



P/2013/0261 –Cwm Golwg –Planning Statement

The following planning statement has been produced to seek the discharge of all the planning agreements as set out in the Section 106 Agreement attached to the planning permission P/2013/0261.

There have been various applications in recent times, which have identically worded Section 106 agreements, which include:

- 22/0085/VAR - Dolfor
- 23/0888/VAR –Llandyssil

We have obtained two open market valuations for the property, which have been undertaken by accredited RISC surveyors.

Morris Marshall & Poole – [REDACTED]  
McCartneys – [REDACTED]

These formal valuations of these can be seen within the supporting documentation.

Section 106A of the Town and Planning Act 190 allows for planning obligations to be discharged. Under sub section 3, it states that a person whom the planning obligation is enforceable may, at any time after the expiry of the relevant period, apply for the obligation to be discharged. Sub section 4 states that the relevant period as five years by default. Furthermore, under sub section 6, it states that where such an application is made, if the obligation no longer serves a useful purpose, it shall be discharged.

In October 2018, Powys County Council adopted the use of the Supplementary Planning Guidance (SPG). This sets out the relative affordability criteria in relation to matters such as value, tenure and scale.

Within paragraph 4.2.1, it states that on average households in Powys are able to afford houses of values up to £126,676 which is £48,650 below the average house price paid.

Within paragraph 4.2.2, it states that this figure is referred to as the 'Affordability Level', and that is also used as the basis for calculating the percentage discount to open market value applied to intermediate affordable housing for sale.

With paragraph 8.20, the Supplementary Planning Guidance sets a percentage discount to be applied to the sale and future resale of intermediate affordable housing at 28% below open market value.

The following extract from the appeal decision at Dunroamin, Abermule sets out the follow points:

*"... In any event, the terms of the S106 planning obligation do not address the claimed local need for affordable housing, as it makes no reference to affordability. Its terms would be satisfied by a wide*

*range of persons including those who would be able to compete for dwellings in the open market. The legitimate aim of national and local planning policies is to seek to meet the housing needs of the whole community, particularly those persons in greatest housing need. But this obligation fails to do that, since it merely restricts occupancy to anyone who has lived or worked in the area for the previous 3 years, or coming to the area to work, with no reference to housing need. I therefore consider that it neither fulfils a proper planning function nor is it an appropriate obligation.*

*Turning to the tests in PPW of June 2010 I find that the obligation has neither a relevant nor necessary planning function. It is not fairly or reasonably related in scale and kind to the development. Furthermore, as the obligation serves no useful planning function based upon a legitimate local or national policy objective, it fails a fundamental test of Circular 13/97 and is by definition unreasonable. For the same reasons it cannot serve a legitimate land use planning purpose, and I conclude that it should be discharged.”*

The effect of this appeal decision is that the planning obligations relating to the need for occupiers of Cwm Golwg to be local to the area can likewise not be held to serve a legitimate land use planning purpose. The obligations aren't related to housing needs, don't take account of the financial position of the future occupier, and aren't concerned with affordability. The restrictions that these planning obligations impose are demonstrably at odds, and therefore with all the relevant planning policy, guidance, and advice, should be discharged. This is further backed up with the discharge of the exact same planning obligation as Pont Faen (23/0888/VAR).

However, the planning obligations that have been imposed on Cwm Golwg as a sole residence and for owners to not have owned a property previously are in part concerned with housing need broadly. They seek to make the Cwm Golwg available only for first time buyers or equivalent. The obligations concerned with size and maximum sale price are likewise recognised to be related to housing need.

The normal procedure when trying to discharge a planning agreement, would be to submit supporting evidence of the marketing of the property in question. This would be done to demonstrate a lack of on-going need for the dwelling to remain available for only to those in housing need. However, with the valuations obtained for Cwm Golwg, even when applying the required 28% reduction to the open market dwelling, would still be in the region of [REDACTED] this is considered to be significantly higher than the affordability level for the locality, which is between the figure of £126,676, as quoted within the Supplementary Planning Guidance and the Acceptable Cost Guidance 2 figures for a 3 bed house (4P 3B H) is £214,820. The additional means that the maximum price set within the planning agreement is well above the stated affordability level.

Due to the reasons above and the remaining planning obligations within the restriction placed on Cwm Golwg, it presented very little need to market the property to demonstrate its lack of affordability to those in housing need.

Planning appeal APP/T6850/Q/18/3210595 (Penarth, Llidiartywaun –VAR/2018/0019) is also an important case which needs to be looked at when considering the removal of the planning obligation placed on Cwm Golwg. The following from the above appeal decision sets out the relevant consideration:

*“.... The subject agreement was entered into in connection with the grant of permission in 2004 for the dwelling which is now the appellant's home and originally contained 3 obligations. In 2014 the Council varied the agreement to omit 2 of the obligations, which restricted the occupation of the*

*dwelling to the appellant and, thereafter, to persons with a local connection. The remaining obligation, which is the subject of this appeal, restricts the dwelling (excluding garages) to a gross floor space of 130m<sup>2</sup>.*

...

*As the appellant points out since the variation of the original agreement there is no restriction on the occupancy of the dwelling and no means of restricting its resale price. Planning Policy Wales explains that an affordable house is one subject to a mechanism that ensures that it is accessible to those who cannot afford market housing. This is reflected in policy SP3 of the Powys Local Development Plan. In the absence of such a mechanism the property is an open market dwelling.*

*The Council contends that there is an onus on the appellant to demonstrate that the dwelling is no longer required as an affordable dwelling. However, I consider that such a justification cannot apply in this case given that the subject property is not an affordable dwelling.*

*As the restriction does not facilitate the property's potential contribution to the supply of affordable housing I find that it is not necessary. As a result it does not satisfy tests set out in Welsh Office Circular 13/97: Planning Obligations and in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Furthermore it serves no useful purpose and, accordingly, I shall discharge the obligation...."*

The importance of the above extract/planning appeal decision is that the planning obligation relating to size can equally be held to not serve a land use planning purpose.

As such, all planning obligations that are intended to have a basis in housing need have been shown to no longer serve a legitimate land use planning purpose. All the restrictions associated with the application contradict the aims of planning policy and will not deliver or retain long term affordable housing in the area. This claim is further backed up by application 23/0888/VAR, which had the same associated restrictions, which upon reflection of the same above information, were removed.

Therefore, this application will be for the discharge/removal of the entire planning agreement. The obligations within said agreement have been shown to have no continued bearing on land use planning matters.

As stated in the Council's SPG, a planning obligation will be considered to meet the tests where it is aimed at ensuring that the dwelling remains as an affordable dwelling and accessible to those who cannot afford open market housing. It should also take account of the financial circumstances of any prospective occupiers and their need for affordable housing.

Heeding this, the availability of the dwelling only to those in local affordable housing need cannot be secured. This highlights the fact that the existing obligations are not necessary or relevant to planning and why other possible considerations such as marketing are not considered appropriate. In turn this demonstrates why there is no reasonable basis on which to seek (any) variation of the agreement.

To summarise, I think the above information/extracts proves that the planning agreement associated to the affordable housing for Cwm Golwg no longer serve land use planning purpose. This is further backed up by the removal of the exact same worded obligations which were placed upon the following:

- 22/0085/VAR - Dolfor
- 23/0888/VAR –Llandyssil

We therefore consider the discharge/removal of said obligations to be granted. This will then enable Cwm Golwg to be placed on the market for those who don't meet the criteria placed upon the dwelling as it currently is.