

Date: 18 March 2019



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By Email Only

Dear Mr Coles

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(the EIA Regulations) – Regulations 10 and 11

Application by Highways England (the Applicant) for an Order granting Development Consent for the M3 Junction 9 Improvement Project (the Proposed Development)

Thank you for consulting Natural England on the aforementioned proposal and apologies for the delay in getting back to you. Your consultation were received by this office on 29 January 2019. I would be grateful if you could forward this response to the applicant for their information.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England welcomes the early engagement with Highways England regarding the proposals and the comprehensive ES Scoping Report. Our advice on the scope of the Environmental Impact Assessment (EIA) for this development is set out below.

The application site lies within, adjacent to or in close proximity to the following sites:

- River Itchen Special Area of Conservation (SAC)
- River Itchen Site of Special Scientific Interest (SSSI)
- St Catherine's Hill SSSI
- South Downs National Park (SDNP)

Case law and guidance has stressed the need for a full set of environmental information to be available for consideration prior to a decision being taken on whether or not to grant planning permission.

Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again.

General Principles

Schedule 4 of the Town & Country Planning (Environmental Impact Assessment) Regulations 2011, sets out the necessary information to assess impacts on the natural environment to be included in an ES, specifically:

- A description of the development – including physical characteristics and the full land use requirements of the site during construction and operational phases.
- Expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.
- An assessment of alternatives and clear reasoning as to why the preferred option has been chosen.
- A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.
- A description of the likely significant effects of the development on the environment – this should cover direct effects but also any indirect, secondary, cumulative, short, medium and long term, permanent and temporary, positive and negative effects. Effects should relate to the existence of the development, the use of natural resources and the emissions from pollutants. This should also include a description of the forecasting methods to predict the likely effects on the environment.
- A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
- A non-technical summary of the information.
- An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

It will be important for any assessment to consider the potential cumulative effects of this proposal, including all supporting infrastructure, with other similar proposals and a thorough assessment of the 'in combination' effects of the proposed development with any existing developments and current applications. A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.

Biodiversity and Geology

Ecological Aspects of an Environmental Statement

Natural England advises that the potential impact of the proposal upon features of nature conservation interest and opportunities for habitat creation/enhancement should be included within this assessment in accordance with appropriate guidance on such matters. Guidelines for Ecological Impact Assessment (EclA) have been developed by the Chartered Institute of Ecology and Environmental Management (CIEEM) and are available on their website.

EclA is the process of identifying, quantifying and evaluating the potential impacts of defined actions on ecosystems or their components. EclA may be carried out as part of the EIA process or to support other forms of environmental assessment or appraisal.

The National Planning Policy Framework sets out guidance in S.174-177 on how to take account of biodiversity interests in planning decisions and the framework that local authorities should provide to assist developers.

Internationally and Nationally Designated Sites

The ES should thoroughly assess the potential for the proposal to affect designated sites. European sites (e.g. designated Special Areas of Conservation and Special Protection Areas) fall within the scope of the Conservation of Habitats and Species Regulations 2017 (as amended). In addition paragraph 176 of the National Planning Policy Framework requires that potential Special Protection Areas, possible Special Areas of Conservation, listed or proposed Ramsar sites, and any site identified as being necessary to compensate for adverse impacts on classified, potential or possible SPAs, SACs and Ramsar sites be treated in the same way as classified sites.

Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) an appropriate assessment needs to be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site.

Should a Likely Significant Effect on a European/Internationally designated site be identified or be uncertain, the competent authority (in this case the Local Planning Authority) may need to prepare an Appropriate Assessment, in addition to consideration of impacts through the EIA process.

Further information on the SSSI and its special interest features can be found at www.magic.gov. The Environmental Statement should include a full assessment of the direct and indirect effects of the development on the features of special interest within and should identify such mitigation measures as may be required in order to avoid, minimise or reduce any adverse significant effects.

European site conservation objectives are available on our internet site

<http://publications.naturalengland.org.uk/category/6490068894089216>

Regionally and Locally Important Sites

The EIA will need to consider any impacts upon local wildlife and geological sites. Local Sites are identified by the local wildlife trust, geoconservation group or a local forum established for the purposes of identifying and selecting local sites. They are of county importance for wildlife or geodiversity. The Environmental Statement should therefore include an assessment of the likely impacts on the wildlife and geodiversity interests of such sites. The assessment should include proposals for mitigation of any impacts and if appropriate, compensation measures. Contact the local wildlife trust, geoconservation group or local sites body in this area for further information.

Protected Species - Species protected by the Wildlife and Countryside Act 1981 (as amended) and by the Conservation of Habitats and Species Regulations 2017 (as amended)

The ES should assess the impact of all phases of the proposal on protected species (including, for example, great crested newts, reptiles, birds, water voles, badgers and bats). Natural England does not hold comprehensive information regarding the locations of species protected by law, but advises on the procedures and legislation relevant to such species. Records of protected species should be sought from appropriate local biological record centres, nature conservation organisations, groups and individuals; and consideration should be given to the wider context of the site for example in terms of habitat linkages and protected species populations in the wider area, to assist in the impact assessment.

