

Report of the Head of Economic Regeneration and Planning

Development Management and Control Committee – 4 December 2014

FORMER BERNARD HASTIE AND CO. SITE, MORFA ROAD, SWANSEA –

Referral of Planning Application Ref 2008/1615

Back to this Committee from the meeting on 19 June 2014

RESIDENTIAL RE-DEVELOPMENT OF SITE TOGETHER WITH NEW ACCESS ROAD, CAR PARKING, LANDSCAPING, INFRASTRUCTURE, RE-PROFILING AND ENGINEERING WORKS (OUTLINE) – AMENDMENT TO SECTION 106 AGREEMENT

Purpose:	To re-consider the Section 106 Planning Obligation Heads of Terms for the above application for the residential re-development of the site of the former Bernard Hastie and Co. Site
Policy Framework:	National and Local Planning Policies.
Reason for Decision:	Statutory responsibility of the Local Planning Authority.
Consultation:	Statutory consultations in accordance with planning regulations as set out in the planning application report contained in Appendix B
Recommendation(s):	APPROVED as set out in the report
Report Author:	David Owen
Finance Officer:	Not applicable
Legal Officer:	Not applicable

BACKGROUND

1.0 Background

- 1.1 This application was reported to the Development Management and Control Committee on 19 June 2014 following a referral from the Area 1 Development Control Committee on the 27 May 2014, with the recommendation that the application be approved, subject to conditions and for the Area Committee to authorise officers to negotiate with the applicants / developers with regard to entering into a Section 106 Legal Agreement as outlined in the recommendation.
- 1.2 The application was referred to this Committee as being of strategic importance on the basis of its relationship to the delivery of the Morfa Distributor Road. The redevelopment of this brownfield site would accord with the adopted Tawe Riverside Corridor Study (TRCS). Moreover, the proposed development would assist in the delivery of the Morfa Distributor Road which is one of the key aspirations of the TRCS, through the dedication of land to allow the construction of the MDR.

1.3 The Committee on 19 June 2014 resolved to amend the Section 106 Planning Obligation to the following Heads of Terms:

- The developer / applicant making a staged financial contribution of £480,000 together with the dedication of land (within the developer / applicant's ownership) to deliver the Morfa Distributor Road - to be constructed by the Local Authority. The dedication of land will be conditional upon the procurement by the Council of a contract for the construction of the Stage 2 works. The site access onto the proposed Distributor Road limiting all traffic movements from the proposed development to travel north until such time as the Distributor Road has been completed to provide the through link to New Cut Road.

However, the developer has not completed the Section 106 Planning Obligation as the developer contends that the abnormal development costs have escalated since June, in particular with regard to the required archaeological work, the ground investigation / remediation work and other infrastructure costs, to the extent that the scheme has now become unviable. Whilst the viability of the development is essentially a commercial decision for the developer on whether to proceed with the proposal, having regard to its intrinsic relationship with the proposed MDR this has implications for the Local Authority in delivering this improvement to the strategic highway network.

1.5 A plan showing the location of the application site is attached as Appendix A. Since the Committee on 19 June 2014 a further letter from the applicants has been received, a copy of which is attached as Appendix B. A copy of the report to the Development Management Control Committee on 19 June 2014 is also attached as Appendix C.

2.0 Policy Background

2.1 Unitary Development Plan Policy HC17 states in consideration of proposals for development, the Council will, where appropriate, enter into negotiations with developers to deliver planning obligations under Section 106 of the Town and Country Planning Act. Provisions should be fair and reasonably relate in scale and kind to the individual development.

2.2 The Council's adopted Supplementary Planning Guidance (SPG) on Planning Obligations indicates that the use of such Obligations should ensure that the key infrastructure and other enabling requirements are provided in the first instance to allow development to proceed. Moreover, it states "*It may be necessary to determine the relative priority of different forms of provision in the context of the individual circumstances and planning objectives relative to each development proposal. The element of flexibility in the process should ensure that the viability of development schemes is not prejudiced.*"

The SPG further advises that where a developer contends that the Section 106 requirements are too onerous and will potentially make the scheme unviable, they will be expected to submit a breakdown of the development costs i.e. a development appraisal. The developer has submitted a viability appraisal in consideration of the proposal in line with the Council's policy using the 3 Dragons Model. The viability appraisal has now been revised to reflect the escalated abnormal development costs.

