

**GREEN TRAVEL PLANS:
WARWICKSHIRE COUNTY COUNCIL PRACTICE NOTE**

SPECIMEN CLAUSES FOR A SECTION 106 PLANNING OBLIGATION

These clauses are the first step towards the development of a model form agreement and are offered only to illustrate how the requirements of the Practice Note might be translated into a legally enforceable agreement. They will need to be incorporated into a full agreement and adapted to the circumstances of the particular case and plan. In particular, these clauses may need adaptation where a development is an extension to existing premises or is intended to be occupied in phases and/or by multiple occupiers.

It is your responsibility to ensure that these clauses are a suitable for your objectives and that any agreement protects your interests. Warwickshire County Council accepts no liability for any loss, cost or other detriment arising from reliance on these clauses and it is strongly recommended that you obtain advice from a suitably experienced and qualified lawyer before entering an agreement.

It cannot be assumed that an agreement using these clauses will be acceptable to the County Council. Equally, the County Council welcomes suggestions for drafting improvements that are within the principles of the Practice Note (and any departures from it agreed in a particular case).

DEFINITIONS

- 2.8 “Auditor” means a suitably qualified and independent person or organisation nominated by the Owner and approved in writing by the County for the purpose of verifying the results of Monitoring (and for the avoidance of doubt an Auditor may with such approval be the same person or organisation as the Travel Co-ordinator)
- 2.9 “Car” means a four wheeled motor vehicle other than one powered by electricity
- 2.10 “Car Ratio” means the number of Cars used (or deemed to be used) to transport Employees between home and the Development expressed as a percentage of the number of Employees making such a journey

- 2.11 “Employee” means a person working under the control of the Owner and having a place of work in the Development
- 2.12 “Excess” means the number of Cars represented by the difference between the Car Ratio and the Target on a day when Monitoring discloses that the Car Ratio is greater than the Target
- 2.13 “Excess Period” means the period between a day on which Monitoring discloses that the Car Ratio is greater than the Target and either the next day on which Monitoring takes place or is deemed to take place or (if no further Monitoring takes place or is deemed to take place) the end of the Monitoring Period
- 2.14 “Green Travel Plan” means a combination of measures designed to achieve Modal Shift and the Target together with arrangements for their implementation monitoring review and revision
- 2.15 “Inflation Factor” means the RPIS Index published for the month preceding the date of payment divided by the RPIS Index published for the month [*month of this agreement*] where the RPIS Index means the Monthly Digest of Statistics published by Her Majesty’s Stationery Office in the following proportions:
- transport equipment materials and fuel – 35%
 - transport and communications industry average earning index – 45%
 - general index, retail price fuel and light – 20%
- 2.16 “Monitoring Period” means the period of five years beginning on the Occupation Date

- 2.17 “Modal Shift” means an increase in the proportion of persons travelling to and from the Site using more sustainable modes of transport
- 2.18 “Monitoring” means a survey of Employees using a questionnaire in a form supplied or approved by the County with the object of ascertaining the modes of transport used by Employees when travelling between home and the Development on a particular day (or any alternative method of achieving that object approved in writing by the County from time to time)
- 2.19 “Occupation Date” means that date on which the Development is first occupied
- 2.20 ‘Remedial Payment’ means a payment intended to be used by the County for the purpose of achieving Modal Shift and calculated in respect of each Excess Period as the product of:
- 2.20.1 the number of days in that Period multiplied by
 - 2.20.2 the Excess found at the start of that Period multiplied by
 - 2.20.3 £4.95 multiplied by
 - 2.20.4 the Inflation Factor
- 2.21 “the Target” is *[number]*%
- 2.22 “Travel Co-ordinator” means an individual or organisation employed (whether by way of a service contract or a contract for services) by the Owner whose responsibilities include the preparation implementation promotion monitoring and review of the Green Travel Plan

OBLIGATIONS

- 4.1 The Owner shall cause a Green Travel Plan to be prepared *[substantially in the form of the draft Green Travel Plan]**[in accordance*

with the Template Travel Plan] appended to this agreement and the Development shall not be commenced until such a Plan has been approved in writing by the County

4.2 No part of the Development shall be occupied unless:

4.2.1 A Travel Co-ordinator has been employed by the Owner and commenced his responsibilities

4.2.2 Any measures scheduled by the Green Travel Plan to be implemented before such occupation have been implemented

4.3 The Owner shall notify the name, address and telephone number of the Travel Co-ordinator (and any replacement) to the County within seven days of his designation

4.4 The Owner shall continue to employ a Travel Co-ordinator throughout the Monitoring Period

4.5 The Owner shall extend (and ensure that its employees directors officers agents and contractors extend) all reasonable co-operation required by the Travel Co-ordinator and the Auditor for the purpose of carrying out their duties

4.6 The Owner shall use all reasonable endeavours to implement the Green Travel Plan and to achieve the Target during the Monitoring Period

4.7 The Travel Co-ordinator shall carry out Monitoring within one month of the Occupation Date and within the same calendar month in the next four years

4.8 The Travel Co-ordinator may carry out Monitoring on any other date

- 4.9 Within fourteen days of carrying out Monitoring the Travel Co-ordinator shall calculate the Car Ratio disclosed by that Monitoring and the Excess (if any) and supply to the County a written statement certified by a director or the most senior executive manager of the Owner setting out the Car Ratio and any Excess and the basis on which they are calculated
- 4.10 The Travel Co-ordinator shall if requested by the County supply to it a statistical summary of the modes of transport used by Employees disclosed by any Monitoring or copies of any questionnaires completed by Employees
- 4.11 The Owner shall secure that the results of each Monitoring are verified by an Auditor within two calendar months of the Monitoring taking place by methods that accord with the reasonable requirements of the County
- 4.12 If Monitoring does not take place at the time required by this agreement it shall be deemed to have taken place on the last day of the month in which it should have been carried out and to have disclosed a Car Ratio of 100%
- 4.13 If Monitoring is not verified within the time required by this agreement it shall be deemed to have disclosed a Car Ratio of 100%
- 4.14 If an Employee fails to return a completed questionnaire given to him for the purpose of Monitoring he shall be deemed for the purpose of calculating the Car Ratio to have travelled by Car
- 4.15 If the measures taken to verify the results of Monitoring indicate the existence of an Excess which is materially different from the information in the statement certified on behalf of the Owner the Auditor shall (after carrying out such further surveys or investigations as he deems necessary) supply a recalculated Excess to the Owner

and the County and any liability for a Remedial Payment shall be determined on the basis of the recalculated Excess

- 4.16 The Owner shall pay to the County a Remedial Payment in respect of any Excess Period within 28 days of the end of that Period
- 4.17 If a Remedial Payment has been paid in respect of an Excess Period on the basis of an Excess certified by the Owner and that Excess is subsequently recalculated by an Auditor the Owner shall make an additional payment or the County shall make a repayment so as to correct any underpayment or overpayment
- 4.18 For the avoidance of doubt:
 - 4.18.1 the Owner is responsible for the costs of Monitoring and auditing and any remuneration and expenses payable to the Travel Co-ordinator and the Auditor
 - 4.18.2 the obligations in the preceding clauses of this section shall cease to have effect at the end of the Monitoring Period save in respect of any antecedent breach or any subsequent liability for a Remedial Payment in respect of an Excess Period during the Monitoring Period

INTEREST

If the Owner does not pay a sum payable to the County by the time it is due to be paid in accordance with this agreement the Owner shall in addition to that sum pay interest to the County calculated daily at the rate of two per cent above the base rate for the time being of HSBC plc in respect of the period between the date on which the sum was due and the date on which payment is made.