

SECTION A – MATTERS FOR DECISION

Planning Applications Recommended For Approval

<u>APPLICATION NO:</u> P2014/0739	<u>DATE:</u> 31/07/2014
PROPOSAL:	Application under S106A of the Town and Country Planning Act 1990 (As Amended) to vary the legal agreement associated with Planning Permission P2005/0393 (Approved on the 08/02/08)
LOCATION:	Former Llandarcy Oil Refinery, Llandarcy, Neath
APPLICANT:	BP & Department Of Economy & Transport
TYPE:	Outline
WARD:	Coedffranc West

Planning History:

P2005/0393- Outline application for an urban village comprising approx. 4,000 dwellings, 41,200sq m of B1 Business Uses; up to 3,800 sq m of retail (gross) and 8,000 sq m of other commercial, education, community facilities, highways, drainage services, infrastructure, car parking and landscaping. – Approved, subject to a s106 on the 8th Feb 2008.

P2011/0880- 302 residential dwellings and associated infrastructure and landscaping (Reserved matters following outline planning permission granted on the 8/2/08)- Approved, subject to a S106 – 30/05/12

P2014/0913- Reserved matters for 79 dwellings plus 5 retail units (Class A1) plus associated infrastructure, public open space and landscaping including details pursuant to the discharge of conditions 10 (Town Code Addendum for phase 2 only) 40 & 41 (Mean of enclosure temporary/permanent), 42 (Cycle/Footpaths), 49 (Retaining structures), 50 (Drainage), 54 (Lighting), 61 (detailed road/footway/cycleway design), 75 (Highway Retaining Structures), 77 (Noise Assessment), 87 (Phase landscaping) & 92 (Phase 1 habitat survey) of outline planning permission P2005/0393 (Approved on the 08/02/08). – Undetermined at this time.

Publicity and Responses if applicable

The application was advertised in the press and on site.

In addition the Planning Department has met with the relevant internal consultees to discuss the principles proposed by the suggested changes to the

clauses within the S106 provided. A consultation in writing has also been undertaken. Whilst discussions have been supportive of the proposed changes we have not yet received any written responses.

Background information:

As members will be aware outline planning permission was granted under planning application reference P2005/0393 in August 2008, subject to conditions and a S106 agreement, for the development of an Urban Village comprising approx. 4,000 dwellings; 41,200sq.m of business use; up to 3,00sq.m of retail (gross) and 8,000sq.m of other commercial, education, community facilities, highways, drainage, services, infrastructure, car parking and landscaping.

The S106 agreement covered a wide range of topics, including remediation obligations, highways and transport improvements and infrastructure, the provision of on site education provision, provision of affordable housing and older persons accommodation, on site health facilities, open space sports and playing fields provision, provision of a community building, and controls and procedures in relation to urban design and habitat protection.

This agreement was signed in February 2008, and is legally binding over the lifetime of the development of this new urban village. It is a complex and wide ranging agreement, that is meant to secure the majority of the planning gain and community facilities on the site, providing key triggers for the delivery of strategic infrastructure in line with the progress of residential development on the site.

Since this agreement was signed in 2008, the progress of the initial phases of development were delayed due to a number of external factors, including the wider economic downturn faced by the area, and the country as a whole. As such the first phase of residential development, subject to this outline planning permission was not commenced until 4 years later in 2012.

Ongoing discussions have taken place with the site owners and relevant consultees to ensure that the site continues to develop in a form that maintains the vision for a sustainable urban village model, and that all of the requirements of the existing S106 are maintained, but all parties are aware that these need to be amended to reflect current needs and changes to proposed development phasing, and to provide more of a review structure going forward over the lifetime of this development.

Both parties have discussed the experiences from the first phase of the scheme, in terms of development impact and financial performance. An assessment of the enabling works that have been required to deliver this first phase suggests that some of the obligations required re-examination in order to deliver and support additional phases of development in a timely manner.

The main purpose of this report is to assess the robustness of the legal agreement in supporting further residential development in the north of the site, where the initial phase of residential development has commenced, and its ability to allow for the commencement of a second front of development in the southern area. The acceleration of development within the Southern area will not only increase the delivery rate of new homes at Coed Darcy, (as required under the emerging LDP) but will also increase income to facilitate the delivery of key infrastructure and community requirements.

