

## PLANNING COMMITTEE

15 DECEMBER 2015

Present: Councillors Street (Chair), Scott (Vice-Chair), Beaney, Beaver, Edwards, Dowling, Lee, Roberts, Rogers and Wincott

Also in attendance: Tezel Bahcheli - Planning Consultant; Stephen Morgan - Barrister; Graham Parry - ACCON UK Ltd; Kal Peglar - Highways, ESCC; Murray Davidson - Environment & Natural Resources Manager; and Sam Batchelor - Acting Development Manager.

### 53. APOLOGIES FOR ABSENCE

None.

### 54. DECLARATIONS OF INTEREST

The following Councillors declared their interest in the minutes as indicated:

<u>Councillor</u>	<u>Minute</u>	<u>Interest</u>
Rogers	56.1 – Proposed Queensway Gateway Road (land between Queensway and Sedlescombe Road North), St. Leonards on Sea	Personal – Attended a meeting last week with the Lead Petitioner, Andrea Needham, plus Anthony Bradnum; Godfrey Daniel (ESCC); the Principal Solicitor and Committee Administrator. Listened but did not engage in any dialogue.
Street & Wincott	56.1 – Proposed Queensway Gateway Road (land between Queensway and Sedlescombe Road North), St. Leonards on Sea	Personal - Attended a public meeting and listened to the points raised.
Lee	56.1 – Proposed Queensway Gateway Road (land between Queensway and Sedlescombe Road North), St. Leonards on Sea	Personal – Met with residents 2½ months ago at the Town Hall. Listened to concerns but did not prejudice himself.

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### 55. PLANNING APPLICATIONS ATTRACTING A PETITION:

#### 55.1 PROPOSED QUEENSWAY GATEWAY ROAD (LAND BETWEEN QUEENSWAY AND SEDLESCOMBE ROAD NORTH), ST. LEONARDS ON SEA

Proposal:	Construction of a new road linking Sedlescombe Road North (A21) with Queensway (B2092)
Application No:	HS/FA/14/00832
Existing Use:	Undeveloped
Conservation Area:	No
National Planning Policy Framework	Achieving Sustainable Development and Sections 1, 4, 11 and 12
Hastings Local Plan – The Hastings Planning Strategy	DS2, FA1, FA6, SC1, SC2, SC4, SC7, EN1, EN2, EN3, EN4, EN6, EN7, E2, T1, T2 and T3
Hastings Local Plan – Development Management Plan	LP1, DM1, DM3, DM4, DM5, DM6 HN4, HN7, HN8, HN9, LRA7, LRA8
Public Consultation:	745 letters of objection and 2 Petitions and 7 letters of support Received

The Planning Consultant reported on an application for the construction of a new road linking Sedlescombe Road North (A21) with Queensway (B2092) at land between Queensway and Sedlescombe Road North, St. Leonards on Sea.

This application was previously considered at Planning Committee on 4 February 2015. At that time, it was resolved that planning permission should be granted for the new road subject to conditions. The planning permission was subsequently issued.

That permission was legally challenged in the High Court, and although the claim was not determined by the High Court, the planning permission was quashed by consent before reaching a hearing, on the advice of our legal Counsel. This was on the basis that the committee report did not adequately draw members' attention to the requirements of policy DM6 of the (at that time emerging – now adopted) Hastings Local Plan: Development Management Plan, nor to the fact that the development would breach statutory limits in relation to air quality. Additionally, the conditions imposed on the planning permission in relation to air quality were not sufficient to secure mitigation to overcome air quality exceedances.

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The application proposals remain the same as was considered at the meeting held in February. Members were asked to consider additional information on traffic modelling, air quality and ecology and asked to consider the proposal afresh.

In the period since the last committee meeting in February, the applicant has provided sufficient information to satisfy what were conditions 18 (environmental management plan), 19 (biodiversity monitoring plan) and 20 (ecological design strategy) with regard to the vegetation clearance phase of development and condition 24 (approved phasing of planning permission HS/FA/14/00832). In accordance with that ground clearance, EPS licences have been issued by Natural England. The development itself has not started on site.

The application site relates to land between Sedlescombe Road North (A21) and Queensway (B2092). The application site accommodates a car showroom, existing road infrastructure, existing accesses to businesses, part of the planted bank along the northern boundary of Sainsbury's car park and undeveloped land. The undeveloped land consists of open meadow/grassland, woodland and scrubland. The applicant has also identified Junction Road and Maplehurst Road as part of the application in relation to possible road closures.

