

M54 to M6 Link Road
TR010054

**8.24 Applicant Responses to Further
Written Question Responses from
Interested Parties and Other Deadline 4
Representations**

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Rule 8 (1) (c)(ii)

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**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

**M54 to M6 Link Road
Development Consent Order 202[]**

**Applicant Responses to Further Written Question Responses from
Interested Parties and Other Deadline 4 Representations**

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Table of contents

Chapter	Pages
1 Applicant Responses to Second Written Question Responses from Interested Parties.....	1
2 Response to Allow's Submission	19

1 Applicant Responses to Second Written Question Responses from Interested Parties

- 1.1.1 This document has been prepared by the Applicant to set out its views and comments on responses from Interested Parties to the Examining Authority's (ExA) further written questions and requests for information (ExQ2) issued on 4 December 2020. This document is being submitted at Deadline 5 for the M54 to M6 link road Examination on 20 January 2021 in line with the current Examination timetable.
- 1.1.2 The Applicant sets out within Table 1-1 overleaf the responses provided by Interested Parties submitted at Deadline 4 (column 4). Where the Applicant responded to the same question at Deadline 4 these responses are also provided for ease of reference.
- 1.1.3 Where the Applicant considers it is useful to respond to answers provided by Interested Parties at Deadline 4 these are clearly set out in the 5th column.
- 1.1.4 The Applicant notes that in some instances Interested Parties have responded to questions not originally directed to them by the ExA. Where this is the case the Interested Parties Deadline 4 response is provided in blue text.
- 1.1.5 All application documents have a reference number [TR010054/APP/x.y], where the last two numbers are the application document number. All documents are presented in numerical order in the Guide to the Application [TR010054/APP/1.5] (the Guide). The number stays the same when a document is updated, with the 'version' being updated as shown in the Guide. This referencing style is used where a document is referenced without the need to reference a particular version. Where a response is referring to a particular version of a document, the document reference [z/x.y] is used, where 'z' is the reference given to the document in the [Examination Library](#) and 'x.y' is the document number in the Guide.
- 1.1.6 The Applicant's responses are provided in Table 1-1 overleaf.
- 1.1.7 A small number of other representations were made by Interested Parties at Deadline 4. The Applicant's responses to those representations are set out within Table 1-2 which directly follow on from Table 1-1.
- 1.1.8 Section 2 of this document provides a more detailed response to Allow Ltd's (Allow) claims that the Applicant has not set out a robust case for the compulsory acquisition of land owned by Allow.

Table 1-1 Applicant's Responses to Further Written Question Responses from Interested Parties

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
2.0 General and Cross-topic Questions				
2.0.1	<p>The effects of the Proposed Development</p> <p>In its response to ExQ1.0.6 [REP1-036] the Applicant has set out what it considers to be the main benefits and adverse effects of the Proposed Development.</p> <p>(a) Do the Interested Parties agree with these lists? (b) If not, please set out what you consider them to be, and provide justification for your view.</p> <p>Please note: This question does not relate to issues of Compulsory Acquisition or Temporary Possession and responses should not address these matters.</p>	NE Allow Ltd	<p>a) We agree, where the effects are relevant to our remit, with the list of benefits and adverse effects listed in the Applicant's response to ExQ1.0.6 [REP1-036].</p> <p>The main adverse impacts of the Scheme are identified in the Applicant's response as a) Impacts on habitats and ecology - although it should be noted that these are all being mitigated as far as possible so that the Scheme delivers no net loss in biodiversity.</p> <p>To be more accurate we would question the point that the Applicant has left the impact described as 'impacts on habitats and ecology'. We are questioning the <i>effectiveness</i> of mitigation and compensation to remove/offset the impacts. Similarly, 'no net loss' of biodiversity is not the same as adequate and appropriate mitigation. It means, in the sense of this project, that habitat created will equal the amount of habitat lost. However, this does not mean that all ecological effects are mitigated. Take bats for example, it is accepted that habitat is being created, but it is on the wrong side of the scheme and an unsuitable crossing structure is proposed to enable bats to reach it. Therefore, those bats will still be adversely affected and the effects are not properly mitigated. However, there will be 'no net loss' of habitat.</p>	<p>N/A</p> <p>Highways England agree that effectiveness of mitigation measures and the degree to which the Scheme would achieve no net loss in biodiversity are two separate points. By itself 'no net loss' in biodiversity does not mean that impacts resulting from the Scheme are mitigated for.</p> <p>The impact of the Scheme on bats has been assessed and is reported in Chapter 8: Biodiversity of the ES [AS-083/6.1]. This assessment concludes that there would be a negligible impact on bats during construction and operation of the Scheme, resulting in an effect of neutral significance. This assessment is not related to the calculation of no net loss in biodiversity reported in Appendix 8.2 of the ES.</p> <p>The mitigation measures proposed for bats have been submitted to Natural England as part of a draft licence application and Natural England has provided a Letter of No Impediment. As set out in the SoCG between Highways England and Natural England [REP4-031/8.8P(B)], Natural England are content that the mitigation measures defined in the ES are appropriate and are required to minimise the impacts.</p> <p>The potential impacts of the Scheme on bat commuting and foraging has been assessed following good practice: Development of a cost-effective method for monitoring the effectiveness of mitigation for bats crossing linear transport infrastructure - WC1060 (DEFRA, 2015). Crossing point surveys (which are a key part of this good practice guidance) focused on three locations (C, D and E) within Lower Pool (Figure 8.15 of the ES [APP-119/6.2]), as well as one location at Brookfield Farm LWS and a final location to the SE of Brookfield Farm.</p> <p>Appendix 8.7 of the ES [APP-179/6.3] provides details on each of these crossing points. With regards to the three locations within Lower Pool:</p> <ul style="list-style-type: none"> • The number of bats recorded at crossing point C and D was below the threshold (>10 bats crossing at one location on one occasion) that requires further survey to be undertaken. • Whilst the number of bats recorded at crossing point E was above the threshold (22 passes), this was considered to be foraging activity of the same small number of bats rather than individual passes. • Crossing Point C: 65% of the bats recorded were crossing at a height >5m. • Crossing Point D: 78% of the bats recorded were crossing at a height >5m. • Crossing Point E: 64% of the bats recorded were crossing at a height >5m. <p>Whilst the surveys showed that bats are crossing through the woodland east to west (and west to east), the vast majority crossed at heights > 5m above ground level. New planting would also extend up to Hilton Lane which would provide bats with a 'hop over' the road, which is 6m below ground level in this location. This information, in combination with the fact that the road will be in cutting in Lower Pool where it is adjacent to Plot 5/2, going from ground level to 6m below ground, shows that bats</p>

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
				<p>would be able to safely cross the operational road from the retained woodland in Lower Pool to the woodland and pond compensation on Plot 5/2.</p> <p>The Scheme does not affect habitats to the east of Lower Pool so bats would be able to continue to access these habitats. The A460 to the west of Plot 5/2 does not form a barrier to bats as there is tall vegetation (woodland and hedgerows) along most of its length, forming a barrier to bats and forcing them to fly up and over the road. This provides connectivity into the wider landscape for bats to the west of Plot 5/2.</p> <p>In conclusion, the road would not sever the woodland and pond habitat within Plot 5/2 from the retained habitats within Lower Pool LWS, and connectivity to new and existing habitats would be maintained.</p>
2.3 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))				
2.3.1	<p>Base data</p> <p>Could the Applicant and Allow Limited please include as part of their Statement of Common Ground information as to the areas of the various habitats and species. This should be provided on drawings based on survey or Ordnance Survey data, setting out clearly the areas where there is agreement and the areas where there is disagreement. This should be accompanied with a schedule explaining the differences and why the parties hold the view they do.</p>	<p>The Applicant</p>	<p>An annotated plan and schedule has been produced and is appended to this document (appendix 2.3.1). This will also be appended to a future iteration of the Allow Limited Statement of Common Ground and has been shared with them for comment. However, given that the key issues with Allow Limited remain under discussion, this Statement of Common Ground has not been re-submitted at Deadline 4.</p>	N/A
		<p>Allow Ltd</p>	<p>Comments provided in Document to be appended to SOGC.</p>	<p>Comments will be considered and areas of agreement/ disagreement documented in the SoCG.</p>
2.3.3	<p>Effects on ancient woodland from nitrogen deposition</p> <p>(a) Do Natural England and the Staffordshire Wildlife Trust consider that the 1:1 ratio for planting of replacement woodland habitat to compensate for the effects on ancient woodland from nitrogen deposition (see paragraphs 2.4.10 and 2.4.11 of the document entitled Environmental Mitigation Approach [REP1-057]) is appropriate?</p> <p>(b) If not, can you please explain why, and what</p>	<p>Natural England</p>	<p>We are not aware of any set mitigation/ compensation for nitrogen deposition impacts on ancient woodlands. Tree planting can be used to buffer woodland as this will capture some of the nitrogen. Other possible mitigation/compensation measures include improving/restoring or managing the ancient woodland affected or other ancient woodlands, planting new native woodland, connecting fragmented woodland.</p> <p>Based on what is proposed, the potential impacts, the order limits and the mitigation already proposed, the options to mitigate and compensate for impacts from nitrogen deposition within the order limits are limited and therefore we consider the proposed compensation appropriate for this scheme.</p>	N/A

