



DEADLINE 8 RESPONSE

KENT DOWNS AONB RESPONSE TO

**Written submission of oral comments made incorporating
additional comments, in respect of**

Issue Specific Hearing 11 – Environment Matters

Wednesday 22nd November 2023.

Interested party Ref no: 20035310

Thank you for inviting the Kent Downs AONB Unit to speak at Issue Specific Hearing 11. Please find below the Kent Downs AONB Unit's written submission and additional comments following the Hearing.

Mr Nick Johannsen, Director of the Kent Downs AONB Unit opened the AONB Unit's submission, by bringing to the attention of the Examination an important change in the legal context for AONB, in respect of the primary legislation applicable to AONBs, comprising an amendment to the Countryside and Rights of Way Act (2000) brought in through the Levelling Up and Regeneration Act (2-23). The Act has received Royal Assent and will become law on the 26th of December, so is considered to be in scope for consideration of the DCO application.

Mr Johannsen advised that this was a very late Lords Amendment to the Act, and that the AONB Unit had only recently heard about it and received a briefing on it from Defra. He advised the Examination that the AONB Unit had brought it to the attention of the Applicant.

The change is to the statutory duty placed on relevant authorities (which includes any public body, Minister of the Crown, statutory undertakers and any person holding public office) towards the purpose of the AONB, currently set out at Section 85 of the Countryside and Rights of Way Act and known as the 'Duty of Regard'.

Section 85 of the CRow Act currently states:

'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.'

The key phrase is shall have regard to the purpose.

The Levelling Up and Regeneration Act amends this to:

'(A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty...a relevant authority...must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.'

The key phrase now is must seek to further the purpose. In a very recent briefing from Defra and Natural England, it was made clear that this is a deliberately active duty.

Mr Johannsen concluded by advising that he thought it was proper, reasonable and hopefully helpful to bring this to the attention of the Examination at this point because in the view of the AONB Unit, it sets a very different context for the treatment of the AONB.

Following this submission, both Mr Bedford, KC for Gravesham and Mr Grant, KC for Natural England advised that they agreed with the AONB Unit that the legislative changes has altered the legal context that the Examining Authority will need to consider the application against.

3. a) Landscape Impacts in Kent Downs AONB

i. Is there agreement amongst the parties that adverse landscape effects on the AONB are localised during construction and operation of the road (inclusive of utility works), or do the parties consider that there would be an adverse effect on the character and integrity of the AONB overall?

Mrs Katie Miller, Planning Manager at the Kent Downs AONB Unit responded to the Agenda items listed at 3. She advised that the impacts of the Project would be most keenly felt in the vicinity of the A2 where the physical alterations of the road widening and utilities diversions would occur. However, impacts would extend beyond the A2 corridor, including harm to the immediate setting of the AONB.

This would include impacts from the new large scale, multi-level junction with the A2, resulting in a permanent major alteration to the scale, rural appearance and landscape character of the immediate western setting of the AONB. It would also include impacts from the total loss of Gravel Hill Wood immediately adjacent to the AONB's western boundary, as well as the loss of the woodland between the Thong Lane south Green bridge and the electricity substation and petrol station on the south side of the A2 to the immediate west of the AONB boundary.

The Project would also result in more indirect effects further afield within the AONB :

- As discussed at Issue Specific Hearing 6, impacts from nitrogen deposition on several designated sites in the AONB, but some distance from the actual Project Order limits.
- Impacts arising from changes in traffic movements as a result of the Scheme which, as the application submission acknowledges, would include notable visual

disturbance on some more minor roads in the AONB as well as visual disturbance at settlements in the AONB including Trottscliffe and Boxley.

- The Project would also increase traffic using the A229, Bluebell Hill, which provides the shortest link between the M20 and M2 and cuts directly through the escarpment of the North Downs, the main target and most prominent feature of the Kent Downs AONB. Both junctions with the motorway at either end of the A229 are already over capacity at peak times and upgrading the junctions and the route itself would have a significant impact on the AONB.

