

## SUSTAINABLE DEVELOPMENT COMMITTEE

8 June 2009

Cathy Gallagher : Tel 020 8583 4961 e-mail: cathy.gallagher@hounslow.gov.uk

---

**References:** P/2008/1873 00768/H/P24

**Address:** Mogden Sewage Treatment Works

**Ward:** Isleworth

**Proposal:** Development of a new waste treatment stream, including sewage treatment plant, odour control units, re-profiling of existing embankments, landscaping and associated works, renewable energy generation (enhancement of existing CHP plant) and enclosure of existing West Side Works Primary Settlement Tanks.

**Received:** 2<sup>nd</sup> June 2008

---

### 1.0 Consideration by Sustainable Development Committee to date

- 1.1 At **8 December 2008** Members received a report stating that the application was probably acceptable subject to a robust S106 agreement. The 8 December report (consolidated with amendments) is attached as appendix A.
- 1.2 On **4 March 2009** an update was provided (including addenda), recommending the grant of planning permission, subject to finalisation of a satisfactory legal agreement. The 4 March report with addenda is attached as Appendix B.

At the meeting SDC resolved to grant planning permission subject to successful completion of a S106 agreement (see Appendix C), including:

#### i). Phasing:

Commitment to a Phasing Plan specifying various commencement and completion dates, and

Bringing forward the odour management works as early as practicably possible:

#### ii). Odour Management, Reporting and Recording:

To be regulated by a Management Plan for the use, monitoring, cleaning and maintenance of the east side storm water tanks, hoppers and the sludge tanks. This would include relevant recording and publication of use, maintenance and cleaning and a 24 hour manned phone for complaints. Also, in the event of unacceptable future odour occurrences, a commitment to a detailed scheme for, and implementation of, covering one or more of the uncovered storm tanks or an alternative proposal.

#### iii). Assessment of Management Plan Failures:

Financial contributions to allow the Council to assess measures to address any failure of the management plan

iv). **Environmental Improvements:**

£167,000 for improvements to the public right of way through the site

v). **Gully Cleansing:**

£50,000 for additional gully cleansing, and for existing gully cleansing payment to the Borough to be included in the agreement.

vi). **Construction Management:**

Implementation of a Considerate Contractors Scheme.

vii). **Mosquitoes:**

Implementation of a Mosquito Management Plan.

vii). **Monitoring During Construction:**

£150,000 for the Council to monitor the site during construction.

ix). **Monitoring After Construction:**

£50,000 for additional monitoring contributions following construction.

x). **Employment Training:**

Provision of local training and employment.

xi). **Additional Monitoring Equipment:**

£11,750 for a Jerome monitor (measures Hydrogen Sulphide) with £10,000 to maintain it.

**The resolution was subject to the following three amendments to the proposals:**

i). That the number of times the storm tanks were used would be reduced from seven to six per year. (For the avoidance of doubt the number of uses is significant as it is the trigger for Thames Water (TWU) to seek OFWAT funding to cover one or more of the storm water tanks or to carry out other works as approved by the Council as set out in the proposed s106 Agreement - the uses of the tank must also be accompanied by Unacceptable Odour Occurrences in order to trigger the requirement to seek OFWAT funding)

ii). That a ring of H<sub>2</sub>S sensors be used around the digesters complex, rather than a single sensor.

iii). That officers be requested to undertake further negotiations on the S.106 obligations, in relation to the storm tanks and storm tank management plan, to tighten this further. (Management of the uncovered storm tanks in the S106 is included in the

East Side Storm water Tanks and Hoppers Management Plan as well as the Odour Management Plan).

It was resolved that the agreement should be completed and planning permission issued by 9 April 2009, or an later date to be agreed in writing by officers or for officers to refuse planning permission if need be if that deadline were not met.

In the event that the planning application was refused, officers were authorised to approve any further application received within 12 months of the date of refusal which duplicates the planning application, provided that a satisfactory legal agreement or unilateral undertaking is completed within a specified period of time, be approved.

## **2.0 Progress since 4 March**

Since the resolution to approve the planning application on 4<sup>th</sup> March, there has been considerable debate in the local community. Because Members had requested further amendments to the S106 and following the discussion of the minutes at the last SDC in which related issues were raised under 'matters arising' and in the light of local concerns, the local planning authority has taken this opportunity to clarify certain matters which have arisen.

### **Issue 1 - TWU ability to fund the covering of one or more of the east side storm water tanks**

- 2.1 There was much discussion at the committee meeting on 4<sup>th</sup> March 2009, and since, regarding the sources of funding available to cover one or more additional East Side Storm Water Tanks either as part of TWU's Capital Works Programme or independently.
- 2.2 As Members are aware, officers have tried to secure an agreement with TWU to secure the coverage of all the storm tanks as part of this scheme, without recourse to funding from OFWAT. TWU have consistently stated that they are not prepared to do this without OFWAT funding.
- 2.3 TWU have provided the following information by letter dated Wednesday 27<sup>th</sup> May 2009 about the possibility of funding such works:
  - As a statutory water and sewerage undertaker licensed and regulated under the Water Industry Act 1991, TWU is only able to recover and finance its capital investment programme and operating costs by reference to charges made to customers if they have been endorsed by Ofwat within the five yearly asset management and periodic review of pricing processes or interim determinations.
  - Ofwat guidance clearly demonstrates that, in considering changes to funded improvement programmes, Ofwat attaches importance to: (a) the proportionality of a proposed solution to a given issue, (b) selection of the most cost effective option and (c) the need for cost benefit analysis before investment is authorised. The guidance also indicates that Ofwat will expect water companies to challenge unnecessary, excessive, unreasonable or disproportionate planning requirements

through appeal processes before such requirements will be recognised within the Ofwat-authorized funding programme.

- TWU's independent odour experts have advised that further covering of the storm water tanks would be neither necessary nor proportionate given the minimal effect it would be likely to have on reducing odour levels at Mogden once the planned extension work has been completed.
- As a responsibly run public utility, and consistently with the practices of water and sewerage undertakers generally, TWU would not be willing to absorb the cost of an excessive, unreasonable or disproportionate requirement from a local planning authority.
- Against this background, the Council is prepared to enter into a s106 obligation to seek funding from Ofwat for the carrying out of "capital works" in the event that any of the uncovered east side storm water tanks are used (other than when a covered storm tank is unavailable due to maintenance, repair renewal or reinstatement) more than six times in a calendar year or rolling 12 month period and such use gives rise to an "unacceptable storm water tank odour occurrence". We have agreed with Council officers that "capital works" means covering one or more storm water tanks and/or, with Council's prior approval, other works involving the creation of significant new infrastructure the scope of which represents good value for money and is a proportionate response. The definition of an "unacceptable storm water tank odour occurrence" has also been agreed.
- The S106 obligation outlined above has been designed to enable a robust case to be presented to Ofwat to authorise the funding of capital works in the event that unacceptable odour consequences arise from usage of the uncovered storm tanks.
- TWU's position, as set out on 22 January letter and summarised above, has not changed. It was endorsed as reasonable by the Council's independent expert and this was reflected in the Committee Report (see page 90 of Committee report dated 4 March 2009)...
- The project once implemented will significantly reduce the frequency of storm tank usage and the odour control measures included in the planning application submission ensure that the project will be odour neutral without the covering of the remaining storm tanks. In these circumstances, and given that our independent odour experts advise us that covering the remaining open storm water tanks will have minimal effect on reducing odour, we do not consider that a requirement to cover storm water tanks would be reasonable, necessary or proportionate. If an unreasonable planning requirement were sought to be imposed in connection with the planning application, then, as is made clear in the Ofwat guidance referred to in our 22 January letter, we would have no option but to appeal to the Secretary of State.
- If TWU were to have to challenge unreasonable and unnecessary planning requirements through the appeal processes, then:
- we would not meet the regulatory deadline set by the Environment Agency and Ofwat to improve the quality of the River Thames; and

