



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

REPORT on the IMPLICATIONS for EUROPEAN SITES

Proposed M3 Junction 9 Improvement

An Examining Authority report prepared with the
support of the Environmental Services Team

Planning Inspectorate Reference: TR010055

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1 INTRODUCTION

1.1 Background

- 1.1.1 National Highways (the Applicant) has applied to the Secretary of State for a development consent order (DCO) under section 37 of the Planning Act 2008 (PA2008) for the proposed M3 Junction 9 Improvement (the application). The Secretary of State has appointed an Examining Authority (ExA) to conduct an Examination of the application, to report its findings and conclusions, and to make a recommendation to the Secretary of State as to the decision to be made on the application.
- 1.1.2 The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive¹ and the Habitats Regulations² for applications submitted under the PA2008 regime. The findings and conclusions on nature conservation issues reported by the ExA will assist the Secretary of State in performing their duties under the Habitats Regulations.
- 1.1.3 This Report on the Implications for European sites (RIES) documents and signposts the information in relation to potential effects to European Sites³ that was provided within the DCO application and submitted throughout the Examination by the Applicant and Interested Parties (IPs), up to Deadline 5 (D5) of the Examination (22 September 2023). It is not a standalone document and should be read in conjunction with the Examination documents referred to. Where document references are presented in square brackets [] in the text of this report, that reference can be found in the Examination library published on the National Infrastructure Planning website at the following link:
[TR010055-000426-M3 Junction 9 Improvement Examination Library.pdf \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/tr010055-000426-m3-junction-9-improvement-examination-library.pdf)
- 1.1.4 This RIES is issued to ensure that IPs including the Appropriate Nature Conservation Body (ANCB) - Natural England (NE), - is consulted formally on Habitats Regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 63(3) of the Habitats Regulations.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive').

² The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

³ For the purposes of this RIES, in line with the Habitats Regulations and relevant Government policy, the term "European sites" includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this RIES also collectively uses the term "European site" for 'European sites' defined in the Habitats Regulations 2017 and 'European Marine Sites' defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. "UK National Site Network" refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

- 1.1.5 It also aims to identify and close any gaps in the ExA's understanding of IPs' positions on Habitats Regulations matters, in relation to all sites and features of interest as far as possible, in order to support a robust and thorough recommendation to the Secretary of State.
- 1.1.6 Following consultation, the responses will be considered by the ExA in making their recommendation to the Secretary of State and made available to the Secretary of State along with this report. The RIES will not be revised following consultation.

1.2 Documents used to inform this RIES

- 1.2.1 The Applicant's Habitats Regulations Assessment (HRA) Report (the HRA Report) comprised the following document(s):
- Habitat Regulations Assessment (HRA) report [APP-158], updated at D4 [REP4-028] and D5 [REP5-021]. All further references in the RIES refer to the D5 version.
- 1.2.2 In addition to the HRA Report, the RIES refers to representations submitted to the Examination by IPs, Issue Specific Hearing (ISH) documents, Statements of Common Ground (SoCG) and other Examination documents as relevant. All documents can be found in the Examination Library.

1.3 RIES questions

- 1.3.1 This RIES contains questions predominantly targeted at the NE which are drafted in *blue, underlined italic text.*
- 1.3.2 The responses to the questions posed within the RIES and comments received on it will be of great value to the ExA in understanding IPs' positions on Habitats Regulations matters. However, it is stressed that responses to other matters discussed in the RIES are equally welcomed.
- 1.3.3 In responding to the questions in Tables 3.1, please refer to the ID number in the first column.
- 1.3.4 Comments on the RIES are timetabled for D7 (3 November 2023).

1.4 HRA Matters Considered During the Examination

- 1.4.1 The Examination to date has focussed on the following matters:
- Air quality impacts

2 LIKELY SIGNIFICANT EFFECTS

2.1 European Sites Considered

Introduction

- 2.1.1 The Proposed Development is not connected with or necessary to the management for nature conservation of any European site.
- 2.1.2 The Applicant scoped sites for consideration by applying the criteria set out in the Design Manual for Roads and Bridges (DMRB) LA 115 (reproduced in Plate 2.2 of the HRA report).

