

Item 6 - Report on Planning Applications

Application Ref: NP/12/0449

Application Type	Modification of Planning Obligation
Grid Ref:	SN05724064
Applicant	Mr C Noott
Agent	
Proposal	To lift the occupancy restriction to enable the disposal/sale of units 1, 3 and 4 in Block One
Site Location	Newport Golf Club, Newport, Pembrokeshire, SA42 0NR
Case Officer	Vicki Hirst

Summary

This application was reported to the Development Management committee on 21st November 2012 where it was resolved to approve the modification subject to a variation to the agreement being negotiated that required any monies arising from the sale of the flats to be re-invested into the golf course and club.

The decision to approve this application is considered to represent a significant departure from the adopted Local Development Plan and as such the Authority instigated a "cooling off" period of one month prior to a final decision being made in line with its agreed protocol on departure applications. There is no need to refer the application to the Welsh Government following its amendments to the call in procedure and as such the application is brought back to members for a final decision. The following report is the same as that brought to the November meeting and the recommendation of refusal remains the same.

This application seeks the modification of the Section 106 obligation imposed on planning permission NP/04/316 in relation to Newport Golf Club to remove the occupancy restriction imposed on Flats 1, 3 and 4, Dormy House to enable their disposal/sale separately from the overall golf course.

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

It is not considered that the request for a modification has been justified and the original obligation should remain on policy grounds and having regard to national policy advice. In your officer's view there are no overriding other material considerations that would justify allowing the modification of this obligation contrary to long and well established national and local policy. In addition, the economic gains that are presented in this application are not considered to be sufficiently compelling or with a level of surety that would

Item 6 - Report on Planning Applications

justify the release of this accommodation from the original Section 106 requirements.

The application is therefore recommended for refusal.

Consultee Response

Nevern Community Council: Objecting

Public Response

One other letter has been received setting out that the trustees of Flat 2 Dormy House (which is not tied to the golf club) would have no objection in principle to this proposal providing new leases are drawn up on the same basis as that for Flat 2.

Policies considered

Please note that these policies can be viewed on the Policies page Pembrokehire Coast National Park website - <http://www.pembrokeshirecoast.org.uk/default.asp?PID=549>

LDP Policy 01 - National Park Purposes and Duty

LDP Policy 07 - Countryside

LDP Policy 08 - Special Qualities

LDP Policy 15 - Conservation of the Pembrokeshire Coast National Park

LDP Policy 35 - Visitor Economy

TAN 06 - Planning for Sustainable Rural Communities

Officer's Appraisal

Legislative Powers/Policy Framework

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).

Circular 13/97 is also relevant and 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,

Item 6 - Report on Planning Applications

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.

Officer's Appraisal

Background

Planning permission was granted on 14th March 2006 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).

At the time of the application, 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 but 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". Furthermore, the applicant at the time was unwilling to enter into a Section 106 obligation 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.

Members however resolved to approve the development but subject to the applicant entering into a Section 106 obligation to ensure the delivery of the complete scheme and to tie the accommodation to the golf course in perpetuity. The minutes from the meetings highlight how important members considered the need for a Section 106 obligation to be to enable this application to be approved.

As such, the application was subsequently approved subject to a Section 106 obligation 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 obligation 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 obligation was that the proposal was only justified as development in association with the recreational activity (ie golf course) in this countryside location and with an improved appearance to the existing development.

Item 6 - Report on Planning Applications

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.

Section 106 of the Town and Country Planning Act 1990 includes provisions for the modification of such obligations. These modifications cannot be sought prior to the expiry of five years from the original obligation; in this instance the five years has been exceeded. 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 an “informal” request seeking the modification of the Section 106 obligation to allow for the sale of the three remaining flats within Dormy House on the same leasehold basis as Number 2 was made in August 2011. The matter was reported to the Development Management committee on 21st September 2011 where it was resolved to refuse the modification request on the following grounds:

1. The modification would be contrary to the provisions of the adopted Local Development Plan, in particular policy 7 which seeks to resist development in the countryside unless, amongst other things, tourist attractions or recreational activity is proposed where the need to locate in the countryside is essential. In addition policy 35 seeks to resist new self catering accommodation in the countryside. The release of Dormy House flats from the overall golf course would be tantamount to allowing accommodation in the countryside without any justification.
2. The modification would also be contrary to policies 1, 8 and 15 of the Local Development Plan which seek to protect and enhance the special qualities of the National Park. The modification of the Section 106 agreement would reduce the control over Dormy House in visual terms as part of the overall golf club in terms of its external appearance and decoration.
3. The Section 106 agreement continues to comply with the “tests” set out in Circular 13/97 in relation to Planning Obligations in that it remains necessary, relevant to planning, directly related to the development, fairly and reasonably related in scale and kind to the development and reasonable in all other respects. Its requirement to enhance the quality of development and to enable the original proposals to go ahead also remains. The modification of the agreement would undermine the fundamental reasons for its original imposition and which allowed this development to go ahead.

