

**M54 to M6 Link Road**

**TR010054**

**8.22 Assessment of Alternative  
Locations for Mitigation in Plot 5/2**

Regulation 17(1)

Infrastructure Planning (Examination Procedure) Rules 2010

January 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning  
(Examination Procedure) Rules 2010**

**M54 to M6 Link Road**  
Development Consent Order 202[ ]

---

**8.22 Assessment of Alternative Locations for Mitigation in Plot 5/2**

---

<b>Regulation Number</b>	Regulation 17(1)
<b>Planning Inspectorate Scheme Reference</b>	TR010054
<b>Application Document Reference</b>	8.22
<b>Author</b>	M54 to M6 Link Road Project Team and Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
1	January 2021	Submitted to ExA at Deadline 4

## Table of contents

Chapter	Pages
<b>1 Executive Summary .....</b>	<b>1</b>
<b>2 Introduction .....</b>	<b>4</b>
2.1 Background .....	4
2.2 Ongoing Consultation .....	5
2.3 Purpose of the Report .....	6
2.4 Assessment Methodology .....	6
<b>3 Mitigation Options .....</b>	<b>7</b>
3.2 Current Scheme design .....	7
3.3 Option 1 .....	8
3.4 Option 2 .....	8
3.5 Option 3 .....	8
3.6 Option 4 .....	8
<b>4 Assessment of Options .....</b>	<b>10</b>
4.1 Cultural Heritage .....	10
4.2 Biodiversity .....	14
4.3 Landscape and Visual .....	18
<b>5 Planning Policy .....</b>	<b>20</b>
5.1 Introduction .....	20
5.2 Planning Policy Assessment of Options: Heritage .....	20
5.3 Planning Policy Assessment: Biodiversity .....	23
5.4 Policy Assessment: Landscape and Visual .....	24
5.5 Planning Permission and Environmental Impact Assessment .....	24
5.6 Compulsory Acquisition Regulations .....	25
<b>6 Summary .....</b>	<b>27</b>

### List of Tables

Table 5.1: Summary of options assessment .....	28
--	----

### List of Figures

Figure 3.1: Proposed compensation measures .....	7
Figure 3.2: Alternative location for compensation measures, Plot 5/2 -Options 1 to 4 .....	9

## **List of Appendices**

Appendix A: Figures - Alternative location for compensation measures - Options 1 to 4

# 1 Executive Summary

- 1.1.1 Highways England submitted an Application for a Development Consent Order for the M54 to M6 Link Road in January 2020. The new link road includes a section of new carriageway that passes through Lower Pool Local Wildlife Site (LWS)/ Site of Biological Importance (SBI). There is a need to mitigate for the impacts of constructing the new link road on the LWS, including the loss of woodland habitats and waterbodies. The primary location for this mitigation, including new ponds and planting is to the west of the carriageway on Plot 5/2 as shown on the Land Plans for the application [AS-065<sup>1</sup>].
- 1.1.2 The owner of Plot 5/2 is Allow Ltd, who questioned the quantum of mitigation to be provided across the Scheme and particularly on Plot 5/2. The rationale for the quantum of mitigation proposed is set out in the Review of Woodland Mapping, Impact Assessment and Compensation [REP3-038/8.16] submitted to the Examining Authority in November 2020 and subsequent version submitted at Deadline 4 [TR010054/APP/8.20].
- 1.1.3 At the recent hearings held as part of the Examination on the Scheme Allow Ltd also questioned the location of the mitigation, proposing that the mitigation be relocated to the east of the carriageway between Lower Pool LWS and the Grade I listed buildings of Hilton Hall and the Conservatory. The Applicant has always taken the position that relocating the mitigation to the east of the carriageway would lead to impacts on heritage assets that are unacceptable in the presence of an alternative option. This Technical Note supports this position. The Applicant's view remains that Plot 5/2 is the optimum location for the mitigation and locations to the east are not acceptable alternatives.
- 1.1.4 This Technical Note explores four different alternative locations for the proposed mitigation, including three alternative locations to the east of the carriageway (Options 2, 3 and 4) utilising an alternative area of land proposed by Allow Ltd. One further option retains the mitigation proposals to the east of the new link road but moves a proportion of the compensatory planting to a plot south of Dark Lane (Option 1). This option was identified by the Applicant as a potential way to reduce planting on Plot 5/2 without leading to significant effects on designated heritage assets. Allow Ltd asked particularly whether Plot 5/2 could be reduced to omit the remaining portion adjacent to the A460 and this option would fulfil that request. The Options are shown in Figure 3.2 in this Technical Note.
- 1.1.5 The assessment in this Technical Note explains that the movement of mitigation measures to the east of the carriageway would introduce new ponds and landscaping into an open area within the setting of Hilton Hall and the Conservatory. The setting of both assets includes Hilton Park, the surrounding landscaped area purportedly designed by Repton. The mitigation would change the character of this designed landscape and the setting of the assets in a location closer to the buildings and an area of the park that is not segregated from the buildings by the new link

---

<sup>1</sup> A revised set of Land Plans was submitted to the Examining Authority on 17 December 2020 to change the boundary of a plot in another area of the Scheme, but this set has not been accepted yet by the Examining Authority and is not yet available on the website so is not referenced here. The revision does not alter Plot 5/2.

road. As a consequence, Options 2, 3 and 4 would have a 'moderate adverse' effect on the two Grade I listed buildings, as opposed to the 'slight adverse' effect predicted for the current Scheme and alternative proposal, Option 1. A 'moderate adverse' effect is a significant effect in Environmental Impact Assessment terms, so these options would lead to significant effects on Grade I listed buildings that are not experienced with the current Scheme.

- 1.1.6 The Options perform very similarly from both a biodiversity and landscape and visual impact perspective. Options 1 and 3 would have a 'slight adverse' effect on bats (compared to a neutral effect with the current Scheme, Option 2 and Option 4), whilst Options 3 and 4 would have a slight beneficial' effect on great crested newts (compared to a neutral effect with the current Scheme, Option 1 and Option 2). 'Neutral' and 'slight' effects are both not significant in Environmental Impact Assessment terms. There is no difference in the predicted effects for landscape and visual effects.
- 1.1.7 The Planning Act 2008 (Section 104) states that Development Consent Order applications should be determined in accordance with the relevant National Policy Statement unless a number of exceptions apply (see Section 5). The relevant National Policy Statement for this application is the National Policy Statement for National Networks (NPSNN). The NPSNN states that harm to designated heritage assets should require a clear and convincing justification. The NPSNN states that great weight should be given to the harm to heritage assets and that the more important the asset, the greater the weight should be. Grade I listed buildings are those of 'exceptional interest' and are the buildings of highest importance. Therefore, the harm caused to Hilton Hall and the Conservatory should be given very great weight. The NPSNN also states that where harm is less than substantial, the harm should be weighed against the public benefits of the Scheme. The greater the harm, the more justification would be required.
- 1.1.8 The National Planning Policy Framework (NPPF) is a relevant and important matter in decision making on Development Consent Order applications and echoes the heritage policy as set out in the NPSNN above.
- 1.1.9 Options 2, 3 and 4 would lead to significant effects on listed buildings of exceptional interest, with no clear public benefits to justify the increased effects. It would be challenging to provide a clear and convincing justification for this harm in the presence of an alternative location for mitigation that would have a 'slight adverse' rather than 'moderate adverse' effect on these assets. Options 2, 3 and 4 would therefore not comply with heritage policy in the NPSNN or the NPPF and are not proposed to be taken forward.
- 1.1.10 Option 1 does not perform better than the current Scheme under any measure. The location of the woodland planting is less optimal for bats than the current Scheme as in this location the Scheme is not in cutting and habitats would be more isolated from habitats to the east of the road. However, it also does not result in significant adverse impacts and could provide a compromise if Allow Ltd want to retain more of Plot 5/2, whilst not leading to significant effects on the listed buildings. This option may therefore warrant further consideration with Allow Ltd, although the Applicant remains of the view that Plot 5/2 is a better location.

- 1.1.11 It should be noted that even if the mitigation were moved to the east of the carriageway, Plot 5/2 would still be required temporarily for the borrow pit. This means that the overall land take would increase for any option that moved the mitigation from Plot 5/2 and likely increase scheme costs for Highways England as a result of additional land take and restoration/ land take on two separate plots.
- 1.1.12 Highways England maintain that the current Scheme is the most appropriate design for the proposed mitigation measures which balances the impacts to biodiversity and heritage assets. Option 1 is only being considered further to try and resolve outstanding objections from Allow Ltd. Option 1 has only been made possible by the design changes accepted by the Examining Authority on 29 October 2020. Prior to this, the area to the south of Dark Lane was required to provide great crested newt mitigation measures.

