

**Application by Highways England for M54 to M6 Link Road
Response to The Examining Authority's 3rd Written Questions and requests for information (ExQ3)
Issued on 29 Jan 2021**

**Response Deadline 6 - 12th Feb 2021
Responses From: Allow Ltd**

General and Cross-topic Questions –

1.0 3.0.2 - Site Inspection:

When arranging the 360° photography, can the Applicant please ensure photography additionally to that set out in Annex A of the ExA's letter dated 18 January 2021 [PD-020] includes:

- (a) Site 5 on HE514465-ACM-EGN- M54_SW_PR_Z-DR-EG-0048P01 WQ2.3.1: Areas of Disagreement/Agreement between the Applicant and Allow Ltd as found in Response to The Examining Authority's Further Written Questions and requests for information (ExQ2) issued on 4 December 2020 from Allow Ltd [REP4-045], including clearly the two veteran trees;*
- (b) the locations identified as existing and proposed bat crossing points in the Lower Pool area; and*
- (c) along the western section of the Shareshill 5 PRoW including its junction with Hilton Lane.*

1.1 In addition to the specific points referred to in this question, Allow Ltd would also request the Applicant consult with them prior to finalising the route, locations or undertaking any collection of data for virtual site inspection. This is to ensure the 360° photography includes viewpoints of locations of Allow Ltd's proposed alternative woodland mitigation and their inconspicuousness to the heritage assets in the locality. As discussion will be needed with Allow Ltd for access arrangements, this is not considered to be an onerous request on the Applicant.

Biodiversity, Ecology and Natural Environment –

2.0 3.3.2 - Biodiversity net gain:

While not a requirement of NPSNN, and thus not part of CA/TP, this does not mean that Biodiversity net gain could not be delivered as part of the project on land that is required in any event – ie up-grading biodiversity on this land beyond the minimum. The Applicant's approach has been to show that the CA land is needed holistically, i.e. to ensure that the development best-fits the many facets of the scheme.

What is there to prevent the upgrading in terms of biodiversity of land which is required in any event, for example, the verges, cuttings, so as to meet the Government's overall aim of enhancement to ecology and biodiversity?

2.1 Allow Ltd welcome the suggestion of the scheme delivering biodiversity net gain. However, as mentioned Examining Authority's written question, we would suggest that this could be

achieved by altering existing planting and habitat creation proposals on land already earmarked by the scheme – rather than taking additional/larger areas to deliver the gain.

3.0 3.3.4 - Alternatives to Plot 5/2:

In its response to 'Assessment of Alternative Locations for Mitigation in Plot 5/2' submitted at D5 [REP5-008] in relation to Section 3 of the original report Allow Limited states:

The proposed planting layout drawn up by Allow following the site visit 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 at the site meeting.

Could Allow Limited please provide the ExA with a copy of this proposed planting plan, and also provide, as early as possible, a copy to RCHME so that it can use that in its response to ExQ3.6.4(c)?

3.1 We attach a copy of the plan provided to the Applicant on 13th January 2021 following the site meeting with RCHME. A copy of the same plan was provided to RCHME on 3/2/21 as requested by the ExA.

4.0 3.3.7 - Veteran Trees:

Allow Limited proposal is that mitigation planting should be located to the east of the proposal.

Could the parties set out their positions as to the effects of this planting, were it to occur, on the special interest of the two veteran trees in this field.

4.1 Planting to the east of the scheme would not involve the loss of the veteran trees. Rather, retaining the veteran trees and planting native woodland around them, whilst respecting a root protection area (to be determined in line with Annex D in BS5837), would protect the trees in the future. The Government's own advice concerning the protection of veteran trees and development is to plant a buffer zone around them. The buffer should contain woodland or a mix of scrub, grassland, heathland and wetland planting and use local and appropriate native species. This would be achieved through planting to the east of the scheme. <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences#avoid-impacts-reduce-mitigate-impacts-and-compensate-as-a-last-resort>

4.2 Similarly, Woodland Trust advice for veteran trees and development is to provide green connectivity between individual trees wherever possible (p21). <https://www.woodlandtrust.org.uk/media/3731/planners-manual-for-ancient-woodland.pdf>

- 4.3 A suitable planting and management plan would need to be produced, taking into consideration the Root Protection Area and Veteran Tree Buffer of each tree, with the sensitivities of the trees and the local environment in mind e.g:
- a. Timing: change arising from new introductions should ideally be progressive (consider stock size, growth habit and introduction of associated pests)
 - b. Density: preclude an abrupt change in density adjacent to the trees (feathering/transitional stocking on the edge of the Root Protection Area)
 - c. Bark shading: in the context of epicormic shoots, epiphytes etc
- 4.4 However, if this is sensitively and responsively done, planting around the veteran trees will protect them and incorporate them into an extended area of woodland and green infrastructure associated with the Local Wildlife Site.

Cultural Heritage –

5.0 3.6.2 - Less than substantial harm:

The parties have made various comments effectively relating to a 'spectrum' of harm that would represent 'less than substantial harm'. Could the parties please provide their representations as to how that should be considered in the light of the High Court judgement of Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin).

