

## **UPDATES TO PLANNING CONDITIONS AND LINK TO S106 OBLIGATIONS**

### **1. UPDATES TO PLANNING CONDITIONS**

#### **General**

1.1 The conditions have been generally reviewed. As part of this review:

1.1.1 Original condition 4 (as updated in Addenda 1) has been deleted as it duplicated the requirements of conditions 1 and 3 which specify the reserved matters (condition 3) and the timeframe for their submission to the Council (condition 1), which have been drafted in accordance with section 92 of the Town and Country Planning Act 1990.

1.1.2 Each of the conditions (including conditions dealing with environmental mitigation) has been reviewed and amended where necessary to consistently refer to phases to allow for phased discharge of conditions (where appropriate) and phased implementation, as is appropriate for a phased development.

#### **Updates to the monitor and manage conditions**

1.2 To ensure the development is fully deliverable within the 3 year timeframe to implementation approved by Committee, the monitor and manage conditions (conditions 16-23, as renumbered) have been updated as follows:

1.2.1 The monitor and manage conditions have been updated to relate to phases rather than the zones approved under the Parameter Plan. This is because these zones restrict the height, number and footprint of buildings in certain areas of the application site but may not reflect the build sequence of the development.

1.2.2 Conditions 18.1, 20.1, 22.1 have been updated so that the transport assessments for each phase can be submitted to and agreed by the LHA prior to the commencement of each phase rather than prior to submission of reserved matters.

1.2.3 Conditions 17.3, 19.3, 21.3 and 23.3 have been updated so that monitoring report for the preceding phase needs to be approved before occupation of the subsequent phase rather than prior to submission of reserved matters.

1.2.4 The occupation restriction in conditions 17.3, 19.3, 21.3 and 23.3 has been relaxed. The "unless otherwise agreed in writing" qualification builds flexibility into the delivery programme whilst retaining the Councils' discretion in the matter, having regard to the mitigation works carried out in the relevant phase.

1.2.5 Conditions 17.1, 19.1, 21.1 and 23.1 have been updated so that monitoring commences at 90% occupation rather than "full" occupation – this update provides a clear an enforceable trigger for post occupation monitoring.

1.2.6 The conditions have been clarified to set out the matters that need to be approved prior to commencement of each phase, including the scope and format for each transport assessment (conditions 16.1 18.1, 20,1 and 22.1) ; as well as the format, times and duration of monitoring (conditions 17.1, 18.1, 20.1 and 22.1).

1.2.7 The conditions have also been updated to expressly specify that details relating to transport assessments and monitoring require consultation with the LHA or LHA approval.

1.2.8 A new "sweeper" condition 23A has been added account for the theoretical possibility that there could be more than 4 phases under the approved phasing plan, with each additional phase necessitating the monitor and manage process to be repeated.

- 1.2.9 The list of junctions originally inserted at condition 24 (Travel Plan) have been moved into a new condition 23B which clarifies that these are the junctions being assessed under the transport assessments approved under conditions 16, 18, 20, 22 and 23A.
- 1.2.10 At the LHA's request the following junctions "A6116 junctions between the A43/A4300 and the A14" have been added into the list of junctions at 23B.

### **Phasing**

- 1.3 The phasing condition (condition 4) has been clarified to ensure the plan approved under this condition specifies phases and sub-phases (as the conditions relate to both phases and sub-phases) as well as the zones under the approved Parameter Plan to which the phases relate.
- 1.4 Updated condition 4 also sets clear floorspace parameters as follows:
- 1.4.1 a maximum (205,000 sqm) per-phase floorspace parameter; and
- 1.4.2 a minimum (20,000 sqm) per phase floorspace parameter.

The above parameters are intended to ensure that no one phase is too small or too large to permit of meaningful application of the monitor and manage approach. As an additional safeguard, intra-phase monitoring is secured under the s106 – see below.

## **2. LINK TO S106 OBLIGATIONS**

- 2.1 The updated planning conditions dovetail with the Section 106 Agreement as set out below.

