



Public Document Pack

Arun District Council
Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Tel: (01903 737500)
Fax: (01903) 730442
DX: 57406 Littlehampton
Minicom: 01903 732765

e-mail: committees@arun.gov.uk

Committee Manager Andrew Bishop (Ext. 37984)

7 December 2021

SPECIAL PLANNING COMMITTEE

A Special meeting of the Planning Committee will be held in the **Council Chamber at the Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF** on **Wednesday 15 December 2021 at 2.00 pm** and you are requested to attend.

Members: Councillors Chapman (Chair), Lury (Vice-Chair), Blanchard-Cooper, Bower, Charles, Coster, Edwards, Goodheart, Kelly, Thurston and Tilbrook

PLEASE NOTE: Subject to Covid-19 Risk Assessments members of the public are advised of the following:

Where public meetings are being held at the Arun Civic Centre in order to best manage safe space available, members of the public are in the first instance asked to watch the meeting online via the Council's Committee pages – the meeting will be available to watch live via this [link](#).

- a) Where a member of the public has registered a request to speak, they will be invited to submit their statement in advance of the meeting to be read out by an Officer. In response to the continuing health guidelines, there will be very limited public access to this meeting. Admission for public speakers will be by ticket only. Attendees will be asked to sit in an allocated seat in the public gallery on a first come first served basis. Only one ticket will be available per person.
- b) It is recommended that all those attending take a lateral flow test prior to the meeting.
- c) All those attending the meeting will be required to wear face coverings and maintain safe distancing when in the building/meeting room.
- d) Members of the public must **not** attend any face to face meeting if they or a member of their household have Covid-19 symptoms.

For further information on the items to be discussed, please contact:
committees@arun.gov.uk

PLEASE NOTE THAT THE ORDER OF THE AGENDA MAY BE ALTERED AT THE DISCRETION OF THE CHAIRMAN AND SUBJECT TO THE AGREEMENT OF THE MEMBERS OF THE COMMITTEE

PLEASE ALSO NOTE THAT PLANS OF THE APPLICATIONS DETAILED IN THE AGENDA ARE AVAILABLE FOR INSPECTION AT THE COUNCIL'S PLANNING RECEPTION AT THE CIVIC CENTRE AND/OR ON LINE AT www.arun.gov.uk/planning<<http://www.arun.gov.uk/planning>>

AGENDA

1. APOLOGIES FOR ABSENCE

2. DECLARATIONS OF INTEREST

Members and Officers are reminded to make any declarations of pecuniary, personal and/or prejudicial interests that they may have in relation to items on this agenda and are reminded that they should re-declare their interest before consideration of the item or as soon as the interest becomes apparent.

Members and officer should make their declaration by stating:

- a) the application they have the interest in
- b) whether it is a pecuniary, personal and/or prejudicial
- c) the nature of the interest
- d) if it is a prejudicial or pecuniary interest, whether they will be exercising their right to speak to the application

3. VOTING PROCEDURES

Members and Officers are reminded that voting at this Committee will operate in accordance with the Committee Process as set out in the Council's adopted Planning Local Code of Conduct for Members and Officers at Part 8 of the Constitution. A copy of the Planning Local Code of Conduct can be obtained from Planning Services' Reception and is available for inspection in the Members' Room.

4. MINUTES

(Pages 1 - 10)

To approve as a correct record the Minutes of the meeting held on 24 November 2021.

5. ITEMS NOT ON THE AGENDA WHICH THE CHAIRMAN OF THE MEETING IS OF THE OPINION SHOULD BE CONSIDERED AS A MATTER OF URGENCY BY REASON OF SPECIAL CIRCUMSTANCES

6. **FITZALAN LINK ROAD, LITTLEHAMPTON**

(Pages 11 - 44)

The acoustic fence was granted permission under permission LU/234/16/RES at Arun's Development Control Committee on 17 October 2017. This report invites the Committee to consider whether they wish to investigate options around amending/withdrawing the permissions granted and follows the decision of the Committee on 18 May 2021 to commission an independent report to undertake a review of previous decisions and provide advice on possible actions available to the Council.

Note: Reports are attached for all Members of the Committee only and the press (excluding exempt items). Copies of reports can be obtained on request from the Committee Manager.

Note: Members are reminded that if they have any detailed questions would they please inform the Chairman and/or relevant Director in advance of the meeting.

Note: Filming, Photography and Recording at Council Meetings - The District Council supports the principles of openness and transparency in its decision making and permits filming, recording and the taking of photographs at its meetings that are open to the public. This meeting may therefore be recorded, filmed or broadcast by video or audio, by third parties. Arrangements for these activities should operate in accordance with guidelines agreed by the Council and as available via the following link – [PART 8 - CP - Section 5 Filming Photographic Protocol](#)

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PLANNING COMMITTEE

24 November 2021 at 11.00 am

Present: Councillors Chapman (Chair), Lury (Vice-Chair), Blanchard-Cooper, Bower, Charles, Coster, Edwards, Goodheart, Pendleton (Substitute for Kelly), Thurston and Tilbrook

The following Members were absent from the meeting during consideration of the matters referred to in the Minutes indicated:- Councillor Thurston – Minute 462 to Minutes 464; Councillor Charles – Minute 462 to Minute 465 (Part); Councillor Goodheart – Minute 466 (Part) and Minute 471 (Part).

Councillor Elkins was also in attendance for all or part of the meeting.

Apologies: Councillor Kelly

462. DECLARATIONS OF INTEREST

Councillor Pendleton declared a Personal Interest in Agenda Item 11 [F/4/20/OUT - Land at Ford Airfield, Ford] as a Member of West Sussex County Council.

463. MINUTES

The Minutes of the meeting held on 27 October 2021 were approved by the Committee and signed by the Chair.

464. ITEMS NOT ON THE AGENDA WHICH THE CHAIRMAN OF THE MEETING IS OF THE OPINION SHOULD BE CONSIDERED AS A MATTER OF URGENCY BY REASON OF SPECIAL CIRCUMSTANCES

The Chair confirmed that Agenda Item 7 [AL/87/21/PL - Oldlands Farm, Newlands Road, Bognor Regis PO22 9FJ] had been withdrawn from the agenda ahead of the meeting.

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465. F/4/20/OUT - LAND AT FORD AIRFIELD, FORD

[Councillor Pendleton re-declared her Personal Interest made at the beginning of the meeting. Councillor Thurston joined the meeting at the beginning of this item. Councillor Charles joined the meeting during this item and declared a Personal Interest as a Member of West Sussex County Council.]

5 Public Speakers

Cllr Colin Humphris – Climping Parish Council

Nigel Searle - Objector

Philip Atkinson - Objector

Robin Shepherd - Agent

Paul Collins - Supporter

Outline planning application (with all matters reserved except for access) for the development of up to 1,500 dwellings (Use Class C3), 60-bed care home (Use Class C2), up to 9,000 sqm of employment floorspace (Use Classes B1), local centre of up to 2,350 sqm including up to 900 sqm retail / commercial (Use Classes A1-AS) and 1,450 sqm community / leisure floorspace (Use Classes D1- D2), land for a two-form entry primary school (Use Class D1), public open space, allotments, new sports pitches and associated facilities, drainage, parking and associated access, infrastructure, landscape, ancillary and site preparation works, including demolition of existing buildings and part removal of existing runway hardstanding. This application affects a Public Right of Way. This application is the subject of an Environmental Statement. This application may affect the setting of a Listed Building. This application falls within CIL Zone 1 - Zero Rated.

The Chair welcomed Stephen Gee from West Sussex County Council to the meeting. The Principal Planning Officer presented the report with both written and verbal updates and explained the Officer recommendation had changed from Delegated Conditional Approval to Deferral due to the need to clarify discrepancies between odour assessments carried out on the site. This was followed by 5 Public Speakers and a representation from Alan Lovell read out by the Chair.

Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- several questions remaining unanswered (the need for improvements to the Oystercatcher junction, increased vehicle numbers including cyclists, whether improvements needed or should be completed before any of the new properties are occupied, public money via the Section 106 agreement going to a private cricket club, the viability of a bus service only once a third of properties are occupied and whether the developers should subsidise a service) and the issue of the odour assessment not being the only grounds for deferral

- concerns over the allocations of the section 106 contributions, and the need for these details to be agreed by Committee in order to more appropriately assess the application
- the objection from Grundon, why they are objecting on the grounds of odour given their role in producing some of it and Grundon's own planning application with West Sussex County Council which Arun opposed due to conflicts with the Local Plan
- support for the Masterplan having been developed with the community and for working within the constraints it had to, but the need for more joined-up thinking on all the infrastructure issues in the area (Ford Lane, Horsemere Green Lane) with Active Travel Plans and public transport arrangements to be in place before people begin move into the development to foster positive transport habits
- an increased strategic significance to be made of Ford Rail Station
- the application being an Outline planning application with all matters reserved except for access
- the length of time (22 months) the application has taken to reach Committee, it being a strategic site for house building in the District, and whether if after two sets of odour assessments deferral was a reasonable course of action or imposing further conditions was more appropriate
- no objection from West Sussex County Council Highways, but willingness from the developer to work with some of the issues posed (Horsemere Green Lane, Ford Lane)
- further appreciation that the developers and community had worked hard to create something effective and desirable, but recognition that issues still remained - highway issues and increased traffic (Climping, Ford Lane, level crossings, North End Road, into Arundel, Oystercatcher junction) in conflict with NPPF paragraph 111 and the need for a plan to deal with these issues before a decision could be made; odour issues and the differing views of consultants; conservation issues and comments from Historic England; development not providing essential road link needed between A27 and A259
- different modes of public transport – shuttle services between villages
- the need for historical information relating to the site to be made available
- whether the rail bridge at Ford should be a top priority and without it whether other improvement works would have limited impact

The Committee

RESOLVED

That the application be DEFERRED to allow for further consideration of the trigger points of Heads of Terms of the Section 106 agreement and the odour assessments.

466. WA/63/21/PL - LAND EAST OF TYE LANE, WALBERTON

[Councillor Goodheart was absent for the vote on this item.]

Proposed alternative vehicular accesses of Tye Lane and emergency access of Avisford Park Road, along with minor highway works following WA/95/18/RES (resubmission following WA/93/20/PL). This site is CIL Zone 2 (Zero Rated) as other development.

