



**DEADLINE 9A RESPONSE
KENT DOWNS AONB UNIT
FINAL POSITION STATEMENT**

Interested party Ref no: 20035310

Purpose of Submission

The Kent Downs AONB Unit considers it appropriate and hopefully helpful to the Examining Authority to set out a brief summary of its final position at the end of the Examination and the issues of substance where agreement has not been reached with the Applicant and how we consider these outstanding issues could be addressed. We have also provided some additional contextual information and reflections on the Examination process.

The AONB Unit maintains its overall stance of objection to the grant of the DCO, due to the very significant impacts of the Project on the character, qualities and statutory purpose of the AONB. However, notwithstanding this fundamental objection to the project, the AONB Unit has collaborated with National Highways both prior to the submission of the application and throughout the Examination, to try and reach reasonable agreement and find solutions to outstanding issues on a without prejudice basis to this fundamental objection. However, there remains significant divergence between the AONB Unit and the Applicant on several matters.

Position at Deadline 9a

The AONB Unit has not submitted a Principal Areas of Disagreement document during the Examination. The main areas of disagreement and agreement are set out in the Statement of Common Ground that is now signed and due to be submitted by the Applicant at Deadline 9A. While the AONB Unit has welcomed constructive engagement with the applicant on many matters, there remain several outstanding areas of disagreement. We believe that

some of these areas of disagreement might have been resolved if the Applicant had operated in a more timely and transparent manner:

Principle and compliance with national policy

The National Policy Statement for National Networks (NPSNN) requires great weight to be given to the conservation and enhancement of AONBs and sets out a strong presumption against road widening in an AONB, '*unless it can be shown that there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly*'. The AONB Unit remain of the view that compelling reasons for the Project have not been proven, alternatives discounted too readily and as significant residual impacts to the AONB are assessed, and mitigation opportunities are limited, we do not believe that the high bar for works affecting AONBs set out in the NPSNN is met.

This is considered all the more relevant in view of the imminent changes to the legislative context for AONBs.

Landscape and visual impacts

Important professional disagreement remains on the assessed level of impacts both to visual and landscape receptors in the Kent Downs AONB as reported in the Environment Statement. The effects of proposed mitigation measures are considered by the AONB Unit to be over-estimated in the assessed level of residual impacts. Additionally, the effects of design changes in reducing assessed levels of effect between the final assessment and the 2020 assessment are also overestimated and over-relied on.

Impacts to wider AONB

The AONB Unit strongly disagrees that impacts are limited to a localised part of the AONB and there would be no significant impacts arising from the Project affecting the wider AONB. It is our view that the proposal results in significant impacts to the setting of the AONB as a result of the major new junction, new highway and loss of woodland. Indirect impacts would also arise from traffic displacement and consequential requirements for increased capacity to be provided on major routes elsewhere within the AONB and impacts to designated sites within the AONB as a result of nitrogen deposition.

The AONB Unit also disagrees with the contention of the applicant that the purpose of the AONB designation would not be compromised. The conclusion that this major highway infrastructure scheme would conserve and enhance natural beauty is bold to say the least and wholly contradicts the findings of the Environment Statement which concludes there would be significant residual landscape and visual effects on AONB receptors both within the AONB and in its immediate setting.

Insufficient Mitigation

The AONB Unit maintains its position that insufficient mitigation for harm to the AONB is provided in the Project, although it acknowledges that opportunities to provide this are limited. We are of the view that widening the proposed Brewers Road and Thong Lane south green bridges and replacing the existing bridge at Park Pale with a green bridge to meet best practice standards, would mean that the residual impacts of the development on the AONB and in particular those pertaining to landscape severance, would substantially be reduced.

While the AONB Unit has welcomed revisions made to the Design Principles aimed at reducing harm to the AONB, we are of the view additional principles could be incorporated to further reduce impacts.

Nitrogen Deposition

A professional disagreement remains as to whether the proposed nitrogen deposition compensation adequately addresses the recognised significant harm arising to designated sites in the Kent Downs AONB.

The AONB Unit's concerns would be overcome by the re-instatement of previously proposed compensation at Burham and Bluebell Hill. Should this not be feasible then it is considered that alternative compensation should be provided through a supplementary amount to be made to the AONB Enhancement Fund. This would be used to secure measures to improve the ecological resilience and biodiversity of the AONB as close as possible to the affected sites and would be targeted in the first instance at securing better management of, extensions to, and connections between the sites that are assessed as being affected. An appropriate financial amount would be the equivalent cost of the acquisition and subsequent management of the removed land at Bluebell Hill and Burham.

Compensatory Enhancement

As confirmed at ISH 11 and set out in the SoCG, the AONB Unit reluctantly agreed a compensatory enhancement fund for the AONB of £4.24m should the scheme go ahead. While such a fund would not overcome the adverse impacts on the AONB and does not remove the AONB Unit's fundamental objection, should the Project proceed, it would assist in offsetting the residual impacts by enabling enhancement in the AONB elsewhere.

