of the report). Highways England is not in a position to compel Historic England to respond to the request from Montagu Evans.

7.2.14 Point 12: The Heritage Statements of Significance [APP-123] is concerned with the contributions of setting to the heritage significance (value) of the RPG. The heritage chapter of the ES [APP-075] found that the scheme would not alter the way in which the current setting of the RPG contributes to the significance of the asset. The current approach to the RHS entrance, whilst key to the design of the property as an attraction, does not contribute to the heritage significance (value) of the asset (point 13).

Arboricultural matters

7.2.15 As mentioned above, Highways England notes that the RHS has no further comments to make on arboricultural matters and is content to rely on the provisions in the Land and Works Agreement between Highways England and the RHS.

Table headed 'RHS responses to Highways England's REP12-024'

7.2.16 The majority of the submission does not raise any new points that were not included in RHS's deadline 12 submission [REP12-056]. These points have already been covered in previous Highways England submissions, including the Highways England document '9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly' submitted in response to response to Secretary of State's consultation dated 4 November 2020. Where new points have been raised these are dealt with in the following paragraphs.

7.2.17 For the convenience of the Secretary of State, the relevant sections of the Highways England document 9.151 have been provided below.

Section 3.2 The suggested overlap between SPA enhancement areas proposed by HE as part of the suite of compensatory measures and the draft Surrey Wildlife Trust Wisley and Ockham management plan

7.2.18 This matter is covered by paragraphs 9 to 15 of Highways England document 9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly submitted in response to response to Secretary of State's consultation dated 4 November 2020.

7.2.19 As recorded in the HRA Annex B Consultation report [REP4-016], page 50, it was raised as Item 4.0 at the meeting of the 16 March 2018 that, to be acceptable under EC guidance (Guidance Document on Article 6(4) of the 'Habitats Directive' 92/43/EEC 2012), the SPA enhancement must not be

something that would have been done as 'normal practice' under the Habitats and Birds Directives or obligations laid down in EC law. Therefore, this was at the forefront of Highways England's decision-making process for designing the suite of compensatory measures.

Section 3.4 The established woodland buffer is not a supporting habitat for any of the qualifying SPA species

- 7.2.20 This section makes reference to the RHS deadline 12 submission [REP12-056].
- 7.2.21 This matter is covered by paragraphs 17 and 22 of Highways England document 9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly submitted in response to response to Secretary of State's consultation dated 4 November 2020.

Section 3.5 The conservation objectives do not apply equally to all parts of the SPA

- 7.2.22 This section makes reference to the RHS deadline 12 submission [REP12-056].
- 7.2.23 This matter is covered by paragraphs 17, 22 and 27 to 29 of Highways England document 9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly submitted in response to response to Secretary of State's consultation dated 4 November 2020.

Section 3.6 There will not be an air quality impact on the invertebrate assemblage of the established woodland buffers as a result of the Scheme

- 7.2.24 This section makes reference to the RHS deadline 12 submission [REP12-056].
- 7.2.25 This matter is covered by paragraphs 16 to 26 of Highways England document 9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly submitted in response to response to Secretary of State's consultation dated 4 November 2020.

Section 3.7 Summary of HE's key points regarding air quality and the SIAA

- 7.2.26 All of the points made in section 3.7 are covered in Highways England document 9.151 Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] – Response by counsel – Michael Humphries QC and Caroline Daly submitted in response to response to Secretary of State's consultation dated 4 November 2020. However, Highways England makes the following two points.
- 7.2.27 In points 3.7.2 (6) (7) and (9) RHS refer to their own calculations of nitrogen deposition which include for in-combination sensitivity testing and ammonia beyond 30 m. It is not Highways England's view that these RHS calculations are correct and the response in REP12-024 to these points stands.

7.2.28 Point 3.7.2 (8) refers to the delay to conservation objectives caused if the Scheme is granted consent. Highways England has set out its position on this point already in REP12-024.

Section 3.8 RHS Response to HE-NE-SWT responses to ExQ4 (REP11-038)

7.2.29 In points 3.8.3 to 3.8.6 RHS states that Highways England does not challenge the RHS's rewrites of paragraph 7.2.50 in REP4-018 (the SiAA). For the avoidance of doubt, Highways England does not agree with the RHS rewrites as given in REP11-038 4.3.3 page 5) for reasons provided in REP12-024 para 3.7.2 points 8 and 9.

Section 3.11 AQC note (references at 4.3.3)

7.2.30 RHS suggest that Highways England appears not to have understood the methodology set out in AQC's note (REP11-041), but does not provide any evidence for this. Highways England does not agree with this statement and has suggested that the likely reason for differences in the modelling carried out by AQC is because the emission factors used by AQC are not the most up to date ones used for Highways England schemes (REP12-024, 3.11.3). RHS has acknowledged that AQC used published factors rather than those used by Highways England's contractors (second paragraph relating to 3.11.3). This must indicate that the modelled results produced by AQC cannot be compared to the Highways England modelling.

8. Errata in Highways England document

8.1.1 In paragraph 42b of Highways England's Response to the Secretary of State's consultation of 4 November 2020 (document reference 9.151) Applicant's Comments on the Royal Horticultural Society D12 Submission [REP12-056] submission there are two references to junction 28. These should be read as references to junction 10.

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