

Re: Monitoring Officer's S 52 report to the Authority (Ref 09/20) in respect of the sale of 10 accommodation units at Newport Links Golf Club in apparent breach of obligations contained in a S106 TCPA 1990 agreement dated 13.6.2013 made between the Authority and the owner

Dear Mr Kent,

Thank you for your email with attached letter of 14th February 2020 in response to my email to you in respect of your report to the above meeting. I understand that the members accepted your recommendation on this matter.

With respect I beg to differ with your explanation as to how the disposal of the 10 units other than as part of the Golf Club has come about. It is quite obvious from comparing the two 106 Agreements concerned that the reason you give for the 'mistake' that has occurred is far more than the two words '*other than*' being omitted from clause 7 in the 13th June 2016 106 Agreement.

You do not say from where in clause 7 these words have been omitted.

Clause 7 *"Save as permitted by this schedule not to dispose of any interest or estate in the Dormy House Flats except as part of a disposal of the site as a whole or otherwise approved by the Authority with absolute discretion".*

It is hard to see how the omission of these words would have changed the meaning:

It was not possible for the two words to have been omitted from the amended 106 Agreement, because the paragraphs in which they are contained in the original 106 Agreement have not been transferred to the amended 106 Agreement. These two words appear twice in the original 106 Agreement dated 14th March 2006. They appear in the Third Schedule at bullet point 1 and 3 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".*

*" For the avoidance of doubt the new accommodation comprising of 13 guest rooms and the professional's accommodation shall not be disposed of **other than** as an integral part of the land and buildings comprising Newport (Pembs)Golf Club".*

In the DMC meeting 21st November 2012, the members agreed, against officers' advice, to the modification of the original 106 agreement relating to planning consent NP/04/316 dated 14th March 2006. This was to allow for the sale of 3 of the 4 original flats (Dormy House), and for the net proceeds to be reinvested back in to the business. Although it was argued by the applicant that it was needed for the sustainability of the business, Members did **not** agree to discharge the 106 Agreement from the 10 additional units of accommodation

" DECISION:

(i) The existing obligation continued to serve a useful purpose of controlling residential use in the open countryside.

(ii) The Committee was nevertheless minded to agree to the modification of the obligation to allow the disposal by way of lease for residential use of Flats 1, 3 and 4 Dormy House subject to being assured that the proceeds would be applied to the further development of the facilities of the Newport Golf Club.

However, the Members' instruction was simply not carried out by officers. In Clause 4 of the 106 Agreement dated 13th June 2013, under the title "**Discharge of the 2006 Planning Obligation 106 Agreement,**" sub-clause 4.2 it is now stated:

"Upon this Deed into effect the 2006 Planning Obligation should be discharged and the Authority should arrange to entry of a note to that effect in the registration of local land charges".

Instead of modifying the existing 2006 Agreement in respect of Flats 1, 3 and 4 Dormy House only, it replaced it, so that the Planning Obligations as attached to the 2006 agreement, relating to all the accommodation were wiped out. There was nothing repeated and included in the new 106 Agreement related to the units that were not the subject of this planning application. The solicitors inexplicably provided what the owner had wanted and in signing the second document the Officers failed to carry out the Members' instructions. You say that it is not for the Authority's authorised signatory to scrutinise every word of the agreement, but it is surely to be expected that he or she reads what is being signed. In this case, "*the mistake*" was glaringly obvious **and I contend that this amounts to a serious error on behalf of the Authority**

Certainly, it didn't take long for the Golf Club owner to realise "*the mistake*", when he took full advantage of the situation and sold off all the remaining units (except for the manager's accommodation) that it had been argued in 2004/5 were needed as an essential component for the economic and business sustainability of the Golf Course enterprise. This assertion found favour in 2005 with the majority of Members, who were persuaded, as an exception to the general rule, to grant the permission sought, **subject to the strict understanding and condition that individual units of accommodation thus permitted would thereafter, and in perpetuity, be tied or bound to the Golf Course business as a whole**, i.e. they would not be capable of being sold off on the open market individually and separately to the Golf Course business itself.

The result of the National Park's "*mistake*", is that the Authority has failed in its first and foremost duty and obligation in the lawful administration of the public law duties of town and country planning control - in this instance, to strictly limit the grant of permission to develop land (i.e. to build units of accommodation) in "*the open countryside*".

And, what is left of the original business now, after many hundreds of thousands of pounds of public money have been ploughed into the Golf Club to boost the local economy - for which the National Park has some statutory responsibility? One manager's flat, for which the owner has sought change of use to holiday accommodation (no doubt to sell on the open market once permission is obtained) and a clubhouse of which the catering operation is leased out. In addition, it is understood that even the 9 holes of the golf course added since 2012 have been sold off and leased back to the Golf Club for only 10 years. If this is correct, then there is only 9 holes of the original golf course left leaving a greatly diminished business, the sustainability of which must now be more than ever in doubt

The Authority has a duty to foster the economic and social wellbeing of the communities living within the Park. It has failed in this duty in its actions in relation to Newport Golf Club

Yours sincerely