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	other metric should be used?			
2.3.7	<p>Compliance with NPSNN</p> <p>(a) In the draft SoCG with SSC [REP1-059] indicates that SSC considers that the scheme does not reference paragraph 5.33 of the NPSNN, which highlights the need to consider whether biodiversity opportunities have been maximised, including via planning obligations. Could SSC indicate whether it considers biodiversity opportunities have been maximised.</p> <p>(b) If not, what additional measures need to be included?</p>	<p>SSC</p>	<p>SSC and SCC concerns were set out in an email to the applicant's representative AECOM (by email, 18th Dec 2020):</p> <p><i>Habitat currently stands at c.2% net gain at present for the scheme, while linear habitats exceed 10%. DEFRA agencies now are asking for 10% net gain overall, which SCC consider is reasonable and in line with the emerging Environment Act. Does HE agree with this, and if not why?</i></p> <p><i>Can you clarify the relationship between the project that Emily Major is leading, which is called M54 to M6 link road Biodiversity Net Gain strategy feasibility study and any off-site net gain that might be needed as a result of the Hearing? For example, if the Inspector finds in favour (partly or entirely) of Allow, I believe the remaining land within the DCO limits will not provide enough space for habitat creation?</i></p> <p><i>It is our understanding that the Road Improvement Strategy (RIS) Fund involves a bidding process and is therefore not guaranteed for the purpose of mitigating any losses from the M6 /M54 link. We also have some concern regarding timing as, although RIS2 ends in 2024, it is likely to be over-subscribed by then and there has been no announcement of a RIS3. Our preferred outcome would be to secure funding for any off-site mitigation through a S106 agreement. Is this possible?</i></p> <p>We have not yet received a response to these questions and remain concerned that any off-site mitigation should be secured through planning agreement, rather than be left to bidding into a scheme with no guaranteed outcome. Given the lack of planning obligations to secure off-site improvements and the apparent inability to secure a 10% net gain on-site, South Staffordshire District Council and Staffordshire County Council remain concerned that the limited extent of biodiversity improvements proposed would fail to maximise biodiversity opportunities available.</p> <p>A list of priority off-site locations in the area around the site have been provided to the applicant's representative previously as part of their Road Improvement Strategy scheme. This work was informed by local Nature Recovery Network mapping prepared by Staffordshire Wildlife Trust and South Staffordshire District Council and was refined in discussion with local stakeholders. Therefore, we consider that commuted sums secured via planning obligations towards these locations could provide additional measures for improving biodiversity up to the 10% net gain advised by DEFRA."</p>	<p>Regarding the DEFRA agencies 10% overall biodiversity net gain target, in July 2019 DEFRA published 'Net Gain: Summary of responses and government response to consultation on the objectives of net gain policy'. The document was clear that consultation proposals for a mandatory requirement for net gain did not include nationally significant infrastructure projects because they have 'fundamentally different characteristics to other development types'. The Bill currently proposes that this mandatory requirement would be introduced through amendments to the Town and Country Planning Act (TCPA) 1990 so developments authorised under the Planning Act 2008 would not be included. Highways England agree with the Government's position on NSIPs and net gain as indicated in the Environment Bill. NSIPs by their very nature are extremely complex and unique so a blanket approach would be challenging.</p> <p>SSC agreed in a meeting with HE on 13 January 2021 that there is no policy requirement for biodiversity net gain to be delivered as part of NSIP Schemes. This agreement will be recorded in the next iteration of the SoCG with SCC. Natural England also agree that it may not be possible to achieve 10% net gain through the DCO process, as set out in the SoCG [REP4-031/8.8P(B)].</p> <p>Highways England is nonetheless seeking to fully mitigate the impact of the Scheme on biodiversity so far as possible and seeks to deliver a scheme that results in no net loss in biodiversity.</p> <p>With reference to the M54 Net Gain designated fund feasibility study or any future Environmental Designated Fund (EDF) applications these cannot be considered part of the DCO application and are not material to decision making on this application. It is only possible to apply for and receive EDF funding where the work is limited to facilitating the achievement of environmental benefits over and above the essential mitigation for the scheme. If we reach a position where essential mitigation needs to be delivered outside of the Order limits we would need to identify sites and if those sites have been previously identified to be included in the net gain designated fund they would need to be removed from that study and secured as part of the DCO. However, this would only be in the event that sites are required to deliver 'essential mitigation', not to deliver a net gain in biodiversity.</p> <p>Highways England cannot guarantee the outputs of the EDF study nor availability of further EDF funding as EDF has to meet strict appraisal requirements in order to be eligible for the funding. Until we have outputs from the feasibility study (expected spring 2021) we will be unable to know if 10% net gain is achievable. Notwithstanding this, an EDF application for the next stage of the study involving detailed design of enhancements would be submitted in 2021, funding for delivery of enhancements would be sought following this most likely late 2021 with works expected to be undertaken in 2022, subject to approvals and programming.</p>
		<p>SCC</p>	<p>Staffordshire County Council's concerns were set out in an email to the applicant's representative AECOM (by email, 18th Dec 2020):</p> <p>Habitat currently stands at c.2% net gain at present for the scheme, while linear habitats exceed 10%. DEFRA agencies now are asking for 10% net gain overall, which SCC consider is reasonable and in line with the emerging Environment Act. Does HE agree with this, and if not why?</p>	<p>Refer to the Applicant's response to SSCs response to WQ2.3.7 above.</p> <p>Regarding the potential for a S106 agreement to deliver net gain, Highways England do not consider that this agreement would be an appropriate mechanism. For items to be included in a S106 agreement and to form the basis on which consent for the scheme is granted, they should meet three tests (Regulation 122 of the Community Infrastructure Levy Regulations 2010), which are that planning obligations/requirements are:</p>

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			<p>Can you clarify the relationship between the project that Emily Major is leading, which is called M54 to M6 link road Biodiversity Net Gain strategy feasibility study and any off-site net gain that might be needed as a result of the Hearing? For example, if the Inspector finds in favour (partly or entirely) of Allow, I believe the remaining land within the DCO limits will not provide enough space for habitat creation?</p> <p>It is our understanding that the Road Improvement Strategy (RIS) Fund involves a bidding process and is therefore not guaranteed for the purpose of mitigating any losses from the M6 /M54 link. We also have some concern regarding timing as, although RIS2 ends in 2024, it is likely to be over-subscribed by then and there has been no announcement of a RIS3.</p> <p>Our preferred outcome would be to secure funding for any off-site mitigation through a S106 agreement. Is this possible? We have not yet received a response to these questions and remain concerned that any offsite mitigation should be secured through planning agreement, rather than be left to bidding into a scheme with no guaranteed outcome.</p>	<ul style="list-style-type: none"> necessary to make the development acceptable in planning terms. directly related to the development; and. fairly and reasonably related in scale and kind to the development. <p>Due to the lack of a policy imperative to net gain, delivering a net gain is not necessary in planning terms. A requirement to deliver net gain would therefore not meet the three tests and should not be included in a S106 agreement.</p> <p>For all the reasons above, Highways England does not think it is necessary, appropriate or desirable to link the EDF project with the DCO application through a S106 agreement or another mechanism but will continue to pursue the two projects in parallel.</p>
2.3.8	<p>Effects on Priority Habitats</p> <p>(a) In the draft SoCG with NE [REP1-028] the Applicant considers that NE is requesting an 'in combination' assessment for Priority habitats. Is this in fact correct?</p> <p>(b) If so, could the NE please explain under what policy indication or legal obligation should such an assessment be made.</p> <p>(c) If not, could NE please indicate in greater detail the concerns that it is seeking to make.</p>	NE	<p>Our comments relating to in-combination in the draft SoCG [REP1-028] related to the ancient woodland which is also a priority habitat. Furthermore, Highways England have confirmed that the traffic data issued in their air quality assessment takes into account traffic flows associated with 'reasonably foreseeable' developments. As such an in-combination assessment has essentially already been conducted.</p>	N/A
2.3.9	<p>Veteran Trees</p> <p>Could the parties ensure that agreement or otherwise that all veteran trees are identified in the documentation is recorded in the relevant Statements of Common Ground.</p>	The Applicant	<p>The following text has been added to the SoCG with Natural England and South Staffordshire Council (SSC):</p> <p>"Seven veteran trees have been identified within the biodiversity study area, five of which are within the Scheme boundary (T137, T227, T221, T214 and 211). T226 is shown on the Environmental Masterplan [AS-086 to 092/6.2] as a veteran tree however as set out in Appendix 7.1: Arboricultural Impact Assessment [AS-101/6.1] this tree is a prominent tree, a particularly large over-mature ash but it is not considered to be a veteran tree.</p> <p>A further 12 veteran trees were identified as part of the assessment of impacts from nitrogen deposition. These trees are located within 200 m of the affected road network but are outside the Scheme boundary. Further details of these veteran trees can be found in application document, 'DMRB Updates and the Impact on the DCO Application' [AS-059/8.2]."</p> <p>Drafts of these SoCG have been sent to Natural England and SSC to provide comment on this point. SSC has responded on this issue directly to the ExA on 6 January 2021, with</p>	N/A