- whether or not there is a need for the planning conditions and s106 obligations discussed to date with the Council would fall to be decided by the Secretary of State.
- To assist Council officers, we thought it would be helpful to elaborate on the reasons that TWU in practice can not fund, at the expense of shareholders, works to cover the remaining open storm water tanks at the site. Unlike other companies, we do not have the freedom to set our own prices, nor do we have the opportunity to sell more of our products and services. Consequently, such expenditure could never be recouped. Ofwat sets price limits on the basis that they will enable a well-managed and responsible company to 'finance its functions'. This includes paying a reasonable dividend to shareholders, in return for their investment. If part of that dividend were used to pay for unapproved infrastructure projects it would mean the shareholders accepting a lower dividend than the independent regulator has deemed to be reasonable, and in turn, investors electing to invest their funds elsewhere.
- From time to time, in special circumstances our shareholders have resourced individual projects, for example, including a £10 million pot of money set aside this time last year for funding charitable and community projects.
- In relation to the Tidal Thames Quality Improvements Mogden project, having regard to the advice of our odour specialist that covering the remaining storm tanks is unnecessary and disproportionate and the fact that the proposed extension once implemented will considerably reduce the use of the uncovered storm tanks, it would not be acceptable for us to seek significant direct investment from our shareholders for covering of the remaining storm tanks. Put simply, it is not good use of anyone's money to pay to cover storm tanks that are going to be used only very rarely and that our experts tell us will have minimal effect on reducing odour. Moreover, the obligations included in the s106 agreement provide a strong safeguard to ensure that a cost effective and proportionate solution is implemented in the event that there are unacceptable odour occurrences in connection with use of the uncovered storm tanks.
- In conclusion, whilst in abstract theory TWU could fund infrastructure works from shareholders' resources, in practice it cannot due to the nature of the commercial reality of the regulated industry within which TWU operates. We trust this offers the Council the clarity it requires, such that planning permission can now be issued in accordance with the decision of Members.

### **Officer Response**

- 2.4 As was stated at the 4<sup>th</sup> March SDC meeting, the capital works programme constitutes capital works authorised and funded through OFWAT; such works are referred to in the Council's independent water industry specialist's report as asset management programme 5.
- 2.5 TWU have clarified, as stated in the 4<sup>th</sup> March committee report and at the committee, and since in writing – see paragraph 2.3, that the covering of one or more

of the East Side Storm Water Tanks does not form part of the current capital works programme.

- 2.6 TWU could potentially fund covering one or more of the East Side Storm Water Tanks at the company's own expense separately from their Capital Works Programme.
- 2.7 However, as indicated in both the committee report of 4 March and their own submission of 27<sup>th</sup> May 2009, TWU are not prepared to provide such funding themselves and will not commit to covering one or more of the East Side Storm Water Tanks without first obtaining OFWAT approval and funding.
- 2.8 Independent corroboration and advice in respect of the funding position has been sought by the Council from Rubeson Consulting Limited, a water industry specialist. The consultant confirmed that *"TWU could fund work independently of OFWAT, from its own resources, in the interests of improved service"*, but goes on to say *"There is very little precedent for this in the privatised water industry and successful retrospective recognition of their significant capital investment would be subject to considerable scrutiny and testing against stated regulatory criteria. In view of the impact of such an investment and the uncertain financial and services benefits, it is highly unlikely that TWU shareholders would choose to invest without a real prospect of return"*.
- 2.9 In terms of obtaining OFWAT funding to cover one or more of the East Side Storm Water Tanks, at this point in time, the independent water industry specialist states:
- "As the current proposals are formulated it is difficult to see OFWAT recognising further odour prevention works at Mogden as an obligation or fully supported service improvement and the choice to invest would fall back to TWU shareholders."
- 2.10 In summary, the funding position for covering the East Side Storm Water Tanks is that TWU could, outside their capital programme, fund such works at the company shareholders' expense, but are not prepared to do so. However, such a decision not to do so is, according to the independent water industry specialist, not out of line with normal industry practice.
- 2.11 In terms of securing OFWAT funding for capital works to cover one or more of the East Side Storm Water Tanks, certain regulatory criteria will need to be met and the independent water industry specialist has indicated in the current context it is difficult to see OFWAT recognising such capital works meeting the necessary regulatory criteria to obtain the funding. It is unlikely that any company whether in the water industry or not, would be prepared to fund capital investment at the cost of shareholders unless that would provide an acceptable return or was required on the advice of the company's experts as being necessary.
- 2.12 Any further comments from our Independent consultant on TWU's statement or any further point he has made will be incorporated into the addendum report.
- 2.13 It is perhaps worth making clear that in addition to the cost of covering the tanks that TWU have made much of the operational difficulties, working in confined spaces etc, that make it a doubly unattractive option for them, over and above the cost.

- 2.14 Having considered the independent advice Members need to have regard to the planning context of the planning application.
- 2.15 The current application before the committee is one to improve the standard of discharge from Mogden Sewage Treatment Works by increasing treatment capacity at the site; it is suggested by the applicant that an effect of increased treatment capacity will be to reduce the frequency of use of East Side Storm Water Tanks filling and potentially odour emanating from them.
- 2.16 The independent water industry specialist states in his reports "*it is accepted that such a significant increase in the full treatment capacity of the sewage treatment works will inevitably mean an equally significant reduction in the frequency of the storm tank operation.*" Though he does go on to say it is not possible to say how often the storm tanks will be used with any degree of certainty as this would depend on weather variations.
- 2.17 However, there is no evidence to suggest that the pre-existing impact of the odour from East Side Storm Water Tanks would become more prevalent as a result of the works carried out pursuant to the application currently under consideration.
- 2.18 This application should result in decreased use of the East Side Storm Water Tanks both in terms of frequency and duration, to achieve the inherent improvement already identified and secured in the S106.
- 2.19 This raises the important question of whether it would be reasonable to refuse the current application on the basis that the applicant was not prepared to commit to additional measures (in particular covering more of the East Side Storm Water tanks) going beyond those improvements which the applicant has already committed to.
- 2.20 The view of officers is that it would not be reasonable to refuse the application on that basis. The development proposed by the applicant will not worsen the current impact of odour from the operation of the sewage work. The likelihood is that the odour impact will be reduced by the development and by additional measures which TWU have effectively volunteered, which are not necessitated by the scheme under the current application and which have been secured under the current package in the section 106 agreement.
- 2.21 These additional odour control measures are matters which the committee may properly take into account in determining this application.
- 2.22 However, it would not be reasonable for the committee to insist on further measures to deal with odour arising from previous consented lawful development, where the current application will not adversely affect the impact of such odour.

## **Issue 2 : Community Engagement during the Planning Process**

- 3.0** An issue has been raised that adequate public consultation on the planning application did not take place and that local residents, in particular MRAG – the Mogden Residents Action Group representing residents of Hounslow and Richmond, were prevented from addressing Members of SDC who would make the decision on the planning application.

- 3.1 The application was received on 2/6/08 and advertised by site notice as a major / significant development on 18/6/08 and 7/7/08 and in the press 26/6/08. It was also advertised as a departure from the development plan by site notice on 9/7/08 and in the press on 17/7/08.
- 3.2 In addition, the owners/occupiers of 950 neighbouring properties in Hounslow were notified, and inter alia, the London Borough of Richmond and two adjoining properties in Richmond were notified around 14/6/08 ( full details in 4/3/09 SDC report).
- 3.3 Additional consultations were carried out on 17/11/08 to residents of the Ivybridge estate fronting Mogden Lane.
- 3.4 All of the respondents to the initial consultations were notified on the 27/11/08 that the planning application would be reported to SDC on 8/12/08.
- 3.5 The application was then scheduled to be reconsidered by SDC on 4/3/09. Letters advising of this were sent out on 23/2/09 and a copy of the letter was e-mailed to MRAG on 24/2/09.
- 3.6 Concerns were raised by MRAG that by opening the e-mail and attached letter on 26/2/09 they had missed the opportunity to address the committee as the protocol for speakers requires 5 working days notification.
- 3.7 The e-mail of the 24/2/09 met the 5 working days protocol, if this was opened as appears to have happened on 26/2/09, then this would allow less than 5 working days to request to speak.
- 3.8 However, it is common practice for the Chair of SDC to consider requests to speak right up until the last minute. In this case the Committee clerk had invited MRAG to speak on 25/2/09 and the Chair of SDC agreed to allow MRAG to speak and the reality is that Mr Barry Edwards spoke on MRAG's behalf at the SDC on 4<sup>th</sup> March meeting.
- 3.9 All of the residents who had commented on the application, including MRAG were notified of the report on tonight's agenda on 26/5/09 well within the 5 day protocol for the SDC on 8/6/09. Objectors will thus be able to request a further opportunity to be heard at the forthcoming meeting.
- 3.10 It is officer's view that there has been the opportunity for residents to be involved in the consultation process and that no one has been denied the opportunity to address the planning committee.

