

Committee: **Regulatory
Planning Committee**

Date: **14 August 2024**

Report by: **Director of Communities, Economy and Transport**

Proposal: **A height extension to the existing asphalt plant stack**

Site Address: **Plots 6 & 7, North Quay Road, Newhaven, BN9 0AB**

Applicant: **FM Conway Limited**

Application No. **LW/886/CM**

Key Issues: **1) Need
2) Air Quality
3) Visual and Landscape Impacts**

Contact Officer: **Miss Kiran Sajjan – 01273 481595**

Local Member: **Councillor James MacCleary**

SUMMARY OF RECOMMENDATIONS

- 1. To grant planning permission subject to conditions as indicated in paragraph 8.1 of this report**
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CONSIDERATION BY DIRECTOR OF COMMUNITIES, ECONOMY AND TRANSPORT

1. The Site and Surroundings

1.1 The application site is approximately 0.35ha in area comprising an existing asphalt plant and includes part of the private North Quay Road as far to the south where it meets the public highway near the flyover carrying the A259. The area subject of this application forms part of the wider FM Conway asphalt site.

1.2 It is within an industrial area on the eastern side of the River Ouse to the north-east of Newhaven Town Centre with Denton Island intervening. The closest residential properties are in the town centre, 200 metres south-west of the site, at Bridge Court on the north side of Bridge Street. Various industrial activities take place within the locality to the north, south and east. North Quay Road (a private road) adjoins Plots 6 and 7 to the east of the site and provides access to it from the public highway to the south.

1.3 Members of the Committee visited the site in February 2024, and the Chair visited in July 2024.

2. The Proposal

2.1 The proposal is to increase the height of the stack on the existing asphalt plant by 20 metres to aid dispersal and lower the concentration of pollutants (e.g. nitrogen oxides, sulphur oxides, carbon monoxide, particulate matter, volatile organic compounds and odours) released into the air. The current stack is 20.25 metres in height from ground level. Additionally there is a top cone, which is not currently regularised, bringing the total height of the existing stack to 22.6 metres. The 20 metres extension would provide an additional stack height of 18 metres with a top cone of approximately 2.2 metres resulting in a final height of 40.25 metres from ground level. The height extension would result in a visible stack of approximately 27 metres above the height of the asphalt plant, compared with 7 metres at present.

2.2 The height extension would involve delivery of new prefabricated sections which will be attached to the existing stack. A total of six sections measuring approximately 3 metres each would be bolted together up to the required height with guyed cables. A 2.2 metre cone would be bolted to the top. The proposed stack would maintain the existing diameter of 1 metre, which is less than that previously approved, and would match the grey colour of the existing stack.

3. Site History

3.1 Planning permission was granted in July 2018 (ref. LW/789/CM(EIA)) for the development of the site to install and operate an asphalt plant, concrete batching plant and gully waste plant, together with ancillary development and access. The permission was subject to the completion of a legal agreement (the requirements of which have been discharged) and is subject to conditions.

3.2 Subsequent to the original permission, the applicant applied to vary the approved drawings to facilitate changes to the layout of the approved development and specifications of the asphalt plant. Permission for these variations was granted in February 2020 (ref. LW/840/CM)) (which is now the extant permission for the site).

4. Consultations and Representations

4.1 Lewes District Council, Planning – No response received.

4.2 Lewes District Council, Air Quality Advisor – Comments were made on the dimensions of the existing stack which differs from the originally approved dimensions under LW/840/CM.

4.2.1 Following the comments from the Lewes District Air Quality Advisor, the applicant commissioned a report (TetraTech Memo) which demonstrates that the as built stack parameters would not have significantly altered the conclusion

of the WYG (now TetraTech) Assessment undertaken in February 2018 which was submitted in support of application LW/840/CM.

4.2.2 It was also raised that the operators reliance on water sprays and odour suppression at source is unsuitable for primary abatement for gaseous stack emissions and the volume of loading bay emissions. The emphasis should be on reduction of emissions rather than mitigation.

4.3 Newhaven Town Council - Welcome any action to address the ongoing problems of air quality being experienced by Newhaven residents from the existing operation, and particularly the long-term effects of ongoing particulate depositions to the surrounding aquifers. It is suggested that the Planning Authority should actively consider conditions surrounding the annual monitoring/checking of stack emissions that are also in line with DEFRA requirements.

4.4 South Downs National Park Authority - No comment.

4.5 County Landscape Architect - It is recommended that the proposed development can be supported. The conclusions of the supporting Landscape and Visual Impact Assessment that the proposed development would have acceptable and not significant effects on the landscape character and visual amenity of the site and surrounding area are not disputed.