The following section sets out the key requirements to be secured for this site in-addition to the recommended changes to the existing S106 requirements. It should be noted that up to the signing of any new S106 agreement, all consultees will continue to have an input into these changes.

Principles and Suggested Heads of Terms.

Southern Access road and strategic highways link. - *The Southern Access Road , Southern Highway Link and associated matters (Schedule 3, Part 1, 1.6)*

The southern access road (SAR) is the strategic highway link (SHL) to the south of the site that links the development with the Amazon link road, that runs parallel with Fabian way. This road is a key infrastructure requirement to allow further development on the site, as it ensures a public transport link to Fabian Way, and facilitates a through route between Junction 43 of the M4 to Fabian Way for public transport, and the general public.

The main changes concern a revision to the timing of the delivery of this Southern Access Road and the strategic highways link connecting the northern and southern parts of the site. Members may be aware that planning permission for the SAR was recently renewed, and that an application to discharge the pre-commencement conditions has been submitted. At this time the applicant is also in discussion with the Authority on the adoption agreements for these works.

The current legal agreement requires the SAR to be delivered before the occupation of more than 300 homes and the proposal is to allow this figure to increase, and to amend the timing of the SAR and strategic highway link . This will allow the development of the second phase of development to proceed (as referred to above) and let the authority consider revisions to the next phases of the development, in terms of their location and the timing of their delivery.

It will also enable the developers to open up a second front door in terms of the Southern area, the delivery of which is prevented without the SAR. Allowing the development of Coed Darcy on two fronts will enable for an increase in the number of house builders on the site, and a consequent increase in the delivery of residential units for occupation. Such delivery rates are also important to demonstrate that the Councils house building trajectory as defined within the emerging LDP is deliverable.

The need to make these adjustments provides an opportunity to review and update other topic areas within the S106 agreement which reflect and respond to changes realised through the passage of time. This acknowledges that developing a site of this scale and complexity is an iterative process which needs constant monitoring and evaluation, with all parties being able to respond to changing needs and demands. These other adjustments mainly concern a re-packaging of improvements to Junction 43, thus increasing capacity on Junction 43 to allow an increase in development served off this access, prior to the delivery of the SAR and SHL.

A revised trigger for the delivery of the SAR will be inserted to require completion of the SAR before July 31st 2017 or prior to the occupation of the 501st dwelling on the site as a whole (linked to capacity of the improvements to J43 and the site access) whichever is the sooner.

The figure is over and above that requested by the applicant, allowing an additional 7 months over that requested, and is linked to both the J43 improvements that are about to take place, together with the projected build rates provided by the applicant, and set out within “Phasing & Delivery of New Housing Provision (January 2015) document, supporting the emerging Local Development Plan, but also ensuring that this strategic piece of infrastructure is delivered without any further delays.

New or adjusted clauses will also be inserted;

- **A Highways Agreement to be technically approved, signed and legally sealed before any works to the viaduct and highway can commence, these shall include the highway network from the existing junction onto Ffordd Amazon to the boundary of the southern development area of Coed Darcy (which will allow housing to be constructed). The agreement will be signed and legally sealed with a surety/guarantor agreement for the costs of completion of the development prior to occupation of any dwelling beyond that approved under planning application P2011/0880 (or the land that it covers)**
- **Evidence provided to the Local Authority that a signed contract between St Modwen and an arms length contractor clearly identifying a start and completion date for the whole of the SAR Infrastructure has to be submitted to the Local Authority, and written confirmation of compliance with this clause given by the Local Authority to St Modwen prior to 1ST January 2016 or prior to the occupation of any more than 300 dwellings on the site as a whole, whichever is the sooner.**
- **No more than 300 houses shall be occupied on the site as a whole until construction work commences on the SAR infrastructure (Not site clearance or demolition works)**
- **The SAR must be complete and available for public use before the occupation of the 501st house or 31st July 2017 whichever is the sooner.**

This amended clause will ensure that the provision of the SAR is secured, and that there is financial security in place to ensure its completion, should the developer fail to deliver in accordance with these clauses. It will also prevent occupation of any development within the southern part of the site before the SAR is completed and opened, given that the SAR will be required to provide access to these properties, and at that time will be the sole means of access. Following the opening of the SAR, a restriction will still continue whereby;

- **No more than 50 dwellings in the southern area can be occupied prior to a public transport link is provided and operational connecting the northern and southern areas of the development together.**

This will ensure that a public transport link between the two halves of the site is secured, in addition to creating the essential public transport link between

J43 and Fabian Way at an early stage of the development of the site as a whole. The amendment to the trigger point will allow for development to commence in the south prior to the creation of the link, but will limit the number of units to be occupied until its provision, thus incentivizing the developer to deliver at an early stage.

