

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF SPECIAL DEVELOPMENT CONTROL COMMITTEE ON 18 MAY 2021

### REPORT

**SUBJECT:** Fitzalan Link Road, Littlehampton

**REPORT AUTHOR:** Neil Crowther, Group Head of Planning

**DATE:** 28 April 2021

**EXTN:** x 37839

**PORTFOLIO 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 commission an independent report to undertake a review of previous decisions and to provide advice on possible actions available to the Council.

### RECOMMENDATIONS:

To agree one of the following two options;

1. Acknowledge that the acoustic fence being erected on site is lawful and conclude that the Council's position remains unchanged from previous decisions, or,
2. The Committee recommend to Full Council that a supplementary estimate be agreed for up to £15,000 to fund the commissioning of an independent expert to undertake the following actions.
  - a) Review the decisions already taken to establish if there are any issues (process and judgement)
  - b) Identify what legal options exist for securing changes to the acoustic fence
  - c) What are the implications of (2) above, including financial (compensation) and legal.

## 1. BACKGROUND:

### Planning History

1.1 Planning application LU/63/11 granted outline planning permission for the northern section of the Fitzalan Link Road in June 2012. This was considered at Development Control Committee on 1 December 2011. The proposal was for approximately 800m of road linking the A259 to the new road created to access the Littlehampton Academy that was being constructed at that time. At that time, it was proposed as a road capable of having a 40 mph speed limit.

1.2 Whilst the application was only in outline form, the report noted *'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.'* ..... *'The Council's Environmental Health Officer confirms that noise will have a substantial effect upon a number of residents located close to the proposed road. He considers that further mitigation should be investigated.'*

1.3 Full details of design and acoustic impacts were not to be considered at outline stage. Therefore, condition 18 of that permission reads;

*'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.'*

1.4 Planning application LU/234/16/RES granted reserved matters approval for the details of the proposed road in October 2017. This was considered at Development Control Committee on 18 October 2017. Three representations were received through the consultation process on this application.

1.5 This application stated that the road had been designed to facilitate a 40mph speed limit at the request of WSCC and stated *'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.'*

The report went on to state;

*'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. The EHO is satisfied with the results of the noise modelling.'*

*'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.'*

1.6 As part of the reserved matters application (LU/234/16/RES) details were included showing the location of the acoustic fence with an offset of approximately 1.0 metre to the boundary of the site, for maintenance purposes. A gated track is to be installed behind the acoustic fencing to enable access for maintenance purposes.

1.7 Condition 7 attached to LU/234/16/RES stated

*'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.'*

1.8 Application LU/426/17/DOC was submitted to discharge details of condition 7 and was approved in June 2018 under delegated powers granted to the Group Head of Planning. This granted permission for the fence to be constructed of timber panels.

1.9 Application LU/366/19/DOC was submitted to discharge details of condition 7 and was approved in April 2020 under delegated powers granted to the Group Head of Planning. This granted approval to change the materials from timber to galvanised steel. The change was proposed due to the greater longevity of this system. A Timber Close Boarded acoustic fence has an expected life span of 10 to 15 years whereas the Weathered Steel has an expected life span of 60+ years. This would reduce therefore maintenance and enable planting in front of the acoustic fence to establish.

## **2.0 Commentary**

2.1 As can be seen above, since the first permission, there has always been a proposed acoustic fence sited to the west of the new link road to the rear of properties in Highdown Drive. WSCC sought for the speed limit to be 40mph and sought a fence design which reflected this. This resulted in a need for an acoustic barrier 3.5m in height and this was approved at the Council's Development Control Committee in October 2017.

2.2 Subsequent discharge of condition applications have related to the materials of the acoustic fence only with the height remaining at 3.5m and no changes to the siting of the fence.