4.6 County Ecology – No objections subject to appropriate measures to protect nesting birds which may nest in buildings/structures. An informative has been recommended to address this.

4.7 NatureSpace - consider that there would be no likely impact on great crested newts or their habitats.

4.8 Healthy Places, Public Health – No objections subject to the following recommendations:

- Recommendation 1; Public Health request that in deciding this application, whether the impact on the groups (Children and young people, Older people and Income related groups such as those unemployed) have been fully considered, and whether the proposed development would not contribute to the health and wellbeing of the population;
- Recommendation 2; Public Health recommend that attention is given to the sensitive locations surrounding the application site and conclusions made with these in mind;
- Recommendation 3; Recommend that consideration is made on the potential effects the proposal may have on the surrounding community's sense of health and wellbeing, including mental health;
- Recommendation 4; The proposal seeks to minimise and mitigate the effects of air pollution on the surrounding population, and in consideration of this, Public Health request that mitigation measures are fully scrutinized and the evidence for potential negative impacts are given a proportionate weighting; and

• Recommendation 5; Have regard to the Chief Medical Officer's Annual Report (2022)¹ on air pollution and the 'Air quality and emissions and mitigation guidance for Sussex' (2021)² as part of broader evidence of impact of air quality.

4.9 Environment Agency - No objection to the proposal as submitted.

4.10 Newhaven Port Authority - No response received.

4.11 Newhaven Enterprise Zone – No response received.

4.12 Representations – A total of 19 representations have been received. These raise various concerns which are summarised below:

- The proximity of the stack to the town centre would look out of place and unsightly.
- Queries are raised about alternative options and whether the stack extension is the most appropriate.
- Concerns raised about the current situation and the impact it is having on human health. Some residents would support the proposal as there would be an improvement in air quality.
- Many representations requested additional time and/or deferral to ensure the recommendations made by the Healthy Places, Public Health Team and the Air Quality Advisor could be addressed.
- Concerns that the stack height increase would not be sufficient or would make the issue worse for some residents.
- Human health and environmental health concerns.

5. The Development Plan policies of relevance to this decision are:

5.1 East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013: Policies WMP23a (Design); WMP25 (General Amenity); WMP27 (Environment & Environmental Enhancement).

5.2 East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Revised Policies Proposed Submission Consultation Document September 2021: Policies RD1 (Environment & Environmental Enhancement).

5.3 Lewes District Joint Core Strategy 2016: Core Policy 9 (Air Quality) and Core Policy 11 (Built and Historic Environment and High Quality Design).

5.4 Lewes District Site Allocation and Development Management Policies 2020: Policies DM20 (Pollution Management) and DM25 (Design).

5.5 National Planning Policy Framework (NPPF) December 2023: Parts of relevance include Part 12 (Achieving well-designed and beautiful places) and Part 15 (Conserving and enhancing the natural environment).

6. Considerations

Need

6.1 The need to increase the height of the stack on the asphalt plant stems from recent concerns relating to odour emissions from the Site at locations around the Newhaven area. To address these matters FM Conway have undertaken a comprehensive review of operations and working practices at the Site and have already implemented a number of measures aimed at reducing emissions to the environment, this includes additional staff training and the implementation of automated dust and odour control systems.

6.2 Following complaints received by Lewes District Council, measurements of releases of gaseous and particulate substances and odours from the plant stack were undertaken during April and May 2023. Measurement of odours associated with asphalt discharge to trucks were also made. The assessment concluded that an increase in stack height would be an appropriate method of reducing odour impact at proximate residential locations.

Air Quality

6.3 Policy WMP25 in the Waste and Minerals Plan requires that all proposals ensure there is no unacceptable effect on the standard of amenity appropriate to (existing and proposed) land uses likely to be affected by the development; there is no significant adverse impact on air quality; adequate means of controlling dust, litter, odours and other emissions including those arising from traffic generated by the development are secured and there is no unacceptable effect on the recreational or tourist use of an area or use of areas for public access.

6.4 Policy DM20 of the Lewes Local Plan Part 2 states that development that may potentially contribute to, or be adversely affected by, unacceptable levels of soil, air, water, noise or light pollution will only be permitted where it can be demonstrated that: its location is appropriate in terms of land use in relation to the uses in the surrounding area; the development will not have an unacceptable impact on health, the natural environment or general amenity; the development will not have an adverse impact on the use of other land and where relevant, the appropriate after-use of land can be secured.