The Chair again welcomed Stephen Gee from West Sussex County Council to the meeting. The Principal Planning Officer presented the update report which dealt specifically with the reasons given for deferral at the Planning Committee on 27 October 2021:

- a) traffic movements at the junction of Tye Lane and The Street
- b) traffic movements through the village centre along The Street
- c) confirmation that the reduction in the width of Tye Lane to accommodate the pavement would not impair the free flow of traffic

Members then took part in a full debate on the deferred application where a number of points were raised and responded to by Officers, including:

- whether there were any public benefits to the application of a new access to balance the harm caused to Walberton Conservation Area by the increase in traffic through the village
- the issue of narrow roads in the village, in parts only 5m wide, with significant on-road car parking and the reality of one-way traffic in response to this
- traffic already generated by the school
- it being a Conservation Area and the report confirming that harm would occur
- the development already having an access and whether this precluded the granting of a new access being regarded as public benefit
- contrary to various points in the Local Plan and NPPF (paragraphs 199-203)
- the new access being unnecessary and it now being the responsibility of the Planning Authority if the developer cannot sell the houses due to delays in the A27 Arundel bypass decision process
- whether the condition in the original report that the proposed improvements to Tye Lane and The Street being made in advance of the access works could be added to other similar planning applications in future where evidence demonstrated
- road widths not meeting Arun's criteria and the role of criteria if they are not being worked to
- whether, if approved, the original access would be closed
- acceptance that there would be harm but less clarity there would be public benefit

The Committee

RESOLVED

That the application be REFUSED as the implementation of the proposed alternative vehicular access off Tye Lane would result in an increased intensity of traffic movements along The Street in Walberton Village Conservation Area which would have a negative impact on the Conservation Area and its setting resulting from the development proposed which would conflict with paragraph 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Whilst there would be less than substantial harm to the Walberton Village Conservation Area there are no public benefits of the proposed development to sufficiently outweigh the harm caused to the Conservation Area. Consequently, the proposed development is contrary to Policy HER SP1 and Policy HER DM3 of the Arun Local Plan, the National Planning Policy Framework (2021), and Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).

467. FG/163/21/PL - THE CHALET, LITTLEHAMPTON ROAD, FERRING BN12 6PG

6 Public Speakers

Cllr Stephen Abbott – Ferring Parish Council

Peter Hyatt - Objector

Ed Miller – Objector

Joanna Goodman – Applicant

Hugh James - Agent

Cllr Roger Elkins - Arun District Council Ward Member

Development comprising of marine workshop & boatyard, martial arts gym (Class E) & storage container compound (Class B8) to replace former glasshouses. This site is a Departure from the Development Plan & is in CIL Zone 3 (Zero Rated) as other development.

The Planning Area Team Leader presented the report. This was followed by 6 Public Speakers.

Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- the site being previously horticultural and bounded by countryside on east, west and largely to south in a strategic gap between settlements
- proximity to Highdown Hill and an ancient burial ground
- the application having the effect of extending the semi-industrial boundary southwards
- there being no exceptional reason to approve this application in the strategic gap contrary to the Local Plan

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- whether the activities proposed were appropriate for the site, consequences for traffic on the A259 and why a pre-existing business needed to move to this site
- there being commercial development in a settlement gap
- it being material that the South Downs National Park Authority have objected to this application
- the proposed design having an adverse visual impact
- concerns over the height of the development and impacts on surrounding residents
- the width of roads especially when considering vehicles towing boats
- the issue of noise and odour
- the extent of the opening hours and the impact on residents
- positive development for future of small businesses in the area

The Committee

RESOLVED

That the application be REFUSED by reason of its location, types of use and heights of buildings will have an unacceptable impact on the character and appearance of the area and serve to unacceptably erode the strategic gap between Angmering and Worthing contrary to policies C SP1, D DM1 and SD SP3 of the Arun Local Plan and policy 7 of the Ferring Neighbourhood Plan.

468. M/99/21/PL - GUERNSEY FARM, YAPTON ROAD, MIDDLETON-ON-SEA PO22 6DY

[Councillor Pendleton declared a Personal Interest as an Arun District Councillor and West Sussex County Councillor for the ward.]

3 Public Speakers

Siobhan Jasper - Objector

Paul Carnell - Agent

Cllr Shirley Haywood - Arun District Council Ward Member

Change of use of existing farm shop and agricultural buildings to light industrial (Class E(g)) and storage and distribution use (Class B8). This site is in CIL Zone 5 (Zero Rated) as other development.

The Planning Area Team Leader presented the report. This was followed by 3 Public Speakers.

Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- whether designation as a locally listed building would have any impact on the uses suitable for the building and afford any protections from light industrial use
- the conditions restricting storage on site and whether this was also possible for restricting vehicle parking or access for larger vehicles
- the agricultural land having been taken on by another farmer
- the recoverability of previous Section 106 agreements
- the ambience of this part of Middleton village and its agricultural/rural setting
- the state of Yapton Road and its already high levels of traffic, and how further increases would compromise the use of the road for local residents
- vehicular access by a narrow alley and the potential risk of damage to the fabric of the barn, and therefore whether Newlands Barn (Building 1 in the Officer's presentation) should be excluded from the application and protected
- the risk of setting a precedent for development/storage on surrounding fields and changing the character of the area
- contrary to the Local Plan EMP DM1
- the restrictive conditions on previously approved applications on the site to limit the risk of damage to the barn
- whether the application could be deferred until the listed designation and any protection is known

With the Chair casting a second, deciding vote,

The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report subject to the conditions as detailed

469. BR/222/21/PL - VINCENT HOUSE, 75 HIGHFIELD ROAD, BOGNOR REGIS PO22 8PD

1 Public Speaker

Creation of 1 No 1 Bed & 1 No 2 bed Units to roof space of existing block with 2 No new car parking spaces and revised access provision. This site is in CIL Zone 4 (Zero Rated) as flats.

The Planning Area Team Leader presented the report with updates. This was followed by 1 Public Speakers.

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Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- concerns over traffic and parking on Highfield Road, but this application having more parking per unit than previously approved applications on the road
- the extra land acquired for additional parking
- concerns of overlooking and the possibility of obscured glass

The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report and report update subject to the conditions as detailed and a Section 106 agreement.

470. LU/263/21/PL - LAND AT UNIT 4 HAWTHORN ROAD, HAWTHORN ROAD, LITTLEHAMPTON BN17 7LT

Construction of a two-storey office building (Use Class E). This application is in CIL Zone 2 (Zero Rated) as other development.

The Planning Area Team Leader presented the report.

The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report subject to the conditions as detailed

471. AL/89/21/PL - MILDMAY, HOOK LANE, ALDINGBOURNE PO20 3TE

[Councillor Goodheart was absent for the vote on this item.]

Demolition of existing property and erection of new 4 bed dwelling house with ancillary parking.

The Planning Area Team Leader presented the report.

Members then took part in a debate on the application where the habitat survey conditions were clarified.

The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report subject to the conditions as detailed. If a suitable Phase 1 Habitat survey is not submitted within 2 weeks following the Committee the application shall be refused for the following reason:

Due to the lack of a Phase 1 Habitat study/mitigation strategies the development has not demonstrated it will not have an adverse impact on wildlife in accordance with policy ENV DM5 of the Arun Local Plan and EH12 of the Aldingbourne Neighbourhood Plan.

If a Phase 1 study/mitigation strategies is submitted in the timescale the final decision shall be delegated to the Group Head of Planning, following reference to the Committee Chair on any additional conditions.

472. LU/251/21/PL - 57 RIVER ROAD, LITTLEHAMPTON BN17 5DD

2 Public Speakers

Partial demolition of number 57 River Road, change of use & redevelopment to provide a flatted development comprising 6 No apartments, with private amenity space, parking & cycle storage. including the partial demolition of the adjacent boundary wall to provide a new pedestrian access & the creation of a floating pontoon with resident morning spaces (resubmission following LU/247/21/PL). This application affects the character & appearance of the Littlehampton River Road Conservation Area & is in CIL Zone 4 (Zero Rated) as flats.

The Planning Area Team Leader presented the report. This was followed by 2 Public Speakers.

Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- protection of the flint walls and whether more could be done to protect the heritage of the building
- support for the design and the sympathetic use of the existing building
- concerns raised over underground car parks next to flood areas
- that historical information on the area would be publicly available for visitors

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The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report subject to the conditions as detailed

473. EP/64/21/PL - 111 SEA ROAD, EAST PRESTON BN16 1NX

1 Public Speaker

Sioned Vos – Objector

Alterations to existing premises to facilitate use as Office. This site is in CIL Zone 4 (Zero Rated) as other development.

The Planning Area Team Leader presented the report. This was followed by 1 Public Speaker.

Members then took part in a full debate on the application where a number of points were raised and responded to by Officers, including:

- the Arun design guide and how it should be being used
- preservation of the building's fabric
- a desire that the colour be sympathetic
- the use of materials
- the building not being in a conservation area or listed, and the shopfronts differing across the row

The Committee

RESOLVED

That the application be APPROVED CONDITIONALLY as detailed in the report subject to the conditions as detailed

474. APPEALS

The Committee noted the Appeals list.

(The meeting concluded at 4.20 pm)

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF SPECIAL PLANNING COMMITTEE ON 15 DECEMBER 2021

SUBJECT: Fitzalan Link Road, Littlehampton

REPORT AUTHOR: Neil Crowther, Group Head of Planning

DATE: November 2021

EXTN: 01903 737839

AREA: Planning

EXECUTIVE SUMMARY:

The acoustic fence was granted permission under permission LU/234/16/RES at Arun's Development Control Committee on 17 October 2017. This report invites the committee to consider whether they wish to investigate options around amending/withdrawing the permissions granted and follows the decision of the Committee on 18 May 2021 to commission an independent report to undertake a review of previous decisions and provide advice on possible actions available to the Council.

RECOMMENDATIONS:

That the Committee

- i. Support the principle of reducing the height of the acoustic barrier to 2.5m subject to further work being undertaken regarding the quantification of the costs that the Council would be liable for the physical works, potential scale of any future compensation claims, and the likely costs associated with pursuing a formal modification of the planning permission through Section 102 & 103.
- ii. Require a focused consultation takes place for properties on the eastern side of Highdown Drive to gauge public opinion.
- iii. Confirm that discussions continue with West Sussex County Council and Persimmon Homes to seek an agreed solution seeking to negate the need for any formal legal process.
- iv. Require a further report to be provided to the committee on progress on these matters.

1. BACKGROUND:

- 1.1 On 18 May 2021, the Committee resolved to commission a report from independent experts to review the decisions taken, identify what legal options exist for securing changes to the acoustic fence that had been granted planning permission to the rear of Highdown Drive and consider the implications, including financial and legal, of those options.

1.2 Following the meeting, briefs were prepared in consultation with the Chairman and Portfolio Holder at the time, to seek fee proposals for this work. No fee proposals were initially received from planning consultants to provide advice on the technical aspects on what options there were for changing the fence and whether these options have technical implications. Specialist noise consultants were then approached, and this instruction was delayed until early August.

1.3 The reports on the legal options and the technical aspects of the options have now been received. These reports are appended in full to the cover report.

