

Planning and Orders Committee (Extraordinary)

Minutes of the meeting held on 7 October 2015

- PRESENT:** Councillor W.T. Hughes (Chair)
Councillor Ann Griffith (Vice-Chair)
- Councillors Jeff Evans, John Griffith, Kenneth Hughes, Vaughan Hughes, Victor Hughes, Raymond Jones, Richard Owain Jones, Nicola Roberts
- IN ATTENDANCE:** Chief Planning Officer (EGJ)
Lead Planning Case Officer (DPJ)
Principal Environmental Health Officer (HT)
Environmental Health Officer (MG)
Committee Officer (ATH)
- APOLOGIES:** Councillor Lewis Davies
- ALSO PRESENT:** Councillors Richard Dew (Portfolio Member for Planning), Dafydd Rhys Thomas, R.Llewelyn Jones, Trefor Lloyd Hughes, Llinos Medi Huws, Mr Gary Soloman and Mr Stephen Humphries (Burgess Salmon)
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1 APOLOGIES

The apology for absence by Councillor Lewis Davies was noted.

2 DECLARATION OF INTEREST

Councillor John Griffith declared a personal but not prejudicial interest with regard to item 4 on the agenda and he said that he would be speaking and voting on the matter.

3 LAND & LAKES MEMBERS' BRIEFING

The minutes of the informal briefing meeting for Members held on 11 September, 2015 were presented. The informal meeting was held at Members' request to clarify specific issues raised at the meeting of the Planning and Orders Committee held on 29 July, 2015 with regard to the terms of the Section 106 Agreement in relation to the Land and Lakes proposal.

It was resolved to accept the minutes of the informal briefing meeting held on 11 September, 2015.

4 LAND & LAKES DEVELOPMENT

4.1 46C427K/TR/EIA/ECON - A hybrid planning application proposing: Outline with all matters reserved except for means of access, for –

A leisure village at Penrhos Coastal Park, London Road, Holyhead comprising: up to 500 new leisure units including new lodges and cottages; Central new hub building comprising reception with leisure facilities including indoor sub-tropical water park, indoor sports hall, and cafes, bars, restaurants and retail; central new Farmer's Market building; Central new spa and leisure building; A new café and water sports centre at the site of the former Boathouse; demolition of the Bathing House and the construction of a restaurant at its former location; Demolition of other existing buildings including three agricultural barns and three residential dwellings; Providing and maintaining 29 hectares of publicly accessible areas with public car parking and enhancements to the Coastal Path, including: Managed walkways within 15 hectares of woodland, the retention and enhancement of Grace's pond, Lily pond, Scout's pond with viewing platforms, the Pet Cemetery, War Memorial, the Pump House and picnic area with bird feeding stations and hides with educational and bilingual interpretation signage created throughout; Creation of a new woodland sculpture trail and boardwalks and enhanced connection to the Coastal Path. The beach will continue to be accessible to the public providing safe access to the shallow shelving water; A Combined Heat and Power Centre.

Land at Cae Glas: The erection of leisure village accommodation and facilities which have been designed to be used initially as a temporary construction workers accommodation complex for Wylfa B at land at Cae Glas, Parc Cybi, Holyhead comprising : Up to 315 lodges which will be initially sub-divided for nuclear workers accommodation; Central hub building providing reception and canteen ancillary to accommodation; A Park and Ride facility comprising up to 700 car parking spaces; a new hotel; A lakeside hub comprising restaurant, café, retail and bar; New grass football pitch and cricket pitch; and a Combined Heat and Power centre. To be subsequently converted (post Wylfa B construction) into an extension to the Penrhos Coastal Park Leisure Village comprising: Refurbished lodges and facility buildings to create high quality holiday accommodation (up to 315 family lodges); A Visitor centre and Nature Reserve allowing controlled public access; and Heritage Centre with visitor parking.

Land at Kingsland: the erection of a residential development which has been designed to be used initially as temporary construction workers accommodation at land at Kingsland, Kingsland Road, Holyhead comprising: Up to 320 new houses to be initially used as temporary construction workers accommodation. To be subsequently converted (post Wylfa B construction) into a residential development comprising: Up to 320 residential dwellings set in high quality landscaping and open spaces. Each phase of development will have ancillary development comprising car parking, servicing areas, open spaced and plant. Full detail for the change of use of the existing Estate buildings at Penrhos Coastal Path, London Road, Holyhead including the

change of use for: The Bailiffs Tower and outbuildings at Penrhos Home Farm from the a cricket clubhouse to a visitors information centre, restaurant, café, bars and retail; Home Farm Barn and Cart Buildings from farm buildings to cycle and sports hire centre; the Tower from residential to a Managers accommodation and ancillary office; and Beddmanarch House from residential to a visitors' centre.