- 5.1 The judgement referenced here and referred to hereafter as Shimbles 2018 dealt with a judicial review into the granting of planning consent for two Energy from Waste (EfW) plants. The planning authority had identified that the development would result in 'less than substantial harm' to the setting of a Grade I listed building but that this harm was outweighed by the public benefits (of the development), hence the test outlined in paragraph 134 of the National Planning Policy Framework (NPPF) had been undertaken and the outcome was in favour of the development. [Note that the paragraph references are to the 2012 version of the NPPF]
- 5.2 In challenging the decision to grant consent, counsel for the claimant asserted that not only must the planning authority decide '*whether the harm to the asset or its setting is either "substantial" or "less than substantial"; it must go on to assess where on a "spectrum" of harm the harm lies. This is necessary in order to give "great weight" (NPPF paragraph 132) to the conservation of the asset, whether the harm to the asset or its setting is assessed as substantial (paragraph 133) or less than substantial (paragraph 134)*' [Shimbles 2018 para. 63]

5.3 In his decision, Kerr J did not accept the above assertion from the claimant's counsel, finding instead that the two categories of harm identified within the NPPF (i.e. 'substantial and 'less than substantial') are adequate to allow the weighted balancing exercise outlined in paragraphs 133 and 134 of the 2012 NPPF (now paragraphs 195 and 196 of the 2019 NPPF). Kerr J went on to state (with regard to the 'spectrum concept': *'That would mean subdividing less than substantial harm into sub-categories such as "slight less than substantial harm", "quite serious less than substantial harm", "really serious less than substantial harm", and so forth. The exercise leads to over-refinement, while the approach ordained by the NPPF deliberately keeps the exercise relatively straightforward, avoiding unnecessary complexity'*. [Shimbles 2018 para. 91]

5.4 To some extent, this issue arises from the lack of definition of the terms 'substantial harm' and 'less than substantial harm'. These terms were first introduced in *Planning Policy Statement 5: Planning for the Historic Environment* (PPS5) but were not defined in *Annex 2: Terminology* of that PPS. The terms were retained within the NPPF but again no definitions were provided.

5.5 The web-based Planning Policy Guidance (PPG) provides some clarification regarding substantial harm: *'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'*. [PPG Historic Environment paragraph 18]

5.6 This guidance was in place at the time of the Shimbles judgement and a body of case law had developed concerning the definition of substantial harm, principally *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2013] EWHC 2847. In this case, Jay J confirmed that for harm to be substantial, there must be an impact *'which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced'* [paragraph 25 of that judgement]

5.7 The case law has therefore established that the 'high test' referenced in Historic Environment paragraph 18 of the PPG with regard to 'substantial harm' is actually a very

high bar. In the binary position established within the NPPF, any harm that cannot be classed as 'substantial harm' will fall into the category of 'less than substantial harm'. The inevitable reality is that this covers a wide range of harm, ranging from negligible to almost substantial.

5.8 Historic Environment paragraph 18 of the PPG was last updated in July 2019 [in the previous version (2014) this was actually paragraph 17]. In a nod to the 2018 Shimbles judgement, ahead of the section on substantial harm which is quoted above, the following text was inserted into paragraph 18: '*Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated*'. This therefore represents the Government's policy response to the Shimbles judgement – i.e. the binary approach in the NPPF remains intact, but there can and should be a nuanced approach setting out the extent of harm within each of the two categories. [In practice this is far more likely to be undertaken with regard to 'less than substantial harm' than 'substantial harm']

5.9 Overall the Shimbles judgement and the PPG can be reconciled thus: the binary position in the NPPF triggers the tests required through paragraphs 195 and 196 (2018 NPPF) – the planning authority is required to identify the harm (if any) as either 'substantial' or 'less than substantial' and apply the appropriate test. What is not necessary is for the level of harm to be further divided and for the equivalent level of public benefits to be provided in order to outweigh this harm. For example, if the level of harm is considered negligible, it should not therefore follow that the level of public benefits required needs to be just slightly more than negligible in order to outweigh the harm. That approach would not be compatible with paragraph 193 of the 2019 NPPF (which identifies that '*great weight*' should be given to the asset's conservation regardless of the level of harm). However, it is necessary to identify and clearly articulate the extent of any harm within the process of undertaking the balancing tests required through NPPF paragraphs 195 and 196.

5.10 In the current situation regarding this particular DCO, there is no disagreement between parties with regard to the level of harm as per the binary position in the NPPF – all harm is agreed as falling within the 'less than substantial' category. Where various options are under discussion, it is helpful to establish where one option is more or less harmful than another, and why this is. Ultimately it will be for the Secretary of State (guided by the ExA)

to decide if the harm to the significance of heritage assets is outweighed by the public benefits of the scheme.

6.0 3.6.3 - Hilton Park:

In its paper on Assessment of Alternative Locations for Mitigation in Plot 5/2 submitted at D4 [REP4-036] 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?*

6.1 Q3.6.3a) This question is just for the Applicant.

6.2 Q3.6.3b) In the ES submitted as part of the DCO application, the Applicant identified Hilton Park as a heritage asset of 'medium value' (Chapter 6, paragraph 6.9.40). In accordance with the ES methodology expressed in Chapter 4 of that document, a medium value is ascribed to receptors of '*High or medium importance and rarity, regional scale, limited potential for substitution*' (Table 4.1). This is taken from Section 2 LA 104 of DMRB. The text accompanying Table 4.1 of the ES advises that '*Assessments against these criteria have been made on the basis of professional judgement*' (paragraph 4.3.11).

