

**M54 to M6 Link Road
TR010054**

**8.27 Applicant Responses to Further
Written Questions Responses from
Interested Parties and Other Deadline 6
Representations**

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(Examination Procedure) Rules 2010**

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

**Applicant Responses to Further Written Question Responses from
Interested Parties and Other Deadline 6 Representations**

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1 Introduction and Responses to the Examining Authority's Third Written Questions

- 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 (ExQ3) issued on 29 January 2021. This document is being submitted at Deadline 7 for the M54 to M6 link road Examination on 26 March 2021 in line with the current Examination timetable.
- 1.2 The Applicant sets out within Table 1-1 overleaf the responses provided by Interested Parties submitted at Deadline 6 (column 4). Where the Applicant responded to the same question at Deadline 6 these responses are also provided for ease of reference.
- 1.3 Where the Applicant considers it is useful to respond to answers provided by Interested Parties at Deadline 6 these are provided in column 5.
- 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 Party's response is provided in blue text.
- 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.
- 1.6 A small number of other representations were made by Interested Parties at Deadline 6. The Applicant's responses to those representations are set out within Table 2-1 in Section 2.
- 1.7 Section 3 of this document provides a response to the ExA's recommended amendments to the draft DCO submitted at Deadline 6 [PD-025], a response to other ExA requests and another change to the draft DCO that was not requested by the ExA.

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

WQ No	Reference (in bold) and Question	Respondent	Applicant/Interested Party Response D6	Applicant's Deadline 7 Response
3.0 General and Cross-topic Questions				
3.0.2	<p>Site Inspection</p> <p>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:</p> <p>(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;</p> <p>(b) the locations identified as existing and proposed bat crossing points in the Lower Pool area; and</p> <p>(c) along the western section of the Shareshill 5 PRoW including its junction with Hilton Lane.</p>	The Applicant	<p>These additional sites will be added to the 360° photography however further clarification in response to point (b) is provided below.</p> <p>As explained in Section 2 (response to Allow's comments on paragraphs 4.2.7, 4.2.8, 4.2.10 and 4.2.12 of Document 8.22), none of the surveyed potential crossing points at Lower pool are important for bats and no specific crossing locations for bats have been included as mitigation. Also Hilton lane bridge has not been designed as a bat crossing point rather its presence in the design for other purposes provides bats an opportunity to cross the road given that it will be 6m above the height of the road and vegetation could be planted up to the edge of the structure. Notwithstanding this, photographs will be provided at locations C, D and E as shown on Figure 8.15 [APP-120/6.2].</p>	N/A
		Allow Ltd	<p>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.</p>	The Applicant consulted Allow Ltd on the plan showing locations for the 360° imagery on 03 March 2021.
3.0.4	<p>Statements of Common Ground</p> <p>Could the Applicant please ensure that the latest versions of all the draft or finalised Statements of Common Ground are submitted at D6 to assist the ExA in determining whether the Hearings scheduled for March 2021 are required.</p>	The Applicant Interested Parties	<p>Statements of Common Ground have been submitted as requested where they have been updated since the previous submitted versions. The Statement of Commonality (document 8.8) summarises the status of negotiation, including explaining where revised SoCG have not been submitted at Deadline 6.</p>	N/A
		Cadent Gas Ltd	<p>Cadent has no comment to make on these questions at this stage, but Cadent reserves its right to respond to representations submitted in response to these questions.</p>	No response required
3.1 Green Belt				
3.1.1	<p>Whether inappropriate development</p> <p>Can the parties please give their analysis as to whether the proposed development may be covered by the exception to inappropriate development set out in paragraph 145 c) of the National Planning Policy Framework, "local transport infrastructure which can demonstrate a requirement for a Green Belt location".</p>	The Applicant	<p>The Applicant is of the view that the project is not covered by this exception. The term in paragraph 145 c) uses the term 'local' transport infrastructure so suggesting that there are forms of 'non-local' transport infrastructure that would not be included in the definition. The question therefore is to what extent the Scheme could be defined as 'local'.</p> <p>The M54 to M6 link road will be part of the strategic highway network being delivered and maintained by Highways England. The project is therefore not part of the defined 'local' highway network or being developed by a 'local' highways authority.</p> <p>The link will provide a strategic link between the M54 Junction 1 and the M6 Junction 11, which are two motorways, designed to carry long distance, strategic traffic. Two of the Scheme objectives are to relieve</p>	

			<p>traffic congestion of the A460, A449 and A5 and keep the right traffic on the right roads by separating local community traffic from long distance and business traffic. The Scheme is therefore designed primarily to cater for long-distance traffic. The Scheme is therefore also not aiming to cater for vehicles making local journeys.</p> <p>The Scheme will lead to local benefits, including economic benefits to the area, relieving traffic on the local network and facilitating delivery of local projects, however, in our view this is not sufficient to argue that the project constitutes local transport infrastructure.</p>	
		SSC	<p>SSC has submitted a LIR which sets out its interpretation of Green Belt policy and how it relates to the proposal. For clarity, SSC acknowledges that the proposed development may be covered by the exception to inappropriate development set out in paragraph 146 c) of the National Planning Policy Framework, "local transport infrastructure which can demonstrate a requirement for a Green Belt location". However, as set out in the LIR, the Council contends that the scheme would harm openness and conflict with one of the purposes of including land within the Green Belt i.e. fail to safeguard the countryside from encroachment. On this basis it would conflict with paragraph 146 of the Framework.</p>	<p>The Applicant notes that SSC agrees with the Applicant's position that the development is 'inappropriate' as defined in paragraphs 145 and 146 of the Framework. However, the Scheme does not <u>conflict</u> with the Framework on Green Belt policy given that very special circumstances exist and clearly outweigh the harm to the Green Belt and other harm.</p>
3.3 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))				
3.3.2	<p>Biodiversity net gain</p> <p>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, ie to ensure that the development best-fits the many facets of the scheme.</p> <p>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?</p>	The Applicant	<p>There is nothing to prevent the delivery of biodiversity enhancements on land required for other purposes and the Applicant has taken every opportunity to secure these benefits as part of the Scheme.</p> <p>The Scheme design maximises enhancements for biodiversity where possible to do so. The road verges, islands and junctions would be seeded with a wildflower seed mix which would benefit invertebrates, in particular pollinators which are in significant national decline, or planted with native broadleaved woodland, rather than amenity grassland which is of little value to biodiversity. New hedgerow planting, the majority of which is native species-rich, has been included along the length of the Scheme and along boundaries of land parcels taken for other means. This would result in a net increase in length of hedgerows of over 4km. Retained watercourses within the Scheme boundary would also be enhanced. Appendix 8.2 [AS-031/8.2] shows that these measures would result in 2% gain of area-based biodiversity units, 26% gain of linear based units and 2% gain of river-based biodiversity units. Whether this constitutes a "net gain" or a "no net loss" for biodiversity in the context of the DEFRA metric is subjective at the current time without specific guidance, but it does show that the Scheme would result in an overall benefit to biodiversity when measured in units.</p> <p>Should the ExA or other parties identify further opportunities to deliver biodiversity benefits within areas to be acquired for other purposes that have not yet been realised, the Applicant would welcome those suggestions and will consider whether they can be implemented.</p>	
		Allow Ltd	<p>Allow Ltd welcome the suggestion of the scheme delivering biodiversity net gain. However, as mentioned Examining Authority's written</p>	<p>No response required.</p>

			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.	
		SSC	<p>Whilst this would be welcome, there are two potential problems with this approach – one is that it will necessarily involve quite narrow parcels of land which will restrict their usefulness to a range of species as noise, light and disturbance levels either side will probably be considerable. The other is the difficulty of securing adequate remediation during establishment or management in future. Species-rich grassland requires annual cut and collect management, while woodland will need regular thinning and possibly coppicing on rotation, which are tasks that require personnel and / or specialist machinery.</p> <p>SSC supports the concerns of the SCC Ecologist that net gain to biodiversity is unlikely with this scheme and believe that the applicant should be prepared to make available a commuted sum towards offsite habitat compensation. SSC considers this position to be in accordance with the requirement in paragraph 5.33 of the NPSNN for such opportunities to be maximised in or around developments, including through use of planning obligations. While we understand that the applicant is pursuing habitat benefits through the Community Fund, this is not a guaranteed outcome as any bid will be competing with other schemes.</p>	SSC's position has evolved on this point and the Applicant and SSC have come to an agreement. Please see pages 14-16 of the SoCG with SSC submitted at Deadline 7.
		SCC	<p>We have raised a similar point with the applicant that whilst the NPSNN does not make it a requirement for net gain as an agency of Government Highways England could aspire to achieving net gain on schemes where possible. While this would be welcome, there are two potential issues with this scheme. One is that it will necessarily involve quite narrow parcels of land which will restrict their usefulness to a range of species as noise, light and disturbance levels either side will probably be considerable. The other is the difficulty of securing adequate remediation during establishment or management in future. Species-rich grassland requires annual cut and collect management, while woodland will need regular thinning and possibly coppicing on rotation, which are tasks that require personnel and / or specialist machinery. We remain concerned that net gain to biodiversity is unlikely with this scheme and believe that the applicant should be prepared to make available a financial contribution towards off-site habitat compensation. While we understand that the applicant is pursuing habitat benefits through the Designated Funds programme, this is not a guaranteed outcome as any bid will be competing with other schemes.</p>	This point has now been agreed with SCC. Please see pages 73-74 of the Statement of Common Ground with Staffordshire County Council submitted at Deadline 7 [TR010054/APP/8.8LA(A)].
3.3.4	<p>Alternatives to Plot 5/2</p> <p>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:</p> <p><i>The proposed planting layout drawn up by Allow following the site visit with Historic</i></p>	The Applicant	N/A	N/A
		Allow Ltd	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.	No response required.
		Historic England	Allow have provided the plan mentioned to us.	No response required.

	<p><i>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.</i></p> <p>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)?</p>			
3.3.5	<p>Habitat Regulations Assessment</p> <p>The D4 draft SoCG with NE [REP4-031] records that NE's concern about air quality impacts on the Cannock Chase Canal SAC are still outstanding but highly likely to be agreed. NE have submitted a letter at D4 to confirm that they agree with the conclusions of the HRA No Significant Effects Report (NSER) [APP-216] so the next version of the SoCG should presumably reflect that all HRA matters have been agreed. The Applicant considers on the basis of the information provided at D2 [REP2-009] that conclusions of the NSER [APP-216] are correct. Both parties consider the likelihood of agreement on this remaining issue is high (as indicated in Table 3.2).</p> <p>Could the Applicant and Natural England please provide an update on the outstanding matters in this SOCG?</p>	<p>The Applicant</p> <p>Natural England</p>	<p>This matter has been resolved between Highways England and Natural England as shown in the SoCG submitted at Deadline 6 [TR010054/APP/8.8P(B)].</p> <p>This has now been resolved with the Applicant and it is our understanding that the Applicant will be submitting the latest SoCG at deadline 6 which will reflect this.</p>	<p>A SoCG has now been agreed with Natural England and will be signed and submitted for Deadline 8.</p>
3.3.7	<p>Veteran Trees</p> <p>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 (trees T-178 and T-182) as shown on Environmental Statement Figure 2.5 (Ver P15) [AS-090]?</p>	<p>The Applicant</p>	<p>Impacts to the two veteran trees (T-178 and T-182) could occur during the preparation works and subsequent planting of the woodland and the creation of the ponds. To prevent such impacts occurring, during construction a buffer zone of no planting would need to be implemented around the base of the veteran trees to protect the trees and their roots. This buffer zone would be at least 15 times larger than the diameter at breast height of each tree. The buffer zone would need to be 5m from the edge of the tree's canopy if that area is larger than 15 times the tree's diameter. Given these exclusion zones, compensatory planting would need to extend closer to Hilton Hall and the Conservatory than it would otherwise.</p> <p>In relation to the biodiversity interest of the veteran trees, no effects on the trees during operation different to those already assessed in the ES are predicted to occur as a result of moving the woodland and pond creation to the east of the road from plot 5/2.</p> <p>With reference to the heritage interest of the Veteran Trees, while the proposals would involve the retention of the veteran trees, they would no longer be seen in isolation, but would be encompassed within the</p>	<p>N/A</p>

		larger woodland block. This, and the loss of open views, would have a detrimental impact on the historic parkland, with a direct impact on key elements of the original design.	
	Allow Ltd	<p>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-protectionsurveys-licences#avoid-impacts-reduce-mitigate-impacts-and-compensate-as-a-last-resort</p> <p>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</p> <p>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:</p> <ul style="list-style-type: none"> 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 <p>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.</p>	Please see the Applicant's response to SCC comments to WQ3.3.7 as set out below.
	NE	<p>Veteran trees are important in their own right, and therefore are mentioned in the NPPF. Planting around veteran trees is not advisable as the veteran trees will quickly become shaded out. It is often also detrimental to interests that grow on them, especially lichens. We are not aware of what if any interests that grow on these two veteran trees. Veteran trees also support species of interest especially bats, nesting birds, and saproxylic species and this should be taken into account when considering planting. If planting is going ahead in this area, there should be a halo of at least 25m around the veteran trees that is not planted.</p>	The Applicant notes Natural England's comment and confirms that the Scheme does not include planting around the two veteran trees within the open historic parkland.