The conservation of species protected by law is explained in Part IV and Annex A of Government Circular 06/2005 *Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System*. The area likely to be affected by the proposal should be thoroughly surveyed by competent ecologists at appropriate times of year for relevant species and the survey results, impact assessments and appropriate accompanying mitigation strategies included as part of the ES.

In order to provide this information there may be a requirement for a survey at a particular time of year. Surveys should always be carried out in optimal survey time periods and to current guidance by suitably qualified and where necessary, licensed, consultants. Natural England has adopted [standing advice](#) for protected species which includes links to guidance on survey and mitigation.

Habitats and Species of Principal Importance

The ES should thoroughly assess the impact of the proposals on habitats and/or species listed as 'Habitats and Species of Principal Importance' within the England Biodiversity List, published under the requirements of S41 of the Natural Environment and Rural Communities (NERC) Act 2006. Section 40 of the NERC Act 2006 places a general duty on all public authorities, including local planning authorities, to conserve and enhance biodiversity. Further information on this duty is available here <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>.

Government Circular 06/2005 states that Biodiversity Action Plan (BAP) species and habitats, 'are capable of being a material consideration...in the making of planning decisions'. Natural England therefore advises that survey, impact assessment and mitigation proposals for Habitats and Species of Principal Importance should be included in the ES. Consideration should also be given to those species and habitats included in the relevant Local BAP.

Natural England advises that a habitat survey (equivalent to Phase 2) is carried out on the site, in order to identify any important habitats present. In addition, ornithological, botanical and invertebrate surveys should be carried out at appropriate times in the year, to establish whether any scarce or priority species are present. The Environmental Statement should include details of:

- Any historical data for the site affected by the proposal (e.g. from previous surveys);
- Additional surveys carried out as part of this proposal;
- The habitats and species present;
- The status of these habitats and species (e.g. whether priority species or habitat);
- The direct and indirect effects of the development upon those habitats and species;
- Full details of any mitigation or compensation that might be required.

The development should seek if possible to avoid adverse impact on sensitive areas for wildlife within the site, and if possible provide opportunities for overall wildlife gain.

The record centre for the relevant Local Authorities should be able to provide the relevant information on the location and type of priority habitat for the area under consideration.

Contacts for Local Records

Natural England does not hold local information on local sites, local landscape character and local or national biodiversity priority habitats and species. We recommend that you seek further information from the appropriate bodies (which may include the local records centre, the local wildlife trust, local geo-conservation group or other recording society and a local landscape characterisation document).

Designated Landscapes and Landscape Character

Nationally Designated Landscapes

As the development site is within/adjacent to , consideration should be given to the direct and indirect effects upon this designated landscape and in particular the effect upon its purpose for designation within the environmental impact assessment, as well as the content of the relevant management plan for

Landscape and visual impacts

Natural England would wish to see details of local landscape character areas mapped at a scale

appropriate to the development site as well as any relevant management plans or strategies pertaining to the area. The EIA should include assessments of visual effects on the surrounding area and landscape together with any physical effects of the development, such as changes in topography.

The EIA should include a full assessment of the potential impacts of the development on local landscape character using [landscape assessment methodologies](#). We encourage the use of Landscape Character Assessment (LCA), based on the good practice guidelines produced jointly by the Landscape Institute and Institute of Environmental Assessment in 2013. LCA provides a sound basis for guiding, informing and understanding the ability of any location to accommodate change and to make positive proposals for conserving, enhancing or regenerating character, as detailed proposals are developed.

Natural England supports the publication *Guidelines for Landscape and Visual Impact Assessment*, produced by the Landscape Institute and the Institute of Environmental Assessment and Management in 2013 (3rd edition). The methodology set out is almost universally used for landscape and visual impact assessment.

In order to foster high quality development that respects, maintains, or enhances, local landscape character and distinctiveness, Natural England encourages all new development to consider the character and distinctiveness of the area, with the siting and design of the proposed development reflecting local design characteristics and, wherever possible, using local materials. The Environmental Impact Assessment process should detail the measures to be taken to ensure the building design will be of a high standard, as well as detail of layout alternatives together with justification of the selected option in terms of landscape impact and benefit.

The assessment should also include the cumulative effect of the development with other relevant existing or proposed developments in the area. In this context Natural England advises that the cumulative impact assessment should include other proposals currently at Scoping stage. Due to the overlapping timescale of their progress through the planning system, cumulative impact of the proposed development with those proposals currently at Scoping stage would be likely to be a material consideration at the time of determination of the planning application.

The assessment should refer to the relevant [National Character Areas](#) which can be found on our website. Links for Landscape Character Assessment at a local level are also available on the same page.

Heritage Landscapes

You should consider whether there is land in the area affected by the development which qualifies for conditional exemption from capital taxes on the grounds of outstanding scenic, scientific or historic interest. An up-to-date list may be obtained at www.hmrc.gov.uk/heritage/lbsearch.htm.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help encourage people to access the countryside for quiet enjoyment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways are to be encouraged. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be incorporated where appropriate.

