

# THE VALE OF GLAMORGAN COUNCIL

## COMMUNITY LIAISON COMMITTEE

### REQUEST FOR CONSIDERATION OF A MATTER BY THE COMMITTEE (\*TO BE MADE BY THE TOWN / COMMUNITY COUNCIL VIA THEIR CLERK\*)

**Date:** 30/3/2022.

**Name of Town/Community Council:** St Nicholas with Bonvilston community Council.

**It is requested that the Community Liaison Committee consider the following matter. (N.B. Items that are site specific should be referred to the appropriate Council department):**

Issue: S106 money is primarily directed at “affordable housing”/more housing, with little left for infrastructure or facilities.

#### **Reason(s) for request:**

With the LDP being reviewed, this is a good time for consideration on what S106 is used for - and there are many, many complaints from residents of the Vale of Glamorgan that new development is not bringing the required infrastructure or facilities.

**PLEASE RETURN TO:** Room 26  
Democratic and Scrutiny Services  
Directorate of Resources  
The Vale of Glamorgan Council  
Civic Offices  
Barry  
CF63 4RU

#### **FOR COUNCIL USE ONLY:**

**Date Received:** 30 March 2022.

**Subject Matter:** S106 Allocations.

**Copy of request passed to Director(s)/Officer(s):**

Chief Executive – Rob Thomas
Head of Regeneration & Planning – Marcus Goldsworthy
Principal Planner – Charlotte Raine
March 30 2022 at 11:41

**Copy to Chair/Vice Chair:**      YES/NO

**FOR COMMITTEE AGENDA**      YES/NO

**If yes: Report / ~~Slide Presentation / Verbal Update~~**

**If no please state reason:**

Report to be provided to the Committee at the 14<sup>th</sup> July 2022 Meeting by the Operational Manager for Planning & Building Control and Senior (S106) Planner.

30 March 2022 11:49

**Chief Executive's comments:** 30 March 2022 21:04

The matter you set out in the request is a key issue for both Vale and Town/Community Councillors and therefore addressing this at a meeting of the Community Liaison Committee would be appropriate.

However, considering that the request was received in a pre-election period, it would not be a good use of time and resources to consider the matter at the 27<sup>th</sup> April meeting but rather at the 14<sup>th</sup> July meeting of the Committee, the first scheduled meeting post the 5<sup>th</sup> of May Election, when the new cohort of Vale and Town/Community Council members would benefit from addressing the matter. In addition, Council Officers are currently reviewing related Section 106 guidance with emphasis on community facilities/assets, green infrastructure, and climate change remediation and this review exercise would not have concluded before the 27<sup>th</sup> April meeting. It would therefore be more beneficial for members to consider the matter alongside the most up to date guidance later in the 2022 calendar year.

**Date of written response(s) to Town/Community Council:**

Acknowledgement of receipt: 30 March 2022 at 11:45 to Cllr Ian Perry [Private Email Address] from Amy Rudman.

Confirmation of scheduling: 06 April 2022 at 10:15 to Cllr Ian Perry [Private Email Address] from Amy Rudman.

