

PP/02/01324	Lots Road Power Station And Chelsea Creek 16- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 17- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 18- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 19- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 20- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 21- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 22- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 23- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 24- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 25- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 26- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 27- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 28- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 29- 41
PP/02/01324	Lots Road Power Station And Chelsea Creek 30- 41

ROYAL BOROUGH OF KENSINGTON AND CHELSEA

(29)

DOCUMENT TYPE

CONFIDENTIAL DOCUMENTS

APPLICATIONS

LATE UPDATE

PP/02/01324

PP/02/01324

Lots Road Power Station And Chelsea Creek

Due to case file size the content has been broken down and scanned in sections as denoted.

Index of content of case files

File Number: Content of File:

- 01-10 Council Case
- 11- 13 Refused Drawings
- 14 -17 Amended Drawings
- 18-19 Hammersmith And Fulham Plans
- 20-21 CD of Planning Drawings
- 22 Other Docs
- 23 Baily Bridge
- 24 Officers Notes and Other Correspondents
- 25 Condition 5
- 26 Condition 6
- 27 Condition 7
- 28 Condition 9
- 29 CONFIDENTIAL DOCS
- 30 Condition II
- 31 Condition II
- 32 Condition 12
- 33 Condition 12
- 34 Condition 12 -CONFIDENTAIL DOCS
- 35 Condition 12 -Superseded Docs
- 36 Condition 12 -Superseded Docs
- 37 Condition 12 -Superseded Drawings
- 38 Condition 12 -Superseded Drawings
- 39 Condition 25
- 40 Condition 25 + 29
- 41 Condition 27

confidential

to be scanned but not
on to website.

✓ RB
21/5/07

LAW AND ADMINISTRATION
INTERNAL MEMORANDUM

TO: Georgina Slader
Bruce Coey
David Prout
Geoff Burrage
Mark Chetwynd
Stan Logn

ROOM NO: Planning and Borough Development
South Area
Planning and Borough Development
South Area
Executive Director of Planning and
Borough Development
Transportation and Highways
KTH
Transportation and Highways
KTH
Housing Initiatives
Room 247 KTH

CC:

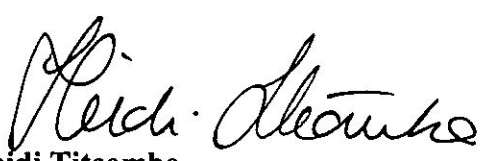
FROM: Heidi Titcombe
TELEPHONE: 020 7361 2617
EMAIL: heidi.titcombe@rbkc.gov.uk
DATE: 17 May 2007
SUBJECT: LOTS ROAD APPLICATION TO THE COURT OF APPEAL

ROOM NO: 230 2
FAX: 020 7361 3655
REF: HT/10035997

(GS)

I enclose a copy of the Judgement of the Court of Appeal referred to in my email of the 16th May. As you know, Lady Berkeley had been refused permission to appeal to the Court of Appeal.

Regards


Heidi Titcombe
Senior Solicitor
Licensing, Planning and Property
For the Director of Law and Administration

enc

EX DIR	RDC	TP	CAC	AD	CLU	AO	AK
R.B.	K.C.	18 MAY 2007				PLANNING	
N	C	S		APP	IO	REC	
HBS				ARB	FPLN	DES	FEEs

(102)



HER MAJESTY'S
COURTS SERVICE
hmcs

Civil Appeals Office
Royal Courts of Justice
Strand
London
WC2A 2LL

DX 44450 STRAND

T 020 7073 4828

F 020 7947 6621

RNID Typetalk

18001 (Text) 18002 (Voice)

(Helplines for the deaf and hard of hearing)

www.civilappeals.gov.uk

www.hmcourts-service.gov.uk

Kensington & Chelsea Borough Council
The Town Hall Legal Department
Horton Street
London
W8 7NX

Our ref: C1/2007/0684

Your ref:

14th May 2007

Dear Sir,

Re: The Queen (on the application of Berkeley) – v – First Secretary of State & Others

I enclose a copy of the order refusing permission to appeal.

If you do not intend to renew this application within seven days, would you please arrange for the bundle which you filed in support to be collected from the Civil Appeals Office Registry, Room E307, 3rd Floor East Block, Royal Courts of Justice, within fourteen days, producing a copy of this letter to the counter clerk. *Please note that these documents will only be released on production of this letter or a copy.* The office is open Monday to Friday, 10.00am to 4.30pm (10.00am to 4.00pm for payment of fees).

If I do not hear from you within the above time I shall assume that these papers are no longer required and consign them to the confidential waste disposal system.



INVESTOR IN PEOPLE

LET296C :1 4 05:



CUSTOMER SERVICE EXCELLENCE

If you intend to renew this application, your advocate will need to provide the statement required by paragraph 4.14A of the Practice Direction which supplements CPR Part 52, and you must notify our Listing Office in writing within 7 days (at the above address, Room E306, telephone number 020 7947 6195/6917, fax number 020 7947 6621).

Yours faithfully,

A handwritten signature in black ink, appearing to be 'AZ' or similar, written in a cursive style.

Court Associate

civilappeals.associates@hmcourts-service.gsi.gov.uk

civilappeals.listing@hmcourts-service.gsi.gov.uk



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2007/0684

1618

500 GS.VO:17/10.06)

Her Majesty's

Court of Appeal

(SEAL)

14 MAY 2007

The Queen (on the application of Berkeley) –v– First Secretary of State & Others

ORDER made by the Rt. Hon. Lord Justice Richards

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

REFUSED

Reasons**Ground 1**

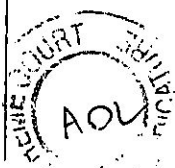
There may be a degree of confusion in the Judge's analysis, but I am not satisfied that there is a realistic prospect of establishing on appeal that the Secretary of State fell into legal error in his decision:

- (1) Policy 4C.20 of the London Plan was indeed deployed in support of two different cases: (i) the "height of the towers" case, and (ii) the "Blue Ribbon Network (BRN)" case as to failure to provide water-related uses.
- (2) As regards case (ii), the Mayor of London argued that policy 4C.20 was concerned with *design* rather than land use and therefore, by implication, that it did not assist the objectors' case concerning land use (IR 7.11). (The Mayor's reference to the policy at IR 7.51-7.52, in the context of the height of the towers case, is consistent with this: the criteria are examined from the standpoint of design.)
- (3) The Inspector plainly accepted the Mayor's argument on this point, finding policy 4C.20 to be "purely a design policy – not one which addresses the suitability in principle of a proposed use for a riverside site" (IR 19.162).
- (4) The Secretary of State agreed with that aspect of the Inspector's reasoning: see DL 83, which is expressed in general terms but encompasses the inspector's finding that policy 4C.20 was purely a design policy. (The Secretary of State's disagreement with the Inspector in relation to policy 4C.20 was solely in the context of the height of the towers case and was limited to the application of the policy as a design policy.)
- (5) Although the Judge's primary reason for rejecting the applicant's case on this issue was based on the view that the Secretary of State did *not* adopt the Inspector's relevant conclusion, she also held as a secondary matter that the Inspector was correct in finding that policy 4C.20 was purely a design policy (paras 47-48). If she was right so to hold in relation to the Inspector, that must apply equally in relation to the Secretary of State in agreeing with the Inspector.
- (6) In my view the judge was right in her secondary finding. The policy is capable of being interpreted as it was by the Inspector, and he cannot be said to have erred in law in so interpreting it. Nor, therefore, can the Secretary of State be said to have erred in law in agreeing with the Inspector.
- (7) Accordingly, any mistake in the Judge's primary reasoning on this issue is immaterial.

Ground 2

Here, too, the focus should be on the Inspector's reasoning (IR 19.163), as agreed with by the Secretary of State (DL 83), rather than on the additional points in the judge's judgment to which objection is taken in the grounds. Again I am not satisfied that there is a realistic prospect of establishing on appeal that the Secretary of State fell into legal error:

- (1) If, as does not appear to have been disputed, it was reasonably open to the Inspector to conclude that "there is no water-based use which could reasonably be expected to occupy the site, or part of it, if this scheme did not go ahead", there was no sensible basis on which to find any material non-compliance with the obligation in policy 4C.12 to prioritise uses in favour of those that specifically require a waterside location.



- (2) In any event the policy is capable of being interpreted as it was by the Inspector, and here too there cannot be said to have been an error of law by the Inspector in his interpretation of the policy or by the Secretary of State in agreeing with the Inspector.

Information for or directions to the parties



Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

By the Court

Signed:

[Signature]

Date:

11/5/07

Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 4.14A of the Practice Direction.
- (3) Where permission to appeal has been granted, the appeal bundle must be served on the respondents within 7 days of receiving this order (see para. 6.2 of the Practice Direction to CPR Part 52). A letter of notification will be sent to the appellant or his solicitors, as soon as practicable (see para. 6.3).

Case Number: **C1/2007/0684**

**DATED 11TH MAY 2007
IN THE COURT OF APPEAL**

THE QUEEN (ON THE APPLICATION OF BERKLEY)

- and -

FIRST SECRETARY OF STATE & OTHERS

ORDER

Copies to:

Kensington And Chelsea Borough Council
The Town Hall Legal Department
Horton Street
London
W8 7NX
Ref: MJH TITCC

London Borough Of Hammersmith And Fulham
Legal Department
Town Hall
King Street
Hammersmith
W6 9JU
Ref: MR A BERESFORD

Addleshaw Goddard
150 Aldersgate Street
London
EC1A 4EJ
Ref: D EVANS

Messrs Richard Buxton
19b Victoria Street
Cambridge
CB1 1JP
Ref: RMB/AK

Treasury Solicitor
Dx 123242
Kingsway

Treasury Solicitor
Dx 123242
Kingsway

QBD Admin Court
Ref: C022142006

LAW AND ADMINISTRATION

THE TOWN HALL HORNTON STREET LONDON W8 7NX

Director of Law and Administration Gifty Edila, LLB, LLM, Solicitor - Advocate

Mr David Beynon
Hutchison Whampoa Properties (Europe)
Limited
Hutchison House
5 Hester Road
London
SW11 4AN

Direct Line: 0207 361 2617
Facsimile: 0207 361 3665
Email: bernard.ralph@rbkc.gov.uk
Web: www.rbkc.gov.uk
DX: 84015 Kensington High Street 2

21 June 2007

THE ROYAL BOROUGH OF



KENSINGTON AND CHELSEA

My reference: HT/10005552

Your reference:

Please ask for: Heidi Titcombe

Dear Mr Beynon,

Section 106 Agreement Lots Road Power Station & Chelsea Creek, Lots Road, London SW10

David Prout has passed your letter of 21 May 2007 to me for response in relation to the S.106 agreement.

