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Environment Agency

Rother District Council
Development Control
Town Hall London Road
Bexhill-on-Sea
East Sussex
TN39 3JX

Our ref: KT/2014/118770/03-L01
Your ref: RR/2014/1608/P

Date: 19 December 2016

Dear Sir/Madam

AMENDED PLANS (RECEIVED 16/11/2016) - REINSTATEMENT OF THE ROTHER VALLEY RAILWAY FROM NORTHBRIDGE STREET, ROBERTSBRIDGE, TO JUNCTION ROAD, BODIAM. ROTHER VALLEY RAILWAY NORTHBRIDGE STREET, ROBERTSBRIDGE TO JUNCTION ROAD, BODIAM. SALEHURST/ROBERTSBRIDGE, EWHURST, BODIAM

Thank you for consulting us on the above proposal. We have reviewed documents submitted in support of the planning application. While we no longer object to the proposal, we recommend conditions are put in place to manage the remaining risks that this development poses.

We have reviewed the latest Flood Risk Assessment and the Addendum to the Environment Statement and we wish to raise some important considerations and recommendations.

Our previous response drew attention to Circular 06/2005 relating to biodiversity and geological conservation, which, in paragraph 99 states that “ecological surveys . . . should only be left to coverage under planning conditions in exceptional circumstances”. As we stated, it is for the Council to decide whether circumstances relating to this proposal are classed as ‘exceptional’. If this is the Council decision, we will work with Rother Valley Railway and the Council to review ecological surveys that are needed and any mitigation or compensation that are required.

We consider that the impacts on biodiversity can be mitigated by planning conditions and, taking the County Ecologist’s analysis into account, we do not wish to object on grounds of ecological surveys. However, the Council should note that it is possible that necessary mitigation will require works to be undertaken outside the red line boundary of the development.

We are satisfied that the updated baseline flood model has been undertaken to the required standards. This flood model represents the existing flood risk situation, without the railway in place.

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As part of the submitted Flood Risk Assessment, flood modelling has also been undertaken to include the reinstatement of the railway embankment and associated bridges (viaducts) and culverts. This is termed the 'with railway' model and represents the flood risk post development. We have reviewed how the railway embankment has been represented within this model, but still need to review how the structures have been implemented now that further design details have been submitted.

We have reviewed the updated Flood Risk Assessment (FRA), dated June 2016. The updated modelling does identify that there are minor increases in flood depths for the 1% plus climate change event for the 'with railway' model which are mostly within modelling tolerances. In accordance with NPPF mitigation is required for any increase in flood risk and the post development scenario should show no impact on flood risk or a reduction compared on the baseline scenario. We recommend that conditions are put in place to manage this risk.

The new design incorporates 45 circular culverts and 4 rectangular culverts to allow flood water to flow through the railway embankment and sections of the embankment that have been lowered to allow flood flows. These structures will need to be maintained by the applicant over the lifetime of the scheme.

We do require further design details to satisfy the riverine ecology and flood risk will not be impacted but we understand that design adjustments are feasible if necessary and as such we would recommend that this is dealt with through planning conditions.

If the council is minded to grant planning permission bearing in mind the above considerations, we recommend that the following conditions are included:

1 Ecology Survey condition. No development shall take place until a site-specific ecological assessment, carried out by suitably qualified and experienced ecologists has been submitted to and approved in writing by the local planning authority. The assessment must employ best practice and should include, but not be limited to:

- scoping surveys of the proposed development site as well as its immediate surroundings
- identifying and evaluating existing ecological features including any key species, including invasive species, and habitats
- precise recommendations for minimising negative impacts and maximising net biodiversity gains through habitat management, enhancement, creation of compensatory habitat and habitat restoration.

Reasons
To ensure the protection of legally protected species and supporting habitat under UK legislation, the Wildlife and Countryside Act 1981 (as amended), and European legislation, the Conservation of Habitats and Species Regulations 2010.

To secure opportunities for the enhancement of the nature conservation value of the site in accordance with Paragraphs 99, 109 and 118 of the National Planning Policy Framework and Policy EN5 of the Rother Local Plan Core Strategy.

We note that the Environmental Statement proposes mitigation options. We are only able to confirm whether these options are appropriate when surveys have been undertaken.

2 Buffer zone condition. No development shall take place until a scheme for the retention and management of a buffer zone, to be at least 8 metres wide between the toe of the railway embankment to the top of the riverbank has been submitted to and agreed in writing by the local planning authority. The schemes shall include:

- plans showing the extent and layout of the buffer zone.
- details of any proposed planting scheme (for example native species of local provenance) if required.
- details of a management plan for the lifetime of the scheme including adequate financial provision and a named body responsible for its delivery.
- details of methods to be implemented should river bank repair works be required to maintain the width of the buffer strip. This must not include installation of sheet steel piling in the river
- details of any proposed footpaths, fencing, lighting (fitted with back scatter guards to prevent light from being cast on the river) etc.

The scheme shall be implemented as approved.

Reasons
To ensure the protection of wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in accordance with Paragraphs 99, 109 and 118 of the National Planning Policy Framework and Policy EN5 of the Rother Local Plan Core Strategy.