- **To limit occupation to no more than 350 homes in the southern area, or 800 on the site as a whole until such time that the strategic highway link (SHL) through the site, connecting the north and south development areas is completed and open and unrestricted for general public use.**

This will be a publicly accessible route that will allow not only public transport, but also private transport by the public, including cycle and walking provision.

These linkages are very important to the connectivity and sustainability of the site as a whole, especially as the first community facilities, such as the first primary school, are to be located in the northern part of the site, and those living in the early phase of development within the southern area will need access to this and other facilities in the north until such a time as they are replicated in the south.

Junction 43 improvement works and phasing.

Phasing of Works to Junction 43 of the M4 Motorway (Schedule 3, Part 1, 1.1 to 1.5)

The existing section 106 agreement requires a series of improvements to Junction 43 of the M4, and the road connecting the scheme to the Junction which is known as the Northern Access Road (NAR). A revision to these requirements is proposed to reflect the revised phasing of the development of the site and projected build rates in the north area of Coed Darcy.

In basic terms, the changes will re-phase the delivery of the improvement works to increase potential capacity for additional traffic from the site onto J43 earlier, and therefore allow a greater number of residential dwellings to be constructed prior to the construction of the strategic highway link connecting J43 to Fabian way, via the southern access road. I.e. a larger proportion of traffic will be directed to enter and leave the site via the north in the shorter term and the phasing of the highway improvements are to be re-profiled to accommodate this. In addition, that sufficient capacity is provided prior to the strategic highway link being upon for public use, as once this internal link is

created, the approved Traffic Impact Assessment estimates that up to 85% of traffic in the south will travel out of the site via J43, and an estimated 15% of traffic in the north will travel out of the site via the Southern Access Road. i.e. 30% of total traffic will go south via the SAR and Fabian Way, and 70% will use J43.

Public Transport Subsidy

To phase and/or amend the provision of the “Transport Subsidy Sum” (Schedule 3, Part 1, 2.1)

The S106 currently secures the phased payments of £1,430,000.

The revisions to the site phasing, and expected delivery rates, will trigger changes to the staging of the Transport Subsidy Sum which will be used to fund public transport to and from the site. The total figure, and the phasing of its payment to the Authority, will be amended to reflect the actual cost and timing for subsidising a service through the site at this time.

It is clearly evident that changing the timing of the provision of a strategic highway link through the site, and providing public transport linkages, either via tank farm road or through Llandarcy village, in the short term, will incur different costs. There are also differing costs to diverting existing bus services, and providing additional routes or services. As a result there will be a need to amend the phasing of the payments to address the actual need in line with the phasing and delivery of development on the site. In addition to amending the phasing of the payments, there may also be a consequential increase in the overall sum required. At this time these discussions are ongoing.

Affordable Housing

To adjust the provision for Affordable Housing (Schedule 3, Part 3)

Phase 1 of the development (302 residential units, approved under planning permission P2012/0880) provided no affordable housing, as the applicant (Persimmon/St Modwen) provided a viability assessment to support their application. It was made clear by the Local Planning Authority at the time that whilst this would be acceptable on the initial phase to enable work to commence on site, all future phases would be required to deliver affordable housing on a phased basis.

Affordable housing provision on such a strategically important site as Coed Darcy is an essential requirement. However it is also acknowledged that the economics associated with delivering such large scale complex sites will change over time and have changed since the original S106 agreement was signed. Nevertheless it is the policy of this Authority, as set out within the existing Unitary Development Plan, and Supplementary Planning Guidance, together with the emerging Local Development Plan, that these strategic sites deliver for all sections of the community.