The penultimate paragraph of your letter requests confirmation of the Council's view regarding implementation of the development, for the purposes of the S.106 Agreement. The question of "implementation" and the associated "material operations" was discussed during the lengthy negotiations regarding the S.106 agreement. In our view the meaning of these terms are clearly set out in clauses 1.58 and 1.71 of the Agreement.

Clause 1.58 specifies that "Implementation" will be triggered as soon as a "material operation" is carried out pursuant to the development in Kensington and Chelsea.

Clause 1.71 defines a material operation as any operations set out in Section 56(4) of the Town and Country Planning Act 1990. The clause confirms that works of ground investigation, site survey work, the construction of boundary fencing or hoardings, archaeological investigation works, exclusively of decontamination, demolition or remediation shall not be taken as being a "material operation". However the definition goes on to make clear that any works directly associated with the erection of buildings below ground level, such as the construction of the underground car park and the laying of foundations and permanent service conduits or any preparatory works which give rise to bulk material transportation will be regarded as a "material operation".

In our view, many of the works specified in your letter will constitute a material operation and will constitute implementation so far as the S.106 agreement is concerned. Georgie can you please check the works mentioned to make sure you agree that this sentence.

May I also remind you that the developer is required to comply with the obligations set out in clause



Lexcel
PRACTICE MANAGEMENT STANDARD
THE LAW SOCIETY



INVESTOR IN PEOPLE

4.7 and clause 1.60 of the Agreement. This requires a Notice to be served on this Council and Hammersmith and Fulham at least 7 days prior to implementation.

Once Implementation has been carried out, the developer will have to comply with various obligations set out in the Agreement. Purely in relation to the financial contributions the following payments will need to be made:-

Within 7 days of the date of service of the Implementation Notice for the Royal Borough Development the following payments are due:

- | | | |
|-----|----------|---|
| 1. | £75,000 | Bus Stops Contribution First Payment payable to TfL (part of sum to be made available to RBKC if Bus Stops are provided on non-GLA roads) |
| 2. | £50,000 | Bus Priority Measures sum payable to TfL (part of sum to be made available to the RBKC if Bus Priority Measures are carried out on non-GLA roads) |
| 3. | £30,000 | Chelsea Harbour Pier Contribution to be paid to RBKC |
| 4. | £160,000 | Cycle Contribution First Payment to be paid to RBKC |
| 5. | £5,000 | Cycle Safety and Proficiency Training Sum to be paid to RBKC |
| 6. | £22,500 | Car Club and Cycle Pool Contribution First Payment to be paid to RBKC |
| 7. | £30,000 | School Travel Plans Sum to be paid to RBKC |
| 8. | £100,000 | Streetscape Improvement Zone Contribution to be paid to RBKC |
| 9. | £83,000 | Pedestrian Measures Contribution First Payment to be paid to RBKC |
| 10. | £100,000 | Public Art Contribution to be paid to RBKC. |

Within 7 days of Service of the Implementation Notice for the Hammersmith and Fulham Development the following payment is due:

- | | | |
|----|----------|--|
| 1. | £200,000 | Lots Road / Cremorne Road Junction Contribution to be paid to RBKC |
|----|----------|--|

In addition to the S.106 obligations, you will be aware that conditions (attached to the planning permission) 3, 4, 5, 6, 7, 9, 12, 14, 25, 26, 27 and 29 must in some cases be fulfilled before either the development is implemented or certain works of construction relating to those conditions takes place.

Yours sincerely,

Heidi Titcombe
Senior Solicitor, Property and Planning Team
for Director of Law and Administration

Slader, Georgina: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 26 June 2007 13:46
To: Slader, Georgina: PC-Plan; Ralph, Bernard: CP-Legal
Subject: Lots Road S.106 obligations

Importance: High

Attachments: Letter_Developer_070621 (2).doc; Schedule of monies to be paid under the s106 agreement.doc; Lots Rd_S106 payments.doc

Georgie,

Bernard and I have discussed the query. I attach a draft letter in response to the query raised. Are you happy for this to go out from legal or would David does so?

I note that the original letter from Mr Beynon, raises matters other than the S.106 agreement so David may prefer to comment further on those points.

I need you to check the highlighted paragraph of my letter. This refers to the various works specified in the penultimate paragraph of Mr Beynon's letter. He refers to certain works which will not be regarded as a material operation (because they have been excluded under the agreement), but it also refers to other works including the construction of the basements and piling of the foundations etc which will be regarded as a material operation. Are you happy with the way I have dealt with this? If not please, suggest alternative wording.

I also enclose two notes setting out the requirements of the S.106 obligations for your future information.

Many thanks

Heidi

Heidi Titcombe
Senior Solicitor, Property and Planning
for Director of Law and Administration
Tel: 0207 361 2617
Fax: 020 7361 3665



Letter_Developer_070621 (2).doc... Schedule of monies to be paid ... Lots Rd_S106 payments.doc (52 ..

Slader, Georgina: PC-Plan

From: Coey, Bruce: PC-Plan
Sent: 31 July 2007 18:09
To: Titcombe, Heidi: CP-Legal
Cc: Slader, Georgina: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment

Heidi

Thank you. I cannot trace a reply, so will try and unravel it. It may however need to await Georgina's return. When Mr. Beynon and I spoke on the phone, he advised that the answer depended on whether we regarded demolition as development, and that he had been advised by Hammersmith and Fulham that it did not. Bearing in mind Counsel's Opinion on this matter, is there anything that you wish to add to your previous advice?

From: Titcombe, Heidi: CP-Legal
Sent: 31 July 2007 12:02
To: Coey, Bruce: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment
Importance: High

Bruce,

Yes I advised on the letter of 21 May 2007 and drafted a letter in response for approval by Georgina and David Prout. I attach my original email of 26 June with my draft letter.

I suggested a letter could either be sent from David Prout or myself once Georgina was able to clarify the highlighted point. I haven't been asked to send the letter out and am not sure if David responded instead. Perhaps you could ask Aine.

If you want me to send out the letter, I will need your confirmation that you do consider many of the works mentioned in the letter do amount to a material operation. (see the highlighted bit).

Regards

Heidi

From: Coey, Bruce: PC-Plan
Sent: 27 July 2007 16:17
To: Titcombe, Heidi: CP-Legal
Subject: FW: Lots Road Power Station Redevelopment

Heidi-are you able to advise me whether one of your team has advised Georgina on the attached letter and, if so, to let me have a copy of the advice to enable me to reply please (Georgina is on leave and I have no access to her computer)

From: DavidBeynon@hwpg.com [mailto:DavidBeynon@hwpg.com]
Sent: 27 July 2007 15:43
To: Coey, Bruce: PC-Plan
Cc: Slader, Georgina: PC-Plan

13/08/2007

Subject: Lots Road Power Station Redevelopment

Dear Mr Coey,

Further to our telephone conversation this afternoon regarding my letter of 21st May 2007 addressed to Mr Prout and his reply of 5th June 2007, I am enquiring whether a response has yet been considered by the Director of Law and Administration to the confirmation we are seeking to the point raised in the penultimate paragraph of my letter of 21st May. The full letter is attached for your reference but the specific point is extracted below:

As mentioned above, we intend submitting to you very soon material for the discharge of a series of planning conditions as required by the planning permission. In our view, those planning conditions will need to be discharged prior to the implementation of the development, by which we understand to mean works such as construction of basements, piling of foundations etc, and as such they would not need to be discharged prior to the works of decontamination, strip-out and demolition in the PowerStation. Similarly these preparation works would not trigger implementation for the purposes of the S106 Agreement. I would be grateful if you could confirm that this reflects the Council's view of the position.

I would be grateful if you would check with the Legal Department whether they have already provided a response to Georgina Slader during her absence on holiday. As I believe you are aware we have already submitted to your office some material for the discharge of certain planning conditions and more will be submitted over the next two weeks. We are in the process of finalising plans for our decontamination and plant strip-out contractor to make a start on site and it is possible that they could be ready to do so before your approval period for the discharge of planning conditions has been concluded. The Council's view of the position described in my letter is therefore important as it could affect our start date.

Thank you for your assistance,

Regards

David Beynon

David Beynon
Senior Project Manager
Hutchison Whampoa Properties (Europe) Limited.
Tel: +44 (0) 207 350 5640
Fax: +44 (0)207 350 5641
E-mail: david.beynon@hwpg.com

Hutchison Whampoa Property
Hutchison Whampoa Properties (Europe) Limited
Hutchison House, 5 Hester Road, London SW11 4AN, United Kingdom
Tel +44 (0) 20 7350 5640 Fax +44 (0) 20 7350 5641
www.hwpg.com
Registered in England & Wales, registration no. 40004453



Please consider the environment before printing this e-mail

Slader, Georgina: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 01 August 2007 14:40
To: Coey, Bruce: PC-Plan
Cc: Slader, Georgina: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment

Bruce,

I think they are trying to be clever to avoid triggering the financial and other obligations in the agreement. Demolition will not be regarded as a material operation in itself, however if it is related to the works specified below it will be a material operation. Paragraph 1.71 of the agreement makes it clear that any "works directly associated with the erection of buildings below ground level such as the construction of the underground car park, the laying of foundations and permanent service conduits or any preparatory works which give rise to bulk material transportation " **will constitute a material operation.**

I am not sure what counsel opinion to which you refer, but the operations on this site will be bound be dictated by the S.106 agreement which after all the developer freely entered into to support the Secretary of State's decision. The agreement is complicated and voluminous. It might be an idea if you give your counterpart a ring at Hammersmith to see what approach they are taking because our agreements are consistent.