Therefore, it was advised that the Kent Downs AONB Unit does not consider that adverse landscape impacts arising from the Project would be localised, but would extend across a wider geographical area of the AONB and its immediate setting. The AONB Unit therefore disagrees with the statement included at paragraph 4.28 of The Planning Statement - Appendix F ([APP-501](#)) which states that *'the Project affects only the very northern most area of the Kent Downs AONB and is limited to the existing major transport infrastructure corridor through the West Kent Downs Character Area within the Kent Downs AONB'*.

Moreover, the assertion of the Applicant set out in the same document ([APP-501](#)) at paragraph 3.44 that the AONB designation as a whole would not be compromised on the basis that only 1.61km² of the Order Limits are located within the Kent which represents 0.18% of the total 878km² of the AONB is also contested. Such a conclusion not only fails to acknowledge the wider and indirect impacts referenced above, but we would also contend that development of any scale which detracts from elements which contribute to the wider natural and scenic beauty of the AONB, neither conserves nor enhances the AONB as a whole. In terms of policy, the fact that the appeal site is a small part of a much larger AONB is not important. This is a matter that has been established in previous appeal decisions such as APP/Z3825/W/21/3266503 (Land south of Newhouse Farm, Old Crawley Road, Horsham, [link](#)) in the High Weald AONB, where at paragraph 40 of the Decision letter, the Inspector notes:

'In terms of policy and statute, the notion of relative beauty, and the fact that the appeal site is not with in deep countryside, with other areas perhaps having greater scenic beauty, is not important. Neither is the fact that the appeal site is a tiny corner of the much larger AONB, two fields out of some 10,000'.

The AONB Unit advised that it also disagreed with the conclusion of the Planning Statement Appendix F at paragraph F7.7 ([APP-501](#)) that 'The purpose of the AONB designation would not be compromised'. Given that the purpose of AONB designation is to conserve and enhance natural beauty, the conclusion that this major highway infrastructure scheme would conserve and enhance natural beauty is strongly contested and wholly contradicts the findings of Chapter 7 of the Environment Statement which concludes that there would be significant residual landscape and visual effects on AONB receptors both within the AONB and in its immediate setting.

ii. The Applicant has advised in response to both ExQ1 and ExQ2 why it has 'adjusted' the boundaries for the Cobham and Shorne Local Landscape Character Areas (LLCA) for the purpose of assessing landscape impacts; however, can it explain the level of sensitivity and significance of effects it would ascribe to those areas if the boundaries had not been 'adjusted' and instead the Kent Downs AONB LLCA boundaries (which echo the Kent County Council's 2004 LCA) were used? Is there a difference?

The applicant explained that if the published boundaries had been used, then it would assess the West Kent Downs: Sub-area Cobham as Very high, rather than the High attributed to it using the adjusted boundaries, due to '*increased susceptibility to change due to vegetation loss between the HS1 and A2 corridors*'. The AONB Unit advised that it agreed with this assessment.

The applicant went on to advise that the significance of effect levels within West Kent Downs: Sub-area Cobham would be assessed as large adverse in construction, rather than moderate adverse; large adverse in opening year winter, rather than slight adverse; and moderate adverse in design year summer, rather than slight adverse, due to a greater proportion of the project being located within the local landscape character area. Again, the AONB Unit agrees that there would be an increased significance of effect if the published boundaries had been used.