### **Issue 3 – The requests to serve further Odour Abatement Notices (OAN) on TWU under the Environment Protection Act**

- 4.0 The Environmental Protection Act 1990 sections 79 and 80 provide that where a local authority is satisfied that a statutory nuisance exists or is likely to occur or recur, in the area of the authority, the local authority shall serve an abatement notice.

4.1 On 19<sup>th</sup> July 2001 the London Borough of Hounslow served on TWU an abatement notice pursuant to its powers under Section 80 of the Environmental Protection Act 1990 due to the release of malodorous gases detectable outside the process boundary and required TWU within 60 days from the service of the notice as owner, occupier and person responsible for nuisance abate the nuisance and prevent the recurrence of the nuisance.

TWU appealed against the notice to the Magistrates' Court on several grounds provided by Regulation 2(2) of the Statutory Nuisance Appeals Regulations 1995 including that the abatement notice was not "justified" by Section 80 of the 1990 Act.

TWU took the preliminary point that Mogden Sewage Treatment works of which they were the undoubted owners did not constitute premises within the meaning of Section 79(1)(d) of the 1990 Act.

The initial hearing took place in the Magistrates' Court on 13<sup>th</sup> and 14<sup>th</sup> May 2002. The District Judge accepted the submissions of TWU and quashed the notice. In doing so, the District Judge adopted the reasoning in a similar appeal heard in Liverpool City Magistrates' Court where the same conclusion was reached.

The London Borough of Hounslow appealed against the District Judge's decision by way of case stated to the Divisional Court for a decision to be made on whether the District Judge was right to hold that sewage works were not considered to be "premises" under the provisions of the Environmental Protection Act 1990.

The case was heard on 14<sup>th</sup> May 2003 and judgement was handed down on 23<sup>rd</sup> May 2003 when the Court allowed the appeal and remitted the case back to the Magistrates' Court for the appeal hearing to proceed. This created legal history as for the first time a sewage works was considered to be premises under the provisions of the Environmental Protection Act 1990.

TWU then applied for leave to the House of Lords to appeal the decision of the Divisional Court of 23<sup>rd</sup> May 2003.

A further hearing took place in the Divisional Court on 6<sup>th</sup> February 2004 when TWU was unsuccessful in its request to allow an appeal to the House of Lords. The reasoning of the Justice's has not been confirmed in writing but the original appeal was brought under Section 80(3) of the Environmental Protection Act 1990 and Regulation 2(2) of the Statutory Nuisance (Appeals) Regulations 1995 specifies the grounds on which appeal under Section 80(3) can be brought. The proceedings that were brought by TWU were therefore civil proceedings and it was not possible to allow an appeal to the House of Lords. If the London Borough of Hounslow had instituted proceedings against TWU under Section 80(4) of the Environmental Protection Act 1990 for failing to comply with the requirements of an abatement notice then it would be possible for an appeal to be made to the House of Lords from the Divisional Court as it would be a criminal matter.

The matter was referred back to the Magistrates' Court to hear the original appeal and this took place between 2<sup>nd</sup> and 10<sup>th</sup> September 2004 and was heard by a District Judge. A decision was given on 5<sup>th</sup> November when the Judge found in favour of the London Borough of Hounslow and upheld the original abatement notice served by the London Borough of Hounslow and was satisfied that there existed and

continued to exist a level of malodour which amounts in law to a nuisance. The Judge accepted that the treatment of sewage involved dealing with malodorous matter and that since the sewage works was constructed in the 1930s the surrounding area has been developed for housing and the volume of sewage treated increased massively due to the increase in population served by the catchment area. He also accepted that large sums of money had been spent extending and improving the works and that the public's expectations in terms of pollution control has also increased and local residents feel very strong about the odour including the value of their properties quite apart from their concerns about their quality of every day life. He also accepted that odour is very subjective and perception of it highly variable.

The time period for compliance was extended to two years and was based on the time already elapsed since the notice was served and that no representations were made by either party in relation to the issue.

TWU appealed this decision to the Crown Court. The District Judge then decided that he could re-open the case and both parties agreed to this and a hearing was held on 8<sup>th</sup> June 2005 at Brentford Magistrates' Court. A schedule was agreed by both parties with various requirements to be complied with within seven days and thirty days, undertaking an odour survey and engineering works to abate odour nuisance.

The timescale for the completion of the works was approved by OFWAT as it approved the funding of the works.

- 4.2 The notice has been complied with in full and the intention of clause 27 to the schedule agreed by the court was to cover any matters which might contribute to reducing odour, for example housekeeping and maintenance, which might not have been mentioned in the notice. The object was to allow action to be taken against TWU if, while carrying out the works required by the schedule, they failed to take interim measures within their control so that nuisance odour occurred. It was never intended to allow the Council to re-open the capital works required by the notice, for example to require storm tanks to be covered once the notice had been complied with. It would not be possible for the Council to argue that further capital works could be required under paragraph 27.
- 4.3 Given the history, Officers have been trying to negotiate improvements under the S106 which will help to assist in reducing odour from Mogden, namely :
- i. Better capacity to treat the waste material which should by definition result in reducing the use of the uncovered Storm water tanks – in what ever weather conditions.
  - ii. Actual benefits
    - Fixed digester roofs and increasing size of the return gas pipe work to powerhouse,
    - Covering existing primary settlement tanks on West side,
    - Improve sludge handling treatment on West side,
    - Odour Management Plan – so that it is rigorous and enforceable, and

- Greater, more reliable information.

All of which should have a better effect on odour than if the proposed works included in the planning application did not take place.

Officers view is that these works should bring about an improvement to the existing situation and further more the additional information to be collected and verified can then be used to reinforce any further OAN if needed.

Officers proposal is that the position on the OAN should be kept under review, in particular the monitoring of the Odour Management Plan and scrutiny of the management regime on site by TWU.

## **5.0 Section 106 Update**

**The following table identifies the agreed S106 :**

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
<b>Phasing</b>	<p>TW to provide to the Council a detailed Phasing Plan before Commencement; to accord with agreed 'Phasing Principles'.</p> <p>The Owner will be required to implement and comply with the Phasing Plan provided.</p> <p>Where that Plan contains elements contrary to the Phasing Principles, these would need to be approved by the Council.</p> <p>The Phasing Principles are appended to the agreement and are designed to bring forward parts of the development that the Council wants carried out at the outset or hand in hand with other works. These principally relate to odour control such as the work to the Sludge Digesters. They include requirements to commence and complete certain works by the end of specific time periods.</p> <p>In the Phasing Principles the following words are added:</p>	<p>TW wish to retain control of project management and have removed the requirement for the Council to approve the detailed Phasing Plan, but any departure from the Phasing Principles would have to be approved by the Council. This is acceptable in principle and gives sufficient reassurance that the project would be carried out in a way that ensures protection of residents' interests.</p> <p>In advance of meeting drawing up the Phasing Principles Plan, Thames have supplied a Phasing I Principles Site Plan to show Members and Officers I what is intended. For clarification, Thames are being asked to confirm that a written Phasing (Principles Plan is to be provided under the terms of the agreement. Officers consider that this (provides the reassurance needed in terms of securing a satisfactory outcome and is an acceptable basis for implementing the project.</p>	No further Amendment made or requested.
	<p><b>1<sup>st</sup> Tranche</b></p> <p>Commencement of: Sludge Digester Roofs including large diameter gas collection pipes; and Public Right of Way Information boards.</p>	<p>TW have now accepted that the obligation to complete the covering of the existing West Side Rectangular Primary Settlement Ranks within 3 years (having earlier</p>	

