

Item 4m **13/00649/FUL**

Case Officer **Adele Hayes**

Ward **Euxton**

Proposal **Application under Section 106 BA of the Town and Country Planning Act 1990 (as amended) to modify a planning obligation dated 22 December 2009.**

Location **Group 1 Euxton Lane Euxton**

Applicant **BAE Systems**

Consultation expiry: **3 September 2013**

Application expiry: **4 September 2013**

Proposal

1. The Group One site is located to the west of Central Avenue and covers an area of 54.34 hectares. It is located to the south west of Buckshaw Village and forms part of the former Royal Ordnance site. It is split between the administrative areas of South Ribble Borough Council and Chorley Borough Council with the larger part of the site within the boundary of Chorley.
2. Outline planning permission was granted in December 2009 for the redevelopment of the Group One site for mixed use development comprising housing and commercial uses and associated landscape treatment and highway works (08/00910/OUTMAJ). Permission was granted subject to a number of conditions and obligations contained within a Section 106 Agreement.
3. Two further Section 73 applications (11/00403/OUTMAJ and 13/00126/OUTMAJ) to vary condition 29 (access on the A49) of the outline planning permission and to remove the requirement for the dwellings to achieve Code Level 6 were approved on 27 July 2011 and 17 July 2013 respectively.
4. Infrastructure has been constructed to deliver serviced land which is solely accessed from a new junction onto the A49. This has enabled the sale of land across plots H3, H4 and H5 at the north western sector of Group One. Reserved matters approval has been given for these plots and housing development is underway. The balance of the development land falls in the administrative area of Chorley. It is this land that is the subject of this S106BA application.
5. This land has not been serviced. To achieve development there is a need for significant investment in infrastructure, including the construction of a new access onto Central Avenue.
6. BAE Systems have now submitted this application to vary the affordable housing obligations contained in the original Section 106 Agreement dated 22 December 2009

in so far as they relate to the part of the Group 1 site within Chorley Borough Council's administrative area.

7. The amendments proposed by BAE are to reduce the affordable housing provision from 20 per cent to 15 per cent and for all of the affordable housing units provided to be in the form of social rented housing.
8. All of the other obligations within the original Agreement are not affected by this application.

Recommendation

9. It is recommended that this application is approved and the terms of the Section 106 Agreement be amended.

Background to Section 106BA

10. Since the downturn in the economy many housing projects and other commercial ventures have stalled. One measure taken by the Government to kick start the economy has been to enable the early renegotiation of Section 106 planning obligations to take place.
11. Section 7 of the Growth and Infrastructure Act 2013 came into force on 25 April 2013 and amended the Act by introducing section 106BA which allows an application to be made to the relevant local planning authority ("LPA") in England to vary or remove "an affordable housing requirement" contained in a planning obligation where such requirements mean that development is not economically viable.
12. The LPA have the ability to modify, replace, remove or discharge the affordable housing obligation. If the LPA does not modify the planning obligation as requested, or fails to make a determination, within a specified time, there will be a right of appeal to the Secretary of State. However, this change in the law does not apply in respect of planning permission granted on the basis of a policy for housing on rural exception sites.
13. The change in the law came into force in respect of England only on 25 April 2013 but may be available for a limited period only. It is currently to be repealed on 30 April 2016 although the Secretary of State has the power to extend the date.

Consultations

14. **South Ribble Borough Council** – any comments will be reported on the addendum.
15. **Strategic Housing** – any comments will be reported on the addendum.

Assessment

Original Requirements

16. The original 2009 S106 Agreement required that 20% of the total dwellings on site would be dedicated as Affordable Housing, with 70% for Social Rent and 30% for Shared Ownership.

17. The Agreement also required that any Reserved Matters application for new residential development on the site that was to be made seven years from the date of the original outline (or five years from the date of the first Reserved Matters consent), i.e. July 2016, would make provision such that 30% of those new dwellings would be Affordable Housing units (also based on a 70/30 tenure split).
18. The negotiations in relation to the original S106 Agreement included the submission by the landowner of an open-book viability appraisal, which was independently assessed by GVA Grimley on behalf of Chorley BC.

