

Representors' unique ref nos. Alan Bowe - 20032094, John Lane - 20032106, Sarah Crane - 20032112 & James Hare - 20032109

**IN THE MATTER OF THE NATIONAL HIGHWAYS A66
NORTHERN TRANS-PENNINE PROJECT DEVELOPMENT
CONSENT ORDER APPLICATION**

**AND IN THE MATTER OF LAND TO BE ACQUIRED
PERMANENTLY AT THE WINDERWATH ESTATE, PENRITH,
CUMBRIA**

ISH3 – on Environmental matters

**POST HEARING STATEMENT OF
JOHN RICHARD LANE, JAMES HARE, ALAN MOORE
BOWE AND SARAH CRANE AS THE TRUSTEES OF THE
WINDERWATH 1989 SETTLEMENT TRUST (“the
REPRESENTORS”)**

1. The Applicant seeks compulsory purchase powers to acquire approximately 146 acres of land from the Representors under the draft DCO being sought for the National Highways A66 Northern Trans-Pennine Project (“the Project”). Substantial areas are proposed for environmental mitigation.
2. You have before you already the Representors written representations.
3. The Representors are supportive of conservation works, woodland planting and environmental management but are against proposals such as the Applicants which only consider a narrow number of issues, are ill conceived and do not properly seek to consider the wider issues or take into account Affected Parties current environmental management

practices and operations on the land. The Representors have indeed over many years planted numerous areas of woodland across the estate and particularly at Whinfell House farm as can be seen on the plans attached and headed “Woodland Management Plan – North Sheet” and “South Sheet”.

4. As such the following environmental matters remain of serious concern to the Representors as they adversely affect the position of and extent of areas of land proposed to be compulsorily acquired for environmental mitigation.

5. The ExA identified under item 3.2 of the ISH3 agenda plots 03-02-01 and 03-04-04 which are located on Winderwath Estate.

6. Although plot 03-02-01 appears to show a significant area of environmental mitigation the Representors understanding is this area is required temporarily for the diversion of a high pressure gas main and from the Environmental Mitigation Maps (APP-041) is shown as an area with Landscape Element Code LE1.6, which is described as Open Grassland, which at footnote 6 of the maps is described as “*agricultural seeded grassland with intention for potential return to landowner by agreement*”. If this plot is returned after the temporary use, then the Representors have no issue with the proposals for this plot.

7. The Representors fundamental issue, as the ExA is aware is the proposals for Plot 03-04-04 and the associated plots of 03-04-10 and 03-04-14 which are proposed as long-term environmental mitigation and which the Representors have continually objected to on a number of grounds, and most recently as set out within their written representations

and most recently as set out within their written representations (REP1-129 paragraphs 10-42). We would wish to expand on a number of those representations as follows.

8. First, **bio-diversity gain**. The Applicant's Response to Written Representations (REP2-015) in response to paragraph 90 of the Representors Written Representations (REP1-129, page 17), where the Representors had said that there is no statutory obligation to provide a net biodiversity gain, the Applicant states "*however opportunities to maximise biodiversity enhancements have been sought where possible*". The Applicant also states in its Responses to the Examining Authorities Written Questions (REP4-011) at the response to question CA1.2 (bottom para of page 4 and top of page 5) that "*one of the project objectives is to seek to achieve no net loss as a minimum and looks to deliver net gains where such opportunities exist*" The applicant also stated at ISH3 that the provision of part of plot 03-03-04 was to provide scrubland as an enhancement for Great Crested Newts and was not replacing a habitat like for like.

9. These Responses are ambiguous as to whether or not biodiversity net gain is being sought that adversely affects the land of the Representators and demonstrates that the Applicant is going beyond the present statutory requirements applicable to the DCO proposals.