The wider area has a very mixed character consisting of an industrial estate (West Ridge/Ashdown), several retail uses (Sainsbury's, Pets at Home, Dunelm Mill, McDonalds and the various car showrooms, residential development and undeveloped land.

The site crosses a local wildlife site (LWS), preserved woodland, an Archaeological Notification Area and is close to an area of Ancient Woodland.

The site also includes part of the designated Ridge West/Ashdown Industrial Estate allocated in the Hastings Local Plan 2004 (HLP) and allocations LRA7 and LRA8 which are employment allocations in the Hastings Local Plan: Development Management Plan (adopted 2015).

The applicant proposes to build a new road linking Sedlescombe Road North with Queensway – known as the Queensway Gateway Road (QGR). The QGR proposal includes 3 roundabouts – one at either end (on Queensway and on Sedlescombe Road North) where it joins the existing road network, and one in the middle which would allow for access to the allocated land for employment development.

The proposal utilises the existing Whitworth Road alignment with a new section of road being proposed from the end of Whitworth Road to Queensway. No right turn, left in and left out only junctions are proposed for the accesses to the existing businesses on Whitworth Road and a new left in and left out only junction is shown onto the northern part of Sainsbury's car park.

The proposal includes shared footways and cycleways between the middle roundabout and Sedlescombe Road North, uncontrolled crossings and upgrades and diversions to existing rights of way.

The main issues considered were the principle of development; environmental

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impacts, transport impacts, noise and vibration, air quality, ecology and nature conservation, landscape and visual amenity, ground conditions, water quality and drainage, heritage and evidence of community involvement. Transport and Air Quality are the subject of the ES Supplementary Report which has been subject to further consultation and considered in detail in the report.

The Planning Consultant considered the proposed development was acceptable in principle given the strong policy support for the proposal in the HPS and other documents. This support had recently been confirmed by the County Council's Communities, Economy and Transport Manager, the Council's Head of Regeneration and Culture, the South East Local Enterprise Partnership and Rother District Council.

She felt the proposed QGR will have a strategic role on the highway network, but also a local role in providing employment generating uses (the amount of employment floorspace required was identified through the background evidence to the Hastings Planning Strategy and Development Management Plan) and in relieving congestion in the locality.

The QGR will have the capacity to accommodate the development it intends to serve and will provide a strategic improvement to the local highway network as part of the wider collective of road improvements and the completion of the BHLR. The benefits of the QGR were summarised in the report as:-

- Releasing land for employment floorspace which is a key planning objective of the HPS and DMP.
- Improving road connectivity and redistributing traffic from the BHLR to the A21.
- Reducing congestion on The Ridge and Queensway, in the Little Ridge and Ashdown area more generally.
- Supporting the role of the HBLR in unlocking the growth corridor.

The ES, and the ES Supplementary Report, have identified the environmental effects of the development. Where adverse effects have been identified on ecology, mitigation is proposed and will be controlled by condition. Although these will not remedy all the effects, the resultant degree of harm is low when balanced against the need for the development.

The Planning Consultant considered the effect of airborne pollutants on ecology. The Report states that there are no statutory thresholds for air quality on ecological receptors, as there are for human receptors but critical levels are set. The Planning Consultant clarified this by stating that the Air Quality Standards Regulations 2010 do include a duty on the Secretary of State to ensure that the critical levels for the protection of vegetation are not exceeded. The critical levels are based on the European Air Quality Directive 2008. The Government has acknowledged that it has been in breach of its duty under the Directive to secure compliance in certain zones with the limits for nitrogen dioxide levels. The Government is currently preparing an Air Quality Plan as required under the Directive. An objector has contended that it would not be lawful for the Council to grant planning permission where the development would result in a breach of the critical levels in respect of vegetation.