Commercial Viability

19. During 2012, the Council entered into discussions with applicant, BAE Systems, with a view to re-examining the provisions of the outline planning permission for mixed use development.
20. The primary driver for these discussions, from the applicant's perspective, was the uncertainty regarding the future viability of development on the site. This cast doubt on the ability of the landowner to commit capital expenditure to a project where reasonable commercial returns are called into question.
21. Although some progress has been made by the landowner to bring forward the development in accordance with the outline planning permission granted in 2009, a change in circumstances has necessitated a fundamental review.
22. A detailed viability assessment, prepared by Lea Hough & Co on behalf of BAE Systems, was submitted to the Council in 2012. The appraisal methodology, which was first considered and scrutinised as part of the 2009 planning negotiations, was again the subject of external review by GVA Grimley on behalf of the Council.
23. GVA Grimley confirmed that the updated viability assessment was accurate and sound.
24. The appraisal was submitted to the Council under the terms of a Confidentiality Agreement and therefore full details of the appraisal are not provided in this report. However, a summary of the headline points is detailed below:
Receipts - Down 11 % from 2009 expectations.
Costs - An increase of 9.5%, over contingency levels, since 2009.
Land Value – A significant reduction to make the project commercially undeliverable.
25. It is generally difficult to obtain data relating to a particular trend in development land values and there is a wide range of factors that affect the price paid for land, from greenfield/brownfield, planning, s106 obligations, third party interests, market forces etc. It is evident however that there has generally been a downward trend in land values since 2009, as house prices stall, costs and inflation continue to take effect and developers are required by their funders to generate improved returns for any capital they spend. The empirical data that is available from the Land Registry House Price Index for the period between 2009 and 2012, in Lancashire (no sub-regional information is available) shows an average house price of £116,373 in December 2009. By December 2012, this had fallen to £104,390, a reduction of 10.3%.
26. The original viability exercise in 2009 and the revised appraisal submitted in March 2012 demonstrate that the effective reduction in projected land value of the Group 1 site is approximately 11%.

27. Group 1 forms part of the former RO Chorley munitions factory. As such, an extensive remediation and earthworks programme is required to ensure the land is safe and suitable for development purposes. In addition, the implementation of extensive infrastructure and service media is necessary to bring the site forward. The costs for this were borne by BAE Systems as landowner.
28. During 2010 and 2011, the market for residential land continued its decline and significant difficulties were encountered by the landowner in marketing and selling the land. The first parcel of land was sold to Persimmon Homes in late 2011 and this was followed by additional sales to Stewart Milne and Bloor Homes.
29. The value derived from these sales, combined with a market requirement for deferred terms, placed an additional burden on the forecasted cash flow of BAE Systems.
30. In addition to the downward pressure on land values, the costs of remediating and servicing the site increased, with particularly inclement weather conditions adding further to the costs associated with delivering the site.
31. This combination of factors meant that the landowners were no longer sufficiently incentivised to continue their investment in the site moving forward. Whilst the residential developers on site have continued within the South Ribble portion of Group 1, the ability of BAE Systems to remediate and service the Chorley element of Group 1 was undermined by the change in circumstances.
32. The development of Group 1, to date, has been focused in South Ribble Borough. There are currently four developers on-site, namely Persimmon, Bloor, Stewart Milne and Charles Church. In total, within parcels H5 and H4, there will be 220 dwellings constructed. 25 of these 220 dwellings will be Affordable Housing Units, made up of a mix of Shared Ownership, Affordable Rent and Target Rent properties. This equates to c11% overall provision. The rationale for this level of provision was to assist in stimulating delivery on the site in the early stages of the development.

Overall Conclusion

33. The viability appraisal and supporting evidence, demonstrates that in current market conditions, with the 2009 S106 in place, the progression of the site is unviable and will not be delivered. The reduction in the level of affordable housing provision will assist in ensuring that housing continues to be built on this key site and it is recommended that this application is approved and the obligation be amended to reduce the affordable housing provision requirement from 20 per cent to 15 per cent, with no step change increase in provision after the trigger date of July 2016, and for all of the affordable housing units provided to be in the form of social rented housing. It is anticipated that approximately 101 affordable houses would be provided.

Planning Policies

National Planning Policies:
National Planning Policy Framework

Chorley Borough Local Plan Review
Policy: GN2

Central Lancashire Core Strategy
Policy 7

Policy ST4

Planning History

97/00509/OUT: Outline application for mixed use development Approved August 1999.

97/00660/CTY: Erection of a landfill containment facility for the storage of contaminated soils and demolition material and associated land forming. Approved January 1998.

02/00748/OUT: Modification of conditions on outline permission for mixed use development. Approved December 2002.

05/00017/CTY: Variation of conditions 1, 3 and 4 of planning permission 9/97/660 to allow the importation of hazardous waste and to amend the phasing of landfilling and restoration at the existing landfill containment facility. Approved March 2005.

07/01108/CTY: Variation of condition 1 of planning permission 09/05/0017, extending the period of operations of the contained landfill facility by 3 yrs from 1/03/08 to 1/03/11. Approved by LCC January 2008.

08/00645/FUL: Erection of a bat house at Group One, Buckshaw Village. Approved July 2008.

08/00910/OUTMAJ: Outline planning application for the redevelopment of land at Group One (Site Area 54.34 Hectares), Royal Ordnance Site, Chorley for mixed use development comprising housing and commercial uses (including uses A1, A2, A3, B1, B2, C1, C2 and C3 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2006) and associated landscape treatment and highway works. Approved December 2009.

08/01002/FUL: Erection of a bat house at group one Buckshaw Village. Approved November 2008.

09/00058/CTY: Construction of a landscape mound for recreational and nature conservation use, utilising surplus excavation soils from the restoration of the site. Approved by LCC April 2009.