		SSC	<p>SSC considers that the proposed landscaping is unlikely to affect the veteran trees. The location of the landscaping is at a distance that would not affect the trees through increased shading, changes in hydrology etc. The end use of the land assuming its agricultural, may have more of an effect, through livestock poaching and rubbing against the trees, or land preparation for crops with ploughing too close to these trees. SSC recommends that the veteran trees are fenced off in the long term to prevent damage from future land uses and a management plan secured for the management of the veteran trees.</p> <p>Carefully designed planting could benefit the veteran trees by adding additional habitat and a degree of protection. It could be used to incorporate additional dead wood as log piles and could be designed as wood pasture, rather than dense woodland. Planting should allow for a halo space around each tree, preferably advised by an arboriculturalist with a Vet Tree certificate.</p>	<p>The use of the land will be unchanged following the completion of the Scheme. The veteran trees are outside the Order Limits for the Scheme and therefore the Applicant has no powers to install fencing around the veteran trees. Please also see the Applicant's response to SCC comments to WQ3.3.7 as set out below.</p>
		SSC	<p>Carefully designed planting could benefit the veteran trees by adding additional habitat and a degree of protection. It could be used to incorporate additional dead wood as log piles and could be designed as wood pasture, rather than dense woodland. Planting should allow for a halo space around each tree, preferably advised by an arboriculturalist with a Vet Tree certificate.</p>	<p>The Applicant agrees that additional planting at an appropriate distance from the veteran trees would provide some ecological benefits, though it would not alter the conclusions of the assessment reported in Chapter 8: Biodiversity of the ES [AS-083/6.1]. However, the veteran trees form an important part of the historic parkland. Any additional planting, including wood pasture, would impact on the significance of the parkland by eroding open areas and the function of the veteran trees as eye catchers.</p>

3.4 Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations

3.4.2	<p>Various Plots</p> <p>Various Interested parties have suggested that land required for mitigation should be subject to Temporary Possession and then the Imposition of Rights rather than being subject to Compulsory Acquisition.</p> <p>In its response to the points made at D3a [REP3A-001] in respect of Plots 4/20a and 4/20b Allow Limited indicates that "Permanent acquisition is required for these plots to allow the Applicant to grant rights to third parties for the use of the existing access from the A460 to access land parcels in this area".</p> <p>Can the Applicant please explain why this cannot be achieved by temporary possession and the permanent imposition of rights for all the plots in this situation? This should be done both generally and specifically to the individual plots.</p>	The Applicant	<p>The land required for mitigation is an essential part of the proposed Scheme and is required to minimise its impact. The Applicant has applied to acquire the land permanently to ensure this essential mitigation can be delivered and maintained as required. The Applicant has previously explained that it did not seek to rely on temporary acquisition powers with the imposition of rights because the mitigation is likely to sterilise the land and create a maintenance liability for landowners.</p> <p>Notwithstanding that position, some landowners have during the examination process indicated a desire to retain their land and a willingness to consider taking on such maintenance liabilities. In response, the Applicant has expressed a willingness to enter into a suitable form of legal agreement to allow land to be returned to landowners with the mitigation measures in place. Such agreements will be subject to the landowner covenanting to maintain the mitigation measures on their land and subject to providing the Applicant with the power to 'step in' should the maintenance regime not be completed as required. The precise details of the mitigation and the maintenance regime will of course, only be conclusively established if the DCO is made and the final scheme details have been approved. It will not be possible therefore for a landowner to enter into an agreement cognisant of the final details of the mitigation and maintenance regime required and the sums of compensation payable until after the DCO is made and the mitigation is in place.</p> <p>Furthermore, it is important that the Applicant safeguards against a scenario where a landowner initially willing to take on the burden of the mitigation land subsequently changes its mind. Without a legal</p>	N/A
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			<p>agreement in place, the commitment cannot be demonstrated and guaranteed. For example, if mitigation measures were removed by a landowner the Applicant may have inadequate powers to secure their replacement and/ or incur significant additional costs in reinstating it. Whilst the Applicant hopes that this type of difficulty can be avoided, it requires the ability to deliver the Scheme and its essential mitigation by use of permanent rights of acquisition. The Applicant must emphasise that the presence of a power of permanent acquisition does not mean that the Applicant must use those powers and its preference remains to reach agreement with landowners, which may include arrangements to return land to landowners and permit them to maintain the mitigation installed on their land, if that remains their desired option.</p> <p>Plots 4/20a and 4/20b comprise the current access track from the A460. That track may need to be altered to accommodate the proposed mitigation works adjacent to and surrounding the track. The landowner has made its desire to retain the track known but has also requested that the Applicant consider the creation of a passing point at an undesignated point, which will extend beyond the confines of plots 4/20a and or 4/20b. The Applicant requires the power to acquire the track permanently to ensure the surrounding essential mitigation works and any consequential alterations to the track can be accommodated appropriately. The Applicant remains in dialogue with the landowner regarding the potential for land to be returned following the completion of the works should the landowner wish to take on responsibility for maintaining the altered track and mitigation planting.</p>	
		Cadent Gas Ltd	Cadent has no comment to make on these questions at this stage, but Cadent reserves its right to respond to representations submitted in response to these questions.	
3.5 Draft Development Consent Order (DCO) [REP4-005 / REP5-006]				
3.5.2	<p>Article 16</p> <p>In its representations at D5 M6 Diesel [REP5-010] request that the provisions of Article 16 of the dDCO should be time limited.</p> <p>(a) If the Applicant considers this appropriate could it provide such provisions within the dDCO?</p> <p>(b) If the Applicant does not consider this appropriate could it explain why, and also provide, on a without prejudice basis, draft provisions for possible inclusion in the dDCO?</p> <p>(c) Could SCC provide its response to M6 Diesel's representation?</p>	The Applicant	<p>(a) The power conferred by Article 16 is already time limited (see 16(3)) and expires 12 months after the authorised development is open to traffic. This ensures that the power is only exercisable in relation to the construction or initial maintenance and operation of the scheme.</p> <p>(b) N/A</p> <p>(c) N/A</p>	N/A
		SCC	<p>(a) & (b) whilst not directed at SCC we would make the point that although there is disagreement between us and the applicant on the imposition of a Weight Limit, at no point has there been any suggestion that the provisions of the DCO should be limited to remove any possibility of a TRO being implemented. Indeed, the applicants' position is to monitor the A460 post scheme opening and implement a TRO if necessary.</p> <p>Also is there an apparent inconsistency here compared to what has been asked for from SCC previously on this issue? We were asked to suggest provisions in the dDCO for a TRO whereas here the applicant is being asked to consider how they could include</p>	<p>SCC has suggested that:</p> <ol style="list-style-type: none"> 1. the Applicant's position is to monitor the A460 post opening and implement a TRO if necessary, and; 2. -there is £50,000 set aside by the Applicant to implement a weight restriction. <p>Unfortunately, neither of these statements is correct. In order to try and resolve this issue, the Applicant did previously offer to enter into a legal agreement with SCC whereby the traffic is monitored post opening of the Scheme and actions discussed with SCC to resolve issues if necessary. An indicative sum of £50,000 was suggested and considered likely to be sufficient for monitoring and the limited works associated with implementing the weight restriction. However, this was offered in the context of a monitor and manage agreement which SCC made clear they did not want to pursue. The Applicant confirms that no money is earmarked for the</p>

