

M54 to M6 Link Road

PI Ref TR010054

Written Representation by Allow Ltd - Deadline 1 – 3rd November 2020

1. Overview

1.1 The Examining Authority have confirmed on 29 October to accept the Applicant's changes to the Scheme. These changes are referred to as the 'Accepted Changes'. This Written Statement is subject to further comments and observations in respect of those Accepted Changes.

1.2 Allow maintains its objection to compulsory purchase powers over its land, and requests that it is recommended that powers are not granted. The Applicant is resolved to implement compulsory acquisition powers without any restraint, regardless of the potential impact on Allow, the local economy, the local community and the negative visual impact it will have on the green belt. It is Allow's position that only in the absence of compulsory acquisition will the Applicant engage meaningfully in respect of the extent and location of its proposed ecological mitigation on Allow's land.

Compulsory Purchase

1.3 Specifically Allow objects to the compulsory acquisition of its rights, interest and property in respect of all its rights and interests identified in the Book of Reference ('Allow's Land Interests').

1.4 Allow objects, in particular, to the permanent acquisition of plots 4/20a, 4/20b, 4/20c, 5/2 and 5/4, and the permanent rights over plots 4/20g, 4/20f, 5/26 and temporary rights over plot 5/25. It is Allow's case that the conditions set out in section 122(2) and (3) of the Planning Act 2008 ('the Act') are not met in respect of those parcels of land and as such the Secretary of State cannot authorise the compulsory acquisition powers requested by the Applicant in respect of Allow's Land Interests.

1.5 The condition set out at section 122 (2) and (3) of the Act is shown below:

1.5.1 (2) The condition is that the land-

(a) is required for the development to which the development consent relates,

- (b) is required to facilitate or is incidental to that development, or
- (c) is replacement land which is to be given in exchange for the order land under section 131 or 132

- 1.5.2 (3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 1.6 The purpose of compulsory acquisition of Allow's Land Interest are clearly not met and compulsory purchase powers should not be authorised by the Secretary of State. The purpose of acquiring Allow's Land Interests is for the purposes of ecological mitigation and not for the development to which the development consent relates (as set out in section 122(2)(a) of the Act) nor required to facilitate or is incidental to that development (pursuant to section 122(2)(b) of the Act). Further, the Applicant has not demonstrated a compelling case in the public interest for Allow's Land Interests to be acquired compulsorily for the purposes of ecological mitigation. The extent of ecological mitigation is not necessary or proportionate.
- 1.7 A large part of Allow's Land Interests provide existing public benefit including, as a car boot field and as fishing ponds. There is no compelling evidence that the public benefits that would be derived from the compulsory acquisition of plots 5/2, 5/4, 4/20c, 4/20a & 4/20b will outweigh the loss that would be suffered by Allow and indeed the local community who currently hugely benefit from the current uses of Allow's Land Interests. The Applicant has also not demonstrated that all reasonable alternatives to compulsory acquisition have been explored. In particular, it has only identified the historic landscape on land to the east of plot 5/4 and carried out no assessment of the historic landscape value of the remainder of Allow's Land Interests including plot 5/2. Further, it has not carried out any trial trenching throughout the Scheme.

Allow's Specialist Consultants

- 1.8 Allow have commissioned its own leading expert consultants in Ecology (Aspect) and Historical Landscape (RPS) ('Allow's Consultants') to assess the extent of the Applicant's proposed ecological mitigation. Allow's Consultants have identified serious flaws in the Applicant's assessment. Indeed, the Approved Changes confirm that the Applicant overestimated the land to be acquired compulsorily and the Approved Changes reduce the area required for ecological mitigation. Allow's Consultant's analysis is set out below and their reports are appended (Appendices 1, - 3). Allow have provided copies of the reports to the Applicant and copies of those reports are appended to this Written Statement.

Engagement

- 1.9 An updated Statement of Common Ground is currently awaited from the Applicant and it is unlikely that there will be sufficient time for Allow to respond to the Statement of Common Ground by Deadline C.
- 1.10 Allow have met with the Applicant as early as 28 August 2019 and 11 November 2019 and sought to try and reach agreement by negotiation. Allow's consultation responses of 4 July 2019 and 11 December 2019 also offered land by agreement however it is Allow's experience that at the meetings the Applicant demonstrated no intentions to attempt to secure Allow's Land Interest by agreement. The Applicant simply advised that all of the land required for ecological mitigation was necessary and no attempts were made to negotiate between those meetings and the submission of the Application in January 2020 despite continued representations made by Allow in their consultation responses dated. The Applicant then proceeded to submit its Applicant to the Examining Authority in January 2002.
- 1.11 Notwithstanding the position taken by the Applicant at the meetings referred to above the Approved Changes confirm that the extent of land required for ecological mitigation was simply not necessary. The Applicant by its own admission has confirmed its most recent Great Crested Newts survey demonstrate that less land for ecological mitigation is required. It remains Allow's case that the ecological mitigation is excessive and as a consequence the extent of Allow's Land Interests the Applicant wishes to acquire compulsorily is not necessary and not in the public interest.