6.5 Core Strategy Policy 9 seeks to improve air quality with applications that could impact on an Air Quality Management Area (AQMA) required to have regard to any relevant Air Quality Action Plan (AQAP), seek improvements to air quality through implementation of measures in the AQAP and provide mitigation where development would adversely affect an AQMA. There is long-standing and wide ranging legislative framework underpinning a national strategy aimed at improving air quality and protecting human health from the effects of pollution. One outcome of this has been the declaration in 2014 of an AQMA around Newhaven Town Centre and the swing bridge because of recorded levels of Nitrogen Dioxide (NO₂).

6.6 An Air Quality Assessment prepared by a specialist air quality consultant, Socotec, on behalf of the operator states that the modelling undertaken shows that in respect of the current situation, without the inclusion of the stack height increase, there are no breaches of carbon monoxide, nitrogen dioxide, PM10, PM2.5 and nitrogen monoxide limits. In addition, process contributions of sulphur dioxide and volatile organic compounds (VOCs) are also within acceptable limits.

6.7 With regard to odour, the highest odour concentrations in respect of the existing asphalt plant stack lie to the east / north east of the plant, focussed on the train line and the industrial areas off New Road, Estate Road and Avis Way. However, the industrial nature of these areas means that there is likely to be limited frequent long term human exposure when compared to residential locations and therefore the impact is reduced. One residential receptor (New Road) is assessed as receiving a process odour contribution above the odour benchmark defined within The Institute of Air Quality Management (IAQM) Guidance on the assessment of odour for planning, July 2018.

6.8 Dispersions modelling of the maximum process contributions for odour at stack heights increasing from 20 m up to 50 m has been illustrated in the air quality assessment. At 40 m no area is shown to experience an odour contribution greater than 1.5 ouE/m³ (odour unit per cubic metre of air) and the area experiencing odours greater than 0.5 ouE/m³ is significantly reduced. In accordance with The Institute of Air Quality Management (IAQM) Guidance on the assessment of odour for planning, July 2018, odour exposure levels of 0 to 1.5 ouE/m³ are classified as negligible at all receptor sensitivities. It is therefore assessed that the increased stack height will support an improvement in air quality to residents and there will be no notable worsening at any location.

6.9 The County Council commissioned an independent review of the accompanying Air Quality Assessment, the TetraTech memo on the 'as built' stack height calculation and list of mitigation measures which have been implemented or will be implemented at the site. The review agrees with the conclusion that a stack increase from 22.6 metres to 40 metres, will reduce the process contributions below 1.5 OuE/m³ with a 75% drop in maximum odour contribution, compared with the current arrangement.

6.10 By increasing the stack height, emitted pollutants will have sufficient dilution and dispersion in the atmosphere to ensure that they ground at concentrations that are deemed harmless. Based on the results presented in the Socotec report for a stack height of 40 metres, exceedances of the odour benchmark at any sensitive receptor in the model domain, including those within South Heighton, are not expected. It is also considered that the top cone would further help increase the exit velocity (stack exit velocity measures the speed at which gases leave a stack) to achieve greater dispersion.

6.11 As previously noted, the applicant has already undertaken a number of additional mitigation measure to address odour and emissions. The various assessments undertaken conclude that, along with these measures, an increase in the height of the stack will provide an improvement to the dispersal

of emissions. Notwithstanding this, and the comments from Public Health and other representations, Paragraph 194 of the NPPF states that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. The use of the land has been permitted by consent ref. LW/840/CM. It is considered that the extended stack would reduce the impact of odorous emissions from the plant. Any further matters relating to pollutants from the site should be dealt with under the permitting regime.

6.12 As suggested by Newhaven Town Council, consideration has been given to the inclusion of monitoring requirements as a condition. Boundary monitoring is already undertaken by the site operator in order to comply with the Environmental Permit. Any wider monitoring, for example at specific monitoring points around Newhaven, would not be effective as it would be difficult to identify the source of emissions. As such, conditions for wider monitoring are not recommended.

6.13 Overall, increasing the stack height will provide greater dispersion and reduce potential odour emissions as part of the mitigation measures. The proposal would offer an improvement to the current situation in terms of release of emissions and therefore would reduce any negative impact on health and the natural environment. The proposal is therefore considered to comply with Policies WMP25 of the Waste and Minerals Plan; DM20 of the Lewes Local Plan Part 2 and Core Policy 9 of the Lewes Joint Core Strategy.

Visual and Landscape Impacts

6.14 Waste and Minerals Plan Policy WMP23a requires all buildings associated with waste development to be of a scale, form and character appropriate to its location and to allow sufficient space for effective operations. In urban locations design should complement the existing or planned scale or built form of the local area and take account of local landscape character and distinctiveness.

6.15 Policy WMP27 of the Waste and Minerals Local Plan states that in order to conserve and enhance the local character and environment of the Plan Area, permission will not be granted where development would have a significant adverse impact on particular sites and assets including the South Downs National Park.

