

National Infrastructure Planning
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Date 25 March 2025
Your ref 20049000
Our ref TE\TE\107278\224
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Dear Sirs,

EN010128 – Deadline 5: Response to the Examining Authority’s further written questions and requests for information (ExQ2)

IP Number: 20049000

1. This submission is made by Bevan Brittan LLP on behalf of Tilfen Land Limited (UK company registration number 3685753, referred to as “Tilfen”), as owner of the relevant land (referred to in this submission, as the “Peabody Land”), and also by its parent entity, Peabody Trust (a registered society, UK registered number RS007741), which owns Tilfen.
2. Together, Tilfen and the Peabody Trust will be referred to as “Peabody” in this submission, and the relevant land as the “Peabody Land”.
3. We refer to the Examining Authority’s (“ExA”) further written questions and requests for information issued 11 March 2025 (“ExAQ2”).
4. Bevan Brittan is instructed by Peabody to review and negotiate the terms of a deed of obligation to secure biodiversity net gain relating to the Applicant’s development. The Applicant has proposed that Peabody enter into the deed of obligation as the landowner of the Peabody Land.
5. We have received two initial drafts from the Applicant’s solicitors, Pinsent Masons LLP:
 - a. Deed of Obligation in respect of the BNG Opportunity Area Land (“Obligation A”); and
 - b. Deed of Obligation in respect of the Mitigation and Enhancement Area (“Obligation B”).

(together “Draft Deeds of Obligation”)

6. We refer to question 2.16.5 of the ExAQ2s:

Deed of Obligation (B)

Are the parties satisfied that the Deed of Obligation [REP4-031] has been drafted in a legally satisfactory manner and meets the tests for such obligations?

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7. We have provided initial feedback on the Draft Deed of Obligations to the Applicant's solicitor and continue to work together productively. While the ExA's question focuses on Obligation B specifically, we have provided the ExA with an update on the respective Draft Deeds of Obligations below.
8. The Draft Deed of Obligations are currently not drafted in a satisfactory manner for the following reasons:

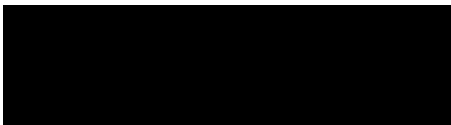
Obligation A

- a) The agreement should be entered into as a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) ("1990 Act"), rather than under Section 111 of the Local Government Act 1972 ("1972 Act"). Agreements made under section 111 of the 1972 Act do not automatically run with the land whereas a planning obligation would be enforceable by the local planning authority against Peabody's successors in title without limit of time. This is important from an enforcement perspective, but (for Peabody) it is also important, as it would allow for Peabody (as original covenantor) to be released from the obligations on parting with its interest in the Peabody Land. To the extent that there is any risk that the obligations contained within the deed are not capable of being 'planning obligations' for the purposes of the 1990 Act, in line with good practice the deed should be expressed to be also made under s111 of the 1972 Act and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 in order to ensure that they are capable of running with the land and being enforceable against successors in title; and
- b) The agreement does not reflect terms that Peabody (acting reasonably) consider commercially satisfactory.

Obligation B

- a) Similarly, terms require further negotiation to reach a mutually acceptable position.
9. As the ExA will appreciate, Peabody must ensure any agreement entered into adequately protects its interests and contains commercially reasonable terms. We will update the ExA on progress at Deadline 6.

Yours faithfully,



Bevan Brittan LLP