		<p>provisions to address the concerns M6 Diesel raise in their representation</p> <p>(b) We disagree with the position M6 Diesel present in their representation. Whilst we understand their concern it must be recognised that even without a weight limit in place there will be no passby trade (i.e. impromptu stops made simply through decisions on site of the filling station), once the new link road opens. At that point any trade will be via pre-determined decisions to leave the motorway network to refuel. It is in this context where we believe the weight limit will serve most value as the only HGV's likely to be using the A460 motorway to motorway (M6 Jct 11 to M54 Jct 1 and vice versa) will be those accessing the filling station as part of a longer distance journey.</p> <p>(c) The response submitted on behalf of M6 Diesel reinforces our concerns. At paragraph 2.5 M6 Diesel state that 'for drivers leaving the M6 Diesel site, seeking M54 J1, their satellite navigation system (and road user knowledge if they have used the facility previously) will indicate that they should turn left.' It is precisely this sort of behaviour/human nature that the traffic model or journey time analysis will not pick up. Further, it is this section of the A460 that we would want to keep unnecessary HGV movements from.</p> <p>The response goes on to suggest that drivers may miss the signage and then be faced with a decision to breach the Order or perform a turning manoeuvre. SCC is suggesting that suitable advanced signing be installed to complement the proposed weight restriction and reduce any likelihood of drivers contravening it. There is no requirement to provide turning facilities for Heavy Goods Vehicles at the point of the restriction given that drivers would have had to ignore all advanced signing to reach that point and had the opportunity to avoid such a contravention by turning at either the M54 or M6 junctions or at the filling station itself.</p> <p>Whilst human error cannot be ruled out completely it needs to be borne in mind that we are dealing here with professional drivers and should they inadvertently breach the Order they will only do so once. We would also hope, that as a responsible operator, should a weight limit be introduced, M6 Diesel would notify their customers of said Order until it became common knowledge. It is also worth mentioning that more modern HGVs tend to be equipped with SATNAV systems designed specifically for use in heavy vehicles which should identify the presence of any relevant restrictions to drivers.</p> <p>In terms of substantiating the requirement for a 7.5T environmental weight restriction except for access, SCC undertook turning counts on the 9th April 2019 for 72 hours at the M6 Diesel filling station to provide a basis on decision making. This data indicates that on average 315 trips were made by articulated vehicles on the section of the A460 to the south of the filling station in 24 hours and a total of 1381 vehicles visited the filling station in 24 hours. This equates to one articulated vehicle every 4.5 minutes, although, naturally, there will be peak periods of flow.</p>	<p>introduction of a weight restriction given that the Applicant considers it unnecessary, challenging to enforce and could cause a hazard due to the need for undesirable turning movements.</p> <p>SCC has suggested that if a weight restriction was to be implemented on the existing A460 between the junctions of New Road and Hilton Lane:</p> <ul style="list-style-type: none"> • suitable advanced signing of a weight restriction would reduce the likelihood of HGVs travelling south from the M6 Diesel site and; subsequently having to contravene the order, • <i>'there is no requirement to provide turning facilities for Heavy Goods Vehicles'</i> • SCC would hope that <i>'as a responsible operator, should a weight limit be introduced, M6 Diesel would notify their customers of said Order until it became common knowledge'</i>. <p>The Applicant disagrees with these statements. A responsible highway authority should not provide a dead end for specific vehicles; with no turning facilities nor should it rely on advanced signing and the goodwill of a third party operator in the hope of achieving compliance with road traffic regulations.</p> <p>With regards to HGV traffic on the existing A460, the Applicant has provided further information in Technical Note 8.17 'HGV flows on Existing A460' [REP3-039] and maintains its position that a weight restriction is not required in order to achieve the Scheme objectives and as such, the Scheme does not include a weight restriction on the existing A460.</p>
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		<p>Highways England has suggested that Heavy Vehicle traffic remaining on the A460 after completion of the link road will be making local trips rather than straight through movements. Highways England forecast that vehicle trips on the A460 as a result of construction of the new link road in the forecast year of 2024, will reduce from approximately 27,000 per day with 12% of those being Heavy Goods Vehicles (HGVs), to 3,000 per day, with 300 of these being Heavy Goods Vehicles i.e. approximately 10%.</p> <p>However, when you consider the 300 residual local heavy vehicle trips in combination with those that will remain using the filling station (as suggested in the response on behalf of M6 Diesel) the actual number is likely to be significantly greater than that presented by the model. This would lead to a higher proportion of traffic using the A460 being HGVs, which have already been identified as a local concern by residents of Shareshill and Featherstone.</p> <p>Whilst the traffic model takes into account future traffic generated by significant local development locations such as the West Midlands Interchange (WMI) and Cannock Designer Outlet Village which will, no doubt, generate additional Heavy Goods Vehicles locally. It cannot estimate of those HGVs generated how many may utilise the M6 Diesel filling station over its existing customer base. With WMI forecast to generate over 6,000 HGV movements per day, invariably some of this additional local HGV traffic will find its way to M6 Diesel i.e. demand for use of the facility will increase. As we have stated before we contend that the forecast HGV numbers on the A460 post scheme are underestimated. The traffic model cannot estimate the long distance traffic on the new link which may be potential customers of M6 Diesel or the route they would take to access the facility off the M6 or M54. It is also noted that in discussions with Highways England on this matter they have conceded that the model shows zero HGV movements heading between the M54 and M6 post scheme.</p> <p>Highways England has previously agreed to the reclassification of the A460 to an unnumbered C-road which would enable implementation of a weight restriction. However, the numbers suggest that the volume of Heavy Goods Vehicles will remain relatively high and not in line with what would be expected essentially on a 'village street'.</p> <p>SCC and Highways England have expressed a desire to implement 'legacy' schemes along the A460 upon completion of the new link road, for example improvements for pedestrians, cyclists and equestrians. SCC feels such schemes would be significantly constrained by both the number of remaining HGVs using the road and the proportion of HGVs to other traffic. This would not necessarily promote an environment to encourage sustainable travel.</p> <p>The extent of the weight limit proposed by SCC would permit access to properties within the restriction, allow larger vehicles to access New Road from the M54 junction 1 and the M6 Diesel filling station from M6</p>	
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			<p>junction 11. The aim of the order is solely to prevent HGVs using the A460 along its entire length from the M6 to the M54.</p> <p>The introduction of an environmental weight restriction as part of the DCO process would be the most cost-effective solution. The only additional cost to the overall scheme would be for the procurement of additional signs and posts where they are required. Costs associated with traffic management; new signage at Junctions 1 and 11; and labour will already be accounted for in the overall scheme cost. Highways England has previously supported a monitor and manage approach for which it has earmarked £50,000. However, once a proportion of that £50,000 has been spent on surveys and consultancy support there will be little left to do anything meaningful. We believe that the scheme we have proposed may require up to 10 additional signs/posts plus the incorporation of notification of the weight limit on new signage proposed for the link road. This should be able to be accommodated within the £50,000 Highways England have set aside for monitoring post scheme.</p> <p>Further, the subsequent retrospective introduction of a weight restriction would be far more costly to the public purse as in many instances newly installed signing would have to be amended/replaced under appropriate and expensive temporary traffic management protocols. The scheme costs would then likely move into the hundreds of thousands of pounds bracket.</p> <p>In addition to the weight limit signage we would support the inclusion of advisory signage directing M6 Diesel customers on the trunk road network to access via M6 Jct 11.</p> <p>In relation to section 3 of M6 Diesels' Representation we have no empirical data from Highways England on journey times but during meetings we've had on this matter they have expressed an opinion that for drivers on the M54 wishing to access M6 Diesel staying on the link road and utilising junction 11 is the quicker and more convenient route. We do not agree and whilst we have no data on journey times it is reasonable to assume that the difference will be marginal. We therefore believe that drivers would continue to access M6 Diesel via the shortest route or the route they have historically used, which concurs with what M6 Diesel believe will happen without any restriction in place.</p> <p>The introduction of an environmental weight restriction at this stage would support the objective of keeping the right traffic on the right road and reinforce the proposed road hierarchy. SCC is supported in this stance by local Parish Councils and South Staffordshire District Council.</p>	
3.5.7	<p>Protective Provisions/Cadent Gas</p> <p>Could the Applicant please confirm the latest position in respect of the Protective Provisions sought by Cadent Gas and the</p>	The Applicant	<p>Cadent and the Applicant are continuing to finalise a form of protective provisions acceptable to both parties. The final form of those provisions is subject to final reviews but agreement is expected to be reached.</p>	N/A

	<p>likelihood that any outstanding issues will be resolved.</p>	<p>Cadent Gas Ltd</p>	<p>As set out in Cadent's relevant representations and Deadline 4 response, its position remains that it is not satisfied that the tests under section 127 of the PA 2008 can be met unless and until it has appropriate and adequate protective provisions in place.</p> <p>Cadent's preferred form of protective provisions is enclosed at Appendix 1 (the "Cadent PPs"). Cadent has provided these to the Applicant and to the ExA in response to ExA Question 1 and again in Cadent's Deadline 4 response. To assist the ExA, enclosed at Appendix 2 is a tracked change version of the Cadent PPs compared against the protective provisions contained in the current dDCO.</p> <p>Substantially similar protective provisions to the Cadent PPs have been agreed in The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 (the A585 DCO), The M42 Junction 6 Development Consent Order 2020 (the M42 DCO) and The A38 Derby Junctions Development Consent Order 2021 (the A38 DCO).</p> <p>For each of the A585 DCO, M42 DCO and A38 DCO a number of issues remained in dispute between Cadent and the Applicant at the end of the examination and these issues were put to the Secretary of State for determination. On the A585 DCO, the Secretary of State determined in favour of Cadent. On the M42 DCO and the A38 DCO, the Secretary of State determined in favour of the Applicant.</p> <p>Cadent has accepted the substantive decision of the Secretary of State on the M42 DCO and the A38 DCO (save in respect of consequential loss and betterment discounts, which is addressed below). Therefore, the Cadent PPs enclosed are based on the protective provisions included in the M42 DCO (which are substantially the same as those included in the A38 DCO). Since the M42 DCO was made, Cadent has sought to engage with the Applicant to reach an agreed position on Cadent's protective provisions across all schemes (subject to any scheme specific requirements).</p> <p>Cadent does not accept that the indemnity within the Cadent PPs should include a carve out in respect consequential loss, and considers that the Secretary of State's decision on the A585 DCO was correct on this ground. This is reflected by the Secretary of State's decision of 19 January 2021 on a recent scheme (the A1 Birtley to Coal House Improvement Scheme) promoted by the Applicant where detailed consideration was given to similar wording in respect of another undertaker (Network Rail) and where it was confirmed that this wording was not appropriate for inclusion in that DCO.</p> <p>Cadent does not accept that the betterment and deferral of benefit discounts should apply for works outside of the highway, and these provisions are not included in its preferred form of protective provisions. Cadent derives no benefit from the scheme, and for this scheme the Cadent diversion will be through private land. Imposing a costs liability on it, which could be significant and which is not planned for or required in terms of network management, is not appropriate.</p>	<p>Amended protective provisions are under active discussion and follow the form of those previously agreed between Cadent and the Applicant on the M42 and A38 projects which were approved by the Secretary of State. Cadent and the Applicant are discussing the points where Cadent is seeking alternative drafting. The Applicant hopes to reach an agreement on the outstanding issues by Deadline 8.</p>
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3.5.8	Protective Provisions/SSW Could the Applicant please confirm the latest position in respect of the Protective Provisions sought by SSW and the likelihood that any outstanding issues will be resolved.	The Applicant	The Applicant has reviewed the current protective provisions in favour of the water companies and provided a response and detailed suggestions to address all areas of concern identified by SSW. The Applicant considers that the response provided will allow a final form of the protective provisions to be prepared and expects to be able to resolve any outstanding issues.	N/A
		South Staffordshire Water Plc	Further to SSW's last response to this question in January SSW feel there has been no progress in the negotiations regarding the protective provisions. As stated previously the amendments sought aim to protect SSW's position as a statutory undertaker, SSW's assets and SSW's obligation to supply fresh water to vast numbers of people in the area. SSW are disappointed that they are still yet to receive a substantive response to these comments from the applicant's solicitor. Overall SSW are disappointed with the progress of these negotiations as they would have hoped to be further forward at this time.	A substantive response and suggestions on how agreement could be reached was provided to SSW's legal representatives prior to Deadline 6. SSW have been invited to confirm if their concerns are now resolved or, where they remain, to discuss those concerns to allow agreement to be reached. Discussion is ongoing but the Applicant hopes to have reached an agreed position by Deadline 8.
3.6 Cultural Heritage				
3.6.1	Archaeological WSI (a) Do the parties consider that the proposed Written Scheme of Investigation [REP4-032] is a robust approach to dealing with this matter? (b) How is this to be secured within the draft DCO?	The Applicant	N/A – The Applicant did not respond to this question as it was not directed to them.	N/A
		Historic England	Historic England has agreed that Staffordshire County Council will manage all aspects of archaeological mitigation including the WSI.	Noted.
		SSC	SSC will be guided by the Staffs CC Archaeologist on the above matters who provide specific advice on archaeology to the DC.	Noted.
		SCC	(a) and (b) SCC is of the opinion that the proposed Archaeological WSI, which has been commented on and approved by the County Archaeologist, is a robust enough approach for dealing with this matter. It has been previously been advised that the County Archaeologist was happy that the Archaeological Trial Trenching covered by the WSI does not necessarily need to be carried out prior to decision making on the DCO application but could be carried out in parallel with the application or after the DCO has been made. The County Archaeologist has been informed by the applicant that the programme of archaeological evaluation works outlined in the WSI is currently being carried out and is receiving daily reports on progress, in addition to carrying out regular monitoring visits (when deemed necessary). The fieldwork programme is on track in terms of timescales, and it is anticipated that a final or a detailed interim report on this work will be submitted in time to inform the inspector's decision and indeed to inform and assist in the	<p>The trial trenching has now been completed and a report submitted to ExA on 18 March 2021 [document 8.26] following review by the County Archaeologist.</p> <p>No archaeological remains were identified on site, although there were two areas where the ground conditions were unsuitable for archaeological trenching. As committed in the OEMP [REP4-011/6.11], PW-CH2 and PW-CH3, an appropriate Archaeological Management Plan and Archaeological Mitigation Strategy will be drafted and updated in consultation with the County Archaeologist prior to the start of construction.</p>

