

<b>Application Ref</b>	<b>NP/24/0119/MOD</b>
<b>Case Officer</b>	<b>Andrew Richards</b>
<b>Applicant</b>	<b>Mr D Madge</b>
<b>Agent</b>	<b>Mr A Crompton</b>
<b>Proposal</b>	<b>Modification of schedule 2 (affordable housing) retaining to section 106 Agreement - NP/18/0488/OUT</b>
<b>Site Location</b>	<b>Land off Nun Street &amp; East of Ysgol Dewi Primary School, St Davids, Pembrokeshire, SA62 6NX</b>

**This application is being considered by the Development Management Committee as it seeks to vary a Section 106 legal agreement, the terms of which were agreed previously by the Development Management Committee in relation to planning application NP/18/0488/OUT. The County Council is also party to the Section 106 agreement.**

### **Summary**

The application proposes the modification of a Section 106 legal agreement relating to a housing site in St Davids for 11 dwellings. The existing legal agreement requires planning obligations to cover a contribution towards a local play area identified as New Street Play area, and the provision of an on-site affordable housing unit to be transferred to a Registered Social Landlord (RSL).

The application seeks to amend the provision of an affordable housing element from an on-site provision to an off-site provision in the form of a financial contribution towards affordable housing. This request is made on the basis that the applicant has approached all the relevant RSL's who operate within this area, and they do not wish to take on the relevant unit of affordable housing as initially required within the original legal agreement.

Having considered the evidence submitted, Officers consider that a modification to agree to a financial contribution towards off-site affordable housing in-lieu of on-site affordable housing provision in this instance still serves a planning function and therefore recommends that this modification request be approved.

The plans and accompanying documents can be found on-line at: [Citizen Portal Planning - application details \(agileapplications.co.uk\)](https://agileapplications.co.uk)

### **Consultee Response**

**St Davids City Council** do not support the proposal and raise the following relevant matter:

- Impact on affordable housing provision within St Davids

### **Public Response**

There is no requirement to publicise the request for a modification of a Legal Agreement, however the modification request has been published to the Authority's website.

The above process has generated five letters of objection and the relevant matter raised in two of the responses is listed below:

- Impact on affordable housing provision within St Davids

The remaining three letters of objection did not indicate any relevant matters on why they had objected.

### **Policies considered**

Future Wales 2021

Please note that the LDP2 policies can be viewed on the Policies page of Pembrokeshire Coast National Park website –

[Local Development Plan 2 - Pembrokeshire Coast National Park](#)

Policy 1 National Park Purposes and Duty (Strategy Policy)

Policy 8 Special Qualities (Strategy Policy)

Policy 10 Sites and Species of European Importance

Policy 48 Affordable Housing (Strategy Policy)

Policy 50 Housing Development Proposals

Policy 55 Infrastructure Requirements

Policy 59 Sustainable Transport (Strategy Policy)

Policy 60 Impacts of Traffic

Planning Policy Wales Edition 12

SPG – Planning Obligations

### **Constraints**

Biodiversity issue

Historic Landscape

Safeguarding Zone

Rights of Way Inland – within 50m

Ancient Monument – within 500m

Hazardous Zones

Potential for Surface Water Flooding

Recreation Character Areas

Affordable Housing Submarkets

Landscape Character Area

### **Officer's Appraisal**

#### **Site and Context**

The application site covers a parcel of land to the northeast of Ysgol Bro Dewi Primary School, which is located within the city of St Davids, identified as a Local Centre within the PCNPA LDP2.

The A487 is the main entrance road to St Davids and runs to the southeast of the site.

The site as a whole was granted planning permission for the construction of 11 residential dwellings (10 open market and 1 affordable) under an outline planning permission (NP/18/088/OUT) dated 11th June 2019. As part of the granting of that planning permission a Section 106 legal agreement dated 22nd May 2019 ("Section 106 Agreement") was entered to address the requirements of planning obligations necessary to make the application acceptable.

