

A46 Newark Bypass

TR010065

7.52 Applicant's Summary of the Issue Specific Hearing 4 (ISH4)

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December 2024

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The A46 Newark Bypass
Development Consent Order 202[#]

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Issue Specific Hearing 4: Environmental Matters – 5 December 2024

Applicant's responses to Representations made at Issue Specific Hearing 4 (ISH4) held on Thursday 5 December 2024 at 9:30

1.1 Introduction

The ISH4 for the A46 Newark Bypass Scheme (DCO) application was held at The Great Hall, The Renaissance at Kelham Hall, Main Street, Newark NG23 5QX on Thursday 5 2024, commencing at 09:30. Participation was possible virtually on Microsoft Teams as well as by attendance in person.

This document summarises the responses made at ISH4 by the Applicant and addresses the representations made by Affected Parties, Interested Parties and other parties attending.

The Applicant has responded to the topics raised by each of the attending parties in the sequence that the Examining Authority (ExA) invited them to speak. It provides cross references to the relevant application or examination documents in the text below.

The following actions arising from the ISH4 were noted by the ExA:

1. The Applicant to provide details of the SoS for Transport's approach to weighing non-mandatory biodiversity net gain in the overall planning balance;
2. The Applicant to provide a response as to whether habitat maintenance should be in perpetuity and if not why not;
3. The Applicant to provide a wire frame image (180° view from VP25) and elevational drawing to assist in assessing the impact of the Cattle Market flyover. Please provide electronic and printed versions of these along with a printed version of the Supporting Historic Environment and Visual Impact Assessment [REP2-020]. Please also provide a printed copy of these documents directly to NSDC;
4. The Applicant to respond to concerns raised by NSDC in relation to the potential for further planting / landscaping;
5. The Applicant to provide justification for the design approach to the Cattle Market Junction flyover and the reasons why an 'open' structure is not being proposed;
6. The Applicant to explain how the design of the new entrance to the Langford Hall estate would be agreed / approved to ensure that there is no undue harm to the setting of the listed building;
7. NSDC to provide details of the recent decision for the Bridge House Farm traveller site including the Officer's Report and details of the Members' decision.

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8. The Applicant, taking account of NSDC's response to point 7, provide response in relation to assessment of impacts on the group with protected characteristics at Bridge House Farm.

The Applicant's response to each action point is detailed at Appendix 1.

1.2 POST-HEARING SUBMISSIONS IN RESPONSES TO MATTERS RAISED AT ISH4

Item	Comment/Representation by:	Questions/Issues Raised at the ISH4	Applicant's summary written Response at ISH4
Agenda # 1 Welcome, introductions and arrangements for the Hearing			
1	Applicant	Introductions	<p>The Applicant was represented by the following individuals:</p> <ul style="list-style-type: none"> • Lorrae Hendry Partner at Womble Bond Dickinson (UK) LLP on behalf of and advisor to the Applicant • Emma Harling-Phillips Partner at Womble Bond Dickinson (UK) LLP on behalf of and advisor to the Applicant • Michael Fry Consultant at Womble Bond Dickinson (UK) LLP on behalf of and advisor to the Applicant • Vicky Coulthard – Biodiversity Specialist, Mott MacDonald • Ross Holdgate – Biodiversity Net Gain Specialist, Mott MacDonald • James Sothcott – Arboricultural Specialist, Mott MacDonald
2	<p><i>Other appearances</i></p> <p><u>Local Authorities and Statutory Bodies:</u></p> <p>Nottinghamshire County Council (NCC)</p> <ul style="list-style-type: none"> • Kevin Shareman – Items 3 – 5 as and when needed • A number of Council Officers – will introduce themselves as and when 		

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<p>Newark and Sherwood District Council (NSDC)</p> <ul style="list-style-type: none"> Lindsay Preston – Speaking as and when needed Nick Law Colleagues from Fire East Midlands 			
<p>Agenda #2 Purpose of the ISH4 and ExA Opening remarks</p>			
<p>Agenda #3 Biodiversity</p>			
<p>a) The impact of the proposal on biodiversity including mitigation and compensation.</p>			
3.1.1	ExA	<p>The ExA asked the Applicant to explain its approach to the mitigation hierarchy in light of the Local Wildlife Sites (LWS) affected by the Scheme</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) [APP-052] provides an assessment of the impacts of the Scheme. Following implementation of the mitigation hierarchy the Scheme is anticipated to result in a residual likely significant effect during construction. Having taken a reasonable worst-case approach, the only likely significant effect on Biodiversity resulting from the Scheme is the direct permanent loss (1.7 ha; 56%) and temporary long-term loss (0.5ha; 17%) of Great North Road Grasslands LWS, located around the Cattle Market roundabout. Habitat loss has been minimised by introducing 70 degree steepened slopes to the embankments, reducing the overall cross section by narrowing the new central reserve and reducing the access track widths adjacent to these (from 5m to 3m). The working space to widen the gyratory and Smeaton Arches has been reduced to an absolute minimum. Compensation for this habitat loss involves the creation of a new 0.75 hectare area of lowland meadow close to the area of habitat lost. Additionally, the area of habitat lost to temporary works would be re-created following the work.</p> <p>In terms of compensation, the following is proposed:</p> <ul style="list-style-type: none"> Green hay from surrounding retained lowland meadows would be used to create approximately 8,570 square metres of lowland meadow in fields adjacent to Great North Road Grassland LWS. Approximately 20,800 square metres of species-rich neutral grassland will be created in the fields adjacent to the LWS with approximately 1,300 square metres of the remaining compensation grassland captured Scheme-wide.

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			<ul style="list-style-type: none"> • Great North Road Grasslands LWS is not designated for the woodland habitat present in its boundary and therefore approximately 940 square metres of broadleaved woodland has been incorporated Scheme-wide. • Attenuation basins created in the same land parcel as the pond being lost will amount to approximately 540 square metres. • A total of approximately 760 square metres of reed bed will be created within Great North Road Grasslands LWS around the attenuation basins. <p>There are no residual significant effects anticipated during operation.</p> <p>Mitigation and compensation measures for all Biodiversity receptors are detailed in the REAC of the First Iteration Environmental Management Plan (FIEMP) [REP3-022] and Figure 2.3 (Environmental Masterplan) of the ES Figures [AS-026].</p>
3.1.2	ExA	With reference to Chapter 3 (Assessment of Alternatives) of the ES [APP-048], how was avoidance considered as part of the Scheme and was this baked into the Scheme design from the outset?	<p>The Applicant confirmed that that was correct. Examples of how the Scheme has avoided/minimised biodiversity impacts include:</p> <ul style="list-style-type: none"> • Scheme was only widened at one side – vegetation has been retained along the south side of the Scheme except where this was unavoidable due to access/ junction requirements. Localised habitat clearance only has been provided for and the majority of trees are being retained. • The impact on the lowland meadow and lowland mixed deciduous woodland around Cattle Market Roundabout was minimised by introducing 70 degree steepened slopes to the embankments, reducing the overall cross section by narrowing the new central reserve and reducing the access track widths adjacent to these (from 5m to 3m). At Cattle Market the working space to widen the gyratory and Smeaton Arches has been reduced to an absolute minimum. Proposals set out in the outline compensation agreement include lowland meadow compensation totalling 0.7505ha. In principle, Natural England considers the compensation proposed to be appropriate, subject to appropriate ongoing management, as detailed in the Statement of Common Ground (SoCG) with Natural England (NE) [REP1-026]. • Farndon East and West FCAs – originally intended to be returned to agriculture – design changed so that these could comprise habitat creation areas.

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			<ul style="list-style-type: none"> • Naturalised drainage measures used throughout Scheme – planting within them have been designed to be climate resilient in term of being able to withstand drier conditions. • Steepened embankments between Farndon FCAs and railway line to avoid encroachment to CFGM. • Compounds proposed within coastal floodplain grazing marsh (CFGM) area designed to have smallest footprint needed (compounds required at this location). • Dairy Farm Railway Strip LWS – loss of LWS reduced to the footprint of the carriage. • Access to lowland meadow area – design of access changed to run along edge of carriageway rather than through the meadow. • East of A1 - no works encroaching into wood pasture and parkland even though it is within the Order Limits – design changed to avoid impacts. • The Applicant considered whether the alignment of the flyover in proximity to woodland at Lowland Mixed Deciduous Woodland east of Esso could be changed. This was determined not to be feasible due to other constraints (e.g. Winthorpe Conservation Area). However, the design was amended to retain veteran trees at this location. The design will be looked at further in detailed design to avoid or reduce impacts to root protection areas (RPAs) of ancient and veteran trees. • Vegetation along A1 is being retained to reduce the risk of traffic black spots for barn owls likely to cross the road at this location. • Winthorpe Roundabout design incorporates retained vegetation within the middle of the roundabout. • Specific surveys were carried out at Langford Hall to identify the optimal route for the access track to avoid any direct impacts to wood pasture habitat.
3.1.3	ExA	The ExA noted that there would, of course, be minimum requirements that have to be met for a road scheme, for example in	The Applicant confirmed that that was correct. For example, the location of the access was realigned so as to avoid going through lowland meadow.

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		relation to safety, and asked whether that had been considered when looking at avoidance.	
3.1.4	ExA	The ExA asked for clarification on where the areas of temporary loss were shown on ES - Figure 8.4 – Compensation Planting for Loss of Local Wildlife Site Habitats [AS-045]	The Applicant confirmed that the area of temporary loss on page 4 of Figure 8.4 of the ES (Compensation Planting for Loss of Local Wildlife Site Habitats) is shown in the vicinity of Old Trent Dyke, highlighted in pink, which is an area of Old Trent Dyke LWS which is subject to temporary possession.
3.1.5	NSDC	In relation to the impacts on the Great North Road Grassland LWS, the impacts relate to the loss of an area of LWS. However, NSDC believe that it is possible that the boundary of the LWS has contracted in this area since the Scheme's desk based study was undertaken such that the loss may be less than was first thought to be the case.	The Applicant confirmed that it was its understanding that the boundary of the LWS had been changed so that the area of loss was now less than that reported in the ES.

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3.1.6	NSDC	NSDC confirmed that they had no further concerns in relation to the LWS.	The Applicant welcomed that confirmation.
3.1.7	ExA	The ExA queried the areas of retained vegetation that are shown on Environmental Masterplan (Figure 2.3 of the ES) [AS-026], including areas outside of the Order Limits.	The Applicant explained that those are areas of vegetation that currently exist and are not being affected by the Scheme, and are therefore marked as 'retained'. These are shown outside of the Order Limits where there are belts of existing vegetation, for example the highway verge, that extend beyond the Order Limits and which will be retained, for the sake of completeness.
3.1.8	ExA	The ExA noted the discussion in ISH1 of how the barn owl boxes that are to be provided outside of the Order Limits are to be secured and queried whether the position was the same in relation to the bat and kestrel boxes.	<p>The Applicant confirmed that the position was the same in relation to the bat and kestrel boxes. Discussions have commenced with the relevant landowners regarding the placement of the boxes, as shown on Figure 2.3 (Environmental Masterplan) of the ES Figures [AS-026]. Licences are going to be agreed in the first instance to allow the boxes to be installed in the next few months, so that they can become naturalised before construction works commence. After that, the Applicant will negotiate separate agreements with the landowners in relation to the maintenance and management of the boxes going forward.</p> <p>The Applicant is hopeful that those agreements can be concluded before the close of the Examination and submitted to the Secretary of State for Transport (SoS) so that it has comfort that they have been secured. Were that not to prove possible, the Applicant confirmed that a requirement would be included in the draft DCO [REP3-003] requiring the agreements to be in place before development commences, similar to the requirement imposed on the A303 (Amesbury to Berwick Down) DCO 2023.</p>
3.1.9	ExA	The ExA referred to the SoCG with NE [REP1-	The Applicant confirmed its understanding that the advice referred to was that to be given by NE in the context of the forthcoming protected species licences.

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		026] at page 13, section 5 that suggests that NE expect to deliver further advice on protected species to National Highways. The ExA queried whether that advice had been received?	
3.1.10	ExA	The ExA asked NSDC whether, in relation to habitats that were to become exposed due to tree felling, that they would not be impacted by pollutants.	The Applicant welcomes NSDC's response to the ExA's question; NSDC had no concerns on atmospheric pollution on woodland and LWS.
3.1.11	NSDC	NSDC confirmed that they had no specific concerns on this matter.	The Applicant welcomes that confirmation from NSDC.
b) Habitat Severance			
3.2.1	ExA	With reference to the Applicant's Comments to Responses to ExWQ1 [REP3-037], in particular question Q3.0.4 on page 23 regarding habitat severance, the ExA asked whether the Applicant considered	Both the Applicant and NSDC confirmed that they were happy that outstanding issues relating to habitat severance had been resolved. NCC noted that they were still reviewing the responses provided by the Applicant and would address this matter via the discussions on the SoCG.

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		that the issues regarding habitat severance had now been resolved?	
c) Biodiversity Net Gain including appropriateness of the Applicant's approach and delivery mechanism.			
3.3.1	ExA	The ExA asked, seeing as there is currently no mandatory requirement for Nationally Significant Infrastructure Projects (NSIPs) to deliver Biodiversity Net Gain (BNG), what weight the decision maker should give to the BNG on this Scheme.	The Applicant confirmed that, while no mandatory requirement for BNG applies for NSIPs such as this Scheme, increases in biodiversity units have been sought within the parameters of the Scheme wherever possible. This therefore represents a benefit of the Scheme. However, in terms of the weight to be attached to that benefit, that is a question for the decision maker.
3.3.2	ExA	Paragraph 5.3 of the National Policy Statement for National Networks (NPSNN) 2015 states that the SoS should consider whether the Applicant has maximised opportunities for building in beneficial biodiversity as part of good design in and	The Applicant referred to Appendix 8.14 (Biodiversity Net Gain Technical Report) of the ES [APP-159], which details the approach to providing net gain as part of the Scheme and the findings of the Applicant's BNG assessment against Version 3.1 of the Biodiversity Metric, including the guidance that has been followed. The Applicant explained that the starting point for that is applying the mitigation hierarchy – the first thing to consider is the fact that the design process has sought to minimise the impact on habitats as much as possible. The Scheme has sought to enhance biodiversity units and biodiversity for the design wherever possible including the 3 types of the units included in the metric. Appendix 8.14 (Biodiversity Net Gain Technical Report) of the ES [APP-159] shows an increase in all three types of biodiversity units (4.99% for area based habitats, 8.17% for hedgerows and 36.93% for rivers) although it involves a loss of lowland meadow that requires bespoke compensation and trading rules are not met for rivers. The Applicant has therefore sought to maximise the opportunities for

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		<p>around developments. The ExA asked whether the Applicant had maximised those opportunities as part of this Scheme?</p>	<p>biodiversity benefits within the parameters it has to work with, given that the provision of BNG is not a mandatory requirement for NSIPS and therefore the Order Limits cannot be increased, or powers of compulsory acquisition used, to deliver it.</p> <p>The Applicant also referred to page 99 of the National Policy Statement for National Networks (NPSNN) Accordance Table [AS-090] which sets out the Applicant's case against paragraph 5.33 of the NPSNN and states:</p> <p><i>"Chapter 11 of The Scheme Design Report (TR010065/APP/7.5) sets out the environmental considerations that have influenced the design of the Scheme including incorporating opportunities for beneficial biodiversity. The chapter sets out the embedded mitigation measures that have been incorporated into the design from the outset. For example, the landscape design objectives include retaining notable extents of existing planting and providing new planting to replicate existing features and establish visual screening. The environmental mitigation strategy also seeks to reinstate landscape features lost as a result of the Scheme and enhance the landscape context wherever possible. Examples include reinstatement of linear belts of trees and shrubs, woodland, grassland and hedgerows, as shown on the First Iteration Environmental Masterplan (TR010065/APP/6.5) presented in Figure 2.3 of the Environmental Statement Figures (TR010065/APP/6.2)."</i></p>
3.3.3	ExA	<p>The ExA queried why the Applicant is delivering BNG and why the ExA should be taking it into account, given that BNG is not required under the NPSNN 2015 and the legal provisions requiring it for NSIPs have not commenced.</p>	<p>The Applicant explained that whilst the NPSNN 2015 does not expressly refer to the achievement of BNG, it does refer, at para. 5.29, to ensuring the conservation and enhancement of the site's biodiversity and maximising opportunities to benefit biodiversity. To that extent, the increase in biodiversity units demonstrated in the Appendix 8.14 of the ES (Biodiversity Net Gain Technical Report) [APP-159] that the Applicant has voluntarily committed to despite the BNG provisions not yet applying to NSIPs, demonstrate compliance with the NPSNN and represent a benefit of the Scheme which is a relevant and material matter in deciding the application.</p>

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3.3.4	ExA	The ExA queried whether the SoS's previous decisions on the delivery of BNG had factored into the Applicant's decision to provide it.	<p>The Applicant explained that it had taken the SoS for Transport's previous decisions on other DCOs in determining its approach. However, it was also guided by the messaging from NE, the Environment Agency and many Local Planning Authorities, who are already expecting BNG to be delivered by scheme, even though the BNG provisions in relation to NSIPs have not yet come into force. As such, the Applicant has sought to achieve BNG where possible, given the parameters it must work within as described above.</p> <p>The Applicant has provided a document outlining the SoS's consideration of BNG in previous DCO decisions as part of its Deadline 4 submission.</p>
3.3.5	ExA	The ExA asked NSDC and NCC whether they considered that the Applicant had maximised biodiversity opportunities as part of the Scheme.	
3.3.6	NSDC	NSDC explained that infrastructure projects should follow the mitigation hierarchy and be trying to minimise the impact of the scheme of biodiversity whilst delivering BNG if possible. NSDC noted that whilst BNG does not have to be provided by schemes, the accepted approach by NSIPs was now to	The Applicant welcomes this confirmation.