6.16 Core Strategy Policy 11 seeks high quality design in all new development by ensuring, *inter alia*, that it respects the character and distinctiveness of built heritage and responds sympathetically to the site and its local context.

6.17 Policy DM25 of the Lewes Local Plan Part 2 supports development which contributes towards local character and distinctiveness through high quality design through a series of criteria including ensuring its scale, form,

height, massing, and proportions are compatible with existing buildings, building lines, roofscapes and skylines and where there will be no unacceptable adverse impact on the amenities of neighbouring properties in terms of privacy, outlook, daylight, sunlight, noise, odour, light intrusion, or activity levels.

6.18 The application is accompanied by a Landscape and Visual Impact Assessment (LVIA). This provides an assessment of the landscape and visual context for the site and surrounding area. The LVIA assesses that the potential effects on the character of the surrounding townscape would be slight adverse. The effects on the setting of the South Downs National Park are assessed to be, at worst, moderate adverse and this needs to be considered in the context of the existing urban area and industrial uses on North Quay.

6.19 From Castle Hill, which lies to the south of the site, the stack would be barely perceptible against the downland background and the white face of Tarring Neville chalk pit. From Bollens Bush to the east, the stack would be seen against a background of the elevated built-up area on the slopes of South Heighton and the chimney stack on the Veolia Energy Recovery Facility (ERF) building. From the residential areas of Denton and South Heighton the stack would be viewed against the background of the built up area.

6.20 Whilst the LVIA states that there are similar stacks within the built form of Newhaven such as the ERF, the application site is set further within the townscape and in closer proximity to Newhaven Town Centre than the ERF. However, the immediate surroundings are largely industrial, and it is not considered that the extended stack would cause visual detriment. On balance, although the extended stack would be visible from surrounding viewpoints it would be viewed against the sky and built-up area therefore the grey finish would help to mitigate the visual impact. Overall, it is considered that the proposed stack height increase complies with Policies WMP23a and WMP27 of the Waste and Minerals Plan; Policy DM25 of the Lewes Local Plan Part 2 and Core Policy 11 of the Lewes Joint Core Strategy.

7. Conclusion and reasons for approval

7.1 In accordance with Section 38 of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the Development Plan unless material considerations indicate otherwise.

7.2 Planning permission is sought to increase the stack height on the existing asphalt plant by 20 metres to aid in the reduction of odorous emissions. The proposed development would result in an improvement to air quality, specifically odour. Whilst it would result in a much taller structure closer to Newhaven Town Centre, taking into account the industrial surroundings it is not considered to be out of character for the area. The proposal is considered to accord with Policies WMP23a, WMP25 and WMP27 of the Waste and Minerals Plan 2013; Policy RD1 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Revised Policies Proposed Submission Consultation Document September 2021; Core Policies 9 and 11 of the Lewes

District Joint Core Strategy 2016 and Policies DM20 and DM25 of the Lewes District Local Plan Part 2. It also complies with the provisions of the NPPF 2023.

7.3 In determining this planning application, the County Council has worked with the agent in a positive and proactive manner. The Council has also sought views from consultees and neighbours and has considered these in preparing the recommendation. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, and as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

7.4 There are no other material considerations, and the decision should be taken in accordance with the Development Plan.

8. Recommendation

8.1 To recommend the Planning Committee to grant planning permission subject to the following conditions:-

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the plans listed in the Schedule of Approved Plans and Documents.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The stack height extension hereby permitted alongside the list of mitigation measures set out in letter titled FM Conway Newhaven Asphalt Plant – Summary of Mitigation Measures dated 31st January 2024 shall be fully implemented and retained for the lifetime of the development, unless otherwise agreed in writing by the Director of Communities, Economy and Transport.

Reason: In the interest of the amenity in accordance with Policy WMP25 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013.

INFORMATIVE

1. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act.

Trees, scrub, dense shrubs, hedgerows and buildings/structures are likely to contain nesting birds between 01 March and 31 August inclusive. Some of these habitats are present on the application site or in close proximity and could contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

Schedule of Approved Plans and Documents

Supporting Statement, Air quality assessment of releases from an asphalt production process, Landscape and Visual Impact Assessment, Appendix A - Drawings and Photosheets, Appendix B - Methodology, KD.NHVN.2.D.002 - Location Plan, KD.NHVN.2.D.003 - Site Plan, KD.NHVN.2.D.004 - Existing Elevations, KD.NHVN.2.D.005 - Proposed Elevations, Summary of Mitigation Measures

RUPERT CLUBB

Director of Communities, Economy and Transport

Date: 5 August 2024

BACKGROUND DOCUMENTS

Application File LW/886/CM

The Development Plan