At present the S106 requires;

- No reserved matters application to be submitted until the affordable housing phasing plan for that part of the site is approved.
- No less than 20% affordable housing to be provided on the site.
- The units will be offered to an approved Registered Social Landlord (RSL) at 42% open market value.
- For the first 5 years 75% of these units shall be social rented, 25% intermediate housing.
- There are limits placed on grouping, ensuring “pepper potting”.
- The affordable units have to be provided along with the open market houses within that phase at set stages.

In discussion with our Housing Strategy colleagues and with our partner RSL’s, the Authority has suggested to the applicant an alternative model to secure the total number of units across the site but at different densities throughout the site. Such provision will be based on the different character areas throughout the site in addition to the need as evidenced within the most up to date local Housing Market Assessment (2013) data that the Authority holds.

As a consequence affordable housing provision across the site will be revised to reflect a spatial zoning approach to delivery over the lifetime of the scheme. Whilst overall provision will be retained at 20% across the site as a whole, this will differ across different phases, whereby some higher density phases may well have greater ratios of affordable housing than within the lower density areas. Each phase will be required to deliver a specified level of affordable housing, in addition to tenures, types and sizes. These will be specified within phase development briefs. The amount and type of affordable housing in each area will be based on the Local Authority’s Local Housing Market Assessment, and other relevant evidence, and when read as a whole will deliver the objectives of the original section 106 which is to secure a mixed sustainable community.

Therefore the proposed changes to the S106 will provide;

- A minimum of 740 affordable housing units across the site. (equating to 20% of the remaining 3698 units)
- Ensure a mix of 70/75% (518-555 units) social rented properties, and 25/30% (185-222 units) intermediate housing. (With a review mechanism to ensure actual need is re-assessed)
- Using the Local Housing Market Assessment LHMA (2013) ensure that the mix of unit type provides for the actual need identified. (With a review mechanism to ensure actual need is re-assessed)

Therefore at this time the following criteria would be relevant;

The table below is taken from the Local Housing Market Assessment LHMA (2013) and based on the overall LDP Housing Requirement.

Housing Size	Number of Dwellings Required			Total	% of overall housing need	% of overall affordable need
	Market Housing	Affordable Housing				
Net Requirement 2010-2026		Intermediate	Social			
1 bedroom	500		900	1,400	17.2%	29%
2 bedroom	1,400		1,100	2,500	31%	35.5%
3 bedroom	2,600		1,000	3,600	44.4%	32.3%
4+ bedroom	500		100	600	7.4%	3.2%
Total	5,000		3,100	8,100	100%	100%

The unit numbers, based on these figures would require the provision of;

1 Bedroom Units 29% = 210 Units (of which 100% can be apartments)

2 Bedroom Units 35.5% = 260 Units (of which 30% can be apartments)

3 Bedroom Units 33% = 240 Units (Houses)

4+Bedroom Units 4% = 30 Units (Houses)

This approach provides clarity on the types of units required over the development as a whole, based on known data from the LHMA to ensure that the real need is addressed. A review of this “need per unit type” can be built into the revised agreement to ensure that it is reviewed every 5 years, or when a revised LHMA is adopted, whichever is the sooner.

In terms of where and when these units are to be provided, the existing S106 is very prescriptive of the number of units that can be grouped together. This is to ensure that the units are “pepper potted” amongst the open market housing. Whilst this is still an important factor, recent evidence suggests that in certain circumstances the management of these properties by an RSL is easier when the properties are grouped together.

It is this approach that the revised S106 will take, and the details of this will be subject to further discussion with the relevant consultees.

Healthcare Facilities

To amend the timing and provision of temporary and permanent Health care facilities on site (Schedule 3, Part 4)

The S106 requires the provision of a temporary health care facility prior to the occupation of the 101st dwelling, and the provision of a permanent primary health care centre on the occupation of no more than 451 dwellings.

Due to the length of time which has passed since the original S106 was signed the current Health Board requirements have altered significantly. The primary health care centre at Baglan has been constructed, and the new Briton Ferry primary health care facility has been granted planning permission, and is currently under construction. In addition, the capacity at the existing surgeries in the area has altered.

This means that the timing of the temporary health care facility will need to be reconsidered. Current discussions suggest that provision will need to be made for a dentist and a branch surgery/practice.

