



Report of the Head of Planning & City Regeneration

Planning Committee – 13 April 2021

Planning Application Ref: 2021/0646/106 - Residential development of up to 100 dwellings along with associated parking, access, landscaping and open space

Former Cefn Gorwydd Colliery, Gowerton, Swansea

1.0 Purpose of the Report

- 1.1 To seek authorisation to modify the Section 106 Agreement relating to planning permission 2017/1451/OUT (for the residential development of the former Gorwydd Colliery, Gorwydd Road, Gowerton).
- 1.2 The request has been submitted under S106A(1)(a) of the Town and Country Planning Act 1990 (as amended).
- 1.3 The applicant has sought to amend the following aspects of the S106 agreement;
 - (i) remove the education contribution for the English Medium schools and change the trigger point for payment; and
 - (ii) reduce the highway contribution from £35,000 to £20,000.
 - (iii) to introduce a Mortgage in Possession clause for the social rented affordable housing.

2.0 Background / Relevant Planning History

- 2.1 Outline planning application (2017/1451/OUT) was granted on the 10th August 2018 for residential development of up to 100 dwellings along with associated parking, access, landscaping and open space.
- 2.2 Reserved Matters application (2018/1894/RES) was granted on the 09 January 2019 for the details of the access, parking, landscaping, open space and engineering works (Details of access, appearance, landscaping, layout and scale pursuant to outline planning permission 2017/1451/OUT granted 10th August 2018) and submission of details pursuant to Conditions 6 (Japanese Knotweed), 7 (drainage), 11 (on-site culverts), 12 (auto-track), 13 (site intrusive investigations for mine entries), 15 (historic environment mitigation), 27

(tree protection), 28 (boundary treatment) and 29 (wildlife habitat protection plan) of outline planning permission 2017/1451/OUT

- 2.3 Variation to the S106 application (2021/0106/106) for the “Modification of Section 106 agreement attached to planning permission 2017/1451/OUT granted 10th August 2018, to alter the tenure split of affordable housing, to remove the education contribution for the English Medium primary school only and change the trigger point for the education payment, and to reduce the Highway contribution to £20,000” was refused on the 5th March 2021 for the following reason:

“The proposed provision of intermediate housing as the only form of affordable housing provided within the development site that is secured by a S106 agreement, would fail to provide a balanced mix of housing tenures, which would be to the detriment of community regeneration and social cohesion.”

- 2.4 A copy of the 2017/1451/OUT outline committee report is attached at Appendix A

3.0 Consultation.

- 3.1 The Local Ward Member, the Placemaking and Strategic Planning Team, the Education Officer, the Housing Enabling Officer and the Head of Engineering and Transportation were all consulted on this application.

- 3.2 The Placemaking and Strategic Planning Team has commented as follows:

A viability appraisal of the proposed 99 home development for this site was recently undertaken using the Council’s Development Viability Model (DVM). Pobl and their partners have engaged with the Council in an open book manner on these matters, which enabled the costs and values associated with the project to be fully understood and for a fair and accurate assessment of the scheme’s development viability to be undertaken. Pobl submitted sufficient information to demonstrate the high level of abnormal costs involved in developing the site and have shown that, whilst a significant amount of abnormal costs were allowed for when acquiring the site and taking forward proposals, further significant abnormal costs arose following further site investigations.

The viability appraisal work illustrates that, having regard to the quantum of Section 106 (s106) contributions previously agreed on the scheme, the significant abnormal costs associated with this site do impact fundamentally on the financial viability of bringing forward the proposals. These viability matters provide a reasonable justification for the Authority to enter into discussions with the applicant in relation to modifying the s106, with the aim of delivering a development that is acceptable in planning terms.

A previous application to modify the s106 for outline application 2017/1451/OUT was refused by the Planning Committee on the 2nd March 2021. The amendments sought for that application requested the 30%

affordable housing requirement to be required by legal agreement (i.e. the element of affordable homes to be specified in the s106) be for intermediate affordable tenure. For that application, Pobl proposed delivering the following tenure split across the site: 32 open market, 34 social rent affordable homes and 33 intermediate affordable.