Penrhos Coastal Park, Cae Glas and Kingsland, Holyhead

The report of the Head of Planning Service was presented for the Committee's consideration.

The Chief Planning Officer summarised the background and timeline to discussions and activities in relation to the Land and Lakes proposal since the outline application was approved by the Planning and Orders Committee in November, 2013 with particular reference to the work undertaken with regard to the heads of terms under the Section 106 Agreement. The Officer said that the report above follows on from the report presented to the Committee on 29 July, 2015 which contained details of all the heads of terms and where it was resolved that the terms of the Section 106 Agreement be brought back to the Committee prior to its completion due to concerns expressed in relation to seven specific areas. Following the Committee 29th July meeting and in line with Members' request, an informal Members' briefing was held by Officers on 11 September, 2015 to discuss and clarify those issues along with some additional points made. No decision was made at the briefing meeting.

The report addresses the concerns raised by Members in relation to the Section 106 provisions.

Mr Gary Soloman, Burges Salmon reported on the position to date with regard to the seven areas noted below regarding which Members were most concerned and on which they had sought assurance, and where applicable he explained the modifications proposed to the Heads of Terms in order to address the issues raised as described in the report –

- **Contamination** - Members were concerned as to what Land and Lakes were doing or intending to do to deal with historic contamination at Cae Glas and what requirements were being put in place.

Mr Gary Soloman summarised the obligations required of the developer as follows which it is considered creates a robust position in relation to the contamination issue –

- Prior to development taking place, the developer will be required to submit details of the appropriate remediation and mitigation works to be undertaken to the land designated as the Nature Reserve;
- A bond to be put in place prior to any development at Cae Glas which will cover the value of the works of mitigation and which can be drawn upon by the Council if required.

- The remediation programme to be implemented in a phased way in accordance with a scheme to be agreed by the local planning authority and as part of the development of any part of Cae Glas.
- The Section 106 Agreement to provide that the remediation programme will be implemented either before public use of the nature reserve or the occupation of Cae Glas, whichever is the sooner.
- Planning conditions to be imposed which will require that an assessment of contamination, appropriate remediation and implementation thereof for any contamination which may be present on any other parts of the development area at Cae Glas (or Kingsland and Penrhos).

The Chief Planning Officer read out an extract from correspondence by Natural Resources Wales in confirmation that the statutory body is satisfied that the Section 106 Agreement will deal appropriately with the issue of contamination viz “we are satisfied that any planning consent for the development to include the suite of conditions suggested by NRW in order to ensure the developer will have to implement the agreed remedial measures in full in particular to deal with contamination issues at the Cae Glas site. Part of those conditions will require the developer to submit further decontamination assessment reports of which the results may require further appropriate remedial measures to be approved and implemented; some of those remedial measures will also form the subject of the Section 106 Agreement. We understand that Land and Lakes have confirmed that the remediation programme will be implemented either before public use of the nature reserve or occupation of Cae Glas whichever is the sooner. NRW is satisfied that the conditions and requirements of the Section 106 Agreement will satisfactorily deal with contamination issues as noted in section 3 of the agenda for the October 2015 Committee.”

In response to a request by the Vice-Chair, the Principal Environmental Health Officer expanded on the nature and extent of contamination at Cae Glas as a former site for the disposal of refuse and used by the former Anglesey Aluminium. The Officer confirmed that as expected with such sites there is some heavy metal contamination on site and it is expected that there would be some methane gas generation. It is likely that given the length of time since the landfill site closed the amount of methane gas generation reduces as anaerobic activity on decomposition declines with time. The evidence to date indicates that this is fairly typical of a landfill site of this nature and that nothing untoward has emerged. Naturally occurring reed beds have developed in one or two locations and this provides confidence as to the likely success of the suggested remediation programme leading to attenuation of some of the material. There are well established principles for preventing/addressing gas migration. The Environmental Impact Assessment has dealt with the presence of heavy metals on site and confirms that none are above the threshold that make them an issue. Natural Resources Wales will be monitoring any impact on the Inland sea. Planning consent will afford the opportunity to remediate the land at Cae Glas where otherwise that would not have been possible.

