



Havering
LONDON BOROUGH

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London Borough of Havering (20035775) – Action Points from Issues Specific Hearing 12

Dear Sir,

This document responds to the action points issued by the ExA in respect of ISH 12, Parts 1 and 2.

Issue Specific Hearing 12 – Action Points

No 7: S106 Agreements – approval/completion process - Provide information, including timing, of the approval process (i.e. Council committee procedures) for the conclusion of any S106 agreements and whether these approval processes could be completed before the close of the examination on 20 December 2023.

There have been positive discussions between the Applicant and LB Havering and it is confirmed that the monetary payments under the S106 have been agreed. Only very minor drafting points remain outstanding.

With regards the approval processes, the Leader of the Council will formally approve the S106 agreement through an Executive Decision, after which it will be signed and “sealed”. It is currently hoped that this process will be completed before the end of the Examination, however if the agreement falls into a certain category of documents the necessity to publish notice of it 28 days in advance of completion may apply. The need for this is currently being ascertained.

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No 8: Blue Pencil Clauses in S106 Agreements - *Please provide a view on the potential use of 'blue pencil clauses' in S106 agreements. In responding, please make reference to their use in the context of NSIP applications.*

It is now apparent that no blue pencil clause will be required, since agreement has now been reached with the Applicant.

Blue pencil clauses are used in relation to planning appeals where an appellant and a local authority are not in agreement over the contents of a s.106 agreement by the time that a decision maker on a planning appeal (Inspector or Secretary of State) needs to make a decision. In those circumstances, the drafting of the s.106 agreement makes it clear as to the difference and the Inspector/SoS sets out in the decision letter the version that they consider should apply. Such an approach is confined to issues of principle, such as the quantum or timing of payments and not detailed drafting points.

The blue pencil clause approach does not rely on any specific provision in s.106 which applies to planning appeals. It is an approach which is within the general scope of S.106 provided the obligations concerned comply with the criteria in s.106 (1), as all obligations are required to do. The ability to adopt such an approach applies to any planning obligation entered into, whether in respect of planning appeals or development consent orders in relation to NSIPs since the same provisions of s.106 apply to both.

In the event, it is still the expectation of LB Havering that agreement will be reached, and a blue pencil clause will not be necessary. It is, however, available as a fall back to enable adjudication upon the differences.

No 14: Local Plan Commitments - Agenda Item 3.c) Local Plan Commitments - *Please could any local planning authority who wishes to make comments on ISH12 Agenda Item 3.c) (Local Plan commitments), provide these in writing.*

The Council's latest Local Plan was formally adopted following Examination in 2021. This sets out the Council's strategy for growth and development over a 15-year period. The project is not expected to impact on any site allocations identified within the adopted Local Plan.

With regards to emerging plans, whilst work is underway on a Local Plan review, the Council is not expecting to undertake Reg 18 consultation until early spring 2024 at the earliest.

Issue Specific Hearing 12 Continued

AP1: Control documents – detailed drafting - *Provide an update on any detailed matters of drafting in respect of the control documents, or suggested amendments to them, in writing which, in your view, remain at issue.*

The LB Havering has referred to the fact that essential obligations in respect of the SEE Strategy and the Community Fund first appeared in the SAC-R at D7.

LB Havering has suggested amendments that it believes are necessary to both Article 61 and Parts 2 and 3 of the SAC-R. These are contained in paragraph 4.2 and Appendices 1-

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3 of the response of LB Havering to the ExA Commentary on the dDCO being submitted at D8.

AP4: Draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (AMS-OWSI)

LB Havering continues to discuss the Draft AMS-OWSI with the Applicant and welcomes the improvements that have been made thus far. Some matters remain outstanding and an updated position will be provided no later than Deadline 9A, as requested. Further details on matters that remain outstanding are set out in a separate submission at Deadline 8 in response to the Applicant's latest set of Control Documents.

More general comments on a number of other Control Documents are also being made in a separate submission to the ExA at Deadline 8.

Yours faithfully,

Daniel Douglas

Team Leader Transport Planning

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