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		<p>demonstrate BNG on a precautionary basis. NSDC confirmed that, within the constraints referred to by the Applicant, it was satisfied that it had attempted to maximise biodiversity where possible.</p>	
3.3.7	NSDC	<p>NSDC sought confirmation that more creating opportunities for biodiversity enhancement outside of the sphere of BNG, such as tree planting, had been explored and that the Applicant had not simply focused on wetland habitat in order to achieve a greater increase in biodiversity units. NSDC were concerned that there is a lot of wetland habitat being created around Cattle Market Junction, which will create a flat</p>	<p>The Applicant explained that it had not been a slave to the BNG metric in its approach to habitat provision as part of the Scheme. Where there has been a choice in the mitigation/enhancement to be provided, the Applicant has chosen the most ecologically appropriate solution and the one that provided the greatest ecological benefit. The uplift in biodiversity units delivered by the Scheme reflects and validates the Applicant's approach to providing biodiversity enhancement.</p> <p>In relation to the provision of wetland habitat, the only wetland habitat at Cattle Market Junction is being provided for reasons of drainage and water management. This represents a good example of the operational requirements of the scheme that have been developed between the technical disciplines to ensure that they also maximise benefits to biodiversity. For example, the gently sloping sides of the swales have been designed to support emerging wetland vegetation and hold water so that they develop a biodiversity interest for flora and fauna.</p> <p>The larger areas of wetland are located down towards Farndon to provide the Flood Compensation Areas (FCA). Grazing marsh has been provided as essential mitigation for habitat that has inevitably been lost along the highway. The Applicant highlighted that it is obliged to mitigate on a like for like basis.</p> <p>It is in the nature of the FCA that they will be wet part of the time. This has steered the approach towards providing wetland habitat, quite separately from what the biodiversity metric requires. The</p>

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		landscape in an attempt to boost the BNG score.	Applicant is satisfied that it has adopted the correct approach in this area and that it represents a significant biodiversity enhancement.
3.3.8	ExA	The ExA queried whether it was a question of quantity over quality, particularly given that BNG is not a mandatory requirement for NSIPs.	
3.3.9	ExA	The ExA asked the Applicant to explain the difficulty in providing an increase in river units.	<p>Whilst no mandatory BNG requirement applies to the Scheme, impacts to rivers and streams have been minimised and enhancements sought wherever possible. These include the creation of new sections of river channel, and stream enhancements of The Fleet upstream of Winthorpe. However, there is a lack of opportunity to enhance river habitat within the Order Limits, as there are limited areas where works will be taking place close to watercourses. On the short sections of the River Trent within the Order Limits there are constraints from engineering structures that perform flood defence, erosion protection and navigation functions. There are further constraints from adjacent developments.</p> <p>As there is no mandatory requirement for BNG it is not possible to increase the Order Limits and use compulsory acquisition powers to allow river enhancement to take place. Such actions would not form essential mitigation. Habitat enhancements to provide an increase in biodiversity units can only be included in the design as part of other works that are required by the Scheme.</p> <p>The lack of opportunity for river enhancement has meant that, although the Scheme is predicted to increase river units from the creation of ditches, the 'trading rules' for losses of rivers and streams could not be avoided. This issue was raised by the Environment Agency (EA) in their relevant representations. The Applicant has since discussed it with them and the EA has stated in its Written Representation [REP2-043] that it considers the issue to be resolved.</p>
3.3.10	ExA	The ExA asked whether maintenance of the wetland habitat would	The Applicant confirmed that was correct. The predicted gains in biodiversity units would be secured through the mitigation displayed on the Environmental Masterplan [AS-026]. Requirement 12(1)(b) of

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		form part of the Third Iteration Environmental Management Plan (TIEMP).	the draft DCO [REP3-003] requires the detailed design to accord with the mitigation principles shown on the environmental masterplan [AS-026]. A BNG Management and Monitoring Plan (REAC Commitment B12) and BNG Audit Reports (REAC Commitment B13) are required through the FIEMP [REP3-022]. These documents will set out the detailed management prescriptions to achieve the target habitat type and condition, the proposed monitoring schedule and provide an updated prediction of change in biodiversity units.
3.3.11	ExA	On the basis that BNG is not a mandatory requirement for the Scheme, why is the Applicant proposing offsite planting at Doddington Hall?	<p>The Scheme would result in a loss of lowland mixed deciduous woodland. This is a Priority Habitat and compensation for its loss is classed as essential mitigation. It has been agreed with stakeholders that, for losses of this and other priority habitats, the amount of compensation would use the biodiversity metric to determine no net loss of habitat units. The biodiversity metric showed that onsite proposals for habitat creation were insufficient to fully offset the losses. Additional onsite options were considered but, there was insufficient space to achieve adequate compensation onsite. The shortfall in provision of biodiversity units onsite therefore needs to be addressed at a nearby offsite location.</p> <p>The intention is for the biodiversity units to be provided through the enhancement of 1.3ha of existing woodland at Doddington Hall, near Lincoln. Enhancement of an area of non-native pine plantation would provide a solution that is ecologically achievable and would contribute to the network of high quality woodland in the local area.</p>
3.3.12	ExA	The ExA asked whether the Applicant had considered other sites for offsite mitigation?	The location was selected as the baseline habitat type and condition of the proposed location at Doddington Hall is highly suitable for providing lowland mixed deciduous woodland. The habitat is located in an ecologically desirable location. It forms part of an extensive network of woodland within the Doddington Hall Estate that includes areas of ancient woodland and Habitats of Principal Importance. Its enhancement would strengthen the habitat network in this location and therefore contribute to the establishment of a coherent and resilient ecological network. Locations with a different baseline habitat would have required more intensive habitat management and greater land take to meet the requirements of the Biodiversity Metric.
3.3.13	ExA	The ExA noted that Doddington Hall is not ecologically linked with	The Applicant explained that in addition to the suitability of the habitat selected, it is also important that the offsite location is deliverable. In this case, the provision of offsite mitigation at Doddington Hall involves working with a landowner who is willing to enter a voluntary agreement thereby

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		the Scheme and asked whether there were other sites closer to the Scheme that were ecologically linked that were considered by the Applicant?	<p>avoiding the need for compulsory acquisition. Whilst there may have been other areas closer to the Scheme that may have been suitable, they represented multiple parcels of land in different landownerships. This would have made land assembly much more difficult and would have undermined the maintenance and management of the sites going forward.</p> <p>The Applicant also explained that Doddington Hall is within the same Landscape Character Area as the site it is mitigating and therefore is considered to be 'local' under the Biodiversity Metric.</p>
3.3.14	NSDC	NSDC acknowledged that when there is a need to look offsite for mitigation it is always challenging to select a suitable location. As long as the selection process is detailed in the documentation, NSDC confirmed that it was acceptable.	The Applicant confirmed that further detail on this matter is contained in Appendix 8.14 of the ES (Biodiversity Net Gain Technical Report) [APP-159].
3.3.15	NCC	NCC confirmed that it was comfortable with the approach adopted.	The Applicant welcomes that confirmation.
3.3.16	ExA	The ExA queried how the provision of mitigation at Doddington Hall would be secured by the DCO.	These habitat enhancements will be secured through an agreement under s.253 of the Highways Act 1980 and the habitat will be maintained for the lifetime of the Scheme. The Applicant hopes to be in a position to provide a copy of the concluded agreement to the SoS prior to the end of the Examination. If that is not possible, the Applicant confirmed that a requirement would be included in the draft DCO REP3-003] requiring the agreement to be in place before development commences, similar to the requirement imposed on the A303 (Amesbury to Berwick Down) DCO 2023.
3.3.17	ExA	The ExA noted that there had been	The Applicant confirmed that Natural England has stated the following at section 24 of the SoCG with itself [REP1-026]:

Item	Comment/Representation by:	Questions/Issues Raised at the ISH4	Applicant's summary written Response at ISH4
		discussions with Natural England regarding the loss of lowland deciduous meadow.	<p><i>"Due to a loss of lowland meadow, a bespoke compensation agreement is stated to be required with Natural England (Biodiversity Net Gain Technical Report, para 5.1.15). It should be noted that in the absence of mandatory Biodiversity Net Gain, this is not currently a mandatory requirement. Nonetheless, an outline compensation agreement is included (Appendix A.6). It is noted that 0.1032ha of lowland meadow would be affected, 118m2 of which would be permanent loss. Proposals set out in the outline compensation agreement include lowland meadow compensation totalling 0.7505ha. In principle, Natural England considers the compensation proposed to be appropriate, subject to appropriate ongoing management."</i></p>
3.3.18	ExA	The ExA noted that it had previously raised the fact that some landscape planting was due to be maintained for 5 years and other areas for 30 years. The ExA queried whether in fact the planting needed to be maintained in perpetuity.	<p>In its previous response on this matter at Q6.2.8 of the Applicant's Responses to the Examining Authority's First Written Questions [REP2-037], the Applicant confirmed that all areas of proposed planting as depicted on Environmental Masterplan [AS-026] contribute to essential mitigation which will be maintained for the lifetime of the Scheme.</p> <p>The reference to the five-year aftercare period made in Chapter 7 (Landscape and Visual Effects) of the ES [APP-051], is in relation to the maintenance required during the establishment period for planting implemented as part of the Scheme. This five-year aftercare period is an industry and well-established standard. Recently made highways DCOs made by the SoS contain the same five-year aftercare period. See for example, Requirement 5(6) of the A12 Chelmsford to A120 Widening Development Consent Order 2024, Requirement 5(3)(f) of the A47 Wansford to Sutton Development Consent Order 2023, Requirement 5(3)(f) of the M25 Junction 28 Development Consent Order 2022 and Requirement 5(5) of the M54 to M6 Link Road Development Consent Order 2022. It is intended that following the initial five-year aftercare period, the plants will have established, with subsequent maintenance of planting to continue as part of National Highways' cyclical maintenance regime for the life of the Scheme, secured via the TIEMP in in line with Requirement 4 of the draft DCO [REP3-003].</p> <p>The Applicant can confirm that all mitigation proposed within the Order Limits will be maintained by the Applicant. Appendix A.2 of Appendix 8.14 of the ES (Biodiversity Net Gain Technical Report) [APP-159] shows the BNG post-construction habitats that will be included in the Biodiversity Net</p>

Item	Comment/Representation by:	Questions/Issues Raised at the ISH4	Applicant's summary written Response at ISH4
			<p>Gain Management and Monitoring Plan that will form part of the Second Iteration Environmental Management Plan (EMP) during the five-year aftercare period and will be development into the TIEMP for maintenance beyond this period.</p> <p>Where habitats contribute to BNG, they will be maintained for a 30-year period (in accordance with BNG requirements), as detailed in the Register of Environmental Action and Commitments (REAC) within the FIEMP [REP3-022] (to be developed into the TIEMP).</p> <p>In light of the above, the following periods apply:</p> <ol style="list-style-type: none"> 1. For the lifetime of the Scheme: all areas of proposed planting as depicted on the Environmental Masterplan], as these contribute to essential mitigation; 2. For 30 years: BNG post-construction habitats as shown in Appendix A.2 of Appendix 8.14 of the ES (Biodiversity Net Gain Technical Report) [APP-159]; 3. 5 year after care period: maintenance required during the establishment period for planting implemented as part of the Scheme. This does not mean that they will not be maintained thereafter, but will form part of National Highways' cyclical maintenance regime for the life of the Scheme undertaken in accordance with The Design Manual for Roads and Bridges (DMRB), GM 701 'Asset Delivery Asset Maintenance Requirements'.
d) Impact on trees including veteran trees and their root protection areas.			
3.4.1	ExA	The ExA noted that three veteran trees are due to be impacted by the Scheme and queried how they are to be protected?	<p>Appendix 7.4 (Arboricultural Impact Assessment Part 1) of the Environmental Statement [APP-140] has recorded the reasonable worst-case impact on trees, veteran trees and their root protection areas (RPAs). Three veteran trees (T038, T136, T139) will have surface level infringements into their RPAs. However, the design has been amended to retain veteran trees and woodland Habitats of Principal Importance (HPIs).</p> <p>In relation to veteran tree T038, Scheme elements have been realigned to retain this tree. The remaining Scheme elements that infringe on the edge of the RPA of this tree in the current design</p>

			<p>proposals will be reviewed at the detailed design stage. It is anticipated that the initial gradient of the proposed earth bund to the west of the tree as presented in the Parts 4 and 5 to Appendix 7.4 (Arboricultural Impact Assessment of the ES [AS-088 and AS-089] can potentially be revised during detailed design, locally steepening the slope profile to 1:2 to reduce the footprint of the bund. The alignment of the access road and swale to the west/southwest of the tree will be further reviewed with the objective of removing the minor incursion into the RPA if possible. Similarly, it is anticipated that the footprint of the headwall to the north of the tree can be adapted during detailed design to remove the minor incursion into the section of the RPA currently identified.</p> <p>In regard to veteran trees T136 and T139, the design has been developed to limit incursions as far as practicable, steepening proposed earthworks to limit the footprint of the Scheme with the provision of 70-degree slopes to the widened embankment to reduce the neighbouring access track corridor from 5.0 metres to 3.0 metres in order to avoid removal of the trees. The measures have also reduced the amount of lowland mixed deciduous woodland which will be affected in this area however, unfortunately, there is no scope to reduce this further. Pruning will be required for tree T139 but will be limited to the extreme southern extents of the crown (i.e. not crown lifting to the trunk) as the majority of the canopy will be secured behind protective barriers. The existing and proposed levels for the design have been considered in this assessment. The Applicant confirms these provisions will be detailed in the production of a Full Arboricultural Method Statement and are secured in commitment L2 of Table 3-2 (Register of Environmental Actions and Commitments) within the First Iteration Environmental Management Plan [REP3-022].</p> <p>The RPA infringements to trees T038, T136 and T139 will be further mitigated by utilising “no-dig” construction methodologies and cellular confinement systems to ensure no ground is broken in their RPAs and to reduce the effects of compaction within the RPA. Protective barriers in accordance with BS5837:2012 will be utilised to exclude all construction activities from the remaining RPA. Arboricultural auditing, supervision and inspection of the veteran trees has been recommended for the duration of the works to ensure that protection measures are in place and adequately installed and to monitor the health of the veteran trees during construction. These provisions will be detailed in the Full Arboricultural Method Statement which will be produced alongside the Second Iteration Environmental Management Plan and are secured in commitment L2 of Table 3-2 (Register of Environmental Actions and Commitments) within the First Iteration Environmental Management Plan [REP3-022].</p>
3.4.2	ExA	The ExA queried who would be responsible	The Applicant confirmed that this would be an Arboricultural Consultant appointed by the Principal Contractor who reports on the health of the trees as part of the submission of the Arboricultural

		for monitoring the health of the trees?	Audit, which is a transparent process. The Arboricultural Consultant will supervise works carried out within the RPA of the veteran trees and will also inspect the health of the veteran trees throughout the duration of the works to ensure that protection measures are in place, works are carried out in accordance with the relevant standards and to monitor the health of the veteran trees during construction. Reporting in the form of an Arboricultural Audit will be required to capture the results of any supervision and inspection works carried out and will be made available to NSDC. These measures are detailed in commitment L2 of Table 3-2 (Register of Environmental Actions and Commitments) within the First Iteration Environmental Management Plan [REP3-022].
3.4.4	NSDC	NSDC queried who is going to be monitoring that work within the RPA to make sure it is minimised to the absolute necessary that is required as part of the Scheme, and what is considered to be the impact on those trees in their duration – will there be any monitoring either during construction or afterwards and will there be any provisions within a monitoring plan for replacement or further works should there be an impact on the health or longevity of those trees as a result of the Scheme.	The Applicant confirmed that this would be an Arboricultural Consultant appointed by the Principal Contractor who reports on the health of the trees as part of the submission of the Arboricultural Audit, which is a transparent process. The Arboricultural Consultant will supervise works carried out within the RPA of the veteran trees and will also inspect the health of the veteran trees throughout the duration of the works to ensure that protection measures are in place, works are carried out in accordance with the relevant standards and to monitor the health of the veteran trees during construction. Reporting in the form of an Arboricultural Audit will be required to capture the results of any supervision and inspection works carried out and will be made available to NSDC. These measures are secured in commitment L2 of Table 3-2 (Register of Environmental Actions and Commitments) within the First Iteration Environmental Management Plan [REP3-022].

AGENDA ITEM 4 - LANDSCAPE AND VISUAL EFFECTS

4(b) – Impacts on Sandhills Park residential areas

4.1.1	ExA	<p>In their Rule 6 letter [PD-005], the ExA requested a 180 degree view of VP24 (Sandhills) with a wire frame supporting that. The ExA requested that the Applicant discusses the impacts and how the residents of Sandhills might see the Scheme.</p>	<p>Chapter 7 (Landscape and Visual Effects) of the ES [APP-051] sets out the assessment of visual effects, with Visual Receptor 24 assessing the impact and associated effects in relation to views from residences at Sandhills Park, adjacent to Cattle Market Junction.</p> <p>The Applicant confirmed that VP24 captures the view north of Sandhills Park which is representative of the views for local residents at this location. As per the Rule 6 request, the Applicant has produced a wider field of view at 180° compared to the original photomontage previously produced for this location. The updated image from viewpoint 24 incorporates a wireframe render and is found in Appendix D of the Supporting Historic Environment and Visual Impact Assessment [REP2-020]. Opaque areas within the wireframe define the area of the Scheme which would be screened from view by intervening built form or vegetation, and in this case the Scheme is located behind properties at Sandhills Park. The Applicant noted that Wireframe 24 shows that Cattle Market Junction is visible within the area of the wireframe depicted with white rendering, and confirmed that it is only those areas of white that will be seen by the residents from this specific location at viewpoint 24 within Sandhills Park.</p> <p>Regarding the shaded areas shown on the right hand side of the wireframe from viewpoint 24 (Page 22 of the PDF), the Applicant confirmed that the views will vary depending on the angle of view and direction of view afforded by the properties. The majority of the properties afford oblique views so they will not have any direct views towards Cattle Market Junction itself. The Applicant confirmed that when reviewing the second image of the wireframe from VP24 on Sheet 2 of the PDF, the alignment of the road as it reduces down from the grade separated junction would be some distance behind these properties. The compound would be directly at the rear of these three properties shown on Photomontage 24.</p>
4.1.2	NSDC	<p>NSDC confirmed that they made representations at Deadline 3 on the visuals provided by the Applicant [REP3-046]. NSDC's position is that these visuals will not allay the concerns of the residents of</p>	

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		<p>Sandhills Park as they do not show the impact of the Scheme in full. NSDC noted that the main impact to these properties will be from their gardens as the view for these residents is changing from flat infrastructure to a raised structure and therefore more should be done to interpret the impact of that change. NSDC appreciate that the Applicant cannot go into the gardens of these properties but queried whether a different vantage point could show the impact of the elevated Scheme more clearly.</p>	
4.1.3	ExA	<p>The ExA requested that, as an action point, the Applicant provides a computer generated wire frame image (180o view from VP24) and a supplemental elevational drawing to assist in assessing the impact of the Cattle Market flyover. The ExA</p>	<p>The requested view is provided in the Applicant's Deadline 4 submission as Additional Visual Effects Information [7.57].</p>

