

## **Other Matters**

### **Modification of Section 106 Agreement relating to planning permission**

**NP/04/316**

**Newport Golf Club, Newport**

#### **Background**

Planning permission was granted on 18<sup>th</sup> May 2005 for the extension and re-arrangement of the clubhouse accommodation, re-modelling of the existing flats, extension of the driving range shelter, guest rooms, link flat and golf pro accommodation and the extension of the golf course to 18 holes at Newport Golf Club. (NP/04/316).

Officers advised members that the part of the application in relation to the new accommodation contravened the then policies of the Local Plan particularly if the new 18 hole golf course was not constructed prior to the occupation of the new accommodation.

A business plan was submitted in support of the application, the Authority's Finance Officer commented that "I cannot conclude that the future viability of the business is dependent on the enhanced accommodation and catering facilities".

The applicant was unwilling to enter into a Section 106 agreement that required the 18 hole course to be completed prior to the accommodation being built or occupied. Officers therefore recommended refusal as it was not considered that the additional accommodation was justified in the absence of an overall expansion of the existing facility.

The Committee resolved to approve the development subject to the applicant entering into a Section 106 agreement to ensure the delivery of the entire scheme and to tie the accommodation to the golf course in perpetuity. The minutes from the meetings reflect how important Members considered the need for a Section 106 to be to enable this application to be approved.

The application was subsequently granted planning permission with a Section 106 agreement in place which required the formation of the fairways, greens and non-playing areas on the Land, the road crossover and the enhancement of the existing flats in Dormy House.

In addition, the legal agreement restricted the disposal of any part of the land within the agreement (with the exception of Flat 2 Dormy House which was one of four existing flats on the site) other than as part of the Newport Golf Club. This effectively required the overall enhancement of the facilities and site, and tied the golf course to all facilities and accommodation associated with the golf club and restricted any future severance. The reason for this agreement was that the

proposed development was only justified as if in association with the recreational activity (ie golf course) in this countryside location and also improved the appearance to the existing development.

The flats known as Dormy House were in situ at the time of the application and were at the time not restricted to use by the golf course. Flat 2 had already been sold privately, but it was considered that the remaining flats should be tied to the golf course in the interests of ensuring that there was sufficient accommodation for the golf club taking account of their request for additional development and set out in their Business Plan, and to ensure that the maintenance of all buildings was carried out as a single entity in the interests of their visual appearance.

### **Current Proposal**

Following discussions with your officers a request has been received to modify the Section 106 agreement to allow for the sale of the three remaining flats within Dormy House on the same leasehold basis as Number 2.

It has been requested that the submission in relation to the modification be reproduced in full in your agenda and the two letters in relation to this matter are therefore reproduced at Appendix A, as is your Solicitor's reply dated 5<sup>th</sup> September, 2011.

It will be noted in the submission that much is made of the fact that the original decision by members did not include the existing building, Dormy House in the deliberations. The final version did however include this building for the reasons set out above. Members are reminded that should the applicant have had concerns with the inclusion of Dormy House in the original agreement he was under no obligation to enter into an agreement that included this clause and these matters are not considered to be relevant to the current request. Furthermore issues relating to whether officers had delegated powers to negotiate the terms of the Section 106 agreement at the time should have been challenged at that time.

Notwithstanding the above, the main reasons put forward for the request for a modification can be summarised as:

- The emphasis of the discussions with regard to the original Agreement was on the importance of securing the additional nine holes. These are now built, the accommodation completed and the site generally of a more pleasing appearance.
- The modification request only relates to the building that already existed at the time of the original application, and is for the purpose of releasing capital from the lease of the flats to further improve and develop the golf course.

- The golf club would retain the freehold and thus control over the visual appearance of the overall development, and as such the modification would not cause any problems from a visual aspect (as demonstrated by Flat 2 which has not been part of the golf club for many years).
- The flats have no occupancy restriction requiring them to be used for golfing holidays and apart from the leasehold arrangements there would be no material difference in the way that they are occupied.
- The golf club needs to raise capital to further improve the facilities it offers and to expand its client base and invest in tournaments such as the Ladies Senior Welsh Championships which will be using Newport as its venue in 2014.
- Government advice requires planning obligations to serve a useful planning purpose and in the absence of any restriction on occupancy (with the exception of a holiday clause on the new accommodation) the change in tenure is unlikely to alter the golf orientated function and occupancy of the flats. The sub-divided ownership does not automatically mean that the planning unit has been fragmented and as such the restriction on Dormy House serves no useful planning purpose.
- Planning obligations should relate directly to the proposed development – in this case requiring controls over a pre-existing development is not appropriate and was not relevant to the development at the time.