The Committee considered the position and sought further clarification with regard to the following points –

- Whether the remediation programme will be implemented ahead of the commencement of the development or as the report suggests, in a phased way during the course of the development. Mr Gary Soloman confirmed that the remediation works will have to be agreed before development commences and will be carried out in a phased way, the idea being that a phased strategy will allow the Council greater control over the timing of works. Remediation works have to be completed before any occupation of Cae Glas.
 - The value of the bond to be put in place for the remediation works and whether this will cover a percentage or the whole of the costs of those works and in the event of problem occurring with issuing a Bond for this kind of work, whether there is a Plan B. Mr Gary Soloman said that the bond will be to the value of all the remediation works required. As the extent of those works is not known currently, they will have to be agreed and an assessment of the value of the works undertaken. A figure will be agreed with the Council which will then give the value of the Bond. Bonds will be required to cover the contributions and the works in the Section 106 agreement He said that he did not anticipate any problems arising with the issuing of bonds.
 - Whether the Authority is able to draw on information obtained from assessments linked to developments in previous years e.g. the construction of the A55 or the Biomass Plant on Anglesey Aluminium land. The Chief Planning Officer said that whilst he was not aware that previous developments have given rise to exactly the same issues as this proposal, the Authority will where appropriate examine conditions linked to other developments e.g. the Biomass Plant and Eco Park and is steadily building a comprehensive picture.
- **Application of Monies Received** - Members had expressed a concern as to how monies received would be spent and sought assurance that the various contributions would be spent in the locality for the purposes for which they were paid.

Mr Gary Soloman confirmed that the Section 106 Agreement specifies what each contribution needs to be applied towards. Obligations in the Section 106 Agreement ensure that the Council only uses the sums towards the infrastructure or services for which they are paid, and, in the event they are not applied towards those services, they will need to be repaid by the Council to the developer. In circumstances where monies need to be passed on by the Council to other parties, the Council will require that an agreement is entered into by the relevant service provider to ensure that the monies are applied as per the requirements of the Section 106 Agreement. Mr Gary Soloman confirmed that local in this case is defined as the local area of impact i.e. Holyhead.

The Committee suggested that the application of monies should be considered in the context of the whole of the Island especially with reference to the emergency services.

- **Restrictions on the Legacy Uses** – Concerns were raised regarding the acceptability of the criteria which would apply before units being built as nuclear worker accommodation qualify for legacy use. There was also an issue raised in relation to the status of any units built as nuclear worker accommodation where the Wylfa project does not proceed.

Mr Gary Soloman recapped on the position proposed to the 29th July meeting of the Committee in relation to qualifying criteria for legacy uses and he said that Officers have been looking at options to ascertain if there is a way of dealing with legacy units that might alleviate the concerns raised including by increasing the length of time within which a unit must be occupied to qualify as a legacy unit e.g. 4 years or alternatively, to await completion of the contract between Land and Lakes and Horizon Nuclear Power in order to base the legacy criteria on the term of the contract which would ensure that the minimum criteria are directly related to the contract and help avoid arbitrary measures being put in place at this stage. The latter option is proposed and specific provisions are put forward in order to achieve this as set out under clauses 1 to 5 of section 3 of the report.

The Committee considered the proposals and the following points were made –

- The rationale for basing the criteria on the terms of the contract. Mr Gary Soloman said that at some stage the nuclear worker units have to be converted to a legacy use and the Council needs to be in position to manage the conversion and when it happens. The qualifying criteria can be set now or when the agreement between HNP and Land and Lakes is finalised when a more informed decision could be made based on the availability of the details of the contract. That would allow the Council greater control over how many legacy units can be converted and when.
 - Continuing concern was expressed with regard to clause 1.1.4 which provides for an exception to the qualifying criteria for legacy use in the event that a contract between HNP and Land and Lakes (or its successor) is completed but due to circumstances beyond the control of Land and Lakes Wylfa newydd does not then proceed which would allow Land and Lakes to convert any unit it has completed at that point into a legacy unit regardless of whether it has been used for nuclear worker accommodation. The Committee deemed the provision to be far too open ended and emphasised that the risk attached to the proposal as a commercial venture should be borne by the developer and not shared by the Council and any redress in the event of Wylfa Newydd not proceeding should be sought from HNP. It was pointed out that development should meet specific needs and if Wylfa newydd does not go ahead then there is no need for housing in Kingsland on the scale proposed but that that is a risk for the developer and not for the Council. Mr Gary Soloman said that the objective is to balance achieving what needs to be achieved against having a reasonable position if the development does not proceed. He said that there is a concern that deleting the clause could mean that what are designed to be exemplar units would have to be demolished. He suggested 4 possible options with regard to dealing with clause 1.1.4 viz
- To support the Section 106 Agreement with clause 1.1.4 as it is
 - To support the Section 106 agreement and to exempt Kingsland from clause 1.1.4
 - To support the Section 106 agreement with the deletion of clause 1.1.4 in its entirety

