

Dear Sirs

**HISTORIC ENGAND**

**The Planning Act 2008, Section 89, and The Infrastructure Planning (Examination Procedure) Rules 2010, Rules 8(3) and 9 Application by Highways England for an Order Granting Development Consent for the M54 to M6 Link Road**

We are responding to the EA's questions for Historic England published in their 3rd Written Questions on Friday 29 Jan. We understand that the questions for us are set out in the table below:

WQ No	Question to	Reference (in bold) and Question
3.3.	Allow Limit ed	<b>Alternatives to Plot 5/2</b> In its response to Assessment of Alternative Locations for Mitigation in P of 5/2 submitted at D5 [REPS-008] in relation to Section 3 of the original report A Low Limited states: The proposed planting layout drawn up by Allow Limited owing the site with Historic England of 6th January is much better than either of the two options for planting to the east of the road as shown in this TN and reflects views shared with Historic England and at the site meeting. Could A Low Limited please provide the EA with a copy of this proposed planting plan, and as so provide, as early as possible, a copy to RCHME so that I can use that in its response to EXQ3.6. (c)?
3.6.1	SCC SSC RCHME	<b>Archaeological WSI</b> (a) Do the parties consider that the proposed Wiltshire Scheme of Investment on [REP -032] is a robust approach to dealing with this matter? (b) How is this to be secured within the draft DCO?
3.6.2	The Applicant SCC SSC RCHME Allow Limited	<b>Less than substantial harm</b> (a) Is this a fair summation of the Applicant's view? (b) How is this to be secured within the draft DCO? <a href="#">Shimblee v City of Bradford MBC [2019] EWHC 195 (Admin)</a>
3.6.3	The Applicant SCC SSC RCHME Allow Limited	<b>Hilton Park</b> In its paper on Assessment of Alternative Locations for Mitigation in P of 5/2 submitted at D [REP -036] the Applicant appears to accept that Hilton Park was designed by Humphrey Repton. (a) Is this a fair summation of the Applicant's view? (b) If Hilton Park was designed by Humphrey Repton does this make any difference to the consideration of the Proposed Development?
3.6.	Historic England and RCHME	<b>Hilton Park settings of listed buildings</b> (a) Could RCHME please set out its position in respect of each of the listed buildings at Hilton Park as to the degree of harm, if any, that the proposals may have on their settings and thus their historic significances. (b) Can RCHME undertake the same analysis for each of the four Options set out in the Assessments of Alternative Locations for Mitigation in P of 5/2 submitted by the Applicant at D [REP -0] by its ed building? (c) Can RCHME undertake the same analysis for the proposed planting plan prepared by Allow Limited and referred to in EXQ3.3.?

**Historic England's response's to the EA's questions.**

Please note that RCHME (Royal Commission on the Historical Monuments of England) merged with English Heritage in 1999 and were known thereafter as English Heritage. Historic England came into being on 1<sup>st</sup> April 2015 when English Heritage became a Trust. The official name of Historic England is the Historic Buildings and Monuments Commission for England (HMBCE).

**WQ 3.3.4**

Allow have provided the plan mentioned to us.

**WQ 3.6.1**

Historic England has agreed that Staffordshire County Council will manage all aspects of archaeological mitigation including the WSI.

**WQ 3.6.2**

The Shimblee case concerned the grant of planning permission for an energy from waste plant that would be in the setting of a grade I listed building (East Riddlesden Hall). Those who challenged the Council's grant of permission were trying to argue that the Council must not only decide whether the harm was "substantial" or "less than substantial" but to go on to assess where on the spectrum of harm the amount of harm lies so that "great weight" can then be given. They also said that the assessment of harm on a spectrum has 2 aspects to it. There must be an assessment of significance of the asset then a separate assessment of the significance of the impact of the development proposal on the asset or setting. The Court said that the contention that the LPA was obliged to place the harm somewhere on the spectrum is not supported by either s66 of the 1990 Act or the NPPF. If the challenger was correct this would mean that the LPA would have to say how significant the grade I building was (high end or low end) and this would introduce unnecessary complexity. The approach ordained by the NPPF deliberately keeps the exercise relatively straightforward avoiding unnecessary complexity.

In terms of the approach that we take we follow that set out in the NPPF that of assessing significance of the asset assessing the impact the proposal will have on that significance and using the terminology of the NPPF whether that harm would be substantial or less than substantial. Guidance on how harm can be assessed is set out in the Planning Practice Guidance – see below text in italics which may be of assistance regarding the articulation of the harm.

It might also be useful to note that the NPPF also sets out that when considering the impact of the proposal to avoid or minimise any conflict between the heritage assets conservation and any aspect of the proposal clear and convincing justification is needed for the harm.

Whilst these are points from the NPPF they should translate across into the relevant National Policy Statement for the DCO.