### **Legislative Powers/Policy Framework**

Section 106 of the Town and Country Planning Act 1990 includes provisions for the modification of Section 106 agreements. They can be modified by agreement at any time. They can also be the subject of a formal application to modify under Section 106A of the Act after the expiry of 5 years from the date of the Agreement. That minimum period has been exceeded in this case, but the applicant has requested that the matter be dealt with on an informal basis at this stage. Circular 13/97 – Planning Obligations provides advice on the imposition and subsequent modification of planning obligations and advises that the preferred option for variation of obligations is through agreement with the parties concerned rather than through a formal application and appeal procedure.

As such this request has been made in an "informal" manner by letter rather than through a more formal route. Should the request be refused it is open to the applicant to apply more formally which if refused would enable an appeal to be lodged against that decision.

Although the request has been made in this manner, in view of the fact that this application was originally determined by the Committee, it is considered that the matter should be considered by the Development Management Committee.

In addition, consultations have been carried out with Nevern Community Council and those interested parties who commented on the original application. Any representations received will be reported at the meeting.

Circular 13/97 sets out the main criteria to be met in requesting a planning obligation and these are similar to those required to be met in imposing a planning condition. Obligations should be necessary, relevant to planning, directly related to the development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. They should also enhance the quality of the development and enable proposals to go ahead which might otherwise be refused.

Although the adopted development plan has changed since the extensions to the golf club were approved, the policy principles remain the same. Policies in the adopted Local Development Plan only allow development in the countryside where amongst other things, tourist attractions or recreational activity is proposed where the need to locate in the countryside is essential, and where possible these proposals should use existing buildings. New self catering accommodation will only be allowed in the countryside where the land is a brownfield site or by the conversion of a building. (Policies 7 and 35). The general policies in relation to the protection of the National Park's special qualities and landscape are also relevant (Policies 1, 8 and 15).

### **Officers Considerations**

The main issues to be considered in this case are:

- Whether the modification of the planning obligation would meet adopted planning policy
- Whether the planning obligation continues to meet the requirements of Circular 13/97
- Other material considerations that would support the modification of the obligation

*Whether the modification of the planning obligation would meet adopted planning policy*

The policy framework set out above clearly restricts the approval of new development in the countryside unless it can be demonstrated that (in the case of a recreational activity) the need to be in the countryside is justified. New self-catering accommodation in the countryside on previously undeveloped land is not permitted under adopted policy.

In this case, a golf course clearly requires a countryside location for its operation and can therefore demonstrate an essential need for being in this location. It can also be accepted that there may be a need for a certain amount of buildings to

service this recreational activity (ie clubhouse, changing rooms, office etc). A number of golf courses also have an element of accommodation with them, either for the course manager or for users of the facility. In the case of Newport, there was much concern at the time of the original application that the accommodation would not be utilised as part of the golf course but would be an unfettered development in the countryside. As such the application was only granted subject to a planning obligation that sought to retain the accommodation as an integral part of the golf course and thus part of its revenue. Although this request for a modification relates only to the pre-existing flats, these were considered to be integral to the golf course, being situated between the clubhouse and new accommodation block and providing an important revenue for the overall viability of the golf course. A business plan was provided at the time of the application to demonstrate these factors.

In addition, the visual impact of the development was an essential part of the considerations. In the absence of any control over the existing flats, the overall appearance of the site could not be guaranteed and it was considered that the inclusion of this block of flats as part of the overall golf course "package" was essential in the interests of the visual impact in the National Park. The work to enhance this block has been carried out, but it is considered that its future maintenance and control should be secured through its continued ownership by the golf club.

It is therefore your officer's view that the original reasons for the planning obligation were clearly justified in policy terms, there has been no substantive change to policy that would now justify the modification of part of the obligation and which through its modification would result in an un-fettered block of flats in the open countryside with no justification. As such the request on policy grounds must fail.

*Whether the planning obligation continues to meet the requirements of Circular 13/97*

As set out above, a planning obligation must meet a number of "tests". As set out in the policy section above, it is considered that the planning obligation was required on planning policy grounds and as such was relevant to planning.

The applicant's agent has stated that he does not consider the obligation to be directly relevant to the development as it relates to a pre-existing block of flats. However, these were clearly in the control of the golf club at the time of the original application (with the exception of Flat 2) and were centrally positioned between the clubhouse and the new accommodation block. They were in a poor state of repair and formed part of the revenue stream for the golf course and its expansion and improvement.

It is therefore your officer's view that the inclusion of these flats in the obligation was directly relevant to the development; they were included in the planning application with proposals for alterations and improvements, and are an essential and integral part of the overall golf club buildings and site. As such it is considered that their inclusion was directly relevant to the proposal.

It is also stated that the accommodation has no occupancy restriction requiring it to be used in association with the golf course. This is a fact, but it is reasonable to assume that the main occupancy is carried out by users of the golf course due to its operation by the golf club who would market it as such. The severance of part of the accommodation to an alternative owner is unlikely to result in the same focussed marketing for golfing holidays as there would be no incentive to do so. As such whilst it is accepted that the accommodation could be used by persons not playing golf, the income generated from the use would inevitably be used by the golf course for its operations and which would cease should the accommodation be sold.