## 2 Introduction

### 2.1 Background

- 2.1.1 This Technical Note ('TN') has been prepared in respect of an application ('the Application') for a Development Consent Order ('DCO') under section 37 of the Planning Act 2008 ('PA 2008') for the proposed M54 to M6 Link Road ('the Scheme') made by Highways England Company Limited ('Highways England') to the Secretary of State for Transport.
- 2.1.2 Allow Ltd raised concerns at the first Issue Specific Hearing on (ISH1) 8 December 2020 and the first Compulsory Acquisition Hearing (CAH1) on the 10 December 2020 that Plot 5/2 (to the west of the new link road) currently in the ownership of Allow Ltd is not the most appropriate location for the essential mitigation proposed primarily to compensate for the loss of habitat at Lower Pool Site of Biological Importance (SBI) and Local Wildlife Site (LWS).
- 2.1.3 There are a number of constraints in the area around Lower Pool that have determined the positioning of the mitigation in Plot 5/2. These include Hilton Park (a non-designated historic parkland), two Grade I listed buildings (Hilton Hall and The Conservatory) and three Grade II listed buildings (18<sup>th</sup> century gate piers, the Coach House and Stable Block and Portobello Tower) located within the setting of Hilton Park. Other constraints include Lower Pool SBI, the location of confirmed great crested newt populations and recorded bat activity in the area.
- 2.1.4 Allow Ltd made the case at the first Issue Specific Hearing (ISH1) that providing this mitigation to the east of the new link road rather than the west would not result in any undue impact on the historic parkland and would provide the optimum location for biodiversity mitigation. The Examining Authority (ExA) requested that Highways England respond to the point made at ISH1 by Deadline 4 (8 January 2020). This TN provides that response.
- 2.1.5 Allow Ltd went on to state at the first Compulsory Acquisition Hearing (CAH1) that compulsory acquisition rights should not be granted for Plot 5/2 because the case was not adequately made that this land was required, particularly in the presence of a better alternative to the east of the carriageway. The ExA requested that Allow Ltd set out the alternative sites for mitigation within its control by Deadline 4 (8 January 2020). Given that this TN is being finalised in advance of this information being provided by Allow Ltd, this TN has been drawn up based on Highways England's understanding of Allow Ltd's preferred options rather than plans provided by Allow Ltd. Highways England reserves the right to provide a further response following a review of the information to be provided by Allow Ltd at Deadline 4.
- 2.1.6 Highways England has consistently informed Allow Ltd that relocating mitigation to the east of the carriageway would increase the impact of the Scheme on heritage assets within Hilton Park. In the presence of a lower impact option, these effects could not be justified. The conclusions of this note support that position and the Applicant has no intention to alter the location of the proposed mitigation measures to the east of the carriageway. Further, given that the area to the east of the carriageway is outside the Order limits and the Examination concludes in April 2021, it is difficult to see how a change to the Scheme could be made to incorporate this



change within the timescales of the Examination. Option 1 is within the Order limits but not in an area where Highways England propose to acquire land, so may also be rejected for this reason.

- 2.1.7 It should be noted that Plot 5/2 is also the location of a proposed borrow pit. The area to the east of the carriageway would not be suitable for use as a borrow pit. Allow Ltd has not suggested relocating the borrow pit and this TN therefore does not assess the impacts of relocating it. However, this does mean that if the mitigation were moved to the east the amount of land affected by the Scheme would increase as Plot 5/2 would still be required for this purpose. Costs are likely to increase for Highways England due to the additional land take required and because Highways England would be restoring Plot 5/2 as well as planting and creating ponds on another plot.

## 2.2 Ongoing Consultation

- 2.2.1 The location of mitigation measures had been discussed with Allow Ltd prior to ISH1 as set out in the Statement of Common Ground between Highways England and Allow Ltd [REP1-066/8.8LIU(A)].
- 2.2.2 The location of mitigation measures, particularly with reference to Hilton Park and the associated listed buildings was discussed with Historic England during the design of the Scheme in August 2019. Historic England set out that they would look for retention of form of features within retained historic park such as the historic boundary of Lower Pool/ the Shrubbery, and they would prefer not to extend the woodland into the open parkland between the Shrubbery and the Hall.
- 2.2.3 Following submission of relevant representations from Allow Ltd on this matter in June 2020 a further meeting was held with Historic England to discuss this matter. Historic England confirmed that they would have a serious concern if woodland mitigation was moved from the west of the Scheme to the east of the Scheme within the parkland as this could substantially alter the parkland. This is set out in the SoCG between Highways England and Historic England [TR010054/APP/8.8P(C)], a revised version of which has been submitted at Deadline 4.
- 2.2.4 Historic England will provide a separate opinion to the Examining Authority at Deadline 4 regarding the potential effects of planting to the east of the Scheme, following a site visit undertaken on 6 January 2021.
- 2.2.5 South Staffordshire Council's Conservation Officer provided comment on the proposal to relocate woodland planting to the east of the Scheme on 7 January 2021. The Conservation Officer supports Highways England's position and is in agreement that relocating all of the mitigation in Plot 5/2 to the east of the new link road between Hilton Hall and the Shrubbery would impact upon the character of the parkland. The Conservation officer stated that whilst Hilton Park is not a designated heritage asset, the parkland is an integral part of the grounds which surround Hilton Hall, which is Grade I listed. The park is a man-made feature and whilst it appears natural landscape, this was the intention of 18th and 19th century landscape architects, who strived to create these landscapes. The views from the house across the grounds are intended to include both open vistas, lone sporadic trees, water features and a backdrop of woodland. This is the classic appearance of parkland of the type set out

by Capability Brown and Humphry Repton. The SSC Conservation Officer supports those comments made previously by Historic England regarding the fact that planting to the east would substantially alter the parkland.

## 2.3 Purpose of the Report

- 2.3.1 Following CAH1 on 10 December 2020 this TN has been produced to document the assessment of other alternative locations for the essential mitigation (woodland planting and the creation of ponds) required primarily to compensate for the loss of habitat at Lower Pool SBI and LWS. These mitigation measures are currently proposed to be located on Plot 5/2 as shown on the Land Plans [REP3-005/2.2] and Figure 2.5 Environmental Masterplan Sheet 3 of 5 [AS-090/6.2] of the Environmental Statement. This TN considers the current position of the mitigation measures alongside four alternative options which would reduce or remove the mitigation proposed in Plot 5/2. These alternative options are outlined in Chapter 3 and illustrated on Figure 3.2 and in Appendix A of this TN.
- 2.3.2 Four alternative options are considered, of which three propose relocating some or all of the mitigation measures on Plot 5.2 to the east of the new carriageway, as proposed by Allow Ltd (options 2 to 4). The remaining option proposes relocating some of the planting from Plot 5/2 to the area south of Dark Lane, therefore reducing the impact on Plot 5/2 without introducing significant landscaping to the east of the carriageway. This latter option has been considered by Highways England as a potential compromise to be discussed with Allow Ltd. This alternative location has only become an option following the design changes accepted by the ExA on 29 October 2020. Prior to this, the area to the south of Dark Lane was required to provide great crested newt mitigation measures.

## 2.4 Assessment Methodology

- 2.4.1 The assessment presented in this TN considers three key environmental topics which informed the location of this mitigation, biodiversity, cultural heritage and landscape and visual.
- 2.4.2 The assessment methodology utilised in this TN is as set out in Chapter 6: Cultural Heritage [APP-045/6.1], Chapter 7: Landscape and Visual [APP-046/6.1] and Chapter 8: Biodiversity [AS-083/6.1] of the Environmental Statement.

### 3 Mitigation Options

3.1.1 This chapter outlines the current proposals for compensation measures located in Plot 5/2 of the Land Plans [REP3-005] as well as four alternative options. These options all propose the same quantum of compensatory measures but propose alternative locations for these measures in sufficiently close proximity to the impact that the measures would compensate for. Refer to Figure 3.2 and Appendix A for figures illustrating the alternative options.

#### 3.2 Current Scheme design

3.2.1 The Scheme design as submitted in October 2020, would provide an area of woodland planting (4.94 ha) and two ponds (0.57 ha) surrounded by species-rich grassland to facilitate future access and maintenance of the ponds and to reduce leaf deposition within the ponds. These measures are proposed to compensate for the loss of habitat from Lower Pool LWS and SBI as well as providing connectivity and habitat for protected species such as bats. The compensation measures are currently proposed to be located in Plot 5/2, north of Park Road, as shown in Figure 3.1.



**Figure 3.1: Proposed compensation measures**

### 3.3 Option 1

- 3.3.1 Option 1 would reduce the area of woodland planting located in Plot 5/2 to the west of the new link road. 3.12 ha of woodland would remain in the eastern section of Plot 5/2 with an area of 1.82 ha relocated to the south of Dark Lane (in Plot 4/20c [REP3-005]). The proposed ecology ponds and species-rich grassland would be retained in Plot 5/2, refer to Figure 3.2 and Appendix A.

