

REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

S106 Legal Agreement Terms and updated planning conditions for Outline Planning Application 40/2013/1585/PO, Land at East of Bodelwyddan

1 PURPOSE OF REPORT

- 1.1 To provide Members with details of the Heads of Terms for the proposed s.106 legal agreement for the Bodelwyddan Key Strategic Site (KSS). To seek Members agreement to allow Officers to finalise and complete the s.106 legal agreement on the basis of the terms presented, enabling the relevant Outline planning permission and conditions to be issued.

2 BACKGROUND

- 2.1 The KSS has been designated as such within the adopted Local Development Plan (LDP). The LDP and the KSS were adopted as sound following an Examination in Public (EIP) which took place between January 2012 and February 2013. This EIP involved an appointed Planning Inspector examining a range of environmental, economic and social information and hearing a variety of representations from interested parties.

In concluding that the KSS could be allocated for the major mixed use development the Inspector highlighted that Key Policy BSC 5 of the LDP *"contains the tools necessary to ensure that the expanded Bodelwyddan is a sustainable community."*

- 2.1 Members will recall that they resolved to grant outline planning consent for the major mixed use development at the KSS when Planning Committee met on 21st January 2015. This was on the basis that they considered the proposal met the relevant criteria within Key Policy BSC 5 of the LDP.
- 2.2 This resolution was given on the basis that the proposed terms for any s.106 legal agreement and updated planning conditions would be presented back to Committee within 12 months of the January 2015 resolution. The Planning Committee report with Executive Summary for the Outline application is attached in full as **Appendix A**.
- 2.3 Given the nature of the KSS it was always envisaged that any Outline planning consent would be followed by a series of detailed applications for phased development. Should Members resolve to agree the terms of the s.106 legal agreement, resulting in the granting of the Outline consent, further detailed applications to discharge planning conditions, as well as detailed Reserved Matters applications, would be need to be submitted and approved. Such applications would, where relevant, be presented back to Planning Committee for determination.

- 2.4 For a major mixed use development on an area of land the size of the KSS it was important to ensure that a s.106 legal agreement and a set of planning conditions provide relevant and enforceable obligations, controls and triggers to enable the land to be developed and key elements delivered appropriately. In particular, this would need to be done to ensure compliance with Key Policy BSC 5 of the LDP. Policy BSC 5 is included as **Appendix B**.
- 2.5 Members should note that there are legal tests for the use of s.106 legal agreements. These are set out in Regulation 122 of the Community Infrastructure Regulations 2010 ("CIL Regulations"). The CIL Regulations require that the terms of any s106 agreement should be:
- Necessary to make the development acceptable in planning terms.
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.

In addition Members should note that there are legislative controls on the use of planning conditions in planning consents. These are set out within Welsh Government Planning Circular 16/2014 and set out six key tests for the use of conditions. Any conditions imposed should be:

- Necessary
 - Relevant to planning
 - Relevant to the development
 - Enforceable
 - Precise; and
 - Reasonable.
- 2.6 The Head of Planning and Public Protection accompanied by his Development Manager, Strategic Planning and Housing Manager and the Head of Customers and Education Support have met with the applicants several times since the January 2015 Planning Committee. These meetings, at which the Council was supported by a specialist Planning Solicitor from Pinsent Masons, sought to work through the terms of the s.106 legal agreement to ensure it would meet the legal tests outlined above as well as setting the legal framework for the development and delivery of the KSS moving forward.
- 2.7 It is important to highlight the context within which the aforementioned negotiations of the terms of the s.106 legal agreement were carried out. Firstly, Officers have had to have regard to the legal tests outlined above. Secondly, the negotiations had to focus on the adopted LDP Policy BSC 5 as well as the adopted Site Development Brief for the Bodelwyddan KSS. These Policy documents set out the key requirements for the development such as a new primary school, green infrastructure and affordable housing. Finally, it has to be remembered that viability is a crucial element to such negotiations. The scheme can only sustain a certain amount of development given land values and build costs. The provision of housing, employment land, a school, a hotel and shops provides the area and the

County with economic benefits in the form of economic activity, jobs and other spin-off's.

- 2.8 Officers have provided a written and verbal update on the progression of the negotiations on the s.106 legal agreement to the local Member, the Town Council, CET and Planning Committee Members prior to this meeting of Planning Committee. It should be noted, however, that the Local Planning Authority were under no obligation to seek representations from the public or elsewhere on the negotiated detailed terms of the s.106 legal agreement.