The planning obligation was also considered to be fairly and reasonably related in scale and kind to the proposed development; it merely sought to retain the development as part of the golf club, as it formed part of the income stream for the club, and forms a direct visual relationship within the overall development.

As such it is your officer's view that the obligation met the tests of Circular 13/97 and continues to do so and there is no justification for the modification on this ground. It was open to the applicant at the time not to enter into this obligation had he considered it to contravene national policy advice or to be in other way objectionable.

*Other material considerations that would support the modification of the obligation*

The applicant's agent has stated that the sale of Dormy House is required to release capital for improving the overall golf course and its facilities to enable it to expand and improve. No business plan or information has been provided to identify how this money would be spent (although this was requested in discussions prior to the modification request being received). Whilst there is sympathy with the current economic situation and its impact on businesses in the area, there is much concern that this argument could be used in many situations across the National Park. Whilst a short term capital gain can assist in times of recession, the longer term consequences must be borne in mind. The argument could be used again in the future and should the economic downturn not improve, there is the possibility that further release of accommodation could be requested resulting in accommodation in the countryside with an unfettered use. Granting consent for the modification of the obligation by releasing this block of flats would undermine the Authority's position in the future should further requests for releasing other accommodation from the obligation be sought.

Conversely, the release of capital could result in the upturn of the golf course which would be welcomed. However, success often leads to further pressure for development and the release of this block of flats from the golf course at this time, could well result in a further request for extensions to the accommodation at the golf course in the future. Whilst this would be dealt with on its merits, the extent of accommodation was considered to be necessary at the time of the original application (including Dormy House) to ensure the viability of the golf course, and it must be questioned why this number of flats is no longer needed for the longer term viability. In the absence of any business plan it is not possible to fully assess this aspect.

It is also argued that the Dormy House improvements have now been carried out and therefore there is no reason to retain them in the obligation. However, their severance would result in a lesser control by the golf course with regard to future maintenance and whilst the applicant's agent has suggested that controls could be included in the lease arrangements, these aspects are not planning controls and would not be able to be considered as justification for releasing these flats. The sale of a leasehold inevitably results in less control overall by the freeholder than if the units are retained.

### **Conclusion**

In conclusion, it is considered that the request for a modification has not been sufficiently justified and the original obligation should remain in place as it is necessary and reasonable with regard to current local and national planning policy.

### **Recommendation**

That the request for a modification of the planning obligation be refused.

*The applicant has requested that should members be minded to refuse this request that members agree that any further, formal request for a modification as required by legislation to enable an appeal to be lodged, may be dealt with under officer's delegated powers unless there is a change in recommendation.*







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Your Ref: NP/04/316  
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**Special Delivery**

75 AUG 2011

Date: 24th August 2011

Dear Ms Hirst

**Modification of Section 106 Deed made on 14th March 2006 between Newport (Pembs) Golf Club Limited, Pembrokeshire Coast National Park Authority and Barclays Bank PLC.**

I refer to the above, to my correspondence to you of the 10th August 2011 and to our recent telephone conversation on the 17th August 2011.

You confirmed that you have not decided what your recommendation to members will be, this you say must await a more detailed consideration of my report letter.

However, you indicated that the matter will be put before your members meeting to be held on the 21st September 2011 at which it is unlikely that I will be allowed to speak i.e. addressing your committee is seemingly restricted to planning applications, even though a S106 Agreement is an enabling annex to a planning permission.

From what you said when we spoke you perhaps mistakenly imagine that my primary concern is the possibility that your solicitor David Prescott may have added the '*restriction on disposal*' clause in connection with the Dormy House without the necessary approval of the Authority.

To my mind two salient points arise from your interpretation of Mr Prescott's actions, firstly to correct any misunderstanding between us, the undeniable core purpose of the key terms of the

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Chartered  
Town Planner

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Section 106 Agreement as approved and minuted in relation to your members meeting in May 2005 and described by yourself at the time, contains no reference to any controls over the Dormy House. Similarly I argue in my report letter, which you will recognise when you have had time to read it, that while there was no formal or material need to curtail normal business activity with regard to the Dormy House in 2005, there is even less justification today. Secondly you tell me that although you originally advised me that officers do not have the necessary delegated powers to modify or discharge a Section 106 Agreement it now appears, after your further reflection, that Mr Prescott was entitled to manipulate the members S106 May 2005 decision because he was acting in support of planning policy.