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		requested that the Applicant provide electronic and printed versions of these along with a printed version of the Supporting Historic Environment and Visual Impact Assessment [REP2-020]. The ExA requested that the Applicant also provides a printed copy of these documents directly to NSDC.	
4.1.4	ExA	Impacts on Sandhills Park residential area.	<p>The Applicant referred to Sheet 3 of the General Arrangement Plans [AS-007] and showed the proximity of the Sandhills Park residential area to the Cattle Market Roundabout. The Applicant noted that it is helpful to look at the alignment of the properties on this plan which shows the orientation of the properties and the likely views that they will be afforded both towards the junction itself and the retaining walls associated with the grade separated junction as it raises above existing ground level.</p> <p>The Applicant noted the existing vegetation that is being retained as part of the Scheme. The Applicant's starting point has been to minimise the visual impacts by retaining existing vegetation wherever possible. Beyond that the Applicant has sought to introduce the maximum vegetation practicable through woodland screening and additional hedgerows with trees. The Applicant also proposes shrub planting on the slip roads in that area to aid integration of the Scheme within the surrounding landscape and improve the visual amenity from this location. The Applicant noted that there are ecological constraints to providing more woodland planting, where land forming part of the Scheme is required for essential mitigation of Priority Habitat. The Applicant confirmed that should the area adjacent to Cattle Market Roundabout be fully planted that would interact with existing flood defences.</p>
4.1.5	ExA	Can the Applicant provide a brief summary of the lighting proposals	The Applicant confirmed that lighting will not be placed on elevated sections of the Scheme such as at Cattle Market Junction, instead lighting will be provided at ground level only. Outside of these elevated areas, the lighting will remain as per the existing baseline condition with the exception of

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		in particular over the grade separated elements.	new lighting in areas which are currently unlit at Brownhills Junction and the Friendly Farmer link, albeit the Friendly Farmer Link is located immediately adjacent to the existing A46 which is already lit in this location. Away from the Friendly Farmer Link and Brownhills Junction lighting levels will remain as per the existing condition, with unlit sections remaining unlit, and lit sections remaining lit.
4.1.6	ExA	NSDC raised a specific concern in their submission for Deadline 3 (Comments on any submissions received at the previous deadline) [REP3-046] with regards to lighting and the impact on Newark Castle at paragraph 3.3. The ExA wants to bottom out the concerns.	<p>The Applicant advised that there will be lighting columns at ground level but not on the elevated sections of the junction, and therefore lighting would be as per the existing conditions at Cattle Market Junction.</p> <p>The Applicant welcomes NSDC's confirmation that provided the elevated sections of the new carriageway will not be lit then their concerns are alleviated. The Applicant confirmed that the SoCG will be updated to reflect that position.</p>
4.1.7	NSDC	NSDC referred to their submission for Deadline 3 (Comments on any submissions received at the previous deadline) [REP3-046], but noted NSDC's concern is that the character in the Cattle Market area would change dramatically due to the landscaping coupled with the new infrastructure. NSDC noted that currently there is green infrastructure both sides	The Applicant noted that when looking at Photomontage 25 as shown in the Supporting Historic Environment and Visual Impact Assessment [REP2-020] there is a line of existing vegetation that will be retained which is immediately behind the photographer in this location and therefore not captured in the view from this precise location at Smeaton's Arches. The Applicant's view is therefore that anything north of this photograph will allow the retention of existing vegetation and therefore containment of the roadside view as per the baseline view, albeit understanding that where there are breaks in that existing vegetation then oblique views may be afforded across the existing landscape to the A46 and the grade separated junction.

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	<p>of the existing highway network which feels rural in character. NSDC is concerned that the Scheme proposals are replacing the areas around Cattle Market roundabout with wetland areas which may diminish the green status of the existing roundabout. In essence, NSDC is concerned that the landscape will change to be dominated by the infrastructure rather than coexisting with the landscape.</p> <p>NSDC referred to VP25 as shown in the Supporting Historic Environment and Visual Impact Assessment REP2-020] – Photomontage 25 (Existing View) shows the existing vegetation as road users approach the south of the A616 with existing boundary vegetation on both sides of the A616 framing the view down to the junction.</p>	
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		<p>Photomontage 25 (year 1 operation) shows that the vegetation has been removed so that you see the full expanse of the elevated carriageway at the grade separated junction and retaining wall. In Photomontage 25 (Year 15 Operation) there's not a huge difference in NSDC's view from Year 1, in terms of vegetation either side of the A616 and there is still the same horizontal expanse of the retaining wall and the elevated structure. NSDC are concerned that the view is much more open and currently there are no proposals for planting in the areas identified and queried whether the impact of the structure could be mitigated further.</p>	
4.1.8	ExA	<p>The ExA when looking at the Environmental Masterplan [AS-026] notes there are areas of retained landscaping</p>	<p>The Applicant confirmed that, as noted in its earlier submissions, the swales in this location have a highways drainage function. The reason these nature-based solutions were chosen is a move away from the historic hard drainage features to enable co-benefits in terms of biodiversity and landscape integration that can be afforded using a surface drainage approach.</p>

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		and asked would it affect the function of the swales in that location if there were to be additional planting.	The Applicant confirmed that it has made an allowance for individual trees and shrub planting adjacent to the retaining walls on the lefthand side of the approach to the junction. In addition to that, there is the planting on the junction itself shown on Photomontage 25 (year 1), albeit small in size and yet to establish in Year 1. By Year 15 this planting would be well established which would aid the screening of the junction. In Year 15, the mitigation planting would be particularly effective along the lower portions of the retaining structure which would be screened by the intervening vegetation, whilst the individual trees would create a greater aspect of height above the shrub line, which in turn would help break up the upper portions of the facade of the structure.
4.1.9	NSDC	NSDC would like to make reference to earlier commentary on the approach to biodiversity that made reference to section 4.2 of NCA 46 which makes direct reference to boundary features within this landscape, in particular the wet willow boundary features. NSDC noted that the character when moving along that corridor is fairly consistent in that there is a significant mature boundary treatment for some distance on the A616 (GNR) approach so that the road user has a very long distance view on a straight road to the junction. NSDC is concerned about direct	The Applicant confirmed that as a general rule across the Scheme, it has sought to maximise the retention of existing vegetation where practicable and maximise new planting. The Applicant noted that there are a number of constraints in this location associated with the drainage of the Scheme and the chosen nature-based drainage solution previously mentioned. The Applicant has proposed planting along the highway boundary where possible, albeit the Applicant must ensure that the planting offset from the carriageway aligns with industry standard guidance around the safe operation of the highway as required in DMRB LD117. The Applicant noted that the existing planting provision in this location adjacent to Great North Road, may have naturalised over time and may not be maintained as per the highways standards with respect to offsets from the carriageway.

		<p>loss of mature vegetation and they would like to see more confidence in that being reestablished over time. NSDC's position is that when looking at that baseline position the Applicant should try and attempt to recreate that within the restoration proposal.</p>	
<p>4(a) -Cattle Market junction and views into Newark including impacts on Newark Castle and Church of St Mary Magdalene.</p>			
4.1.1	ExA	<p>The ExA clarified with NSDC whether in their Deadline 3 submissions they were referring to a relationship between the Church of St Mary Magdalene and Newark Council. Juliet Wilson on behalf of NSDC confirmed that there is not a historic relationship other than the road user experiencing them together as they approach Newark from the Great North Road.</p> <p>The ExA referred to NSDC's submission that discussed the impact on</p>	<p>A number of factors had to be considered when informing the selection of the structural form of the grade separated junction and approach ramps. These were discussed with numerous stakeholders and the current DCO layout was presented at the Statutory Consultation following the Applicants decision to adopt the two separate structures with reinforced earth approaches and infill within the gyratory.</p> <p>Key factors that led to this decision were:</p> <ul style="list-style-type: none"> • The overall depth of an open structure would be 300mm to 500mm deeper, this would increase the height of the structure and also worsen the departures from standard associated with the slip roads for visibility and merge lengths. • The land beneath the open structure would be hardened and not allow any planting creating a utilitarian environment. • The area beneath the open structure would be vulnerable to anti-social behaviour, litter collection and arson risk. • The centre of the gyratory would still be landscaped with trees and shrubs, this would block any potential views through the structure and the open aspect would disappear over time.

	<p>road users travelling down Great North Road from this going from a lowline flat landscape to having a rather significant structure in place. The ExA mentioned NSDC's proposals for the potential to redesign the grade separated junction and create a gap through the middle to soften its appearance. NSDC is concerned that the view experienced by road users coming into and out of the town and thinks views could be softened with a lighter structure. NSDC consider that the chosen design has not been fully justified at this stage.</p> <p>ExA requested details from the Applicant as to whether this has been considered and if not, could it be, and if it's unachievable then why not.</p>	<ul style="list-style-type: none"> • The Applicant concluded in its assessment that the existing views of Newark Castle and the church spire are restricted and are more visible from the south of the existing Cattle Market roundabout. • The multi span structure would need to be placed on bearings to allow it to move due to temperature changes, this would require additional maintenance and repair, increasing health and safety risks from working at height and removing and replacing heavy bearings. The two single span structures are fully integral and have no bearings to maintain. • Capital and whole life costs will be significantly higher, £6.5m and £8.0m extra respectively.
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4.2.2	NSDC	<p>ExA asked about NSDC's submission for Deadline 3 (Comments on any submissions received at the previous deadline) [REP3-046], paragraph 3.13 raised a concern about the accuracy of one of the photomontages. As part of negotiations already taken place between the Applicant, NSDC and NCC it was agreed that there would be changes to the alignment of Smeatons Arches and due to the swept path that would need to be designed in order to enter into the A616 and the photomontages don't take into account those changes. NSDC expect that change to alignment to be shown as part of that image as this is one of the heritage impacts.</p>	<p>The Applicant thanked NSDC for its notes and confirmed that it has identified an omission in the Photomontages which are being remodelled to be submitted within the Applicant's Deadline 4 submission as Additional Visual Effects Information [TR010065/APP/7.57].</p>
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AGENDA ITEM 5 CULTURAL HERITAGE

5(a) - Winthorpe Conservation Area.

5.1.1	ExA	<p>The ExA requested that NSDC provide a</p>	
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		summary of its concerns with respect to the impact on the Winthorpe Conservation Area.	
5.1.2	NSDC	<p>NSDC advised that their main concerns relate to the flyover crossing the A1 which in effect brings the highway closer to the Winthorpe Conservation Area and those listed buildings contained within Winthorpe village. NSDC noted that they were concerned in terms of the visual impact of the flyover, however acknowledged that the most recent submission by the Applicant demonstrates that the flyover is highly greened and landscaped which has alleviated some of NSDC's concerns.</p> <p>NSDC still has concerns that the experience of the Winthorpe Conservation Area will be impacted in terms of noise, that said, NSDC</p>	<p>The Applicant requested NSDC and NCC to confirm whether they have any further points they would like the Applicant to address as currently what has been said would not change the Applicant's assessment as set out in the ES.</p> <p>In response NSDC confirmed that no further information is required which the Applicant acknowledged.</p> <p>The Applicant agrees to update the SoCG with NSDC and NCC to reflect the current position.</p>

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		<p>acknowledged that this will be partially mitigated with sound barriers but they will have a visual impact themselves.</p> <p>NSDC confirmed that most of the above concerns have been eased with the most recent visuals submitted by the Applicant.</p>	
5(b) - Civil War landscape features.			
5.2.1	ExA	<p>The ExA highlighted that when travelling to Newark, the town leans on an identity with the Civil War and its prominent role within that. The ExA would therefore like to understand the impacts of the Scheme on the Civil War landscape. The ExA noted that as part of their Written Questions they requested a single plan showing only the Civil War features on there.</p>	<p>The Applicant confirmed that a plan showing the Civil War features only would be submitted at Deadline 4 of the Examination.</p>

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		The ExA acknowledged the Applicant's response showing where these features are shown in the application documents but the ExA would like a map showing only the Civil War features on it by Deadline 4.	
5(c) - Extent of archaeological works to date.			
5.2.2	ExA	The ExA asked the Applicant to provide an update on progress of discussions regarding archaeological investigations.	<p>The extent of archaeological works undertaken by the Applicant to date are outlined in Chapters 4 and 5 of the Archaeological Management Plan (AMP) [REP2-062] submitted at Deadline 2.</p> <p>The works set out in these chapters were agreed in advance with heritage stakeholders from NCC, NSDC and Historic England and the approved WSI's for these works are contained within Appendix A to G of the AMP [REP2-062].</p> <p>The technical reports detailing the results of these investigations are contained within Appendix D to K of the Cultural Heritage Desk Based Assessment [AS-099] and Appendix H of the AMP [REP2-062].</p> <p>Discussions with key stakeholders including NCC, NSDC and Historic England have developed a Phase 3 Archaeological Mitigation Strategy (AMS) which sets out pre-commencement and construction stages of the Scheme. The AMS is contained within Chapter 6 of the AMP [REP2-062].</p>
5.2.3	ExA	The ExA asked NCC and NSDC if they have had a chance to consider the AMP [REP2-062] submitted at Deadline 2 by the Applicant and if so,	<p>NCC acknowledged the submission of the AMP and suggested that the Appendices be separated but confirmed that the data is now there and is welcomed.</p> <p>NCC confirmed they are still reviewing the submission and that their comments will be provided at Deadline 4. NCC noted that there are two areas yet to be evaluated, which will be evaluated at a later date. NCC confirmed that they were happy with this approach. However, NCC noted that the AMP will need to be updated to reflect any data recovered when that later work is carried out.</p>

		whether it resolves their concerns.	NCC will provide some proposed wording for Requirement 2 of the draft DCO [REP3-003] that has been used on other schemes recently consented by the SoS. NCC confirmed that this proposed wording would be provided at Deadline 4.
5.2.4	ExA		<p>The Applicant confirmed that the areas which were not subject to evaluation were not undertaken because of access issues with landowners. However, these areas are covered within Chapter 6 of the AMP [REP2-062] which sets out at section 6.5, the two areas, why they need trenching, how many trenches need to be excavated and that further archaeological works may be required dependant on the results of the evaluation. Once the evaluation is complete, discussions will need to be had with the stakeholders to determine the extent and nature of any further archaeological mitigation works which may be required. Should further archaeological mitigation work be required it will be detailed within the Site Specific Written Schemes of Investigation (WSI's) as set out in Requirement 9 of the dDCO [REP3-003], which will be provided at a later date and not within the AMP [REP2-062]. The AMP cannot be updated without the results of the evaluation which is unlikely to be completed until the pre-commencement phase of work when land has been accessed using powers granted by the Order. It is the Applicant's opinion that it is not necessary to update the AMP as the existing wording within section 6.5.5 and the wording of Requirement 9 provides sufficient assurances on the process by which further archaeological mitigation work can be secured. The WSI's will set out the scope and nature of any additional archaeological mitigation works and will need to be agreed with the relevant planning authority.</p> <p>The Applicant acknowledged the suggestion from NCC that amends might be required to Requirement 9 of the draft DCO [REP3-003] but noted that there is already specific mention of the Site Specific Written Schemes of Investigation which reflect the fact that the AMS (contained within the AMP [REP2-062]) is a live document that will operate across all aspects of the development, i.e. pre-commencement, post commencement works and maintenance of the authorised development.</p>
5.2.5	ExA	The ExA asked whether there are any provisions needed for the pre-commencement phases and whether the drafting of the requirement could be made clearer that the AMS will apply to pre-commencement works.	<p>The Applicant confirmed that the AMS (contained within the AMP [REP2-062]) is a control document that will apply to all works including pre-commencement works. Therefore, the AMS (contained within the AMP [REP2-062]) is to be read alongside the Pre-Commencement Plan [APP-188].</p> <p>The Applicant explained that the wording of Requirement 9 of the draft DCO [REP3-003] is slightly different to other Requirements because it states that the "authorised development must be carried out" and does not refer to the term "commence" in any way. The intention here is that AMS will therefore apply to all works associated with the authorised development regardless of which stage they may be carried out.</p>

			<p>The Applicant stated that they would review the wording to see if clarity is required here to make the intention plain. However, looking at the wording of Requirement 9 and noting that there is precedent for this approach in Requirement 9 of the A428 Black Cat to Caxton Gibbet DCO 2022 the Applicant does not think any further amendments are required at this stage.</p> <p>The Applicant comes to this view noting the ExA's further question regarding how works that may be carried out prior to commencement and that may not require permission because they wouldn't be a 'material operation' are controlled in the context of archaeological mitigation. The Applicant notes that the DCO, if made, would authorise all works associated with the authorised development, be they above the threshold of a material operation or otherwise. It is this reason that the draft DCO [REP3-003] sets out and defines the 'pre-commencement works' and controls those works through a combination of the Pre-Commencement Plan [APP-188] and the AMS (contained within the AMP [REP2-062]).</p> <p>The Pre-Commencement Plan [APP-188] together with the AMS (contained within the AMP [REP2-062]) provide, in the Applicant's view, all of the controls required in relation to those works that fall within the definition of 'pre-commencement works' i.e. including any works that would not meet the threshold of a material operation. Therefore, any works carried out before the authorised development has technically 'commenced' (based on the definition of commence in Article 2 of the draft Development Consent Order [REP3-003]) regardless of whether they would constitute a material operation or not would be controlled by and must be carried out in accordance with the details contained within the Pre-Commencement Plan [APP-188] and the AMS (contained within the AMP [REP2-062]).</p> <p>However, unlike the Pre-Commencement Plan which falls away as soon as the Second Iteration EMP is put in place, in accordance with Requirement 3 of the draft Development Consent Order [REP3-003], the AMS will continue to apply to the authorised development during all stages of construction (i.e. pre and post commencement), operation and maintenance.</p>
5.2.6	ExA	The ExA asked whether any further permissions, other than what is already provided for in the draft DCO [REP3-	The Applicant confirmed that all permissions required would be covered by the powers sought in the draft DCO [REP3-003].

		003], would be required in relation to the access and access gates at Langford Hall.	
5.2.7	ExA	The ExA then questioned the impact on Langford Hall and its wider setting in the context of the detailed design of the access and access gates to Langford Hall. The ExA sought confirmation as to who would sign off the detailed design of these elements of the Scheme.	The Applicant confirmed that while listed building consent might be required in this context, given that this Scheme is being granted under the Planning Act 2008 regime, separate listed building consent is not necessary. However, the Applicant agreed to take this point away to consider whether any other consenting regimes might be applicable or if not how approval of the detailed design to ensure there was no impact on the setting of Langford Hall would be secured. The Applicant's response to Action point 6 is captured in Appendix 1 to this document.
ITEM #6 HABITAT REGULATIONS ASSESSMENT (HRA)			
6.1.1	ExA	The Applicant was requested to provide an update on their discussions with NE with respect to the HRA.	<p>In response to the Relevant Representations submitted by Natural England [RR-044] and the Environment Agency [RR-020] as part of the DCO examination, the Applicant made several changes to the HRA, which was submitted at Deadline 3 [REP3-024].</p> <p>There have been discussions with the EA and NE during the Examination process, which have been reflected in updates to the HRA [REP3-024] and the FIEMP [REP3-022].</p> <p>Those changes made to the HRA [REP3-024] related to:</p> <ul style="list-style-type: none"> • A Fish Escape Passage Technical Note has been produced, appended to the HRA, which provides details of consideration of four options for fish escape passage from the Farndon FCAs, with justification for selection of the preferred option. The fish escape passages are required mitigation for entrapment of riverine fish species following a flood event, including the low risk of entrapment of sea and river lamprey, which are qualifying features of the Humber Estuary SAC and Ramsar. • Reference to the design of the fish escape passages, both in the HRA and appended technical note states that the design will be in agreement with the Environment Agency (rather than in consultation with the Environment Agency).

