

# M25 junction 10/A3 Wisley interchange

## TR010030

### 3.3 Consents and Agreements Position Statement

Regulation 5(2)(q)  
Planning Act 2008  
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



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## Infrastructure Planning

### Planning Act 2008

#### The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended)

### M25 junction 10/A3 Wisley interchange

#### The M25 junction 10/A3 Wisley interchange Development Consent Order 202[x ]

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### 3.3 CONSENTS AND AGREEMENTS POSITION STATEMENT

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<b>Regulation Number:</b>	Regulation 5(2)(q)
<b>Planning Inspectorate Scheme Reference</b>	TR010030
<b>Application Document Reference</b>	TR010030/APP/3.3
<b>Author:</b>	M25 junction 10/A3 Wisley interchange project team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 0	June 2019	Development Consent Order application

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## Executive summary

Highways England is seeking consent for a Scheme to improve the M25 junction 10/A3 Wisley interchange (“the Scheme”). The Scheme is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 (“the Act”) and requires development consent to be authorised by the Secretary of State for Transport. An application for a Development Consent Order (DCO) has been submitted for examination by the Planning Inspectorate. This Statement has been prepared to support that application and is intended to explain how Highways England is addressing the need for other consents that may be required for the Scheme under a range of other separate statutory regimes.

The Act provides a streamlined consenting process for Nationally Significant Infrastructure Projects (NSIPs). Under the Act it is possible to use a DCO to disapply certain legislative provisions, which has the effect of incorporating some other consenting requirements within the scope of the DCO. Highways England’s DCO has been drafted in line with the intent of the Act. It is seeking a wide range of powers to both authorise the works and the compulsory acquisition of any land and rights necessary to facilitate its construction, operation and maintenance, including undertaking works in the Green Belt and on common land and public open space.

Where feasible and expedient for the Scheme, Highways England has sought the agreement of other relevant consenting bodies to be able to include other consenting requirements within the scope of the DCO. Agreement has been sought from the Environment Agency and from Surrey County Council (as lead local flood authority) to disapply the requirement to obtain any flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016 as amended or any land drainage consent under the Land Drainage Act 1991. Highways England has incorporated protective provisions within the DCO for the benefit of the Environment Agency and Surrey County Council and is in discussions with both consenting bodies to obtain their agreement to disapply the requirements of the respective consents and agree suitable protective provisions. Copies of relevant correspondence with the Environment Agency and Surrey County Council are provided in the appendices of this Statement and statements of common ground are being prepared to inform the DCO examination process.

For other consents that may need to be obtained separately from the DCO, Highways England is either seeking to obtain these in parallel with the DCO process or has sought assurances from the relevant consenting bodies that there are no impediments to the grant of such consents at a later date.

Shadow/draft applications have been submitted to Natural England in relation to obtaining a bat mitigation licence under the Conservation of Habitats and Species Regulations 2017 and a badger licence under the Protection of Badgers Act 1992. This approach is consistent with the advice provided by the Planning Inspectorate in its Advice Note 11, ‘Working with Public Bodies’. Natural England has provided a letter of no impediment (LONI) to the gaining of these consents, a copy of which is provided in this Statement.

At this stage in the Scheme, it is not feasible or practicable to obtain all consents that may be needed, either because they relate to matters which can only be addressed at the detailed design stage or because they relate to matters that can only be determined once Highways England’s construction contractor is appointed. None of these matters are likely to affect the acceptability of the Scheme in principle as they generally relate to the methodologies for some of the activities or operations or are matters of finer detail. On this

basis, Highways England's approach to address such consents separately need not indicate against the granting of consent.

As part of the DCO process, Highways England expects that it may be necessary to enter into a number of other agreements with third parties. These would be referred to in the Statements of Common Ground and could include separate legally binding agreements, to address matters such as obligations, commitments and responsibilities for maintenance and management upon completion of the Scheme.

Highways England is currently in discussion with a variety of parties on a range of matters and this Statement will therefore be kept under review and updated as and when necessary to document the progress made.

Overall, Highways England's understanding is that there are no consenting matters which are likely to become an impediment to the implementation of the Scheme and therefore to the granting of development consent by the Secretary of State.

# 1 Introduction

## 1.1 Purpose and objectives

- 1.1.1 This Statement sets out Highway England's strategy for obtaining any consents, licences, permits or other agreements that may be necessary to construct, operate and maintain the proposed M25 junction 10/A3 Wisley interchange scheme (the Scheme). It is submitted in support of the applicant's Development Consent Order (DCO) application, in accordance with regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures Regulations) 2009 (as amended). It is intended to provide assurance to the examining authority that there are no consenting matters which are likely to become an impediment to the implementation of the Scheme or which indicate against the grant of development consent by the Secretary of State.
- 1.1.2 This Statement identifies the relevant consents that are likely to be required and sets out Highways England's strategy for addressing them. It explains how the DCO (as submitted) has been drafted to disapply certain legislative provisions, including disapplying a number of consents that would otherwise be required under a variety of different statutory regimes. It also seeks to provide assurances on the other consents that will need to be obtained separately from the DCO process, including consents for which the Secretary of State is not the authorising body under the Act.
- 1.1.3 In preparing this Statement and the DCO application generally, full regard has been given to the guidance published by the then Ministry of Housing, Communities and Local Government (MHCLG). As required by the MHCLG Application Form Guidance, published in June 2013<sup>1</sup> (paragraphs 45 and 46), this Statement summarises the applicant's understanding on the likelihood of the relevant consents being granted.
- 1.1.4 Advice published by the Planning Inspectorate has also been taken in to account in preparing the DCO application. Highways England has engaged with the relevant consenting bodies early in the pre-application stages of the Scheme and has followed the principles contained in the Planning Inspectorate's Advice Note 11, 'Working with Public Bodies' about twin-tracking some consents in parallel with the DCO application where feasible.
- 1.1.5 This Statement includes information on the status of Highways England's engagement with relevant bodies to date.

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<sup>1</sup> Planning Act 2008: application form - GOV.UK

## 2 Highways England's Consents Strategy

### 2.1 Background to the consenting regime under the Planning Act 2008

2.1.1 Section 33 of the Act removes the requirement to obtain certain other consents or authorisations that would otherwise be needed under a variety of different statutory regimes. Section 36 and Schedule 2 of the Act provide for the necessary consequential amendments to those other consenting regimes. Of particular relevance to the Scheme, Sections 33, 36 and Schedule 2 in combination, have the effect of:

- removing any requirement to obtain planning permission under the Town and Country Planning Act 1990, that would otherwise be required to authorise development;
- removing any requirement to obtain consent under Sections 10(1), 11(1), or 12(1) of the Green Belt (London and Home Counties) Act 1938, for works in the Green Belt; and
- deeming hazardous substances consent under The Planning (Hazardous Substances) Act 1990 to have been granted as part of any grant of development consent, if required.

