



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

REVISED SECTION 106 CONFIRMATION AND COMPLIANCE DOCUMENT

DOCUMENT 8.5A

The Northampton Gateway Rail Freight Interchange Order 201X

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ROXHILL

**THE NORTHAMPTON GATEWAY RAIL FREIGHT
INTERCHANGE ORDER 201X**

SECTION 106 CONFIRMATION AND COMPLIANCE DOCUMENT

Roxhill (Junction 15) Limited

26 February 2019

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1. Introduction

- 1.1 This document is submitted to confirm that:
- 1.1.1 the Section 106 Agreement (S106) (Document 6.4[1]) complies with the legal requirements attached to planning obligations under section 106 Town and Country Planning Act 1990 (as amended) ('TCPA') and that it has been legally executed as a Deed;
 - 1.1.2 all parties with an interest in the land bound by the obligations are party to the S106 and no other parties are required to bind that land;
 - 1.1.3 all those necessary to be party to the S106 so that the obligations contained therein are complied with throughout the construction and use of the development have been made parties to the document and are party to the S106; and
 - 1.1.4 the construction, occupation and use of the development is restricted by the S106 obligations and non-compliance with those obligations would be enforceable.
- 1.2 Section 2 of this document explains the ownership of the land which is bound by the S106.
- 1.3 Section 3 deals with the tests identified in paragraph 4.10 of the National Policy Statement for National Networks (NPSNN) as being required to be satisfied if planning obligations are to be sought.
- 1.4 Section 4 confirms how the S106 has been executed by the parties.
- 1.5 Section 5 confirms the completion arrangements.

2. Ownership

- 2.1 The S106 is entered into by the landowners and the Applicant with South Northamptonshire Council and Northamptonshire County Council in order to secure various planning obligations agreed with those authorities.
- 2.2 The S106 binds the majority of the main site, referred to as the "Obligation Land". This is shown tinted blue on the plan attached to the S106 and is contained in various title numbers, as explained in the recitals to the S106, and repeated below for ease of reference. This covers almost the entire extent of the development plots and therefore the warehousing cannot be occupied or used by any person without compliance with the obligations contained in the S106.

- 2.3 Hereward Charles Wake and John Hereward Wake (defined as the “First Owners”) are the freehold owners of the land within title numbers NN289465, NN289466 and NN289824.
- 2.4 John Hereward Wake is the “Second Owner” because he is the sole owner of the land within title numbers NN288549, NN290178, NN290838, NN348756 and NN348757.
- 2.5 The Applicant is also party to the S106 as it has the benefit of an option to purchase the Obligation Land.
- 2.6 The parties mentioned at paragraphs 2.3 – 2.5 are the only parties necessary to be party to the S106 in order to ensure that the obligations contained therein are complied with throughout the construction, occupation and use of the development. This is because the S106 binds the “Obligation Land” and the landowners of the Obligation Land together with the Applicant (who has an option agreement over the Obligation Land), are party to the Agreement to acknowledge that the land is bound by the provisions of the S106. Pursuant to the provisions of section 106 of the TCPA, the S106 binds the land and will therefore bind successors in title to the landowner and will be enforceable against such successors.
- 2.7 The Applicant’s solicitors provided the title information set out above to the District Council and the County Council with the first draft of the S106.

3. Planning Obligations: NPSNN Tests

- 3.1 The table at Appendix 1 identifies the planning obligations contained in the S106 and explains how they meet the criteria referred to in paragraph 4.10 of the NPSNN.
- 3.2 These are that they are:
- 3.2.1 necessary to make the development acceptable in planning terms;
 - 3.2.2 directly related to the proposed development; and
 - 3.2.3 fairly and reasonably related in scale and kind to the development.
- 3.3 The fourth column of the table confirms the position in respect of any “pooling” issue for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) if felt relevant.
- 3.4 It is the Applicant’s view that all of the obligations contained in the s.106 Agreement comply with the criteria in paragraph 3.2 above for reasons set out in **Appendix 1**.
- 3.5 However, some of these obligations have been the subject of criticism (notably the Community Fund has been criticised by Rail Central). If the Examining Authority

(‘ExA’) considers that any of the obligations do not comply with those criteria then it should make it clear that the existence of such an obligation has been given no weight in respect of its recommendation. In due course, if the Secretary of State agrees with the ExA, he also should make it clear that the obligation(s) concerned have been given no weight in arriving at the decision on whether or not to approve the DCO.

- 3.6 In considering the above it is not considered necessary to refer to case law relating to the determination of planning applications, which is governed by s.70 of the TCPA and is concerned with material considerations which is not a concept applied to the determination of DCO’s by the Planning Act. Accordingly, it is suggested that the case of *Forest of Dean District Council and anr. v R (on the application of Wright) 2017* is of no assistance.
- 3.7 The relevant law is contained in s.104 of the Planning Act which sets out what the Secretary of State must have regard to when determining DCO applications. This is the equivalent provision to s.70 of the TCPA but is very different.
- 3.8 For the purposes of considering the s.106 obligations, s.104 directs that the Secretary of State must have regard to:
- 3.8.1 Paragraph 4.10 of the NPSNN (s.104(2)(a); and
- 3.8.2 “any other matters which the Secretary of State thinks are both important and relevant” (s.104(2)(d).
- 3.9 Section 104(3) then provides that the Secretary of state must decide the application in accordance with the NPSNN unless stated exceptions apply.
- 3.10 It is therefore important that if the Secretary of State has any doubt as to the compliance of any of the obligations with paragraph 4.10 of the NPSNN the Secretary of State should not give the existence of the obligation any weight when considering his decision.