			<p>development, in liaison with the County Archaeologist, of an appropriate archaeological mitigation strategy (including the potential for preservation in situ where appropriate). It is anticipated that the OEMP, Archaeological Management Plan, and the Archaeological Mitigation Strategy will be updated accordingly, and that, where necessary, Site Specific Written Schemes of Investigation will be developed. This approach would be certified under the DCO.</p>	
<p>3.6.2</p>	<p>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 <i>Shimble v City of Bradford MBC</i> [2018] EWHC 195 (Admin).</p>	<p>The Applicant</p>	<p>It is the Applicant's view that the need to further consider the extent of harm within the 'less than substantial harm' category is supported by relevant case law which postdates <i>Shimble</i>. For example, in the High Court judgment of <i>Hall (R. (on the application of 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 stated that 'There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm'. HHJ Belcher also concluded that (our emphasis) '<i>There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF</i>'. Whilst concluding that there were three categories of harm, Her Honour noted that understanding the extent of harm within the less than substantial bracket is essential for undertaking the balancing exercise in NPSNN paragraph 5.1131/ NPPF paragraph 193. This case was also interestingly in the <i>City of Bradford</i> and more recent than the <i>Shimble</i> case.</p> <p>The Applicant would also draw the ExA's attention to the <i>Catesby Estates</i> Court of Appeal judgement (<i>Catesby Estates v Peter Steer v Historic England</i> [2018] EWCA Civ 1697). In this case Lindblom LJ, cited and endorsed the appeal Inspector's approach which considered there to be a range of harm within the less than substantial category. Paragraph 19 of that judgement records the Inspector's approach and in particular noted that '<i>The term 'less than substantial' does, however, cover a wide range of harm – and the question is just how great that harm would be.</i>' The Inspector went on to look in detail at the extent and nature of the harm before concluding that: '<i>In terms of the significance of the Park and Conservation Area, though, the harm would be at the lower end of 'less than substantial'.</i>' The Inspector in the case discussed the impact on the significance of <i>Kedleston Hall</i> using EIA terminology, describing the impact as no more than negligible, taking the same approach as the Applicant in considering both whether the impact was substantial, and the extent/ nature of the impact within the category of 'less than substantial'. In paragraphs 44 and 46, Lindblom LJ confirms the lawfulness of the Inspector's approach and his conclusion that the potential effect was no more than negligible and that the harm was at the lower end of less than substantial. The approach taken by the Applicant to consider whether the magnitude of impact is negligible, minor or moderate within the ES and the assessment of alternative options for plot 5/2 takes the same approach as taken by the Inspector, endorsed by LJ Lindblom; to consider the extent of harm within the less than substantial category.</p>	

		<p>The Applicant's assessment of the mitigation options and the compliance of different options with policy is presented in [REP4-036/8.22] and in the Applicant's response to REP4-038 presented on page 14 of [REP5-004/8.24]. Additional information is provided below to assist the ExA's consideration of the arguments put forward by the Applicant and other parties on the impact of the Scheme on Hilton Hall and the Conservatory, particularly in the context of Allow Ltd's request to relocate environmental mitigation to the east of the link road.</p> <p>The Scheme is an EIA development and cultural heritage was scoped into the EIA. To address the requirements of the EIA Regulations the ES presents the description of the likely significant effects of the Scheme. The significance of an environmental effect is typically a function of the 'value' or 'sensitivity' of the receptor and the 'magnitude' or 'scale' of the impact. In the ES, the sensitivity of a receptor is assessed and described as very high, high, medium, low or negligible; the magnitude of charges as major, moderate, minor or negligible; and the resultant significance of effect as very large, large, moderate, slight or neutral. Further detail on the EIA methodology is set out in Chapter 4 of the ES [APP-043/6.1]. The methodology and descriptions of significance are in line with DMRB LA Series.</p> <p>As set out in DMRB LA 104, environmental assessment and design shall incorporate mitigation measures using a hierarchical system, of which the first is design and mitigation measures to avoid or prevent the significant effect; the second is reduction of the effect and the third is remediation. The current Scheme design avoids the significant effect on the two Grade I listed buildings through a number of measures, including careful design and location of environmental mitigation, in line with DMRB LA 104. An approach that amended the design such that new significant effects are introduced without good justification would conflict with the approach to environmental assessment as set out in DMRB. DMRB LA 104 emphasises that environmental mitigation measures themselves can produce adverse as well as beneficial effects and the significance of effect shall be reported after an assessment of the effectiveness of the design and mitigation measures has been undertaken. The approach the Applicant has taken to the ES and the assessment of alternative mitigation measures at Plot 5/2 is in line with DMRB.</p> <p>Chapter 6: Cultural Heritage of the ES [APP-045/6.1] assesses the impact of the Scheme on heritage assets, including the Grade I listed assets of Hilton Hall and the Conservatory. The same methodology was then used to assess the Scheme as would be amended by four options to relocate environmental mitigation from plot 5/2 to the east of the new link road. This provided information on how the magnitude of impact and significance of effect would change with each of the options, showing how the changes would affect the outcome reported in the ES. When considering any change to a Scheme subject to a DCO application, it is vital to consider the impact of the change on the outcome reported in the ES and consider whether the change would result in any materially new or different environmental effects. To undertake this assessment, the same methodology should be applied to proposed changes as to the original Scheme. It is therefore not only correct, but essential, that an assessment is carried out of the proposed</p>	
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	<p>Allow Ltd</p>	<p>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]</p> <p>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]</p> <p>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]</p> <p>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.</p> <p>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</p>	<p>The Applicant agrees with Allow Ltd that the category of 'less than substantial' harm covers a range of harm, ranging from negligible to almost substantial and that this is a 'wide range' given that substantial harm is 'a very high bar'. The Applicant also agrees with Allow Ltd that an approach that assesses the extent of harm within the category is supported by the PPG.</p> <p>The Applicant further agrees that there is no need to further divide the category of 'less than substantial harm' into sub-categories. However, it should be noted that, whilst there may be no need for sub-categories, this does not mean that the extent of harm within the less than substantial category is not taken into account in the planning balance exercise. If the extent of harm is to be identified and articulated, it must be taken into account in the balancing exercise otherwise what is the purpose of articulating it. If the harm is to be taken into account on one side of the balancing exercise, it must then be taken into account on the other, otherwise how would a decision maker decide whether the two balance. Logically, therefore, it would not make sense that the public benefits required to outweigh negligible (not significant) harm to a listed building would be the same as those required to outweigh moderate or major (significant) harm.</p> <p>The Applicant also does not agree that taking the extent of harm into consideration on both sides of the balancing exercise when determining whether a Scheme should be consented conflicts with NPPF paragraph 193. Paragraph 193 states: <i>'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). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.'</i> This paragraph requires the decision maker to consider the impact of a proposed development on an asset, then afford the conservation of the asset great weight (greater weight for more important assets). Whilst this means that even negligible harm would be afforded great weight, it does not follow that in the balancing exercise a negligible effect, when given great weight, would be considered to be equivalent to a moderate effect, when that effect is afforded great weight. Similarly, this paragraph does not say anything that would suggest a greater degree of harm to an asset would not require a greater justification or greater public benefits to outweigh that harm.</p> <p>It is the Applicant's position that the extent of harm should be taken into account when balancing exercises are carried out to determine whether the DCO should be made with regard to Planning Act 2008 paragraph 104(7) and with respect to the Green Belt in NPSNN paragraph 5.178. In both cases, the moderate harm caused by alternative mitigation planting proposed by Allow Ltd would require greater benefits to outweigh them than those required to outweigh negligible/minor harm. Therefore, the Applicant's rejection of Allow Ltd's suggested alternative mitigation options on the grounds of greater impact on heritage assets is justified.</p>

		<p>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].</p> <p>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].</p> <p>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.</p> <p>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']</p> <p>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</p>	
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		<p>within the process of undertaking the balancing tests required through NPPF paragraphs 195 and 196.</p> <p>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.</p>	
	<p>Historic England</p>	<p>The Shimbles 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.</p> <p>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.</p> <p>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.</p> <p>Whilst these are points from the NPPF they should translate across into the relevant National Policy Statement for the DCO.</p> <p>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</p>	<p>The Applicant agrees with Historic England’s comments that the extent of harm within the less than substantial’ category must be clearly assessed and articulated.</p>

		<p>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.</p> <p>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 conceivably 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.</p> <p>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 assets 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 Revision date 23 07 2019</p>	
	SSC	<p>The spectrum of harm ranges from betterments through to substantial harm. In terms of the proposed scheme, SSC concludes that the proposals cause "less than substantial harm" to the setting of the listed buildings and the non-designated heritage asset (the parkland itself). Whilst the new road will not be visible from either of the Grade I listed buildings and there will potentially be an increased road noise, there is already road noise associated with the other main routes in existence in the area. The listed buildings are significant (Grade I listed), but the changes will need to be weighed against the public benefits of the new road. A balanced judgement will need to be taken when considering this impact upon the parkland which as has been noted is a non-designated heritage asset. The public benefits of the road will need to be taken into consideration.</p>	<p>The Applicant notes that SSC states that the 'changes' to the assets (or effects) will need to be weighed in the balance when determining the application. The Applicant agrees with this position.</p>

		SCC	SCC is happy to defer to RCHME and South Staffordshire Council's Conservation Officer on this matter.	Noted
3.6.3	<p>Hilton Park</p> <p>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.</p> <p>(a) Is this a fair summation of the Applicant's view?</p> <p>(b) If Hilton Park was designed by Humphrey Repton does this make any difference to the consideration of the Proposed Development?</p>	The Applicant	<p>a) The applicant accepts a possible association of Hilton Park with the landscape designer Humphrey Repton. This is based on the documentary evidence. This assumption was outlined within Chapter 6 of the ES and repeated within the assessment submitted at Deadline 4 [REP4-036/8.22].</p> <p>b) As the association with Repton has been maintained during the production of the ES and subsequent assessments, the Applicant's consideration of the Proposed Development has not changed.</p>	
		Allow Ltd	<p>Q3.6.3a) This question is just for the Applicant.</p> <p>Q3.6.3b) In the ES submitted as part of the DCO application, the Applicant identified Hilton Park as a heritage asset of '<u>medium value</u>' (Chapter 6, paragraph 6.9.40). In accordance with the ES methodology expressed in Chapter 4 of that document, a <u>medium value</u> 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).</p> <p>The baseline information underpinning the attribution of a <u>medium value</u> 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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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 	<p>Research was undertaken on Hilton Park to inform the assessment of impacts for the purposes of the ES. This included research at the Staffordshire County Record Office which incorporated the Vernon family papers. The existence of Repton's Red Book was identified but could not be located.</p> <p>The Garden's Trust were consulted, but no response was received. The evidence collated was sufficient for us to identify a potential association of the park with Humphrey Repton and sufficient for us to assess the significance of the park on the basis that it was the work of Repton, regardless of further archive material.</p> <p>The document Appendix 6.5 [APP-173] is primarily concerned with Hilton Hall as the designated asset, but discussion is noted on the park as part of the setting of the asset.</p> <p>The assessment of the park as being of medium value reflects the assignment as defined within DMRB LA104. We maintain that the survival of the parkland is not sufficient to raise this value to high.</p>