I hope this helps.

Thanks

Heidi

From: Coey, Bruce: PC-Plan
Sent: 31 July 2007 18:09
To: Titcombe, Heidi: CP-Legal
Cc: Slader, Georgina: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment

Heidi

Thank you. I cannot trace a reply, so will try and unravel it. It may however need to await Georgina's return. When Mr. Beynon and I spoke on the phone, he advised that the answer depended on whether we regarded demolition as development, and that he had been advised by Hammersmith and Fulham that it did not. Bearing in mind Counsel's Opinion on this matter, is there anything that you wish to add to your previous advice?

From: Titcombe, Heidi: CP-Legal
Sent: 31 July 2007 12:02
To: Coey, Bruce: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment
Importance: High

Bruce,

Yes I advised on the letter of 21 May 2007 and drafted a letter in response for approval by Georgina and David Prout. I attach my original email of 26 June with my draft letter.

13/08/2007

I suggested a letter could either be sent from David Prout or myself once Georgina was able to clarify the highlighted point. I haven't been asked to send the letter out and am not sure if David responded instead. Perhaps you could ask Aine.

If you want me to send out the letter, I will need your confirmation that you do consider many of the works mentioned in the letter do amount to a material operation. (see the highlighted bit).

Regards

Heidi

From: Coey, Bruce: PC-Plan
Sent: 27 July 2007 16:17
To: Titcombe, Heidi: CP-Legal
Subject: FW: Lots Road Power Station Redevelopment

Heidi-are you able to advise me whether one of your team has advised Georgina on the attached letter and, if so, to let me have a copy of the advice to enable me to reply please (Georgina is on leave and I have no access to her computer)

From: DavidBeynon@hwpg.com [mailto:DavidBeynon@hwpg.com]
Sent: 27 July 2007 15:43
To: Coey, Bruce: PC-Plan
Cc: Slader, Georgina: PC-Plan
Subject: Lots Road Power Station Redevelopment

Dear Mr Coey,

Further to our telephone conversation this afternoon regarding my letter of 21st May 2007 addressed to Mr Prout and his reply of 5th June 2007, I am enquiring whether a response has yet been considered by the Director of Law and Administration to the confirmation we are seeking to the point raised in the penultimate paragraph of my letter of 21st May. The full letter is attached for your reference but the specific point is extracted below:

As mentioned above, we intend submitting to you very soon material for the discharge of a series of planning conditions as required by the planning permission. In our view, those planning conditions will need to be discharged prior to the implementation of the development, by which we understand to mean works such as construction of basements, piling of foundations etc, and as such they would not need to be discharged prior to the works of decontamination, strip-out and demolition in the PowerStation. Similarly these preparation works would not trigger implementation for the purposes of the S106 Agreement. I would be grateful if you could confirm that this reflects the Council's view of the position.

I would be grateful if you would check with the Legal Department whether they have already provided a response to Georgina Slader during her absence on holiday. As I believe you are aware we have already submitted to your office some material for the discharge of certain planning conditions and more will be submitted over the next two weeks. We are in the process of finalising plans for our decontamination and plant strip-out contractor to make a start on site and it is possible that they could be ready to do so before your approval period for the discharge of planning conditions has been concluded. The Council's view of the position described in my letter is therefore important as it could affect our start date.

Thank you for your assistance,

13/08/2007

Regards

David Beynon

David Beynon
Senior Project Manager
Hutchison Whampoa Properties (Europe) Limited.
Tel: +44 (0) 207 350 5640
Fax: +44 (0)207 350 5641
E-mail: david.beynon@hwpg.com

Hutchison Whampoa Property
Hutchison Whampoa Properties (Europe) Limited
Hutchison House, 5 Hester Road, London SW11 4AN, United Kingdom
Tel +44 (0) 20 7350 5640 Fax +44 (0) 20 7350 5641
www.hwpg.com
Registered in England & Wales, registration no. 40004453



Please consider the environment before printing this e-mail

Slader, Georgina: PC-Plan

From: Slader, Georgina: PC-Plan
Sent: 15 August 2007 16:11
To: Coey, Bruce: PC-Plan; Titcombe, Heidi: CP-Legal
Cc: Parker, LeVerne: CP-Legal
Subject: RE: Lots Road Power Station Redevelopment

Heidi,

I have been looking at David Benyon's letter and subsequent e-mail and I have read your draft letter which you sent by e-mail.

To be honest I'm slightly confused as to the wording of clause 1.71. What does it mean when it says '... exclusively of decontamination demolition or remediation'? Does it mean that ground investigation or site survey work construction of boundary fencing etc. can take place in relation to decontamination etc. or does it mean it can't take place in relation to decontamination etc.? Or, does it mean decontamination, demolition or remediation work can take place whatever? Or does it mean that the initial ground investigation or site survey work can take place in relation to decontamination demolition or remediation but if they were to do the associated mitigation works that would constitute implementation. (This is why I thought it might have been easier to talk to you, rather than write!)

Secondly, the clause notes that a major operation involves 'preparatory works which give rise to bulk material transportation'. There does not appear to be a definition for what 'bulk material transportation' is. The 'strip out and demolition in the Power Station' mentioned in Benyon's letter, I would assume, requires movement of material either around the site or from the site, and depending on the definition of 'bulk material transportation' would constitute implementation? If the answer to this is yes, then I agree with your comments in paragraph 5 of your draft letter and think we should advise them that conditions would also need to be discharged prior to the proposed works, and once undertaken would trigger payment of the S106. If the developer can demonstrate that the preparatory works would not create bulk material transportation, whatever that is, would you agree that conditions would not need to be discharged and the works would not trigger the S106 payments?

Bruce has suggested we arrange a meeting to discuss this matter. Once we have agreed internally our position we should, as you suggested, speak to Hammersmith and Fulham regarding their position.

Look forward to hearing from you.

Georgina Slader
 Planning and Conservation
 Telephone 020 7361 2664

This e-mail may contain information which is confidential, legally privileged and/or copyright. This e-mail is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer.

From: Coey, Bruce: PC-Plan
Sent: 31 July 2007 18:09
To: Titcombe, Heidi: CP-Legal
Cc: Slader, Georgina: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment

Heidi

Thank you. I cannot trace a reply, so will try and unravel it. It may however need to await Georgina's return. When Mr. Beynon and I spoke on the phone, he advised that the answer depended on whether we regarded demolition as development, and that he had been advised by Hammersmith and Fulham that it did not. Bearing in mind Counsel's Opinion on this matter, is there anything that you wish to add to your previous advice?

15/08/2007

From: Titcombe, Heidi: CP-Legal
Sent: 31 July 2007 12:02
To: Coey, Bruce: PC-Plan
Subject: RE: Lots Road Power Station Redevelopment
Importance: High

Bruce,

Yes I advised on the letter of 21 May 2007 and drafted a letter in response for approval by Georgina and David Prout. I attach my original email of 26 June with my draft letter.

I suggested a letter could either be sent from David Prout or myself once Georgina was able to clarify the highlighted point. I haven't been asked to send the letter out and am not sure if David responded instead. Perhaps you could ask Aine.

If you want me to send out the letter, I will need your confirmation that you do consider many of the works mentioned in the letter do amount to a material operation. (see the highlighted bit).

Regards

HEIDI

From: Coey, Bruce: PC-Plan
Sent: 27 July 2007 16:17
To: Titcombe, Heidi: CP-Legal
Subject: FW: Lots Road Power Station Redevelopment

From: DavidBeynon@hwpg.com [mailto:DavidBeynon@hwpg.com]
Sent: 27 July 2007 15:43
To: Coey, Bruce: PC-Plan
Cc: Slader, Georgina: PC-Plan
Subject: Lots Road Power Station Redevelopment

Dear Mr Coey,

Further to our telephone conversation this afternoon regarding my letter of 21st May 2007 addressed to Mr Prout and his reply of 5th June 2007, I am enquiring whether a response has yet been considered by the Director of Law and Administration to the confirmation we are

is attached for your reference but the specific point is extracted below:

need to be discharged prior to the works of decontamination, strip-

the S106 Agreement. I would be grateful if you could confirm that this reflects the Council' position.

15/08/2007

Slader, Georgina: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 04 September 2007 10:22
To: Slader, Georgina: PC-Plan; Coey, Bruce: PC-Plan
Subject: FW: Lots Road - section 106 Agreement and Planning Permission

Hi Georgie,

Here is the advice from the solicitor who deal with the negotiation of the S.106 agreement. I think this does answer your queries, but if not please let me know.

Many thanks

Heidi

-----Original Message-----

From: Zoe Wilson [mailto:temp3@Forsters.co.uk] On Behalf Of Michael Cunliffe
Sent: 03 September 2007 13:10
To: Titcombe, Heidi: CP-Legal
Subject: Lots Road - section 106 Agreement and Planning Permission

Dear Heidi

I refer to your e-mail of 29 August. I have read through the letter from David Beynon of the developers to David Prout of the Council dated 21 May 2007. In the penultimate paragraph of his letter Mr Beynon stated that they would be very soon submitting material for the discharge of a series of planning conditions needed to be discharged prior to the implementation of the development. Mr Beynon said that he understood implementation to mean works such as construction of basements, piling of foundations etc and as such would not need to be discharged prior to works of decontamination, strip out and demolition in the Power Station. Similarly he stated that these preparation works would not trigger implementation for the purposes of the section 106 Agreement.

It is important to differentiate between what constitutes a material operation for the purposes of the planning permission granted by the Secretary of State on 30 January 2006 and what constitutes a material operation for the purposes of the section 106 Agreement dated the 27th of April 2005. They are different.

For the purposes of the planning permission development shall be taken to begun on the earliest date on which any material operation comprising the development begins to be carried out. Material operation is defined in section 56(4) of the 1990 Act as (a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building (b) the digging of a trench which is to contain the foundations or part of the foundations of a building; (c) the laying of any underground main or pipe to the foundations of a building or part of the foundations of the building or to any such trench as is mentioned in paragraph (b); (d) any operation in the course of laying out or constructing a road or part of a road; (e) any change in the use of any land which constitutes material development.