6.3 The baseline information underpinning the attribution of a medium value for Hilton Park is set out in paragraphs 6.6.77 – 6.6.84 of Chapter 6 of the ES, which refers to the design of the park being '*associated with*' Humphry Repton (paragraph 6.6.77). This section of text concludes with a statement that further details on the development of Hilton Park are contained within Appendix 6.5 of the ES. This Appendix is titled '*Further information on Hilton Hall, including photos from Hilton Hall*'. However, the text of the Appendix concerns Hilton Park (not the Hall) with only paragraph 4.1.5 and Annex A (the photographs) dealing directly with the relationship between the Hall and the Park.

6.4 Allow Ltd has previously presented evidence to the ExA regarding the woeful inadequacies of the Applicant's review of the historical development of Hilton Park and the '*association*' with Humphry Repton (the RPS report entitled '*Review of land acquisition at Hilton Park*', Appendix 3 of the Deadline 1 submission re. ExQ1). It is not necessary to repeat this evidence here, but key points include:

- Failure to identify the 1816 Ordnance Survey Drawing as a key historic map, putting the major landscaping works such as the Lower Pool, the Shrubbery and the perimeter tree belt planting within the design life of Repton;
- Failure to identify the illustration of Hilton Hall by Repton reproduced in the 1796 edition of *Peacock's Polite Repository or Pocket Companion*;
- Failure to have sought input from a specialist garden historian;
- Failure to consult with the Gardens Trust and/or other appropriate organisations;
- Failure to follow up on a reference to a possible Repton 'Red Book' in the possession of the Vernon family (former owners of Hilton Park); and
- Failure to consult the Vernon family papers held at the Staffordshire County Record Office.

6.5 If it were to be found that the late 18th / early 19th century landscape of Hilton Park was definitely or even very probably the work of Humphry Repton, this would prompt a rethink on the 'value' attributed to it within the EIA methodology. As outlined above, the medium value set out in the ES is defined as '*High or medium importance and rarity, regional scale, limited potential for substitution*' and this attribution has been made on the basis of professional judgement.

6.6 In Table 4.1 of the ES, a high value (for a receptor) is defined as '*High importance or rarity, national scale, limited potential for substitution*'. A definite or highly probable Repton designed landscape would certainly be important at a national scale, even one which has been impacted by subsequent development within and adjacent to it. Several key elements of the potential Repton design are still present and are very legible. There would be no potential for substitution. On this basis it is considered very likely that the correct value to be attributed to Hilton Park would be high rather than medium in the event of the Repton connection being confirmed or further evidenced.

6.7 The assessment of construction impacts and effects regarding Hilton Park is set out in paragraphs 6.9.37 – 6.9.41 of the ES, with operational impacts and effects set out in paragraphs 6.9.50 – 6.9.54. The RPS report entitled '*Review of land acquisition at Hilton Park*' (Appendix 3 of the Allow Ltd response - Deadline 1 submission re. ExQ1) includes commentary on the inadequacy of the Applicant's assessment of impacts presented in the ES and it is not intended to repeat that commentary here.

6.8 For the construction effects, the ES identified the impact magnitude as moderate adverse leading to an effect of moderate adverse significance (paragraph 6.9.40 and Table 6.4), which is a significant effect within the EIA methodology. If the value of Hilton Park was to be

reassessed as high, the significance matrix presented as Table 4.3 of the ES would result in the significance of effect being moderate or high adverse, with the judgement on which one is most appropriate being made by the assessor.

6.9 In accordance with the descriptors used in the Applicant's ES methodology (Table 4.4, derived from DMRB), effects of moderate adverse significance '*can be considered to be material decision-making factors*'. However, if the significance of effect is assessed as large adverse, then it is '*likely to be material in the decision-making process*'.

6.10 The assessment of operational effects considered the impacts arising from road noise and lighting and from visibility of traffic. It found that there would be an impact of negligible adverse magnitude on Hilton Park. The significance matrix presented as Table 4.3 of the ES shows that this impact magnitude on a medium value receptor results in an effect of either neutral or slight significance. The assessor identified the significance of effect as being slight adverse. If the value of Hilton Park was to be reassessed as high, the significance matrix would result in the significance of effect being slight adverse, i.e. unchanged from the assessment presented in Chapter 6 of the ES.

7.0 3.6.4 - Hilton Park – settings of listed buildings:

- a) *Could RCHME please set out its position in respect of each of the listed buildings as to the degree of harm, if any, that the proposals may have on their settings and thus their historic significance.*
- b) *Can RCHME undertake the same analysis for each of the four Options set out in the 'Assessments of Alternative Locations for Mitigation in Plot 5/2' submitted by the Applicant at D4 [REP4-046] by listed building?*
- c) *Can RCHME undertake the same analysis for the proposed planting plan prepared by Allow Limited and referred to in ExQ3.3.4?*

7.1 Although the question is aimed at RCHME, Allow Ltd consider that it is relevant to provide commentary on their proposed mitigation planting plan (the Allow option) to the ExA in relation to the settings of the listed buildings at Hilton Park. This will look only at Hilton Hall and the Conservatory, both of which are listed at Grade I, as well as the historic park. It is noted that there are also three Grade II listed buildings (the 18th century gate piers, the Coach House and Stable Block, and the Portobello Tower) that are located within Hilton Park and thus forming elements of a group of designated heritage assets with clear associative values.