The Planning Committee reason for refusal of that application was that the proposed modification to the s106 “would fail to provide a balanced mix of housing tenures, which would be detriment of community regeneration and cohesion”.

Following the decision to refuse the previous application, the new application by Pobl to modify the s106 no longer seeks to alter the tenure of affordable housing from that specified in the original s106. As such, the 30% affordable housing requirement proposed to be specified in the legal agreement will align with the original s106 by specifying that this 30% requirement should be a mix of social rented and intermediate tenure homes at a 70/30 ratio.

Notwithstanding the terms of the revised application, Pobl still intend to provide the following tenure split across the site: 32 open market, 34 social rent affordable homes and 33 intermediate affordable.

In summary therefore, whilst the wording of the legal agreement in respect of affordable housing tenure is different to that specified on the previous application, ultimately the mix of homes proposed to be delivered by Pobl is unchanged. This mix is consistent with policy requirements to provide a sustainable, balanced mix of tenures on developments.

This new application to modify the s106 also proposes that the financial contributions required to be paid are reduced from those specified on the original agreement. The amended contributions are the same as those specified in the previous application to modify the S106. The applicant has pointed out that these reduced figures were not highlighted as a reason for refusal on the decision pursuant to that previous application. My understanding is that the level of proposed amended contributions are all in accordance with the latest evidence and information provided by the relevant Council departments (including Highways and Transportation, Education and Ecology), and that no objections are raised by those departments. LDP Policy IO1 ‘Supporting Infrastructure and Planning Obligations’ requires that planning obligations be paid to ensure that the effects of any proposed development are addressed, and that any obligations required must be in accordance with the relevant legislative framework (Community Infrastructure Levy Regulations 2010). Obligations can only be sought up to a limit of what the evidence demonstrates can fairly and reasonably be related to the effect of the development.

3.3 The Education Officer has commented as follows:

Education contribution amounting to £369,076 is simply unviable given the particular unforeseen abnormal circumstances outlined above and it is requested that this figure is omitted from the S106 Agreement.

The original request/response from Education to the planning application 2017/1451/OUT was £670,188. Planning revised this request to £369,076 and this was subsequently included in the signed S106. Breakdown as below

Gowerton Primary	£272,659.14	(English Medium Primary) (EM)
Gowerton Comp	NIL	(English Medium Secondary) (EM)
Y Login Fach	£48,872.86	(Welsh Medium Primary) (WM)
Y Gwyr	£47,544	(Welsh Medium Primary) (WM)

The development will have an impact on pupil numbers as below:

Gowerton ward = 15.2%	Pupil Numbers	EM	WM
Primary	31	27	4
Secondary	22	19	3
Post 16	0	3	1

The year on year projections have been reviewed in line with projected build rates. As the Gowerton Primary school is a new build, a reduced contribution would not be sufficient to create new places at this school as an extension would be required and a reduced contribution would not be sufficient to facilitate any extension to the school, were it feasible.

Gowerton Primary	capacity 2020	Sept 2020	2021	2022
NoR*	346	347	335	320
Unfilled Places		-1	11	26
%		-0.29	3.18	7.51

*NoR – Number on Roll

It must be made clear that Education requests for contributions are assessed in accordance with the Supplementary Planning Guidance and are essential to enable the provision of additional places in schools to meet increased demand arising from developments. If requests are rejected, or s106

agreements varied, then this risks Education being in a position that it is unable to accommodate catchment area pupils in their local school.

In this case, considering the viability of Education being able to utilise such a small contribution, the fact the site whilst not within the catchment area is closer to another local primary school (Waunarwydd Primary) with capacity, and the advice from Planning, Education has no option but to agree to foregoing the contribution for the English medium primary school.

However, Welsh medium places are currently and are projected to be under continued pressure.

Works to increase capacity are planned for Y Login Fach, and in progress at YG Gwyr. As such, the contributions for Welsh medium would be needed to support these projects.