What this means therefore is that, for the purposes of the planning permission, work by way of demolition of buildings on the site will constitute a commencement of the development. That means therefore that Condition 6 (details of the proposed vehicular access); Condition 7 (landscape works); Condition 9 (riverside walk); Condition 12 (Chelsea Creek treatment); Condition 25 (programme of archaeological works); Condition 27 (Investigation and recording of contamination) and Condition 29 (a scheme for the inclusion of renewable energy) will all need to be satisfied before any demolition takes place.

For the purposes of the planning permission works of internal strip out will not in themselves constitute a commencement of development. For the purposes of the planning permission works in relation to contamination cannot take place until Condition 27 has been satisfied.

For the purposes of the section 106 Agreement various planning obligations are triggered by Implementation of the Development.
Implementation is defined at clause 1.58 as meaning the undertaking of a Material

Operation pursuant to the Planning Permission. Material Operation is defined at clause 1.71 as meaning the carrying out of a Material Operation as defined at 56(4) of the 1990 Act provided that for the purposes of this Deed various preliminary works are excluded from being a Material Operation.

One of the exempted works is 'works exclusively of decontamination demolition or remediation'. It is difficult immediately to understand what the word 'exclusively' adds in this context and to recall how it arose. The same wording does appear in the Hammersmith and Fulham section 106 Agreement. I will need to trace back through the section 106 files to see how that wording arose. It is certainly my recollection that works of decontamination demolition or remediation were not intended as such to constitute a Material Operation for the purposes of the section 106 Agreement. I will come back to you once I have done some further research.

The definition of Material Operation makes it clear that any preparatory works which give rise to bulk material transportation shall constitute a material operation for the purposes of the Act. Bulk material transportation is not defined in the Agreement and it will therefore be in the reasonable judgment of the Council whether a material operation is triggered. You will need to ask the developers how they intend to transport materials arising from the preparatory works in particular in relation presumably to demolition and then to make a judgment. Clearly if you decide that a material operation will be triggered by the transportation of materials the various section 106 payments tied to the Implementation Date will then be payable. If the matter is disputed by the developers then the matter can be dealt with by an expert under the provisions of Clauses 59.10 - 59.13 of the Agreement.

Best wishes

Michael Cunliffe
Partner

Forsters LLP
Direct Line: 020 7863 8477
Fax: 020 7863 8444

This email is sent on behalf of Forsters LLP ('the firm'), a limited liability partnership registered in England and Wales (no OC306185). A list of the members of the firm may be inspected at its registered office, 31 Hill Street, London W1J 5LS, or at www.forsters.co.uk. The firm is regulated by the Solicitors Regulation Authority (www.sra.org.uk)

The firm contracts on its terms of business, which may be read at www.forsters.co.uk. No personal liability is assumed by the sender of this email.

Emails sent or received may be monitored to ensure compliance with the law and the firm's policies. Although this email (as well as any attachments) has been scanned for viruses, the recipient should ensure that it is virus-free before opening it.

This email may contain privileged and confidential information. If you are not the intended recipient, any dissemination of it is prohibited. If you have received this email in error, please notify us at mail@forsters.co.uk or on 020 7863 8333 and delete it from your system.

Slader, Georgina: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 29 October 2007 10:14
To: Slader, Georgina: PC-Plan; Coey, Bruce: PC-Plan
Subject: FW: Lots Road - Section 106 Agreement and Planning Permission

Georgie,

Here is the further information from the external solicitor who dealt with the case.

Regards

Heidi

-----Original Message-----

From: Zoe Wilson [mailto:temp3@Forsters.co.uk] On Behalf Of Michael Cunliffe
Sent: 26 October 2007 10:35
To: Titcombe, Heidi: CP-Legal
Subject: Lots Road - Section 106 Agreement and Planning Permission

Dear Heidi

Further to your e-mail of the 16th of October I have now retrieved my files in the above matter. I note from reading the first draft of the section 106 Agreement prepared by Addleshaw Goddard on the 16th of December 2004 the wording 'works exclusively of decontamination, demolition or remediation' appear in the definition of 'Material Operation' in that draft. It is unlikely therefore that there were any discussions at all regarding that wording during the negotiation.

Best wishes

Michael Cunliffe
Partner

Forsters LLP
Direct Line: 020 7863 8477
Fax: 020 7863 8444

This email is sent on behalf of Forsters LLP ('the firm'), a limited liability partnership registered in England and Wales (no OC306185). A list of the members of the firm may be inspected at its registered office, 31 Hill Street, London W1J 5LS, or at www.forsters.co.uk. The firm is regulated by the Solicitors Regulation Authority (www.sra.org.uk)

The firm contracts on its terms of business, which may be read at www.forsters.co.uk. No personal liability is assumed by the sender of this email.

Emails sent or received may be monitored to ensure compliance with the law and the firm's policies. Although this email (as well as any attachments) has been scanned for viruses, the recipient should ensure that it is virus-free before opening it.

This email may contain privileged and confidential information. If you are not the intended recipient, any dissemination of it is prohibited. If you have received this email in error, please notify us at mail@forsters.co.uk or on 020 7863 8333 and delete it from your system.

S106 Agreement - Implementation?

Slader, Georgina: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 31 October 2007 15:22
To: Prout, David: PC-Plan; Slader, Georgina: PC-Plan; Coey, Bruce: PC-Plan
Subject: Lots road

Attachments: Briefing Note for the LPA for Lots Road meeting 1 NOVEMBER 2007.doc

I attach my briefing note confirming the legal position for our meeting tomorrow. I have not circulated this to the developers.

Many thanks,

Heidi

Heidi Titcombe
Senior Solicitor, Planning and Property
for Director of Law and Administration
Tel: 0207 361 2617
Fax: 020 7361 2748



Briefing Note for
the LPA for ...

BRIEFING NOTE LOTS ROAD DEVELOPMENT
MEETING WITH DEVELOPERS 1 NOVEMBER 2007

I have been asked to advise on what works will constitute a material operation in relation to the S.106 agreement completed with Circadian Ltd and RBKC on 27 April 2005

1. Note the planning permission was granted by the SOS on 31 January 2006 specifying that PP is subject to 30 conditions.

2. It is important to differentiate between what constitutes a "material operation" for the purposes of the planning permission granted by the Secretary of State on 30 January 2006 and what constitutes a "material operation" for the purposes of the section 106 Agreement dated the 27th of April 2005. They are different.

Planning permission

3. **For the purposes of the planning permission** development shall be taken to begun on the earliest date on which any material operation comprising the development begins to be carried out.

3.1 Material operation is defined in section 56(4) of the 1990 Act as
(a) **any work of construction in the course of the erection of a building**; including :-

(a) **any work of demolition of a building**;

(b) the digging of a trench which is to contain the foundations or part of the foundations of a building;

(c) the laying of any underground main or pipe to the foundations of a building or part of the foundations of the building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.

3.2. What this means therefore is that, for the purposes of the planning permission, **works for the demolition of buildings on the site will constitute a commencement of the development.**

That means the following conditions will need to be satisfied before any demolition takes place :-

Condition 6 (details of the proposed vehicular access);

Condition 7 (landscape works);

Condition 9 (riverside walk);

Condition 12 (Chelsea Creek treatment);

Condition 25 (programme of archaeological works);

Condition 27 (Investigation and recording of contamination) and Condition 29 (a scheme for the inclusion of renewable energy).

3.3. Internal stripping out will not in themselves constitute a commencement of development, for the purposes of the planning permission.

3.4. For the purposes of the planning permission works in relation to contamination cannot take place until Condition 27 has been satisfied.

S.106 agreement

4. For the purposes of the section 106 Agreement various planning obligations are triggered by Implementation of the Development.

4.1. Implementation is defined at **clause 1.58** as meaning the undertaking of a Material Operation pursuant to the Planning Permission.

Material Operation is defined at **clause 1.71** as meaning the carrying out of a Material Operation as defined at 56(4) of the 1990 Act provided that for the purposes of this Deed various preliminary works are excluded from being a Material Operation.

i.e works not regarded as a material operation for the purposes of the Deed are:-

ground works investigation

Site survey works

Construction of the boundary fencing or hoardings

Archaeological investigations

Also one of the exempted works :-

Decontamination,

demolition or

remediation'.

The external solicitor recalls that **works of decontamination demolition or remediation were not intended as such, to constitute a Material Operation for the purposes of the section 106 Agreement.**

4.2 However, if any of the above preparatory works **gives rise to bulk material transportation, this will constitute a material**

operation for the purposes of the Act.

4.3 Bulk material transportation is not defined in the Agreement and it will therefore be a matter of reasonable planning judgment of the LPA as to whether it is regarded as a material operation.

4.4 Planning therefore need to ask the developers how they intend to transport materials arising from the preparatory works in particular in relation presumably to demolition and then to make a judgment. Clearly if you decide that a material operation will be triggered by the transportation of materials the various section 106 payments tied to the Implementation Date will then be payable.

4.5 If the matter is disputed by the developers then the matter can be dealt with by an expert under the provisions of Clauses 59.10 - 59.13 of the Agreement.

21 months of decontamination works will presumably involve the movement of bulk materials (e.g the removal of asbestos material) (as they won't want to keep these materials on the site for the safety reasons???)

Heidi Titcombe
31 October 2007

Slader, Georgina: PC-Plan

From: Parker, LeVerne: CP-Legal
Sent: 25 July 2008 11:57
To: Myers, Derek: CP-ChiefExec; Cllr-Cockell (merrick.cockell@googlemail.com); Cllr-Moylan (daniel.moylan@egan-associates.com); Cllr-Fairhead
Cc: Prout, David: PC-Plan; Kidd, Paul: CP-Fin; Brill, Tot: TELS-Director; Slader, Georgina: PC-Plan
Subject: RE: Fw: For comments/approval: Imperial Wharf station work begins
Attachments: Obligations Chart.doc

Derek

The s106 agreement between RBKC and Circadian does not include a contribution for the station.