### 3.4 Option 2

- 3.4.1 Option 2 would reduce the area of woodland planting located in Plot 5/2 to the west of the new link road. 3.12 ha of woodland would remain in the eastern section of Plot 5/2 with an area of 1.82 ha of woodland planting would be located to the east of the new link road adjacent to Lower Pool LWS and the Shrubbery<sup>2</sup>. The proposed ecology ponds and species-rich grassland would be retained in Plot 5/2, refer to Figure 3.2 and Appendix A.

### 3.5 Option 3

- 3.5.1 Option 3 would remove the area of woodland planting and proposed ecology ponds from Plot 5/2. 3.12 ha of woodland would be located to the east of the Scheme adjacent to Lower Pool LWS and the shrubbery and 1.82 ha would be located to the south of Dark Lane (in Plot 4/20c). The proposed ecology ponds and species-rich grassland would be located to the east of the new link road, south of Lower Pool, refer to Figure 3.2 and Appendix A.

### 3.6 Option 4

- 3.6.1 Option 4 would remove the area of woodland planting and proposed ecology ponds from Plot 5/2. All of the woodland planting (4.94 ha) would be located to east of the Scheme adjacent to Lower Pool LWS and the Shrubbery. The proposed ecology ponds and species-rich grassland would be located to the east of the new link road, south of Lower Pool, refer to Figure 3.2 and Appendix A.

---

<sup>2</sup> It is recognised 'the Shrubbery' is the name of a residential property in this location, however where mentioned in this TN 'the Shrubbery' refers to the historic woodland surrounding and adjacent to Lower Pool, which forms part of Lower Pool Local Wildlife Site.



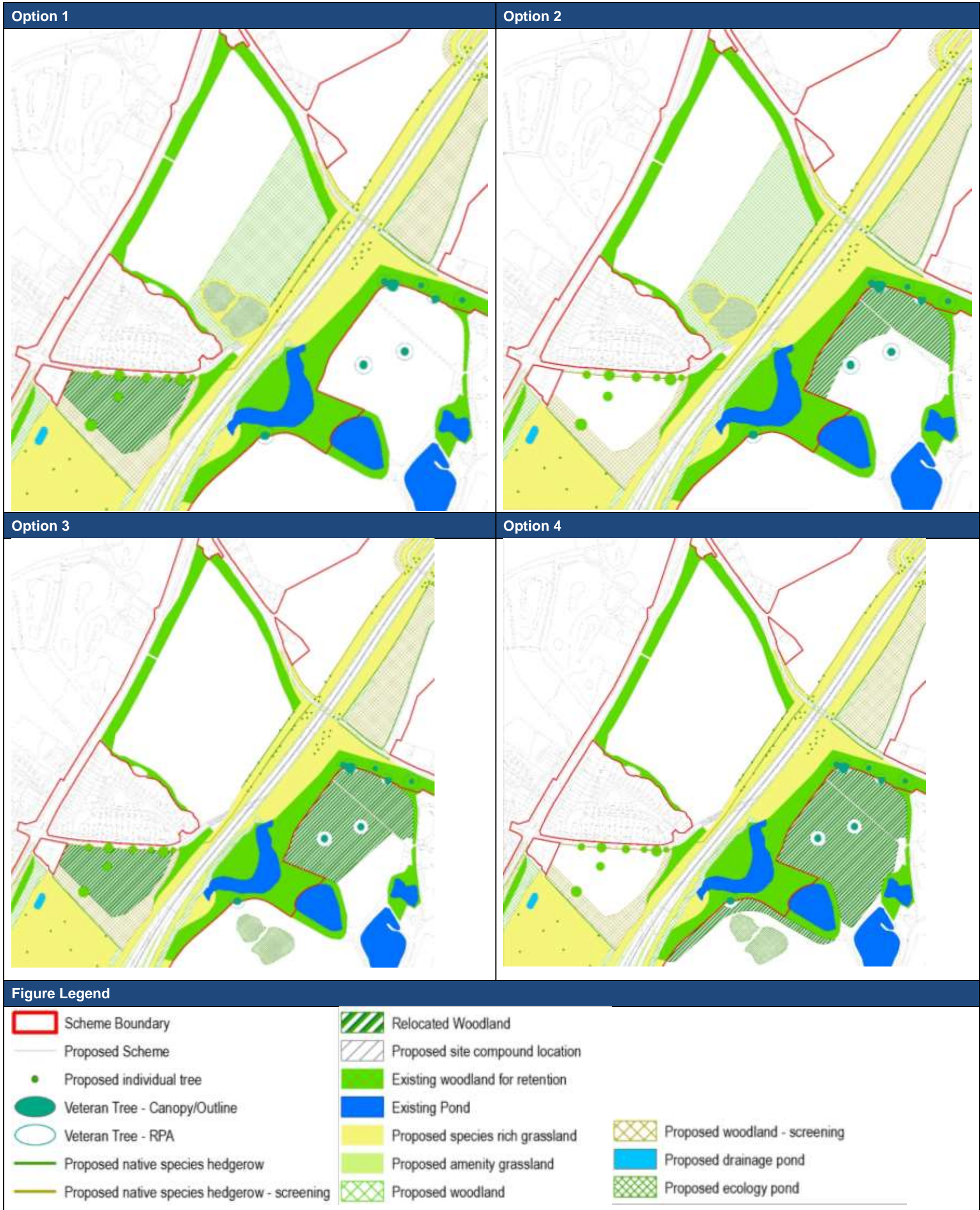


Figure 3.2: Alternative location for compensation measures, Plot 5/2 -Options 1 to 4

## 4 Assessment of Options

### 4.1 Cultural Heritage

- 4.1.1 Hilton Park is a non-designated heritage asset. Designed in the early 19th century, the parkland forms part of the setting of Hilton Hall (Grade I listed) and associated listed buildings, including the Grade I listed Conservatory.
- 4.1.2 The park is reputed to have been designed by Humphrey Repton, a leading landscape architect of the late 18<sup>th</sup>/ early 19<sup>th</sup> century. Repton's designs followed on from those of Capability Brown in favouring the 'picturesque', an aesthetic which sought to create a false 'natural' landscape to be viewed from the main house and appreciated in travelling through the grounds. The picturesque involved the introduction of belts of trees and waterbodies, often working with elements already present, to create the perfect rural setting. In contrast to Brown, Repton combined this with formal gardens around the house itself, forming a distinction between what was conceived as deliberately designed and what naturally formed.
- 4.1.3 Hilton Hall follows Repton's aesthetic with the present arrangement retaining a number of features from the original design of the park, despite the construction of the M6 corridor to the east and M54 to the south. Large areas of the park were also used for gravel extraction, compromising part of its integrity. The Scheme would involve the construction of a new road through the western part of the park, adjacent to the western edge of the Shrubbery, a feature considered to be part of the original design, alongside the Lower Pool which lies within the Shrubbery to the south. Other woodland belts survive, principally along the northern boundary of the park and to the west, along Cannock Road (A460).
- 4.1.4 The Grade I listed Hilton Hall lies towards the centre of the current park, with the Conservatory, also Grade I listed, situated within a small copse of trees to the northwest of the Hall. Both are intrinsically linked to the designed landscape and it forms a key feature of their setting. These assets are illustrated in Appendix A.
- 4.1.5 There are also a number of Grade II listed buildings associated with Hilton Hall and the parkland, these include the 18<sup>th</sup> century gate piers, the coach house and stable block and the Portobello Tower. These Grade II listed structures are not mentioned as part of the options assessment as the impact on these heritage assets would remain the same for each mitigation option.

#### **Current Scheme design**

- 4.1.6 The current Scheme design involves locating the mitigation planting, for the impact on Lower Pool SBI and LWS, entirely to the west of the new carriageway, within the area of park already severed by the Scheme (Plot 5/2 as shown on the Land Plans [REP3-005]). This design would result in impacts to the historic parkland by partially infilling an area of open park with a block of woodland and severing one of the main approaches to the park. This would also remove part of the tree belts which form the northern and western boundary of this land parcel, considered to form part of the original design of the park, merging them to form a single wooded area. Planting within this area, in the absence of the rest of the Scheme would be considered a negligible adverse impact due to very minor loss or detrimental alteration to one or



more characteristic, features or elements, resulting in a slight adverse effect on the non-designated park of medium value. The impact of the mitigation combined with the rest of the Scheme, as reported in Chapter 6: Cultural Heritage of the ES [APP-045/6.1] would be moderate adverse, resulting in a moderate adverse (significant) effect to Hilton Park.