Ecological Mitigation (Plots 4/20c, 5/2, 5/4)

- 1.12 The Applicant has not properly assessed alternative locations. The burden of the excessive mitigation is placed on Allow's Land Interests. The approach taken by the Applicant is flawed it has not properly identified the full extent of the historic landscape (with no assessment of plots 5/2 and 4/20c) and has therefore only identified the existing historic landscape in part and in turn not assessed the extent of the historic landscape.
- 1.13 Allow's Consultants and in particular Aspect Ecology Ltd ('Allow's Ecologists') have confirmed that the Applicant has submitted its application based on an inaccurate baseline calculation of existing woodland planting resulting in the Applicant applying for excessive ecological mitigation including woodland planting. We have appended images showing snapshots of the grass verges that have been included in the Applicant's woodland loss calculation below (Appendix 4).The consequence of this inaccuracy is that unnecessary woodland planting is

being proposed by the Applicant and it seeks compulsory purchase powers from the Secretary of State to acquire Allow's Land Interests and in particular on plots 5/2 and 4/20c that are not necessary and compulsory purchase powers should not be granted. The consequence of the unnecessary proposed woodland planting is set out in the evidence to support Allow's position, at sections 4.7 to 4.12 of this Written Statement. The proposed woodland on plot 5/2 would completely decimate the current use of 5/2.

Historical Landscape (Plots 4/20c, 5/2, 5/4)

- 1.14 The Applicant has not correctly identified the historic landscape in respect of plots 5/2 and 4/20c and as such its approach to protecting the historic landscape is flawed. The Applicant has identified plot 5/4 and land to the east of plot 5/4 as being historic landscape when in fact all of Allow's Land Interests were part of the same historic landscape. Allow's Landscape Consultants, RPS ('RPS') have carried out its own assessment and identified that all of Allow's Land Interests
- 1.15 RPS have noted that the Applicant has not carried out any trial trenching. The presence of absence of archaeological sites or features is uncertain. This is described further in sections 6.18 to 6.21 below.
- 1.16 It should also be noted by the Examining Authority that RPS have not be able to visit the National Archives (Kew) or any other archives during their assessment due to the (COVID-19 pandemic) and as such their assessment has been limited to available source material.

Drainage and Hydrology

- 1.17 Allow have concerns about the impact of drainage and hydrology on its land and pools that will continue to surround the construction site. No satisfactory assurances have been provided and no detail is contained in the Environmental Statement in this regard. The Secretary of State should ensure that the Scheme does not create any detrimental impact of Allow's land that does not form part of the DCO in particular the pools that are used for fishing.

Green Belt

- 1.18 Allow's Land Interests fall within the green belt. There has been no proper assessment of the impact of: (a) the Scheme on the green belt; and (b) the laying out of proposed woodland planting on plots 5/2 and 4/20c and in particular the impact of the visual openness to the green belt.

Noise and Vibration

- 1.19 It is clear and obvious that the Scheme will have a detrimental effect on The Shrubbery which is a residential unit within the immediate vicinity of the new link road. There has been no assessment of the impact of the Scheme on the Shrubbery.



Issue Specific Hearing and Compulsory Acquisition Hearing

- 1.20 Allow's Solicitors wrote to the Examining Authority on 21 October 2020 in respect of attendance and the submission of oral representations at the: (a) Issue Specific Hearings; and (b) Compulsory Purchase Hearings. A copy of this letter is appended below.

2. Introduction

- 2.1 Allow Ltd (“Allow”) is the owner of interests in land which the applicant seeks to acquire by compulsion. Allow is an interested party falling within the definition set out at section 102(1)(aa) of the Planning Act 2008.
- 2.2 This Written Representation is prepared by Bagshaws LLP on behalf of Allow.
- 2.3 On 29 October 2020 the Examining Authority confirmed its acceptance of the Applicant's Accepted Changes. This Written Representation is subject to further representations in relation to those Accepted Changes.

3. Objection

- 3.1 Allow objects to the compulsory acquisition of its rights, interest and property in respect of all its rights and interests identified in the Book of Reference.
- 3.2 Allow objects, in particular, to the acquisition of plots 4/20a, 4/20b, 4/20c, 5/2 and 5/4, of permanent rights over plots 4/20g, 4/20f, 5/26 and temporary rights over 5/25. It is Allow's case that the conditions set out in section 122(2) and (3) of the Planning Act are not met in respect of those parcels of land.
- 3.3 We will set out our objections in the order that they are addressed in the Main Issues for the Examination.

4. Biodiversity, Ecology and Natural Environment

- 4.1 Significant areas of land will be acquired from Allow for both construction and for Environmental Mitigation including habitats recognised at a local level.