The effect of the airborne pollutants on the vegetation could be significant and no

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specific mitigation is proposed for this effect. The principle effect would be that of N and NO<sub>x</sub> on any potential lower plant assemblages in the Ancient Woodland. High levels of these pollutants can cause the decline of such species, reducing overall biodiversity. Whilst there is no reported lower plant assemblage in the Ancient Woodland, the Council were advised by a member of the public that this is not the case. However, no species list is provided. The citations for the Ancient Woodland and the Local Wildlife Site do not identify lower plant species of interest. The Environmental Statement was based on a habitat survey undertaken by a competent ecologist. Although the habitat survey did not expressly state that there were no lower plant assemblages in the AW, it did not recommend there was a need for further surveys. The woodland is of county and not national significance. The steps taken by the applicant's ecologist are considered appropriate and the Borough Ecologist is satisfied with these findings.

The Air Quality Regulations include a duty for the Secretary of State to ensure that the critical levels of pollutants for vegetation are not exceeded. Planning Practice Guidance and the NPPF require Local Planning Authorities to consider the natural environment, as well as human health, in sustaining air quality limit values and objectives. As stated in the Report the NPPF advises that planning policies and decisions must reflect and where appropriate promote relevant EU Obligations and statutory requirements. Even if there were a breach of an EU limit value, which relates to human health, the PPG advises that if it is not practicable to amend the application, consideration should be given to refusing planning permission. However, the PPG does not advise that the authority has to refuse permission. The objectors who contend that it would be unlawful to grant permission where there is a breach of a critical level (which relates to ecological interests) provide no legal authority directly on this point to support that contention. There would be serious implications if an authority had to refuse planning permission in every instance where there was a breach of a critical level.

There is no specific mitigation suggested by the applicant for this effect. There is tree and shrub planting shown in the landscape plan which will provide landscaping and habitat formation, and which should have a mitigating effect on pollutant levels.

The question comes back to whether the relatively low levels of pollution that might affect lower plants in a wood of local significance can be weighed in the balance for the new road, or whether, because limit values are predicted to be exceeded, the development is open to challenge as a result. The legal advice is that there is currently no direct legal authority that indicates the authority is barred from doing so, providing it so on the correct basis as set out in the report and discussion.

The recommendation is that the need for the development is such that it outweighs the acknowledged harm to ecology. The mitigation and compensation measures go some way to alleviate that harm and are appropriate in the circumstances to meet the requirements of planning policy.

The proposals are considered to fully accord with policies DS2, FA1, SC1, EN4, EN6, E2, T1, T2, T3 of the HPS and policies DM6 of the DMP. Where there is a conflict with policies EN2, EN3 and HN8 (on ecological matters) the relatively low level of

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harm and the high level of local and strategic support means that it is considered that the proposal accords with the development plan as a whole.

After considering these matters, the Planning Consultant recommended the proposal for approval subject to conditions.

A number of amendments were noted to the resolution as follows: the deletion of Condition and Reason Nos. 5 and 6 and the correction of Conditions 3, 16, 17, 18, 19 and 21 to all refer to Condition No. '22'. Also, Note 5 be amended to read Condition Nos. 4 and '10', not 12, and Note 6 be corrected to read Condition No. '13', not 15.

The Human Rights considerations have been taken into account fully in balancing the planning issues.

The petitioner, Andrea Needham, was present and spoke against the application.

The applicant, John Shaw, was present and spoke in support of the application.

Councillor Cooke, Ward Councillor for Ashdown, was present and spoke in support of the application.

Members discussed this application at length and asked questions of the Officers present.

Councillor Edwards proposed a motion to approve the application as set out in the resolution below, subject to the deletion of Condition and Reason Nos. 5 and 6 and the correction of Conditions 3, 16, 17, 18, 19 and 21 to all refer to Condition No. '22'. Also, Note 5 be amended to read Condition Nos. 4 and '10', not 12, and Note 6 be corrected to read Condition No. '13', not 15. This was seconded by Councillor Beaver.

**RESOLVED – by 7 votes for and 3 against that planning permission be granted subject to the following conditions:-**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: C600-015 S3, C600-016 S2, C600-025 S1, C100-025 S2, C100-026 S3, and C100-040 S6.
3. Before each phase of development, in accordance with the phasing approved as part of condition 22 below, is commenced a Construction Environmental Management Plan (not including biodiversity) in accordance with the approach outlined in the chapters of the submitted Environmental Statement shall be submitted to, and approved in writing by, the local planning authority. The approved CEMP shall be adhered to throughout the construction period. The CEMP shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;

