

## Report of the Head of Planning & City Regeneration

Planning Committee - 1 October 2019

### Land North of Garden Village Swansea - Planning Application 2016/1478

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 280m<sup>2</sup> - 370m<sup>2</sup> 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 Background

- 1.1 This application was reported to the Planning Committee on the 3rd April 2018 with the recommendation that planning permission be approved subject to 51 conditions and subject to the applicant entering a Section 106 Planning Agreement (S106) which included the following obligation:

New School

Either;

The provision and completion of the (ready for use) 2.5 form entry school (to include fixed furniture and equipment and electrical and mechanical fit out, including ICT infrastructure) by the developer (together with the associated playing fields, external open space and boundary treatment etc) and its delivery/conveyance to the Council, together with the construction of the school drop off / pick up area and associated access road, prior to the occupation of the 301st residential unit;

or

A payment of £9,981,415 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 the conveyance 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 £9,714,912 would be required 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.

A copy of the report to Planning Committee is attached as Appendix A

- 1.2 The Planning Committee resolved to accept the recommendation. The applicant has not yet entered into the S106 agreement and consequently the planning permission has not been granted
- 1.3 The applicant now contends that the proposed development of 750 dwellings does not generate the need for a 2.5 form entry school, and that the Council's S106 requirements insofar as they relate to educational are therefore not compliant with the Planning Obligation Circular 13/97 and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) .
- 1.4 The applicant has also requested a number of changes to the trigger points of three of the originally recommended planning conditions.

## **2.0 Main Issues**

- 2.1 The applicant has referenced Para B12 of Annex B of the Welsh Government Circular 13/97 – Planning Obligations which states “*Developer should not be expected to pay for facilities which are needed solely in order to resolve existing deficiencies not should attempts be made to extract excessive contributions to infrastructure costs from developers.*”
- 2.2 In addition, Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) state that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is :
  1. necessary to make the development acceptable in planning terms;
  2. directly related to the development; and
  3. fairly and reasonably related in scale and kind to the development
- 2.3 The applicant contends that a development of 750 houses only generates a yield of 233 pupils of primary school age, whereas a standard 2.5 form entry school would provide capacity for 525 pupils, and that as such, it is clear that the development does not itself generate the need for a 2.5 entry primary school.
- 2.4 As such, the Education contribution has been reviewed in the light of the above. It is accepted and concluded that the education obligation should be amended. It has been agreed by the Council's Education Department and the developer that a financial contribution be made, together with the provision of the land on which the school will be constructed. The Council will then be able to utilise the financial contribution to support the construction of a 2.5 form entry school on the land. The Council will seek the balance of the required funding from Welsh Government as part of the 21<sup>st</sup> Century Schools Programme. This may be subject to a statutory consultation.
- 2.5 The following calculations are based on the figures previously provided by the education department and the adopted SPG – Planning Obligations, and is

based on the provision of 750 residential units, and the capacity in the local schools which is forecast to exist in 2023.

- 2.6 The figures also include 'indexation' as the SPG figures were based on 2006/2007 figures. The indexation rates are based on the April 2019 Retail Price Index (RPI)

**Primary:** 233 pupils (minus 15 capacity in 2023) = **218 pupils**  
@ £10,372 + 4,296 indexation = **£3,197,624**

**Secondary:** 165 pupils (minus 75 capacity in 2023) = **90 pupils**  
@ £15,848 + 6,564 indexation = **£2,017,080**

**Post 16:** 30 pupils @ £17,013 + 7,047 in 2023) = **£721,800**

**Total = £5,936,504**

- 2.7 Notwithstanding the figure of £5,926,504 above, the viability work previously undertaken in respect of the proposed development assessed the developer contribution (based on the Planning Obligations SPG rates at 2006/7) of the school at £5.5 million, and as such, in order to maintain the agreed levels of affordable housing and other required S106 contributions, then it is considered that it is acceptable to require a £5.5m financial contribution towards the provision of a 2.5 form entry school on the site.

- 2.8 The revised S106 education obligation is therefore recommended as:

**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 201<sup>st</sup> residential unit. The developer to construct the school drop off / pick up area and associated access road, prior to the occupation of the 301<sup>st</sup> residential unit.**

- 2.9 With regard to the changes to the trigger points of the three conditions, the applicant has requested that the conditions be amended as described in the following paragraphs. It is considered that the changes requested are acceptable and are compliant with the six tests of the Welsh Government Circular 16/2014, namely: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects.