2.1.2 It is possible for a wide range of matters to be included within the scope of a DCO. Section 120 of the 2008 Act provides that a DCO may make provision for, or relating to, any matters listed in Schedule 5 of the Act, including the application, modification or disapplication of certain relevant statutory provisions where necessary or expedient for the purposes of giving full effect to the order. In addition, there are specific sections within the Act which provide that a DCO may include certain other provisions. These include:

- the compulsory acquisition and possession of land and the creation, suspension, extinguishment or interference with rights over land (Schedule 5 of the Act);
- the stopping up or diversion of highways (Schedule 5 of the Act);
- carrying out civil engineering or other works (Schedule 5 of the Act);
- the designation of a highway as a trunk road and the specification of classes of traffic authorised to use a highway (Schedule 5 of the Act);
- carrying out surveys or taking soil samples (Schedule 5 of the Act);
- cutting down, uprooting, topping or lopping trees or shrubs (Schedule 5 of the Act);
- the compulsory acquisition/appropriation of registered common land and rights over common land, (Sections 131 and 132 of the Act);
- the undertaking of works on common land for the purposes of section 38(6) of the Commons Act 2006 (where sections 131 or 132 apply), (Section 139 of the Act);
- the extinguishment of rights and the removal of apparatus belonging to statutory undertakers (Sections 137 and 138 and Schedule 5 of the Act);

- the extinguishment of public rights of way (Section 136 of the Act);
- the discharge of water (Section 146 of the Act); and
- the acquisition, appropriation and exchange of Green Belt land and the freeing of that land from any restrictions under the Green Belt (London and Home Counties) Act 1938 (Section 147 and Schedule 5 of the Act).

2.1.3 There are however some limitations, most notably in Section 150 of the Act, which stipulates that certain prescribed non-planning consents may only be included within a DCO with the agreement of the relevant consenting body. These consents are prescribed in The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

2.1.4 Highways England's approach towards the opportunities to incorporate a wide range of matters within the scope of the DCO and to responding to the limitations imposed by Section 150 of the Act are set out in the next section of this Statement.

## 2.2 Highways England's Strategy and Approach

2.2.1 As the Scheme qualifies as an NSIP, Highways England's consents strategy is to fit within the legislative streamlining intent of the Act. The basis of Highways England's approach is therefore:

- that the DCO should be the principal consenting mechanism for the works, including any necessary powers for land acquisition, temporary possessions, the creation, suspension and extinguishments of rights over land and the stopping up of highways or other means of access;
- to exercise the opportunities provided for by Sections 33, 36 and 120 and Schedules 2 and 5 of the Act, to modify or exclude certain statutory provisions and consenting requirements where necessary and expedient;
- to engage and collaborate with relevant consenting bodies with a view to agreeing to the inclusion of other prescribed consents, including those subject to the limitations of Section 150 of the Act, where feasible and beneficial for the delivery of the Scheme;
- to make provision within the drafting of the DCO for appropriate 'protective provisions' or suitable development requirements for the benefit of the relevant consenting bodies, in exchange for their agreement to disapply certain consenting requirements. This will ensure that the principle of the development is agreed whilst providing a mechanism for the continued involvement of the relevant consenting bodies in approving specified design details; and
- where it is not practicable to include certain other consents, to seek agreements and assurances with the relevant consenting bodies to the effect that there is no impediment to the grant of such further approvals or consents.

2.2.2 For those consents that cannot be included within the DCO, either because the relevant consenting authority does not agree to their inclusion or because it is not feasible or desirable to incorporate them within the DCO at this stage in the Scheme, Highways England's approach is to:



- engage with the relevant consenting bodies as early as practicable within the DCO process to confirm any consenting requirements and a timetable for obtaining those consents;
- seek to obtain certain consents in parallel with the DCO process (at least in draft form) for those matters that could be central to determining the acceptability of the development in principle;
- seek assurances from the relevant consenting bodies on the likelihood of obtaining those consents to provide certainty and confidence to the Examining Authority about there being no impediment to the implementation of the Scheme once development consent is granted; and
- collaborate with stakeholders and relevant consenting bodies to agree and submit Statements of Common Ground (SoCG) early in the DCO examination process, with a view to confirming the status of negotiations on any relevant consents that are likely to be required.

2.2.3 This Statement outlines the progress that has been made to date and summarises Highways England's understanding of the likelihood of any necessary consents being granted.

2.2.4 A number of other consents may need to be obtained later in the Scheme's development and after the DCO application has been determined. These primarily relate to consents that are typically obtained by a construction contractor, once the final details of the construction arrangements have been determined. They may also relate to particular points of design detail that cannot be confirmed at the preliminary design stage of the Scheme. In both cases, they are likely to relate to matters of detail rather than the acceptability of the development in principle and it therefore follows that the determination of the DCO application does not depend upon their resolution at this stage.

2.2.5 Moreover, as the Scheme is still at preliminary design stage, it is possible that a requirement for additional consents may become apparent as further work progresses, such as for any proposed piling works or remediation works.

2.2.6 Overall, Highways England's consenting strategy as outlined above will enable the principle of the Scheme to be agreed and authorised through the DCO, without the need for all detailed design matters to be confirmed at this stage. It will provide sufficient certainty that the majority of consents required for the Scheme are or will be in place at the required time and that there are no likely impediments to the grant of other consents that may be needed.

## 3 Relevant Consents and Agreements

### 3.1 Consents and authorisations to be included within the DCO powers

- 3.1.1 The principal consent for the Scheme will be the DCO itself. The DCO as drafted (see application document reference TR010030/APP/3.1) makes provision for the following:
- the authorisation of all permanent and temporary works (the equivalent of planning permission);
  - consent to construct works in the Green Belt (the equivalent of a green belt consent under Section 10(1), 11(1) or 12(1) of the Green Belt (London and Home Counties) Act 1938 and to free the land from any restriction under the 1938 Act;
  - powers for the compulsory acquisition of land (including subsoil) and of rights over land such as easements and restrictive covenants and the temporary possession of land;
  - powers for the compulsory acquisition of common land and open space and for rights over that land in accordance with Sections 131 and 132 of the Act;
  - powers for the compulsory acquisition of land for the purposes of providing replacement land. This is to ensure that the Scheme is within the exceptions contained within sections 131 and 132 of the Act such that the DCO will not need to be subject to special parliamentary procedure;
  - consent to carry out works within a Site of Special Scientific Interest (SSSI) (disapplying any requirement for a consent under Section 28E of the Wildlife and Countryside Act 1981). This is because the Scheme will involve construction works to be undertaken on land that forms part of the Ockham and Wisley Commons SSSI;
  - consent to carry out street works and to stop up highways and accesses permanently and temporarily (including the equivalent of any consents under the New Roads and Street Works Act 1991). This is because the Scheme will require works to side roads adjoining the A3 and private access arrangements;
  - highway and traffic regulation matters, such as the classification of roads, speed limits, clearways and restrictions on use (the equivalent of matters otherwise covered by the Road Traffic Regulation Act 1984 and Highways Act 1980. This is because the Scheme will involve the construction of new roads and the alteration of existing roads over which traffic regulation matters will need to be confirmed or clarified;
  - consent to stop up, divert and create public and private rights of way because the Scheme will necessitate some diversions of rights of way and includes proposals for significant improvements to the local public rights of way network;

