

Points on the s.106 agreement Document 6.4

- 1 Please define HGV
- 2 Definition of Implementation – some of the exclusions seem to be extensive and have not been justified; see “temporary construction” and “decontamination works” in particular. Please compare with equivalents in the dDCO - ordinarily is it right for this to be wider?
- 3 “Index –Linked” – should not the commencement be the time to which when the data used to calculate the various sums relates? For example Q1 2018 for construction costs using Q1 2018 figures.
- 4 “Interest” – is 2% above base rate sufficiently high to deter late payments?
- 5 “Relevant Index” – what happens if the parties cannot agree on an alternative index?
- 6 “Obligation Land” why is not the rest of the order land to be bound by the s.106 agreement, particularly the rest of the Main Site?
- 7 Why are there square brackets around the definition of Parish Councils?
- 8 Cl 1.2.4 – the brackets are wrong
- 9 Cl 1.2.6 – why should joint and several liability depend on “context”. But is this appropriate in a document which runs with the land (and is intended to do so) and where there may several owners? If any qualification to joint and several liability is to be retained in this agreement, please explain fully to the ExA why it is justified and why it is acceptable. The ExA will want to see the agreement of the County and the District Council.
- 10 Cl 1.2.7 “may be deemed” – this introduces vagueness – “shall” or “must” are preferable
- 11 Cl 1.2.9 – please will the Applicant explain why the Interpretation Act 1978 is expressly referred to.
- 12 Cl 10.1 – punctuation needed between notices, requests and demands.
- 13 Cl 10.1.1- 10.1.4 – why should only the Developer be permitted to change its address? Should there not be a more rigorous procedure for notifying a change of address? For example not only to be addressed to the Development Control Manager but including a reference to the project and the s.106 agreement.
- 14 Cl 11 – CIL - How is the reduction in obligations justified? If these obligations are necessary and they mitigate environmental effects how can it be right to reduce them if CIL is introduced? Is that eventuality not already addressed by drafting in the dDCO?
- 15 Cl 16 – void provisions. Is this necessary in view of cl 1.2.8? Consider amalgamating the two.
- 16 Cl 17.1 – consider punctuation of lists
- 17 Cl 20.1 – How quickly must the notification take place? As drafted it could be weeks or months after the event. But also consider whether

- this clause falls within s.106(1) TCPA 1990 and therefore how it will actually be enforced against persons deriving title.
- 18 Covenants with the District Council – consider whether paragraphs 2.2, 2.3 and 3 fall within s.106(1) and if so, please explain how.
- 19 Covenants with the County Council – consider whether paragraphs 1, 2, 3,4,5 and 8 fall within s.106 and if so, please explain how.
- 20 District Council’s obligations
- a. – paras 1.1 and 1.2. Is it intended that the Parish Councils can enforce these? If so, how?
 - b. Para 1.2 – what is the split between the Parish Councils?
 - c. such
 - d. “written request is supported by documentary evidence demonstrating procurement of works, services or building contracts or other such evidence as shall be agreed with the District Council” – agreed between whom?
 - e. Presumably the words “and confirmation that they will” are meant to apply on a Parish Council by Parish Council basis, but please will the Applicant consider clarifying the drafting.
- 21 Apprenticeship scheme
- a. Opening paragraph – “A scheme for the employment of apprentices on the Development which shall endeavour so far as is practicable to meet the criteria listed below ...” how is this limitation justified in the case of necessary mitigation?
 - b. Para 1 – how do apprentices qualify so as to “be” within 20 miles of the centre of Northampton – is this place of birth? Or place of residence, if so for how long; what happens if the apprentice moves outside the 20 mile radius? Where precisely is “the centre of Northampton”. Or is it something else?
 - c. Para 2 – this does not make sense.
 - d. Para 3 – which site?
 - e. Why name Construction Futures? Please will the Applicant include address and identification details?
 - f. Para 7 – this refers to a Strategy; this is the first occasion this word has been used. To what does it refer? It occurs again at para 10
 - g. Para 8 – please define “relevant training providers”.
- 22 Schedule 0 – list of Approved Community Purposes” – please will the Applicant explain where these fit into the scheme of the s.106 agreement. They do not appear in the definition clause.
- 23 Sch 7 – Sustainable Transport working group constitution
- a. Is this Schedule and its purposes approved by the County? Is the LPA involved too? If not should it or is this just a matter for the County?
 - b. Para 1.1 – who is the appropriate authority? What is the test for identifying them?

- c. Para 1.2 – overseeing the work of the TPC - What sanctions do they have? Must they use them? What if the FTP isn't enforced?
- d. Para 1.4 – “Make recommendations to appropriate parties” - What if recommendations not followed?
- e. Para 2.2 Membership of the STWG – there will only two voting persons of which one is the chair (who will be the Developer if not the Owners) . Does the chair have a casting vote?
- f. Para 5 – “The representatives from the local authorities specified at clause 2 will be able to request that no decision be taken by the STWG on a matter discussed at a meeting of the STWG without prior reference to an approval of senior managers and/or elected members as appropriate.” What happens if the request is not granted?
- g. Para 6 – “Decisions are to be taken on a majority vote with each member of the STWG present having a single vote. The Developer’s vote shall be weighted to be equal to the number of voting members (other than the Developer) of the STWG that are present at the meeting.” This means the Developer plus one can outvote all the other members. But the Developer is not necessarily a part of the STWG (para 2 contemplates the Owners being on the STWG in place of the Developer). And also there are only two voting members anyway; so actually the if the other member opposes something the Developer wants, the Developer cannot insist. Is this what is intended? The para does not look fair if there are more voting members than the Chair and County; and it does not look like what is intended if there should be more than just two voting members. Please will the Applicant reconsider and justify either this or a revised proposal.
- h. Para 8 “The STWG will continue to meet until at least 5 years after full Occupation or such time (which may be earlier or later) as the STWG decides it has fully served its purpose, at which time all powers and responsibilities the STWG has exercised shall revert to the appropriate body.” This seems odd on the weighted vote proposals. Also how does this work in practice? The powers all derive from this Schedule, so how do they "revert"? Will for example the County, after dissolution of the STWG, be approving Occupier Travel Plans? What will happen if it disapproves one? How will that be enforced? What is the sanction?
- i. Para 9 – “The STWG shall at all times be free to consult with other relevant authorities and bodies and shall at the election of any member be at liberty to invite persons to attend meetings in a nonvoting capacity.” This is the first reference to elections. Hitherto membership has been by appointment. Please redraft to be consistent with the scheme of the schedule.

- j. Paras 10 – 17 – These paragraphs create a dispute resolution mechanism. But the rest of the constitution operates on the basis of votes (and a weighted majority vote). Is dispute resolution appropriate in this context? Could dispute resolution be invoked after a vote? Dispute resolution of course involves costs and expense.
- k. Para 15 – “The Expert when making his determination shall have regard to the contents of the National Planning Policy Framework or any replacement thereof ...”. Should the NNNPS also be a matter to which the Expert should have regard? Is it right to have regard to the NPPF?
- l. How are the provisions of this schedule and actions under it enforced? What are the sanctions? Who can impose them? (Actually that is a good question even when the STWG is operating.)

Please note these points are not the totality of the questions and issues intended for discussion on the s.106 agreement (Document 6.4) at ISH3

Northampton Gateway Examining Authority

17th December 2018