7.2 Following discussions at ISH1, a meeting was held on site at Hilton Park to review potential locations for mitigation planting within the historic park, both to the west and to the east of

the proposed new highway. The meeting was attended by representatives of Allow Ltd (the landowner), the Applicant, and Historic England (aka RCHME). No plans of any proposed mitigation planting were tabled at the site meeting other than the current application scheme as shown on the revised Draft Environmental Masterplan (Revision of APP-057, Figure 2.5 Sheet 3). This shows the mitigation planting to be located wholly within Plot 5/2, on the western side of the proposed new highway.

7.3 Subsequent to the site meeting, the Applicant produced a Technical Note (TN 8.22) entitled '*Assessment of Alternative Locations for Mitigation in Plot 5/2*', which was submitted to the ExA at Deadline 4. This identified 4 (four) alternative options for the mitigation planting (Options 1-4) and examined how these options performed against the current scheme design.

7.4 Historic England provided a response to the ExA at Deadline 4 which summarised their view on the likely impacts of Options 1-4 (*cf.* TN 8.22) with regard to the settings of the two Grade I listed buildings and also to the historic park.

7.5 Comments on TN 8.22 were submitted by Allow Ltd to the ExA at Deadline 5 and it is not intended to repeat those comments here. However it was noted at the start of the Allow Ltd commentary that TN8.22 had been produced before the Applicant had seen a proposed mitigation planting option prepared by Allow Ltd, and it follows that the Historic England response submitted to the ExA had been prepared without site of the same proposed mitigation planting option (the Allow option).

7.6 The following text provides a review of the Allow option in terms of the likely impacts and effects in respect of the settings of the two Grade I listed buildings and also of the historic park. It should be noted that the position of Allow Ltd is that the mitigation planting in the current scheme design (i.e. wholly within Plot 5/2) is sub-optimal with regard to efficacy and that it would be much better placed on the eastern side of the proposed new highway in this regard, also that the current scheme design raises questions with regard to the extent of the Compulsory Purchase Order that would be required.

7.7 The assessment presented in the ES identified that the construction of the current scheme design would result in an impact of minor adverse magnitude on Hilton Hall as a result of the change within its setting (Chapter 6, paragraph 6.9.12). This is a receptor of high value and the significance matrix (Table 4.3 of the ES) indicates that the effect would be of slight or moderate adverse significance. In this instance the assessor determined that slight adverse

was the most appropriate level. The impact on Hilton Hall during the operation of the proposed scheme would be no change resulting in an effect of neutral significance (paragraph 6.9.49).

7.8 The construction impacts on Hilton Hall were described as the introduction within its setting of *'an additional modern infrastructure element'* which would be *'mostly screened from the Hall with only a few glimpses in the winter'* (paragraph 6.9.11).

7.9 For the Conservatory, the assessment presented in the ES identified that the construction of the current scheme design would result in an impact of negligible adverse magnitude as a result of the change within its setting, resulting in an effect of slight adverse significance (paragraph 6.9.17). As with the Hall, the impact on the Conservatory during the operation of the proposed scheme would be no change resulting in an effect of neutral significance (paragraph 6.9.49).

7.10 The construction impacts on the Conservatory were described as the introduction within its setting of *'a modern infrastructure element'* (paragraph 6.9.15). The same paragraph states that *'Due to existing trees and planting around the Conservatory, the asset would remain screened from the Scheme'*.

7.11 As noted above in the answer to Question 3.6.3b, for Hilton Park the ES identified the impact magnitude (construction) as moderate adverse leading to an effect of moderate adverse significance (paragraph 6.9.40). The impact magnitude during the operation of the proposed scheme would be negligible adverse and the assessor decided that the significance of effect would be slight adverse rather than neutral.

7.12 In TN 8.22, Option 3 represents the wholesale removal of the mitigation planting from Plot 5/2 on the western side of the proposed new highway. Some of this remains on the western side, but now placed further south in Plot 4/20. The remaining part of the mitigation planting has been moved to the east side of the proposed new highway, to the north-west of Hilton Hall and the Conservatory, extending north from Middle Pool and filling much of the open land here adjacent to the historic tree belt known as The Shrubbery, although an area of land between the mitigation planting and the vegetation adjacent to the Conservatory has been left open. The boundary of the new planting and the retained open land has been crudely drawn as a straight line as opposed to the sinuous boundaries of the historic planting in this area. Two veteran parkland trees in the presently open parkland here would be subsumed

within the mitigation planting. This option also involves the establishment of two small 'ecology ponds' within the open parkland to the south of Middle Pool. No planting is proposed around these ponds.

7.13 The assessment of impacts and effects arising from Option 3 is presented in paragraphs 4.1.18 – 4.1.20 of TN 8.22. This identifies that the impacts comprise the planting of trees within what has hitherto been open parkland with individual trees (now veterans), along with the introduction of ecology ponds into a second area of open parkland. The consequent magnitude of impact on Hilton Park is assessed as moderate adverse, with the significance of effect also being moderate adverse. This is therefore the same magnitude of impact and significance of effect (in construction) that the Applicant has identified in the ES for the current scheme.

7.14 With regard to the two Grade II listed buildings, the assessment presented in TN 8.22 identifies that Option 3 would bring the mitigation planting closer to the buildings, within an area of open land which forms an important part of their settings, stating that '*The infilling of the area would remove this feature [the open area] and the intended setting of the hall*' (paragraph 4.1.19). The consequent magnitude of impact on both Hilton Hall and the Conservatory is assessed as moderate adverse with the significance of effect also being moderate adverse. This means that, in comparison with the current scheme, Option 3 would change the magnitude of impact on Hilton Hall from slight adverse to moderate adverse and would also change the significance of effect from slight adverse to moderate adverse. However, the magnitude of impact on the Conservatory would change from negligible adverse to moderate adverse and the significance of effect would change from slight adverse to moderate adverse.