In respect of the West Kent Downs: Sub-Area Shorne, the applicant stated that there would be a reduction from Very large to large during construction, and that the Operation effects reported at Year 1 and Year 15 would remain as large adverse and moderate adverse respectively. While the AONB Unit remains of the view that the Magnitude of effect for the Design Year is under-assessed in the ES and would remain large adverse at Year 15, we agree with the applicant that there would be no reduction in the reported significance of effect at operation. The AONB Unit however disagrees that there would be a reduction at Construction to large rather than Very large given the extent and nature of works that would remain in the West Kent Downs: Sub-area Shorne local character area.

iii. Will the green bridges over the A2 at their proposed widths provide valuable landscaping connectivity to reduce the severance between the historically linked landscape of Cobham and Shorne (noting that we do not need to re-visit the discussions on Green Bridge design)?

The AONB Unit advised that it remains of the view the Green Bridges over the A2 would fail to serve this purpose due to their restricted width. While it is recognised that the landscape here is already severed to a degree, the impacts are significantly reduced by the central reservation woodland, the mitigation planting associated with the high speed railway line, and the fact the existing woodland currently comes up to the highway edge on the north side of the A2, all of which reduces the apparent scale of the transport infrastructure and provides wooded enclosure, limiting the apparent severance.

The AONB Unit went on to state that it had explained at ISH9 the importance of woodland character to this part of the AONB and how this contributed to the inclusion of the land at Shorne in the AONB; this is the only location where the AONB boundary extends to the north of the A2, and that it was specifically included because of its wooded character.

It was explained that the loss of the woodland and the creation of a mostly 14-lane (but up to 16 lane) wide unbroken expanse of highway infrastructure would significantly increase the severance of the northern tip of the AONB from the rest of it and the effects of this are demonstrated in photomontages included in Chapter 7 of the LVIA such as those provided from Viewpoint S05a ([REP6-036](#)) in Doc 6.2 Environmental Statement Figure 7.19 - Photomontages Winter Year 1 and Summer Year 15 (1 of 4).

The AONB Unit commented that the severance of the landscape and need for this to be addressed through the provision of green bridges was acknowledged throughout the application submission, including:

- In the *Combined Modelling and Appraisal Report - Appendix D* ([APP-524](#)) as well as Ch 7 of the ES (6.3 Environmental Statement - Appendix 7.9 ([APP-384](#)) where it is acknowledged that 'the A2 widening and vegetation loss within the A2 corridor would increase the existing severance of the Kent Downs';
- The need for the green bridges to provide landscape connectivity in addition to ecological connectivity in various document in F.5.50 of the Planning Statement Appendix F ([APP-501](#)), where green bridges are identified to be one of the proposed mitigation measures:

'c. The provision of green bridges to enhance landscape continuity across the Project route';
- Chapter 2 of the Doc 6.1 Environmental Statement – Project Description ([APP-140](#)) states 'Green bridges are built over infrastructure such as roads or railways to provide landscape and habitat connectivity'; and
- Table 3.3 Schedule of landscape effects on LLCAs during operation in 6.3 Environmental Statement - Appendix 7.9 ([APP-384](#)) where it is advised that one of the key considerations for mitigation includes '*two new green bridges to reduce the perception of severance resulting from the widened A2 corridor*';
- It was also confirmed by the Applicant at ISH6, (Doc 9.86 Post-event submissions, including written submission of oral comments, para 4.1.5 for ISH6 [[REP4-182](#)] that 'landscape character was also a factor in the use of green bridges. For example, within the Kent Downs AONB, the replacement of Thong Lane south and Brewers Road bridges to maintain the landscape connectivity across the transport corridor and to reduce severance as well as to improve the walking, cycling and horse-riding experience.'

However, despite this acknowledgement of the need for the bridges to provide landscape connectivity, the AONB Unit advised their current width falls far short of achieving any meaningful landscape connection and, as explored at ISH 6, fall far short of relevant design guidelines for green bridges that are seeking to achieve landscape connectivity:

- The Landscape Institute's Technical Note which recommends a 50-80 metre width for landscape and species connectivity (NE Deadline 4 Response – Appendix A.6 – Landscape Institute Green Bridge Technical Note ([REP4-330](#)); and
- Natural England's Literature review on Green Bridges which states bridges aiming to achieve connections at a landscape/ecosystem level should be over 80m in width (Natural England literature review (Natural England's Deadline 4 Response - Appendix A.5 Natural England Commissioned Report NECR181 Green Bridges A literature review- [REP4-329](#)).