### **Intra-phase monitoring**

- 2.2 Schedule 1, paragraphs 2.2-2.4: the applicant is required to ask the LHA, before commencement of any phase, if it needs intra-phase monitoring in respect of that phase. In practice, this request would be made in tandem with submitting the transport assessment for that phase for the LHA's approval under planning conditions 16, 18, 20 and 22.
- 2.3 Schedule 1, paragraph 2.5: if intra phase monitoring is required by the LHA in connection with a phase, then before commencement of that phase, the applicant needs to agree with the LHA in writing the scope and duration of the intra phase monitoring as well as the format of the intra phase monitoring report. Again, in practice, this process would run parallel with the LHA agreeing the scope etc. for the main monitoring report under planning conditions 17, 19, 21 and 23.
- 2.4 Schedule 1, paragraph 1.2.3 to avoid duplication the post occupation monitoring reports secured under the planning conditions will have regard to any intra phase monitoring.
- 2.5 Schedule 1, paragraphs 2.7-2.8: where required, the applicant then carries out the intra phase monitoring in accordance with the agreed scope. Once completed, the applicant submits to the LHA for its written approval the intra phase monitoring report in the agreed format. The intra phase monitoring report will set out any residual mitigation measures identified as necessary pursuant to the intra phase monitoring (if any).
- 2.6 Schedule 1, paragraph 2.10: if residual mitigation is required, the applicant is required to carry out the works before first occupation of the subsequent phase or in accordance with a later timeframe agreed with the LHA.
- 2.7 Schedule 1, paragraph 2.11: if the applicant defaults on its obligations the LHA can call on the security put in place under the s106 (or otherwise) to complete the works – see below.

- 2.8 Schedule 1, paragraph 2.12: conversely, if no residual mitigation measures are required, any security under the s106 shall be released - see below.

### **Security for residual mitigation**

- 2.9 Schedule 1, paragraph 2.14.1 & 2: where intra-phase monitoring is required, the LHA is required to agree the likely cost of residual mitigation measures (based on a reasonable worst case assessment) with the applicant before commencement of any phase. In practice this will happen in tandem with the applicant securing the LHA's confirmation as to whether or not intra-phase monitoring is required in connection with any given phase – see above.
- 2.10 Schedule 1, paragraph 2.14.3 & 4: the applicant is required to put in place the security (bond or cash deposit) in respect of the agreed sum before first occupation of that phase.
- 2.11 Schedule 1, paragraph 2.10.2: the security is released in stages, at practical completion and final certification of the residual mitigation works.
- 2.12 NB: It is important to bear in mind that this security is not in respect of the cost of the mitigation works secured under the conditions. The Council accepts that these works will be secured under the LHA's usual s278 protocol. It is in respect of the estimated cost of any potential residual mitigation which may be necessary pursuant to intra-phase monitoring.
- 2.12.1 If no intra phase monitoring is required in connection with any phase, then the security mechanism is not triggered.
- 2.12.2 Likewise, even if intra phase monitoring is required, it is open to the LHA to waive the security mechanism under the s106 in preference for security mechanisms which may already exist under its s278 agreement for the main mitigation works. For example, the LHA has explained that the s278 agreement required under the planning conditions could potentially be sufficiently flexible to accommodate the residual mitigation measures required pursuant to intra phase monitoring. If that is the case, then the security under the s106 will not be required.
- 2.12.3 However, the Council would prefer to retain reference to the security mechanism as a fall back and to cover the possibility of the residual mitigation measures not being physical works governed by a s278.

### **Updates to transport assessments secured under the monitor and manage conditions**

- 2.13 Schedule 1, paragraph 2.17: the applicant is required to submit to the LHA for its written approval an updated transport assessment in the event that (and only if) the transport assessment for subsequent phase is approved before the monitoring report for a preceding phase has been approved.
- 2.14 The updated transport assessment will set out the updates to the approved access and mitigation works that may be required on review of the results of the monitoring for the preceding phase i.e. the local trip data.
- 2.15 The s106 agreement provides, at Schedule 1, paragraph 2.17, that the update works are required to be practically completed before first occupation of the subsequent phase, unless a longer timeframe is agreed in writing by the LHA.

### **Summary**

- 2.16 The amended conditions allow for phased implementation of the development in full within the timeframe for implementation set by Committee.
- 2.17 Intra phase monitoring refers to the monitoring of traffic effects between first and final occupation. This may be required in addition to the post occupation monitoring already

secured under the conditions if any phase is particularly large and also because a phase may not become “fully occupied” until a very late stage in the development, if at all.

- 2.18 If intra phase monitoring gives rise to the need for additional mitigation, this is known as “residual mitigation”.
- 2.19 This residual mitigation is distinct from additional mitigation (if any) which may be required on account of the transport assessments being adjusted to reflect the local trip data obtained from post occupation monitoring (see below). It is proposed that residual mitigation is secured by a cash deposit or bond required under the s106, unless the LHA waives this requirement.
- 2.20 Updates to the transport assessments and access and mitigation works approved under those transport assessments will be required where (but only where) the transport assessments for a given phase are approved before the monitoring report for the preceding phase is approved, to ensure the transport assessment for that phase and the access and mitigation works required in connection with that phase fully reflect and respond to local trip data. It is proposed that such update works are completed before first occupation of the subsequent phase, unless a longer timeframe is agreed by the LHA.

**Summary as at 28 October 2020**