Meeting of:	<b>Community Liaison Committee</b>
Date of Meeting:	<b>Thursday, 14 July 2022</b>
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Section 106 – Affordable Housing, Infrastructure and Facilities
Purpose of Report:	To respond to a request made by St Nicholas with Bonvilston Community Council in respect of Section 106
Report Owner:	Marcus Goldsworthy – Director of Place
Responsible Officer:	Charlotte Raine (Major Project Manager) / Ian Robinson (Operational Manager for Planning and Building Control)
Elected Member and Officer Consultation:	Not applicable
Policy Framework:	This is a matter for information
Executive Summary:	<ul style="list-style-type: none"> <li>• In March 2022, St Nicholas with Bonvilston Community Council raised an issue to be considered at the Community Liaison Committee.</li> <li>• The issue raised by the Community Council was: ‘S106 money is primarily directed at “affordable housing”/more housing, with little left for infrastructure or facilities.’</li> <li>• The reason stated for the request was: “with the LDP being reviewed, this is a good time for consideration on what S106 is used for - and there are many, many complaints from residents of the Vale of Glamorgan that new development is not bringing the required infrastructure or facilities.”</li> <li>• The Vale of Glamorgan Council has been extremely successful securing high levels of affordable housing, in addition to receiving Section 106 financial contributions, to support infrastructure and facilities to mitigate the impacts of major new developments. On 31st March 2022, the Council had £18,738,499.06 in the main Section 106 account, with large sums for education facilities, sustainable transport, public open space, off-site highway works, affordable housing, community facilities and public art.</li> <li>• However, it is accepted that it may not always be possible for developers to satisfy the LDP requirements for affordable housing and planning obligations. This is predominantly due to</li> </ul>

individual site constraints and viability issues, and this is identified in Policy MD4 and supporting paragraphs 7.29-7.31.

- The Vale of Glamorgan Council agrees that LDP review shall provide the opportunity to undertake a review of development viability to ensure the most appropriate policy approach is taken by the Council to maximise affordable housing delivery, in addition to community infrastructure and facilities, and to consider any potential new policies in respect of green infrastructure and climate change.

## **Recommendation**

1. That the Community Liaison Committee note the contents of this report.

## **Reason for Recommendation**

1. For information.

### **1. Background**

#### Legislative Context

- 1.1 The Council has the power to enter into legal agreements with developers under Section 106 of the Town and Country Planning Act 1990 (as amended). A Section 106 Agreement operates alongside a statutory planning permission and is used to secure planning obligations. The Council may enter a planning obligation with a developer to:
  - I. Restrict development or use of land;
  - II. Require operations or activities to be carried out in, on, under or over land;
  - III. Require land to be used in a specified way; or
  - IV. Require payments to be made to the authority either in a single sum or periodically.
- 1.2 Planning obligations are an important mechanism to help mitigate the impacts of new development, and can secure:
  - “In kind” / on site obligations – the provision of facilities on site by the developer, such as affordable housing, open space and landscaping, habitat protection, access arrangements including sustainable transport facilities.
  - Financial / off-site obligations - The developer contributes financially towards the provision of measures off-site, such as contributions towards new and improved education and community facilities, sustainable and public transport
  - Maintenance contributions - The developer contributes financially towards the physical upkeep of facilities that they have funded or provided, such as open spaces
- 1.3 It is important to note that The Community Infrastructure Regulations 2010 (as amended) came into force on 6th April 2010 in England and Wales and therein Regulation 122 had immediate effect, which gave a regulatory basis to the following tests:  
‘a planning obligation may only legally constitute a reason for granting planning permission if it is:
  - a) necessary to make 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.’
- 1.4 The Council must therefore act reasonably when setting policy and negotiating planning obligations, to ensure that there is not a breach of Regulation 122.

## **Planning Policy Context**

**1.5** The National Planning Policy context for the provision of planning obligations through the planning system is set out in:

### **Future Wales: The National Plan 2040**

**1.6** This document is the national development framework setting out the direction for development in Wales to 2040. It sets out the challenges and opportunities facing Wales, such as Climate Change, Housing and Travel.

**1.7** Policy 7 “Delivering Affordable Homes” sets out Welsh Government’s ambition to increase the delivery of affordable housing through the planning system.

### **Planning Policy Wales - Edition 11 (gov.wales)**

**1.8** This document sets out the land use planning policies of the Welsh Government. Paragraphs 4.2.28 to 4.2.34 set out the requirements for development plans in respect of the provision of affordable housing. The policy is supplemented by Technical Advice Notes.