As I make reference to in my report letter to you of the 10th August 2011, Mr Prescotts reasoning for introducing the 'Restriction on Disposal' clause is explained in his correspondence to my clients solicitors dated the 14th November 2005 (i.e. six months after your members deciding the terms of the S106) – he makes no comment on planning policy, just the timing of the completion of the Dormy House refurbishments, which was not included in the S106 as it materialised. Lastly I discuss Mr Prescotts concept of an 'overall package' which as far as I am aware has no planning meaning whatsoever other than if I were to be extraordinarily generous and agree that your solicitor envisaged perhaps a comprehensive development. My reaction to such a thought is 'so what', the work to the Dormy House has been completed – it's implementation could have been ensured in the first place by means of a planning condition and the future, particularly in a visual sense, is capable of guarantee by means of a leasehold arrangement.

For the avoidance of any further doubt and for the sake of summary, I will set out below the issues as I see them in priority order (i.e. No 1 is the most important).

- 1 Those aspects of the Newport Golf Club development identified by you in your reports to members in May and March 2005, thereafter decided and minuted by committee, have been completed to National Park's and County Council's satisfaction.
- 2 The question then arises as to what material planning purpose is served by the S106 after the expiry date of the *relevant period*. (See Circular 13/97 ~ Primary Obligations)
- 3 Irrespective (for a moment) as to whether or not the 'Prescott Clause' is legitimate in terms of your own delegation rules, the thought remains, in the context of Circular 13/97, that planning obligations are intended, by means of works, the regulation of development or financial contribution, to improve a proposal that if it were not for these S106 measures would otherwise be unacceptable. Put another way, it is my belief that S106 Agreements are not an appropriate mechanism nor are they intended to replace the function of planning conditions and planning policy. The reason I conclude that this is the case, in part at least, stems from the simple

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principle (see Para 7 – 13/97 – Tests) that a planning obligation must relate directly to the proposed development – i.e. in the case of the Dormy House the agreement (for example) could reasonably have a clause that, say, addressed the refurbishment (*i.e. because this is what the Dormy House development is about*) i.e. requiring the structure to be programmed in a particular way relative to the remainder of the development under consideration. What seemingly is not appropriate is to seek to use the agreement to control tenure on (in this instance) a building that pre-existed the subject planning application (NP/04/316) and consequent development.

- 4 I do not believe that your solicitor had the necessary authority to impose the restriction on the tenure of the Dormy House, even if your delegation agreement distinguished between massaging legal documents in policy and non-planning policy circumstances.

When you have decided what your recommendation to members will be I would welcome a telephone call to keep me informed. Perhaps it may assist members (together with your comments) if you add this correspondence to my report letter of 10th August 2011.

Once again, thank you for your assistance.

Yours sincerely



**R. ANDERSON**  
**ROGER ANDERSON AND ASSOCIATES**

c.c. Client  
Mr K. Morgan (Douglas Jones Mercer)





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**Special Delivery**

Date: 10th August 2011

Dear Ms Hirst

**Modification of Section 106 Deed made on 14th March 2006 between Newport (Pembs) Golf Club Limited, Pembrokeshire Coast National Park Authority and Barclays Bank PLC.**

Thank you for the available reports and minutes with regard to the planning permission and Section 106 Agreement as they relate to the (now completed and operational) development at Newport (Pembs) Golf Club.

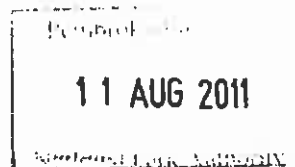
In reporting my client's request to your members which is an informal approach as advised by Circular 13/97 ~ Planning Obligations, I shall be obliged if you will convey the matter in full. Clearly you will comment as you see fit.

On behalf of the Golf Club I am instructed to ask your committee members to consider modifying the extant Section 106 Agreement previously completed by your Authority and my client in March 2006. The purpose and objective would be to sell the remaining three flats in the Dormy House adjacent to the clubhouse on the same leasehold basis as the one apartment previously sold and now in private ownership, which as you will recall is specifically excluded from the Section 106 Agreement.

Some of your members may recollect that initially officers recommended that our planning application NP/04/316 should be refused and while the report to committee (March 2005) was wide ranging in its scope, the core reason for rejection is to be found at the head of Page 8:-

*... 'It is therefore your officers view that in the absence of an agreement to extend the course prior to the (building of the) accommodation block that the application must be refused' ...*

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The decision of the National Park Authority was deferred by members to allow further negotiation with my client in connection with the terms of the Section 106 Agreement which culminated in a report to members in May 2005, your comments and the terms were as set out below:-

*... 'Ms Hirst considered that these terms secured the requirements of the Committee at previous meetings, and provided the necessary commitment to extend the course, which would justify the additional level of accommodation' ...*

- that no development would take place until the land for the extended golf course had been purchased, and would remain in perpetuity as part of the golf club;*
- that no part of the new accommodation would be occupied until the formation of the fairways, greens, non-playing areas and the road crossover for the new area of the course had been carried out to the satisfaction of the National Park Authority;*
- that the new accommodation (comprising 13 guest rooms and professional's accommodation) would remain an integral part of the land and buildings comprising Newport Golf Club in perpetuity, and*
- that the ancillary buildings and static caravans on the site be removed from the land permanently prior to the commencement of development.*

*... 'DECISION: That the Chief Executive (National Park Officer) be authorised to grant consent, subject to a Section 106 Agreement as outlined by officers, subject to agreement being reached on the outstanding design issues and appropriate conditions regarding parking, turning, materials and landscaping, and subject to a detailed layout of the extended golf course being submitted and approved prior to the commencement of development.' – May 2005*

A year elapsed from the members decision in May 2005 until the completed Section 106 Agreement emerged in March 2006 incorporating changes stemming from the definition of the land, which effectively controlled, not just the new development, but also land and buildings granted planning permission many decades ago.