Lower Pool Site of Biological Interest (SBI) and Local Wildlife Site (LWS)

- 4.2 Lower Pool SBI & LWS is an important ecological feature of significant ecological and landscape importance, which will suffer irreversible damage to the biodiversity resource due to the scheme. The SBI comprises a fishing pool with surrounding long established woodland, created as part of a larger parkland in the 1800's.
- 4.3 The areas of impact on the Lower Pool are currently unclear as the area has been adjusted in the scheme changes drawings issued in July 2020 and accompanying revised environmental masterplan drawings. Queries have been raised with HE to request clarification of this but it has not yet been provided. This included emails of the 7th September, 10th September and 15th September 2020. Explanation and clarification was promised by HE in a Teams meeting with HE on 24th September 2020, which Bagshaw's followed up in an email of the 29th September 2020, amendments to the meeting minutes of the 7th October 2020 and follow up emails of the 20th October 2020 and 30th October 2020. No such clarification has been provided.
- 4.4 The original area of land proposed to be lost within the SBI referred to in the Environmental Statement was of 1.83 ha of woodland and 0.55 ha of standing water. The revised Environmental masterplan plans (21.08.20) show a larger area than originally proposed to be felled, despite a contradiction in the accompanying rationale document which states that there would be a reduction in the impact on the Lower Pool SBI of 1 ha. The revised ES submitted on 16th October provides updated areas of 2.04 ha of woodland and 0.46 ha of standing water to be lost from the SBI.
- 4.5 There has been a lack of explanation and narrative around the scheme changes, which when combined with the contradictory information on the rationale document, which formed part of the consultation, compared to the revised Environmental Masterplans, and those environmental masterplans also showing inaccurate information as to revised public rights of way alongside Dark Lane, has led to inaccuracies as to what areas are necessary to be acquired to mitigate the impact of the Scheme. Allow object to the Applicants Acquisition of the Lower Pool SBI (Plot 5/4 and 4/20c) and request further clarity as to what area is proposed to be acquired for scheme construction and for mitigation of the scheme.
- 4.6 A considerable area of woodland beyond that required for construction, has been included within the DCO boundary in plot 5/4. It is Allow's opinion that the Applicant has failed to set out justification for the acquisition of the extent of the Lower Pool SBI within the DCO boundary.

Excessive Environmental Mitigation

- 4.7 The estimated land areas proposed to be taken for construction of the link road and cutting etc at Allow Ltd's estate at Hilton extends to approximately 3.26 hectares (as updated 21.08.20, and was previously 2.90ha). The additional area proposed to be acquired for environmental mitigation on Allow's holding is approximately 8.24 hectares (as updated 21.08.20 and was previously 14.71 ha); Based on current area calculations the area of mitigation proposed amounts to over 2.5 times the area required for the road construction itself. It can only be assumed therefore that land owned by Allow is being acquired for the mitigation of environmental damage on other parts of the Scheme. This has been confirmed by Allow's ecology consultant. Explanation has not been provided as to why such a large percentage of environmental mitigation area for the entire Scheme is proposed to be on Allow's land.
- 4.8 The area of land proposed to be acquired for environmental mitigation is excessive and disproportionate to the area of land taken for the construction of the road and associated engineering. The ES provides no detail as to how or why this large area has been selected for mitigation and is misleading in terms of suggesting that the area of mitigation being local to the subject ecological feature being lost.
- 4.9 The significant impact the road it having upon the estate is worsened to a large extent by the large area proposed to be acquired for environmental mitigation. It is strongly argued that the extent of land to be acquired is completely disproportionate to the area needed to offset the environmental impact of the road, and the number of trees that are being lost, upon Allow's land holding.
- 4.10 It is our opinion, supported by Allow's Ecologist, that the assessment of woodland taken for works across the scheme has been incorrectly assessed and therefore the area required for mitigation is flawed and overstated. Plans provided by the Applicant to Allow Ltd, which informed the mitigation requirement calculations, illustrate excessive estimates which are clearly not currently woodland on the ground. These include significant areas of mown grass verges, gorse scrub and brambles. There has evidently been poor standards of mapping which have recorded all areas, from roadside kerb to kerb which has given rise to considerable differences between the woodland areas lost to the scheme stated by the Applicant and those actually on the ground. The Applicant

states that the area of woodland taken for the scheme is a total of 20.59 ha. Following our own mapping exercise, it is our assessment that a figure of approximately 14 hectares is a more accurate assessment of the woodland present on the ground. Over the scheme we estimate that there has been an excess of 6.59 Ha or 16.28 acres which has been incorrectly identified as woodland, much of which has been proposed to be compulsorily acquired from Allow Ltd for mitigation planting. Further information can be provided if required by the ExA and has been provided to the HE.

- 4.11 We have appended photographs to show some of the areas which have been incorrectly identified by the Applicant as established woodland lost to the scheme when in fact they are merely grass verge. We have made representations to the Applicant to advise them on this inaccuracy on 23rd September 2020. We understand the Applicant is considering the information provided but we have not received a response. We have made representations during the consultation since 2019 that the ecological mitigation is excessive and disproportionately burdened on Allow's land
- 4.12 Allow object to the acquisition of plot 5/2 and 4/20c for environmental mitigation, because the Applicant has failed to justify the correct area of woodland habitat lost in the scheme.