At the ISH, the AONB Unit advised that it was disappointed that draft Heads of Terms were shared with the Unit very late in the process. The need to agree a figure before the end of the Examination resulted in insufficient time for both parties to reach agreement on the fund offer. We were clear at the Hearing and in our Post event submission that we consider that a higher figure that responds more appropriately to the identified level of harm could have been agreed if negotiations had commenced earlier.

In the last weeks (and since ISH 11), the AONB Unit has been made aware of Submission Doc 7.7 Combined Modelling and Appraisal Report, Appendix D Economic Appraisal Report: Economic Appraisal Package [APP-526]. At 10.6.1 of this Report, it is advised that a monetary valuation of the impact of the Project on landscape has been undertaken, based on DfT's Value for Money Supplementary Guidance on Landscape¹. The Appraisal calculates the valuation of the landscape impacted by the Project to result in a disbenefit of £149.78m. The figure is then amended to take into account proposed landscape mitigation and additional ecosystem services benefits which reduces the landscape disbenefits to £93.35m.

While the valuation is applicable to the entire scheme, the higher baseline of the AONB receiving landscape and consequent higher assigned values results in the impacts to the AONB landscape forming a substantial proportion of this total figure. The AONB Unit considers that using this Government produced method for calculating harm to the

¹ Department for Transport Value for Money Supplementary Guidance on Landscape Moving Britain Ahead, 2021 <https://assets.publishing.service.gov.uk/media/6103d905e90e0703aee75920/value-for-money-supplementary-guidance-on-landscape.pdf>

landscape would have provided a more appropriate basis on which to base negotiations on an appropriate amount of compensation. We consider the Applicant should have both brought it to our attention and based their calculation of the fund amount on it. While we recognise that the Report forms part of the application submission documents, we consider it unreasonable to have expected the AONB Unit, a non-statutory consultee and small organisation with limited capacity, to have seen a report whose title provides no indication of its content in respect of a landscape valuation, given the volume of material submitted in support of the application.

In view of this, it is our conclusion that it was possibly a deliberate and tactical measure that the Applicant did not commence negotiations on a Fund amount earlier in the process, nor share the Economic Appraisal Report referenced above with the AONB Unit in order to secure a fund amount that was low as possible, if that were not the case, it is a significant omission on their behalf. Both the conservation and enhancement of the natural beauty of a nationally and internationally important landscape (IUCN Cat V) and national transport infrastructure are important for the public good, they should be weighed equally, we would contend that appropriately seeking to compensate we would contend that appropriately seeking to compensate for the irreversible and unmitigable damage to the AONB landscape is equally as important as the Applicant's desired outcome of providing enhanced highway capacity and shorter journey times. Therefore compensatory payments should be calculated to reflect calculated harm. The AONB considers that through the actions outlined above, the Applicant has failed in their public duties to seek to achieve the best public outcome from the Project. This includes the duty to have regard to the purpose of the AONB (as set out currently at S 85 of the CRoW Act 2000) and its supporting guidance, and in the light of the revision brought in by the Levelling up and Regeneration Act, the new duty which requires the Applicant, Examining Authority and Secretary of State 'must seek to further' the purpose of AONBs.

As such, we would invite the Examining Authority to conclude a higher compensatory enhancement fund would be appropriate, given the calculated value of the harm.

Procedural Matters

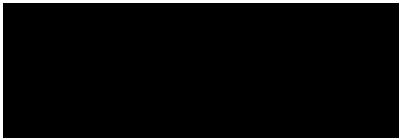
We acknowledge that the Planning Inspectorate has sought to ensure that the Examination is carried out in a manner that is fair to all parties and that no one is disadvantaged and needs to comply with specific Regulations and associated timetables. We would however make the following observations on the process, which we think may pose a risk in the ability of organisations such as ours, representing an important Government priority and the public good, with equal force as the applicant:

- The implications of the inequity of resources available to the Applicant compared to Interested Parties comprising smaller organisations such as the AONB Unit. While the Applicant has a team of specialists working full time on the application, Interested Parties such as the AONB Unit have very limited resources in which to deal as best they can with the rigorous demands of the Examination Process. The Kent Downs AONB Unit for example employs just one, part-time, Planner mainly involved with responding to the Application, assisted in part by the Director of the AONB Unit, and both staff members had to maintain other aspects of AONB work while involved in the Examination. The difficulties associated with this limited resource manifested themselves in particular in an inability to assess the vast realm of documents

submitted in support of the application, and also in respect of the timetabling/deadlines in the Examination process, such as:

- While reasonable advance notice of the topic headings of Issue Specific Hearings was provided, the details and Agendas for these were in some instances provided just five working days prior to the Hearing event. This left what we consider to be unreasonably short lengths of time in which to adequately prepare and present our case effectively.
- For the same reasons, the inclusion of deadlines of four working days to respond to lengthy and complex submissions is considered wholly unreasonable.

The Kent Downs AONB Unit hopes that the ExA finds the above final position statement and procedural comments helpful. The Unit would like to thank the panel of Inspectors for their detailed consideration of the Project and the inclusion of an Issue Specific Hearing on AONB/landscape matters. We would also like to thank the wider PINs case team for their assistance throughout the Examination.



Director, Kent Downs AONB Unit

15 December 2023