Rights of Way, Access land, Coastal access and National Trails

The EIA should consider potential impacts on access land, public open land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the adjacent/nearby National Trail. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation

measures should be incorporated for any adverse impacts. We also recommend reference to the relevant Right of Way Improvement Plans (ROWIP) to identify public rights of way within or adjacent to the proposed site that should be maintained or enhanced.

Air Quality

Air quality in the UK has improved over recent decades but air pollution remains a significant issue; for example over 97% of sensitive habitat area in England is predicted to exceed the critical loads for ecosystem protection from atmospheric nitrogen deposition (England Biodiversity Strategy, Defra 2011). A priority action in the England Biodiversity Strategy is to reduce air pollution impacts on biodiversity. The planning system plays a key role in determining the location of developments which may give rise to pollution, either directly or from traffic generation, and hence planning decisions can have a significant impact on the quality of air, water and land. The assessment should take account of the risks of air pollution and how these can be managed or reduced. Further information on air pollution impacts and the sensitivity of different habitats/designated sites can be found on the Air Pollution Information System (www.apis.ac.uk). Further information on air pollution modelling and assessment can be found on the Environment Agency website.

Climate Change Adaptation

The [England Biodiversity Strategy](#) published by Defra establishes principles for the consideration of biodiversity and the effects of climate change. The ES should reflect these principles and identify how the development's effects on the natural environment will be influenced by climate change, and how ecological networks will be maintained. The NPPF requires that the planning system should contribute to the enhancement of the natural environment 'by establishing coherent ecological networks that are more resilient to current and future pressures' ([NPPF](#) Para 174), which should be demonstrated through the ES.

Cumulative and In-combination Effects

A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.

The ES should include an impact assessment to identify, describe and evaluate the effects that are likely to result from the project in combination with other projects and activities that are being, have been or will be carried out. The following types of projects should be included in such an assessment, (subject to available information):

- a. existing completed projects;
- b. approved but uncompleted projects;
- c. ongoing activities;
- d. plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
- e. plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.

Considerations in relation to National Planning Policy Framework (NPPF)

The ES should set out how the proposals will meet the tests for "Major" development within a National Park, as set out in NPPF paragraph 172. In particular, measures will need to be identified that minimise any detrimental effect on the environment, the landscape and recreational opportunities within the National Park. In addition, in relation to NPPF paragraph 170 and 175 the scheme should seek wherever possible to avoid, minimise, or as a last resort compensate impacts on biodiversity, while seeking to ensure an overall biodiversity net gain.

The key objective of the landscape, access and biodiversity aspects of the scheme should be to ensure that the wider landscape affected by the proposals, the biodiversity it supports and the provision for public access are significantly enhanced by the development. Such measures should include enhancements on land within the applicant's control and might include:

- The creation and restoration of areas of priority habitats such as chalk grassland, native woodland, riparian habitat, etc. The aim should be to create attractive, biodiverse habitats with low maintenance requirements along the road corridor.
- Provision for enhancing ecological connectivity both along the motorway and across. The latter might include provision of appropriately sited green bridge (s), enhanced connectivity of habitats along the River Itchen including measures for the safe passage of otter, etc.
- The creation of new public access opportunities that link up to the wider footpath network.
- The use of chalk embankments, sown with key butterfly food plants to provide biodiverse habitats and enhanced noise attenuation along access tracks.

Further, given the scale of the scheme there may nevertheless remain significant wider residual impacts to landscape and biodiversity interests. In order to address and moderate any such wider residual impacts the scheme the ES should also include the preparation of a comprehensive landscape, biodiversity and access enhancement plan for the wider areas of landscape affected by the proposals that are outside the applicants control.

The measures identified in the enhancement plan should be used to calculate a reasonable level of offset funding needed to meet the wider objectives of the plan and achieve full moderations of the adverse impacts of the scheme. Potential landscape, biodiversity and access offset measures that would meet the objectives of the plan and should therefore be made eligible for funding might include:

- Measures to enhance local landscape eg through the restoration of boundary features, removal of eyesores, appropriate tree planting, restoration of the setting of historic features, etc.
- Measures to permanently remove landscape features that are out of character such as conifer plantations.
- Measures to improve ecological connectivity.
- Establishment of new areas of BAP priority habitat, including chalk grassland, farm ponds and broad leaved native woodland.
- Provision for the enhancement of existing wildlife sites.
- Measures for conserving and enhancing BAP priority species.
- Measures for enhancing access opportunities, particularly away from the noise and visual intrusion of the M3.

Natural England would welcome the opportunity to comment on the landscape, biodiversity and access enhancement plan and agree the funding arrangements in due course.

Please note that Natural England reserves the right to provide further comments on this proposal beyond this EIA scoping opinion, should your authority seek our views on the planning application. This includes any third party appeal against any screening decision your authority may make.

For any queries relating to the specific advice in this letter please contact John Stobart on 07825 844475. For any new consultations or issues, please contact consultations@naturalengland.org.uk.

Yours sincerely

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