Issue	Draft of S106 Agreement as per 4 March 2009 Committee	Officers' comments as of 4 March 2009 Committee	Further Changes incorporate in current draft of S.106
	<p style="text-align: center;"><b>2<sup>nd</sup> Tranche</b></p> <p>By the end of year 1 to complete fixing no less than 2 digester roofs and associated larger diameter gas collection pipes.</p> <p style="text-align: center;"><b>3<sup>rd</sup> Tranche</b></p> <p>To have installed the new west side effluent stream Odour Control Unit (OCU) and transferred flow from the existing west side rectangular Primary Settlement Tanks (PSTs) to the new covered PSTs with associated emissions treated through the new OCU.</p> <p>By end of year 2 to have completed fixing no less than 9 digester roofs and related larger diameter gas pipes.</p>	<p>insisted on 5 years) of commencement should be in the S106 agreement, albeit in the form of a requirement for its contractor to do this and subject to a 'force majeure' clause (i.e. if there is any overriding reason why this cannot be achieved, this is a reasonable justification for departing from the timetable). This time period is deemed to be acceptable and to be a good outcome for nearby residents.</p> <p>TW have also asked that the obligation to complete the Development within 5 years be also subject to the 'force majeure' provision but would now apply to all Odour Control Works defined in the application. Previously, they had sought that this only apply to Odour Control Works for the new plant and not to the retro-fitting of existing equipment. Officers consider this to be a satisfactory improvement.</p>	
	<p style="text-align: center;"><b>4<sup>th</sup> Tranche</b></p> <p>By the end of year 3 to have completed fixing all digester roofs and associated pipes.</p> <p>Completion of Public Right of Way Improvement.</p> <p>The Owner's contractor shall as "so far as is reasonably practicable" require covering of the West Side Rectangular PSTs within 3 years, subject to a 'force majeure' clause (i.e. acts of god, lack of materials, war) and to have carried out all "Odour Control Works" identified in the</p>	<p>Thames have agreed that (subject to 'force majeure') their contractor will be required to carry out the Odour Control Works within three years of the start of the contract</p> <p>This proposed phasing is an improvement on TWU's initial position, where no guarantees were available. This would be a local benefit and it is considered to be a satisfactory outcome to the negotiations</p>	

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
	planning application regardless of whether they are part of the development.		
Odour Management, Reporting and Recording (Sludge Gas)	<p>TW to apply a Sludge Gas Monitoring Plan (to be included in the agreement) which states:</p> <ul style="list-style-type: none"> <li>● TW to carry out routine patrols of digester area not less than once a shift to identify and log gas leaks.</li> <li>● When gas leaks occur, measures to manage this are included, either by isolating the source of the leak or by reducing the gas pressure by burning the gas in plant on site.</li> <li>● TW to carry out and produce a monthly report detailing gas mass balance and correlation with boundary monitoring data.</li> <li>● If Unacceptable Odour Occurrence arises, corrective measures under the Odour Management Plan (OMP) will be taken.</li> <li>● Unacceptable Odour Occurrence is to be defined in the OMP. TW propose a method for this.</li> <li>● Once the whole Development is operational to produce a monthly Sludge Gas Monitoring Report and publish it on the Internet no later than the end of the following month.</li> </ul>	<p>TW have accepted the Council's requirements for Sludge Gas Monitoring. However, a concern still remains that the extent of monitoring and measurement is not yet satisfactorily robust in that it does not cope properly with variations in wind direction.</p> <p>To achieve this, officers consider that extra H2S monitors are required (to provide a total of eight) and that the results from any one of these monitors (unless fewer is shown to be a workable option in conjunction with the other relevant assessment criteria would be enough on its own to trigger remedial action under the Sludge Gas Monitoring Plan and the Odour Management Plan. This request has been put to TWU and a response is awaited.</p> <p>Otherwise, officers now consider that the arrangements proposed for dealing with</p> <p>Officers are satisfied that, with these provisions, a satisfactory definition of unacceptable odour levels on which action can be taken will have been achieved.</p> <p>As the obligation to produce and publish the Sludge Gas Monitoring Plan only arises once the development is operational,</p>	<p>A total of 8 H2S monitors will, prior to commencement of development, be procured and installed and thereafter maintained and operated.</p> <p>The 8 sludge gas monitors will cover all points of the compass about the sludge gas digesters in locations agreed in advance with the Council.</p> <p>Requirement in accordance with Members' resolutions of 4 March 2009</p>
		further review of the criteria and relevant measures can be carried out in advance of implementation.	

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
<p>Odour Management Reporting and Recording (Uncovered Storm Water Tanks Obligation)</p>	<p>A revised East Side Storm Water Tanks and Hopper Management Plan with the following key elements subject to certain provisos of:</p> <ul style="list-style-type: none"> <li>● Using covered tanks first</li> <li>● Emptying uncovered tanks first</li> <li>● Inspecting tanks once every 12 hours</li> <li>● Cleaning tanks after use</li> <li>● Critical parts list and maintenance regime</li> <li>● Pumping of Hoppers</li> <li>● Odour monitoring</li> </ul> <p>Many of the actions are subject to "where practicable" or "as soon as is practicable"</p> <p>TW propose 'best endeavours'/obligations to comply with the management plan.</p> <p>TW stipulate that in the event of use of the uncovered East Side Storm Water Tanks and Hoppers (SWTs), other than when one or more covered tanks are out of use for maintenance, repair, renewal or reinstatement, seven or more times in a year and this coincides with unacceptable odour occurrences as defined in the agreement they will seek funding from OFWAT for capital works, which include (if it represents good value for money and is a proportional response) covering one or more uncovered SWTs. If such funding is obtained TW will seek necessary consents and carry out works.</p>	<p>This aspect of the agreement deals principally with the other main Odour Control issue. The draft agreement provides for officers and TWU to agree practical measures of what is unacceptable odour at a later date. However, officers have yet to agree with Thames what this might be and have yet to agree a form of words to deal with any failure mutually to agree a satisfactory measure. As things stand, Thames proposed measure is not likely to be acceptable to officers. Discussions continue on the best form of words and the outcome will be reported orally at the meeting.</p> <p>Usefully, the agreement also now provides that Thames will accept an independent inspector's finding that such unacceptable odour has occurred, regardless of whether there have been any complaints from members of the public.</p> <p>Negotiations have achieved a shorter time period between tank inspections from 24 hours (originally proposed by Thames) to once a shift (approximately every 12 hours) and specified the sequence of use of the uncovered tanks to ensure the lowest risk of unacceptable smells and therefore most effective protection for neighbours.</p>	<p>The definition of what an "Unacceptable Storm Water Tank Odour Occurrence" has been agreed between Officers and Thames.</p> <p>The number of times that the Storm Water Tanks would have to be used in a year before the requirement to seek OFWAT funding will be triggered has been reduced from nine to six ( provided each of those six events result in Unacceptable Storm Water Tank Odour Occurrences)</p> <p>The wording in relation to seeking OFWAT funding to cover Storm Water Tanks has been tightened, so that it is no longer subject to the caveat of being "good value for money" and "proportionate" therefore, should the Storm Water Tanks be used on six occasions and each of those six occasions result in Unacceptable Storm Water Tank Odour Occurrences Thames will be required to seek funding from OFWAT to cover one or more of the Storm Water Tanks.</p> <p>Thames may only seek OFWAT funding for other works instead of covering the Storm Water Tanks if the Council approves such course of action</p> <p>Further clarification on the OFWAT funding position is provided separately at paragraph 2.3-2.22 of this report.</p>