3. LEGAL AGREEMENT TERMS

- 3.1 For ease of reference the following table sets out a summary of the relevant legal agreement terms and includes a brief commentary on the main financial payments, controls and triggers.

Description of Heads of Terms	Proposed Main Highlights
<p>Affordable Housing (AH) provision to be a minimum of 10% of all housing developed on the site.</p>	<ul style="list-style-type: none"> • Prior to the submission of any Reserved Matters applications a detailed phasing plan must be approved by the Council pursuant to condition 9 which shall include details of affordable housing across the development including details of the sequence of phases and which ones are to be developed individually and concurrently. This will establish the framework within which the s106 provisions will operate • Each Phase of development would also need to have an agreed AH Scheme. • Where viability allows more than 10% AH the agreement stresses the desirability of achieving up to the provision of 30%. • Not more than 65% of Market Housing Units in each Phase shall be Occupied until all of the AH Units in that Phase have been completed and Transferred to an AH Provider. • AH Units can only be occupied by those persons meeting the Council's Local Connections Policy
<p>Green infrastructure - To provide, manage and maintain the Green Infrastructure (Open Space, Pitches, Woodland, Orchards etc.) throughout the site.</p>	<ul style="list-style-type: none"> • For the developer to serve notice on the Council that it has completed the Green Infrastructure works on completion and to require remediation works where necessary. • For the developer to maintain the Green infrastructure in accordance with a specification approved pursuant to condition 29 and a management plan approved pursuant to condition 30. • The developer has the option to transfer the Green Infrastructure to a Management Company and, where they are happy to accept the transfer, either or an alternative

	body such as the Town Council.
Primary School and Community Facilities to meet the Council's policy requirement of £6.5m towards primary education in the Community.	<ul style="list-style-type: none"> • For the developer to provide phased payments of £1.75 million to enable the existing Ysgol Y Faenol school to be enhanced/expanded. This contribution will need to be paid in full by the occupation of the 75th Dwelling • For the developer to provide land for a new primary school, the freehold of which to be transferred to the Council at the appropriate time to enable construction (value of land calculated at £500k). • For the developer to provide phased payments totalling £4.25 million to enable the new primary school and community facility to be constructed at the appropriate time. This contribution will need to be paid in full by the 800th Dwelling. • A bond and/or parent company guarantee will be required to underwrite the primary school contributions • A contribution of £50,000 shall be paid towards improvements to the existing community facility
Transport - Undertake required highway improvements, improve public transport links and develop a Travel Plan.	<ul style="list-style-type: none"> • For the developer to provide a payment totalling £4,500 for enhancement to Public Footpath links to and from the site. • For the developer to provide phased payments totalling £500,000. for Public Transport improvements to and from the site. • For the developer to provide phased payments totalling £125,000 towards the implementation of the initiatives in the Framework Travel Plan.
Welsh Language initiatives for the enhancement of the Welsh Language as part of the development	<ul style="list-style-type: none"> • For the developer to provide annual phased payments from commencement of development totalling £125,000 to enable the employment of a Welsh Language Officer who would work to implement agreed Welsh Language Initiatives. (Council policies on Welsh Language to also apply e.g. street naming.)
Local labour and training initiatives to promote the use of Local Labour and to develop Training Initiatives as part of the development.	<ul style="list-style-type: none"> • For the developer to produce a Local Labour Plan which shall: <ul style="list-style-type: none"> a) Prioritise the employment opportunities for local people generated by the construction of the Development by wherever practicable employing suitably qualified local people in the first instance. b) Source building materials from local supply chains wherever practicable. c) Work with the Council in identifying suitable and practical training initiatives by which local people can participate in the Development. d) Seek to operate an apprenticeship scheme aimed at local people wherever practical.
Security for Payments to ensure all relevant financial contributions are secured in the event of default.	<ul style="list-style-type: none"> • For the developer to enter a Parent Company Guarantee (PCG) with the Council to ensure sufficient funds are available to meet all financial contributions. • Failure to provide a suitable PCG will result in the requirement of a suitable Bond.

- 3.2 Members should also note the proposed set of planning conditions which are attached as **Appendix C**. In particular, it is important to highlight the phasing condition which is shown as Condition No. 9. This is a key planning condition as it requires further agreement to be given to the phasing and implementation of key elements of the scheme. This means that the timing of the provision of the key elements listed in that condition will need to be agreed with the Local Planning Authority. This gives the Council the ability to further control how relevant phases of development are delivered.
- 3.3 The following section of the report will explain some of the key headlines from the s.106 in more detail in an attempt to answer any possible queries from Members.

