

Committee: **Regulatory
Planning Committee**

Date: **14 October 2015**

Report by: **Head of Planning and Environment**

Proposal: **Non Material Amendment - Alteration to the wording of Condition 13 to allow the use of the Link Road by the public prior to the completion of the boundary walls and fencing.**

Site Address: **A259 Belle Hill, Bexhill-on-Sea to B2092 Queensway, St Leonards-on -Sea, East Sussex (known as the Bexhill-Hastings Link Road).**

Applicant: **Assistant Director (Operations), Communities, Economy and Transport, East Sussex County Council**

Application No. **RR/2474/CC(EIA)NM/11**

Key Issues: **Whether the amendment sought is considered to be non-material in its effect.**

Contact Officer: **Mrs Sarah Iles – 01273 481631**

Local Members: **Councillors Phillips, Ensor, Field, Scott, and Pragnell**

SUMMARY OF RECOMMENDATIONS

To approve the non-material change application to the Bexhill-Hastings Link Road scheme, as indicated in paragraph 9.1 of this report

CONSIDERATION BY HEAD OF PLANNING AND ENVIRONMENT

1. Introduction

1.1 The Planning Act 2008 inserted a new section 96A into the Town and Country Planning Act 1990. Section 96A allows non-material changes to be made to an existing planning permission. An application under s.96A is not an application for planning permission and therefore statutory consultations and publicity requirements do not apply and any consultation is at the discretion of the Local Planning Authority.

1.2 In determining non-material change applications, the Local Planning Authority must have regard to the effect of the change, singularly and cumulatively, and any representations received. The Local Planning Authority must satisfy itself that the change sought is non-material before granting any S96A applications. In deciding whether a change is material the Local Planning Authority must have regard to the effect of the change, together with any previous changes made under s.96A

applications, on the planning permission as originally granted. This needs to be considered in each case and cumulatively in multiple application cases.

2. The Site and Surroundings

2.1 The Bexhill - Hastings Link Road (the Link Road) is currently under construction. The most westward section is urban in character with the remainder of the scheme emerging into countryside between Bexhill and Hastings. The road will partly run along the route of the former Bexhill – Crowhurst railway line in the built up area of Bexhill, then pass around the northern side of the Combe Haven Site of Special Scientific Interest (SSSI) in the countryside. From there it will pass the southern edge of the Marline Valley Woods SSSI crossing the Hastings to London railway line to join Queensway just north of its junction with Crowhurst Road.

2.2 The urban section, running between the A259 Belle Hill and Sidley, temporarily opened and was used as a diversion route by the public from 29 September 2014 until 22 August 2015, whilst the existing Ninfield Road Bridge was being replaced. The new Ninfield Road Bridge has now opened and the temporary diversion route along the Link Road closed.

3. The Proposal

3.1 Several conditions attached to the original planning permission RR/2474/CC(EIA) stipulated that the Link Road could not be brought into use until certain works had taken place. The wording of these conditions, including condition 13, was altered following the approval of a non-material amendment application RR/2474/CC(EIA)NM/9 in April 2014, to allow for use of the Link Road as a temporary diversion without the entire length having been constructed or all specified works in each condition having been implemented.

3.2 The wording of conditions 8 and 15 were further altered in August 2015 by RR/2474/CC(EIA)NM/10 to provide, if necessary, the flexibility to allow the permanent opening of the Link Road, for use by the public, without the Greenway (condition 8) having been fully completed and without all of the landscaping works (condition 15) having been fully implemented.

3.3 The current application for a non-material amendment is to further alter the wording of condition 13 to allow the permanent opening of the Link Road, for use by the public, without the approved boundary walls and fencing having been fully completed. It is not intended to vary or delete the scope of the required works, merely to vary the timing of their implementation in relation to the opening of the Link Road itself. As currently worded, condition 13 does not allow the whole of the Link Road to open without all of the boundary walls and fencing works being completed.

3.4 Condition 13 is currently worded as follows:

13. Development shall not be brought into full permanent use by the public until all approved details of boundary walls, fences and other means of enclosure to be erected within the site have been provided and shall thereafter be retained unless otherwise agreed in writing by the Head of Planning. If during construction, the temporary use of part of the Link Road is required this shall only be undertaken with means of enclosure appropriate to the temporary use and following the prior written approval of the Head of Planning.

Reason: To ensure the appropriate appearance of the development in the area.

4. Main Site History

4.1 2015 – Permission granted for one non-material amendment application – RR/2474/CCNM/10.

4.2 2015 – Permission granted for one non-material amendment application – RR/2474/CCNM/5.

4.3 2015 – Withdrawn - One non-material amendment application – RR/2474/CCNM/6.

4.4 2014 – Permission granted for one non-material amendment application – RR/2474/CCNM/9.

4.5 2013 – Permission granted for five non-material amendments applications – RR/2474/CCNM/1 – 4 and 7.

4.6 2009 – Planning permission granted – RR/2474/CC(EIA). Construction of a new road, including environmental treatment with earthworks, planting, flood and noise attenuation, wildlife compensation and facilities for non-motorised users (known as the Bexhill – Hastings Link Road).

5. Consultations and Representations

5.1 Rother District Council: No response received.

5.2 Hastings Borough Council: No response received.

5.3.1 Councillor Michael Ensor (Local Member – Bexhill King Offa): No objection to this NMA application, on the condition that where a wall or a fence is not complete that adequate safety measures are always in place to protect vehicles and the public.

5.3.2 Councillor Peter Pragnell (Local Member – Hastings: Ashdown and Conquest): No objection to the NMA referred to and share Councillor Ensor's view that there should be some form of safety barrier for the public while the work is ongoing.