			<ul style="list-style-type: none"> • Reference to the fish escape passages being tested in the fluvial hydraulic model has been removed as this is no longer necessary due to the design of the preferred option for fish escape passage. • The in-combination assessment has been updated to provide clarity on the geographic scope of the assessment. The assessment was also updated in September 2024 to include additional plans and projects that had the potential to give rise to in-combination effects on the Humber Estuary SAC and Ramsar since completion of the assessment submitted as part of the DCO application in August 2023. • Wording for Stage 2 Appropriate Assessment has been amended to refer to no 'Adverse Effects on the Integrity' of the site rather than no 'Likely Significant Effects' • Further clarity has been provided on: • The Likely Significant Effect on lamprey within the River Trent due to construction phase lighting and how the mitigation hierarchy has been applied; • Specific embedded measures proposed to avoid Likely Significant Effects to the Humber Estuary SAC and Ramsar due to siltation and pollution of the River Trent during construction • Assessment of the potential impact pathway 'loss of lamprey individuals' • Assessment of the 'de-minis' level impact on lamprey due to piling works • Justification for electro-fishing and water abstraction being scoped out at HRA Stage 1 Screening. • The FIEMP has also been updated at Deadline 3 [REP3-022] with the points above, where relevant. <p>The Applicant has continued discussions with NE and EA in relation to these updates and has a further meeting scheduled for the week of 9 December 2024. The Applicant confirmed that it would update its SoCGs with these bodies to reflect those discussions, if possible, by Deadline 4 and otherwise committed to providing an updated draft SoCG at Deadline 5. Since ISH4, a meeting was held on the 10 December 2024 with Natural England and the SoCG has been updated to reflect the 'Agreed' status regarding the fish escape passages design. This updated SoCG has been submitted at Deadline 4.</p>
AGENDA ITEM 7 – NOISE AND VIBRATION			
7.1.1	ExA	Regarding the previous discussions on Langford Hall Lodge and the concerns of the	<p>Noise Impacts at Langford Hall During Operation</p> <p>The Applicant confirmed that the noise assessment has concluded that there will be negligible impacts to Langford Hall Lodge during operation (both in the short and long term) and on that basis</p>

		<p>Interested Party regarding impacts to the Lodge, the ExA queried whether 1) there are any impacts on that particular property; and 2) would it potentially fall under the Noise Insulation Regulations 1975.</p>	<p>Langford Hall Lodge will not qualify for sound insulation under the Noise Insulation Regulations 1975.</p> <p>Noise Impacts at Langford Hall During Construction</p> <p>The noise assessment in Chapter 11 (Noise and Vibration) of the ES [APP-055] has identified a number of potential noise impacts at Langford Hall Lodge during construction. In order to avoid any significant effects at this location during construction, the Applicant will provide mitigation measures to avoid adverse effects. These impacts will be mitigated either through the provision of temporary noise barriers (REAC Commitment NV2 in the FIEMP [REP3-023]) or through limiting the duration of the construction activities in this location (REAC Commitments NV3, NV4 and NV6 in the FIEMP [REP3-023]). The Applicant considers that there is no requirement for noise insulation measures at Langford Hall Lodge during construction.</p> <p>Regarding how these mitigation measures would be secured through the DCO, the Applicant confirmed that the provision of temporary acoustic barriers are detailed in commitment NV2 of the REAC within the FIEMP [REP3-022]. The Applicant clarified that the temporary barriers that will be installed adjacent to the construction activities in Winthorpe will provide the construction noise mitigation for Langford Hall Lodge.</p> <p>The Applicant confirmed that the REAC (within the FIEMP [REP3-022]) is secured by Requirement 3 of the draft DCO [REP3-003] which requires adherence with the Second Iteration EMP. The FIEMP [REP3-022] will be developed into a Second Iteration EMP to be implemented during construction of the Scheme.</p>
7.1.2	ExA	<p>Consideration and potential impacts on the gypsy and traveller site at Old Stable Yard including Public Sector Equality Duty.</p> <p>The ExA noted that the site history dates back to 2018 with their main</p>	<p>The construction noise and vibration assessment is undertaken on the basis of representative assessment locations on a reasonable worst-case basis. Representative locations are spread throughout the study area to facilitate an assessment that evaluates potential impacts at all relevant receptors.</p> <p>Construction noise impacts are detailed in Section 11.11 of Chapter 11 (Noise and Vibration) of the ES [APP-055] for affected representative receptors which are shown in Figure 11.11 (Construction Noise and Vibration Assessment Locations) of the ES Figures [AS-065]. The nearest representative noise sensitive receptor to the Old Stable Yard GRT site for which construction noise calculations have been carried out is 127039 which is slightly closer to the works than the traveller site at the Old</p>

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		<p>concern being that there are people living in this location with protected characteristics.</p> <p>The ExA noted that the site has been considered as a planning allocation. However, following further noise assessment work undertaken by NSDC at that site, the allocation was proposed to be removed. The ExA wants to understand from the Applicant why this site was not considered from a Public Sector Equality Duty Perspective.</p>	<p>Stable Yard site indicating a conservative approach for the latter. Tables 11-14, 11-15, 11-17, 11-18, 11-19, 11-22, 11-23, 11-25, and 11-29 in Chapter 11 (Noise and Vibration) of the ES [APP-055] present daytime construction noise levels relevant to this representative receptor, indicating that the daytime baseline noise level of 68dB(A) (which, in accordance with LA111 defines the Lowest Observable Adverse Effect Level (LOAEL) at this location) is not exceeded throughout the construction period. Tables 11-20 and 11-24 of Chapter 11 (Noise and Vibration) of the ES [APP-055] present night-time construction noise levels relevant to this representative receptor, indicating that the night-time baseline noise level and hence LOAEL of 59dB(A) is only exceeded during the roadworks construction phase, with a highest predicted level of 62dB(A) during the resurfacing work activity which would be classified as a moderate impact. This noise level is unlikely to be disruptive as resurfacing works are by definition linear suggesting any potential impacts would not affect any receptor for prolonged periods of time and therefore additional mitigation is not required for this activity. Construction induced vibration is not expected to be experienced at this representative receptor.</p> <p>The operational noise assessment considers all address base points quantitatively and includes noise maps that present noise levels/noise level changes with/without the Scheme in the short/long term over the entire study area which encompasses the Old Stable Yard GRT site. These maps include all the information needed to inform an assessment for this site. The impact of the Scheme at this location may be seen in Sheet 5 of Figure 11.9 (Short-term Noise Change) of the Environmental Statement Figures [AS-063] and Figure 11.10 (Long-term Noise Change) of the Environmental Statement Figures [AS-064] which shows the noise level change is Negligible in both the short-term and long-term.</p> <p>The Applicant understands that it must comply with the Public Sector Equality Duty and it is the Applicant's position that the noise assessment fully accounts for the Old Stable Yard GRT site by reference to receptor location 127039 (for construction noise and vibration) and Ordnance Survey (OS) address base points/ noise maps (for operational noise). The Applicant's conclusion is that a significant effect will not arise on the Old Stable Yard GRT site during either construction or operation.</p>
7.1.3	ExA	The ExA referred to page 75 of the Applicant's Responses Written Representations	The Applicant confirmed that during the entirety of the construction works, the predicted noise level at the representative receptor nearest to the Old Stable Yard GRT site is below LOAEL. This means that the noise from construction will be less than the noise level currently experienced at the Old

	<p>[REP3-036] and queried why the agreed mitigation measures at Bridge House Farm are not required at the Old Stable Yard GRT site given that Bridge House Farm is adjacent to the Old Stable Yard GRT site. The ExA also requested an explanation of how the Applicant has accounted for the different characteristics of the buildings and units at the Old Stable Yard GRT site and how noise may be perceived differently by these residents.</p>	<p>Stable Yard GRT site, with the exception of resurfacing works which will not impact any particular receptor for prolonged periods of time and on this basis a significant effect will not arise.</p> <p>The Applicant further confirmed that the noise level change during operation is predicted to be Negligible beneficial in both the short-term and long-term.</p> <p>In relation to setting the Lowest Observable Adverse Effect Level (LOAEL)/Significant Observable Adverse Effect Level (SOAEL) values, DMRB LA 111 sets out an approach for the assessment of construction noise (utilising the BS 5228-1:2009 +A1:2014 'Example Method 1 - ABC Method' calculation methodology to establish LOAEL/ SOAEL thresholds) and operational noise effects at sensitive receptors. The following are noted:</p> <ul style="list-style-type: none"> • For construction noise, LOAEL for the Scheme reflects the existing baseline (ambient noise level currently experienced at the site). Considering that the noise level experienced at a particular location during construction could never be lower than the noise level experienced at the same location without construction, it would be unreasonable to set LOAEL any lower than the existing baseline (as this could mean LOAEL is exceeded even in the absence of construction activity). Accordingly, receptor sensitivity does not factor in to setting the LOAEL value for the Scheme (and could not have resulted in a lower value). • For operational noise, it is acknowledged that DMRB LA 111 includes provision to adjust the LOAEL value where it is proportionate and merited by local circumstances e.g. for highly noise sensitive receptors. The operational noise assessment nonetheless is based on noise level change with/without the Scheme. Noise impacts with the Scheme in the short term where noise levels increase by 3 dB or more (Moderate/Major impact) for receptors above the LOAEL or at least by 1 dB (Minor impact) for receptors at or above the SOAEL would be considered to be potentially significant, subject to review of additional factors (which include the magnitude of change with respect to minor and moderate boundaries, the magnitude of impact in the long-term and short-term, the consideration of absolute noise levels with respect to the LOAEL and SOAEL, the location of noise sensitive parts of the receptor, the acoustic context, and the perception of change). On the basis that noise impacts at the Old Stable Yard site are predicted to be Negligible beneficial in both the short-term and long-term, a significant effect would not arise regardless of the LOAEL/SOAEL values selected for operational noise i.e. receptor sensitivity in this instance does not change the outcome which is that a significant effect would not arise.
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			<p>The Applicant's position is therefore that there is nothing in the Public Sector Equality Duty to suggest that the Applicant should be applying different criteria to the Old Stable Yard GRT site as a significant noise effect in the context of DMRB LA111 would not arise at this location.</p> <p>Regarding the proposed mitigation measures at Bridge House Farm and the dog kennels, the Applicant notes that these owners have discussed their concerns with the Applicant relating to the nature of their business. The mitigation measures in this location are therefore a bespoke accommodation works package regarding the particular business use, rather than mitigation measures to be provided as an outcome of the noise assessment. The Applicant confirms these measures do not form part of the noise mitigation strategy and are not factored in when reaching the conclusion that a significant effect would not arise at this location.</p>
7.1.4	NSDC	<p>NSDC confirmed that a planning application for the Old Stable Yard GRT site was approved at planning committee in November as a GRT site. NSDC noted that this was a site they intended take forward in the allocation of the local plan but following a noise assessment it was de-allocated based on noise impact. Although mitigation would have been proposed at that site, that mitigation depended on engineering solutions. Subsequently members have approved that application.</p>	<p>The Applicant confirmed that it has reviewed the decision notice for the Old Stable Yard GRT site and confirms that there are no planning conditions relating to noise, the only planning conditions relate to the number of pitches, the use of the caravans, flooding and a landscaping scheme.</p> <p>Regarding the noise concerns of the NSDC planning officer recommending the planning application for the Old Stable Yard GRT site for refusal, it is noted that assessing site suitability for new residential receptors, in this case the traveller community, and assessing potential impacts on the existing environment (and by extension on relevant receptors) from a highways scheme, are two different processes with differing scopes.</p> <p>Site suitability is addressed at planning stage, and it is the responsibility of the Local Authority to ensure a site is suitable for its intended use. Site suitability for the Old Stable Yard is nonetheless not relevant at this stage on the basis this does not change the scope or outcomes of the current assessment (which evaluates potential impacts on the existing environment/relevant receptors from the Scheme to determine if a noise and/or vibration related significant effect occurs during either the construction or operational phase) for the reasons detailed in the Applicant's response to Agenda Item 7, entries 7.1.2 and 7.1.3.</p> <p>The Applicant maintains that the noise and vibration assessment shows that a significant effect would not arise during either the construction or operational phase of the Scheme and it is not in the scope of the Scheme to assess another site's suitability in relation to site allocations by the Council.</p>

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		<p>NSDC confirmed that as part of this discussion there was a representative from the Old Stable Yard GRT site itself.</p> <p>Members resolved to approve the application of their own accord taking into account material considerations following a recommendation to refuse the application based on noise, however NSDC will check and revert back on that point. The ExA requested a copy of the Officer's Report and the Members decision.</p>	<p>NSDC have provided the Officer's Report to the Applicant and this information has been reviewed by the Applicant's consultants.</p>
7.1.5	ExA	<p>The ExA requested more information as to how the Old Stable Yard GRT site has been considered overall and how the Applicant has met its Public Sector Equality Duty.</p> <p>The ExA has requested a consolidated response to take</p>	<p>The Applicant queried with the ExA whether it is the ExA's suggestion that there could be something in the Public Sector Equality Duty that requires the Applicant to assess a receptor when DMRB indicates a significant effect would not occur. The Applicant welcomes the ExA's confirmation that it is not suggesting any alternative criteria for assessment.</p> <p>The Equality Impact Assessment (EqIA) [APP-195] assesses the impact of the Scheme (adverse or beneficial) on people with characteristics protected under the Equality Act 2010. The Old Stable Yard Traveller site is identified within the EqIA as the 'Bridge House site'. For consistency and ease of cross- referencing, this information note will refer to the Old Stable Yard Traveller site as the Bridge House Gypsy, Roma and Traveller (GRT) site.</p>

	<p>account of the information provided by NSDC, not just considering the noise dimensions but to also consider the difference in noise transference for the nature of the residential units on the Old Stable Yard GRT site given the importance of the Public Sector Equality Duty.</p> <p>The ExA would like the response to include details of the Applicant's attempts at consultation with this community.</p> <p>The response should address the ExA's main concern that there is an absence of any reference to a group with protected characteristics as the ExA needs to be certain that a full assessment has been undertaken even if the outcome does not change.</p> <p>The ExA requested the Applicant ensures that</p>	<p>The Bridge House GRT site is first identified in the EqIA in Section A.5 – Customers, staff, and stakeholders (p. 11), as part of a list of Equality, Diversion, and Inclusion stakeholders who are likely to be affected by the Scheme, along with the Tolney Lane GRT community.</p> <p>The EqIA identifies, through policy and literature review, the likely impacts of road construction and improvement schemes on the local community, and then assesses the specific impacts of the A46. The literature review is provided in full at Section F.3 – Literature and evidence review, and in summary at Section C.2 – Literature and evidence review (summary). These impacts include the effects of noise, air quality and pollution, landscape, and access. The literature review specifically identifies that GRT groups are likely to experience differential impacts as a result of changes to noise during construction and during the operation of the new road (pages 42-43).</p> <p>Section D (Full Assessment) (page 52 onwards) provides an assessment of the potential impacts on groups with protected characteristics. The Assessment bases its noise, air quality, and landscape assessments on the findings of the Environmental Statement. The potentially differential impacts that may be experienced by GRT communities is therefore identified on pages 55/56 ('Changes to noise exposure during operation') and pages 76/77 ('Changes to noise exposure during construction'). The EqIA concludes that it is unlikely there will be adverse equality impacts as a result of changes to noise exposure.</p> <p>However, it should be noted that both sections on changes to noise exposure within the EqIA at the pages noted above make specific reference to the Tolney Lane GRT community. This is an error - as the EDI groups listed in Section A.5 include both the GRT groups at Tolney Lane and Bridge House GRT site they should also be referred to here, as both were assessed. However, this is simply an error of terminology and does not affect the assessment conclusions with the EqIA. This error will be corrected in the EqIA and submitted at Deadline 5.</p> <p>Section F1.5.1 – Gypsy, Roma, and Traveller Community (pages 109- 111) summarises the statutory consultation undertaken with local GRT communities via the NSDC Community Liaison Officer (CLO) and sets out that consultation was undertaken with both the Tolney Lane and Bridge House GRT communities from April 2022 until May 2023. The CLO advised the Applicant that the GRT community were broadly supportive of the Scheme, and specifically that the representative from the Bridge House GRT community had verbally confirmed support for the Scheme.</p>
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		<p>when looking at the setting of LOAEL in the noise assessment that it took account of all the factors and protected characteristics as otherwise if the Applicant did not have regard to the necessary factors in setting LOAEL then this could be an inappropriate baseline.</p>	<p>The Applicant has provided an additional summary below of the engagement that has taken place with the Old Stable Yard GRT site to date.</p> <p>Summary of GRT engagement planning and delivery</p> <p>The A46 Newark Bypass scheme has worked in collaboration with NCC and NSDC since spring 2022 initially, in preparation for the Statutory Consultation, paying particular attention to under-represented or seldom heard groups, as identified by the Councils, and referenced in the Statement of Community Consultation (SoCC) [APP-033] (page 8) during the planning phase (see document section below).</p> <p>In an early meeting with NSDC, support was offered by NSDC Director of Planning and Growth on behalf of the Community Liaison Officer (CLO) who works directly with the GRT communities in Newark. A meeting was held with this officer in September 2022 during which the officer offered to visit the GRT communities to facilitate the sharing of the consultation documentation and read through useful information to facilitate knowledge and understanding of the potential impacts. (See document 1 below)</p> <p>The CLO commented that any of the GRT community who were interested in finding out more about the Scheme might attend the engagement van session in Newark Market Place or the sessions at Newark Town Hall.</p> <p>During the September 2022 meeting with the CLO the A46 team provided an overview of the documentation to be used within the consultation and agreed to provide the consultation brochure and response form ahead of the consultation the CLO to share with residents.</p> <p>Ahead of the statutory consultation, NSDC updated the risk level of one of the GRT sites and advised the Scheme that they would not be allowing their team to access the site. This meant that the additional engagement offered by the CLO could not be delivered.</p> <p>Direct engagement and correspondence</p> <p>In August 2022, the stakeholder team met with representatives at Old Stable Yard to provide an overview of the preliminary design plan and answered questions on noise, access and safety for</p>
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		<p>PROW users in both directions from this location. These representatives said they would encourage other residents at this site to look at the brochure and use the response form during the Statutory Consultation.</p> <p>In December 2022, following an invitation by NSDC, the stakeholder team attended a GRT-specific event at Castle House, where community representatives were shown the councils proposals for a flood alleviation project at the Tolney Lane site. The stakeholder team set up a branded table by the entrance and offered brochures and response forms to attendees as they arrived and left. Comments from attendees at this event included support for the scheme and confirmation that they had seen the plans and had no questions.</p> <p>All relevant correspondence in relation to the Scheme has been issued to addresses on Tolney Lane and Old Stable Yard. A record of returned post has been managed and the Scheme's land team have helped redirect letters when people have moved to different sites across the country.</p> <p>In July 2024, with support from a PC from Nottinghamshire Police, the Scheme was able to deliver two 'returned to sender' Section 5 letters to addresses on Tolney Lane. A letter was hand delivered to the new owner of one plot and another abandoned plot had a waterproof notice affixed to it for information.</p> <p>Documentation</p> <ol style="list-style-type: none"> 1. APP-028 5.1 Consultation Report. Table 4-7 SOCC Compliance (Page 57) 2. APP-033 5.2 Consultation Report: Annex E: Published SoCC (Page 12) <p>Examples of ongoing high-level planning</p> <p>In May and November 2024, the stakeholder team has attended the GRT multi-agency meeting, hosted by NSDC at Castle House, where they have established a good relationship with the new Community Liaison Officer for GRT communities in the district (including Tolney Lane and Old Stable Yard), plus other supportive agencies, including Nottinghamshire Police and the NSDC education team.</p>
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Agenda #8 Any other matters			
Additional Comments			
8.1.1	NSDC	NSDC referred to paragraph 3.15 of NSDC's submission for Deadline 3 (Comments on any submissions received at the previous deadline) [REP3-046] and requested a visual taken from between Newark Castle train station and the ASI/Council offices Junction looking towards the grade separated junction at Cattle Market to see how it interacts with the landscape from that perspective. NSDC requested the image be taken at ground level	The Applicant agreed with the ExA to provide a wireframe image accompanied by a baseline photograph to show context to the wireframe. The Applicant will provide an update at Deadline 4 of the progress of this.
ISH4 concluded at 12:57			