It may be the case that the permanent primary healthcare facility is no longer required. If this is confirmed, then it is likely that a building for a dental practice will be needed by the occupation of the 500th home, and a branch GP surgery/practice will need to be delivered before the occupation of the 1,500th home. The final details will be agreed in consultation with the health board.

Local Shop facilities (Schedule 3, Part 7 (5), 1.2)

The S106 requires the provision of a local shop facility in the village centre prior to the occupation of no more than 300 residential units on site.

This requirement is to remain, but due to the fact that the delivery and phasing is to be amended to provide a separate development phase to the south area earlier than originally expected and potentially prior to the construction of the Strategic Highway link between the northern and southern areas, a facility to serve those residents also needs to be secured. This change will ensure that the sustainability of the site is maintained, and that the holistic approach to a mixed development can be promoted.

Education Provisions (Schedule 3, Part 2 and Definitions)

At present the S106 requires the provision of three primary schools, and a secondary school on site. These are again triggered by the number of dwellings occupied on site.

It requires;

- 1st Primary School to be provided before the occupation of the 400th dwelling.
- 2nd Primary School to be provided before the occupation of the 1341st dwelling.
- 3rd Primary School to be provided before the occupation of the 2681st dwelling.
- Phase 1 Secondary school to be provided before the occupation of the 600th dwelling.
- Phase 2 Secondary school to be provided before the occupation of the 2001st dwelling.

The delivery of education at both primary and secondary levels has evolved since the section 106 agreement was signed. The developer and the Council are considering modern forms of provision which may see different types or sizes of primary school and revised triggers for the provision of secondary education for children living at Coed Darcy.

The main changes proposed are to provide two sites for primary education rather than the three originally proposed, together with the phasing of the size of these schools. At present there is uncertainty regarding the current economic viability of two specific development areas within the site as a whole. If these areas are not developed it would reduce the overall site capacity down to approximately 3000 dwellings. Whilst these sites could be developed at some point in the future, it is considered that the scale of the education provision should reflect this reduction in house numbers but should be designed to allow expansion should the need arise. This phased approach will ensure that the school provision caters for the children living on the site

only, thus ensuring sustainable delivery of education without detrimentally impacting upon the viability of existing schools within the surrounding area.

The education provision for the site is not to replace existing provision with the area, but to serve the needs of the population of this urban village as it expands. As such, taking into account current projected build rates, and phasing the current proposal is being tested and considered as follows;

- a) The first primary school will be built as one construction project but will be available for use (or fitted out) in two phases. The first phase will be ready for use by the occupation of the 400th home (as set out in the current obligations). The second phase of this school will be fitted out for use before the occupation of the 1000th home on the site as a whole.
- b) The second “southern” primary school (currently timed for the occupation of 1341 homes) will also be delivered in two phases. To reflect wider development progress, the first phase will be delivered before 500 homes are occupied in the southern area or 1500 homes are occupied on the site as a whole. The second phase will be available before 1,000 homes are occupied in the south or 2000 on the site as a whole, whichever is sooner. This school will be constructed to allow for future expansion to a three form entry school
- c) Secondary school provision on the site will be reduced from 900 to 600 spaces to reflect the reduction in house numbers on the site as a whole to 3000 units. This will be accommodated within one school which will be constructed/occupied in two phases as per the original agreement. The first phase was originally to be delivered before the occupation of 600 homes, and the second by house 2001. The trigger for the first phase is to be amended to be delivered prior to the occupation of the 1000th dwelling, but there will be no change to the second phase trigger.
- d) Provision is to be made to add a third form to the southern primary school and to extend the capacity of the secondary school (to add accommodation for an extra 300 pupils, should the number of residential units increase beyond 3000 as per the allowances within the existing planning permission). The trigger for both projects will be before the occupation of the 3001st home.

These changes have been discussed with colleagues in the Education Directorate, as such the principles have been agreed, and the detail will be subject to further discussions. The triggers for the provision of the schools and

their phasing are based on the build rates, together with the estimates on child ages and numbers within these properties. These take into consideration both statistical data used by Education for this purpose and that used by the Planning Department, in relation to its LDP evidence.

A Community Building (*Schedule 3, Part 6*)

The existing section 106 agreement requires provision of a community building in the main village centre by the occupation of the 451st home. Revisions to the way facilities are delivered and managed, means that this facility may not be required until later in the scheme. If the (above) revisions to primary education provision are accepted, the second phase of the first primary school will be used as a temporary community facility until the completion of the community building or the occupation of 1000 homes (whichever comes first).