3.0 Construction of Morfa Distributor Road

3.1 The Council's commitment and agreed funding for the delivery of the MDR was approved by Cabinet on 11 Feb. 2014. The previously agreed Section 106 Planning Obligation required a financial contribution of £480,000 together with the dedication of land (within PMG's ownership) in order to deliver the MDR - to be constructed by the Local Authority.

3.2 The Cabinet report on 11 Feb. 2014 highlighted the total estimated cost (£4.55m) for the scheme and that the scheme will be implemented in a number of stages. Stage 1 of the MDR involving the reconfiguration of the junction between New Cut Road and Morfa Road to accommodate predicted future traffic flows has been completed. The delivery of Stage 2 has been dependant on reconciling the development proposals by Hitachi Europe Ltd at Network Rail's Maliphant St Depot and the development of the Hastie's site to enable the release of land required for the Distributor Road.

3.3 The construction of Stage 2 of the MDR will provide a route from the existing park and ride access to the entrance of the Hastie's site and is integral to the development of the site in order to provide access to the residential development. The site access will therefore join the proposed Distributor Road and all traffic movements will travel north until such time as the Distributor Road has been completed to provide the through link to New Cut Road. However, failure to secure the dedication of land for this section of the MDR (within the developer / applicant's ownership) would significantly affect the ability of the Authority to deliver the strategic highway route.

4.0 Viability Appraisal

4.1 The developer has submitted a revised viability appraisal in consideration of the proposal in line with the Council's policy using the 3 Dragons Model and comparative figures are incorporated into the tables below. The following are relevant to the consideration of this appraisal:

- the scheme revenue is based on the revised layout for 92 dwellings and the revenues have been compared against comparable house prices in the area.
- the scheme Costs & Other Development Costs are similar to those in Swansea, and includes the revised exceptional development costs (£1.868m as compared to £1.4m previously reported).
- the exceptional development costs have increased from £1.4m to £1.868m, largely as a result of the required archaeological scheme of investigation (an increase from £25,000 to £250,000) additional ground contamination / remediation costs, and Welsh Water's quote for a foul sewerage pumping station and rising main and also includes the contribution towards the Morfa Distributor Road of £480,000.

	Previous	Revised
Total Scheme Revenue	£12,285,000	£12,850,000
Total scheme Costs	- £10,895,000	<u>£11,363,000</u>
Residual Value	= £ 1,390,000	£ 922,000
Land Acquisition cost (2007)	£3,120,000	£3,120,000
Residual Value	- £1,390,000	<u>£ 922,000</u>
Loss in site value	£1,730,000	£2,199,000

The submitted appraisal shows that the residual value of the site has decreased from £1,390,000 to £922,000 which would effectively be the sale price. This is significantly lower than the price the landowner acquired the site for in 2007 (i.e. £3,120,000) and shows a negative return of £2,199,000.

5.0 Appraisal

- 5.1 The Planning Obligations SPG states where a developer contends that the proposed Section 106 requirements would render scheme unviable, developers will be expected to submit a breakdown of development costs and anticipated profits on properly sourced evidence. As indicated the developer has submitted a viability appraisal for the site using an industry recognised appraisal model (Three Dragons). The information highlights the significant abnormal costs associated with the development of the site have increased from £1.4m to £1.868m, and as such has significantly reduced the ability of the developer to offer a contribution of £480,000 towards the construction of the MDR.
- 5.2 The SPG also highlights that any reduction in the requirement for Section 106 contributions is only likely to be justified where there is planning merit and/or public interest in developing the site. In this respect, the site is identified in the Morfa Road Masterplan within the Tawe Riverside Corridor Study as residential which is a key material consideration as it was adopted as policy by the Council in October 2006. The question therefore is whether, in the absence of the provision of the financial contribution towards the MDR, the development would be unacceptable in planning terms. In this respect the UDP and associated SPG clearly make provision for developments where abnormal costs would challenge the viability of a development and the applicant has provided satisfactory information to demonstrate that the site cannot bear the financial contribution of £480,000, having regard to the increased abnormal costs. The Head of Transportation has indicated that there is currently sufficient funding from the Regional Transport Plan Grant in order to deliver the MDR Stage 2 works, however, without the dedication of the land from the developer, this would significantly affect the ability of the Authority to deliver the scheme. Therefore whilst the Authority would not receive the financial contribution of £480,000 towards the MDR this should be balanced against potential costs associated with pursuing a Compulsory Purchase Order required to secure the required land. It is considered the development of the site is an aspiration of the TRCS and, therefore, in the balancing exercise, it is considered the proposal would constitute a sustainable development that would be in accordance with development plan policies.