Legal Options

1.4 The report from Town Legal makes the following comments on the legal options open to the Council;

- (Para 2.6) There does not appear to be any obvious errors in process or judgement in relation to the decision making relating to the acoustic barrier.
- The barrier has been constructed lawfully.
- The Council has legal powers to revoke or modify a planning permission but that cannot affect those operations that have been previously carried out.
- There are also powers (para 3.3) to permit alterations to works already carried out. The use of this power would essentially be to create a new permission. However, only the Secretary of State has the power to confirm this, and this will only be done following representations from all parties.
- The advice is that the lowering of the height of the existing fence would constitute an 'alteration', but the relocation of the fence may not.
- In order to be successful in this process, the Council would need to produce robust evidence to support the decision (para 3.8).
- This process will also involve compensation to the developer and any alterations would need to be carried out at the Council's cost.

1.5 In addition this would include any costs assisted with Part 1 claims under the land compensation act 1973.

1.6 If the Council decided to pursue the use of Section 102 & 103, then it would need to instruct legal Counsel at the start of the process to ensure that all the correct processes and documentation are followed as well as discussing what litigation liabilities there may be with suitably qualified legal advisor.

1.7 An alternative to the use of Section 102, would be to make a request to WSCC to carry out further mitigation work under the terms of their S278 agreement. This could only be done after a new planning permission had been granted. WSCC could make amendments to the barrier but para 3.23 & 3.24 of the report highlights that it would be unlikely to use this power. There are alternative powers available to Highway Authority to improve the amenity of the highway, but this would only serve to mitigate the existing rather than change it.

- 1.8 WSCC would not make any changes to the barrier without a new planning permission in place because they could not make any changes that would breach existing permissions and these works would almost certainly indemnify the s278 agreements that currently exist.

Technical Options

- 1.9 The appointed consultant (24 Acoustics) advises that both their assessment and the assessment undertaken to accompany the application demonstrate that mitigation against adverse impacts of the new road is required. The road will result in additional noise levels of approx. 18db which should be mitigated.
- 1.10 The appointed consultant has assessed the likely noise impacts that may result after mitigation. They conclude that a 3.5m high barrier will provide adequate mitigation but they consider that the noise levels that properties will experience will be higher (by about 5db) than the survey that accompanied the application.
- 1.11 However, this is due to a number of factors that include the fact that the barrier assessed was in a different location to that shown on the application drawings (it was shown adjacent to the carriageway and not to the rear of properties in Highdown Drive), the assumptions for the percentage of HGV movements and the fact that the only assessment was at 4m (first floor windows).
- 1.12 The assessment that accompanied the application also only assessed one option – a 3.5m barrier. This demonstrated that this would provide suitable mitigation, but it did not carry out an assessment of any other option to determine if these would provide adequate mitigation.
- 1.13 The consultant has assessed the likely mitigation at both 4m (first floor window height) and 1.5m (levels in rear gardens). They have also assessed the likely difference between a 3.5m barrier and a 2.5m barrier and other variables. The conclusions are;
- A 2.5m barrier results in noise levels being increased by approx. 3 – 4db. The minimum perceptible difference is 3db but that would only be relevant if the noise source existed at present (if the noise source was already occurring).
 - A 2.5m barrier would result in night time noise levels of 50 - 53 db. These are within the recommended levels of 55db.
 - A difference in surface materials would account for only 1db difference.
 - A change to a 30mph road would account for only 1- 2db reduction in levels.
- 1.14 They conclude that, even though a 2.5m barrier would provide less mitigation than a 3.5m barrier, the levels would still be within recommended levels.

Officer Comment

1.15 From the advice received it would appear to Officers that there is an acceptable technical solution. The barrier could be reduced in height to 2.5m and still retain an acceptable level of noise protection to the properties in Highdown Drive. The technical assessment undertaken has not assessed the potential impact on type 1 claims under the Land Compensation Act and this matter will require further consideration. It is not a straightforward process to just get the barrier changed in height. If the Committee were to resolve that this was the preferred course of actions, there are essentially two processes that could be followed.

1. Arun District Council could seek to persuade Persimmon Homes (or WSCC) to submit a planning application to amend the height of the barrier. If they agree to the principle of this, ADC will likely have to meet all of the costs associated with the planning process and the operational works required to reduce the height. ADC could submit the application on but there would be greater issues around having the correct technical officers/consultants to carry out this work (WSCC and Persimmon would have them in-house).

In addition, there would need to be an indemnity for potential compensation claims.

2. If Persimmon and WSCC do not agree to this process, ADC would have to pursue a legal process outlined in para 1.5 which would obviously involve greater costs and a longer time period because Legal Counsel would need to be instructed to guide the Council through the process. This would also only be successful if the Council were able to convince the Secretary of State to agree. Once a legal process is complete, and if successful, all of the costs outlined in 1. Above would apply.

Other Matters

1.16 As mentioned above, it is not simply a case of getting the barrier reduced in height. There are significant issues that need to be considered before a final commitment to this process can be stated.

1.17 If the height of the barrier was reduced in height and it did not perform mitigation of noise to an acceptable degree, then the residents of Highdown Drive could potentially make a compensation claim to the Council. Officers have sought advice from consultants who normally act for the County Council regarding land compensation claims on other road schemes. However, to date, we have not been successful in getting any response from them. Officers have been unable to make any progress on this matter to date. Committee need to be aware that there is potential for compensation claims which the authority would need to be prepared to bear the cost of these if they were successful. Members should also be mindful that this issue is likely to take a significant length of time to resolve.

- 1.18 Officers have also approached WSCC to seek to determine whether they would be willing to discuss reducing the height of the barrier (after they adopt the road and barrier). They have been provided with copies of the consultant reports to consider. WSCC have confirmed that they would be willing to discuss do this. However, as per the advice from Town Legal, require a planning application to be made so that there was a clear and transparent decision-making process. This would allow so that all those affected by the proposal had the opportunity to comment.
- 1.19 Officers have sought to obtain an estimate of likely costs because the Council would be likely to be liable for the costs of any works. Officers requested Persimmon to provide a likely cost estimate for these works so that an informed decision could be taken. Whilst Persimmon are seeking these details, no firm estimate has been provided to date. On this matter it should also be noted that there may be potential issues with the warranty of the barrier if substantial works are proposed to it.
- 1.20 Officers are meeting with WSCC and Persimmon on 8 December so a verbal update may be provided at the meeting on these matters.

Conclusion

- 1.21 Based on the comments of members at the previous meeting, it would appear that there is a consensus among members that the height of the acoustic barrier should be lowered. Paragraph 1.15 of this report highlights the two options available in order to achieve this and it would be hoped that option 1 can be used with the willingness and agreement of all parties concerned. It will also be a lengthy process that will not be resolved over a few months.
- 1.22 However, it is not as simple as just deciding that the Council want to reduce the height of the barrier. Even if option 1 could be pursued, there are a number of implications as well as potentially significant costs to consider.
- The Council would likely have to cover to costs of submitting a planning application for the reduced height
 - There are risks of future compensation claims if a reduced height barrier does not perform as well acoustically
 - The Council would have to cover the costs of carrying out works to reduce the height of the barrier.
- 1.23 If option 1 cannot be pursued with the co-operation of West Sussex County Council and Persimmon Homes, then a formal legal process would have to be pursued. There would be obvious time and cost implications associated with this course of action. It is therefore necessary to understand the position of West Sussex County Council and Persimmon Homes.
- 1.24 As set out above, there are still a great deal of unknowns to investigate before a formal process can be followed. Officers will continue to seek details in respect of these so that any decision to reduce the height of the barrier can be taken with certainty of costs.

2. PROPOSAL(S): <p>1. Arun District Council could seek to persuade Persimmon Homes or WSCC to submit a planning application to amend the height of the barrier. If they agree to the principle of this, ADC will have to meet some or all of the costs associated with the planning process and the operational works required to reduce the height. ADC could submit the application on but there would be greater issues around having the correct technical officers/consultants to carry out this work (WSCC and Persimmon would have them in-house).</p> <p>2. If Persimmon and WSCC do not agree to this process, ADC would have to pursue a legal process outlines in para 1.5 which would obviously involve greater costs and a longer time period because Legal Counsel would need to be instructed to guide the Council through the process. This would also only be successful if the Council were able to convince the Secretary of State to agree. Once a legal process in complete, and if successful, all of the costs outlined in 1. Above would apply.</p>		
3. OPTIONS: <p>1. To agree to the recommendation in this report</p> <p>2. To confirm that the barrier, as built, will remain and that no further work or costs will be required.</p>		
4. CONSULTATION:		
Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		x
Relevant District Ward Councillors	x	
Other groups/persons (please specify)		
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial	x	
Legal	x	
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		

6. IMPLICATIONS:

There are potentially significant legal and financial implications if the Council resolved to pursue a course of action to formally lower the height of the barrier.

7. REASON FOR THE DECISION:**8. BACKGROUND PAPERS:**

[Planning Committee Agenda papers for 18 May 2021](#)

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Arun District Council

Advice Note on Fitzalan Link Road Acoustic Barrier

1. Introduction

- 1.1 We are instructed by Arun District Council (“ADC”) to consider the planning position in relation to the ongoing erection of a 3.5 metre tall galvanised “weathered” steel acoustic barrier on the new Fitzalan Link Road, Littlehampton, West Sussex (the “Acoustic Barrier”).
- 1.2 This advice note has been prepared for the benefit of ADC only and shall not be relied on by any other party.
- 1.3 For the avoidance of any doubt, this note addresses the law and ADC’s options in the context of planning legislation (with some relevant references to highways legislation), it does not however cover other potentially relevant legislative regimes that may impact upon proposals (which will clearly also need to be considered when assessing ADC’s options).
- 1.4 We understand that the developer, Persimmon Homes (the “Developer”), who is undertaking the construction of the Acoustic Barrier has obtained a number of planning consents and approvals for the structure (as discussed in more detailed in section 2 of this Advice) and that they are in the process of building out under these extant consents. We also understand, based on discussions with West Sussex County Council (“WSCC”) officers, that construction of the Acoustic Barrier is now very nearly completed, if not completed already.
- 1.5 We are aware that a number of complaints have been made by individuals whose properties abut the Acoustic Barrier who allege that it will impact upon their amenity as, in summary, they consider it to be unsightly in appearance and overbearing in nature (primarily on the basis of its height and the materials used for its construction). We also note that our commission to review ADC’s options in respect of the Acoustic Barrier follows on from these concerns and the desire of ADC Councillors to explore potential alterations to the barrier, particularly whether there is scope for a reduction in its height or relocation. We also aware that the matter has attracted some local press coverage¹.
- 1.6 We understand that ADC has made contact with the Developer to explore potential reductions in the height of the barrier, however, the Developer has confirmed that it is not willing to make any alterations (in terms of height or materials) and is continuing with construction of the Acoustic Barrier in accordance with the approved planning consents and approvals.
- 1.7 We are asked to provide an advice note covering the following matters:
- (a) A review of the decisions already taken to establish if there are any issues (in process or judgment);
 - (b) To identify what legal options exist for securing changes to the Acoustic Barrier; and

¹ <https://www.littlehamptongazette.co.uk/news/politics/developer-explains-rationale-for-high-littlehampton-acoustic-fence-3192270>
<https://www.littlehamptongazette.co.uk/news/politics/controversial-fence-between-new-road-and-littlehampton-homes-to-be-discussed-3240751>
<https://www.theargus.co.uk/news/19486765.furious-littlehampton-residents-slam-new-massive-prison-like-acoustic-barrier/>

- (c) Confirm the implications of the matters set out in (b) above, including financial (compensation and legal implications).
- 1.8 We are asked to specifically advise, which we have incorporated when dealing with the headings above, as to which of the identified options has the most likely chance of success and the potential costs attached. We are also asked to specifically consider whether section 97 of the Town and Country Planning 1990 (“TCPA”) (relating to the revocation or modification of planning permission) would be an available / appropriate option.
- 1.9 We understand that ADC is seeking technical advice on noise and highways matters to establish whether alternative options could be feasible separately from this advice.

