

EAST SUSSEX COUNTY COUNCIL

in favour of

HASTINGS BOROUGH COUNCIL

and

ROTHER DISTRICT COUNCIL

UNDERTAKING

under (inter alia) Section 106 of the Town and Country Planning Act 1990
relating to land known as A259 Belle Hill, Bexhill on Sea to B2092
Queensway, St Leonards on Sea, East Sussex

BEXHILL HASTINGS LINK ROAD

**ANNUAL REPORT BY HEAD OF PLANNING IN ACCORDANCE WITH
PROVISION 4.5**

25 July 2013

BEXHILL HASTINGS LINK ROAD

SECTION 106 UNDERTAKING

ANNUAL REPORT BY HEAD OF PLANNING – 2012/13

1 Introduction

- 1.1 Provision 4.5 of the Section 106 Undertaking for the Bexhill Hastings Link Road requires the Head of Planning to annually report progress to Hastings Borough Council and Rother District Council on the compliance with the planning obligations contained in the Undertaking. Annual Reports have been forwarded to the Councils in 2010, 2011 and 2012, and this Annual Report needs to be published by 28 July 2013.
- 1.2 Considerable progress has been made in the last 12 months. The Scheme was the subject of a Public Inquiry in 2009. The Inspector's Report was published on 20 September 2012 and confirmation of the Compulsory Purchase Orders and Side Road Orders took place on 5 October 2012.
- 1.3 In March 2012, Government announced £56 million support for the Bexhill Hastings Link Road (BHLR). The Department for Transport confirmed their final funding approval for BHLR on 3 April 2013. The County Council varied its Capital Programme on 10 July 2013 to increase its capital contribution.
- 1.4 This Annual Report will cover the current position on BHLR and provide an update on the provisions of the Undertaking.

2. Current position on the Bexhill Hastings Link Road

- 2.1 The planning application for BHLR was considered by East Sussex County Council's Planning Committee in December 2008 following rigorous appraisal of the application and the accompanying Environmental Statement. It was resolved that subject to the Secretary of State not calling in the application and the completion of a Legal Undertaking, that planning permission should be granted. The Secretary of State for Communities and Local Government on 3 February 2009 decided not to 'call-in' the application and a Legal Undertaking was completed in July 2009. Consequently planning permission was granted on 29 July 2009.
- 2.2 The County Council made Compulsory Purchase Orders and negotiated with landowners to purchase land needed both directly for the link road and also for new environmental habitats. Objections to the Orders

required a Public Inquiry to be held. The Public Inquiry started on 10 November 2009 at the White Rock Theatre, Hastings in front of an independent Inspector. The Inquiry looked at the land needed for the road and for new environmental habitats, and whether East Sussex County Council should be allowed to buy it from current owners by using compulsory purchase powers. Nearly 40 people came to the Inquiry to give evidence, and the Inspector made two site visits to look at the Council's proposed route and alternative routes suggested by other people.

- 2.3 The Public Inquiry into the Compulsory Purchase Orders for the Link Road closed in early December 2009. The Inspector then completed his Report.
- 2.4 The Coalition Government has made clear its most urgent priority is to tackle the UK's record budget deficit, in order to restore confidence in the economy and support the recovery. Consequently, a Spending Review has been undertaken.
- 2.5 Following the publication of the conclusions of the Spending Review, the Secretary of State for Transport announced in October 2010 a process for deciding which transport schemes would receive funding. Further guidance was issued in February 2011. The Secretary of State had identified a Development Pool of 45 schemes including the Bexhill Hastings Link Road which would be funded from a £650m budget. Further announcements followed on the schemes within the Development Pool.
- 2.6 In March 2012, the Department for Transport confirmed that Ministers had agreed to provide the County Council with the Government funding requested, and reconfirmed Programme Entry for the Scheme. The Department for Transport will provide a maximum contribution of £56.85m. The offer is subject to conditions including a fully worked up plan for the delivery of the complementary public transport measures, and, a fully worked up plan to carry out further offsetting environmental and biodiversity measures possibly involving a green bridge and a financial contribution to a Heritage Lottery Fund Project in the Brede – Hastings area. The County Council is also required to provide a progress report on developer interest in employment and housing sites in North East Bexhill, and a plan of support to local unemployed people to compete for jobs ultimately delivered by the Scheme.
- 2.8 In June 2012, a Judicial Review Claim was served on the Secretary of State for Transport regarding the decision in March to grant the County Council a funding contribution of £56.85m. The Claim referred to the application of the precautionary principle in relation to risk of irreversible damage to the environment. The Claim sought to quash the decision to grant funding. The County Council was named as an Interested Party. Following an Oral Hearing the Claim was finally dismissed in October 2012 with costs awarded.