- consent to carry out tree works (including works to trees subject to a Tree Preservation Order – the equivalent of consent under Section 16 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012). This is because there are trees that are the subject of tree preservation orders within or close to the boundary of the Scheme which may need some lopping or cutting back works;
- consent for landscaping works and new tree planting. This is because the Scheme includes extensive areas of new planting associated with environmental mitigation and compensation measures, including the laying out of replacement land as open space and common land;
- consent to carry out works on or within 8m of any main river or flood defence structure or in the floodplain of any main river (see section 3.2.2 below);
- consent to carry out works that affect the flow of water within the channel of any ordinary watercourse (see 3.2.2 below);
- consent and powers to remove apparatus belonging to statutory undertakers and/or to carry out utility diversions;
- rights to use or make connections with watercourses and public sewers or drains for the drainage of water (the equivalent of consents under the Water Industry Act 1991).

3.1.2 In addition, the DCO (in article 46) makes provision to disapply the following local legislation and byelaws:

- Cobham, Leatherhead and Godalming Bridges Act 1782 , sections 1 and 6;
- Cobham Gas Act 1899 section 29;
- Electric Lighting Orders Confirmation (No.1) Act 1908 sections 4 and 5;
- Borough of Guildford Byelaws with respect to Loading of Vehicles and Deposit of Mud on Highways 1968, byelaws 2 and 3; and
- Surrey Act 1985 sections 5(1) and 5(2).

3.1.3 None of the following consents listed in Section 33(1) of the Act will be required for the Scheme:

- Listed building consent under the Planning (Listed Buildings and Conservation Areas) Act 1990. This is because the Scheme will not involve any works to a listed building;
- Scheduled monument consent or any consent under the Ancient Monuments and Archaeological Areas Act 1979. This is because no works are proposed within the boundary of any scheduled monument and the Scheme is not situated within an area of archaeological importance designated under the 1979 Act;
- A pipe-line construction authorisation under the Pipe-lines Act 1962. This is because the Scheme will not require the diversion of a pipeline of more than 800mm in diameter or exceeding 8 bar gauge or any other limit stipulated by the 1962 Act; and
- A consent under the Gas Act 1965 the Energy Act 1976 or the Electricity Act 1989.

## 3.2 Other Consenting requirements subject to the limitations of section 150 of the Planning Act 2008

- 3.2.1 Section 150 of the Act allows for certain consenting requirements to be disapplied by a DCO (see DCO document TR010030/APP/3.2 Explanatory Memorandum, Article 3), provided that this has been agreed by the relevant consenting body. The consents which fall under Section 150 of the Act are prescribed in Schedule 2, Part 1 of The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

### Section 150 consents to be included within the DCO powers

- 3.2.2 Highways England is seeking to include the following Section 150 consents within the scope of the DCO for the Scheme:

- Flood risk activity permits under the Environmental Permitting (England and Wales) Regulations 2016 as amended, for which the Environment Agency is the relevant consenting body;
- Land drainage consents under the Land Drainage Act 1991, for which Surrey County Council is the relevant consenting body as the lead local flood authority;

- 3.2.3 Highways England considers that these consents relate to matters that should be agreed in principle as part of the DCO examination process.

### Flood Risk Activity Permits

- 3.2.4 Under the Environmental Permitting (England and Wales) Regulations 2016 as amended, a flood risk activity permit is required from the Environment Agency for any works in, under or over a main river, within 8m of a non-tidal main river or for any works that interfere with the course of a main river, including the construction of an outfall to a main river.

- 3.2.5 Stratford Brook, which passes beneath the A3 just to the north of the Ockham Park junction, is classified as a main river and any works within 8m of this watercourse will therefore require a flood risk activity permit, including the following:

- the construction of a new highway bridge over Stratford Brook to carry the proposed Wisley Lane diversion over the river, including associated embankment earthworks and bridge abutments;
- modification works to the existing Stratford Brook culvert in association with the widening of the A3 north-facing slip roads and improvement works at the Ockham Park junction, including the construction of a new bridleway alongside the A3 southbound off-slip;
- the construction of four new outfalls and associated drainage works, including drainage ditches, catchpits and gulleys on either side of Stratford Brook to the north-east of the Ockham Park junction; and  
the construction of a drainage attenuation pond on land to the west of the A3 and south of Mill Lane.

- 3.2.6 The DCO has been drafted to disapply any requirement to obtain a flood risk activity permit and includes protective provisions for the benefit of the

Environment Agency. These require Highways England to seek the Environment Agency's agreement on the details of certain specified works before construction may commence. They enable the Environment Agency to impose conditions on any approval to ensure existing drainage infrastructure and flood defence measures are protected. They also cover matters relating to the inspection and maintenance of the works.

- 3.2.7 Highways England has been engaging with the Environment Agency on this approach during the pre-application stage of the Scheme. As required by Section 150 of the Act, Highways England is seeking the Environment Agency's agreement to the dis-application of the requirement to obtain a flood risk activity permit(s) under the DCO. The Environment Agency has confirmed that it is in-principle content that the DCO should include this disapplication subject to the use of the Environment Agency's standard protective provisions. Highways England is in discussions with the Environment Agency accordingly. The draft DCO at schedule 9 (TR010030/APP/3.1) includes protective provisions for the benefit of the Environment Agency.
- 3.2.8 A Statement of Common Ground (SoCG) between Highways England and the Environment Agency has also been prepared which describes the engagement that has been undertaken in more detail. A copy of the SoCG is submitted as part of Highways England's DCO application (see document TR010030/APP/7.5). The SoCG will be kept under review as negotiations with the Environment Agency progress and be updated or supplemented where appropriate.
- 3.2.9 It is noted that the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016 have repealed any requirement for a separate consent to be obtained under Section 109 of the Water Resources Act 1991 for works affecting a main river.