2. Factual background / Planning History

- 2.1 The background to this matter is set out in detail in the Report to ADC’s Special Development Control Committee of 18th May 2021.
- 2.2 The report identifies the planning history of the Acoustic Barrier and specifically highlights the following planning decisions which form the consenting regime under which the Acoustic Barrier is currently being erected –

- (a) Outline planning application LU/63/11 which was granted on 6th June 2012 for:

Outline Application for the construction of the "Fitzalan Link Road" between the A259 Worthing Road & the East Street/Fitzalan Road roundabout - This application affects a Public Right of Way

(the “**Outline Planning Permission**”)

The Outline Planning Permission included condition 18 which states:

No development shall take place until a scheme of noise mitigation measures to reduce the impacts of noise from the proposed highway affecting residential or commercial properties in the area has been submitted to and been approved in writing by the local planning authority. This shall include details of the height, specification and positioning of noise barriers. The approved scheme shall be implemented prior to the commencement of the use and be permanently maintained thereafter.

Reason: In order that noise levels may be agreed prior to the commencement of works on site and to safeguard the amenities of nearby occupiers.

Under the “NOISE” heading of the Officers Report for the Outline Planning Permission it is stated that:

Some residential properties adjoining the application site will see an increase in noise levels as a result of the road. The predicted noise levels have been used to include noise mitigation in the final design where possible. The existing boundary fences along the rear gardens of Rosemead, Paterson Wilson Road, Highdown Drive and Amberley Close, some of which are low, open or in a poor state of repair, and will not be very effective noise barriers, will be upgraded to 2m close boarded, double lapped timber fences as part of the scheme. A low (1m) graded landscape noise bund has been incorporated into the landscape design where possible. Further mitigation to protect against excessive noise during the construction is also to be incorporated into the Construction Environmental Management Plan.

- (b) Reserved matters application LU/234/16/RES which was granted on 19th October 2017 for:

Application for reserved matters relating to access, appearance, landscaping, layout and scale of the previously approved LU/63/11/. This application affects a Public Right of Way (the “Reserved Matters Approval”)

The Reserved Matters Approval included condition 7 which states:

“Prior to the commencement of development, details of the 3.5 metre high acoustic barrier shall be submitted and be approved by the Local Planning Authority. The Link Road shall not be brought into use until such acoustic barriers have been completed.

Reason: In the interests of the environment of the development, in accordance with Arun District Local Plan policy GEN7.

There are a number of more detailed paragraphs within the Officers Report that deal with the Acoustic Barrier namely –

Under the “LAYOUT” heading: *The applicant's noise consultants have confirmed that a 3.5 metre noise barrier, imposed by means of a condition, would provide sufficient noise mitigation relating to a speed limit of 40 mph.*

Under the “NOISE” heading: *A noise assessment report was submitted by the applicant, which concludes that the beneficial effects of erecting 3.5 metre high acoustic barriers along the west of Fitzalan Link Road, would reduce traffic noise levels by up to 7.3dB. The report has been agreed with the Environmental Health Officer. It is considered necessary to impose a condition regarding the size, location and appearance of the acoustic fencing. Revised noise modelling has been carried out for the whole length of the Link Road including properties TR39-TR42. to reflect the change from 30 mph to 40 mph; everything south of the signal crossing and roundabout is proposed to be 30mph. These receptors (TR39-TR42) are outside the redline boundary of the planning application, therefore without the protection of the barrier the noise levels at these properties are higher than the ones opposite the Link Road, with the barrier in place. However they are below the 68dB guidance for the requirement for provision of noise insulation. The EHO is satisfied with the results of the noise modelling. The proposed development complies LU/234/16/RES report with Policy QE DM1 of the eALP.*

Under the “VISUAL IMPACT OF ACOUSTIC BARRIER” heading: *The erection and retention of a 3.5 metre high acoustic barrier alongside the Link Road, backing onto the rear gardens of residential properties will have a visual impact upon the amenity of local residents, but this needs to be measured against the noise emissions from the vehicles travelling along the Link Road. It is considered that the higher the acoustic barrier is, the lower the noise emissions and the lower the acoustic barrier is, the higher the noise emissions will be. On balance, it is considered that the visual impact of a 3.5 metre high acoustic barrier is acceptable when measured against the noise levels emitted by vehicles on the Link Road.*

- (c) Approval of details application LU/426/17/DOC which was approved on 6th June 2018 in relation to the approval of details under condition 7 of the Reserved Matters Approval.
(the “First AoD”)

This included technical noise analysis and highways and landscaping plans. The noise report actually sought to address condition 18 of the Outline Planning Permission, however, the First AoD only refers to approval of condition 7 of the Reserved Matters Approval. We understand that Condition 18 has not been formally discharged, however ADC officers are

of the view that it has for all intents and purposes been approved as part of the approval of details applications to the Reserved Matters Approval.

The plans and noise reports secured by this approval confirmed that the Acoustic Barrier would be a 3.5m high close board fence with softwood boarding with an alkaline copper quaternary treatment.

- (d) Approval of details application LU/366/19/DOC which was approved on 6th April 2020 also in relation to the discharge of condition 7 of the Reserved Matters Approval.

(the “**Second AoD**”)

This included revised details for the materials to be used for the Acoustic Barrier, instead proposing a galvanised steel material with an aluminium coloured finish. The decision notice confirms that the panelling should be “Ridged Panels in Weathering Steel, manufactured by Gramm Barrier Systems Ltd”.

The decision notice for the Second AoD includes a note which states:

The Local Planning Authority attempted to secure improvements to the acoustic fence by it being constructed on top of the landscaped bund, where there are landscaped bunds proposed. If the bund is 2.0 metres high for example, 1.5 metre high acoustic fence could be constructed on top of the bund, so as to provide a total height of 3.5 metres. It is understood that this is not possible because the road is not creating a landscaping bund as the whole road is elevated between 100mm and 400mm above exist ground level, with a small slope to the back fences. Therefore there is no option to lower the height of the fence.

The application attracted a lengthy commentary analysis from WSCC discussing the benefits of metal and timber barriers, concluding: “...decisions regarding the proposed acoustic fences should be taken with a holistic view of form vs function. A metallic fence will provide far longer acoustic and non-acoustic lifespans (up to 60 years), and therefore provide longer term savings, but subjectively it doesn’t have the aesthetic appeal of a timber alternative. A ‘weathering steel’ acoustic fence is the preferred solution of the WSCC Structures Department that not only meets the acoustic and non-acoustic criteria, but also has an aesthetic appeal...”

- 2.3 As mentioned above, there are several references within the First AoD and Second AoD to the discharge of condition 18 under the Outline Planning Permission and, also as above, we understand that while ADC has not formally discharged condition 18 in writing, officers are of the view that given that the substance of condition 7 of the Reserved Matters Approval clearly also seeks to address condition 18, the essence of both conditions have been approved.
- 2.4 A section 106 agreement was entered into on 23 January 2013 in relation to planning application ref LU/47/11 for a mixed used development located north of Todington Lane, which included highways improvement works to the Fitzalan Link Road (the “**S106 Agreement**”). The S106 Agreement does not contain any provisions relating specifically to the provision of the Acoustic Barrier; however, the deed of variation to the S106 Agreement, dated 11 September 2018, required entry into a highways agreement under section 278 of the Highways Act 1980 in relation to the “Fitzalan Link Stage 2 Works” (the corresponding plan for which includes the land on which the Acoustic Barrier has been constructed) prior to occupation of 150 dwellings.
- 2.5 In the course of producing this Advice we have received a copy of the corresponding section 278 agreement, dated 2 December 2019 (the “**S278 Agreement**”), from WSCC. Clause 29 of the S278 Agreement confirms that adoption of the “Road” (which includes ancillary items to the carriageway,

which could be deemed to include the Acoustic Barrier) by the WSCC shall take place automatically upon the issue of the Final Certificate signing off the works (following the initial maintenance period). Clause 10 requires the Developer, to submit AIP ('approval in principle') documents for the Acoustic Barrier, as well as design and check certificates, prior to construction. The Developer is further required to complete the Acoustic Barrier prior to issue of the "Part Two Certificate", and maintain the Acoustic Barrier until the issue of the Final Certificate "after which the Council will maintain in perpetuity" (the obligations on the Council in relation to maintenance of the Acoustic Barrier are discussed further below). There is also a requirement for the Developer to pay WSCC a commuted sum for the Acoustic Barrier's future maintenance, which is relatively common in respect of highways structures (as the cost of maintenance for such structures is often above general highway maintenance expense). While the S278 Agreement is not definitive on the whether the Acoustic Barrier itself is to be formally adopted as a highways structure, the ADC Committee Report 18th May 2021 states that it is officers understanding that it will be, and in any event, the provisions of the S278 Agreement are clear that it will be maintained in perpetuity by WSCC as highway authority, and so the distinction is likely to be unimportant.

- 2.6 Upon review of the background consents, approvals and other relevant documents there did not appear to be any obvious errors in process or judgment in the decision-making relating to the Acoustic Barrier that would merit legal concern. On this basis we consider that the starting point for considering options is that the Acoustic Barrier is being constructed lawfully under an approved planning consent, and that it is subject to a number of conditions and covenants relating to its construction and future maintenance.

3. Options

- 3.1 This note will now analyse the options available to ADC to alter the Acoustic Barrier. These options have been split into three categories: options under planning legislation, options under highways legislation, and other more practical options that might be agreed with the Developer and/or WSCC.