- 2.9 In June 2012 and on subsequent occasions, the applicant's agents wrote to the County Planning Authority setting out proposals to undertake certain investigation and mitigation tasks in advance of the BHLR and seeking confirmation that the works did not constitute "commencement of development" as defined in the S106 Undertaking. The Head of Planning replied on 11 July 2012 indicating in relation to the S106 Legal Undertaking and per se the works did not constitute development. Subsequent approvals were given for tree clearance, other mitigation works and temporary fencing on 13 December 2012, 18 December 2012, 4 January 2013, 10 January 2013, 11 January 2013, 15 February 2013, 9 April 2013 and 10 April 2013.
- 2.10 Details pertaining to conditions imposed on the BHLR have been submitted to the County Planning Authority. Details pursuant to the following conditions have been submitted:
- 4 (Scheme of Phasing), 5 (Bridges/structures), 6 (Detailed schemes), 7 (Scheme for the protection of animals), 9 (Scheme showing temporary construction compounds and access points), 10 (Wheel washing), 11 (Scheme of working hours during construction), 13 (Details of boundary walls and fences), 14 (Landscape details), 17 (Archaeology), 18 (Bat Survey), 19 (Waste Minimisation), 20 (Details of temporary measures to maintain affected Rights of Way), 21 (Noise attenuation arrangements), 23 (Mitigation and Compensatory Habitat Scheme), 24 (Habitat Management Plan), 25 (Ecological Monitoring Scheme), 26 (Surface water drainage scheme), and 30 (Telephone Contact Scheme).
- 2.11 As part of the consideration of all the details, relevant consultations have been carried out with the following main consultees: County Archaeologist, County Ecologist, the Council's Landscape Architect and Rights of Way Team, Highway Authority, Environment Agency, Natural England, Rother District Council and Hastings Borough Council.
- 2.12 In determining the details pertaining to conditions imposed on BHLR, environmental information has been considered in the Environmental Statement and Addendum Environmental Statement submitted with the original planning permission, as required by Regulation 8(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.
- 2.13 Details pertaining to the 19 pre-commencement conditions were approved by 4 April 2013. In respect of Condition 29 (Borrow Pit Scheme), a scheme of working has to be submitted for approval prior to the use of the borrow pit. Under Conditions 5, 6 and 26, there are also further submissions of details required in relation to specific schemes. Further later submissions are required under Condition 17.

- 2.14 All the outstanding requirements and details requiring approval under the S106 Legal Undertaking prior to the commencement of development were approved by 11 April 2013. Details related to the individual elements of this are covered in Section 3 below.
- 2.15 Formal commencement of development of BHLR occurred on 11 April 2013.
- 2.16 Seven Non-Material Amendment (NMA) applications under Section 96A of the Town & Country Planning Act 1990 were submitted on 26 November and 10 December 2012. The NMAs covered a variety of changes including replacing an underground storage tank with open ditches (swales), reduction in verge widths, omission of a proposed overbridge by retaining an existing structure, alterations to the Greenway including diversions to use existing footbridges and a ford crossing for horses, and deletion of a short bus lane at Queensway.
- 2.17 Over 50 representations were received and ultimately Planning Committee considered the NMAs at their meeting on 10 July 2013. The Committee resolved to grant 5 of the NMAs and delegated authority to the Head of Planning to grant the other 2 NMAs following the receipt of satisfactory further details.
- 2.18 A Judicial Review against the County Council undertaking works on the BHLR, including undertaking tree clearance, was made to the High Court by a member of a protest group, Bexhill Link Road Resistance (BLINKRR). The basis of the Claim was that they considered that work on site contravened planning law, that the work would adversely affect the site of the Battle of Hastings and that the NMAs could not be regarded as non material. The application for a Judicial Review was refused on the 5 March 2013 with costs awarded to the County Council. The claimant subsequently requested an oral hearing and this was set to be heard on the 12 April 2013. However, the claimant fully withdrew his action on the 11 April 2013. The County Council is seeking costs.