- 4.1.7 The proposed carriageway would sever the western part of the parkland, causing impacts to the historic park and, therefore, the setting of the Grade I listed Hall and Conservatory. By placing the mitigation to the west of the carriageway, it remains within an area already impacted by the new carriageway. The remaining part of the park would continue to be understood and appreciated and it would continue to provide a distinct setting for Hilton Hall and its associated buildings and structures.
- 4.1.8 The magnitude of impact of the mitigation (in isolation on the Grade I listed structures would be minor (Hilton Hall) and negligible (The Conservatory) adverse respectively due to very minor loss or detrimental alteration to one or more characteristic, features or elements within their setting. In combination with the rest of the Scheme, the impact would be minor adverse, resulting in a slight adverse effect, which is not significant.

#### **Option 1**

- 4.1.9 Option 1 would involve locating the compensatory tree planting to the west of the proposed carriageway, north of Park Road and south of Dark Lane. This option has the benefit of keeping all planting to the west of the proposed carriageway, within an area already severed from the main parkland by the new link road and which has already been modified by the existing housing estate. It is therefore, considered better able to absorb change to the landscape.
- 4.1.10 To the north of Dark Lane, this option will result in impacts to the historic parkland by partially infilling an area of open park with woodland. However, the existing tree belt which forms the western boundary of the park would be retained in full, alongside the northern return in part.
- 4.1.11 The impact of the proposed compensation planting in isolation would be negligible adverse due to very minor loss or detrimental alteration to one or more characteristic, features or elements of the park. In combination with the rest of the Scheme, the magnitude of impact on Hilton Park would be moderate adverse, resulting in a moderate adverse effect on the non-designated park of medium value.
- 4.1.12 The Grade I listed Hilton Hall and The Conservatory would both be impacted by changes to their setting; however, the retention of key features would reduce the magnitude of impact to negligible adverse for both assets due to very minor loss or detrimental alteration to one or more characteristic, features or elements. In combination with the rest of the Scheme, the impact would be minor adverse on Grade I Hilton Hall and negligible on the Grade I Conservatory, resulting in a slight adverse effect to both assets.

#### **Option 2**

- 4.1.13 Option 2 would involve splitting the compensation between the east and west of the proposed carriageway.

- 4.1.14 To the west, the proposals would partially infill the area of open park with woodland. However, the existing tree belt which forms the western boundary of the park would be retained in full, alongside the northern return in part. To the east, the woodland which currently forms the Shrubbery would be extended into the parkland, obscuring the boundary of the historic feature. In addition, the area required would necessitate the absorption of the veteran trees into the new woodland. The magnitude of impact of eroding these open areas would be moderate adverse due to the partial loss of/damage to key characteristics, resulting in a moderate (significant) adverse effect on Hilton Park.
- 4.1.15 By incorporating planting to the east of the new carriageway, Option 2 would introduce new impacts on the Grade I listed Hilton Hall and the Grade I listed Conservatory. At present, this open area to the east of the Shrubbery forms an important part of the setting of both structures, providing a separation from the tree belts which characterise Repton's aesthetic. Such belts were deliberately designed as part of a scenic parkland setting for the hall, in contrast to the designed gardens in close proximity. By bringing the woodland planting closer to the hall, this distinction is eroded, and the appreciation of the naturalistic setting degraded. The impact on both assets of high value would be moderate adverse, resulting in a moderate (significant) adverse effect.

### **Option 3**

- 4.1.16 Option 3 would involve the compensation woodland divided between two areas, one to the west of the new carriageway, south of Dark Lane, and the other area to the east of the new carriageway, adjacent to the Shrubbery and Lower Pool.
- 4.1.17 The area of proposed compensation planting to the east of the new link road is currently open grassland with individual veteran trees. Bordering the area to the west is a belt of woodland referred to as the Shrubbery, with the trees continuing to the north, marking the boundary of the park. While there has been some augmentation of the woodland during the 20<sup>th</sup> century, including the addition of new ponds to the south, the woodland remains largely as designed in the early 19<sup>th</sup> century.
- 4.1.18 Option 3 would involve the planting of trees across much of the open grassland, removing the aesthetic of the tree belt and creating a large expanse of woodland. In addition, Option 3 would involve the introduction of proposed ecology ponds to the south of Lower Pool, within an area of currently open grassland. While the proposals would involve the retention of the veteran trees, they would no longer be seen in isolation, but would be encompassed within the larger woodland block. This, and the loss of open views, would have a detrimental impact on the historic parkland, with a direct impact on key elements of the original design. The impact on this asset of medium value would be moderate adverse due to the partial loss of/damage to key characteristics, resulting in a moderate (significant) adverse effect on Hilton Park.
- 4.1.19 In addition, the proposals would bring the compensation measures closer to the Grade I listed Hilton Hall and Conservatory. At present, this open area to the east of the Shrubbery forms an important part of the setting of both structures. The infilling of the area would remove this feature and the intended setting of the hall. The impact on both assets of high value would be moderate adverse, resulting in a moderate (significant) adverse effect.



- 4.1.20 The area to the west of the new carriageway has already been modified by the existing housing estate and, therefore, is able to better absorb change to the landscape. In addition, it lies within the area of the park already severed by the new link road. Woodland planting in this area would continue to impact on the parkland; however, in isolation, it is not considered to be a significant effect and the additional impact is not sufficient to alter the significance of effect for the Scheme as a whole beyond that reported above.

#### **Option 4**

- 4.1.21 Option 4 would involve the compensatory planting being positioned to the east of the proposed carriageway, in an area of open parkland directly adjacent to the Shrubbery. The required ecology ponds would be located to the south of Lower Pool.
- 4.1.22 As with Option 3, Option 4 would involve the planting of trees across much of this area, removing the aesthetic of the tree belt and creating a large expanse of woodland. While the proposals would involve the retention of the veteran trees, they would no longer be seen in isolation, but be encompassed within the larger woodland. This, and the loss of open parkland, would have a detrimental impact on the historic park, with a direct impact on key elements of the original design. The impact on this asset of medium value would be moderate adverse due to the partial loss of/damage to key characteristics, resulting in a moderate (significant) adverse effect.
- 4.1.23 The proposals would also bring the compensation measures closer to the Grade I listed Hilton Hall and Conservatory. At present, this open area to the east of the Shrubbery forms an important part of the setting of both structures. Option 4 would involve the infilling of the area with trees which would effectively remove this key characteristic and the intended setting of the hall. With Option 4, the Conservatory would no longer be located within a copse of trees, but on the edge of a woodland, removing this key characteristic of its setting. The impact on both assets of high value would be moderate adverse, resulting in a moderate (significant) adverse effect.

#### **Summary**

- 4.1.24 The construction of the Scheme would require new land take within the historic Hilton Park, a non-designated heritage asset. As part of the Scheme, trees would be removed from within the historic feature of the Shrubbery, a belt of trees which form part of the original early 19th century design of the park, attributed to the work of Humphrey Repton, a key landscape designer of the period. Both the partial loss of the historic woodland and the replacement woodland and pond habitat proposed would affect the significance of the non-designated asset. In addition, the parkland forms the setting of the Grade I listed Hilton Hall and associated Grade I listed Conservatory.
- 4.1.25 The western area of the park would be severed from the main parkland by the new link road. Planting in this area is therefore considered better able to absorb change. While the tree belts to the west and north are likely to form part of the original design of the park, the integrity of the parkland has already been compromised by the existing housing development on Park Road and Dark Lane and will be further

eroded by the new link road. In addition, the area to the west of the new carriageway is further removed from the listed buildings. Planting in this area would not increase the impact on the designated structures (Hilton Hall and the Conservatory) above that caused by the link road itself.

- 4.1.26 Locating the compensation measures to the east of the new link road would bring the Scheme as a whole closer to the listed buildings. Planting in this area would compromise the surviving boundary of the Shrubbery and transform this into a woodland rather than the intended tree belt. In addition, the woodland planting would absorb the isolated veteran trees which form an important feature of the landscape. The effect on the non-designated parkland would remain moderate adverse (significant) due to the loss of key features of the designed landscape; however, it is considered that the level of 'less than substantial harm' caused would be greater than that of planting to the west.
- 4.1.27 Planting to the east of the Scheme would also have an adverse impact on the Grade I listed Hilton Hall and separately listed Grade I listed Conservatory. Locating woodland planting closer to these structures and removing the understanding of the Shrubbery as a distinct block of woodland would erode the setting of the listed buildings. In particular, Option 4 would continue into the copse of trees which surround the Conservatory removing the understanding of this as a separate feature. It is considered that the effect on the designated structures would increase to moderate adverse (significant). The resulting harm would remain less than substantial, but at the upper levels of less than substantial harm.
- 4.1.28 With reference to the impact of the proposed mitigation measures, the Scheme and Option 1 would have a similar effect on the designated assets and the non-designated parkland. The impact on the non-designated parkland would be worse for Options 2 to 4, with Option 4 having the most detrimental effect. On the designated assets of Hilton Hall and the Conservatory, the impact would be worse from Options 2 to 4, resulting in new significant adverse effects. Option 4 remains the most harmful option.

