

Confirmation and compliance document

To the Applicant

Please consider adding the following. Many of these flow from the difficulty that the presumptions of due execution of documents in English law in general apply only where there is a sale and purchase. They also arise out of the need to ensure that all those necessary to be parties to the s.106 agreement so that it is complied with throughout the construction and use of the development are actually made parties to the document and that there are no other parties who should be joined in. These comments are on the assumption that no other parties need to be joined and in particular that there are no foreign corporations.

1 Revised statement of purpose in paragraph 1.1 so as to include confirmation that all those necessary to be parties to the s.106 agreement so that the obligations in it are complied with throughout the construction and use of the development described in the DCO as the authorised development, have been made parties to the document and are bound by the obligations on the part of the Owners and Developer, as defined in the s.106 agreement, and that there are no other parties who should be joined in.

Confirm also that the development cannot be constructed, occupied or used by any person without compliance with the obligations entered into (or purported to be entered into) by the First Owners, the Second Owner and the Developer in the s106 agreement.

2 Confirmation that all non-natural parties to the s.106 agreement are duly incorporated established and validly existing according to and under the laws of England and Wales and that parties who are natural persons have full capacity.

3 Confirmation that all parties to the s.106 agreement have taken all corporate or other actions and obtained all necessary agreements or consents required to authorise the execution and delivery of the s.106 agreement and to exercise their rights and perform their obligations under the s.106 agreement and that such parties have duly authorised, executed and delivered the s.106 agreement in accordance with such authorisations.

4 That the s.106 agreement as duly executed and delivered by the parties constitutes legal, valid, binding and enforceable obligations of the parties thereto under all applicable laws.

5 The parties have the capacity and power to enter into the s.106 agreement and to exercise their rights and perform their obligations thereunder.

6 A search of the public records on the day of and before execution and delivery of the s.106 agreement revealed no evidence of any resolutions for the winding up or dissolution of the Developer and no evidence of the appointment of any liquidator, administrator of other person, insolvency or event who would

deprive the Developer of any of their assets or of the power and ability to bind the Developer to the obligations on its part in the s.106 agreement by execution of the s.106 agreement in the manner it is actually executed;

nor any evidence of similar nature applicable to the Owners as natural persons.

7 The document as executed constitutes valid legal binding and enforceable obligations of the parties to it.

8 The s.106 agreement has been duly executed and delivered by the Developer, the First Owners and the Second Owner, and fully in accordance with the laws of England and Wales.

9 At paragraph (at 4.3), in addition to the reference to s 44 of the Companies Act 2006, there should also the reference to s 46 of the Companies Act 2006

10 The document is to be addressed to and for the benefit of the Secretary of State, South Northamptonshire Council and Northamptonshire County Council.

11 To be given by a firm of solicitors regulated by the Solicitors Regulation Authority

12 To be given immediately following execution of the s.106 agreement, signed and dated accordingly.

Northampton Gateway Examining Authority

17th December 2018