10. Second, **scheme design and mitigation areas**. The public document "A66 Northern Trans-Pennine Project - Proposed Changes Consultation" currently being consulted on by the Applicant indicates an intended reduction in land required for the project through Scheme 03, if the changes are accepted into the DCO application by the ExA. Notably

the proposed changes detailed at DC-08 (page 22) under the heading “Reason for the Change” the Applicant states the changes proposed include the potential removal of 1.2km of temporary diversion at the Centre Parcs junction, with the inversion of the mainline alignment resulting in the removal of large earthworks which would “*reduce the overall land required for the project*”. This must therefore consequently result in a reduction in loss of habitat and this is acknowledged in the published “Environmental Appendix” that sits alongside the consultation document, where at the bottom paragraph on page 45 it states “..... *the potential for a slight reduction in effects on biodiversity*”. As the areas of land sought to be compulsorily acquired for environmental mitigation purposes were related and determined by the total area of the Project, it must follow that on an intended reduced land requirement for the Project, there must be a commensurate reduction in the land take for environment mitigation. If the change proposal is accepted, then an appropriate area must therefore be removed from that proposed to be acquired from the Representors including particularly plots 03-04-04, 03-04-12 and 03-04-14.

11. **Third, the best and most versatile agricultural land.** The Applicant’s Response to Written Representations (REP2-015) in response to paragraph 15-19 of the Representors Written Representations (REP1-129, page 4), states that the primary policy document on recognition of the best and most versatile agricultural land is the National Policy Statement for National Networks and not the National Planning Policy Framework (NPPF), The former document replicates at paragraph 5.168 the NPPF wording. The Representors therefore contend that the location and compulsory acquisition of the environmental mitigation land

at Whinfell House, as stated in their written representations is not in line with either policy, when other lower grade land located in close proximity has been offered in substitution. As such there is no compelling reason for compulsory acquisition of plots 03-04-04, 03-04-12 and 03-04-14.

12. The Representors noted the Applicant at ISH3 stated that in earlier consideration of areas for environmental mitigation they had discounted the numerous areas due to the existing land use being “high value agricultural land”. The Applicant has failed to do the same here. As stated previously the areas proposed for mitigation here are predominately on Grade 2 agricultural land. For that reason alone there should be a presumption against use of these areas for mitigation.

13. Fourth, **road safety and shoot activities**. This is an area that the Applicant has consistently failed to consider throughout its decision making.

14. The ExA visited site on Tuesday 28th February, and we wish to explain in a little more detail the operation of the shoot in this area and why the location of the proposed mitigation areas has potential road safety issues as well as implications for the estates commercial shoot.

15. Attached is a map showing the layout of the shoot in the area of Whinfell House and headed “Shooting Drives – Whinfell House Farm”. The map is annotated to show the existing woodlands, release pen, gun standings and direction of drives, which we hope will aid the ExA’s understanding of the shoot and thus the negative implications of the proposed mitigation.

16. The ExA noted the mature coniferous plantation at Whinfell House Pond that forms plot 03-04-14. This area contains a pheasant release pen where up to 1,200 pheasants are released annually in late July as chicks and reared on before being drawn out by feeding from September onwards to existing substantial areas of woodland on the rising ground to the south (away from the A66 as pointed out to the ExA) where they are fed prior to shoot days of which there are around 10-12 each season, between October and the end of January.

17. On a shoot day the birds are driven by a team of beaters back north towards Whinfell House Pond and the pen which has been their rearing home and to which they will naturally migrate. The birds are driven over teams of eight individual guns to be shot and who are lined out, facing the appropriate southern woodland (red lines on plan), on the open ground between the wood been driven and Whinfell House Pond. There are on average two of the four available drives in this area shot on each of those shoot days.

18. The layout of the woodlands and ground and the isolation of Whinfell House Pond within surrounding arable land and purposely unconnected to any other woodlands has been established over many years to produce the variety of different pheasant drives in this area without encouraging pheasants towards the A66 – see attached plan.

19. In their response to written representations (REP2-015 page 10) and a subsequent explanatory note, which we assume is the note that the Applicant referred to at the CAH2 (copy attached headed “Winderwath Estate – Environmental Mitigation Query”), the Applicant suggests that

the proposals for mitigation woodland planting and scrub within the noted plots is to essentially provide for habitat connectivity north and south over the widened road.

20. That connectivity already exists with the nature of the woodlands and cover strips on land south of Swinegill. There is already connectivity through three gullies under the existing road and all that is happening is that the road is being widened at that point and existing wildlife crossing will be replicated and enhanced. Nothing that is proposed in the scheme as presented will encourage more wildlife in these area.