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			these comments incorporated into their stance on the SoCG. Highways England will respond on this point at Deadline 5.	
		SSC	<p>SSC is satisfied that the tree survey has collated the relevant baseline information. However, it is noted that some veteran trees have been noted as part of groups and/or woodlands and not as individuals per se. SSC recommend that any groups or woodlands that is identified as having veteran trees within and which may be affected by the proposal should be individually assessed and appropriate management/protection measures identified.</p> <p>It is also suggested that the site/area of development is cross referenced with information kept on ancient tree forum (ATF), ancient and veteran tree maps, that may further identify any trees which may have been picked up and verified as ancient or veteran by the group.</p> <p>Finally, following consultation with the SCC Ecologist, SSC requests that over mature and veteran trees are clearly highlighted and identified on site, including in working documents such as the CEMP. This point is to be referred to by SCC in the draft SoCG?</p>	<p>A full tree survey has been undertaken and details of veteran trees are provided in the Arboricultural Impact Assessment Report, Appendix 7.1 [AS-101/6.3]. The Scheme boundary has been cross checked against the information on the Ancient Tree Forum website and no further veteran trees have been identified.</p> <p>There are two veteran trees noted as part of a group (W516) in Appendix 7.1: Arboricultural Impact Assessment [AS-101/6.3]. W516 refers to Oxdon Leasow ancient woodland, therefore these two veteran trees have been assessed as part of the impact on ancient woodland, reported in Chapter 8: Biodiversity of the ES [AS-083/6.1]. Those veteran trees located in other groups of non-ancient woodland or as individual trees have been assessed individually.</p> <p>Seven individual veteran trees have been identified within the biodiversity study area, five of which are within the Scheme boundary (T137, T227, T221, T214 and 211). T226 is shown on the Environmental Masterplan [AS-086 to 092/6.2] as a veteran tree however as set out in Appendix 7.1: Arboricultural Impact Assessment [AS-101/6.1] this tree is a prominent tree, a particularly large over-mature ash but it is not considered to be a veteran tree. The impact on these veteran trees during construction and operation is reported in Chapter 8: Biodiversity of the ES [AS-083/6.1].</p> <p>A further 12 veteran trees were identified as part of the assessment of impacts from nitrogen deposition. These trees are located within 200 m of the affected road network but are outside the Scheme boundary. Further details of these veteran trees can be found in application document, 'DMRB Updates and the Impact on the DCO Application' [AS-059/8.2].</p> <p>The production of an Arboricultural Mitigation Strategy is secured through the OEMP, commitment MW-LAN2 set out in Table 3.3. [REP4-010/6.11]. The Arboricultural Mitigation Strategy will outline the methodology for undertaking works in close proximity to existing trees and veteran trees. This will also include a schedule of trees to be protected or removed and detailed Tree Protection Plans which will identify over mature and veteran trees and the measures required to protect them.</p>
		NE	The latest version of the Statement of Common Ground between ourselves and Highways England includes a record of agreement of the identification of veteran trees.	N/A
2.4 Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations				
2.4.5	<p>Statutory Undertakers</p> <p>(a) Can the latest position of the Utilities be updated and in particular with regard to the protective provisions?</p> <p>(b) Could the Applicant also set out the current progress on Statements of Common Ground?</p>	The Applicant	<p>(a) The Applicant is in dialogue with the affected Statutory Undertakers. In particular: National Grid – Protective provision wording has been agreed and has been incorporated into the dDCO submitted at Deadline 4 (D4) (8 January 2020) Western Power – Protective provision wording is understood to be in an agreed form and is awaiting final confirmation from WPD.</p> <p>Cadent – The Applicant has been in extended dialogue to agree a standardised approach to protective provisions for Cadent and agreed wording is expected to be resolved within the Examination.</p> <p>Water companies – The Applicant is in contact with the legal representatives for both South Staffordshire Water and Severn Trent Water. The Applicant is confident that the issues of concern to each water company are capable of being resolved.</p> <p>Other utility companies comprise the telecoms companies of BT, Vodafone, Virgin and Zayo. The protective provisions for these companies follow the format in other made DCO's. Copies of the protective provisions have been sent to each of those companies but they</p>	N/A

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			<p>haven't made a representation to date and in the absence of an indication to the contrary the protective provisions are expected to be acceptable to them.</p> <p>(b) A full update on the progress of all Statements of Common Ground is provided in the Statement of Commonality (document 8.8) submitted at D4. Where Statements of Common Ground have progressed sufficiently since Deadline 1 (D1), the updated Statements of Common Ground will be made available at D4. Further contact will be made with each Statutory Undertaker to check if comments will be provided on the draft Statement of Common Ground.</p>	
		Cadent Gas	<p>Cadent's position, as set out in its relevant representations, is that it is not satisfied that the tests under section 127 of the PA 2008 can be met unless and until it has appropriate protective provisions in place which adequately protect its existing apparatus and which properly regulate any diversions that may be required.</p> <p>Cadent is in discussion with Highways England over the form of the protective provisions. Cadent has a preferred form of protective provisions which it has provided to Highways England and which it provided to the ExA in response to ExA Question 1 (see Appendix 1 of the enclosed response dated 3 November 2020). These protective provisions should be included at Part 3 of Schedule 9 to the DCO.</p>	<p>Highways England and Cadent Gas have been engaged in constructive dialogue and agreement on the final form of protective provisions is understood to have been reached.</p> <p>Highways England expects to insert the agreed form of protective provisions into the next version of the dDCO.</p>
		SSW	<p>SSW have not made any specific comments on the Statement of Common Ground with the Applicant as they feel they need to make more substantial progress regarding the Protective Provisions and any agreement that may come out of those negotiations and which will influence the Statement of Common Ground going forward.</p>	<p>Highways England provided a detailed response to SSW's solicitor on 25 November 2020. The response addressed each of SSW's suggested revisions to the protective provisions.</p> <p>Highways England is working to resolve SSW's identified areas of concern and remains confident that those issues are capable of being addressed through amendments to the protective provision or other protections in the dDCO. As SSW have noted, Highways England is also awaiting comments from Severn Trent Water so that issues common to both water companies can be addressed.</p>
2.4.6	<p>High Pressure Gas Main (Work 68)</p> <p>Should this also be that any redundant equipment be removed, rather than abandoned, so that there is overall no change in effects? (see also question 2.5.4).</p>	The Applicant	<p>Cadent Gas has confirmed that any redundant sections of the Gas Main would be removed as they would release their wayleave rights and cannot leave behind pipe which would be classed as 'hazardous waste material'. The only exception being where they pass under an existing carriageway that would prohibit their removal in which case they would be grouted and left in-situ. We do not consider it necessary to amend the DCO. The works include the diversion of the gas main and the protective provisions in favour of Cadent Gas set out the extent to which it will be agreed with Cadent as to whether the redundant main will be removed or made safe and left in-situ. To the extent that works are required to remove or make safe, those works would be in connection with work no.68 and would be authorised by the description of other works at the end of Schedule 1.</p>	N/A
		Cadent Gas	<p>As set out in Cadent's relevant representations, Cadent will not decommission its existing apparatus and/or commission new apparatus until it has sufficient land and rights in land (to its satisfaction) to do so, whether pursuant to the DCO or otherwise. This is a fundamental matter of health and safety and network integrity.</p> <p>Under section 138 of the PA 2008, Cadent cannot be obliged to remove the apparatus unless the Secretary of State is satisfied that removal is necessary for the purpose of carrying out the development to which the DCO relates.</p> <p>Cadent requires that the DCO is flexible as to how decommissioned apparatus is managed. Leaving decommissioned apparatus in situ is emerging as environmental best practice for decommissioning gas pipelines. Under paragraph 23(5) of Cadent's protective provisions in the dDCO, where Highways England acquire an interest in land from Cadent, it will be a</p>	<p>Highways England's response remains that the removal or making safe of gas mains will be covered by a combination of the agreed protective provisions with Cadent Gas and the existing powers in schedule 1 of the DCO.</p>

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			condition of any such agreement that Highways England are responsible for decommissioned apparatus left in situ. Therefore, the approach to decommissioned apparatus is a matter for Highways England.	
2.5 Draft Development Consent Order (DCO [APP-018])				
2.5.4	Schedule 1, Work 68 (a) This work would involve the relocation of an existing high pressure gas main. Given the location and the effect on the remaining land holding, should any redundant gas main be removed from the site, rather than abandoned? (b) If so, how is this to be secured?	The Applicant	(a) Cadent Gas has confirmed that any redundant sections of the Gas Main would be removed as they would release their wayleave rights and cannot leave behind pipe which would be classed as 'hazardous waste material'. The only exception being where they pass under an existing carriageway that would prohibit their removal in which case they would be grouted and left in-situ. (b) We do not consider it necessary to amend the DCO. The works include the diversion of the gas main and the protective provisions in favour of Cadent Gas set out the extent to which it will be agreed with Cadent as to whether the redundant main will be removed or made safe and left in-situ. To the extent that works are required to remove or make safe, those works would be in connection with work no.68 and would be authorised by the description of other works at the end of Schedule 1.	N/A
		Cadent Gas	As set out in Cadent's relevant representations, Cadent will not decommission its existing apparatus and/or commission new apparatus until it has sufficient land and rights in land (to its satisfaction) to do so, whether pursuant to the DCO or otherwise. This is a fundamental matter of health and safety and network integrity. Under section 138 of the PA 2008, Cadent cannot be obliged to remove the apparatus unless the Secretary of State is satisfied that removal is necessary for the purpose of carrying out the development to which the DCO relates. Cadent requires that the DCO is flexible as to how decommissioned apparatus is managed. Leaving decommissioned apparatus in situ is emerging as environmental best practice for decommissioning gas pipelines. Under paragraph 23(5) of Cadent's protective provisions in the dDCO, where Highways England acquire an interest in land from Cadent, it will be a condition of any such agreement that Highways England are responsible for decommissioned apparatus left in situ. Therefore, the approach to decommissioned apparatus is a matter for Highways England.	Highways England's response remains that the removal or making safe of gas mains will be covered by a combination of the agreed protective provisions with Cadent Gas and the existing powers in schedule 1 of the DCO.
2.5.6	Schedule 2, Requirements 4 and 5 In its response at D2 in relation to ExQ1.5.39 [REP2-009], the Applicant indicates that Natural England is content with the mitigation measures relating to soil storage. Could Natural England confirm its position.	NE	<i>Mitigation measures for soil storage</i> – we are content with what is proposed by the applicant. <i>Allocating soils to different end uses</i> – we are content that soils for re-use will be appropriately protected during the construction of the Scheme, with the exception of those soils stripped for the creation of species rich grassland which is still under discussion.	Discussions with regard to the stripping of topsoil for the creation of species-rich grassland are ongoing between Highways England and Natural England and will be recorded in the SoCG.
2.5.9	Schedule 9 Could the Applicant and all Statutory Undertakers who would have apparatus covered by the Protective Provisions set out their latest understandings of	The Applicant	The Applicant is in dialogue with the affected Statutory Undertakers. In particular: National Grid – Protective provision wording has been agreed and will be incorporated into the next draft DCO to be submitted at D4 (8 January 2020). Western Power – Protective provision wording is understood to be in an agreed form and the Applicant is awaiting final confirmation of this from Western Power. Cadent Gas – The Applicant has been in extended dialogue to agree a standardised approach to protective provisions for Cadent Gas and agreed wording is expected to be resolved within the Examination.	N/A

