

THE EAST SUSSEX COUNTY COUNCIL (BEXHILL TO HASTINGS LINK ROAD) COMPULSORY PURCHASE ORDER 2009

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PUBLIC INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF EAST SUSSEX COUNTY COUNCIL

Introduction:

1. Our opening submissions to this inquiry put forward a number of general propositions that we claimed would be established by the evidence. They were as follows, namely that:
 - (i) the area is in pressing need of economic regeneration
 - (ii) this Link Road is an essential component of a comprehensive package of measures to bring about that regeneration;
 - (iii) the need for the Link Road to achieve that goal has been assessed over a substantial period of time and has consistently been found proven;
 - (iv) the need exists now;
 - (v) it is recognised in all components of the statutory development plan;
 - (vi) the ESCC as local planning authority conscientiously and thoroughly

carried out its statutory duty to consider the application for planning permission and decided to grant permission in the public interest subject to all appropriate conditions and obligations;

(vii) the SoS tested that resolution to grant planning permission against all appropriate development plan, regional and national policy and decided to allow the grant of planning permission to be made by the ESCC without intervention;

(viii) the scheme to build the Link Road has been designed to avoid harm to the environment and all interests of acknowledged importance where possible, to mitigate any harm that would be caused as far as is reasonably practicable and where significant harm would nevertheless be caused to seek to compensate for it;

(ix) funding is in place to the extent it can be at this stage;

and finally and as a consequence, that therefore

(x) the compelling case in the public interest in the CPO's being confirmed outweighs substantially the private loss and justifies the interference with the human rights of those whose land is affected.

2. At the end of the evidence to the inquiry we can now submit that these propositions have all been established by the evidence and have not seriously been challenged. The need for regeneration and the essential role of the Link Road in achieving it have been established with clarity and force. After all the evidence has been heard and read there is not a word of our opening submissions that we need to change let alone retract and so to avoid unnecessary repetition we

invite the Inspector and the Secretaries of State to read our opening submissions and these closing submissions together as the summary of our case.

3. Two matters have changed since our opening submissions.
4. Firstly, there has been no suggestion by any objector that the statutory tests for the confirmation of the Side Roads Order have not been satisfied and so if the Secretaries of State confirm the CPO's - as we invite them to - the SRO should also be confirmed. Mr. Robertson and Mr. Davies dealt with the SRO in their evidence¹ and we propose to say no more about it.
5. Secondly, since we made those opening submissions there have been 9 withdrawals of objections by remaining objectors as set out in the attached schedule so that the balance of public interest over private loss comes down even more clearly in favour of the public interest being served by the confirmation of the Orders.
6. We will now turn to consideration of the main issues that have been considered during the inquiry.

The Need for Regeneration:

7. It has not seriously been contended by any objector that this area comprising Bexhill and Hastings does not suffer from serious economic deprivation and all that stems from it. Mr. Shenfield's evidence has shown that Hastings is the most deprived community in the South-East and the 31st most deprived community in all of England while Bexhill is also disadvantaged with Sidley and Central wards

¹ ESCC/1/1 s.14 and ESCC/2/1 s.5.4

containing areas within the 20% most deprived nationally.² Mr. Shenfield has wide and long experience of considering economic circumstances, the need for regeneration and how that need can be addressed. He is the main author of the Regeneration Statement published in support of the application for planning permission in 2007³ and of its Addendum in June 2008⁴ and of the Regeneration Report⁵ issued in October 2009 which was able to bring matters up to date taking into account the most recent traffic modelling and the Major Scheme Business Case.⁶ He carried out surveys and interviews which were able to inform his evidence and his judgments.

8. He and the Regeneration Report identify the circumstances from which the area suffers as including:

- (i) high levels of economic inactivity with 3,063 claimants for Jobs Seekers' Allowance in Hastings currently⁷;
- (ii) accessibility problems and congestion that will continue to deteriorate in the absence of action;
- (iii) a local economy that is very dependent upon a high level of public sector employment; and
- (iv) a shortage of commercial and industrial premises that is inhibiting private sector development.⁸

² ESCC/4/1 #4.1

³ CD 9.1(b)

⁴ CD 9.1(f)

⁵ CD9.32

⁶ CD9.12

⁷ ESCC/INQ/33 Q.8

⁸ ESCC/4/1#4.14 and CD 9.32 p.1 s.5

9. The annual survey carried out by Hastings Borough Council, and Rother District Council⁹ shows a significant number of local companies are operating in constrained circumstances, are actively seeking to expand and require new premises.¹⁰
10. None of this has been seriously challenged by objectors. It has been suggested that the problems are really in Hastings and not Bexhill or Rother but the two Councils clearly see Hastings and Bexhill as one area whose needs have to be addressed. The Inspector who considered objections along similar lines to the Rother District Local Plan was clear that “the towns may be considered as a single urban area in employment terms. The proposed Link Road would facilitate access to work in Bexhill for Hastings residents and vice versa.”¹¹ He concluded “There is substantial evidence of need for additional business development provision to serve Bexhill and Hastings. These towns currently experience relatively high levels of unemployment and social deprivation and low wage levels, particularly in comparison with other parts of the south-east region.”¹² Mr. Shenfield’s Table 4.1 shows that since the LP Inspector reported at the very end of 2005 there is a continuing and deteriorating position in Hastings and Rother in terms of overall deprivation.¹³
11. The Local Plan Inspector also agreed that there was strong evidence of a pent-up local demand for space particularly from local firms seeking to expand or to move

⁹ CD7.35 (N.B. NOT 7.36 as shown on the CD list) at p.73 T.47 and #6.37

¹⁰ RR CD 9.32 at p.2 and ESCC/4/1 #4.15

¹¹ CD 7.24 IR 10.73

¹² *ibid* #10.71

¹³ ESCC4/1 p.18

to better quality accommodation¹⁴. So he was not basing his support for the NE Bexhill Business Park and the Link Road on a hope or expectation of inward investment alone but he did recognise that “local regeneration initiatives” (of the type that Mr. Shaw has given evidence of) “and proposals to provide the BHLR and upgrade the A21 are improving business confidence and will make the area more attractive to inward investment.”¹⁵ Inward investment was seen as one element of the regeneration of the area, contrary to Prof. Wenban-Smith’s repeated assertions that inward investment alone was relied upon and that it was unrealistic.

12. Following receipt of the Inspector’s Report on the Local Plan it was adopted and became the local component of the statutory development plan in July 2006. It expressly recognises that “economic regeneration, including inward investment, in the Bexhill and Hastings area is a regional priority.”¹⁶ It is recognised as “a clear priority of the business community that new sites and buildings are provided as soon as possible.”¹⁷

13. The South –East Plan¹⁸ published by the Government as recently as May 2009 also recognises the area as in need of regeneration, as we shall see in more detail later.

14. There can be no doubt that Bexhill and Hastings together are economically disadvantaged and in pressing need of regeneration.

¹⁴ CD 7.24 #10.72

¹⁵ CD7.24 #10.72

¹⁶ CD7.3 #4.21

¹⁷ *ibid* #4.23

¹⁸ CD6.2 e.g SP1, SP4, SCT1,2,3,4,5 and 7.

The Link Road as a part of a comprehensive package of measures to achieve regeneration.