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Appendix 1 – Post-Hearing Response to Action Points Arising From ISH4

Item	For	Action Point	Applicant's Response
Biodiversity and HRA			
1	Applicant	Provide details of the SoS for Transport's approach to weighing non-mandatory biodiversity net gain in the overall planning balance.	This has been provided at Appendix 2.
2	Applicant	Provide a response as to whether habitat maintenance should be in perpetuity and if not why not.	Please see the Applicant's response under agenda item 3c) above.
Landscape and Visual Effects			
3	Applicant	Provide a wire frame image (180o view from VP25) and elevational drawing to assist in assessing the impact of the Cattle Market flyover. Please provide electronic and printed versions of these along with a printed version of the Supporting Historic Environment and Visual Impact Assessment [REP2-020]. Please also provide a printed copy of these documents directly to NSDC.	The Applicant has provided this information in the Applicant's Deadline 4 submission as Additional Visual Effects Information [TR010065/APP/7.57].
4	Applicant	Respond to concerns raised by NSDC in relation to the potential for further planting / landscaping.	The Applicant has provided this information in the Applicant's Deadline 4 submission as Additional Visual Effects Information [TR010065/APP/7.57].
5	Applicant	Provide justification for the design approach to the Cattle Market Junction flyover and the reasons why an 'open' structure is not being proposed.	The Applicant has provided this information in the Applicant's Deadline 4 submission as Additional Visual Effects Information [TR010065/APP/7.57].

Cultural Heritage			
6	Applicant	<p>Explain how the design of the new entrance to the Langford Hall estate would be agreed / approved to ensure that there is no undue harm to the setting of the listed building.</p>	<p>The Applicant notes the ExA's question regarding how it can be sure that the ultimate detailed design of the new entrance to this listed building will not cause undue harm to its setting. In accordance with Requirement 12 of the draft Development Consent Order [REP3-003], the Applicant must not do or construct any aspect of the authorised development in such a way as to give rise to any materially new or materially different environmental effects and this constrain ensures that the Applicant cannot construct the new entrance in such a manner as to breach this threshold. However, given the particularly sensitive nature of this element of the Scheme, the concerns of the Landowner and the potential to impact the setting of the listed building (albeit not in a significant way as controlled by Requirement 12) the Applicant has proposed to include a new requirement into the draft Development Consent Order [REP3-003] which will state as follows:</p> <p>Langford Hall Estate</p> <p><i>19 (1) The construction of the new entrance at Langford Hall estate contained within Work No. 110 cannot commence until the Applicant has submitted to the Secretary of State for its approval in writing, following consultation with the relevant landowner of Langford Hall Estate and Historic England, the proposed design of the new entrance.</i></p> <p><i>(2) The proposed design referred to in paragraph (1) must accord with the landscaping principles shown on the environmental masterplan and any relevant mitigation identified in the first iteration environmental management plan.</i></p> <p><i>(3) The new entrance must be constructed in accordance with the approved design.</i></p> <p>The updated draft Development Consent Order [REP3-003] including the above requirement will be submitted into the Examination at Deadline 4.</p>

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			<p>The Applicant would like to distinguish the above approval of the design of the new entrance from the wider question asked by the ExA during Issue Specific Hearing 1 regarding approval of the detailed design generally. The Applicant's response to this question is contained in the Applicant's Summary of the Issue Specific Hearing 1 [TR010065/APP/7.49] at reference points 4.6.1 and 4.6.2 and it makes clear that approval of the full detailed design of the authorised development is not necessary for, and would prove detrimental to the delivery of, the Scheme for the reasons given. However, the Applicant accepts that for this specific, discrete, aspect, given the potential for impacts on the setting of a listed building (even if less than significant), that further approval is appropriate in consultation with Historic England.</p>
Noise and Vibration			
7	NSDC	Provide details of the recent decision for the Bridge House Farm traveller site including the Officer's Report and details of the Members' decision.	No response required from the Applicant.
8	Applicant	Taking account of NSDC's response to point 7, provide response in relation to assessment of impacts on the group with protected characteristics at Bridge House Farm.	Please see the Applicant's response under Agenda Item 7 of this Written Summary, and particularly the explanation regarding the assessment undertaken within the Scheme's Equality Impact Assessment [APP-195], which assesses the impact of the Scheme (adverse or beneficial) on people with characteristics protected under the Equality Act 2010.

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Appendix 2: Table setting out the details of the SoS for Transport’s approach to weighing non-mandatory biodiversity net gain in the overall planning balance

DCO	Links to Relevant Documents	Relevant Paragraphs Extracted from the Decision Letter	Relevant Paragraphs Extracted from the Recommendation Report
<p>The A1 in Northumberland: Morpeth to Ellingham Development Consent Order 2024</p> <p>Made 24 May 2024</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>Biodiversity No Net Loss</p> <p>119. Whilst noting that there is currently no legal requirement for NSIPs to provide for Biodiversity Net Gain, the Secretary of State has had regard to the reports produced by the Applicant for the Proposed Development quantifying biodiversity losses and gains in working towards national and local policies, including the aims of the NPSNN [ER 4.15.78 - 4.15.79]. The Secretary of State notes that, despite biodiversity net gains for hedgerow and area-based biodiversity, no net loss could not be claimed across the entirety of the Proposed Development due to losses of irreplaceable habitat, and medium distinctiveness woodland and scrub and river habitat; in particular there would be a net loss of 11.69% in river biodiversity units [ER 4.15.80 and ER 4.15.82]. The Secretary of State has had regard to the SoCG between the Applicant and the Environment Agency, as well as the view from Natural England that the loss of ancient woodland as a result of the Proposed Development had been addressed in the AWS [ER 4.15.81 – 4.15.82].</p> <p>...</p> <p>131. Overall, the ExA find that there would be considerable harm to biodiversity and an adverse effect overall. The Secretary of State concurs with the ExA, noting also that whilst compensation has been agreed, additional significant adverse effects relating to air quality have been identified since the close of the Examination. In line with paragraph 5.35 of the NPSNN this harm must be weighed against the benefits of the proposed development [ER 4.15.92] and this is covered in the Planning Balance section below.</p> <p>...</p>	<p>Biodiversity No Net Loss</p> <p>4.15.78. The ExA sought clarification from the Applicant at ISH2 [EV-011] and ISH3 [EV-038] about the issue of biodiversity net gain and biodiversity net loss. The Applicant confirmed [REP4-025] that there was no legal requirement for a NSIP to achieve biodiversity net gain. It also noted that the EA no longer questioned the basis for the calculation of biodiversity net gain and loss. Nevertheless, BNNL reports [APP-246] [APP-309] had been produced for the Proposed Development for Parts A and B while at D2 a BNNL Assessment [REP2-009] for both Parts A and B was undertaken. The purpose of the reports was to quantify biodiversity losses and gains and to assess the loss of habitats and inform landscape mitigation proposals with the aim of achieving no net loss in order to meet the Applicant’s own internal biodiversity plan. The Applicant aims to consider biodiversity impacts across its network on a national scale as opposed to considering it on a scheme-by-scheme basis.</p> <p>4.15.79. Responding to ExQ1 BIO.1.1 the Applicant [REP1-032] confirmed that the aim of working towards BNNL also related to addressing national and local policies and strategies including the aims of the NNNPS. For example, RIS2 states that by 2025, the Applicant must deliver no net loss of biodiversity on its estate and progress towards the target of delivering a net gain in biodiversity by 2040.</p>

		<p>202. The following are considerations the ExA has weighed against the Proposed Development:</p> <ul style="list-style-type: none"> • Biodiversity and Ecology: negative weight against the Proposed Development as a result of adverse impacts on and considerable harm to biodiversity, including the loss of ancient woodland [ER 6.2.85 and 6.3.12]; • Landscape and Visual: moderate negative weight due to adverse landscape impacts during construction and operation at some sensitive receptors, despite appropriate mitigation [ER 6.2.69 and 6.3.13]; 	<p>4.15.80. The BNNL Assessment was revised [REP5-010] to provide a correction to the biodiversity calculation. The correction resulted in a net gain predicted for hedgerow biodiversity units (previously a net loss) and an increase in the net gain of area-based biodiversity units (which includes woodland). However, the as a whole no net loss could not be claimed for the Proposed Development due to the loss of irreplaceable habitat, and medium distinctiveness woodland and scrub and river habitat.</p> <p>ExA Conclusion</p> <p>4.15.83. This section has had regard to the likely significant effects resulting from the Proposed Development on biodiversity, particularly taking account of paragraphs 5.20-5.38 of the NNNPS which set out the assessment and mitigation requirements with regard to biodiversity and geological conservation. Findings and conclusions in relation to HRA matters are covered in Chapter 5 of this Report.</p> <p>...</p> <p>4.15.86. The Proposed Development would result in the loss of irreplaceable habitats including ancient woodland and veteran trees. Paragraph 5.32 of the NNNPS advises that the SoS should not grant development consent in such cases unless the national need for and benefits of the development clearly outweigh the loss.</p> <p>...</p> <p>4.15.92. Notwithstanding the improvement in the quality of habitats there would be no net gain in habitat area and the</p>
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			<p>impacts on biodiversity would be adverse, we find that there would be considerable harm to biodiversity and an adverse effect overall. Accordingly, in line with paragraph 5.35 of the NNNPS this must be weighed against the benefits of the Proposed Development which is done in Chapter 6.</p>
<p>The A303 (Amesbury to Berwick Down) Development Consent Order 2023 Made on 14 July 2024</p>	<p>Decision Letter Recommendation Report</p>	<p>33. In relation to the water environment, the Secretary of State is satisfied that there would be improved pollution control through the imposition of upgraded pollution control measures. The Secretary of State agrees that the creation of 186 hectares (net) of new semi-natural habitats (including 162 hectares of calcareous grassland) would represent a significant benefit for biodiversity and the improvement to the SRN would also provide a waste management benefit [ER 7.2.18]. The Secretary accords moderate weight to the water environment benefit, great weight to the biodiversity benefit and moderate weight to the waste management benefit in the planning balance.</p> <p>...</p> <p>239. The Secretary of State agrees with the ExA that, on balance, the impacts of the following matters are also of neutral weight in the decision as to whether to make the DCO: air quality; biodiversity and wildlife; design; flood risk, ground water protection and water environment; geology, soil and land contamination; noise and vibration; people and communities; traffic and transportation; and waste and materials management (paragraphs 170-184)</p>	<p>5.5.2. The NPSNN states at paragraph 5.23 that the Applicant should show how the Proposed Development has taken advantage of the opportunities to conserve and enhance biodiversity and geological conservation interests. This echoes the NPPF which sets out the ways that the planning system should enhance the natural and local environment. The revised (2019) version of the NPPF encourages developers to look beyond maintaining existing biodiversity value and to pursue opportunities for securing measurable net gains for biodiversity.</p> <p>5.5.3. Matters which should be considered in decision-making are described in paragraphs 5.24 to 5.35 of the NPSNN and mitigation in paragraphs 5.36 to 5.38. In addition, air quality impacts are addressed in NPSNN paragraphs 5.3 to 5.4. Insofar as they relate to biodiversity air quality matters are considered in this section of the Report.</p> <p>5.5.4. In taking decisions, the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity. Applicants should include appropriate mitigation measures as an integral part of the Proposed Development. These should address construction and operational impacts, and should take opportunities to enhance existing habitats and, where practicable, to create new habitats of value within the site through techniques such the use of green bridges and the habitat improvement of the network verge. The SoS will need to take account of what</p>

			<p>mitigation measures may have been agreed between the Applicant and NE.</p> <p><i>Applicant's Approach</i></p> <p>...</p> <p>5.5.12. ES Chapter 8 [APP-046] identifies habitat losses and gains of a temporary and permanent nature during the construction phase, as shown in Table 8.14. By the opening year there would be a net gain of early successional grass chalkland habitat, because the Winterbourne Stoke bypass and associated "soft estate" (e.g. verges, embankments) would be in place prior to the year of opening, whereas habitat creation on the much more extensive area east of Parsonage Down would be less advanced at that stage. By Year 15 (the assessment year) it is predicted that there would be a progressive increase in the benefits. The net gain of 162ha of chalk grassland associated with the cuttings and other areas of the scheme is expected to result in a residual beneficial effect. Due to the increase in both extent and connectivity, the benefit from the new habitat is expected to be significant at a local level by the year of opening, and at the county level moderate beneficial or more by Year 15.</p> <p>5.5.13. The ES identifies a loss of approximately 16ha of semi-natural habitats, of which less than 1ha has been assessed as being of local value (i.e. the rest of the loss is at a 'site' level of importance as defined in Table 8.2 of [APP-046]. The Proposed Development provides for all other lost habitats to be replaced by similar or better habitats. No irreplaceable habitats would be affected (such as ancient woodland or veteran trees). There would also be a loss of approximately 291ha of arable or agriculturally improved grassland, of which 118ha would be returned to agriculture, largely arable.</p>
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			<p>to the west and east, allowing species that use both terrestrial and aquatic habitats (i.e. invertebrates) to benefit. It also stated that the scheme would provide improvement of highway drainage compared to existing conditions, in turn contributing to improving river conditions, through sustainable drainage systems. A moderately beneficial residual effect for water quality in the River Avon is anticipated, itself contributing to a net biodiversity gain [REP2-027].</p> <p>5.5.66. The issue was discussed at the ISH 7 on Biodiversity and at the second DCO ISH (ISH 11). At D8 [REP8-039] EA welcomed a letter from the Applicant dated 27 August 2019 relating to maximising outcomes for the environment, but maintained the position that the scheme should contribute directly to improvements to water bodies and a net gain in biodiversity, in line with national and local policy. They also maintain their view that a Requirement for an Environmental Enhancement Plan should be included, either in the DCO itself or in the OEMP. This would commit the Applicant to explore and utilise the opportunities within the Hampshire Avon Catchment Partnership to contribute to the fulfilment of the aims of the River Avon Restoration Plan, either via direct monetary contributions, or alternatively in-kind machinery or staff expertise.</p> <p>5.5.67. The Applicant responded at ISH 11 [REP8-019] that while the EA was able to point to the general thrust of policy, it was not able to justify in what way the Applicant had failed to comply with the policy, to the extent that the inclusion of a Requirement was necessary. The Applicant's position is that the Proposed Development meets the requirements of NPSNN paragraphs 5.23 and 5.33 to maximise opportunities for beneficial biodiversity features, not least through the creation of new calcareous grassland which in turn may offer modest benefits to aquatic biodiversity. In this respect, the Proposed Development is considered to be policy compliant and there is</p>
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			<p>no justification for including an additional Requirement. The proposals submitted by the EA at D6 are outside the order limits, and so cannot relate to the policy requirements in the NPSNN in the view of the Applicant.</p> <p>5.5.68. In the ExA's view, the Proposed Development would make a substantive contribution to biodiversity through the establishment of new calcareous grassland habitat, as detailed in the Applicant's response to FWQ Ec.1.21 [REP2-027]. With regard to the water environment and the Rivers Avon and Till, the drainage arrangements would safeguard water quality and would lead to an improvement in the quality of discharge to the River Avon in comparison with the present unsatisfactory situation, as set out in the Applicant's response to FWQ Ec.1.6 [REP2-027]. The ExA concludes that the scheme has taken the opportunities available to promote biodiversity in accordance with the NPSNN and NPPF, and accordingly agree with the Applicant that there is no justification to include a Requirement for an Environmental Enhancement Plan beyond what is already secured in the DCO through the OEMP and the suite of supporting plans.</p> <p>...</p> <p>5.5.85 The scheme would involve the creation of approximately 203ha of new habitats, mainly chalk grassland (162 ha), which would be present and developing at opening year (2026). By year 15 the establishment of this chalk grassland would represent a significant beneficial effect in the view of the Applicant. Overall there would be a net gain of 186 ha of seminatural habitats. This, in conjunction with the provision of four green bridge crossings, is considered by the Applicant to represent a significant beneficial effect in terms of network connectivity.</p> <p>...</p>
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			<p>5.5.90. In conclusion on this issue the ExA consider that the Applicant has given appropriate consideration to the management of chalk grassland to maximise biodiversity gains through the suite of management plans to be prepared in accordance with the OEMP and in consultation with relevant stakeholders. Where land within the order limits needed for habitat creation is handed back to landowners after construction there is scope for this to be achieved through management agreements and monitoring of the condition of chalk grassland, with triggers for management actions through the provisions of the OLEMP and HEMP. However no agreements were in place at the close of the Examination.</p>
<p>M3 Junction 9 Development Consent Order 2024</p> <p>Made 16 May 2024</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>Biodiversity Net Gain (“BNG”)</p> <p>66. The Secretary of State notes that the requirements for providing BNG under the Environment Act 2021 is not currently a requirement for NSIP applications until 2025 [ER 3.6.84]. Nevertheless, the Applicant has provided a BNG Assessment as an appendix to Chapter 8 of the ES which shows that the Proposed Development would result in a predicted net gain in biodiversity of +4.14% and a predicted net gain in linear habitats (hedgerows) of +3.60% [ER 3.6.85].</p> <p>67. Although, as the ExA explains, a BNG of 4.14% is below the potential future threshold of a 10% requirement for BNG, and this is because of the risk factors associated with the provision of chalk grassland and, if “other neutral grassland” were to be provided instead of chalk grassland, the overall BNG score would improve from 4.14% to 14.93%. SDNPA confirmed that it considered establishing chalk grassland is significantly more important in this instance than achieving a target for BNG and that a 4.14% increase with the appropriate habitat is appropriate even though it suppresses the BNG calculation [ER 3.6.87].</p> <p>68. The ExA accepts that there is currently no legal requirement to provide BNG for this application and it was recognised that a BNG of 4.14% is a positive benefit and accepted by the ExA that</p>	<p>3.6.84. It is acknowledged that the requirements for providing BNG under the Environment Act 2021 are currently not expected to be a requirement for NSIPs until 2025. However, the Applicant has provided an appendix to ES Chapter 8 for BNG Assessment [APP-131] which details the BNG calculations for the Proposed Development.</p> <p>3.6.85. The Applicant has concluded in its BNG Assessment that the Proposed Development would result in a predicted net gain in biodiversity of +4.14 and a predicted net gain in linear habitats (ie hedgerow) of +3.60%.</p> <p>3.6.86. As can be seen, a BNG of 4.14% is below the potential future threshold of a 10% requirement for BNG. Notwithstanding that this is not a requirement, the ES detailed that the assessment includes for the currently predicted net increase of 9.6ha of chalk grassland, which is proposed as compensatory habitat as this is a defining feature of the SDNP and is appropriate to the local area. The ES states that when used in BNG calculations, this type of habitat suppresses the overall result of the metric, due to risk factors associated with this habitat type. The ES states that, if ‘other neutral grassland’</p>