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
	negotiations on any necessary text.		<p>Severn Trent Water – Comments on the protective provisions are currently awaited by the Applicant.</p> <p>South Staffordshire Water – The Applicant is responding to the points raised by South Staffordshire Water with a view to resolving the areas of identified concern through amendments to the protective provisions or other protections within the draft DCO. Other utility companies comprise the telecoms companies of BT, Vodafone, Virgin and Zayo. The protective provisions for these companies follow the format in other made DCOs. Copies of the protective provisions have been sent to each of those companies but they have not made a representation to date and in the absence of an indication to the contrary the protective provisions are expected to be acceptable to them.</p>	
		Cadent	<p>Cadent's position, as set out in its relevant representations, is that it is not satisfied that the tests under section 127 of the PA 2008 can be met unless and until it has appropriate protective provisions in place which adequately protect its existing apparatus and which properly regulate any diversions that may be required.</p> <p>Cadent is in discussion with Highways England over the form of the protective provisions. Cadent has a preferred form of protective provisions which it has provided to Highways England and which it provided to the ExA in response to ExA Question 1 (see Appendix 1 of the enclosed response dated 3 November 2020). These protective provisions should be included at Part 3 of Schedule 9 to the DCO.</p>	Highways England and Cadent Gas have been engaged in constructive dialogue and agreement on the final form of protective provisions is understood to have been reached. Highways England expects to insert the agreed form of protective provisions into the next version of the draft DCO.
		SSW	<p>SSW have previously suggested amendments to the draft protective provisions to the applicant's solicitor, these were largely deemed unacceptable and on the 3 December SSW provided further comments and explanations as to the rationale for these amendments. The amendments SSW sought aim to protect their position as a statutory undertaker, their assets and their obligation to supply fresh water to vast numbers of people in the area. SSW are disappointed that they are yet to receive a substantive response to these comments from the applicant's solicitor, however from their recent email SSW are told that the applicant awaits a response from another statutory undertaker before negotiations can continue and further responses are provided to the points SSW have raised with them. Overall SSW are disappointed with the progress of these negotiations as they would have hoped to be further forward with given the last communication on the 3 December 2020.</p>	<p>Highways England provided a detailed response to SSW's solicitor on 25 November 2020. The response addressed each of SSW's suggested revisions to the protective provisions.</p> <p>Highways England is working to resolve SSW's identified areas of concern and remains confident that those issues are capable of being addressed through amendments to the protective provision or other protections in the dDCO. As SSW have noted Highways England is also awaiting comments from Severn Trent Water so that issues common to both water companies can be addressed.</p>
2.6 Cultural Heritage				
2.6.4	Planting in vicinity of Lower Pool (a) In their representations at D3A [REP3A-001] Allow Limited state "It is asserted that visual screening can be achieved with less planting in 4/20c and that the area of woodland mitigation on plot 4/20c should be reduced." Could Allow Limited please evidence this assertion, taking into account that the Applicant is of the view that the reasoning for the mitigation is multi-faceted	The Applicant	b) Please see our response to Question 2.3.1 above. The Applicant can confirm that it continues to work with Allow Limited towards agreeing a Statement of Common Ground, but this has not sufficiently progressed since D3 to warrant submission at D4.	N/A
		Allow Ltd	<p>4/20C Plot SW06 on Environmental Masterplan Mitigation Breakdown, is proposed to screen views from Dark Lane. This is to address the distant views of the double roundabout and slip roads to the south of the scheme, near J1. There will be screening immediately adjoining the base of the embankments at those locations with EW 10, 11, 12 & 13. It is assumed therefore the purpose of SW06 is to offer some near distance screening for the residences of Dark Lane. We would pose the question of whether a woodland strip of 22m to 25m in width, (widening to approximately 65m in the south eastern corner adjoining the motorway) is necessary to achieve this. It is suggested, and more conventional for, the screening planting to be a narrower width of approximately 10m which should still provide the required level of screening. It is proposed that a new hedge EH 14 would also be planted along the southern edge of the track that runs from Lower Lodge, and another along Dark Lane itself at SH08, therefore these would also afford some additional screening at a lower height level.</p>	<p>The remaining woodland planting on plot 4/20c is proposed to provide visual screening for residents on Dark Lane whilst also contributing to visual amenity and biodiversity. A reduction of this woodland plot would risk it no longer providing its primary function and therefore a worsening of visual impact, for views south of Dark Lane, VP 20 in Chapter 7: Landscape and Visual of the ES [APP-046/6.1].</p> <p>As set out in the Environmental Mitigation Approach [REP01-057/8.11] SW06 also provides part of a mosaic of habitat (species rich grassland, hedgerows and woodland) proposed to the south of Dark Lane to provide optimal foraging habitat for bats and provide connectivity between woodland plots. As with all woodland planting proposed as part of the Scheme it also provides replacement habitat for woodland lost during the construction of the Scheme. Woodland replacement outside of the compensation measures for the impact on Local Wildlife Sites and ancient woodland is currently provided at a ratio of less than 1:1. The County Ecologist has made it clear that they would not accept further reductions in woodland planting.</p>

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
	and not just for ecological or cultural heritage reasons. (b) Could Allow Limited and the Applicant in their joint draft Statement of Common Ground please set out the differences between the two parties both described and in drawings.		We have not seen any ecological justification for planting on 4/20C, therefore would suggest that this middle distance planting could be reduced in width to 10 m to reduce the area of productive agricultural land taken from Allow Ltd. Plan 1 attached illustrates an alternative 10m width of planting alongside the Lower Lodge driveway.	Please see pages 68-69 of the SoCG with SCC submitted at Deadline 4 [REP4-026/8.8LA(A)]. Further clarity on the agreement on this point will be provided in the next issue of the SoCG with SCC.
2.7 Landscape and Visual				
2.7.2	Replace metal fencing Residents have requested that action is taken to remove/replace the existing metal fence in the vicinity of Lower Pool and Dark Lane. Has this been considered and assessed and any impediments identified to improve the appearance of the area?	The Applicant	Consideration has been given to removing/replacing the existing metal fence adjacent to Dark Lane in response to local resident's requests. The fence is under the ownership of Allow Ltd and provides a secure boundary. Discussion are ongoing with Allow Ltd and the local Parish Council to agree a suitable replacement hedge/fence to provide a suitable secure boundary with and improved visual appearance. Subject to agreeing a suitable replacement, this will be provided as part of the Scheme and recorded in the Statement of Common Ground with Allow Ltd [REP1-066/8.8 LIU(A)] and Hilton, Featherstone & Brinsford and Shareshill Parish Councils [REP1-024/8.8 P(D)]	N/A
		Allow Ltd	Allow have confirmed that they are open to suggestions to alter the fence provided that a replacement adequately addresses concerns regarding fly tipping and trespass. This is due to be discussed at a site meeting rescheduled for January 2021.	At a site meeting between Highways England and Allow Ltd on 15 January 2021, it was agreed that an equivalent height fence would be provided in combination with a boundary hedge. Details of the fence specification are currently under discussion and will be recorded in the draft SoCG. This proposal will also be discussed with SSC and the Parish Councils.
2.10 Traffic and Transport				
2.10.9	Shareshill lay-by (a) Could SCC confirm whether there are currently waiting/parking restrictions? (b) If so, what effect have they?	SCC	(a) The Shareshill Layby has a restriction as follows: Limited Waiting of 1 hour with no return within 1 hour; And No waiting for vehicles in excess of 7.5T between 10pm and 6am. A Plan identifying the extent of the restrictions is included at Appendix B (b) The restrictions limit parking to a duration of one hour at a time and preclude a return to the layby within an hour of departure. Between the hours of 10pm and 6am parking for vehicles over 7.5T is prohibited.	See HE response to REP4-042 in Table 1-2.
2.10.10	Maintenance Plans While the ExA appreciates that they are draft, and would not form a certified document, it would ease the ExA's understanding if it could be provided with the draft Maintenance Plans, ie those showing which highways would be the responsibility of Highways England and of	The Applicant	Please refer to drawing HE514465-ACM-HGN-M54_SW_PR_Z-DR-CH-1009 provided in Appendix 2.10.10. As the ExA notes, the areas for maintenance remain under discussion with SCC and this document remains indicative at this stage.	N/A
		SCC	Agreement on maintenance responsibilities is of significant importance to the delivery of the scheme and should be secured as part of the DCO to provide the necessary clarity. Whilst agreement has been reached over responsibilities at Junctions 1 and 11. There are still outstanding issues over maintenance at the attenuation pond adjacent to Jct 11 and the area between the old alignment of the A460 and the new alignment. We picked up this as a concern in our written representation that there was no clarity as to what was happening to the land between the rear of footway on the new A460 and the old alignment. We do not believe this area should become highway as there is little public utility	The issues raised in this response were discussed with SCC at a meeting on 13 January 2021. Progress on discussions will be reported in the next iteration of the SoCG with SCC with a view to reaching agreement before the hearings in March 2021.

