

Report of the Head of Planning and City Regeneration

Planning Committee – 6 August 2023

Planning Application Ref: 2024/1110/106 - Land North Of Garden Village Swansea SA4 4HE

Residential-led mixed use development, to be developed in phases, including: preparatory works as necessary including earthworks/regrading of site levels; up to 750 residential units (use Class C3, including affordable homes); provision of 1 no. Primary school; circa 280m² - 370m² of flexible A1-A3 / D1 floorspace; open space including parks; natural and semi natural green space; amenity green spaces; facilities for children and young people; outdoor sports provision including playing pitches; associated services, infrastructure and engineering works including new vehicular accesses, improvement works to the existing highway network, new roads, footpaths/cycleways; landscaping works (including sustainable drainage systems), ecological mitigation works and ancillary works.

1.0 Purpose of Report

- 1.1 To seek authorisation to modify the Section 106 Agreement relating to Planning Permission 2016/1478 (for the development described above).
- 1.2 The request has been submitted under S106(A)(1)(a) of the Town & Country Planning Act 1990 (As amended).
- 1.3 The applicant has sought to amend the following aspects of the S106 agreement :
 - To amend the third schedule to enable Swansea Council to be an option to receive / transfer the affordable homes, as well as / instead of a Registered Social Landlord (RSL).

2.0 Background / Relevant Planning History

- 2.1 Outline planning permission (2016/1478) was granted on 12th December 2019 for “Hybrid planning application (with all matters reserved apart from strategic access) for residential-led mixed use development, to be developed in phases, including: preparatory works as necessary including earthworks/regrading of site levels; up to 750 residential units (use Class C3, including affordable homes); provision of 1 no. Primary school; circa 280m² - 370m² of flexible A1- A3 / D1 floorspace; open space including parks; natural and semi natural green space; amenity green spaces; facilities for children and young people; outdoor sports provision including playing pitches; associated services, infrastructure and engineering works including new vehicular accesses, improvement works to the existing highway network, new roads, footpaths/cycleways; landscaping works (including sustainable drainage systems), ecological mitigation works and ancillary works.
- 2.2 Reserved matters applications (2019/2905/RES) and (2019/2906/RES) were granted on 5th July 2021 for:

2019/2905/RES - Reserved Matters application for the details of the access, appearance, layout, scale and landscaping for the construction of 705 residential dwellings, associated public open space, hierarchy of street networks, provision of local centre, habitat retention, SUDS attenuation areas and other associated works, pursuant to outline planning permission 2016/1478 granted 12th December 2019 (excluding the site of the school). Submission of details pursuant to Conditions 8 (Design & Access Statement), 9 (Intrusive Site Investigation for mine entries and shallow coal workings), 10 (Reports for the findings and treatment of the Intrusive Site Investigation for mine entries _ shallow coal workings), 15 (Surface Water Strategy), 17 (tree protection), 18 (Arboriculture Impact Assessment), 19 (Tree protection fencing), 25 (Air Quality Assessment), 34 (vehicular restriction / bus gate), 47 (loading and unloading for the A1-A3/ D1 units) and 49 (cycle parking for the A1-A3/D1 units) of planning permission 2016/1478 granted 12th December 2019.

2019/2906/RES - Reserved Matters application for the details of landscaping for the whole site (excluding the site of the school) and ecological migratory planting along the access road pursuant to outline planning permission 2016/1478 granted 12th December 2019. Submission of details pursuant to Conditions 40 (Ancient Woodland Mitigation Strategy), 41 (Dormouse Mitigation Strategy), 42 (Wildlife Protection Plan), 43 (Lemp) of planning permission 2016/1478 granted 12th December 2019.

- 2.3 The following applications have also been approved:

2020/0006/NMA - Non- Material Amendment to Planning Permission 2016/1478 granted 12th December 2019 to allow the variation of wording to condition 9. Approved – 03/01/20.

2020/2455/NMA - Non Material Amendment to Planning Permission 2016/1478 granted 12th December 2019 to vary the wording of condition 47 from 'submission of the servicing and management plan with the reserved matters application' to 'submission of the servicing and management plan prior to beneficial occupation' in relation to the facilities

for loading / unloading and service management plan (including hours of operation for deliveries) of the A1-A3/D1 units and the school. Approved 15/12/20.

2021/0295/NMA - Non Material Amendment to Planning Permission 2016/1478/FUL granted 12th December 2019 to amend the wording of condition 5 to amend the site location plan. Approved 02/02/21.

2021/1157/NMA - Non- Material Amendment to Planning Permission 2016/1478 granted 12th December 2019 to amend the wording of conditions 9, 10 and 32. Approved 27/05/21

2021/1677/NMA - Non-Material Amendment to Planning Permission 2016/1478 granted 12th December 2019 to vary the wording on condition 35 (public art) to alter the trigger point for the submission of the required details. Approved 22/06/21.