Location of Environmental Mitigation

- 4.13 We append herewith a report on proposed habitat creation, prepared by Allow's Ecologists, together with a supplementary Technical Briefing note TN02 following the review of the Great Crested Newt Data provided in October 2020.
- 4.14 It is appreciated that the Applicants should include appropriate mitigation measures as an integral part of their proposed development, however the applicant should demonstrate that opportunities will be taken to enhance existing habitats and, where practicable they will seek to ensure that activities will be confined to the minimum areas required for the works; and that best practice will be followed to ensure habitats will, where practicable, be restored after construction works have finished; developments will be designed and landscaped to provide green corridors and minimise habitat fragmentation where reasonable.
- 4.15 The NPPF specifically states at para 170d) that minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are

more resilient to current and future pressures. It is Allow's contention that ecological networks are not adequately proposed in the design of mitigation, as detailed in Aspect Ecology's report.

- 4.16 It has been proposed by Allow Ltd that more landscaping and some mitigation planting could be created on the East side on the Scheme adjoining the existing woodland and SBI, on the open grassland instead of the Western side of the scheme as proposed.
- 4.17 Allow have offered land which is situated outside the DCO boundary for potential mitigation as it is more appropriate for ecological habitat, landscape and noise attenuation than in the proposed location and we are open to looking at positive land management in the vicinity of the scheme instead of the proposed mitigation which we consider to not be appropriately located.

Bats

- 4.18 The Environmental Statement details a sufficient and proportionate approach to bat surveys as part of the scheme. However, based on the activity levels and roost locations presented in the Environmental Statement, habitats created for the benefit of bats to the west of the scheme are not effectively sited, such that their mitigatory function is compromised. Accordingly, the proposed habitats will not function to offset the impacts to bat habitats under the scheme and could lead to increased mortality as bats are required to cross the motorway to reach new habitats. Current activity levels appear to be greater to the east of the scheme, especially around Lower Pools Site of Biological Importance (SBI), and these areas will be separated from the new habitats, with little new connectivity provided. In addition, Crossing Point Surveys do not indicate any significant east-west movements by bats, especially at the area proposed to link retained habitats with created ones. As such, there is nothing to suggest that bats in retained habitats will travel to the newly-created habitats, whilst if they do they risk high mortality effects from crossing of the motorway. Consequently, it is recommended that habitat is created in the east of the scheme which would deliver effective mitigation and avoid collision risk mortality within the local bat population.

Woodland creation

- 4.19 It is our specialist's view that:
- 4.20 The proposed woodland creation on Allow Ltd's land is disproportionately high compared to the amount of woodland being lost.

- 4.21 The large areas on woodland proposed on Allow Ltd's land (e.g. EW08) are located on the west of the proposed scheme. This will isolate planted woodland from other areas of woodland, plus Lower Pools SBI, in the landscape, reducing its effectiveness to contribute to existing ecological networks.
- 4.22 The appropriateness and effectiveness of woodland planting for the benefit of species such as newts and bats to the west of the scheme is considered sub-optimal and will not offset the impacts arising on these species.
- 4.23 Other, more effective, locations to the east of the scheme should be examined which would not compromise the Historic Landscape Area of Hilton Park. It is recommended that woodland creation is redirected to the east of the proposed link road.
- 4.24 It is appreciated that whilst there will be some ecological benefits associated with new woodland planting however, it is likely to be many years until these are realised. The benefits associated with new woodland planting need to be maximised by ensuring the most appropriate locations are identified for planting. Given that some of the proposed woodland planting would appear to be isolated from other areas of retained woodland, this should be reviewed in order to optimise ecological benefits. The scheme is taking areas of long establish woodland with mixed habitats which, in parts, are situated alongside pools; these cannot be replaced by new planting in a location which is disjointed and divided from the remaining habitats by the road scheme.
- 4.25 There is currently minimal planting proposed on the Eastern side, other than infilling alongside the new road after construction where existing trees and Lower Pool will be taken. It is our opinion that there would be reduced habitat fragmentation and improved ecological connectivity with the existing woodland by locating the new planting alongside the existing woodland, rather than in a large block which is disconnected from the existing ecosystems by the Scheme. The new planting would thereby recover to a greater ecological value in a shorter time period than if it were only connected by the one mammal tunnel and the Hilton Lane road bridge, allowed for within the scheme.
- 4.26 The use of existing green corridors across the Hilton Park estate will improve the ecological value to a far greater extent than a blanket approach to a block of new mitigation planting on the West side of the Scheme.