7.15 The two-step change in the magnitude of impact on the Conservatory as a result of the change within its setting seems quite odd here. Option 3 has brought the mitigation closer to the Grade I listed building, but some openness has been retained and there would be very little visibility of the new planting from adjacent to the structure and none at all from within it. The Conservatory already sits within an area of mature woodland and the only open views are to the south-east which is to the Hall, looking across the moat, and to the south-west, looking across Upper Pool. Although this latter view across Upper Pool is very picturesque, it is actually a very recent one dating to the later part of the 20th century, and the historic designed view from the Conservatory south-west across the open parkland no longer exists. The wall of the Conservatory around its west side is in solid material rather than glass, indicating that

the intention was to restrict views in that direction. The relationship between the Conservatory and Hall, which is a key element of its setting, would remain unaltered. In a methodology where four levels of impact magnitude are identified (plus No Change), how has this gone from the lowest level (negligible) to the second highest (moderate)?

7.16 In TN 8.22, Option 4 represents the relocation of all of the mitigation planting from the western side of the proposed new highway to the eastern side. The open parkland to the north-west of Hilton Hall and the Conservatory and to the north of Middle Pool would be totally infilled and the two veteran parkland trees here would be subsumed within the mitigation planting. There would also be additional mitigation planting along the edge of the current woodland to the south of Lower and Middle Pools, this time with a sinuous boundary reflecting the present one, of which the section to the south of Lower Pool is part of the historic designed planting. This option also involves the establishment of the same two small 'ecology ponds' within the open parkland to the south of Middle Pool.

7.17 The assessment of impacts and effects arising from Option 4 is presented in paragraphs 4.1.22– 4.1.23 of TN 8.22. As with Option 3, this identifies that the impacts comprise the planting of trees within what has hitherto been open parkland with individual trees (now veterans), along with the introduction of the ecology ponds into a second area of open parkland. The consequent magnitude of impact on Hilton Park is assessed as moderate adverse, with the significance of effect also being moderate adverse. Again as with Option 3, this is therefore the same magnitude of impact and significance of effect that the Applicant has identified in the ES for the current scheme.

7.18 With regard to the two Grade II listed buildings, the assessment presented in TN 8.22 identifies that Option 4 would have the same impacts and effects as Option 3 as a result of bringing the mitigation planting closer to the buildings. The magnitude of impact on both Hilton Hall and the Conservatory is assessed as moderate adverse with the significance of effect also being moderate adverse. This means that, in comparison with the current scheme, Option 4 would change the magnitude of impact on Hilton Hall from slight adverse to moderate adverse and would also change the significance of effect from slight adverse to moderate adverse. The magnitude of impact on the Conservatory would change from negligible adverse to moderate adverse and the significance of effect would change from slight adverse to moderate adverse. The two-step change in the magnitude of impact on the Conservatory is a bit more understandable with Option 4 as this brings the new planting much closer to the structure,

but it still appears to be excessive given the restricted visibility of the new planting (from adjacent to the Conservatory) and the unchanged relationship between the Conservatory and the Hall.

7.19 The Allow option is much more nuanced and carefully considered than any of those put forward by the Applicant in TN 8.22. Part of the mitigation planting is retained within Plot 5/2 on the western side of the proposed new highway, as this provides visual screening of the scheme (including traffic) for residents of Featherstone and travellers using the A460 Cannock Road.

7.20 The remaining planting is all moved to the eastern side of the proposed new road. Some would be placed in the open land to the north-west of Hilton Hall and the Conservatory, extending north from Lower Pool and largely replicating the current sinuous boundary of the historic planting known as The Shrubbery. A considerable amount of the land here would be left open and it would be possible to retain the two veteran isolated trees here out with the mitigation planting. In the south-eastern part of this open area there would be a small ecology pond with additional mitigation planting adjacent.

7.21 Further mitigation planting would be placed within the open land to the south of Middle and Lower Pools, with the boundary reflecting the existing planting and then curving around to establish a southern strip (to the north of the historic access road leading to the Hall. A second ecology pond would be placed within this mitigation planting, close to Lower Pool. Another small area of mitigation planting would be placed in the south-eastern corner of this open area, to the south-west of the Hall. This additional mitigation planting in the south-eastern corner would not be visible from the Hall or Conservatory as a result of existing vegetation, thus it would not impact on views across the open parkland. Also, it would not be an isolated block of woodland as it would be directly adjacent to the current mature woodland to the east of here.

7.22 It should be noted that this option proposed by Allow is very much an initial design capable of some level of adjustment if required – all of the land here is within the ownership of Allow Ltd. The current design of the Allow option has considered the ecological requirements (i.e. the efficacy of the mitigation planting) as well as the historic landscape and the settings of the listed buildings. The ecology ponds are placed such that there is connectivity with existing

ponds and are surrounded by mitigation. The mitigation planting itself has been designed to provide good linkage with existing tree belts and hedges.