4. Execution

- 4.1 The S106 is executed as a Deed, as required by s.106(9) of the Town and Country Planning Act 1990.
- 4.2 The owners (Hereward Charles Wake and John Hereward Wake) have signed the Deed as individuals with full capacity and in the presence of an independent witness as provided for by s.1(3) of the Land of Property (Miscellaneous Provisions) Act 1989.
- 4.3 The Applicant (Roxhill (Junction 15) Limited) is a company incorporated, established and validly existing according to the laws of England and Wales and has executed

the Deed pursuant to ss.44 and 46 of the Companies Act 2006, by one Director in the presence of a witness. The Director of Roxhill (Junction 15) Limited who has signed the S106 is [REDACTED]. A list of the current Directors of Roxhill (Junction 15) Limited is enclosed at **Appendix 2** – as can be seen from that list, [REDACTED] is noted as a Director.

Commented [ES1]: List of Directors to be attached setting out Directors of Roxhill (Junction 15) Limited at the time the s106 is signed.

4.4 A search of the public records on the date of this document before execution of the S106 revealed no evidence of any resolutions for the winding up or dissolution of the Applicant company and no evidence of the appointment of any liquidator, administrator or other person, insolvency or event which would deprive the Applicant of any of its assets or of the power and ability to enter into the S106 and perform its obligations thereunder.

Commented [ES2]: Search to be carried out before s106 completes, this document to be signed and dated simultaneously with the s106.

4.5 The parties have the capacity and power to enter into the S106 and to exercise their rights and perform their obligations thereunder.

4.6 The document as executed constitutes a valid legal binding Deed and is enforceable against the owners and their successors in title.

5. Delivery of the Deed

5.1 The S106 has been duly executed and delivered by the landowners and the Applicant on [REDACTED] 2019 in accordance with the laws of England and Wales.

6. Benefit of this Document

6.1 This document is provided for the benefit of the Secretary of State, South Northamptonshire Council and Northamptonshire County Council or any successor authorities.

6.2 This document has been prepared by Eversheds Sutherland (International) LLP, a law firm regulated by the Solicitors Regulation Authority and legal advisers to the Applicant.

Signed:

For and on behalf of Eversheds Sutherland (International) LLP

Date: 2019

Appendix 1
Justification Table

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Clause/Paragraph of the S106 containing obligation	Obligation	Justification in relation to paragraph 4.10 NPSNN tests	Pooling Issue? Y/N
Schedule 1	Payment of Community Fund	<p>This obligation complies with s.106 in that comes within s.106 (d).</p> <p>The payment of a community fund related to the impacts of the development is considered to be comply with the criteria in paragraph 4.10 of the NPSNN to which the Secretary of State is required to have regard in making his decision.</p> <p>The structure of the s.106 Agreement provides that the Community Fund can only be spent on projects which are considered to be directly related to the Development and likely to address impacts arising from the development. If the money is not therefore spent because no such need arises then it is returned to the party who paid it.</p> <p>The payment cannot therefore be considered a payment for a permission but is in recognition of the fact that, whilst the impact of a large scheme on surrounding communities can be the assessed at the time of application, the actual impact cannot be</p>	N

		<p>known until the development occurs. This fund provides a mechanism to address those unforeseen impacts of they arise.</p> <p>The fund is similar in concept to a fund included in the s.106 Agreement relating to East Midlands Gateway.</p>	
Schedule 2 Para 1.	Bus Services	<p>This obligation complies with s.106 in that it comes within s.106 (1)(a) and (d).</p> <p>The Bus Services Fund complies with the NPSNN because it provides funding for Bus Services which are considered necessary to serve the development as described in the public transport strategy contained in Appendix 2 of the Transport Assessment contained in Appendix 2.1 if the Environmental Statement.</p>	N
Para 2	Travel Plan Monitoring Fee	<p>This obligation complies with s.106 in that it comes within s.106 (1)(a) and (d).</p> <p>The fee is legitimately required by NCC to enable them to monitor the framework travel plan required for the development</p>	N
Para 3	Highway Capacity Improvement Fee	<p>This obligation complies with s.106 in it that comes within s.106 (1)(a) and (d).</p> <p>These monies are required to be paid to ensure that the development makes an appropriate contribution to improvement works along the A5076 corridor and A45 Queen Eleanor</p>	N

		junction, as explained in the Transport Assessment contained in Appendix 2.1 of the Environmental Statement (see paragraphs 8.156 – 8.165)	
Para 4	Knock Lane Blisworth Road Maintenance Fund	<p>This obligation complies with s.106 in that it comes within s.106 (1)(a) and (d).</p> <p>These monies are required to be paid to ensure that maintenance or other remedial works to Knock Lane/Blisworth Road arising as a result of the development can be carried out, as explained in the Transport Assessment contained in Appendix 2.1 of the Environmental Statement (see paragraphs 10.93 – 10.104).</p>	N
Para 5	Weight Limit Signs	<p>This obligation complies with s.106 in that comes within s.106 (1)(a) and (d).</p> <p>These monies are required to be paid to fund the signs necessary to enforce the weight limits imposed by article 9 of the the DCO.</p>	N
Para 6	Air Quality Contribution	<p>This obligation complies with s.106 in that comes within s.106 (1)(a) and (d).</p> <p>These monies are required to be paid to enable the Borough Council to carry out Air Quality measures (as defined in the agreement). Despite the overarching objective of taking freight of the road and onto rail the Borough Council feel that in the short</p>	N

		<p>term the development may add traffic to areas where they have air quality concerns.</p> <p>Although the development does not give rise to any significant adverse air quality impacts, there will be some trip increases within Northampton AQMA arising from the development. The impacts are small and will not affect the East Midlands Zone coming into compliance, but the contribution made will assist the Borough Council in the implementation of its low emissions strategy.</p>	
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Appendix 2

List of Directors of Roxhill (Junction 15) Limited

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