In summary, and after careful consideration of the advice from Planning, Education has no option but to agree to the omission of the English medium primary contribution. However, the Welsh medium contributions are essential to support the need to create additional places to meet the demand arising from the new development, and these two requirements still stand.

3.4 The Housing Enabling Officer has commented as follows:

In response to the planning consultation 2021/0646/106 Former Cefn Gorwydd Colliery Gowerton , I can confirm Housing agree to the modification of the Section 106 agreement attached to planning permission 2017/1451/OUT granted 10th August 2018 to include a Mortgage In Possession Clause for the social rented affordable housing.

3.5 The Head of Transportation and Engineering has commented as follows:

The original planning application 2017/1451/OUT was approved in 2017 and contained the requirement for the provision of a controlled crossing across Gorwydd Road to link the site to the cycle network.

At the time that the outline application was consulted on, a controlled crossing which could be used by both pedestrians and cyclists was only achievable using a signalised Toucan type crossing.

Alternative crossing types were at that time in their trial phases, but were not included within the regulations as approved crossing types.

In 2019, the new Chapter 6 of the Traffic Signs Manual (TSRGD) was published by the Department for Transport which includes the Parallel Zebra Crossing as an approved crossing type. This can be used by both pedestrians and cyclists, is generally less intrusive than a signalised crossing, and affords priority to pedestrians and cyclists.

Design considerations on the implementation of a controlled crossing include vehicle and pedestrian site lines, vehicle flows, expected usage and the 85%ile vehicle speed in both directions.

These parameters have been checked and the location is suitable for the implementation of a parallel Zebra crossing, had this been an approved crossing type in 2017, it would likely have been selected at the time.

The Highway Authority is content that this proposal provides a safe crossing point for vulnerable users, whilst being delivered at less cost to the developer. Making use of the existing refuge islands, a new parallel Zebra Crossing can be supplied, and installed for around £20k.

3.6 The Local Ward Councillor has OBJECTED as follows:

I would again like to confirm my objections to this application. During the Planning Committee of the 2nd of March this application was refused by the Councillors with the decision to alter the houses status on this site. They were informed that this was the only reason that could be defended in any process (Judicial Review). It was evident that Pobl would alter that part of the application and submit another form. There was much discussion over the ability to go back on their agreed 106 agreement and the Council agreeing to this. The costs of the development was cited as a reason although there was much discussion over the land in question. There was also discussion over the agreement of Education to allow funding to be reduced but the Welsh Media were still in line for some funding although there has been a new building for Y.G.G and the fact that they acquired the former Infants building and the Hall within the last four years. There are pupils who have recently moved into the village at the moment asking for places in the English Medium Comprehensive School. The focusing of the pupil population is constantly moving and there seems to be no consideration for this. Councillors had much discussion over this issue.

During this process there has been many objections on this planning application which mainly focused on the ability of Pobl to reduce their contributions to the Education Department - this it seems was not considered to be a strong objection by Planning Officers and the advice was given to concentrate of the housing mix?

I am appalled that this application will now be considered and possibly approved despite the many objections. The message to the Public is - objections are not given any weight so what is the point of consultation?

The message to the Developers is agree to any 106 Agreement you will always be supported to alter this by the Authority? There may be developers looking at this decision and I am sure will be applying to do the same.

I strongly object to this planning application and again reinforce that the original 106 agreement should be upheld.

3.7 Gowerton Community Council has OBJECTED as follows:

Gowerton Community Council are strongly opposed to this application. Pobl want to Modify Section (106) reneging on their responsibility of investing £369,076.00 towards education and infrastructure to accommodate the extra children, and we feel this is extremely underhanded. The promise of the investment was made to secure the application and now Pobl are trying to get out of it due to increased costs. Surely they should have foreseen this? The village has enough pressure on its facilities and schools without adding to them by this proposed development. We sincerely hope that this application is not granted by Swansea Council.