	<p>providing the preferred habitat in this location is the correct approach [ER 3.6.88]. The Secretary of State agrees with the ExA's conclusions.</p> <p><i>The Secretary of State's Conclusions on Biodiversity and Ecology</i></p> <p>69. The Secretary of State agrees with the ExA that he is satisfied that the Applicant has fully addressed the possible effects for construction and operation of the Proposed Development on biodiversity and ecology, that the overall approach to mitigation is appropriate for construction and operational effects and that the effects associated with the Proposed Development can be satisfactorily mitigated and managed [ER 3.6.89]. He further agrees that the Proposed Development complies with the relevant paragraphs of the NPSNN on conserving and enhancing biodiversity and ecology conservation interests and on mitigation measures [ER 3.6.99].</p> <p>...</p> <p>71. He agrees with the ExA's conclusion that the Applicant has sought to implement enhancements to habitat and biodiversity [ER 3.6.93].</p> <p>...</p> <p>73. The Secretary of State has had regard to the ExA being satisfied that the opportunities for promoting biodiversity have been identified through the Proposed Development. In relation to habitats and species, he agrees with the ExA that, notwithstanding slight adverse effects in the short term on some types of habitat, there will be slight beneficial effects on certain habitats and species in the medium term. It is recognised that in most cases the effects are between slight adverse and slight beneficial and in all instances, impacts are seen as not significant. When considering the positive effects of BNG and taking all other matters relating to biodiversity and ecology into account the Secretary of State notes the ExA attributed a little weight in favour of making the Order [ER 3.6.100].</p>	<p>was provided in place of 'chalk grassland' then the overall BNG score for the Proposed Development would change from +4.14% to +14.93%.</p> <p>3.6.87. The ExA examined this divergence at ISH2. It was acknowledged that the assessment is a likely reflection of the true BNG and the SDNPA confirmed that establishing chalk grassland was significantly more important than achieving a target for percentage BNG and they would agree that a 4.14% increase with the appropriate habitat is appropriate, even though it supresses the BNG calculation.</p> <p><i>ExA's consideration regarding biodiversity net gain</i></p> <p>3.6.88. The ExA accepts that the Applicant is not legally required to comply with the BNG requirements of the Environment Act 2021 at present however, we recognise that delivering a BNG of 4.14% is a positive benefit. We note that a higher BNG figure could have been seen if 'other neutral grassland' were used in the calculation instead of 'chalk grassland' as mitigation in the SDNP. Nevertheless, it is accepted by the ExA that providing the preferred habitat in this location is the correct approach.</p>
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<p>A66 Northern Trans-Pennine Development Consent Order 2024</p> <p>Made on 7 March 2024</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>119. The Secretary of State notes the representations, including from Westmorland and Furness Council and Durham County Council, that the Proposed Development should achieve biodiversity net gain of at least 10%, and notes the position of Natural England [ER 4.8.14] and the Applicant [ER 4.8.15 - ER 4.8.16]. Like the ExA, the Secretary of State accepts that it is not a requirement for the Proposed Development to achieve biodiversity net gain. However, he agrees with the ExA that the Applicant's approach to maximise biodiversity is welcomed [ER 4.8.28].</p> <p>...</p> <p>124. The Secretary of State concurs with the ExA that biodiversity matters have been adequately scoped and assessed in the ES in that an assessment has been carried out for the Proposed Development to determine any likely significant effects on internationally nationally and locally designated sites and all potential ecological receptors as required by the NPSNN (paragraph 5.22). The ExA was satisfied that mitigation is adequately secured in the EMP and PDP [ER 4.8.27]. Like the ExA, the Secretary of State is also content that the Proposed Development accords with NPSNN and all legislation and policy requirements, and that mitigation is adequately provided for and secured in article 53 of the Order. Accordingly, the Secretary of State agrees with the ExA that, in this respect, the Proposed Development attracts neutral weight in the planning balance [ER 4.8.29].</p>	<p>4.8.14. Notwithstanding, a number of outstanding issues remain for IPs. Contained within their respective LIRs, final PADSS and signed SoCGs, both Westmorland and Furness C [REP1-019] [REP7-190] and [REP9-007]; and Durham CC's [REP1-021] and [REP7-175] and [REP8-022] maintained that the Proposed Development should achieve biodiversity net gain (BNG) of at least 10%. In its WR, NE [REP1-035] did not quite endorse that position, arguing that the Applicant's first responsibility is to ensure that any habitat loss is first avoided, then mitigated and then compensated. NE did state though that BNG outcomes can be achieved on-site, off-site or through a combination of both, that delivery should create or enhance habitats of equal or higher value, and when delivering net gain, opportunities should be sought to link delivery to relevant plans or strategies.</p> <p>4.8.15. The Applicant's position [REP9-007] is that BNG is not currently a requirement for NSIPs. However, the Applicant goes on to state [REP2-011] that it is committed to maximising biodiversity delivery at the detailed design stage and to ensure it goes beyond No Net Loss (NNL) which is the minimum requirement; this being set out in the ES [APP-049] and EMP1 [REP8-005]. The Applicant is using the BNG Metric methodology as a means to achieve the required environmental mitigation.</p> <p>4.8.16. Following the publication of BNG Metric 3.1, the Applicant stated that it would recalculate the BNG Metric output. During detailed design, the layout or location of the mitigation within the DCO boundary [REP7-011] may need to be altered. Any alterations would be regulated under the EMP [REP8-005] and the PDPs [REP8-061]. The ExA did not question the matter further, having established the parties' positions on this matter early on in the Examination. While Westmorland and Furness C [REP9-007] and Durham CC [REP8-022] maintain their stances on this matter, the</p>
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			<p>Applicant's BNG methodology approach is not a matter of dispute for NE [REP9-008].</p> <p>...</p> <p>4.8.28. The ExA accepts that it is not a requirement for the Applicant to achieve BNG, and that its starting point for mitigation is NNL. Nevertheless, the ExA welcomes the Applicant's approach is to maximise biodiversity and thus going beyond what it is necessary for it to do. The ExA accepts that the use of the BNG Metric methodology is purely to ascertain the required environmental mitigation necessary for the Proposed Development, and thus responding to the requirements set out in the LIRs [REP1-019, REP1-021 and REP1-042].</p> <p>4.8.29. The Proposed Development would accord with the NPSNN and all legislation and policy requirements, and the ExA is satisfied that mitigation is adequately provided for and secured by Article 53 of the Recommended DCO, including circumstances where the Applicant would seek to amend the approved EMP2. In this respect, the Proposed Development attracts neutral weight in the planning balance.</p> <p>...</p> <p>7.6.12. In terms of alternatives to the CA powers sought and concerns regarding land-take for environmental mitigation, the Applicant submits that all of the land identified for environmental mitigation is required to mitigate the adverse environmental effects of the Proposed Development [REP4-011, CA 1.2 and REP5-023, page 12]. None of this land-take is required solely for Biodiversity Net Gain (BNG), although the Applicant has sought to maximise such opportunities in accordance with the NPSNN58. Examples include providing habitat linkages to tie into existing green infrastructure and</p>
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			<p>locating the mitigation as close as possible to the identified impact. The design of the environmental mitigation is indicative and would be refined alongside the Proposed Development's detailed design. If, following detailed design, the Applicant no longer requires the land or could achieve its purposes by exercising a lesser power, it would do so. However, the Applicant seeks CA powers to ensure that the Proposed Development can deliver the mitigation that has been assessed as being required.</p>
<p>A12 Chelmsford to A120 Widening Development Consent Order 2024</p> <p>Made on 12 Jan 24</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>53. On habitat loss as a result of construction, the Secretary of State is aware that while construction would result in a loss of 44.78ha of lowland mixed deciduous woodland and 15.81km of hedgerows, the landscape mitigation proposals include replanting of replacement woodland and the creation of hedgerows with an overall net gains of 42.52ha and 26.34ha respectively [ER 5.4.75].</p> <p>...</p> <p>57. The Secretary of State agrees with the ExA that the Applicant has undertaken a thorough and detailed assessment of biodiversity matters that would be affected by the Proposed Development, both directly and indirectly [ER 5.4.91]. The ExA recorded that the local planning authorities and Natural England were also satisfied with the Applicant's assessment methodology and overall approach [ER 5.4.55], and that Natural England also confirmed that they were generally satisfied that the relevant legislation and national policy relating to biodiversity had been identified and that, where relevant, their Standing Advice had been followed [ER 5.4.56].</p> <p>58. The Secretary of State considers that the loss of five veteran trees and the significant adverse effect on Perry's Wood Local Wildlife Site and Perry's Wood Ancient Woodland would weigh against the Proposed Development but that positive effects on certain habitats and species mean that the harm should be afforded limited weight [ER 5.4.102 – 5.4.105].</p>	<p>3.5.8. The Environment Act 2021 makes provision for Biodiversity Net Gain (BNG), including in respect of NSIPs. However, the biodiversity gain statement for NSIPs is expected to be published in 2023, with the implementation of mandatory BNG for NSIPs in 2025.</p> <p>...</p> <p>5.4.97. The NPSNN is the primary source of policy guidance for the Proposed Development and provides clear guidance on the approach to biodiversity enhancement.</p> <p>5.4.98. Paragraph 5.23 requires the Applicant to show how the proposal takes advantage of opportunities to enhance, as well as conserve biodiversity interests. Paragraph 5.33 requires the SoS to consider whether the Applicant has maximised opportunities to build in beneficial biodiversity features in and around developments.</p> <p>5.4.99. We note the submission of the Applicant that there is currently no requirement in law or policy for promoters of NSIPs to deliver BNG. Nevertheless, such assessments have been undertaken for a number of recent road NSIPs. However, in this instance, we find that s104(2)(a) and s104(3) of PA2008 are clear, that the guidance contained within the NPSNN provides the framework for the consideration of this application.</p>

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			<p>5.4.100. That said, we find that the Proposed Development would deliver enhancements in biodiversity, with predicted net gain being substantially above the 10% requirement. Furthermore, the Applicant has given an undertaking to look for opportunities to further improve biodiversity through the design stages. The mitigation measures necessary to achieve those enhancements are clearly set out in the EMP [REP4-022], which we consider to be both achievable and deliverable.</p> <p>...</p> <p>5.4.104. We note the achievement of BNG, along with the legal position set out by the Applicant. However, the Proposed Development would deliver biodiversity and habitat improvements, which the ExA consider to be a benefit of the Proposed Development. To that extent, the Proposed Development would comply with paragraphs 5.23, 5.26, 5.29, 5.31, 5.33 and 5.34 of the NPSNN on conserving and enhancing biodiversity conservation interests and paragraphs 5.36 and 5.38 regarding the mitigation measures.</p>
<p>The A38 Derby Junctions Development Consent Order 2023</p> <p>Made on 17 August 2023</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>67. The Secretary of State notes concerns raised by Derbyshire Wildlife Trust, EBC and DCiC about the lack of use of Biodiversity Metric Assessment (“BMA”) during the examination [ER 4.11.87] and in response to the statement of matters. The Secretary of State notes that the ExA had not been made aware of any policy provision applicable to the Proposed Development which specifically requires the use of BMA [ER 4.11.103] and agrees with the ExA’s conclusion that the fact that it has not been used at this stage does not weigh against the proposal [ER 4.11.103]. The Secretary of State welcomes the Applicant’s commitment to produce a BMA during the detailed design phase as secured in the OEMP [ER 4.11.89]. The Secretary of State agrees with the ExA that the Applicant’s approach to assessing No Net Loss is satisfactory and enables the full range of biodiversity gains and losses to be taken into consideration. The Secretary of State also notes that the ExA</p>	<p>4.11.84 Consideration of the opportunities for enhancement also took in the Applicant’s approach to no net loss of biodiversity, the use of BMA and the weight to be attached to NPPF policies on biodiversity enhancement.</p> <p>4.11.85 Our FWQ [PD-005] sought clarification of the Applicant’s approach to achieving NNL, as well as the views of NE, DCiC, DCC and EBC on this matter. In its response, the Applicant [REP1-005] advised that the ES assessment considered delivery of NNL in terms of the significance of residual effects, rather than using BMA. This allowed it to consider important ecological features (not just habitats) including designated sites, protected and notable species. It also allowed comprehensive biodiversity mitigation and enhancement measures to be considered. The ES assessment</p>

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	<p>considers the scope, methodology, and assessment findings of the ES to be generally sound and agrees with the ExA that, where specific matters have been disputed in relation to biodiversity, no reason has been found to disagree with the Applicant's position [ER 4.11.105]</p> <p>...</p> <p>72. The Secretary of State notes the ExA's conclusion that the Proposed Development has the potential to achieve enhancements in biodiversity, that the mitigation measures necessary to achieve these enhancements are set out in the OEMP, and that there is no convincing evidence to demonstrate that they would not be deliverable. The Secretary of State agrees with the ExA that the Proposed Development would result in a modest general enhancement of biodiversity that would not be significant and that moderate beneficial operational effects on Dam Brook, protected/notable fish in Dam Brook, otters and aquatic macro-invertebrates weigh significantly in favour of the DCO being made [ER 4.11.107]. The Secretary of State agrees with the ExA that the objections raised regarding the effect of the Proposed Development on specific species do not call into question the relevant ES findings [ER 4.11.100] and does not consider that any similar objections raised since the examination call the findings of the ES into question.</p> <p>73. However, the Secretary of State agrees with the ExA that the loss of a veteran tree weighs against the DCO being made [ER 4.11.110] as do the moderate adverse construction effects on the A38 Kingsway Rough Grassland LWS and the short to medium term moderate adverse effects on the semi-natural broadleaved woodland [ER 4.11.109]. The Secretary of State agrees with the ExA that the NPSNN provides clear guidance on the approach to biodiversity enhancement [ER 4.11.104] and is satisfied the Proposed Development complies with the NPSNN overall in respect to conserving and enhancing biodiversity conservation interests [ER 4.11.108].</p>	<p>found that there is potential to achieve NNL and potential net gain having regard to all the mitigation hierarchy measures applied during the life cycle of the Proposed Development.</p> <p>...</p> <p>4.11.88 The Applicant [REP3-026] considered that there was no policy requirement to use BMA for NSIPs and that the process had not previously been requested by any party. It also set out the proposed opportunities for biodiversity enhancement. These included:</p> <ul style="list-style-type: none"> • the management of invasive plant species; • the replacement of species-poor semi-improved grassland with species rich grassland; • the retention of felled trees to enrich woodland habitat; • maximising ecological opportunities in the realignment of Bramble Brook and Dam Brook; • the creation of new water features and biodiversity enhancement in the drainage design; and • habitat creation for a range of terrestrial and aquatic species. <p>4.11.89 The Applicant also subsequently undertook to produce a BMA during the detailed design phase [REP7-007]. This is secured through the OEMP [REP14-008 D-B31].</p> <p>4.11.90 In its ISH4 submissions [REP6-027], DCiC maintained the view that BMA would allow a more transparent measurement of biodiversity gains and losses and noted it's understanding that BMA would be used for the application. Nevertheless, it took comfort from the Applicant's commitment to produce a BMA during the detailed design phase. Nor did DCiC express concern regarding the survey methods that had been used to assess individual habitats or question the extent or quality of the habitats as presented in the ES. It noted the proposed net gain in the number of trees to be planted and that the proposals sought to achieve net gains for some habitats (for</p>
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			<p>example grasslands). However, the Applicant and DCiC were unable to agree on the weight to be attached to NPPF policies which seek biodiversity enhancement, rather than NNL [REP6-027]. Those positions were maintained in the SoCG with DCiC [REP7-020].</p> <p>Conclusions on biodiversity and ecological conservation</p> <p>4.11.91 Our consideration of this topic has had careful regard to the policies of the NPSNN on biodiversity and ecological conservation. We have also considered the NPPF and development plan policies insofar as they are applicable to an NSIP.</p> <p>...</p> <p>4.11.102 The question of whether the proposal takes the opportunities available for biodiversity enhancement broadened out during the Examination to consider the use of BMA, the weight to be attached to NPPF policies on biodiversity net gain and the Applicant's approach to NNL.</p> <p>4.11.103 We recognise that BMA is becoming more widely used and that, corporately, HE has made a commitment to using it in similar projects⁶. However, we have not been made aware of any policy provision applicable to the Proposed Development which specifically requires its use. Furthermore, as the consideration of the Alfreton Road Rough Grassland LWS (paragraphs 4.11.61 to 4.11.70 above) shows, the process would not necessarily take into account all biodiversity gains and losses. Consequently, we find that the fact that it has not been used at this stage of the project does not weigh against the proposal. Nevertheless, we welcome the Applicant's commitment to using BMA during the detailed design phase where it has the potential to assist in refining the mitigation proposals.</p>
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			<p>4.11.104 The NPSNN is the primary source of policy guidance for the Proposed Development. We consider that the NPPF is also an important and relevant consideration, but only to the extent relevant to a project and it is not intended to contain specific policies for NSIPs where particular considerations can apply. In this case the NPSNN provides clear guidance on the approach to biodiversity enhancement. Paragraph 5.23 requires the Applicant to show how the proposal takes advantage of opportunities to enhance, as well as conserve, biodiversity interests. Paragraph 5.33 requires the SoS to consider whether the Applicant has maximised opportunities to build in beneficial biodiversity features in and around developments. As such, whilst acknowledging the aims of paragraphs 170(d) and 175(d) of the NPPF to achieve a net gain in biodiversity, we consider that they do not outweigh paragraphs 5.23 and 5.33 of the NPSNN in this case.</p> <p>4.11.105 Given these findings, we conclude that the Applicant's approach to assessing NNL is satisfactory. It enables the full range of biodiversity gains and losses to be taken into consideration and we have already found that the scope, methodology and assessment findings of the ES are generally sound. As set out above, where specific matters have been disputed, we have not found reason to disagree with the Applicant's position.</p> <p>4.11.111 Based on the above, we are satisfied that appropriate consideration has been given to relevant policy for the Proposed Development and that, subject to the provisions of the rDCO (Appendix D), the likely reasonable worst-case effects have been identified in respect to biodiversity and ecological conservation.</p>
<p>The A47 Wansford to Sutton Development</p>	<p>Decision Letter</p>	<p>110. The Secretary of State notes NE's recommendation that version 3.0 of the Defra Biodiversity Metric should be used to quantify Biodiversity Net Gain [ER 9.4.16]. The Secretary of State agrees with the ExA that mandatory biodiversity net gain is not yet a requirement for NSIPs [ER 9.5.27] and that although the</p>	<p>National Planning Policy Framework and Planning Practice Guidance</p>