Biodiversity unit calculations

- 4.27 Our specialist states that the updated 2020 Defra 2.0 version of the metric should be applied and the baseline habitat area calculations revisited to ensure that CPO powers can be lawfully exercised.
- 4.28 Another factor which could influence the required area for habitat creation is the extent of proposed restoration and enhancement of existing habitats. Paragraph 2.3.1 of Appendix 8.2 of the ES assumes that no retained habitats will be enhanced. As such, Biodiversity Units need to be achieved solely through habitat creation. However, paragraph 8.9.36 of Chapter 8 of the ES states that “In addition, retained habitats of importance within the Scheme boundary (notably woodlands and wetland associated with the SBIs) would be subject to improvement through appropriate infilling/planting and more favourable management”. This should be clarified, as enhancement works to retained habitats would result in further Biodiversity Units being generated and in turn this could result in the need for a reduced land-take for habitat creation.
- 4.29 It is recommended that the Biodiversity Impact Assessment is revisited to take account of proposed habitat enhancement measures

Great Crested Newts

- 4.30 We append hereto a review of the 2020 Great Crested Newt Data, undertaken by Allow’s Ecologists. The concerns that arise are as follows:
- 4.31 A screening distance of 500m appears to have been used whereas 250m is appropriate, therefore it is recommended that the screening distance is re-visited.
- 4.32 An overly precautionary approach has been taken by the Applicant. There is no evidence to suggest that the area is significantly important to the species and none of the three ponds which will be lost on Allows land support GCN populations. The assumption of worst case scenarios does not reflect actual survey data and is too over-precautionary.
- 4.33 Ponds known to support GCN are to the east of the scheme and Mitigation ponds are proposed to the west of the scheme – the effectiveness of locating the ponds to the West is highly questionable. New ponds would not link to the existing population of GCN and hence would not serve to mitigate effects of losses to the scheme. It is recommended that the siting of mitigation is re-visited and this is re-located to the east of the scheme.

4.34 Pond ratios dictating habitat creation have determined that eight of the twelve proposed ecological ponds will be created on Allow's land, however GCN presence has not been confirmed in any of the ponds being lost to the scheme. The 2020 results have confirmed that fewer compensatory ponds are required, and scheme changes have resulted in a small reduction to eight ecological ponds, however creating compensatory habitat to the west of the scheme is in question.

Unnecessary Loss of (BMV) Agricultural Land.

4.35 The scheme as proposed will result in the loss of 8.19 ha (reduced from the initial 13.90 hectares (34.34 acres)) of Grade 2 & 3a Agricultural Land (in addition to the woodland losses), whereas only a small area of this is required for the road construction area and the majority is proposed to be taken for environmental mitigation. The loss of agricultural land, the majority of which is exceptionally good grade 2 land, is contrary to scheme guidelines and the NPPF.

5. Green Belt

5.1 The Applicant is required to demonstrate the very special circumstances apply to the scheme which outweigh the loss of openness and therefore the significant harm to the Green Belt. It is our contention that the special circumstances which could apply to the new road do not also automatically apply to the environmental mitigation land, which should be provided outside the Green Belt if possible.

5.2 The Applicant does not demonstrate the case for 'Very Special Circumstances'. The fundamental aim of Green Belt policy is to keep the Green Belt permanently open given that the essential characteristics of Green Belts are their openness and their permanence. Instead of retaining a Green Belt that already provides beneficial uses for outdoor recreation (car boots and fishing) and does not need visual enhancement, the Applicant seeks to decimate this existing Green Belt that is well managed and maintained by Allow and has been for over 65 years. The land is not damaged or derelict. Further the changes to the Green Belt are not required for the purposes of the Applicant's scheme they are required (by way of compulsory purchase) entirely in respect mitigation in circumstances

where the Applicant's analysis of its proposed mitigation is entirely flawed resulting in the Applicant applying for compulsory purchase powers excessively.

- 5.3 The extent of the proposed woodland mitigation planting will therefore significantly impact upon the openness of the green belt across the area of the scheme due to the area being significantly greater than that area actually taken by the scheme.
- 5.4 Widespread planting is not beneficial for the landscape and the proposals will significantly impact upon and change the character of the landscape. An open grassland field of 10.69 ha, (26.42 ac) surrounded by a tree belt which formed part of the original Hilton Park design is proposed to be taken for blanket tree planting (except the arbitrary reduction proposed in the proposed scheme changes). This will reduce the openness of the landscape around the Dark Lane, Hilton Lane and A460 area. But more importantly the historical tree belt, which forms one of many of the original tree belts which were landscaped around the perimeter of the Hilton Park Estate will be lost forever as it becomes obscured in the proposed adjoining new planting – a significant detriment to the local landscape.

6. Cultural Heritage

- 6.1 The parkland has been within the ownership of Allow since the 1950's. and they have undertaken woodland planting and landscaping of the pool and park; for example, when the estate was purchased in the 1950's a wood was planted to shield a coal mining slag tip in the distance which was visible at that time.
- 6.2 The Top Pool, to the West of the Hall, was dug in 1977/78, and the Middle Pool in the 1980's being situated to the South East of the older Lower Pool. The Lower Pool (plots 5/4 and 4/20c) was cleared, improved and enlarged as a fishing pool. All of the woodland planting to the eastern side of Lower Pool and around Middle Pool has all been undertaken by Allow.
- 6.3 The land proposed to be acquired for both the construction of the Scheme and Environmental Mitigation is designated as a Historic Landscape Area in South Staffordshire Historic Environment Character Assessment (2011).