		<p>to a possible Repton 'Red Book' in the possession of the Vernon family (former owners of Hilton Park); and</p> <ul style="list-style-type: none"> • Failure to consult the Vernon family papers held at the Staffordshire County Record Office. <p>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 <u>medium value</u> 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.</p> <p>In Table 4.1 of the ES, a <u>high value</u> (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 <u>high</u> rather than <u>medium</u> in the event of the Repton connection being confirmed or further evidenced.</p> <p>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.</p> <p>For the construction effects, the ES identified the impact magnitude as <u>moderate adverse</u> leading to an effect of <u>moderate adverse</u> 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 <u>high</u>, 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.</p> <p>In accordance with the descriptors used in the Applicant's ES methodology (Table 4.4, derived from DMRB), effects of <u>moderate adverse</u> significance 'can be considered to be material decision-making factors'. However, if the significance of effect is assessed as <u>large adverse</u>, then it is 'likely to be material in the decision-making process'.</p> <p>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 <u>negligible adverse</u> magnitude on Hilton</p>	
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			Park. The significance matrix presented as Table 4.3 of the ES shows that this impact magnitude on a <u>medium value</u> receptor results in an effect of either <u>neutral</u> or <u>slight</u> significance. The assessor identified the significance of effect as being <u>slight adverse</u> . If the value of Hilton Park was to be reassessed as <u>high</u> , the significance matrix would result in the significance of effect being <u>slight adverse</u> , i.e. unchanged from the assessment presented in Chapter 6 of the ES.	
		Historic England	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 Humphry Repton provided designs or advice on the Park at Hilton Hall. If there was evidence that Humphry 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.	<p>No conclusive evidence has been found to associate the design of Hilton Park with Humphrey Repton; however, enough evidence has been identified to suggest a plausible association. As noted in the Applicant's response to written question 3.6.3 [REP6-039], the assessment reported in Chapter 6: Cultural Heritage of the ES [APP-045/6.1] assessed the significance of the park on the basis that it was designed by Humphrey Repton in the absence of definitive evidence.</p> <p>The assessment has been undertaken using current guidance outlined in DMRB LA104 and LA106. While professional judgement can be applied, we agree that the park is of 'high or medium importance and rarity, regional scale, limited potential for substitution' and, thus, of medium value. Despite the association of Repton, the park remains a non-designated asset. It is not considered to meet the criteria of designation due to the extent of alteration within the parkland, most notably the severance of the park by the M54 and M6 and further erosion through quarrying and development.</p> <p>For the park to be elevated to the category of high value, it would need to represent a good example of Repton's work with a good level of survival of his original designs such that it is of 'high importance and rarity, national scale and limited potential for substitution' (as defined by DMRB LA104). Repton was a prolific landscape designer and a significant number of his landscapes survive in better condition than at Hilton and which could be deemed to be of high value.</p> <p>As an interesting example of a late-18th/ early 19th century landscape, Hilton Park would remain of medium value should it be shown that Repton was not involved in its design.</p>
		SSC	Point b), if the park was able to be assigned to Repton by definitive evidence then it would obviously increase the importance of the landscape (both Brown and Repton are highly regarded landscape architects). If it could be attributed to Repton it would be like attributing a building to an architect such as Nash or any other of the major C18 architects. The grounds are obviously a designed landscape associated with the hall, but we cannot definitively identify the person responsible for the design. The Gardens Trust may have more information on this, but SSC are unaware if any specific evidence in this regard.	The potential association with Repton raises the interest of the parkland; however, it does not increase its significance to such a level as to make it of high value in line with DMRB 104 for the reasons listed above.
		SCC	SCC is happy to defer to RCHME and South Staffordshire Council's Conservation Officer on this matter.	Noted.
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 at Hilton Park as to the degree of	The Applicant	The Applicant did not respond to Question 3.6.4 as it was directed solely at RCHME.	N/A
		Allow Ltd	Although the question is aimed at RCHME, Allow Ltd consider that it is relevant to provides commentary on their proposed mitigation planting plan (the Allow option) to the ExA in relation to the settings of the listed	We refer Allow Ltd to Technical Note 8.22 [REP4-036] and the Applicant's response to representations made by Allow Ltd at Deadline 5 [REP6-039].

	<p>harm, if any, that the proposals may have on their settings and thus their historic significances.</p> <p>(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?</p> <p>(c) Can RCHME undertake the same analysis for the proposed planting plan prepared by Allow Limited and referred to in ExQ3.3.4?</p>		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>The assessment presented in the ES identified that the construction of the current scheme design would result in an impact of <u>minor adverse</u></p>	<p>The Applicant agrees with Allow Ltd that, by incorporating the majority of planting to the east of the new carriageway, Allow Ltd's proposal would introduce new impacts on the Grade I listed Hilton Hall and the Grade I listed Conservatory. At present, this open area to the east of the Shrubbery forms an important part of the setting of both structures, providing a separation from the tree belts which characterise Repton's aesthetic. The proposed planting and the new pond adjacent to the existing man-made fishing pools would take away any association of the Conservatory with the parkland.</p> <p>The Applicant agrees with both Allow Ltd and Historic England that 'the Allow option' is more favourable than Options 3 and 4, as defined within TN 8.22 [REP4-036]. The Applicant also agrees that 'the Allow option' would result in an increase in harm to Hilton Park and the associated listed buildings, compared to Options 1 and 2 [REP4-036/8.22]. The Applicant maintains that the current Scheme is the most appropriate design for the proposed mitigation measures which balances the impacts to biodiversity and heritage assets.</p>
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		<p>magnitude on Hilton Hall as a result of the change within its setting (Chapter 6, paragraph 6.9.12). This is a receptor of <u>high</u> value and the significance matrix (Table 4.3 of the ES) indicates that the effect would be of <u>slight</u> or <u>moderate adverse</u> significance. In this instance the assessor determined that <u>slight adverse</u> was the most appropriate level. The impact on Hilton Hall during the operation of the proposed scheme would be <u>no change</u> resulting in an effect of <u>neutral</u> significance (paragraph 6.9.49).</p> <p>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).</p> <p>For the Conservatory, the assessment presented in the ES identified that the construction of the current scheme design would result in an impact of <u>negligible adverse</u> magnitude as a result of the change within its setting, resulting in an effect of <u>slight adverse</u> significance (paragraph 6.9.17). As with the Hall, the impact on the Conservatory during the operation of the proposed scheme would be <u>no change</u> resulting in an effect of <u>neutral</u> significance (paragraph 6.9.49).</p> <p>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'.</p> <p>As noted above in the answer to Question 3.6.3b, for Hilton Park the ES identified the impact magnitude (construction) as <u>moderate adverse</u> leading to an effect of <u>moderate adverse</u> significance (paragraph 6.9.40). The impact magnitude during the operation of the proposed scheme would be <u>negligible adverse</u> and the assessor decided that the significance of effect would be <u>slight adverse</u> rather than neutral.</p> <p>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</p>	
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		<p>'ecology ponds' within the open parkland to the south of Middle Pool. No planting is proposed around these ponds.</p> <p>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 <u>moderate adverse</u>, with the significance of effect also being <u>moderate adverse</u>. 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.</p> <p>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 <u>moderate adverse</u> with the significance of effect also being <u>moderate adverse</u>. This means that, in comparison with the current scheme, Option 3 would change the magnitude of impact on Hilton Hall from <u>slight adverse</u> to <u>moderate adverse</u> and would also change the significance of effect from <u>slight adverse</u> to <u>moderate adverse</u>. However, the magnitude of impact on the Conservatory would change from <u>negligible adverse</u> to <u>moderate adverse</u> and the significance of effect would change from <u>slight adverse</u> to <u>moderate adverse</u>.</p> <p>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)?</p> <p>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</p>	
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		<p>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.</p> <p>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 <u>moderate adverse</u>, with the significance of effect also being <u>moderate adverse</u>. 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.</p> <p>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 <u>moderate adverse</u> with the significance of effect also being <u>moderate adverse</u>. This means that, in comparison with the current scheme, Option 4 would change the magnitude of impact on Hilton Hall from <u>slight adverse</u> to <u>moderate adverse</u> and would also change the significance of effect from <u>slight adverse</u> to <u>moderate adverse</u>. The magnitude of impact on the Conservatory would change from <u>negligible adverse</u> to <u>moderate adverse</u> and the significance of effect would change from <u>slight adverse</u> to <u>moderate adverse</u>. 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.</p> <p>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.</p> <p>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</p>	
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		<p>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.</p> <p>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 exiting 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.</p> <p>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.</p> <p>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.</p> <p>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</p>	
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		<p>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.</p> <p>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.</p> <p>However, the magnitude of impact on Hilton Park if the Allow option were to be taken forward is assessed as <u>moderate adverse</u>, with the significance of effect also being <u>moderate adverse</u>. 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.</p> <p>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.</p> <p>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 <u>minor adverse</u>. 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 <u>slight</u> or <u>moderate adverse</u> significance. In this instance <u>slight adverse</u> 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.</p>	
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		<p>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 <u>minor adverse</u>. 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 <u>slight or moderate adverse</u> significance. In this instance <u>slight adverse</u> 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.</p> <p>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.</p>	
	<p>Historic England</p>	<p>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.</p> <p>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 Ha I 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.</p> <p>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</p>	<p>The Applicant agrees with the assessment made by Historic England.</p>

			<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	
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			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.	
		SSC	SSC has reviewed the Technical Note 8.22 (TN) 'Assessment of Alternative Locations for mitigation in plot 5/2' (TR020054) submitted by Highways England at Deadline 5 and representations made by Allow Ltd on this TN. The Council Conservation Officer has been consulted on the TN/representations from Allow Ltd, with the latter published on the website on 21 January 2021. However, due to time constraints, the SSC Conservation Officer has been unable to provide a response by Deadline 6 (this is a shared service with the Officer concerned only working 1 day a week (Tuesdays) for SSC). SSC therefore respectfully requests whether its comments on these documents can be submitted after Deadline 6. Would the 24 February be acceptable to the Examining Inspectors? This would allow for the Conservation Officer to respond/account for officer leave commitments over half-term.	The Applicant notes that the Conservation Officer's view was submitted at Deadline 6 and supports the Applicant's assessment. The SSC Conservation Officer agrees with Historic England and the Applicant that moving the woodland to the east of the carriageway would have a greater impact on the parkland and listed buildings within it than the currently proposed option. The agreed position between SSC and the Applicant on this topic is presented on page 24 of the Statement of Common Ground with SSC submitted at Deadline 7.
3.7 Landscape and Visual				
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?	The Applicant	N/A this question wasn't directed to the Applicant.	N/A
		Allow Ltd	<p>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.</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>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</p>	The Applicant is proposing to reinstate a welded mesh fence along Dark Lane as a direct replacement of the green metal fence in order to prevent access and deter fly tipping.