The H&F s106 provides Circadian will contribute a total of £1 million (index linked) for the station. If the money is not required to be spent on the station the money can be spent by H&F on alternative transportation measures which are relevant to and have a similar mitigation effect upon the transportation impact of the development and which are of benefit to residents of the development.

If the contributions or any part of such contributions remain unexpended after a period of 8 years from the date of payment they are to be divided equally between RBKC and H&F and used for alternative transportation measures.

I attach a table which Georgina Slader, the Planning Officer, has usefully prepared setting out the obligations in the s106 agreement between RBKC and Circadian.

Clause 6 of the s106 agreement does allow the Council to agree with Circadian or their successors that the various contributions due under the s106, for the purposes specified in the s106 agreement, may be used for "similar purposes". My advice would be, however, to formalise any such an agreement to change the purposes for which the contributions can be spent in a deed of variation.

LeVerne

LeVerne Parker
Chief Solicitor
for the Director of Law and Administration

Telephone -020 7361 2180
 Fax- 020 7361 2748
 Secretary Leela Mathai - 020 7361 2146

From: Myers, Derek: CP-ChiefExec
Sent: 24 July 2008 15:52
To: Cllr-Cockell (merrick.cockell@googlemail.com); Cllr-Moylan (daniel.moylan@egan-associates.com); Cllr-Fairhead
Cc: Prout, David: PC-Plan; Parker, LeVerne: CP-Legal; Kidd, Paul: CP-Fin; Brill, Tot: TELS-Director

11/08/2008

Subject: RE: Fw: For comments/approval: Imperial Wharf station work begins

It is still notable that RBKC puts in £650k but H & F only puts in S106. I had previously understood we were in some way sharing a funding gap with H & F.

David or LeVerne **Can you check that the final Lots Rd power station S106** approved on appeal included *inter alia* a contribution from Circadian to the then proposed new station? The original report in October 2003 described £5.56m "index linked" and to be paid in stages for a basket of transport improvements

It did also include £2m for "secondary education". This may yet become relevant if we need a face saver for a bigger contribution to make the Chelsea Academy building cost work.

This does not mean we withdraw our support but it might make us feel easier if we can link the £650 to the S106. Also the Committee report in 2003 describes the £5.6m as being shared with H&F. What we might want to do is forward fund the £650K now from Capital but then free up the subsequent S106 from Circadian (assuming they go the distance) and get any H & F slice of the S106 counted in this transaction

DM

From: Merrick Cockell [mailto:merrick.cockell@googlemail.com]

Sent: 24 July 2008 12:16

To: Myers, Derek: CP-ChiefExec; Cllr-Moylan (daniel.moylan@egan-associates.com); Cllr-Fairhead

Subject: Fwd: Fw: For comments/approval: Imperial Wharf station work begins

Please see the email I have just sent to Cllr Greenhalgh.

You should read the earlier sequence of emails that he was kind enough to leave attached.

Merrick Cockell

----- Forwarded message -----

From: Merrick Cockell <merrick.cockell@googlemail.com>

Date: 24 Jul 2008 12:13

Subject: Re: Fw: For comments/approval: Imperial Wharf station work begins

To: Greenhalgh Stephen COUNCILLOR <stephen.greenhalgh@lbhf.gov.uk>

Stephen

There is no stumbling block. We have said we would fund up to £650,000. We did not need Cabinet to reconfirm something we had already agreed and therefore pulled the paper. That should not be interpreted as anything other than full support.

They have just asked me my shoes size for the navy's boots....

Best wishes,

Merrick

On 24/07/2008, **Greenhalgh Stephen COUNCILLOR** <stephen.greenhalgh@lbhf.gov.uk> wrote:

Merrick

I am delighted that we have sorted photo call for Friday. I thought we had resolved size of our respective financial contributions. I have asked Nick to look into this. What is the stumbling block?

Best wishes

11/08/2008

Stephen

-----Original Message-----

From: Pallace Nigel

To: Greenhalgh Stephen COUNCILLOR; Mansfield Rob; Anthony Lyn; Botterill Nicholas COUNCILLOR; 'nbbotteril@aol.com' <nbbotteril@aol.com>

CC: Swinburne Graeme; Bainbridge Chris; Jones Simon; Reade Maria

Sent: Wed Jul 23 20:24:44 2008

Subject: RE: For comments/approval: Imperial Wharf station work begins .

<<RE: Imperial Wharf Station>>

OK but note I have yet to receive any response to the attached re size of K&C financial contribution. You might like to mention it to Merrick? Nigel

Nigel Pallace

Director of Environment

London Borough of Hammersmith and Fulham

tel 020 8753 3000 mobile 07973 508 431

e-mail: nigel.pallace@lbhf.gov.uk

Web: www.lbhf.gov.uk

-----Original Message-----

From: Greenhalgh Stephen COUNCILLOR

Sent: 23 July 2008 19:42

To: Mansfield Rob; Anthony Lyn; Botterill Nicholas COUNCILLOR; 'nbbotteril@aol.com'

Cc: Pallace Nigel; Swinburne Graeme; Bainbridge Chris; Jones Simon

Subject: Re: For comments/approval: Imperial Wharf station work begins

I think we need to share the glory with our neighbours that we have collaborated. Stephen

-----Original Message-----

From: Mansfield Rob

To: Anthony Lyn; Greenhalgh Stephen COUNCILLOR; Botterill Nicholas COUNCILLOR; 'nbbotteril@aol.com' <nbbotteril@aol.com>

CC: Pallace Nigel; Swinburne Graeme; Bainbridge Chris; Jones Simon

Sent: Wed Jul 23 11:37:48 2008

Subject: For comments/approval: Imperial Wharf station work begins

Hi Lyn,

Please pass this draft article on work beginning at Imperial Wharf station past the leader/Cllr Botterill for comments/approval. I know Boris is unlikely to be free in the next 48 hours at short-notice but it would be good to get a photo of the Leader/Cllr Botterill arranged with K&C in the next two days if possible. Can we discuss please?

Rob

<<Imperial Wharf station work begins.doc>>

Rob Mansfield

Principal Communications Manager

Hammersmith & Fulham Council

King Street

11/08/2008

London
W6 9JU

Tel: 020 8753 2383
Mob: 07769 965886
Fax: 020 8741 2685

----- Forwarded message -----

From: "Pallace Nigel" <Nigel.Pallace@lbhf.gov.uk>
To: <Tot.Brill@rbkc.gov.uk>
Date: Tue, 15 Jul 2008 11:51:56 +0100
Subject: RE: Imperial Wharf Station
Tot

That's fine, thanks. As you say, we do not need the K&C contribution yet, and should not need it until next financial year. The station funding agreement with St George has finally been signed (together with a deed of variation to their S106 agreement) and they have already contracted with Fitzpatrick to carry out the work which will start in earnest in August. The station should be completed later in 2009. Chris Bainbridge or Graeme can give you a copy of the funding agreement and S106 agreement with St George.

The agreement obliges H&F to pass on to them all the various funding contributions as and when they invoice us for costs actually incurred, up to a capped total cost (to us) of £7m. There remains a risk that some additional costs may be incurred by way of VAT payments which cannot be reclaimed, and there was conflicting legal advice on this. The last I heard was that Network Rail were willing to reclaim VAT payable by St George but I do not know how reliable this is. (The potential VAT risk was calculated as £306.25k based on the value of works to be carried out by St George funded by other parties). Any escalation in the cost of the station itself will be met by St George with no further recourse to us (at least that's what the contract says). As we are still in negotiation with St George about other development (notably the detailed content phase 3 of Imperial Wharf which only has outline planning permission) it is possible that they may seek to set against any future agreements' affordable housing viability assessments any additional costs they incur on the station above the £7m capped contribution, but we would obviously resist that.

My concern is that we do want to hold to the informally agreed K&C contribution of £650k (that sum having been derived from the earlier and now defunct idea of a short term loan of circa £1.3m being taken from TfL to bridge a previously identified funding gap, with each borough sharing the repayment, in Hammersmith's case funded by further S106 contributions to be sought from other schemes, in K&C's case from capital reserves with the approved education development in mind).

Our members are anxious that K&C do not attempt to reduce the anticipated £650k contribution should all the available funds eventually exceed the £7m capped cost, in which event we would be able to renegotiate and re-apply any small amount of potentially surplus S106 funding. We are therefore asking you to justify in your report to Cabinet a fixed £650k contribution towards the provision of the station whose real total cost is unknown and probably well in excess of £7m (the Network Rail price went into double figures), but which will be provided under contract by St George at a capped price to H&F of £7m. St George will probably end up paying in the region of £8m but the contract does not require disclosure of their final costs. There is absolutely no chance that they will incur costs of less than £7m. The justification for the K&C contribution would be the benefit of having the station for residents in K&C (well-being powers), the assistance to local travel and avoidance of some car trips associated with approved development including Lots Road (whose development in H&F requires the station) and the reality that without last year's informal

promise of a contribution from K&C there would have remained a funding shortfall which would have prevented our signing the funding agreement with St George and which would therefore have prevented the station from finally being committed after several years of delay and cost escalation.

The total funding package would then be:

St George S106 original station contribution plus interest	£2.25m
St George S106 additional contribution negotiated 2007	£1.25m
St George S106 education funding switched to station	£0.75m
Sainsbury, Townmead Road	£0.06m
TfL congestion charge complementary measures	£1.00m
RBK&C contribution	£0.65m
Balance	£1.04m
TOTAL	£7.0m

£1.04m Balance to be secured from existing or future S106 agreements by H&F including sums currently payable on commencement of uncommitted developments which are renegotiable (Chelsea Harbour Design Centre £300k, Lots Road £1m) plus interest on sums received, less any VAT payments payable/not reclaimable by H&F/St George/Network Rail.