15. The objectors have sought to argue that even if there is a need for regeneration the Link Road is not needed to bring it about. This argument has shown a lack of understanding of what is proposed and how the package of measures to address the problem has been assembled and carefully considered over the recent past.
16. The history begins earlier¹⁹ but we will address the position as it has emerged following the rejection of the Bypass Schemes.
17. We should record in passing that the Link Road scheme is very different from the Bypasses.²⁰ In deciding not to approve the Bypasses in July 2001 the Secretary of State drew particular attention to the “evidently severe implications for the environment – two SSSI’s, an Area of Outstanding Natural Beauty and a designated wildlife site”²¹ But he went on to say: “Regeneration is an important priority for the Government – some wards in Hastings suffer from the most severe deprivation in England. It is important we have a strategy to tackle this and we stand ready to help but we do not believe the bypasses are the solution.”²² He went on to say that “a regeneration strategy for Hastings needs to be developed which shows clearly how transport and other measures may be implemented to

¹⁹ See Mr. Robertson’s evidence ESCC1/1 s.7

²⁰ Compare the routes as shown on Mr. Davies’ ESCC/2/1 Figures ENG1 and ENG2

²¹ CD9.15a

²² *ibid* further down the page

ensure a sustainable economic future for the area.”²³

18. Following that decision the South East of England Economic Development Agency commissioned DTZ Pieda to “identify the economic future of the Hastings area and what may be done to secure the prosperity of the area.”²⁴ They produced a report which Mr. Bingham and Prof Wenban-Smith for the Hastings Alliance have characterised as “far-sighted” and as “coming closest to providing a clear strategic vision, compatible with RSS and national policy”²⁵. Given their opposition to the Link Road those views are surprising as the DTZ Report clearly supports the NEBexhill Business Park and the Link Road. The Professor seems to have been referring to some presentation which has never been published as far as we are aware rather than to the published Report under the SEEDA and DTZ Pieda names or, if not that, he appears to have entirely misread the Report. We submit that the Report bears only one sensible reading, namely that the Business Park and the Link Road are strongly supported as ways of addressing the need for regeneration in the area provided the necessary technical work on them showed them to be feasible and capable of avoiding the SSSI’s and the AONB. I will not take inquiry time by quoting again the relevant passages but I commend a further reading of paragraphs 5.3 -5.11 and 6.42-43 to justify our interpretation of the document²⁶. Recommendations 7 and 17 both recommended that the Business Park and the Link Road be progressed as crucial ways of addressing the need for regeneration of the area.

²³ CD9.15a lat paragraph

²⁴ CD7.5 #1.2

²⁵ Obj.179/1 #4.19

²⁶ CD7.5

19. The 5 Point Plan²⁷ built on that work. It is true that the NEBexhill Business Park and the Link Road do not feature prominently in the document but that is explained at paragraph 3.11: “There are a number of projects that are judged not to be sufficiently developed or have not presently been programmed to commence within the first three years of the Five Point Plan by the members of the Task Force lead by SEEDA. However, it is important that they are detailed within this report as they are an integral part of the regeneration of Hastings and Bexhill and form the balance of the 10 year programme.” They include the Business Park and what was there termed the Bexhill Feeder Road.
20. That was in March 2002. In August 2002 the Final Report of the South Coast Corridor Multi-Modal Study was published. That identified that “economic regeneration is a key local policy issue” in the Bexhill-Hastings areas with “a shortage of available industrial premises and low rental levels which act as a constraint on business expansion” and with “high unemployment, benefit dependency and a low wage economy” also contributing to “social exclusion and deprivation”²⁸. Congestion problems along the A259 were expressly identified and the Report recommended that “The Bexhill-Hastings Link Road should be developed.”²⁹
21. The Hastings Strategy Development Plan was published at the same time which after careful and thorough analysis unequivocally supported the NEBexhill Business Park and the Link Road.³⁰

²⁷ CD7.6

²⁸ CD7.9#6.20

²⁹ *ibid* #6.20.3,4 and Figure 6.4

³⁰ CD7.10 esp.Chapter 8 and #8.2.3 to 8.2.7 and 8.4.7 and 8.6.1

22. The SoS considered all that work and in July 2003 he reported “The Multi-Modal Study has recommended one local road scheme to be taken forward: the Bexhill-Hastings link road. The scheme is part of a package of regeneration measures for Hastings that is being developed following our decisions on the Access to Hastings Multi-Modal Study announced in July 2001. The SoS recognises that this road will have some impact on the environment. He is therefore asking ESCC to work closely with the Statutory Environmental Bodies in developing this scheme in more detail, in order to minimise the environmental impacts.”³¹
23. The ESCC complied with that request. The timing allowed Rother District Council to revise their deposit Local Plan so that the LP itself explains: “A key proposal that Government has asked ESCC to carry forward is a link road from Bexhill to St Leonards/north Hastings. As well as relieving the congestion and serious environmental problems along the A259 at Glyne Gap and the Bexhill Road it will open up vital development land and improve accessibility in other ways.”³² The Plan was able to show an area of search that skirted to the north of the Combe Haven Valley SSSI, as the permitted route does.³³
24. Given that timing, the Business Park and the Link Road were able to be fully scrutinised at the Local Plan Inquiry that sat for 47 days between the 19th October 2004 and the 20th May 2005. They were “particularly controversial”³⁴. Mr. Bingham as a member of The Friends of Brede Valley took the opportunity to object to the Link Road, the Business Park and the housing. The Inspector

³¹ CD9.17

³² CD7.3 #8.7

³³ ibid #8.8 and inset plan 1a.

³⁴ CD 7.24 letter paras 1 and 15

supported all of them. He concluded that the construction of the Link Road would be “essential if the necessary housing and employment provision is to be achieved within the Local Plan period and if an adequate supply of development land is to be maintained for the subsequent period.”³⁵

25. The LP Inspector reported that a number of objectors to the Local Plan suggested alternative locations for major development, but he concluded that any of those alternatives “would be likely to contribute to excessive levels of traffic on the A259 through the town if the Link Road is not built”³⁶. The adopted Local Plan explains that “consideration has been given to alternative or additional urban extensions around both Bexhill and Hastings” but concludes “any significant growth of Bexhill is dependent upon the building of the Link Road.” It describes those potential alternative areas to the west or north-west as being “less well-related to the existing urban fabric, the town centre or the new transport infrastructure and are environmentally sensitive rural fringes. While Hastings is the sub-regional centre, the High Weald AONB envelops the built up area from Fairlight in the east to Marline Woods in the west. National planning policy looks to areas outside AONB’s in preference, which land around Bexhill is.”³⁷ 80% of Rother District is AONB.³⁸

26. So the Business Park and the principle of the Link Road were subject to public scrutiny and the conclusions of the Local Plan Inspector and of the local planning authority were that the new employment land is needed to assist in the

³⁵ ibid letter #21

³⁶ CD7.24 letter #21

³⁷ CD7.3#4.37

³⁸ CD7.3#2.10

regeneration of the town, together with the new housing that is also needed, that there was no other suitable location for that development, that the Link Road was essential to the delivery of that new employment land and housing and that the three elements of the package – the Link Road, the employment land and the housing - all should be supported.

27. The Inspector did contemplate that some development might be able to come forward before the Link Road is open if a Transport Assessment was able to show that the impact on the road network was acceptable pending the opening of the Link Road but he saw the amount as “only a small proportion”³⁹ or “little” and refers to a possible 100 dwellings.⁴⁰ It is perhaps telling that no developer has sought to establish that a Transport Assessment could show such an acceptable temporary impact of a small number of houses and it is in any event clear that the policies are premised on the Link Road in fact being programmed to take place before any development could come forward. Policy DS2(ii) refers to the new urban extension being “well related to the planned Link Road” and BX2 and BX3 refer to any numbers possibly justified for early release having to be located with “regard to the approved route” of the Link Road. The amount of any such development that could potentially have come forward – but in fact has not- is so small that there is no merit in Prof Wenban-Smith’s suggestion that the proportion should be removed from the benefit side of the benefit to cost ratio of the Link Road. In reality the development that has been established as being needed for the regeneration of the area is dependent on the Link Road. The 2007

³⁹ CD7.24 letter #20 and IR #10.76

⁴⁰ *ibid* #10.31

SPD, The North East Bexhill ‘Masterplan’, recognises that the existing road network and specifically the A259 between Bexhill and Hastings is already over-capacity and could not accommodate the further traffic generated in NEBexhill – “it is essentially dependent upon the proposed Link Road to create that capacity.”⁴¹

28. The ESCC in carrying out its statutory duties as local planning authority has now determined that planning permission should be granted for the Link Road in the public interest taking into account the provisions of the development plan in order to bring about the regeneration of the area. The SoS having expressly taken into account local, regional and national policy has declined to intervene in the grant of that permission⁴².
29. Furthermore, the South East Plan unambiguously and whole-heartedly supports the delivery of the NE Bexhill sustainable urban extension to secure the regeneration of the area and calls for the delivery of the Link Road in order in turn to deliver the NE Bexhill development and so to secure the Plan’s regeneration objectives for the area.
30. The SEP is a prime example of an up to the minute expression of spatial planning in accordance with PPS1 from the standpoint of which Prof Wenban-Smith purported to give his evidence⁴³ even though it did not feature in his chronology and the published SEP did not feature in the list of documents that were an “input” to his evidence. His suggestion that national policy is increasingly hostile

⁴¹ CD7.13 #3.16 and #5.81-85 – “a transport case for a very limited amount of development in advance of the Link Road opening would have to be based on a range of on-site and off-site measures to offset the effect of development traffic on overall traffic flows at Glyne Gap.”: 5.86 5th bullet point.

