

**P/2009/1287/MOA  
Blatchcombe Ward  
Land At Park Bay Garden Centre And Holly Gruit, Brixham Road, Paignton  
Section 106**

**Site Details**

The proposal site is land at Parkbay Garden Centre and Holly Gruit, off the main Brixham Road (A3022) in Paignton. Holly Gruit is the former campsite adjacent to the local Western Business Park.

The remainder of the application site is the former Torbay Garden Centre, now known as Parkbay Garden Centre. The vehicular access to the site is proposed to be via a cross road junction off of Brixham Road (approved under reference P/2007/1421 in 2008).

**Relevant Policies**

National Planning Policy Statements

PPS1 Delivering sustainable development

PPS3 Housing

PPS4 Planning for sustainable economic growth

Saved Adopted Torbay Local Plan (1995-2011)

ES Employment strategy

E1 New employment on identified sites

E1.16c Yalberton Road, Paignton

E6 Retention of employment land

HS Housing strategy

H2 New housing on unidentified sites

H6 Affordable housing on unidentified sites

CF6 Community infrastructure contributions

CF7 Education contributions

T2 Transport hierarchy

**Proposals**

The Development Management Committee of 19 April 2010 granted approval for the proposed development of the site in outline for circa 95 dwellings, subject to the completion of a Section 106 Legal Agreement in terms acceptable to the Executive Head of Spatial Planning.

**s106 Proposals**

The s106 agreement has not as yet been signed and the applicant is seeking to redefine the terms of the agreement in order to obtain financial support to build the scheme out. It is intended that the proposed draft s106 will be available for members before the Committee meeting.

In essence, the change that is being sought from the heads of terms that were agreed prior to the committee meeting of 19 April is specifically in relation to the mechanism for the calculation of deferred payments. This was originally proposed to apply to the development in its entirety, but is now proposed only to apply to those dwellings that are not completed within a period of 5 years from the date of the outline consent.

**Consultations**

Affordable Housing Manager "Housing Services support the delivery of new housing and particularly the provision of affordable housing. When this site was considered by committee

previously there were two main areas that Members were particularly keen to protect – Deferred Contributions and Early Delivery.

Due to viability reasons this development is not delivering any affordable housing or any other planning contributions that would normally be expected for a development of this size. Torbay Council must protect itself against allowing an unprecedented reduction in planning contributions and the development then going on to make a higher level of profit than was predicted in the viability report. It is policy that a deferred contribution arrangement is detailed within the S106 agreement to deal with this eventuality.

Early delivery of these homes was put forward by the applicant to encourage members to consider this departure site favourably and is an important issue, but this early delivery has never previously been linked to the deferred contribution arrangements. Members are now being asked to link these two elements so that deferred contributions are only paid if the homes are not built within the agreed timeframe regardless of the level of profit made by the developer. Each are important but doing one should not remove the need to provide for the other. If a higher level of profit is achieved Torbay Council should receive planning contributions regardless of the point in time the homes are delivered.

Housing Services would recommend that Members decline this request and that any approval should be subject to the applicant agreeing a satisfactory S106 agreement that contains a deferred contribution arrangement and an early delivery arrangement that are not linked.”

### **Representations**

2 letters of objection and 1 letter of support were received in relation to the scheme, these were considered as part of the deliberations at the original committee meeting at which the development was approved. The representations have no substantial bearing on the issue of the detailed wording of the s106 clauses.

### **Key Issues/Material Considerations**

#### *Principle*

This application was approved subject to the signing of a s106 legal agreement at the committee meeting of 19 April 2010. As such the key consideration for the Committee at this time is whether or not the detailed wording of the s106 is acceptable in this case.

#### *s106*

Recently agreed Council policy states that, in order to respond to the economic circumstances in relation to development viability, the Authority will consider viability and will make use of deferred payment clauses in s106 agreements. This is in order to enable schemes to go ahead that are not currently able to provide the policy level of s106 contributions.

In addition, the Government has recently made it clear that Local Planning Authorities should renegotiate the terms of s106 agreements in order to make development happen. Officers are keen to put this into practice and in the case of this development officers recognise the importance of delivery of this scheme to the delivery of infrastructure to service a quantum of employment land.

Early delivery of schemes such as this is also likely to be a key factor in kick starting the local economy, and it is also clear that there is a desperate need for new homes in Torbay.

It was originally agreed that because the development is not providing any affordable homes or community infrastructure contributions (due to the viability of the scheme) it would be necessary to include a standard deferred calculation of payments mechanism. This would

mean that the viability of the scheme would be reassessed at a later stage once the development has been substantially built out when there will be an understanding of the actual costs and sales values for the development. This would enable half of any profit, over a standard 20% profit for the developer, to be paid to the Authority as a commuted payment for community infrastructure. Alternatively this clause could be worded in such a way as affordable homes are provided on site in the event that the viability exceeds 20%.

The applicant has stated that such an agreement would make it difficult to obtain financial support for the scheme, principally due to the need for the financier and developer to have control of the return on capital employed (ROCE) when building out a scheme. It has been suggested that the deferred payments mechanism creates a level of uncertainty for the developer and in effect increases the risk to the financial equation of the development, by introducing an element of uncertainty about the returns the scheme could proffer.

Officers, have suggested that this need not be the case given that the deferred payments mechanism would still enable the developer to obtain 20% profit before anything comes back to the Authority.

However, the applicant has now proposed that a traditional deferred payments mechanism be replaced with a clause in the s106 that does not include any calculation of deferred payments for those units that are completed within a period of 5 years from the date of the approval of the outline planning consent.

This proposal is intended to drive forward the development, and secure early delivery through an effective penalty of re-assessment for those dwellings that are not completed within 5 years of the consent. Importantly this will also drive forward the delivery of the junction, because the previous legal agreement includes provision for the payments to the junction to come forward as soon as an enabling project commences.

In essence, therefore, the deferred contributions mechanism would only apply to those units that are not completed within 5 years from the date of consent. It is proposed that the viability of the remaining units be calculated on the basis of serviced plots, i.e. the infrastructure, roads etc that form part of the wider scheme will not be included in the viability assessment. The notion of a calculation on this basis could work, assuming that the land value is set at today's price, and that the land value of the serviced plots does not form part of the viability assessment of those remaining plots.

The applicant's proposal in this case differs from a strict interpretation of Council policy, in that deferred calculations of contributions would only take place on dwellings that are not completed within the first 5 years following the grant of consent. Whilst this is intended to drive forward the development it does clearly enable the developer to have the potential to make additional profits that are not shared with the Authority in relation to development that is completed in the 5 year window.

This proposal would not strictly accord with recently adopted Council policy and it is imperative if members accept the proposed alternative mechanism in this case, that the Local Authority does not lose out on community infrastructure contributions that could have come forward...

#### {b Conclusions}

The development of this site is tied into providing a 50% contribution towards the provision of the new junction/access from Brixham Road, this coupled with an element of future proofing land for the potential widening of the Brixham Road and the existing land value provides for a slim margin in terms of development viability.

On the back of this viability constraint members agreed to approve the development at the committee of 19 April 2010, subject to a s106 that was to include a deferred contributions clause.

The applicant is seeking to alter the wording of this clause such that deferred contributions will not apply to any of the units that are completed within 5 years of the grant of outline consent. This will effectively drive forward the delivery of the housing and infrastructure associated with this scheme, however, this wording does not strictly accord with Council policy and as such it is imperative that the detailed wording is written in such a way as to not substantially prejudice the Council's and the community's position.

**Recommendation** Report further information in relation to the wording of the s106 clauses to ensure they do not disadvantage the Council but do enable the delivery of the scheme.