6.0 Conclusion

- 6.1 The applicant has demonstrated through the revised viability assessment that the development would not be commercially viable if the previously agreed Section 106 Planning Obligations were required in full (indeed there was already a predicted loss of £1.7m). Notwithstanding this, the land dedication for the road will be secured on the completion of the Section 106 Planning Obligation which is an essential requirement in order to deliver a key section of the MDR. It is therefore recommended that the Head of Terms of the Section 106 Planning Obligation are amended accordingly.

7.0 RECOMMENDATION:

- 7.1 It is recommended that the application be **APPROVED**, subject to the following conditions and to Committee authorising officers to negotiate with the applicants / developers the applicant entering into a Section 106 Legal Agreement with regard to:

Revised Section 106 Planning Obligation Heads of Terms

- That the financial contribution of £480,000 towards the delivery of the Morfa Distributor Road (MDR) be foregone.
- The dedication of the land (within the developers / applicant's ownership) in order to allow the Local Authority to construct the MDR to take place immediately upon the completion of the Section 106 Planning Obligation.
- The site access onto the proposed Distributor Road limiting all traffic movements from the proposed development to travel north until such time as the Distributor Road has been completed to provide the through link to New Cut Road.
- A sum of £250,000 be made available by the developer / applicant for the intrusive archaeological investigation on the site in line with agreed tenders and scope to be agreed by the Local Authority.
- That any savings arising from that intrusive archaeological investigation be made available to the Council for the Morfa Distributor Road and that the applicants be required to submit to the council tenders for the archaeological works and subsequent payments for this work in order that any balance is readily identified.

CONDITIONS

- 1 Approval of the details of the appearance, scale and the landscaping of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.
Reason: To ensure that the development is carried out in an orderly and satisfactory manner.
- 2 Detailed plans and drawings with respect to the matters reserved in condition (01) shall be submitted for approval by the Local Planning Authority not later than the expiration of three years from the date of this permission.
Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that the development is determined within a reasonable period.

- 3 The development to which this permission relates shall be begun either before the expiration of 5 years from the date of this outline permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that development is begun within a reasonable period.
- 4 The development shall be completed in accordance with the approved plans prior to any part of the development being brought into beneficial use, unless otherwise agreed by the Local Planning Authority.
Reason: To ensure that the development is completed in accordance with the plans approved by the Council, and so avoid any detriment to amenity or public safety by works remaining uncompleted.
- 5 Before any part of the development hereby approved is occupied the means of enclosing the boundaries of the site and individual curtilages of all dwellings shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of visual amenity and general amenity.
- 6 Before the development hereby permitted is commenced, details of the levels of the buildings, roads and footpaths in relation to the adjoining land and highways together with any changes proposed in the levels of the site shall be submitted to and agreed by the Local Planning Authority in writing.
Reason: To ensure that the work is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access, and the amenities of adjoining occupiers.
- 7 Samples of all external finishes together with an external finishes schedule illustrating the disposition of finishes within the layout shall be submitted to and approved by the Local Planning Authority before the development is commenced. The scheme shall be implemented in accordance with the approved details.
Reason: In the interests of visual amenity.
- 8 Prior to the commencement of the development of the adoptable roads, full road engineering details of the internal road layout shall be submitted to and approved by the Local Planning Authority and shall be constructed in accordance with the approved details.
Reason: To allow the proper consideration of all details in the interests of highway safety.
- 9 No part of the development shall be occupied until the proposed adoptable roads linking to the existing adopted road network have been constructed to base course level and provided with street lighting in accordance with details to be submitted to and approved by the Local Planning Authority.
Reason: To ensure that the development is provided with satisfactory vehicular access in the interests of public safety.