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- iii) construction traffic management; iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) measures to control noise disturbance;
  - viii) measures to investigate and remediate any land contamination;
  - ix) measures to maintain land stability during construction;
  - x) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - xi) working hours.
4. The road must be built to an adoptable standard.
  5. No development shall take place until the developer has secured the implementation of a programme of archaeological work, in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.
  6. The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 9 above to the satisfaction of the Local Planning Authority, in consultation with the County Planning Authority.
  7. The road hereby approved shall not be brought into use until the diversion of the affected footpaths has been achieved under s257 of the Town and Country Planning Act 1990.
  8. The newly created paths - as a result of the diversion of the existing Public Rights of Way - shall be constructed to an adoptable standard.
  9. Before it is implemented a scheme of soft landscaping shall be submitted to and approved by the Local Planning Authority. It shall include indications of all existing trees and hedgerows on the land including details of those to be retained, together with measures for their protection in the course of development. New soft landscaping details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate together with an implementation programme.
  10. All planting seeding or turfing comprised in the approved soft landscaping scheme shall be carried out prior to the operation of the

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road, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

11. No development shall commence until details of how the development impacts upon existing drainage and sewerage infrastructure crossing the site has been submitted to and approved in writing by the Local Planning Authority. Details shall include measures for protection and diversion of the infrastructure were appropriate. The development shall be carried out in accordance with the approved details.
12. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, including detailed hydraulic calculations, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the connectivity of different drainage features, surface water run-off generated up to and including the 1 in 100 year critical storm (including an allowance for climate change) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before development is completed.
13. The surface water drainage scheme above shall include:
  - xii) details of how the scheme shall be maintained and managed after completion;
    - details of specific measures to minimise the risk of deterioration in water quality of receiving watercourses and waterbodies downstream (for both the construction and operational phases of development);
    - details that are in accordance with the submitted Flood Risk Assessment (ref 11636 Rev D1 dated September 2014); and
    - details showing that the restricted discharge rates shall be in accordance with chapter 6 "Development Proposals", pages 18 to 31 of the FRA.
14. Before each phase of development (including demolition, ground works, vegetation clearance) in accordance with the phasing approved as part of condition 22 below is commenced a Construction Environmental Management Plan for biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:



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- Risk assessment of potentially damaging construction activities.
- Identification of “biodiversity protection zones”.
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- The location and timing of sensitive works to avoid harm to biodiversity features.
- The times during construction when specialist ecologists need to be present on site to oversee works.
- Responsible persons and lines of communication.
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details and phasing agreed, unless otherwise agreed in writing by the local planning authority.

15. Before each phase of development (including demolition, ground works, vegetation clearance) in accordance with the phasing approved as part of condition 22 below is commenced a biodiversity monitoring strategy shall be submitted to, and approved in writing by, the local planning authority. The content of the Strategy shall include the following:

- Aims and objectives of monitoring to match the stated purpose.
- Identification of adequate baseline conditions prior to the start of development.
- Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.
- Methods for data gathering and analysis.
- Location of monitoring.
- Timing and duration of monitoring.
- Responsible persons and lines of communication.
- Review, and where appropriate, publication of results and outcomes.

A report describing the results of monitoring shall be submitted to the local planning authority at intervals identified in the strategy. The report shall also set out (where the results from monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with the local planning authority, and then implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The monitoring strategy will be implemented in accordance with the approved details.

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16. Before each phase of development (including demolition, ground works, vegetation clearance) in accordance with the phasing approved as part of condition 22 below is commenced an ecological design strategy (EDS) addressing, mitigation, compensation, enhancement, restoration, shall be to and approved in writing by the local planning authority. The Ecological Design Strategy shall include the following:
- Review of site potential and constraints.
  - Detailed design(s) and/or working method(s) to achieve stated objectives.
  - Extent and location/area of proposed works on appropriate scale maps and plans. · Type and source of materials to be used where appropriate, e.g. native species of local provenance.
  - Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
  - Persons responsible for implementing the works.
  - Details of initial aftercare and long-term maintenance and management.
  - Details for monitoring and remedial measures.
  - Details for disposal of any wastes arising from works. The Ecological Design Strategy shall be implemented in accordance with the approved details and phasing and all features shall be retained in that manner thereafter.
17. Before each phase of development, in accordance with the phasing approved as part of condition 22 below, is commenced full details of the hard landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs lighting etc.); proposed and existing functional services above and below ground (eg drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.
18. All hard landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
19. No development of each phase of development, in accordance with the phasing approved as part of condition 22 below, shall commence until an adequate ground stability investigation has been undertaken and suitable stability measures have been submitted to and approved in

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writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.