Options in Planning Legislation

- 3.2 Section 97 of the Town and Country Planning Act 1990 ("TCPA") empowers a local planning authority to (by order) revoke or modify a planning permission relating to building operations "at any time before those operations have been completed"², but such revocation or modification "shall not affect so much of those operations as has been previously carried out"³.
- 3.3 As the Acoustic Barrier will most likely be completed by the time any such order could be made (if not completed already), it would appear that this power is not appropriate in the present case. However, section 102 of the TCPA provides a very similar power to that of section 97, but permits alterations to works already carried out. This would therefore appear the more appropriate power in this case and we have provided a detailed analysis below.
- 3.4 Section 102 of the TCPA empowers a local planning authority to (by order) "require such steps as may be so specified to be taken for the alteration or removal of the buildings or works"⁴, provided that the alteration or removal appears to them to be "expedient in the interests of the proper planning of the area (including the interests of amenity)"⁵. The local planning authority may also

² As per section 97(3)

³ As per section 97(4)

⁴ As per section 102(b)(iii)

⁵ As per section 102(1)

use the order to grant a new and separate planning permission “for any development of the land to which the order relates, subject to such conditions as may be specified in the order”⁶.

- 3.5 It should also be noted that, under section 103, “an order under section 102 shall not take effect unless it is confirmed by the Secretary of State...”. The Secretary of State has broad power to modify the order as submitted, including the power to grant planning permission or modify the grant of permission under the order. Following submission of the order to the Secretary of State for confirmation, the local planning authority must serve notice on the owner and occupier of the land, and any other affected persons. These parties are then entitled to request and opportunity to appear before the Secretary of State, and the Secretary of State must allow at least 28 days for such requests before making their decision (the notice must make this time period clear to the recipient). If such an opportunity is given to a recipient, the local planning authority is also entitled to appear before the Secretary of State. Where the Secretary of State confirms the order, the local planning authority shall serve a copy of the order on the owner and occupier of the affected land (but not neighbours).
- 3.6 The power under this section seems much more appropriate to the facts at hand. If ADC thought it expedient to do so, it could issue an order for the Acoustic Barrier to be altered or removed, and simultaneously grant a new planning permission for the altered Acoustic Barrier.
- 3.7 The legislation does not define what constitutes ‘alteration’. In our opinion, keeping the Acoustic Barrier in the same place and reducing its height falls squarely within the scope. However, it is less clear whether relocating the Acoustic Barrier could be deemed an ‘alteration’. The details of any proposed relocation would be required to advise more fully and this would likely be something that could be picked up in further Counsel’s advice on risk as mentioned below.
- 3.8 It is important to note that to enable the exercise of section 102, ADC would need to produce a robust evidence base to justify the decision. This evidence base would also need to distinguish from its previous decisions on the matter and why the evidence is sufficient to essentially overturn the previous decision on the matter. Planning considerations (technical noise, highways and visual assessments etc.) will clearly be relevant as well as financial considerations (justifying the spend in the public interest) which we discuss further below.
- 3.9 Thorough consultation is also recommended prior to taking any action and to ensure that all representations received are carefully considered in the round. There is no statutory requirement for consultation by the local planning authority (beyond the opportunity to appear before the Secretary of State set out at paragraph 3.5 above). Therefore, who is consulted, and the extent of such consultation, would be at ADC’s discretion. We would suggest that at minimum those neighbouring residents who are affected by the proposals must be consulted, however ADC may wish the cast the net slightly wider to ensure that no-one who may be impacted is missed.
- 3.10 It should be borne in mind that issuing an order under section 102 will likely involve the payment of compensation to the Developer. Section 115 TCPA provides as follows:

115.— Compensation in respect of orders under s. 102, etc.

- (1) This section shall have effect where an order is made under section 102—*
(a) requiring a use of land to be discontinued,
(b) imposing conditions on the continuance of it, or

⁶ As per section 102(2)

- (c) requiring any buildings or works on land to be altered or removed.*
- (2) If, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—*
 - (a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it, or*
 - (b) by being disturbed in his enjoyment of the land or of such minerals, that authority shall pay to that person compensation in respect of that damage.*
- (3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.*
- (4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.*
- (5) Subject to section 116, this section applies where such an order as is mentioned in subsection (6) is made as it applies where an order is made under section 102.*
- (6) The orders referred to in subsection (5) are an order under paragraph 1 of Schedule 9—*
 - (a) requiring a use of land to be discontinued, or*
 - (b) imposing conditions on the continuance of it, or*
 - (c) requiring any buildings or works or plant or machinery on land to be altered or removed, or an order under paragraph 3, 5 or 6 of that Schedule.*

- 3.11 To summarise under section 115 TCPA, any person with an interest in the land subject to the s102 order (i.e. just the Developer and anyone else with a legal interest in the land on which the Acoustic Barrister is sited, but not the neighbouring owners) who suffers damage on the following heads is entitled to compensation:
 - (a) in respect of depreciation in the value of land or minerals;
 - (b) in respect of disturbance (this generally relates to the reasonable expenses involved with being displaced from the land);
 - (c) any expenses reasonably incurred in carrying out works in compliance with the order; and/or
 - (d) rehousing.
- 3.12 However, subsection 115(4) states that any timber, apparatus or other materials removed for the purpose of complying with the section 102 order are to be deducted from the compensation payable.
- 3.13 We would not anticipate any material depreciation in value of the land, nor would we anticipate any extensive disturbance caused to the Developer, although we would still suggest this is still carefully examined when carrying out any technical survey work assessing the cost of any proposed alterations. The obvious main head of compensation would therefore be the cost to the Developer of altering the Acoustic Barrier in compliance with the order. We are not in a position to accurately estimate these costs, and a detailed assessment would need to be undertaken prior to exercising the power to ensure that ADC were fully aware of the potential compensations sums that may be involved.
- 3.14 As mentioned above section 115 only applies to those with an interest in the land directly affected by the order. Aggrieved neighbours would therefore not have a claim to compensation under that

section. However, there may be a risk that neighbours could bring a claim in private nuisance under common law for interference with their quiet enjoyment of their land. Private nuisance is outside the scope of the planning regime – for analysis of the risk and potential quantum, we would recommend advice is sought from a litigation specialist.

- 3.15 Section 190 of the TCPA provides that if the s102 order was not complied with, ADC would be able to enter onto the land to take the steps required by the s102 order and recover their costs in doing so (although clearly this would need to be balanced against the compensation payable). Section 189 also confirms that it is an offence not to comply with the terms of a s102 and persons who do not comply may be prosecuted under this section.
- 3.16 There is no automatic route of appeal against a section 102 order, however “a person aggrieved” may legally challenge the decision under section 288 TPCA, which would be dealt with in the High Court. An order may be challenged on the grounds that its issue was not within the powers of the TCPA. The case of *Ashbridge Investments*⁸ broadened the scope of this ground to include misuse of a discretionary power, for example by reaching an unreasonable conclusion or failing to take relevant considerations into account. In this case for example, it may be alleged that an order unreasonably contradicted the recently granted Outline Planning Permission and Reserved Matters Approval without any change to the factual context, or that ADC failed to properly consider the noise impact if it could be shown that the shorter barrier required under the order failed to mitigate the noise impact as well as the Acoustic Barrier. Of course, the risk of a section 288 challenge would be greatly reduced if the results of the technical assessments currently being undertaken suggest that a shorter Acoustic Barrier could in fact achieve a similar reduction in noise impact.
- 3.17 Other potential grounds for challenge to be aware of are the potentially high public cost involved with issuing the order (and any corresponding compensation to the Developer). The Supreme Court case of *HSE v Wolverhampton City Council*⁹ confirmed that, when considering whether to make a section 102 order: “as custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved, and taking into account more economic ways of achieving the same objective”.
- 3.18 There would also be a potential risk of challenge for procedural unfairness. Any order would have to be preceded by a robust consultation of all neighbours and potentially affected parties, as of course while visual impact is important to some, noise impacts may be more important to others.
- 3.19 It is important to note that the most likely remedy for any legal challenge to the section 102 order would be to quash the decision (which in effect means the Court would nullify the effect of the order). If that were to occur ADC would need to decide afresh whether there was merit in pursuing the issue further through remaking the order or appealing the Court’s judgment.
- 3.20 There are few cases dealing with challenges to section 102 orders that can serve as an illustration. The most useful is perhaps the decision by the Secretary of State to confirm the section 102 order

⁷ The concept of who will be a “person aggrieved” is broad. Lord Reed endorsed Lord Denning’s observation in *Attorney-General of Gambia v N’Jie* [1961] AC 617 that it is “of wide import and should not be subjected to a restrictive interpretation”. A “person aggrieved” is not restricted to a person with a legal grievance and it will turn on its facts in each case.

⁸ *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 W.L.R. 1320

⁹ *The Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent)* [2012] UKSC 34

for discontinuance of use¹⁰ relating to Home Farm, Somerton. The Secretary of State first looked to the material considerations to support the order, then the material considerations indicating against issue of the order. The mixed farm/residential use had changed from what was originally anticipated, and the land fell into disrepair – the impact on the residential nature of the surrounding locality and the impact on amenity were held to be material considerations to support the order. There were no material considerations found to indicate against the order.

- 3.21 By way of concluding comments on above, in order to exercise section 102 to alter the Acoustic Barrier, a great deal of preliminary work will be required particularly obtaining appropriate technical evidence in relation to the justification (i.e. the noise and highways work currently being undertaken) and detailed analysis as to potential compensation/other associated costs for proposals (the cost of the proposed alterations, and an assessment in respect of any resulting land value depreciation). As above we would also recommend that further legal advice is sought from a litigation specialist in terms of potential claims that could potentially be made by neighbouring residents under other legal regimes (e.g. private nuisance, environmental legislation etc). Finally a clear assessment against both planning and public law considerations will be required to ensure a robust and defensible order is capable of being made. On the final point there would appear merit in obtaining Counsel's opinion following completion of the evidence gathering/cost analysis exercise, to assist in preparing the ADC's final justification report and to provide a final view on chances of success/susceptibility to challenge.

Highways Options

- 3.22 In addition to the powers exercisable under planning legislation as set out above, an alternative route open to ADC may be to request that WSCC undertake further works to mitigate the harm caused by the barrier in their capacity as highway authority, following the handover of the Acoustic Barrier to WSCC pursuant to the terms of the S278 Agreement.
- 3.23 WSCC may have a number of powers available to it as highway authority under the Highways Act 1980, to remove or make amendments to the Acoustic Barrier (potentially under sections 62, 80 or 282 – although WSCC will likely be best placed to confirm any appropriate power). Notwithstanding the potential availability of powers, we would suggest that WSCC would likely be unwilling to take such action (even with potential indemnification i.e. agreement by ADC to compensate for any legal action taken against WSCC following the exercise of its powers) for a number of the reasons, including but not limited to:
- (a) From a highways authority perspective the height and material of the fence were considered to be appropriate on the basis that it appropriately mitigates the noise impact from the road and the steel material used was considered lower maintenance than the timber alternative;
 - (b) There is a risk that any decision made by WSCC to undertaken amendments could be legally challenged on similar grounds to those discussed above for ADC's exercise of s102; and
 - (c) The exercise of any highways power would not override the planning restrictions that have been established by the extant planning consents and approvals.

¹⁰ Section 102 orders can order discontinuance of use as well as requiring modification of works. We don't believe this distinction changes the relevance of this case.

