

20 May 2020

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Dear Ceri

Outline Planning Permission Reference P2005/0393
Application under S106A of the Town and Country Planning Act (TCPA) 1990 (as amended) to Modify the Section 106 agreement (Reference P2019/5574)

In March 2019, Savills, on behalf of St Modwen Developments, submitted a letter setting out a series of proposed changes to the Section 106 Agreement at Coed Darcy. The letter formed the basis of an application under Section 106 of the TCPA. A review of the scheme's viability was then undertaken. This review, which was carried out by District Valuer Services (DVS), was completed and, further to ongoing discussions with you, allowed us to make progress with the application.

The application was subsequently registered on 8th November 2019 (reference P2019/5574). Since then, there has been ongoing discussions relating to the changes proposed, specifically with regard to highways and active travel considerations.

Following these discussions, this further letter provides an updated, and final 'heads of terms' for the proposed changes to the Section 106 at Coed Darcy. We do not repeat information relating to the type of application or the background to the application, nor the planning policy background – and so this letter should be read alongside the letter dated 21 November 2019. This letter only lists the proposed changes sought to the current obligations and the information that has been prepared and submitted to support the proposed changes.

The proposed changes or Heads of Terms

Following the above rationale, the basic changes proposed to the section 106 agreement are listed below. The changes listed below reflects the position discussed with senior Council officers, but is submitted **without prejudice** basis and subject to the final drafting of the Supplemental Section 106 Agreement.

The references in brackets (in the sub headings below) identify which parts of the current section 106 agreement will need to be changed. Where appropriate some additional commentary is provided to explain the background behind the changes proposed.

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

This 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 or NAR). Some of these works have now been completed and a revision to the remainder is proposed to update the phasing of the proposed improvements, and the development levels (the number of homes) they will be connected to.

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Local Highways Impact

To address comments raised by NPTCBC Highways Department, the following report was prepared and submitted:

- Coed Darcy Local Highway Network – Operational Assessment Report (Atkins, 3 March 2020)

As per our comments when we submitted this report, with respect to the main point (on local highway network), in the light of the commitment to carry out a full review of the Transport Impact Assessment (TIA), the report examines the impacts associated with the next five years of growth forecast at Coed Darcy. This shows that there are no issues on the local highway network for the level of growth described and – for the reasons given – adopts a worst case basis.

For the purposes of the modelling this assumes that there is no SAR in place but please be assured that as the report says this is only a way to simplify the assessment and the revised 106a will specify when the SAR will need to be open.

It should also be clear that it does not alter the current access into the northern part of the site (beyond the railway) by confirming that all that is proposed in the section 106a is the ability to vary that proposal if it is properly considered and assessed and then agreed by the Council. See further explanation of this change below.

This assessment is very robust. It uses a combination of data and research to make a series of clear conclusions for a specified level of development at Coed Darcy (and for a specific period). Notwithstanding this, a new TIA will be carried out and is underway now – there is a clear commitment to do this and control can be included through the new S106. Further to discussions, a new obligation is proposed that will require the submission of a new full TA, as set out below.

Impact on J43

There has also been extensive discussions with SWTRA since March 2019, when we submitted an earlier version of a Technical Note. These discussions progressed and since then Atkins has prepared a final report which sets out the proposals, and the technical justification for them, for changes to the phasing strategy which are to be reflected in the modifications to the S106. The following information is therefore enclosed:

- Coed Darcy – M4 Junction 43 Improvements Updated Phasing Strategy (Atkins, March 2020)
- M4 J43 – Phase 1a Queue Graphs – these were additional graphs request by TFW on behalf of WG/SWTRA issued in April 2020

Whilst St. Modwen and its technical team remain of the view that the information provided robustly demonstrates the re-phasing of the works to Junction 43, it is NPTCBC's contention that additional survey work is required but recognise that this is not possible at the current time because of the Covid 19 pandemic.

Therefore, it has been agreed that a new TIA will be undertaken in advance of the occupation of the 800th house at Coed Darcy, and this TIA will determine any future thresholds for improvements to Junction 43, based on the evidence contained in the new TIA.

New Obligation

Further to discussions, it was been proposed that a new obligation is included in the Supplemental S106 requiring the submission of a new TIA.

The following obligation has been proposed by NPTCBC, and is agreed:

No more than 800 houses shall be occupied until a full TIA (scope of which to be agreed with WG and LHA) including an assessment of J43 of the M4 and the local highway network is undertaken, which shall inform phasing works to J43 and any other off site highway improvements, including active travel connectivity and legibility.

With permanent traffic counters to be installed at the site access in approved locations, prior to the occupation of any further dwellings, which shall be retained and operational to inform real time trip rates into and out of the site, the data from which shall be provided to the Authority every 6 months, and inform the evidence base of the updated TIA.