			<p>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.</p> <p>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).</p> <p>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.</p>	
		SSC	Please see the attached spreadsheets which identify incidences of fly tipping on Dark Lane over the period April – December 2020. If the Examining Inspectors require, the Council can also provide records of such activity for the first 2 months of 2021.	Noted.
3.7.2	<p>Dark Lane Fence</p> <p>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.</p> <p>(a) Could it be clarified whether the hedgerow or fence is to be on the highway side?</p> <p>(b) If it is the fence, could it please be explained why this is appropriate given the effect on the landscape?</p> <p>(c) Could SSC and SCC give their comments on the appropriateness of this design approach?</p>	The Applicant	<p>(a) Feedback from the landowner, SCC and Parish Council's indicates differing views on this and further discussion is needed to confirm this. The Applicant does not have a strong view.</p> <p>(b) The existing fence is opaque and presents a visual screen to views from Dark Lane. The proposed fence is to be a weld mesh type fence (or similar) which will allow visibility to the landscape beyond. If the fence is to be provided on the highway side of the hedgerow it would still be considered to improve views.</p> <p>(c) N/A</p> <p>Discussions on the boundary treatments along Dark Lane have progressed significantly with all parties. It has been agreed with Allow Ltd that the land where the Dark Lane fence is located will no longer be acquired permanently. Instead, the Applicant will take temporary possession of the land in order to carry out the works to provide the new boundary treatment. The Land Plans, Book of Reference and Statement of Reasons have been updated to reflect this and they will be submitted at Deadline 6. It is also the Applicant's understanding that the fence type has been agreed with Allow Ltd and the Parish Councils, with the proposed solution being the one appended to the Parish Council SoCG.</p>	<p>The position on this has moved on since this response was written and a solution agreed between the Applicant, Allow Ltd, SSC, SSC and the Parish Councils. Agreements are reported in the relevant SoCG submitted at Deadline 7 for the latter three parties.</p> <p>The answers to the questions now would be as follows:</p> <p>a) The hedgerow will be behind the fence, with the fence on the highway side.</p> <p>b) The Applicant has agreed to place the hedge behind the fence because:</p> <ol style="list-style-type: none"> In places the existing fence is very close to the highway with mature trees behind it. To plant a hedge in front of the fence at those locations would require felling of vegetation as the fence would then need to move further from the highway. Allow Ltd and SCC would prefer for maintenance purposes that the hedge is on Allow Ltd's land and the fence alongside the highway. Given that the fence is green and not unattractive, and the hedge would still screen views where required there is not considered to be a significant difference in landscape or ecology terms locating the hedge behind the fence. All parties agreed to this approach and the Applicant is keen to work with parties to mutually agreeable solutions where possible. <p>c) N/A</p>
		Allow Ltd	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.	The Applicant is proposing that a combination of hedge and fence is provided along the boundary of Plot 4/20c adjacent to Dark Lane to replace the existing fence. A 1.8m high green metal welded mesh panel style security fence is proposed to provide a suitable equivalent security boundary, with a hedge to be planted on the landowner's side of the fence (with stockproof fence).

			<p>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.</p> <p>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.</p>	
		SSC	<p>SSC understands that the hedgerow would be on the highway side, with a rigid mesh fence (colour green) of a similar height to the existing fence to be installed. Discussions appear to be ongoing between the applicant and the Parish Council regarding the cost of the future maintenance of the hedge.</p> <p>SSC consider that the new fence should be erected behind a new native hedgerow to ensure that this feature respects the character and appearance of the countryside and represents a design enhancement over the existing fence. It is also noted that this approach may not be possible to the east of the last property along Dark Lane due to restricted space in this area. SSC considers that alternative options should be considered here i.e. could a hedgerow be planted directly behind this section of fence which grows through the fence to soften its impact or additional planting added between existing trees?</p>	SSC's stance has evolved from that reported here, see pages 26-27 of the SoCG with SSC.
		SCC	c) In relation to matters of design of the fence we will defer to SSC. Our only comment would be in relation to the maintenance of the hedge and fence, which should be the responsibility of the landowner or HE.	Noted. Given that Dark Lane is not a Highways England road and the landowner could not maintain a hedge in front of the fence without doing so from SCC's highway, SCC's stance on this has influenced decision making on this issue.
3.7.3	<p>Landscaping between Dark Lane and Featherstone roundabouts</p> <p>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.</p> <p>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?</p>	The Applicant	<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 worsening visual impacts, for views south of Dark Lane, VP 20 in Chapter 7: Landscape and Visual of the ES [APP-046/6.1]. 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 is of the view that the planting proposed is the minimum necessary to mitigate the impacts of the Scheme (see SCC SoCG [TR010054/APP/8.8LA(A)]).</p>	N/A
		Allow Ltd	<p>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.</p>	The Applicant has always maintained that the woodland planting on Plot 4/20c is required primarily for visual screening, although it does provide additional secondary functions for biodiversity. This planting has not been located specifically for the benefit of bat species, however its presence once established will provide additional habitat and connectivity.

			<p>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.</p> <p>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.</p>	Relocation of the woodland planting to the east of the Scheme would result in increased impacts upon heritage assets and prevent this mitigation from providing its primary purpose, to screen views of the Scheme from local residents.
3.10 Traffic & Transport				
3.10.2	<p>Junction of Cannock Road/The Avenue</p> <p>The ExA notes that the proposal is to leave the priorities as at present, that is with the main carriageway along Cannock Road. However, only a very small proportion of traffic would use this route as it would only to serve 10 properties. It is indicated that this the main flow from traffic between Cannock Road and The Avenue will be advised by traffic signs, which must add to visual clutter.</p> <p>Could the Applicant and SCC please relook at this junction with a view to rearranging it so that the main flow is between Cannock Road and The Avenue.</p>	The Applicant	<p>At this location the existing priority arrangement has been proposed to be retained due to the limited space available within the existing highways boundary to change the priority. Given the small peak hour traffic flows forecast on The Avenue, the capacity of the existing priority-controlled junction arrangement is not expected to be an issue. A Design Manual for Roads and Bridges compliant alignment between Cannock Road and The Avenue would require a minimum radius of 64m which would require the compulsory purchase of the Methodist church and the frontage of a number of properties to deliver and therefore this option was discounted. The Manual for Streets Guidance allows the provision of much tighter corner radius on the basis that it will encourage lower vehicle speeds. This guidance is generally used on new residential development areas where low vehicle speeds are expected. An alignment that would accommodate 20mph vehicle speeds could be achieved within the existing Highways boundary. Both alignments are indicated on the drawing in Appendix WQ 3.10.2. This was discussed with SCC on 12 February 2021. SCC agree with the principle and details will be agreed as part of further discussions.</p>	N/A
		SCC	<p>We have discussed the form of this junction with the applicant in relation to a T-junction and mini roundabout. We will happily revisit in light of the comments from the ExA to consider a change in priority.</p>	<p>A Design Manual for Roads and Bridges compliant alignment between Cannock Road and The Avenue would require a minimum radius of 64m which would require the compulsory purchase of the Methodist church and the frontage of a number of properties to deliver. Therefore, this option was discounted. The Manual for Streets guidance allows the provision of much tighter corner radius on the basis that it will encourage lower vehicle speeds. This guidance is generally used on new residential development areas where low vehicle speeds are expected. An alignment that would accommodate 20mph vehicle speeds could be achieved within the existing highway boundary. This was discussed with SCC on 12 February 2021. SCC agreed with the principle. The parties agreed that the plans would be amended to reflect this new design, with new plans submitted by the Applicant at Deadline 7. This agreement is recorded on pages 39-40 of the signed SCC SoCG submitted at Deadline 7.</p>

3.10.3	Tie in with existing A460 The draft SoCG between the Applicant and SCC [REP4-026] notes discussions between the parties in relation to the land between the proposed carriageway and adjacent properties that need to be considered. Could the parties please set out the latest position.	The Applicant	A revised proposal for the land between the proposed carriageway and adjacent properties in the vicinity of the existing Cannock Road has been provided to SCC. This was discussed with SCC on 12 February 2021 and discussions are ongoing to seek to resolve this.	The SCC SoCG records the final agreed position on this issue on page 42. The plans have been amended at Deadline 7 to reflect minor amendments to the tie-in to address SCC's comments.
		SCC	Same question as 3.10.7	N/A
3.10.4	Speed Limit on Hilton Lane The draft SoCG between the Applicant and SCC [REP4-026] notes discussions between the parties over the appropriate speed limit for Hilton Lane. Could the parties please set out the latest position.	The Applicant SCC	As part of the Scheme it is proposed to reduce the speed limit along Hilton Lane within the order limits to 30mph up to the junction with Cannock Road. SCC agrees with this approach but has requested that the speed limit is stepped down from national speed limit to 30mph with a 'buffer zone' of 40mph carriageway to encourage compliance. This 'buffer zone' would need to be in advance of the proposed 30mph for a minimum length of 600m therefore would fall outside of the Order limits to the east along Hilton Lane. Discussions are ongoing with SCC as to the proposed length of reduction and how this could be delivered as part of the DCO.	N/A
		SCC	We have a general agreement in principle but are working through the detail of how the incremental drop in speed from 60mph to 30mph will be delivered.	The Applicant and SCC have agreed that a buffer zone 40mph speed limit would be beneficial to the east of the Order limits along Hilton Lane. The Applicant proposes to seek to implement this change through a change to the draft DCO and Traffic Regulation Measures Plans submitted at Deadline 7 to amend the TRO/ introduce a new TRO for the affected section of the Order limits. It has been agreed that any signage required outside the Order limits will be implemented by SCC, with reasonable costs reimbursed by the Applicant. The agreement between SCC and the Applicant on the resolution of this issue is recorded on pages 41-42 of the SCC SoCG submitted at Deadline 7.
3.10.5	Signage on SCC network The draft SoCG between the Applicant and SCC [REP4-026] notes SCC has confirmed that they are content to amend signs on their own network using their existing powers, where this is necessary following construction of the Scheme. SCC has suggested this should be subject to funding from the Applicant. (a) If the Applicant does not consider this appropriate, can the Applicant explain why this should not be the case, given that the need for this would be caused by the Proposed Development? (b) If the Applicant accepts this, could relevant provision be made in the dDCO or other certified document for this, or could it be explained how this funding is to be provided?	The Applicant SCC	(a) The Applicant agrees that the request to update signs to reflect the amended road network signage is reasonable, provided that the scope and extent of such signage is clearly defined and agreed. Upon reviewing the existing signage, it is considered that the following signs would need to be updated: <ul style="list-style-type: none"> All directions signs in the vicinity of M54 Junction 1 and M6 Junction 11. These will be replaced/amended as part of the Scheme, therefore no changes to provisions would be required. Signs on the existing A460 between M54 Junction 1 and M6 Junction 11. These will require minor amendments to reflect the new road status and will be replaced/ amended as required as part of the Scheme, therefore no changes to provisions would be required. One directional sign on New Road, Featherstone, that requires the text 'A460' removing. This sign is located outside of the Order Limits and the Applicant does not intend to change any part of the current DCO application to facilitate such works. (b) The Applicant and SCC are in discussions regarding this matter and how it might be secured. The Applicant has expressed a willingness to enter into a suitable form of agreement with SCC to allow for funding to be provided. SCC agrees with the principle of this approach.	N/A

