

Date: 02 February 2022  
Our ref: 380729  
Your ref: TR010056



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**BY EMAIL ONLY**

Dear Sirs,

**NSIP: A417 Missing link**

**User Code: TR010056**

**Rule 17 Request for further information and Hearing Action Points**

Thank you for your Rule 17 Request for further information on 14 January 2022, and the Hearing Action Points which were received on 31 January 2022.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

**Rule 17 – Request for further information**

**The Cotswold Way National Trail**

The Examining Authority has requested Natural England's views on:

- *the Applicant's proposed diversion of the Cotswold Way National Trail;*
- *the legality and appropriateness of including a direction under s55(2) of the 1949 Act within a DCO; and*
- *the appropriateness of SoS DfT making this direction.*

Natural England's views are as follows.

**The Applicant's proposed diversion of the Cotswold Way National Trail**

Natural England is satisfied with the proposed diversion of the Cotswold Way National Trail. We have been engaged in the consultation process since the beginning and have influenced the schemes design with regard to the Cotswold Way. We are therefore confident that the proposals will improve the user experience and safety significantly, and will only require a minor deviation from the existing route.

**The legality and appropriateness of including a direction under s55(2) of the 1949 Act within a DCO**

As the body responsible for proposing National Trails, Natural England is normally responsible for proposing any necessary variations to them. However, a Development Consent Order (DCO) can incorporate direct provision for varying a national trail without a proposal being made by NE. This can be done through the Secretary of State using the reserve power at section 55(2) of the 1949 Act to direct the necessary variation after suitable consultation with NE. NE retains its ability to propose a variation itself instead, but it is not necessary for it to do this in order for the variation to take effect.

National Highways initially proposed to include a direction under s55(2) of the 1949 Act within the Development Consent Order (DCO). Given that we have been and expect to be appropriately consulted throughout the A417 Missing Link NSIP process, Natural England deems it to be acceptable to include provision for a variation report within the DCO.

However, we have been advised today that National Highways is now considering disapplying s55(2) of the 1949 Act instead. Our initial impression is that this approach would also be acceptable. However, we will need to be assured of the continued engagement in the procedures of ourselves and the Cotswold Way Trail Partnership to ensure all necessary contributory steps are addressed.

### **The appropriateness of SoS DfT making this direction**

We suggest that it is beyond Natural England's remit to advise on this matter, as this decision sits with Government.

### **Response to Hearing Actions Points Issue Specific Hearing 2 (ISH2) on Environmental Matters**

#### **Reference number: ISH2-AP4**

#### **Natural England to seek advice and respond in relation to nitrogen deposition issues and potential timeframe for degradation of ancient woodland.**

At the Issue Specific Hearing 2 on Environmental Matters on Thursday 27 January, the Examiner requested that NE advised on a potential timeframe for the degradation of Ullen Wood ASNW.

In paragraph 4.49 of our Written Representations (our reference 374696), Natural England stated:

*Environmental Statement Chapter 8 – Biodiversity states that air quality modelling shows a maximum increase in nitrogen deposition within the ancient woodland of 1.08kg N/ha/yr, which is a 10.8% increase against the lower critical load for broadleaved woodland at 10kg N/ha/yr. The lower critical load would also be substantially exceeded in the “Do-Minimum” baseline in 2026, with total nitrogen deposition predicted at over 34kg N/ha/yr throughout the woodland (8.10.262). This is considered likely to lead to degradation of a 2.1ha area, through a reduction in species richness and/or changes to species composition (8.10.262). We attest that this amounts to the loss of ancient woodland habitat, rather than degradation, albeit over a long timeframe. The Environmental Statement concludes that this would be a significant adverse effect on Ullen Wood.*

Natural England has published several research reports that provide a background:

- Natural England Commissioned Report NECR199 The ecological effects of air pollution from road transport: an updated review<sup>1</sup>

A literature review looking at the ecological effects of air pollution from road transport. This updates the comprehensive review of ecological effects of diffuse air pollution from road transport on semi-natural habitats that was undertaken in 2004.

- Natural England Commissioned Report NECR200 Potential risk of impacts of nitrogen oxides from road traffic on designated nature conservation sites<sup>2</sup>

A mapping and site analysis report that classifies designated sites.

- Natural England Commissioned Report NECR210 Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of conservation importance<sup>3</sup>

This report aimed to analyse existing scientific data to demonstrate and quantify the effect of incremental additions of atmospheric nitrogen deposition (above the critical load) on different semi-natural habitat types. The objective of this report was to examine recent vegetation survey data to understand the relationships that exist between species (composition and richness) and nitrogen deposition, and to determine the effect of incremental increases in N. This report studied the responses of vegetation to long-term N deposition within data from five semi-natural UK habitats: acid grasslands, upland heath, lowland heath, bog and sand dunes, however, evidence suggests that other important UK habitats are also negatively affected by N.

- The Air Pollution Information System website provides a detailed explanation of the impacts of Nitrogen deposition on habitats.

There is global acceptance that once Nitrogen deposition exceeds the demands of sensitive plants, semi-natural ecosystems are at risk of species loss and changes in structure and function (as quoted on the Air Pollution Information System webpage<sup>4</sup>). However, research into the impact of nitrogen deposition on woodland is lacking, and in any case changes to a particular woodland will be case specific. Having given this matter full consideration, we advise that it is not possible to put a timeframe on the degradation of this woodland as a result of increased nitrogen deposition.

The Environmental Statement (ES) concluded that increased Nitrogen deposition on Ullen Wood as a result of the proposed scheme would likely lead to loss of species richness (Environmental Statement, Chapter 8, 8.10.263). Having given this issue further consideration, we are satisfied that the impact is appropriately described in the ES as degradation. For the avoidance of doubt, there are no condition criteria associated with ancient semi-natural woodland. The site would remain ASNW irrespective of its condition.

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<sup>1</sup> [The ecological effects of air pollution from road transport: an updated review - NECR199](#) [REDACTED]

<sup>2</sup> [Potential risk of impacts of nitrogen oxides from road traffic on designated nature conservation sites - NECR200](#) [REDACTED]

<sup>3</sup> [Assessing the effects of small increments of atmospheric nitrogen deposition \(above the critical load\) on semi-natural habitats of conservation importance - NECR210](#) [REDACTED]

<sup>4</sup> [Nitrogen deposition | Air Pollution Information System](#) [REDACTED]

Natural England accepts that the scheme impacts are unavoidable with this route and that mitigation is not possible. We therefore accept the principle of compensation, in this specific case (Written Representation paragraph 4.53).

The Environmental Statement sets out that approximately 5ha of mixed broadleaved woodland and a buffer of scrub species would be planted around the borders of a field to the south of Ullen Wood (8.9.32 and as shown in ES Figure 7.11 Environmental Masterplan (Document Reference 6.3). In addition National Highways has committed to explore opportunities to contribute towards the enhancement of Ullen Wood through improvements to its management. Natural England is satisfied that the compensation proposed is appropriate in the circumstances. This subject is included in our Statement of Common Ground with National Highways, in the 'matters agreed' section.

If you have any queries relating to the advice in this letter please contact me on

[REDACTED]

Yours faithfully

[REDACTED]

Hayley Fleming  
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West Midlands Area Team