- To support the Section 106 Agreement and to amend clause 1.1.4 to read that no unit can be converted to a legacy use unless it meets the criteria or unless otherwise agreed in writing by the Council.

• **Restrictions on Occupation** – A concern was raised in respect of the relationship between the development at Cae Glas and Kingsland

Mr Gary Soloman explained that Officers consider that a similar approach could be taken to the restrictions on occupation as with the legacy provision i.e. that the criteria set out in the report onto the 29th July Committee meeting could be specified as minimum criteria but with the actual phasing provisions being subject to approval by the Council once the HNP Agreement has been entered into and the requirements for Nuclear Worker accommodation are known.

With reference to the position whereby to qualify for a legacy use a unit must have been occupied by at least two nuclear workers for a two year period, the Committee suggested that the occupation period be amended to a minimum 4 years. A further preference was expressed that 80% to 90% of the units at Cae Glas should be occupied before occupation of units at Kingsland.

• **Bonds** – Members had sought clarification of the bonding provisions and how they would be delivered

Mr Gary Solomon said that the Section 106 Agreement will identify the bonded items. These will effectively be all the contributions payable and the significant works that need to be carried out. Those contributions/works will be payable at various times throughout the development (trigger points). The bonding provisions will require that a value is established for the bonded items with a bond being put in place at a certain point prior to the trigger point (security point).

An alternative is for the average bond figure to be agreed which provides security for the duration of the development and is sufficient to cover all the peaks and troughs of payment. This can be agreed once the total value of obligations is known together with timings of the payments. The developer has also requested that Parent Company Guarantees be used.

Given the size of the development and the number of commitments, it is likely that a number of bonds with different banks (to be approved by the Council) will be required.

The Committee noted the proposal but expressed reservations about the lack of clarity with regard to the value of the bonds to be put in place, how the value will be determined and the readiness of banks/companies to take on the risk. The Committee was minded to defer acceptance of the bonding provisions pending further details regarding the amounts involved. Mr Gary Soloman said that it is not possible to achieve a position of knowing the exact value of the bonds before the Section 106 agreement is signed. In most cases the value of contributions is known e.g. Police. Leisure etc. Where there are works required, then when the Section 106 Agreement is signed, and permission is granted, the developer will issue a report on the value of certain works for the Council's approval and if the figure is

acceptable a bond will be put in place to that value. Bonds will cover all the obligations in the Section 106 Agreement.

- **Emergency Services Contribution**

Mr Gary Soloman updated the Committee as follows with regard to the contributions towards emergency services –

- Fire Service provision – agreed at the level specified at the 29th July meeting i.e. £676,740
- Ambulance Service – re-assessed downwards to £667k which is acceptable to the developer.
- Police Service - £2.759m with a contingency of 689k for a variety of measures including custody suites.
- Medical Care - £768k split into £600k for GP provision and £168k for Dentists. The BCUHB has accepted this as a capital contribution. Whilst the BCUHB is of the opinion that a contingency along with a revenue contribution may also be properly requested the Council is not of the opinion that there is robust enough justification for this. The Developer is happy to agree in principle to those commitments on condition that that element is subject to a future review when more evidence is available. A Counsel's opinion has been sought with regard to emergency services contributions which confirms that it is appropriate to put in place a review mechanism for the emergency services contributions, which will allow for reassessment at a future date.

Councillor Trefor Lloyd Hughes sought a breakdown of the £667k contribution towards Ambulance Services on the basis of whether it would be adequate to meet the requirements. The Chief Planning Officer confirmed that the amount is based on a formula and that he would provide the Member with the information.

- **Social Services Provision** – Members had raised concerns about the reference in the draft Section 106 Agreement to a Consultant Social Worker on the basis that the Council is moving away from the employing consultants on the grounds of costings.