		SCC	We are content to utilise our existing powers to amend any signage on the local highway network. It will be for the applicant to determine which signs need changing and fund in full the cost of the new signs and their installation.	The Applicant welcomes SCC's comments. The final agreed position on signage between the two highway authorities is recorded on page 43 of the SCC SoCG.
3.10.7	<p>Maintenance Plans</p> <p>In its response at D4 SCC [REP4-042] in response to ExQ2.10.10 indicated that there are issues in the vicinity of works 6 and 7 both over private accesses, the extent of the public highway after the development and an embankment.</p> <p>The Applicant and SCC are asked to provide a detailed analysis of the issues and their preference methods of resolution.</p>	The Applicant	<p>It is the Applicant's understanding that SCC is referring to works 18 & 19 rather than works 6 & 7. This is the same area referred to as the Tie in with existing A460 in WQ 3.10.3, see answer to that question.</p> <p>The alternative layout currently proposed removes the requirement for 'long' private accesses and proposes to retain the existing highway boundary to the west of the existing A460. There is no embankment proposed at this location. Further details will be submitted to the Examining Authority once these are agreed with SCC.</p>	N/A
		SCC	<p>We have been supplied with a new design for the tie in with the existing A460 and the applicant has only recently indicated that they would like the local highway authority to take responsibility for the area bounded by the new alignment of the A460 and its original. We are currently reviewing the proposal and will consider with pragmatism. However, the proposed retention of the existing A460 alignment in its entirety in this location as adopted highway results in scenarios whereby unnecessary additional road space and verge is created. This will need to be maintained at taxpayer expense. Our preference for the original option would be for the old alignment of the A460 to be stopped up; the services/utilities diverted into the new alignment; and the additional land left over between the new A460 and the existing properties offered to those frontages as additional garden space or forecourt in the case of the petrol station.</p> <p>If we are to consider a situation whereby there is an increase in adopted highway it will need to be accompanied by an appropriate commuted maintenance sum. Discussions are continuing with the applicant.</p>	<p>A revised proposal for the land between the proposed carriageway and adjacent properties in the vicinity of the existing Cannock Road has been provided to SCC. This layout was agreed in principle at the meeting on 10 March 2021 subject to commuted sums for maintenance of the additional area. The Applicant and SCC have agreed that the plans will be amended to reflect this new design, with new plans submitted by the Applicant at Deadline 7.</p> <p>The maintenance plan between the two parties has been updated, with the latest version provided in Appendix B of the SCC SoCG.</p>
3.11 Water Environment and Flood Risk				
3.11.1	<p>Proposed Pond to southwest of Junction 11 of M6</p> <p>The draft SoCG between the Applicant and SCC indicates that the attenuation pond close to Junction 11 of the M6 (Work 60) is proposed to be split to serve the maintenance authorities. The ExA notes that this is described in the dDCO as "a balancing pond" in the singular.</p> <p>(a) Could the parties explain why this is necessary, other than convenience for maintenance purposes?</p> <p>(b) If formally proposed, could the Applicant undertake a full assessment of this, dealing with the effects in landscape, biodiversity and water environment terms?</p>	The Applicant	<p>(a) In discussions relating to maintenance of highway assets between the Applicant and SCC, an issue was raised with the balancing pond identified (Work 60), as it is proposed to receive surface water runoff from a portion of the new link road (strategic road network) and part of the realigned existing A460 (local road network). Sharing maintenance responsibility for the maintenance of highway assets is undesirable as it does not provide certainty on how the respective bodies share such duties. Further if a spillage were to occur on the highway draining to this pond, both parties would potentially be responsible for any pollution incidents, which has the potential to cause dispute.</p> <p>An interim solution of splitting the pond into two separate ponds (each to be maintained by the authority that maintains the highway draining to it) was discussed between the Applicant and SCC. However, a more practical and manageable solution has been identified which involves:</p> <ul style="list-style-type: none"> The Applicant retaining maintenance responsibility of the entire pond and outfall 	N/A

	<p>(c) If necessary, all appropriate drawings, reports and other matters will need to be updated to take account of any changes?</p> <p>(d) The Applicant should also set out how this is to be examined within the Examination Timetable?</p> <p>(e) Both SCC as Local Lead Flood Authority and the Environment Agency are asked for their comments on the effectiveness and efficiency to there being two waterbodies rather than one with respect to their areas of concern.</p>		<ul style="list-style-type: none"> • SCC maintaining all drainage pipes up to the highway boundary, with a pollution control device at the extent of SCC's network to collect any spillages <p>The details of such an arrangement are to be discussed between the Applicant and SCC, however it is not anticipated that any changes would be required to the application documentation as this option would involve creation of one pond as shown on the plans.</p> <p>(b) N/A (c) N/A (d) N/A (e) N/A</p>	
		Environment Agency	The Environment Agency has no preference for one attenuation pond or two, as long as it is ensured that the SuDS systems are effective at pollutant removal, and maximise opportunities for marginal wetland habitat creation.	The Applicant confirms that it is no longer proposed to split the attenuation pond. Any changes to the design during the detailed design phase will be assessed to ensure that they would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement, in accordance with Requirement 3 of the draft DCO [REP6-006].
		SCC	(a) The splitting of pond is acceptable in principle to clarify maintenance responsibilities. However, this is not reflected in the drainage strategy submitted. Splitting the pond may require additional area to provide the required attenuation volume. As such if this approach is to be followed the Drainage strategy should be updated to reflect changes, including discharge rates, volumes and levels for split ponds.	The Applicant confirms that it is no longer proposed to split the attenuation pond.
3.12 Socio-economic effects				
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?	The Applicant	N/A – this question was not directed to the Applicant.	N/A
		Allow Ltd	<p>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.</p> <p>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.</p>	<p>As set out in the Applicant Responses to Further Written Question Responses from Interested Parties and Other Deadline 4 Representations [REP5-004/8.24] it is not appropriate to assess the impact of potential future business proposals that may or may not be taken forwards.</p> <p>The assessment of impacts on Allow Ltd's farm holding (Farm Holding 9) reported in Chapter 12: Population and Human Health [APP-051/6.1] of the ES does not report a minor impact on the agricultural holding. The temporary and permanent impacts on Farm Holding 9 are acknowledged and assessed as resulting in a moderate adverse impact resulting in moderate adverse effect, which is significant.</p>

		<p>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.</p> <p>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.</p>	
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2 Responses to Representations Made at Deadline 6

Table 2-1 Responses to Representations Made at Deadline 6

Representor	Topic	Representation	Applicant's Response
Messrs Simkin, Whitehouse and Jones	Access for surveys to client's land	<p>We represent Messrs Simkin, Whitehouse and Jones in this matter and I am writing in response to your recent letter concerning all three of our clients <i>"Notification of decisions to postpone Site Inspection and associated variations of timetable for the Examination."</i></p> <p>I understand the deadline for responses to this letter was 27th January 2021, so apologies this response has arrived late, I hope it can be accepted.</p> <p>We appreciate your comments that you are mindful of guidance which seeks to reduce movement and to avoid meeting for work where possible, particularly during this period of uncertainty and in the midst of a global pandemic. I am not sure you are aware but Highways England have proposed a series of extensive intrusive/non intrusive surveys over the next 12 months on all our clients land.</p> <p>Of particular concern are the Archaeological trial trenching which are due to commence on Messrs Simkins land next week. These surveys include:</p> <ul style="list-style-type: none"> -Bat surveys - Badger surveys - Otter surveys - Barn Owl surveys - Great Crested Newt surveys - Archaeological trial trenching - Ground Investigation - Water Quality / Gas monitoring surveys - Ground water monitoring - Topographical surveys - Watercourse surveys - Bathymetry surveys - Arboricultural surveys - Water environment and water quality monitoring surveys - Drainage surveys - Pavement surveys - Dust monitoring (tbc) - Utilities surveys <p>I would point out that the archaeological trial trenching surveys are of the most concern to our clients – especially in the case of Messrs Simkin who are having 40 trenches dug across their land – each trench is up to 50m x 2m. These works also involve a number of personnel and mechanical diggers crossing land to dig the trenches.</p> <p>Highways England wrote to our clients concerning these surveys in November 2020 – I spoke to Messrs Simkin and I responded to Highways England to advise our clients did not wish the surveys to go ahead for the below reasons;</p> <p>1) They are both in opposition to the scheme and have raised objections to the Planning Inspectorate</p>	<p>Justification for each survey required on the land was provided to this landowner in a 'Schedule of Surveys required by Highways England'.</p> <p>Surveys which have been undertaken during the Covid19 pandemic have complied with Government rules and working guidelines.</p>
			<p>The Applicant notes that the landowner is in opposition to the Scheme and has engaged with the landowner through the SoCG in order to address any concerns raised.</p> <p>The Applicant has more recently responded to the landowner within the SoCG submitted at Deadline 6 and advised that a telephone call and email exchange took place with the landowners' agent and a mutually agreeable meeting date was arranged due to Covid19 Government rules and guidelines on</p>

Representor	Topic	Representation	Applicant's Response
		<p>2) They are disappointed that recent meetings with Highways England have been rearranged or changed to online meetings at short notice – Paul Simkin had a personal appointment for the 8th October that he had to cancel and then was subsequently advised at short notice that the meeting had moved online.</p> <p>3) They do not agree with many of the comments in the SOCG and feel there is much that will not be resolved. Generally they feel unhappy with the approach Highways England have taken as they feel that landowner engagement has been poor and their views have been overlooked – in short they are not willing to co-operate with Highways England at this moment in time.</p> <p>4) These surveys are based on the assumption that the order is granted and are in relation to further works – as our clients are in objection to the scheme they would prefer to see the outcome of the Planning Inspectorates decision before considering allowing further surveys on their land.</p> <p>At the time of writing my response, the pandemic had not entered its second wave, however had I known that we would be in lockdown at the time the surveys were due to commence, I would have certainly added this to the above list.</p> <p>As a response, Highways England issued the attached Section 174 letter to our clients, sent 23rd December 2020 – Messrs Simkin are in their 60's and are very concerned about the scheme in general, the impact on their land and the Covid 19 pandemic, therefore to issue a letter such as this, just in time for Christmas seems particularly insensitive on Highways England's part.</p> <p>As most people in our firm were off for the holidays I was not able to address this matter until week commencing 4th January 2021 at which point Highways England's agent contacted me to try and seek a licence by agreement, however to quote part of an email from the agent "I will prepare a Licence pack for Messrs Simkin and revert back to you ASAP, however, I must stress, Highways England will rely upon their Statutory Powers, should land access not be agreed."</p> <p>Therefore having been given Hobsons Choice by Highways England our clients have reluctantly agreed for us to sign licences on their behalf so the surveys can take place, which we have now done.</p> <p>It seems that Highways England are happy to apply pressure and bullying tactics when they want something from our clients, however are very slow to respond and uncommunicative on other matters – for example I sent responses on the latest versions of the Statements of Common Ground for all our clients on the 10th December 2020 and have not yet received a response to the points raised in the letters, other than acknowledgement of receipt.</p> <p>Finally to summarise, in light of the above comments our client has no objection to you accessing their land whenever you see fit, as this access poses an insignificant risk in comparison to the extensive surveys and activities that Highways England will be carrying out on our clients land over the next 12 months.</p>	<p>face-to-face meetings. It was not mentioned that the meeting date would not be suitable for the land agent's client until 09/11/20, four weeks after the meeting took place. This is regrettable as the Applicant would have been very happy to change the date to a more suitable date.</p> <p>The Applicant has offered to meet with the landowner since the submission of the draft SoCG for Deadline 6. The Applicant was advised that the land agent needs to review the document before arranging a meeting date to discuss the SoCG contents.</p> <p>In response to the land agent's concern for the need for ecology surveys during examination, the Applicant advised the land agent on 22/11/20 that "Ecology surveys are required to be undertaken on the land in your client's ownership proposed to be acquired for the scheme as part of ongoing data gathering to inform the European Protected Species Licence applications to Natural England. These licences will allow disturbance of species during the construction stage. No further data is required to inform the DCO submission".</p> <p>Surveys that have been undertaken during the pandemic of Covid19 have complied with Government rules and working guidelines.</p> <p>Due to the importance of the proposed surveys, the Applicant advised the land agent of the intention to utilise statutory powers in a letter dated 17/09/20 should land access not be via voluntary agreement. The Applicant continued to try and reach agreement with the land agent in the following months as evidenced in several letters and emails within the SoCG, however, upon refusal on 07/12/20 the Applicant proceeded to take steps to utilise their statutory powers. The Applicant regrets the need to serve notice over the Christmas period but had no alternative due to the particular circumstances and timescales involved.</p> <p>In response to the land agent's email on 07/01/21 advising that their client now may wish to enter into an agreement for the surveys to take place, the Applicant prepared a licence pack to the land agent and stated that due to the surveys starting imminently, agreement would need to be reached within 7 days, otherwise the Applicant would rely on their statutory powers.</p> <p>The Applicant strongly denies that it has applied undue pressure or bullied the landowner and is disappointed that the land agent would suggest it given the active ongoing dialogue between the parties. The Applicant has tried to reach voluntary agreement with the landowner throughout the Scheme and is committed to resolving issues raised by the landowner and recorded within the SoCG.</p> <p>Due to the lateness of responses received and the number of further points raised by the landowners' agent, the Applicant responded and updated the SoCG at Deadline 6. The Applicant has invited the landowner and agent to meet and discuss and are awaiting a meeting date from the land agent. Full details of the Applicant's engagement is shown within the Record of Engagement within the SoCG.</p>
SSC	Technical Note 8.22(TN) 'Assessment of Alternative Locations for mitigation in plot 5/2'	The SSC Conservation Officer confirms that whilst he is aware of the site and the location of the features, he has not visited during this process (mainly due to lockdown restrictions and minimised travelling). Nor has the SSC Conservation Officer seen any notes from Historic England following on from the site visit. Having looked at the four options in the document "8.22 Assessment of Alternative Locations for Mitigation in Plot 5/2" the SSC Conservation Officer would agree that option 1 would have the minimum impact upon the setting of the Grade I listed hall and the landscaped grounds allowing the individual trees to not be absorbed and retaining the backdrop of the woodland character as was originally established in the landscape.	Refer to REP4-038 and REP6-044 for Historic England's response to the site visit and the Assessment of Alternative Locations for Mitigation in Plot 5/2, document 8.22 [REP4-036].