- 3.24 In respect of (c) it is important to note that the following planning conditions and S278 Agreement restrictions exist, and that these restrictions in principle prevent WSCC from making further amendments to the Acoustic Barriers without amendments to the relevant planning consent:

Condition 18 of the Outline Planning Permission:

*No development shall take place until a scheme of noise mitigation measures to reduce the impacts of noise from the proposed highway affecting residential or commercial properties in the area has been submitted to and been approved in writing by the local planning authority. **This shall include details of the height, specification and positioning of noise barriers. The approved scheme shall be implemented prior to the commencement of the use and be permanently maintained thereafter. [our emphasis]***

Clause 10.5 of the S278 Agreement:

*IT IS HEREBY AGREED AND DECLARED by and between the parties [the Developer and WSCC] to this Agreement as follows: THE Developer will maintain the acoustic fencing until the issue of the Final Certificate **after which the Council maintain in perpetuity [our emphasis]***

Condition 7 of the Reserved Matters Application appears to be slightly less of an issue as it simply requires the completion of the Acoustic Barrier. This was presumably not to fetter WSCC's power as highway authority to make amendments as they saw fit.

- 3.25 Condition 18 is of particular issue as altering or removing the Acoustic Barrier would be in breach of the terms of the condition, given that ADC is of the view that the details were effectively approved under the approval of details for condition 7 of the Reserved Matters Application. In addition it is likely that a further planning consent would be required to make amendments to the barrier in any event. It would technically be open to ADC not to enforce against a breach of the condition on the basis that it was "not expedient" to do so, however, this presents its own risks and would also be a decision open to potential legal challenge.
- 3.26 On this basis it would appear that further regularising action under the planning regime would be required prior to any actions being taken under the Highways Act.
- 3.27 That being said there may be more practical steps that could be taken by WSCC as the highway authority to improve the visual amenity of the Acoustic Barrier without taking actions that would make actual changes to the height/materials/location of the barrier or interfere with the planning restrictions.
- 3.28 For example section 115B of the Highways Act 1980 provides a power for the highway authority to:
- 115B(1) [...] (a) **to carry out works on, in or over a highway** to which this Part of this Act applies; and*
*(b) to place objects or structures on, in or over such a highway, **for the purpose—***
(i) of giving effect to a pedestrian planning order;
*(ii) **of enhancing the amenity of the highway and its immediate surroundings;** or*
(iii) of providing a service for the benefit of the public or a section of the public

Sub-section (3) goes on to confirm that (3) *Without prejudice to the generality of this section, the amenity of a highway may be enhanced by providing lawns, trees, shrubs or flowers.*

Section 96 also offers a wider general power for the provision of plants on highway land.

- 3.29 Section 274 provides that a council (which for the purposes of the Highways Act 1980 would include ADC) may contribute towards expenses incurred or to be incurred by a highway authority if, in the opinion of the council, the expenditure is or will be of benefit to the council's area.
- 3.30 It would therefore appear that the Highways Act 1980 provides a mechanism which would allow not only for WSCC to provide a scheme of work to improve the amenity of the highway (which may for example include a suitable planting scheme to improve the appearance of the Acoustic Barrier) but also a legal method of ADC contributing towards this enhancement. Indeed it is understood that part of the rationale for the "weathered steel" material used for the Acoustic Barrier was that it has an expected life span of 60+ years which would reduce maintenance and enable a planting scheme around the barrier to be established. The powers outlined above, may provide an opportunity for ADC to provide a financial "top-up" to existing planting proposals through engagement with WSCC.
- 3.31 It would appear that the risk attached to any such proposal would be relatively low as the height, materials and integrity in terms of noise mitigation of the Acoustic Barrier would seemingly not be compromised, it would merely be a method of improving the visual amenity of the structure. It would also obviously be a matter for ADC as to how much money had been spent, and to consider whether this would be a reasonable and proportionate response to addressing the issue. Further detailed cost and risk analysis would of course be prudent prior to committing funds in the manner set out above. We would suggest that WSCC would unlikely be willing to any actions to actually alter, remove or move the Acoustic Barrier under its highway powers for the reasons set out in paragraph 3.22 above.

Other Options

- 3.32 In addition to the options outlined above, it may also be possible to seek to enter into a private arrangement with either the Developer or WSCC to seek to alter or move the Acoustic Barrier or, as discussed above, provide other measures to assist in mitigating the harm to visual amenity. In ADC's discussions with the Developer it is not clear as to whether ADC sought to provide financial input into the proposed amendments to the Acoustic Barrier, which may of course incentivise the Developer to make the changes required (providing it is at ADC's expense). The private arrangement may be contractual and legally binding or more informal depending on the nature of the proposal.
- 3.33 As outlined above in respect of the highways options, the planning restrictions would still need to be overcome, and if alternative applications (for example a further approval of details application or variation to condition 7) were submitted following discussion in respect of a private arrangement, ADC would need to be very careful to ensure that it did not fetter its discretion in terms of its responsibility for independent decision-making as local planning authority.
- 3.34 The decision to enter into any private arrangement would also be potentially subject to judicial review and so as with any decision to be made on this issue, ADC must ensure that the decision-making is legally robust.

4. Analysis and Recommendations

- 4.1 We have identified the following options as being available to the ADC:
- (a) Section 102 of the Town and Country Planning Act 1990 – this provides the most comprehensive solution to addressing the issue and may allow scope for reductions in the height of the Acoustic Barrier which we understand is Councillors and the current complainant's principle concerns (relocation *may* also be possible but it is less clear whether this would constitute an 'alteration'). Section 102 also provides a mechanism to grant a new planning permission or amend the existing planning consents (and the attached

conditions) so any further actions taken would not require additional amendments to the existing planning permissions - it would all be wrapped up in the s102 order. That being said this option is not without risk and there would almost certainly be compensation attached, at minimum being the cost of works to carry out the order (but this may be further reaching – see discussion above). In addition, the s102 order may also be amenable to potential legal challenge on a number of grounds. If s102 were to be pursued further detailed analysis would be required to robustly justify the action, including production of a clear and thorough evidence base that any alternative proposal continued to sufficiently mitigate noise impact and that the use of public funds were appropriate/proportionate. As mentioned above we would also recommend that a litigation lawyer's opinion is sought in respect of other potential claims that could be made by neighbouring residents that fall outside of the planning regime. We would also recommend that once all technical evidence has been compiled that Counsel's opinion is sought in advance of exercise of the power for a final view on the chances of success and any vulnerability to challenge;

- (b) Request that WSCC exercise appropriate highways powers – as outlined above, WSCC would appear unlikely to want to exercise powers to alter, remove or move the Acoustic Barrier in its capacity as highway authority, and this would not resolve the potential conflict with the terms of the relevant planning conditions. There may however be other appropriate powers that could be reasonably implemented by WSCC including enhancements to the visual appearance of the Acoustic Barrier (which may include a more complete planting scheme with the assistance of ADC funding);
- (c) A private arrangement with the Developer and/or WSCC – a further alternative could be to reach an agreement with the Developer and/or WSCC (which may be by legally binding contract or a more informal arrangement) to secure proposed alterations to the Acoustic Barrier. Clearly this will also attract the same issues outlined for the other options including the need for a robust evidence base in terms of rationale and use of any public funds, as well as being mindful not to fetter discretion on decisions made on future planning applications for amendments to the barrier and/or the planning conditions.

4.2 We hope that this assists ADC in their review of the matter and we would be happy to assist further as the matter progresses.

Town Legal LLP
20 September 2021

Neil Crowther
Arun District Council
Civic Centre
Maltravers Rd
Littlehampton
BN17 5LF

Date: 5th November 2021
Reference: 9200-3 Rev 1

Dear Mr Crowther,

RE: Fitzalan Link Road, Littlehampton – Noise Review

Further to our review of relevant documents that relate to noise mitigation, we are pleased to confirm the results and findings.

1.0 INTRODUCTION

- 1.1 An outline application for the link road was submitted in 2011 and approved subject to conditions in 2012 (reference LU/63/11/). The application was accompanied by a noise report (reference A044039-2 dated 21st February 2011) which concluded that a graded bund of up to 1m would provide sufficient mitigation.
- 1.2 A revised noise report was submitted in July 2011 and at section 5.3, a recommendation was made for a 3.0m close boarded timber fence to reduce noise from the road. The location of the barrier, shown at SK06, is adjacent to the proposed new highway. Both 2011 documents contain several inaccuracies which make the report difficult to follow (for example Table 4.3 repeats twice and contains the same predicted levels for materially different receptor locations). This report has not been considered further in this review.
- 1.3 A reserved matters application was submitted in 2016 (reference LU/234/16/RES). As part of the application, an updated noise report was prepared by WYG in July 2016 (reference A095004).
- 1.4 The 2016 report identified a 3.5m high noise barrier, adjacent to the highway as appropriate mitigation. This barrier alignment, next to the road, does not match the barrier location shown in the submitted landscape drawings which were subsequently approved (and as per where the barrier has now been constructed).
- 1.5 Condition 7 of the reserved matters approval required details of the 3.5m noise barrier to be submitted and approved by the LPA. The condition required completion of the barrier installation prior to first use of the road.

- 1.6 An addendum statement dated 20th March 2017 was produced to respond to the proposed change in road speed, from 30 mph to 40 mph, with low road noise surface. It is understood that the road was constructed using a standard hot rolled asphalt (HRA) finish, rather than a low noise surface.
- 1.7 A further note was issued by WYG on 29th November 2019 in respect of the barrier type, noting that the proposed metal GRAMM MetaSoundblock barrier (with vertical panels) was suitable in acoustic terms. The location of the barrier, in this note, matched that shown in the landscape drawings.
- 1.8 Significant concern has been raised by residents regarding the height and location of the now constructed noise barrier and the veracity of the submitted noise reports. This report, therefore, reviews the submitted documents and makes observations where necessary.
- 1.9 Specifically, the following key areas have been reviewed:
- Review of acceptability criteria
 - Accuracy of modelling undertaken
 - Review of noise barrier mitigation and assessment of alternative options
- 1.10 The road scheme, barrier and surrounding area is shown in Figures 1A and 1B. For reference, the term noise barrier may be used interchangeably with acoustic screen or acoustic barrier. It should be noted that light-weight close boarded timber fences are usually of insufficient weight and quality to be considered as a robust form of noise mitigation for new road schemes.
- 1.11 All sound pressure levels quoted in this report are in dB relative to 20 μ Pa. A glossary of the acoustic terminology used in this report is provided in Appendix A. The author's qualifications and experience are shown in Appendix B.

2.0 NOISE CRITERIA

NPPF and NPSE

- 2.1 The National Planning Policy Framework (NPPF), revised in 2021, states at paragraph 174 that:

Planning policies and decisions should contribute to and enhance the natural and local environment by: ...

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; ...