Town Architect (*Schedule 3, Part 7*)

The original S106 requires the employment of a “Town Architect” by “CDL” (Coed Darcy Limited). Both the role of the Town Architect and how the Town Architect is financed needs to be considered going forward, in light of the fact that this role is linked to reporting directly to “CDL”.

The Town Architect provides expert advice on both the Masterplan and Town Code. Their current role includes reporting to the CDL board on Town Code compliance and to contribute towards the preparation of Development Briefs by St Modwen. The post also supports the Local Planning Authority in relation to design and layout issues on reserved matters applications, both at pre-application and application stage. This key role is significant in ensuring ongoing quality in the design process as this site goes forward, and offers a consistent voice and approach to design principles, on a site where multiple developers will be submitting schemes. It also ensures that the design detail required to deliver an exemplar development is secured independent of the normal regulatory planning function, otherwise the planning function will be overwhelmed with detail over and above that normally controlled under the planning process.

As an independent role, the Town Architect can look objectively at these issues, with a view to adding value to the development without compromising deliverability. The Town Architect has significantly raised quality within the first phase of this development, by influencing the design of the development in addition to monitoring build quality throughout the construction process. This has resulted in review meetings taking place where all parties can assess

outcomes, both good and bad, to ensure that the development improves as it progresses forward. However it is acknowledged that the strategic role of the post has been overshadowed by the detail associated with the build quality within phase 1. This role needs to be more balanced going forward to ensure that the right development is identified at the right location. The contribution of the Town Architect to achieving this goal is critical.

Given the importance of the role of the Town Architect, it is proposed to secure the retention of this post within the revised S106 agreement, to be financed by CDL or St Modwen. The Town Architect role will in future report directly to the Local Planning Authority, and a requirement will be built into the S106 requiring quarterly reports to be prepared by the Town Architect in relation to progress on site and compliance with the Masterplan and Town Code. Should issues be identified within that report, which need addressing by the developer(s) then such mitigation will be required to be submitted within a set time frame. As a consequence of the aforementioned, added weight will be given to the role of the Town Architect.

Site Monitor (Schedule 2)

The original S106 requires the employment of a firm of “Environmental Consultants” appointed by “CDL” for the purposes of monitoring compliance with the remediation obligations and reporting such findings to CDL, the Authority and any other relevant Environmental Authority.

The monitor reports directly to “CDL” as a company relating to the remediation action plan works and strategic remediation progress. It is important on a site that will be developed in a piecemeal fashion over up to 25 years, that there is a consistent approach to remediation. There has been a significant amount of remediation and site preparation work undertaken on site up to this point, and this has all been overseen and signed off by the existing independent “Monitor”. It is accepted that the level of work associated with such monitoring may reduce over time once the majority of the strategic remediation works has been completed. However such remediation is only being carried out up to a certain level i.e. to a level whereby the site can be used for public open space. Parcels of land which will accommodate more sensitive land uses will require additional remediation and given the scale of this development site it is essential that a strategic approach to remediation is maintained. It is also important to demonstrate due diligence in the remediation and sign off associated with this site, to ensure that public confidence in its future use is maintained. This can only be achieved via the retention of resources to secure an independent “sign off” by means of the independent Monitor. This post will be financed by “CDL” or St Modwen ,

until such time that the local Planning Authority is satisfied that monitoring of the remediation is no longer required.

CONCLUSION

The above sets out the basic proposals or heads of terms for the modifications proposed to the section 106 agreement. As confirmed above further discussions between the Planning Authority and the developer, and where appropriate, with other internal and external Consultees will be required to add detail to the Heads of Terms, in order to agree the amended S106 for this site.

Sections of the agreement will provide inbuilt review mechanisms in order that the Authority can react to changes in the market thus ensuring that any changes to the wider needs of this site can be accommodated at a future date.

RECOMMENDATION

APPROVE the proposed changes to the principles within the S106 Agreement as outlined above, and grant delegated powers to the Head of Planning for any further minor amendments to these terms, subject to the agreement of the relevant consultees, on condition that the amendments do not undermine the principles/objectives as described above.