7.23 The impacts of the Allow option comprise the planting of trees and the establishment of ecology ponds within what have hitherto been areas of open parkland with individual trees (now veterans). Consequently, there is some loss of openness and also loss of legibility of the historic tree belt planting (The Shrubbery) as the new planting would be directly adjacent to the historic planting. However, the legibility of the perimeter tree belt along the western edge of the park (immediately east of the A460 Cannock Road within Plot 5/2) would be retained in full, whereas with the current (ES) scheme this would be partially lost. The sinuous boundaries of the proposed mitigation planting on the eastern side of the new highway reflect the historic ones.

7.24 A considerable amount of openness is retained in both the land to the north-west of the Hall and Conservatory and the land to the south of Middle Pool. The design of this option allows the retention of existing isolated (and veteran) trees within these areas of open parkland. More than that, however, it enables the planting of additional individual trees in these open areas to complement and ultimately replace the existing ones which are the surviving remnants of the designed planting. In their response to the ExA at Deadline 4, Historic England advised (with regard to the land east of the proposed new highway): *'This area of parkland is subdivided by 20th century ponds and surrounding planting, and has lost the majority of its open growing parkland trees, but still retains its parkland character, which could in part be recovered through restoration planting of individual parkland trees'*. This restoration planting would be possible within the Allow option. The Applicant has proposed restoration planting within Plot 4/20 (EM8 in the revised Environmental Masterplan – Repositioning of individual trees to match OS 1st edition 25'' map (1900-1902)), thus clearly this is seen as desirable. However, Plot 4/20 would be separated from the rest of Hilton Park (and the listed buildings) by the proposed new highway, whereas restoration planting in the retained open parkland to the east of the new road would be more beneficial both for the historic park and also with regard to the setting of the listed buildings.

7.25 The Allow option actually performs much better than the Applicant's Option 3 and Option 4 in terms of the impacts on the historic park, as it has been far more carefully designed with regard to the locations of the mitigation planting, the nature of the boundaries of the new planting (sinuous rather than straight), and the placement of the ecology ponds within areas

of mitigation planting rather than within open parkland. Additionally, it retains existing isolated (veteran) parkland trees and provides the opportunity for restoration planting of further individual parkland trees in the open areas to the east of the proposed new highway. Finally, the Allow option leaves some of the mitigation planting on the western side of the proposed new highway in order to provide visual screening, hence the quantum of mitigation planting on the eastern side of the new road is lower for the Allow option than for the Applicant's Options 3 and 4.

7.26 However, the magnitude of impact on Hilton Park if the Allow option were to be taken forward is assessed as moderate adverse, with the significance of effect also being moderate adverse. This is the same magnitude of impact and significance of effect that the Applicant has identified in the ES for the current scheme, and this is because by far the greatest impact comes from the physical placement of the scheme within the western side of the historic park.

7.27 The Allow option brings the mitigation planting closer to Hilton Hall and the Conservatory and reduces the extent of the open parkland which forms part of their settings. The legibility of the historic planting scheme (The Shrubbery) which is also part of their settings is lost or much reduced. However, a great deal of openness is retained and restoration planting of further individual parkland trees in the retained open parkland would enhance the setting of both listed buildings, whilst no longer views in any direction to, from or across the listed buildings would be impeded.

7.28 The magnitude of impact on Hilton Hall as a result of the change within its setting if the Allow option were to be taken forward is assessed as minor adverse. Once again this is because by far the greatest impact comes from the physical placement of the scheme within the western side of the historic park and therefore within the setting of the Hall. This is a receptor of high value and the significance matrix (Table 4.3 of the ES) indicates that the effect would be of slight or moderate adverse significance. In this instance slight adverse would be the most appropriate level. This is the same magnitude of impact and significance of effect that the Applicant has identified in the ES for the current scheme.

7.29 The magnitude of impact on the Conservatory as a result of the change within its setting if the Allow option were to be taken forward is assessed as minor adverse. Again this is because by far the greatest impact comes from the physical placement of the scheme within the western side of the historic park and therefore within the setting of the listed building. This is a receptor of high value and the significance matrix (Table 4.3 of the ES) indicates that the effect

would be of slight or moderate adverse significance. In this instance slight adverse would be the most appropriate level. This represents a greater magnitude of impact but the same significance of effect that the Applicant has identified in the ES for the current scheme.

7.30 Overall, the placement of most (but not all) of the mitigation planting on the eastern side of the proposed new road would result in a greater level of harm to the historic park and also to the settings of the two Grade I listed buildings than the current scheme. However, the increase in harm is fairly small and can be offset to some extent by restoration planting in retained areas of open parkland east of the proposed new road, which would not be possible with the current scheme. The small increase in harm is not always reflected through the matrix-based approach to assessment but is described within the narrative text above. This small increase in harm to the significance of the heritage assets needs to be reviewed alongside the greater efficacy of the mitigation planting arising from the Allow option, and the reduction in the amount of land that would be subject to Compulsory Purchase Order.

Landscape and Visual –

8.0 3.7.1 - Dark Lane Fence and fly-tipping:

Could Allow Limited and SSC provide any records they may have of fly-tipping, as to when and precisely where such fly-tipping occurred, and nature and quantity tipped?

8.1 Allow Ltd have continually made mention in previous representations of fly tipping, trespass and the deterrents that have been necessary to implement in order to reduce the impact to their land and incidence of such anti-social behaviour.

8.2 To further clarify the position, there has been a continual problem with fly tipping and trespass along Dark Lane over the last 30 years. On a recent inspection it was noted that sheets of the metal fence along Dark Lane had been wedged open by concrete blocks, clear evidence of the intentions of an individual or individuals to gain access.