- 2.2 Similarly, Paragraph 185 states:

"Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential

sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;*
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason;*

2.3 The NPPF also refers to the Noise Policy Statement for England (NPSE) which is intended to apply to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The NPSE sets out the Government's long-term vision to 'promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development'.

2.4 The NPSE defines the following key concepts in relation to noise impact:

LOAEL – 'lowest observed adverse effect level' - this is the level above which adverse effects on health and quality of life can be detected;

SOAEL - 'significant observed adverse effect level' - the level above which significant adverse effects on health and quality of life occur.

2.5 The following guidance is also provided within the NPSE:

"It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available."

2.6 In 2014 the Planning Practice Guidance (PPG) was issued. The PPG reflects the NPSE and states that noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. It also states that opportunities should be taken, where practicable, to achieve improvements to the acoustic environment.

LA 111 Noise and Vibration

2.7 For this scheme the appropriate standard for use in assessing the noise impact is those given in Design Manual for Roads and Bridges (DMRB), LA 111 Noise and Vibration, Revision 2 (formerly HD 231/11). This provides guidance on the environmental assessment of noise impacts from new road schemes. The DMRB contains advice and information on transport-related noise and vibration, which has relevance to operational traffic impacts affecting sensitive receptors. The document also provides guideline significance criteria for assessing traffic related noise impacts.

2.8 With regard to the LOAEL and SOAEL lexicon used in the NPSE, absolute levels from Table 34.9.1

from LA 111 are shown below.

Table 3.49.1 Operational noise LOAELs and SOAELs for all receptors

Time Period	LOAEL	SOAEL
Day (06:00-24:00)	55dB $L_{A10,18hr}$ facade	68dB $L_{A10,18hr}$ facade
Night (23:00-07:00)	40dB L_{night} , outside (free-field)	55dB L_{night} , outside (free-field)

- 2.9 LA 111 sets an upper limit of 68 dB $L_{A10,18hr}$ as the threshold for significant adverse impact for new road schemes. This noise level, for context, corresponds to the trigger threshold for the noise insulation regulations. In addition, the change in noise level is considered and Tables 3.54a and 3.54b from LA 111 consider the impact magnitude in the short and long term respectively.

Table 3.54a Magnitude of change - short term

Short term magnitude	Short term noise change (dB $L_{A10,18hr}$ or L_{night})
Major	Greater than or equal to 5.0
Moderate	3.0 to 4.9
Minor	1.0 to 2.9
Negligible	less than 1.0

Table 3.54b Magnitude of change - long term

Long term magnitude	Long term noise change (dB $L_{A10,18hr}$ or L_{night})
Major	Greater than or equal to 10.0
Moderate	5.0 to 9.9
Minor	3.0 to 4.9
Negligible	less than 3.0

- 2.10 With regard to mitigation from operational noise, the guidance from LA111 states at para 3.65:

The suitability of each potential mitigation measure for use within the project area shall be determined based on the following criteria:

- 1) *for residential noise receptors only, a comparison of the monetised noise benefit of a mitigation measure against the cost of the measure over the anticipated design life of the project*
- 2) *the likely perceived benefit of the measure at any noise sensitive receptors.*
- 3) *the benefit of a measure in terms of elimination of likely significant effects.*
- 4) *practicality of the measure, for example, in terms of safety considerations and engineering constraints.*
- 5) *the impact of the measure across other environmental factors, for example the visual impact of a noise barrier.*

Calculation of Road Traffic Noise (CRTN)

- 2.11 CRTN (1988) provides a method for assessing noise from road traffic in the UK using both forecast Annual Average Weekday Traffic (AAWT) flows and from measured noise levels. The calculation methods provided include correction factors to take account of variables affecting the creation and propagation of road traffic noise, such as the percentage of heavy goods vehicles (HGV), road surface type, inclination, screening by barriers and relative height of source and receiver.
- 2.12 Noise levels arising from road traffic are typically calculated using a height of 4m at nearby receptors. All calculations are made using the L_{A10} parameter. Conversion of L_{A10} to L_{Aeq} can be achieved by the relationship: $L_{Aeq,16h} = L_{A10,18h} - 2 \text{ dB}$.

British Standard 8233:2014

- 2.13 BS 8233:2014 recommends an upper guideline value of 55 dB $L_{Aeq,16hr}$ for free-field noise levels in external amenity spaces such as gardens (at a height of 1.5m). BS 8233 notes that this level is "not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted."

Local Authority

- 2.14 Arun District Council's Policy QEDM1 (Adopted Local Plan 2018) notes for new noise generating development:

Developers proposing new noise generating development must seek advice from an early stage to determine the level of noise assessment required. Proposals will need to be supported by:

- a. Evidence to demonstrate that there are no suitable alternative locations for the development.*
- b. A noise report which provides accurate information about the existing noise environment, and the likely impact of the proposed development upon the noise environment. The report must also demonstrate that the development meets appropriate national and local standards for noise, as set out in Annex 1 of the Planning Noise Advice Document: Sussex, and any mitigation measures required to ensure noise is managed to an acceptable level.*

- 2.15 Annex 1 of the 2021 Planning Noise Advice Document refers to the Design Manual for Roads and Bridges and the Noise Insulation Regulations (1975). It also suggests that noise levels should not exceed 40 dB $L_{Aeq, 8 \text{ hour}}$ externally, though this is a very stringent level and not normally used as a threshold for acceptability for new road schemes.
- 2.16 Arun District Council was consulted during the planning phases for the road scheme. To protect existing residents from noise from the road, the consultation responses sought to establish how many properties would be subject to noise that exceeded 55 dB $L_{Aeq, 16 \text{ hour}}$ (or 57 dB $L_{A10, 18 \text{ hour}}$). It should be noted that in planning terms, this is significantly lower than SOAEL and is not normally

used for new road schemes.

Summary

- 2.17 Noise arising from the road should be assessed against the both the absolute LOAEL / SOAEL values as well as the change significance criteria. Contextually, the increase in noise level should be balanced in planning terms against the benefits that arise from the scheme. In addition, the suitability of potential noise mitigation should take into account factors such as visual impact.

3 NOISE REVIEW

WYG Report 2016

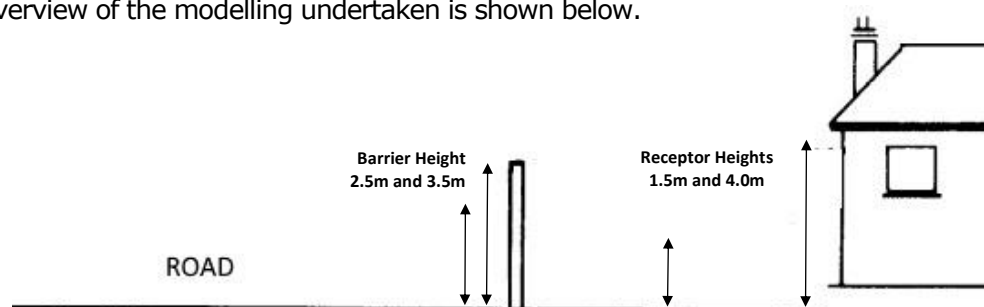
- 3.1 A review of the RM report July 2016 shows that the input traffic flow data (18 Hr AAWT) appears to be broadly consistent with those recently received by 24 Acoustics from West Sussex CC (via email 29th September 2021). There are certain subsets of data (eg, %HGVs, porous road surface) that have not been stated. Although implied only from the 2017 update note, it is assumed that an operational traffic speed of 30 mph applies in the 2016 report. The model appears to have used a hybrid CRTN/ISO 9613 approach and a German standard for ground absorption, which is not consistent with the requirements of DMRB. The reasons for this approach are not clear.
- 3.2 This report, in line with the requirements of the Calculation of Road Traffic Noise (CRTN), predicts noise levels at a height of 4m. No noise predictions were made at ground height (1.5m) in response to the EHO's queries to assess the impact in gardens. The report, after Table 5.3, also directly compares the modelled $L_{A10\ 18\ hour}$ values at a height of 4m with the $L_{Aeq\ 16\ hour}$ criteria (at a height of 1.5m) in BS 8233 which is incorrect (the 2017 assessment also repeats this comparison). The study should have contained calculated levels at 1.5m height (ie, representing standing height in a garden) to address the EHO's query. No night-time values were calculated and this is considered to be an omission, given the potential impact to first floor bedrooms.
- 3.3 The report includes a reference to a 2.5m barrier in Drawing SK02b on Page 31; this appears to be a typographical error as all other references are to a 3.5m noise barrier.
- 3.4 Fundamentally, the alignment of the barrier in SK02b of the noise report (see Appendix C) is materially different to the approved plans (and as constructed). It follows that the predicted receptor noise levels are not likely to be representative of the barrier in its current / approved location.
- 3.5 Given that the modelling in the noise report deviates significantly from the approved plans, it is considered that none of the work undertaken is of practical use to demonstrate the impact of the Fitzalan Link Road. The uncertainties mean that a comparative or relative noise assessment which looks at the change in noise level cannot reliably be undertaken.
- 3.6 In summary, it is 24 Acoustics' opinion that the methodology and findings of the WYG study were not sufficient for a reasonable conclusion to be drawn by decision makers at ADC.

24 Acoustics Study

3.7 A study of noise from the Fitzalan Link Road has been undertaken by 24 Acoustics using the procedures in CRTN and via a 3D model constructed in Immi 2021 noise modelling software. The following input assumptions have been made:

- Road flows as per advised by WSCC (email 29th September 2021) for 2019 and 2034
- Topography – as per approved plans
- Barrier location & height – as per approved plans / as built, 3.5m and 2.5m
- Road speed – 40 mph / 64 km/hr
- Percentage HGVs – 6%
- Road surface – standard HRA (non-porous)
- Receptor height – 4m (façade) and 1.5m (free-field in garden)

3.8 An overview of the modelling undertaken is shown below.



3.9 The predicted noise levels at key receptors in the year 2034, for the scheme as built, are shown in Table 1 below.

Receptor Location	WYG 2016 Reference	Sound Pressure Level (dB L _{A10} 18 hour)	
		4.0m Receptor Height	1.5m Receptor Height
168 Highdown Drive	TR02	60	51
158 Highdown Drive	TR03	59	52
150 Highdown Drive	TR06	57	53
138 Highdown Drive	TR07	56	53
170 Highdown Drive	TR12	56	53
8 Amberley Close	TR20	58	54
10 Amberley Close	TR21	58	54
16 Amberley Close	TR24	56	54
58 Highdown Drive	TR28	57	53
28 Highdown Drive	TR33	55	54
26 Highdown Drive	TR34	54	54
2 Highdown Drive	TR36	55	51

Table 1 – Calculated Noise Levels, 3.5m Barrier and Scheme as Built (2034)

3.10 To convert between L₁₀ and L_{eq} indices and allow a comparison with the query raised by the EHO, the modelled L₁₀ levels must be reduced by 2 dB. Subtracting 2 dB from the values in the last

column shows that all of the properties would be at or below 55 dB $L_{Aeq, 16 \text{ hour}}$ for the 3.5m barrier as built. The levels in Table 1 are, on average, between 8 dB to 13 dB lower than the scenario with no barrier, which shows that the barrier is effective (depending on receptor height) in mitigating noise impacts from the road.

