

## **Comments by Allow Ltd upon TN 8.22**

### **‘Assessment of Alternative Locations for Mitigation in Plot 5/2’**

**Response Deadline 5 20<sup>th</sup> Jan 2021**

#### **Introductory overview:**

TN 8.22 has been produced before seeing proposed options from Allow Ltd provided to HE on 13<sup>th</sup> January 2021, following a site inspection held on 6<sup>th</sup> January 2021 with Historic England representatives (Bill Klemperer and Erika Diaz Petersen) and Tamara Percy and Amy Jones of AEOM. (Paragraph 2.1.5) Additionally, it does not reflect the findings of Historic England following that site visit.

None of the 4 options put forward by Highways England in this TN deliver the benefits, whilst minimising impacts on the landscape, which would be realised by the option proposed by Allow.

Overall, the assessment of the 4 Options against the current design seems to over-emphasise any increase in the impacts on heritage assets whilst downgrading the biodiversity benefits. This is commented upon in detail below.

#### **Comment:**

Para 1.1.5 – whilst habitat creation to the east of the route would ‘introduce new ponds and landscaping into an open area’ it should be noted that our proposals involve expanding existing areas of standing water and broadleaved woodland (e.g. Lower Pool SBI/LWS, Middle Pool and Upper Pool). This would be in-keeping with the current habitats on site. We aren’t proposing to create new areas which would be ‘out of place’.

Para 1.1.6 – We reserve the right to comment further once assessment methods are reviewed.

Para 1.1.7 –The text here discusses heritage assets and impacts that are considered ‘less than substantial’. Historic England concluded that all 4 options would result in ‘less than substantial’ harm in their representation. As such, impacts would be permissible/acceptable if the project could prove the public benefits of the scheme (which must have been demonstrated for the scheme to have progressed this far).

Para 1.1.9 – This again mentions ‘significant effects’ on listed buildings but this was not echoed by Historic England in their response.

Para 1.1.10 – Whilst we agree with some of the remarks on Option 1 from a biodiversity perspective, splitting the woodland planting between 5/2 and 4/20c would not deliver more benefits for biodiversity, and would likely have a greater impact on the species affected.

The comment about the new road not being in cutting adjacent to Plot 4/20 and therefore less optimal for bats (crossing over the road) is misleading, as it is not in a cutting adjacent to Lower Pool and that is the Applicant’s proposed crossing point to 5/2.

Para 1.1.12 – Allow are unclear what point Highways England are making at 1.1.12. The land at 4/20c was only ‘required to provide great crested newt mitigation measures’ on a precautionary basis as HE hadn’t completed their surveys. Now that they have, and obtained negative results, the land is not required for GCN mitigation; the results showing that it was never actually required.

Para 2.1.2 – This issue was raised significantly ahead of ISH1 rather than at ISH1 as stated here.

Para 2.1.3 - The listed buildings named here are not ‘within the setting of Hilton Park’ as stated, they are within the historic park which thus forms part of the setting of the listed buildings.

Para 2.1.4 – The statement suggesting that Allow stated at the 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” misrepresents what Allow were saying at ISH1. Allow consider that putting the mitigation to the east would result in a slightly greater level of harm to the historic park, but that this is outweighed by the increased efficacy of the environmental mitigation.

Para 2.1.6 – The point about having the change the Order limits is irrelevant – the issue is about having the mitigation in the optimum location when all concerns are taken into account.

Para 2.1.7 – the Environmental representative from Highways England was unsure at the site meeting of 6<sup>th</sup> January whether or not this borrow pit would actually be required the Applicant’s representatives were still unable to provide any information about what material was likely to be borrowed from here and what would replace this as reinstatement. It seems that the borrow pit is a ‘maybe’ which the Applicant has identified as a fall-back in case there is a shortage of suitable material for construction, rather than a definite part of the scheme. As above, any issue of potential cost increases would need to look at more than just the areas of permanent and temporary land-take.

Para 2.2.3 – The SoCG with Historic England has been substantially changed, but it must be noted that the comments to date have been made prior to their inspection of Hilton Park. Their note subsequent to their site visit assesses the level of harm of the subject mitigation options as less than substantial.