Sites within the UK National Site Network

- 2.1.3 The Applicant's HRA Report [REP4-028] identified 2 No. European sites within the UK National Site Network for inclusion within the assessment. These are listed in paragraph 3.1.2 of the HRA Report and are as detailed in Table 2.1 below.

Table 2.1: UK National Site Network European sites identified in the Applicant's HRA Report [REP4-028]

Name of European Site	Distance from Proposed Development (km)
River Itchen Special Area of Conservation (SAC)	0km
Mottisfont Bats SAC	16km

- 2.1.4 The locations of these sites relative to the Proposed Development are depicted on Figures 8.1 to 8.3 of the HRA Report [REP4-028].
- 2.1.5 No additional UK European sites have been identified by IPs for inclusion within the assessment in the Examination to date.
- 2.1.6 NE agreed [REP2-048] with the scope of the Applicant's HRA and that the relevant European sites that could be affected by the project had been identified by the Applicant.

2.2 Potential impact pathways

- 2.2.1 Tables 3.1 and 3.2 of the HRA Report [REP4-028] detailed the potential impacts from the Proposed Development, along with the potential geographical extent of effects. The potential impact pathways assessed by the Applicant included:
- changes in water quality;
 - changes to hydraulic / hydrological conditions;
 - other habitat degradation (including physical modification of habitat, spreading invasive species, increase in air-borne pollutants,

increased shading of the River Itchen, inappropriate habitat management);

- species disturbance; and
- mortality of white-clawed crayfish.

2.2.2 The HRA Report assessed the potential impacts during construction and operation and maintenance; it did not assess impacts during the decommissioning phase. The Environmental Statement - Chapter 2: The Scheme and its Surroundings [APP-043] explains that it is considered very unlikely that the Scheme would be decommissioned as the road is likely to have become an integral part of the national infrastructure in the area and decommissioning would not be either feasible or desirable.

2.2.3 Table A1 in Annex 1 of this RIES details the potential impact pathways considered in the HRA Report [REP4-028] by European site and qualifying features.

2.2.4 No additional impact pathways have been identified by IPs for inclusion within the assessment in the Examination to date.

2.3 In-combination effects

2.3.1 Section 2.5 of the HRA Report [REP4-028] detailed the Applicant's approach to assessing in-combination effects. The projects included in the in-combination assessment were detailed in Appendix I of the HRA Report [REP4-028].

2.3.2 NE [REP2-069][REP5-034] raised concerns with the assessment of air quality in combination with other plans and projects, discussed below in Tables 2.2 and 3.1.

2.4 The Applicant's assessment

2.4.1 The Applicant's conclusions in respect of screening and effects on integrity are presented in Sections 3.3 and 6 of the HRA Report [REP4-028], respectively. They are summarised in the Applicant's screening and integrity matrices in Appendices F, G and H of the HRA Report [REP4-028].

Sites for which the Applicant concluded no Likely Significant Effects (LSE) on all qualifying features

- 2.4.2 The Applicant concluded that the Proposed Development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on all qualifying features of:
- The Mottisfont Bats SAC
- 2.4.3 NE confirmed it agreed with the Applicant's conclusion of no LSEs in respect of the above European site (Appendix J of the HRA Report [REP4-028] and in their SoCG [REP2-069]).

Sites for which the Applicant concluded LSE on some or all qualifying features

- 2.4.4 The Applicant concluded that effects arising from the Proposed Development, either alone or in combination with other projects or plans, cannot be ruled out on one or more of the qualifying features of:
- The River Itchen SAC
- 2.4.5 The qualifying features and LSE pathways screened in by the Applicant are detailed in Table 3.1 of the HRA Report, Appendix F (Screening matrices) [REP4-028] and are identified in Annex 1 Table A1 of this RIES.
- 2.4.6 The Applicant's decision to screen out an impact pathway (changes in air quality) was disputed by NE and questioned by the ExA during Examination. See Section 2.5 of this RIES for further details.

