

Appendix B

UPDATE SHEET

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COMMITTEE DATE:	14 th February 2019
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**APPLICATION NO: RR/2017/1705/P
BEXHILL**

Spindlewood Drive – land off

Outline: Residential development for circa 160 dwellings with all matters other than access reserved.

Further matters for reporting:

Four further items of correspondence have been received: two directly to the Local Planning Authority, one copy correspondence between a local resident and the County Council as Local Lead Flood Authority; and one being copy correspondence on behalf of SPINDAG to the Secretary of State the Environment, Food and Rural Affairs requesting that the application be called in for the Secretary of State's decision following public inquiry*.

In summary these items of correspondence all focus on the matter of the Council's Appropriate Assessment (AA) of the scheme prepared in consultation with Natural England and the Environment Agency and agreed by those organisations, as required under the Habitat Regulations following the CJEU ruling in the case of 'People Over Wind'

The correspondence raises no new issues but focuses on what objectors consider to be the incompleteness and unlawfulness of the AA in light of that judgement.

Response

- The Council's solicitor has advised that in undertaking its AA that case law establishes that the Council is entitled to take the view of Natural England as the 'Appropriate Nature Conservation Body' within the Regulations as being authoritative (paragraph 6.3.6 of the report refers).
- Any grant of outline planning permission would be subject to very rigorous and detailed planning conditions and other legal obligations on the Applicant under a s.106 agreement that would meet the requirement of paragraph 70(3) of the Regulations that states; "*Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.*"
- The conditions recommended would preclude any works on site to implement the development until detailed foul water and particularly

surface water drainage schemes had been worked up and approved. The detailed schemes would themselves be required to be appropriately assessed.

- The inspector's decision into the recent planning appeal at land west of Ashridge Court (APP/U1430/W/17/3191063, 23/11/2018) is relevant in this respect as in that case where an AA was also required due to potential significant effects on the Pevensy Levels, the inspector concluded that because the proposal was in outline, and therefore the details of the quantity, appearance, landscaping, layout and scale of development were not known, precise details of mitigation measures could not be specified.

He considered that the information provided by the appellant that established the principle of discharging foul drainage to the public sewer and a two stage SUDs scheme, together with a construction management plan would be sufficient in regulating surface water run-off to greenfield rates and to trap potential contaminants. In summary, the inspector considered that the appropriate mitigation at outline stage was simply to secure the submission of these details at reserved matters stage and he attached a very basic condition requiring these details of both to be submitted to and approved before any development commenced. The requirements of the conditions proposed to be attached in this instance far exceed those at Ashridge Court.

* The Ministry of Housing, Communities and local Government has acknowledged the request to call in the application. It has confirmed that this does not prevent the Committee from determining the application now but it wishes to be informed of the decision reached.