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
	SCC.		<p>and the two long drives referred to in works 6 and 7 are in effect private accesses and should not be the responsibility of the local highway authority. Our position is that the old alignment of the A460 rendered redundant as a result of the scheme should be stopped up with the services/utilities diverted into the new footway to provide a clear and understandable limit to the extent of public highway.</p> <p>Since preparing the written representation it has become apparent that there are further issues in this locality relating to the access to private dwelling and what appears to be an embankment on the plans that may affect such access. A meeting is due to be held next week with the applicant to discuss. However, should no resolution be forthcoming we would request that this matter is considered for discussion at a future hearing session.</p>	
2.12 Socio-Economic Effects				
2.12.2	<p>Employment</p> <p>In their Written Representations [REP1-091] paragraph 8.1 to 8.16 Allow Limited have set out what it considers to be the effects on employment. While it has made various comments, it is not clear how many full-time equivalent workers would be affected by the Proposed Development. The ExA requests a precise number, described by where they are employed.</p>	Allow Ltd	<p>Allow Limited's business is at a time of transition as there has been a restructuring of management responsibilities from the previous managing director to his son, in early 2020. The directors had planned for this period of reinvestment, expansion and improvement before the road scheme became a certainty and the road scheme will have a significant detrimental impact upon not only the physical property but also the business proposals and future enterprises of the estate business.</p> <p>Allow's business comprises a number of elements:</p> <ol style="list-style-type: none"> 1) A farming business mostly produces a grass crop which is harvested for hay or sold for grazing. The hay is sold within the equestrian centre. Additionally, straw is traded through the agricultural yard at Hilton Park, including some haulage to Isle of Man based buyers. 2) An equestrian centre with extensive stabling and indoor arena. The enterprise includes horse livery including DIY as well as full and part-time livery (where horse owners pay Allow for their staff to look after their horses on owners' behalf.) The arena is hired out on an hourly basis or for whole day shows and events. Some shows /competitions are hosted and run by Allow. <p>Equestrian centre is undergoing a period of improvement with an increase in horse numbers, events held and the proposed reopening of the café and bar at the arena.</p> <p>In previous years the equestrian centre also had an equestrian cross country course around the estate where they would run horse trial events and course hire. Allow has plans to rebuild its cross country course and business of horse trials in the near future and to include farm rides along with horse trials and clinics, which would provide further employment opportunities as well as services that would benefit the local population. 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. The loss of land to the scheme will restrict the scale of the enterprise.</p> <ol style="list-style-type: none"> 3) The business has 3 fishing pools which are let annually to 3 fishing clubs/syndicates with a wide membership of around 300 members in total. Each club/syndicate is responsible for the running of the syndicate so we estimate that the loss of the Lower Pool will result in the loss of approximately one half of a full-time equivalent worker. 4) A regular car boot sale is held on plot 5/2 (and 5/25) throughout the Spring to Autumn months. Dark Lane Car Boot is operated under licence by a company called Market Promotions Limited. Each day of a car boot event, it provides employment for at least 10 	<p>The assessment of impacts on agricultural farm holdings and individual businesses is set out in Chapter 12: Population and Human Health [APP-051/6.1]. The detail provided by Allow does not alter the conclusions of that assessment.</p> <p>The equestrian centre referenced is located to the east of Hilton Hall and will not be impacted by the Scheme. It is not appropriate to assess the impact of potential future business proposals that may or may not be taken forwards.</p> <p>It is not clear from Allow's response how the three full time equestrian workers, two directors and one full time farm worker would be affected by the Scheme. It is also unclear whether Allow considers that this information alters the conclusions of the assessment or any other information provided for the DCO application.</p>

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
			<p>local people, with 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 as well as for the employees working on site.</p> <p>The cessation of the car boot events (on the 14 days of the year) would result in the loss of the equivalent of approximately two full time equivalent workers across the employees of the events company, catering vendors and Allow.</p> <p>The loss of the car boot field will result in Allow having to assess the feasibility of running the car boot events within remaining Hilton Park land or having to cease the event in the locality, which would result in both financial losses to the local economy and Allow limited and also loss of local employment associated with the car boot events. The land to be acquired as a result of the scheme is revenue generating for the business and the loss of the car boot sales income would have a significantly detrimental impact upon the scope for reinvestment of Allow's wider business.</p> <p>5) The estate also has a number of woods for timber production and recreation. The impact of the scheme will force Allow to look at all options available to them including utilising their retained land for commercial timber crops.</p> <p>Employees. Allow currently employ 3 full time employees in the equestrian centre plus part time volunteers. Additionally, there is a full time farm worker and two of the Allow directors are occupied full time in the estate. The fishing pools and car boot facilities have direct oversight by the Allow director on site to maintain and run all facilities, as well as farming and the management of the equestrian centre. It is envisaged that as the business plan is implemented, additional employees will be taken on including a full time groundsman and more part time employees in the equestrian centre. The curtailment of the business not being able to utilise the whole estate and to continue use of its existing facilities including the car boot field and Lower Pool will result in fewer employment opportunities which would otherwise have been created. The revenue generated from those elements of the business would have been directly reinvested into the expansion of the wider business. The amount of land being lost to the road scheme is a high percentage of Allow's total land and will result in a complete re-evaluation of the business as a whole, once the extent of land losses are clear.</p> <p>The business activities of Allow add indirect benefits to the wider local economy through fishing supplies, local retailers benefitting from increased passing trade generated by Allow's activities and retailers at the car boot events. Consequently, the impact of the land losses to Allow has a much wider economic impact upon the local economy.</p> <p>The businesses on Allow Limited's land provide recreational facilities to the general public, which would be seriously diminished if the current size of land purchase is approved. Both the car boot and fishing pools are community activities and perform a vital function for the local area which cannot just be measured in financial terms.</p> <p>The total number of full time equivalent workers affected by the proposed development is 8.5.</p>	
2.12.3	ROF Featherstone	SSC	The ROF Featherstone strategic employment site was most recently allocated for development in Policy SAD5 on page 46 of the 2018 Site Allocations Document (SAD)	Noted

WQ No	Reference (in bold) and Question)	Respondent	Applicant/Interested Party Response D4	Applicants Deadline 5 Response
	Could the precise allocation be identified, that is the quantum, size, use(s) and associated metrics be provided, as well as location on an Ordnance Survey base map.		<p>(https://www.sstaffs.gov.uk/doc/179829/name/APP2%20SAD%20September%202018%20FINAL.pdf).</p> <p>The SAD allocated the site for 36ha of B1/B2/B8 employment use. Very recently, a planning application has been submitted (but not yet approved or validated) for the entirety of the site (20/01131/OUT), which is a hybrid application seeking full permission for necessary external and internal highways measures and outline permission for the employment uses on the site.</p> <p>A map showing the extent of the 2018 SAD employment allocation is attached to this response (Figure 1 – ROF Map).</p>	
2.12.4	i54 Could the precise allocation be identified, that is the quantum, size, use(s) and associated metrics be provided, as well as location on an Ordnance Survey base map.	SSC	<p>The majority of the i54 strategic employment site was originally granted planning permission for “[c]omprehensive redevelopment of land to provide a strategic employment area comprising offices, workspaces, industrial units, education and research, hotel, ancillary services, open space and associated highways, footpaths and landscaping” in March 2007. The majority of land covered by the original permission is now built out, however the following areas are covered by the original permission but are currently undeveloped:</p> <ul style="list-style-type: none"> • Plots D, E & F: 4.82ha remaining with outline permission for B1/B2 use (permission refs. 05/01311/OUT & 13/00349/VAR) <p>In addition, a more recent extension to the site was allocated for development in Policy SAD5 on page 46 of the 2018 Site Allocations Document (SAD) (https://www.sstaffs.gov.uk/doc/179829/name/APP2%20SAD%20September%202018%20FINAL.pdf).</p> <p>The SAD allocated around 40ha of additional land to the west of i54, which can be split into two separate elements, which are set out below;</p> <ul style="list-style-type: none"> • An existing planning permission for up to 100,000 sqm of B1/B2 floorspace on the southern area of the allocation (permission ref. 18/00637/OUT) • The remaining northern area of the allocation (approximately 15ha), which is currently without planning permission. <p>A map showing the extent of the existing plots D, E & F, the recent outline permission and the unpermitted land to the north is attached to this response (Figure 2 – i54 Map).</p>	Noted

Table 1-2 Applicant's Responses to Other Representations Made at Deadline 4

Representation Reference	Interested Party	Issue	Representation	Applicant Response
REP4-038	Historic England	Mitigation planting	Representation submitted on alternative locations for planting at Hilton Park.	<p>Highways England appreciates Historic England's swift response on this issue. Highways England notes that Historic England broadly agrees with the assessment of alternatives as set out in '8.22 Assessment of Alternative Locations for Mitigation in Plot 5/2' [REP4-036/8.22]. Document [REP4-036/8.22] concludes that relocating planting and ponds from Plot 5/2 to the east of the alignment would lead to significant effects on the Grade I listed assets in Hilton Park that would not be experienced with the Scheme as currently proposed. Historic England concludes that each option to move mitigation to the east causes progressively more harm than the other options and that the option with the least harm to heritage assets is the Scheme currently before the ExA.</p> <p>Highways England and Historic England agree that no options would result in 'substantial harm' to the Grade I listed buildings. However, there is a broad spectrum of harm within the 'less than substantial harm' category. It is a matter of planning judgment when harm is sufficient to be described as 'substantial harm' and so the category does not always directly align with the magnitude of impact or significance of effect categories presented in an Environmental Impact Assessment. However, it is often concluded that a 'major' magnitude of impact or a 'major' significance of effect leads to substantial harm.</p> <p>The magnitude of impact categories described in the ES for the Scheme are; no impact, negligible, minor, moderate and major. The proposal to move all environmental mitigation from Plot 5/2 to the east of the alignment would change the magnitude of impact from negligible/ minor to moderate for the two Grade I listed buildings. In addition to meaning that the impacts would then be 'significant' in EIA terms, this would mean that within the broad spectrum of impacts considered to be 'less than substantial', the impact would be within the highest category it could be <i>without</i> being considered to be substantial harm.</p> <p>In a recent High Court judgment (<i>R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited</i> [2019] EWHC 2899 (Admin)), Her Honour Judge Belcher concluded that even 'negligible' harm is sufficient to engage the heritage paragraphs in the NPPF (paragraphs 193 to 197), with the harm weighed in the balance when making a decision on an application. She noted that the degree of harm is considered when applying weight to that harm. Given that the paragraphs in the NPSNN are very similar (5.131-5.134) to those in the NPPF, it is logical that the same interpretation should be taken of the paragraphs in the NPSNN. All harm to heritage assets should be given weight, including harm considered to be less than substantial. Harm considered less than substantial can be sufficient to warrant refusal of an application and can certainly justify selection of one land parcel over another.</p> <p>The conclusion that the options for changes to the environmental mitigation would result in less than substantial harm to heritage assets does not consequently undermine or change any of the conclusions in the document provided by Highways England at Deadline 4 [REP4-036/8.22].</p>