The AONB Unit concluded its submission by advising that the provision of Green bridges is one of the few possible mitigation measures available for impacts to the AONB given the specific constraints of the Project, therefore they need to be as ambitious as possible to properly fulfil this function. Both the Thong Lane South and Brewers Lane bridges however fall far short of the scale of response needed to provide fully functioning landscape linkage in view of the scale of impact arising as a result of the Project.

Gravesham Borough Council and Natural England both endorsed the AONB Unit's position.

iv. Are there any landscaping mitigation measures not already proposed by the Applicant that would reduce the impact of the Proposed Development on the AONB, and/or any measures that would instead compensate for the harm (noting that we do not need to re-visit the discussions on the site selection for nitrogen deposition compensation areas)?

The AONB Unit advised that opportunities for mitigation of the AONB landscape, particularly in terms of landscaping mitigation are limited. This is due to:

- the potential for mitigation alongside the A2/M2 being restricted as a result of the constraints associated with the diverted utilities and their associated wayleave requirements which restricts opportunities replacement tree planting;
- the presence of the High Speed1 railway line;
- and beyond this on both sides of the A2, the majority of land already comprising either woodland or historic parkland where new woodland planting would be inappropriate in terms of landscape character.

Given these constraints, the AONB Unit advised that it considered mitigation should be focused on reducing the harm arising from the increased severance of the AONB landscape and that Green bridges provide the greatest opportunity to achieve this. Therefore, in addition to Green bridges at Brewers Road and Thong Lane south, the existing Park Pale bridge could be replaced with a Green bridge, as this provides further opportunity for reducing the severance of the landscape and would also provide and signal an entrance gateway at the eastern end of the AONB. It would be particularly beneficial as it would provide an improved experience for recreational users of the bridge as it is crossed by a public footpath (NS161) and National Cycle Route 17 and is considered particularly suitable as a green bridge as its only used by limited vehicular traffic, serving just the Golf Club.

The AONB Unit advised that further opportunities for mitigation to the AONB include additional Design Principles to help ensure reduction of impacts on the AONB as set out in Section 8.4 of the AONB Unit's Written Representation ([REP1-378](#)). This includes:

- A requirement for fences be cleft post and rail to ensure they are locally distinctive,
- Minimising the use of metal crash barriers and looking at alternative designs where they are considered essential, such as tensioned steel cables or gabions with natural stone products such as flint and ragstone.
- Kerbs to be kept to a minimum, rumble strips or cats eyes to be used instead. Where kerbs are considered essential, these should be used flush to the ground.
- Gantries, signs and lighting columns to be minimised and sited and finished in a colour to minimise their impact on the landscape.

Both Gravesham Council and Kent County Council subsequently endorsed the request for the additional Green bridge at Park Pale.

v. The ExA would like an update on the draft S106 Agreement with Kent County Council comprising a 'compensatory enhancement fund' for the Kent Downs AONB Unit (as per the Applicant's Response to EXQ1 12.2.9b [[REP4-200](#)] and as referenced in Item No. 2.1.62 of the Statement of Common Ground with Gravesham Borough Council [[REP6-025](#)]).

The Kent Downs AONB Unit advised that it had welcomed proactive discussions held with National Highways since January 2021 on compensatory measures for the AONB and that compensation in the form of a Compensatory Enhancement Fund, to be used to fund enhancements in the wider AONB, would be an appropriate approach to compensation should the Project proceed, although agreement to compensation did not remove the AONB Unit's in-principle objection to the scheme.