It should be reiterated that the above limit of 800 houses is limited by the improvements to Junction 43 undertaken to date and therefore there will be no obligation on St Modwen to carry out any further works to Junction 43 until the TIA is carried out and any updated phasing to the works is agreed.

2. The SAR, SHL and associated matters (Schedule 3, Part 1, 1.6)

It is broadly agreed that a revised trigger for the delivery of the “Southern Access Road” or SAR will be inserted. The proposal is to link completion of the SAR to a date and occupation trigger (with a “whichever is earlier” starting point). Based on an achievable but ambitious construction programme, the objective is to construct and open the SAR by **June 30th 2024** or by the occupation of 600 dwellings in total across the site. Work is already well advanced on the design of the scheme and this has allowed us to be more precise on the likely costs associated with it.

The timing of the completion of the Strategic Highway Link (or SHL) that will connect the northern and southern parts of the scheme will follow completion of the SAR, and within one year of the opening of the primary school, by **September 2024**.

Primary School - Darcy Business Park Link

NPTCBC has requested that, to mitigate the changes to the delivery of the SAR and SHL, a secondary access into the site should be provided from Darcy Business Park into Coed Darcy, via Road 3 (which will provide access to the primary school from Road 1). This will provide a secondary access to Coed Darcy. This will be constructed and open by the occupation of 400 dwellings or the occupation of the first primary schools (with the trigger being whichever comes first) unless otherwise agreed in writing with the LPA.

3. The Northern Link (Schedule 3 Part 1, 1.7)

The original agreement and outline planning permission for the scheme make provision for a road connecting the central parts of the development to the area to the north of the railway line. There may be scope to replace this vehicular crossing with a revised access from the B4290/existing highway (Pen-Yr-Heol). At this stage all that is proposed is to make provision for the alternative (or a mechanism for its agreement) as this can only be sanctioned if the Council confirms acceptability based on an assessment of impact and capacity.

There is broad agreement that a further vehicular connection from this northern area to the Crymlyn Road (known as the Crymlyn Road link) is no longer required. An existing bridleway between the site / B4290 and Crymlyn Road already provides access for pedestrians and cyclists). This change will be picked up in the proposed Masterplan revision.

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

The revisions to expected delivery rates 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 will remain as approved, but it will be

paid in a way which reflects the actual cost and timing for subsidizing a service through the site. The Council has indicated that it will expect swift payment of the full amount as part of any revisions to the agreement.

5. Education Provisions (Schedule 3, Part 2 and Definitions)

The delivery of education at both primary and secondary levels has evolved since the section 106 agreement was signed. The Council and SMDL 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 current proposal, which differs to the obligations within the Section 106 agreement, is now broadly agreed with the Council's education and planning teams and is summarised below:

- a) The first 2 form entry primary school will be built and ready for use by **September 2023** or by the occupation of 740 homes across the site (with the trigger being whichever comes first) unless otherwise agreed in writing with the LPA. The September 2023 date is ambitious but current programme shows it is deliverable.
- b) The trigger for the second 2 form entry primary school (which will be constructed in the southern development area) is the completion of 1500 dwellings across the site.
- c) There is no longer a requirement for a third primary school on the site
- d) The secondary school will need to accommodate about 600 pupils and will be developed as one project. The triggers for opening are **September 2027** or by the occupation of 1,700 homes whichever is the earlier.

6. Affordable Housing (Schedule 3, Part 3)

Affordable housing provision is currently set at 20% of the housing developed on the site, with the ability to vary the amounts to be provided as part of each phase. The viability work completed for the scheme shows that this cannot be delivered and a reduction is proposed. We understand that the basic conclusion from the DVS is that the scheme is not viable with the affordable housing provisions currently included in the Section 106 agreement and this application seeks to modify the amount of on-site affordable housing provision from 20% to 15% and change the consideration from 42% of Market Value to 50%.

Further to discussions with Officers, an indicative phasing plan (reference 8243Sk1016 rev C dated 14th October 2019 - attached) has been prepared which shows how the different phases or parcels can combine to deliver 15% affordable housing provision across the whole site. The purpose of this plan is to illustrate how the affordable housing could be phased and may be subject to adjustment and refinement as the relevant plots come forward.

7. Temporary and permanent Health care facilities on site (Schedule 3, Part 4)

Further to your recent consultation with the local Health Board, it has confirmed that it provision still needs to be made on-site for a permanent health care provision. As always envisaged, this is to be delivered as part of the village centre uses (and we note the requests that this is now shown on the updated masterplan). A revision to this trigger is proposed taking its delivery to 2,000 homes. A branch surgery be constructed on site at the developers cost, to the required specification within the village centre, prior to the first occupation of the 2000th dwelling.