Affordable Housing

- 3.4 The proposed terms of the s.106 legal agreement will ensure that a minimum of 10% (171 units) affordable housing will be provided across the application site. This figure could rise to a maximum of 30% affordable housing subject to viability.
- 3.5 The Council will retain control over who provides the affordable housing in each phase of development and this affordable housing will only be capable of being occupied by persons who comply with the Council's Local Connections Policy .
- 3.6 The s.106 legal agreement will control the delivery of affordable housing in each phase. This is done by specifying that no more than 65% of open market units on each phase shall be occupied until **all** of the affordable housing units in that phase have been completed and transferred to the affordable housing provider.

Green Infrastructure

- 3.7 The KSS will contain a number of areas such as orchards, open spaces, pitches and woodland. These areas will need to be provided, managed and maintained as part of the overall phased development.
- 3.8 The proposed terms of the s.106 legal agreement will seek to ensure that the relevant Green Infrastructure across the site will be provided in relevant phases and then managed and maintained in perpetuity. This will either be by the land owner, developer or a suitable Management Company. Unless the Council agrees to take a part of the Green Infrastructure to manage and maintain themselves, the owner, developer or management Company will be responsible and accountable for the relevant areas.

Education Provision

- 3.9 The Outline application Committee Report at **Appendix A** explained how the development of the KSS would generate a need for a new Primary School to be provided on site. That report specified that the applicant had agreed to provide the land required for this new school as well as pay a sum of £6 Million.
- 3.10 Officers have previously explained that the existing school in Bodelwyddan, at Ysgol Y Faenol, is at capacity. As such, when the KSS development begins to generate new primary school pupils there will be an immediate need to accommodate them. As such, part of the £6 Million contribution by the applicant will need to be used to extend the existing Ysgol Y Faenol.
- 3.11 At some point, however, the extended Ysgol Y Faenol will reach capacity as more pupils are generated from the KSS development. This will then trigger the need to build the new Primary School on the KSS.
- 3.12 The proposed terms of the s.106 legal agreement ensure that the land required for the new Primary School on the KSS is transferred as freehold to the Council for nil consideration.
- 3.13 In addition, the proposed terms of the s.106 legal agreement ensure phased payments are received by the Council to enable the required extension to be completed at the required time on Ysgol Y Faenol.
- 3.14 Payments are also set out within the proposed terms of the s.106 agreement which will enable the new Primary School to be completed at the required time. Safeguards are put in place in the s.106 legal agreement which will prevent dwellings being occupied on the KSS until phased payments have been received by DCC for the delivery of the relevant education facilities (extension to Ysgol Y Faenol and new Primary School).
- 3.15 Protection is also provided against failure to make the payments with the requirement for a Bond or a Parent Company Guarantee.

Community Facilities

- 3.16 The Outline application Committee Report at **Appendix A** explained that there **may** be a preference for the Council to seek the provision of a dual use new Primary School and Community Facility. The report explained that the £6 Million contribution secured would cover such a development as and when required within the scheme.
- 3.17 It should be remembered, however, that the eventual design of any new Primary School and Community Facility within the proposed Local Centre on the KSS is yet to be decided. The main Local Centre on the KSS will contain shops, a health facility, school, community facility, open space and hotel.
- 3.18 As such, there will be an opportunity for Members to further determine the layout and design of this Local Centre as part of future planning applications. This could involve the development of a stand-alone Community Facility on the KSS. The important issue for Members to

understand now is that the proposed terms of the s.106 legal agreement and Outline Consent **does not** prevent that happening.