21. It was acknowledged by the Applicant in their evidence at ISH3 that the widened road here will be more dangerous for wildlife yet the Applicant continues to pursue environmental mitigation planting that will encourage not only wildlife towards the widened A66 but it will also draw pheasants. Unlike the wildlife there is no provision for pheasants to safely cross the road and thus they will pose in the Representors opinion an increased road safety risk as they may try to do so.

22. The proposed connectivity will encourage pheasants towards the road for several reasons being: -

- When pheasants are driven back towards Whinfell House Pond they will naturally move through the new woodland towards Swinegill Plantation and the A66.
- If birds are able to be encourage airborne then rather than drop from height into the presently isolated Whinfell House Pond they will again migrate towards the scrub and or Swinegill plantation and the A66.
- The connected woodlands and scrub will make it significantly harder to feed and encourage pheasants south up the hill to their normal

woodland areas and the shoot drives by providing natural feed opportunities in the wrong place.

23. Fifth, **the alternatives**. The Representors have in all their responses to the Applicants consultations and their representations to the ExA put forward a number of alternative areas for mitigation, that would avoid the potential safety and shoot management issues described above. These are described in detail in written representations (REP1-129 paragraphs 28-39) but summarised in preference order are:-

- Adrian's Wood (REP1-129 – Appendix 2&3).
- Alternative areas of mitigation north of the A66 (REP1-129 – Appendix 4).
- Alternative new planting areas (REP1-129 – Appendix 5).

24. The applicants has not provided any sound reasoning why none of these suggested areas should be used in substitution for the proposed mitigation.

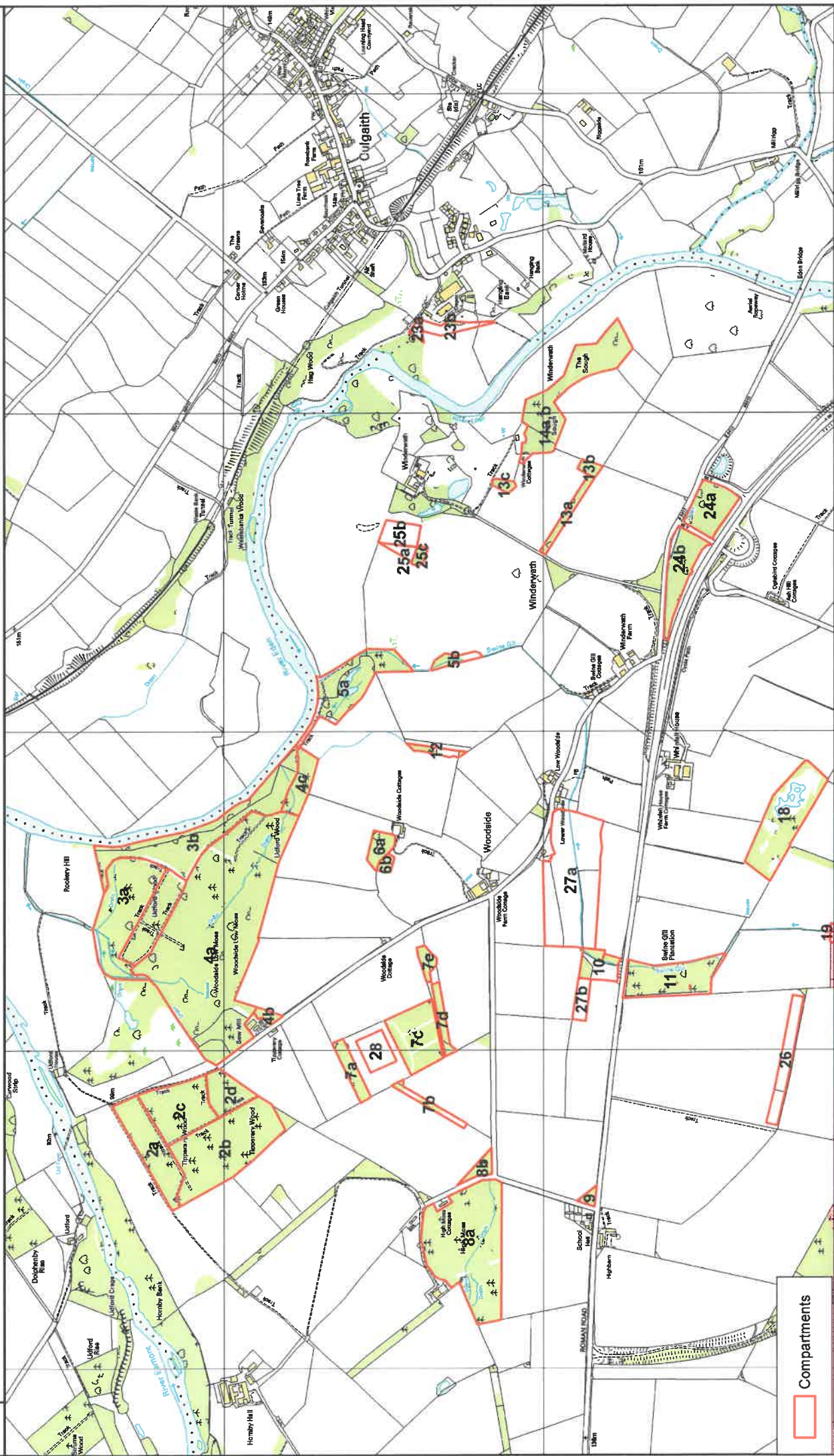
25. Sixth, **management plan**. Without prejudice to the above the Representors object to the taking of any land where no coherent management plan has been presented that is consistent with the uses of the adjoining land retained by the Estate.