#### Land Drainage Consents

- 3.2.10 Under Section 23 of the Land Drainage Act 1991, a land drainage consent is required for any works, including temporary works, that affect the flow of water within the channel of an ordinary watercourse, such as a new pipe (culvert), bridge, dam or other structure or obstruction or for any change to the alignment or the banks of an ordinary watercourse.
- 3.2.11 An ordinary watercourse is any river, stream, brook, ditch, drain, culvert, pipe through which water may flow which is not designated as a main river. As the Scheme has the potential to affect a number of ordinary watercourses, including in the vicinity of Bolder Mere and junction 10, the DCO seeks to incorporate land drainage consents within the scope of the DCO, to provide greater certainty for the delivery of the Scheme. Works that will require land drainage consent (with key ordinary watercourses identified using preliminary drainage design chainages) include the following:
- A) A3 SB CH4550 to 4700: Unnamed ordinary watercourse which runs alongside the edge of the A3 southbound carriageway to the south of Bolder Mere and south of where Elm Lane and Wisley Lane meet the A3, to accommodate the widening of the A3 carriageway;



- B) A3 SB CH3800 to 4400: The realignment of an ordinary unnamed watercourse which runs alongside the edge of the A3 southbound carriageway to the south of Bolder Mere ending where Elm Lane meets the A3 to accommodate the widening of the A3 carriageway. Works are required at the road section adjacent at Bolder Mere (designated as a reservoir). The works at this location require an extension to the existing Bolder Mere culvert;
- C) A3 NB CH1970: An unnamed ordinary watercourse which runs through the woodland at Wisley Common to the west of the A3 north bound carriageway at Bolder Mere, at approximate chainage CH1970 to accommodate the widening of the A3 carriageway and new Wisley NMU route;
- D) Junction 10 M25 WB diverge, CH400: An unnamed ordinary watercourse to the east of junction 10 which drains from the M25 west bound at approximate chainage CH400 to a track in Ockham Common to accommodate the widening of the M25 junction 10 Slip road and drainage attenuation area ;
- E) M25 WB, CH10950 to 11250: An unnamed ordinary watercourse to the east of junction 10 which runs along the west bound carriageway of the M25 one end of which starts at the top of a track running through Ockham Common up to the edge of the carriageway, to accommodate the widening of the M25 carriageway;
- F) Junction 10 M25 EB merge CH 0 to 150: An unnamed ordinary watercourse to the east of junction 10 of the M25 which runs under the M25 and provides hydraulic linkage to a pond at Redhill Bottom (north of M25 east bound) to accommodate the approach ramp of the NMU Foot Bridge over the M25.;
- G) Junction 10 A3 SB Diverge CH200: An unnamed ordinary watercourse just north of junction 10 (and to the east of the A3) near Pointers Road, to accommodate the widening of the A3 Slip road at M25 junction 10;
- H) Junction 10 M25 WB merge, CH0 to 100: An unnamed ordinary watercourse just west of junction 10 which runs alongside the carriageway merging onto the M25 west bound at approximate chainage CH0 to 100 to accommodate the widening of the M25 junction 10 Slip road.

3.2.12 Surrey County Council is the designated lead local flood authority (LLFA) under the Flood and Water Management Act 2010 and has responsibility for determining flood defence consents for ordinary water courses under section 23 of the Land Drainage Act 1991. Highways England has obtained Surrey County Council's agreement in principle to the inclusion of these consents within the scope of the DCO. Discussions regarding protective provisions are ongoing and therefore Surrey County Council has not yet agreed to the disapplication of section 23 of the Land Drainage Act 1991.

3.2.13 The DCO has been drafted to include protective provisions for the benefit of Surrey County Council (as LLFA) in exchange for disapplying the provisions of the Land Drainage Act 1991. These provisions have the effect of requiring Highways England to submit to Surrey County Council detailed plans of any works in relation to the watercourses specified and enable Surrey County Council to impose conditions on any approval given. They also make provision for Surrey County Council to inspect the works to ensure that they have been

undertaken to their reasonable satisfaction and include arrangements for the maintenance and repair of the works once completed. These provisions will be enforceable and will also ensure that any detailed approvals cannot be unreasonably withheld.

- 3.2.14 Discussions are continuing with Surrey County Council to agree the detailed content of the proposed protective provisions. A SoCG is being prepared which will provide further detail on that engagement and will outline any points of difference as well as agreement. It is anticipated that this SoCG will be submitted during the examination period.
- 3.2.15 Although not prescribed under Section 150 of the Act, the DCO has also been drafted to disapply the provisions of Section 32 (variation of awards) and the provisions of any byelaws made under Section 66 of the Land Drainage Act 1991, to extinguish any unforeseen impediment to implementing the Scheme.
- 3.2.16 A SoCG between Highways England and the Environment Agency has been prepared which describes the engagement that has been undertaken thus far in more detail and discussions will continue during the examination process. A copy of the SoCG is submitted as part of Highways England's DCO application (see document TR010030/APP/7.5). The SoCG will be kept under review as discussions with the Environment Agency progress.

### Section 150 consents to be obtained in parallel with the DCO process

- 3.2.17 Highways England intends to obtain the following Section 150 consents outside the scope of the DCO, but in parallel with the DCO process:
- a badger licence from Natural England, under section 10 of the Protection of Badgers Act 1992; and
  - European protected species mitigation licences (in respect of bats) from Natural England, required under Regulation 55 of the Conservation of Habitats and Species Regulations 2017.
  - Water Impoundment licence under Section 25 of the Water Resources Act 1991, for which the Environment Agency is the relevant consenting body.
- 3.2.18 The badger licence and bat mitigation licence consents are to be obtained separately because this is Natural England's preferred approach, as set out in Annex C of the Planning Inspectorate's Advice Note 11 – Working with Public Bodies in the Infrastructure Planning Process<sup>2</sup>. The Environment Agency have indicated that it is their policy not to disapply water impoundment licences and that instead, these types of licence need to be applied for outside of the DCO.

#### Badger Licence

- 3.2.19 Section 10 of the Protection of Badgers Act 1992 makes it an offence to kill, injure or take a badger or undertake works that interfere with a badger sett, including any associated tunnels and chambers. Works that are considered to constitute interference for the purposes of the 1992 Act include; destroying or damaging setts or access to setts, the carrying out of noisy activities or operations that would result in vibration such as pile driving, excavations, the installation of additional lighting and other works such as tree felling.

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<sup>2</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/10/PINS-Advice-Note-11\\_AnnexC\\_20150928.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/10/PINS-Advice-Note-11_AnnexC_20150928.pdf)

- 3.2.20 Ecological surveys undertaken as part of the environmental impact assessment of the Scheme (see application document TR010030/APP/6.3) have identified that there is a [REDACTED]. A licence from Natural England will therefore be required to interfere with the badger sett for the purposes of development prior to the commencement of the relevant works.
- 3.2.21 Normally, Natural England does not grant such licences until planning permission for the relevant works has been obtained. However, for NSIPs, Natural England recommends that a draft licence application be submitted at the pre-application stage. This is to ensure that the acceptability of the proposed works can be considered in principle and thus avoid any unforeseen problems arising during the implementation stage of the Scheme. This will enable all relevant matters to be considered early, including method statements and proposed mitigation. Where matters are agreed, Natural England undertakes to provide a letter of no impediment (LONI) to the granting of the licence at a later stage.
- 3.2.22 Highways England has engaged with Natural England throughout the pre-application stage of the Scheme and Natural England is providing advice and guidance on the proposals through its discretionary advice service. A full draft licence application was submitted to Natural England in January 2019 and Natural England issued a LONI (Appendix A.1).
- 3.2.23 A SoCG has been prepared and submitted as part of Highways England's DCO application (document reference TR010030/APP/8.25). The SoCG summarises all of the engagement that has been undertaken with Natural England including in relation to licensing matters.

