

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION

TILBURY2

TRO30003

EXPLANATORY NOTE
ON SECTION 106 DEVELOPMENT CONSENT OBLIGATION
BETWEEN PoTLL AND THURROCK COUNCIL

TILBURY2 DOCUMENT REF : PoTLL/T2/EX/233



**EXPLANATORY NOTE ON SECTION 106
DEVELOPMENT CONSENT OBLIGATION
BETWEEN PoTLL AND THURROCK COUNCIL**

1. This note provides for the assistance of the Examining Authority an explanation of the contents of the Section 106 Development Consent Obligation ("S106") which has been entered into by PoTLL and Thurrock Council in respect of the Tilbury2 DCO application.
2. The S106 has been the subject of detailed discussions with stakeholders throughout the course of the Examination. These discussions have primarily been held with Thurrock Council (TC), but also with English Heritage (EH) and Gravesham Borough Council (GBC), given these bodies are named beneficiaries of financial contributions to be made by PoTLL to Thurrock Council. The Skills and Employment Strategy has been discussed with TC, GBC and Essex County Council.
3. TC have been kept informed of the discussions held with these other parties in order to ensure that as the signatory to the agreement, the Council themselves are content that the obligations meet the tests of reasonableness in statute and policy. The agreement of TC is noted in the SoCG with the Council [SoCG001 – Appendix 1 to REP7-012] at para. 4.3.8 (Active Travel Measures), 4.7.2 (Skills and Employment Strategy) and 4.19.1 (overall content and drafting, including financial contributions to heritage and ferry signage).
4. The tests of reasonableness are set out in the National Planning Policy Framework for any planning obligation.
5. Paragraph 56 of the NPPF (2018) states that
*"Planning obligations must only be sought where they meet all of the following tests
a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development"*
6. This policy guidance is given statutory force by Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
7. Table 1 below considers each of the items in the S106 and provides a brief commentary on the discussions held with the relevant stakeholder in concluding the agreement.

TABLE 1 : SUMMARY OF S106 DEVELOPMENT CONSENT OBLIGATIONS

Reference	Item	Explanation	Stakeholder engagement
<p>Section 5 Schedule 1 Appendix 2 Appendix 4</p>	<p>Active Travel Measures</p>	<p>The agreement requires the construction by PoTLL of a package of 'Active Travel Measures' which are illustrated on the plan at Appendix 2. These measures are designed to enhance access to and around the area by non-car modes of transport, with a particular emphasis on encouraging access to the riverside and Tilbury Fort, for the benefit of the local community and visitors to the area. They also assist in encouraging sustainable modes of access to the Tilbury2 site itself.</p> <p>The plan at Appendix 2 refers to two schedules contained in Appendix 4 which describe the measures themselves. Table 1 of Appendix 4 lists those measures which are within the DCO boundary; Table 2 lists those measures that are outside of the DCO boundary. Two measures identified in Table 2 will lie both within the DCO boundary <i>and</i> outside of it; these measures being pedestrian and cycle facility improvements at the ASDA roundabout (item 11) and a 'waymarking scheme' (item 13). The latter will comprise directional signage and interpretation at a variety of locations throughout the area.</p> <p>Schedule 1 paragraph 5 requires completion of the works within the DCO boundary by PoTLL to the reasonable satisfaction of the Council. Powers to deliver these works and provisions for the approval of their detail by the Council are contained in the DCO itself.</p> <p>Schedule 1 paragraphs 7 to 14 apply to the remainder of the</p>	<p>The package of Active Travel Measures is agreed with Thurrock Council, and also has the support of English Heritage in improving access to and around Tilbury Fort.</p> <p>The strategy has been the subject of detailed discussions with officers of Thurrock Council responsible for highways, sustainable transport, heritage, landscape and health.</p> <p>The measures have been modified through these discussions to the satisfaction of the Council.</p> <p>Modifications have included increasing the length of footpath upgrades generally, improving linkages with the Council's own cycling strategy for Tilbury, and looking in detail at cycling and pedestrian links around the ASDA roundabout.</p>