3.8 FIFTY SIX (56) OBJECTIONS from local residents have been received which are summarised below

N.B. Only objections relating to this specific application have been summarised below and should be considered. Objections relating to the principle of development, impacts upon ecology, trees, residential amenity, traffic, parking, pollution, drainage, flooding, sewerage, old coal mine working / land stability, noise, etc. were considered at the time of the outline and reserved matters applications, and as such are not relevant to this application.

- City Council Education Department has stated there was insufficient money available when building the English Medium and Primary School, a few years ago, and hence it is already too small for the existing intake of pupils. This funding was most important for this School, as with the number of new properties already built and proposed, will most certainly put too much strain on the School. Pobl has now admitted, after completing the survey on the Cefn Gorwydd, (Old Colliery Site) with its Shallow Mine workings, Mine Shafts, Japanize Knotweed, Wetness, and Contamination, with one being Arsenic, the cost implication to meet the safety standard requirements is too high to absorb. All of these were mentioned in the objections to the original Planning Application, that was granted, by a then Planning Committee and only by the Chairman's Casting Vote. Concerns are now being raised as to what other compromises might be made regarding the ground safety requirements
- It is hoped you will reject this application, and although Welsh myself, also seems to imply Racial Discrimination.
- Yet another round of this application. For heaven's sake, how many times are we going to have to object. This application is not sustainable. It is galling that this once again is being considered without proper contribution to the community. It is clearly not a suitable site, and the parties involved are acting in bad faith. Additionally, this is hardly in line with Swansea Council's own stated policy on the environment/climate emergency.
- My objections are the same as the previous objections that I and all my neighbours have submitted when are we ever going to be listened to. The schools are already full to capacity and now that Pobl don't even wish to contribute to the local primary which as we are in Gowerton would be Gowerton

Primary. What will be next that they don't want to pay for and take off their original application.

- The contractor was fully aware of the conditions at this site which I feel are not safe to build on but was unbelievably granted permission with conditions/requirements attached. Now they want to renege on those conditions. Gowerton primary is already full to capacity and yet more children will need a place with the building of these family homes. So how the cutting of English school contribution can even be considered is beyond belief. Promise of affordable housing is also under threat. Also the crossing which was promised on Gorwydd rd is now deemed not required. I agree in lockdown the road may be less busy but in normal times this is a very busy road in an already well populated area
- Gowerton Primary were using a staff room and a community room for teaching areas and up to the start of the pandemic were having to hold classes outside so that it could manage school numbers, but funding is being given to Welsh medium school where a huge majority of pupils live outside of the village, if you count the number of buses that are on the roads of Gowerton at school start and finish times
- My child is in Llofn Fach and we have been asked to support with giving time to photocopying/reading with children, donating paint and time for the upkeep of the school.....the Council know the reason why but I will remind them of course.....support teachers budget cut, lack of finances for the upkeep of the school. My child was not able to attend swimming lessons because the teacher support budget was cut and there was not an extra person to sit on the bus as per council requirements.....you the council know all of this your just choosing to ignore it.....does anyone even read any of these? Take them into account?
- I continue to object to Pobl's modification of the 106 agreement attached to this planning application. It appears that the Education Department are short-changing local children by agreeing to the removal of the education contribution to English Medium schools. This is despite acknowledging that the housing site will likely create an additional 27 places in Primary school (as opposed to 4 Welsh medium places) and 19 additional secondary places in English Medium schools (as opposed to 3 Welsh medium places at secondary level). Originally Pobl had agreed to pay £272,659.14 to English schools. That is a staggering amount that should be going towards the children. Is there going to be a stipulation that residents of this estate ONLY attend Welsh schools? No, this would be inappropriate. Also, I would be very surprised if Waunarlwydd Primary have space for 27 children! This will have a direct and negative impact on the local children's education and wellbeing. Schools need to forward-plan and prepare for such an influx of children (staffing, resources etc) and to fund them after 50 houses have been occupied is far too late. Zebra crossings are not the safest traffic calming measure so is inadequate for the size of the development. Resident's safety also needs to be prioritised. The developer would have been well aware of the environmental and social impact and risks involved in this site and would have undertaken an assessment prior to submitting the planning