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
		<p>TW will not commit to covering an uncovered tank, unless they have received funding from OFWAT, and even then only if it is good value for money and is proportionate. Use of the uncovered tanks is not a 'Default Event'; it only becomes so if this correlates with an Unacceptable Odour Occurrence (this definition is yet to be agreed - see above).</p> <p>This is because Thames assert that use of a tank on its own may not cause unacceptable odour and, while undoubtedly there is a correlation, officers cannot contradict this.</p> <p>Thames had set the number of times that the storm tanks would be used at nine per year. This well exceeded the four to six that they forecast and officers stated this to be an unacceptable threshold. Officers have achieved a reduction to seven, which is considered acceptable. At officers' prompting, Thames have also accepted that any use of the tanks for over four days at one time (and also resulting in unacceptable odour) would be treated as two occurrences, not one and that this would apply for each subsequent four-day period. This is a helpful concession.</p>	<p>Clarification on OFWAT Funding position at paragraph 2.3-2.22 of this report.</p>
		<p>Officers had sought an undertaking from Thames that the use of the tanks beyond this threshold would automatically trigger the covering of further tanks. Thames were</p>	

Issue	Draft of S106 Agreement as per 4 March 2009 Committee	Officers' comments as of 4 March 2009 Committee	Further Changes incorporate in current draft of S.106
		<p>unable to commit to this because of the need to obtain approval from the regulator, OFWAT, before they could make such a large capital investment, and their inability to guarantee that OFWAT would accept that such works were best value.</p> <p>Officers have taken independent advice about Thames' stance on this matter from a water industry specialist.</p> <p>He said "The operation of a major sewage treatment works will almost always give rise to some level of The severity and impact of this will be dependent on the processes and equipment, the works operation, the local environment and the proximity and sensitivity of the local customers. The investment required to reduce odour levels to a point where they give rise to no significant complaints at any time is unlikely to be justifiable in the present regulatory and economic climate. It is also questionable whether such a level of odour treatment is possible with current technologies."</p> <p>He then concludes that Thames' position on to the capital commitment that officers have sought is a reasonable one and that they would not likely be able to make such an investment without OFWAT's sanction, but that Hounslow should approach OFWAT directly about this when the time arises.</p> <p>Therefore, officers recommend that the position set out in the latest draft of the</p>	

Issue	Draft of S106 Agreement as per 4 March 2009 Committee	Officers' comments as of 4 March 2009 Committee	Further Changes incorporate in current draft of S.106
		agreement provides the best safeguard available against excessive future storm tank use, subject to resolving the difference relating to the definition of unacceptable odour.	
Odour Management, Report and Recording (Telephoning hotline)	Thames have agreed to provide telephone helpline service for customer complaints about operational sites	<p>Officers had pointed out that there was no effective means of neighbours complaining to Thames about smells and that, as a result, many complaints may have gone unheard or have been submitted to the Council instead, and then transmitted onwards to Thames (which is clearly inefficient). Thames had responded that their customer helpline was intended for this purpose.</p> <p>On reflection, they agree with officers that it is not a user-friendly service for this specific type of complaint (since it does not have the necessary flexibility to accept and report such complaints) and accept the need for a dedicated facility to run alongside the existing one. Officers are satisfied with this outcome, which will be a significant improvement on existing arrangements.</p>	No further Amendments made or requested.
Assessment of Management Plan Failures	Thames have not offered to meet the costs to the Council of monitoring these external effects of the development once it is operational	Members' views are sought	No further Amendments.
Public Rights of Way Improvements	Thames propose to carry out the Public Right of Way of Improvements instead of paying the Council to do the works.	Thames' proposal to carry out the works themselves is acceptable. Although TW have not, as hoped for, agreed to complete the Public Right of Way Improvements not affected by the works early on, apart from the information boards (to be commenced	No further Amendments.

Issue	Draft of S106 Agreement as per 4 March 2009 Committee	Officers' comments as of 4 March 2009 Committee	Further Changes incorporate in current draft of S.106
		in the 1st Tranche). The phasing is not considered a 'deal breaker'.	
Gully Cleansing	£50,000 Gully Cleansing Contribution only.	TW will not document and formalise their current voluntary £20,000 annual contribution, but the proposal is acceptable.	No further Amendments.
Considerate Contractor Scheme	Agreed in principle		Wording finalised.
Mosquito Management Plan	Agreed in principle subject to minor amendments	Officers are considering these, but it is thought that any issues can be easily resolved	Additional requirement to produce an annual report detailing monitoring results and what measures under the Mosquito Management Plan have been undertaken in the past year. Such report to be published on the Thames' Website and to be available to the public. TWU to confirm its acceptance of such requirement.
Monitoring During Construction	The agreement includes a sum of £150,000 payable to the Council to monitor the effects of the development	This is acceptable to officers	
Monitoring After Construction	Thames have not offered to meet the costs to the Council of monitoring the external effects of the development once it is operational	Members' views are sought	TW have agreed to a further £50,000 being made available to meet the costs to the Council of monitoring the external effects of the development.
Employment Training	The agreement includes a sum of £125,000 payable to the Council to provide local employment training relevant to the development	This is acceptable to officers	No further Amendments.
Additional	The agreement includes a sum of £21,750	This is acceptable to officers	No further Amendments.

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
Monitoring Equipment	payable to the Council to buy and maintain a Jerome Monitor to be used to monitor emissions from the site		
Binding Dispute Resolution Clause	<p>Binding dispute resolution not to cover matters of law or interpretation of the Agreement.</p> <p>Can be invoked by either party. If invoked by the TW, TW will pay experts costs. If invoked by the Council, expert costs will be borne as the expert decides.</p> <p>TW have proposed the various types of experts to be appointed for various disputes.</p>	<p>The Council's hope was that Thames would pay the Expert's costs in any event, however they have adopted this position, leaving the Council at risk of having to pay these costs. This is a potentially significant disincentive to enforcement action. However, it is the best result that can be achieved and, by use of planning conditions where relevant as a means of enforcement, this risk has been limited.</p> <p>Binding dispute resolution clauses tend to favour applicants. They lose the Council a degree of control and elements of discretion in its decision-making powers.</p>	No further Amendments.
		<p>With highly technical issues, as in this agreement, binding expert dispute resolution is probably necessary. That said, the expert might give very focused technical decisions, not accounting for important, wider community-based issues that the Council might want considered.</p>	
Enforcement of the Agreement	<p>TW propose alteration to the draft clause that in the event of a breach of an obligation in the Agreement they must not continue with until such obligation has been met.</p> <p>It is restricted it so it only applies where cessation or suspension of development is the only proportionate response and also restricted it to phasing, sludge for monitoring,</p>	<p>This Clause has been significantly diluted, it is difficult to determine in what circumstances it would bite and whether there would be successful enforcement through the courts.</p> <p>However, the Council can use S106 to obtain a Court declaration that TW are in breach of their obligations. This would</p>	No further Amendments.

<b>Issue</b>	<b>Draft of S106 Agreement as per 4 March 2009 Committee</b>	<b>Officers' comments as of 4 March 2009 Committee</b>	<b>Further Changes incorporate in current draft of S.106</b>
	<p>considerate contractor, uncovered storm tank, public right of way or Mosquito Management obligations</p>	<p>damage Thames' public profile being a Public Utility Company and may be an effective deterrent.</p> <p>Alternatively, an injunction in respect breach of the obligations might be obtained. This would be difficult in respect of many of the obligations, because they require positive actions and are therefore difficult for Courts to enforce. Courts will not issue injunctions that are unenforceable.</p> <p>For this reason, officers have now placed some of the matters that were initially elements of the proposed agreement in planning conditions instead, or which a different enforcement regime exists.</p>	

## **6.0 Miscellaneous**

- 6.1 TWU have asserted that the principle purpose of the development is to provide a new treatment stream, which would increase and improve capacity by approximately one third for better treatment of the existing sewage. They have assured officers and Members that the proposals would not bring any more sewage to Modgen (10% growth allowed) and their discharge into the river would be reduced.

In order to prevent other sewage treatment flows being diverted to Modgen we are suggesting a further planning condition.