8.3 In addition, the continuous fly tipping of rubbish, and general littering expected to be from moving vehicles along Dark Lane, was clearly evidenced at a recent site visit with the Applicant on 15th January 2021. A trespasser was also encountered during the same site inspection.

- 8.4 Image 1 and 2 (Appendix B) shows a large quantity of tyres fly tipped over the metal fence into the Lower Pool SBI. In addition to the tyres there is also other fly tipped materials, such as an old printer and general rubbish, visible in image 3 (Appendix B).
- 8.5 On the opposite side of Dark Lane is an entrance into the car boot field, 5/2. This area has been a regular target for fly tippers and is often reported on social media, including via posts on the public Facebook group 'Featherstone Staffs'. The public post, of 12th April 2020 included images showing a large amount of various fly tipped materials in the entrance to 5/2, including domestic rubbish, furniture and garden waste (<https://www.facebook.com/groups/150170748984/permalink/10157402428168985>).
- 8.6 On a separate occasion in June 2020, further domestic waste, including bottles, cans, clothes and furniture were fly tipped in the entrance to 5/2 (Appendix B – image 4, 5 and 6).
- 8.7 The continuous prevalence of the anti-social behaviour through fly tipping and trespass on Allow Ltd's land surrounding Dark Lane causes significant managerial and financial burdens to the directors and has been somewhat mitigated through the presence of the metal fence. Where there is insufficient fencing to the east side of Dark Lane however, fly tipping causes severe nuisance, not only to Allow Ltd, from the damage to their land interests but also the local residents of Featherstone.

Landscape and Visual –

9.0 3.7.2 - Dark Lane Fence:

It is indicated that the existing Dark Lane fence is to be removed to be replaced by a hedgerow and fence. The fence being of similar height to that existing.

(a) Could it be clarified whether the hedgerow or fence is to be on the highway side?

(b) If it is the fence, could it please be explained why this is appropriate given the effect on the landscape?

- 9.1 Allow Ltd discussed the proposed fence and hedge specification with the Applicant at a recent site meeting on the 15th January 2021. We have been informed by the Applicant that it has now been discussed and agreed with other interested parties.

9.2 For ongoing maintenance of hedges, Allow Ltd consider it important for the hedge to be on the field side of the fence where it is accessible for trimming and keeping in a tidy condition. This is not considered to be unusual arrangement.

9.3 The specification of fence discussed with the applicant was one which would allow residents to view the hedge and land behind the fence, therefore providing an appropriate improvement to the landscape.

10.0 3.7.3 - Landscaping between Dark Lane and Featherstone roundabouts:

Allow Limited have indicated [REP4-045] that it considers that the landscaping proposed in this location would have a greater depth than is necessary to provide the necessary mitigation of view from the properties in Dark Lane towards the Featherstone roundabouts.

Could the Applicant please set out why it believes the landscaping as proposed needs to be that depth, and why that suggested by Allow Limited would be insufficient to provide the necessary mitigation?

10.1 In document **8.24 Applicant Responses to Further Written Question Responses from Interested Parties and Other Deadline 4 Representations**, the Applicant has responded that the proposed area of planting provides part of a mosaic of habitats to the south of Dark Lane to provide optimal foraging habitat for bats and provide connectivity between woodland plots.

10.2 We refer the ExA to our previous written and oral submissions made by Allow in relation to the location of optimal habitats for bats, including Allow's responses to TN 8.22 'Assessment of Alternative Locations for Mitigation in Plot 5/2' at D5. No bats have been identified in the 4/20c location as it is currently open grassland and the proposed woodland would offer little benefit for bat foraging as it is a suboptimal location. Additionally, the Applicant has previously made representations that the purpose of the planting at 4/20c is primarily for visual screening and not ecological benefit.

10.3 The second point the Applicant makes is that the woodland cannot be removed from the woodland mitigation calculations as a net reduction in area. Allow's proposal has not been to remove the woodland planting completely, but to relocate it to a more effective location to achieve greater ecological benefits as shown indicatively on the proposal plan appended hereto at Appendix A which is under consideration. This exact area of mitigation planting remains to be determined, following our representations made at D5 to the Applicant's 8.20

Review of Woodland mapping.

11.0 3.12.2 - Employment:

In its response at D4 Allow Ltd [REP4-45] indicates “the total number of full time equivalent workers affected by the proposed development is 8.5”. Could Allow Limited please indicate, as best as it is able, to estimate how many of these FTEs would be lost should the development be implemented, and justify this answer?

- 11.1 Due to the multi-faceted business outlined in our previous submission at deadline 4, it is difficult to quantify the impact of the scheme upon the estate’s business and its employees. As previously outlined it is anticipated that the scheme will curtail the proposed growth of the business rather than cause the termination of employment of any current direct employees of Allow. The curtailment of the business not being able to utilise the whole estate and to continue use of its existing facilities will result in fewer employment opportunities which would otherwise have been created. The revenue generated from all elements of the business would have been directly reinvested into the expansion of the wider business, so the loss of that revenue will reduce the number of jobs that would have otherwise been created.
- 11.2 What can be quantified is that 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. This is calculated by taking 30 - 35 people, across multiple sectors, working 14 full days of the year, which equates to 2 whole time equivalent jobs.
- 11.3 We also suggest that the loss of the Lower Pool will result in the loss of approximately one half of a full-time equivalent worker as fishery manager of that Pool.
- 11.4 In document **8.24 Applicant Responses to Further Written Question Responses from Interested Parties and Other Deadline 4 Representations** The Applicant has responded to state *“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.”* In saying this it is evident that the Applicant has not taken any regard to the representations that have been made by Allow to date. The equestrian business will be impacted by the scheme in that it has made use of the whole of the estate in the past and had imminent plans to reinstate the cross country course and farm rides enterprise which will no longer be able to make use of any of the western side