- Gowerton primary school is currently oversubscribed in my opinion! Class sizes are in excess of 30 pupils with some not even able to have a desk and chair in order to carry out their work! My child is in the school and some pupils have to do their work in the 'learning street' or sitting on a carpet which is unacceptable and not conducive to effective learning! The education departments contention that the school will be under capacity by 2022 is not credible especially given the extra developments in the village and the education departments idea that extra children from the new estate who will live in Gowerton could be sent to Waunarlwydd is unviable as they are outside that catchment and it is unfair to divide the villages children in order to save pobl money which they promised to pay on application!
- Strong objection to the removal of the S106 education contribution for the English Medium Primary school. Due to the fact that Waunarlwydd Primary School is within 690m of the proposed planned development of approx. 160 houses to be built at Pen Y Dre and Cefn Gorwydd, and has capacity within its roll, it is possible that this school could be the preferred placement for a number of parents. As such, Waunarlwydd Primary School should also benefit from a share of the education community contribution from Pobl of the original amount of £272,659.14

4.0 Main Issues

- 4.1 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.
- 4.2 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.
- 4.3 The 2017/1451/OUT Outline Planning Permission granted consent for the residential development of the site, comprising 99 dwellings. The S106 agreement included the following obligations:
- 30% of Affordable Housing (AH) on the site; comprising 70% social rent and 30% intermediate, provided at 42% ACG and DQR compliant. The AH shall comprise a 50/50 mix of 2 and 3 bedroom properties. The design and

specification of the AH should be of equivalent quality to those used in the Open Market Units. The AH shall be dispersed across the site in clusters.

- A Highways Contribution of £35,000 for the provision of a Toucan Crossing for pedestrian /cycle use (suggested location is at a point of secondary pedestrian access opposite 60/62 Gorwydd Road).
- Education Contribution of £369,076 to increase school capacity at local schools (plus indexation) - Primary: £321,532 (plus indexation), to be split 84.8/15.2 towards Gowerton Primary and YGG Y Login Fach, respectively. Secondary: £47,544 (plus indexation), towards YG Gwyr.
- Management plans for the future maintenance of the retained woodland, and proposed Open Spaces, Leaps and Laps.
- An Ecology Contribution of £20,000 towards the on-going management, maintenance and enhancement of Killay Marsh Local Nature Reserve, to mitigate the loss of the wet woodland area.
- A Management and Monitoring fee of £8481 (based on 2% of the monetary value of the obligation contained within this S106 agreement)
- The Council's legal fees of £1000 relating to the preparation of the S106 agreement

4.4 The changes to the above obligations subject to this variation application are as follows:

- (i) remove the education contribution for the English Medium schools and change the trigger point for payment; and
- (ii) reduce the highway contribution from £35,000 to £20,000.
- (iii) to introduce a Mortgage in Possession clause for the social rented affordable housing.

4.5 The developer has stated that extensive site clearance operations were required to take place on the site, in order to enable further intrusive ground investigations to take place to inform the remedial package of works required for the economic development of the site. All the trees and scrub have been cleared in accordance with the planning permission and the required planning conditions. Pobl Group have since entered into negotiations with a Contractor in order to deliver the proposed development and alongside the further intrusive investigations, it has been established that the level of abnormal costs associated with the development are far greater than was originally anticipated.

4.6 The Council's Placemaking and Strategic Planning Section has undertaken a viability appraisal of the proposed 99 home development on this planning application site using the Council's Development Viability Model (DVM).

4.7 It is considered that Pobl have submitted sufficient information to demonstrate a high level of abnormal costs involved in developing the site. It is acknowledged that there is an element of risk for developers on all sites, and it is noted that a significant amount of abnormal costs were allowed for by the developer when acquiring the site. Notwithstanding this, the information submitted in association with the viability appraisal demonstrates that further significant abnormal costs have arisen following further site investigations, including ground investigations of this former mining area.