'Not to divert waste flows from other sewage treatment works to Mogden Sewage Treatment Works without first obtaining the consent of the Council and complying with any Council requirements to mitigate the impact of any such increase in waste flows.'

TWU's response to the proposed condition is awaited.

## **7.0 Conclusion**

- 7.1 Overall, it is now anticipated that the proposed works would either improve neighbours' living conditions or leave them unharmed and that negotiations since 4 March have strengthened the Council's position
- 7.2 Officers consider that negotiations have secured significant improvements for residents. Under the circumstances, officers now consider that the development can proceed and that the S106 agreement and associated planning conditions provide appropriate safeguards. The package of proposals now on the table is one that should offer improvements for residents when compared to the existing situation.
- 7.3 Whilst the application was advertised as a departure from the development plan because of the loss of local open space and potential impacts on the nature conservation environment, it would only be referable to the Secretary of State for determination if the scale or nature of the proposal significantly prejudiced the implementation of the development plans policies and proposals.

In the event that Members are minded to refuse the above application, as the application is of strategic importance, the Mayor of London could exercise his discretion to determine the application.

In determining the application the Mayor of London may direct to approve the application and in doing so, while he may have regard to the currently agreed draft section 106 agreement as negotiated, it is, however, the Mayor who will be lead party for the matters contained in the section 106 agreement and ultimately decide what measures should be included or excluded.

Alternatively, the applicant could appeal against any refusal by the Council to the Secretary of State. Any such appeal would most likely be heard by way of public inquiry and the planning inspector sitting in the inquiry would ultimately determine, where there was conflict between the parties, the reasonableness or otherwise of any measures to be included as a planning obligation and ultimately, what measures should be included as planning obligations.

In appeal scenarios it is commonplace for applicants to propose unilateral section 106 undertakings normally including only the minimum package of measures they believe necessary to obtain approval in respect of the application, and the inspector then decides whether to grant consent on the basis of what is in front of him.

If the application is refused by Members, the Council may effectively lose its control over the package of measures to be included within the section 106 agreement. An inspector may grant consent with a lesser package of measures and the officers' consider that some of the measures secured in the draft agreement go well beyond what an inspector would be likely to require, given the purpose of the planning application and its prime benefit in terms of meeting water quality directive requirements for discharge into the Thames.

- 7.4 In summary, it is considered that, subject to minor amendments on the OMP, and agreement to produce and publish the Mosquito Management Monitoring report, and agreement to the additional planning condition the matters raised on 4 March and subsequently have been adequately addressed

## **8.0 Recommendation**

If Members now consider the draft agreement to be acceptable and subject to any Direction that may be issued by the Mayor of London.

That the Director of Environment or the Divisional Head of Regulatory & Development Services be authorised to grant planning permission subject to the following conditions and securing the above planning obligations by prior completion of an agreement or agreements made under Section 106 of the Town and Country Planning Act 1990 and/or other appropriate legislation, the exact terms of which shall be negotiated by the Divisional Head of Regulatory & Development Services on the advice of the Director of Legal Services.

The satisfactory legal agreement or unilateral undertaking outlined above shall be completed and planning permission issued by 11 August 2009 or such extended period as may be agreed in writing by either the Director of Environment, Divisional Head of Regulatory & Development Services or Borough Solicitor. If the legal agreement or unilateral undertaking is not completed by 11 August or such extended period as shall be agreed in writing by the Director of Environment, Divisional Head of Regulatory & Development Services or Borough Solicitor, then the Director of Environment or Divisional Head of Regulatory & Development Services be authorised to refuse planning permission for the reason that the proposal should include planning obligations required to make

the development acceptable in planning terms in accordance with Circular 05/05, Policy IMP 6.1 of the UDP and the Planning Obligations SPD providing for and securing of the planning obligations, as described in paragraph 8.3 of this Report.

In the event that the planning application is refused (for non-completion of s106 agreement within set timeframe or such extended period as may have been agreed by the Director of Environment, Director of Environment or Divisional Head of Regulatory & Development Services or Borough Solicitor), the Director of Environment or Director of Environment or Divisional Head of Regulatory & Development Services (in consultation with the Chair of Sustainable Development Committee) is hereby authorised to approve any further application for planning permission received within 12 months of the date of refusal of planning permission, provided that it a) duplicates the planning application, and (b) that there has not been any material change in circumstances in the relevant planning considerations, and (c) that a satisfactory legal agreement or unilateral undertaking securing the obligations set out in the Report is completed within any specified period of time.

1. *A1a – Time Limit – Three Years*

2. *Planting – native species only*

All planting on and around the site shall be of locally native plant species only, of UK genetic origin.

**Reason** - Use of locally native plants is essential to benefit local wildlife and to help maintain the region's natural balance of flora.

3. *Biodiversity Mitigation*

The development shall be carried out in accordance with the key mitigation measures for biodiversity set out in Table 20 of the Environmental Statement submitted with the application, and in accordance with detailed specifications, arrangements and timing details to first be agreed by the Local Planning Authority.

**Reason** - To ensure that the proposed mitigation is carried out as approved.

4. *Habitat Management and Creation*

The development shall not commence until a programme and specification have first been submitted to, and have been approved in writing by, the Local Planning Authority for the ongoing management of existing and creation of new wildlife habitats on the site and the permanent future retention of the habitats to the quality specified in that programme. The approved programme shall include timing details, shall be implemented on commencement of the development, shall continue for the period specified in the approved programme, and shall be monitored during the implementation period and remedial measures taken as necessary to ensure that the objectives set out in the programme are achieved.

**Reason** - In the interests of local biodiversity and ecology.

## 5. *Dust Control*

During and following the relocation of materials and the recontouring of embankments, the material shall be kept damped down and compacted at all times to prevent excess dust generation prior to the development of significant vegetative cover.

**Reason** - In the interest of air quality and safety.

## 6. *Control of Light Spill*

External artificial lighting associated with the approved waste water treatment stream shall be directed away from the Duke of Northumberland River and shall be focused with cowlings, to minimise light spill from the new development into the Duke of Northumberland River.

**Reason** - Artificial lighting disrupts the natural diurnal rhythms of a range of wildlife using and inhabiting the river and its corridor habitat. The water body provides important habitat for wildlife. Duke of Northumberland River should be treated as recommended under the Institute of Lighting Engineers 'Guidance Notes for the Reduction of Light Pollution'.

## 7. *Land Contamination Measures*

Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

- 1) A preliminary risk assessment which has identified: all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

**Reason** - The Environmental Impact Assessment indicates that there are land contamination issues on the site, therefore additional site investigations need to be undertaken to delineate the contamination and feed into the design of the remedial strategy. Any changes to these components require the express

consent of the local planning authority. The scheme shall be implemented as approved.

#### **8. *Contamination Measures Verification***

Prior to the bringing into operation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

**Reason** - EIA indicates that there are land contamination issues on the site, therefore additional site investigations need to be undertaken to delineate the contamination and feed into the design of the remedial strategy.

#### **9. *Contamination Monitoring Reports***

Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the local planning authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the local planning authority.

**Reason** - The Environmental Impact Assessment indicates that there are land contamination issues on the site, therefore additional site investigations need to be undertaken to delineate the contamination and feed into the design of the remedial strategy.

#### **10. *No Piling Without Prior Consent***

Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

**Reason** - To ensure that the piling design is protective of controlled waters.

#### **11. *Contamination Investigation, Verification and Remediation***

Before the development hereby permitted commences:

- a) The site shall be investigated by a competent person to identify the extent and nature of contamination. A detailed site investigation report shall be prepared and submitted to the Local Planning Authority. The report should include a tiered risk assessment of the contamination based on the

proposed end use of the site. Additional investigation may be required where it is deemed necessary.

- b) If required, a scheme for decontamination of the site shall be submitted to the Local Planning Authority, for written approval. The scheme must account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied.
- c) The Local Planning Authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination and shall submit appropriate amendments to the scheme for contamination in writing to the Local Planning Authority for approval.
- d) The agreed scheme for decontamination, including amendments, must be fully and a written validation (closure) report submitted to the Local Planning Authority for approval.