⁴² CD9.10

⁴³ His SoE #1.5 and compare the SEP CD 6.2 #1.4,1.13,14

to the Link Road does not bear any serious analysis when it is accepted – as the Professor did - that the SEP is a recent expression of the Government’s policy for this area.

31. This area is within the Sussex Coast sub-region which policy SP1 identifies as a focus for growth and regeneration. Hastings is identified as one of the regional hubs which are seen as delivering long term development in strategic development areas identified around those hubs.⁴⁴ Hastings is expressly referred to as a “focus of future major development for employment and housing” where “increasing accessibility is a central plan of the integrated regeneration package for the town” and “where regeneration initiatives are intended to meet the social and economic needs of both the urban area and the wider economic area”⁴⁵ That expression echoes the LP Inspector’s view of Hastings and Bexhill as being one employment area.
32. The Core Strategy of the SEP goes on to require local authorities and other agencies to “proactively pursue and promote the sustainable economic growth and regeneration of the Sussex Coast that will ... (iii) provide for sustainable urban extensions in ...(inter alios) Rother including mixed use developments”⁴⁶ Lest there should be any doubt that it is NE Bexhill that is being referred to there, policy SCT3 provides that in order to “deliver sufficient appropriate sites and premises for business ... that will help to facilitate the regeneration of the local economy, local authorities should develop and coordinate with other agencies delivery mechanisms to unlock and implement existing allocated business parks”

⁴⁴ SEP CD6.2 SP2 v

⁴⁵ ibid p.21 Table item 10

⁴⁶ SCT1(iii)

- and this “includes mixed use development sites at North East Bexhill.” The Government’s support for the NE Bexhill development to help the regeneration of Hastings could not be clearer.
33. Prof Wenban-Smith suggests that “The NEBBP is irrelevant and potentially damaging.”⁴⁷ That is not the view of Mr. Shenfield, nor of Mr. Shaw nor of the County Council, nor of the Borough Council nor of the District Council and it is clearly not the view of the Government.
34. NE Bexhill is again supported for employment development within a sustainable urban extension in SCT4 and for housing in SCT5.
35. Finally the text of the SEP at #17.14 refers to the transport schemes that are already committed for delivery in order to develop the Sussex Coast as being listed in Chapter 8 Appendix A “Strategic Transport Infrastructure Priorities” and there we see in Table 3 the Link Road. Securing the delivery of that Scheme is sought.⁴⁸
36. There cannot be clearer expressions of support by the Government for the NE Bexhill development to secure the regeneration of this area with the Link Road supported as a transport infrastructure priority in order to deliver it.
37. In the light of this unequivocal expression of Government support, Prof Wenban-Smith and Mr. Buchan for the Hastings Alliance were driven to wholly unsustainable positions – primarily it has to be said after their cross-examinations had been completed and by way of inappropriate “supplementary statements of evidence” not provided for in the Rules or in the Inspector’s pre-inquiry meeting

⁴⁷ His SoE #4.20

⁴⁸ SEP CD6.2 #8.48

directions and notes.

38. Firstly they maintained that the cross-cutting policies in the SEP which support sustainable development and seek to address climate change undermine the express policy support for the Link Road and for NE Bexhill. It would be a strange Plan that gave express, unambiguous support for the delivery of named and identified developments as critical elements of the regeneration of an area whilst expecting that they might not come forward because of other general policies in the Plan. The SEP has gone through lengthy and thorough statutory processes including consideration of objections to the draft Plan – and indeed including objections by the Hastings Alliance to all those policies we have considered which support this scheme⁴⁹ – and the policy support for the NE Bexhill development and the Link Road has been maintained at the end of that process. The NE Bexhill development is expressly seen as a “sustainable urban extension” in Policy SCT1, the Core Strategy. The Local Plan Inspector has already identified the high level of sustainability of the NE Bexhill extension.⁵⁰
39. Further, CC1 requires that all authorities’ actions in delivering the policies in the plan should “contribute” to meeting the objectives of inter alia “reducing greenhouse gas emissions associated with the region”. It is not a requirement that each development whose delivery is supported in the Plan should in and of itself “reduce greenhouse gas emissions associated with the region”. It would be strange indeed if each housing allocation, each employment allocation and each road identified for delivery should be expected itself to reduce greenhouse gas

⁴⁹ See ESCC/INQ/27

⁵⁰ CD7.24 #10.75

emissions. In this case the ESCC has committed itself to addressing any net increase in greenhouse gases resulting from the Road in its climate change strategy and Mr. Robertson has given examples of how that may be achieved.⁵¹ The PPS1 Supplement expressly advises that strategic targets should not be applied directly to individual planning applications and that must apply - we would submit - to individual schemes such as that before this inquiry⁵². That PPS1 Supplement is expressly referred to as extant planning policy on reducing carbon emissions in paragraph 4.80 of the Carbon Reduction Strategy for Transport.⁵³ Mr. Buchan was forced into arguing that the UK Low Carbon Transition Plan⁵⁴ and the Carbon Reduction Strategy for Transport having been issued in July of this year undermine the provisions of the SEP published in May 2009. Neither document says any such thing and one would have expected the Government to spell that out if it had been its intention. PPS's in the past have advised that they supersede development plan policies on the same subject where there is a conflict⁵⁵ but that is not said in either of these documents. That is not to say that they are not very important statements of Government policy but the ESCC has taken their advice into account by entering into the obligations to address climate change issues in CD 9.33.

40. The DfT, having considered the ESCC Major Business Scheme Business Case which includes an assessment of climate change effects,⁵⁶ has approved the re-

⁵¹ See ESCC/INQ/32

⁵² See ESCC/INQ/21

⁵³ CD 5.35

⁵⁴ CD5.33

⁵⁵ e.g. PPS10 on Waste

⁵⁶ CD9.12 at #3.4.3

confirmation of Programme Entry of the Link Road into its Local Authority Major Schemes Programme on the 9th October 2009⁵⁷ after the publication in July 2009 of the documents upon which Mr. Buchan relies suggesting that the DfT does not share his interpretation of them any more than we do.

41. Nor does Policy T1 which is a general policy on regional strategies, local development documents and local transport plans impose specific requirements as to mobility management measures on individual transport investment priorities identified in T14 and Appendix A - although it is right to say as Mr. Johnston explains in his evidence that the Link Road is a part of a package of complementary measures.

42. Of course, too, the Link Road will ultimately be subject to value for money and affordability tests by the Government as paragraph 8.43 of the SEP explains but this Scheme has already been thoroughly assessed thus far and the letter from the DfT dated the 9th October 2009⁵⁸ indicates that the SoS has approved the re-confirmation of Programme Entry of the Link Road into the Local Authority Major Schemes Programme and that the Department has the present intention to provide funding towards the construction of the scheme as set out in the letter. The basis on which considerable confidence can be given to the reliability of the cost assessment of the scheme is explained in the Inquiry document on the subject that the Inspector asked for⁵⁹.