Nigel

Nigel Pallace
 Director of Environment
 London Borough of Hammersmith and Fulham
 tel 020 8753 3000 mobile 07973 508 431
 e-mail: nigel.pallace@lbhf.gov.uk
 Web: www.lbhf.gov.uk

-----Original Message-----

From: Tot.Brill@rbkc.gov.uk [mailto:Tot.Brill@rbkc.gov.uk]
 Sent: 15 July 2008 10:20
 To: Pallace Nigel
 Cc: Mark.Chetwynd@rbkc.gov.uk
 Subject: Imperial Wharf
 Importance: High

Dear Nigel,

As you know we were preparing to take a paper to our Cabinet on 24 July to ask Members to delegate the authority to make an agreement with yourselves and transfer our contribution towards Imperial Wharf to H&F.

Our finance people were nervous that we were asking Members to make a decision without giving them the details of the agreement, and as you don't actually need the cash yet, they've asked that we pull the paper and take it in September when we are clearer about the details of the agreement between ourselves. Having discussed this with our CE and Leader I think that the best course of action is to work up the paper so that it can give Members a proper basis for making their decision and take it to them in September. This doesn't in any way mean that we are going cold on the deal, just that we need to make sure our decision process is robust.

Give me a ring if this causes you any real problems

Tot Brill

Executive Director

Transport, Environment and Leisure Services

37 Pembroke Road

London

W8 6PW

020 7341 5101

07971174319

Not printing this message is a tiny contribution to the future of our planet.

The Royal Borough of Kensington and Chelsea.
This e-mail may contain information which is confidential,
legally privileged and/or copyright protected. This e-mail
is intended for the addressee only. If you receive this in
error, please contact the sender and delete the material
from your computer.

Site:	Lots Road Power Station	File reference:
Subject:	Chelsea Creek.	
R.B.K. & C Planning Services		Site <input type="checkbox"/> Office <input type="checkbox"/>
NOTES OF MEETING		Date: 01.07.09

Names of persons attending:

Officers

Peter Tiernan

Applicant/Agent/Resident

Matters discussed:

two issues:

① Short term lease of Chelsea Creek.

- construction of bridges to oversail creek.

3 year lease

£2500 per month.

→ delegated decision due to Director of Property

② long term arrangements.

Council owns creek.

retain existing rights through a lease.

terms undertake works + manage.

who else needs to approve this? EA - letter already received.

GLA
ports?

no access to Basin, OK to Creek.

Peter has met with Hutchison Whampoa re: short term lease.

management wants to progress long term.

Peter to draft heads of terms.

Short term - heads of terms agreed with David Beynon.

→ approval → legal formalities to complete.

(timing when actually needed).

Signatures:

To: DEBRAH SILVER

Date: 13/08/09

PLANNING & BOROUGH DEVELOPMENT
Please find the attached document(s)

- ☐ as discussed
- ☐ for action by you
- ☐ for your attention
- ☐ for your consideration and comments
- ☐ for noting and returning
- ☒ For information

Property Services

The Town Hall, Hornton Street
London W8 7NX

Tel: 020 7361 3211

Fax: 020 7361 2008

Notes:

Debrah

Just to keep you in the
loop on this case.

Regards

Peter



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

Finance Information Systems and Property
Central Library, 12 Phillimore Walk, LONDON, W8 7RX

Executive Director for Finance Information Systems and Property
Nicholas Holgate

Director For Property
Michael Flanagan



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

Mr David Beynon
Senior Project Manager
Hutchison Whampoa Properties (Europe) Limited
Hutchison House
5 Hester Road
London
SW11 4AN

13 August 2009

My reference: PS/VA/PT/PCHE
Please ask for: Peter Tiernan

SUBJECT TO CONTRACT AND COUNCIL APPROVAL

WITHOUT PREJUDICE

Dear David

CHELSEA CREEK AND BASIN, SW10 – LONG TERM LEASING ARRANGEMENTS


I write to follow up our meeting along with your colleague Mr Hugh Fleming on 06 August 2009.

You will no doubt recall that in our meeting we discussed some of the salient issues relating to the proposed long term arrangements at Chelsea Creek and Basin, SW10.

In order to progress our negotiations, I now enclose a document setting out Property Services initial draft of the heads of terms for the proposed long term lease.

I now look forward to receiving your response and comments to these proposed heads of terms.

Yours sincerely


Peter Tiernan
Senior Surveyor - Development

Enc.

cc. Planning and Borough Development (Attn: Debrah Silver)

Direct Line: 020 7361 3888
Fax: 020 7361 2008
Email: peter.tiernan@rbkc.gov.uk
Web: www.rbkc.gov.uk

SUBJECT TO CONTRACT AND COUNCIL APPROVAL
WITHOUT PREJUDICE

		Chelsea Creek.
10.	No future management or liability to fall on the Council:	The Lessee will not give any rights to the parkway and access routes at or around or over Chelsea Creek and Basin that would result in any new management responsibilities or result in any other liability falling on the Council.
11.	Binding agreement on Leaseholders	The Lessee's covenants will extend to include and bind all the Underlessees (and successors-in-title) to the Lots Road Former Power Station development.
12.	No public access to Chelsea Basin:	No public access to be given to Chelsea Basin.
13.	Indemnities:	<p>The Lessee to indemnify and keep the Council indemnified from and against all actions proceedings costs claims and demands in respect of any damage or liability caused by or arising from the use or occupation by the Lessee or the Lessee's servants or guests and any other persons on the site.</p> <p>To pay and to indemnify the Council against all rates taxes assessments duties charges and outgoings (if any) whether of a periodically recurring nature or otherwise payable in respect of the site during the Lessee's occupation of the site.</p> <p>To conform at the Lessee's own expense with all statutory and other regulations pertaining to the site and to indemnify the Council against any claims arising from any breach of such regulations or from the use of the site.</p> <p>Not to cause or permit to be caused any nuisance to the Council or to any adjoining or neighbouring owners or occupiers.</p>
14.	Alienation:	Assignment of whole only. No subletting in part or parts, with the exception of within Hutchinson Whampoa's group companies. (Group companies as defined by the Companies Act and relate to companies that have been part of the Group for a number of years).
15.	Rent Review:	Five yearly upwards only rent review indexed to RPI.

SUBJECT TO CONTRACT AND COUNCIL APPROVAL
WITHOUT PREJUDICE

DRAFT HEADS OF TERMS

VERSION 1.1

LONG TERM LEASING ARRANGEMENTS

1.	Lessor:	The Mayor and Burgesses of the Royal Borough of Kensington & Chelsea ('the Council') Town Hall, Hornton Street, London W8 7NX
2.	Lessee:	Circadian Limited Hutchison House, 5 Hester Road, London SW11 4AN
3.	Land/Site:	Chelsea Creek (basin and tidal part of creek bed), Lots Road, London SW10
4.	Rental:	To be determined on agreement of the other heads of terms.
5.	User:	Lease to allow Lessee to erect and retain structures and services attached to these structures to include maintenance, repairs and renewal.
6.	Term:	99-years
7.	Council's retained rights:	The lease will retain and protect the Council's existing rights to access and use Chelsea Creek and Basin.
8.	Approvals and consents:	<p>The Lessee to consult with and obtain all the necessary consents and approvals from all the relevant agencies and authorities for all aspects of the Lessee's proposed works and use of the land.</p> <p>The Council's Planning and Borough Development department advise that it will not discharge Condition 12 of the planning approval until all these consents and approvals are in place.</p>
9.	Works:	<p>At the Lessees own expense carry out all the works as required to comply with Condition 12 of the planning approval.</p> <p>Subject to obtaining consents from appropriate bodies, Lease to permit surface water drainage to</p>

SUBJECT TO CONTRACT AND COUNCIL APPROVAL
WITHOUT PREJUDICE

16.	Other terms:	Other terms as recommended by the Council's Director of Law and Administration to be included in the Licence.
17.	Property Services fees:	The Licensee shall pay the sum of £1,500 (one thousand five hundred pounds) to cover the Director for Property's fees in dealing with the grant of this Lease.
18.	Director of Law's fees	The Lessee shall pay the Director of Law and Administration's fees for preparing, executing and completion of the Licence in total not exceeding £1,500 (one thousand five hundred) and pay SDLT, VAT and other disbursements (if applicable).

Silver, Debrah: PC-Plan

From: Titcombe, Heidi: CP-Legal
Sent: 21 August 2009 15:50
To: Silver, Debrah: PC-Plan
Subject: RE: Chelsea Power Station- Lots Road

Hi Debra,

The allocation of contributions for the S.106 agreement are complicated. The agreement was drawn up by external solicitors as I was dealing with the inquiry.

Funds can only be allocated to the projects specified in the agreement. The definitions normally specifies what funds can be spent on.

I am happy to have a meeting in with Councillor Daley. I may not be able to say whether particular funds can be allocated to particular projects at the meeting as it will take time to consider the intricacies of the wording of the agreement. Next week is not looking good but perhaps the end of the first week of September.

Many thanks

Heidi

Heidi Titcombe
Senior Solicitor
Law and Administration
The Royal Borough of Kensington and Chelsea
The Town Hall, Hornton Street
London W8 7NX

Tel: 020 7361 2617
Fax: 020 7361 2748
DX: 84015 Kensington High Street 2

Secretary: Sue Billington
Tel: 020 7361 2610

From: Silver, Debrah: PC-Plan
Sent: 19 August 2009 11:41
To: Titcombe, Heidi: CP-Legal
Subject: FW: Chelsea Power Station

Dear Heidi

I have been asked by David Prout to respond to this query from Councillor Daley. The query relates to the S106 agreement for the Lots Road Power Station and where/when/how the contributions will be delivered and whether we are able to amend delivery of these funds to other projects. I was allocated the application after Georgina Slader went on maternity leave, but have no knowledge of the intricacies of the project. I understand that you were the legal officer assigned this application and I am wondering whether you would be able to attend a meeting with Cllr Daley to discuss his email (below and attached)? Could you please let me know?

Thank you

08/10/2009

Regards

Debrah Silver

Senior Planning Officer
020 7361 2699

This email may contain information which is confidential, legally privileged and/or copyright. This email is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer.

From: Basu, Supriya: PC-Plan
Sent: 17 August 2009 18:45
To: Silver, Debrah: PC-Plan
Subject: FW: Chelsea Power Station

Debrah

Can David pls have a summary of funding available in the s1056 for Lots Road.