4.8 It is considered that based on the information submitted, the appraisal confirms that having regard to the Section 106 contributions previously agreed on the scheme, the significant abnormal costs associated with this site fundamentally impact on the financial viability of bringing forward the proposals.

However, whilst it is accepted that the financial viability of the scheme is a material consideration in the determination of this application, the Local Planning Authority must nevertheless still consider the impacts of amending the requirements of the S106 agreement. In short, consideration must still be given to whether the proposed revisions to the S106 are acceptable in planning terms.

4.9 Since the previous refused application, the developer has removed the requirement to change the tenure of the affordable housing and as such, the affordable housing provision is the same as originally approved under the outline planning application. The developer has stated that *“Ordinarily Welsh Government would expect any homes defined under the s.106 agreement as social rent to be non-grant funded (i.e funded from planning gain from any open market homes). In the case of Gorwydd Rd only 30% of the homes are open market which would have meant building 34 new homes for affordable rent without grant funding and why the request was made to change the wording. There was to be no change of homes provided on site. However after this was refused at Committee, Welsh Government have agreed to fund the affordable homes with grant in the usual way”*.

4.10 Education Contribution Variation - Under the previous variation application, the applicant originally requested that all of the education contributions be removed as a result of the pressure on the viability for the development of this site. However, following consultation with the Education Officers, it was established that the Welsh medium places are currently and are projected to be under continued pressure, and that works to increase capacity are planned for the Welsh Medium schools at Y Logyn Fach, and are in progress at YG Gwyr.

As such, the financial contributions for the Welsh medium schools are still required to support these projects and to provide the Welsh medium places for the children occupying the new development.

Pobl have agreed to pay the original requested contribution for the Welsh Medium (WM) schools, namely, Y Logyn Fach - £48,872.86 and Y Gwyr - £47,544 (plus indexation).

- 4.11 The main issue to be considered is therefore whether it is acceptable to remove the requested contribution for Gowerton Primary of £272,659 (plus indexation). It should be noted that there was no requested contribution for Gowerton Comprehensive (English Medium), as there was sufficient capacity to accommodate children from the development at the time of the outline permission.
- 4.12 At the time of the 2017/1451/OUT planning application being determined, the forecasted capacity figures for Gowerton Primary showed -36 unfilled places in Jan 2017. At that time it was forecast that by 2022 there were expected to be +2 unfilled spaces by 2023. Therefore, the requested amount of £272,659 for the forecasted 27 English primary school places associated with this development was requested and agreed.
- 4.13 The current forecasted figures for Gowerton Primary have changed (mainly due to a decrease in birth rate and population changes). They are now +8 unfilled places in January 2020, increasing to +26 unfilled places by 2022.

As there would be 27 English Medium Primary pupils generated by the development, and there would be 26 available spaces in 2022 at Gowerton Primary, there would be a shortfall of only 1 space. It is considered that requesting a financial contribution for 1 primary school child is unreasonable and unnecessary. In addition, it is considered clearly unfeasible to extend the school to accommodate 1 additional child, particularly given that the school is already built to capacity given the current constraints of the Gowerton School site.

- 4.14 It is also noted that the application site is geographically closer to Waunarlyydd Primary School (although in a separate catchment), which has unfilled places which can absorb the additional 1 primary school place required.
- 4.15 It is therefore considered that the request from Pobl to remove the educational contribution for Gowerton Primary is reasonable and acceptable in planning terms, and would not unduly prejudice the future educational needs of the children associated with this development or children in the wider locality.
- 4.16 This application also seeks to vary the trigger point of the payment of the education contribution.

The agreed trigger points within the approved S106 are: to pay 50% of the contribution prior to the occupation of the 1st open market house with the remaining 50% to be paid on the occupation of the 50th open market house.

The proposed change is to pay 100% of the contribution on the occupation of the 50th dwelling (irrespective of tenure). Education Officers have confirmed that this is acceptable and have advised that this would be more useful in terms of directing the funds than the previously agreed trigger point.