- 2.3 It has to be stated at the outset that the applicant is currently implementing their planning permissions in accordance with the approved details. The Council does not have any evidence that works being carried out are not in accordance with the planning permissions granted and there is no unlawful activity taking place on the site.
- 2.4 Following a number of complaints, the Council has approached the applicant (Persimmon Homes) to request that work on site is paused and to find out if any changes to the fence are possible. They have confirmed that they have been through a lengthy planning process with legal and technical documents and that financial commitment have been made regarding the fence and its erection. They do not consider that a 2.5m high fence will have the desired noise mitigating results.
- 2.5 There has been a lot of reference to a 2.5m high fence in recent correspondence but it is unclear where a 2.5m suggestion has come from as it was never within any application submissions. It is unclear where many residents have the impression that a 2.5m high fence was to be erected because all detailed permissions have been for a 3.5m high fence.
- 2.6 Following complaints to the Council in Feb/March 2021, Group Leaders & Cabinet (22 March 2021) have expressed a desire to consider what options are open to Council at this time that may address some of the complaints concerning the height of the fence.
- 2.7 There have been some comments from Ward Member and members of the public that a change in the speed limit of the road to 30mph would result in the need for an acoustic fence to be only 2.5m in height. Following the complaints about the barrier, Persimmon have stated that they instructed their consultants to undertake a review of the noise assessment data and to review the noise model. They conclude that the impact of reducing the height of the acoustic fence to 2.5m results in an increase in noise levels. And, even if the road was re-designed to be compliant for a 30mph speed limit, this would not achieve sufficient noise reduction to make a 2.5m acoustic fence an acceptable noise mitigation solution. It should be noted that the Council has not been provided with a copy of this technical work to comment upon.
- 2.8 However, in September 2019, Persimmon did investigate whether a lower fence (lower than 3.5m) could be installed in response to several nearby residents' complaints. Additional technical information was submitted, and Arun Planning Officers consulted colleagues in Environmental Health. They stated;
- 11/09/19 'I am reminded of recent nearby residents' opposition to a 3.5 m acoustic barrier, which they consider as visually intrusive. Such a barrier does however provide an acceptable means of noise attenuation in this case. I believe that the provision of a 3.5 m barrier should stand unless a suitable alternative is provided to us for evaluation.'*

23/09/19 *'In respect of proposed reduction in height of the proposed acoustic fence to 3.0 - 3.2m. Having considered the contents then the Environmental Health Department will accept that reasonable noise mitigation measures will be achieved in this case and we agree to discharge of Condition 18 on this basis'*

- 2.9 In November 2019, Persimmon confirmed that they intended to submit a DOC application with the height of the fence remaining at 3.5m. It is understood that Persimmon and WSCC were concerned about future complaints concerning noise and compensation from a fence of a lower height. Arun DC contacted Persimmon Homes in January 2020 and requested whether they would be willing to consider re-designing the acoustic fence. A response was received on the 16/01/20 in which Persimmon Homes confirmed that they re-visited the height of the fence with their noise consultants and confirmed that they considered that the 3.5m high fence was an appropriate response. They confirmed that WSCC were happy with the proposals/solution put forward and are willing to adopt the fence.
- 2.10 The acoustic fence is being offered for adoption to West Sussex County Council as a Highway structure. It will be inspected by the Structures Team at WSCC every two years. As part of their inspection, they are required to be able to access both sides of the structure. Therefore, this requires clear access of the maintenance strip to allow these inspections to take place. This maintenance strip has not been amended and the fence is being erected in the position shown on the approved drawings.
- 2.11 The acoustic fence has gates positioned within in it to allow West Sussex County Council officers access; all gates will be locked. Planting along the Fitzalan Link Road is being installed by Persimmon Homes in accordance with their planning permission. Persimmon Homes have entered into a Legal Agreement with West Sussex County Council that requires them to maintain all elements of the works, including planting, until the road is adopted by the County Council. Prior to the adoption of the road by the County Council an inspection will take place on all elements of it and any defects rectified.
- 2.12 There have been some comments made about the adequacy of the consultation process of the above planning applications. I can confirm that all of the applications were advertised and consulted upon in line with the Council's adopted policy. Advertisements were places in the requisite publications and site notices were erected on Highdown Drive.

## 2. PROPOSAL(S):

This report has been prepared because members wished to consider the facts and discuss what options are available to them. Essentially, there are two options at this time;

1. Acknowledge that the acoustic fence being erected on site is lawful and conclude that the Council's position remains unchanged from previous decisions.
2. If Committee are of the view that they wish to seek potential for change from previously decisions they have taken, it would involve considering revocation or discontinuance. Both would have significant implications around resources, compensation and lawfulness. Officers are not yet in a position to be able to advise on all potential options and implications on these. Therefore,

The Committee recommend to Full Council that a supplementary estimate be agreed for up to £15,000 to fund the commissioning of an independent expert to undertake the following actions.

- a) Review the decisions already taken to establish if there are any issues (process and judgement)
- b) Identify what legal options exist for securing changes to the acoustic fence
- c) What are the implications of (2) above, including financial (compensation) and legal.

## 3. OPTIONS:

Options set out in section 2 of this report.

## 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:**

If option 2 is decided, then there would be financial implications in terms of expenditure and potential compensation. There are would also be legal issues around what options are available to the Council.

**7. REASON FOR THE DECISION:**

To either;

- a) Agree that lawful development should continue.
- b) Agree that options are investigated.

**8. BACKGROUND PAPERS:**

[DCC Agenda 18 October 2017](#)

[DCC Minutes 18 October 2017](#)