You may remember that I ceased my employment with the Newport (Pembs) Golf Club in mid-November 2005, however, in the context of the unilateral undertaking previously drafted by me for my client and the Authority which was followed by a bipartite agreement prepared by the club's solicitors Douglas Jones Mercer in November 2005; there was no restriction to the disposal of the remaining Dormy House flats in either of the drafts, both being absolutely in accord with your members understanding of the ratified terms of May 2005.

If you refer to your solicitor's response to the draft Douglas Jones Mercer agreement, his letter dated the 14th November 2005, you will see that the 'screw is tightened' in the fifth paragraph on the first page of your Mr. Prescotts letter:-

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*... 'Secondly, the Authority is unwilling to exclude the existing flats from the Restriction on Disposal provision - again because this is part of the overall package, and indeed we need to add as a separate covenant requirement that the proposed enhancement of the existing flats (which is part of the applicants' proposal and necessary in visual terms) shall be completed prior to occupation of the new units'...*

I believe that from our recent interchange of correspondence we now know that Circular 13/97~ Planning Obligations does not recognise a concept such as an 'overall package' but rather advises that measures should be both necessary and appropriate to ensure the acceptability of the development under consideration. I will explain later as to why the visual integrity of the whole development is safeguarded in perpetuity without the need for clauses in a S106 Agreement.

From my inspection of your file NP/04/316 it seems almost certain that your solicitor's claim in his letter to Douglas Jones Mercer (above) that he had the sanction of 'the Authority' to include a Restriction on Disposal clause in the agreement is at least questionable (i.e. I do not believe 'the Authority' were ever asked). Nevertheless, the perhaps doubtful objective of officers was seemingly achieved in the sense that in a note from my client of December 2005 to Cllr Steve Watkins (passed to Catherine Milner) we see that Chris Noott capitulates and agrees to the exclusion clause - the revised and completed terms are as follows:-

- No part of the Land (save for Flat 2 Dormy House) shall be disposed of separately other than as part of Newport (Pembs) Golf Club*
- No part of the new 13 guest accommodation units or the professionals accommodation shall be occupied until the formation of the fairways, greens and non-playing areas on the Land, the road crossover adjacent to the cattle grid on Beach Road and the proposed enhancement of the existing flats known as 1, 2, 3 and 4 Dormy House Newport Golf Club have been carried out to the reasonable satisfaction of the Authority*
- For the avoidance of doubt the new accommodation comprising 13 guest rooms and the professional's accommodation shall not be disposed of other than as an integral part of the land and buildings Newport (Pembs) Golf Club*
- The ancillary buildings and static caravan on the site (adjacent to the existing accommodation) shall be removed from the land permanently prior to the commencement of the Development without any consequential liability in terms of compensation on the Authority*

The emphasis of the negotiations and indeed the member decisions in 2005 related to the importance of securing the nine hole extension to the golf course (i.e. first). The new nine holes are now built and operational, the 13 bedroom accommodation is completed; the Dormy House and the Clubhouse have been refurbished; the Beach Road crossover has been implemented to the satisfaction of the County Surveyor and the miscellany of temporary buildings and the caravan have been removed. I trust that you will agree that what was previously an untidy and

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unsatisfactory site in visual terms has been transformed into a pleasing development worthy of its coastal location in the National Park.

The Golf Club seek only the relaxation and modification of that part of the agreement which appears (see above) not to have been part of the original member decision – i.e. the need to inhibit the transfer of the Dormy House from the overall site. My client's request is made not so that he may dispose of the asset piecemeal and thereby lose any form of control over it, but so that, via means of a lease only, he may employ a relatively small part of the asset to raise capital so as to further improve and develop the golf course.

Disposal by way of lease with my client (as freeholder) remaining liable for the maintenance and upkeep of, in particular, all aspects of the exterior would in turn secure the long term visual integrity of the total development. What is proposed has already taken place in relation to Flat 2 Dormy House which was expressly excluded from the S106 Agreement as it had been disposed of (by way of lease) many years prior to the Section 106 negotiations.