#### European Protected Species Mitigation Licences (Bats)

- 3.2.24 The Conservation of Habitats and Species Regulations 2017 implements the EC Directive 92/43/EEC in the United Kingdom as it relates to the protection of European Protected Species (EPS), both wild animals and plants. Under Regulation 43 of the 2017 Regulations (EPS), it is an offence to deliberately capture, injure or kill any EPS (specified in Schedule 2 of the Regulations) or to deliberately disturb them or damage or destroy a breeding site or resting place. Works that have the potential to result in disturbance or damage can include engineering operations and a material change in the use of land and the demolition of buildings and structures (if used as a shelter for the protected species).
- 3.2.25 Ecological surveys undertaken as part of the EIA of the Scheme have established the presence of bats within the area of land to be acquired or used for the construction and operation of the Scheme. Bats are one of the species listed in Schedule 2 of the Habitats Regulations as a European Protected Species (EPS). Bat mitigation licences will therefore be required from Natural England under Regulation 55, to authorise any works that would otherwise be illegal under the regulations. These would address mitigation for the loss of tree bat roosts and for the potential loss of maternity roosts should it be necessary to demolish any buildings at the former San Domenico Hotel site (now the Starbucks Drive Thru).
- 3.2.26 Under the Habitats Regulations, Natural England may grant a licence for these activities, if it can be demonstrated that they are for the purposes of preserving

public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequence of primary importance for the environment. It is a requirement of licensing that there is no satisfactory alternative that will cause less harm to the species and that the activity must not harm the long-term conservation status of the species. There are a number of different types of EPS licences and it is Natural England's view that a licence will be needed, if on the basis of survey information and specialist knowledge there are proposed works that are reasonably likely to result in an offence under the regulations.

- 3.2.27 It is Natural England's policy only to determine such licence applications once a proposed development has been authorised through the granting of planning permission and subject to the land in question being owned by the applicant. However, in the case of NSIPs, Natural England is able to provide an opinion on a full draft application and whether the relevant licensing tests can be satisfied without a planning consent needing to be in place. This is confirmed in Annex C of the Planning Inspectorate's Advice Note 11, 'Working with public bodies in the infrastructure planning process'<sup>3</sup>.
- 3.2.28 Highways England has engaged fully with Natural England throughout the pre-application stage of the Scheme. Draft bat mitigation licences were submitted to Natural England in January 2019. Natural England provided a LONI to the granting of these EPS bat mitigation licences on 26 March 2019 (Appendix A.2). Whilst it will still be necessary to obtain the full licences at a later stage post determination of the DCO application, Natural England's LONI provides sufficient assurance to the examination that the principle of the development and the methods for mitigating any impacts are agreed in principle.
- 3.2.29 As noted in paragraph 3.2.23 a SoCG between Highways England and Natural England has been prepared and submitted as part of Highways England's DCO application (document reference: TR010030/APP/8.25). The SoCG addresses a range of matters, including licensing requirements.
- 3.2.30 Based on current survey information, no other European protected species will require a licence. In line with the Scheme's outline CEMP (application document reference: TR010030/APP/7.2), appropriate methods of working are being agreed with Natural England to minimise the risk of the works disturbing sand lizards or great crested newts, both of which are European protected species.

#### Water Impoundment Licences

- 3.2.31 Under Section 25 of the Water Resources Act 1991, a water impoundment licence is required from the Environment Agency for any works to construct or alter any impoundment works in inland waters or obstruct or impede the flow in any inland waters, by means of impounding.
- 3.2.32 At this stage there is limited detail in relation to the design of the proposed Bolder Mere and Manor Pond works however it is currently anticipated that there will be permanent works to the retaining walls at both locations with anticipated encroachment into both watercourses to support wider carriageways, together with an extension to the culvert at Bolder Mere. These works will require a water impoundment licence as impoundment structures within inland waters will be constructed / altered.

<sup>3</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/10/PINS-Advice-Note-11\\_AnnexC\\_20150928.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/10/PINS-Advice-Note-11_AnnexC_20150928.pdf)

- 3.2.33 The Environment Agency has indicated that it is not current policy to disapply Section 25 of the Water Resources Act 1991 and that a separate application for a licence will need to be made. Highways England therefore intends to commence the licencing process in parallel with the DCO application in order to seek the Environment Agency's preliminary view, where possible, on the licence application in readiness for the DCO examination.

### Other Section 150 consents

- 3.2.34 At this stage of the Scheme, no requirement has been identified to obtain any of the following consents that are subject to the provisions of Section 150 of the Act, but it should be noted that it will not be known definitively until detailed design has been completed and a contractor appointed:
- A licence from Natural England under Section 16 of the Wildlife and Countryside Act 1981, this is because there are no activities proposed that will require a licence under that Act. Whilst the Act prohibits any works to deliberately take, kill or injure a protected animal (listed in Schedule 5 of the Act) or to intentionally, or recklessly, disturb such an animal in its place of shelter, or to damage, destroy or obstruct access to its place of shelter, or to pick up or destroy any plant (listed in Schedule 8 of the Act) the provisions do not apply where such acts are the incidental result of a lawful operation and could not have reasonably been avoided. The outline Construction Environmental Management Plan (oCEMP) (see application document TR010030/APP/7.2) sets out the measures that will be adopted during the works to ensure compliance with the provisions of the 1981 Act. As noted above, mitigation licences will be sought for European protected species under the Conservation of Habitats and Species Regulations 2017.
  - A Groundwater Activity Permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended. This is because the Scheme incorporates suitable pollution control measures within the drainage design features to mitigate the risk of contamination of ground water. Highways England is in discussions with the Environment Agency to obtain their agreement to this approach. If it is subsequently considered that a permit will be required for any specific construction operations a permit will be sought separately at the relevant time. A SoCG has been prepared between Highways England and the Environment Agency to confirm that this approach is still part of ongoing discussions but it is not anticipated that this is likely to pose a risk to the delivery of the Scheme (see application document Ref: TR010030/APP/7.5).