5.4 Local Representations: None received.

6. The Development Plan and other policies of relevance to this decision are:

6.1 Rother District Local Plan 2006: Policies DS1 (Development Principles) and GD1 (General Development Considerations).

In July 2012 Rother District Council determined that virtually all its 2006 Rother District Local Plan Saved policies were compliant with the National Planning Policy Framework. Saved Policies in the Rother District Local Plan 2006 will continue to be used to determine planning applications alongside the NPPF.

6.2 Rother Local Plan Core Strategy 2014: Policies: BX1 (Overall Strategy for Bexhill), BX3 (Development Strategy), OSS4 (General Development Considerations), TR1 (Management and Investment in Strategic Accessibility) and HF1 (The Hastings Fringes).

6.3 Hastings Local Plan 2004: Saved Policy DG1 (Development Form)

Hastings Borough Council has not formally determined whether its Saved Policies in the Hastings Local Plan are in general conformity with the NPPF however Saved Policy DG1 is considered by the County Planning Authority to be in general conformity with the overarching principles of the NPPF.

6.4 Hastings Planning Strategy 2011 - 2028: The Council adopted its Planning Strategy in February 2014. One of the strategic objectives is to secure construction of the Link Road, which is seen as a main priority and central to the regeneration strategy of the area.

6.5 National Planning Policy Framework 2012: The Framework (NPPF) does not change the status of the Development Plan as the starting point for decision making but it does constitute guidance as a material consideration in determining planning applications. At the heart of the NPPF is a presumption in favour of sustainable development. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.

7. Considerations

7.1 Applications of this type are not planning applications. Guidance to Local Authorities, the National Planning Practice Guidance, advises that there is no statutory definition of 'non-material' because it is dependent on the context of the overall scheme. The Local Planning Authority must be satisfied that the amendment sought is non-material in its effect in order to grant the application and the procedure allows for new conditions to be imposed to the original planning permission or for existing conditions to be removed or, as in this case, to be altered. As this is not the first amendment proposed, the Local Planning Authority must have regard to the cumulative change of all approved amendments as well as to any representations received. The guidance does not anticipate amendments which are non-material in their effects would need to be addressed under the EIA regulations.

7.2 Any decision made relates only to the amendment sought and, if approved, the decision does not constitute a reissue of the original planning permission, which still stands. The decision, together with any other non-material amendments which have been approved, should all be read together.

7.3 Fencing details required by condition 13 were approved on 26 March 2013. Condition 13 also sets out the requirements for the fencing/boundary treatment to be erected before the Link Road is brought into full permanent use by the public. The non-material amendment application relates to the fencing and boundary treatment of the Link Road scheme. It does not relate to the environmental (acoustic) barriers/fencing or safety barriers on the edge of the carriageway, which will be provided prior to the Link Road fully opening, as will the badger proof fencing which seeks to keep badgers and other animals away from the carriageway. The majority of the fencing required that may not be erected prior to the opening of the Link Road, as affected by this non-material amendment application is located in the rural

part of the scheme and consists of stock proof fencing and internal boundary sections. Due to the construction schedule and attempts to deal with future land management issues, the erection of the fencing has been delayed in places and it may not be possible to have it fully completed in time for when the Link Road would be available to be opened to the public. However, the fencing will still be provided in accordance with approved details, albeit not necessarily before the Link Road is opened. There is therefore no reason to consider that altering the wording for condition 13 will be anything other than non-material in its effect.

7.4 The measures required by condition 13 will still be carried out in full; it is just a question of when they will be fully completed. The proposed alteration to the wording of condition 13 will not automatically approve the use of the Link Road without having completed the fencing and boundary treatment, instead it will provide the flexibility of allowing the Link Road to open to the public, without the aforementioned measures being in place, should the need arise. However, approval would still have to be sought from the Head of Planning and Environment.

7.5 The representations received have been taken into account.

7.6 It is considered that there is no unacceptable cumulative impact arising from the non-material amendment taking into account the previous non-material amendments.

8. Conclusion and reasons for approval

8.1 The application has been considered in accordance with Section 96A of the Town and Country Planning Act 1990 and the National Planning Practice Guidance, together with other non-material amendments.

8.2 The amendment to the condition 13 is related to the timing of certain measures required by that condition, rather than to the actual implementation of those measures and as such the amendment can be considered non-material in its effect whether taken individually or cumulatively with the other, previously approved, amendments. An element of control on timing is retained as separate permission to complete the fencing and boundary treatment after the Link Road has opened will have to be sought from the Head of Planning and Environment.

9. Recommendation

9.1 To grant the application for non-material amendment RR/2474/CC(EIA)NM/11 and alter the wording of condition 13 attached to RR/2474/CC(EIA), approved on 29 July 2009, as follows:-

13. Unless otherwise agreed in writing by the Head of Planning and Environment, the Link Road shall not be brought into full permanent use by the public until all approved details of boundary walls, fences and other means of enclosure to be erected within the site have been provided and shall thereafter be retained unless otherwise agreed in writing by the Head of Planning and Environment. If during construction, the temporary use of part of the Link Road is required this shall only be undertaken with means of enclosure appropriate to the temporary use and following the prior written approval of the Head of Planning and Environment.

Reason: To ensure the appropriate appearance of the development in the area.

Tony Cook
Head of Planning and Environment
Communities, Economy and Transport Department
06 October 2015

BACKGROUND DOCUMENTS

Application File and Planning application, RR/2474/CC(EIA)
Application Files, RR/2474/CCNM/1 – 5, 7, 9 and 10
Rother District Local Plan 2006
Hastings Local Plan 2004
National Planning Policy Framework 2012
National Planning Practice Guidance