- 3.19 Members will also have an opportunity to influence the eventual design of any new Primary School through the Asset Management process and in liaison with colleagues in Education. As such, in addition to the planning process there will be opportunities for Members to determine how a new Primary School and Community Facility is provided on the KSS.
- 3.20 The local Member and the Bodelwyddan Town Council through the Town Plan process and further planning applications can influence how a new Community Facility is provided, managed and maintained on the KSS. At this stage nothing has been formally decided, however, the proposed terms of the s.106 legal agreement and the Outline Consent will seek to ensure the appropriate developer contributions can be secured to provide such a facility at an appropriate time.
- 3.21 In addition to the provision of new Community Facilities on the KSS the proposed terms of the s.106 legal agreement will also seek to secure a contribution of £50K for enhancements to the existing Community Centre in the village of Bodelwyddan. Again, it will be for the local Member and the Town Council to decide how best to use that money at the appropriate time.
- 3.22 It should be noted that this proposed £50K contribution for enhancements to the existing Community Centre in the village replaces the originally proposed Abergele Greenway improvement contribution. Having re-assessed the impacts of any possible pedestrian improvements along the Abergele Road in Bodelwyddan as part of the KSS development, Officers have concluded that the £50K contribution could be better used to enhance the Community Centre in the village. Existing pedestrian links from the KSS into the existing village along Abergele Road are well established and so this proposed transfer of contribution is considered to provide more beneficial impact to the community of Bodelwyddan. Officers and legal advice are satisfied that this transfer of the contribution meets the statutory tests for planning obligations.

Transport and Infrastructure

- 3.23 The internal road designs for the KSS, including any potential boundary road, will be controlled as part of an agreed phasing strategy (controlled by planning condition No. 9) and subsequent reserved matters planning applications. As such, it is not necessary to seek to control this highway element within the terms of the s.106 legal agreement.
- 3.24 In accordance with the adopted Site Development Brief and the submitted Transport Assessment, however, the proposed terms of the s.106 legal agreement seek to secure phased payments totalling £500K for improvements to public transport serving the KSS.
- 3.25 The payments are proposed to be provided in 4 instalments of £125K commensurate with the occupation of dwellings on the KSS.

- 3.26 In addition to the public transport contributions the proposed terms of the s.106 also seek to secure phased payments totalling £125K to enable the Council to implement initiatives within a Framework Travel Plan. These payments will again be provided commensurate to the occupation of dwellings such that, no payment means no further occupation of dwellings.
- 3.27 Finally on the transport and infrastructure element of the proposed terms of the s.106, a payment of £4,500 is to be secured for enhancement to pedestrian facilities near to the KSS. This will be primarily to enable the Council to improve existing public footpaths in the area. This will again be provided prior to the occupation of a certain number of dwellings on the site.

Welsh Language and Culture

- 3.28 Members have previously accepted the contents of the Welsh Language Impact Assessment submitted with the Outline planning application. Within this document it was specified that potential impacts on the Welsh Language and Culture resulting from the KSS development could be mitigated and managed by the introduction of various initiatives.
- 3.29 Members accepted that such initiatives would need to be managed appropriately and, in order to comply with the Key LDP Policy, a financial contribution should be sought for the possible employment of a Welsh Language Officer.
- 3.30 The proposed terms of the s.106 will secure phased payments totalling £125K which could be used to employ a Welsh Language Officer or any other such measure as agreed by the Council to ensure the Welsh Language initiatives are delivered.

Local Labour and Training

- 3.31 In order to maximise the economic impacts associated with development of the KSS one of the Key LDP Policy criteria was to seek to ensure local labour and training initiatives throughout the development.
- 3.32 To this end the proposed terms of the s.106 legal agreement require a Local Labour Plan to be submitted for each phase of development on the KSS. This Plan would have to be agreed by the Council in liaison with local Chambers of Commerce and would set out how jobs would be advertised locally, how training initiatives could be promoted and how opportunities could be promoted to local trades people, contractors and businesses.

Security of the payments

- 3.33 The Council in negotiating the proposed terms of the s.106 legal agreement also sought to ensure security for the payments required for the Primary School and Community Facilities. Legal advice from the appointed Planning Solicitor has suggested that this could be done through a Parent Company Guarantee (PCG) or a traditional bond.

- 3.34 This effectively means that a Guarantor (PCG) or a Bank will secure the agreed payments and the Council could call on these funds should the applicant or developer fail to meet their financial obligations. The Council would first need to approve the Parent Company or the Bank providing the security.
- 3.35 The proposed terms of the s.106 contains this level of security for the required payments for the Primary School and Community Facilities.

4. **RECOMMENDATION**

- 4.1 That Members agree to the proposed heads of terms for the s.106 legal agreement as set out in the table which are in line with the previous resolution of the Planning Committee (save for the substitution of the Community Facility Contribution in place of the Abergele Greenway Contribution). Members are further requested to delegate the finalisation (with any minor changes) and thereafter the completion of the agreement to the Head of Planning and Public Protection. In addition that Members allow the release of the Outline Planning Consent (with the relevant updated conditions) on the final completion of the s.106 legal agreement.