- A water discharge activity permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended for surface water run-off from the highway. This is because the Scheme incorporates overall improvement in the drainage scheme, including commitments in the REAC and suitable pollution control measures within the drainage design features to mitigate the risk of polluting any inland freshwaters and because suitable construction management measures will be adopted to prevent any vegetation being cut back from falling in to adjacent watercourses. The Register of Environmental Actions and Commitments (REAC) (application document TR010030/APP/7.3) and the outline CEMP (oCEMP) (application document TR010030/APP/7.2) set out Highways England's commitments to maintaining water quality. If any de-watering activities are required during construction which do not meet the current exemption for discharging clean water for less than three consecutive months (as noted in Environment Agency Guidance: Temporary dewatering from excavations to surface water, dated 16 July 2018), a permit will be sought by Highways England's appointed construction contractor at the appropriate time. Highways England has obtained the Environment Agency's verbal agreement to the approach relating to highway run-off in a meeting dated 28 November 2018 and has requested formal written confirmation. The Environment Agency has asked for more detail to be provided and discussions are therefore ongoing. These discussions include the possibility of a requirement for a water discharge activity permit for discharging surface water from Bolder Mere back into Bolder Mere (as part of dewatering activities where water is segregated and pumped out of the construction area temporarily) as this is within the Ockham and Wisley Commons SSSI and the Environment Agency have confirmed that a water discharge activity permit would likely be needed in this instance (and location) due to the SSSI status. At this time however, it is not envisaged that this will be required as the preferred construction method design does not require dewatering. As above, a SoCG has been prepared to confirm that this approach is still part of ongoing discussions but it is not anticipated that this is likely to pose a risk to the delivery of the Scheme (see application document Ref: TR010030/APP/7.5).
- A waste environmental permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended. This is because at this stage in the Scheme it is not possible to determine whether there is likely to be a need to store excavated materials for reuse in sufficient quantities to exceed the relevant limits or durations (stipulated in the Waste (England and Wales) Regulations 2011 as amended or to store waste under Schedule 3 of the Environmental Permitting (England and Wales) Regulations 2016 as amended. In addition, at this stage it is not known whether non Waste Framework Directive exemptions apply, or whether there will be a need to treat any manmade materials on the site, such as crushing rubble. Any permits required for such activities will therefore need to be obtained by Highways England's appointed contractor should the need arise.

- A water abstraction licence from the Environment Agency under Section 24 of the Water Resources Act 1991, as amended, or any disapplication from the provisions of Section 32 of the 1991 Act. This is because at this stage in the Scheme it is not expected that the construction works will need to abstract more than 20 cubic metres per day, which is the abstraction limit prescribed in the Water Resources Act 1991 (or for any dewatering of surface waters that may be required to accommodate construction works as it is anticipated the abstraction will meet the conditions of the surface water abstraction exemption as noted in regulation 6 of the Water Abstraction and Impounding (Exemptions) Regulations 2017). Again, should circumstances change, it will be for Highways England's appointed contractor to obtain any necessary permits should the need arise.

3.2.35 Highways England will continue to review the need for any of the above consents in the light of any detailed design work or should any further or new information come to light.

### 3.3 Other Consents to be obtained

#### Section 38 Consent under the Commons Act 2006

- 3.3.1 Under section 38 of the Commons Act 2006 consent is required for the carrying out of works on common land. However, an order granting development consent may only exclude or modify the requirement to obtain a section 38 consent in accordance with the circumstances in which either section 131 or section 132 of the Act applies, namely where the land is to be compulsorily acquired, or where a right over the land is to be acquired or a new right over the land created and provided that suitable replacement land is given in exchange for the order land. The powers do not extend to works to be carried out on land that would be the subject of temporary possession powers.
- 3.3.2 The Scheme requires the temporary possession of approximately 39.84 hectares of land comprising registered common land, for the carrying out of both permanent and temporary works, including:
- Temporary working sites and compounds as shown on the Temporary Works Plans (application document reference TR010030/APP/2.10);
  - Temporary slip roads at M25 junction 10 as shown on the Temporary Works Plans (application document reference TR010030/APP/2.10);
  - The creation of new non-motorised user routes and public rights of way;
  - The provision of substitute means of access to private properties; and
  - Other works in connection with local highways that are or will become the responsibility of the relevant local highway authority.
- 3.3.3 As section 139 of the Act states that for the purpose of section 38(6)(a), works carried out under a power conferred by an order granting development consent are not to be taken as carried out under a power conferred by or under an enactment, except in a case to which section 131 or 132 applies. Highways England is therefore proceeding on the basis that a separate consent under section 38 of the commons Act 2006 will be required for the activities listed above.

- 3.3.4 Highways England intends to submit a separate application under section 38 of the Commons Act 2006, once the DCO application is accepted for examination. The timing of that application will be the subject of further discussion with the Planning Inspectorate.

Consents to be obtained by the contractor at a later stage if required

- 3.3.5 The Scheme is still at its preliminary design stage. Not all consenting requirements can therefore be identified or confirmed at present. In some cases, it is not practicable to include certain matters within the DCO (or even to be able to pursue them in parallel with the DCO process) because the details of the design are not sufficiently developed. In other cases, it is because the detailed construction site set up and working arrangements cannot be fully confirmed until a construction contractor is appointed.
- 3.3.6 Highways England intends that all matters which are of fundamental importance to the delivery of the Scheme should be addressed as part of the DCO process or alongside the DCO process to minimise the risk of any unforeseen problems arising and which could jeopardise the implementation of the Scheme. Any consents to be addressed at a later stage will therefore relate only to points of detail on the design of the authorised works or where there is likely to be a degree of flexibility in possible solutions or methodologies for a particular activity.
- 3.3.7 The oCEMP (document reference TR010030/APP/7.2) and the Register of Environmental Actions and Commitments (REAC) (document reference TR010030/APP/7.3) will provide a framework within which any subsequent consents will need to be addressed. SoCGs have been prepared and include assurances from the relevant consenting bodies that any consents that may be required separately will not be unreasonably withheld.
- 3.3.8 Consents that will typically need to be obtained by the construction contractor once appointed will include the following:

*Environment related matters:*

- consents from the Environment Agency under the Control of Pesticides Regulations 1986 (as amended) for the use of any pesticides within 8m of a watercourse, such as for the spraying of any Himalayan Balsam which is likely to be present within the DCO boundary;
- licences from Natural England under the Conservation of Habitats and Species Regulations 2017, in the event of a European protected species or other protected species, not previously identified in the environmental assessment, being found whilst undertaking the works and which indicate the need for an appropriate mitigation licence to be obtained;
- any permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended should any contaminated material or groundwater be found unexpectedly during the construction works and that would indicate the need for a permit to be obtained;
- consents from the relevant local authority under Section 61 of the Control of Pollution Act 1974 should any construction activities be likely to exceed the noise thresholds stipulated in the CEMP or should operations need to be undertaken outside the specified and agreed working hours; and

- licences from the Environment Agency under Section 26, Section 27A or Section 30 of the Salmon and Freshwater Fisheries Act 1975 as they relate to the removal of fish as part of mitigation. This will be required for mitigation works at Bolder Mere and discussions with the Environment Agency are underway to ascertain whether or not this is also required for works at Stratford Brook. It has been agreed with the Environment Agency that such licences will be obtained separately and not disapplied within the DCO.