26. Seventh, **rights, not acquisition**. In their Representations (REP1-129 para 85-88) the Representors stated that permanent acquisition of land for the environmental mitigation is unnecessary as they will offer rights and enter into restrictive and enforceable positive covenants to plant and manage these areas in an agreed manner. The Applicant is

seeking powers to acquire rights in Article 22 of the DCO; these powers can be used. To date there have been no proposals from the Applicant on the use of such rights.

27. In **summary** the Representors therefore contend that not only will the proposals for environmental mitigation pose an increased road safety risk, affect the commercial shoot but also that the Applicant has not made a compelling case for the provision of the environmental mitigation in and the permanent acquisition of plot 03-04-04 and plots 03-04-10 and 14 to the extent proposed in the DCO application and should roll back or substitute those areas.

Woodland Management Plan - North Sheet



H&H

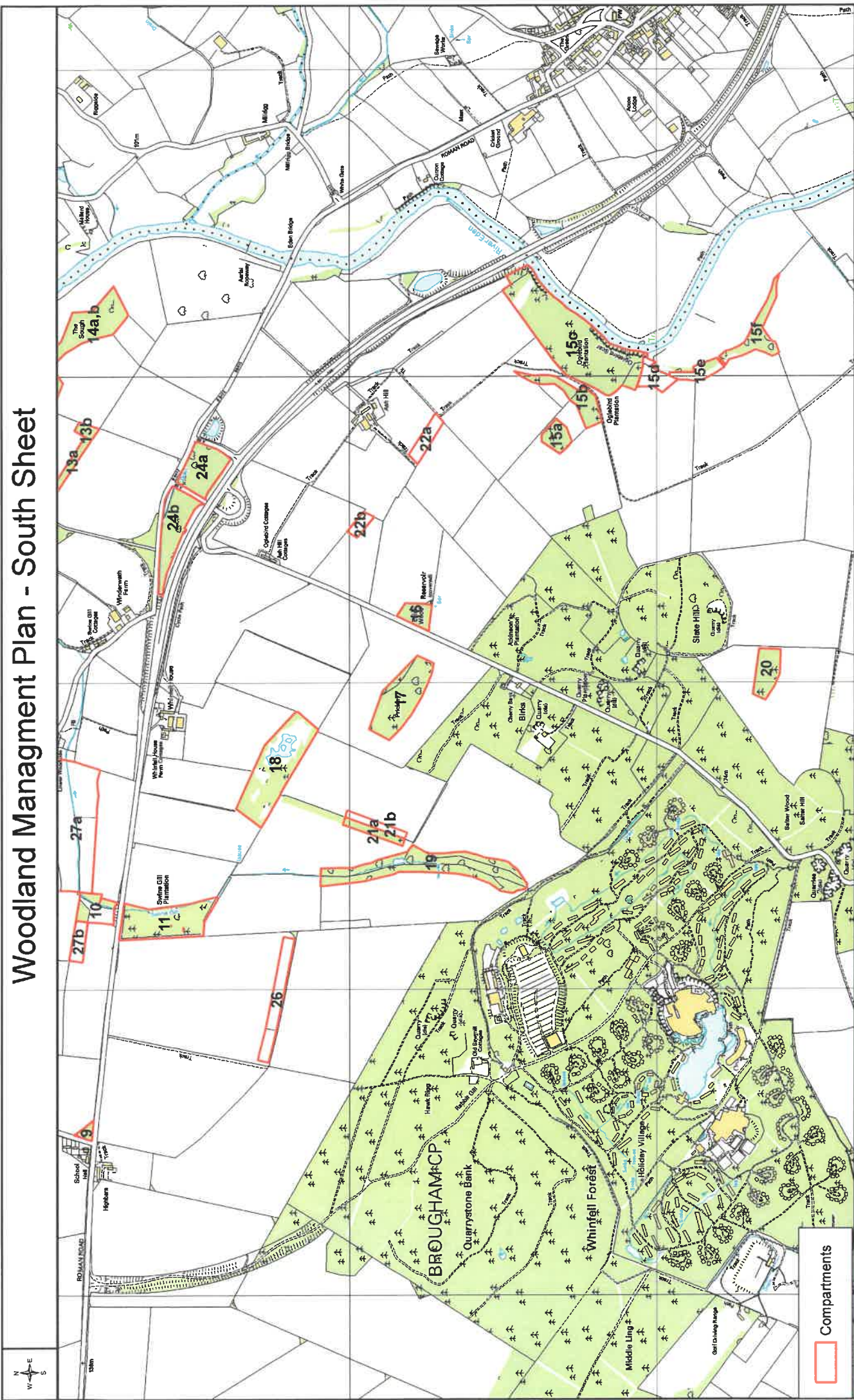
Land & Estates

Borderway
Rosehill
Carlisle
CA1 2RS
01228 406260
hhlandstates.co.uk

Date: January 2023
 Our Ref: W77 16b
 Plan No: 1
 Scale @ A4: 1:15,846

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Woodland Management Plan - South Sheet



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Rosehill
Carlisle
CA1 2RS
 01228 406260
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 Our Ref: W77 18b
 Plan No: 1
 Scale @ A4: 1:15,846