Flat 2's partial separation (if indeed it can be described as such) from the overall ownership of the course has caused no issues or problems (demonstrated by my client's relatively recent refurbishment of Flat 2), therefore it is difficult to see how the Golf Club's current request would create any material difficulties. Additionally there is no restriction on the occupancy of the Dormy House or indeed on the use of the new accommodation. No part of the existing or new accommodation is reserved for the exclusive use of golfers, although in practice, virtually without exception, occupation is related to those wanting to enjoy golf in this stunning location. The disposal of the leasehold interest in the three remaining Dormy House flats would be attendant with the conditions described above and apart from a change to leasehold ownership there would be no visible or practical difference to the National Park interest.

My client has already invested considerable monies and effort to develop what has become a significant attraction in Newport; indeed the course has been chosen as the venue for the 2014 Ladies Senior Welsh Championships which self evidently will require the continued investment in all the facilities at Newport G.C.

Tourism you will concede has become increasingly demanding and whilst a nine hole golf course would largely meet a local (and occasional visitor) need, an eighteen hole course provides a facility for the discerning and serious golfer. Newport Golf Club is now capable of attracting golfers from beyond the boundaries of Wales, however, to seduce this wider golfing fraternity the course (particularly the new nine holes) must continue to improve.

To do so my client needs to raise further capital.

Whilst appreciating that such a need is not a planning consideration, the well being of tourism and the associated jobs in an otherwise moribund economy is, and without further capital investment

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my client would be unable to effect the vital move forward.

Members will presumably be reminded that Circular 13/97 ~ Planning Obligations, advises that following the 'relevant period' (5 years) it is legitimate to consider whether the whole or part (as in this case) of an agreement continues to serve a **useful planning purpose**.

I believe that there are two strands to the evaluation of 'usefulness' and trusting that you have no objection I will set out below an extract from your memorandum to my client of the 11th May 2011 which explains your version of the likely issues associated with a departure from planning policy, which I would say has nothing to do with the terms of the agreement approved by the members in May 2005:-

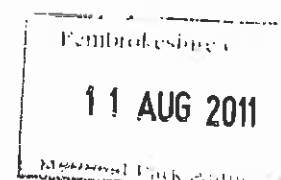
*... 'VH explained that the lifting of the restriction was of concern as the development was only allowed on the basis that the proposal was part of the larger golf course development and permission would not have been allowed in this location without an essential need to be located in the countryside. In this case the justification had been the recreational use as a golf course. Allowing the severance of the block of flats from the remaining buildings would lead to unfettered development in the open countryside which would be contrary to well adopted national and local development plan policies. As such this would be a departure from the plan and the Planning Acts required decisions to be made in accordance with the plan unless other material considerations indicated otherwise'...*

There is a certain compelling logic requiring most golf courses to be situated in the countryside, to which one may couple the reality that Inspectors have held in similar cases that national and local planning policies are usually sufficiently robust to repel the problems that you perceive. I believe also that there is a danger in overplaying 'severance' and 'unfettered' in the sense that there does not exist a restriction on the occupancy of any of the units. In summary the change of tenure is unlikely to alter the golf orientated function and occupancy of the flats. The other aspect which you do not mention, but one that may exercise the mind of a Planning Inspector are the relevant issues associated with fragmentation. As I see it, and related to the already explained indiscernible material planning changes caused by the sale of the leaseholds; case law seems to suggest that if a single ownership becomes subdivided this does not, of itself, prevent the continued use of the subject area as a solitary planning unit, i.e. there is no fragmentation. Therefore I conclude that neither planning policy nor the sub-division of ownership are remotely of sufficient concern to disturb the argument that the present (March 2006) 'Restriction on Disposal' clause on the Dormy House serves **no useful planning purpose**.

### **Concluding Remarks**

On behalf of my client I respectfully request that the Section 106 Agreement be modified to allow the leaseholds of No's 1, 3, 4 Dormy House to be sold. You asked about the effective control of the external appearance of the subject buildings – these matters, as I make clear above, and as the enclosed letter from my client's solicitor explains will remain with the freeholder Newport

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(Pembs) Golf Club Ltd in perpetuity who will ensure that decoration and maintenance/replacement of features is both tasteful in its execution and harmonises with the remainder of the adjoining development.

In my opening paragraph I emphasised the need for your members to take note that the governments preference is for requests to discharge or modify a planning obligation be resolved locally between the parties i.e. we are encouraged to avoid expensive (perhaps unnecessary) arbitration at appeal. I am persuaded to make the latter point again because **the planning purpose** of what was reported to committee in March and May 2005 and resolved at the self same meetings has now been delivered by Newport (Pembs) Golf Club in total.

If I have the sequence of events correct during the period 2005 and 2006, particularly the possibility of officers subsequently extending the degree of control in the S106 Agreement from that previously authorised members, in such circumstances, I do not think that it is sufficient to argue that my client signed the 2006 Deed, which he did, but he may reasonably say (as I have demonstrated) that the pressure in early 2006 to capitulate and sign outweighed any consideration in connection with the possible future implications of the altered S106.