*Waste related matters:*

- Any waste permits required from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended should there be a need for operations involving the treatment or processing of manmade waste, such as crushing any excavated rubble for reuse in the works;
- Any notifications required by the Environment Agency under the Waste (England and Wales) Regulations 2011, should any Japanese knotweed or giant hogweed be identified and need to be removed;
- Any waste carrier licences or transfer licences that may be required under the Control of Pollution (Amendment) Act 1989;
- Any consignment note or notification under the Hazardous Waste (England and Wales) Regulations 2005 (hazardous waste) or waste transfer note under waste duty of care (non-hazardous waste);
- Obtaining any exemptions from the requirements of the Pollution Prevention and Control Act 1999 and Environmental Permitting Regulations 2016 as amended for operations such as U1 (the import of waste for use in construction) if required; and
- A CL:aire Materials Management Plan to assure compliance with the Waste (England and Wales) Regulations 2011 and the Waste Framework Directive, may also be required in relation to the reuse of soils on site.

3.3.9 The contractor will need to comply with various protocols on the storage and use of waste. These are stipulated in the oCEMP (Application document TR010030/APP/7.2).

*Water and drainage related matters:*

- A water discharge activity permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 as amended for construction operations such as de-watering, if required;
- A trade effluent consent from the relevant undertaker under Section 118 of the Water Industry Act 1991, for the discharge of waste water associated with the operation of construction compound site welfare facilities;
- A water abstraction licence from the Environment Agency under section 24 of the Water Resources Act 1991 (as amended) and the Water Resources (Abstraction and Impounding) Regulations 2006, should the contractor need to abstract more water than originally envisaged and remove more than 20 cubic metres per day); and

- Any consents to comply with duties under section 110A of the Water Industry Act 1991 as may be required for connection of sewers/disposal mains into public sewers/disposal mains or into a sewage disposal works.

*Construction plant and machinery and site safety related matters*

- A permit from the Environment Agency under Part B of the Environmental Protection Regulations 2010, Pollution Prevention and Control Act 1999, the Pollution (Prevention and Control) (England and Wales) Regulations 2000 (as amended) and the Environmental Permitting (England and Wales) Regulations 2016 as amended etc for the operation of any mobile plant, crushers or concrete batching plants and including application for deployment of mobile plant permit(s);
- Notification to the Health and Safety Executive about the commencement of construction in accordance with the Construction (Design and Management) Regulations 2015;
- Approvals under the Health and Safety at Work Act 1974; and
- Compliance with duties under The Regulatory Reform (Fire Safety) Order 2015.

*Traffic and highways related matters*

- Any temporary traffic regulation orders that may be required under the Road Traffic Regulation Act 1984 for temporary reductions in speed limits or other restrictions required during construction works;
- Any permits required under the Traffic Management Act 2004 and the New Roads and Street Works Act 1981 relating to booking time for works on the highway;
- Any permissions under section 177 of the Highways Act 1980 etc, for construction works involving crane oversailing or site hoarding; and
- Any permits for the transportation of abnormal or indivisible loads or for the use of certain classes of vehicle required under the Road Traffic Act 1988, The Road Vehicles (Authorised Weight) Regulations 1988, the Road Vehicles (Construction and Use) Regulations 1986 and the Road Vehicles (Authorisation of Special Types) (General) Order 2003.

- 3.3.10 As construction work proceeds, there is also the possibility that certain other consents may need to be obtained where new information comes to light or when unexpected events occur during construction, such as encountering a protected species not previously identified through the surveys for the environmental assessment of the scheme. In such scenarios, work may have to cease until the necessary consents for the works can be obtained. The draft DCO requirements, set out in schedule 2 of the DCO (application document reference TR010030/APP/3.1) confirm that this will be the case should a protected species not previously identified be found and where works will require a relevant mitigation licence in order to resume.



## 3.4 Agreements

- 3.4.1 Agreements between Highways England and a number of different parties may be entered into in connection with the Scheme. These could take the form of:
- an agreement made under section 106 of the Town and Country Planning Act 1990 (planning obligations); or
  - other undertakings, memoranda of understanding or letters of comfort etc.
- 3.4.2 Agreements may also emerge from the discussions that Highways England is holding with third parties on SoCGs. A number of SoCGs are being progressed to identify both the matters on which the relevant parties have agreed and the matters where agreement has yet to be reached or cannot be reached. They are intended to help narrow the focus for the examination of the DCO application and thus make the examination process more efficient.
- 3.4.3 The following SoCGs have been submitted as part of Highways England's DCO application:
- Environment Agency;
  - Natural England; and
  - Historic England.
- 3.4.4 Additional SoCGs will be developed during the examination period, with the following interested persons and bodies, including:
- Surrey County Council
  - Guildford Borough Council; and
  - Elmbridge Borough Council.
- 3.4.5 Highways England is currently in discussions with Surrey County Council about a range of matters that may need to be included in an agreement, including the following:
- The undertaking of ecological enhancement works, and the maintenance of compensatory habitat creation and enhancement measures required on land owned by Surrey County Council in connection with fulfilling commitments to off-setting impacts on the Thames Basin Heaths Special Protection Area; and
  - The maintenance and management of areas proposed as replacement land to offset losses of common land or open space;
- 3.4.6 Some land required for the Scheme and situated to the north-east of the Ockham Park junction, is held by the Secretary of State for the Environment, Food and Rural Affairs and other land is held by the Secretary of State for Transport. This land constitutes 'Crown land' for the purposes of the Act. Under Section 135 of the Act, Crown land can only be acquired through agreement rather than be compulsorily acquired (see DCO document TR010030/APP/2.6 for the Crown Land Plans). Highways England has been engaging in discussions with the Department of the Environment, Food and Rural Affairs and Secretary of State for Transport with a view to reaching agreement with them as soon as possible.


# Appendices

# Appendix A. Letters of no impediment

## A.1. Letter of No Impediment regarding Badger Licence dated 3 April 2019

Date: 03 April 2019  
Our ref: 258963  
(NATIONALLY SIGNIFICANT INFRASTRUCTURE  
PROJECT)



  
Sent by e-mail only

Dear 

<b>DRAFT MITIGATION LICENCE APPLICATION STATUS:</b> INITIAL DRAFT APPLICATION <b>LEGISLATION:</b> THE PROTECTION OF BADGERS ACT 1992 (as amended) <b>NSIP:</b> M25 Junction 10, Wisley, Surrey, GU23 6QS <b>SPECIES:</b> Badger
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Thank you for your initial draft badger development licence application in association with the above NSIP site, received in this office on 23/01/2019. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

### Assessment

Following our assessment of the resubmitted draft application documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the DCO be granted.