## 4.2 Biodiversity

### Current Scheme design

- 4.2.1 To compensate for the impacts of woodland and standing water habitat loss within Lower Pool LWS and SBI, a feature of County nature conservation importance in Staffordshire, habitat compensation is proposed for Plot 5/2. The habitat compensation comprises new woodland planting and two ponds surrounded by grassland to facilitate future access and maintenance of the ponds and to reduce leaf deposition within the ponds.
- 4.2.2 Plot 5/2 is located immediately adjacent to the retained woodland and pond within Lower Pool LWS. As the woodland planting and ponds to be created on Plot 5/2 would compensate for the impacts to the LWS (loss of woodland and pond), siting the compensation close to the location where the impact would occur would ensure that the compensatory habitat provides long-term habitat for biodiversity affected in this location (primarily bats but also amphibians, mammals, birds and invertebrates).

- 4.2.3 The potential impacts of the Scheme on bat commuting and foraging has been assessed following good practice guidance<sup>3</sup>. Crossing point surveys (which are a key part of this good practice guidance) focused on three locations (C, D and E) within Lower Pool (Figure 8.15 of the ES [APP-119/6.2]).
- 4.2.4 Appendix 8.7 of the ES [APP-179/6.3] provides details on each of these crossing points. The data on the three locations within Lower Pool is summarised below.
- 4.2.5 The number of bats recorded at crossing points C and D was below the threshold (>10 bats crossing at one location on one occasion) that requires further survey to be undertaken
- 4.2.6 Whilst the number of bats recorded at crossing point E was above the threshold (22 passes), this was generally associated with constant foraging activity of the same small number of bats rather than individual passes (refer to Appendix 8.7 of the ES [APP-179]):
- Crossing Point C: 65% of the bats recorded were crossing at a height >5m.
  - Crossing Point D: 78% of the bats recorded were crossing at a height >5m.
  - Crossing Point E: 64% of the bats recorded were crossing at a height >5m.
- 4.2.7 Whilst the surveys showed that bats are crossing through the woodland east to west (and west to east), the vast majority crossed at heights > 5m above ground level. New planting would also extend up to Hilton Lane which would provide bats with a 'hop over' the road, which is 6m below ground level in this location. This information, in combination with the fact that the road will be in cutting in Lower Pool where it is adjacent to Plot 5/2, going from ground level to 6m below ground, shows that bats would be able to safely cross the operational road from the retained woodland in Lower Pool to the woodland and pond compensation on Plot 5/2.
- 4.2.8 The Scheme does not affect habitats to the east of Lower Pool so bats would be able to continue access these habitats. The A460 to the west of Plot 5/2 does not form a barrier to bats as there is tall vegetation (woodland and hedgerows) along most of its length, forming a barrier to bats and forcing them to fly up and over the road. This provides connectivity into the wider landscape for bats to the west of Plot 5/2.
- 4.2.9 Surveys have confirmed the likely absence of great crested newts in Lower Pool, though a population of unknown size is present in Waterbody 34 to the east of Lower Pool outside of the Scheme boundary.
- 4.2.10 As detailed in Chapter 8: Biodiversity of the ES [AS-083/6.1], taking into account that the woodland planting would take some time to establish (functioning well developed scrub within 15 years and mature woodland within 30 + years), the Scheme is considered to have a moderate adverse impact on the LWS (effects of slight significance) in the medium term (10- 30 years), reducing to an effect of neutral significance in the long term (beyond 30 years) once habitats are established. Overall the Scheme would result in a negligible impact on bats and great crested

---

<sup>3</sup> Defra (2015) Development of a cost-effective method for monitoring the effectiveness of mitigation for bats crossing linear transport infrastructure - WC1060

newts (an effect of neutral significance) during the construction or operational periods.

### **Option 1**

- 4.2.11 Option 1 would relocate a proportion of the proposed compensatory woodland planting to the south of Dark Lane. This woodland would still be directly connected to the retained areas of Lower Pool LWS to the west of the Scheme.
- 4.2.12 The new link road adjacent to this woodland block south of Dark Lane would not be in cutting, so it would be more isolated from habitats to the east of the road as bats would find it harder to access the woodland habitat. Other species groups (other mammals and amphibians) would be able to access the woodland via the mammal tunnel (shown on sheet 3 of the Environmental Masterplan [AS-090/6.2]).
- 4.2.13 The effect on Lower Pool LWS would not change, as the compensation habitat type and area has not changed, and woodland compensation would still be adjacent to retained woodland. Option 1 would result in a minor adverse impact on bats during operation of the Scheme which would result in an effect of slight adverse significance as bats are less able to access the woodland planting south of Dark Lane. The effect on great crested newt would remain as neutral.

### **Option 2**

- 4.2.14 Option 2 would locate a proportion of the compensatory woodland planting to the east of Lower Pool LWS. This woodland would still be directly connected to the retained areas of Lower Pool SBI. The effect on Lower Pool LWS would not change (neutral effect), as the compensation habitat type and area has not changed, and woodland compensation would still be adjacent to retained woodland.
- 4.2.15 This option is likely to be more favourable for bats as it would relocate some proposed woodland planting directly adjacent to the larger area of retained woodland to the east of the Scheme where there are known bat roosts present. However, the changes to the mitigation strategy are not enough to result in a beneficial impact to bats, therefore Option 2 would still result in a negligible impact on bats during operation which would result in an effect of neutral significance. The effect on great crested newts would not change (neutral effect), as although woodland planting would be closer to the known population, as this population has access to large areas of terrestrial habitat already, the additional planting would not be enough on its own to result in a beneficial effect.

### **Option 3**

- 4.2.16 Option 3 would remove all compensatory woodland planting and the proposed ponds from Plot 5/2, with woodland planting located to the east of Lower Pool LWS and south of Dark Lane. The ponds would also be located to the east of Lower Pool LWS. The woodland would still be directly connected to the retained areas of Lower Pool LWS.
- 4.2.17 The effect on Lower Pool LWS would not change (neutral effect), as the compensation habitat type and area has not changed, and woodland compensation would still be adjacent to retained woodland.

- 4.2.18 This option is likely to result in a minor adverse impact on bats during operation which would result in an effect of slight adverse significance as bats are less able to access the woodland planting south of Dark Lane.
- 4.2.19 Option 3 would result in new aquatic habitat being created within 250 m of a known great crested newt population, as well as additional woodland habitat which provides optimal terrestrial habitat for newts. Relocating habitat to the east of Lower Pool, in particular aquatic habitat would result in a minor beneficial impact to great crested newts resulting in a slight beneficial effect.

#### **Option 4**

- 4.2.20 Option 4 would locate all compensatory woodland planting and the ponds to the east of Lower Pool LWS. The woodland would still be directly connected to the retained areas of Lower Pool LWS. The effect on Lower Pool LWS would not change (neutral effect), as the compensation habitat type and area has not changed, and woodland compensation would still be adjacent to retained woodland.
- 4.2.21 This option is likely to be more favourable for bats as it relocates all woodland planting directly adjacent to the large area of woodland retained to the east of the Scheme where the known bat roosts are present. However, the changes to the mitigation strategy would not be enough to result in a beneficial impact to bats, therefore Option 4 would still result in a negligible impact on bats during operation which would result in an effect of neutral significance.
- 4.2.22 Option 4 would result in new aquatic habitat being created within 250 m of a known great crested newt population, as well as additional woodland habitat which provides optimal terrestrial habitat for newts. Relocating all habitat to the east of Lower Pool LWS would result in a minor beneficial impact to great crested newts resulting in a slight beneficial effect.

#### **Summary**

- 4.2.23 In summary, Options 1 to 4 as outlined above would not result in a change to the effects on Lower Pool LWS and SBI as reported in Chapter 8: Biodiversity of the ES [AS-083/6.1], as the type and quantity of habitat compensation remains the same and woodland planting would still be adjacent to retained woodland.
- 4.2.24 Options 1 and 3 would result in a neutral to slight adverse effect on bats, as a proportion of the woodland planting south of Dark Lane would be harder for bats to access as the road in this location is at ground level rather than in cutting. Options 2 and 4 would be more favourable for bats, though not in terms of the significance of the effect of the Scheme on bats as the changes to the proposals are not enough to result in a beneficial effect.
- 4.2.25 Options 3 and 4 would result in a slight beneficial effect on great crested newts as new aquatic habitat would be created within 250 m of a known population. Options 1 and 2 would result in no change to the effect on great crested newts.
- 4.2.26 In isolation of other factors, Option 4 would therefore be marginally more favourable for biodiversity than the current Scheme proposals. However, the options are very similar in terms of their impact on biodiversity and significant impacts are not anticipated on Lower Pool LWS, bats or great crested newts for any of the options.



