

## **Report of the Head of Planning & City Regeneration**

**Planning Committee – 5 May 2020**

**Planning Application Ref: 2016/1046**

**Demolition of existing buildings and construction of a residential development for 37 dwellings comprising of 30 x one bedroomed flats, 6 x two bedroomed flats and one detached bungalow with associated access and landscaping**

**Former TA Centre, Park Road, Gorseinon**

### **1.0 Purpose of the Report**

1.1 To seek authorisation to modify the planning obligation made pursuant to S106 of the Town and Country Planning Act 1990 (as amended) for the development at the former TA Centre, Park Road, Gorseinon, Swansea SA4 4UR

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 An application for the residential development of the former TA Centre was submitted in May 2016, prior to the adoption of the Local Development Plan (Ref: 2016/1046). At the time of the submission, the Adopted Unitary Development Plan was time expired, but was still the development plan for S38(6) purposes. The application as reported to Planning Committee in November 2016 and the decision was issued in February 2017 subject to a S106 Agreement.

2.2 The development has been completed and is occupied.

2.3 The applicant (Coastal Housing Group) has submitted an application to modify the S106 Agreement to include a mortgage in possession clause on the social rented units only. As the original application was reported to Planning Committee, any variation of the legal Agreement also needs to be referred to Planning Committee.

2.4 In terms of the Affordable Housing, the Officer Report noted that whilst the application is for 100% affordable housing, in order to ensure the scheme is brought forward as affordable housing, a Section 106 agreement would be necessary to ensure a minimum of 30% affordable housing (in line with Council policy at the time), is retained in the development at all times.

2.5 The applicant has sought the inclusion of a Mortgagee in Possession Clause on the social rented units as this provides RSL's with greater options to finance developments.

2.6 As the Section 106 was signed in February 2017, the applicant can only vary the terms of the S106 in agreement with the Council.

2.7 A copy of the Officer Report to Planning Committee on the 1<sup>st</sup> November 2016 is attached (Appendix A).

### **3.0 Consultation**

3.1 The Housing Officer and Local Ward Councillor were consulted on the application.

3.2 The Council's Housing Officer has commented as follows:

*"I can confirm that Housing agree to the amendment to the Section 106 agreement of planning permission 2016/1046 granted 1st November 2016 to include the Mortgagee in Possession (MIP) clause on social rented units only".*

3.3 No other comments were received at the time of writing.

### **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 Firstly, it is considered that the original obligation still serves a useful planning purpose in that the affordable housing would still be provided and would not change as a result of this application.

4.4 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.

4.5 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.

4.6 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.

4.7 The Housing Officer has not objected to the proposals.

4.8 The planning purpose for the S106 agreement was to secure the percentage of affordable housing. The planning purpose would therefore still be served by the proposed modification.

4.9 The applicant has requested that a Mortgagee in Possession (MIP) Clause is inserted into the document for the Social Rented units. 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.

4.10 This MIP Clause would only apply to Social Rented units which would be owned by the Registered Social Landlord (Coastal Housing Group). In the first instance, it should be noted that repossessions are a relatively rare event and the RSL would need to become insolvent before this would come into effect. It should also be noted that these clauses are now regularly included in S106 agreements.

4.11 In addition, the MIP Clause would state that the MIP 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.

4.12 However, 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. RSL's have discussed this issue directly with the

Welsh Government and they have indicated support for this approach and advised that they are likely to step in in such a situation if an RSL got into difficulties 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:

**i) Members authorise the modification of the S106 agreement (planning obligation) to provide a MIP clause for Social Rented units only.**

## **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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**Date of Production:** 23<sup>rd</sup> April 2020.

**Document Name:** TA Centre Report