### **‘Delivering Affordable Housing Using Section 106 Agreements – Practice Guidance’ (2008) and ‘Delivering Affordable Housing Using Section 106 Agreements: A Guidance Update’ (2009)**

**1.9** These WG guidance documents aim to improve the delivery of affordable housing through the planning system.

**1.10** The Local Planning Policy context is set out in the Local Development Plan and Supplementary Planning Guidance.

### **The Vale of Glamorgan Adopted Local Development Plan 2011-2026 (LDP)**

**1.11** The LDP was adopted by the Council in June 2017, following a public examination. The LDP is the statutory planning document for planning decisions, and sets out the vision, objectives, strategy and policies for managing development in the Vale of Glamorgan.

**1.12** To fully consider the level and distribution of housing and employment growth identified in the LDP and the impact it would have upon infrastructure and facilities, assessments were undertaken in respect of highways impact, sustainable transport, educational facilities, open space and community facilities, as background evidence to the LDP.

**1.13** There are several specific policies which refer to the provision of infrastructure and/or allocate sites for the provision of new infrastructure and community facilities within the LDP to support the anticipated growth, including, but not limited to, MG6 – Provision of Educational Facilities, MG7 Provision of Community Facilities, MG16 Transport Proposals and MG28 Public Open Space Allocations.

**1.14** The key overarching policies in respect of the use of planning obligations to secure affordable housing and infrastructure are:

- Policy SP4 Affordable Housing Provision sets a target for the provision of 3,252 affordable dwellings during the Plan period 2011-2026. The target

figure set by the Council has been derived from an assessment of the potential affordable housing contributions from the anticipated level of windfall and small housing sites, and housing allocations identified in within the LDP under Policy MG2. Policy MG4 sets out when residential developments will be required to provide affordable housing.

- Policy MD4 is the “Community Infrastructure and Planning Obligations” policy, and sets out that where appropriate, and having regard to development viability, the Council will seek to secure new and improved community infrastructure, facilities, and services appropriate to the scale, type and location of proposed developments. The supporting text (paragraphs 7.29-7.32) sets out the Council’s approach to considering development viability, and how planning obligations will be prioritised for a particular development in the event that viability is an issue, having regard to the site location and the local needs in the vicinity.
- 1.15** The Council is required to monitor the implementation of the adopted LDP by preparing an Annual Monitoring Report (AMR), which is prepared in accordance with the Monitoring Framework contained in the adopted LDP at page 129 (section 9). The evidence collected as part of the [latest AMR \(2020/21\)](#) shows that good progress is being made regarding the implementation of the LDP strategy and objectives, particularly in relation to the delivery of affordable housing, infrastructure, and facilities.

#### **Supplementary Planning Guidance (SPG): Affordable Housing**

This SPG sets out the Council’s planning requirements and mechanisms for securing and delivering affordable housing within the Vale of Glamorgan. The SPG also provides guidance in respect of assessing development viability, and development viability appraisal requirements.

#### **Supplementary Planning Guidance (SPG): Planning Obligations**

- 1.16** This SPG provides clarification of where, what, when and how planning obligations will be sought, and sets out details of the development thresholds and formulae for each type of obligation. The costs formulae have been derived on costs set in July 2017. These are summarised in the table below. This table provides a starting point for negotiations, and the purpose of it is to provide a guide to developers as to the general expectations in respect of planning obligations. Other issues may be relevant, such as development viability, and each case will be considered on its own merits.

Type of Obligation	Residential development threshold	Commercial Development Threshold	Formula
*Affordable Housing in Barry	Net gain of 5 dwellings	-	30% on site