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		<p>measures, setting out a process for agreement of their details by the Council and their implementation by PoTLL.</p> <p>The Active Travel Measures meet the tests of paragraph 56 of the NPPF(2018). The measures represent a strategy aimed at:-</p> <ul style="list-style-type: none"> - mitigating for the severance of footpath FP144 which presently links Tilbury to the riverside via an uncontrolled pedestrian crossing across the railway, by enhancing other links and making the routes themselves more attractive to pedestrians and cyclists; - enhancing access to and appreciation of the setting of Tilbury Fort as a heritage asset and the green space within its setting, including the river itself; this in turn is aimed at encouraging patronage of the Fort (allied to the Tilbury Fort contribution, see below); - encouraging physical activity amongst the local community by making routes for cyclists and pedestrians both safer and more attractive for users thereby facilitating positive health outcomes; and - encouraging sustainable forms of transport more generally, including by employees of Tilbury2 and the existing Port with potential environmental benefits, in accordance with the Framework Travel Plan. <p>Accordingly, the Active Travel Measures are considered necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to the development.</p>	

Reference	Item	Explanation	Stakeholder engagement
Paragraph 6 and 20 and Schedule 2	Tilbury Fort Contribution	<p>The S106 requires the payment by PoTLL of £112,000 to TC prior to commencement of the development. The contribution is defined as being for the purpose of implementing measures to realise tourism and heritage benefits at Tilbury Fort.</p> <p>The S106 requires the Council to hold the contribution for this purpose and to invite English Heritage to identify one or more specific projects to achieve the purpose of the contribution. Following receipt of such a request with appropriate details and costings, the relevant amount of the contribution is provided by the Council to English Heritage to implement the works.</p> <p>The Tilbury2 proposals will take place within the setting of Tilbury Fort. The contribution seeks to compensate for the residual effects that will arise following other mitigation that is proposed as part of the Scheme by improving access to and the visitor experience at the Fort.</p> <p>It thus accords with the tests of para. 56 of the NPP(2018) being necessary to make the Scheme acceptable in planning terms by compensating for the potential effect on heritage and tourism at the Fort, directly related to the Scheme as there will be some potential effect in this regard; and fairly and reasonably related in scale and kind to the Scheme given the magnitude of that effect as assessed by PoTLL taking into account other mitigation.</p>	<p>Detailed discussions with English Heritage have been held and the position of the parties in respect of the Tilbury Fort Contribution is set out in the SoCG with English Heritage at paragraph 6.1.2 [SoCG015 – Appendix 12 to REP7-012]</p> <p>The sum of £112,000 is derived from information provided by English Heritage and is intended to fund two specific initiatives at Tilbury Fort namely:-</p> <p>(i) resurfacing of the drive which routes from the public car park adjoining the ‘Worlds End’ public house (which itself is to be resurfaced as one of the Active Travel Measures referred to above) to the ‘Water Gate’ entrance of the Fort; and</p> <p>(ii) enhanced interpretation within the Fort itself, an outline strategy and costs for which has been provided by EH.</p> <p>The principle and cost of funding these two items is agreed. In seeking to agree the cost of these items, EH also sought £42,000 for orientational signage within the Fort, but PoTLL did not agree that such an initiative would realise any tangible benefits to tourism or heritage and so would not meet the NPPF tests.</p> <p>Through representations to the Examination EH sought a package of other measures, including reinstatement of a former car park to the north of Fort; repair of bridges across the moats and dredging of the moats themselves. These items were set out in EH’s response to First Written Questions [REP1-047] and represented works of £8.1 million in value. PoTLL have subsequently made submissions, most particular in answer to Second Written Question 2.13.4 [REP4-020],</p>