Representation Reference	Interested Party	Issue	Representation	Applicant Response
REP4-042	SCC	A460 Weight Limit	<p>Plan 1 in Appendix 1 sets out the existing Orders in place to control the movement of HCV's around the A460. As can be clearly seen protection is afforded to communities adjacent to the A460 to the west and routes to/from the A460 to the east. It is only the length of the A460 itself that is not subject to any restriction as it presently performs a function as part of the Primary Route Network (A roads) to distribute traffic. Once the new link road is complete the existing A460 will no longer perform that function and as such there will be a noticeable gap in the provision of TRO's to prevent indiscriminate HCV use. Copies of the written Orders shown in Plan 1 are also included at Appendix 1 of this submission.</p>	Noted.
			<p>As set out in our written representations and discussed at the Issue Specific Hearing it is our position that there will be residual daily HCV flows on the A460 that have not been identified up by the strategic traffic model. These relate to drivers accessing M6 Diesel filling station using the A460 by force of habit, commercial agreement , or as the most direct/shortest route.</p>	Refer to Highways England's response to REP1-005 Issue 3: page 2 para 4 & 5 in the Applicant Responses to Documents Received at Deadlines 1 and 2 [REP3-037/8.15].
			<p>In addition, in the event of incident or closure of the new link road traffic will likely revert back to the A460 to avoid the disruption. The signed diversion route of the A5/A449 is presently the identified route for connecting between the M54 and M6 but drivers choose to use the A460, hence the need for the link road so it is fair to assume that at times when the new link is unavailable traffic will revert back to the route from which it originated i.e. the A460.</p>	Refer to Highways England's response to RR-011d in the Applicant Responses to Relevant Representations [REP1-043/8.9].
			<p>The provision of the weight limit will help the scheme deliver against its stated objectives of keeping the 'right traffic on the right roads' and helping to create better environment for non-motorised users. Without such a restriction in place there is a distinct possibility that improvements to pedestrian and cyclist facilities may be hindered if HCV through traffic is not constrained to its fullest extent.</p>	Highways England does not consider that a weight restriction is required in order to achieve the Scheme objectives and as such, the Scheme does not include a weight restriction on the existing A460. Refer to Highways England's response to REP1-005 Issue 3: page 2 para 4 & 5 in the Applicant Responses to Documents Received at Deadlines 1 and 2 [REP3-037/8.15].
			<p>There is an expectation locally arising from the Public Consultation Events held by HE that legacy schemes will be delivered post scheme to further improve the local road network for pedestrians and cyclists.</p>	<p>Highways England has made it clear that there will be no improvements to cycleways or similar along the A460 delivered as part of the Scheme in the DCO, including at consultation events in 2019, and meetings throughout 2019 and 2020. It is surprising that this expectation remains, although it is accepted that the designated funds project may continue to cause confusion.</p> <p>Highways England has accepted a designated fund application for an initial feasibility study to identify opportunities to provide improved NMU routes along the existing A460. This feasibility study will be developed in partnership with key stakeholders including SCC. This designated funds project is at the feasibility stage and as such no outcomes can be guaranteed. These measures are not part of the Application or material to decision making on it.</p>
			<p>The issue is not about the level of reduction of traffic on the A460 or what constitutes an 'acceptable level of use' it is about creating the conditions necessary for the proposed development to have its greatest effect. The weight limit is a simple and cost-effective way of securing such conditions and when viewed in the context of the scheme and its objectives makes sense.</p>	Highways England does not consider that a weight restriction is required in order to achieve the Scheme objectives and as such, the Scheme does not include a weight restriction on the existing A460. Refer to Highways England's response to REP1-005 Issue 3: page 2 para 4 & 5 in the Applicant Responses to Documents Received at Deadlines 1 and 2 [REP3-037/8.15].
		Proposed Weight Restriction	<p>In order to be effective at preventing HCV through traffic, the proposed weight limit will need to interface with the existing Orders. Set out below is an overview of how this could be achieved with the subsequent section detailing the provisions required in the DCO to deliver the works.</p> <p>A 7.5T environmental weight restriction is proposed in order to discourage use of the existing A460 for M6-M54 movements by large vehicles and also to reduce use of the route during planned or emergency closures of the new link road. The proposal put</p>	<p>Notwithstanding the position that Highways England does not consider that a weight restriction is required in order to achieve the Scheme objectives and as such, the Scheme does not include a weight restriction on the existing A460, Highways England has considered the proposal suggested by SCC.</p> <p>Plan 1 in REP4-042 indicates that currently all roads to the west of the existing A460 are subject to 7.5T Zonal Prohibition Orders and all roads to the east of the existing A460</p>

Representation Reference	Interested Party	Issue	Representation	Applicant Response
			<p>forward aims to address HCV through traffic that should be utilising the new link road and will allow vehicles weighing in excess of 7.5T accessing properties on Dark Lane, Hilton Lane or Old Warstone Road to utilise the existing A460 to access the M6, M54 or New Road as they are currently permitted to do. This will remove or limit any unintended impact of the weight limit on existing traffic movements by maintaining the current level of accessibility for vehicles using these roads.</p> <p>The proposed amended 7.5T Environmental Weight Restriction Order would have the following schedule:</p> <ul style="list-style-type: none"> • Prohibition of Heavy Commercial Vehicles of over 7.5 Tonnes Gross Order • A460 Cannock Road – from a point approximately 8 metres south of its junction with Church Road in a southerly direction to a point approximately 2 metres north of its junction with New Road, Featherstone. A total distance of approximately 705 metres. • Dark Lane – entire length • Hilton Lane – entire length • Old Warstone Road – from Hilton Lane to its junction with Warstone Road A462. <p>This would be an amendment to the existing Order sealed in 1991 which includes Dark Lane, Hilton Lane and Old Warstone Road to include the section of the A460 specified in the above schedule.</p> <p>To accompany this Order, signing would be required at each end of the route, with advanced signing at M6 J11 and M54 J1 to allow HGVs to use the junctions to take an alternative route and avoid the restriction. Signing would also be provided on New Road to inform HGV drivers of the restriction, all of which would be within the Order Limits. It would make sense to include this new signing as part of the new junction works to avoid the need for costly traffic management if installed post scheme opening. This would be the most effective use of available funding, providing better value to the public purse and not require additional disruption to motorists from associated traffic management. Existing signage at Old Warstone Road/Hilton Lane could remain in situ as it would remain relevant.</p>	<p>(Dark Lane, Hilton Lane and Old Warstone Road) are subject to 7.5T Weight Restrictions (except for access).</p> <p>Implementing a 7.5T Weight Restriction (except for access) over the suggested length of the existing A460 would result in the sections of existing A460 to the north and south of this being legally accessible to all HGV traffic. This presents a practical and operational safety issue as:</p> <ul style="list-style-type: none"> • An HGV travelling south along the existing A460 from M6 Junction 11 would not be able to legally progress beyond the Church Road, Hilton Lane Junction by any route without making a U-turn. There is insufficient space within the highway to allow such manoeuvres, therefore an HGV driver would have to illegally continue or make an unsafe reversing manoeuvre. • An HGV travelling north along the existing A460 from M54 Junction 1 would not be able to legally progress beyond the New Road, Dark Lane Junction by any route without making a U-turn. Again, there is insufficient space within the highway to allow such manoeuvres, therefore an HGV driver would have to illegally continue or make an unsafe reversing manoeuvre. <p>Further, the implementation of a Weight Restriction (except for access) over the suggested length of existing A460 would be challenging to enforce and is unlikely to be supported by the Police.</p> <p>Highways England therefore considers that SCC's suggestion would not result in the further reduction of HGV traffic along the existing A460 and is not a feasible proposal.</p>
		DCO Provisions for delivery of the Weight Limit	<p>To provide the above the following additions and changes are proposed to Article 16 and a new Schedule [No. to be determined].</p> <p>16. (1) This article applies to roads in respect of which the undertaker is not the traffic authority.</p> <p>(2) Upon the event specified in column (3) of Schedule [] the existing order made under the 1984 Act, as specified in column (1) of Schedule [] shall be amended as set out in column (2) of that Schedule.</p> <p>All subsections re-numbered but not repeated here.</p>	<p>For the reasons previously stated, Highways England remains of the view that a traffic regulation order for a new weight restriction is not necessary and does not form part of the Scheme. If the ExA was minded to require the implementation of a weight restriction then Highways England proposes the following amendments to the draft DCO:</p> <ul style="list-style-type: none"> • New Article 11(7) to read - On such day as the undertaker may determine, the orders specified in column (3) of Part 7 (variations of existing traffic regulation order(s)) of Schedule 3 is to be varied as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part. • Article 11(8) to be renumbered Article 11(9) and amended to read - The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

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		Shareshill Layby	<p>The closure of the Shareshill layby would be beneficial to the local community and would have been supported if Highways England had included it in their proposals.</p> <p>There are two elements to the closure of the layby; (i) the amendment of the existing waiting restrictions; and (ii) the physical alteration of the highway to remove the layby. There are various ways in which the physical closure could be undertaken; where the re-provision of highway space may be related to future pedestrian/cycle improvements, which have been muted as potentially forthcoming via HE's Designated Funds programme. Given the uncertainty around what the physical works may entail it is suggested that the existing provision within the DCO to alter TRO's be applied to amend the current waiting restrictions along the layby to 'No Waiting'. It is understood that HE will need to amend a number of existing restrictions on the A460 to deal with its realignment and the addition of 'No Waiting' to the layby could be incorporated in the same undertaking.</p> <p>It is suggested that the layby is visited during the accompanied site inspection; our Cabinet Member for Highways would wish to attend should this take place.</p>	<p>For the reasons previously stated (in Highways England's response to Paragraph 6.4 Bullet 10 in SCC's Local Impact Report [REP3-037/8.15]), Highways England does not consider the closure of the Shareshill layby to be necessary or potentially beneficial. The use of the layby is already restricted and the current issues identified with use of the layby may be more associated with the enforcement of current restrictions than the nature of them. If the ExA was minded to agree with SCC that a change to the current restrictions which apply to the layby then this could be secured by way of a variation to the existing traffic regulation order which applies to the layby.</p>																	
		Provision for Approval of	<p>At the hearing session we noted that there is an apparent lack of clarity in the processes set out in the DCO to approve the detailed design of new and/or altered local highway and associated works, including construction specifications. Article 11 provides for any new and/or altered highway to be constructed to the reasonable satisfaction of the local</p>	<p>Highways England does not agree that there is a lack of clarity in the draft DCO. The wording in Article 11, including the requirement to complete any works to the reasonable satisfaction of the local highway authority, mirrors the wording in other made DCOs.</p>																	