**PPG - How can the possibility of harm to a heritage asset be assessed?**

*What matters in assessing whether a proposal might cause harm is the impact on the significance of the heritage asset. As the National Planning Policy Framework makes clear significance derives not only from a heritage asset's physical presence but also from its setting. Proposed development affecting a heritage asset may have no impact on its significance or may enhance its significance and therefore cause no harm to the heritage asset. Where potential harm to designated heritage assets is identified it needs to be categorised as either less than substantial harm or substantial harm (which includes total loss) in order to identify which policies in the National Planning Policy Framework (paragraphs 194-196) apply. Within each category of harm (which category applies should be explicitly identified) the extent of the harm may vary and should be clearly articulated. Whether a proposal causes substantial harm will be a judgment for the decision-maker having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms substantial harm is a high test so it may not arise in many cases. For example in determining whether works to a listed building constitute substantial harm an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but depending on the circumstances it may still be less than substantial harm or even not harmful at all. For example when removing later additions to historic buildings where those additions are inappropriate and harm the buildings' significance. Similarly works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However even minor works have the potential to cause substantial harm depending on the nature of the impact on the asset and its setting. The National Planning Policy Framework confirms that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). It also makes clear that any harm to a designated heritage asset requires clear and convincing justification and sets out certain assets in respect of which harm should be exceptional/wholly exceptional (see National Planning Policy Framework paragraph 194). Paragraph 018 Reference ID: 18a-018-20190723  
Revised date: 23/07/2019*

**WQ 3.6.3 (b)**

Our advice on the heritage impact of the Proposed Development has been provided based on the understanding that conclusive evidence has not been found to date that Humphrey Repton provided designs or advice on the Park at Hilton Hall. If there was evidence that Humphrey Repton did contribute to the design of Hilton Park this would add to the historical value and significance of the designed landscape of the park and consequently the significance derived from their setting of the Hall and Conservatory by association with one of the most influential landscape designers of the 18th century.

**WQ 3.6.4 (a)**

We confirm that Table 5.1 of the Highways England Technical note: 8.22 Assessment of Alternative Locations for Mitigation in Plot 5/2 January 2021 does reflect our assessment of overall impact upon the historic environment.

**WQ 3.6.4 (b)**

**Heritage Impact of Plot 5/2 Mitigation Alternative - Option 1**  
In Option 1 the proposed mitigation planting would be placed entirely on the west side of the road on the north west section of the historic designed landscape of Hilton Park. The consequent loss of part of the open parkland would result in a degree of harm to the significance of Hilton Hall and the Conservatory derived from their designed landscape setting which we assess as less than substantial. This part of the park would however already be separated from the rest of the park by the new road which will sever the connection to the Hall via the drive from the west lodge. The surviving historic layout of the parkland east of the new road would be retained. In this area of the park the Shrubbery provides a backdrop of woodland to a formerly contiguous area of open parkland which forms a key part of the surviving historic designed landscape setting immediately west of Hilton Hall and the Conservatory.

**Heritage Impact of Plot 5/2 Mitigation Alternative - Option 2**  
In Option 2 a proportion of the proposed mitigation planting is removed from the west side of the road and an area of planting is shown along the north and west boundary of the Shrubbery in the area of open parkland north of the 20th century ponds. The existing layout of the area of open parkland to the south of the 20th century ponds would be retained. This would lead to the loss of part of the surviving layout of the designed landscape defined by the edge of the Shrubbery and loss of part of the open parkland in the immediate environs of the Hall and Conservatory. This area forms part of the setting of the Hall and Conservatory in which they are directly experienced. This loss of part of the historic layout and character of the designed landscape in the immediate vicinity of the Hall and Conservatory would result in a harm to the significance derived from their setting of both buildings. We assess the degree of harm as less than substantial but greater than Option 1 for the reasons set out above.

**Heritage Impact of Plot 5/2 Mitigation Alternative - Option 3**  
In Option 3 a larger proportion of the proposed mitigation planting is shown in the field west of the Hall and Conservatory north of the 20th century ponds than in Option 2 and new ecology ponds are shown in the field south of the existing ponds. This would envelop surviving historic parkland trees in woodland and lead to further loss of open parkland and the loss of the Shrubbery as a designed landscape feature. This would have a decrease the legibility of the designed landscape in the immediate environs of the Hall and Conservatory with a consequent harm to the significance derived from their designed landscape setting of the Hall and Conservatory. We assess the degree of harm as less than substantial but greater than Option 2 for the reasons set out above given the greater loss of the historic character and integrity of the designed landscape setting in the immediate environs of the listed buildings.

**Heritage Impact of Plot 5/2 Mitigation Alternative - Option 4**  
Option 4 is similar to Option 3 but with all of the proposed mitigation planting shown in the field north of the 20th century ponds. This would cause harm to the significance derived from their designed landscape setting of the Hall and Conservatory for the same reasons as set out under Option 3. We assess the degree of harm as less than substantial but greater than Option 3 due to the increased loss of the historic character and integrity of the designed landscape setting in the immediate environs of the listed buildings.

**WQ No 3.6.4 (c)**

**Heritage Impact of further Proposed Planting Plan by Allow Limited - Option 5**  
This proposed planting plan shows a similar arrangement of planting in the field north of the 20th century ponds as in Option 2 but with the remaining proposed mitigation planting distributed around the margins of the field south of the 20th century ponds and the proposed new ponds in different locations to Option 2. On this plan one new pond is proposed between the two existing ponds and one new pond is proposed within an area of proposed woodland planting along the west boundary of the area of parkland south of the existing ponds. This proposal would have a similar impact on the historic landscape of the park and the setting it provides to the listed buildings to Option 2 but also creates a greater degree of separation with the introduction of a new pond between the two areas of open parkland immediately west of the Hall and Conservatory. There is also a further loss of surviving historic layout and openness of the parkland in the immediate vicinity of the Hall and Conservatory with increased areas of woodland planting south of the existing ponds. We assess the resulting harm to the significance derived from their designed landscape setting of the Hall and Conservatory to be slightly greater than Option 2 but less than Option 3 and to be less than substantial.

Yours sincerely

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