

Critique No: 4 – 28 March 2009**STOP'S COMMENTS ON TVBC'S 'FINAL' VERSION OF THE SECTION 106 AGREEMENT to be discussed at PCC Tuesday 31st March**

We have received and reviewed the final draft of the Section 106 Agreement dated 19th March 2009. Our comments are set out below. We note substantial improvements have been made to the draft and these take account many of the comments made in our last three critiques of the section 106 agreement.

However there are still some fundamental flaws to the agreement which need to be rectified to ensure it is not inconsistent with the resolution passed by the PCC on 1 December 2008.

1. Clause 2.5

Clause 2.5 states that the provisions of the section 106 agreement will not have full force and effect until the Permission has been granted (Clause 2.6.1 which should be amended to refer to clause 2.5.1) and Commencement pursuant to the Permission has occurred (clause 2.6.2 which should be amended to refer to clause 2.5.2). "Commencement" means commencement of development which in turn is defined as carrying out a Material Operation.

Material Operation is however defined as excluding some of the major elements of this development such as "major earthworks", site preparation", "piling", "reinforced concrete construction", "road and pavement construction" and "drainage works". This is not acceptable.

The definition of Material Operation means that the section 106 will not take effect or apply during the lengthy construction period. The HGVs serving the construction will not be subject to the controls set out in the section 106. Further the sound insulation obligations set out in Schedule 6 Part II will not apply during the noisy construction phase.

The definition of Material Operation also has a number of references which do not make sense. For example the reference to Part C of Part IV of Schedule 6 is incorrect. Further in Schedule 5 Part II Highway Works paragraphs 3 and 4 are circular and contradictory. Paragraph 3 states that the developer must enter into a section 278 agreement pursuant to Commencement of Development but because of the exclusion of "road and pavement construction" from the definition of Material Operation this means the developer can carry out the elements of the highway works which the section 278 is supposed to cover prior to the section 278 agreement being put in place. Paragraph 4 is similarly circular.

2. Clause 13.2

The restriction to be placed on the register of the owner's title needs to be amended so it is the Borough Council or its conveyancer which provides the certificate for confirming the deed of positive covenants has been entered into. This restriction should be placed on the title following completion of the section 106 agreement rather than "prior to Commencement".

3. SCHEDULE 1 – LANDSCAPING

As previously stated the planting areas should be specifically defined by reference to specific points on plans to ensure the correct areas are planted.

This Schedule omits any reference to the landscaping along the boundary with Red Post Lane i.e the South West Boundary. It also refers rather ambiguously to a 5m landscape strip along the southern boundary. Assuming this means the boundary with the DLO this would be better referred to as the South East Boundary.

There is no reason why the percentage landscape coverings should be omitted. These should be reinstated to refer to 45% in relation to Class B1 and 20% in relation to Class B2 and B8. The current wording is too vague.

4. SCHEDULE 2 - COMMUNITY LAND

To repeat what we asked in our three previous briefings, what will be the penalties imposed if the owner fails to market the Community Land in accordance with Schedule 2?

5. SCHEDULE 4 – SUSTAINABLE DEVELOPMENT

As we set out in our previous briefing the recommendation made by the Head of Planning and Building in the Notice of Meetings papers issued for the 1 December PCC meeting stated that compliance will be secured within each of the plots with the principles laid out in the Renewable and Low Carbon Energy Sustainability Report.

The draft section 106 agreement does not achieve this.

Clause 2 Schedule 4 of the Section 106 agreement states "the owner shall use reasonable endeavours to ensure that 10% of the total energy consumed by the buildings in any plots is from renewable and low carbon sources".

Reasonable endeavours is not an absolute obligation. The drafting needs to say **best endeavours** to ensure the Head of Planning and Building's recommendation is satisfied.

6. SCHEDULE 6 – TRANSPORTATION MEASURES

Part II

HCV Traffic Demand Management

Paragraph 4 refers to HCV Contraventions i.e. "more than 85 No HCVs leaving the Site in any

one hour beginning on the hour". This definition is inadequate, since in any one elapsed hour it would be theoretically possible to have 170 HCVs leaving without violating the 85/clock hour limit. To reduce this risk HGV numbers need to be monitored over a sliding time window that advances by no more than half an hour at a time and staggered intervals need to be insisted upon.