2.5 Examination matters

- 2.5.1 Matters raised in the Examination to date, or for which the ExA seeks clarity, in relation to LSEs screened out by the Applicant are summarised in Table 2.2 below.

Table 2.2: Issues raised in the Examination to date by the ExA and IPs in relation to the Applicant's screening of LSEs (alone and in-combination)

ID	Potential impact pathway	Details of issue	ExA observation/ question
River Itchen SAC			
2.2.1	Impacts to air quality (construction and operation) on qualifying habitat (water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation)	<p>The Applicant screened out this impact pathway in their original HRA report [APP-158]. NE highlighted in response to ExQ1 (Q5.1.22) (which requested NE to confirm whether it was satisfied with the conclusions of the HRA report) that it had outstanding concerns regarding the assessment of air quality impacts (ES Appendix 8.3 [APP-132]). NE requested:</p> <ul style="list-style-type: none"> • additional assessment of air quality impacts in combination with other projects, particularly beyond the scheme's opening year, and in-combination impacts with other non-road projects; and • further consideration of airborne pollutants including acid deposition. <p>At D4, the Applicant submitted revisions to ES Chapter 5: Air Quality [REP4-009], ES Appendix 5.3 [REP4-018], ES Appendix 8.3 [REP4-020]. The HRA Report was revised at D4 [REP4-028] and D5 [REP5-021] to conclude that there is the potential for LSE to occur on the qualifying habitats of the SAC.</p>	n/a – matter resolved as pathway taken forward to Stage 2 (see Section 3 of this report regarding discussions relating to Adverse Effects on Integrity)

3 ADVERSE EFFECTS ON INTEGRITY

3.1 Conservation Objectives

- 3.1.1 The conservation objectives for the River Itchen SAC are provided in Table 3.1 and Appendix C of the HRA Report [REP4-028], Table C.1: Summary of conservation objectives, threats / pressures and SSSI conditions. Table C.1 does not state whether the European site features are in unfavourable condition, or provide the conservation status of the SAC, however it does provide the condition of the River Itchen Site of Special Scientific Interest (SSSI). Given that the SSSI is predominately in an unfavourable condition this suggests that the SAC is an unfavourable condition as well.

Q (to NE): Can NE confirm the condition of the River Itchen SAC?

3.2 The Applicant's assessment

- 3.2.1 The European sites and qualifying features for which LSE were identified were further assessed by the Applicant to determine if they could be subject to Adverse Effects on Integrity (AEoI) from the Proposed Development, either alone or in combination. The outcomes of the Applicant's assessment of effects on integrity are summarised in Section 4 of the HRA Report [REP4-028].

Mitigation measures

- 3.2.2 The Applicant's HRA Report identified mitigation measures in Section 4 [REP4-028]. These were taken into account in the Applicant's assessment of effects on integrity. For each pathway assessed, the report runs through the measures proposed to mitigate the effects. These can be summarised as comprising:
- Preparation of a First Iteration Environmental Management Plan (fiEMP) [REP5-019] which includes measures to be adhered to when working near watercourses, a temporary (construction) drainage strategy, working methods and timing restrictions in relation to the River Itchen SAC specifically, standard biosecurity measures and species-specific mitigation strategies.
 - Implementation of pollution prevention measures set out in the Appendix 13.1 (Drainage Strategy Report) of the ES [APP-142 to 143].
 - Principles of operational habitat management are provided within Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES [APP-102].
 - Provision of pedestrian fencing located between the new footpath / cycle path and sensitive habitats, to minimise impacts through disturbance to otter.