3 Monitoring Report

- 3.1 The Annual Report from the Head of Planning needs to consider progress on the planning obligations in the Undertaking. This will cover:
- i. The Construction Environmental Management Plan (CEMP)
 - ii. The Operational Environmental Management Plan (OEMP)
 - iii. The Complementary Highway Improvement Plan (CHIP)
 - iv. The Compensatory Habitat Scheme (CHS)
 - v. Adams Farm Barn
 - vi. The Monitoring Scheme

The Construction Environmental Management Plan

- 3.2 The S106 Legal Undertaking related to the planning permission RR/2474/CC (EIA) required approval of a CEMP before commencement of development. The S106 Legal Undertaking sets out the areas of interest to be included in the CEMP. The relevant arrangements from the S106 Legal Undertaking were considered in the submitted CEMP together with references to where there is overlap with specific conditions attached to the planning permission and how the CEMP related to other Environmental Management Plans.
- 3.3 The details included in the CEMP were subject to careful scrutiny by the Environmental Advice Team within the County Council as well as the Environment Agency resulting in several revisions to the CEMP. The revised version was considered acceptable although there remained certain items outstanding which could not be finalised until the appointed contractor is on site. These include noise monitoring during construction work, confirmation of tree protection measures, and completed travel plans. The mechanism for this is mostly through Method Statements referred to in the CEMP, details of which need to be agreed at a later date.
- 3.4 The details of the CEMP submitted pursuant to the S106 Legal Undertaking attached to RR/2474/CC(EIA) were considered using the Bexhill-Hastings Link Road Environmental Statement and the Addendum Environmental Statement, which formed part of the determination of the Link Road planning permission. The information contained within the previously submitted Environmental Statement and Addendum is considered to be adequate to assess the environmental effects of the development and thereby facilitate the determination of the submitted details related to the Construction Environmental Management Plan. It should be noted that a revised estimate of emissions of CO₂e from construction activities was included in the CEMP compared to the Environmental Statement and Addendum Environmental Statement. This is the result of more accurate details now being available compared to the figures compiled for the Environmental Statement which had a greater range of uncertainty.
- 3.5 The details in the CEMP (Revision 7) were approved on 11 April 2013 subject to :-
- i) the implementation and review of the effectiveness of the CEMP being reported to the Head of Planning;
 - ii) the provisions of the CEMP being undertaken in accordance with the submitted details and, in addition, the requirements in paragraphs (iii) to (vii) below;
 - iii) the provisions in the CEMP being undertaken in accordance with the relevant details approved under Condition 7, Condition 9, Condition 10, Condition 11, Condition 14, Condition 17, Condition 19, Condition 20, Condition 21, Condition 23, Condition 24, Condition 25,

and Condition 26 that have been submitted to satisfy planning permission RR/2474/CC (EIA) BHLR;

- iv) a completed Travel Plan being submitted to and agreed in writing by the Head of Planning within 2 months of the commencement of development;
- v) the Method Statements referred to in Section 6 of the CEMP which are to be prepared 1-2 weeks prior to particular work commencing, being submitted to the Head of Planning as soon as they are prepared. Any further requirements of the Head of Planning or the Environmental Health Officer of the relevant authority will be forwarded to the contractor for implementation;
- (vi) the following further requirements in relation to the Carbon Management Strategy (Appendix E4):
 - (a) a timetable showing the phasing of the likely emissions of CO₂e arising from construction activities being submitted to and agreed in writing by the Head of Planning within 2 months of the commencement of development;
 - (b) a programme of how a 5% reduction in CO₂e emissions from the baseline set at 20,352 tonnes will be achieved over the lifetime of construction activities being submitted to and agreed in writing by the Head of Planning within 2 months of the commencement of development;
 - (c) the monthly monitoring reports of CO₂e emissions being submitted to Head of Planning as soon as they are prepared;
 - (d) the review of the Carbon Management Strategy on a 6 monthly basis being submitted to the Head of Planning as soon as they are prepared. Any further requirements of the Head of Planning in relation to any of the matters in the Carbon Management Strategy including any measures related to the reduction of CO₂e emissions from the baseline will be forwarded to the contractor for implementation, and;
 - (e) the final outcome of the CO₂e emissions as a result of construction activities being submitted to the Head of Planning as required by Clause 3.1.5 of the S106 Legal Undertaking; and
 - (vii) any changes to the CEMP should be submitted to and approved in writing by the Head of Planning

The Operational Environmental Management Plan

- 3.6 The S106 Legal Undertaking related to the planning permission RR/2474/CC (EPA) requires approval of an OEMP prior to the opening of the BHLR for public use. The S106 Legal Undertaking sets out the areas of interest to be included in the OEMP. To date, no details have yet been submitted.