## 4.3 Landscape and Visual

### **Current Scheme design**

- 4.3.1 The current Scheme provides a single block of woodland planting in a regular form which assists in integrating the Scheme into the new landscape context by linking mitigation to landscape elements beyond the highway boundary. It delivers visual screening for properties on Hilton Lane, looking southwards, and Dark Lane looking northwards. The scale and extent of the woodland is compatible with the baseline character of the Settled Plateau Farmlands Landscape Character Type (LCT) and would have little or no impact on the park land landscape associated with Hilton Hall.

### **Option 1**

- 4.3.2 The Option 1 layout provides two blocks of woodland planting to the west of the Scheme, located to the north and south of Dark Lane and south of Hilton Lane. The southern woodland would foreshorten and obstruct long views from Dark Lane, creating a more enclosed outlook particularly from the upper floors. Both planting blocks would strengthen woodland within the Settled Plateau Farmlands LCT and assist in landscape integration beyond the highway boundary. The scale and extent of the woodland is compatible with the baseline character of the Settled Plateau Farmlands LCT.

### **Option 2**

- 4.3.3 The Option 2 layout provides two blocks of woodland planting to the east and west of the Scheme. To the west, the woodland would strengthen woodland within the Plateau Farmlands LCT and assist in landscape integration beyond the highway boundary. The scale and extent of the woodland is compatible with the baseline character of the Settled Plateau Farmlands LCT. The eastern block would reduce the open area of parkland associated with Hilton Hall but would retain an organic form compatible with existing woodland blocks. There would be little, or no, screening benefit derived from the woodland to the east of the Scheme.

### **Option 3**

- 4.3.4 The Option 3 layout is arranged as two broadly similar sized blocks of woodland planting to the east and west of the Scheme. To the west, the woodland would foreshorten and obstruct long views from Dark Lane, creating a more enclosed outlook particularly from the upper floors. Both planting blocks would strengthen woodland within the Plateau Farmlands LCT and assist in landscape integration beyond the highway boundary. The removal of woodland to the west of the new link road, north of Dark Lane, would locally reduce landscape integration of the highway. The scale and extent of the woodland is compatible with the baseline character of the Settled Plateau Farmlands LCT. The western block would deliver visual screening for properties on Dark Lane looking southwards. The woodland planting would reduce the open area of parkland associated with Hilton Hall but would retain an organic form compatible with existing woodland blocks. There would be little, or no, screening benefit derived from the woodland east of the Scheme.

#### **Option 4**

- 4.3.5 Option 4 fully relocates the woodland from the west of the current scheme to the east of it, remaining to the north of Hilton Lane. Effects would be as described for the eastern woodland of Option 2 but with an increased effect on openness of the Hilton Hall parkland. There would be reduced landscape integration of the Scheme locally to the west, between Hilton Lane and Dark Lane, but little or no adverse effects on visual amenity.

#### **Summary**

- 4.3.6 All options provide an equivalent area of woodland to strengthen woodland within the Settled Plateau Farmlands LCT and replace tree cover lost to the Scheme. Options 3 and 4 would provide the least effective landscape integration but the removal of woodland from the west of the scheme would not result in any adverse visual effects on receptors in the vicinity due to the presence of other mature screening vegetation.
- 4.3.7 Option 1 and Option 3 would result in adverse visual effects for properties on Dark Lane as a result of increased enclosure and obstruction of long views, however this would be principally from upper floors. Options 2, 3 and 4 alter the scale and extent of woodland in the vicinity of Hilton Hall. Woodland to the east of the scheme would have little or no role as visual screening.
- 4.3.8 There would be no change in the assessment of effects on the landscape character of the Settled Plateau Farmlands LCT in operation as a result of any of the options, compared to the overall conclusions as set out in Chapter 7: Landscape and Visual of the ES [APP-046/6.1]. Similarly, there would be no change in the assessment of effects on visual amenity at Viewpoint 14 or Viewpoint 20 (the most appropriate viewpoints) in operation as a result of any of the options, compared to the overall conclusions of the ES [APP-048/6.1].
- 4.3.9 The current Scheme performs the best than all alternative options proposed, although not significantly so. Option 2 would be marginally more favourable than the other alternative options (other than the current Scheme) in terms of landscape and visual considerations although the difference is slight. Option 2 would have a greater impact on the character of Hilton Hall Parkland, which contributes as an element of landscape value (independently of its cultural heritage value) and is therefore marginally less favourable than the current Scheme.

## 5 Planning Policy

### 5.1 Introduction

5.1.1 The Planning Act 2008, (as amended) is the primary legislation setting out the process for obtaining a DCO. Section 104 of the Planning Act states that DCO applications should be determined in accordance with the relevant National Policy Statement unless the Secretary of State (SoS) is of the view that:

- the consent would breach international obligations, breach a duty of the SoS or be unlawful;
- the consent does not meet a condition for deciding the application not in accordance with the NPS is met; or
- the adverse impacts outweigh the benefits.

5.1.2 The PA (2008) states that a decision must have regard to:

- National Policy Statement.
- Local Impact Report submitted by Local Authorities.
- Other prescribed, important and relevant matters.

5.1.3 In this case the relevant National Policy Statement is the National Policy Statement for National Networks, December 2014 (NPSNN) and the Local Impact Reports are those produced by Staffordshire County Council [REP1-007] and South Staffordshire Council [REP1-097]. The primary prescribed, important and relevant matters of relevance to the topic here are the National Planning Policy Framework, February 2019 (NPPF) and the policies in the South Staffordshire Council Core Strategy (December 2012).

### 5.2 Planning Policy Assessment of Options: Heritage

#### **Weight applied to effects on designated heritage assets**

5.2.1 The text on the weight to be applied to the conservation of heritage assets and how these impacts should be considered in decision making is very similar in the NPSNN and the NPPF. Heritage is primarily considered in paragraphs 5.120 to 5.142 of the NPSNN and chapter 16 of the NPPF.

5.2.2 NPSNN paragraph 5.133 states that where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the harm is necessary to deliver substantial public benefits that outweigh that harm. Section 6.9 of the ES [APP-045/6.1] concludes that the Scheme as currently proposed would not cause substantial harm to any designated heritage assets. It is common ground between Highways England and Historic England that the current Scheme will not cause substantial harm to any designated heritage assets (see Statement of Common Ground with Historic England [REP1-052/8.8P(C)]).

5.2.3 It is Highways England's view that this position would remain unchanged with the introduction of any of the Options 1-4 described above, with none of the options leading to substantial harm on any designated heritage assets.



- 5.2.4 NPSNN paragraph 5.131 and NPPF paragraph 193 both state that when considering the impact of a proposed development, the decision maker should give great weight to the conservation of designated heritage assets, and that the more important the asset, the greater the weight. Grade I listed buildings are those of 'exceptional interest', with only 2.5% of listed buildings in being of this grade<sup>4</sup>. Therefore, the greatest weight should be given to the conservation of Grade I listed buildings, such as Hilton Hall and the Conservatory. Any impact on Grade II\* and Grade II listed buildings would also be afforded great weight, but lesser weight due to the reduced importance of the assets. However, there is not predicted to be any change to the impact on the significance of the Grade II\* or Grade II listed assets when comparing the current Scheme with any of the alternative Options 1-4 so these other assets are not considered further here.

#### **Harm including development in the 'setting' of a listed building**

- 5.2.5 The NPSNN (paragraph 5.131) and NPPF (paragraph 194) both emphasise that the significance of heritage assets can be harmed through alteration or destruction of the heritage asset or development within its setting. The setting of both Hilton Hall and the Conservatory includes the surrounding Hilton Park and components of the Scheme are therefore within the setting of both Grade I listed assets. However, the Scheme has been designed wherever possible to minimise the impact on the setting of the listed buildings such that the Scheme is predicted to have a 'slight adverse' effect on the significance of the two listed assets (see Section 3.1 of this report). As set out in section 3.1 of this TN, relocating the planting from Plot 5/2 to the east of the link road would result in this effect changing from 'slight adverse' to 'moderate adverse' for both Grade I listed assets.
- 5.2.6 The NPSNN (paragraph 5.131) goes on to state that: 'Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification.' The NPPF uses very similar wording in paragraph 194, although uses the words 'Any harm to...' emphasising that this includes all harm, regardless of the severity of that harm. However, in our view the same meaning is implied in the NPSNN given that no mention is made of any particular level of 'harm' requiring justification. We therefore consider there to be no material difference in the wording of the two policies.
- 5.2.7 In Highways England's view, there is a clear and convincing justification for the 'slight adverse' harm to the Grade I listed heritage assets, with the low level of harm and the very significant benefits of the Scheme. The efforts made to minimise the impact on setting through locating elements of the new link in cutting, minimising lighting, locating the link within the woodland and locating mitigation measures such as pond creation and planting to the west have contributed to that justification as effects have been minimised wherever possible. Option 1 would also have a 'slight adverse' effect on the heritage assets and would therefore perform equally well when assessed against the heritage policies in the NPSNN and NPPF as the current Scheme.