*Affordable Housing in Llanwit Major, Rhoose and St Athan	Net gain of 5 dwellings	-	35% on site
*Affordable Housing in the rest of the Vale of Glamorgan	Net gain of 1 dwelling**	-	40% on site unless otherwise agreed
Sustainable Transport	10	1000sqm floor space / 1ha site	£2300/dwelling or £2300/100sqm floor space
Education	10	-	Contributions per dwelling (depending on available capacity in local schools) Nursery = £1,825 Primary = £5,073 Secondary = £5,720 Post 16 = £1,193 Total = £13,811
Training and Development	-	1000sqm floor space / 1ha site	one trainee (£1255) per 500sqm of new floor space
Community Facilities	25	-	0.74sqm of community floor space per dwelling = a financial contribution of £1260 per dwelling
Public Open Space	5	1000sqm floor space / 1ha site	2.4 ha per 1000 population = $55.68m^2$ per dwelling or £1150 per person = £2,668 per dwelling
Public Art	10	1000sqm floor space / 1ha site	1% of Build Costs

### Replacement Local Development Plan 2021 - 2036

- 1.17** To ensure Local Development Plans (LDPs) are kept up to date, local planning authorities are required to review their Plan at least every 4 years from the date of adoption. The Council is preparing a new Local Development Plan (LDP) to replace the existing adopted LDP. The new Plan will be called the Replacement Local Development Plan (RLDP) and will cover the period 2021 to 2036.
- 1.18** A [Delivery Agreement](#) has been prepared and contains a Community Involvement Scheme and timetable for preparing and adopting the RLDP. This was approved by Welsh Government in May 2022 and marked the formal start of the RLDP preparation process.

### Local Housing Market Assessment (LHMA) 2021

- 1.19** As part of the development plan process, PPW (paragraph 4.2.3) requires planning authorities to understand their local housing market. Further, Section 8 of the Housing Act 1985 requires local authorities to consider housing needs and

to review the housing market 'periodically', and in 2013, Section 87 of the Local Government Act 2003 set a requirement for LHMA to be updated biannually.

- 1.20 The results of the LHMA 2021 shows a net need for an additional 1205 units of affordable housing per annum for the next five years, comprising 917 units for social rent, 79 for low-cost home ownership and 211 units of intermediate rented accommodation. To provide comparison, at the time of preparing the now adopted LDP, the LHMA 2015 identified a net annual need for 559 affordable housing per annum over the next five years (2015 - 2020), comprising of 331 social rented, 115 low cost home ownership (LCHO) and 113 intermediate rented dwellings.
- 1.21 Despite a significant increase in the number of affordable homes being delivered through the planning system (between 1st April 2011 and 2021 a total of 1,622 affordable dwellings delivered), there remains a significant need within the Vale of Glamorgan.

## 2. Key Issues for Consideration

- 2.1 The issue raised by St Nicholas with Bonvilston Community Council states that 'S106 money is primarily directed at "affordable housing"/more housing, with little left for infrastructure or facilities.'
- 2.2 The Vale of Glamorgan Council has been extremely successful securing high levels of affordable housing, in addition to receiving Section 106 financial contributions, to support infrastructure and facilities and to mitigate the impacts of major new developments.
- 2.3 The Council has recently circulated the Annual Section 106 Report 2021/22 to all Elected Members and Town and Community Councils. The report has been appended for completeness. The report highlights that the Council spent £5,576,157.37 of Section 106 in 2021/22 on schemes providing infrastructure and facilities, including enhancements to public transport, walking, and cycling networks, new school places, public open space and public art. A summary of income and spend on each planning obligation between April 2021 and March 2022 is attached at Appendix B of the report.
- 2.4 On 31st March 2022, the Council had £18,738,499.06 in the main Section 106 account, with large sums for education facilities, sustainable transport, public open space, off-site highway works, community facilities and public art. There was £5,403,001.82 in the account for affordable housing (29%).
- 2.5 Consequently, whilst the delivery of affordable housing/housing is an important priority for this Council, it is not correct that there is "little left for infrastructure or facilities", with over 70% of the Section 106 account being legally defined for other uses such as community facilities, education and sustainable transport.
- 2.6 Table 1 below provides a summary of the Section 106 Annual Reports since the adoption of the LDP. The table demonstrates that the Council has not only been successful in securing large Section 106 contributions, but it has also been successful in receiving the monies and implementing schemes. The annual reports are available to view at the following link:  
[https://www.valeofglamorgan.gov.uk/en/living/planning\\_and\\_building\\_control/Planning/Developer-Contributions-Section-106.aspx](https://www.valeofglamorgan.gov.uk/en/living/planning_and_building_control/Planning/Developer-Contributions-Section-106.aspx)