43. Policy T14 is followed by paragraph 8.48 which provides that “plans, strategies, investment decisions and programmes should take forward and secure the

⁵⁷ CD9.40

⁵⁸ CD9.40

⁵⁹ ESCC/INQ/30

- delivery of the transport investment and management priorities of regional significance outlined in Appendix A”. The Link Road is one such transport investment priority of regional significance whose delivery is sought to be secured.
44. The SEP read in a sensible holistic way can only be read as express support for this Link Road as a critical element in the delivery of regeneration for the area through the delivery of the sustainable urban extension at NE Bexhill.
45. Certainly both Hastings Borough Council and Rother District Council in their emerging LDF Core Strategies expressly support both the Link Road and the NE Bexhill Development as the way to meet the development requirements of the SEP and to accord with the strategies of that Plan.⁶⁰ They see no conflict between the cross-cutting policies and the identification of the NE Bexhill development as a sustainable urban extension delivered by the Link Road.
46. Prof Wenban-Smith also sought to argue that “it is not at all clear that the BHLR is the only means of accommodating the additional housing provided for by the RSS.” We have already seen that the SEP itself expressly identifies NE Bexhill as the sustainable urban extension in Rother. The Local Plan Inspector considered a range of alternatives and found none of them to be acceptable⁶¹. The adopted Local Plan explains the sound reasons why NE Bexhill is the only appropriate location and both the local Councils continue to express that view in their emerging Core Strategies.
47. Prof Wenban-Smith’s main substantive alternative is that the regeneration needs

⁶⁰ CD7.11 Rother draft CS Box 2 p.21, Box 4 p.34 and see CD7.12 #8.21-22 and #18.4

⁶¹ CD7.24 #10.74 and 10.76

of the area could be met by “churn” in the local property market without the need for substantial additional development at NE Bexhill. Again none of the existing or emerging components of the development plan agree. The Local Plan Inspector did not agree. The Employment Land Review carried out by the Borough Council and the District Council identifies a need for some 14,400 more jobs and a need for some 208,000m² of additional employment floorspace.⁶² Neither Mr. Shenfield nor Mr. Shaw agrees. They point out that “churn” is indeed a constant feature of the local property market. If it produced regeneration it would have done so by now and it patently has not. Mr. Shaw has explained how Sea Space has focussed on regenerating the town centre first in proper accordance with the sequential test, then they have looked to brownfield sites and then to acquiring new buildings. NE Bexhill is the next and necessary stage. Good quality business floorspace is in very short supply in this area.⁶³

48. Mr. Shaw has the hands-on experience for his evidence to carry significant weight in these matters.⁶⁴ He has explained the broad reach of the Five Point Plan and of the Hastings and Bexhill Business Plan⁶⁵ developed therefrom. It aims to deliver 100,000m² of business, education and hotel floorspace and 1,400 new homes. It provides for a £341m package of projects over 10 years to deliver 5,700 new jobs. The NEBexhill Business Park will account for 51,500m² of the projected business floorspace. He is of the view that without the Link Road, the floorspace and jobs targets could not be met and the Enviro 21 Business Corridor Projects

⁶² CD7.35 Table 47 and #6.37-8 and see ESCC/INQ/34 for a further explanation of the numbers.

⁶³ See John Shaw ESCC 3/3 App.8

⁶⁴ ESCC/3/1 #2.3.6-9.

⁶⁵ CD7.7

would not succeed without both the NE Bexhill Development and the connectivity of the Link Road⁶⁶. Business confidence would be undermined with an impact on the schemes which are not directly dependent on the Link Road for access.⁶⁷ His view as a practical man in the real business world is that the Link Road is a key part of a comprehensive plan which addresses the social, economic and physical issues which have held back Hastings and Bexhill and should be seen in the whole context of that wider plan. The Link Road is an integral and essential part of the plan to regenerate the area.⁶⁸ He was not seriously challenged on any of that evidence.

49. Mr. Shenfield provided a more academic view but still grounded in wide experience of regeneration in the real world. Again he was not seriously challenged in his views. They are that without the Link Road the North East Bexhill Business Park would not be developed thereby losing the prospect of creating some 2,000 jobs and providing some 1,200 new homes. In his judgment about 60% of those jobs would be taken by local residents⁶⁹. A further 900 jobs and 1,450 homes at other projects would be put at risk. He is also of the view that the Link Road would safeguard a number of existing jobs by reducing the risks of existing companies relocating outside the area. His view is that the jobs that the Link Road would create the opportunity for would particularly benefit the residents of the more deprived wards.⁷⁰

⁶⁶ ESCC/3/1 #7.1.1

⁶⁷ *ibid* #7.1.2-4

⁶⁸ *ibid* #8.43 and #9.2

⁶⁹ See ESCC/INQ/8 for a breakdown of the expected spatial distribution of the new jobs

⁷⁰ ESCC/4/1 section 8

50. Mrs Bargery⁷¹ suggested through her table drawn from the 2001 census figures that because a high proportion of the unemployed do not have cars the NE Bexhill Business Park would not address their needs as they would not be able to get there. Firstly, it will be noted that Sustrans after being challenged on the matter in cross-examination withdrew the suggestion in their evidence that a bus company had indicated it would not be prepared to run buses along the Link Road⁷². The Link Road clearly provides the opportunity for bus services to access the Business Park from all local areas. Furthermore, the Business Park would be accessible by walking and by cycling by a large proportion of the local population. The Greenway would allow and thereby attract cycling separated from vehicles. In any event, a careful look at Mrs. Bargery's table and the census figures allows one to see that the majority of unemployed households in Hastings and Rother do have access to one or more cars. Mrs. Bargery drew particular attention to the low levels of car ownership in Castle and Central St Leonards wards. However, these are conveniently and centrally located wards with very good access to public transport. The other side of that coin can be seen in the fact that wards on the periphery of the urban area have high levels of car ownership irrespective of employment status. Sidley is an example of this one can see from Mrs. Bargery's spreadsheet and is a deprived ward as the Regeneration Report and Mr. Shenfield's evidence show.

51. The Sustainable Community Strategy recognises and supports the sustainable travel options referred to by Mr. Boocock for Sustrans but still identifies the need

⁷¹ Obj/244

⁷² ESCC/INQ/22

to implement the Link Road.⁷³ The Greenway linkages are extensive as ESCC/INQ/35 shows.

52. Finally on this issue, I should say a few words about the suggestions by a number of objectors that *alternatives to the Link Road* have not been properly considered. The Hastings Strategy Development Plan as part of SOCOMMS⁷⁴ expressly looked at alternatives to the Link Road. It looked at on-line improvements to increase capacity, removing on-street parking, widening the A259, local public transport improvements and ‘soft measures’.⁷⁵ It concluded by recommending the Link Road should be developed⁷⁶. Its view was that “as land-use developments in North Bexhill cannot be accommodated without increased highway capacity, the Link Road also addresses wider economic regeneration issues”⁷⁷. To make on line improvements would require comprehensive destruction of buildings and local transport and ‘soft measures’ would have only a limited effect.⁷⁸ It was that work which persuaded the SoS to ask the ESCC to work closely with the SEB’s in developing the Link road in more detail, in order to minimise the environmental impacts.⁷⁹ As we have already seen that work was done and consultation on alternative routes was carried out. The people in 65,000 households were given the opportunity to tick a box to say they did not support the development of a Link Road. 419 people did so.⁸⁰

53. In the Local Transport Plan Major Scheme Bid of July 2004 non road based

⁷³ ESCC/INQ/37

⁷⁴ CD7.10

⁷⁵ CD7.10 # 5.7 and #8.2.6

⁷⁶ CD7.19 #6.20.3

⁷⁷ #8.2.6

⁷⁸ #8.2.6

⁷⁹ CD 9.17

⁸⁰ ESCC/INQ/33 Q.5

alternatives were looked at and solutions based on improvements to public transport were considered but found unsuitable for the reasons set out in the Report.⁸¹

54. Objections to the Link Road including that from Mr. Bingham's organisation which sought a "wider policy about transport in the Bexhill-Hastings area" were looked at during the Local Plan Inquiry but the Inspector upheld the safeguarding policy for the Link Road.⁸²
55. The Hastings Alliance sent to the DfT a report from Denvill Coombes which alleged that alternatives to the Link Road had not been properly addressed. The response from the DfT dated the 1st March 2007 is attached to the rebuttal to Mr. Buchan⁸³. It rejected the criticism observing that SOCOMMS had "looked in particular at the scope that all transport modes and policies such as demand management could make to resolving the identified transport problems." In the last paragraph on p.2 it refers to the importance in other road schemes that alternatives be considered presumably on the basis that it was considered that proper consideration had been given at that stage to the Link Road.
56. In any event Mr. Johnston's thorough consideration of alternatives has been well aired at the inquiry and we commend it to the Inspector. Mr. Johnston's evidence explains that various alternative options have been considered by him including on-line improvements, improvements to rail and bus services, the provision of a station at Glyne Gap⁸⁴, travel plans and the other types of measures which have

⁸¹ CD9.28 #9.2

⁸² CD7.24 #8.15

⁸³ ESCC/R18/Obj.179

⁸⁴ ESCC6/1 #8.3.2 – 8.7.8

come to be known as “Smarter Choices”⁸⁵. He has provided further information on the analyses he carried out in response to questions from objectors.⁸⁶ He explained in oral evidence how he had taken into account the most recent research on Smarter Choices but he concludes that none of the measures would achieve the objectives of the Link Road. He was not seriously challenged in his conclusions.