It is interesting to note here that there is no mention, as claimed in the oral submission by the Applicant at ISH1, of Historic England’s view that they would actually object to the scheme if the planting was moved to the east.

Para 2.2.4 – despite, it is interesting to note that this TN details all of Historic England’s *previous* concerns but doesn’t detail the outcome of Historic England’s most recent written representation following the site inspection which, we believe, is much less concerned and suggests they would be open to review options to the east.

Para 2.2.5 – Allow’s proposed option would still contain all the views mentioned here including open vistas, lone sporadic trees, water features and a backdrop of woodland.

It is not known whether the Conservation Officer has ever been to the site. It should be noted that these comments from the Conservation Officer predate the advice given by Historic England in their e-mail of 8<sup>th</sup> January, so the Conservation Officer is agreeing with advice provided before Historic England had visited the site.

Section 3 - The proposed planting layout drawn up by Allow following the site visit with Historic England of 6<sup>th</sup> January is much better than either of the two options for planting to the east of the road as shown in this TN and reflects views shared with Historic England at the site meeting.

Section 4 – The thrust of the Applicant’s argument is that planting to the east of the road (their Options 2-4) would increase the magnitude of impact on the Grade I listed buildings from Minor (current Scheme) to Moderate, resulting in the significance of effect in each case being Moderate (and therefore significant in EIA terms). This is looking at the significance of the Grade I listed buildings,

not the significance of their settings. In their methodology (Table 4.2 in chapter 4 of the ES and based on DMRB), magnitude of impact is measured on a 5 point scale – Major/Moderate/Minor/Negligible/No Change. Moderate is defined as *‘Loss of resource, but not adversely affecting the integrity; partial loss of/damage to key characteristics, features or elements’*. As there would be no loss of resource (i.e. the buildings would remain intact), the reassessment suggests that the Applicant regards planting on the east side of the new road as representing *‘partial loss of/damage to key characteristics, features or elements’*. Is this really the case? A Moderate magnitude of impact is only one step lower than Major, which would be the result of total demolition of the buildings, whereas what is proposed in Options 2-4 is a modest change within the setting of the buildings. The view of Allow’s Historic Landscape Consultant is that Options 2-4 would result in a Minor magnitude of impact in each case, resulting in a Slight level of effect (and therefore not significant in EIA terms).

Para 4.1.26 – it should be noted that, under Allow’s proposals, the isolated veteran trees would not be absorbed into the woodland planting.

Para 4.1.27 - The TN suggests that planting to the east would result in harm (to the significance of the Grade listed buildings) which would remain less than substantial but ‘at the upper levels of substantial harm’ - compare this with the Historic England e-mail (8<sup>th</sup> January) which merely states that the harm would be ‘less than substantial’ for all 4 options.

Please note that it is not possible to see much of the northern portion of the Shrubbery from the Hall or the Conservatory.

Para 4.2.2 – The statement *‘Plot 5/2 is located immediately adjacent to the retained woodland and pond within Lower Pool LWS’* continues to ignore that the scheme (a dual carriageway) will ultimately separate the retained habitats in the LWS from planting in 5/2. As such, the planting is unlikely to provide *‘long-term habitat for biodiversity affected in this location’*.

Para 4.2.7 – Please see our written evidence for Issue Specific Hearing 1. There is no evidence to suggest that bats will change commuting routes and use a poorly-sited, unvegetated structure to ‘safely’ cross the scheme at Hilton Lane.

Para 4.2.8 – Bats will still be able to use habitats to the east of Lower Pool, but it needs to be acknowledged that they are losing 39% of the habitat within Lower Pool and that at 5/2 this is not being compensated for in an accessible location.

Para 4.2.10 – Please see our written evidence for Issue Specific Hearing 1. We contest this assessment of impact on bats. Given the location and nature of the crossing structure, there is no evidence to suggest it will be used by bats in the future. As such, they are still losing a significant proportion of their habitat at Lower Pool without it being adequately compensated. There is also a collision risk with cars as the road is at ‘ground-level’ where it passes Lower Pool.