The existing planning permission was granted under the previous Local Development Plan (LDP1) and within the context of the previously adopted Affordable Housing SPG document for LDP1.

### **Relevant Planning History**

- NP/18/0488/OUT - Proposed planning (outline) for 11 residential units in total with 10 no. full market dwellings and 1 no. affordable dwelling - Approved 11.06.2019
- NP/20/0487/NMA - Non-material amendment to NP/18/0488/OUT - 22.12.2020
- NP/20/0583/DOC - Discharge of conditions 17 & 18 of NP/18/0488/OUT - 15.02.2021
- NP/22/0222/RES - Access, appearance, landscaping, layout and scale - 07.09.2022
- NP/22/0634/DOC - Discharge of condition No. 9 of NP/18/0488/OUT - Construction Method Statement - 29.11.2022
- NP/23/0200/DOC - Discharge Conditions 8, 9,10 & 11 of NP/22/0222/RES - 16.11.2023
- NP/23/0201/DOC - Discharge conditions 12, 13 & 16 of NP/18/0488/OUT - 19.06.2023

### **Description of Proposal**

This application is seeking to vary the terms of the Section 106 Agreement. Section 106A(1)(a) Town and Country Planning Act 1990 provides that a planning obligation can be modified by agreement between the authority by whom the obligation is enforceable (i.e. the Authority), and the person(s) against whom the obligation is enforceable. It is discretionary and a refusal to modify an agreement is challengeable only by judicial review on public law grounds.

In deciding whether to enter into an agreement, the LPA must consider whether the original planning obligation still serves a useful purpose. In *R (on the application of Batchelor Enterprises Ltd) v North Dorset District Council* [2003] EWHC 3006 (Admin), the LPA's refusal to modify a s.106 agreement was unlawful because the refusal was not based on planning grounds. It is also necessary to assess whether the obligation meets the legal tests for a planning obligation, including that of reasonableness.

The planning obligations secured by the Section 106 Agreement were:  
(a) the provision of 1 affordable housing unit, constructing and transferring the affordable housing units to a registered social landlord or the local housing authority, as nominated by the Authority.

(b) payment of £2,890 to Pembrokeshire County Council towards the provision and/or improvement of open space.

For the purposes of this report, item (a) is described as "the Affordable Housing Obligation" and item (b) is described as "the Contribution".

## **Key Issues**

The application raises the following issues

- The policy and principle that applies to Section 106 agreements and variations and whether an off-site financial contribution towards affordable housing can be supported in lieu of the previously agreed on-site affordable housing provision
- Any other material considerations

### ***Policy and Principle:***

Policy 55, Infrastructure Requirements of the adopted LDP2 for the National Park states that planning permission will be granted for proposals that have made suitable arrangements for the improvement or provision of infrastructure, services and community facilities made necessary by the development.

It notes that arrangements for provision or improvement to the required standard will be secured by planning conditions attached to a planning permission, or in some cases planning obligations. The policy specifies that where it can be proven that a proposal is unable to deliver in terms of the policy requirements of the Plan, priority will be given to the delivery of affordable housing in any further negotiations, provided that it can be demonstrated that the proposal would not unduly overburden existing community infrastructure provision.

More guidance on Planning Obligations is set out in the Authority's adopted Planning Guidance Supplementary Planning Guidance (Planning Obligations SPG) document. This document states that the Local Planning Authority will secure Planning Obligations in order to ensure that local services and infrastructure have adequate capacity to meet the additional demands arising from new development.

The SPG notes that in cases where Section 106 contributions cannot be met fully these will be expected to demonstrate the economic viability of a scheme is impacted through a Development Appraisal Toolkit.

Welsh Office Circular 13/97 "Planning Obligations" and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 also apply to the consideration of planning obligations.