57. In conclusion on this issue we submit that the evidence is overwhelmingly to the effect that the Link Road by providing the access to the major sustainable urban extension at North East Bexhill is an essential component of the package to regenerate the area.

The Reliability of the Transport Forecasting:

58. Given the obvious professionalism and skill shown by Mr. Johnston in his evidence it is perhaps not surprising that there were no serious challenges to the reliability of the forecasts he provided. He explained in his evidence how the models had been developed from the information provided by roadside interviews and then constructed and validated all in accordance with DfT guidance. The DfT has carefully considered his work as part of the submission of the Major Scheme Business case and that has resulted in the re-confirmation of the Programme Entry of the Link Road into the DfT’s Local Authority Major Schemes Programme.⁸⁷ His forecasts can be relied upon with confidence, we submit. He has taken into account all the development that is expected to occur with the successful

⁸⁵ ESCC6/1 # 9.2

⁸⁶ ESCC/INQ/36 and /40

⁸⁷ CD9.40

- regeneration of the area that the Link Road is designed to bring about. His Figure 7.1 illustrates the forecast flows.
59. Mr. Smith on behalf of the Wishing Tree Residents Association understandably had queries about some of the forecasts over time but in cross-examination he accepted that what Mr. Johnston had done was to redo the modelling over time in accordance with the DfT guidance so as to take into account the most recent research and thereby to improve the reliability of the forecasts.
60. Those forecasts show the substantial reductions in flows along the critical links of the A259 even taking into account the traffic generated by the development brought about as part of the regeneration of the area which can only happen in NE Bexhill with the Link Road open.
61. It also shows the significant reductions in flows on the rural roads in the AONB with big reductions, for example, on Ballards Hill and Henley's Down entering or leaving Crowhurst.
62. It is correct to say that there are increases on the Queensway and Gillsmans Hill but the flows will still be within the capacity of the roads and complementary measures are to be put in place as Mr. Johnston explained in his rebuttal to the Wishing Tree Residents Association.⁸⁸ The A21 Baldslow Link is identified as an investment priority in the SEP at T14 App.A Table 3.
63. There are too forecast to be small increases on flows to the west of Belle Hill but again the flows are well within the capacity of those roads⁸⁹ and the accident rates along those links over a representative period of time are near or below the

⁸⁸ ESCC/R31/Obj155

⁸⁹ ESCC/R5 and 6/ obj 131a and b

national average rate⁹⁰. Mr. Rosner, whose concern this was, positively supports “ a rational answer to the A259” and accepts that the A259 presents a problem that has to be addressed but his and his wife’s solution is a bypass that would inevitably go thorough the AONB.

64. We submit that Mr. Johnston’s evidence can be relied upon as showing that the Link Road will do the job it is planned to do and indeed that there is no other practicable solution.

Reliability of the Economic Assessment:

65. Again this is Mr. Johnston’s area of expertise and we repeat our earlier submissions on the quality of his evidence. The only challenge to his evidence was Prof Wenban-Smith’s concern about account being taken of small time savings. He accepted that to take them into account is required by current Government guidance on the methodology of economic assessment and ESCC/INQ/14 shows that the very short time savings are effectively cancelled out by the very short time losses, that over 93% of the time savings are over 2 minutes and so the exclusion of time savings and time losses of less than 1 minute would not significantly reduce the time benefits from construction of the Link Road.

66. We have already made our submission that there is no force in the Professor’s suggestion that there should be a reduction in the benefits of the road from the

⁹⁰ ESCC/INQ/15

housebuilding on the basis of a very small number coming forward in advance of the road opening. They still could not come forward at all if the Link Road were not planned and due to open.

67. Mr. Johnston's work has already been checked and looked at by the DfT and the letter of the 9th October 2009 is the result⁹¹.

68. Again we are able to submit on the basis of Mr. Johnston's evidence that the road shows good value for money. Confidence can be given to the costings on the basis of all the checks, balances and safeguards explained in ESCC/INQ/30.

Landscape and Visual Effects:

69. The assessment of these matters on behalf of the ESCC was explained in our opening submissions at paragraphs 37 to 43 and nothing in the evidence at the inquiry causes us to change anything we said then.

70. Dr. Clark and Mr. Hewson debated questions of methodology but ultimately this is a matter for the Inspector to form his judgments upon and to inform the SoS's accordingly. All of the material is available – not least the site visits - to enable those judgments to be reached. Mr. Hewson is confident that he has used his professional expertise and judgment to employ the correct methodologies that properly enable him to form his judgments. We commend them to the Inspector.

71. Dr. Clark seemed to be exercised by the use of the word "significant" in the description of the effects of the Link Road on the local landscape in our opening submissions. It derives from Mr. Hewson's evidence in the first line of paragraph

⁹¹ CD9.40

7.2.7 of his SoE⁹². Both his evidence and the opening submissions go on to qualify this statement by describing the proposed mitigation to reduce the landscape and visual effects of the scheme. The definition of “significant” derives from the ES which explains that impacts are assessed as significant if they are assessed as moderately adverse or beneficial or above.⁹³ This is consistent with the approach advocated in the DMRB.⁹⁴

Ecology:

72. As we explained in our opening submissions the correct approach has been followed as advised in PPS9 of avoiding harm where possible, then mitigating any harm that would occur and then compensating for any harm that cannot be mitigated. Table 4-1 of Karen Colebourn’s evidence⁹⁵ sets out the mitigation commitments and Table 4-2 sets out the compensation.

73. Queries have been raised by Mr. Boggis and Mrs. Blackford as to the completeness of the survey work that informed the assessments. The full surveys are within the Core Documents⁹⁶ and notes have been submitted responding fully to these suggestions and which show them to be unfounded.⁹⁷

74. The ESCC complied conscientiously with the SoS’s request to work closely with the SEB’s to minimise the effects of the Link Road on the environment. The fact

⁹² ESCC/8/1

⁹³ CD 9.1(b) at # 1.7.9

⁹⁴ CD9.21 Volume 11 Section 2 Part 5 Table 2.3

⁹⁵ ESCC7/1

⁹⁶ CD’s 9.48 to 58

⁹⁷ ESCC/INQ/16 re Bynes Farm and ESCC/INQ/38 s.2 re Upper Wilting Farm

that Natural England and the Environment Agency did initially object to the application for planning permission is an indication of how carefully they have assessed the scheme and the fact that they were able to withdraw their objections is an indication of the care the ESCC has taken in progressing the Scheme.

75. Both those bodies have statutory duties in relation to conserving, enhancing and managing the natural environment.⁹⁸ They have to be satisfied that they are complying with their statutory duties before they can withdraw an objection. They do not have statutory duties to support or to enable road building so they do not express their actual support for such a scheme – that would be to go beyond their remit.