Item 6 - Report on Planning Applications

4. It is not considered that there are any overriding material considerations that would justify the modification of the agreement contrary to the provisions of the development plan and national guidance.

As this decision was based on an “informal” request for modification rather than under a formal application there was no right of appeal against this decision. Members resolved that should a formal application be received for modification of the obligation that this should not be dealt with under officer’s delegated powers but by further resolution by the Development Management committee. It is the formal application for a modification of the obligation that is the subject of this report.

Current Application

The current application again seeks a modification of the Section 106 obligation to remove the occupancy restriction imposed on Flats 1, 3 and 4, Dormy House to enable their disposal/sale separately from the overall golf course. The applicant’s main submission in relation to this matter together with a business plan is appended to this report but can be summarised as follows:

- The application has been amended to remove technical arguments and to set out the bigger picture in relation to future plans for the golf club.
- The works already carried out at the club have been very beneficial and produced enormous environmental gains
- The Agreement was required at the end of a long and protracted planning process and was mainly to ensure the course expansion and new build were carried out simultaneously
- There is interest in using Newport for future prestigious tournaments but investment is required to achieve championship course status.
- Concerns that the visual appearance of the building would not be retained can be resolved by a clause in the lease
- The flats are joined to the main club and share infrastructure so they cannot be regarded as unfettered residential units
- A clause could be imposed that stated that the units could not be used as the only or main residence of the occupants
- The units are too small for permanent occupation anyway
- The business has a reputation of excellence and good relationships with key partners
- The club employs several staff which will increase if the modification is granted
- The layout of the flats is not conducive to good letting and the monies would be better spent through re-investment which cannot be supported through normal lending
- Planning authorities are being encouraged to help the economy and this is one business that could offer those benefits to the community through re-investment of monies from the sale of the flats.

Item 6 - Report on Planning Applications

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

Item 6 - Report on Planning Applications

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.

Whilst the flats, the subject of this application, were pre-existing at the time of the original application to extend the course and accommodation, 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.

Whilst it is also accepted that the accommodation has no occupancy restriction requiring it to be used in association with the golf course 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.

Whilst it is accepted that the accommodation could be used by persons not playing golf, the income generated from the use is 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 visual relationship with 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, but that would have resulted in the refusal of planning permission for the development of the golf course.

Item 6 - Report on Planning Applications

Other material considerations that would support the modification of the obligation

The applicant has stated that the sale of Dormy House would release capital for improving the overall golf course and its facilities to enable it to expand and improve and a business plan has been provided with the application. This in the main comprises support from the Golf Union of Wales stating that improvements to the club will increase the chances of the premises being considered for future championships which will bring benefits to the local economy. Quotes for works to the bunkers, tees, greens, restaurant, car park and landscaping have also been included amounting to some £207,000 in total.

Whilst there is sympathy with the current economic situation, its impact on businesses in the area, and the difficulty of gaining further lending for investment, there is much concern that the arguments presented 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 for 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.

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 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 not considered that the request for a modification has been justified and the original obligation should remain on policy grounds and with regard to national policy advice. In your officer's view there are no overriding

Item 6 - Report on Planning Applications

other material considerations that would justify allowing the modification of this obligation contrary to long and well established national and local policy. In addition, the economic gains that are presented in this application are not considered to be sufficiently compelling or with a level of surety that would justify the release of this accommodation from the original Section 106 obligation.

Recommendation

That the request for a modification of the planning obligation be refused for the following reasons:

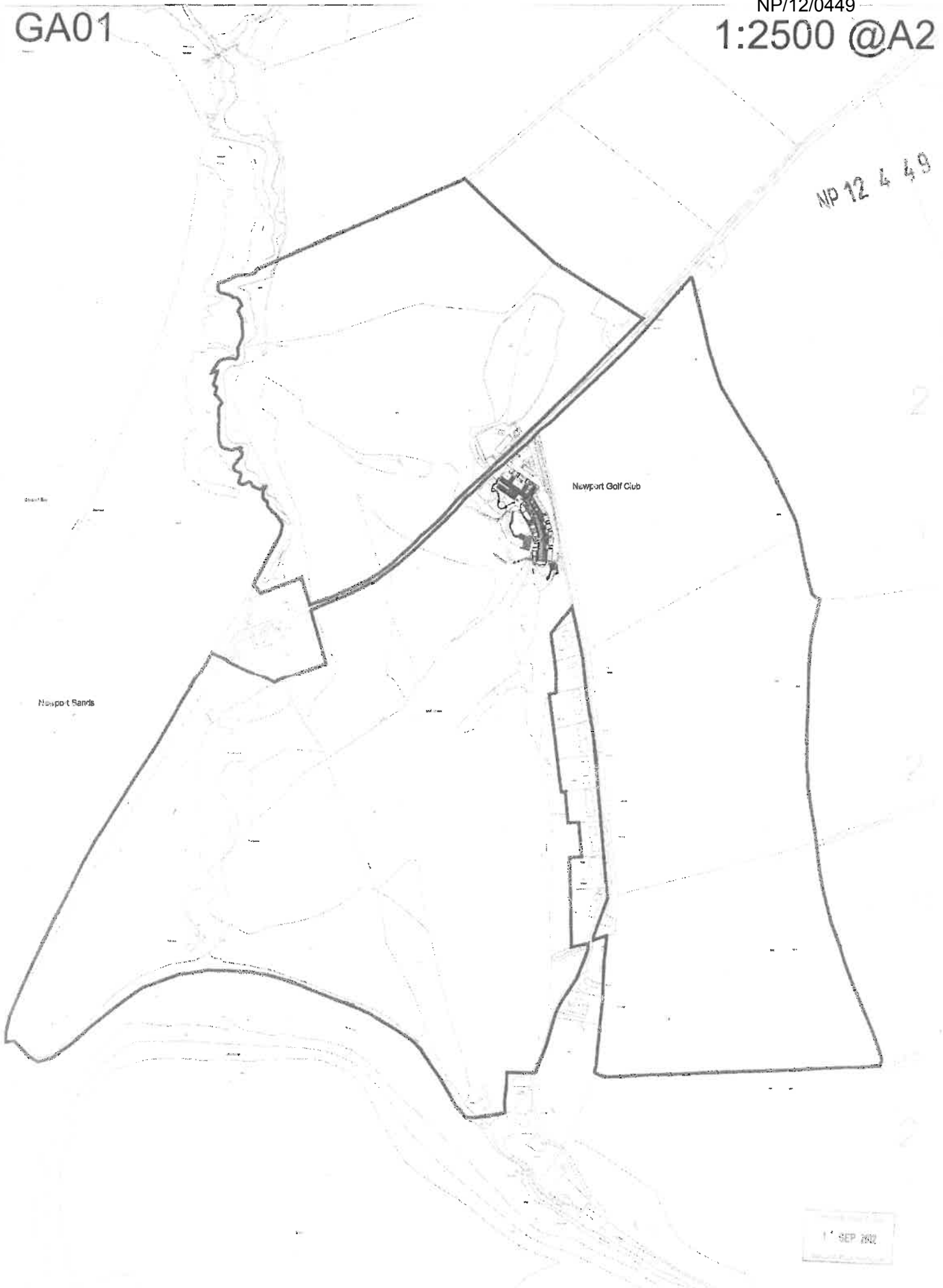
1. The modification would be contrary to the provisions of the adopted Local Development Plan, in particular policy 7 which seeks to resist development in the countryside unless, amongst other things, tourist attractions or recreational activity is proposed where the need to locate in the countryside is essential. In addition policy 35 seeks to resist new self catering accommodation in the countryside. The release of Dormy House flats from the overall golf course would be tantamount to allowing accommodation in the countryside without any justification.
2. The modification would also be contrary to policies 1, 8 and 15 of the Local Development Plan which seek to protect and enhance the special qualities of the National Park. The modification of the Section 106 obligation would reduce the control over Dormy House in visual terms as part of the overall golf club in terms of its external appearance and decoration.
3. The Section 106 obligation continues to comply with the "tests" set out in Circular 13/97 in relation to Planning Obligations in that it remains necessary, relevant to planning, directly related to the development, fairly and reasonably related in scale and kind to the development and reasonable in all other respects. Its requirement to enhance the quality of development and to enable the original proposals to go ahead also remains. The modification of the obligation would undermine the fundamental reasons for its original imposition and which allowed this development to go ahead.
4. It is not considered that there are any overriding material considerations that would justify the modification of the obligation contrary to the provisions of the development plan and national guidance.

GA01

NP/12/0449

1:2500 @A2

NP 12 4 49



1:500 @ A3



NP 12 4 49

NP/12/0449

Pembroke Hire Corp
 11 SEP 2012
 The Planning & Design Authority

GA02
 Kinver Creations Ltd
 www.kk-uk.com

Lewport Golf Club