3.11 Table 2 shows predicted levels for a scenario with a reduced barrier height of 2.5m.

Receptor Location	WYG 2016 Reference	Sound Pressure Level (dB $L_{A10 \text{ 18 hour}}$)	
		4.0m Receptor Height	1.5m Receptor Height
168 Highdown Drive	TR02	63	54
158 Highdown Drive	TR03	63	54
150 Highdown Drive	TR06	61	55
138 Highdown Drive	TR07	60	55
170 Highdown Drive	TR12	59	55
8 Amberley Close	TR20	62	57
10 Amberley Close	TR21	62	57
16 Amberley Close	TR24	60	57
58 Highdown Drive	TR28	60	56
28 Highdown Drive	TR33	59	57
26 Highdown Drive	TR34	58	57
2 Highdown Drive	TR36	60	54

Table 2 – Calculated Noise Levels, 2.5m Barrier (2034)

3.12 As per para 3.8 above, subtracting 2 dB from the values in the final column yields a level in gardens of 55 dB $L_{Aeq, 16 \text{ hour}}$ or lower. Noise levels at 4m are typically 3-4 dB higher for the 2.5m barrier scenario. A change of 3 dBA is the minimum perceptible under normal conditions for steady noise sources such as road traffic noise. In this context, therefore the above result show that the change in noise level from a 3.5m barrier to 2.5m would be at the threshold of perceptibility.

Night-time Noise

3.13 Noise levels at 4m or first floor generally affect habitable bedrooms and therefore the impact at this height should also be considered. The method to calculate the night-time noise level uses the TRL conversion method TRL PR/SE/451/02. On this basis, night-time noise levels at first floor for the existing 3.5m barrier range between 46 – 49 dB $L_{Aeq, 8 \text{ hour}}$. Internal noise levels with an open window would be approximately 15 dBA lower at 31 to 34 dB $L_{Aeq, 8 \text{ hour}}$.

3.14 With a 2.5m barrier the night-time levels range between 50 – 53 dB $L_{Aeq, 8 \text{ hour}}$. As above, internal noise levels would be in the range 35 to 38 dB $L_{Aeq, 8 \text{ hour}}$.

Speed Limit

3.15 In the event the road speed limit reduces to 30 mph, noise levels would reduce by 1-2 dB across all scenarios (3.5m or 2.5m barrier and 4m or 1.5m receptor heights). As noted, a change of 3 dB (or lower) is below the threshold of detection for steady noise levels.

Barrier Relocation

- 3.16 Were relocation possible, positioning the barrier closer to the road would result in an improved performance. This is on the basis that improved screening occurs when the barrier is closest to either the source or receiver. In this case, placing the barrier closer to the road would result in an anticipated improvement of 2 - 4 dB. It is relevant to note that this option appears to be very limited in practice given the presence of the loop road that occurs towards the north of the scheme.

Barrier Material

- 3.17 In order for a barrier of a given height to be effective, a minimum superficial weight of 15 kg/m² is recommended. In addition, the barrier must contain no holes, gaps or openings. If an alternative material were to be considered, it would first be necessary to ensure that the barrier supplier's warranty would be maintained. If this were the case, then use of an alternative (eg, transparent) material would be possible. It is understood that the barrier supplier for the scheme, GRAMM provide a product ClearSoundBlok which achieves this weight; GRAMM would need to confirm whether these panels are compatible and could be retrofitted.

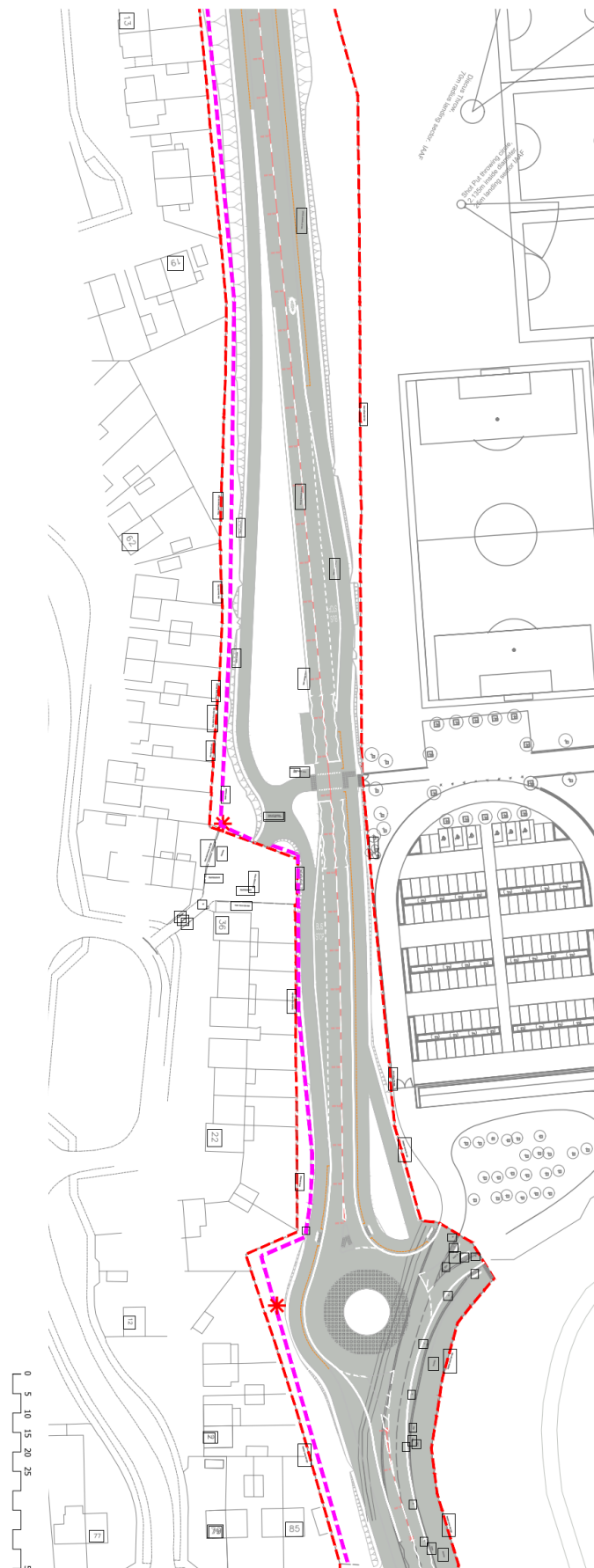
Summary

- 3.18 In summary, noise arising from the proposed new link road has been re-calculated based on the as-built scheme and current assumptions regarding vehicle flow and speed.
- 3.19 Noise from the scheme will clearly have an impact at the nearest affected residential properties and the identification and inclusion of a noise barrier is considered an appropriate form of mitigation.
- 3.20 The difference in receptor noise level between the current 3.5m barrier and a reduced height barrier of 2.5m is marginal at between 3-4 dBA. In both cases, daytime noise in external amenity spaces will be lower than 55 dB L_{Aeq} 16 hour. Contextually, a difference of 3 dB is the minimum perceptible under normal conditions for steady noise sources such as road traffic noise. Similarly, a reduction in speed to 30 mph would result in a change in noise level of 1 -2 dB, which is also below the threshold of perceptibility for a change in steady noise levels.

Yours sincerely,
For 24 Acoustics Ltd

Steve Gosling BEng MIOA MAES FRSA
Principal Consultant

[illegible]

FIGURE 1B – SCHEME OVERVIEW

APPENDIX A – ACOUSTIC TERMINOLOGY

Noise is defined as unwanted sound. The range of audible sound is from 0 to 140 dB. The frequency response of the ear is usually taken to be around 18 Hz (number of oscillations per second) to 18000 Hz. The ear does not respond equally to different frequencies at the same level. It is more sensitive in the mid-frequency range than the lower and higher frequencies and because of this, the low and high frequency components of a sound are reduced in importance by applying a weighting (filtering) circuit to the noise measuring instrument. The weighting which is most widely used and which correlates best with subjective response to noise is the dBA weighting. This is an internationally accepted standard for noise measurements.

For variable sources, such as traffic, a difference of 3 dBA is just distinguishable. In addition, a doubling of traffic flow will increase the overall noise by 3 dBA. The 'loudness' of a noise is a purely subjective parameter, but it is generally accepted that an increase/ decrease of 10 dBA corresponds to a doubling/ halving in perceived loudness.

External noise levels are rarely steady, but rise and fall according to activities within an area. In attempt to produce a figure that relates this variable noise level to subjective response, a number of noise indices have been developed. These include:

- i) The L_{Amax} noise level - This is the maximum noise level recorded over the measurement period.
- ii) The L_{Aeq} noise level - This is "equivalent continuous A-weighted sound pressure level, in decibels" and is defined in British Standard BS 7445 as the "value of the A-weighted sound pressure level of a continuous, steady sound that, within a specified time interval, T, has the same mean square sound pressure as a sound under consideration whose level varies with time".

It is a unit commonly used to describe construction noise and noise from industrial premises and is the most suitable unit for the description of other forms of environmental noise. In more straightforward terms, it is a measure of energy within the varying noise.

- iii) The L_{A10} noise level - This is the noise level that is exceeded for 10% of the measurement period and gives an indication of the noisier levels. It is a unit that has been used over many years for the measurement and assessment of road traffic noise.
- iv) The L_{A90} noise level - This is the noise level that is exceeded for 90% of the measurement period and gives an indication of the noise level during the quieter periods. It is often referred to as the background noise level and is used in the assessment of disturbance from industrial noise.

APPENDIX B – QUALIFICATIONS AND EXPERIENCE: STEVE GOSLING

Steve Gosling is a Director and Principal Consultant of 24 Acoustics Limited, Southampton, a firm of consulting engineers specialising in acoustics and environmental noise.

Mr Gosling holds a BEng degree in Engineering Acoustics and Vibration from the Institute of Sound and Vibration Research (ISVR) at Southampton University. He is a corporate member of the Institute of Acoustics and also the Audio Engineering Society. He is a former Vice Chairman of the Association of Noise Consultants and former Chairman of the Association of Noise Consultants' Membership Steering Group. He was also a former Secretary of the Southern Branch of the Institute of Acoustics.

He has specialised as an independent consulting engineer in environmental noise for approximately twenty five years.

Mr Gosling has given evidence at Planning Appeals and various Courts, including the High Court. He has also presented evidence at various local government committees both for developers and those affected by developments.

**APPENDIX C – EXTRACT FROM 2016 WYG REPORT SHOWING MODELLED BARRIER LOCATION
(HIGHLIGHTED IN RED)**