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<p>Consent Order 2023</p> <p>Made on 17 February 2023</p>	<p>Recommendation Report</p>	<p>most recent model was not used to undertake the analysis (Metric version 2.0 was used), the Secretary of State is satisfied that the Proposed Development would result in a Biodiversity Net Gain in relation to habitat units (38.4%) and hedgerow units (69.05%) [ER 9.5.28], and this should be given moderate weight in favour of the Proposed Development [ER 9.5.29].</p> <p>...</p> <p>113. The Secretary of State notes that measures to avoid or reduce the ecological effects and to maximise benefits are secured via the REAC in the EMP which are secured through Requirement 4 (environmental management plan) in the Order [ER 9.3.18 – ER 9.3.19]. The Secretary of State agrees with the ExA that appropriate mitigation has been secured in the Order to ensure that there is appropriate protection for protected species of international, national and local level [ER 16.4.31].</p> <p>Planning Balance</p> <p>200. The ExA considered that the following matters weigh in favour of the Proposed Development:</p> <p>...</p> <ul style="list-style-type: none"> • A Biodiversity Net Gain weighs moderately in favour of the Proposed Development [ER 16.4.32] 	<p>9.2.5. The Framework emphasizes (paragraph 174) that sites of biodiversity or geological value and soils should be protected and enhanced by, amongst other matters, net gains for biodiversity.</p> <p>...</p> <p>9.2.8 The PPG explains biodiversity net gain as delivering measurable improvements by creating or enhancing habitats. The PPG also indicates the Defra biodiversity metric can be used to demonstrate whether or not biodiversity net gain will be achieved.</p> <p>Local Plan</p> <p>9.2.11. Local Plan Policy LP28 specifically deals with Biodiversity and Geological Conservation. The policy sets out, insofar as is material to the Proposed Development, that developments should:</p> <ul style="list-style-type: none"> • aid the management, protection, enhancement and creation of priority habitats; and • promote an effective, functioning ecological network of core sites, buffers and wildlife corridors to link to green infrastructure. <p>9.2.12. The policy sets out the hierarchy of international, national and local sites and habitats and species of principal importance. All development should conserve and enhance this network commensurate to their status, and should deliver a net gain in biodiversity.</p> <p>Biodiversity Net Gain</p>
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			<p>9.4.16. NE recommended the use of version 3.0 of the Defra Biodiversity Metric, and initially considered that further information was necessary to show Biodiversity Net Gain and that this should be an aim of the Proposed Development. It made no further comment in relation to the metric submitted at D6.</p> <p>...</p> <p>9.5.27. The provisions in respect of Biodiversity Net Gain as set out in the Environment Act 2021 have not yet come into force in respect of NSIPs. It therefore cannot be a mandatory requirement.</p> <p>9.5.28. However, I am pleased to note that according to the undisputed analysis in the Defra Biodiversity Matrix 2.0 that the Proposed Development would result in an increase of 38.4% in relation to habitat units and 69.05% for hedgerow units.</p> <p>9.5.29. While this analysis was not undertaken using the most recent model (Matrix 3.1) and therefore will be less accurate than had this methodology been used, I am satisfied that there is sufficient margin to conclude that the Proposed Development would result in a Biodiversity Net Gain and this should be given moderate weight in favour of the Proposed Development.</p> <p>16.4.32. I am of the opinion that moderate positive weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix.</p> <p>...</p>
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			<p>16.5.16. In addition, to the identified benefits in traffic and transport terms and to the economy identified, the Proposed Development would also result in a moderate benefit through Biodiversity Net Gain.</p>
<p>The A57 Link Roads Development Consent Order 2022</p> <p>Made 16 November 2022</p>	<p>Error! Hyperlink reference not valid.</p> <p>Recommendation Report</p>	<p>156. Paragraphs 5.20 to 5.38 of the NPSNN relate to biodiversity and ecological conservation. Paragraphs 5.34 and 5.35 indicate that proposals should take measures to protect species and habitats that have been identified as being of principal importance for the conservation of biodiversity and where appropriate, requirements or planning obligations may be used to deliver this protection. Consent should be refused where there would be harm to these habitats or species and their habitats unless the benefits of the development (including need) clearly outweigh that harm [ER 5.11.10]. The Secretary of State accepts the ExA's assessment of policy considerations that apply to this decision [ER 5.11.2-5.11.14].</p> <p>157. The Secretary of State notes the ExA's consideration of the Proposed Development in relation to biodiversity and the natural environment as set out in ER 5.11 and the biodiversity and nature conservation issues considered during the Examination [ER 5.11.140 - 5.11.142].</p> <p>....</p> <p>175. Regarding opportunities for biodiversity and ecological enhancement as considered at ER 5.11.191 – ER 5.11.196, the ExA concluded that the Proposed Development had the potential to achieve enhancements in biodiversity and that the mitigation measures required to achieve enhancements are set out in the EMP1 and had no reason to doubt that they would be deliverable and effective. The Secretary of State agrees with this conclusion [ER 5.11.218]. The ExA considered, however, that even with the</p>	<p>5.11.151 The Applicant stated that the new habitats and ecological mitigation features would be monitored to ensure they are fulfilling their respective purpose and any remedial action would be undertaken immediately if the habitats and features are proving ineffective. As part of the mitigation strategy, new habitats and features would be provided above and beyond the minimum requirement such that where certain elements fail to be sufficient remaining habitats and features would provide the necessary mitigation. This includes a 10% BNG in line with DEFRA Metric 2.0 which ensures that additional habitat is provided taking into consideration negative factors such as 'difficulty of creation' and 'time to completion'. These measures would be secured via the OLEMMP [REP8-014] within EMP1 [REP12-007].</p> <p>...</p> <p>5.11.197 Our consideration of this topic has had careful regard to the policies of the NPSNN on biodiversity and ecological conservation. We also consider the NPPF and development plan policies as applicable to an NSIP.</p> <p>...</p> <p>7.4.102 We find that there would be likely to be biodiversity net gain, but we do not find sufficient evidence for us to conclude that the benefits would be significant.</p>

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		<p>proposed mitigation, there would be a slight adverse residual effect on Hurstclough Brook, which would be likely to experience a reduction in flow in its upper section, but this would be unlikely to result in any significant effects [ER 5.11.216]. The Secretary of State has no reason to disagree. Although a Biodiversity Net Gain ('BNG') is not currently a legal requirement, it is noted that the Proposed Development would result in a limited BNG which would have a slight beneficial effect. The ExA noted the commitment of the Applicant to seek further BNG in consultation with the LAs and others during the detailed design phase. However, the scale of the benefit is likely to be such that it does not count significantly for the DCO being made [ER 5.11.219]. The Secretary of State is satisfied with this conclusion.</p> <p>176. In conclusion, the Secretary of State agrees with the ExA that the Proposed Development would have a moderate adverse effect and therefore significant effect on mountain hare which counts significantly against the DCO being made [ER 5.11.220] and this effect is taken forward into the planning balance [ER 5.11.221] as considered in the section headed 'Conclusions for making a case for a DCO' below. The Secretary of State is also satisfied with the consideration given by the ExA to the NPSNN and compliance with the requirements on conserving and enhancing biodiversity conservation interests and regarding mitigation measures [ER 5.11.214 - ER 5.11.215], and the regard paid to the NERC Act and the biodiversity duty in their consideration of the implications of the Proposed Development of mountain hare as a species of principal importance [ER 5.11.222]. The Secretary of State has had regard to the matters mentioned in regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 and note that the ExA were content that the Proposed Development accords with the aims of the United Nations Environmental Programme Convention on Biological Diversity of 1992 [ER 5.11.223].</p>	
<p>A417 Missing Link</p>	<p>Decision Letter</p>	<p>168. The Secretary of State notes the ExA's consideration of the high environmental standards test at ER 7.3.38 – 7.3.41. Notwithstanding the lack of biodiversity net gain provided by the</p>	<p>5.3.58. The Applicant's base position was that the Environment Act 2021 commitments to BNG do not apply to this NSIP and there is no mandatory requirement to achieve this at this time</p>

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<p>Development Consent Order 2022</p> <p>Made 16 November 2022</p>	<p>Recommendation Report</p>	<p>Proposed Development, the Secretary of State notes the landscape-led approach adopted by the Applicant, its regard to the landscape and location in terms of addressing issues and evolving the design, its attempts to focus on priority and important habitats that contribute to the landscape and special qualities of the AONB and the mitigation and enhancement secured through the EMP, Landscape and Ecological Management Plan (LEMP), Landscape Masterplan and requirements in the rDCO. The Secretary of State agrees with the ExA that the Proposed Development would be carried out to high environmental standards and that such matters are appropriately secured through the rDCO.</p>	<p>[REP1-009]. The calculation within the ES predicts a net loss of biodiversity by 26.5% once mitigation and compensatory habitat is provided, although the Applicant notes that providing calcareous grassland scores low on the biodiversity metric [REP1-015]. A large proportion of the environmental mitigation proposed relies upon the provision of calcareous grassland, with similar provision of broadleaved woodland.</p> <p>5.3.59. The NT, NE and the GWT advocated that more could be done to contribute towards BNG [REP1-099]. The Applicant maintained that all essential mitigation relative to the Proposed Development had been incorporated into the Proposed Development's design and the BNG figure is low only because calcareous grassland itself scores low in the metric [REP3-011].</p> <p>...</p> <p>7.3.40. The Proposed Development, although not providing a Biodiversity Net Gain (BNG), has sought to focus on priority and important habitats that contribute to the landscape and special qualities of the AONB, eg calcareous grassland, native woodland including extending Ullen Wood ancient woodland, amongst others. See section 5.3 above on biodiversity. The Proposed Development also provides geological exposures which will assist in greater understanding of the geology of the area, improved Public Rights of Way (PRoW) and improvements to Emma's Grove scheduled monument (SM) in order to remove it from the at-risk register.</p> <p>7.3.41. Mitigation and enhancement are secured through the EMP, Landscape and Ecological Management Plan (LEMP), Landscape Masterplan and requirements in the rDCO. On this basis we are satisfied that the Proposed Development would be carried out to high environmental standards and that such matters are appropriately secured through the rDCO.</p>
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<p>The A47/A11 Thickthorn Junction Development Consent Order 2022</p> <p>Made 14 October 2022</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>77. On opportunities for biodiversity and ecological enhancement, both NCC and Anglian Water expressed strong encouragement for biodiversity net gains (“BNG”) to be provided by the scheme (ER 5.10.99). The Applicant responded that there is no mandated framework for calculating and reporting on BNG, which is dependent on the coming into force of the relevant provisions of the Environment Act 2021. The ExA noted that the Defra Metric 2.0 was replaced by Defra Metric 3.0 and that this post-dates the surveys carried out by the Applicant meaning new surveys would need to be carried out to assess the potential BNG in accordance with Defra Metric 3.0. The ExA therefore accepted that the Applicant could not commit to providing an overall BNG or indicate the extent of BNG because it was not possible to provide an accurate or meaningful calculation to the Examination (ER 5.10.115). The Secretary of State accepts this and is satisfied that the relevant provisions in the Environment Act relating to BNG are not yet in force. The Secretary of State notes the assessment of net gain or loss by habitat type presented at Table 8-11 of Chapter 8 of the ES, the predicted significance of residual effects on biodiversity resources following implementation of committed mitigation at Table 8.12 of that Chapter and the areas of proposed mitigation for enhancement of habitats and biodiversity shown in the Environmental Masterplan at Chapter 6.8 of the ES seeks to maximise biodiversity delivery in its overall design approach (ER 5.10.101).</p> <p>78. The Secretary of State agrees with the ExA that the obligation in section 40 of the National Environment and Rural Communities Act 2006 to have regard to the purpose of conserving biodiversity has been complied with (ER 5.10.118). The Secretary of State agrees that subject to the provisions of the rDCO , the likely reasonable worst-case effects have been identified in respect to biodiversity and ecological conservation (ER 5.10.120).</p> <p>79. The Secretary of State agrees that the loss of two veteran tress weighs substantially against the DCO being made (ER</p>	<p>5.10.99. Both NCC and Anglian Water expressed strong encouragement for biodiversity net gains to be provided by the scheme.</p> <p>5.10.100. The Applicant responded that there is currently no mandated framework for calculating and reporting on biodiversity net gain (BNG). Any such calculation is subject to the commencement of the Environment Act and its associated secondary legislation, which is expected to set out the SoS biodiversity metric and methodology.</p> <p>5.10.101. Thus, any calculation using existing Biodiversity Metric approaches is subject to variation. For that reason, the Applicant would not commit to providing overall BNG or indicating the extent of BNG. That said, the scheme seeks to maximise biodiversity delivery in its overall design approach. Landscaping and biodiversity proposals have been developed to align with CIEEM best practice principles. The package of works and mitigation proposed by the Applicant does include habitat re-creation and enhancement.</p> <p>...</p> <p>5.10.102. The ExA has had regard to the policies of the NPSNN on biodiversity and ecological conservation as well as the NPPF and local development plan policies insofar as they are applicable to a nationally significant infrastructure project (NSIP).</p> <p>....</p> <p>5.10.115. As such, whilst acknowledging the aims of paragraphs 174(d) and 180(d) of the NPPF to achieve a net</p>
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		<p>5.10.119) but agrees with the ExA that the benefits of the Proposed Development as set out in this letter clearly outweigh veteran tree loss.</p>	<p>gain in biodiversity, the ExA does not consider that those factors outweigh paragraphs 5.23 and 5.33 of the NPSNN in this case. That view takes into account in particular, that the Defra Metric 2.0 was replaced by version 3.0 when the Environment Act came into force, and remains subject to variation. To satisfy the requirements of Defra Metric 3.0, additional surveys would be necessary. As Defra Metric 3.0 was published on 7 July 2021 and post-dates the ecological surveys carried out to inform the Applicant's biodiversity assessment, the scope of those surveys did not extend to capturing and recording the necessary condition information required as input data into the most recent metric. Accordingly, the ExA accepts that the Applicant cannot commit to providing overall BNG or indicate the extent of BNG because it was not able to provide an accurate or meaningful calculation to the Examination.</p> <p>5.10.116. That said it is accepted that the Proposed Development has been designed to seek to maximise biodiversity delivery and conservation interests, where it is possible do so. Landscaping and biodiversity details have been developed by the Applicant to align with CIEEM best practice principles. The package of works and mitigation proposed by the Applicant does include habitat re-creation and beneficial enhancement in some respects.</p>
<p>The A428 Black Cat to Caxton Gibbet Development Consent Order 2022</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>37. NPSNN paragraphs 5.20 to 5.38 relate to biodiversity and ecological conservation and paragraph 5.23 states that the Applicant should “show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests” (ER 7.1.3).</p> <p>38. The Secretary of State agrees with the ExA that the requirement imposed under the Environment Act 2021 for NSIPs to achieve a Biodiversity Net Gain ('BNG') of at least 10% if</p>	<p>7.4.25. The Cambridgeshire Councils and NE raised concerns with the Applicant's approach to BNG, regarding the integrity of the methodology and suggested that the D2M or DEFRA 3.0 metric (D3M) were used instead to ensure that habitat condition and other key criteria were considered [REP1-048, Paragraph 7.1.2] [RR-076, Paragraph 2.12.9].</p> <p>...</p> <p>7.4.27. The Applicant submitted its assessment of BNG using the D2M, which, with certain assumptions and qualifications,</p>