- 6.4 The property impacted by the scheme comprises the surviving components of the historic landscape park associated with Hilton Hall including the shelter belts, woodland, ornamental lakes and parkland trees. The route of the proposed motorway will transect this area and will remove substantial areas of the parkland, woodland and the Lower Pool ornamental lake.
- 6.5 Table 7.7 of the ES identifies seven factors which are used to determine landscape value. Of these seven factors, four have been ascribed a 'low' value whilst three have been ascribed a 'medium' value, leading to an assessment that the study area is of low landscape value. Allow would contest that the receiving landscape is not of low landscape value due to the quality and historical context of the landscape.
- 6.6 One of the factors to which a 'low' value has been ascribed is that of 'Conservation interests'. The description of this factor within Table 7.7 refers to Hilton Park (a locally-designated Historic Landscape Area and also to the presence of two Grade I listed buildings within the park.)
- 6.7 However, there are also several Grade II listed buildings within Hilton Park which are not referenced in the description within Table 7.7, including the Portobello Tower – a prominent commemorative tower of mid-18th century date which records the capture in 1739 of the Spanish town of Porto Bello in the West Indies by Admiral Vernon, a distant cousin of the owners of Hilton Hall.
- 6.8 We append a report prepared by RPS Consulting Services Ltd, specialist Historic Landscape Consultants which provides additional information regarding the history and development of Hilton Park.
- 6.9 Specifically, the report finds that surviving elements of the post-medieval park may have been associated with Humphrey Repton, the renowned landscape designer who worked mostly in the latter part of the 18th century. This is not adequately acknowledged within the documents submitted by the Applicant, largely due to a flawed appraisal of historic maps. The current state of preservation of the historic park, along with the association with Repton and the presence of a number of significant historic buildings within the park, means that it has an enhanced level of importance.

- 6.10 We consider that the level of importance of Hilton Park has been underplayed by the Applicant and that the correct value of the 'Conservation interests' factor in Table 7.7 of the ES should be 'Medium'. This would therefore mean that four of the seven assessed factors would be of 'Medium value' with the remaining three factors being of 'Low' value. The overall landscape value of the study area should therefore be considered to be 'Medium' rather than 'Low'.
- 6.11 The report states that the baseline description of the historic park presented in Appendix 6.5 of Chapter 6 of the ES is flawed. Also, the assessment fails to examine the impacts of the proposed environmental mitigation, which has an additional adverse impact on aspects of the historic landscape. The assessment in Chapter 6 of the ES focuses on the impact of the new road but even then fails to take into account the severance of the former principal access route to the house and the severance of Dark Lane which are both part of the designed landscape.
- 6.12 The environmental mitigation measures proposed within Hilton Park include new woodland planting across all of Plot 5/2 west of the new road. This would merge with the historic tree belts on the east side of the A460 and the south side of Hilton Lane, and therefore these tree belts, which were key elements of the redesign of the parkland in the period 1796 - 1816, would lose their separate identity. The South Staffordshire HEA includes recommendations for Hilton Park and states that 'The surviving heritage assets of the historic landscape park which lie within this zone comprise the shelter belts, woodland and lake which are important components to understanding the history and design of Hilton Park'. Thus not only will the proposed new road sever the western edge of the historic park, but the proposed woodland planting will impact greatly on the nature and character of the western perimeter tree belt as an important component of that designed landscape. This is not acknowledged or discussed within Chapter 6 of the ES and has not been taken into account in the assessment of the impacts and effects on Hilton Park.
- 6.13 Similarly, the new road would sever the route of the former principal access route to the house (leading from the A460 at Lower Lodge), and the proposed woodland planting in plot 4/20c extends over this access route. There is no mention in Chapter 6 of the ES regarding the impact (on the historic park) of severing and planting over what was formerly the principal access through the park to Hilton House, nor any recognition of this access route within the designed mitigation.