09/00084/FUL: Erection of a bat house at group one, Buckshaw Village. Approved April 2009.

09/00095/FULMAJ: Land reclamation and remediation earthworks to create a development platform at Group 1, Buckshaw Village (site area 54.34 hectares). Approved December 2009.

10/00153/DIS: Application to discharge conditions 4, 9, 10, 11, 12, 14, 16, 17, & 18 attached to planning approval 09/00095/FULMAJ. Discharged April 2010.

10/00247/DIS: Application to discharge condition 32 of planning approval 08/00910/OUTMAJ. Discharged April 2010.

10/00309/DIS: Application to discharge condition 14 attached to planning approval 09/00095/FULMAJ (discharge of phase 1 only). Discharged July 2010.

10/00339/DIS: Application to discharge conditions 7, 8 and 23 of planning approval 09/00095/FUL. Discharged June 2010.

10/00608/NLA: Neighbouring local authority application for construction of an access road onto the A49. No objection August 2010.

10/00693/DIS: Application to discharge condition 14 attached to planning approval 09/00095/FULMAJ (further phase relating to more information on tree removal/tree retention in the high and medium risk remediation zones). Discharged September 2010.

10/00940/DIS: Application to discharge conditions 7, 10, 12, 22 & 28 attached to planning approval 08/00910/OUTMAJ. Discharged December 2010.

10/01061/DIS: Application to discharge condition 47 attached to planning approval 8/00910/OUTMAJ. Discharged January 2011.

10/01062/DIS: Application to discharge condition 13 attached to planning approval 9/00095/FULMAJ. Discharged January 2011.

11/00080/DIS: Application to discharge conditions 5, 6, 8, 9, 11, 29, 30 and 46 attached to planning approval 08/00910/OUTMAJ. Discharged March 2011.

11/00099/DIS: Application to discharge condition 14 attached to planning approval 9/00095/FULMAJ. (phase 2 of the tree removal/tree retention and amendments to Phase 1 previously approved as part of 10/00309/DIS and 10/00693/DIS). Discharged February 2011.

11/00361/NLA: Neighbouring Local Authority consultation on a reserved matters application for the construction of an access road, foul water pumping station and layout of the NEAP/ open space (site 0.9ha) at Group 1, Buckshaw Village. No objection May 2011.

11/00403/OUTMAJ: Section 73 application to vary condition 29 (access on the A49) attached to outline planning approval 08/00910/OUTMAJ. Approved July 2011.

11/00784/DIS: Application to discharge condition 45 attached to planning approval 11/00403/OUTMAJ. Discharged October 2011.

11/00897/DIS: Application to discharge condition 24 attached to planning approval 11/00403/OUTMAJ. Discharged October 2011.

12/00007/FUL: Construction of an access roads to serve parcels H3 and H4 of Group 1 and the erection of a foul pumping station. Approved May 2012.

12/00265/MNMA: Application for minor non-material amendment to planning application 11/00403/OUTMAJ to amend to the remediation phasing. Approved April 2012.

12/00266/MNMA: Application for minor non-material amendment to planning application 09/00095/FULMAJ to amend to the remediation phasing. Approved 5 April 2012.

12/00448/DIS: Application to discharge condition 17 attached to planning approval 09/00095/FULMAJ. Discharged 30 May 2012.

12/00475/FULMAJ: Section 73 application to vary condition 18 (southern boundary treatment) attached to planning approval 09/00095/FULMAJ. Approved January 2013.

12/00688/FUL: Construction of an access road leading from Central Avenue together with earthworks and landscape treatment associated with the realignment of watercourses. Approved November 2012.

12/00791/MNMA: Application for minor non material amendment to outline planning application 08/00910/OUTMAJ comprising changes to the approved phasing of the development. Approved January 2013.

12/00801/DIS: Application to discharge conditions numbered 6 (exportation of material), 7 (cleaning of vehicle wheels), and 8 (routing of heavy goods vehicles) of planning approval 09/00095/FULMAJ. Approved December 2012.

12/00835/DIS: Application to discharge condition 3 (requirement to agree the extent of the proposed sub-phase H3 for which a reserved matters application is to be submitted) of permission 08/00910/OUTMAJ (outline permission for the development of Group 1). Approved September 2012.

12/00979/DIS: Application to discharge condition numbered 14 (tree survey) of planning approval 09/00095/FULMAJ. Approved October 2012.

12/01205/DIS: Application to discharge conditions numbered 3 (phasing) and 24 (verification reports) of planning approval 11/00403/OUTMAJ. Approved December 2012.

12/01237/DIS: Application to discharge condition numbered 14 (tree survey) of planning approval 09/00095/FULMAJ. Approved February 2013.

13/00126/OUTMAJ: Section 73 application to vary condition no. 17 (Code for Sustainable Homes) of planning permission no. 11/00403/OUTMAJ to remove the requirement for dwellings built post January 2016 to achieve Level 6. 17 July 2013.

Recommendation: That this application is approved and the terms of the Section 106 Agreement be amended