2021/1769/DOC - Discharge of condition 44 (Lighting Design Strategy for Biodiversity) of Outline planning permission 2016/1478 granted 12th December 2019. Approved 12/08/21

2021/2021/DOC - Discharge of conditions: 20 (Land contamination), 26 (Japanese Knotweed Remediation Strategy) of Planning Permission 2016/1478 granted 12/12/2019. Approved 31/08/23.

2021/2181/DOC - Discharge of conditions 1 (Phasing Plan), 28 (Construction Method Statement), 45 (Construction Environmental Management Plan) and 46 (Site Waste Management Plan) of planning permission 2016/1478 granted 12th December 2019. Approved 16/08/23.

2021/3041/DOC - Discharge of condition 13 (surface water removal strategy) of planning permission 2016/1478 granted 12th December 2019. Approved 06/10/23. (Partially Approved for Phase 1 – first 89 dwellings)

2022/1908/DOC - Discharge of conditions 11 (point of connection on the public sewerage system) and 12 (scheme for the disposal of foul sewerage) of planning permission 2016/1478 approved 12th December 2019. Approved 07/11/22.

2022/1932/NMA - Non Material Amendment to planning permission 2019/2905/RES granted 5th July 2021 to vary condition 1 (plans) to amend the surface water outfall route in relation to attenuation basin 1. Approved 28/09/22.

2022/2202/DOC - Discharge of condition 31 (Travel Plan) of planning permission 2016/1478 granted 12th December 2019. Approved 16/11/22.

2022/2259/NMA - Non Material Amendment to planning permission 2016/1478 granted 12th December 2019 to vary the wording of condition 36 to read: "Within 3 months of the commencement of works relating to the phase of development to which the Pen Y Frode farmstead relates, a record of the remains of Pen Y Frode farmstead shall be submitted to the Local Planning Authority. The recording levels shall be in accordance with Historic England: Understanding Historic Buildings A Guide to Good Recording Practices 2016. Reason: To record an undesignated heritage asset which would be destroyed by the development". Approved 04/10/22.

2022/2261/DOC - Discharge of condition 27 (programme of archaeological work) of planning permission 2016/1478 approved 12th December 2019. Approved 27/10/22.

2022/2313/NMA - Non Material Amendment to planning permission 2016/1478 granted 12th December 2019 to vary the wording of condition 29 (Street management and maintenance. Approved 09/12/22.

2023/0172/NMA - Non Material Amendment to planning permission 2019/2905/RES granted 5th July 2021 to the southern access layout, and minor amendments to road alignment and plot location. Approved 22/02/23.

2023/1823/DOC - Discharge of condition 7 (Swansea Road access details) of planning permission 2016/1478 granted 12th December 2019. Approved 26/10/23.

2023/1978/DOC - Discharge of condition 14 (strategic surface water drainage strategy) of planning permission 2016/1478 granted 12th December 2019. Approved 08/05/24.

2023/2692/ENQ – ELECTRICITY ENQUIRY for installation of a sub station under PD rights. No Objection. 25/01/24.

2024/0812/NMA - Non Material Amendment to Reserved Matters application 2019/2905/RES and 2019/2906/RES granted 5th July 2021 to amend the affordable housing locations. Approved 24/06/24.

2.4 Current Applications pending consideration are as follows:

2022/2257/NMA – Non Material Amendment to planning permission 2016/1478 granted on 12th December 2019 to amend the proposed highway drain.

2022/2201/DOC - Discharge of conditions 3 (surface materials), 4 (sample panel) and 6 (external meter boxes) of planning permission 2019/2905/RES granted 5th July 2021.

2022/2262/DOC - Discharge of condition 39 (street lighting) of planning permission 2016/1478 approved 12th December 2019.

2023/0715/DOC - Discharge of condition 13 (surface water removal strategy) of planning permission 2016/1478 approved 12th December 2019. (for remaining 616 dwellings in phases 1B, 2, 3A, 3B, 4A, 5 and 6)

2023/2318/DOC - Discharge of conditions 29 (future management and maintenance of the proposed streets) and 36 (record of the remains of Pen Y Frode farmstead) of planning permission 2016/1478 approved 12th December 2019.

2.5 A copy of the 2016/1478 outline committee report is attached at Appendix A.

2.6 The development has commenced on site and is at an early stage with the groundworks being undertaken.

3.0 Consultations

3.1 The Local Ward Member, the Housing Enabling Officer and the Legal Officer were all consulted on this application.

3.2 The Housing Enabling Officer has commented as follows:

I can confirm that Housing support the application to modify the Section 106 Agreement attached to planning permission 2016/1478 granted 12th December 2019 to enable the Council to be an option to receive/transfer the affordable homes to, as well as/instead of an Registered Social Landlord.

3.3 LLwchwr Town Council has commented as follows:

It was resolved that there would be no objection - the Council welcomed the application and support it.

3.4 The Legal Officer has commented as follows:

I do not have any comments.