To ensure the objectives of the River Basin Management Plan (required by the Water Framework Directive, as transposed into English law by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003) are being and can be delivered.

3 Ecology Management Condition. No development shall take place until a landscape and ecology management plan, including long-term design objectives, management responsibilities and maintenance schedules has been submitted to and agreed in writing by the local planning authority. The plan must deliver the recommendations of the approved site-specific ecological surveys and contain details of:

- the extent and type of any new planting (for example native species of local provenance)
- maintenance regimes
- any new habitat created on site
- management responsibilities.

The management plan shall be implemented as approved.

Reason
To ensure the protection of wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in accordance with

Paragraphs 99, 109 and 118 of the National Planning Policy Framework and Policy EN5 of the Rother Local Plan Core Strategy.

4 Environmental Method Statement Condition. No development shall take place until a method statement / construction environmental management plan, to be carried out by suitably qualified and experienced persons / bodies, has been submitted to and approved in writing by the local planning authority. Such a scheme shall include details of the following:

- the timing of the works
- the measures to be used during the development in order to minimise environmental impact of the works.
- the ecological enhancements as mitigation for the loss of any habitat resulting from the development
- a map or plan showing habitat areas including the river buffer zone to be protected during the works with proposed means of protection.
- any necessary mitigation for protected species
- a detailed method statement for removing or the long-term management / control of invasive non-native species
- construction methods
- all necessary pollution prevention methods.

The method statement/construction environmental management plan shall be implemented as approved.

Elements of this condition are required due to the presence of Japanese knotweed *Fallopia japonica* at Bridge 6.

Reasons
To ensure the protection of legally protected species and supporting habitat under UK legislation, the Wildlife and Countryside Act 1981 (as amended), and European legislation, the Conservation of Habitats and Species Regulations 2010.

To secure opportunities for the enhancement of the nature conservation value of the site in accordance with Paragraphs 99, 109 and 118 of the National Planning Policy Framework and Policy EN5 of the Rother Local Plan Core Strategy.

5 Protect Species condition. In the event that populations of any protected species are found by site-specific ecological surveys, no development shall take place until a plan detailing the protection and / or mitigation of damage to the population(s) has been submitted to and approved in writing by the local planning authority.

The plan shall be implemented as approved.

Reason
To ensure the protection of legally protected species and supporting habitat under UK legislation, the Wildlife and Countryside Act 1981 (as amended), and European legislation, the Conservation of Habitats and Species Regulations 2010.

6 Bridge design condition. No development shall commence on bridges until detailed drawings showing the siting, design and external appearance of all bridges (including mammal paths or tunnels) have been submitted to and approved by the local planning authority.

The bridges shall be constructed in accordance with the approved drawings.

Reason:
To ensure that the bridges do not restrict the flows in the River Rother and that riparian mammals have sufficient passage to migrate through the river corridor.

7 Flood Risk Condition. No development shall take place until such time as a scheme to ensure any increase in flood risk is appropriately managed by providing appropriate mitigation measures, has been submitted to and approved in writing by the local planning authority. All mitigation measures should take into account the flood risks over the lifetime of the development.

Reason
To ensure that the proposed works will not increase flood risk elsewhere and take account of climate change in accordance with paragraph 99, 100 and 103 of National Planning Policy Framework.

The proposal to change part of the existing flood embankment to a flood wall has not yet been modelled. This must be incorporated into the post development 'with railway' model.

Following submission of new details on the associated bridges and culverts forming part of the scheme, the implementation of these structures within the 'with railway' flood model need to be reviewed. The applicant should demonstrate that the proposed bridges and culverts are set at appropriate levels to convey flood flows. Demonstration of sensitivity to culvert blockages is necessary to confirm the degree to which maintenance is required.

Scour protection should be considered to ensure that the integrity of the railway embankment is maintained following a flood event, along the sections that will be allowed to overtop.

8 Flood defence integrity condition. No development shall take place until a working method statement to cover all works to / close to flood defences and over/under and in the vicinity of the main river has been submitted to and agreed in writing by the local planning authority. The method statement shall cover the following requirements:

- timing of works
- methods used for works
- machinery (e.g. location and storage of plant, materials and fuel)
- temporary works (e.g. access routes, temporary bridges, site compound etc.)
- protection of existing flood defences
- site supervision

The working method statement shall be implemented as approved.

Reason
To ensure that the construction phase of the works will not affect the integrity of flood defences in this area in accordance with of Policy EM8 of the Rother District Council Local Plan and the works do not affect The environment Agency flood defence improvement and maintenance works.

The proposal incorporates a replacement of an existing flood embankment to a flood wall. The present and future integrity must be demonstrated to give assurance that people will not be put at risk of flooding.

9 Flood plain storage compensation: The applicant must demonstrate that there will be no loss of floodplain storage post development, following reinstatement of the railway embankment. Any loss of floodplain storage will need to be compensated, with details submitted and approved by the LPA. Calculations will need to demonstrate that compensation can be provided on a volume by volume, level by level basis and in a suitable location.