The Unit went on to state that it was disappointing that draft Heads of Terms were only shared with the Unit at the end of August 2023, with no prior indication given of National Highways intended compensatory offer in financial terms which had left a frustrating short amount of time for both parties to reach agreement on the fund offer. This is despite undertakings from the Applicant earlier on in the process to have draft Heads of Terms agreed prior to submission of the Application.

Given the short amount of time left to available to have a signed Agreement in place, the AONB Unit reluctantly accepts the proposed Fund Offer, although it was considered that a higher figure that responds more appropriately to the identified level of harm identified could have been agreed if negotiations had commenced earlier.

The AONB Unit confirmed that it was also content with the relevant clauses and wording set out in the Draft Agreement.

The AONB Unit went on to advise that there remains disagreement between the Applicant and the AONB Unit on whether the impacts of nitrogen deposition on designated sites in the AONB are appropriately compensated for. The AONB Unit had therefore sought to negotiate a higher fund figure to provide compensation for the nitrogen deposition impacts to sites in the Kent Downs, in the absence of inclusion or reinstatement of appropriate levels of compensation sites in the AONB. This had not been accepted by National Highways.

It was suggested by the AONB Unit that should the Examining Authority agree that the proposed nitrogen deposition compensation does not adequately address harm to designated sites in the AONB, and the removed sites are not re-instated, then a supplementary amount to increase the Enhancement Fund would be appropriate, to be used specifically on measures that would improve the ecological resilience and biodiversity of the AONB, and preferably the affected sites, which could potentially be secured through a separate planning obligation. The AONB Unit advised that it would seek to continue to engage with the Applicant to reach agreement on an appropriate level of funding, without prejudice to the applicant's position that compensation is not required. However, following ISH 11, at a meeting between the Applicant and the AONB Unit on 28/11/2023, the Applicant advised that it was not prepared to engage on this matter and that it would respond to any submission made by the AONB Unit through official Examination submissions. The AONB Unit sets out its further position on this in response to Action Point 15 of ISH 11.

5 Mitigation Proposals

a Nitrogen Deposition and other Woodland Compensation/ Mitigation

i There remain issues with the compensation offered for the Nitrogen Deposition and other woodland compensation/ mitigation. The Applicant is to provide a simple explanation or summary indicating:

- **How the land in the Change Application [[CR1-001 and 002](#)] at Blue Bell Hill and Burham was originally considered to be necessary and is now considered to be no longer required to be provided elsewhere.**

- **The amount of Nitrogen Deposition compensation required to offset the project and why there is limited compensation provided in the Kent Downs AONB where the largest effect is said to occur.**

- **Some of the proposed Nitrogen Deposition and other woodland compensation/mitigation locations have not yet had the benefit of detailed ecological surveys. What measures are proposed to mitigate the impact on the existing habitat and/or species found following the surveys? How is the mitigation secured?**

A full description of all the points can be provided in writing at Deadline 8.

Mr Johannsen, Director of the AONB Unit opened by clarifying that when talking about Nitrogen Deposition harm, it is to sites designated for wildlife interest that the AONB Unit is referring to, i.e. SSSIs and SACs. He advised that he made this point as the applicant appeared to have confused this matter in their response to the AONB Unit's submission at Issue Specific Hearing 6, given they suggested that comments made were 'not relevant' (their words) because the AONB designation is a government administrative boundary for the conservation of the landscape. The AONB Unit is concerned because so many of the affected designated sites lie within the AONB.

The AONB Unit explained that both Natural England's High Level advice on Nitrogen Deposition and the Applicant's own submitted documents are clear that nitrogen deposition compensation should be as close to the harm as possible and that the habitat networks and resilience they refer to should strengthen the network of designated sites and so should also be as close as possible to the affected areas.