Part IV

A. ANPR System

The entire section 106 agreement refers to the ANPR as though it is synonymous with the Vehicle Identification System. It is not. The Vehicle Identification System comprises two components: the ANPR system (parts of which are on public roads) and a Vehicle Classification System installed at the entrance/exit to the Business Park which detects whether or not the vehicle is an HCV.

Schedule 6 Part IV should make mention of the VCS as well as the ANPR system and should also require that it is demonstrated to work.

Further the definition of HCV should include reference to the vehicle axles being 3 or more.

B. Barred Routes

We are pleased to note there will be two lists a HCV White List and a non-HCV White List.

What is disappointing to note is that the contents of both lists are completely determined by the Owner and there does not appear to be any provisions for independent verification of the vehicles placed on either list by either Council.

Even more concerning is the proposal that the HCV White List be compiled 5 working days after the vehicle has made its visit. This needs to be changed so the vehicle is on the list prior to its journey otherwise you are inviting retrospective altering of the list after the event!

The definition of Non HCV White List Vehicles refers to a "legitimate stopping off point" – what is that?

Further there are no criteria setting out when vehicles will be removed from either list and obviously the vehicles should not remain in the list in perpetuity. These omissions need to be rectified.

Please can you provide us with a copy of the Local Delivery Plan in order that we can ascertain what area local deliveries actually cover?

UNIT 4 – the EHO called for a planning control to be applied to limit the number of hourly HCV movements in/out of Unit 4 at night (Recommendation EH/L5 in section L of Appendix C to the officer's report to the NAPC). This was to ensure that the night traffic levels around Unit 4 did not exceed the levels assumed by Vanguardia when calculating the noise impact

on residents in Red Post Lane.

This is the third time we have pointed this deficiency out in the section 106 and again it is not clear to us why TVBC wish to ignore the recommendation of their own officer.

7. SCHEDULE 8 – NOISE

As previously mentioned Part I paragraph 2 should refer to Sound Insulation not Sound Installation. There are two references within the paragraph which need to be changed.

Part III

The Section 106 agreement refers to the acoustic barriers being installed substantially in accordance to the Vanguardia report. However, TVBC's noise consultant's report in the PCC Update Paper Appendix A page 3 specifically states that this is not an optimum arrangement of the barriers and suggests alternative configurations would be better and that there should be further studies and that this should be put into any agreement with the owner. Additionally some communities would be left unprotected from A303 noise. We have pointed this issue out previously

We seek reassurance that the current wording is therefore appropriate and will ensure the implementation of the recommendations set out above.

Typographical/ incorrect references

In addition to the errors set out above we would draw your attention to the following which need to be amended.

Definitions

A338 Restriction HCV Movement – the proviso is unclear

Barred Route Contribution – reference to “each and every breach of Schedule 6 Part IV E paragraph 2 does not appear to make sense

Lorry Routeing Requirements – amend “prange” to presumably “orange”?

Master Plan – “ing” needs to be added to the end of “draw”

Site Travel Plan Co-ordinator refers to paragraph 5.2.2 – but in what document or schedule is this paragraph?

Page 59 Schedule 6 Part IV C – paragraph 6 – the reference in that paragraph to paragraph 5 does not appear to be correct.

Appendix 2 A338 Restriction Bond – the reference to Part V of Schedule 5 should be to Schedule 6

Appendix 3 Barred Route Contribution etc – the reference to Part IV E of Schedule 5 should be to Schedule 6 and the reference on page 76 to Schedule 6 Part IV Paragraph 2 is incorrect.

CONCLUSION

The drafting has improved but there are still serious omissions as regards the specific recommendations of the TVBC's officers and own noise consultant.

Despite the PCC's resolution being passed over 3 months ago the draft section 106 agreement still does not deliver what was promised.

Throughout this process the officers and planning department have maintained that the development will only be permissible because of the conditions incorporated into the Section 106. The Section 106 does not yet incorporate all these things and to represent that it does is both misleading and factually incorrect.