Para 4.2.12 – The document states that bats would find woodland south of Dark Lane ‘harder to access’ as the road is not in a cutting at this location. However, regardless of possible compensation planting option, the scheme still maintains that the original option is sufficient for bats, despite bats currently crossing at this location (into the south-eastern corner of Plot 5/2). We have maintained that bats may still continue to use this area/route once the scheme is developed, instead of using the Hilton Lane Overbridge. It would be useful to understand why Highways England think woodland at Dark lane would be ‘harder to access’ and why this is due to the scheme not being in a cutting in this location. If it is, as we have suggested, because bats will be at risk of collision with vehicles, then any

planting to the west of the scheme is likely to put bats at risk of collision (as was discussed at the Hearing). Planting to the east would remove this risk.

Para 4.2.14 – We would like to see evidence of how Highways England have reached this conclusion. Area and nature of planting is discussed, although location and strategic significance is not. The same area overall is being planted, but planting to the east would bolster the existing portions of the LWS and have a positive contribution to integrity of the LWS above planting in Plot 5/2. How has this been taken into consideration and why is it not considered to alter the effect. Furthermore, how can a 'neutral effect' be achieved when 39% of the LWS is being lost to construction? Whilst acknowledging that compensation is being provided, this will not recreate or restore those habitats being lost.

Para 4.2.15 - We would like to see evidence of how Highways England have reached this conclusion. We question how creating new habitat next to known bat roosts, avoiding the need for them to cross the scheme plus the likelihood that they won't access/find it in Plot 5/2, is not considered to constitute a 'beneficial impact'.

Para 4.2.17 – As with paragraph 4.2.14, we question how the effects at Lower Pool are considered neutral. We also question how woodland and standing water creation (the habitats for which the LWS is designated) would not benefit and complement the LWS.

Para 4.2.18 – whilst we agree that bats are less likely to use woodland south of Dark Lane (in plot 4/20c), why is it considered that bolstering woodland around the Shrubbery and Lower Pool, plus creating more areas of open water (next to known roosts), will not benefit bats (leading to an overall conclusion 'slight adverse' significance)? This is the same conclusion as Option 1, but with better planting and habitat creation to the east for bats. Therefore, we question how the same conclusion as that for Option 1 has been reached.

Para 4.2.21 - We would like to see evidence of how Highways England have reached this conclusion. How can creating all these habitats next to known bat roosts, avoiding the need to cross the scheme, not be considered to result in a beneficial impact?

Para 4.2.23 – This text, as with similar text before, completely ignores the location of new planting when determining its significance. It is not just area and type that are important considerations.

Para 5.3.1 – same comment as for paragraph 4.2.21

Para 5.3.3 – the key point here is whether the scheme has maximised opportunities for biodiversity, which habitat creation to the west of the scheme will not do.

Para 5.3.5 - Please see our written evidence for Issue Specific Hearing 1. There has been no evidence provided by the applicant that the measures provided will safely ensure that the bats will locate and benefit from planting in 5/2. On the contrary, evidence from Defra states that bats are unlikely to use unvegetated structures not located on a known bat flight path.

Para 5.3.7 - Please see our written evidence for Issue Specific Hearing 1. A Letter of No Impediment is not an 'agreement' of the mitigation, it is stating that there is no obvious impediment to why a licence for the scheme would not be granted. They are two different things. In addition, just because a mitigation strategy is approved (at some stage) does not mean that better alternatives do not exist.

Para 5.6.4 – The TN states that *until recently, Allow Ltd has consistently opposed the acquisition of their land for any purpose ..... 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.* This is **not** the case and Allow have offered to enter into negotiations for the sale of land to the East of the scheme to the Applicant since 2019. The land under discussion to the East of the scheme was within the order limits in 2019 until it was later removed by the Applicant.

Allow have offered to enter into agreement for the Applicant to acquire the finally negotiated areas, or to enter into long term management arrangements, to avoid compulsory acquisition of additional land.

Para 6.1.3 – The applicant appears to not be including the potential benefit to bats provided by the proportion of woodland planted to the east of the scheme in Option 3. They are just focusing on the section of woodland in 4/20c.

Para 6.1.6 – we disagree that the current scheme design would result in the least harm to those receptors impacted by the scheme. It also does not deliver the most potential benefits.