

Report of the Head of Planning & City Regeneration

Planning Committee – 2 April 2019

Planning Application Refs: 2019/0577/106 and 2018/0358/S73

Residential Development for the Construction of 41 Units, including Access and all other Associated Works Heol Pentre Bach, Gorseinon, Swansea, SA4 4ZA

1.0 Purpose of the Report

- 1.1 To seek authorisation to modify the S106 agreement (planning obligation) for the development at Heol Pentre Bach.
- 1.2 The request has been submitted under S106A(1)(a) of the Town and Country Planning Act 1990 (as amended).

2.0 Background

- 2.1 Permission for a residential development on the site was originally approved on 30th September 2016 subject to conditions and a S106 agreement (2015/2506). This permission was subsequently implemented.
- 2.2 A subsequent application sought a re-design of the site as a result of drainage constraints but keeping the same number of units (2017/0775). This permission was again approved subject to conditions and S106 agreement.
- 2.3 A subsequent S73 application was submitted to include an electrical substation and amend the parking arrangements in the southern end of the development (2018/0358/S73). The application was also approved subject to conditions and a S106 agreement in May 2018. This is the development that has been progressed on site.
- 2.4 The S106 agreement has not changed in substance since the original permission was granted.
- 2.5 The Planning Obligations associated with this development include:
 - Provision of 12 affordable housing units on site to DQR (29% of the development – of which 60% intermediate units at 70% of ACG or OMV (whichever is lower at the point of transfer) and 40% social rented at 42% ACG or OMV (whichever is lower at the point of transfer) – all to be disposed of via a RSL)
 - £52,440 contribution towards Education (£31,696 would be required towards Penyrheol Comprehensive School and £20,744 towards YGG Pontybrenin)
 - £750 contribution to replace two existing stiles with kissing gates
- 2.6 The planning obligations towards Education and PROW improvements have been received by the Council. The Affordable Housing units have been transferred to Pobl Group.

- 2.7 In terms of the Affordable Housing, the Officer Report noted the split of tenure between Social Rented and Intermediate (40% and 60% respectively). Following the transfer to Pobl Group, an issue has arisen in that the intermediate tenure properties are restricted to intermediate *rental* properties in the definitions contained within the S106 agreement. This would not allow Pobl to provide Low Cost Home Ownership (a Welsh Government approved intermediate product) on site. This appears to have been an error when the S106 agreement was drafted and Pobl are seeking to vary the S106 agreement to refer to “intermediate tenure” rather than “intermediate *rented* tenure”.
- 2.8 Pobl has submitted an application to vary the terms of the S106 Agreement. As the original application was reported to Planning Committee, any variation of the S106 Agreement also needs to be referred to Planning Committee.
- 2.9 As the S106 agreement was signed in May 2018, the applicant can only vary the terms of the S106 agreement in agreement with the Council.
- 2.10 A copy of the 2018 Officer Report to Planning Committee is attached as Appendix A.

3.0 Main Issues

- 3.1 On an application for modification by agreement pursuant to section 106A(1)(a) of the 1990 Act the Courts have considered the matters that a Council must have regard to (see *R(Bachelor Enterprises Ltd) v North Dorset District Council* [2003] EWHC 3006 and in *R(Millgate Development Ltd) v Wokingham DC* [2011] EWCA Civ 1062).

The Council has to ask itself:

- a. Does the existing planning obligation still serve a useful planning purpose?;
 - b. If it does and modification is proposed, then the question is whether that planning purpose could be equally served by the proposed modification?
 - c. If it would, then the Council should agree to the modification;
 - d. If it would not then the Council should refuse the application to modify.
- 3.2 Any decision by the Council to agree to a modification of the S106 agreement could be the subject of a challenge via Judicial Review however the decision cannot be appealed.
- 3.3 Firstly, it is considered that the original obligation still serves a useful planning purpose in that the required affordable housing (12 units on site) would still be provided in the same split between intermediate and social rented housing. This would not change.
- 3.4 The requirement for Affordable Housing is clear in both local and national planning policy. Technical Advice Note 2: Affordable Housing (2006) provides practical guidance on the role of the planning system in delivering such housing. The guidance defines affordable housing for the purposes of the TAN and provides advice to local planning authorities on how to determine affordability.
- 3.5 Secondly, the question is whether that planning purpose could be equally served by the proposed modification. The definition of ‘affordable housing’ for the purpose of the land use planning system as described in the Technical Advice Note (Para 5.1) is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers. However, it is recognised that some schemes may provide for staircasing to full ownership and where this is the case there must be secure arrangements in place to ensure the recycling of capital receipts to provide replacement affordable housing. Affordable housing includes:

- Social rented housing;
- Intermediate housing.

3.6 Social rented housing is that provided by local authorities and registered social landlords. Intermediate housing is that where prices or rents are above those of social rent but below market housing prices or rents.

3.7 As part of the first application (2015/2506), the Housing Officer commented that:

“We will require a 30% affordable housing contribution on this site. This should be split between 60% intermediate units at 70% of ACG or OMV (whichever is lower at the point of transfer) and 40% social rented at 42% ACG or OMV (whichever is lower at the point of transfer) – all to be disposed of via a RSL.” This was transposed into the Planning Obligations summary in the Officer’s Report.

3.8 This requirement was again replicated in the 2017 and 2018 applications and Planning Obligations summary contained within each report.

3.9 The term “intermediate *rented* housing” was contained within the first S106 agreement and the terminology has followed through into subsequent agreements. It was not the intention of the Housing Officer or Committee in approving the application to further restrict the intermediate offering to intermediate rented only.

3.10 The Housing Officer has again been consulted on this alteration and has advised as follows:

“I can confirm that the Housing Service agrees to the request to remove the word “rented” from within the Section 106 description of Intermediate Housing to enable Intermediate sale products to be provided on site.

Affordable Housing is defined as housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers. Affordable Housing may be broken down into two categories; Social Rented Housing and Intermediate Housing.

Intermediate Housing provided by Registered Social Landlords covers housing provision where prices or rents are above those of social rented housing but below market housing prices or rents. The Registered Social Landlords can only use a Welsh Government approved Intermediate Rent or Sale Product, therefore the Housing Service supports this variation to provide Intermediate Sale.”

3.11 The Housing Officer has not objected to the proposals, and has clarified that Pobl would be using an Intermediate sales product approved by the Welsh Government. For clarification, Low Cost Home Ownership is not the same as low cost market housing referred to in TAN 2.

3.12 The planning purpose for the S106 agreement was to secure the percentage and make up of affordable housing. The planning purpose would therefore still be served by the proposed modification as a WG approved intermediate product would still be provided.

3.13 In light of what was an apparent error when preparing the S106 agreement in the first instance, the intention of the applicant is the same as was reported to Planning Committee for each application. 60% of the 12 affordable units would still be “intermediate units” which is considered acceptable. The remainder of the Affordable Housing provision (40%) would be social rented units.

4.0 Recommendation

4.1 It is recommended that:

- i) **Members authorise the modification of the S106 agreement (planning obligation) to amend the terminology to omit the term “rented” from the definition of “intermediate housing” and update the remainder of the agreement accordingly so that the applicant can utilise other WG approved intermediate products.**

BACKGROUND PAPERS

Local Government Act 1972 (Section 100) (As Amended)

The following documents were used in the preparation of this report:
Application file, together with the files and documents referred to in the background information section of the appended Development Management committee report.

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