Sites for which the Applicant concluded no AEOI

- 3.2.3 The Applicant concluded that the Proposed Development would not adversely affect the integrity of the River Itchen SAC and features assessed, either alone or in combination with other projects or plans.
- 3.2.4 The Applicant's conclusions in respect of the River Itchen SAC were largely agreed with by NE, with the exception of the air quality impact pathway. See Section 3.3 of this RIES for further details.

3.3 Examination matters

- 3.3.1 Matters raised in the Examination to date, or for which the ExA seeks clarity, in relation to AEOI are summarised in Table 3.1 below.

Table 3.1: Issues raised in the Examination to date by the ExA and IPs in relation to the Applicant's assessment of effects on integrity (alone and in-combination)

ID	Potential impact pathway	Details of issue	ExA observation/ question
River Itchen SAC			
3.1.1	Various pathways	<p>Many of the mitigation measures relied upon to conclude no AEOI are secured within the fiEMP [APP-156]: Table 3.2 Record of environmental actions and commitments (REAC). The ExA (ExA Q5.1.19 of [PD-008]) requested that the Applicant clarify, for each of the potential effects assessed within Section 4 of the HRA, the specific measures relied upon to conclude no AEOI of the River Itchen SAC (providing specific numbered references in the REAC).</p> <p>This was provided by the Applicant in their response at Deadline 2 [REP2-051].</p>	n/a – matter resolved
3.1.2	Various pathways	<p>The Applicant was requested to explain why NE and the Environment Agency (EA) were not listed as consultees under Requirement 3(1) of the DCO (Q5.1.20 of [PD-008]) (relating to the EMP). The Applicant clarified [REP2-051] that rather than being noted as consultees on the entire fiEMP, NE and the EA are included as consultees on key and relevant matters within the fiEMP and subsequent versions.</p>	n/a – matter resolved
3.1.3	Disturbance effects to otter	<p>The HRA proposes the use of pedestrian fencing to avoid disturbance to otter (paragraph 4.9.3). The Applicant was asked to clarify how this mitigation had been secured (Q5.1.21 of [PD-008]). The Applicant clarified [REP2-051] that the proposed fencing was shown on the General</p>	n/a – matter resolved

		Arrangement Plans (2.5, APP-009), and that further details of the fencing will be provided within the Landscape and Ecological Management Plan (LEMP) to be secured through Requirement 3 of the draft DCO in agreement with statutory consultees.	
3.1.4	Impacts to air quality (construction and operation) on qualifying habitat (water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation), Bullhead, White-clawed crayfish, brook lamprey, Atlantic salmon, and otter	<p>As noted in Table 2.2 above, following comments and discussions with NE, the Applicant submitted revisions to the HRA Report at D4 [REP4-028] and D5 [REP5-021]. The HRA Report (section 4.11) now includes:</p> <ul style="list-style-type: none"> • An assessment of construction impacts from air quality (arising from both dust and plant emissions) on the qualifying habitat of the River Itchen SAC. This concludes that emissions from construction activities will not result in adverse effects to the integrity of the SAC. • An assessment of operational impacts from air quality (nitrogen oxides (NOx) and total nitrogen deposition) on the qualifying features. This concludes that where there are increases in pollutants above screening thresholds, these are minor and so unlikely to result in appreciable changes to qualifying features of the River Itchen SAC (no AEoI). • Consideration of the potential for in-combination impacts from non-road sources. <p>In their response to ExQ2 [REP5-034], NE indicated some remaining areas of disagreement, namely concerns with the in-combination assessment and with the conclusion of no AEoI. However, since this representation was submitted at D4, the Applicant submitted further revisions to the HRA at D5 to address these concerns.</p>	<p><u><i>Q (to NE): Following the Applicant's revised HRA Report submitted at D5 [REP5-021], can NE confirm whether it continues to have concerns with the air quality assessment? NE is requested to explain whether they now agree with the Applicant's conclusions of no AEoI with respect to construction, operation alone and in combination?</i></u></p> <p><u><i>Q (to NE): NE's response to ExQ2 [REP5-034] refers to them having made comments on the Applicant's DL4 submission, but these have not been submitted to the examination. For the sake of completeness, NE is requested to provide the comments referred to in their Deadline 4 response.</i></u></p>