**Table 1: Summary of income and spend since 2016/17**

Year	Amount secured via Section 106 Agreements	Amount received via Section 106 Agreements	Amount spent
2021/22	£1,109,088.62	£2,276,023.95	£5,576,157.37
2020/21	£310,404.80	£2,193,701.13	£5,427,020.94
2019/20	£3,713,242.73	£10,471,766.77	£6,529,159.89
2018/19	£3,538,708.00	£9,840,639.92	£2,226,160.50
2017/18	£8,109,968.00	£5,210,619.00	£1,831,407.00
2016/17	£9,794,952.16	£6,723,344.97	£1,437,773.02

- 2.7** Numerous community councils and community groups have worked closely with the Council to use Section 106 financial contributions to lever in additional external grants, to deliver larger projects for their communities. An example of this is the new Ogmore by Sea Village Hall - the project has seen the trustees of the Ogmore Village Hall Association work in partnership with the Vale of Glamorgan Council to secure additional funding towards the ambitious new village hall, which opened in January 2022. In total, the project cost approximately £634k, with £332k from Section 106, and the balance secured via Welsh Government's Rural Community Development Fund, Community Facilities Programme, the Big Lottery and money the Association had fundraised within the community. There are also other examples, with the latest itemised in the 2021/22 Annual Report.
- 2.8** Notwithstanding the above, it is accepted that there are instances where a development cannot provide the full policy requirements for affordable housing and planning obligations.
- 2.9** As part of the background evidence base for the adopted LDP, the Council undertook a high-level viability assessment of the Plan's planning obligation and affordable housing requirements. The background evidence demonstrated that in most circumstances, there would be sufficient viability to meet the LDP policy requirements identified in Policies MG4 and MD4.
- 2.10** However, as noted above, the Council accepts that it may not always be possible for developers to satisfy the requirements for affordable housing and planning obligations. This is predominantly due to individual site constraints and viability issues, and this is identified in Policy MD4 and supporting paragraphs 7.29-7.31. Where this is proven to be the case, the Council must consider what the planning obligation priorities will be for that development, having regard to background evidence, the site location, and the local needs in the vicinity. This is considered on a site-by-site basis having regard to the statutory tests set out above in paragraph 1.3.
- 2.11** When affordable housing and planning obligations cannot be met in full, the Council must consider this within the acceptability of the scheme, and the wider planning balance. The Officer delegated/committee report (which considers the acceptability of planning applications) provides more detail on the individual circumstances, and a planning assessment is made.