8. Local Shop Facilities (Schedule 3, Part 7 (5), 1.2)

Under the terms of the agreement a local shop should be provided almost immediately. The Council is keen that this obligation is retained and a shop is provided with the next phase of development and there is already

space available on site (which was built as part of phase 1) to do this. Ownership is currently in the process of being transferred from Persimmon and St. Modwen is looking to start marketing in the next couple of months.

9. 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 services are delivered and managed and to provide better integration of existing and new communities, it is considered that a financial contribution for the upgrade of an existing nearby facility should be made to NPTCBC. Therefore it is proposed to amend this obligation to allow for a financial contribution of £500,000 for improvements to or towards the replacement of the existing Llandarcy Community Centre. This financial contribution is to be made to NPTCBC before the occupation of the 400th house.

10. Estate Covenants (Schedule 3, Parts 7(2) – 7(3))

Several minor amendments are required to the estate covenants. In brief, these seek to better define the estate managed areas with one clear definition rather than separate references to the 'Public Areas,' 'Residential Common Parts' and 'Community Facilities' and to reflect that the management of such spaces (and the estate in general) will be undertaken by the Man Co (being Coed Darcy Estates Management Limited). More specifically:

Residential Estate Covenants (Residential Restrictive Covenants Part 7(3)(a))

Minor amendments are required to reflect the delivery and use of the dwellings at the site and to allow greater flexibility to individual owner/occupiers, whilst preserving the appearance of the Estate Managed Areas. Changes are proposed to: (i) allow display of estate agent's signs in cases where the relevant property is being advertised for let as well as sale; (ii) provide that the consent of the Man Co to erect television aerials/dishes etc is only required to the extent this relates to the front elevation of the dwelling (i.e. when visible); (iii) limit the restriction on the ability to make alterations/additions to the exterior of any property without the approval of the Man Co, to the first 12 years following the transfer of the relevant property (and to provide a mechanism for the Man Co to consider such an application for approval); (iv) extend the exception to leaving refuse on the site to dustbins and vermin and pet proof receptacles; (v) better particularise those vehicles that cannot be left or parked on the site; and (vi) impose obligations on residential occupiers of the development to ensure that nothing is done that impedes statutory undertakers or interferes with roads, sewers and service media.

Residential Estate Covenants (Residential Positive Covenants Part 7(3)(b))

It is proposed that specific wording will be incorporated into the 'Residential Positive Covenants' to require that, on disposal of any dwelling (save for any disposal on shared ownership terms where the tenant has not yet achieved final staircasing) the transferee enters into a deed of covenant with the Man Co, pursuant to which it covenants to observe and perform the estate covenants and payment of the estate service charges. Specific measures are also proposed to ensure that, on the first disposal of a dwelling, the transferee attends to the necessary registration of a restriction on the relevant title relating to the deed of covenant requirements.

It would be preferable to re-categorise the current rent charges as an estate service charge. Rent charges are unpopular with lenders who often require the exclusion of statutory rights under section 121 of the Law of Property Act 1925. As noted above, it is proposed that a deed of covenant and restriction mechanism is included in all plot transfers in relation to the payment of the rent charges and, in our experience, this is a sufficient mechanism to ensure payment of estate service charges. The feedback from other house builders is also that rent charges make homes less marketable and so we consider this re-categorisation is required. Alternatively, the powers under section 121 of the Law of Property Act 1925 will need to be excluded from the rent charge provisions so as to not affect marketability of homes.

Residential Estate Covenants (Rent Charges (Part 7(3)(c)- (e))

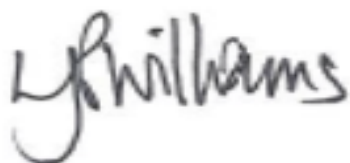
Related to this, it is proposed that the Man Co's heads of expenditure are amended to include a proviso to the effect that the Man Co is not permitted to pass to any transferee, the costs of any expenditure covered by any insurance policies; monitoring and/or letting vacant parts of the Property; any liability or expense for which other owners, tenants or occupiers are individually responsible; or any capital expenditure in relation to the installation or establishment of any Estate Managed Areas incurred prior to the date of the transfer. This proviso is being requested as it is market standard for such items to be excluded from the estate service charges, so again is linked to marketability of homes.

Use of Calendar Dates

It is important to note that obligations or proposals which are based on specific date triggers (such as those described under points 2 and 5 above), and which rely on additional Council or other 3rd party decisions or planning approvals will need to be subject to appropriate contingency provisions should completion, opening or transfer not be achieved by the relevant date. As such, to allow for these circumstances, the wording of the Agreement should allow for adjustment, if necessary, in agreement with the NPTCBC and in writing.

I trust this is clear and reflects recent discussions held on these matters. The above description sets out the basic proposals or heads of terms for the modifications proposed to the section 106 agreement to be subject to re-consultation, and the application. In the meantime though, if you need anything else, do please call or send an e-mail to me or Meryl Lewis (malewis@savills.com).

Yours sincerely



Laura Williams
Associate Director