- 10 No part of the development hereby approved shall be occupied until a Travel Plan for the development has been submitted to and approved by the Local Planning Authority. The Travel Plan shall be implemented in accordance with the approved scheme.
Reason: In the interests of sustainability and to reduce reliance on the car as a mode of transport.
- 11 Unless otherwise agreed by the Local Planning Authority, prior to the commencement of development a scheme shall be submitted to and approved by the Local Planning Authority to provide that all habitable rooms achieve an internal noise level of 37dBA Leq 16 hour during the day and 35 dBA Leq 8 hour at night. The submitted scheme shall ensure that habitable rooms subject to sound insulation measures shall be provided with acoustically treated active ventilation units. No habitable room shall be occupied until the approved sound insulation and ventilation measures have been installed in that room.
Reason: To ensure acceptable living conditions for future residents having regard to the existing and proposed noise environment experienced at the site.
- 12 Unless otherwise agreed by the Local Planning Authority, no development (which shall exclude site clearance, demolition, ground investigation and site preparation works) approved by this planning permission shall be commenced until a phased scheme, comprising three progressively more detailed reports, detailing measures to be undertaken in order to investigate the presence of land contamination, including relevant gas and vapour related risks, at the proposed site shall be submitted to and approved by the Local Planning Authority. The Phase 1 desktop study should include a Conceptual Method for the initial site investigation which must include a risk assessment relating to the potential affects on groundwater and surface water as a result of the works. Where the site investigation indicates the presence of such contamination, including the presence of relevant gas/vapour, a Method Statement shall indicate the extent of the contamination and the measures to be undertaken in order to remediate the contamination identified, including measures to minimise the impact on ground and surface waters. The reports shall be submitted individually. The provision of the Phase 2 (Method Statement) detailed report and Phase 3 remediation strategy/validation report will be required only where the contents of the previous [Phase 1 desk top study] report indicates to the Local Planning Authority that the next phase of investigation/ remediation is required.
Reason: To ensure that the site contamination is satisfactorily remediated in the interests of public safety and amenity.
- 13 Prior to the occupation of any residential unit, 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: To demonstrate that the remediation criteria relating to controlled waters have been met and (if necessary) to secure longer-term monitoring of groundwater quality. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

- 14 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: To ensure that longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

- 15 If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To protect the water environment. Given the size / complexity and history of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

- 16 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 protect the water environment.

- 17 A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented in accordance with the approved scheme.

Reason: In the interests of the ecology and amenity of the area.

- 18 No development shall take place until a waste management plan for the control, management, storage and disposal of excavated material has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure sustainability principles are adopted during the development.

- 19 The development hereby approved shall not be occupied until a scheme for the comprehensive and integrated foul water, surface water and land drainage for the site has been implemented in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment or the existing public sewerage system.

- 20 No infiltration of surface water drainage into the ground is permitted other than with the written approval 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 controlled waters.
Reason: To prevent pollution of the water environment.
- 21 No built development approved by this permission shall take place within the area defined as zone C1 / C2 on the Welsh Assembly Government's development advice map (DAM), referred to under TAN15: Development and Flood Risk (July 2004). Development shall only take place on those areas currently above 16.5 m AOD.
Reason: To reduce the risk of flooding to the proposed development and future occupants.
- 22 No development approved by this permission shall be commenced until a Construction Method Statement detailing all necessary pollution prevention measures for the construction phase of the development is submitted to and approved in writing by the Local Planning Authority.
Reason: In order to prevent pollution.
- 23 No development shall take place within the area indicated (i.e. the area of archaeological interest) until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
Reason: To safeguard this area of archaeological interest.
- 24 The proposed development shall facilitate the provision of a pedestrian link along the southern boundary of the site linking the existing path along the River Tawe to Morfa Road.
Reason: In order to facilitate pedestrian access to the walkway along the River Tawe.