The Tests in Circular 13/97 Planning Obligations apply to all Planning Obligations, including those not covered by the CIL Regulations. The tests make it clear that a Planning Obligation must be:

- Relevant to planning;
- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development;
- and
- Reasonable in all other respects.

In addition, Regulation 122 of the CIL regulations stipulate that: "A planning obligation may only constitute a reason for granting planning permission if the obligation is:

- a). Necessary to make to the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development".

Regulation 122 of the CIL Regulations places into law the Welsh Government's policy tests on the use of Planning Obligations. The CIL Regulations reinforce the purpose of Planning Obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions that are better suited to a Community Infrastructure Levy (CIL).

The Authority does not charge CIL. If a Planning Obligation is capable of being charged to CIL, even in cases where CIL is not in operation, it is unlawful for a Planning Obligation to be taken into account when determining a planning application for a development if the obligation does not meet the three tests. In such a circumstance, the decision to grant planning permission would also be unlawful. For all other developments (i.e. those not capable of being charged CIL), the tests in Circular13/97 will continue to apply.

The Authority is satisfied that the original requirement for contributions met the tests set out above. The contributions are still considered necessary in the context of the site.

The applicant has demonstrated that no RSLs, nor Pembrokeshire County Council are able to take on the single affordable housing unit due to management issues. LDP 2, Policy 48 does specify that where it can be demonstrated that on-site provision is not appropriate, or where the proposal relates to the conversion of a building in the countryside, alternative forms of contribution, including off-site provision and commuted sums will be sought. The existing Section 106 agreement

(signed in 2019) did not contain any details specifying a Default Commuted Payment when on site affordable housing provision cannot be provided.

This application therefore seeks to modify the S106 agreement under section 106A of the Town and Country Planning Act 1990 (as amended). This application to modify the S106 agreement is valid and has been made within 5 years of the date the obligation has been entered into.

The following two options were presented to the applicant as an alternative to providing an affordable property for social rent on site:

1. Provide the affordable unit on site as a form of Low-Cost Home Ownership (LCHO) available to purchase at 70% of Open Market Value; or
2. Agree to a financial contribution, to be calculated to be the equivalent cost of providing on site affordable housing.

The applicant did not wish to pursue the provision of the affordable unit as LCHO under option 1 as the unit is a first floor flat that would have to be sold on a leasehold basis (including management / maintenance charges). The developer also identified potential difficulties for potential purchasers obtaining a suitable mortgage offer from the key mortgage providers.

Planning Officers acknowledge that there can be issues in providing LCHO properties in terms of their affordability and for potential purchasers in securing mortgages and agreed with the preferred option of calculating an off-site commuted sum contribution.

### **Calculating an off-site commuted sum contribution**

The off-site contribution has been calculated to ensure the financial contribution made in lieu of on-site provision is of broadly equivalent value to the provision an affordable unit on site.

The authority has used the Welsh Government's latest 'Acceptable Cost Guidance (ACG) for the Social Housing Grant' (2023) as a way of calculating the financial contribution<sup>1</sup>. The ACG is based on the cost of developing a 'reasonable site' with no major abnormal costs and reflects the cost of building to the appropriate Welsh Government quality standards and Welsh Building Regulations.

The latest ACG value (2023) for a 2-person, 1 bedroom flat (for schemes 20 homes and under) is £173,420.00. The Authority's adopted Affordable Housing: Interim Supplementary Planning Guidance (September 2020) sets a transfer value for developers to receive 42% of the ACG value for affordable housing for rent from a Registered Social Landlord (RSL) (paragraph 2.6). However, the existing S106 agreement signed in 2019 set the transfer value from an RSL at 55%, which was the

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<sup>1</sup> [Acceptable Cost Guidance for the Social Housing Grant | GOV.WALES](#)

policy position in the Authority's adopted Supplementary Planning Guidance at that time.

The developer would be required to fund the remaining 45% of ACG. Therefore, the cost to the developer to build the affordable property would be £78,039 (£173,420 x 0.45).