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] EWCH 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 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 2016/1478 Outline Permission granted consent for the development of the site with a residential-led mixed use development, to be developed in phases, including: preparatory works as necessary including earthworks/regrading of site levels; up to 750 residential units (use Class C3, including affordable homes); provision of 1 no. Primary school; circa 280m² - 370m² of flexible A1-A3 / D1 floorspace; open space including parks; natural and semi natural green space; amenity green spaces; facilities for children and young people; outdoor sports provision including playing pitches; associated services, infrastructure and engineering works including new vehicular accesses, improvement works to the existing highway network, new roads, footpaths/cycleways; landscaping works

(including sustainable drainage systems), ecological mitigation works and ancillary works.

4.4 The S106 agreement included the following obligations :

- Affordable Housing:
20% Affordable housing (AH) on the site; comprising 50% social rent (at 42% ACG) and 50% intermediate (at 70% ACG) and DQR compliant. The AH shall comprise a mix of 2 and 3 bedroom dwellings. The design and specification of the AH shall be of an equivalent quality to those used in the Open Market Units. The AH shall be dispersed across the site in clusters and 20% shall be delivered within each phase of the development.
- Local Highway Improvements Works:
 - J47 (M4) – contribution to the installation of the MOVA to be made on the occupation of the first dwelling. (£100,000).
 - A484 / B4560 Swansea interchange (Day's Roundabout) – existing roundabout enlarged, wider flare lanes and the two western approaches increased from two lanes to three lanes each. The access from Day's (eastern approach) increased from one lane to two lanes. Payment to be triggered on the occupation of the 100th residential unit (£334,688).
 - A4240 / Hospital Road Interchange (Gorseinon Rd / Hospital Road) – the existing 2 mini roundabouts will become one small roundabout with access to 3M (UK) becoming a priority junction. Payment to be triggered on the occupation of the 50th residential unit (£134,297).
 - B4560 / Hospital Road Interchange (Swansea Road / Hospital Road) – the signalisation of the junction with a pedestrian phase across both Hospital Road and Swansea Road. Payment to be triggered on the occupation of the 300th residential unit (£214,453).
- New School
A payment of £5.5m to the Council for the Council to construct the 2.5 form entry school (together with the associated playing fields, external open space, and boundary treatment etc) together with delivery of the land required to build the school. A payment of £266,503 would be required prior to any works commencing on site, whilst the remaining balance of £5,233,497 would be required to be paid prior to the occupation of the 201st residential unit. The developer to construct the school drop off / pick up area and associated access road, prior to the occupation of the 301st residential unit. *(N.B The payment of £266,503 has been paid)*
- Cycle Path
Contribution of £100,000 towards the extension of the existing Kingsbridge Link cycle path across Stafford Common to Gowerton Railway station, to be paid prior to the occupation of the 351st dwelling.
- Local Enhancement Works
Scheme of enhancement works for Railway Terrace (shared surface, planting and new fencing) - £197,210 to be paid prior to the occupation of the 351st dwelling. Improvements to the existing

footpath between Clos Bryngwyn and Clos Llandyfan (widening and resurfacing) £50,000 to be paid on the prior to the occupation of the 351st dwelling.

- **Management Plans**
Unless offered for adoption by the Council (with an appropriate commuted sum agreed with the Council's Parks Dept), the Management Plans for the future maintenance of the retained woodland and ecologically sensitive areas, proposed parks, open spaces, LEAPS, NEAPS, MUGA and SUDs ponds, to be submitted prior to the commencement of the phase of works within which the relevant area is contained.
- **Bus Service**
A subsidy payment of £101,000 per year for the provision of a public bus service to go through the site for 2 years, or up to the year following the creation of a through bus route, whichever is the sooner. £202,000 to be paid (following the occupation of the 75th dwelling).
- **Council's Monitoring Fee**
A Monitoring fee of £11,340 (based on 20% of the application fee, as the 2% fee of the overall cost of the obligation would be unreasonably and prohibitively large). The fee to be paid prior to the commencement of works on site.
- **Legal Fees**
The Council's legal fees of £3,000 relating to the preparation of the S106 agreement.

4.5 The change to the above obligations subject to this variation application is:

- To amend the third schedule to enable Swansea Council to be an option to receive / transfer the affordable homes, as well as / instead of a Registered Social Landlord (RSL).

4.6 The developer has stated that the original Registered Social Landlord is no longer involved with this development, and that Persimmon have agreed with Swansea Council Housing Enabling Officer that the Council will take on the responsibility of the affordable housing dwellings. As such, the wording of the Section 106 is required to be amended to allow the Council to be an option to receive / transfer the affordable housing.

4.7 All the existing S106 obligations listed above will remain as approved.

4.8 In terms of the tests in para 4.1 above,
a) Yes – the existing planning obligation still serves a useful planning purpose; b) Yes - the planning purpose could be equally served by the proposed modification
c) Yes - the Council should agree the modification;

5.0 Recommendation

5.1 It is recommended that: **Consent is granted for the modification of the third schedule of the S106 Agreement to enable Swansea Council to be an option to receive / transfer the affordable housing as well as / instead of the registered social landlord.**

Background Papers:

Appendix A Copy of the 2016/1478 outline committee report

Contact Officer: Eilian Jones
Date of 26th July 2024
Production:

Extension No: 07929 822781
Document Land North of Garden
Name: Village