

davies planning

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2 February 2018

J Patterson Esq
Principal Planning Officer
East Sussex County Council
County Hall
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Dear Mr Patterson

Brett application - LW/799/CM(EIA)

Amendment to the application

Further to your recent meetings with John Bunnett, Richard Ford and Gregor Mutch, as agent for Brett Aggregates Limited (BAL) I have been instructed to withdraw Stage 4 development proposals, the construction and use of a concrete block-making plant, from the above planning application.

The planning permission sought is now described as follows:

'The construction and use of plant, namely aggregate processing plant, aggregate bagging plant, concrete batching plant and buildings, ancillary offices and stores for processing and utilising aggregates landed at Newhaven Port and distribution of the products by road and rail together with access to the public highway and the extension of an existing rail siding.'

BAL's legal adviser has indicated that the planning authority has a discretion to accept amendments to an application prior to determination and has referred BAL to the PINS guidance to Inspectors in dealing with amendments at appeals which states:

“There may be occasions where amendments could be made to a scheme without prejudice to the delivery of a fair and more efficient system. Where amendments are proposed to a scheme, the Inspector will be guided in their decision making by the *Wheatcroft Principles*. In the ‘Wheatcroft’ judgement the High Court considered the issue of amendments in the context of conditions and established that *“the main, but not the only criterion on which...judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.....An integral part of the legal test is therefore the issue of fairness to third parties. This is a fact-sensitive question to be determined by the decision maker. The question of the stage in the process at which it is sought to make an amendment is likely to be relevant, together with the appellant’s reasons for seeking the amendment.”*”

In the context of Brett’s initial proposals for development at Newhaven Port, it is as a consequence of the public reaction to the Stage 4 proposals following a public exhibition and the formal consultation process that this request to amend the application is made. Accordingly, it is evident that the changes proposed can properly be addressed by amending the application without any prejudice to third parties.

The remaining Stages 1-3 are not in any way dependent upon the proposed development of Stage 4 which can be easily severed and the requested amendment would not give rise to any need for further consultation.

For the avoidance of doubt:

- (i) Stage 4, as outlined in paragraph 1.7 of the *Planning supporting statement and environmental statement* (the PS&ES) and fully described in Section 4 of that document, shown as added in layout drawing Figure 16, as elevations in Figure 17 and the proposed building design in Appendix 8, is hereby withdrawn from planning application LW/799/CM(EIA); and
- (ii) no development, as defined in s.55 of the Town and Country Planning Act 1990, is proposed or would be carried out on that part of the application site south of footpath N40b shown on Figure 6.

Mitigation proposals for lorry movements on Beach, Clifton and Railway Roads during Stages 1 and 2.

At the meeting on 25 January, your concerns about the impact on the amenity of the residents of Beach Road, Clifton Road and Railway Road as a consequence of the proposed lorry movements during Stages 1 and 2 (only) was discussed.

This road link to the main highway network would only be used until the New Port Access Road is open to traffic and lorry movements would be restricted during this period as indicated in paragraph 4.22 of the PS&ES.

It was identified in the Transport Assessment in Appendix 7 of the PS&ES that the proposed increase in traffic (all vehicles average of 54 per day) represented just a 1.4% increase in traffic movements on these roads with heavy goods vehicles responsible for less than 1% (average 34 vehicles per day).

It was indicated in paragraph 4.61 of the PS&ES that the hours when aggregates would be distributed in Stages 1 and 2 would be as follows:

Monday to Friday (excluding public holidays): 07:00 to 18:00
Saturday: 07:00 to 13:00

No deliveries would be made between 08:00 and 09:00 Monday to Friday

The reason for proposing that no deliveries would be made between 08:00 and 09:00 hours Monday to Friday was to avoid conflict with cars at peak drop-off times at Noah's Ark Nursery on Railway Road. As stated in paragraph 5.40 of the PS&ES, 'BAL would accept a planning condition preventing loaded lorries leaving the site between 08:00 and 09:00 hours.'

BAL would accept a further condition prohibiting heavy goods vehicles entering site before 07:00 hours during Stages 1 and 2.

BAL has a rolling replacement programme for all of its plant and vehicles and confirmed to you that all heavy goods vehicles controlled by the company would have the latest Euro 6 model engines fitted. Such engines are mandatory in the ultra low emission zone (ELEZ) in central London to avoid the punitive ELEZ charge (but not elsewhere), more fuel efficient than their predecessors whilst significantly reducing harmful exhaust emissions, such as nitrogen oxides, carbon monoxide, hydrocarbons and particulate matter, i.e. they are far cleaner than their predecessors.

All BAL lorries are fitted with the latest GPS tracking equipment and CCTV cameras which monitor the speed of the vehicle and how it is being driven. The on board computer can be set up to restrict routes which can be travelled and set speed limits of BAL's own choosing. The computer in any vehicle taking an unauthorised route or violating the statutory or BAL imposed speed limit automatically sends an E-mail to the BAL fleet manager and a message to the driver on his in-cab tablet that he/she has exceeded the speed limit. BAL would welcome the opportunity of demonstrating how this system functions.

BAL would impose a 15mph maximum vehicle speed on vehicles associated with Stages 1 and 2 development using these roads.

BAL's acoustic and air quality consultants have confirmed that BAL imposed speed limit would reduce the impact of noise and exhaust emission gases from lorries associated with the proposed development below that of other users of these roads.

With the self imposed embargo on making deliveries during nursery drop off peak times, it is clear to BAL that the potential impact on the amenity of residents of Beach, Clifton and Railway Road would be less from its vehicles operating under planning control than that resulting from other uncontrolled road users. These users include those who currently take advantage of the port's permitted development rights or, indeed, those who, in the future, could similarly make use of the unrestricted rights (e.g. users who could collect their loads from cargos discharged on to the quay or transhipped direct to lorries from the importing vessel as it is being unloaded).

It is well recorded in the PS&ES that these roads would only be used during Stages 1 and 2 and all vehicle movements associated with the proposed development would be transferred to the NPAR once it is open to traffic, when Stage 3 would also be developed. Planning permission has been granted for the construction of this road, essential to the future of the port. It is assumed that its delivery is in part dependent upon increased port dependent development. The BAL proposals, importing marine dredged aggregates and discharging them at a deep water berth are seen by the port authority as being a significant part of the future of Newhaven Port. Permitting them can only assist the justification for the NPAR's development and the benefits to the town it will create.

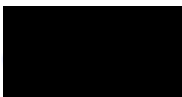
Response to comments made by statutory consultees

You have forwarded comments from your noise and landscape consultees and as yet, BAL has not responded.

This is because it was preparing to withdraw Stage 4 and as many of the comments related to that stage of the development, a meaningful response could not be submitted until the position was clarified.

Those responses will be submitted in early February.

Yours sincerely

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M R Davies