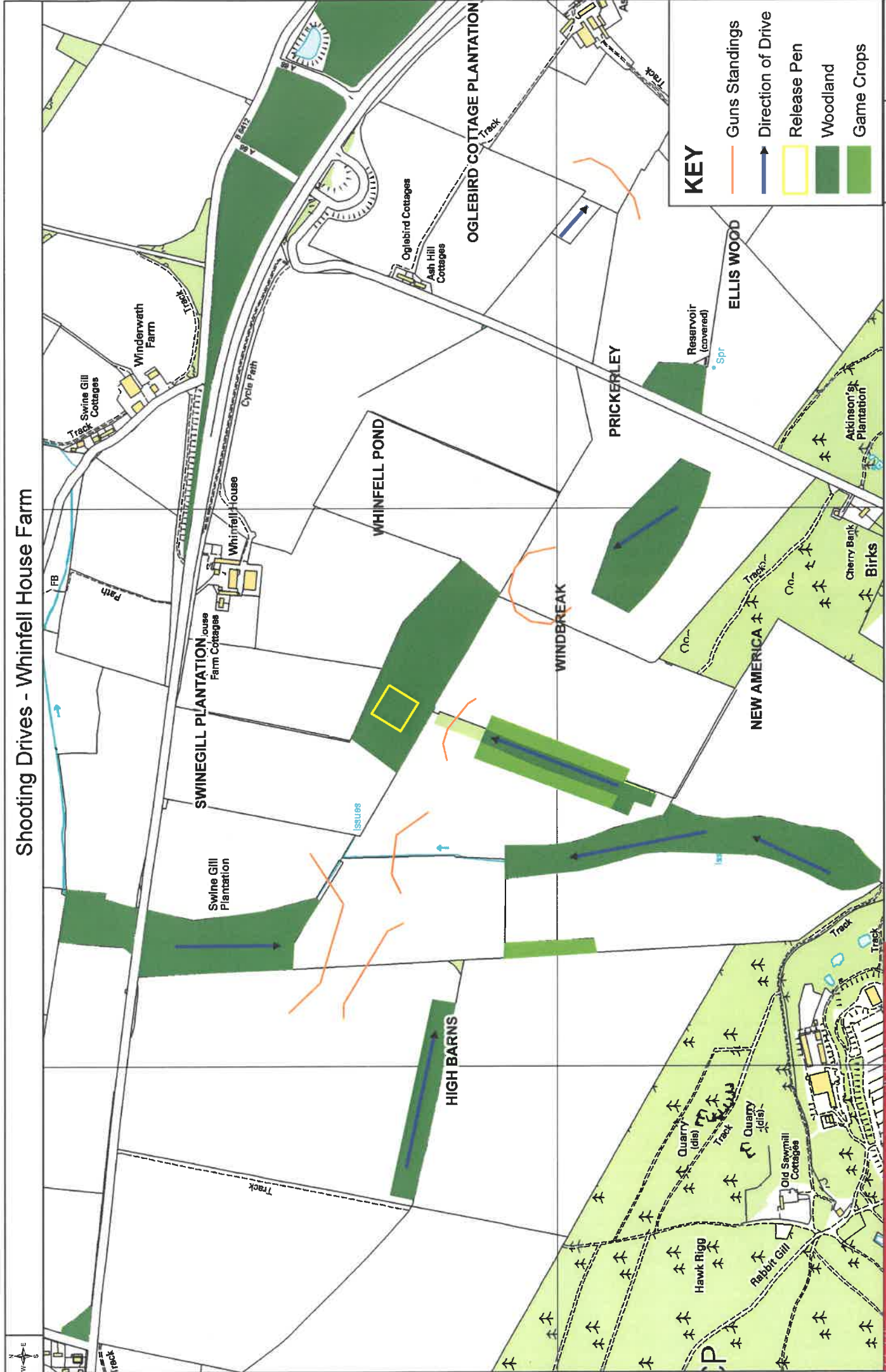
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Compartments



Shooting Drives - Whinfell House Farm



KEY

-  Guns Standings
-  Direction of Drive
-  Release Pen
-  Woodland
-  Game Crops

Date: March 2023
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A66 Northern Trans-Pennine Project

Winderwath Estate – Environmental Mitigation Query

This short technical note gives a summary of reasons for the mitigation proposals in question at Winderwath Estate.

The principles underpinning the proposed mitigation and habitat planting across the Project can be found in the response to Written Query CA1.2 (REP4-011). This note should be read in conjunction with that response. The primary driver informing the environmental mitigation design was to ensure that mitigation is provided for impacts on protected species and designated sites, and that replacement habitats are provided for those lost, as stipulated in the Environmental Statement Biodiversity Chapter 6 (APP-049). This also includes full consideration of all habitats and species of Principle Importance. National Highways has also had regard to paragraph 5.33 of the National Networks National Policy Statement which advises that “Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments.”. National Highways has accordingly sought opportunities, where possible, to maximise opportunities to enhance biodiversity as part of its mitigation. For example, by providing habitat linkages to increase connectivity between areas of mitigation and existing areas of semi-natural habitats within the wider area, thereby enhancing and tying into existing green infrastructure networks. The approach taken was to locate the required environmental mitigation as close as possible to the identified impact or where the affected habitat was expected to be lost. Where this was not possible, an alternative location was selected within the scheme area where the loss was anticipated. For example, where linear woodland planting was not appropriate due to the need to retain open views, suitable locations for woodland blocks were reviewed.

The following part of this note explains the rationale for the mitigation proposed to the south of the area referred to as Swine Gill plantation which is to the north of Whinfell Forest (as shown in the associated plan). The note does not detail the reasons for discounting other specific areas of land. Other plots of land were considered in the determination of the proposed mitigation alongside this one [include reference to Phase 1 and areas looked at for planting] and on balance, the proposed location was considered to be the most suitable location to fulfil multiple ecological mitigation requirements of the Penrith to Temple Sowerby scheme, and of the Project as a whole.