At the time of the S106 agreement in 2019, the ACG values included land costs, which are no longer included in ACGs after 2021. A contribution towards the land cost is required. The Authority and developer have therefore agreed to use the benchmark land values as contained within The Pembrokeshire Coast National Park Authority's Affordable Housing Study (May 2017)<sup>2</sup> undertaken by Dr Andrew Golland.

This document provides the evidence base supporting the affordable housing policies in the adopted LDP 2. The benchmark land value for the St Davids & North Coast is identified as £323,864 per hectare (Table 5.1, page 24). At the LDP 2 Examination, the results of the Affordable Housing Viability Study were adjusted by the Housing Background Paper<sup>3</sup> as the viability information did not include the cost of sprinklers.

However, no change was made for the benchmark land value at St Davids and North Coast (see pages 22 to 25). Using the density of 30 dwellings per hectare, the benchmark land value for an individual plot is £10,795.47 (£323,864 per hectare, divided by 30 dwellings per hectare).

Officers and the applicant have agreed to the off-site Affordable Housing Commuted Sum payment of £82,896.96, calculated as follows:

ACG (2023) 2-person, 1 bedroom flat (for schemes 20 homes and under) =  
£173,420.00

Benchmark Land Value per plot (taken from The Affordable Housing Study and Housing Background Paper) = £10,795.47

Total (ACG value and land value) = £184,215.47

Transfer Value from RSL @ 55% ACG. = £101,318.51

**Residual Off-Site Commuted Sum = £82,896.96**

For this application, it has been agreed that the ACG value, plus the land value should be discounted by 55%. This reflects the situation when the S106 agreement was signed where the developer would have received 55% of the ACG (which

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<sup>2</sup> [PCNPA AHVS Updated Report June 2019 \(pembrokeshirecoast.wales\)](https://www.pembrokeshirecoast.wales/PCNPA-AHVS-Updated-Report-June-2019)

<sup>3</sup> [Housing-Backgroud-Paper-Appendix-4-New-November-2018.pdf \(pembrokeshirecoast.wales\)](https://www.pembrokeshirecoast.wales/Housing-Backgroud-Paper-Appendix-4-New-November-2018.pdf)

included land costs) from the RSL. This position is set out in the wording of the current legal agreement. The Affordable Housing Interim Supplementary Planning Guidance adopted in September 2020 has amended the transfer value to 42% of ACG. Also, since 2021, ACG values no longer include land costs and developers would be required to fund 100% of the benchmark land value in addition to the 42% ACG value.

### **Other Matters:**

The need for affordable housing and other planning obligations is a relevant planning consideration. Information regarding viability is also a relevant consideration. No request has been made at this time to vary the section within the legal agreement in respect of the contribution towards the provision and/or improvement of open space within the New Street Play area.

### **Conclusion**

The application seeks to amend the form of the provision of an affordable housing element from being an on-site contribution to being an off-site contribution in the form of a financial contribution towards affordable housing. This request is made on the basis that the applicant has approached all the relevant RSL's who operate within this area, and they do not wish to take on the relevant unit of affordable housing as initially required within the original legal agreement.

Having considered the evidence submitted, Officers consider that a modification to agree to a financial contribution towards off-site affordable housing in-lieu of on-site affordable housing provision in this instance still serves a planning function and therefore recommends that this modification request be approved.

### **Recommendation**

For the application to be delegated to the Chief Executive, Director of Placemaking, Decarbonisation and Engagement or to the Development Management Manager to issue the modified Section 106 Legal Agreement associated with NP/18/0488/OUT within three months from the date of this meeting.

In reaching a recommendation, regard has been given to the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. It is considered that this recommendation is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive, and resilient communities.



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Parc Cenedlaethol  
Arfordir Penfro  
Pembrokeshire Coast  
National Park

Graddfa/Scale: 1:1,250