- 2.12** The Council does not solely rely upon Section 106 financial contributions to deliver infrastructure and facilities. Infrastructure and facilities are delivered in several ways across the Vale of Glamorgan, in partnership with others. For example, the Council's 21<sup>st</sup> Century Schools Programme is an amalgamation of funds and is part-funded by Welsh Government. Active Travel funding comes from Welsh Government in the form of a dedicated grant, known as core allocation, and larger grants for specific projects which local authorities must bid for in a competitive process.
- 2.13** There is also the Council's Strong Communities Grant Fund which offers grants to Community Groups, the Voluntary Sector, and Town and Community Councils towards the cost of initiatives within the Vale of Glamorgan (up to a maximum of £25k). Projects funded through this scheme have ranged from new play areas, new sports facilities, community cinema equipment, community transport provision, community centre refurbishments and enhancements and community gardens, to name but a few. There are thus opportunities for community councils such as St. Nicholas with Bonvilston Community Council, to put forward schemes and apply for such funds to support projects.
- 2.14** The adopted LDP is currently being reviewed. As part of this process a [Review Report](#) (May 2022) was prepared which considers the effectiveness of the adopted LDP policies and confirms the revision procedure to be followed in preparing the Replacement LDP.
- 2.15** The Review Report (May 2022) confirmed that the LDP policies in respect of affordable housing and infrastructure are working effectively and securing appropriate mitigation. However, the LDP review will provide the opportunity for the Council to undertake a review of development viability to ensure the most appropriate policy approach is taken by the Council to maximise affordable housing delivery, in addition to community infrastructure and facilities, and to consider any potential new policies in respect of green infrastructure and climate change. Supplementary Planning Guidance on Affordable Housing and Planning Obligations will also be reviewed.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** Long Term - Section 106 contributions seek to ensure that sustainable communities are developed within the Vale of Glamorgan, providing equal opportunities for living, learning, working and socialising for all.
- 3.2** Prevention – The Council has a statutory duty as Local Planning Authority and Local Housing Authority to enable the delivery of affordable housing to prevent homelessness and provide decent homes and safe communities.
- 3.3** Integration - The delivery of planning obligations seeks to ensure that new communities integrate with existing.
- 3.4** Collaboration - The Council works collaboratively with Elected Members, internal departments and external organisations such as Registered Social Landlords to deliver schemes using Section 106 contributions.

- 3.5** Involvement - Multiple internal departments and external organisations work together to deliver schemes using Section 106 contributions in a holistic way. There will be multiple opportunities for involvement in the Replacement LDP going forward, as set out in the approved Delivery Agreement (May 2022).

#### **4. Climate Change and Nature Implications**

- 4.1** The adopted Local Development Plan (LDP) and supporting SPGs provide the local planning policy framework for delivering sustainable development.
- 4.2** Planning obligations are used to mitigate and secure enhancements as a result of new developments. Section 106 agreements can secure investment in environmental and sustainable transport measures.
- 4.3** The RLDP will enable the Council to consider any potential new policies in respect of planning obligations, such as green infrastructure and climate change.

#### **5. Resources and Legal Considerations**

##### Financial

- 5.1** Financial contributions are secured via Section 106 Agreements. A Section 106 agreement is a legally binding agreement between a land owner, developer and the Council. Financial contributions have a positive impact on many of the Council's functions including education, community facilities, open spaces, highways and public transport. Financial contributions can also be used as match-funding to lever in additional funds, such as the Council's 21st Century Schools Programme.

##### Employment

- 5.2** There are no staffing issues.

##### Legal (Including Equalities)

- 5.3** Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act (1991) and the Community Infrastructure Levy Regulations 2010 (as amended), provides the legislative framework for planning obligations. The Council has acted in accordance with this legislation when securing these contributions.
- 5.4** The Well-being of Future Generations Act has put in place that we must work towards achieving a more equal Wales of cohesive communities. The delivery of affordable housing and other mitigating infrastructure and facilities through the use of planning obligations will ensure that the Council is responding to this duty.

## **6. Background Papers**

Town and Country Planning Act 1990 (as amended)

The Community Infrastructure Levy Regulations 2010 (as amended)

Future Wales: The National Plan 2040

Planning Policy Wales - Edition 11

Technical Advice Notes – in particular, Technical Advice Note 2

'Delivering Affordable Housing Using Section 106 Agreements – Practice Guidance' (2008) and 'Delivering Affordable Housing Using Section 106 Agreements: A Guidance Update'

The Vale of Glamorgan adopted Local Development Plan (2011-2026)

Vale of Glamorgan Council's Local Development Plan - Review Report (May 2022)

Vale of Glamorgan Council's Replacement Local Development Plan Delivery Agreement (May 2022)

Supplementary Planning Guidance 'Affordable Housing'

Supplementary Planning Guidance 'Planning Obligations'