---

<sup>4</sup> See Historic England webpage: <https://historicengland.org.uk/listing/what-is-designation/listed-buildings/> accessed January 2021.

- 5.2.8 However, in the presence of a clear option to locate mitigation planting to the west of the Scheme, with a lesser degree of harm to the listed buildings, it is less clear whether a clear and convincing justification could be provided for a 'moderate adverse' impact on two Grade I listed buildings. The alternative options 2, 3 and 4 would therefore conflict with the policy in the NPSNN and the NPPF. The current Scheme would not.

### **Decision making**

- 5.2.9 The NPSNN (paragraph 5.134) goes on to state that: 'Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.' Almost identical wording is also in NPPF paragraph 196.
- 5.2.10 The South Staffordshire Council Core Strategy Policy EQ3: Conservation, Preservation and Protection of Heritage Assets, c) states that *'The Council will ensure that development which affects a heritage asset or its setting will be informed by a proportionate assessment of the significance of the asset, including its setting, which is likely to be affected by the proposals. These will be judged by considering the extent to which an asset's archaeological, architectural, historic or artistic interest will be harmed, including its conservation, in the interest of present and future generations'*. This policy emphasises that the extent of harm to heritage assets is important when assessing a development.
- 5.2.11 The 'slight adverse' harm to the significance of Hilton Hall and the Conservatory caused by the current Scheme should therefore be given very great weight, with that weight increased by the importance of the assets. This harm should then be weighed against the public benefits of the Scheme. In Highways England's view, this harm, alongside all other harm associated with the Scheme, is clearly outweighed by the public benefits of the Scheme. The same would be the case for Option 1, given that no greater (or lesser) harm is caused to designated assets. This is because whilst the harm is given very great weight, the harm is only 'slight adverse', making it easier to demonstrate that the benefits outweigh the harm.
- 5.2.12 A greater justification would be required for a 'moderate adverse' effect to the significance of the listed buildings than a 'slight adverse' effect, particularly as this degree of harm is avoidable. The change alters the magnitude of impact from negligible for the Conservatory and minor for Hilton Hall to moderate for both assets, and in doing so means the effects are 'significant' rather than 'non-significant' in EIA terms. The change is therefore not inconsequential. Option 2 has no public benefits over the current Scheme to justify this additional harm. Option 3 has a 'slight' beneficial effect on great crested newt compared to the neutral effect of the current Scheme, but this is balanced against a slight adverse effect for bats, also compared to a neutral effect for the current Scheme. Therefore, again, there are no public benefits to justify the additional harm. Option 4 would lead to a slight beneficial effect for great crested newt and no identified adverse biodiversity effects. However, both 'neutral' and 'slight' effects are not significant in EIA terms and the difference is very minor. Again, the public benefits associated with this very small beneficial

change would not outweigh or justify the introduction of significant effects on two Grade I listed buildings.

### **Summary**

- 5.2.13 Overall, the current Scheme and Option 1 would comply with heritage policy in the NPSNN and the NPPF. However, this compliance would be reduced significantly with the introduction of changes shown in Options 2, 3 and 4 due to the introduction of significant effects on two Grade I listed buildings. This harm would be given very great weight in decision making on the DCO. In the presence of an option that did not result in significant effects on Grade I listed buildings and no significant public benefits to justify the additional effects, changing the design to implement any of Options 2-4 would decrease compliance of the Scheme with planning policy, make it more difficult to provide a clear and convincing justification and increase the risk that the application would be refused.

## **5.3 Planning Policy Assessment: Biodiversity**

- 5.3.1 The assessment presented in Section 3.2 concludes that the only changes to the biodiversity effects are small changes to the effect on bats and great crested newt, changing from neutral to slight adverse (bats for options 1 and 3) or neutral to slight beneficial (great crested newt for options 3 and 4).
- 5.3.2 The NPSNN (paragraph 5.26) states that: 'As a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives.'
- 5.3.3 The NPSNN (paragraph 5.33) goes on say that: 'Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments. The Secretary of State may use requirements or planning obligations where appropriate in order to ensure that such beneficial features are delivered.'
- 5.3.4 The NPSNN (paragraph 5.36) sets out principles to mitigate adverse effects on biodiversity, including minimising impacts, restoring habitats after construction, minimising habitat fragmentation and taking opportunities to enhance existing habitats.
- 5.3.5 There would not be significant harm to bats or great crested newts arising from the current Scheme or any of the Options 1-4. Therefore, all options comply with paragraph 5.26.
- 5.3.6 Allow Ltd has consistently argued that too much biodiversity mitigation is being provided as part of the Scheme and that compulsory purchase powers cannot be used to provide benefits to biodiversity. In the context of a project where the Applicant does not own the land required for the Scheme and most landowners are unwilling to sell the land, Highways England has sought to deliver benefits wherever possible on Highways England land and land to be acquired for other purposes. It is the Applicant's view that the current Scheme complies with paragraph 5.33 and

paragraph 5.36 and that the mitigation provided is necessary and not an over-provision. The change from neutral to slight adverse or slight beneficial for a single species in a small area of the Scheme would not alter this conclusion for any of the options presented or significantly change the extent to which the mitigation proposed complies with policy in paragraph 5.36.

- 5.3.7 The body responsible for Protected Species is Natural England, who agreed the proposed mitigation measures for bats and great crested newts when issuing the Letters of No Impediment (LONI) to granting of Protected Species licences [APP-177/6.3]. Natural England has not suggested any change to the mitigation to locate ponds/planting to the east of the new link road is required and agreed that no revised LONI was necessary following the Scheme changes in October 2020. Highways England is seeking a revised LONI for great crested newts, but there is no suggestion that the mitigation would be ineffective in its current location and no reason that the Scheme changes would suggest a need to relocate the new ponds or planting. It should be noted that the ponds to be created on Plot 5/2 are not primarily to mitigate the impact of the Scheme on great crested newts as none of the ponds directly affected by the Scheme have been found to support the species. No change to mitigation is necessary to obtain Protected Species licences for either bats or great crested newt.

### **Summary**

- 5.3.8 Overall, it is Highways England's view that the current Scheme complies with policy in the NPSNN and NPPF on biodiversity. There is no difference between the options in terms of the compliance with planning policy on biodiversity. In addition, the existing mitigation has been accepted by Natural England as being suitable to mitigate the impacts on bats and great crested newts. Therefore, from a licensing perspective there is no necessity to alter the mitigation proposed and no suggestion that the mitigation would not be effective in its current position.

## **5.4 Policy Assessment: Landscape and Visual**

- 5.4.1 The assessment presented in Section 3.3 of this TN concludes that a change to Options 1-4 would not alter the conclusions of the Landscape and Visual chapter of the Environmental Statement [APP-046/6.1]. It is Highways England's view that similarly, there would be no difference in how the options perform when assessed against planning policy on these topics, with the position remaining as set out in the Case for the Scheme [AS-037/7.2]. It should be noted that Options 1 and 3 would obstruct long views, resulting in a slight worsening of impact for properties on Dark Lane, Options 3 and 4 would reduce landscape integration and Option 2 would have a greater impact on the character of Hilton Hall Parkland, which contributes as an element of landscape value (independently of its cultural heritage value). Therefore the current Scheme performs better from a landscape perspective than Options 1, 2, 3 and 4.

## **5.5 Planning Permission and Environmental Impact Assessment**

- 5.5.1 It is Highways England's understanding of Allow Ltd's position set out at ISH1 that given that Allow Ltd could plant trees in Hilton Park without planning permission, it



is unimportant what impact this planting would have on the locally designated park or the listed buildings. Highways England disagrees with this position.

5.5.2 Environmental Impact Assessments should take account of all the impacts (adverse or beneficial) of a Scheme regardless of whether those elements in isolation would require planning permission. For example, the majority of impacts on biodiversity for any project result from the destruction of habitats, which, dependent upon the scale and purpose of the works could be done without planning permission. Allow Ltd could clear Lower Pool SBI without planning permission<sup>5</sup>, but it does not follow that when the impact is caused by a major project, it should not be considered in the EIA or that the impact must not be mitigated. Similarly, works to create new ponds and landscaping *may* not require planning permission<sup>6</sup>, but can in themselves, or in combination with other projects, lead to additional adverse or beneficial environmental effects that must be considered in the EIA. It is not acceptable to divide a project into smaller components in order to avoid the requirement for an EIA or the identification of significant effects – what is colloquially known as “salami-slicing”. Projects should be viewed as one if in reality they should properly be regarded as “an integral part of an inevitably more substantial development”<sup>7</sup>. It is therefore not of relevance to the EIA process that some of the proposed landscaping measures in isolation would not require planning permission or that Allow Ltd could cause harm to the setting of listed buildings of their volition without a planning application.