**Reason** - Contamination is known or suspected on the site due to a former land use. The Local Planning Authority therefore wishes to ensure that the development can be implemented and occupied with adequate regard for public and environmental safety.

#### **12.** *Noise & Vibration Control*

The development shall not commence until details have been submitted to, and have been approved in writing by, the Local Planning Authority, demonstrating that the development will comply with the requirements of BS 5228:1997 Noise and Vibration Control on Construction and Open Sites, and the development shall only be carried out in accordance with the approved details.

**Reason** - To protect neighbours' living conditions.

#### **13.** *Maximum Noise from Plant*

Noise from new plant shall be 10dB below the ambient LAeq at residential properties.

**Reason** - To protect neighbours' living conditions.

#### **14.** *Delivery and Service Plan*

Development shall not commence, until a Delivery and Service Plan has been submitted to and has been approved in writing by, the Local Planning Authority. The approved plan shall be implemented only as approved.

**Reason** - To regulate daily freight operations in the interests of efficiency and sustainability and neighbours' living conditions.

#### **15.** *Construction Management Plan*

Notwithstanding any other condition of this consent, no work on the development shall commence, until a Construction Management Plan, dealing with all relevant environmental information relating to the site construction works, and to include

hours of operation, phasing details of the development (including of the excavation/recontouring works), contractor's compound, environmental nuisance mitigation/ controls over dust, mud, dirt, noise, vibration, and lighting, temporary screening/bunding, and means of access and site delivery/traffic arrangements/routes and construction workers travel plan etc., has first been submitted to, and has been approved in writing by, the Local Planning Authority, and the Plan as approved shall only be implemented as approved. The Plan shall be prepared and implemented in accordance with Best Practice Guidance for the duration of the works.

**Reason** - To ensure that the environmental impacts of construction are appropriately mitigated, in the interests of environmental amenity and the free flow and safety of traffic.

#### **16. *Mud and Dust Control***

During construction works an appropriate wheel-washing system shall be provided to remove mud, stones and any other extraneous materials from the wheels and chassis' of construction vehicles exiting the site and all loads of construction materials, excavation spoil or other such matter shall be fully covered in order to ensure that no material leaves the site attached to the vehicle which might subsequently be deposited on the highway. The exit from the wheel washing system shall be constructed from a hard, non-porous surfacing material and sited as far away from the exit to the highway as is possible given the constraints of the site and the surface shall be kept clean at all times. Waste water discharged from the wheel washing system shall be stored and disposed of on site and shall not be discharged into the public sewerage system without prior removal of soil, stones and any other suspended material. Suitable measures to minimise dust nuisance caused by the operations and to ensure that no dust or other debris is carried on to the adjoining properties shall also be provided in accordance with the guidance at [http://www.london.gov.uk/mayor/environmental/air\\_quality/docs/construction-dust-bpg.pdf](http://www.london.gov.uk/mayor/environmental/air_quality/docs/construction-dust-bpg.pdf) and site lighting shall be designed, positioned and directed so as not to unnecessarily intrude on passing drivers on public highways and so as not to direct light into any windows of properties outside the site. Start of works on site shall be notified to the Council's Community Environment Team on 020 8583 5070.

**Reason** - In order to safeguard the amenities of adjoining properties, the amenities of the locality, and highway safety, and to enable the Council to monitor work on site to ensure that it is carried out in a safe and neighbourly fashion for the above reasons in accordance with Policies ENV-B.1.1 (New Development), ENV-P.1.5 (Noise Pollution), ENV-P.1.6 (Air Pollution), and ENV-P.1.7 (Light Pollution).

#### **17. *Renewable energy***

When it is first brought into use, the development shall comply with the terms of the Energy Statement submitted as part of the application and future energy use on site shall be met by on-site generation of renewable energy to not less than 40% of the on-site energy demand unless otherwise first agreed in writing by the local planning authority. In addition, prior to the development being brought into use, the developer shall carry out and submit to the local planning authority for

approval details of a feasibility study into the installation and subsequent use of a micro-hydro turbine or turbines on the site and a timetable for installation and commissioning of the same if appropriate. If viable, and if approved by the Local Planning Authority, the turbine(s) shall be installed in accordance with the approved details and permanently retained.

**Reason** - In accordance with the applicant's submission, and to minimise the impact of the development and to contribute to meeting the renewable energy targets in the Mayor's London Plan.

#### **18.** *Sustainable Construction Scheme*

Notwithstanding the requirements of the Construction Management Plan, no development shall take place until details have been submitted to, and have been approved in writing by, the Local Planning Authority for a sustainable construction scheme, to comply with the "essential" standards for materials in the Mayor's Sustainable Design and Construction SPG. These being: - No use of insulation materials containing substances known to contribute to stratospheric ozone depletion or with the potential to contribute to global warming; - Minimal use of new aggregates; - Reduction of waste during construction and demolition phases and provision of a sorted waste stream on site where practical; and Use of reused or recycled construction materials wherever practicable.

**Reason** - In the interests of sustainability.

#### **19.** *Details of Cycle Parking*

The development shall not become operational until details of covered cycle parking stands and associated facilities for cyclist shall be submitted to, and have been approved in writing by, the Local Planning Authority, and the approved facilities have been implemented and made available for use.

**Reason** - In the interests of sustainable transport.

#### **20.** *Details of Access*

No development shall take place, until details have first been submitted to, and have been approved in writing by, the Local Planning Authority of appropriate facilities incorporated into the detailed design of the proposed works to ensure that, notwithstanding the nature of the development, a level of accessibility which is reasonably practicable in the circumstances is achieved, and the development shall be implemented in accordance with the approved details.

**Reason** - In the interests of equality of access.

#### **22.** *Odour Control*

The development shall comply with the best practicable means to control and limit odours and, wherever practicable, to ensure that odour is identified at an early stage, and pro-active measures are taken to reduce the impact on off-site sensitive receptors. In addition, there shall be regular maintenance and monitoring and annual performance tests, and remedial work and retesting where

appropriate, and updates of the Odour Management Plan, in accordance with details to be submitted to and to be approved in writing by, the Local Planning Authority, prior to the first bringing into use of the development.

**Reason** - In the interest of air quality.

**23.** *Odour Control Exhaust Monitoring*

Prior to the commencement of operation of the development hereby approved there shall be fitted to the exhausts from all odour control units hydrogen sulphide monitoring instruments with a resolution of 1ppb. These monitoring systems will measure and record outlet hydrogen sulphide concentrations at a frequency of not less than 1 reading per hour and the records of monitoring shall be maintained for a period of at least 24 months, and will be available for inspection by the Local Planning Authority. The instruments shall be maintained in working order.

The emissions monitoring systems shall be “calibrated”, by reference to the annual olfactometric tests described in Condition 26, so that the operators can set “alarm” hydrogen sulphide concentration levels for each of the odour control and stack emission releases to warn of deteriorations in abatement performance. The resulting hydrogen sulphide calibration calculations and emission limits shall be updated on an annual basis as further odour concentration data becomes available. The calibration calculations must be used to set limits which can be expected to detect odour emissions exceeding the emissions limits by no more than 20-25%.

**Reason** - To enable the emissions from the development to be properly monitored so that any necessary remedial action can be taken promptly if emissions exceed target levels.

**24.** *Remedial Measures for Odour Control Exhaust*

In the event that any of the monitoring instruments fitted pursuant to Condition 23 show that hydrogen sulphide concentrations in emissions from odour control units exceed the concentration levels calculated in accordance with Condition 23 on three or more occasions within any period of 30 days, then the developer shall notify the Local Planning Authority and take appropriate remedial action within a further 30 days to bring hydrogen sulphide concentrations back within the levels specified in Condition 23 or to such other level as shall first be submitted to and agreed in writing by the local planning authority.

**Reason** - To ensure emissions stay within acceptable limits.

**25. Compliance with Environmental Statement**

The development shall be operated at all times such that the odour emission rates of air (as defined in the Environmental Statement) released from the odour control units is maintained at or below the predicted levels specified in the Environmental Statement supporting the planning application received on 2<sup>nd</sup> June 2008. Emissions will be discharged to atmosphere through stacks as described (stack heights and air speeds) in the application.

