

03 November 2023

The Planning Inspectorate
National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Dear Madam / Sir,

M3 Junction 9 Improvement Scheme – TR010055

Reference: M3J9-EIA064

For Deadline 7 (D7), the South Downs National Park Authority (SDNPA) would like to make the following comments.

Applicant's Response to ExA Questions (REP5-026 and REP6-023)

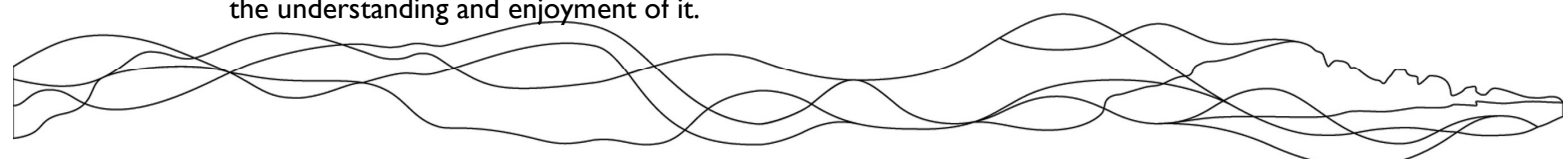
The SDNPA would like to make the following comments in relation to applicant's responses regarding the consideration given to the National Park.

In relation to the *Initial Design*, nothing set out in the applicant's responses detracts from our position (most recently set out in REP5-035). It is notable that the applicant refers to 'seeking to conserve and enhance' the National Park and giving it 'appropriate weight' alongside references to the other constraints it faces.

The National Park is given the 'highest status of protection' (NPSNN para 5.150 and Draft NPSNN para 5.162) and has a statutory underpinning. The applicant's answer shows it has not realistically considered that high level of policy protection, considering the National Park simply one of a number of its constraints.

In relation to the *Construction Compound*:

- It is notable that the applicant admits that the National Park was not given 'higher weighting' due to the alleged reversibility of the compound. It is our position that this conflates matters, the need to conserve the National Park should be given great weight. This is clearly intended to be the highest weighting, in circumstances where NPSNN 5.150 goes on to say National Parks 'have the highest status of protection'. Already, therefore, the applicant has failed to properly apply policy. The fact that a harm may be temporary is a matter to take into account when balancing that harm against other matters, but it doesn't justify reducing the importance of conserving and enhancing the National Park.
- The reliance on Section 5(1) of the 1949 Act does not provide the authority the applicant suggests it does. The Act refers to (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of a National Park and (b) promoting the opportunities for the understanding and enjoyment of it.



There is nothing in there to suggest short term harms are more acceptable than long term harms; and it is self-evident that even short-term harms can have a detrimental effect on purpose (b) (promoting opportunities for understanding and enjoyment). The SDNPA accepts that long-term harms and short-term harms may weight differently in the balance, but it doesn't affect the need to give great weight to the purposes.

- The applicant now seems to be suggesting that not all parts of the National Park should be treated equally, by suggesting the qualities of the National Park are weaker at the edge. However the NPSNN, NPPF and 1949 Act give protection to the National Park in its entirety. The policies, and the statute, are clear. The fact that the existing M3 had an influence on this edge of the National Park was recognised at the time it was designated, but the full extent of it was still designated with the high level of policy protection that that brings. There is no policy support for the applicant's reasoning and, we contend, it runs directly against the clear words of the policy.
- It is not in dispute the statutory duty to 'have regard' in Section 11(2) of 1949 Act is not as high as the duty to have 'special regard' (*Howell [46]* as cited by the Applicant, *Persimmon Homes (Thames Valley) Ltd v Worthing BC [2023] EWCA Civ 762, [54]*). However, the policy imperative is to give 'great weight' to conserving landscape and scenic beauty, and that National Parks have the 'highest status' of protection (NPSNN 5.150). Failure to give great weight to conserving landscape and scenic beauty is in direct conflict with the policy.
- What is clear from the applicant's responses is that, throughout this process, they have not given great weight to conserving the landscape of the National Park. They have instead, avoided SACs and SSSIs and then chosen the compound location for convenience and highways matters rather than by affording great weight, or the highest level of protection, to the South Downs National Park. As evidenced in the closing summary to Q14.3.2 (REP6-023) where they refer to having given 'due weight' and not 'great weight'.

Draft Development Consent Order (Rev5) (Reference REP6-007)

The SDNPA would like to iterate its support for the ExA proposed changes to the DCO (issued on the 6 October) and is disappointed that the applicant does not agree with them.

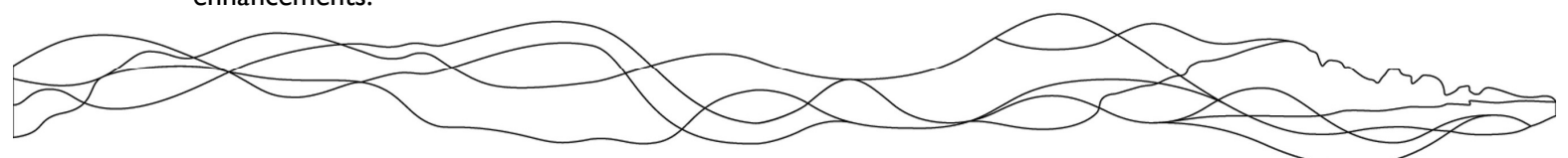
In relation to the specific proposed change by the applicant to include the following under Landscaping.

5. (3)(g) landscaping works associated with the provision of any fences and walls which do not serve a structural or safety purpose for a highway.

The SDNPA would prefer the ExA proposed change of

5. (3)(g) landscaping works associated with the provision of any fences and walls.

Whilst the SDNPA appreciates and fully understands structural and safety concerns raised by the applicant this is not a valid reason to include this specific exemption. Fencing and walls can provide a 'dual' purpose and the applicant could use some of these features to improve the overall design of the scheme and provide opportunities for landscape and biodiversity enhancements.



Design Principles Report (REP5-028)

The SDNPA has already responded to the submitted Design Principles Report (see our response at Deadline 6 – REP6-034). However, we would like to support Winchester City Council comments (set out in REP6-036) that further iterations of the Design Principles Report should be made a specific requirement of the DCO and that a final version should be agreed with Winchester City Council, Hampshire County Council and the SDNPA prior to the detailed design stage and any development commencing on site.

First Iteration Environmental Management Plan (REP6-021)

The SDNPA welcomes the amendment at LV16 to include the additional areas of advanced planting. However, LV16 now includes plot 008-28 but it is not shown on the corresponding Environmental Masterplan (neither on the plan nor listed in the title block). The SDNPA would welcome clarification over this point.

Yours sincerely



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