3 Applicant's response to Examining Authority's Schedule of Recommended Amendments to the Applicant's draft Development Consent Order submitted at Deadline 6

Table 3-1: Applicant's response to the Examining Authority's schedule of recommended amendments.

Provision	Change	Reasoning	Applicant's Response
Article 2(1) – between definitions of “the 1990 Act” and “the 1991 Act”.	Remove extra line.	Typographic.	This change has been made.
Article 2(1) – definition of “CEMP”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This change has been made.
Article 2(1) – definition of “hedgerow and protected trees plan”	Delete.	Now redundant as retitled.	This change has been made.
Article 2(1) – definition of “HEMP”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This change has been made.
Article 2(1) – definition of “lead local flood authority”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This change has been made.
Article 2(1) – definition of “Natural England”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This change has been made.
Article 2(1) – definition of “OEMP”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This change has been made.
Article 2(1) – definition of “relevant planning authority”	Delete.	Use only occurs in Schedule 2 and should therefore be defined there.	This definition is also used in Article 6 and has been left as a defined term in Article 2(1)
Article 2(1) – after definition of “traffic authority”	Insert ““tree preservation order/impact removal plans” means the drawings reference in Schedule 10 (documents to be certified) and certified as the tree preservation order/impact removal plans by the Secretary of State.”	To accord with the terminology in Schedule 10. Note: These drawings need to be separately submitted, since they currently form part of Appendix 7.1 to the Environmental Statement [AS-100/AS-101].	This change has been made and the drawings have been submitted separately as part of the Applicant's submission at Deadline 7. The reference at Schedule 8 Part 2 has also been updated.
Article 2(1) – definition of “traffic officer”	Delete.	Use only occurs in Article 15 and should therefore be defined in that Article.	This change has been made.
Article 2(1) – definition of “the tribunal”	Delete.	Use only occurs in Article 42 and should be used in full there.	This change has been made.
Article 2(1) – definition of “trunk road”	Restart list at (a).	Typographic.	This change has been made.
Article 6(b)(i)	Replace the text as follows: “(i) in respect of the construction of any noise barrier, a maximum of 1 metre upwards or downwards, providing that the effective difference in vertical levels between the carriageway and top of the noise barrier is maintained to at least that identified in the Environmental Statement”	To ensure that the noise barrier is effective for its purpose.	The commitment to deliver the noise barriers is secured in the OEMP and will be the subject of further detailed design which requires the approval of the Secretary of State pursuant to requirement 4 of the draft DCO. The heights of noise barriers identified in the Environmental Statement are given as approximate and are not measured from the carriageway. The suggested text has consequently not been included because the commitment to deliver the noise barriers is already appropriately secured, the Secretary of State retains the ability to approve the final design details and the wording as suggested may unintentionally severely restrict the flexibility of the Applicant to design the noise barriers in an optimal way to achieve their intended purpose of noise reduction whilst limiting their impact.
Article 13(6) – between “development” and “after”	Insert a comma, “,”.	Typographic.	This change has been made.
Article 15	After paragraph (4) insert: “(5) In this article “traffic officer” means an individual authorised to carry out assigned duties connected with, or intended to facilitate or to be conducive or incidental to the management of traffic on the relevant road network, or a person authorised by the Secretary of State in accordance with section 2 of the 2004 Act;”	As this is the only Article in which this definition is used.	This change has been made.
Article 25(5)(b)	Replace the text as follows: “(b) after paragraph 29, insert a new paragraph: “PART 4	To comply with conventional layout provisions.	This change has been made.

Provision	Change	Reasoning	Applicant's Response
	<p>INTERPRETATION 30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the M54 to M6 Link Road Development Consent Order 20[].”</p>		
Article 26(7)	<p>1. In second line replace “Lan” with “Land”. 2. After provision remove extra line.</p>	Typographic.	These changes have been made.
Article 40(4)	<p>Replace the text with: “(4) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public: (a) a copy of each of the documents listed in Schedule 10 (documents to be certified) as may be amended in accordance with paragraph (2); and (b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (Requirements) that provide for further approvals to be given by the Secretary of State. (5) The register pursuant to subparagraph (4)(b) must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details. (6) The electronic record set out in paragraph (4) must be maintained by the undertaker for a period of 3 years following completion of the authorised development.”</p>	To make it clear how the copies and details are to be made publicly available and to ensure all relevant documents, that are certified documents and submissions and approvals of Requirements, are kept in a single accessible location.	This change has been made.
Article 42	Replace “the tribunal” with “the Lands Chamber of the Upper Tribunal”.	As this term is only used once in this Article.	This change has been made.
Schedule 2, Part 1, Requirement 1.	<p>Insert in the relevant places: ““bank or public holiday” means Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971([x]).” [x] is 1971 c. 80. ““CEMP” means the construction environmental management plan;” ““HEMP” means the handover environmental management plan;” ““lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;” ““Natural England” means the body created by the National Environment and Rural Communities Act 2006 or any successor in function to it;” ““the OEMP” means the outline environmental management plan submitted with the application for this Order and certified as the OEMP by the Secretary of State for the purposes of this Order;”</p>	As the term “bank or public holiday” is used twice (in Requirements 2 and, as recommended, in Requirement 14(4)) and should be defined. As the remaining definitions are only used in the Requirements.	These changes have been made save that the definition of “relevant planning authority” remains in Article 2(1) because of its use in Article 6 as explained above.

Provision	Change	Reasoning	Applicant's Response
	““relevant planning authority” means the planning authority for the area to which the provision relates;”		
Schedule 2, Part 1, Requirement 1 – the definition of “the Manual of Contract Documents for Highway Works”	Delete.	This definition is not used in this Schedule.	This change has been made.
Schedule 2, Part 1, Requirement 9(4)	Second line replace “reported” with “reported by way of notice”.	To ensure consistency with Requirement 9(5) which refers to a “notice”.	This change has been made.
Schedule 2, Part 1, Requirement 10	Delete Requirement and renumber requirements thereafter.	This appears to be a duplicate of Requirement 2(d)(xiv).	This change has been made.
Schedule 2, Part 1, Requirement 13	1. In sub-paragraph (2) replace “subparagraph (3)” with “subparagraphs (3) and (4)”. 2. Insert new sub-paragraph (3) as follows: “(3) Where the Secretary of State requests further information pursuant to paragraph 14, and no further information has been submitted eight weeks from the day immediately following that on which the application was received by the Secretary of State, the application is taken to have been refused by the Secretary of State.” 3. Renumber sub-paragraph (3) as (4).	To ensure that where the Secretary of State requests further information and no such information is submitted that the previously submitted information is not approved by default.	This change has been made with additional wording to clarify that the deemed refusal may relate to such part of an application as the Secretary of State has specified as requiring additional information in accordance with requirement 13(2).
Schedule 2, Part 2, Requirement 14(3)	1. Replace “separate” with “separate application”. 2. Add at end: “(4) In this paragraph, “business day” means a day other than Saturday, Sunday or bank or public holiday.”	1. To ensure clarity that any element where further information is requested is to be dealt with as an independent matter. 2. To ensure that this term is appropriately defined.	These changes have been made.
Schedule 2, Part 2, Requirement 15	Delete Requirement and renumber requirement thereafter.	As this should now be covered in Article 40.	This change has been made.
Schedules 2 to 5, 7 and 8	Ensure all tables are of same overall width and that there are no ‘orphan’ headings.	Typographic.	The formatting of the tables in the schedules will be corrected in the final version of the draft DCO submitted at Deadline 8.
Schedule 3, Part 6	Insert extra row as Reference (1) below. If necessary, appropriate changes should also be made to Work provisions in Schedule 1, and cartographic changes to sheet 4 of the streets, rights of way and access plans, and any other necessary document.	To enhance pedestrian and cyclist links between north and south of M54 junction 1. This should run as per option E2 as discussed in the Applicant’s response to ExQ3.10.8.	This change has been made. A new work package no. 91 has also been included and sheet 4 of the streets, rights of way and access plans [reference TR010054/APP/2.7] has been updated.
Schedule 9	Please ensure that any protective provisions in favour of South Staffordshire Water (and any other appropriate party) are included for Deadline 8 (7 April 2021)	To ensure provisions included.	The final agreed protective provisions will be inserted at Deadline 8.
Schedule 10	Please ensure this is updated for Deadline 8 (7 April 2021), including deletion of “Crown land plans”	To ensure up-to-date and accurate.	The Schedule will be further updated at Deadline 8.

In addition to the schedule of changes outlined above the Applicant has responded to additional requests from the ExA and these are set out within Table 3-2 below.

Table 3-2: Applicant Responses to Additional ExA Requests

Additional Matters	ExA's Comment	Applicant's Response
1	Could the Applicant please ensure that the agreed fence to be installed along the southern side of Dark Lane is identified, either as a Work in Schedule 1, or within the Environmental Masterplan (master and sheet 3), and any other necessary document amended.	This has been included within Work No.80 in Schedule 1 of the draft DCO.
2	Could the Applicant please ensure that Article 8(4) covers all the necessary statutory undertakers so as to be in accordance with the final Protective Provisions to be set out in Schedule 9.	Article 8(4) has been updated accordingly.
3	In addition, there a significant number (34) of occasions in the draft DCO where there is a double space. These should be checked and generally replaced with a single space.	All double spaces will be deleted from the final version of the draft DCO submitted at Deadline 8.

The Applicant has made a series of additional changes and these are set out in table 3-3 below.

Table 3-3: Additional changes

Provision	Change	Reasoning
New paragraph (8) at Article 11 and new Part 7 at Schedule 3.	Provision has been made to reduce the speed limit along Hilton Lane after the area of proposed realignment from the current national speed limit to 40mph.	SCC requested that the Applicant provide a suitable transition from the proposed 30mph speed limit along the realigned section of Hilton Lane to the national speed limit which would otherwise apply to the remaining part of Hilton Lane. The Applicant has agreed to this request and has updated the draft DCO and the streets, rights of way and access plans [reference TR010054/APP/2.7].