Reference	Item	Explanation	Stakeholder engagement
			<p>where it was explained that these additional items did not meet the tests of the NPPF. In addition, PoTLL also highlighted issues in respect of deliverability and the fact that they would in themselves need to feature in the Environmental Assessment of the proposals if they were required as part of them.</p> <p>For these reasons, PoTLL and EH have not been able to agree the value of the Tilbury Fort Contribution. PoTLL believe the sum proposed is appropriate and meets the NPPF tests. PoTLL also notes that there is flexibility in how EH might spend the contribution provided it meets the purpose for which it is paid as defined in the Agreement. As noted at para. 4.18.1 of SoCG001 [Appendix 1 to REP7-012] the acceptability of this contribution has been agreed with TC.</p>
Paragraph 6 and 20; Schedule 5	Gravesend Heritage Contribution	<p>The S106 requires the payment by PoTLL of £29,000 to TC prior to commencement of the development. The contribution is defined as being for the purpose of implementing measures to enhance the interpretation of heritage assets, such measures to be located within the town of Gravesend.</p> <p>The S106 requires TC to hold the contribution for this purpose and to invite GBC to identify one or more specific projects to achieve the purpose of the contribution. Following receipt of such a request with appropriate details and costings, the relevant amount of the contribution is provided by the Council to GBC to implement the works.</p> <p>The Tilbury2 proposals will take place within the setting of Tilbury Fort and the relationship of Tilbury Fort and New Tavern Fort on the south side of the river in Gravesend is of historic</p>	<p>GBC provided costings of audio/visual interpretation installations at New Tavern Fort and in the Riverside Leisure Area.</p> <p>Both the sum and purpose for which the contribution is proposed to be used is agreed by PoTLL and GBC, as witnessed by SoCG002, para. 4.2.9 [Appendix 2 to REP7-012].</p>

Reference	Item	Explanation	Stakeholder engagement
		<p>significance. GBC propose to use the contribution to enhance the understanding of the relationship of the two Forts for visitors to New Tavern Fort.</p> <p>The Gravesend Heritage contribution accords with the tests of para. 56 of the NPPF(2018) being necessary compensation for the potential effect on the heritage relationship between Tilbury and New Tavern Forts, directly related to the Scheme as the proposals will have some potential effect in this regard; and fairly and reasonably related in scale and kind to the Scheme given the limited extent of that effect as assessed by PoTLL and GBC.</p>	
Paragraph 6 Schedule 4	Tilbury Ferry Contribution	<p>The S106 requires the payment by PoTLL of £50,000 to TC prior to commencement of the development. The sum is to pay for information boards for the Gravesend – Tilbury Ferry.</p> <p>Schedule 3 requires the Council to install ‘real time information boards’ at three locations, namely the Port of Tilbury landing stage, the landside entrance to the Ferry in Gravesend and Tilbury Town Railway Station.</p> <p>The objective of the contribution is to enhance the attractiveness of the Ferry to both regular and casual users. In so doing, the employment opportunities at Tilbury2 are more likely to be attractive to those living on the south side of the river who may use the Ferry and this will assist in meeting the objectives of the Framework Travel Plan to encourage non-car modes of transport. In addition, enhancing the Ferry will increase the prospect of visitors from the south side of the river accessing Tilbury Fort.</p>	Detailed discussions have been held with TC regarding the cost of the installation and maintenance of the proposed information boards and the best mechanism for their implementation to ensure compliance with the Council's own systems. The approach of PoTLL making a payment and the amount is agreed. It is noted that one of the signs lies outside of the TC administrative area in GBC; TC have held discussions with GBC highways such that they are confident that there will be no impediment to the installation of the board on the south side of the river and are therefore content to take on the obligation to install without requiring the involvement of another party within the agreement.

Reference	Item	Explanation	Stakeholder engagement
		For these reasons the Tilbury Ferry contribution meets the tests of the NPPF(2018) paragraph 56.	
Paragraph 7.1 and Schedule 5	Skills and Employment Strategy	<p>The Skills and Employment Strategy is aimed at maximising the socio-economic benefits of the Tilbury2 proposals by a range of initiatives regarding employment and skills.</p> <p>The strategy clearly accords with the tests of the NPPF(2018) paragraph 56 in seeking to ensure that PoTLL and its tenants work with local stakeholders to best realise and maximise the predicted positive impacts of the proposals.</p>	<p>The Skills and Employment Strategy was subject to detailed discussion with TC, GBC and Essex County Council.</p> <p>All three authorities have agreed its contents, as noted in the respective SoCGs [SoCG001, para. 4.7.2; SoCG002, para. 4.6.1; SoCG003, para. 4.1.2 – Appendix 1, 2 and 3 to REP7-012].</p>