Mr Gary Soloman said that the Head of Social Services has confirmed that the Consultant Social Worker will be a Council employee and that the use of the term consultant is a reflection of an employee's seniority, not employment status.

- **Additional Points**

Mr Gary Soloman updated the Committee on the position in relation to the additional points raised by Members at the informal briefing meeting with regard to the quality of the units at Cae Glas and Kingsland and affordable housing and what had been done to address those points. The Chief Planning Officer referred to a letter from Natural Resources Wales and read an extract therefrom in relation to the conditions that will ensure delivery of an exemplar development at Cae Glas and Kingsland.

Mr Gary Soloman further referred to the provisions for monitoring and assessment which is a Head of term and he explained that there will be an obligation on the developer to pay, but at the appropriate time an assessment will be made by the Council of what resources are needed to ensure that monitoring is carried out effectively.

The Committee suggested that the transition period when the construction work is nearing its end and the legacy use can begin should be specified. Mr Gary Solomon said it is difficult to forecast what that transitional period should be; the mechanism that is proposed will recognise that there will be a transitional period but how that is dealt with will need to be considered by the Council further down the line.

Councillor R.Llewelyn Jones was given the opportunity to speak as a Local Member. Councillor Jones reiterated previously articulated concerns about the scale of the intended housing element of the proposal and the need for it; the viability of the development as a whole given the lack of details around costings and that it was premature to be issuing a section 106 agreement at this time ahead of any formal agreement between Land and Lakes and HNP.

Councillor Kenneth Hughes proposed that the recommendation of the report be approved viz that the Head of Planning Service be authorised to finalise and complete the Section 106 Agreement in accordance with the heads of terms presented to the Committee on 29th July and as updated by the report to this meeting, and thereafter to issue the planning permission with conditions as previously approved, including any additional or amended conditions considered appropriate. The proposal was seconded by Councillor Jeff Evans.

Councillor Victor Hughes proposed amendments to the effect that –

- Clause 1.1.4 (restriction on legacy uses) be deleted in its entirety
- To qualify for legacy use a unit must have been occupied by at least two nuclear workers for at least a four year period
- That agreement on bonding provisions be deferred pending the availability of detailed figures

Mr Gary Solomon reminded the Committee of the four options which he had suggested for dealing with clause 1.1.4 namely –

- To support the Section 106 Agreement with clause 1.1.4 as it stands (as proposed and seconded by Councillors Kenneth Hughes and Jeff Evans respectively)
- To support the Section 106 agreement and to exempt Kingsland from clause 1.1.4 but retain it with regard to Cae Glas (there was no support within Committee for this option)
- To support the Section 106 agreement with the deletion of clause 1.1.4 in its entirety (proposed and seconded by Councillors Victor Hughes and Ann Griffith respectively)

- To support the Section 106 Agreement and to amend clause 1.1.4 to read that no unit can be converted to a legacy use unless it meets the criteria or unless otherwise agreed in writing by the Council. (proposed and seconded by Councillors Richard Owain Jones and Nicola Roberts respectively)

In the subsequent vote on this matter the fourth option was carried namely to amend clause 1.1.4 so that it reads, *that no unit can be converted to a legacy use unless it meets the criteria or unless otherwise agreed in writing by the Council.*

The second amendment put forward by Councillor Victor Hughes (seconded by Councillor Ann Griffith) that a unit must be occupied for at least 4 years to qualify as a legacy unit was voted upon and was carried.

Following further assurances by Mr Gary Soloman with regard to the bonding provisions who reiterated that in terms of the contribution figures that are known, they will all be bonded; if the developer is not able to obtain a bond for any part of the works, then it is the developer's risk and he will not be able to proceed, Councillor Victor Hughes withdrew his amendment that acceptance of the bonding provisions be deferred.

It was resolved that the Head of Planning Service be authorised to finalise and complete the Section 106 Agreement in accordance with the heads of terms presented to the Committee on 29th July, 2015 and as updated by the report to this meeting, and thereafter to issue the planning permission with conditions as previously approved, including any additional or amended conditions considered appropriate subject to the following additional amendments agreed at the meeting:

- **That clause 1.1.4 be amended to read “that no unit can be converted to a legacy use unless it meets the criteria or unless otherwise agreed in writing by the Council”(or words to that effect).**
- **That a unit must be occupied for at least 4 years to qualify as a legacy unit.**

**Councillor W.T. Hughes
Chair**