- 20. Before each phase of development is commenced details of the precise extent of that phase shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved phasing.**
- 21. Prior to the construction of the proposed development a suitable ground investigation is undertaken to establish the depth of groundwater in the vicinity of the proposed attenuation basin, to be submitted and approved in writing by the Local Planning Authority and implemented in accordance with that consent.**
- 22. Prior to the commencement of development on site a CCTV survey of the existing highway drainage network should be undertaken between the point of connection and the outfall to an open waterbody to establish the capacity of the network to accommodate the expected flows. The results of the survey should be submitted and approved by the Local Planning Authority in conjunction with the Highway Authority prior to the commencement of construction on site.**

### **Reasons:**

- 1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.**
- 2. For the avoidance of doubt and in the interests of proper planning.**
- 3. In the interests of:**
  - maintaining highway safety in accordance with policy SC1 of the Hastings Local Plan: The Hastings Planning Strategy and policy DM3 of the Hastings Local Plan: Development Management Plan;**
  - maintaining a tidy appearance during construction in accordance with policy SC1 of the Hastings Local Plan: The Hastings Planning Strategy and policy DM1 of the Hastings Local Plan: Development Management Plan;**
  - protecting neighbouring residential amenities in accordance with policy SC1 of the Hastings Local Plan: The Hastings Planning Strategy and policy DM3 of the Hastings Local Plan: Development Management Plan;**
  - minimising the amount of construction and demolition waste being disposed of in landfill sites in accordance with the East Sussex County Council Supplementary Planning Document on Construction and Demolition Waste; and**
  - protecting the natural environment in accordance with policy EN1 of the Hastings Local Plan: The Hastings Planning Strategy.**

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- 4. In the interests of highway safety as the road will be part of the strategic public highway in accordance with policy T3 of the Hastings Local Plan: The Hastings Planning Strategy.**
- 5. To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with the National Planning Policy Framework.**
- 6. To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with the National Planning Policy Framework.**
- 7. To ensure that Public Rights of Way are maintained.**
- 8. In the interests of pedestrian safety.**
- 9. In the interests of the visual amenity.**
- 10. In the interests of the visual amenity.**
- 11 To prevent increased risk of flooding and to ensure there is no damage to sewerage infrastructure.**
- 12. To reduce the risk of flooding, both on and off site, to improve and protect the water quality and improve habitat and amenity in accordance with the principles of the NPPF.**
- 13. To reduce the risk of flooding, both on and off site, to improve and protect the water quality and improve habitat and amenity in accordance with the principles of the NPPF.**
- 14 To protect features of recognised nature conservation importance.**
- 15. To protect features of recognised nature conservation importance.**
- 16. To protect features of recognised nature conservation importance.**
- 17. In the interests of the visual amenity and to ensure mitigation measures suggested in the submitted Environmental Statement are realized.**
- 18. In the interests of the visual amenity and to ensure mitigation measures suggested in the submitted Environmental Statement are realized.**
- 19. To ensure adequate mitigation for land instability in accordance with policy DM5 of the Hastings Local Plan: Development Management Plan.**
- 20. In the interests of allowing the development to continue in a flexible but controlled manner.**

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- 21. To reduce the risk of flooding, both on and off site, to improve and protect the water quality and improve habitat and amenity in accordance with the principles of the NPPF.**
- 22. To reduce the risk of flooding, both on and off site, to improve and protect the water quality and improve habitat and amenity in accordance with the principles of the NPPF.**

### **Notes to the Applicant**

- 1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.**
- 2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.**
- 3. Erection of flow control structures or any culverting of an ordinary watercourse requires consent from the Lead Local Flood Authority which is East Sussex County Council;**
- 4. Works to the existing highway will require a s278 legal agreement with East Sussex County Council;**
- 5. The requirements of condition 4 and 10 above should be discussed with East Sussex County Council prior to the start of construction and completion of a s38 legal agreement.**
- 6. The applicant is advised to contact Southern Water with regard to condition 13 above.**
- 7. Any works affecting the watercourses as a result of culverting will require Ordinary Watercourse Consent from the Lead Local Flood Authority.**

(The Chair declared the meeting closed at. 7.38 pm)