The AONB Unit commented that it does not accept that compensatory investment in Brentwood on a site already purchased meets the applicant's own criteria nor the advice from Natural England and appears arbitrary when judged against submitted evidence and advice. It was advised that there are many occasions in the documentation which support this point; attention was drawn to 3 documents which provide a narrative as the scheme developed:

- **1st Natural England's pre-application advice on Nitrogen Deposition**

In NE's initial advice (Appendix A.13: Natural England's pre-application advice on Nitrogen Deposition Compensation proposals (dated 10 December 2021) [[REP4-337](#)] they refer to the importance of targeting and building the resilience of affected sites. It is advised in this document that they '*support the principle that the measures are seeking to build the resilience of the affected sites through targeted habitat creation that enhances habitat networks*'.

It is the resilience of the affected sites which are referred to and targeted habitat creation. The bulk of the Nitrogen Deposition proposals are north of the Thames which the AONB Unit does not consider is either targeted, nor does it build the resilience of the affected sites.

In the same document Natural England note that the criteria for compensation apparently agreed by the applicant and Natural England specifically includes 'proximity to the affected sites'.

- **2nd Combined Modelling and Appraisal Report Appendix D.**

This document [[APP-524](#)] also supports the point about compensation being close to harmed designated sites (SSSIs and SACs) and new networks and resilience relating to existing designated sites. Table 4.1 in the Combined Modelling Appraisal on electronic page 23 – reports very large adverse impacts as a result of N Dep impacts on specific designated sites, it states:

'Habitat creation at nitrogen deposition compensation sites, creating new wildlife-rich habitat which strengthens network of designated sites and habitats, proposed to fully offset project wide significant adverse effects from nitrogen deposition.'

It was advised that the simple point again was that the creation of new wildlife rich habitats should strengthen the network of designated sites, not the landscape around Brentwood.

- **3rd Environmental Statement Appendices Appendix 5.6 – Project Air Quality Action Plan**

This point is reiterated in Doc 6.3 Environmental Statement, Appendices Appendix 5.6 – Project Air Quality Action Plan [[APP-350](#)]. When discussing compensation (pp2), in referring to ecological networks it states that the 'ecological network basis for compensation' is an approach.... 'where more comprehensive measures are proposed which **are relevant to the network of habitats within which a number of affected areas of habitat lie.**'

Again, the AONB Unit believes that should be in Kent and not in Brentwood.

Concluding, the AONB Unit advised that it has consistently submitted that there is an imbalance in the approach to nitrogen deposition compensation: with 89% of the identified impacts being south of the Thames and only 21% of the compensatory land being south of the Thames.

Natural England in their high-level advice and the applicant in their submission documents have both confirmed that compensation should be as close to harmed designated sites as possible and that the strengthening of ecological networks should target the harmed designated sites, not any site in the red line; it is the view of the AONB Unit that that the current proposals do not deliver this.

It was stated that additionally, there is a point of principle that Hole Farm is happening anyway, its purchase was secured through Designated Funds and not by the scheme, it is too far away from most of the affected designated sites to meet the function required and that the AONB Unit doubt any additionality by claiming nitrogen deposition at this site.

The AONB Unit acknowledged that there would not be agreement on this issue with the Applicant and so, at this late stage in the Examination, it would be up to the Examining Authority to determine what happens. The AONB Unit's clear preference would be to revert to the approach originally proposed by the Applicant - the acquisition of a more substantial area of land at Bluebell Hill and Burham, enabling the creation of new wildlife rich habitats and networks as close as possible to the harmed designated sites. It was advised that the reduction in compensation land here due to it being difficult to secure and because of the application of Countryside Stewardship Grants near the affected sites was considered an unacceptable approach.

The AONB Unit advised that if the Examining Authority agree with the AONB Unit's position, it considers that the land removed from the nitrogen deposition compensation proposals at

Bluebell Hill and Burham should be re-instated. If this is not possible, then it considers compensation funding through an additional Undertaking would be appropriate. Further details of this are provided in the AONB Unit's response to Action Point 15 of ISH11.



Katie Miller

Planning Manager, Kent Downs AONB Unit

5 December 2023