Thanks

Supriya Basu
PA to David Prout
Executive Director
Planning and Borough Development
Royal Borough of Kensington and Chelsea
Rm 323, Kensington Town Hall
Hornton Street
London
W8 7NX
020 7361 2944

From: Cllr. Mark Daley [mailto:cllr.daley@hotmail.co.uk]
Sent: 10 August 2009 09:54
To: Prout, David: PC-Plan
Subject: Chelsea Power Station

Mr. Prout


Hope you are well and not relaxing too much as you wind down before sadly moving on from us. Before you go though, I would like to meet with someone regarding the allocation for the S.106 contribution from the Power Station development on Lots Road. I know there is lots of money which will be coming our way and I would like to have an input into the discussions. I was sent a document recently with a break down and there is suggestion of diverting the monies to develop other projects in the triangle, I would like to understand and be involved in this.

Could you advise me please?

Mark Daley

Councillor Mark P. Daley
Putting residents FIRST and FOREMOST !!

08/10/2009

 Right-click here to download pictures. To help protect your privacy, Outlook prevented automatic download of this picture from the Internet.
Mark Daley (Con)

Lead Member for Education & Libraries
Town Hall: 020 7361 3000 Secretary: 020 7361 2500

NEXT SURGERY WILL TAKE PLACE AT THE CHELSEA THEATRE

SATURDAY | AUGUST 22ND | 09:30 - 11:00

The Royal Borough of Kensington & Chelsea
Town Hall Hornton Street London W8 7NX

www.rbkc.gov.uk

Windows Live Messenger: Happy 10-Year Anniversary—get free winks and emoticons. [Get Them Now](#)

Silver, Debrah: PC-Plan

From: Prout, David: PC-Plan
Sent: 26 August 2009 17:24
To: Cllr-Daley; Silver, Debrah: PC-Plan
Subject: RE: Chelsea Power Station

Dear Cllr Daley, Ms Silver's annotations in italic are intended to help you with regard to the flexibility of the funding. You should let Ms Silver have your views and suggestions.

David Prout
Executive Director
Planning and Borough Development
Royal Borough of Kensington and Chelsea
Rm 323, Town Hall
Hornton Street
London W8 7NX

Tel: 020 7361 2944
Fax: 020 7361 3463

From: Cllr. Mark Daley [mailto:cldr.daley@hotmail.co.uk]
Sent: 26 August 2009 11:09
To: Silver, Debrah: PC-Plan; Cllr-Daley; Prout, David: PC-Plan
Subject: RE: Chelsea Power Station

Ms. Silver

Thank you for this, it looks like that matrix I have already seen I think.

When I was talking about redirecting the monies, I was meaning to redirect it to be spent most effectively within the triangle. I had not considered that it should be spent on other projects around Cremorne ward.

I will take a look at this and come back with some suggestions. Is there a particular person I should put these suggestions for redirection to, at all or would it be yourself?

Mark Daley

Councillor Mark P. Daley
Putting residents FIRST and FOREMOST !!



Lead Member for Education & Libraries
Town Hall: 020 7361 3000 Secretary: 020 7361 2500

08/10/2009

NEXT **SURGERY** WILL TAKE PLACE AT THE CHELSEA THEATRE

SATURDAY | **September 26th** | **09:30 - 11:00**

The Royal Borough of Kensington & Chelsea
Town Hall Hornton Street London W8 7NX

www.rbkc.gov.uk

Subject: RE: Chelsea Power Station
Date: Wed, 26 Aug 2009 11:04:04 +0100
From: Debrah.Silver@rbkc.gov.uk
To: Cllr.Daley@rbkc.gov.uk; David.Prout@rbkc.gov.uk

Dear Cllr Daley

I apologise for not sending you this information earlier. I have prepared a matrix (attached) which summaries the financial contributions which have been agreed between the developer, TfL and the Royal Borough. Some of the contributions may be used to funds works "within the vicinity of the Development". The agreement does not provide a definition of the term "vicinity", so there may be some limited flexibility on directing these funds within the Lots Road triangle. Overall, though, there is limited flexibility in redirecting the contributions.

I hope this helps answer your questions. Please let me know if you have any further questions.

Regards

Debrah Silver
Senior Planning Officer
020 7361 2699

This email may contain information which is confidential, legally privileged and/or copyright. This email is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer.

From: Cllr. Mark Daley [mailto:cldr.daley@hotmail.co.uk]
Sent: 25 August 2009 12:23
To: Prout, David: PC-Plan
Cc: Silver, Debrah: PC-Plan
Subject: RE: Chelsea Power Station

Apologies, you are absolutely right, she did. My fault for being impatient. I have been dealing with the TMO a lot this week and am becoming frustrated about emails to people vanishing into the abyss.

Thanks

Mark

08/10/2009

Councillor **Mark P. Daley**
*Putting residents **FIRST** and **FOREMOST** !!*



Lead Member for Education & Libraries
Town Hall: 020 7361 3000 Secretary: 020 7361 2500

NEXT **SURGERY** WILL TAKE PLACE AT THE CHELSEA THEATRE

SATURDAY | September 26th | 09:30 - 11:00

The Royal Borough of Kensington & Chelsea
Town Hall Hornton Street London W8 7NX

www.rbkc.gov.uk

Subject: RE: Chelsea Power Station
Date: Tue, 25 Aug 2009 11:54:07 +0100
From: David.Prout@rbkc.gov.uk
To: Cllr.Daley@rbkc.gov.uk
CC: Debrah.Silver@rbkc.gov.uk

Dear Cllr Daley, I think Ms Silver contacted you about this last week. She was on a couple of days leave and has just received some advice from legal. She will contact you again shortly.

The long and short of the advice is that funding allocated in the s.106 agreement for a particular purpose can not (except with the agreement of both the developer and the council) be used for other purposes. So if the money is labelled for education, it has to be used for education. If it is labelled for a junction improvement it has to be used for the junction improvement.

In this case, I consider it fairly unlikely that the developer will agree to any changes to the s.106 agreement – not because he is unreasonable (he is not), but because the whole thing was so bitterly fought over that he hesitates to make any changes to the scheme.

David Prout

08/10/2009

Executive Director
Planning and Borough Development
Royal Borough of Kensington and Chelsea
Rm 323, Town Hall
Hornton Street
London W8 7NX

Tel: 020 7361 2944
Fax: 020 7361 3463

From: Cllr. Mark Daley [mailto:cldr.daley@hotmail.co.uk]
Sent: 25 August 2009 10:24
To: Prout, David: PC-Plan
Subject: FW: Chelsea Power Station

Mr. Prout

I have heard nothing in regard to this question. Could you advise me please?

Mark Daley

Councillor Mark P. Daley
*Putting residents **FIRST** and **FOREMOST** !!*



Lead Member for Education & Libraries
Town Hall: 020 7361 3000 Secretary: 020 7361 2500

NEXT **SURGERY** WILL TAKE PLACE AT THE CHELSEA THEATRE

SATURDAY | September 26th | 09:30 - 11:00

The Royal Borough of Kensington & Chelsea
Town Hall Hornton Street London W8 7NX

www.rbkc.gov.uk

From: cldr.daley@hotmail.co.uk

08/10/2009

To: david.prout@rbkc.gov.uk
Subject: Chelsea Power Station
Date: Mon, 10 Aug 2009 09:54:28 +0100

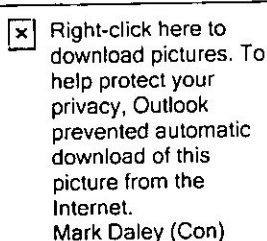
Mr. Prout

Hope you are well and not relaxing too much as you wind down before sadly moving on from us. Before you go though, I would like to meet with someone regarding the allocation fo the S.106 contribution from the Power Station development on Lots Road. I know there is lots of money which will be coming our way and I would like to have an input into the discussions. I was sent a decoment recently with a break down and there is suggestion of diverting the monies to develop other projects in the triangle, I would like to understand and be involved in this.

Could you advise me please?

Mark Daley

Councillor Mark P. Daley
*Putting residents **FIRST** and **FOREMOST** !!*

Right-click here to download pictures. To help protect your privacy, Outlook prevented automatic download of this picture from the Internet.
Mark Daley (Con)

Lead Member for Education & Libraries
Town Hall: 020 7361 3000 Secretary: 020 7361 2500

NEXT **SURGERY** WILL TAKE PLACE AT THE CHELSEA THEATRE

SATURDAY | AUGUST 22ND | 09:30 - 11:00

The Royal Borough of Kensington & Chelsea
Town Hall Hornton Street London W8 7NX

www.rbkc.gov.uk

Windows Live Messenger: Happy 10-Year Anniversary—get free winks and emoticons. [Get Them Now](#)

Windows Live Messenger: Thanks for 10 great years—enjoy free winks and emoticons. [Get Them Now](#)

08/10/2009

The Royal Borough of Kensington and Chelsea.
This e-mail may contain information which is confidential,
legally privileged and/or copyright protected. This e-mail
is intended for the addressee only. If you receive this in
error, please contact the sender and delete the material
from your computer.

Internet Explorer 8 - accelerate your Hotmail. [Download Internet Explorer 8](#)

Windows Live Messenger: Thanks for 10 great years—enjoy free winks and emoticons. [Get Them Now](#)

Lots Road Power Station
Matrix of S106 Planning Obligations

Please find below a matrix summarising the financial contributions that have been agreed to by Circadian, the Royal Borough and Transport for London. It does not contain details on any financial agreement between the developer and the London Borough of Hammersmith and Fulham.