The Complementary Highway Improvement Plan

- 3.7 The CHIP as submitted contains proposals to mitigate the impact of increased traffic along The Ridge through improvements to junctions at key stress points identified on the Highway Network and the introduction of parking restrictions. It also seeks to lock in the benefits of reduced traffic along the A259 through the introduction of bus priority measures. A delivery programme was included outlining when the proposed measures will be designed, consulted on (where appropriate) and delivered.
- 3.8 It is recognised that some of the proposed measures in the CHIP are at a feasibility stage and will require further design and, in some cases, consultation. It was determined therefore that the CHIP should be implemented in accordance with the timetable included in Appendix 3. The County Planning Authority will also need to be kept up-to-date on the progression and implementation of the CHIP. Any changes to the CHIP to mitigate the effects of traffic impacts from the Development (BHLR) would need approval.
- 3.9 The CHIP was approved on 5 April 2013 subject to:
- i. the implementation and review of the effectiveness of each scheme in the CHIP being reported to Head of Planning; and
 - ii. the provisions of the CHIP being undertaken in accordance with the timetable set out in the CHIP. Any deviation from the timetables set out in the CHIP should be agreed in writing with the Head of Planning.

The Compensatory Habitat Scheme

- 3.10 The Section 106 Legal Undertaking requires under Clause 3.4 and Schedule 5 that prior to the commencement of development approval is given for a Compensatory Habitat Scheme (CHS). This involves a Scheme for the provision and management of an area of 6.6 hectares of habitat to compensate for the loss of 3.3 hectares of habitat partly involving Marline Valley Woods SSSI.
- 3.11 Following discussions with the previous Landowners, the actual site to be provided as ecological compensation land covered only part of Area A referred to in the S106 Legal Undertaking and part of Area B was included. The overall area still comprised 6.6 hectares and Natural England agreed to the revised site location. The site includes 2 existing woodland areas – Alder Wood and Brickyard Shaw.

- 3.12 The details provided for the CHS included a mitigation strategy to address the impact of the proposed development on the SSSI and was set out in the Marline Valley Woods SSSI – Impacts and Mitigation Measures report dated January 2013. This report had been compiled following a request from Natural England for a stand alone document with the appropriate information extracted from the Landscape and Ecological Management Plan (LEMP) and the Environmental Master Plan (EMP) to support of the CHS. The report contained mitigation measures to be implemented in order to reduce and manage Air Quality, Pollution, Noise, Shading, Habitat Loss and Fragmentation. Management measures were proposed for Alder Wood and Brickyard Shaw. Reference was also made to where there is an overlap with specific conditions that have been attached to the planning permission (LEMP – Revision 9, Conditions 23, 24, and 25; Environmental Master Plans – Condition 7; Tree and Planting Plans – Condition 14). An indicative programme for implementation was provided by the LEMP, i.e. two years construction period and 7 years landscape aftercare period.
- 3.13 The long term management of the Habitat Land, as defined in the S106 Legal Undertaking, will be undertaken by East Sussex County Council (e-mail from Karl Taylor, Assistant Director, Operations, dated 30 January 2013).
- 3.14 The details that have been provided for the CHS, have been the subject of careful scrutiny by East Sussex County Council's Environmental Advice Team as well as Natural England, which has resulted in the requirement for a stand alone document. The County Ecologist and Natural England were satisfied with the submission details.
- 3.15 The details submitted have been considered using the Bexhill-Hastings Link Road Environmental Statement and Addendum Environmental Statement, which formed part of the determination of the Link Road planning permission. The information contained within the previously submitted Environmental Statement and Addendum, was considered to be adequate to assess the environmental effects of the development and thereby facilitate the determination of the submitted details related to the Compensatory Habitat Scheme.