However, please note the following issues have been identified within the current draft of the method statement that will need to be addressed before the licence application is formally submitted. Our wildlife adviser, Cassandra Jackson discussed this matter with Dave Lewns and Sarah Coxhead via e-mail correspondence on the 03/04/2019 where it was confirmed that the necessary amendments would be made. Please do ensure that the Method Statement is revised to include these changes prior to formal submission.

For clarity these include:

- One way gates must be installed for a minimum of 21 days during the closure of an active sett (Method Statement Section 4.1 (I) page 10).
- Where a disused sett is to be hard-stopped (Method Statement Section 4.1 (VI) page 10), evidence should be recorded of the survey or monitoring activity that was undertaken to conclude that there are no signs of current use.

- [REDACTED]
- Seeding of the artificial sett with bedding. (Method statement Section 3.1 page 8)
- A walkover survey must be conducted within 3 months of the formal licence submission.

#### Next Steps

Should the DCO be granted then the mitigation licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted. Please note that there will be no charge for the formal licence application determination, should the DCO be granted, or the granting of any licence.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

[http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-q36\\_tcm6-28566.pdf](http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-q36_tcm6-28566.pdf)

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely

[REDACTED]

**Annex – Guidance for providing further information or formally submitting the licence application.**

**Important note: when submitting your formal application please mark all correspondence 'FOR THE ATTENTION OF Cassandra Jackson'**

**Submitting Documents.**

Documents must be sent to the Customer Services Wildlife Licensing (postal and email address at the top of this letter).

**Changes to Documents –Reasoned Statement/Method Statement.**

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

**Method Statement**

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. Sections of this document form part of the licence; please do not send the amended sections in isolation.



## A.2. Letter of No Impediment regarding Bat Licence dated 26 March 2019

Date: 26 March 2019  
Our ref: 258963  
(NATIONALLY SIGNIFICANT INFRASTRUCTURE  
PROJECT)



[REDACTED] as applicant  
[REDACTED] as named ecologist

*Sent by e-mail only*

Dear [REDACTED]

**DRAFT MITIGATION LICENCE APPLICATION STATUS:** INITIAL DRAFT APPLICATION  
**LEGISLATION:** THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017  
(as amended)  
**NSIP:** M25 Junction 10, Wisley, Surrey, GU23 6QS  
**SPECIES:** Brown long-eared, common pipistrelle, soprano pipistrelle, noctule and Natterers' bat.

Thank you for your subsequent draft bat mitigation licence application in association with the above NSIP site, received in this office on the 18/01/2019. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

### Assessment

Following our assessment of the resubmitted draft application documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the DCO be granted.

However, please note that several issues have been identified within the current draft of the method statement that will need to be addressed before the licence application is formally submitted. Our wildlife adviser, Cassandra Jackson, discussed these matters with Claire Wansbury via e-mail correspondence on 11/03/2019 where it was confirmed that the necessary amendments would be made. Please do ensure that the Method Statement is revised to include these changes prior to formal submission. The required changes are detailed in the attached document: 'LICENSING CONSULTATION ON THE FAVOURABLE CONSERVATION STATUS (FCS) TEST AS PART OF THE PRE-SUBMISSION SCREENING SERVICE'

### Next Steps

NSIP LONI (03/12)

Should the DCO be granted then the mitigation licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted. Please note that there will be no charge for the formal licence application determination, should the DCO be granted, or the granting of any licence.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

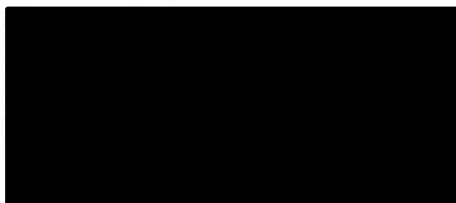
Full details of Natural England's licensing process with regards to NSIP's can be found at the following link:

[http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-q36\\_tcm6-28566.pdf](http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-q36_tcm6-28566.pdf)

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely



**Annex - Guidance for providing further information or formally submitting the licence application.**

**Important note: when submitting your formal application please mark all correspondence 'FOR THE ATTENTION OF Cassandra Jackson'**

**Submitting Documents.**

Documents must be sent to the Customer Services Wildlife Licensing (postal and email address at the top of this letter).

**Changes to Documents –Reasoned Statement/Method Statement.**

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

**Method Statement**

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. Sections of this document form part of the licence; please do not send the amended sections in isolation.



## Customer Feedback – EPS Mitigation Licensing

To help us improve our service please complete the following questionnaire and return to:

Customer Services, Natural England, First Floor, Temple Quay House, 2 The Square, Bristol, BS1 6EB.

Fax: 0845 6013438 or email to [wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk)

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>



Natural England Reference Number (optional):	Please tick to indicate your role:	Consultant	<input type="checkbox"/>
		Developer (Applicant/Licensee)	<input type="checkbox"/>

### 1. How easy was it to get in contact with the Wildlife Management & Licensing team of Natural England?

Difficult (1)

OK (2)

Easy (3)

Very Easy (4)

☐
☐
☐
☐

If 1 please specify who you initially contacted in relation to your issue/enquiry?

### 2. Please tell us how aware you were (BEFORE you contacted us) of wildlife legislation and what it does/does not permit in relation to your enquiry?

Unaware (1)

Very Limited Awareness (2)

Partially Aware (3)

Fully Aware (4)

☐
☐
☐
☐

### 3. How would you rate the service provided by Natural England?

	Poor 1	Fair 2	Good 3	Excellent 4	Not applicable
Ease of completion of application	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice provided by telephone (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Our web site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity and usefulness of published guidance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Helpfulness and politeness of staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and clarity of explanations provided during Method Statement assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and clarity of explanations provided during Reasoned Statement assessment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speed of process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If 1 or 2 to any of the above please specify why:

### 4. Was your issue/enquiry resolved by the activity authorised under licence or advice provided by us?

Fully

Partially

Unresolved

☐
☐
☐

If not fully resolved please state what you think could have been done instead (note legislation affects which actions can be licensed):

### 5. Was there a public reaction to any action taken under the licence or as a result of our advice?

Positive support

No reaction

Negative reaction

☐
☐
☐

### 6. Would you use a fully online licensing service if it could be made available in the future?

Definitely

Possibly

Unlikely

No

☐
☐
☐
☐

7. Do you have any further comments to make or suggestions for improving our service, if yes please specify (continue comments on an additional sheet if necessary). If you are happy to be contacted at a later date to explore possible improvement options, please tick this box ☐ and ensure your Natural England reference number is at the top of this page.

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ  
Highways England Company Limited registered in England and Wales number 09346363