Measures	Total Amount	Recipient Agency	Details/Comments	Flexibility
Bus Stops	£165,000	TfL	1 st contribution - £75,000 2 nd contribution - £90,000	Bus stops are to be located along the route of the Embankment Bus Service and the C3 bus. <i>Limited flexibility in an alternative bus route, subject to provisions of the S106, may be more appropriate</i>
Bus Priority	£50,000	TfL		Includes traffic management or enforcement measures to improve bus journey times and reliability on Lots Road or such other roads in the vicinity of the Site. <i>Limited flexibility as bus route needs to be near to site</i>
Car Parking	£1,500,000	RBKC		Spaces to be provided within the Development <i>No flexibility</i>
Chelsea Harbour Pier	£30,000	RBKC		To improve pedestrian and cycle access from the Development and the vicinity of the Development to Chelsea Harbour Pier <i>No flexibility initially, but after 8 years after implementation other river transport measures may be considered if entire funding has not been exhausted.</i>
Riverbus Service	£250,000	RBKC	£50,000 to be paid over 5 years	"Only for the purpose of public passenger riverbus services between Chelsea Harbour Pier and Embankment Pier or such other similar route" <i>Limited flexibility on actual route between 2 ports</i>
Cycle	£260,000	RBKC	1 st contribution - £160,000 2 nd contribution -	Includes improvement of safety and amenity of cycling in the vicinity of Development <i>Some flexibility in what improvements are</i>

			£100,000	<i>implemented</i>
Cycle Safety and Proficiency Training	£5,000	RBKC		This contribution is to be used to provide cycle safety and proficiency training for "people living within the vicinity of the development". <i>Limited flexibility in types of training, no flexibility on which residents which would benefit from it (although "vicinity" is not defined)</i>
Car Club and Cycle Pool	£45,000	RBKC	1 st contribution - £22,500 2 nd contribution - £22,500	Fleet of cars and bicycles to be made available within the Development for residents or people living/working in vicinity of Development <i>No flexibility in location; some flexibility in car club/cycle hire company</i>
School Travel Plans	£60,000	RBKC	1 st contribution - £30,000 2 nd contribution - £30,000	"Only expend the contribution... for the purpose of the preparation, implementation, monitoring and review of the School Travel Plans". <i>No flexibility</i>
Lots Road/Cremorne Road Junction	£400,000	RBKC		<i>No flexibility</i>
Streetscape Improvement Zone	£400,000	RBKC	1 st contribution - £100,000 2 nd contribution - £300,000	Contributions to be used for works within the Streetscape Improvement Zone <i>No flexibility</i>
Pedestrian Measures	£133,000	RBKC	1 st contribution - £83,000 2 nd contribution - £50,000	Improve conditions for pedestrians who are reasonably related to the Development <i>Some flexibility on work undertaken and area in which work may occur</i>
Community Facility	£100,000	RBKC		
Sports Facilities	£1,000,000	RBKC		Funding to provide public sports facilities in the vicinity of the Development <i>Some flexibility on exact location</i>
Education	£2,000,000	RBKC		Provides and/or enhances educational facilities situated within the administrative area of the Council and within the vicinity of the Development

				<i>Flexibility on location and type of education facilities</i>
Westfield Park	£400,000	RBKC		Specifically relates to this park <i>No flexibility</i>
Public Art	£100,000	RBKC		Includes interactive community facilities lighting sculpture urban design heritage artefact or planting features which are to be located within publicly accessible areas within the vicinity of the Development <i>Some flexibility on overall appearance and location</i>

Lots Road Power Station S106

Background

Planning permission was granted by the Secretary of State for the redevelopment of the Lots Road Power Station along with a package of contributions to various transport initiatives in both this borough and in LBHF totalling over £7 million. It is now six years since the planning application was submitted and three years since the S106 agreement was signed under the auspices of the Secretary of State. Having reviewed the package of contributions it is clear that many of the measures and attached funds included in the S106 are either no longer required or would be better focused on other transport improvements.

Changes proposed to measures included in the S106

Set out below is a table containing all measures and the funding attached to the transport improvements in the S106. Unusually the S106 includes a Travel Plan which itself contains a number of significant measures and contributions. These Travel Plan measures form part of a Sustainable and Integrated Transport Strategy (SITS) that is the same in both the LBHF and RBKC S106 agreements. The contributions in each borough's S106 agreements and the total in the SITS are set out in the table below.

The total contribution is £7,635,000 million. The RBKC elements are £4,493,000. The 'action' column sets out which contributions should be retained, which should receive additional funds, which could potentially be diverted but require discussion with either TfL or LBHF and which should be diverted partially or in full. The latter has the amount that could be diverted shown in the column.

Handwritten notes:
} this is legal document which cannot be amended like a condition
- needs development agreement

Measures	Value of contributions			
	RBKC S106	LBHF S106	Travel Plan (SITS)	Action
Bus Priority	50,000	50,000	100,000	Retain/discuss LBHF
Bus Stops	165,000	see below	see below	discuss TfL
Bus Stop for C3 & Embankment Bus	no sum inc.	15,000	180,000	discuss with TfL and LBHF
Car Parking	1,500,000	no sum inc.	1,500,000	1,500,000
Car Club & Bicycle Pool	45,000	no sum inc.	45,000	Retain
Chelsea Harbour Pier improvements	30,000	170,000	200,000	discuss with TfL & LBHF
Cycle Contribution	260,000	150,000	410,000	Discuss with LBHF but some diverted
Cycle Safety and Training	no sum inc.	no sum inc.	5,000	Retain
C3 Bus Service Enhancement	no sum inc.	650,000	650,000	discuss with LBHF to divert

Embankment Bus Service Subsidise	no sum inc.	1,700,000	1,700,000	discuss TfL and LBHF
Lots Rd/Cremorne Junction	200,000	no sum inc.	no sum inc.	add funds
Pedestrian Measure Contribution	133,000	67,000	200,000	Retain
Riverbus Service	250,000	no sum inc.	250,000	discuss TfL
School Travel Plans	60,000	no sum inc.	60,000	40,000
Streetscape Improvement	400,000	no sum inc.	no sum inc.	add funds
Travel Plan Manager	no sum inc.	120,000	120,000	discuss with LBHF to divert
Townmead Road Bus Gate	no sum inc.	50,000	50,000	discuss LBHF
Westfield Park Contribution	400,000	no sum inc.	400,000	discuss internally
West London Line Improvements	no sum inc.	1,000,000	1,000,000	add funds if required
Total	3,493,000	3,972,000	6,870,000	

The table suggests that at least £2,150,000 could readily be diverted with the agreement of LBHF (the C3 contribution and the car parking money). It is likely that significantly more could also be diverted with the agreement of LBHF and TfL. It is considered that the main focus for additional funds would be the changes to the Cremorne Road / Lots Road junction, streetscape improvements within the Lots Road Triangle and the Imperial Wharf train station if additional funds are required.

Brief justifications of the proposed changes are set out below.

- *Bus priority:* Improvements to the operation of the C3 are considered beneficial in the Lots Road area, as the service suffers from delays;
- *Bus stops:* Discussion should take place with TfL to establish whether bus stop improvements of this magnitude are still required;
- *Car parking:* Given the Council's policy position against the provision of new off-street car parks (including the recent success at planning appeal defending the refusal to allow planning permission for a new off-street residents' car park) a new off-street car park is not considered desirable. At the time of the application the proposed location of the car park was beneath the Chelsea Academy, however this element of the scheme was subsequently dropped. Although residents' parking pressure is approaching saturation levels overnight in the 'Lots Road Triangle' there is significant spare capacity on pay and display at this time and parking pressure is not unacceptable on either restriction at other times of the day. In any case, increasing supply is not considered a sustainable way to reduce on-street parking demand. The car park contribution is considered more beneficial spent elsewhere;
- *Car club and bicycle pool:* This measure is still considered useful although rewording of the clause in the S106 may be beneficial;

- *Chelsea Harbour Improvements*: Discussion should take place with TfL to establish whether these improvements are still required;
- *Cycle contribution*: It is considered that there may be cycle measures identified as part of the work surrounding the new Chelsea Academy that could benefit from some funding. However, it is unlikely that the whole sum would be required and therefore half of the contribution could be diverted elsewhere;
- *C3 bus service enhancement*: The improvements envisaged as part of this contribution have already taken place and so should be diverted;
- *Embankment bus service subsidy*: Discussion should take place with TfL and LBHF to establish whether this bus route is still supported and if not funds should be diverted;
- *Lots Road / Cremorne Road Junction*: More funds are required for this improvement. Any shortfall will otherwise need to be met by the Council. The junction improvement has to take place to enable the occupation of Chelsea Academy;
- *New bus stops for C3 & embankment bus*: Discussion should take place with TfL and LBHF to establish whether this is still required;
- *Pedestrian measure contribution*: This measure is essentially the same as the streetscape improvement. More funds could be useful for streetscape improvements in the Lots Road Triangle;
- *Riverbus service*: Discussion should take place with TfL to establish whether these improvements are still required;
- *School travel plans*: A contribution of £20,000 is considered useful but given existing TfL funding any greater figure is unlikely to be spent. Therefore the remaining £40,000 should be diverted elsewhere;
- *Streetscape improvement*: In combination with the pedestrian measure contribution a total of £600,000 is available for streetscape improvements within the 'Lots Road Triangle'. Given the extra footfall likely in the area following the occupation of the Power Station development and also now the new school more funds would be useful for this measure. There is significant scope for streetscape improvements in the area;
- *Travel Plan Manager*: Although this contribution is considered useful, it is considered that part of the funding could be allocated to other areas;
- *Townmead Road bus gate*: Discussion should take place with LBHF to establish whether improvements are still required to the bus gate;
- *Westfield Park Contribution*: Some improvements have already been made at the park. Discussion should take place with the Council's Leisure and Arts Department to establish whether this contribution is still required and therefore whether the funds could be diverted elsewhere;
- *West London Line Improvements*: The future of Imperial Wharf train station now appears secure so additional funds may not be required.

It is recommended that discussion takes place with LBHF and TfL to establish which funds are no longer required and could be diverted to areas where ^{developed!}

funding is more urgently required. Once a common position is found the Council can negotiate with the developer.

Additional questions

- When do we receive money from developer? The developer does not agree that the work being undertaken on site now constitutes development so money is being delayed.
- When are Tetcott Road and Cremorne Road/Lots Road junction improvements to take place? Completed by September 2010.
- How much to cost? Design and materials to be agreed – no estimate available. I would imagine at least £200,000.