The changes to the three conditions are in bold;

#### Condition 1

Prior to the commencement of development on site (**other than the strategic access road from Hospital Road**), a phasing plan relating to the proposed development and the application site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include details of the phasing of the following:

- a) each and every development parcel
- b) site accesses
- c) school and associated drop off area
- d) bus route and public transport stops
- e) strategic foul and surface water features and SUDS
- f) all open spaces, community infrastructure and other publicly accessible areas.

The development shall be carried out in accordance with the approved phasing plan.

Reason: To ensure there is a clear framework for both the progression of the development and for the submission of reserved matters applications so that the development is carried out in a comprehensive, sustainable and coherent manner.

It is considered that the above change to the condition is acceptable and would meet the tests of the condition circular.

#### Condition 25

**With the exception of the works to deliver the strategic access road hereby approved**, prior to the commencement of development on site, details of the following air quality assessment shall be submitted to and approved in writing by the Local Planning Authority: the applicant shall conduct, and provide the results of an air quality assessment of the potential impact of the proposed development, within the development site and upon the surrounding local area. The assessment should pay particular attention to the 1 hour NO<sub>2</sub> objective and NO<sub>2</sub> annual mean objective within the National Air Quality Strategy and Air Quality (Wales) Regulations 2000 as amended by the Air Quality (Amendment) (Wales) Regulations 2002. In addition the assessment should also pay particular attention to the PM<sub>10</sub> objectives set in regulation (24 hour mean objective of 50µg/m<sup>3</sup> - 35 exceedances' and the annual mean objective of 40µg/m<sup>3</sup> to be achieved by the 31/4/2004 and maintained thereafter). Also, an indication of the particles (PM 2.5) Exposure Reduction objective (contained within the Air Quality strategy 2007) of 25µg/m<sup>3</sup> should be made

Reason: To provide the Local Planning Authority with information relating to the impact of the development of air quality within the site and the locality.

It is considered that the above change to the condition is acceptable and would meet the tests of the condition circular.

#### Condition 29

**With the exception of the works to deliver the strategic access road hereby approved** no development works within each phase of the development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within that

phase of development, has been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: To ensure that the development is provided with satisfactorily maintained and managed streets.

It is considered that the above changes to these conditions are acceptable and would meet the tests of the condition circular.

### **3.0 Recommendation**

- 3.1 It is recommended that the following revised S106 Heads of Terms be accepted and approved by the Planning Committee, together with the revisions to Conditions 1,25 and 29 (as set out below). For the avoidance of doubt, the other 48 planning conditions remain unchanged.

#### Revised S106 Planning Obligation

##### **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 201<sup>st</sup> residential unit. The developer to construct the school drop off / pick up area and associated access road, prior to the occupation of the 301<sup>st</sup> residential unit.

## **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 351<sup>st</sup> 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 351<sup>st</sup> 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 351<sup>st</sup> 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 75<sup>th</sup> 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.

## Revised Conditions:

### Condition 1

Prior to the commencement of development on site (other than the strategic access road from Hospital Road) , a phasing plan relating to the proposed development and the application site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include details of the phasing of the following:

- a) each and every development parcel
- b) site accesses
- c) school and associated drop off area
- d) bus route and public transport stops
- e) strategic foul and surface water features and SUDS
- f) all open spaces, community infrastructure and other publicly accessible areas.

The development shall be carried out in accordance with the approved phasing plan.

Reason: To ensure there is a clear framework for both the progression of the development and for the submission of reserved matters applications so that the development is carried out in a comprehensive, sustainable and coherent manner.

### Condition 25

With the exception of the works to deliver the strategic access road hereby approved, prior to the commencement of development on site, details of the following air quality assessment shall be submitted to and approved in writing by the Local Planning Authority : the applicant shall conduct, and provide the results of an air quality assessment of the potential impact of the proposed development, within the development site and upon the surrounding local area. The assessment should pay particular attention to the 1 hour NO<sub>2</sub> objective and NO<sub>2</sub> annual mean objective within the National Air Quality Strategy and Air Quality (Wales) Regulations 2000 as amended by the Air Quality (Amendment) (Wales) Regulations 2002. In addition the assessment should also pay particular attention to the PM<sub>10</sub> objectives set in regulation (24 hour mean objective of 50µg/m<sup>3</sup> - 35 exceedances' and the annual mean objective of 40µg/m<sup>3</sup> to be achieved by the 31/4/2004 and maintained thereafter). Also, an indication of the particles (PM 2.5) Exposure Reduction objective (contained within the Air Quality strategy 2007) of 25µg/m<sup>3</sup> should be made

Reason: To provide the Local Planning Authority with information relating to the impact of the development of air quality within the site and the locality.

### Condition 29

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until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: To ensure that the development is provided with satisfactorily maintained and managed streets.

## **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 Planning Committee report.