Representation Reference	Interested Party	Issue	Representation	Applicant Response
		Detailed Highway Design	highway authority but there is no process set out to define what would constitute reasonable satisfaction or how that would be demonstrated. Further, there is no provision in the DCO setting out when the applicant should apply to the Local Highway Authority to confirm its satisfaction or otherwise. Consequently, there is also no timeframe setting out how long the Local Highway Authority has to consider whether it is satisfied with the works. Requirement 3 considers detailed design but not specifically in relation to highway works. In addition it appears as though Requirement, as drafted, deals with matters where the detailed design requires a variation from the Works Plans and Engineering Drawings as opposed to the approval of detailed design matter to deliver the proposed scheme as set out in the DCO. We note the Applicant was to consider this matter and provide an updated DCO at Deadline 4, which we will need to review.	Highways England has engaged extensively with SCC throughout the preparation and submission of the DCO application. Highways England confirms that, as set out in the draft SoCG with SCC, this engagement will continue if the DCO is made and during construction of the Scheme. Through this engagement, Highways England and SCC have built up a good working relationship and Highways England will consult SCC on the detailed design of the Scheme and during construction of the Scheme on matters which concern them to ensure that the relevant works are completed to SCC's reasonable satisfaction. Highways England is mindful that if it does not engage with SCC in this way then it bears the risk that the works will not be completed satisfactorily to SCC meaning that Highways England has not complied with its obligations in the DCO. Highways England and SCC met on 13 January 2021 to discuss this and other matters and SCC has requested that, notwithstanding Highways England's comments, the process for engaging with SCC be documented. Highways England is accordingly preparing a form of words to be inserted into the draft SoCG which will be sent to SCC for comment.
REP4-051	I & A Simkin	Action Point 22 from CAH	An alternative site for mitigation was being proposed by the landowner as wide areas of species rich grassland were shown along wide boundary areas on the Environmental masterplan and Environmental mitigation plans. However, at a site meeting on 16th December 2020 HE stated that the land is not in fact proposed to be acquired for environmental mitigation, but will instead form a standard boundary alongside the trunk roads comprising a ditch, hedge and fence of up to 7 m, with a potential 3 m margin shown for limits of deviation. There is therefore no species rich grassland forming part of the area which is to be acquired from my client and obviously no longer any requirement for it to be alternatively accommodated elsewhere. It is unfortunate that HE's plans have been misleading in this way and have caused unnecessary confusion for so long. An explanation of HE's intentions, combined with plans stating the correct proposed use of the land could have addressed this.	This issue was discussed with the landowner at a site meeting on 16 December 2020. The Applicant explained that an area of approximately 7 m width is required adjacent to the earthworks required for construction of the junction, to allow for a drainage ditch, maintenance berm and boundary hedge/fencing. This area would be grassed and maintained by Highways England. This area of species-rich grassed is not required to mitigate for specific environmental impacts but is provided to maximise the use of land which is being acquired for other purposes, such as to facilitate the construction and maintenance of the Scheme. The Environmental Masterplan is intended to outline those areas that will be utilised for environmental mitigation, it does not differentiate between land which is being acquired for the sole purpose of providing environmental mitigation and those areas where mitigation is provided on land required primarily to build and maintain the Scheme.
REP4-055	M6 Diesel	Proposed Protective Provisions	This document contains the proposed protective provisions in favour of M6 Diesel. It is provided in response to the Examining Authority's (ExA) request at the issue-specific hearing on traffic and transport (ISH2) on 08/12/2020, as captured as action no. 11 in the Hearing Action Points [EV-023]. The purpose of these protective provisions is to enable the ExA to have sufficient information to amend the draft DCO so that the Applicant is required to provide signage for M6 Diesel at M6 Junction 11, should the ExA take the view that such signage should be provided. For reference M6 Diesel's position on signage is found in our Written Representation [REP1-080] along with the written submission of the oral case presented at ISH2, which forms part of our submission for Deadline 4.	For the reasons previously stated, Highways England does not agree that protective provisions in favour of M6 Diesel to secure signage are necessary or appropriate. Highways England accordingly does not agree that the draft DCO should be amended to incorporate the wording proposed by M6 Diesel.
REP4-056	Nurton Developments Ltd	SOCG	Submission on points raised in the SoCG.	The SoCG with Nurton Developments submitted to the ExA on 8 January 2021 [REP4-021/8.8LIU(K)] addresses all the points raised in this submission.

2 Response to Allow's Submission

2.1 Introduction

- 2.1.1 The Applicant responded to Allow's oral case at ISH1, CAH1 and the documents submitted by the Applicant at Deadline 4. These responses are not repeated here. The Applicant would, however, like to respond to Allow's argument that the case for compulsory acquisition is not made out with reference to the case law example provided by Allow Ltd at Deadline 4. The Applicant's response on this is provided in this section.
- 2.1.2 Allow's Written Statement of Oral Case for the Compulsory Acquisition Hearing [REP4-048] states that:
- 'As the Court of Appeal has accepted, the need for the development alone cannot amount to a compelling case in the public interest to compulsorily acquire land. The Applicant has to show that there is a compelling case that Allow's land should be acquired for the purpose indicated. It has not done so.'*
- 2.1.3 Allow then provides a copy of R (FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change [2015] EWCA Civ 55 at [10] [REP4-047] to support the assertion above.
- 2.1.4 The Applicant agrees with Allow that there is a distinction between the 'need for a development' as may be supported by NPSs and whether there is a compelling case for compulsory acquisition as required by Section 122(2) and (3) of the Planning Act 2008 of land to deliver that development. However, the Applicant contend that a robust case has been presented both for the need for the development and more narrowly for the compulsory acquisition of the land parcels identified. The Applicant's understanding of Allow's position is that the challenge is not on the need for the Scheme, but more narrowly on the need for compulsory acquisition of Plots 4/20a-c and 5/2. Therefore, this response has focused on the rationale for compulsory acquisition of those plots.
- 2.1.5 The cited case [REP4-047, paragraph 11] discusses four occasions where there may be a need for the development in planning policy terms (a point that seems uncontested by Allow) but not a case for compulsory acquisition of particular plots. It is the Applicant's view that none of these occasions apply to the case for compulsory acquisition of Allow's land in general, or the specific Plots in the 4/20 series or Plot 5/2. These four occasions are explored below.

- 2.2 1) The land proposed to be acquired compulsorily may, on proper analysis, be found to be excessive because the development proposals can be constructed without needing that land to be acquired (in which case, the section 122(2) test would also not be met).
- 2.2.1 The Applicant's response to RR-031 from Allow (see [REP1-043/8.9]) explains the reasons why Plots 5/2, 4/20a, 4/20b and 4/20c are necessary for the delivery of the Scheme with reference to Section 122 of the Planning Act 2008.
- 2.2.2 Plot 5/2 is required for the construction of the Scheme, a borrow pit and environmental mitigation (woodland planting and ecology ponds). The need for the land for construction of the Scheme and a borrow pit appears uncontested. The amount of mitigation proposed is not excessive (see [REP4-034/8.20]) and a reduction in woodland or pond creation would mean the Scheme would not provide sufficient essential mitigation to address the impacts of the Scheme, as assessed in the ES supporting the application.
- 2.2.3 The requirement for Plots 4/20a, 4/20b and 4/20c is set out in the Statement of Reasons [REP1-027/4.1] and the Applicant's responses to relevant representations document [REP1-043/8.9].
- 2.2.4 Allow has made a case that the land to be acquired is excessive because the environmental mitigation is excessive. Allow's case on this point has focused on the detail of Great Crested Newt (GCN) surveys and the method of calculating habitat loss. Given that no land within the Order limits is being compulsorily acquired for the sole or main purpose of providing mitigation for GCNs, the first point is not material to the case for compulsory acquisition.
- 2.2.5 On woodland planting, Allow has contested that the Applicant has overestimated woodland loss and therefore provided excessive replacement planting. Allow's challenge was based on an analysis of woodland loss using a methodology that the Applicant has not seen used on any other projects. The Applicant's ecology team has prepared a very large number of ecology chapters for EIAs, including to support over 30 DCO applications. The methodology used to calculate habitat areas as used in the ES for the Scheme is that used consistently across projects. Allow's methodology is not.
- 2.2.6 Allow developed a bespoke methodology to precisely map woodland habitats to a much smaller scale than is normally used, such that their method omitted areas directly adjacent to / between existing trees and did not consider impacts adjacent to works within woodlands. Notwithstanding this, the Applicant engaged with this method to respond to Allow's comments and to demonstrate why, even with this new method, there would no significant difference in the calculation of woodland loss and proposed mitigation (see [REP3-038/8.16 and REP4-034/8.20]).