Reason

To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.

10 Preliminary Risk Assessment Condition: Prior to the commencement of the development approved by this planning permission (or such other date or stage in the development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1. A preliminary risk assessment which has identified;
   - all previous uses;
   - potential contaminants associated with those uses;
   - a conceptual model of the site indicating sources, pathways and receptors;
   - potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
Any changes to these components require the express consent of the local planning

authority. The scheme shall be implemented as approved.

Reason: The site lies on the Alluvial deposits overlying Ashdown Formation. The Alluvium is classed as a Secondary Aquifer and the Ashdown Formation is classed as Secondary A aquifer in terms of the amounts of water it can yield for supply and its ability to provide baseflow to surface water to supply aquatic ecology. The area is therefore sensitive in terms of groundwater protection. The aquifer may be vulnerable to pollution from any contaminants present at the site.

The submitted Preliminary Land Quality Risk Assessment report (November 2013) recommends further investigation be carried to areas firstly by a second stage including data gathering and updating the site conceptual model to determine whether it will be necessary to carry out an intrusive investigation. We concur with these recommendations.

11 Verification Condition: No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reasons*:* The site lies on the Alluvial deposits overlying Ashdown Formation. The Alluvium is classed as a Secondary Aquifer and the Ashdown Formation is classed as Secondary A aquifer in terms of the amounts of water it can yield for supply and its ability to provide baseflow to surface water to supply aquatic ecology. The area is therefore sensitive in terms of groundwater protection. The aquifer may be vulnerable to pollution from any contaminants present at the site.

12 Piling Condition: Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reasons: The site is located within a sensitive area in terms of groundwater protection area and the previous uses of the site may have impacted on the quality of the underlying aquifers. This condition is therefore requested in order to ensure that the proposed foundations do not pose a risk to the underlying aquifers and the local potable water supply which abstracts groundwater directly from the chalk aquifer underlying this site. This should be constructed in accordance with Environment Agency guidance; Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention and Piling into Contaminated Sites. The guidance is available on the Environment Agency website.

National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels water pollution. Government policy also states that planning policies and decisions should ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121).

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Further information

Risk of offence under the Wildlife and Countryside Act 1981 (as amended)

The applicant could be liable to criminal prosecution under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) should any infestation of invasive non-native species (e.g. Japanese Knotweed) not be addressed appropriately.

Environment Agency consent required (herbicides)

Our consent is required for the use of herbicides within eight metres of the River Rother and other ordinary watercourses. This is to ensure that the herbicides will not have a detrimental effect on the riverine habitat. A copy of the application form can be found on the following link: http://www.environment-agency.gov.uk/homeandleisure/wildlife/31350.aspx

Flood Risk Activity Permit Informative

As of 6th April 2016, the Water Resources Act 1991 and associated land drainage byelaws have been amended and flood defence consents will now fall under the Environmental Permitting (England and Wales) Regulations 2010. Further details and guidance are available on the GOV.UK website: https://www.gov.uk/guidance/flood-risk-activities-environmental-permits.

Fuel, Oil and Chemical Storage

Where it is proposed to store more than 200 litres (45 gallon) of any type of oil on site it must be stored in accordance with the Control of Pollution (oil storage) (England) Regulations 2001. Drums and barrels can be kept in drip trays if the drip tray is capable of retaining 25% of the total capacity of all oil stored.

All chemicals should be stored in an area where spills can be contained. Chemical containers should be kept within an impermeable secondary containment area that will hold liquids if the main containers leak or break. Secondary containment areas include bunds, bunded pallets or spill pallets, sump pallets, bunded storage units and storage cabinets with integral sumps.

If you have one oil storage container in a bund, the bund must be able to hold 110% of its volume. If you have more than one container, your bund must be able to contain at least 110% of the volume of the largest container or 25% of the total volume you are likely to store, whichever is greater.

Storage areas should be covered wherever possible to avoid rainwater collecting. Bunds should be regularly inspected and any accumulated rainwater removed. If the water is contaminated this may need to be disposed of as hazardous/special waste.

Other

National Planning Policy Framework (NPPF), paragraph 109 which recognises that the planning system should aim to conserve and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in

biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. Paragraph 118 of the NPPF also states that opportunities to incorporate biodiversity in and around developments should be encouraged.

You should have regard to have regard to nature conservation and article 10 of the Habitats Directive which stresses the importance of natural networks of linked corridors to allow movement of species between suitable habitats, and promote the expansion of biodiversity.

Please note that licences will be required from Natural England to survey for, and, where any proposals are made as a last resort, to re-locate legally protected species. For further information and guidance on European Protected Species and licensing procedures see the Wildlife Management and Licensing Guidance from Natural England. Further information and guidance on UK protected species and licensing can be found under the Defra web pages for the Wildlife and Countryside Act 1981.

We acknowledge that we are asking for a large number of conditions, but please note that this is in light of the fact that not all survey information has been provided at this point. If you would like to discuss this further please contact me on the number below.

Yours faithfully

Frank Heeley
Sustainable Places Team Leader

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