In any event, I trust that you will agree that I have examined the issues in a thorough fashion, sufficient (with some new information) to encourage you to review your position with regards to your previously held view relative to the alleged material departures from planning policy (11th May 2011).

In summary I am certain that there are no planning dangers involved in your members agreeing to my clients request and without any attempt at 'dark overtones' I do not believe that any benefit will derive from testing this matter at appeal, in fact quite the reverse.

I am obliged to you for your assistance in this matter.

Yours sincerely

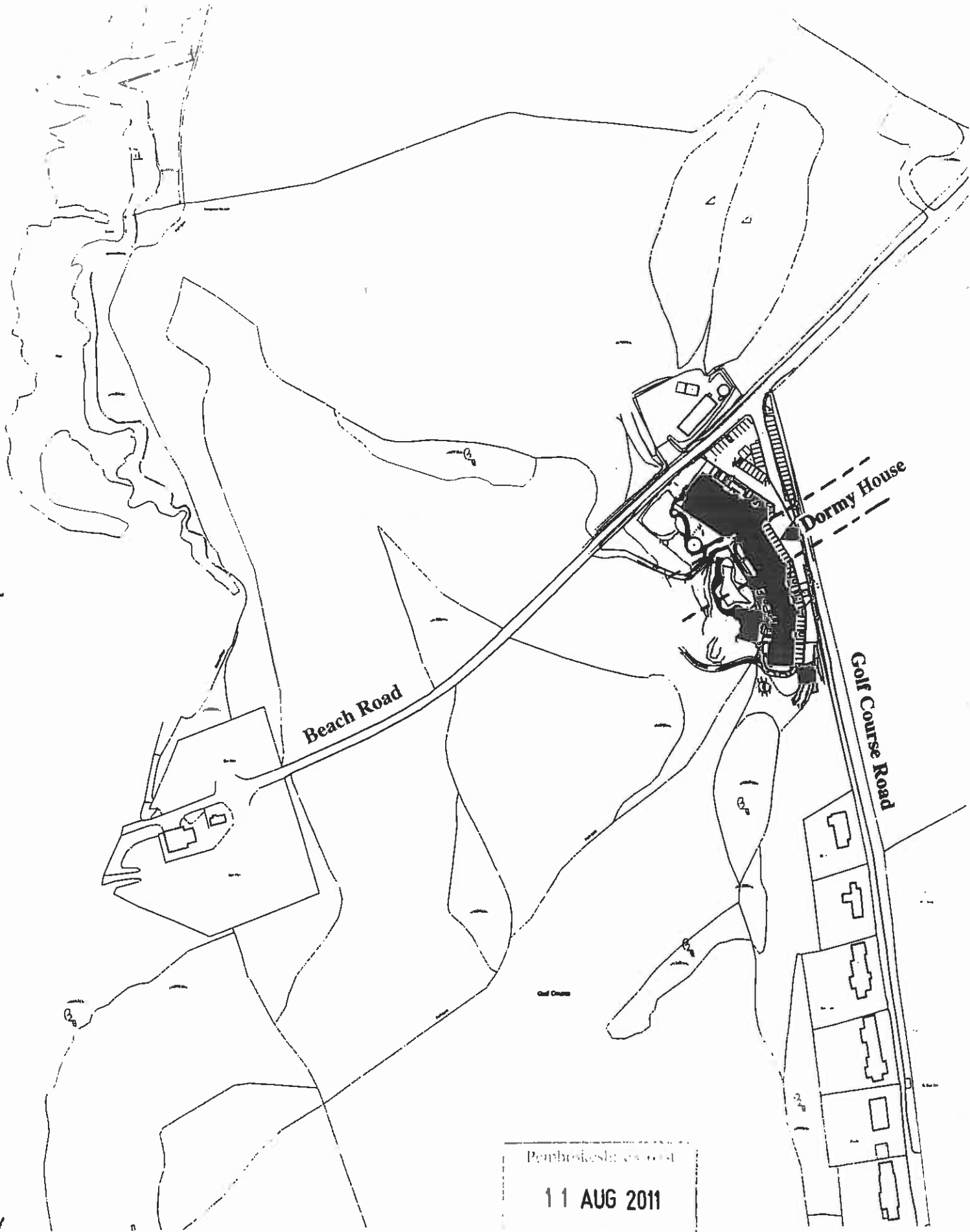


**R. ANDERSON**  
**ROGER ANDERSON AND ASSOCIATES**

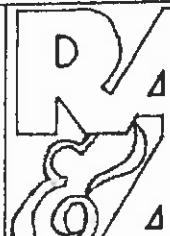
c.c. Client  
Ken Morgan (Douglas Jones-Mercer)

11 AUG 2011

National Park Authority



The Dormy House



**ROGER  
ANDERSON  
& ASSOCIATES  
PLANNING  
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**03**

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DJM

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16 Axis Court, Mallard Way, Swansea Vale, Swansea SA7 0AJ TEL: 01792 650000

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01792 - 656501

**Strictly Private and Confidential**

Mr. C. Nott  
Newport Links Golf Club  
Golf Course Road  
Newport  
Pembrokeshire SA42 0NR

Date:

20<sup>TH</sup> July 2011

Dear Chris

**Re: Flats at Newport Golf Club**

I confirm that the Lease of the flat which is occupied by Mr and Mrs Calvert Jones provides that all items of external repair and maintenance are the responsibility of the Golf Club as Landlord. The Tenant's obligations are limited to internal matters.