76. I should mention in passing the Sustainability Appraisal for the emerging Hastings Core Strategy which assesses the sustainability of the transport package which includes the Link Road as having a “slight negative effect” before mitigation in relation to the protection, conservation and enhancement of biodiversity and the causes of climate change⁹⁹. Mr. Coffee appears now to have been looking at a non-technical summary of the Sustainability Appraisal rather than the Sustainability Appraisal itself which is the document before the inquiry. That NTS does show a significant adverse effect although the table shows only one cross which it is clear from the rest of that document is actually a “slight” effect. By looking at that document and not reading it fully and not looking at the actual Sustainability Appraisal Mr. Coffee seems genuinely to have been misled into thinking the assessment was of a significant rather than a slight effect. We are

⁹⁸ s.2 (1) and s.40 Natural Environment and Rural Communities Act 2006 and the Environment Act 1995

⁹⁹ ESCC/INQ/24 at p.83 and p.324-325

happy to acknowledge that. He still omitted to mention all the positive effects of the Link Road which both the full Sustainability Appraisal and its NTS report. And it still needs to be borne in mind that that Sustainability Appraisal of the Link Road by the Borough Council, not the ESCC, concluded that the negative effect on biodiversity would be only “slight” and that before mitigation.

Fog:

77. This has been a primary concern of Mr. Boggis. He showed us his DVD of fog in and around the Combe Haven Valley and expressed concern that accidents would be caused.

78. Mr. Davies dealt with this matter in his SoE¹⁰⁰, his rebuttal to Mr. Boggis¹⁰¹ and in his note in response to the DVD.¹⁰² It is not disputed that fogs occur from time to time although the site diary kept by those carrying out the Geotechnical Investigation between the 8th December 2008 and the 20th March 2009 recorded early morning fog or mist on 6 of the days they were on site on the weekdays for this period.

79. More importantly Mr. Davies has explained to us that the DMRB does not recognise fog as a constraint on the siting of a road alignment nor as a factor in its design. Fogs occur in river valleys in Britain and there are many roads in such valleys.

80. Mr. Boggis after the close of evidence has searched the DMRB and in his closing

¹⁰⁰ ESCC/2/1 #8.4

¹⁰¹ ESCC/R32

¹⁰² ESCC/INQ/31

refers to a reference to fog. That is a reference to consideration of measures such as signing if fog is encountered. It does not contradict what Mr. Davies told the inquiry in evidence. Indeed it supports his view that fog is not put forward in DMRB as a factor affecting whether a road should be built or affecting route choice, but only the choice of signing at detailed design stage.

Agriculture

81. We explained in our Opening Submissions (ESCC/INQ/1 at paragraph 55) that ESCC recognised at the outset that BHLR would have an adverse effect on agriculture, and that best endeavours had been used to reduce wherever possible the loss of best and most versatile land and to minimise the effect on farm businesses. By reinstating to agricultural use some of the land required temporarily for construction purposes, the permanent loss of agricultural land is limited to about 80 ha - only 50% of which is best and most versatile.
82. The land-take affects nine agricultural units. Overall the effect on agriculture was assessed at moderate adverse and this effect was taken into account and weighed against the public benefits of the BHLR in the processes leading to the grant of planning permission.
83. At this stage of considering the orders, the focus is of course on the effect of the Link Road on private interests, and ESCC recognises that farmers are potentially an important element of the private interests affected by BHLR. In the time since the grant of planning permission and right up to and during the Public Inquiry,

- ESCC has been discussing with the farmers ways of mitigating the effect on their private interests. There has been significant success.
84. As already mentioned, the BHLR land take affects nine agricultural units. At the time of the Opening Submissions, two of these, Adam's Farm and Actons Farm had been acquired or agreed to be acquired by ESCC (Opening Statement, ESCC/INQ/1, para 57). During the course of the Public Inquiry, the objections relating to Glovers Farm and the Van Rijn land (both of which include substantial areas of land being put forward for development - Opening Statement, ESCC/INQ/1, para 58) were withdrawn (ESCC/INQ/39 and see the letter submitted to the inquiry before it opened dated the 5th November 2009).
85. The objection of the Wests was withdrawn during the Inquiry (ESCC/INQ/11). The Wests are farmers and owner-occupiers of Hillcroft farm which is a 65 ha mixed arable and stock farm (ESCC 10/1, para 3.38). BHLR requires about 26 ha (40%) of the farm (ESCC 10/1, para 3.61). For some time, ESCC has had in mind that the effect of BHLR on Hillcroft farm could be mitigated by suitable replacement land from the adjoining Hye House Farm which is owned by ESCC (ESCC 10/1, para 3.62). The tenant of Hye House Farm is intending to retire and downsize. To achieve mitigation of the effect of BHLR on Hillcroft Farm a tripartite agreement was required between ESCC, the tenant of Hye House farm, and the Wests. Agreement was achieved during the course of the Public Inquiry resulting in the withdrawal of the Wests objection.
86. The Betz Ltd holding comprises 20 ha owned by a company with no direct farming interests. 13.2 ha would be required for the BHLR. The land is not

- farmed in hand and is let out on short term agreements and there is not a farmhouse or set of farm buildings attached to the land and therefore the effect was assessed as a minor adverse (ESCC 10/1, para 3.39, 3.67). This assessment has not been challenged. They have not objected to the Orders.
87. The loss of land from Buckholt Farm is about 6% and assessed as minor (ESCC 10/1, para 3.53). They have not objected to the Orders.
88. The loss of land from Decoy Pond Farm is about 10% of the land owned by the holding or 5% of the land farmed by the holding including rented land. The effect of BHLR on Decoy Pond Farm is assessed as minor to moderate adverse (ESCC 10/1, para 3.73, 3.74). There is the prospect of an agreement to resolve the concerns of the Clancys who farm at Decoy Pond Farm but that will not be finalised until after the inquiry. The assessments on the impacts on the farms have not been challenged.
89. ESCC's assessment of the effect of BHLR on Upper Wilting farm was challenged by Mrs. Sarah Blackford who is tenant of the farm. The farm is owned by Hastings BC who do not object to the scheme. ESCC's assessment is to be found in the SOE on Agriculture (ESCC/10/1) at paras 3.42, 3.45, 3.75 - 3.78, 3.82, 4.26 - 4.29. This assessment takes account of details of the enterprises at the farm (arable, suckler cows, pigs utilising woodland within the farm, DIY livery for 22 horses, countryside stewardship agreement of the SSSI land so providing a positive income) and results in a moderate adverse conclusion. At the Inquiry Mrs. Blackford emphasised that the BHLR land take would affect what she regarded as particularly productive land. The ESCC assessment takes into account

the loss of land (most of which is grade 3a with some 3b). The assessment recognises that BHLR would have an effect on the workability of the farm enterprise but would not endanger the agricultural use of the remaining land which could continue in its current form, albeit the effects of the scheme are likely to reduce net farm income and day to day management is likely to change from the present situation. ESCC was aware that Mrs Blackford runs The School Farm and Country Trust at the farm and that about 2 acres is devoted to a group known as Crowhurst Community Agriculture (the Growhursts) which grows a range of fruit and vegetables. ESCC supports and encourages local production of food. It had been stated in correspondence by Mrs Blackford's agents that given sufficient notice, the Growhursts could be relocated within the farm (ESCC/INQ/38), although Mrs Blackford sought to cast doubt on this at the Inquiry.

90. ESCC has discussed with Mrs. Blackford the provision of replacement land at Adam's Farm or Actons Farm (both now in ESCC ownership), but she has referred to the distance involved for vehicle travel, and this is recognised. For pedestrians, equestrians and cyclists the three farms will be well linked by the Greenway. Whilst ESCC is not closing off further negotiations, it is recognised that an agreed solution looks unlikely.
91. In ESCC's submission, there is nothing in Mrs Blackford's evidence to call into question the County Council's assessment of the effect of BHLR on Upper Wilting Farm as moderate adverse. In particular it is clear that the use of the farm for agriculture would be able to continue and therefore a major adverse

assessment would not be justified (ESCC/10/1, paragraph 3.21). The harm to the public interest was taken into account in the grant of planning permission and was considered to be outweighed by the public benefits of the scheme. The effect on Mrs. Blackford's private interest (her tenancy and farm business) would of course be a matter for which compensation would be available.