- 4.17 Highway Contribution variation - The Highway Officer has commented that the reduction of the highway contribution from £35,000 to £20,000 is acceptable. It is noted that when the original outline consent was granted, a Toucan crossing was the only permitted crossing type which could be used by both pedestrians and cyclists.
- 4.18 Since this time the new Traffic Signs Manual Chapter 6 has been issued by the DfT which includes parallel Zebra Crossings as an approved crossing type. This can be used by both pedestrians and cyclists, is generally less intrusive than a signalised crossing, and affords more priority to the vulnerable user crossing the carriageway.
- 4.19 The 85%ile speeds and sight lines on Gorwydd Road are such that a parallel Zebra crossing could be installed in place of the Toucan, and be compliant with the current standards. This is seen as a reasonable compromise to retain the requirement to link the site to the National Cycle Network (NCN), and requires substantially less equipment to implement. Making use of the existing refuge islands, a new parallel Zebra Crossing can be supplied, and installed for around £20k.
- 4.20 As such, The Highway Authority is content that this proposal provides a safe crossing point for vulnerable users, whilst being delivered at less cost to the developer. As such the reduced amount of £20,000 is considered acceptable and will cover the costs of a new parallel Zebra crossing opposite 60/62 Gorwydd Road.
- 4.21 Mortgage in Possession Clause (MIP) - The applicant has requested that a Mortgagee in Possession (MIP) Clause is inserted into the S106 agreement for the affordable houses. These are clauses that allow a (commercial) lender who has repossessed the property to operate free of restrictions which are placed upon individual properties. Essentially, a MIP occurs when a borrower defaults on their repayments and the lender subsequently takes possession of, and sells, the property.
- 4.22 In the first instance, it should be noted that repossessions are a relatively rare event and that the RSL who owned the affordable houses would need to become insolvent before this would come into effect.
- 4.23 In addition, the MIP Clause would state that the MIP mechanism can only operate freely (and unencumbered by the affordable housing restriction) after a 3 month period. These clauses were previously resisted by Local Planning Authorities as there is a chance, albeit very small, that the affordable housing unit(s) could be lost permanently.
- 4.24 Since the financial crisis, and tighter lending requirements, lenders are increasingly looking at S106 agreements to ensure that there is provision to recoup their money in the event of default. RSLs have discussed this issue directly with the Welsh Government, who have indicated their support for this approach. Welsh Government have advised that they would likely intervene if an RSL faced financial difficulties, in order to avoid the loss of affordable

housing stock. This 3 month period is considered sufficient time to resolve the issue and is reasonable.

5.0 Recommendation

5.1 It is recommended that:

Consent is granted for the modification of the S106 agreement (planning obligation) to the following:

- **30% of Affordable Housing (AH) on the site; comprising 70% social rent and 30% intermediate, provided at 42% ACG and DQR compliant. The AH shall comprise a 50/50 mix of 2 and 3 bedroom properties. The design and specification of the AH should be of equivalent quality to those used in the Open Market Units. The AH shall be dispersed across the site in clusters.**
- **A Highways Contribution of £20,000 for the provision of a Zebra Crossing for pedestrian /cycle use (suggested location is at a point of secondary pedestrian access opposite 60/62 Gorwydd Road).**
- **Education Contribution of:**
 - (i) £48,872.86 (plus indexation) to increase school capacity at Y Login Fach, and**
 - (ii) £47,544 (plus indexation) to increase school capacity at Y Gwyr.**

Contribution to be paid in full on the occupation of the 50th dwelling (irrespective of tenure).

- **Management plans for the future maintenance of the retained woodland, and proposed Open Spaces, Leaps and Laps.**
- **An Ecology Contribution of £20,000 towards the on-going management, maintenance and enhancement of Killay Marsh Local Nature Reserve, to mitigate the loss of the wet woodland area.**
- **A Management and Monitoring fee of £8481 (based on 2% of the monetary value of the obligation contained within this S106 agreement).**
- **The Council's legal fees of £1000 relating to the preparation of the S106 agreement**
- **The use of a Mortgage In Possession (MIP) clause with respect to the Social Rented Affordable Housing units.**