Regards

Yours sincerely,

Received by [Name]

11 AUG 2011

FAX: 01792 656500 E-MAIL: [post@djm.law.co.uk](mailto:post@djm.law.co.uk) WEBSITE: [www.djm.law.co.uk](http://www.djm.law.co.uk) DX: 742500 Swansea 19

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Our Ref :  
Your Ref : Gen/09.79.RAA

05 September 2011

Mr Roger Anderson,  
Roger Anderson & Associates,  
Planning Consultants,  
Clive House,  
9 Goat Street,  
Haverfordwest,  
Pembrokeshire,  
SA61 1PX

Dear Mr Anderson,

**Proposed Modification of Section 106 Deed made on 14<sup>th</sup> March 2006 between Newport (Pembs) Golf Club Ltd., PCNPA and Barclays Bank plc.**

I refer to your recent discussions with Vicki Hirst (the thrust of which have been conveyed to me) and to your letters dated 10<sup>th</sup> and 24<sup>th</sup> August 2011, addressed to Vicki Hirst, which were passed to me for my comments on my return from holiday.

I note that you contend forcibly that Vicki's recent ruling re the scope of her delegated powers is at odds with my 2006 correspondence with your clients' Solicitors. This is not accepted, as there is a demonstrably significant difference between the two.

Thus Vicki's recent indication to you that she does not have delegated powers to vary a substantive provision in a completed Section 106 Agreement, but must refer the matter to the Development Management Committee to be decided by the Members is, it seems to me, self-evidently in accordance with good governance and good practice. In these days of greater scrutiny and enhanced transparency an officer would be ill-advised to take it upon herself agreeing to the variation of a key provision in a completed Agreement, the relaxation of which could breach principle and policy.

In an attempt to persuade Miss Hirst to accept your position you contrast her stance with a statement in a letter of mine to your clients' Solicitors dated 14<sup>th</sup> November 2005 in which I state: ".....the Authority is unwilling to exclude the existing flats from the Restriction on Disposal provision....".

Your objection is that this statement did not have the specific authority of the Members, and so this warrants Miss Hirst conceding to your demands.

I consider your view misplaced – my comments were inserted in the 2005 letter after full discussion with, and indeed on the instructions of, the experienced planning officers who were dealing with the case at that time. The reality is this is the sort of steer that planning officers (and occasionally the legal adviser) are frequently and inevitably required to give – it is delivered in the knowledge of National policy, the Authority's adopted policies, previous decisions and debates, and a general feel for the Authority's aspirations. It would be anomalous to refer every such issue to Members, and wholly impractical.

In any event the key point here is that your clients (who were being advised by an experienced firm of Solicitors) expressly entered into the Agreement in its precise terms. If there was cause to question any principle or detail of that proposed Agreement the time to do so was before it was voluntarily entered into by your clients, and not more than five years later. Seeking to undermine the basis of the Agreement at this late stage deflects from what should be the prime focus of discussion; namely, the planning merit of what is proposed, and the resolution of the planning position in the public interest.

Miss Hirst has explained eloquently (in a note from which you yourself quote) the planning justification for the current restrictions. In this context I must take issue with your denigration of the "overall package" point in my 2005 correspondence – it is I believe a strength of this Authority that it endeavours to assess proposals on a holistic basis, including the socio-economic perspective, and indeed all material considerations, which is doubtless why the Authority was prepared to look favourably upon your client's 2005 proposal, despite it being contrary to policy, provided that certain safeguards and collateral benefits could be achieved, which taken together would result in an overall acceptable development.

The onus is accordingly on you and your clients to make a compelling case for relaxing the previously agreed terms. I understand you are currently in active dialogue with Vicki on these issues and she will have to formulate a report and recommendation to the Development Management Committee, for the matter to be decided by the

Members. Incidentally I normally invariably attend the Development Management Committee. It happens I am unable to attend the September meeting. I cannot see that my attendance is at all necessary for the proper determination of this issue, but if you continue to consider that it is, the matter will need to be deferred to the October meeting. Please let Vicki know promptly if that is your wish.

Yours Sincerely

**David A Prescott**  
**Solicitor to the Authority**