92. Overall, ESCC considers that it has been successful in reaching agreement on agricultural holdings so as to mitigate the effect on private interests. Where ESCC has not been successful, statutory compensation will be available. Whilst ESCC regrets this residual harm to private interests, and will continue to work to reduce it further, it is contended that this residual harm to private interests is clearly outweighed by the public benefits of the scheme.

Noise

93. The accuracy of the noise predictions in the evidence of Mr Whiteman (ESCC 11/1 and 3) was not challenged at the Public Inquiry.

94. The investigation of a number of alternative barrier configurations resulted in the design of a combination of bunding and noise fencing which evolved as an optimum noise barrier configuration (ESCC 11/1 paragraph 6.1.1) but throughout the evolution of the scheme, noise has been consistently assessed as a moderate adverse. It should be borne in mind that the traffic flows used for the design year (2028) noise assessment include traffic generated by development expected to occur as part of the successful regeneration of the area which would not occur

- without the scheme. The difference in the amount of development can be seen in Mr Johnston's evidence (ESCC 6/1 in Table 7-1 and 7-2). Wherever this development is located it is likely to generate traffic.
95. The increased noise levels will not be greater than those which generally occur within urban environments (ESCC/R17/OBJ244, paragraph 7.5). There are a small number of dwellings which currently receive very low or no traffic noise which will become exposed to moderate or even major increases, but will at the highest predicted level receive relatively low levels of traffic noise (ESCC/R17/OBJ244, para 7.6). An example of this which was examined during the Inquiry is Bynes Farm (Mr and Mrs Boggis). The property is assessed as receiving a noise increase from 35 dBA in 2013 without the scheme to 51 dBA in 2028 with the scheme, i.e. a major increase (ESCC 11/3, Table B10-3). But this increased noise level is not a high one relative to noise levels experienced now by many properties as can be seen from the 2013 DM column of the noise assessment tables (ESCC 11/3, Table B10).
96. In the processes which led to the grant of planning permission, the noise assessment was taken into account and considered to be outweighed by the public benefits of the BHLR.
97. The same is true in considering the effect on private interests, especially as the properties affected by increased noise are likely to qualify for statutory compensation if the value of the property is affected.

Flood Risk and Water Quality

98. The evidence at the inquiry has borne out the contention made in Opening (ESCC/INQ/1 paras 44 and 51) that the effect of BHLR on both flood risk and water quality have been assessed in great detail throughout the preparation of the design of the scheme. It is understandable that local residents should be concerned about these two topics but there is no evidence that the effect of the scheme on flood risk and water quality is likely to harm public or private interests.
99. It is hard to detect any difference between the Flood Outline (100 year plus 20%) Existing Scenario (ESCC 9/1 fig 8) and the Flood Outline (100 year plus 20%) Post Road Construction Scenario (ESCC 9/1 fig 10). The design of the scheme incorporates flood storage measures and road run off attenuation measures which produce that result. It will be noted that these flood outlines are well away from Crowhurst village as well as being well below the flood levels in the village (ESCC 9/1, P 26 Table 3) - showing at a glance why the flooding problems of Crowhurst are a separate matter unrelated to BHLR.
100. The drainage design includes considerable treatment potential and spillage containment to prevent adverse effects on the local environment thereby ensuring that the quantity and quality of run off from the road meets the relevant environmental standards required before reaching local watercourses (ESCC 9/1, paragraph 4.4). These have not been in issue at the Public Inquiry.
101. The Environment Agency had no sustained objection to the grant of

- planning permission and has raised no objection to the orders.
102. There is nothing in the topics of flood risk and water quality which suggests any harm to public or private interests.

Cultural Heritage

103. Cultural heritage was investigated and taken into account in the processes leading up to the grant of planning permission. The planning permission has a condition requiring the implementation of a programme of archaeological work in accordance with detailed written schemes of investigation for each phase of the works (ESCC/13/1, para 7.6.2).
104. At the Inquiry cultural heritage was not raised as an issue in any substantial way. Mr Austin cross examined Mr Munby but then withdrew his objection. As is set out in the Inspector's Report of the Bypass Inquiry over 25 pages (CD 9.13 from paragraph 7.26.0 on p. 291 to paragraph 7.26.112 on p. 316), Mr Austin's view that Upper Wilting is a former site of Hastings or was a port at which William the Conqueror landed is unsupported by evidence. The Inspector concluded (CD 7.26.113): "There is not one piece of evidence that could indicate a reasonable probability or even a likelihood that Upper Wilting was either a former site of Hastings or was a port at which William the Conqueror landed."
105. There has been no new evidence since then. Mr Austin produced no

evidence. Mr Munby's evidence in his Appendices at Figure 6 (ESCC 13/3) shows a number of archaeological features in the Upper Wilting area, but reference to the Gazetteer in the ES (CD 9.1 (b), Ch 14, Section 2, App 14-A) shows that there is nothing to link these features to military activity or to establish Upper Wilting as a former location of Hastings. This is explained in some detail in the Rebuttal to Mr Austin, (ESCC/R58/OBJ-268).

106. Mr. Boggis' concerns about archaeology seem equally misplaced.
107. There is an advantage to the public resulting in the Scheme proceeding in that it gives the opportunity – and indeed there is the requirement for – extensive archaeological investigation and recording. There is nothing in the topic of cultural heritage which would suggest any harm to private interests.

Air quality and Carbon:

108. The predictions of pollutant concentrations and carbon emissions in the Air Quality and Carbon evidence of Mr O'Brien were not challenged, although some objectors challenged the evidence that the carbon emissions could be catered for satisfactorily within ESCC's Climate Change Strategy.
109. Those predictions were that during operation the Scheme will cause an improvement in air quality across the study area overall. In the assessment years of 2013 and 2028, annual mean NO₂ and PM₁₀ concentrations are predicted to improve at 60% of the approximately 35,000 properties assessed. Deteriorations in air quality primarily occur in areas close to the new link road which are rural in

nature with relatively low housing density. Improvements in air quality are predicted to occur in urban areas with a higher density of properties. Although for some properties the increases are considered to have moderate adverse effects, in all cases NO₂ and PM₁₀ concentrations remain below all of the relevant Air Quality Objectives.

110. At the regional level, the introduction of the Scheme in 2013 causes a slight increase in regional emissions of NO_x (2.2%) and a slight decrease in PM₁₀ emissions (1.9%). The increases in emissions are primarily as a result of the additional traffic present on the local road network resulting from development predicted to occur as part of the successful regeneration of the area with the Scheme in place which would not occur without the Scheme (ESCC 12/1, para 11.1.2).
111. During construction, a number of properties near to the scheme would be at risk from dust effects, but the proper implementation of mitigation measures identified within the CEMP and planning conditions would ensure that risks are kept to a minimum and would not result in significant health effects, loss of amenity or nuisance (ESCC 12/1, para 11.1.1).
112. Turning to carbon, objectors sought to argue that the ESCC's commitment that increased carbon emissions resulting from the construction and operation of BHLR would be catered for in ESCC's Climate Change Strategy was not a sufficient answer to their concerns about the increased carbon emissions predicted to occur as a result of the Scheme.
113. As we have already submitted the Planning and Climate Change -

Supplement to Planning Policy Statement 1 (CD 5.1) states that strategic targets should not be applied directly to individual planning applications but are tools for shaping policies and contributing to monitoring (CD 5.1, paragraph 16).

114. ESCC's Climate Change Strategy sets out strategies which will enable ESCC to make the appropriate contribution to the achievement of the Government's reduction targets for CO₂. The commitment that any increased CO₂ arising from the construction and operation of BHLR will be catered for under ESCC's Climate Change Strategy (CD 9.33, paragraphs 3.1.6, 3.2.6) is the appropriate response to ensure that BHLR does not prevent the achievement of the Government's CO₂ reduction targets (ESCC 12/1, paragraph 10.1.13)

115. In their closing submissions the Hastings Alliance introduced a legal submission that expresses the view that the undertakings given by ESCC to Rother District Council and Hastings Borough Council in clauses 3.1.6 and 3.2.6 of the s.106 planning obligations relating to carbon emissions¹⁰³ are "entirely unsatisfactory if they are being relied upon by the Council(s) to argue that the carbon impact of the road will be adequately mitigated elsewhere". The reasons given in the legal submission are that the undertakings are vague and expressed to be unenforceable by the two councils.