- 2.2.7 Allow's Written Statement of Oral Case for ISH1 (see paragraph 3.6 [REP4-048]) suggests that the technique used in [REP3-038/8.16 and REP4-034/8.20] is 'novel'. This is correct, the standard technique is that used in the ES. However, the Applicant adopted Allow's new technique to respond to comments. When adopting Allow's technique, the Applicant added a buffer area to avoid underestimating the impacts on woodland. The rationale for the buffer is set out in the Applicant's reports above [REP3-038/8.16 and REP4-034/8.20]. At ISH1, Allow's ecologist agreed that there would be impacts on woodland within the woodland edge and that the approach of including a buffer area was valid (see Recording of Issue Specific Hearing 1 on Biodiversity and Cultural Heritage - Session 2 - 08 December 2020 [EV-016] at 5:54-7:35). The Applicant has seen no robust evidence suggesting that the methodology used in the ES, or in the reports examining Allow's new methodology, would overestimate woodland loss or lead to 'excessive' mitigation.
- 2.2.8 South Staffordshire Council agrees that the current mitigation is essential for the Scheme and there is no scope to further reduce mitigation proposals (see [REP4-027/8.8LA(B)] page 19). Natural England agrees that securing no net loss in biodiversity is the minimum that should be achieved (see [REP4-031/8.8P(B)] page 13) and that the mitigation measures set out in the ES are required to minimise the impacts of the Scheme ([REP4-031/8.8P(B)] page 22). Staffordshire County Council (SCC) is of the view that the biodiversity mitigation proposed is necessary, and any reduction would then mean the Scheme provides insufficient mitigation for the impacts on species and habitats. This is the view of SCC's County Ecologist, as the body responsible for Local Wildlife Sites (LWS) such as that at Lower Pool. The agreement on the point with SCC will be evidenced in the next iteration of the SoCG with SCC.
- 2.2.9 The statements made by SCC, SSC and Natural England on the necessity for mitigation proposed applies to the mitigation proposed on all contested plots. Allow's view that mitigation is excessive is not evidenced or shared by the Applicant, the statutory body for the natural environment, the body responsible for Local Wildlife Sites (such as Lower Pool) or the local planning authority for the majority of the area within the Order limits.
- 2.3 **2) The acquisition of a right over the land, rather than its acquisition, might suffice**
- 2.3.1 Mitigation for biodiversity purposes (e.g. Plot 5/2 and 4/20c) must be retained and managed and requires maintenance over a 30-year period to ensure that it is established. The Applicant must have the ability to secure this as it would be required in the terms of a DCO, if made. Whilst Allow has expressed an interest in retaining the land and maintaining future mitigation, their interest is caveated by the need to understand in detail what retention, management and maintenance of the mitigation will entail and any financial arrangements for it, including compensation. This

position is understandable and is in part why the Applicant chose to acquire the land permanently (i.e. to avoid imposing such obligations and arrangements on an unwilling landowner). The Applicant is not yet in a position to provide all of the information sought by Allow. The precise detail of the mitigation measures will be developed through the CEMP (secured by requirement 4) and compensation amounts are not determined within the DCO itself (and occur after its completion). The final terms of a DCO, if made, will not be known until a decision is made on the application. Allow stated that information provided on future maintenance by Highways England is not sufficient to base decision-making on and Highways England continues to respond to each request for further information but there is no certainty that Highways England will be able to provide information such that Allow will agree to any particular terms.

- 2.3.2 Allow continues also to object on principle to Plots 4/20a-c and Plot 5/2 being used for the purpose of environmental mitigation, making it challenging to reach any agreement on the terms of an arrangement for future retention, management and maintenance and step in rights for Highways England following establishment of this use. Discussions are ongoing to see if a solution is possible, but currently acquisition is required of the land to secure future retention, management and maintenance and no alternative is available.
- 2.3.3 Highways England remain committed to exploring any alternatives to compulsory acquisition with Allow and, in the event that agreement is not reached before a decision on the DCO, will continue to explore options with Allow following construction of the Scheme, which might enable them to retain, manage and maintain the land.
- 2.3.4 Plots 4/20a and 4/20b cover the existing private access to Allow's land which will be cut off by the main link road. Whilst Highways England would be agreeable in principle to the track between the existing A460 and the retained parcel of land between Plot 4/20c and Dark Lane being returned to Allow's ownership post construction of the Scheme, Highways England needs to acquire this land to provide rights of access to Staffordshire County Council to maintain the new drainage attenuation pond to be situated within Plot 4/14f.
- 2.3.5 Plot 4/20c is required for construction of the main link road, construction and maintenance of a culvert and essential mitigation.
- 2.4 **3/ The land may be necessary but, during the course of the Panel's consideration of the application, the owner may agree to sell it willingly rather than by compulsion (a common scenario in compulsory purchase inquiries).**
- 2.4.1 The Applicant has been in discussion with Allow for a number of years as detailed within the Record of Engagement within the Statement of Common Ground which

addresses the objections raised [REP1-066/8.8LIU(A)]. For example, Highways England wrote to Allow on 03/11/2019 seeking to engage with them regarding the purchase of their land by agreement and also issued draft Heads of Terms to Allow on 22/06/2020. Allow did not respond positively to either. The recent statement that Allow does not object to the compulsory acquisition of land for the link road itself is welcomed, but Allow has retained its objection to acquisition of all other land. Therefore, there is currently no alternative to compulsory acquisition to ensure all land required for the Scheme can be acquired. Highways England has always made it clear that they would like to negotiate should Allow 'change their mind', and until recently there has not been any indication that Allow is likely to do so..

2.4.2 Since a meeting with Highways England on 03 December 2020, Allow has indicated an interest in retaining areas of environmental mitigation within its current ownership. Highways England notes in Paragraph 7 of Allow's written submission oral case of the CAH1 [REP4-048], that *'In the alternative, even if mitigation did have to go to the west of the road, then Allow's alternative submission is that it is not necessary for the land to be permanently acquired by the applicants. Allow would be content for the applicant to acquire temporary rights over that land, but ownership should remain with the landowners, who would manage the ecological mitigation works in the long term'*.

2.5 4/ 'To these examples the Appellant added the example of an NPS which did not require consideration of alternative sites for the purpose of deciding whether to grant a development consent for a particular kind of infrastructure development, but where the existence of an alternative site or sites would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition' (see paragraph 11 [REP4-047]).

2.5.1 Allow states that the Applicant's case for compulsory acquisition is not made out because Allow's alternative location for planting proposed to the east of the new link road has not been adequately considered. On the consideration of alternatives to planting on Plot 5/2 Allow stated in paragraph 5(g) [REP4-048] that:

'The Applicant's reply to all of this, is that Historic England would resist mitigation there, but with respect, that argument comes nowhere near reaching the high threshold that the Government has laid down in respect of compulsory acquisition. Just because Historic England take issue with planting to the east does not mean that the applicant has made a compelling case in the public interest to acquire land to the west – far from it...'

2.5.2 The suggestion that the Applicant's rejection of alternative locations for environmental mitigation on Plots 4/20c and 5/2 are or have ever been based on a 'preference' from Historic England is not an accurate representation of the

Applicant's case. The rationale for the rejection of the suggested plots to the east has been provided to Allow by Highways England on a number of occasions. For example, 'Technical Note: Environmental Mitigation Review - Plot 4/20c and 5/2' submitted to Allow on 22 June 2020 stated that:

4.3.8. Consideration was also given to providing the woodland currently shown in Plot 5/2 within 4/20c, however this conflicted with the current relatively open nature of views from upper floors on Dark Lane, and historic parkland character within the view.

4.3.9. A desire to screen the views from ground level and the upper floors of these properties has been balanced with a need to protect the character in this area, which is currently dominated by farmland with scattered trees and views of woodland associated with Hilton Park.

4.3.10. The potential to provide woodland planting to the east of the new link road was considered. However, due to the presence of the designed landscape of Hilton Park and the Shrubbery (a feature of the historic parkland) on the eastern side of the link; any additional planting would result in adverse effects on these receptors. Lower Pool and its surrounding woodland, features of the historic parkland, were designed with an area of grassland between the Hall and the Lower Pool. This area formed part of the former 'pleasure ground' made up of pasture fields, interspersed with trees. Therefore, woodland planting in this location would have an adverse effect on the designed landscape and cause further change to the setting of the Grade I Hilton Hall and associated buildings.

4.3.11. 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.'

- 2.5.3 As stated in the documentation submitted to Allow in June 2020 quoted above, the adverse effects on the Grade I listed buildings and the parkland as assessed by the Applicant's heritage experts guided the rejection of this option; it was not rejected solely on the opinion of Historic England. Further, the word 'require' in 4.3.11 above more clearly represents the Applicant's understanding of Historic England's position than the word 'prefer'. Historic England has consistently expressed the view that the harm to designated assets would be greater if the planting were to the east of the Scheme, and that moving this planting to the east would 'substantially' alter the parkland. Historic England has also always stated that they would have 'serious concerns' if the planting were relocated. The wording in the sentence above was agreed between the Applicant and Historic England and documented in the Historic England SoCG submitted at Deadline 1 (see page 18 [REP1-052/8.8P(C)]) as well as other application documents submitted by the Applicant such as the response to RR-031 in [REP1-043/8.9]. The wording in documentation provided by the Applicant

has been very selectively used by Allow to suggest that Historic England's position is less decisive than the Applicant has understood it to be.

2.5.4 Allow would be correct in suggesting that a mere preference from a third party is not sufficient to justify selection of one site over another or the compulsory acquisition of a plot in the presence of an alternative site that would not need to be compulsorily acquired. However, the alternative was not rejected on the grounds of a preference, but on the increased harm to two Grade I listed buildings and a locally designated historic landscape, along with the policy conflict introduced by this harm. Further detail on the nature and extent of the harm created by different options to relocate planting to the east is presented in the Applicant's assessment of options submitted at Deadline 4 [REP4-036/8.22].

2.5.5 Historic England, as the statutory body and experts on designated heritage assets, agrees that there would be greater harm to the two Grade I listed assets and locally designated Hilton Park as a result of relocating mitigation planting and ponds from Plot 5/2 to the east of the alignment (see [REP4-038]). In this response, Historic England states that *'Historic England broadly agrees with the assessment set out in the Highways England Technical Note: '8.22 Assessment of Alternative Locations for Mitigation in plot 5/2'.*

2.6 Summary

2.6.1 In summary, the Applicant has carefully considered all arguments put forward by Allow on why there is insufficient justification for compulsory acquisition. The Applicant has examined these arguments in the context of the four reasons why compulsory acquisition may not be justified when there is a need for the Scheme as identified in the case law submitted by Allow at Deadline 4 [REP4-047]. The Applicant remains of the view that all land identified in the Land Plans [AS-127/2.2] is required for the development or to facilitate or is incidental to that development, complying with Section 122(2) in the Planning Act 2008. The Applicant also remains of the view that there is compelling case in the public interest for the acquisition of all land identified in the Land Plans [AS-127/2.2], complying with Section 122(3) in the Planning Act 2008.