5.5.3 It is Highways England’s position that the additional significant effects to Grade I listed buildings cannot be tolerated or dismissed depending on whether elements would ordinarily require planning permission when not part of the DCO project.

## 5.6 Compulsory Acquisition

5.6.1 It is Highway England’s position that in respect of all plots the conditions as set out in Section 122(2) and 122(3) of the Planning Act 2008 (PA 2008) are met. Section 122 of the PA 2008 states that development consent may include provision for compulsory acquisition only if two conditions are met. The first condition is that the land:

- a) Is required for the development to which the development consent relates.
- b) Is required to facilitate or is incidental to the proposed development, or
- c) Is replacement land which is to be given in exchange under section 131 or 132 of the PA 2008.

5.6.2 Plot 5/2 meets the second criteria as it is incidental to the proposed development (b). Land that is necessary to mitigate the environmental impact of the Scheme is ‘incidental’ to the proposed development. Proposed new ponds and landscaping on Plot 5/2 meets this criterion, with this land being required to mitigate the impact of

<sup>5</sup> It should be noted of course that the woodland contains Protected Species which are protected by law and that there would be moral implications of clearing habitats, but the point here is about whether works require planning permission.

<sup>6</sup> Although the requirement for planning permission would depend on the location and design of the scheme components.

<sup>7</sup> R v Swale BC ex parte RSPB [1991] 1 PLR 6 at [16]].

the Scheme on Lower Pool SBI, as well as delivering secondary benefits such as landscape integration and providing habitats for Protected Species.

- 5.6.3 The second condition (S122(3) of the PA 2008) is that there is a compelling case in the public interest for the land to be acquired compulsorily. Again, Plot 5/2 meets this criterion, with a demonstrable need for the Scheme to support economic development in the area and alleviate congestion on existing roads, and a requirement to mitigate the impacts of the Scheme on Lower Pool SBI. The environmental mitigation for the Scheme is required by policy and legislation, as well as being supported by local people and key stakeholders (e.g. Natural England and Staffordshire County Council). The amount of mitigation is proportional and not beyond that considered essential to mitigate the impact of the Scheme (see [REP3-038/8.16]). There is a clear case in the public interest for the mitigation as currently proposed.
- 5.6.4 Until recently, Allow Ltd has consistently opposed the acquisition of their land for any purpose and has made it clear that the mitigation on Plot 5/2 is, in their view, unnecessary and should be removed. Any change to the Scheme to take forward Options 1-4 would therefore currently require compulsory acquisition of additional land and would be subject to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. Options 2, 3 and 4 would also require land outside the Order limits. The public benefits of compulsorily acquiring land for environmental mitigation for Options 2, 3 and 4 would be reduced by the adverse impacts on historic buildings. However, as discussed above, Options 2-4 are not acceptable alternatives due to their adverse impacts on heritage assets so the above factors are not explored further here.

## 6 Summary

- 6.1.1 This TN has been produced to document the assessment of other alternative locations for the essential mitigation (woodland planting and the creation of ponds) required primarily to compensate for the loss of habitat at Lower Pool SBI and LWS. These alternatives were identified to address suggestions by Allow Ltd (Options 2, 3 and 4) and an alternative Option proposed by Highways England. These mitigation measures are currently proposed to be located on Plot 5/2 as shown on the Land Plans [REP3-005] and Figure 2.1 of this TN. This TN considers the current position of the mitigation measures alongside four alternative options which would reduce or remove the mitigation proposed in Plot 5/2.
- 6.1.2 Options 2, 3 and 4, which involve locating all or part of the compensation measures to the east of the Scheme alignment, would compromise the surviving boundary of the Shrubbery and transform this into a large area of woodland rather than a small distinct block of woodland and tree belt. Woodland planting in this location would absorb the isolated veteran trees which form an important feature of the historic park. Locating woodland planting closer to Grade I listed buildings, Hilton Park and the Conservatory, and removing the understanding of the Shrubbery as a small distinct block of woodland would erode the setting of the listed buildings. In particular, Option 4 would continue into the copse of trees which surround the Conservatory removing the understanding of this as a separate feature. It is considered that the effect on the Grade I designated structures would increase to moderate adverse with options 2, 3 and 4, resulting in a new significant adverse effect on two designated heritage assets.
- 6.1.3 Options 1 and 3 would result in an increased adverse impact on bats, compared to the current mitigation design as positioning a proportion of the woodland planting south of Dark Lane would make it harder for bats to access the proposed habitat as the road in this location is at ground level rather than in cutting. This would result in a slight adverse effect on bats, compared to a neutral effect as reported in the ES. Options 2 and 4 would be more favourable for bats than the current mitigation design, though it would not be enough of an improvement to alter the findings of the assessment reported in Chapter 8: Biodiversity of the ES [AS-083/6.1], which results in a neutral effect.
- 6.1.4 Options 3 and 4 would result in a slight improvement for great crested newts as new aquatic habitat would be created within 250 m of a known population. This would result in a neutral to slight beneficial effect on great crested newts, compared to a neutral effect as reported in the ES. Options 1 and 2 would result in no change to the effect on great crested newts.
- 6.1.5 The location of the mitigation planting and pond habitat in this location would not alter the assessment of landscape and visual impacts as the quantum of planting proposed remains the same.
- 6.1.6 On balance it is considered that the current Scheme design would result in the least harm to those receptors impacted by the Scheme. The increased adverse impact on two Grade I listed buildings, resulting in two new significant adverse effects outweighs the slight improvements for great crested newts resulting from the

movement of mitigation from the west of the Scheme to the east. Refer to Table 5.1 for a summary of effects on key receptors for the current Scheme design and the four alternative options considered in this TN.

**Table 6.1: Summary of options assessment**

Receptor	Current Scheme	Option 1	Option 2	Option 3	Option 4
Hilton Park	Moderate adverse effect (significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)
Hilton Hall (Grade I)	Slight adverse effect (not significant)	Slight adverse effect (not significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)
The Conservatory (Grade I)	Slight adverse effect (not significant)	Slight adverse effect (not significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)	Moderate adverse effect (significant)
Lower Pool LWS	Neutral effect (not significant)	Neutral effect (not significant)	Neutral effect (not significant)	Neutral effect (not significant)	Neutral effect (not significant)
Bats	Neutral effect (not significant)	Slight adverse effect (not significant)	Neutral effect (not significant)	Slight adverse effect (not significant)	Neutral effect (not significant)
Great Crested Newt	Neutral effect (not significant)	Neutral effect (not significant)	Neutral effect (not significant)	Slight beneficial effect (not significant)	Slight beneficial effect (not significant)
Settled Plateau Farmlands LCT	Slight adverse effect (not significant)	Slight adverse effect (not significant)	Slight adverse effect (not significant)	Slight adverse effect (not significant)	Slight adverse effect (not significant)
Viewpoint 14	Slight beneficial (not significant)	Slight beneficial (not significant)	Slight beneficial (not significant)	Slight beneficial (not significant)	Slight beneficial (not significant)
Viewpoint 20	Moderate adverse (significant)	Moderate adverse (significant)	Moderate adverse (significant)	Moderate adverse (significant)	Moderate adverse (significant)

6.1.7 Policy in the NPSNN and NPPF states that harm to designated assets requires a clear and convincing justification and harm should be given 'great weight' in decision making. Both key policy documents emphasise that the more important the asset, the greater weight should be applied. The two assets being primarily affected in this area are Grade I listed, meaning that any harm caused to them should be afforded very great weight. The NPSNN and NPPF also emphasise that any harm should be weighed against the benefits of the Scheme and that the greater the harm to an asset, the greater the justification will be required.

6.1.8 Overall, the current Scheme and Option 1 would comply with heritage policy in the NPSNN and the NPPF. However, this compliance would be reduced significantly for Options 2, 3 and 4 given the resultant significant effects on two Grade I listed buildings. This harm would be given very great weight in decision making on the DCO. In the presence of an option that did not result in significant effects on Grade



I listed buildings and no significant public benefits to justify the additional effects, changing the design to implement any of Options 2-4 would decrease compliance of the Scheme with planning policy, make it more difficult to provide a clear and convincing justification and increase the risk that the application would be refused. No significant benefits have been identified of Options 2-4 to justify this additional harm.

- 6.1.9 When assessed against planning policy, Options 2-4 are less compliant with policies in the NPSNN and the NPPF than the current Scheme or Option 1, introducing significant effects on assets of exceptional value in the presence of a clearly better option. Therefore, Options 2-4 were rejected. Option 1 does not perform as well as the Scheme in landscape and visual terms or for bats, given that the differences are not significant, Highways England propose to discuss with Allow Ltd to determine if it warrants further consideration. It should be noted however that taking forward Option 1 would amount to a change to the Application and the acquisition of additional land, which might prevent it being pursued.

## Appendix A

### Figures - Alternative location for compensation measures - Options 1 to 4