116. The undertakings require that any net increase in carbon emissions attributable to the construction and operation of the BHLR "shall become a commitment to be catered for by the County Council under the East Sussex County Council's climate change strategy". This is an obligation and undertaking given by one public authority with responsibilities to reduce carbon emissions

¹⁰³ CD9.33

enforceable by two other public bodies.

117. The Climate Change Strategy relates to the county as a whole, not just the section of the transport network affected by BHLR. The Strategy reflects ESCC's role in making a contribution to national carbon reduction targets.

118. It is not possible at this stage, some years before the road will be open to traffic, to specify in detail the measures which will be taken to achieve the commitment set out in the Undertaking. The only practical course is that those measures should be decided later.

119. However, the commitment that suitable measures will be taken at the appropriate time is clear and legally enforceable by Rother District Council and Hastings Borough Council. These two Councils are the usual enforcement authorities for s 106 obligations entered into by the County Council and others in their area and the two Councils are well able to discharge that role in the case of BHLR.

120. Other bodies such as Natural England, the Environment Agency, and even Hastings Alliance will be able to address to the two Councils any concerns they may have about carbon emissions and compliance with the undertaking so as to help ensure that compliance is achieved. The ball is not left in the court of the County Council but the District and Borough Councils will be able to enforce compliance with the undertaking.

Alternative Routes:

121. **Mr Keeley:** Mr Keeley objected to the compulsory purchase of land to the north of Bexhill and put forward an alternative (*ARI*) with two elements.
122. One element is an improvement of the existing road network from the A259 at the Barnhorn Road/Little Common Road roundabout along Peartree Lane, Potmans Lane, turning right at Catsfield Road along Powdermill Lane and Telham Lane to the A2100 Hastings Road. (ESCC/R22/OBJ-3)
123. The second element is a mono-rail from Belle Hill north along the former railway to Glovers Farm and then east along the north side of the proposed North East Bexhill development area across the Combe Haven SSSI to a new station on the London-Hastings railway line near Upper Wilting Farm.
124. Turning first to the road element, the main disadvantages are:
- (1) It would require existing country roads to be improved to a standard 7.3 m width. In the vicinity of Crowhurst the roads form the boundary of the AONB, and without going into the detail of which side of the road the AONB boundary is, it is apparent that engineering works would be required at some locations within (as well as immediately adjacent to) the AONB in order to widen the road and modify bends and junctions (ESCC/R21/OBJ-3, para 3.2). This would be harmful to the landscape of the AONB and the setting of Crowhurst (ESCC/R21/OBJ-3, para 6.1). Mr Keeley accepted that it was unrealistic to think that the existing country roads could be widened all the way from the A259 to the A2100, but he suggested there could be localised improvements. This would not produce a route

suitable for general traffic including HGV's and buses, and Mr Keeley's suggestion that the route should be confined to cars and light vehicles would be difficult to enforce and unrealistic.

(2) It would not provide good vehicular access to the proposed development areas at North East Bexhill.(ESCC/R21/OBJ-3, para 4.1)

125. Turning to the monorail element of AR1 the main disadvantages are :

(1) It would not provide for vehicular access to the development areas of North Bexhill which is required for employment development as well as houses. It is unrealistic to think that such a development could be vehicle free.

(2) It would cross the SSSI with direct land take and noise and visual impacts close to the Filsham reed beds the most important area for breeding birds.

(ESCC/R21/OBJ-3, para 5.1). Natural England have indicated that they would object to this (ESCC/R21/OBJ-3, para 12.1.1).

126. These points are by themselves sufficient to demonstrate that AR1 has serious disadvantages when compared to the ESCC Scheme.

127. During his presentation Mr Keeley referred to a further alternative of a variation of the ESCC's scheme by departing from the line at Adams Farm and running north east to Crowhurst Road. Mr Davies responded orally that this would involve tight curves and speed reductions and would probably not involve significant cost savings.

128. Alternative AR1 was published and received 29 counter objections and two letters of support (ESCC/R21/OBJ-3, paras 13 & 14).

129. In ESCC's view the evidence has established that Alternative AR1 has

serious disadvantages, and offers no advantages when compared to the ESCC scheme. It should not be considered further.

130. **Mr. Boggis** withdrew his alternative route **AR2**.

131. **Dr Thurston:** Dr Thurston accepted the need for a new road link between Hastings and Bexhill but put forward an alternative route (**AR3**) which he said was better.

132. The alternative departs from the A259 east of Belle Hill at Dorset Road and uses the local road network (Dorset Road/Penland Road/Wrestwood Road) and then uses what would be a newly constructed single carriageway road from Wrestwood Road across the southern part of Combe Haven SSSI to reach Queensway just to the east of Monkham Wood (ESCC/R35/OBJ-135, Fig A).

133. The main reasons why this alternative should be rejected are :

(1) The harmful effect of increased traffic and noise on unsuitable existing local roads. Compared with the proposed scheme AR3 increases traffic (in 2028) along Dorset Road by 76 %, the A269 London Road by a about 82% and along Wrestwood Road by about 89%. (ESCC/R34/OBJ-135, para 4.2 & 8.2).

(2) It would cross the Combe Haven SSSI on a viaduct resulting in direct land take, severance of ecological networks, and other impacts such as nitrogen deposition, noise and visual disturbance. Natural England have indicated that they would object to this proposal (ESCC/R34/OBJ-135, paras 9.1 & 13.1.1).

134. These two points are by themselves sufficient to demonstrate that AR3 has serious disadvantages when compared to the ESCC Scheme.

135. Alternative AR3 was published and received 29 counter objections and no support (ESCC/R34/OBJ-135, paras 14 & 15).

136. In ESCC's view the evidence has established that Alternative AR3 has serious disadvantages and offers no advantages when compared to the ESCC scheme. It should not be considered further.

Responses to Individual Objections:

137. Each of the ESCC SoE's contains a section which addresses by name and number the individual objections that have been submitted. Furthermore, individual Rebuttal statements have been provided to all the statements of evidence submitted by objectors. The rebuttals cross-refer to the relevant sections of the relevant SoE's where answers to the points made in objection can be found and if appropriate new points in answer are made.

138. We do not propose to further summarise those Rebuttals in our closing submissions. Where matters have been live issues at the inquiry we have made our submissions upon them in the earlier passages of these our closing submissions.

Conclusions:

139. As we acknowledged in our opening submissions to acquire land or rights compulsorily is a serious step to take and can only be justified where there is a

compelling case in the public interest which justifies the interference with the human rights of those whose land is affected.¹⁰⁴ At the end of this inquiry the number of objectors whose land is affected is very small. We attach to these closing submissions a schedule setting out the remaining objectors with any rights or interests or potential rights or interests in the land and rights being acquired. The main landowners have withdrawn their objections. Land is proposed to be acquired from Mrs Blackford the tenant at Upper Wilting Farm whose objection we have addressed in detail earlier and Paul and Steven Clancy at Decoy Pond Farm where there would be a loss of 3.7ha of land assessed as a minor to moderate impact on the farm, an assessment they have not taken issue with. For the bottom 9 of the objectors on the schedule who were included in the orders because of the possibility of them having rights onto the land, their objections do relate to any possible interest or rights in the land covered by the CPO's or the SRO and do not assert any such right. No land is proposed to be acquired from them. Mrs Holman wanted reassurance about the maintenance of a ditch outside her garden. Mr. and Mrs. Harrison at Actons Cottage and Mrs. Nesbitt at Little Actons have sought and been provided with reassurance that existing rights and access throughout the works will be maintained. No land is proposed to be acquired from Mrs. Holman, Mr and Mrs Harrison or from Mrs Nesbitt.

140. That is the degree of private loss to be weighed against what we submit is very substantial and clearly established public benefit in the orders being confirmed and the scheme proceeding. We invite the Inspector and the Secretaries of State to agree.

¹⁰⁴ Circular 06/2004 Memorandum Part 1 paragraphs 17 to 19

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