In respect of the area of land in question (see associated plan), the rationale behind locating the mitigation in this location is as follows:

- The woodland planting itself, which is proposed to be located in the areas shown shaded brown on the plan in the associated plan, serves to fulfil the requirements for replacement habitat across the Project which contributes to both the scheme level and Project level woodland replacement requirements. Wherever possible, planting was located in order to maximise its use as mitigation, e.g. locating woodland planting in areas where it would also serve as species specific mitigation.
- The woodland planting at this point extends the function of the Swine Gill Plantation and woodland north of the road as a connecting corridor to facilitate species movements across the road. By locating it in the plots shown, the woodland planting works towards mitigating the impact of increasing both the width of the carriageway and the speed at which users will be travelling which increases the risk of species mortality increases. The dual carriageway highway also creates a more substantial barrier to species' commuting routes compared to a single carriageway road. There are multiple points across the Project where infrastructure has been incorporated into the design to allow for the passage of commuting species; examples of crossing infrastructure include dry culverts, underpasses, rope bridge structures. Swine Gill Plantation is one such location where a crossing is proposed, specifically for badger (black dotted line on associated plan), bat (blue dotted line on associated plan), and barn owl (green dotted line on associated plan). Each of these species have different requirements for crossing infrastructure and associated habitat on each side of the crossing (see Environmental Management Plan Annex B1 Landscape and Ecological Management Plan Rev 2 (REP3-003) for more detail). This location required a crossing point due to ecological surveys showing bats (specifically common pipistrelle, soprano pipistrelle and brown long eared) crossing at this point, along with evidence of barn owl RTA, badger and otter using the area. The existing habitat being retained on both sides of the A66 will enhance the use of these crossing points in the short term. To support the use of these crossings by species beyond those immediately adjacent to the A66, our DCO design proposes connective planting corridors to direct protected species to utilise the crossing infrastructure beneath the road rather than attempt to cross the dual carriageway at road level.
- The Project Design Principles (REP3-040) principle 03.03, which underscores the mitigation to be secured through the DCO, states the principle of connecting vegetation "such as Hallstead's Wood (CH20900) with Lightwater Bridge, Whinfell Park (CH21800) with Barrackbank Wood, High Moss with Whinfell Forest and Swine Gill Plantation (CH24300) with adjacent vegetation". The woodland planting in this location as shown on the Environmental Mitigation Maps (APP-041) contributes to this by creating a north-south connection between Swine Gill Plantation in the north, and a corridor of woodland to the south that connects to the Whinfell Forest County

Wildlife Site (see Figure 6.1 Statutory and Non-Statutory Designated Sites Sheet 2 of 10 (APP-069)).

- Keeping wildlife away from roads is not always considered the most beneficial option. By not providing habitats and infrastructure which facilitate local biodiversity to cross the highway, it would in effect create a barrier for species movement and dispersal in the long term. The increased connectivity reduces the risk of creating isolated populations separated by the dual carriageway. The connective woodland planting enhanced connectivity at a location that was already being used by multiple species including red squirrel, bats, otters, common lizard and great crested newt. Promoting connectivity may help to promote genetic diversity and population success in the longer term. Additionally, north-south connection is becoming an increasingly important consideration the dispersal of species trending northward as a result of climate change and increases in global temperature affecting distribution of species. While the temperature change may not be substantial over such a short distance, the mitigation has been designed to minimise potential barriers to movement in the long term in accordance with the principle of not preventing migration northwards.
- Great crested newt populations are known to be present around the existing wetted areas to the east of these two woodland locations. The proposal of scrub habitat mitigation planting (cross hatching on the associated plan) in the area and through the provision of additional ponds there is an opportunity to enhance the existing terrestrial habitats for these species. Opportunities for enhancement such as these have been sought across the Project in accordance with the National Planning Policy Statement and as outlined in the response to Written Query response CA1.2 (REP4-011).
- The habitat at this location was also considered suitable to support common lizards and there are records in the area, including at Whinfell Forest CWS, so this connecting habitat offers opportunities for this species to expand and disperse, as well as offering a reptile receptor site for translocation should this be needed.

In terms of alternative locations for woodland planting, the landscape character preference was to have woodland blocks rather than linear woodland along the road and open views were required in several places. The chosen location for the woodland block connects an isolated woodland to a larger woodland while providing enhancements for multiple species and north-south connectivity, which would not be achieved at another location.