of the estate beyond the DCO boundary. This loss of a significant area of land to utilise seriously curtails the current ongoing expansion of the equestrian and agricultural business. The Applicant makes reference to their assessment in *Chapter 12: Population and Human Health [APP-051/6.1]*. Their assessment of the impact of the loss of such a large proportion of the land holding as minor with “slight adverse, not significant” effect is plainly incorrectly understated and their statement at this stage, having received all the representations made by Allow, that nothing has changed their assessment, is derisory.


Appendices to accompany Allow Ltd's Response to ExA's 3rd Written Questions and requests for information (ExQ3) Issued on 29 Jan 2021


Response Deadline 6 – 12th Feb 2021


Appendix A

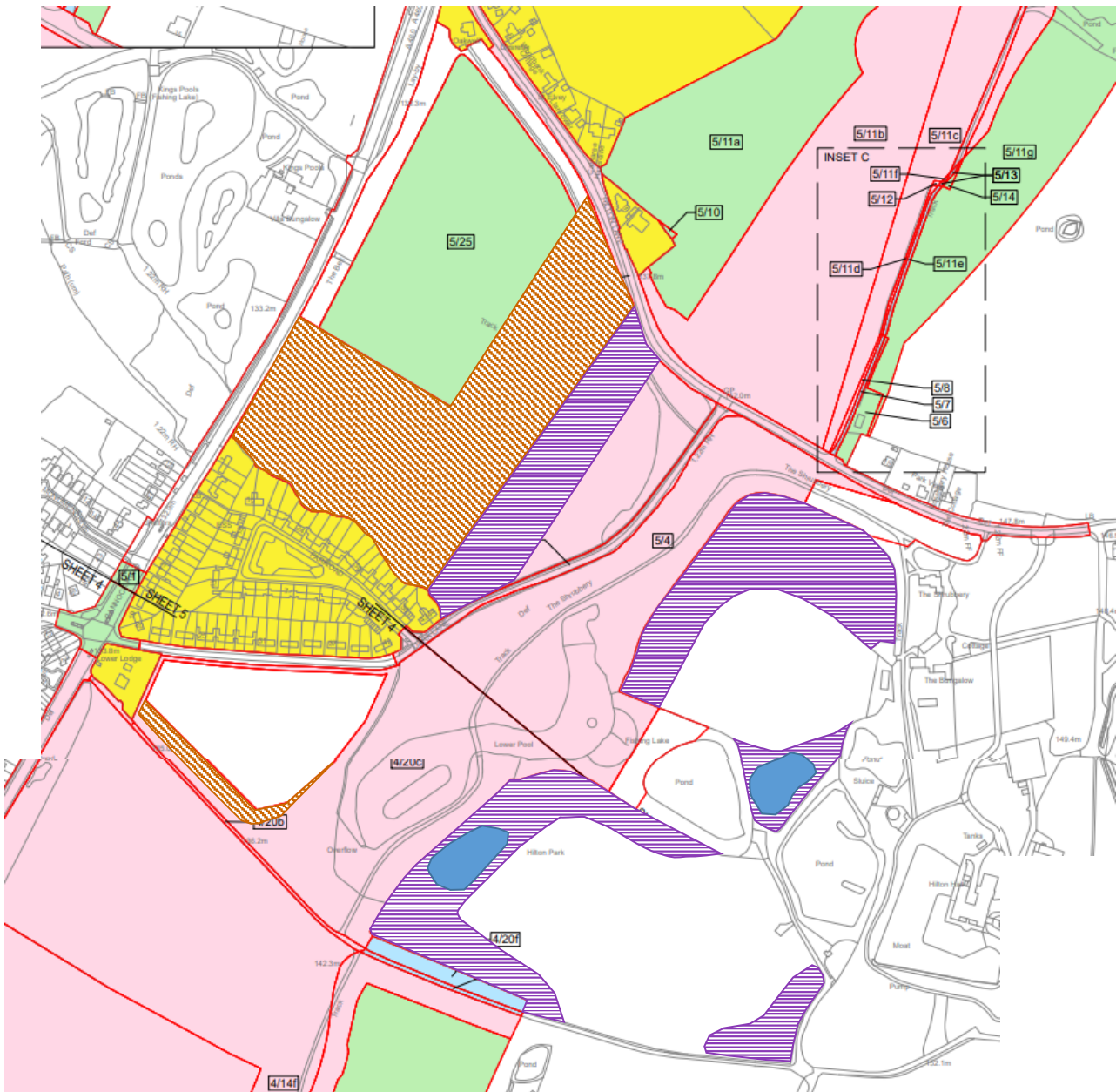
Allow Ltd's Alternative Woodland Mitigation Planting (WMP) Proposal

Key:

Applicant's proposed WMP for removal = 

Allow Ltd's alternative WMP proposed = 

Allow Ltd's alternative ponds proposed = 



Appendix B

Image 1



Image 2



Image 3



Image 4



Image 5



Image 6

