

05 April 2024

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Dear Sirs,

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by National Highways Limited ('the Applicant') seeking Development Consent for the Proposed M3 Junction 9 Improvement Scheme ('the Application') – TR010055

Reference: 20036741 / M3J9-EIA064

Further to your letter dated 22 March 2024, the South Downs National Park Authority (SDNPA) would like to make the following comments regarding Section 245 of the Levelling-Up and Regeneration Act 2023 (and the applicant's response) and Requirement 6.

The Levelling-Up and Regeneration Act 2023 (LURA)

The new duty to 'seek to further' creates an important, pro-active, duty which is clearly intended to strengthen the previous duty of 'have regard to'. The new duty is in force now and must be complied with as part of any decision or course of action that has implications for the National Park.

The SDNPA acknowledges that the new duty does not preclude decisions that are 'harmful' to the National Park. However, the new duty requires positive evidence that the relevant authority (such as the applicant) has, in all the circumstances, sought to further the purposes. This should not merely be through the mitigation of any harm but by taking all reasonable steps to further the statutory purposes. It is considered that the new duty also underlines the importance of avoiding harm to the statutory purpose.

Natural England's¹ advice states:

- *'the new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant*

¹ Advice provided by Natural England to the Lower Thames Crossing DCO Examining Authority (Reference TRO010032), Annex 2 of letter dated 15 December 2023 and Advice provided by Natural England to Secretary of State on the A66 Trans-Pennine Dualling Project DCO (Reference TR010062) letter dated 19 January 2024

authority must be able to demonstrate with reason evidence what measures can be taken to further the statutory purpose,' and

- 'the proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition (our emphasis) to avoiding and mitigating the effects of the development.'

As also advocated by Natural England, proposals / actions should be assessed against the aims, objectives, and principles of the South Downs National Park Partnership Management Plan.

The SDNPA's submissions to date highlight where we consider that the applicant has failed to give 'great weight' to the National Park and mitigate the harm caused. Therefore, it cannot be said the proposal has taken all reasonable steps to further the statutory purpose.

The SDNPA's Local Impact Report, Written Representation, and Deadline 4 and Deadline 7 Submissions (REP2-071, REP2-075, REP4-047 and REP7-006), in particular, highlight several areas (and additional work / projects) where this application could further the statutory purposes, and where the applicant has failed to give 'great weight' to the National Park when choosing the location for, and the designing of, the construction compound in direct conflict with NPSNN 5.150.

Requirement 6

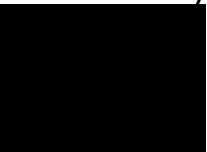
The SDNPA's intention with our suggested amendment to Requirement 6(3) to include the words 'other element' was to try and capture the other types of planting (such as Chalk Grassland) within the proposed landscaping scheme which could not be categorised as a 'tree' or 'shrub' (as Requirement 6(3) was originally worded).

The SDNPA notes that a possible amendment to Requirement 6(3) in the proposed Order (as set out in the 8 March 2024 consultation letter) now refers to '*any tree, shrub, chalk grassland or other element*'.

To be more precise, the SDNPA would accept the deletion of 'other element' provided 'chalk grassland' was specifically referred to within Requirement 6(3) – suggested revised wording is set out below.

6 (3) Any tree, shrub or chalk grassland planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies, or becomes, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Yours sincerely



Kelly Porter
Major Projects Lead
South Downs National Park Authority

South Downs Centre, North Street,
Midhurst, West Sussex, GU29 9DH
T: 01730 814810
E: info@southdowns.gov.uk
www.southdowns.gov.uk
Chief Executive (Interim): Tim Slaney