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<p>Made on 18 August 2022</p>		<p>development consent is to be granted has not yet commenced (ER 7.4.2).</p> <p>...</p> <p>42. The Secretary of State notes that the Applicant's assessment of whether the Proposed Development would achieve a net loss, neutral effect or net gain in biodiversity was initially undertaken using the Highways England Metric ('HEM'). This assessment resulted in a 20.5% BNG which was attributed to the significant increase in woodland and grassland (ER 7.4.23). The Secretary of State notes the ExA's conclusion that the Defra 2 Metric ('D2M') provides a more robust assessment of BNG because it includes linear features separately to area-based habitats and considers the conditions of habitats in more detail than the HEM (ER 7.4.46).</p> <p>43. The Secretary of State notes that the results of a BNG assessment using the D2M were significantly different and showed a net gain of habitat units (16.5%) and river units (10%) but a net loss of hedgerow units (-31.5%) (ER 7.4.27). The Secretary of State notes the Applicant concluded that these results show an overall positive effect of the Proposed Development on biodiversity but that the ExA considered that for there to be an overall positive effect on biodiversity, each of the three components of the D2M (listed above) would need to show a positive score. The ExA considers that the Proposed Development would not result in BNG (ER 7.4.49) and that the Applicant's D2M submission shows a substantial net loss of hedgerow units (ER 7.4.50). The Applicant considered that this was partly due to an overestimation of the length of hedgerows lost in land for temporary possession and despite there being an overall increase in hedgerow length (ER 7.4.28).</p> <p>44. The Secretary of State further notes that the results of the D2M show that the Proposed Development would result in a loss</p>	<p>showed that the Proposed Development would result in a net gain of Habitat units (16.5%) and River units (10%), but a net loss of Hedgerow units (-31.5%) [REP3-012] and [REP3-013] and concluded that there would be an overall positive effect of the Proposed Development on Biodiversity.</p> <p>...</p> <p>7.4.44. The ExA recognises that the calculation of BNG is a distinct process and is not required for the purpose of preparing an ES. However, where undertaken it can be a helpful means of assessing the likely effects of a development on different aspects of Biodiversity, particularly in qualitative terms.</p> <p>7.4.45. The ExA also recognises that there is no requirement for an assessment of BNG to be made for an NSIP at the present time. Nevertheless, such assessments have been undertaken for a number of recent road NSIPs, and has been undertaken for the Proposed Development. The ExA notes the complexity of this issue and that there is no universally agreed metric or method governing this at present.</p> <p>7.4.46. From the evidence, the ExA considers that the D2M provides a more robust assessment than the HEM, including by considering linear features such as hedgerows and rivers separately to area-based habitats, and by considering the condition of habitats in more detail than the HEM. The ExA notes the Applicant's comments questioning the robustness of the survey data, which was considered suitable for the HEM but not necessarily for the D2M. However, the surveys have been accepted by the Cambridgeshire Councils and NE and no doubts have been raised on that basis. As such, the ExA is content that the Applicant's survey results are suitable for use in the calculations for BNG in D2M and that the score is reliable.</p>
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	<p>of High and Medium distinctiveness habitats and agrees with the ExA that this loss cannot, under this metric, be replaced with a greater amount of lower value habitats ('trading down') because this would contravene Rule 3 of the D2M User Guide (ER 7.4.50).</p> <p>45. The Secretary of State agrees with the ExA that there is no prescribed need for BNG offsetting to mitigate a loss of priority habitats (NSPNN paragraph 5.25, ER 7.4.51). Moreover, there is currently no requirement for a BNG assessment to be undertaken for a NSIP, as recognised by the ExA (ER 7.4.45). However, the ExA concludes that the D2M submission shows a substantial net loss of hedgerow units and this is a significant effect (ER 7.4.50) and subsequently that there is no certainty that there would not be an uncompensated loss of priority habitats which would significantly and adversely affect biodiversity and so should be reflected in the Environmental Statement (ER 7.4.52, 21.2.47). The ExA's proposed requirement in the rDCO is therefore to ensure that an updated BNG assessment is undertaken and, should it show an uncompensated loss of priority habitats, to require the Applicant to deliver a biodiversity offsetting scheme for priority habitats so as to avoid conflict with NPSNN paragraph 5.25 (ER 7.4.55). The Secretary of State notes that one of the reasons the ExA proposes this requirement is that it notes that the Applicant will undertake a further BNG assessment at the detailed design stage and considers that such an assessment is necessary, but it is not detailed in the First Iteration Environmental Management Plan ('EMP') or secured in the draft DCO (ER 7.4.53, 7.4.55). The Secretary of State notes that the Applicant did not consider that there was a need for an offsetting requirement as it did not accept that there would be a net loss of priority habitat (ER 7.4.42), but he is persuaded by the ExA's reasoning regarding the possible uncompensated loss of priority habitat. Further noting that NPSNN paragraph 5.35 states that, where appropriate, requirements may be used to deliver protection for priority habitats from the adverse effects of development, the Secretary of State considers the proposed requirement necessary to deliver protection for priority habitats through avoiding an unmitigated loss of such habitats and has</p>	<p>...</p> <p>21.2.46. The ExA recognises that there is no requirement for an assessment of Biodiversity Net Gain (BNG) to be made for an NSIP at the present time. Nevertheless, such assessments have been undertaken for a number of recent road NSIPs, and has been undertaken for the Proposed Development. The Department for the Environment, Food and Rural Affairs (DEFRA) 2.0 metric (D2M) has also been used for other road NSIPs and the ExA notes the preference amongst parties for the D2M. From the evidence, the ExA considers that the D2M provides a more robust assessment of BNG than the Highways England metric (HEM). The ExA is also satisfied that the Applicant's survey data would be suitable to underpin the D2M assessment, and that the Applicant's resulting BNG score is reliable. The Applicant's comment that the D2M results supersede the initial HEM results for the Proposed Development is also significant to the ExA.</p> <p>...</p> <p>21.2.49. The ExA is satisfied opportunities for promoting biodiversity have been identified through the Proposed Development. The ExA notes that with appropriate mitigation there would be positive effects on certain habitats and species, whilst there would be adverse effects on other types of habitat and species. However, taking all the matters reported above into account, the ExA ascribes limited weight against making the Order to Biodiversity.</p>
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		<p>included the requirement in the final DCO. The Secretary of State is mindful that the calculation of BNG is a distinct process and is not required for the purpose of preparing an Environmental Statement (ER 7.4.44).</p> <p>46. The Secretary of State notes that there is no universally agreed metric in place (ER 7.4.45) but considers that the inclusion in the DCO of the need to approve the BNG assessment following consultation with Natural England and the local planning authorities will address this. The Defra biodiversity metric was updated to version 3.1 on 21 April 2022. The Secretary of State considers that the D2M method remains a relevant consideration, and notes that the Defra 3.1 Metric also prohibits 'trading down'. The Secretary of State notes that the proposed requirement specifies that the metric to be used must be agreed with Natural England and the relevant local planning authorities, and so considers that the eventual method used for any BNG assessment need not be the D2M.</p> <p>...</p> <p>52. Overall, the Secretary of State agrees with the ExA that opportunities to promote biodiversity have been identified by the Applicant and that with appropriate mitigation there would be positive effects on certain habitats and species, although there would also be adverse effects on other types of habitat and species (ER 7.5.8, 21.2.49). The Secretary of State also takes into consideration that the Proposed Development would adversely affect some locally designated sites such as causing a minor increased risk of nitrogen pollution to Madingley Slip Road Roadside Verge CWS (ER 7.4.18), but that the overall effect of the Proposed Development on Designated Sites is not considered to be significantly harmful (ER 21.2.45). The Secretary of State has included the ExA's proposed requirement 24 in the DCO to avoid an uncompensated loss of priority habitats, which would constitute a significant adverse effect. In light of the above, and in accordance with the ExA's</p>	
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<p>The A47 North Tuddenham to Easton Development Consent Order 2022</p> <p>Made 12 August 2022</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>recommendations, the Secretary of State ascribes limited weight against making the Order to biodiversity.</p> <p>61.The Secretary of State acknowledges that the Proposed Development would seek to maximise biodiversity delivery in accordance with the current statutory and policy requirements (ER 5.6.125). This would be achieved through considered planting to create new or extended landscape and biodiversity elements including species rich grass land, hedgerows, trees, woodland and biodiversity wetlands. This is shown in the Environmental Masterplan and would be delivered through requirement 5 of the rDCO (ER 5.6.102).</p>	<p><i>Biodiversity net gain</i></p> <p>5.6.98 In my ExQ1 [PD-007], I sought clarification to the extent to which the Proposed Development would result in an overall biodiversity net gain. The matter was also the subject of questions at ISH2 and ISH3.</p> <p>5.6.99 No comments were received from any of the statutory parties.</p> <p>5.6.100 The matter was not directly raised by IPs in their RR or WR, although there were a number of references to improvement and enhancements to biodiversity as a result of the scheme. In response to the discussion at ISH2 the representative from BHE highlighted [REP4-023] that a number of previous DCOs had included Biodiversity Net Gain Assessments.</p> <p>5.6.101 In their response [REP2-014], the Applicant considered that, at this current moment, there was no policy requirement to undertake an assessment as part of NSIP, however the scheme did align with Best Practice Principles, specifically those published by the CIEEM, in developing its landscaping and biodiversity proposals.</p> <p>5.6.102 In response to further questioning on the matter at ISH2 [EV-022], the Applicant confirmed that in their view, it was difficult to quantify, but the Proposed Development would seek to maximise biodiversity delivery in accordance with the current statutory and policy requirements. This would be achieved through considered planting to create new or extended</p>
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			<p>landscape and biodiversity elements including species rich grass land, hedgerows, trees, woodland and biodiversity wetlands. This is shown in the Environmental Masterplan (EnvMP) [REP8-011] and would be delivered through Requirement 5 of the rDCO (Appendix D).</p> <p>5.6.103 In response to questions asked at ExQ1 [PD-007] and raised at ISH2, the Applicant produced a Technical Note on their approach to Biodiversity Net Gain [REP4-015].</p> <p>...</p> <p>5.6.130 To that extent, the Proposed Development would comply with paragraphs 5.23, 5.26, 5.29, 5.31, 5.33 and 5.34 of the NPSNN on conserving and enhancing biodiversity conservation interests and paragraphs 5.36 and 5.38 regarding the mitigation measures.</p>
<p>The A47 Blofield to North Burlingham Development Consent Order 2022</p> <p>Made on 22 June 2022</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>44. Paragraphs 5.20 - 5.38 of the NPSNN relate to biodiversity and ecological conservation [ER 4.12.2] and paragraph 5.23 states that “the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests” [ER 4.12.5].</p> <p>...</p> <p>46. The Secretary of State notes that the ExA highlighted that Chapter 8 Table 8-8 of the Applicant’s ES identifies net gain or loss of habitat types associated with the Proposed Development. Following questions from the ExA about whether there would be an overall biodiversity net gain and, if there would, to what extent, the Applicant clarified that there would be a greater than 40% biodiversity net gain and provided evidence of its calculations to support this. The Secretary of State notes that the ExA concluded</p>	<p>4.12.23. ES Chapter 8 Table 8-8 [REP4-021] identifies net gain or loss of habitat types associated with the Proposed Development. I asked the Applicant to clarify whether there would be an overall biodiversity net gain and to what extent [PD-006]. The Applicant responded [REP1-061] stating that there would be a net change of greater than 40% using the Department of Environment, Food and Rural Affairs (DEFRA) Metric 2.0, which was the relevant metric in use at the time. I sought clarification that the change was an increase and evidence of the Applicant’s calculations. The Applicant clarified [REP4-051] that there would be a greater than 40% biodiversity net gain and provided evidence of its calculations in support of this (Annex B of [REP4-051]). I have no reason to dispute these calculations and no other parties commented on them.</p> <p>4.12.32. The Proposed Development would result in a biodiversity net gain of greater than 40%. This weighs in favour</p>

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		<p>that they had no reason to dispute the calculations and that no other parties commented on this [ER 4.12.23].</p> <p>...</p> <p><i>The Secretary of State's Conclusion on Biodiversity</i></p> <p>50. The Secretary of State agrees with the ExA that the biodiversity net gain that would result from the Proposed Development weighs in its favour [ER 4.12.32] but that the adverse effect on bats weighs against it [ER 4.12.33]. The ExA was satisfied that consideration has been given to alternative developments and, as required by paragraph 5.35 of the NPSNN, that the strategic benefits of the Proposed Development are such that they would clearly outweigh the potential adverse impact on bats, and that the potential harm would be outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NPSNN [ER 4.12.34, 6.3.12]. The Secretary of State agrees with this and is satisfied that the Proposed Development conforms with the NPSNN.</p>	<p>of the Proposed Development, albeit that biodiversity net gain is not currently a legal requirement for NSIPs.</p>
<p>The M25 Junction 28 Development Consent Order 2022</p> <p>Made on 16 May 2022</p>	<p>Decision Letter</p> <p>Recommendation Report</p>	<p>54. The Secretary of State notes the policy requirements set out in the NNNPS and the LB Havering Local Plan, and the findings set out in Chapter 7 of the Applicant's ES on the effect of the Proposed Development on biodiversity resources (ER 5.10.1 – 5.10.18).</p> <p>...</p> <p>58. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would have no likely significant effects on biodiversity and is satisfied the Proposed Development would accord with all legislation and policy requirements. Furthermore, the Secretary of State concurs with the ExA that mitigation is adequately provided for and secured in the recommended DCO and, in this respect, the Proposed</p>	<p>5.10.6. Adopted LB Havering Local Plan policies CP16 and DC58 note the objective to enhance and protect biodiversity and geodiversity in line with the Borough's Biodiversity Supplementary Planning Document, in particular priority habitats, species and sites. Development should avoid adverse impact on existing natural heritage assets as a first principle and enable net gains by designing in landscape and biodiversity features and enhancements.</p> <p>5.10.7. Chapter 7 of the ES [REP9-020] submitted by the Applicant considered biodiversity and outlines that an assessment has been undertaken of the effect of the Proposed Development on biodiversity resources. This includes a description of the ecological baseline, evaluation of biodiversity</p>

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		<p>Development attracts neutral weight in the planning balance (ER 5.10.59).</p>	<p>features present and assessment of impacts and effects on important biodiversity resources (in line with relevant guidance).</p> <p>...</p> <p>5.10.10. The ES [REP9-020] stated that the construction of the Proposed Development would result in the permanent loss of habitat including 1.9% of the total area of the Ingrebourne Valley SMI and the loss of two veteran trees. During construction, loss of habitat and disturbance of species has the potential to result in temporary adverse effects on Ingrebourne Valley SMI (approximately 9.3 % of the total area), Ingrebourne River, Weald Brook, great crested newts, bats, breeding birds, otter and terrestrial invertebrates.</p> <p>5.10.11. To reduce these potential effects on biodiversity resources, the Applicant has incorporated mitigation and compensation measures into the Proposal, as outlined in the outline CEMP [REP10-002] and REAC [REP9-047]. These include, but are not limited to, protection of species during construction, appropriate reinstatement and creation of habitats within temporary construction areas and remodelling and enhancement of the Ingrebourne River and Weald Brook. The Applicant stated that when established, replacement habitats created during construction would be suitable to support a diverse range of species. All newly created habitats would be managed and monitored as part of a long-term management plan.</p> <p>...</p> <p>5.10.25. LB Havering concluded [REP1-031] that the Applicant has placed biodiversity at the heart of the design process and explored opportunities for delivering a net gain for biodiversity, supporting the target of delivering no net loss of biodiversity on the strategic road network by 2020 and achieving net gain by</p>
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			2040. LB Havering welcomed the proposed biodiversity enhancements for the Proposed Development including the use of native species for landscape planting as well as bird and bat boxes in retained habitat to ensure that measurable net gains are provided for biodiversity.
M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 Made on 12 May 2022	Decision Letter Recommendation Report	64. The Secretary of State notes that the issue of biodiversity net gain and the Environment Act 2021 was raised in response to his consultation of 4 February 2022. The Secretary of State notes that the biodiversity net gain obligation under the Environment Act does not affect accepted DCO applications such as the application for the Development but notes that biodiversity net gain is included in policy CS15 of the EBC and GBC development plans (ER 3.9.1). The Secretary of State agrees with the ExA that when considered in its entirety, the biodiversity benefits of the Development would outweigh the disbenefits and this weighs in favour of the DCO being made. In reaching this conclusion, the Secretary of State has taken into account the reduction in the RL proposed (and the implications of less RL being available to provide biodiversity mitigation) and the Secretary of State agrees that the Development would comply with the NPSNN and relevant development plan policies in regard of biodiversity (ER 5.5.60).	5.5.59. The Proposed Development would provide biodiversity enhancements through additional planting, and habitat creation and management. This would entail some opening up of areas of woodland and shrubs to restore lowland heathland, which is a priority habitat. There would be associated longer-term biodiversity enhancements for breeding birds, reptiles, bats, amphibians and the aquatic environment in particular. However, some of the proposed biodiversity mitigation has the potential to be reduced by decreasing the amount of RL to 16.4ha. The reasons for why the ExA considers there should be a decrease in the amount of RL provision are set out in Section 8.8 of this Report. 5.5.60. Consequently, for the reasons we have identified the ExA concludes that when considered as a whole the biodiversity benefits of the Proposed Development would outweigh the disbenefits, and this would weigh in favour of the Order being made, subject to the SoST receiving comments from the Applicant and IPs about the implications of less RL being available to provide biodiversity mitigation. When considered in its entirety the Proposed Development would therefore comply with the NPSNN and relevant Development Plan policies in regard to biodiversity, including Policy CS15 of the ECS, Policies DM6 and DM21 of the ELPDMP, and Policies CS15 and ID4 of the GBLPSS.
The M54 to M6 Link Road Development Consent	Decision Letter Recommendation Report	55. The Secretary of State notes the policy framework relating to biodiversity, ecology and the natural environment as set out in ER 6.2, the Applicant's case set out in ER 6.3 and the position of Interested Parties set out in ER 6.5.	6.3.125. When the application was originally submitted, the Applicant included a Biodiversity metric using a modification of the method published by Defra in its Biodiversity Offsetting Pilots Technical Paper: the metric for the biodiversity offsetting pilot in England published in 2012 [APP-176].

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<p>Order 2022</p> <p>Made on 21 April 2022</p>		<p>56. The Secretary of State notes that the ExA having reviewed the ES, is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly (ER 6.7.1).</p> <p>...</p> <p>61. The Secretary of State is content that there would no unacceptable effects on other habitats and protected species (ER 6.8.1). The ExA have concluded that following completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. Taking all relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 6.8.1 and is content with the ExA's consideration that the effect would be beneficial and should be given moderate weight and would accord with the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has had regard to that Convention in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (ER 6.7.39 and 6.7.40).</p>	<p>6.3.126. In the First Written Questions (FWQ), ExQ1.3.8 [PD-010], we asked why the more recent Defra Biodiversity Metric 2.0 had not been used, and a series of questions about the results of the originally submitted version.</p> <p>6.3.127. The Applicant submitted a study based on the Defra Biodiversity Metric 2.0 which was then revised with the October 2020 application changes [AS-103], where the full details can be found. This indicates that the Proposed Development would result in a Biodiversity Net Gain of 2.21% (17.32 units) of area based habitats, 26.27% (8.20 units) in linear habitats and 2.23% (0.33 units) of river habitats.</p> <p>6.3.128. As these fall within the range -5 % to +5 % for river and area based habitats (woodland, grassland etc.) the Applicant considers that this can be classed as no net loss in accordance with Table 11.9 of CIRIA C776a Good practice principles for development, and can be classed as achieving a net gain in linear (hedgerow) habitats.</p> <p>6.7.39. Following completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. We have had regard to the advice on Metric 3.0, as referenced in the footnote to 6.2.8 above, that Metric 2.0 is still valid for existing projects, in reaching this conclusion. This would accord with the latest guidance in the PPG. It is noted that SSC is satisfied with the approach and results. Taken overall we consider the effect would be beneficial and should be given moderate weight.</p>
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			<p>6.8.1. Taking all relevant documents and policies into account, the ExA concludes as follows:</p> <p>...</p> <ul style="list-style-type: none">• Moderate weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix.
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