- 6.14 In a document of June 2020 entitled Environmental Mitigation Review – Plot 4/20c and 5/2 (Report No. HE514465-BAM-EGN-Z1_ZZ_ZZ_ZZ_TN-LE-0001-PO2 S4), the Applicant states that ‘Consultation with Historic England has confirmed they require the retention of form of features within the retained historic park such as the historic boundary of Lower Pool/The Shrubbery, and they would prefer not to extend the woodland into the open parkland between The Shrubbery and the Hall’. [4.3.11]. No further information is presented with regard to this consultation. It is assumed that Historic England’s principal concern is with regard to the setting of Hilton Hall and the Conservatory rather than the park itself, as both of these are Grade I listed buildings whereas Hilton Park is not included on the non-statutory Register of Parks and Gardens of Special Historic Interest in England. However, the park is locally designated by South Staffordshire Council as a Historic Landscape Area (HLA), but there is no information presented in respect of consultation with South Staffordshire Council with regard to the impact of the proposed environmental mitigation. Given that the appraisal of the historic park presented in Appendix 6.5 of the ES and taken through into the assessment presented in Chapter 6 of the ES is woefully inadequate, how can the ExA be sure that Historic England (and South Staffordshire Council if they were indeed consulted) were provided with adequate information on which to base their advice?
- 6.15 There is no indication that adequate consideration has been given to provision of the required environmental mitigation on other land adjacent or close to the scheme.
- 6.16 Some additional woodland could be established to the east of the new road in this area by thickening up the existing tree belts east of the Lower Pool, whilst still maintaining open parkland between the house and the woodland. There should also have been some consideration of keeping the proposed woodland planting within plot 5/2 in the eastern part of the plot (adjacent to the new road) therefore allowing the western perimeter tree belt to retain its separate identity.
- 6.17 The Applicant has not carried any reasonable or robust analysis of alternatives despite applying for compulsory purchase powers. The statutory tests at section 122(2) and (3) of the Planning Act 2008 and in particular require a compelling case in the public interest for the Applicant to acquire Allow's land compulsorily.

Archaeology/Trial Trenching

Allow's consul

- 6.18 Chapter 6 of the ES states that evaluation trenching will be undertaken after submission of the DCO, but early in the programme – presumably meaning the detailed design programme as the results are supposed to feed into the detailed design of the scheme. Allow request clarification on this point. The results will also enable the development and implementation of further mitigation measures (for archaeological sites and features), including, where possible, preservation in situ.
- 6.19 The geophysical survey of parcel 5/2 (Survey Area 6) was fairly unsuccessful due to the presence of a considerable amount of modern material (probably associated with car boot sales), and the eastern part of the field was not surveyed at all due to obstructions related to a car boot sale. The geophysical survey of parcel 4/20c (Survey Area 3) was more successful but also found modern material to be present. There were also some anomalies which may represent archaeological activity.
- 6.20 As no trial trenching has been undertaken within parcels 5/2 and 4/20c (or indeed anywhere at all within the Scheme boundary), the presence/absence of archaeological sites/features remains uncertain – this means that the Examining Authority cannot assess the particular significance of any such sites/ features that may be affected.
- 6.21 Of equal importance on this point is what happens if significant archaeological remains are found to be present in parcels 5/2 and 4/20c once the trial trenching has been carried out? The further mitigation suggested in Chapter 6 of the ES includes preservation in situ of archaeological remains but this would result in no woodland planting and no ecology ponds, thus the proposed environmental mitigation would not be possible and would need to be reallocated to another location as part of the detailed design.

7. Noise and Vibration

- 7.1 Allow have concerns regarding noise and light pollution.
- 7.2 Additional sound mitigation should be provided, including sound boarding along the roadside, for the protection of The Shubbery which will be retained by Allow and the surrounding cottages and Hall.

- 7.3 The proposed scheme changes have caused the felling of a further approx. 0.337 ha (0.83 acres) of established woodland to the eastern side of the Scheme, significantly reducing the buffer of woodland which may have otherwise served to reduce the impact of noise and light pollution on the adjoining residences and pools. No corresponding sound mitigation appears to have been proposed to address this.
- 7.4 The Shubbery is only 250m from the proposed Link Road, the bungalow and Gardeners Cottage only 310m, and 1 & 2 North Lodge are only 410m away from the link road. There therefore needs to be noise barrier screening in order to prevent noise and disruption once the road is in use and also during the construction phase.



- 7.5 There are concerns regarding the potential visual impact arising from additional lighting at night at and the disruption that this would cause Allow.

8. Socio-Economic Effects

- 8.1 The proposed scheme will have a significant impact upon the business run by Allow Ltd which comprises a mixed farming and recreational business, including fishing pools, an equestrian centre and leasing land for car boot sales. The negative impact upon the business would be reduced by the removal of the mitigation areas from their land losses, including plots 5/2 and 4.20c
- 8.2 The pools have been utilised as fishing pools for many years, utilised by many members of the local community for quiet recreation. Top and Middle pools have been operating as

fishing pools for almost 50 years. The Lower Pool has been operating as a fishing pool since it was built, originally as a Pike pool supplying food to Hilton Hall. Competitions are held practically all year round at Middle Pool and seasonally in the other two.

Top Fishing Pool

- 8.3 Dan's Pool is maintained for a fishing syndicate which has a membership of 110 local members, maintained by retired members.

Middle fishing Pool

- 8.4 Chubb Pool is maintained for a different local fishing syndicate of more than 150 members, with one groundsman.

Lower Fishing Pool (Plot 5/4 & 4/20c)

- 8.5 This pool was constructed in the 19th century and is maintained for the Fox Carp Syndicate, with a membership of nearly 30 members.