4 CONCLUDING REMARKS

- 4.0.1 This RIES is based on information submitted throughout the Examination by the Applicants and IPs, up to D5 (22 September 2013), in relation to potential effects on European sites. It should be read in conjunction with the Examination documents referred to throughout.
- 4.0.2 The RIES has identified gaps in the ExA's understanding of IPs' positions on Habitats Regulations and comments on the RIES will be of great value to the ExA in order to support a robust and thorough recommendation to the Secretary of State. In particular, the ExA seeks:
- Responses to the questions identified in Section 3 of this RIES;
 - Confirmation whether the ExA's understanding of screening and adverse effects conclusions at point of RIES publication (Table (A.1) in Annex 1) is correct.
- 4.0.3 Comments on the RIES must be submitted for D7 (3 November 2023).

ANNEX 1 EXA'S UNDERSTANDING OF SCREENING AND ADVERSE EFFECTS CONCLUSIONS AT POINT OF RIES PUBLICATION

4.0.4 The tables in this Annex summarise the ExA's understanding of the Applicant's screening exercise and assessment of effects on integrity, and agreement with NE at time of publication of this RIES, for all European sites assessed.

Key to tables:

- Applicant's conclusion:
 - ✓ = LSEs/ AEoI cannot be excluded
 - X** = LSEs/ AEoI can be excluded
- Agreement with ANCB:
 - ✓ = ANCB agrees with conclusion
 - X** = ANCB does not agree with conclusion
- Development phases:
 - C = Construction
 - O = Operation
 - D = Decommissioning

Table A1: ExA's understanding of screening and adverse effects conclusions at point of RIES publication

Site	Feature	Potential impact (C and O unless otherwise stated)	LSE?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴	Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴
Mottisfont Bats SAC	Barbastelle bat (<i>Barbastella barbastellus</i>)	Loss/ Changes to supporting habitats	X	✓	N/A	N/A
River Itchen SAC	Water courses of plain to montane levels with the <i>Ranunculion fluuitantis</i> and <i>Callitricho- Batrachion</i> vegetation	Changes in water quality	✓	✓	X	✓
		Changes to hydraulic conditions				
		Other habitat degradation				
		Disturbance to qualifying habitat (O)	X	✓	N/A	N/A
		Impacts from air quality	✓	✓	X	X

⁴ Applies to impacts from the Proposed Development alone and in combination, unless otherwise stated.

Site	Feature	Potential impact (C and O unless otherwise stated)	LSE?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴	Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴
	Southern damselfly (<i>Coenagrion mercurial</i>)	Species disturbance (O)	X	✓	N/A	N/A
	Bullhead (<i>Cottus gobio</i>) Brook lamprey (<i>Lampetra planeri</i>) Atlantic salmon (<i>Salmo salar</i>)	Changes in water quality	✓	✓	X	✓
		Changes to hydraulic conditions				
		Other habitat degradation				
		Species disturbance (C)				
		Impacts from air quality	✓	✓	X	X
White-clawed (or Atlantic stream) crayfish	Species disturbance (O)	X	✓	N/A	N/A	

Site	Feature	Potential impact (C and O unless otherwise stated)	LSE?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴	Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴
	<i>(Austropotamobius pallipes)</i>	Changes in water quality	✓	✓	X	✓
		Changes to hydraulic conditions				
		Other habitat degradation				
		Species disturbance (C)				
		Mortality (C)				
		Impacts from air quality	✓	✓	X	X
	Otter (<i>Lutra lutra</i>)	Changes in water quality	✓	✓	X	✓

Site	Feature	Potential impact (C and O unless otherwise stated)	LSE?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴	Applicant's conclusion (alone or in combination)	Agreement with ANCB? ⁴
		Changes to hydraulic conditions				
		Other habitat degradation				
		Species disturbance				
		Impacts from air quality	✓	✓	X	X