**Reason -** To minimise odour emissions from the development and their off-site impact in the local area

**26. Olfactometric Testing of Odour Control Units**

The developer shall carry out olfactometric tests of the emissions from all odour control unit stacks and building stacks within the development at least annually in accordance with the methodology set out in Condition 27. The first such test shall be carried out within 30 days of first operation of the development. The Local Planning Authority shall be given at least 7 days prior notice of all testing and be supplied with the results of all testing within 30 days.

**Reasons:** *To ensure emissions stay within acceptable limits.*

**27. Olfactometric Testing Methodology**

All tests pursuant to Condition 26 and Condition 28 shall be conducted in accordance with the following methodology. Three representative odour samples of treated/outlet air will be collected whilst the sewage and sludge treatment plants are operating under normal conditions. The odour samples collected shall be analysed in accordance with the BSEN 13725 standard techniques and an outlet odour concentration will be calculated as the geometric mean of the individual results for each of the three samples. Emission rates for each stack will be calculated by multiplying the outlet odour concentration by a measured air flow rate. The Local Planning Authority shall be given at least 7 days notice of all testing and will be supplied with the results of all testing within 30 days.

**Reason:** *To ensure emissions stay within acceptable limits.*

**28. Remedial Action Following Olfactometric Testing**

In the event that the results of a test pursuant to Condition 26 shows that emissions are exceeding the levels set out in Environmental Statement supporting the planning application received on 2<sup>nd</sup> June 2008 for the development, the developer shall immediately take such steps as shall reasonably be required to ensure that emission levels are no higher than those set out in the application. Following the taking of such steps the developer shall immediately demonstrate compliance by further olfactometric testing (as provided for in Condition 26) and supply the Local Planning Authority with the results of the test as required by Condition 26.

**Reasons:** To ensure emissions stay within acceptable limits.

## **29.** *Sludge Thickening Building Ventilation*

Before work commences on site, details shall be submitted to and shall be approved in writing by, the local planning authority to show that there will be a satisfactory level of general ventilation from the sludge centrifuge/thickening building exhausted to the atmosphere including discharge arrangements, velocity, odour concentration and airflow rate. The details submitted shall also include a specification for outlet odour concentrations to be assessed by initial commissioning tests (within three months of the plant becoming operational) and subsequently monitored by annual performance testing, and shall include remedial measures to be implemented if emissions exceed the agreed specification, so as to guarantee future performance in accordance with the details originally approved. The agreed specification shall be implemented before the development is brought into use. The Planning Authority shall be given at least 7 days notice of all testing and shall be supplied with the results of tests within 30 days. If abatement plant is installed and if the outlet odour concentrations exceed the design value in any commissioning or annual performance test, then the plant shall be repaired or rectified and re-tested within 30 days of the failed test, unless the 12 month period for installation of an additional or alternative abatement plant has been triggered.

**Reason.** In the interest of air quality.

## **30.** *Control of Sludge Handling and Storage*

- a) No temporary or permanent sludge/sludge cake liming, or any other mechanical or chemical treatment shall be carried out within the sludge cake store at any time without the written agreement of the local planning authority;
- b) No temporary or permanent sludge/sludge cake liming, or any other mechanical or chemical treatment shall be carried out within the development other than as described in the application, and in any case shall only be carried out within fully enclosed and odour extracted and abated/mitigated facilities. No such sludge or sludge cake treatments shall be undertaken outside or in the open within the development; and
- c) No sludge or sludge cake shall be stored, on a temporary or permanent basis, other than as described in the application, that is, within fully enclosed and odour extracted and odour abated or mitigated facilities. No sludge or sludge cake generated by the development shall be stored outside or in the open within the development or elsewhere within the Sewage Treatment Works and no sludge or sludge cake shall be stored outside or in the open within the development.

**Reason.** In the interest of air quality.

## **31** *Odour Abatement Plant Ventilation*

Before work commences on site, details shall be submitted to, and shall be approved in writing by, the local planning authority to show that there will be a satisfactory level of general ventilation from the odour abatement plant to be

exhausted to the atmosphere including discharge arrangements, velocity, odour concentration and airflow rate. The details submitted shall also include a specification for outlet odour concentrations to be assessed by initial commissioning tests (within three months of the plant becoming operational) and subsequently monitored by annual performance testing and shall include remedial measures to be implemented if emissions exceed the agreed specification, to guarantee future performance in accordance with the details originally so approved. The agreed specification shall be implemented before the development is brought into use. The Planning Authority shall be given at least 7 days notice of all testing and shall be supplied with the results of tests within 30 days. If abatement plant is installed and if the outlet odour concentrations exceed the design value in any commissioning or annual performance test, then the plant shall be repaired or rectified and re-tested with 30 days of the failed test, unless the 12 month period for installation of an abatement plant has been triggered.

**Reason.** In the interest of air quality.

### **32.** *Odour Control Plant Commissioning Plan*

The new odour control plant shall not become operational until and unless a commissioning plan for each new odour control plant, to include details of an agreed performance specification, has first been submitted to, and has been approved in writing by, the Local Planning Authority, and the plant shall be operated only in accordance with the approved Plan.

**Reason.** In the interest of air quality.

Example of a suitable performance and testing specification:-'Outlet air from the odour abatement plant serving the (FACILITY) will be exhausted to atmosphere through (Discharge arrangements, e.g. 15, or 20m stack) at a velocity of at least 15 m/s, and with an odour concentration not exceeding 600 ouE/m<sup>3</sup> (or 1,000 ouE/m<sup>3</sup> to be defined) at an airflow rate not exceeding the design value of Y.Y m<sup>3</sup>/s. TWU shall arrange for outlet odour concentrations to be assessed by initial commissioning tests (within three months of the plant becoming operational) and subsequently by annual performance testing. Each test to be based on triplicate samples of exhaust air collected while the plant is operating under normal conditions with at least X (example plant) and Y (example tanks) operating, and the samples will be analysed in accordance with the BSEN 13725 standard techniques. If the geometric mean outlet odour concentrations shall be re-tested after remedial works have been undertaken within 30 days. If the geometric mean outlet odour concentrations fail to meet the above limit, then the plant shall be re- tested within 30 days after remedial works have been undertaken. If the geometric mean outlet odour concentrations consistently exceed the design value (3 failures within 90 days) then TWU will install additional appropriate abatement equipment or take measures to ensure the outlet air meets the agreed emission rates (XXX ouE/m<sup>3</sup> at y.y m<sup>3</sup>/s) within 12 months. The Authority shall be given at least 7 days notice of all testing and will be supplied with the results of tests within 30 days. If the outlet odour concentrations exceed the design value in any commissioning or annual performance test, then the plant shall be repaired or rectified and re-tested with 30 days of the failed test, unless the 12 month period for installation of an additional or alternative abatement plant has been triggered.'

**33. *Odour Management During Construction***

Development shall not commence until details of measures to maintain a stable odour environment while extension of the facility (e.g. by extension of any existing odour management plan to cover the construction area) have first been submitted to, and have been approved in writing by, the Local Planning Authority, and the development shall only be carried out in accordance with the approved details.

**Reason.** In the interest of air quality.

**34. *Odour Mitigation Implementation***

No new plant shall become operational until and unless all agreed odour mitigation measures for that plant have first been put in place and are operating.

**Reason.** In the interest of air quality.

**35. *Mosquito Management Plan***

Notwithstanding any information which has been submitted as part of the application, prior to the operation of any new plant approved as part of this development, a mosquito management plan shall be submitted to, and shall be approved in writing by, the Local Planning Authority, addressing any potential mosquito nuisance arising from any part of the new plant, and the plan as approved shall be implemented as approved.

**Reason.** To protect neighbours' living conditions.

**Background Papers**

Legal advice from outside solicitors – part 2

It is exempt from publication by Paragraph 5, below, schedule 12A of the Local Government act 1972.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.