3.16 Accordingly the CHS was approved on 9 April subject to:-

i) the implementation and review of the effectiveness of the CHS being reported to the Head of Planning;

ii) the provisions of the CHS being undertaken in accordance with the details submitted; including the management measures for Alder Wood and Brickyard Shaw, the additional planting between Marline Valley Woods SSSI and Brickyard Shaw (including managing an area of pasture) and managing the grassland between Alder Wood and Brickyard Shaw;

iii) the provisions in the CHS being undertaken in accordance with the relevant details in the Landscape and Ecological Management Plan submitted to satisfy Conditions 23, 24 and 25 of planning permission RR/2474/CC (EIA) – BHLR;

iv) the management of the Habitat Land being long term management and details of the arrangements post the periods identified in the Landscape and Ecological Management Plan being submitted to and agreed in writing by the Head of Planning before the expiration of the initial 7 years period;

v) any proposals for the transfer and management of the Habitat Land conforming to the provisions in the S106 Legal Undertaking (paragraphs 2(b) and 5 of Schedule 5) including the requirements for approval by the Head of Planning

Adams Farm Barn

3.17 It is a requirement of the S106 Legal Undertaking that Adams Farm Barn shall be dismantled and relocated within the site. Detailed elevation and reconstruction plans must be prepared and submitted prior to the barn being dismantled. The plans have to be approved by the Head of Planning. BHLR cannot be opened for public use until Adams Farm Barn has been reconstructed in accordance with any approved plans. To date, no plans have yet been submitted.

The Monitoring Scheme

- 3.18 The Monitoring Contribution required by Clause 3.6.1 of the Legal Undertaking was paid to the County Council prior to the commencement of development.
- 3.19 Work is currently being undertaken to establish a formal framework and programme for expenditure relating to the monitoring objectives. It is the intention that initially monitoring activities will be targeted, as relevant, to each phase of the main construction programme. So far, the main elements of monitoring undertaken have been in relation to archaeology and ecology. The focus of the ongoing monitoring will alter as construction work on the scheme continues. Joint monitoring and liaison with the Environmental Health Officer from Rother District Council has also been undertaken, primarily in relation to construction noise and dust issues.

Other Matters

- 3.20 With regard to the archaeological investigations, Oxford Archaeology undertook archaeological and geoarchaeological evaluation trenching, test pits and boreholes along the line of the Link Road, between August and October 2012. The work allowed the archaeological and palaeo-environmental potential of the scheme area to be more fully defined. During the autumn of 2012, Oxford Archaeology undertook historic structures, buildings and landscape feature surveys and carried out a metal detecting survey of the route with local volunteers coordinated through the Hastings Areas Archaeological Research Group. Archaeological mitigation work in the form of watching briefs, targeted excavations and wider strip, map and sample excavations began in April 2013 and will continue during construction. The archaeology revealed by the evaluation and ongoing mitigation excavation is broadly consistent with the levels predicted by the desk-based and earlier surreys, with confirmation, in particular, of the presence of early prehistoric (Mesolithic to Bronze Age) flint scatters at the wetland/dryland margins and evidence for Late Iron Age iron working and associated enclosures at Upper Wilting Farm.
- 3.20 Further details of all the matters contained in this Annual Report can be found on the County Council website at [http://www.eastsussex.gov.uk/environment/planning/applications/register/Detail.aspx?appno=RR/2474/CC\(EIA\)&typ=dmw_planning](http://www.eastsussex.gov.uk/environment/planning/applications/register/Detail.aspx?appno=RR/2474/CC(EIA)&typ=dmw_planning)

4 Conclusion

- 4.1 The Government has agreed to fund a contribution to the construction of the Bexhill Hastings Link Road. Certain advanced environmental works have been authorised to proceed. Final conclusion of all the necessary pre-commencement procedures has now been completed. This has involved approving a number of requirements within the S106 Legal Undertaking. The Construction Environmental Management Plan, the Complementary Highway Improvement Plan and Compensatory Habitat Scheme have all been approved subject to conditions. The Operational Environmental Management Plan, the details pertaining to Adams Farm Barn and aspects of the Monitoring Scheme all have yet to be completed and approved.

Tony Cook

Head of Planning

East Sussex County Council