The Car Boot Field (Plot 5/2)

- 8.6 Dark Lane Car Boot is operated under licence by a company called Market Promotions Limited ('MPL'). At each event, MPL employ the services of at least 10 local people comprising 6 permanent employees and more part time. Typically, the event has 300 – 400 sellers and trade stands such as mobile butchers, with 2500 to 4000 visiting cars through the gates. Each event also provides work for 10 catering vendors on site, such as burger vans and donut vans. This all provides a valuable income for the sellers, trade stands and mobile butchers as well as for the local employees working on site. The event also provides a local open air community event in an open field.
- 8.7 The fishing pools and car boot facilities could not be run without oversight. These facilities form part of a larger business on Allow's land, run by Oatlands Estates Limited, which presently employs one member of staff with the potential to employ more, in addition to the company directors, to maintain and run all facilities including the fishing pools and car boot facilities.
- 8.8 Both the car boot and fishing pools are community activities and perform a vital function for the local area. The car boot has been operating for over 30 years and is very popular

with the local community, being well known to the locals and has obvious beneficial effects for the local economy.

- 8.9 The fishing pools (Plot 5/4 & 4/20c) owned by Allow are used by local syndicates on a social basis and have approximately 300 members whose lives would also be dramatically affected, both by loss of access (4/20a, 4/20b) and in case of Lower Pool, total loss of the facility. The tranquil location that is currently enjoyed at the pools will be irreversibly lost by the close proximity of the new motorway.
- 8.10 This would also have a knock on effect on local businesses, for example retailers selling fishing tackle, such as Ashmoor Park bait and fishing tackle shop, which could lead to loss of employment. Other local businesses are likely to suffer from the reduction in passing trade if people aren't coming into the area to attend the car boot days and the fishing pools.
- 8.11 Allow has plans to rebuild its original business of horse trials in the near future and to include farm rides along with horse trials, which would provide further local employment opportunities as well as services that would benefit the local population and economy. The land around the pools and forestry trails are where these activities used to take place and they are required to make the rebuilt business successful again.
- 8.12 The businesses on Allow's land provide employment as well as facilities to the general public, both of which would be seriously diminished if the current size of land purchase is approved. The amount of land being acquired from Allow is a significant percentage and would ultimately jeopardise Allow's business as a whole, and could impact means other local facilities potentially forcing them to close [e.g. local fishing shop].
- 8.13 The agricultural business will be impacted by the loss of land for both the Scheme and environmental mitigation areas. The Scheme removes one of the main current access routes into the land and through to the fishing pools (4/20a & 4/20b). No information has been provided in relation to future access to land proposed to be retained west of the scheme (adjoining 4/20c & 5/25) following the Accepted Changes to the scheme. Allow seeks clarification as to the proposals for alternative access routes in to retained property, including location, design, specification and any security restrictions Access is sought and

ownership retained of the narrow strip of grassland proposed along the land frontage along Dark Lane and the retention of plots 4/20a & 4/20b. Access is sought from Hilton Lane into plot 5/25.

8.14 Two existing large grassland fields 5/2 and 4/20c are proposed to be reduced significantly in size as a result of mitigation woodland planting and ecology ponds, consequently they will be less easily worked due to their proposed changed shape, size and accessibility.

8.15 Allow Ltd have concerns regarding the stopping up of Dark Lane (Plot 5/3) which could result in an increase in fly tipping along Dark Lane or in Allow's retained land south of Dark Lane at plot 4/20c and plot 5/25.

There are significant financial implications of the ongoing management by Highways England of such a large area of woodland in a semi urbanised area as there are already issues with crime and fly tipping in the small areas of woodland around Dark Lane and Cannock Road as existing.

8.16 We request information in relation to the proposed bridle path on plot 5/2 from Dark Lane, including how it can be accessed from Hilton Lane.

9. Drainage and hydrology (Plot 5/2 and 5/4)

9.1 There is very little information about maintaining the water quantity and quality of the pools and land drainage in the ES and no detail as to how this will be carried out, when and by whom. It is imperative that pre-construction drainage is installed in order to maintain the current drainage to the land and pools surrounding the construction site. A post construction drainage plan will also be required. Assurances will need to be given in this regard that this will be undertaken.

10. Attendance at Issue Specific Hearings (ISH) and Compulsory Purchase Hearings (CPH)

10.1 We attach correspondence sent to the Examining Authority from Allow's Solicitors dated 21 October 2020 requesting attendance at the ISH and the CPH.

10.2 We reserve our position in respect of the Approved Changes accepted on 29 October 2020.

11. Appendices

Appendix 1 – Report by Aspect Ecology Ltd – Review of Proposed Habitat Creation on Land Owned by Allow Ltd (25.09.20).

Appendix 2 – Technical Briefing Note by Aspect Ecology Ltd – Review of 2020 Great Crested Newt Data (19.10.20).

Appendix 3 – Report by RPS group plc – Review of Land Acquisition at Hilton Park (13.08.20).

Appendix 4 – Photomontage

Appendix 5 – Letter from Allow's Solicitors to the Examining Authority in respect of attendance and the submission of oral representations (21.10.20).